



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

NOV -6 2008

Mr. Richard L. Furman
DeOrchis & Partners, LLP
61 Broadway, Suite 2600
New York, New York 10006

Ref. No.: 08-0179

Dear Mr. Furman:

This responds to your letter dated July 10, 2008, regarding the requirements in § 173.56(h) for transportation of imported small arms ammunition under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if small arms ammunition manufactured outside of the United States must be tested, classed, and approved even if it would otherwise be excepted from the approval process under § 173.56(h).

A person offering a new explosive for transportation must ensure that the explosive has been tested, classed, and approved in accordance with § 173.56 and assigned an EX-number by the Associate Administrator for Hazardous Materials Safety (See § 173.56(b)). A new explosive that has received approval from a competent authority of a foreign government under the provisions of § 173.56(g) must receive an EX-number from the Associate Administrator for Hazardous Materials Safety for transportation in the United States.

The requirements of § 173.56 do not apply to cartridges, small arms that are:

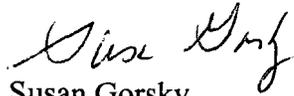
- Not a forbidden explosive under § 173.54;
- Ammunition for rifle, pistol, or shotgun;
- Ammunition with inert projectile or blank ammunition; and
- Ammunition not exceeding 50 calibers for rifle or pistol cartridges or 8 gauges for shotgun shells.

“Cartridges, small arms” meeting these criteria may be assigned a classification code of 1.4S by the manufacturer (See § 173.56(h)). The exception applies to domestically or

internationally manufactured "Cartridges, small arms" that transit the United States. However, this provision does not relieve a manufacturer outside of the United States from obtaining any necessary competent authority approvals from the country of origin, transit, or overflight when the ammunition is transported.

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,



Susan Gorsky
Acting Chief, Standards Development
Office of Hazardous Materials Standards

Enigma
 § 173.56(h)
 Explosives
 08-0179

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>
Sent: Thursday, July 10, 2008 8:37 AM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Request for Official Interpretation; Our Ref. 4417-001

From: Richard Furman [mailto:RFurman@marinelex.com]
Sent: Wednesday, July 09, 2008 10:40 AM
To: INFOCNTR <PHMSA>
Subject: Request for Official Interpretation; Our Ref. 4417-001

Completed by Adam via telephone on 7/9/2008 at 4:15pm.

This office filed an application for a packaging exemption pursuant to 49 C.F.R. § 173.56(h) with the DOT's Hazardous Materials Safety Administration, for certain imported small arms ammunition. Review of the application is pending.

In the course of discussing the application with the DOT's reviewing officer, he made statements regarding the scope and application of the foregoing regulation as to which we have doubts regarding their accuracy. If he is correct, then the pending application may be moot. If not, we would like to resolve the issues so as to move the process of reviewing the application along.

With the foregoing in mind, there are two (2) issues we would like to obtain definitive clarification on.

1. It was stated by the DOT official the exemption provided for in 49 C.F.R. § 173.56(h) is not applicable to imported goods and only applies to domestic goods. Notwithstanding the foregoing, it is our understanding and belief that this interpretation of the subject regulation is contrary to the current, majority view within the DOT, and that, in fact, the exemption provided for by the regulation also applies to imported merchandise.

In view of the foregoing, it is respectfully requested that we be provided with a written Official Interpretation of 49 C.F.R. § 173.56(h) regarding whether or not the exemption provided by the regulation extends to both domestic and imported goods, or it is limited in its application solely to domestic goods.

2. The DOT official also stated that the exemption provided for in 49 C.F.R. § 173.56(h) is only available to manufacturers.

Consequently, we respectfully request an Official Interpretation of 49 C.F.R. § 173.56(h) regarding whether the exemption provided for by the regulation can only be applied for by manufacturers, or whether the exemption is available to other parties as well as manufacturers.

Thank you in advance for your kind and prompt consideration of the foregoing. As noted above, we have a pending application for a packaging exemption pursuant to the subject regulation and time, therefore, is of the essence.

Sincerely,

Richard L. Furman

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7/11/2008