



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

FEB 06 2013

Mr. Joel T. Robertson
Distribution Safety Specialist
Room 5113A
Chevron Phillips Chemical Co. LP
10001 Six Pines Drive
The Woodlands, TX 77380

Reference No.: 12-0253

Dear Mr. Robertson:

This is in response to your November 9, 2012 e-mail requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as they pertain to the transportation of hazardous materials in commerce in accordance with the International Maritime Dangerous Goods (IMDG) Code. You ask if a portable tank received in the United States via vessel from a foreign shipper and in compliance with the IMDG Code may continue to be transported within the United States in accordance with the IMDG Code to its point of destination, regardless of whether it has been temporarily stored at the logistic company's terminal.

Whether or not a vessel shipment can continue to move in the United States in accordance with the IMDG Code is based on the final destination shown on the shipping document.

Section 171.8 of the HMR defines transportation as the movement of property and loading, unloading, or storage incidental to that movement.

Further, § 171.8 also provides that storage incidental to movement includes storage at a transloading facility provided the shipping documentation identifies the shipment as a through-shipment and identifies the final destination of the hazardous material. It does not include storage of a hazardous material at its final destination as shown on the shipping document.

Finally, § 171.25(a) of the HMR provides that a hazardous material may be offered for transportation or transported to, from or within the United States by vessel, and by motor carrier and rail in accordance with the IMDG Code provided all or part of such movement is by vessel.

Therefore, following vessel transport, if the shipping document identifies the shipment as a through-shipment and identifies the final destination of the movement to be other than the logistic company's terminal, the shipment may continue to that final destination point in accordance with the IMDG Code. However, if the shipping document identifies the logistic company's terminal as the final destination of the hazardous material, the shipment must be brought into full compliance with the HMR prior to any further movement.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Delmer Billings". The signature is written in a cursive style with a large initial "D".

Delmer Billings
Senior Regulatory Advisor
Standards and Rulemaking Division

Babich
§ 172.516
§ 171.12

Drakeford, Carolyn (PHMSA)

From: Betts, Charles (PHMSA)
Sent: Friday, November 09, 2012 1:28 PM
To: Robertson, Joel T
Cc: Drakeford, Carolyn (PHMSA)
Subject: RE: Portable Tanks arriving at US Ports complying with the IMDG regulations -- Request for Interpretation

IMDG
12-0253

Importance: High

Good afternoon Mr. Robertson –

We are in receipt of your request for interpretation. Your request will be logged and assigned to a specialist for response. Please note that a response generally takes 4 to 6 weeks depending on the complexity of the issue and the volume of letters being worked on.

Thanks,
Charles

From: Robertson, Joel T [mailto:roberjt@cpchem.com]
Sent: Friday, November 09, 2012 1:12 PM
To: Betts, Charles (PHMSA)
Subject: Portable Tanks arriving at US Ports complying with the IMDG regulations -- Request for Interpretation

Dear Mr. Betts:

I was recently asked a question as to whether the application of IMDG placards, labels and markings to intermodal portable tanks by foreign shippers would satisfy the US DOT requirements for hazardous materials transportation upon arrival at US Ports and subsequent transport to their ultimate destinations?

I conducted a literature search of the PHMSA website for applicable interpretations that I might use as an affirmative regulatory reference.

I found the following interpretations:

1. Reference No. 02-0175, dated 12/12/2001 to Gulf States Intermodal – “Text indicating a hazard on a placard , other than the RADIOACTIVE, DANGEROUS or OXYGEN placards are not required. When hazardous materials are offered for transportation or transported under the provisions of §171.12 , import/export regulations by water, a placard conforming to the specifications of in the IMDG Code may be used in place of a corresponding placard which conforms to the placarding requirements of HMR, ***.” Placards conforming to the specifications of the IMDG Code may contain foreign language inscriptions or text indicating a hazard, (e.g. text displayed in French, Japanese, etc., words. (See §§ 171.12 and 172.519).”
2. Reference No. 06-0074, dated 08.10.2006 to Hyundai American Shipping Agency – “In response to your letter of March 3, 2006 letter requesting clarification of the Hazardous Materials Regulations (HMR: 49 CFR Parts 171-180) regarding placarding requirements for hazardous materials shipments

that are being offered for transportation with the provisions of the International Maritime Dangerous Goods (IMDG) Code. Specifically you asked if a shipment prepared in accordance with the IMDG Code must meet the requirements of §172.516. *** As provided in §171.12 (b) a hazardous material that is packaged, marked, classed, labeled, placarded, described, stowed and segregated, and certified in accordance with the MDG Code may be offered and accepted for transportation and transported within the United States subject to the conditions and limitations specified in §171.12 (b) (1) – (22). *** Thus a shipment prepared in accordance with the IMDG Code need not meet the requirements in §172.516. “ ***

3. Reference No. 06-0078, dated 08.24.2006 to Air Products and Chemicals Inc. – “Section §171.12 (b) of the HMR permits transportation in the United States of a material the is packaged, marked, classed, labeled, placarded, described, stowed, and segregated, and certified in accordance with the IMDG Code, provided that all or part of the transportation is by vessel. “

Although **49 CFR §171.12 (b) no longer refers to the acceptance by the US DOT of the IMDG compliant placards, marks and labels, the application of the international regulations, the IMDG reference is now found in 49 CFR §§ 171.22 and 171.25**, Authorization and Conditions for the use of international standards and regulations. “(a) **Authorized international standards and regulations.** This subpart authorizes, with certain conditions, and limitations, **the offering for transportation and the transportation in commerce of hazardous materials in accordance with** the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO) Technical Instructions, **the International Maritime Dangerous Goods Code (IMDG Code)**, Transport Canada’s Transport of Dangerous Goods Regulations (Transport Canada TDG Regulations), and the International Atomic Energy Agency Regulations for the Safe Transport of Radioactive Material (IAEA Regulations), (IBR See §171.7).”

The other IMDG reference is currently found in 49 CFR §171.25, (a) “A hazardous material may be offered for transportation or transported to, from or within the United States by vessel, and by motor carrier and rail in accordance with the IMDG Code (IBR, see § 171.7), as authorized in § 171.22, provided all or part of the movement is by vessel. Such shipments must conform to the requirements in § 171.22, as applicable, and this section. (b) Limitations on the use of international standards and regulations . A hazardous material that is offered for transportation or transported in accordance with the international standards and regulations authorized in paragraph (a) of this section— (1) Is subject to the requirements of the applicable international standard or regulation and must be offered for transportation or transported in conformance with the applicable standard or regulation; and (2) Must conform to all applicable requirements of this subpart.”

Specifically we receive international shipments, often intermodal portable tanks that contain hazardous materials/dangerous goods. These shipments arrive at the local port in compliance with the IMDG Code and are marked, labeled and placarded accordingly. Sometimes we will direct them to our logistics contractor for short term interim storage at their local terminal until we assign them to a final destination, often a matter of days. Our contractor recently felt there was a need, in order to be in compliance with the DOT regulations, to re-placard and re-mark these portable tanks before delivering them to their final destination and of course that means we incur additional cost and sometimes delays.

I disagreed with that practice, because the DOT regulations specifically indicate in that IMDG placards and markings may be used when hazardous materials are offered for transportation or transported to, from or within the United States by vessel and by motor carrier and rail in accordance with the IMDG Code provided that all or part of the movement is by vessel.

The contractor stated that he contacted the DOT Information Center and was told that the IMDG placards and markings could only remain on the shipment to the first leg of the trip indicated on the shipping papers and if the shipping papers indicated the logistics company's terminal as the destination that's as far as the IMDG Code applies. However, neither the DOT regulations or the any of the interpretation history that is on the PHMSA website mention anything about a first leg destination, in fact just the opposite is true, and as long as the IMDG Code is complied with and all or part of the movement is by vessel, the shipment of hazardous material may be offered for transportation or transported to, from or within the United States by motor carrier when the portable tanks were properly IMDG placarded, marked or labeled..

At the local terminal, the portable tanks are not opened for sampling or partial unloading and are undisturbed and remain sealed as received from the foreign shippers.

I would appreciate your interpretation of the following question based on 49 CFR §§171.22 and 171.25:

1. May properly labeled, marked and placarded portable tanks containing hazardous materials/dangerous goods, received in the United States via ocean from foreign shippers, that remain in compliance with the IMDG Code, be transported within the United States to a point where they are to be unloaded, without the necessity of being required to be DOT re-placarded, re-marked and/or re-labeled, as long as the portable tanks have not been opened for any reason since leaving the shipper? (original seal/s intact)

Thank you for your kind assistance.

Sincerely,

Joel T. Robertson
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