



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

NOV 21 2014

Mr. Arthur Van Houten
Sika Corporation USA
201 Polito Avenue
Lyndhurst, NJ 07071

Ref. No. 14-0173

Dear Mr. Van Houten:

This is a response to your September 22, 2014 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) with regard to bulk shipments of Class 9 hazardous materials. In your letter, you describe shipments which are only regulated for transportation because the liquid material contains a reportable quantity (RQ) of a hazardous substance listed in Appendix A of § 172.101. Specifically, you request clarification on the proper description, marking, packaging, placarding and driver requirements applicable to these shipments. Your questions are summarized and addressed below.

Q1. Would the description of either "NA3082, Other regulated substances, liquid, n.o.s. (name of reportable quantity material), 9, III, RQ" or "UN3082, Environmentally hazardous substance, liquid, n.o.s. (name of reportable quantity material), 9, III, RQ" be acceptable?

A1. Yes. In accordance with Special Provision 8 in § 172.102, which is referenced in Column 7 of the Hazardous Materials Table (HMT; § 172.101) for the entry "UN3082, Environmentally hazardous substance, liquid, n.o.s.," a hazardous substance that is not a hazardous waste may be shipped under the shipping description "Other regulated substances, liquid *or* solid, n.o.s.," as appropriate. Note that the "name of reportable quantity material" referenced in the question should be replaced with the appropriate RQ entry listed in Appendix A of § 172.101.

Q2. Is a DOT specification cargo tank motor vehicle required to transport this material, or may non-DOT specification cargo tank motor vehicles be used?

A2. No, a DOT specification cargo tank motor vehicle is not required. Bulk packaging requirements for NA3082 and UN3082 are found in § 173.241, as referenced in Column 8c of the HMT. In accordance with § 173.241(b), both DOT specification cargo tanks and non-DOT specification cargo tank motor vehicles suitable for transport of liquids may be used.

Q3. Are placards required for this shipment? If not, what are the marking requirements?

A3. No. In accordance with § 172.504(f)(9), for Class 9, a CLASS 9 placard is not required for domestic transportation. However, a bulk packaging must be marked with the appropriate identification number on a CLASS 9 placard, an orange panel, or a white square-on-point display configuration as required by § 172.332.

Q4. Does the use of a CLASS 9 placard to mark the UN identification number constitute the shipment as "placarded?"

A4. No. While the use of a CLASS 9 placard is permitted as a means to display the identification number on a bulk packaging, the use of the CLASS 9 placard does not subject a shipment to additional requirements in the HMR that would be applicable to shipments that require placarding.

Q5. Does this shipment meet the definition of "hazardous materials," as defined in 49 CFR § 383.5 because placarding is not required?

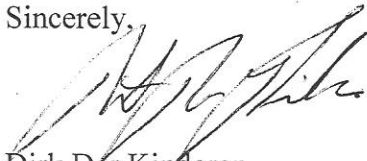
A5. For the purposes of the HMR, this shipment would be considered to be a "hazardous material" as it meets the defining criteria found in § 171.8. However, for purposes of the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR parts 390 through 397) and the Commercial Drivers' License (CDL) hazmat endorsement, the term "hazardous materials" is defined in 49 CFR § 383.5 as a material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under Subpart F of 49 CFR Part 172; or any quantity of a material listed as a select agent or toxin in 42 CFR Part 73. Therefore, a driver of a commercial motor vehicle transporting a Class 9 hazardous material that is excepted from placarding for domestic transportation is not required to obtain a hazardous materials endorsement to his or her CDL.

Q6. Is a driver required to have a hazmat endorsement on his/her CDL for this shipment?

A6. No. See A5. Note that the HMR does require that the driver must receive hazardous materials training (see §§ 177.800(c) and 177.816). This training must include general awareness, function-specific, safety, and security awareness training as specified in § 172.704(a) of the HMR, as well as driver training in the applicable requirements of FMCSR and the procedures necessary for the safe operation of that motor vehicle.

I hope this information is helpful. If you have any more questions, please do not hesitate to contact this office.

Sincerely,



Dirk Der Kinderen
Acting Chief, Standards Development
Standards and Rulemaking Division

Goodall, Shante CTR (PHMSA)

Suchak
172.504(F)(9)
Placarding
14-0173

From: Ciccarone, Michael CTR (PHMSA)
Sent: Monday, September 22, 2014 1:36 PM
To: Hazmat Interps
Subject: FW: Request for interpretation bulk RQ shipments
Attachments: Request for Interpretation bulk RQ shipments 9-22-14.pdf

Shante and Alice,

Please submit this for a formal letter of interpretation. Mr. Van Houten spoke with me, most recently.

Thanks,

Mike

From: Arthur Van Houten [<mailto:vanhouten.arthur@us.sika.com>]
Sent: Monday, September 22, 2014 10:40 AM
To: PHMSA HM InfoCenter
Subject: Request for interpretation bulk RQ shipments

To Whom It May Concern,

Please provide me with your interpretation / clarification for the shipment of bulk materials meeting only the Reportable Quantity requirements.

Regards,



Arthur Van Houten
Corporate EHS Manager
EHS

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BUILDING TRUST



U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE
WASHINGTON, DC 20590-001

SEPTEMBER 22, 2014

Subject: Clarification for bulk shipments of Reportable Quantity (RQ) materials

To Whom It May Concern:

Sika Corporation ("Sika") is seeking a clarification for highway shipments of liquid materials in bulk tanker trucks. The materials are regulated for transportation only because they meet the requirements of Reportable Quantities (RQ) as listed in Appendix A to 49 CFR 172.101.

Sika is therefore seeking clarification of the following when shipping bulk quantities of a material whose only hazard is meeting the Reportable Quantity requirement making it a Class 9 hazard:

1. The proper shipping name of "NA3082 Other regulated substances, liquid, n.o.s., (name of hazard inducer), 9, III RQ" or "UN3082, Environmentally hazardous substance, liquid, n.o.s., (name of hazard inducer), 9, III, RQ" is acceptable.
2. A DOT specification tank trailer (cargo tank) is not required per 49 CFR 173.241(b).
3. Placarding is not required, but rather "marking" as per 49 CFR 172.504(f)(9) using a CLASS 9 placard, an orange panel, or a white square-on-point display configuration.
4. Using a CLASS 9 "placard" to mark this shipment is not the same as placarding a shipment.
5. Shipments do not meet the definition of "Hazardous Materials" as defined in 49 CFR 383.5 because the shipment is not required to be placarded.



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DATE September 19, 2014

6. An endorsement to a drivers Commercial Driver's Lidence is not required per 49 CFR 383.93(b)(4) because these shipments do not meet the definition of hazardous materials as defined under 49 CFR 383.5.

Thank you for your prompt reply.

Sincerely,

A handwritten signature in cursive script that reads "Arthur Van Houten".

Arthur Van Houten
Corporate EH&S Manager

Enclosure

Materials shipped as RQ

1. When the quantity of a Hazardous Substance in a material is equal to or exceeds the reportable quantity threshold listed in Appendix A to 172.101, this shipment will be handled as a Hazardous Substance. The proper shipping name we will use is either "NA3082 Other regulated substances, liquid, n.o.s., (*name of hazard inducer*), 9, III RQ" or "UN3082, Environmentally hazardous substance, liquid, n.o.s., (*name of hazard inducer*), 9, III, RQ"
2. A coded trailer is not necessary for this material when shipped as either a hazardous substance or non-hazardous. In Table 101, Packaging column 8(C) of the shipping name "NA3082 Other regulated substances, liquid, n.o.s." references 173.241 to determine acceptable packaging options. Under 173.241(b) Cargo Tanks, the last portion says: "and non-DOT specification cargo tank motor vehicles suitable for transport of liquids." (shown below) This gives relief from a DOT specification tanker.

§173.241 Bulk packagings for certain low hazard liquid and solid materials.

When §172.101 of this subchapter specifies that a hazardous material be packaged under this section, only the following bulk packagings are authorized, subject to the requirements of subparts A and B of part 173 of this subchapter and the special provisions specified in column 7 of the §172.101 table.

(a) *Rail cars:* Class DOT 103, 104, 105, 109, 111, 112, 114, 115, or 120 tank car tanks; Class 106 or 110 multi-unit tank car tanks and AAR Class 203W, 206W, and 211W tank car tanks.

(b) *Cargo tanks:* DOT specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles; and non-DOT specification cargo tank motor vehicles suitable for transport of liquids.

3. The Placarding requirements for these materials are found under 172.504(f)(9) below. A placard is not required for domestic transportation, but rather marking.

§172.504 General placarding requirements.

(f) *Additional placarding exceptions.* (1) When more than one division placard is required for Class 1 materials on a transport vehicle, rail car, freight container or unit load device, only the placard representing the lowest division number must be displayed.

(9) For Class 9, a CLASS 9 placard is not required for domestic transportation, including that portion of international transportation, defined in §171.8 of this subchapter, which occurs within the United States. However, a bulk packaging must be marked with the appropriate identification number on a CLASS 9 placard, an orange panel, or a white square-on-point display configuration as required by subpart D of this part.

3082

4. The CLASS 9 placard is being used to "mark" the shipment and does not indicate that this shipment is being "placarded"
5. The definition of "Hazardous Materials" under the Commercial Driver's License Standards found under 49 CFR 383.5 Definitions is shown below. There are two (2) requirements that must be met before a material is considered a "hazardous material". 1) material must be a hazardous material and 2) the material must be placarded. The materials being shipped do not require placarding, only Marking (see 172.504(9) above). Therefore, they do not meet the definition of a Hazardous Material.

§383.5 Definitions.

As used in this part:

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

6. Drivers will not need hazardous materials endorsements to their CDL to transport these materials for the following reason:

Under 49 CFR 383.93 Endorsements, an endorsement to a drivers CDL to transport hazardous materials is based on the definition of hazardous materials found in 383.5. Since they do not meet the definition of a Hazardous Material as defined under 383.5, a endorsement to the CDL is not required.

§383.93 Endorsements.

(a) *General.* (1) In addition to passing the knowledge and skills tests described in subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section must pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(2) The only endorsements allowed on a CLP are the following:

- (i) Passenger (P);
- (ii) School bus (S); and
- (iii) Tank vehicle (N).

(3) The State must use the codes listed in §383.153 when placing endorsements on a CLP or CDL.

(b) *Endorsement descriptions.* An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

- (1) Double/triple trailers;
- (2) Passenger vehicles;
- (3) Tank vehicles;
- (4) Used to transport hazardous materials as defined in §383.5, or
- (5) School buses.

(c) *Endorsement testing requirements.* The following tests are required for the endorsements contained in paragraph (b) of this section:

- (1) *Double/Triple Trailers*—a knowledge test;
- (2) *Passenger*—a knowledge and a skills test;
- (3) *Tank vehicle*—a knowledge test;
- (4) *Hazardous Materials*—a knowledge test; and
- (5) *School bus*—a knowledge and a skills test.

[53 FR 27651, July 21, 1988, as amended at 67 FR 49760, July 31, 2002; 68 FR 23850, May 5, 2003; 76 FR 26867, May 9, 2011]

Based on the above, shipments of these materials when exceeding the RQ thresholds will:

1. use the proper shipping name of "NA3082 Other regulated substances, liquid, n.o.s., (*name of hazard inducer*), 9, III RQ" or "UN3082, Environmentally hazardous substance, liquid, n.o.s., (*name of hazard inducer*), 9, III, RQ";
2. be Marked as 3082 and NOT Placarded;
3. not require a Hazardous Material endorsement to a drivers CDL
4. not require a DOT specified tank vehicle