



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

MAR 24 2006

Mr. Carl Jackson
Galls/Aramark Inc.
2680 Palumbo Drive
P.O. Box 54308
Lexington, KY 40555-4308

Ref. No. 05-0290

Dear Mr. Jackson:

This is in response to your October 31, 2005 letter requesting clarification of the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to a freight forwarder who processes international shipments of hazardous materials. Specifically, you ask whether responsibility for compliance with the HMR transfers from the original offeror to the freight forwarder when the shipment is processed by the freight forwarder for international transportation. If not, you ask whether a written agreement between the original offeror and the freight forwarder could relieve the original offeror from its responsibility for compliance with the HMR.

Your question pertains to the following scenario: The original offeror prepares and offers for transportation a shipment of hazardous material classified as Consumer commodity, ORM-D. The shipment is routed through a freight forwarder, who prepares and offers the shipment for international transportation.

Under the HMR, any person who performs a "pre-transportation function" (see definition in § 171.8) is an offeror of hazardous material. Pre-transportation functions are functions performed to prepare a shipment for transportation, including assigning a hazard class to a material, selecting a packaging for the material, filling and closing the packaging, marking and labeling the packaging, and preparing shipping documentation and emergency response information to accompany the shipment. There may be more than one offeror of a shipment of hazardous materials. Each offeror is responsible for complying with the requirements of the HMR, with respect to any pre-transportation function that it performs or is required to perform; however, each offeror is responsible only for the specific pre-transportation functions that it performs or is required to perform, and each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.

Your scenario has two parts. For the first part of transportation, the original offeror is responsible for compliance with requirements applicable to the shipment of consumer



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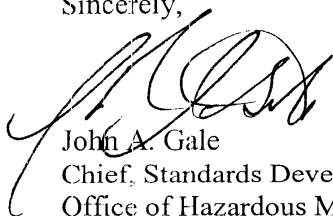
171.1

commodities under the HMR. For the second part of transportation, both the original offeror and the freight forwarder are responsible for the pre-transportation functions they perform. For example, if the original offeror prepares the package in the manner to be forwarded to its international destination by the freight forwarder, the original offeror is responsible for compliance with package selection, filling and closure requirements, and package marking and labeling. The freight forwarder will be responsible for compliance with packaging requirements if it alters the packaging, places the material in a different packaging, or has reason to believe that the original package (including its markings and labels) is not in compliance with the HMR. If the freight forwarder performs all the required pre-transportation functions applicable to the international portion of transportation – including classifying the material, selecting and filling a packaging, preparing a shipping document, supplying emergency response information, and marking and labeling the package – then the freight forwarder would be solely responsible for assuring the shipment complies with applicable requirements.

Unless the freight forwarder is handling the hazardous materials shipment without relying on information provided by the original offeror, a written agreement to transfer responsibility from the original offeror to the freight forwarder does not relieve the original offeror from its responsibility for the shipment. In your scenario, it appears that the freight forwarder is relying on information you provide to process the shipment for international transportation. If so, you are responsible for the accuracy of the information you provide as well as the requirements applicable to the functions you perform relative to that shipment.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards

Eichenlaub
§191.1
Applicability
05-0290



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INCORPORATED**

AN ARAMARK COMPANY

October 31, 2005

Director
Office of the Standards
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
400 Seventh Street, 8th Floor
Washington, DC 20590

2680 Palumbo Drive
P.O. Box 54308
Lexington, KY 40555-4308
phone: 1-800-477-7766
fax: 1-800-944-2557
www.galls.com

Anil K. Mehta, Attorney
Office of the Chief Counsel
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
Washington, DC 20590

Dear Sir or Madam:

Our current company policy mandates ground shipment only for all Hazardous Material. We do not, under any circumstances, ship hazardous material via air. In addition, when we ship hazardous material it is classified as ORM-D Consumer Commodities. The dilemma with our policy occurs when we ship internationally.

As addressed in a previous phone conversation with the Chief Council, we as the shipper are responsible for regulation compliance of the hazardous material from origin to destination. Because our international shipments are processed by a Freight Forwarder, we assumed that compliance passed to them. We have since learned that this is not the case. We then asked if we could request or submit to the freight forwarder a written agreement that ensures all regulation compliance measures are performed on our package by the Freight Forwarder before continuation of shipment to destination. We were told this may give us some legal protection but that we could still be held in violation of compliance regulations; thereby not being released from our liability for the package or its repackaging of the product for shipment.

Even with this verbal interpretation we still request a written interpretation allowing its use as a guideline for our policy determination. Written confirmation would provide us with justifiable cause to present our request to Freight Forwarders for documentation from them confirming strict adherence to regulation compliance.

Your written statement to this request would be greatly appreciated. Once we have received a written statement we will be in a position to finalize company policy.

Respectfully,

Carl Jackson
Hazardous Material/Export Compliance Specialist
Galls/Aramark inc.

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