



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

1000 New Jersey Avenue, SE
Washington, D.C. 20590

JUN 21 2012

Mr. Tom Shober
Health, Safety and Environmental Manager
Silberline Manufacturing Co., Inc.
130 Lincoln Drive
Tamaqua, PA 18252

Reference No. 12-0082

Dear Mr. Shober:

This is in response to your e-mail requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR 171-180) applicable to tests methods found in the United Nations (UN) Manual of Tests and Criteria for materials that are potentially readily-combustible liquids. Your questions are paraphrased and answered below.

- Q1. Does the HMR allow a material to be "overclassified"? Specifically, if the results of Test N.1: "Test method for readily combustible solids," found in the UN Manual of Tests and Criteria, show a material to be non-regulated, is it acceptable to ship it as a Class 4.1 dangerous good regardless? If not, what is the penalty for misclassification of the material on a per day basis?
- A1. In accordance with § 171.2(e), no person may offer or accept for transportation in commerce a hazardous material that is not properly classified. A material that does not meet the criteria for a Division 4.1 hazardous material may not be represented as such.

Each person who performs the functions of an offeror (shipper), such as classification or preparing a hazardous material shipment for transportation in commerce, is responsible for performing those functions in accordance with the HMR. The shipper is potentially subject to either the civil or criminal penalty provisions that may result from non-compliance with the HMR. Determinations of civil or criminal penalties are handled on a case-by-case basis.

- Q2. Has the test methodology specified in Test N.1 changed at all since its introduction into the HMR (via HM-181 (Appendix E to Part 173 of the Federal Register of 12/21/90 (55FR-52402)))?
- A2. Other than very minor editorial changes made over time, it has not. For your information, Appendix E to Part 173 was removed and reserved in a final rule [HM-215B; 62 FR 24690], published in the Federal Register on May 6, 1997. This final

rule required the classification of readily-combustible solids to be made in accordance with Test N.1 of Section 33 of the UN Manual of Tests and Criteria and was incorporated by reference in § 171.7 of the HMR.

Q3. Is third party testing for status of a material for Division 4.1 materials required to properly classify the material, or is self-determination via the administration of the test in-house sufficient for proper classification?

A3. No, third-party (independent) testing of a readily-combustible solid is not required by the HMR or the UN Model Regulations. Please note that 33.2.1.2.1 of the UN Manual of Tests and Criteria requires testing of substances unless it is impracticable (e.g., physical form) to perform the tests. Under such circumstances, substances or articles should be classified by analogy with existing entries prior to being offered for transportation.

I hope this information is helpful. Please contact this office should you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster", with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Drakeford, Carolyn (PHMSA)

McIntyre
§ 172.104
§ 173.150

From: INFOCNTR (PHMSA)
Sent: Friday, March 02, 2012 12:07 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Request for a formal letter of interpretation

Applicability
12-0082

Hi Carolyn,

We received the following request for a letter of interpretation.

Thanks,
Victoria

Victoria Lehman
Hazmat Information Center (HMIC)
<http://phmsa.dot.gov/hazmat/info-center>
(202) 366-1035

From: Shober, Tom [<mailto:Shobert@silberline.com>]
Sent: Friday, March 02, 2012 11:40 AM
To: INFOCNTR (PHMSA)
Subject: Request for a formal letter of interpretation

I'm interested in receiving a formal letter of interpretation for the following questions related to the classification of materials which are potentially readily combustible solids:

- Is it legal to "overclassify" a material for transport? Specifically, if the results of Test N.1: "Test method for readily combustible solids", found in the UN Manual of Tests and Criteria, show the material to be non-regulated, is it acceptable to ship it as a Class 4.1 dangerous good? If not, what is the penalty for misclassification of the material on a per day basis?
- Has the test methodology specified in Test N. changed at all since its introduction into the USDOT regulations in the original requirements of HM181 (Appendix E to Part 173 of the Federal Register of 12/21/90 (55FR-52402))?
- Is third party testing for status of a material with respect to Class 4.1 required to properly classify the material, or is self-determination via the administration of the test in-house sufficient for properly classifying it?

Thanks for your help in this matter.

Respectfully,

Tom Shober
Health, Safety and Environmental Manager
Silberline Manufacturing Co., Inc.
130 Lincoln Drive
Tamaqua, PA 18252
570-668-8381

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