



International Vessel Operators Hazardous Materials Association, Inc.

10 Hunter Brook Lane, Queensbury, NY 12804 - 518/761-0263 - FAX 518/792-7781

E-MAIL: mail@vohma.com - www.vohma.com

March 15, 2007

Mr. Robert Richard, Deputy Associate Administrator for Hazmat Safety
Ms. Jo Strang, Associate Administrator, Office of Safety, FRA
Mr. Edward Pritchard, Director, Office of Safety Assurance and Compliance, FRA
Ms. Stacey Gerard, Deputy Administrator, PHMSA
Mr. Frazer Hilder, Office of the Chief Counsel
Mr. Joseph Solomey, Assistant Chief Counsel, Hazardous Material Safety

Via e-mail to each of the above

The International Vessel Operator's Hazardous Materials Association, Inc. (VOHMA) would like to reiterate our appreciation to you and all the others from the Pipeline and Hazardous Materials Safety Administration (PHMSA) staff and the Federal Railroad Administration (FRA) for taking time to meet with us at the FRA offices on January 17, 2007. At that meeting we discussed some of the issues which our members feel may be presenting operational difficulties and have resulted in impediments and, in some cases even obstacles, to efficient and safe intermodal transportation of containerized hazardous materials cargoes. Some of those issues discussed at the meeting included current problems associated with the use of the emergency response telephone number on a shipping document, identification of those documents which actually can be construed to meet the requirements of the HMR in Subpart C when generated as a part of the intermodal logistics chain such as work orders, dock receipts, or train consists, and which of these would be considered the legal control document, as well as the authorization for use of electronic data interchange for exchange of information. VOHMA also pointed out the inconsistency that often occurs during field audits by inspectors of the various modes and discussed possible guidelines that might be jointly developed. We apologize for the time that has elapsed since the meeting, but we can assure you that have not been sitting idle. Rather than to simply restate the meeting issues, we have spent the past several weeks discussing and analyzing the issues with VOHMA members with a goal of identifying the root cause or multiple causes contributing to or negatively impacting intermodal safety and global commerce and seeking suggestions for resolution.

"Committed to the promotion of the safe handling and transportation of hazardous materials."

Alianca Navegacao E Logistica Ltda ♦ APL, Ltd. ♦ Atlantic Container Line ♦ Bermuda Container Line ♦ China Shipping (NA) Holding Co.,Ltd. ♦ CMA-CGM (America) Inc. ♦ COSCO ♦ Crowley Maritime Corporation ♦ Evergreen America Corporation ♦ Hamburg-Sud ♦ Hanjin Shipping Company Ltd. ♦ Hapag-Lloyd AG ♦ Horizon Lines, LLC ♦ Hyundai America Shipping Agency ♦ Independent Container Line, Ltd. ♦ K Line America, Inc. ♦ Maersk, Inc. ♦ Marine Transport Management Inc., a Crowley Co ♦ Maruba North America ♦ Matson Navigation Company ♦ MOL (America) Inc. ♦ NSCSA (America), Inc. ♦ NYK Line (North America) Inc. ♦ OOCL (USA) Inc. ♦ Safmarine Container Lines Inc. ♦ Seaboard Marine Ltd. ♦ Senator Lines ♦ Tropical Shipping USA, LLC. ♦ United Arab Shipping ♦ Yang Ming Marine Transport Corp. ♦ Zim American Integrated Shipping Services Co., Inc.

We have identified several issues that might provide opportunities for enhancement of safety through regulatory amendments and at the same time provide mutually beneficial transportation efficiency for shippers and carriers by all modes. Without quantifying we can safely assume that the

vast majority of the hundreds-of-thousands of freight containers transported by ocean are transported by highway and/or rail on both ends of the journey from origin to destination. Thus we have attempted to isolate the root cause of problems associated with the modal interchange of these containers, with consideration for nuances experienced in both domestic and international transportation since our members must also comply with Port State regulations in numerous countries as well as the IMDG Code. But rather than to embark on a mission of pointing out the negative experiences that may have resulted from differences in operational procedures or modal agency interpretations VOHMA would like to put forth some general statements which we feel should create some positive initiatives on which all might concur.

1. In the modern global marketplace shippers expect to be able to distribute their newest products “en-masse” throughout the world virtually simultaneously following introduction to the market and to ensure the inventory will meet the perceived demand.
2. The transportation logistics chain must provide a seamless integration of carriage by all modes with the greatest efficiency to meet the delivery schedules and financial constraints of their customers.
3. Competitive world trade participants rely on a transportation infrastructure that minimizes obstacles that may result in delays or even barriers to intermodal transportation efficiency.
4. Harmonization is a key element in eliminating obstacles between multiple geographies or even between modes within a single geography.
5. Differences in hazard communication or the interpretation of their application are a principle source of disharmony in intermodal/international transportation of dangerous goods.
6. Documents required for dangerous goods transportation in each mode must provide uniformity in content and in general format in order to enhance harmonization in hazard communication throughout all modes.
7. Electronic data interchange (EDI) has become a recognized method of efficient and accurate communication currently being used successfully throughout the industrialized world.
8. The basic elements currently required for documents used for the purpose of hazard communication can readily be transmitted by existing EDI methods.
9. EDI transmissions permit immediate access to hazard communication information by all those involved in the transportation infrastructure as well as by emergency responders equipped with basic technology for receiving data in both electronic or hard copy reproduction.
10. Intermodal transportation partners engaging in contractual agreements between modes or between interlining carriers within modes as a link in the intermodal transportation of containerized dangerous goods would benefit from clear, concise, authoritative regulations that provide specificity to responsibilities in the transfer of containers from one carrier to another within or between those modes.

Based on concurrence with these basic statements of principle, VOHMA suggests that the most obvious common denominator that might provide the most readily achievable resolution would be in the realm of hazard communication through documentation. In the past few years we have experienced enhanced harmonization in the adoption of the UN Model Regulations in Chapter 5.4

and we commend the US DOT for adopting those basic elements for the entries and their sequence on the document. However, VOHMA feels that uniformity in interpretation of the documentation requirements for intermodal transportation has not yet been achieved.

One of the issues we have considered to be of a high priority is the application of the requirements in the HMR for documents used for intermodal transfer of containerized hazardous materials cargo. A common error occurs when the inspector uses the document generated by the rail road that is called a consist and accompanies the hazardous material cargo on the train.

Under current HMR §174.24 only the initial carrier must receive and maintain a shipping paper prepared in accordance with Part 172 of 49CFR, including the shipper's certification required by §172.204. Each carrier receiving a shipping paper required by this section must maintain the documents for three years at their principal place of business and they must be made immediately available. §174.26 requires that a member of the crew of a train transporting a hazardous material must have a copy of a document showing the information required by Part 172.

While the consist is required to comply with Part 174, Subpart B, specifically §174.24 and §174.26 there is no requirement therein to identify the person or agency that corresponds to the emergency response information telephone number required at §172.604(b). Thus, if the railroad chooses to enter the name of the ship line interlining with the rail as the shipper for billing purposes, the true identity of the shipper or emergency information provider is often not entered on the consist. Valuable time is often lost while the emergency responder or the inspector checking the validity of the number tracks down the individual intended to be associated with the telephone number.

Another similar problem arises when the current requirements of 49 CFR, §172.604(a) are followed and the person offering the hazardous material provides an emergency response telephone number, including the area code or the international access code, for use in the event of an emergency. While this number may provide access from the United States to the emergency response information provider, others also may attempt to use this number, for example in the case of a shipboard emergency at sea. Thus the number should provide access by internationally accessible codes from anywhere. The below suggested amendment to §172.604(a) would enhance harmonization particularly with the Transport Dangerous Goods Regulations of Canada which include the same requirements.

VOHMA requests the following amendments be considered to correct the existing deficiencies as noted above.

New Section §172.206

§172.206 Interlining carrier documents

When a shipping paper is required by Subpart C of this Part, interlining carriers must provide a shipping paper to connecting carriers when interlining dangerous goods for on carriage.

- (a) The documentation must conform to the requirements of §172.201, §172.202 and §172.203 including the name of the shipper.
- (b) Interlining carriers shall prepare such documentation based on the documentation and certification received from the shipper; however, interlining documentation need not include the certification required in §172.204.

- (c) For interlining shipments in conformance with §171.12 the documentation may contain the information required under the IMDG Code sections 5.4.1.4 and 5.4.1.5 and in addition must include the shipper's name.
- (d) Electronic data interchange may be used to satisfy the requirements of this section.
- (e) Interlining carries are not considered offerors when preparing documentation under the provisions of this section.

Amend §174.26(b) to require that while this document may include the name of the interlining carrier it must include the name of the shipper (offeror) as identified by the interlining carrier as entered on the certified shipping paper.

§174.26(b) A member of the crew of a train transporting a hazardous material must have a copy of a document for the hazardous material being transported showing the information required by part 172 of this subpart , including the requirements of §172.206 applicable to interlining carriers.

Amend §172.604(a) to read:

A person who offers a hazardous material for transportation must provide an emergency response telephone number, including the area code for use in the event of an emergency involving the hazardous material. For international shipments the emergency response telephone number must include the country code and, where necessary to complete the call, the city code. The telephone number must be –

New section: §172.604(a)(3)(iii) for clarification

§172.604(a)(3)(iii) The name of the shipper (offeror) and , if applicable, the contracting party and agency or organization accepting responsibility under 172.604(b) must be provided on the shipping paper in association with the telephone number.

Add §172.604(c)(3) (to clarify only that the E.R. telephone number does not apply to)

Add §172.604(c)(3) Transport vehicles or freight containers containing lading which has been fumigated and displaying the FUMIGANT marking required by §173.9 unless other hazardous materials are present in the cargo transport unit.

Electronic Data Interchange

Modern industry practices and procedures recognize the value of utilization of electronically transmitted data to provide accurate, timely, and accessible information. The UN Subcommittee of Experts on the Transportation of Dangerous Goods is currently discussing advanced methods proposed by the International Air Transport Association that are intended to virtually eliminate the need for paper documents to accompany dangerous goods cargo. The International Maritime Dangerous Goods Code at Chapter 5.4 authorizes the use of EDI as an aid to paper documentation and refers to electronic copies of documents used to satisfy the requirements of various sections of the Code such as 5.4.1.3.

The US Government realized the value of EDI and enacted **The Government Paperwork Elimination Act (GPEA) in 44 U.S.C. 3504**, which states in part as follows:

Section 3504(a)(1)(B)(vi) of title 44, United States Code, is amended to read as follows:

“(vi) the acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.”

The Act recognized the validity of electronic signatures and developed procedures for use and acceptance of such signatures. They are required to be compatible with standards and technology for electronic signatures that are generally used in commerce and industry and by State governments and may not inappropriately favor one industry or technology. The procedures ensure that electronic signatures are as reliable as is appropriate for the purpose in question and keep intact the information submitted and the government set deadlines for implementing the procedures.

The act further provided that electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form.

This Government Paperwork Elimination Act was introduced more than ten years ago and VOHMA feels it is time for the HMR to take steps to provide regulatory authorization for procedures and practices that are currently being utilized by industry both in the U.S and internationally.

VOHMA requests that PHMSA consider adding authorization for EDI at existing §172.200(a) by adding.

§172.200(a)*** The shipping paper required by this subpart may be provided by electronic data interchange provided the sender and the receiver have the capability to successfully send and receive the information required by this subpart.

Add paragraph to §172.204(d)

§172.204(d)***

§172.204(d)(3) When a shipping paper is provided by means of EDI the signature when required must be entered in upper case letters.

The term “interlining carrier” has been used throughout this letter since it best describes the transfer of containerized cargo from one carrier to another, in both multi-modal and single mode transportation, from the origination where the cargo transport unit is packed and offered for movement to the consignee at the final destination where that unit is unpacked. For example, a common scenario of interlining carriage may include a shipper offering a freight container to a motor carrier at the point of origination with subsequent transfers of that freight container from the motor carrier to a rail carrier, to another rail carrier, to an ocean carrier and perhaps to a partner ship line, to a motor carrier at the port of discharge, to a rail carrier, and finally to a motor carrier for delivery to the customer at destination. Depending on the point of origin and the point of destination the number of transfers in interlining carriage may in some cases engage the services of multiples of one or more of the modes mentioned in the typical scenario. Therefore, VOHMA suggests that PHMSA amend §171.8 to include a definition of the term “interlining carrier” as follows:

§171.8 Definitions and abbreviations

Interlining carrier means a carrier making a transfer of physical possession of an intermodal container or an intermodal portable tank from one carrier to another carrier within a single mode of transport or between multiple modes of transport for movement from the offeror to the consignee.

(Note: The terms “intermodal container”, “intermodal portable tank”, “carrier”, “mode”, “movement”, “offeror”, and “consignee” are currently defined in §171.8)

VOHMA is very appreciative for the opportunity to provide our comments to PHMSA and FRA regarding these issues which we have identified as having a high priority. We will continue to develop comments, proposals, or petitions as necessary to reduce impediments to intermodal transportation and to enhance intermodal safety and efficiency in the transportation of dangerous goods by road, rail and vessel. Please do not hesitate to contact the VOHMA office if additional clarification is needed or to discuss any of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "John V. Currie". The signature is fluid and cursive, with a large initial "J" and "C".

John V. Currie
VOHMA Administrator