



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

NOV 05 2013

Mr. Mark Ludwikowski
Member
Sandler, Travis & Rosenberg, P.A.
1300 Pennsylvania Avenue, NW, Suite 400
Washington, DC 20004

Reference No. 13-0168

Dear Mr. Ludwikowski:

This is in response to your July 31, August 6, and August 28, 2013 e-mails to staff members of the Approvals and Permits Division and the Standards and Rulemaking Division of the Pipeline and Hazardous Materials Safety Administration (PHMSA). Specifically, you ask how the new regulations PHMSA recently issued in a final rule under Docket No. PHMSA-2010-0201 (HM-254; 7/30/13, 78 FR 45880) affect approvals PHMSA issues for air bag inflators, herein referred to as "inflator" or "inflators," that are transported in commerce under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). We have paraphrased your questions and answered them in the order provided.

- Q1. How do the regulations issued under the Docket No. HM-254 final rule (effective August 29, 2013) affect inflator approval applications currently pending before PHMSA? For example, can a company that has applied to PHMSA for an inflator explosive (EX) approval ship that inflator before it receives PHMSA's EX approval if the company has the inflator's test reports?
- A1. Inflator applications currently pending before PHMSA for an EX approval will be processed in the same manner that was required prior to issuance of the Docket No. HM-254 final rule. Companies with tested inflators that meet all applicable requirements prescribed in § 173.166 excepting them from needing an EX approval number or from complying with the HMR may be placed in transportation without an EX approval number. Companies with inflators that require an EX approval number must place them in transportation only after receiving this number from PHMSA.
- Q2. Will PHMSA continue to allow analogies to be used in test reports?
- A2. PHMSA permits an explosive to be classified "by analogy" only by the laboratory that performed the original classification tests on the material. Design-type variations are also permitted under § 173.166(b) provided each variation remains within the design type tested and the laboratory report identifies all part numbers and all drawings for that design type.

- Q3. Is the company that applied for an EX approval for an inflator obligated to ensure that testing on the inflator was conducted in conformance with guidelines in the United Nations (UN) Recommendations on the Transport of Dangerous Goods (Recommendations) Manual of Tests and Criteria or is that discretion given to the testing laboratory?
- A3. The HMR does not require the applicant company ensure that testing on its inflator was performed in conformance with the UN Recommendations Manual of Tests and Criteria, nor does it give test laboratories or applicants the responsibility to make this determination. Instead, § 173.166(b)(1)(ii) requires that those authorized to examine and test inflator devices and pretensioners by PHMSA's Associate Administrator for Hazardous Materials Safety must perform these tasks in conformance with the applicable requirements specified in § 172.102, Special Provision 160. This special provision requires that inflators, modules, and pretensioners must be tested in conformance with the UN Recommendations Manual of Tests and Criteria Test, Part I, Test Series 6(c), and that as a result of these tests there must be no explosion of the device, fragmentation of its casing or pressure vessel, projection hazard, or thermal effect that would significantly hinder fire-fighting or other emergency response efforts in the immediate vicinity of the inflator. The volume requirement of test series 6(c) of the UN Manual of Tests and Criteria must be strictly adhered to, with no exceptions granted.
- Q4. Will each individual testing laboratory have its own unique identifying lab report number or certificate number that will replace the EX number? For example, in the lighter industry, a testing laboratory can use a certificate number like "LAA02" to identify any tests it has performed (e.g., LAA02-0001).
- A4. PHMSA assigns each laboratory it approves to perform this type of testing its own unique identifying number (see § 107.403(a)), but this number cannot replace the EX number PHMSA assigns to each new explosive (see §§ 107.404(a)(2) and 173.56(b)(1)). Following the examination of each new design type classed as a Class 9 (see § 173.166(b)(1)), the person that conducted the examination must prepare a test report in conformance with § 173.166(g). To ensure that the test report is traceable, it must be assigned a product identifier number that is unique. This number may include the laboratory report number or be designed so that it has a unique relationship with that number (see § 173.166(g)(1)(iv)).
- Q5. With lighter certificates, the testing laboratory is required to file an activity log that keeps the Department of Transportation (Department) informed of all approvals that have been processed by the lab on the 15th of every month. The new inflator regulations do not mention keeping PHMSA involved in this process. Will a similar reporting requirement apply to laboratories that test inflators?

A5. Although new § 173.166(g)(3) states that test reports must be made available only upon request to representatives of the Department, PHMSA requires in each individual "Explosives Lab" approval letter that EX approval testing laboratories must submit their test activity logs to PHMSA's Approvals and Permits Division annually by February 1 of each year.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Glenn Foster". The signature is written in black ink and is positioned to the left of the typed name.

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

Edmonson
3173-166
HM-254

Drakeford, Carolyn (PHMSA)

From: Billings, Delmer (PHMSA)
Sent: Tuesday, August 13, 2013 7:05 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Questions - New Inflater Regulations HM 254-

73-0168

Importance: High

Carolyn,

Please log this email for formal response. Have the specialist see me, before drafting.

Thanks,
Del

From: Betts, Charles (PHMSA)
Sent: Tuesday, August 06, 2013 2:19 PM
To: Fink, William (PHMSA); Billings, Delmer (PHMSA)
Cc: Mark Ludwikowski [mludwikowski@strtrade.com] (mludwikowski@strtrade.com); Herrera, Jacqueline (PHMSA); Singh, Harpreet (PHMSA)
Subject: RE: Questions - New Inflater Regulations HM 254-
Importance: High

Bill-

Will do.

Thanks,
Charles

From: Fink, William (PHMSA)
Sent: Tuesday, August 06, 2013 2:10 PM
To: Betts, Charles (PHMSA)
Cc: Mark Ludwikowski [mludwikowski@strtrade.com] (mludwikowski@strtrade.com); Herrera, Jacqueline (PHMSA); Singh, Harpreet (PHMSA)
Subject: FW: Questions - New Inflater Regulations HM 254-

Mr. Betts,

Kindly can you review and answer Mr. Ludwikowski questions found below?

Mr. Ludwikowski,

Your questions posed below have been forwarded to our Standards Division for action.

Thank you,

Bill Fink

From: Mark Ludwikowski [<mailto:mludwikowski@strtrade.com>]

Sent: Tuesday, August 06, 2013 9:46 AM

To: Fink, William (PHMSA)

Subject: FW: Questions - New Inflator Regulations

Hi Bill,

Further to my voice message this morning, Jackie mentioned that you might have some insight on these questions. I would greatly appreciate it if you could provide some guidance for us on this front.

Thanks.

Mark

Mark Ludwikowski

Member

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From: Mark Ludwikowski

Sent: Wednesday, July 31, 2013 2:28 PM

To: Jacqueline.Herrera@dot.gov

Cc: Lana Nigro

Subject: Questions - New Inflator Regulations

Hi Jackie,

Thank you for taking our call this morning. We have a few follow-up questions regarding the new regulations (attached) that remove the need for EX approvals for inflators:

- 1) What happens with inflator approval applications currently pending before PHMSA? Can the company ship the product before those EX approvals since it has the test reports?
- 2) Will analogies in test reports continue to be allowed?
- 3) Is the company obligated to ensure that the testing was conducted according to the UN Manual guidelines or is that discretion given to the lab?

Thank you in advance for your guidance.

Best regards,

Mark

Mark Ludwikowski
Member

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