



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

MAY - 5 2006

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

Mr. Thomas Radwick  
President  
Ultimate Contract Services, Inc.  
8380 Flick Road  
Tipp City, Ohio 45371

Ref. No.: 06-0095

Dear Mr. Radwick:

This responds to your April 19, 2006 letter requesting clarification of the term "offeror" for purposes of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). Specifically, you ask whether the term includes brokers, freight forwarders, and agents and whether brokers, freight forwarders, and agents are required to register with DOT in accordance with 49 CFR Part 107, Subpart G.

As provided in § 171.8 of the HMR, an "offeror" is any person who: (1) performs, or is responsible for performing, any pre-transportation function required under the HMR for transportation of a hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce. Pre-transportation functions are functions specified in the HMR that are required to assure the safe transportation of a hazardous material in commerce, including, but not limited to: (1) determining the hazard class of a material; (2) selecting a packaging; (3) filling a packaging; (4) securing the closures on a filled or partially filled packaging; (5) marking and labeling a package; (6) preparing a shipping paper; (7) providing and maintaining emergency response information; and (8) certifying that a hazardous material is in proper condition for transportation in conformance with HMR requirements. If a broker, freight forwarder, or agent performs one or more pre-transportation functions to prepare a hazardous materials shipment for transportation in commerce, then the broker, freight forwarder, or agent is an offeror under the HMR and is subject to all applicable regulatory requirements. A third party logistics company or broker who contracts with a carrier to transport a shipment on behalf of the original shipper is not considered an offeror for purposes of the HMR unless it also performs one or more pre-transportation functions to prepare the shipment for transportation in commerce.

The registration requirements in 49 CFR Part 107, Subpart G apply to persons who offer and persons who transport certain hazardous materials in commerce. A broker, freight forwarder, or agent who performs one or more pre-transportation functions for the types of hazardous materials shipments specified in 49 CFR 107.601 must register with PHMSA and pay a registration fee. Note that under the registration system as currently structured, possession of a valid registration certificate is not an endorsement of regulatory compliance or of a carrier's safety fitness nor does it indicate that the certificate holder complies with applicable security requirements.



060095

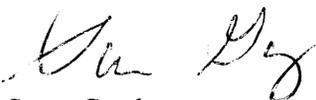
171.8

There is no general requirement for a hazardous materials carrier to obtain a "Federal Hazardous Materials License" in order to transport hazardous materials in commerce; however, Federal Motor Carrier Safety Administration regulations (49 CFR Part 385, Subpart E) require motor carriers transporting certain types and amounts of hazardous materials to apply for a safety permit. To obtain a safety permit, a carrier must have a "satisfactory" safety rating and must meet certain other safety and security requirements. The safety permit requirements apply to motor carriers transporting: (1) a highway route-controlled quantity of a Class 7 (radioactive) material; (2) certain high explosives; (3) certain TIH materials; and (4) certain bulk shipments of liquefied methane gas and liquefied natural gas. A carrier may not transport any of the listed materials unless it has a valid safety permit.

According to your letter, you are concerned that brokers, freight forwarders, and agents do not comply with applicable security regulations. In accordance with Subpart I of Part 172 of the HMR, persons who offer for transportation or transport certain hazardous materials in commerce must develop and implement security plans addressing personnel, unauthorized access, and en route security. The types and quantities of hazardous materials for which a security plan is required are listed in § 172.800(b) of the HMR. If a broker, freight forwarder, or agent meets the definition of an "offeror or person who offers" in § 171.8 for one or more of the hazardous materials listed in § 172.800(b), then the broker, freight forwarder, or agent must develop and implement a security plan covering the security risks associated with the functions he or she performs. Moreover, foreign-based entities must comply with all applicable HMR requirements when operating in the United States. Thus, foreign-based persons who offer for transportation or transport hazardous materials into or within the United States in the types and quantities listed in § 172.800(b) must develop and implement security plans for those hazardous materials.

I hope this information is helpful. Please contact this office if you further questions or need additional information.

Sincerely,



Susan Gorsky  
Regulations Officer  
Office of Hazardous Materials Standards

ULTIMATE CONTRACT SERVICES, INC.

8380 FLICK ROAD TIPP CITY, OHIO 45371  
937-667-7823 937-667-8722 (FAX)

Gorsky  
§171.8  
Definitions  
06-0095

April 19, 2006

Mr. Edward Mazzullo, Director

OFFICE OF HAZMAT STANDARDS  
U.S. D.O.T. – P.H.M.S.A.  
400 7<sup>th</sup> Street SW  
Washington, DC 20590-0001

Good Morning!

I am requesting a formal written clarification of rules regarding Hazmat Regulations 171.1 as they pertain to "Offerers", as a result of the vague interpretations recently provided me by personnel within your Department. As you are aware, the term "Offeror" has been revised to include Brokers, Freight Forwarders and Agents to register with the P.H.M.S.A. This change became effective October 1, 2005.

I recently e-mailed your Department several questions regarding whether a Licensed Property Broker who offers or arranges with a motor carrier to transport hazardous material is required to register with DOT/PHMSA and obtain a Federal Hazardous Material License in order to legally transport such loads. The crux of their response was that it depended on whether the entity performs a "Pre-Transportation Function" (i.e. preparing a shipment, labeling, issue shipping papers etc.)

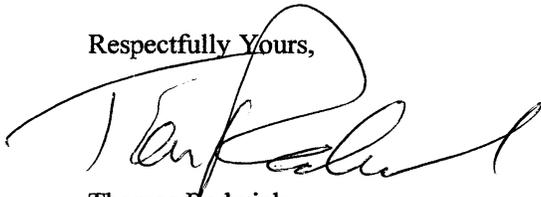
The clarification being sought is; "What is the relationship of a Broker or Third Party Logistics' (a.k.a. 3PL) regarding a Hazmat shipment offered by a Shipper"? While it may be assumed a 3PL will seldom, if ever, be involved with the PHYSICAL handling of a shipment, nevertheless, the 3PL is certainly the catalyst for the selection and qualifying of a motor carrier due to their relationship with the Shipper or Offerer of the hazardous material. A 3PL may contact a carrier it uses regularly, or offers through an Internet Load Board a Hazmat shipment, whereby a previously unknown carrier responds and initiates the contact with the 3PL. When this event occurs and a monetary covenant is finally reached and paperwork exchanged between the parties; wouldn't this exercise qualify as a "Pre-Transportation Function"?

The reality of the 3PLs' involvement in such a transaction would certainly require basic knowledge of the product to be shipped for transport by being aware of the commodity, class and size of the material to be transported. Without knowledge of the Class, UN number, Quantity, and Weight, a 3PL cannot properly identify a hazardous shipment nor communicate the hazard to the carrier. Also, the carrier could not pre-plan the routing if it is unaware of the travel restrictions imposed by state and local governments regarding specific hazardous materials. Such a lack of information could result in dire consequences. For example, a Class 8 Corrosive Liquid; UN 2531 Methacrylic Acid, Inhibited requires that the temperature be kept above 65 degrees to prevent freezing during the winter months. Failure to arrange for a temperature controlled (i.e. Heated Van) to properly transport this material could result in an environmental spill due to negligence on the part of the 3PL.

The threat of terrorism is another subject of serious concern. The Transportation Security Administration and Homeland Security have made a priority to require mandatory fingerprinting and background checks of holders of Commercial Drivers Licenses (CDL) seeking Hazmat endorsements. This was done to insure that access to chemicals and other materials would be restricted to only those who were deemed a non-security risk. Yet, currently, we have 3PL's located outside U.S. borders arranging interstate shipments of hazardous materials between points within the U.S. The only pre-requisite many 3PLs' require of the carrier is that the Driver has a Hazmat endorsement on their CDL. This practice clearly demonstrates their lack of knowledge of the Hazmat regulations. By ordering 3PLs' to register would also require them to review their employees' knowledge of hazardous materials and provide them with proper training. This will ensure that a security review is performed and the security plan is in effect. I find it somewhat irresponsible that this lack of enforcement is being condoned. In the past, when I have requested Brokers who contact me with shipments of hazardous material to provide me with proof of their Registration, I'm told that they are not required to register because they either do not physically handle the material or they do meet the criteria under the definition of shipper or offeror. Some have even stated they have contacted your Department and are being told they are exempt from registering. This I find disturbing from a regulatory as well as a security and safety standpoint.

I trust that I made a case for the necessary written clarification of the recently revised regulations. I believe that by communicating within our industry and complying with regulations designed to protect both our safety and security, that together, we can minimize the risk and eliminates those loopholes so often exploited today. I look forward to your response and thank you in advance for your time and interest

Respectfully Yours,

A handwritten signature in black ink, appearing to read 'Tom Radwick', written over a large, stylized flourish that loops back to the left.

Thomas Radwick  
President