



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAY 13 2019

Mr. Kevin Skerrett
UL Supply Chain & Sustainability
Senior Regulatory Specialist
23 British American Boulevard
Latham, NY 12110

Reference No. 17-0078

Dear Mr. Skerrett:

This letter is in response to your August 2, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the shipment of marine pollutants identified as solutions. We apologize for the delay in responding and any inconvenience this may have caused.

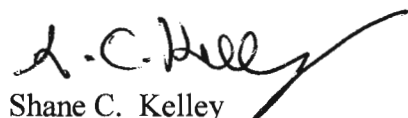
We have paraphrased and answered your questions as follows:

- Q1. You note that “hypochlorite solutions” was added to Appendix B of the § 172.101 Hazardous Materials Table (HMT) in the HM-215N final rule, published March 30, 2017 [82 FR 15796]. You further note that the definition of “marine pollutant” in § 171.8 contains criteria to use if there is a solution or mixture of one or more listed marine pollutants. Therefore, you ask if the 10% by weight marine pollutant and 1% by weight severe marine pollutant criteria for mixtures and solutions applies to “hypochlorite solutions” since the name is listed as a solution.
- A1. The answer is no. The 10% by weight marine pollutant and 1% by weight severe marine pollutant criteria for mixtures and solutions in the definition of “marine pollutant” in § 171.8 do not apply to “hypochlorite solutions.” The addition of “hypochlorite solutions” to Appendix B in HM-215N harmonized the HMR with the addition of “P” to the International Maritime Dangerous Goods (IMDG) Code for UN1791, which covers all concentrations of “hypochlorite solutions” that meet the classification criteria for Class 8. The International Maritime Organization classified these solutions as marine pollutants based on the recommendation of the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) after evaluating the available aquatic toxicity data. For reference, please see the GESAMP Hazard Evaluation of Substances Transported by Ships (BLG.1/Circ.35).
- Q2. You ask if Answer A1 should be considered a general rule for addressing other solution entries in Appendix B of the § 172.101 HMT (e.g., “Copper chloride solution,” “Cyanide solutions,” and “Zinc chloride solution”) and the applicability of marine pollutant requirements.

- A2. The answer is yes.
- Q3. You note that Answers A1 and A2 apply only to domestic U.S. shipments and that international shipment is controlled by the provisions in 2.10 of the IMDG Code. You ask if any material identified as “UN1791, Hypochlorite solution” must be considered a marine pollutant under the IMDG Code.
- A3. The answer is yes. A “P” is shown in column 4 of the IMDG Code Dangerous Goods list for the entries for “UN1791, Hypochlorite solution.” This indicates that solutions meeting the classification criteria of this UN identification number are known marine pollutants.
- Q4. In the event data is available to show that a diluted solution classified as “UN1791, Hypochlorite solution” no longer meets the marine pollutant criteria in 2.9.3 of the IMDG Code, you ask if a Competent Authority Approval Document from PHMSA is required to remove the marine pollutant designation for international shipment, or if a shipper could make this determination without such an approval.
- A4. If a material is identified as a marine pollutant in the IMDG Code, but does not meet the criteria for a marine pollutant in sections 2.9.3.3 and 2.9.3.4, it may be excepted from the applicable marine pollutant requirements if approved by the Associate Administrator (see 2.10.2.6 of the IMDG Code).

I hope this information is helpful. If you need additional assistance, please contact the Standards and Rulemaking Division at (202) 366-8553.

Sincerely,



Shane C. Kelley
Director
Standards and Rulemaking Division

Baker
§ 105.20
Definitions
17-0078

Dodd, Alice (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, August 03, 2017 3:15 PM
To: Hazmat Interps
Subject: FW: Request for formal interpretation to PHMSA - classification of hypochlorite solutions as Marine Pollutants

Hi Alice,

Please submit this as a letter of interpretation. Mr. Skerrett spoke with Brianna. Please let me know if you have any questions.

Thanks,
Jodi

From: Skerrett, Kevin [mailto:Kevin.Skerrett@ul.com]
Sent: Wednesday, August 02, 2017 4:38 PM
To: PHMSA HM InfoCenter <PHMSAHMInfoCenter@dot.gov>
Subject: Request for formal interpretation to PHMSA - classification of hypochlorite solutions as Marine Pollutants

I contacted the HMIC about this issue on 5/22/2017, but apparently it is causing difficulty with shipments at ports, so I would like to request a formal letter of interpretation per 49CFR 105.20.

QUESTION 1:

On March 30, 2017, PHMSA adopted HM215N as a Final Rule.

In "Appendix B to §172.101- List of Marine Pollutants", an entry was added for "Hypochlorite solutions". As noted in the preamble to the Rule, this was to harmonize with Amendment 38-16 of the IMDG Code, specifically the addition of "P" to column 4 for "UN1791, HYPOCHLORITE SOLUTIONS, 8", for both Packing Group II and III. Apparently because the listing in Appendix B is not "hypochlorite" but rather "hypochlorite solutions", the following interpretations are occurring:

- (1) Anything classified as UN1791 must always be classified as a Marine Pollutant.
- (2) Anything describable as a "hypochlorite solution", regardless of concentration, must always be classified as a Marine Pollutant

The definition of Marine Pollutants at 49CFR 171.8, includes a calculation to determine whether a mixture or solution containing a Marine Pollutant must be classified as a Marine Pollutants:
"Marine pollutant, means a material which is listed in appendix B to §172.101 of this subchapter (also see §171.4) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:
(1) Ten percent by weight of the solution or mixture for materials listed in the appendix; or
(2) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the appendix."

Could you please confirm that even though the Appendix B listing is as "Hypochlorite solutions", the 10% MP / 1% SMP treatment of mixtures still applies, and is based on the component concentration?

The question is whether the weight % of the component still drives the classification as a Marine Pollutant, or whether listing as a "solution" was intended to override this calculation.

QUESTION 2:

The same problem could apply to other (preexisting) listings on Appendix B such as (but not limited to):

Sodium hypochlorite solutions
Copper chloride solution
Cyanide solutions
Zinc chloride solution

Could you indicate whether the guidance above is a general rule covering all such listings?

QUESTION 3:

It is understood that the questions above apply only to domestic US shipment by vessel, and that international shipment is controlled by the provisions in Section 2.10 of the IMDG code.

As Competent Authority for the US, could you clarify the following?

Since UN1791 now carries "P" in column 4 of the IMDG Dangerous Goods List:

- (1) Does Section 2.10.2.4 of the IMDG code require that ANY material identified as UN1791 Hypochlorite Solution be considered a Marine Pollutant under IMDG?
- (2) If data is available to show that a dilute solution classified as UN1791 no longer meets the Marine Pollutant criteria in Section 2.9.3 of the IMDG code, is a Competent Authority Approval from PHMSA required to drop the Marine Pollutant designation for international shipment (per Section 2.10.2.6 of the IMDG code), or can the shipper make this determination without such official approval?

Thank you for your consideration of this matter. Since this is currently causing delays in shipment, it would be appreciated if this request could be expedited in any way.

Kevin Skerrett, DGSA

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