



U.S. Department of Transportation
**Pipeline and Hazardous Material
Safety Administration**

1200 New Jersey Ave, S.E.
Washington, D.C. 20590

JAN 20 2010

Ms. Karen Messana
EHS & Regulatory Compliance Manager
Trinity Manufacturing, Inc.
11 E.V. Hogan Drive
Hamlet, NC 28345

Ref. No. 09-0228

Dear Ms. Messana:

This responds to your letter regarding the use of requalified foreign cylinders for the packaging of toxic by inhalation liquids under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether cylinders manufactured in accordance with the European ADR standard are permitted without further approval to package a Division 6.1, Hazard Zone B liquid (Chloropicrin, UN1580) under §§ 173.40 and 173.227 of the HMR once they are requalified in the United States as specified in § 171.23. Once successfully retested and refilled, the cylinders would be exported to a destination outside the United States.

The answer to your question is no. The conditions for packaging materials toxic by inhalation under international standards are specified in § 171.23(b)(10) which requires such materials to be packaged in accordance with the HMR. Section 173.227(a) specifies that a Hazard Zone B toxic liquid must be packaged in a seamless or welded DOT specification cylinder or a seamless UN standard cylinder conforming to § 173.40. Section 173.40 prescribes the specific requirements for the packaging of toxic materials in cylinders.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

Stevens
 §171.23
 §171.24
 IMDG
 09-0228

Drakeford, Carolyn (PHMSA)

From: Betts, Charles (PHMSA)
Sent: Friday, October 02, 2009 10:13 AM
To: Drakeford, Carolyn (PHMSA)
Cc: Gorsky, Susan (PHMSA); Kelley, Shane (PHMSA); Pfund, Duane (PHMSA)
Subject: FW: Request for Regulation Clarification
Importance: High

From: Karen Messana [mailto:KMessana@trinitymfg.com]
Sent: Thu 10/1/2009 4:11 PM
To: Pfund, Duane (PHMSA)
Cc: Dell Gillespie
Subject: Request for Regulation Clarification

Duane,

As we discussed recently on the phone, I would like to get a clarification of the regulation regarding cylinder packaging for a PIH material that is transported under the IMDG Code. We are trying to make use of the regulation 171.23 (a)(4), which allows filling foreign cylinders in the USA for export under the IMDG code without seeking DOT approval.

In 171.23(a)(4) – It essentially states that an ADR specification cylinder may be filled with a gas in the United States and offered for transportation and transported for export if certain conditions are met. These conditions include:

(a)(4)(i) The cylinder has been requalified and marked with the month and year of requalification in accordance with subpart C of part 180 of this subchapter, or has been requalified as authorized by the Associate Administrator.

(a)(4)(ii) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief device for each cylinder conform to the requirements of this part for the gas involved; and

(a)(4)(iii) The bill of lading or other shipping paper identifies the cylinder and includes the following certification: "This cylinder has (These cylinders have) been qualified, as required, and filled in accordance with the DOT requirements for export."

Our product is a liquid PIH (UN1580 Chloropicrin, Zone B), and PIHs are further addressed in 171(b)(10) as follows:

(b) *Conditions and requirements specific to certain materials—*

b)(10) *Poisonous by inhalation materials.* A material poisonous by inhalation (see §171.8) must conform to the following requirements:

(b)(10)(ii) The material must be packaged in accordance with the requirements of this subchapter;

This last statement is not clear as to what requirements are included and not included. Does it mean only the DOT requirements stated anywhere else in the regulations except in 171? If so, then I presume we would have to seek approval to fill PIH material in foreign cylinders for export. If the intent of (b)(10)(ii) is to not allow PIHs to

10/2/2009

be filled in foreign cylinders for export without an approval, then it would be easier on the regulated community for it to be more clear. Several private sector DOT specialists I have talked with believe we can fill PIH in such circumstances without an approval.

I am aware that DOT specific rules outweigh general rules but it is not clear that this situation is a case of specific vs general, as this could be read as an exception to general and specific rules. In support of this, I offer:

One could read 171(a)(4) to mean that filling an ADR cylinder that has been tested and marked per DOT 171(a)(4)(i) is complying with the requirements of this subchapter since subchapter C includes Parts 171 through Parts 180.

In 171(g) *Additional requirements for the use of international standards and regulations*, it states:.. All shipments offered for transportation or transported in the United States in accordance with this subpart must conform to the following requirements of this subchapter, as applicable and includes:

171(g)(5) For export shipments, the general packaging requirements in §§173.24 and 173.24a of this subchapter;

In 173.24, General requirements for packagings and packages., it states:

(c) Authorized packagings. A packaging is authorized for a hazardous material if:.....

(c)(2) The packaging is permitted under, and conforms to, provisions contained in subparts B or C of part 171 of this subchapter.

So the question is, do we need to seek approval to fill foreign cylinders with a PIH product for export or can we choose not to seek approval as long as we comply with 171.23(a)(4) etc?

Thanks for your time in this matter. Please call me if any clarification is needed.

Karen Messana, CSP
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