



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

NOV -7 2002

Mr. F. Kevin Reilly
Director, Directorate of Environmental Management
Defense Logistics Agency
8725 John J. Kingman Road, Suite 3229
Ft. Belvoir, VA 22060-6223

Ref. No. 02-0269

Dear Mr. Reilly:

This is in response to your September 12, 2002 letter concerning marking and labeling requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request written confirmation of a verbal opinion you received from our Hazardous Materials Information Center (HMIC) regarding marking requirements on flasks of mercury. In your situation, you wish to place a number of metal flasks containing mercury in 30-gallon, UN Specification 1A2 drums meeting the PG I requirements for solids or inner containers. Each metal flask meets the packaging requirements for mercury under § 173.164(d). Your question is whether each flask must be marked and labeled, or if each 30-gallon drum may be marked and labeled without marking and labeling the inside metal flasks.

The interpretation you received from HMIC is correct. As authorized in § 173.164(d), the flasks can be considered inner packagings and the 30-gallon drums meet the required outer packaging requirements. Therefore, each 30-gallon drum must be marked and labeled. If the drums are overpacked on a pallet secured with shrinkwrap or other material and the markings and labels on the drums are not visible through the overpack, then the overpack will require the marking and label that appears on the drums.

I hope this satisfies your request.

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards



020269

173.164(d)



DEFENSE LOGISTICS AGENCY
DEFENSE NATIONAL STOCKPILE CENTER
8725 JOHN J. KINGMAN ROAD, SUITE 3229
FT. BELVOIR, VIRGINIA 22060-6223.

Johnsen
§ 173.164(d)(2)
Exemption

SEP 19 2002 02-0269

IN REPLY
REFER TO

DNCS-E

Mr. Robert A. McGuire
Associate Administrator for Hazardous
Materials Safety
Research and Special Programs
Administration
U. S. Department of Transportation
400 Seventh Street, SW
Washington, D.C. 20590-0001

ATTENTION: Exemptions, DHM-31

Dear Mr. McGuire:

**REQUEST FOR CONFIRMATION OF REGULATORY INTERPRETATION
AND EXEMPTION FROM MARKING AND LABELING REQUIREMENTS FOR
METAL FLASKS CONTAINING MERCURY.**

The Defense Logistics Agency/Defense National Stockpile Center (DNCS) maintains strategic and critical materials to reduce the nation's dependence on foreign sources of supply during national emergencies. One of the commodities currently stored by DNCS is mercury (UN 2809). DNCS has over 4,800 tons (net weight) of mercury stored at four locations in the United States. Due to increasing public concerns over the use, disposal, and management of mercury, DNCS is currently evaluating options including long-term storage of mercury at one centralized location to facilitate management control of the stockpile. The consolidation site for long-term storage has not been selected.

Mercury is stored at four U. S. Government sites located in (1) Warren, OH; (2) Somerville, NJ; (3) Oak Ridge, TN and (4) New Haven, IN. All mercury is currently contained in wrought iron or steel flasks, with iron screw-plug closures (tare weight of each flask is approximately 9 pounds). These flasks meet DOT's definition of non-specification, reusable metal packagings under 49 CFR Part 173.164(d)(2). The flasks vary in size and shape, but each flask contains approximately 76 pounds of mercury. Flasks at Warren, OH; Somerville, NJ; and

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507/SP/JOHNS
EXEMPTIONS & APPROVALS

Federal Recycling Program



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New Haven, IN are contained in 30-gallon, removable-head, epoxy-lined steel drums (six flasks per drum), with the following U. N. markings:

1A2/X235/S
1A2/Y1.5/200
01 USA/SDCC

Each drum is lined with a heavy plastic bag. Flasks inside each drum rest on cushioning material and are separated by heavy cardboard partitions. The drums are marked and labeled per DOT regulations and secured to flat pallets (five drums per pallet), with catch pans (one per pallet) located under the drums. Flasks at Oak Ridge, Tennessee, are packaged in wooden box pallets (approximately 45 flasks per pallet).

The following table shows the quantity of mercury stored at each location.

Mercury Stockpile Storage Locations

Location	Number of Flasks	Pounds	Tons
Warren Depot	16,355	1,242,000	621.00
Somerville Depot	75,880	5,767,576	2,883.74
Oak Ridge (DOE Site)	20,276	1,540,976	770.49
New Haven Depot	16,151	1,228,000	614.00
Totals	128,662	9,778,552	4,889.23

DNSC plans to ship the mercury directly from the current sites to the consolidation site, if selected, by commercial trailer truck. The mercury will be shipped alone and the flasks will not be removed from the flat pallets/drums or box pallets during shipment.

DNSC considers each drum and/or wooden box pallet an overpack. However, based on regulatory interpretations made by one of our contractors, and confirmed by the DOT Hazardous Materials Information Center, this would require that every individual mercury flask be marked and labeled in accordance with DOT regulations 49 CFR Part 172, Subparts D and E, respectively. The marking/labeling of each flask inside an over pack as described above, would not even be visible.

Our contractor contacted the DOT Hazardous Materials

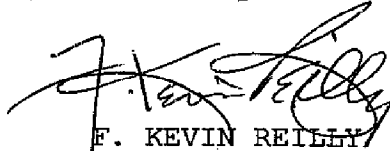
Information Center again on July 31, 2002, and asked if there was any way to avoid having to mark and label each individual flasks. Initially the Hazardous Materials Information Center consultant said no, but later the consultant called back and said he had discussed the problem with Delmer F. Billings, Chief of Standards Development for DOT. Mr. Billings said the metal drums (currently considered overpacks) could be considered the primary containers for the mercury, since they meet DOT's definition of non-specification reusable metal packagings under 49 CFR Part 173.164 (d) (2). Under Mr. Billings' interpretation, only the drums would have to be marked and labeled.

DNSC requests that DOT confirm in writing the Regulatory interpretation provided by Mr. Billings that the drums can be considered the primary containers. In addition, for the reasons stated below, DNSC requests a one-time exemption less than 49 CFR Part 107 Subpart B from marking and labeling the individual flasks that are overpacked in the box pallets. If DOT is unable to confirm the regulatory interpretation provided by Mr. Billings, DNSC requests that the one-time exemption also be applied to the flasks packed in the drums.

As stated above, mercury flasks will be shipped directly from the current storage sites to the consolidation site for long-term storage and not removed from the flat pallets/drums or box pallets during shipment. The flat pallets/drums and box pallets will be loaded and unloaded by DNSC, or its contractors, and will be under control of the commercial carrier during transportation. In addition, shipping papers, markings and labels on drums and box pallets, and placards on truck trailers will allow emergency responders to readily identify material being shipped as mercury, if an accident occurs. DNSC is not aware of any shipping incidents where not marking and labeling individual flasks would have increased risk to property or public health and safety. Therefore, DNSC believes granting this exemption will not increase risk to property, the environment or the health and safety of the public during transportation.

Thank you in advance for your attention to this matter. If you have any questions, please call me at (703) 767-6522.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Kevin Reilly", written in a cursive style.

F. KEVIN REILLY
Director,
Directorate of Environmental
Management