



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

FEB 05 2018

Jim Shimko
Senior Manager
Labelmaster
400 E. Pine Street, Suite 325
Seattle, WA 98122

Reference No. 17-0138

Dear Mr. Shimko:

This letter is in response to your December 1, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the de minimis exception found in § 173.4b. Specifically, you seek clarification of the de minimis exception as it pertains to the HM-215J/224D final rule published January 14, 2009 [74 FR 2200] and certain international standards, including the International Civil Aviation Organization's (ICAO) Technical Instructions (TI) for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods (IMDG) Code.

We have paraphrased and answered your questions as follows:

- Q1. You ask whether Division 6.1, PG I (oral and dermal toxicity only) materials are eligible for the de minimis exception in § 173.4b.
- A1. The answer is no. Only PG II and III materials are eligible for the de minimis exception in § 173.4b.
- Q2. You seek confirmation of your understanding that the de minimis exception in § 173.4b does not align with the ICAO TI and IMDG Code. You further ask if this was the Pipeline and Hazardous Materials Safety Administration's (PHMSA) intent.
- A2. Your understanding is correct. The ICAO TI and IMDG Code currently allow Division 6.1, PG I materials with the excepted quantity provision "E5" to take the de minimis exception.

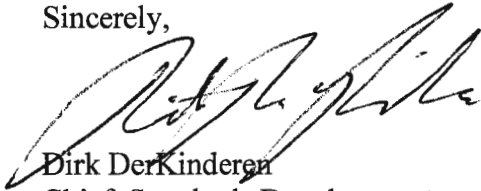
The HM-215J/224D final rule revised § 173.4 and created two new sections: Excepted quantity in § 173.4a and De minimis in § 173.4b. Section 173.4b was created by moving § 173.4(e) to its own section. Section 173.4(e) was created by the HM-218D final rule, published January 28, 2008 [73 FR 4699] in response to a petition that requested the exception for PG II and III materials only. The HM-215J/224D final rule did not propose

a change to this applicability. PHMSA received no comments on this change and, therefore, adopted the provisions as proposed.

If you believe a rulemaking change—such as a revision, addition, or deletion—is warranted, we invite you to file a petition for rulemaking in accordance with §§ 106.95, 106.100, and 106.105 of the HMR, including all supporting information. Your request will be evaluated for merit to be addressed in an upcoming rulemaking. For regulations in 49 CFR Parts 171-180, submit the petition to: Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, PHH-10, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001. Please contact Mr. Steven Andrews in the Regulatory Review and Reinvention Branch of the Standards and Rulemaking Division at 202-366-8553 for more information.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Dirk DerKinderen", written in a cursive style.

Dirk DerKinderen
Chief, Standards Development
Standards and Rulemaking Division

January, Ikeya CTR (PHMSA)

Patrick
Exceptions
(73.4b)

17-0138

From: INFOCNTR (PHMSA)
Sent: Friday, December 15, 2017 2:11 PM
To: Hazmat Interps
Subject: FW: Request for Interpretation / De Minimis Exceptions
Attachments: Final Rule 224D_215J.pdf; De Minimis_ST-SG-AC10-C3-2009-45e.pdf

Hello All,

Please see below and attached for interp request.

Thanks!

-Breanna

From: Jim Shimko [mailto:JSHIMKO@labelmaster.com]
Sent: Friday, December 01, 2017 5:20 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Cc: Jim Shimko <JSHIMKO@labelmaster.com>
Subject: Request for Interpretation / De Minimis Exceptions

Interp Application

I would like to request an interpretation in regard to De minimis Exceptions as stated in §173.4b. Specifically on whether a Division 6.1, packing group I is permitted under this exception.

The current text in §173.4b(a) implies that only substances of packing group II or III of a division 6.1 are permitted to be offered under the de minimis exceptions. Current International Standards as published in the UN Model Regulations (Part 3, Chapter 3.5 (3.5.1.4)), ICAO TI (Part 3, Chapter 5, (5.6)) and the IMDG Code (Part 3, Chapter 3.5, (3.5.1.4) do allow the offering for transport of division 6.1, packing group I substances under such an exception. It is noted that the ICAO TI refers to this exception as De Minimis Quantities and the UN Model and IMDG Code use no specific title to this exception within their applicable sections.

In researching previous rule makings as communicated in my email below to Mr. Shane Kelley and the attached files, it is believed that division 6.1, packing group I materials were to be permitted under the De minimis exceptions. When 49 CFR was being amended under Final Rule HM-224D, 215J dated January 14, 2009 this change may have been in error and was not the intended outcome.

I look forward to your reply.

Thank you,

Jim Shimko, DGSA, CDGP
Senior Manager

400 E. Pine Street, Suite 325
Seattle, WA 98122
Cell: 678-591-7908
Email: JSHIMKO@labelmaster.com
Web: www.labelmaster.com

LABELMASTER[®] SERVICES

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential information. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at +1-773-478-0900 and destroy the original transmission and its attachments without reading or saving in any manner.

From: Jim Shimko
Sent: Thursday, November 02, 2017 12:07 PM
To: shane.kelley@dot.gov
Cc: Jim Shimko
Subject: De Minimis Exceptions

Hi Shane,

I hope you are doing well.

I want to ask you about some historical rulemaking as it relates to De Minimis Exceptions. I am writing to you since you were involved with Final Rule HM-224D / HM-215J issued in January 2009. I am also referencing the working paper submitted to the UN Sub-Committee by the U.S. in September 2009 (copy attached).

What is driving the question is the ability to offer a Class 6.1, PG I (oral or dermal toxicity) under the De Minimis exceptions. As written today in 173.4b, only PG II or PG III is permitted, this is currently not harmonized with the international standards. I believe this may not have been the intended outcome and that such a classification should be allowed.

In the Final Rule PHMSA made changes to 173.4 (Small Quantity Exceptions) and created new sections 173.4a and 173.4b. Under the old 173.4 a Class 6.1 PG I was permitted. In the preamble to the Final Rule PHMSA stated:

We believe that aligning the existing small quantity provisions in the HMR with the excepted quantity provisions for air and vessel transportation will enhance harmonization and increase safety.

We also are moving the exception for small quantities—less than 1 gram for solids and less than 1 milliliter for liquids per inner packaging currently found in § 173.4(e)—to a new § 173.4b. This will align the requirements of the HMR with those of the ICAO TI and the IMDG Code for transport by air and vessel,

When we also look at the working paper to the UN, in paragraph 5.(a) the U.S. states:

Informal document UN/SCETDG/35/INF.59 suggested that as a starting point, the acceptable hazard classes and divisions could include: Class 3, Class 4, Divisions 5.1 and 6.1, Class 8, and Class 9.....Further, it is believed that except for Division 6.1 (oral and dermal hazards) packing group I substances should not be included in this provision.....this proposal would allow de minimis exceptions for minute quantities of Division 2.2 (no subsidiary risk), Class 3, Class 4, Division 5.1 Division 6.1 (oral and dermal hazards only), Class 8, and Class 9.

The Table in this working paper also provides indication that a Class 6.1, PG I is allowable.

As referenced earlier, the current 173.4b allows only PG II and PG III substances under the De Minimis exceptions which is currently not harmonized with the international standards. Based on the Final Rule and working paper it appears the intent of harmonization was the objective but the outcome was not.

Any comment you could offer or, other historical information on this subject would be greatly appreciated.

Thank you,

Jim Shimko, DGSA, CDGP

Senior Manager

400 E. Pine Street, Suite 325

Seattle, WA 98122

Cell: 678-591-7908

Email: JSHIMKO@labelmaster.com

Web: www.labelmaster.com

LABELMASTER[®]
SERVICES

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential information. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at +1-773-478-0900 and destroy the original transmission and its attachments without reading or saving in any manner.