



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

FEB 25 2014

Mr. Mark Smith
Northern Air Cargo Inc.
3900 Old International Airport Rd.
Anchorage, AK 99502

Ref. No. 13-0181

Dear Mr. Smith:

This responds to your September 2, 2013 request for clarification and a follow up telephone conversation with a member of our staff on the use of the "RQ, Waste Environmentally hazardous substance, solid, n.o.s. (lead), 9, III" proper shipping description. In your letter, you ask whether the United States (US) Variations to the International Civil Aviation Organization's Technical Instructions (ICAO TI), specifically Variation 4, may conflict with the § 172.102 Special Provision (SP) 146 in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) in regard to the use of the environmentally hazardous substance proper shipping description.

In the HMR, SP 146 addresses materials which do not meet the HMR definitions of hazardous waste, hazardous substance or a hazard class but have been deemed environmentally hazardous by a Competent Authority other than the US. Specifically, SP 146 permits these materials to use the environmentally hazardous substance proper shipping names both domestically and internationally.

On the other hand, Variation 4 of the US Variations to the ICAO TI, addresses materials that meet the HMR definitions for a hazardous waste or a hazardous substance. Therefore, Variation 4 would not be in conflict with SP 146 because Variation 4 addresses HMR regulated hazardous wastes or hazardous substances and SP 146 addresses material which do not meet the HMR definitions of a hazardous waste, hazardous substance or hazard class but have been deemed environmentally hazardous by another Competent Authority.

Based on this clarification, your questions are paraphrased and answered below.

Q1. For a material not meeting the HMR definition of a hazardous waste or substance may the proper shipping description "UN3077, Environmentally hazardous substance, solid, n.o.s. (lead), 9, III" be used?

A1. In accordance with § 172.102 SP 146, for a material not meeting the HMR definition of a hazardous waste or substance or any hazard class, the proper shipping description “UN3077, Environmentally hazardous substance, solid, n.o.s. (lead), 9, III” may only be used if another Competent Authority has deemed the material environmentally hazardous. This provision may be used for both domestic and international shipments.

Q2. For a material meeting the HMR definition of a hazardous waste or substance may the proper shipping description “UN3077, Environmentally hazardous substance, solid, n.o.s. (lead), 9, III” be used?

A2. Yes, a material meeting the HMR definition of a hazardous waste or substance may use the proper shipping description “UN3077, Environmentally hazardous substance, solid, n.o.s. (lead), 9, III.” However, it should be noted that for a hazardous substance, § 172.203(b) requires the letters “RQ” must be entered before or after the basic description, and for hazardous waste, § 171.101(c)(9) requires shippers to place the word “waste” in front of the proper shipping name, if the material is a waste as defined in § 171.8, and the material description does not already include the word “waste.”

I hope this answers your inquiry. If you need additional assistance, please contact this office at 202-366-8553.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Benedict". The signature is written in a cursive, slightly slanted style.

Robert Benedict
Chief, Standards Development Branch
Standards and Rulemaking Division



02 September 2013

U.S. Department of Transportation
PHMSA Office of Hazardous Materials Standards
Attn: PHIII-10
East Building
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

Boothe
§172.102 SP146
Hazardous Waste
13-0181

RE: Seeking clarification. UN3082, Environmentally hazardous substance, liquid, n.o.s., 9 III and UN3077, Environmentally hazardous substance, solid, n.o.s., 9, III. Apparent contradiction between §172.102 special provision 146 and ICAO TI US04.

Hypothetically, a shipper has offered a shipment of RQ UN3077, Waste, Environmentally hazardous substance, solid, n.o.s. (lead), 9, III.

During the acceptance inspection, it is noted in ICAO TI A3-1-29(I)(a) it states:

For a hazardous substance that is a dangerous good according to these Technical Instructions other than under the proper shipping names "Environmentally hazardous substance, liquid, n.o.s" or "Environmentally hazardous substance, solid, n.o.s."

Also noted in A3-1-29(II)(a) states:

For a hazardous waste that is a dangerous good according to these Technical Instructions other than under the proper shipping names "Environmentally hazardous substance, liquid, n.o.s" or "Environmentally hazardous substance, solid, n.o.s."

During acceptance inspection in 49 CFR, it is noted in §172.102 special provision 146:

146 This description may be used for a material that poses a hazard to the environment but does not meet the definition for a hazardous waste or a hazardous substance, as defined in § 171.8 of this subchapter, or any hazard class, as defined in part 173 of this subchapter, if it is designated as environmentally hazardous by another Competent Authority. This provision may be used for both domestic and international shipments.

However, ICAO TI A3-1-29(I)(b) & (II)(b) both give examples of a shipment offered as a hazardous substance or a hazardous waste using this basic description.

Are these provisions stating that as long as the shipment is listed only as UN3077, Environmentally hazardous substance, solid, n.o.s. (lead), 9, III that does not meet the definition of a hazardous waste, or hazardous substance, this entry may be used?

If it does also meet the definition of a hazardous waste or hazardous substance, must an alternate proper shipping name be used for the example shipment, e.g., NA3077, Hazardous waste, solid, n.o.s. (lead), 9, III?

If it is permissible to use the entry, UN3077, Environmentally hazardous substance, solid, n.o.s.(lead), 9, III, for a hazardous substance and/or hazardous waste shipment, is it stating that the entries "RQ" and/or "Waste" be entered in association with this entry to make it compliant?

We are seeking clarification as this is somewhat confusing.

If you have any questions, please do not hesitate to contact me directly.

Sincerely,



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