



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

April 30, 2020

Kevin Skerrett
Senior Regulatory Specialist
UL Materials & Supply Chain
23 British American Blvd.
Latham, NY 12110

Reference No. 20-0011

Dear Mr. Skerrett:

This letter is in response to your February 5, 2020 email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the classification of perfumery products. Specifically, you seek clarification on whether a material may be described as “UN1266, Perfumery products” when there is no perfume present. You state that you have seen a trend of cosmetics suppliers describing flammable materials as “UN1266, Perfumery products,” regardless of whether they are a perfume. You state that these suppliers have assigned this description to materials such as nail polish, lip stick, and hair colorant.

We have paraphrased and answered your questions as follows:

- Q1. You ask whether the responses in Letters of Interpretation (LOI) Reference Nos. 13-0135 and 13-0226 have any impact on these suppliers’ classification of all flammable materials as “UN1266, Perfumery products.”
- A1. The answer is yes. As stated in both LOI 13-0135 and 13-0226, description of materials as perfumery products is dependent on the primary function of the product. While there is no definition for “perfumery products” in the HMR, perfume is typically defined as a fluid preparation used for scenting, composed of natural essences or synthetics and a fixative. It appears the function of the products your supplier is describing as UN1266 are not as a perfume, and as such, the description “UN1266, Perfumery products” is not appropriate.
- Q2. You ask whether the answer to Q1 would be the same in accordance with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions).
- A2. It is the opinion of this Office that the ICAO Technical Instructions list an entry in the Dangerous Goods List in Part 3, Chapter 2 for cosmetics that contain flammable liquids. While this entry is not available as a proper shipping name, it instructs the shipper to “see

Flammable liquid, n.o.s. or Perfumery products.” Just as in A1, the description of materials as perfumery products is dependent on the primary function of the product. If the primary function of the product is not as a perfume, one should choose “Flammable liquid, n.o.s.” for cosmetics containing flammable liquids.

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

Sincerely,

A handwritten signature in blue ink, reading "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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

Ciccone

20-0011

Dodd, Alice (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, February 6, 2020 9:44 AM
To: Hazmat Interps
Subject: FW: Request for interpretation regarding the applicability of UN1266 Perfumery Products
Attachments: Skerrett_LOI_2-6-20.docx

Hello Alice and Ikeya,

Please see below for letter of interpretation request.

Thank you,
Kathryn, HMIC

From: Skerrett, Kevin [mailto:Kevin.Skerrett@ul.com]
Sent: Wednesday, February 5, 2020 5:01 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Request for interpretation regarding the applicability of UN1266 Perfumery Products

Hello –

I would like to request a formal letter of interpretation (per 49CFR 105.20) regarding an issue we discussed informally on 1/28/2020.

We have some questions about assignment of UN1266 for products carrying Class 3 PG II or III.

Recently, we have seen a trend of a few cosmetic suppliers indicating that all their Class 3 products ship as UN1266, Perfumery Products, regardless if they are actually a perfume or even have any fragrance at all. Some examples of this are Nail Polish, Lip Stick, & Hair Colorant, which we have often seen classified as Paint UN1263. When questioned about this, one of the suppliers responded:

"UN1266 is the industry standard for finished goods useable for retail and professional customers which fall in the class of flammable liquids (class 3).

The generic entry has higher priority over specific n.o.s. entries which would be the next alternative in the absence of an appropriate generic entry.

However, as there is the UN1266, perfumery products, as generic entry for class 3 finished products, this is the code of choice, regardless if the product is a color tint or a fine fragrance.

You may also refer to IATA regulation, chapter 4.1.0.2 a)-d)."

We are trying to determine whether such assignment is appropriate to reship, and to pass along to downstream users. We certainly agree that UN1266 would take priority over such PSNs as "isopropanol solution", "acetone solution", "alcohols n.o.s.", "esters n.o.s.", or "flammable liquids n.o.s.", IF a perfume is actually present. But we are concerned about assigning UN1266 when no perfume is present or when the primary intended product use is not as a perfumery product.

We did find that PHMSA Interpretations 13-0135 and 13-0226 appeared to address a similar issue:

- 1) The requester asked whether UN1266 Perfumery Products could be used for a cleaner or disinfectant.
- 2) PHMSA noted that "perfumery products" is not defined in the HMR, "However, perfume is typically defined as a fluid preparation used for scenting, composed of natural essences or synthetics and a fixative."
- 3) Assignment of UN1266 was deemed inappropriate, since the primary function of the product was not as a perfume.

4) Does this impact the supplier's claim above?

5) Or are such "non-perfume" products simply closer in function to UN1266, so it is allowed?

Since the IATA reference was raised above, we would also like to know if, as Competent Authority for the US, you believe the answer is the same for ICAO or differs. I believe the corresponding ICAO reference is 2;3.2 a)-d).

Kevin Skerrett, DGSA
Senior Regulatory Specialist
Regulatory Operations
UL Materials & Supply Chain

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