



U.S. Department
of Transportation

Research and
Special Programs
Administration

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

MAY 4 1998

Mr. J. P. Gibbons, President
North American Transportation Consultants, Inc.
P.O. Box 1404
Hightstown, NJ 08520

Dear Mr. Gibbons:

This is in response to your letter and subsequent telephone calls regarding a regulatory exception addressing the reuse of UN certified drums without leakproofness testing under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). Specifically you ask for a clarification of § 173.28 (b)(7)(iii).

The reuse provisions in § 173.28 require that all packagings and receptacles used more than once be in such condition that they conform in all respects to the HMR. The exception under § 173.28(b)(7) authorizes reuse of a packaging without leakproofness testing provided the packaging is:

- (1) refilled with a material which is compatible with the previous lading;
- (2) refilled and offered for transportation by the original filler;
- (3) transported in a transport vehicle or freight container under the exclusive use of the refiller of the packaging; and
- (4) constructed of stainless steel, monel or nickel with a thickness not less than 1 ½ times the minimum thickness prescribed by § 173.28(b)(4); plastic provided the packaging is not refilled for reuse on a date more than five years from the date of manufacture marked on the packaging; or other packagings as approved by the Associate Administrator for Hazardous Materials Safety.

The exception is intended to apply only to a drum which is in dedicated service and the drum may only be transported in a transport vehicle that does not contain any material offered by anyone other than the filler of the drums. "Exclusive use of the refiller" as referenced in § 173.28(b)(7)(iii), or dedicated service means only the original filler may refill a drum before offering it for transportation to an end user who then returns the drum for refilling. The intent is to limit the loading, unloading and handling of the drums. In addition, the transport vehicle may not contain any material offered by anyone other than the filler of the drums.

The following scenario would qualify for the leakproofness test exception:

Drums are filled by the original filler and offered for transportation directly to an end user. The end user returns the drums to the original filler. This scenario illustrates a distribution chain without any other shipper or filler.

I hope this satisfies your request. Please contact this office if you need additional information.

Sincerely,

A handwritten signature in black ink that reads "Hattie L. Mitchell". The signature is written in a cursive style with a small asterisk next to the first name.

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



NATC

McIntyre
File: 173 28 (b)(7)
SC 394, 398

July 17, 1997

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
RESEARCH and SPECIAL PROGRAMS ADMIN. - DHM-10
U. S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

RE: REQUEST FOR INTERPRETATION ON 173.28(B)(7)

Dear Director Mazzullo:

Recently a number of shippers have been visited by investigators from RSPA concerning the pressure leakproof testing requirements for plastic drums. Some confusion exist concerning the referenced paragraph. This confusion centers on what constitutes compliance with the phrase in paragraph (iii):

"under the exclusive use of the refiller of the package".

In the chemical distribution industry, due to some state and local fire and safety laws, centralized facilities are used to fill non-bulk packages for different customers. The non-bulk packaging is sent to the filling facility and material, both DOT regulated and non-regulated, is then placed into the containers and properly packaged according to applicable regulations. The packaging is marked and identified under the individual customer's name. Once prepared the material is either picked-up by them in their own vehicles or by an authorized carrier.

According to the Final Rule Preamble in the December 29, 1994 Federal Register on page 67399, "RSPA believes that plastic drums used in distribution chains controlled by the offeror can be used safely without leak testing prior to each reuse". Therefore it appears that the phrase "under the exclusive use of the refiller" means " in a distribution chain controlled by the offeror".

Please answer the following questions concerning what constitutes a distribution chain controlled by the offeror.

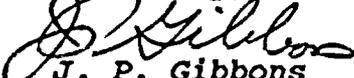
1. If the filler of the container offers the material as agent for the party which owns the containers then would the party who owns the containers be the offeror ?
2. Does the distribution chain mean from the filler to the end user ? If not then what constitutes a distribution chain for the purpose of this regulation ?

3. Since the preamble identifies the transportation of plastic drums by private carrier, contract carrier, or common carrier as authorized, what safeguards are required to ship under this paragraph of the HMR ?
4. Would transportation of a plastic drum containing hazardous materials, which was not leak tested prior to filling, be authorized from the filler to a warehouse distribution center where it is unloaded, stored for a short period of time, reloaded onto a transport vehicle and delivered to the final customer comply with the 173.28(b)(7) if no other materials were transported which could damage the plastic drums ?
5. If the answer to question 4 is yes, then if you reverse the flow back to the offeror with the empty plastic drum and refill it with the same or a like materials without leak testing the drum would you be in compliance with the referenced section of the HMR ?
6. What other requirements do you consider necessary for a company to comply with, if they wish to refill plastic drums without leak testing them during the first five (5) years after manufacture ?

As mentioned above, several investigations have been conducted concerning the use of plastic drums without leak testing prior to filling. Your expeditious reply to this request, will assist both the investigators and the industry in resolving the confusion which is associated with this paragraph of the HMR. As it is in the best interest of the general public to clarify safety issues without delay I look forward to your reply.

If your staff requires additional information or clarification of the information contained within this letter have them contact me directly at (609) 426-0555. As always I thank you and your staff for their assistance in this matter.

Sincerely,


J. P. Gibbons
President

cc: Anthony Lima - RSPA
NACD Members