



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

FEB 28 2003

Mr. Paul Bomgardner
Commercial Vehicle Safety Alliance
5430 Grosvenor Lane, Suite 130
Bethesda, MD 20814

Ref. No. 03-0053

Dear Mr. Bomgardner:

This is in response to your February 25, 2003 letter regarding maintenance of a shipper's certification under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask if RSPA intended to amend § 177.817(a) to require a shipper's certification on all shipping papers in the possession of a driver even those generated by a carrier consolidating multiple shipments.

The answer is no. A final rule under Docket HM-207B [67 FR 46123; 07/12/2002] revised § 177.817(a). In this final rule, § 177.817(a) was changed to read; "A carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter." This revision inadvertently eliminated the shipper's certification exception. RSPA will correct this discrepancy in a rulemaking in the near future.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards



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177.817

BAH
03-0053
File: 177.817**COMMERCIAL VEHICLE SAFETY ALLIANCE**

An Association of State, Provincial and Federal Officials
Responsible for the Administration and Enforcement of Motor
Carrier Safety Laws in the United States, Canada and Mexico.

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February 25, 2003

Mr. Delmer Billings
Chief
Research and Special Programs Administration (DHM-11)
U. S. Department of Transportation
400 7th Street, S.W.
Washington, DC 20590

Dear Mr. Billings:

It has been brought to the attention of the Commercial Vehicle Safety Alliance (CVSA) that several jurisdictions are enforcing section 177.817, paragraph (a) of 49 Code of Federal Regulations (CFR), subchapter C, to require a shipper's certification on all shipping papers in the possession of a driver while transporting hazardous materials. Prior to the change to this section, 177.817(a) stated: "A carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with sections 172.200, 172.201, 172.202, and 172.203 of this subchapter." That wording clearly eliminated the need for a shippers certification on shipping papers in the possession of drivers while hazardous materials are being transported. This only made sense, due to the fact that many shipping papers are carrier-generated from original bills of lading kept on file at the carrier's office. This is especially true for less-than-truckload (LTL) operations where multiple loads are transferred from one vehicle to another and consolidated under carrier-generated shipping papers.

As it now appears, section 177.817(a) merely states that shipping papers must conform to the requirements in Part 172 of subchapter C. Because 177.817(a) is not specific, enforcement officers are applying "all" Part 172 shipping paper requirements to paperwork in the possession of drivers. We believe that this was not the intention of Research and Special Programs Administration (RSPA) when the current requirement was adopted.

CVSA recommends that section 177.817(a) be amended to its former wording in order to clarify its intent. Meanwhile, we request that RSPA issue a recommendation to roadside inspectors that a moratorium be imposed on enforcement of the requirement to have a shippers certification on shipping papers in the possession of drivers while transporting hazardous materials until such time as RSPA can issue an amendment to the rule.

Sincerely,

Paul Bomgardner
Director of Administration