



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

AUG 8 2006

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

Ref. No. 05-0264

Mr. James LoBello
Senior Manager, Lufthansa Cargo AG
Security & Risk Prevention, The Americas
JFK International Airport
Cargo Building 23, North Service Road
Jamaica, New York USA 11430

Dear Mr. LoBello:

This responds to your October 13, 2005 request for clarification on the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to air shipment of hazardous materials packaged in accordance with the International Civil Aviation Organizations (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. Specifically, you ask whether hazardous materials shipments in compliance with the ICAO Technical Instructions aboard a Canadian-bound aircraft would be subject to criminal or civil penalties if the aircraft has to be diverted to the U.S.

You state your flights bound for a Canadian airport occasionally may have to be diverted, because of an in-flight emergency (mechanical, threat, weather, etc.). You ask if you would be in compliance if diverted into the U.S. airspace as long as the hazardous materials shipment is in compliance with the ICAO Technical Instructions.

The answer depends upon whether cargo is unloaded from or loaded onto the aircraft at the U.S. airport. As a practical matter, we would recognize the emergency nature of the diversion and not pursue any noncompliance with the HMR when the aircraft departs for the intended Canadian airport at the conclusion of the emergency. However, if new cargo is loaded onto the aircraft, or the cargo is unloaded for storage and then reloaded, we would require compliance with the requirements in Part 175 of the HMR. In addition, acceptance of hazardous materials packaged in accordance with the ICAO Technical Instructions for transport in and through the U.S. is authorized under § 171.11.

I hope this answers your inquiry.

Sincerely,


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



050264

171.11
175.5

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>
Sent: Thursday, October 13, 2005 8:46 AM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: HMR Regulations on Diversions

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3771.11
3175.5
Air / ICAO
05-0264

Carolyn,

Can you stat this an Interp Letter Request? Thanks!
-Matt

-----Original Message-----

From: Exemptions <PHMSA>
Sent: Thursday, October 13, 2005 8:17 AM
To: INFOCNTR <PHMSA>
Subject: FW: HMR Regulations on Diversions

-----Original Message-----

From: james.lobello@dlh.de [mailto:james.lobello@dlh.de]
Sent: Wednesday, October 12, 2005 2:15 PM
To: Exemptions <PHMSA>
Subject: HMR Regulations on Diversions

To whom it may concern,

With our Lufthansa Passenger flights, we would like to have clarification on whether or not we would be subject to a civil penalty or violation if we diverted an aircraft into US Airspace with hazardous materials onboard not compliant to the US-HMR regulations, but only the ICAO standard? In essence, the situation is as follows:

-- Our passenger flights into Canada use US stations for in-flight diversions. I.e.. FRA-YYZ the diversion airport is DTW. I.e.. FRA-YVR, the diversion airport is SEA or PDX, etc.. If our flights traveling to Canada do not intend to use US Airspace; however, an in-flight emergency (mechanical, threat, weather, etc) is requiring a diversion into US Airspace (and henceforth a landing on US soil), would we be compliant as long as we only follow the ICAO standard for the transport of hazardous materials?

There is no question that when our flight is 'planned' into US Airspace, that the hazardous materials would be ICAO and US-HMR compliant.

Could you please provide the information in writing so we can prepare our Canadian bound flights accordingly. Thank you.

Kind regards,

79917

James LoBello
Senior Manager
Lufthansa Cargo AG
Security & Risk Prevention, The Americas
JFK International Airport

10/14/2005