U.S. Department
of Transportation

Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Avenue SE
Washington, DC 20590

Mr. Robert D. Commisso
Intrepid Coatings, Inc.
1910 East Riverview Drive
Phoenix, AZ 85034

AUG 1 2 2015

Ref. No. 15-0054

Dear Mr. Commisso:

This is a response to your March 13, 2015 email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) with regard to the transportation of aerosol paint under § 173.306. Specifically, you request confirmation that you are not required to perform the hot water bath test prescribed in § 173.306(a)(3)(v). In your email, you state that you purchase aerosol "blanks" containing propellant from the manufacturer. Your company fills the aerosols with paint. You state that the manufacturer indicated that you are not required to re-perform the hot water bath test as they have previously completed the test on representative samples filled with the same paint material. You request confirmation that this is correct.

The answer is no. In accordance with § 173.306(a)(3)(v), each container, after it is filled, must be subjected to the hot water bath test. A previously tested representative sample container or batch would not satisfy this requirement, as each container is subject to the test as prepared for shipment. Therefore, you are required to perform a hot water bath test prior to shipping the completed aerosol.

It should be noted that on January 30, 2015, PHMSA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register, titled "Hazardous Materials: Adoption of Special Permits (MAP–21) (RRR);" (Docket No. PHMSA–2013–0042 (HM–233F); 80 FR 5340). This NPRM proposed to incorporate into the HMR several longstanding special permits, including those related to alternatives to the hot water bath test requirements for aerosols. The comment period for the NPRM closed on March 31, 2015, but please be advised that the regulations for hot water bath testing of aerosols may be revised to incorporate regulatory flexibility for this requirement. PHMSA is currently reviewing comments to the NPRM and working towards a final rulemaking.

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

Suchak
§ 173.306 Limited quantities of compressed gas
15-0054

Dodd, Alice (PHMSA)

From: Ciccarone, Michael CTR (PHMSA)
Sent: Friday, March 13, 2015 4:17 PM
To: Hazmat Interps
Subject: FW: Aerosols Formal Letter of Interpretation
Attachments: Re: FW: DV-16 Masterblend / DOT PSI test; DV16 Can.jpg; DOT 2Q Stamp.jpg; Fill Levels.jpg

Shante/Alice,

Please submit this for a formal letter of interpretation.

Thanks,

Mike

From: Robert D. Commisso / Intrepid Coatings [mailto:robert@intrepidcoatings.com]
Sent: Friday, March 13, 2015 3:12 PM
To: INFOCNTR (PHMSA)
Subject: Aerosols Formal Letter of Interpretation

3/13/2015

To Whom It May Concern:

I am requesting a formal letter of interpretation.

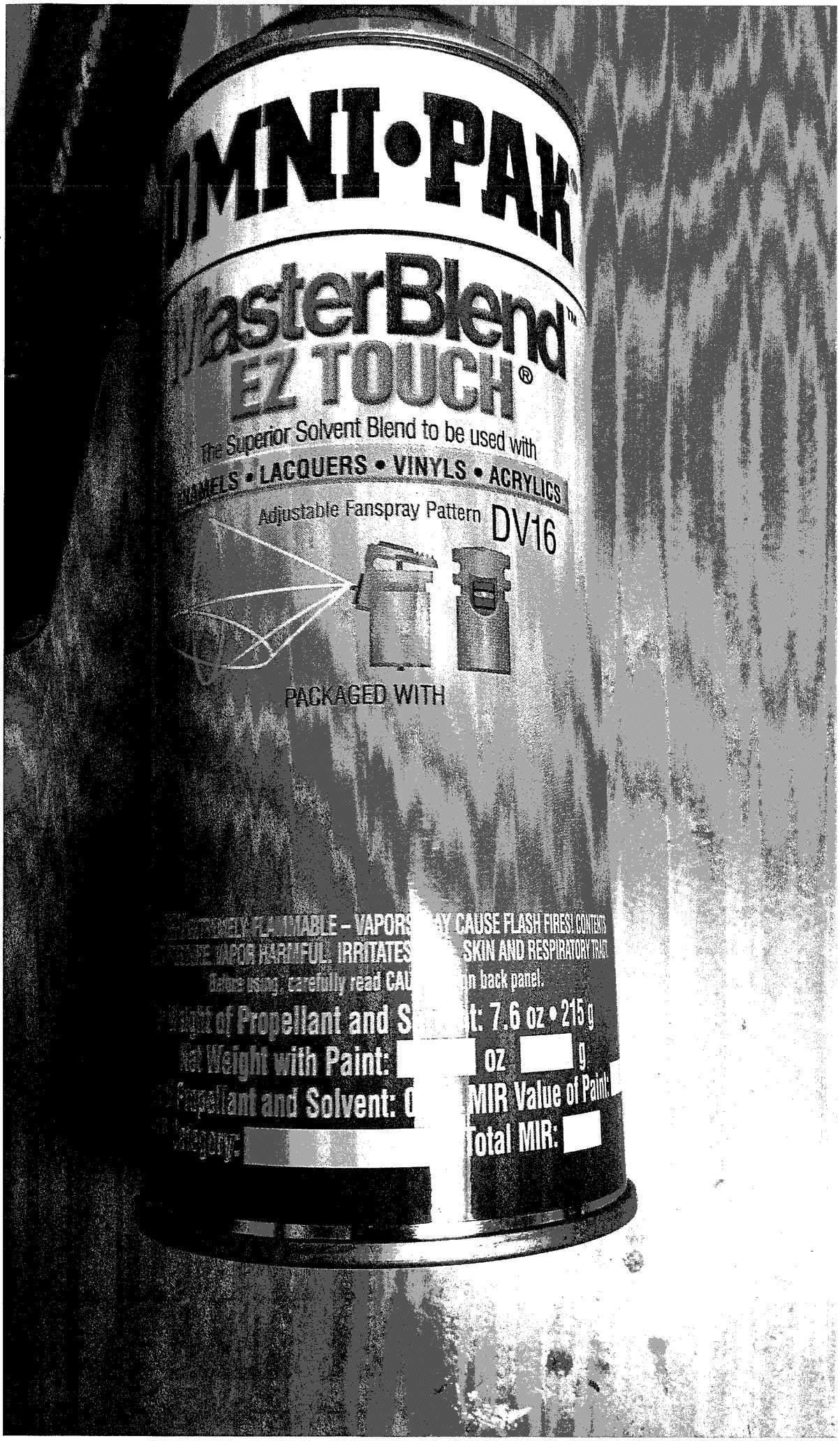
I was going through our files and noticed I didn't have proper follow up from a question we had from back in 2009. We had done it all verbal, and I want a written follow up to have on file with my safety procedures.

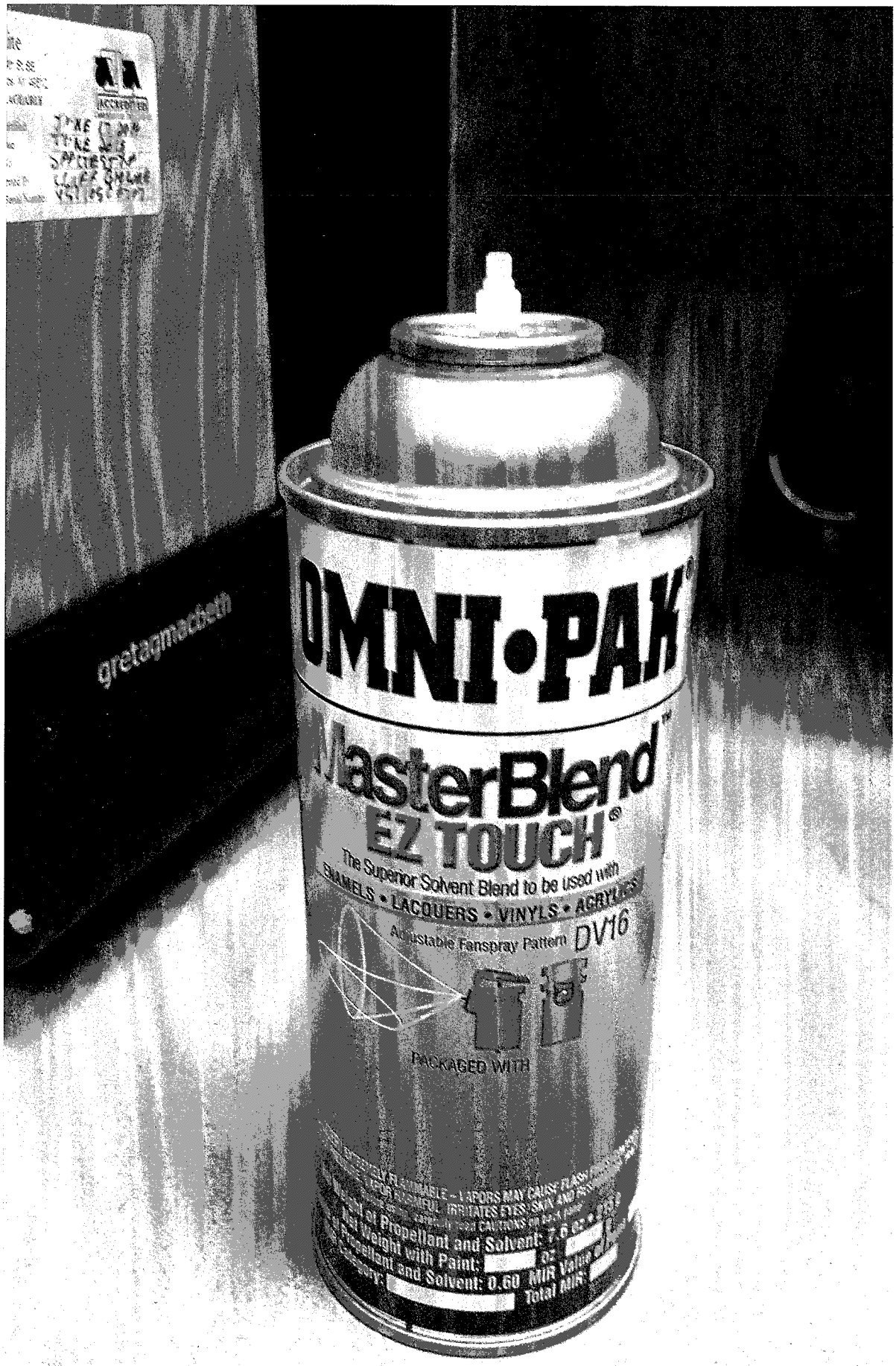
In 2008 (October), we had a DOT FMCSA inspection. We fill aerosol black with our material. The blanks contain all the propellant (7.6 ounces by weight) and the company that fills them (Sherwin Williams – Diversified Brands) runs them through the pressure bath to be consistent with DOT aerosol can shipping regulations. They also fill the cans with material and test them as well to show that they do not need re-testing at the final fill manufacturer (us and companies like us.) We get the cans in, fill them with 4.4 ounces by weight max as prescribed by their fill methods(which equals about 2.5-3 fluid ounces.) The total can weight of liquid is 12 ounces, and the gross weight of the filled system (can weight included) is 16 ounces. We used to re-run the hot water bath prior to our DOT inspection, but the DOT inspector saw this and let us know since they were already pressure tested, we really didn't have to do this. At the end of the inspection, he wanted to make sure he was correct on this assumption, so he had me follow up with his "HazMat Specialist." So, I called, and they asked for a statement from our supplier about the hot water bath, and I got it. I sent this off to the specialist, and they told me keep the e-mail on file and that we were good not having to do the water bath on these cans

Now, I am redoing our safety procedures, and I noticed that this isn't in writing anywhere, so I want it for reference. I attached the e-mail from Sherwin for your reference as well as a picture of our DV-16 blank cans. Can you give me a written confirmation of this so I can file it with our procedures.

Sincerely,

Robert D. Commisso
Intrepid Coatings, Inc.
Phone - (602)243-3293
Fax - (602)268-6801
robert@intrepidcoatings.com
1910 East Riverview Drive
Phoenix, AZ 85034
http://www.intrepidcoatings.com


OMNI•PAK
MasterBlend™
EZ TOUCH®
the Superior Solvent Blend to be used with
ENAMELS • LACQUERS • VINYLS • ACRYLICS
Adjustable Fanspray Pattern DV16
PACKAGED WITH
EXTREMELY FLAMMABLE – VAPORS MAY CAUSE FLASH FIRE! CONTENTS
HARMFUL. IRRITATES SKIN AND RESPIRATORY TRACT.
Before using, carefully read CAU on back panel.
Weight of Propellant and S t: 7.6 oz • 215 g
Net Weight with Paint: oz g
Propellant and Solvent: MIR Value of Paint
Category: Total MIR:


OMNI•PAK
MasterBlend
EZ TOUCH
The Superior Solvent Blend to be used with
ENAMELS • LACQUERS • VINYLS • ACRYLICS
Adjustable Fanspray Pattern DV16
PACKAGED WITH

Dodd, Alice (PHMSA)

From: marudkowski@sherwin.com
Sent: Tuesday, October 13, 2009 5:00 PM
To: robert@tricomcoatings.com
Subject: Re: FW: DV-16 Masterblend / DOT PSI test

Dear Robert,

It was great talking to you today!
All of our Sherwin-Williams Diversified Brands Omni-Fill Blends Aerosol Cans (DV-16 Masterblends) contain propellant and three kind of solvents. During our manufacturing process the aerosol cans are tested according to the specifications. Each aerosol container is subjected to a test performed in a hot water bath.
The pressure at 131 *F in the DV-16 Masterblend does not exceed 130 PSI. When you add the paint bulk using the Omni-Fill Machine, the filled paint Omni DV-16 aerosol blend will have the lower pressure then the pressure of blend just with propellant and solvents. This was tested in our labs using different kind of paint bulk systems.
Filling the paint into aerosol with propellant and solvents, decreases the pressure, pressure is lower.

Hope this helps!
Best Regards,
Margaret

Margaret Rudkowski - R&D Aerosol Lab Manager - The Sherwin-Williams Company / Diversified Brands
4440 Warrensville Center Rd. Warrensville Hts. OH 44128 216.332.1484 or 216.225.9795, fax 216.263.8593
marudkowski@sherwin.com

"Robert D. Commisso" <robert@tricomcoatings.com>

10/13/2009 02:25 PM

Please respond to
<robert@tricomcoatings.com>

To <marudkowski@sherwin.com>
cc
Subject FW: DV-16 Masterblend / DOT PSI test

10/13/2009

Margaret,

Thank you so much for talking with me over the phone about this product. We have been trying to get info on these for quite some time to remedy our audit with the DOT and start shipping our aerosol cans again. Could you please, as we discussed on the phone, send something in writing that I can keep on file for the DOT stating what we talked about. How the pressure in the aerosol can actually lowers when product is added to the solvents and propellants that are in the can. If it comes from the manufacturer of the cans, they might actually listen to it. Thank you again for your help.

Sincerely,

Robert D. Commisso
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