



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

JUN 17 2015

Mr. W.A. Winters
President
Regulatory Resources, Inc.
379 Aragon Avenue
Los Alamos, NM 87544

Ref. No. 15-0056

Dear Mr. Winters:

This responds to your March 23, 2015 letter requesting clarification on the labeling requirements for Class 7 radioactive material in overpacks under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request further clarification of two letters of interpretation (Ref. No. 05-0052 and Ref. No. 06-0188) issued by this Office with regard to §§ 173.448(g) and 172.203(b), respectively.

Letter Ref. No. 05-0052 addresses the applicability of labeling an overpack consisting of Class 7 (radioactive) material packages (drums) that are placed onto a pallet. Question and Answer 4 in the letter is specific to a non-rigid overpack. The question and answer provided states:

Q4. If a non-rigid overpack is used, would the option of applying a label and determining a new dose rate be non-applicable, as long as the markings and labels are visible?

A4. The answer is yes, as long as the markings and labels are visible.

Relative to the above question and answer, you ask if the requirement to label a non-rigid overpack (i.e., a pallet) containing labeled Class 7 (radioactive) material packages is actually a requirement or if it is optional?

It is a requirement. As you indicate, § 173.448(g) requires that if an overpack is used, the overpack must be labeled in accordance with § 172.403(h). Note that § 173.448(g) also specifically references that the overpack is to be marked in accordance with § 173.25, however, it does not reference § 173.25 for labeling. Section 172.403(h) does not provide an exception for labeling overpacks and outlines the requirements for labeling of an overpack including conditions for rigid and non-rigid overpacks. Therefore, the overpack must be labeled with a Class 7 label that contains information on the content, activity, and transport index information

as instructed in § 173.403(h)(1)-(3). This is necessary because of the unique hazard of radioactive material and communicating the aggregate radioactivity of the individual packages in the overpack (i.e., on the pallet).

Letter Ref. No. 06-0188 addresses the appropriate shipping description for a Class 7 material limited quantity shipment (in accordance with § 173.421) which is required to have a shipping paper in accordance with § 173.422(e), if the material is a hazardous substance or hazardous waste. Specifically, you request clarification of the additional description requirements of § 172.203(b), as it relates to this type of shipment.

Your questions related to Letter Ref. No. 06-0188 are paraphrased and answered as follows:

Q1. Is the requirement in § 172.203(b) to add the words "Limited Quantity" or "Ltd Qty" after the required basic description for a Class 7 (radioactive) material a requirement or is it optional?

A1. Adding the words "Limited Quantity" or "Ltd Qty" is a requirement. Although § 172.203(b) requires the words after the basic description, when the proper shipping name (PSN) "Radioactive material, excepted package-limited quantity of material" is used, it is the opinion of this Office that the words "limited quantity of material" in the PSN satisfy the intent of this requirement and thus, the words "Limited Quantity" or "Ltd Qty" need not be repeated following the basic description.

Q2. Because the additional description requirement for limited quantities in § 172.203(b) does not include the phrase "for example" (or other like means of denoting such), is what is in quotes (i.e., "UN2744, Cyclobutyl chloroformate, 6.1, (8, 3), PG II") exactly how the additional information is to appear on the shipping paper?

A2. Yes.

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

Sincerely,



Dirk Der Kinderen
Acting Chief, Standards Development Branch
Standards and Rulemaking Division

Goodall, Shante CTR (PHMSA)

Boothe
173.448(g)
General Interpretation
Requirements
15-00576

From: Ciccarone, Michael CTR (PHMSA)
Sent: Tuesday, March 24, 2015 9:56 AM
To: Hazmat Interps
Subject: FW: Request for Interpretation
Attachments: RRI Clarification Request - 173.448 & 172.203 (March 23, 2015).pdf

Shante/Alice,

Please submit this for a formal letter of interpretation.

Thanks,

Mike

From: Wade Winters [<mailto:wade@regulatoryresources.net>]
Sent: Monday, March 23, 2015 4:21 PM
To: INFOCNTR (PHMSA)
Subject: Request for Interpretation

Dear Hazardous Materials Information Center,
I have attached a letter requesting clarification.

Thank you,

Wade Winters
President

Regulatory Resources, Inc.
Your Training and Compliance Professionals
509-628-1020
www.reghead.net

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March 23, 2015

Standards and Rulemaking Division
Pipeline and Hazardous Materials Safety Administration
Attn: PHH-10, U.S. Department of Transportation, East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001

Dear Hazardous Materials Information Center:

RRI is seeking clarification with an allowance provided by your letters to relax regulatory requirements that appear to be mandatory. The two letters in particular are Ref. No. 05-0052 (April 13, 2005) concerning §173.448(g) and Ref. No. 06-0188 (September 8, 2006) specifically with regard to §172.203(b).

Letter Ref. No. 05-0052

The subject in letter 05-0052 is the applicability of markings and labels for an overpack containing Class 7 (radioactive) material packages (drums) that are placed onto a pallet. Question/Answer 3 deals with the label determination for a rigid overpack. Question/Answer 4 is specific to a non-rigid overpack. The question and answer provided state:

- Q4) If a non-rigid overpack is used, would the option of applying a label and determining a new dose rate be non-applicable, as long as the markings and labels are visible?
- A4) The answer is yes.

The term "overpack" is defined in §171.8 (General Definitions) and is not specifically redefine or excepted for Class 7 (radioactive) material. The definition of overpack states it is a:

...means an enclosure that is used by a single consignor to provide protection or convenience in handling of a package or to consolidate two or more packages. Overpack does not include a transport vehicle, freight container, or aircraft unit load device. Examples of overpacks are one or more packages:

- (1) Placed or stacked onto a load board such as a pallet and secured by strapping, shrink wrapping, stretch wrapping, or other suitable means; or
- (2) Placed in a protective outer packaging such as a box or crate.

The regulatory requirements for the labeling of an overpack containing Class 7 (radioactive) material package(s) is specified in §173.448(g):

- (g) If an overpack is used to consolidate individual packages or to enclose a single package of Class 7 (radioactive) materials, the package(s) must comply with the packaging, marking, and labeling requirements of this subchapter, and:
- (1) The overpack must be labeled as prescribed in §172.403(h) of this subchapter...

Paragraph §172.403(h) states:

- (h) When one or more packages of Class 7 (radioactive) material are placed within an overpack, the overpack must be labeled as prescribed in this section, except as follows:
- (1) The "contents" entry on the label may state "mixed" in place of the names of the radionuclides unless each inside package contains the same radionuclide(s).
 - (2) The "activity" entry on the label must be determined by adding together the number of becquerels of the Class 7 (radioactive) materials packages contained therein.

(3) For an overpack, the transport index (TI) must be determined by adding together the transport indices of the Class 7 (radioactive) materials packages contained therein, except that for a rigid overpack, the transport index (TI) may alternatively be determined by direct measurement as prescribed in §173.403 of this subchapter under the definition for “transport index,” taken by the person initially offering the packages contained within the overpack for shipment.

(4) The category of Class 7 label for the overpack must be determined from the table in §172.403(c) using the TI derived according to paragraph (h)(3) of this section, and the maximum radiation level on the surface of the overpack...

First, §173.448 mandates compliance with §172.403(h) by the use of the verb “must” (see §171.9(b)(2)). Second, §172.403(h)(3) requires an overpack, rigid or non-rigid, to have a new Transport Index established and prescribes how that is to be derived. Please note that although not codified, the term “rigid” has been qualified in letter Ref. No. 02-0270 (March 21, 2003) to mean “...the requirement for a rigid packaging means a packaging that is not flexible, will retain its shape, and will not yield to knocks, bumps, drops, or other forces that may be encountered during transportation.” The term “rigid” for drums on a pallet would not apply, and by default, be a non-rigid overpack.

I do find one subjective term in the first sentence in §172.403(h) – the term “within”. This term is also not defined in the Hazardous Materials Regulations. One must be careful not to assume its meaning. For example, placing packages within a flatbed trailer clearly means they are located inside the vertical projected plane of the sides of the trailer. The application to a pallet is no different.

Therefore, with regard to Question/Answer 4 in letter Ref. No. 05-0052 (April 13, 2005), and given the mandatory requirement for labeling of a non-rigid overpack, it appears the reply in your letter is one of common sense rather than true compliance.

RRI Question 1: Is the requirement to label non-rigid overpacks (i.e., pallets) containing labeled Class 7 (radioactive) material packages an option or requirement?

Letter Ref. No. 06-0188

This letter concerns the appropriate shipping description for a Class 7 (radioactive) material limited quantity shipment which requires a shipping paper per §173.422(e). Specifically at question is the additional description requirements required by §172.203(b):

When a shipping paper is required by this subchapter, the description for a material offered for transportation as “limited quantity,” as authorized by this subchapter, must include the words “Limited Quantity” or “Ltd Qty” following the basic description.

You state in your reply that: *“In accordance with §172.203(b), for a limited quantity shipment that also is a hazardous substance or hazardous waste, we the words “limited quantity” are part of the proper shipping name, you need not repeat the words “limited quantity” following the basic description.”*

The term “basic description” is defined in §172.202(b) which reads:

“...the basic description specified in paragraphs (a)(1), (2), (3), and (4) of this section must be shown in sequence with no additional information interspersed.”

Hence, the “basic description” comprises the Identification Number, Proper Shipping Name, Hazard Class/Division, and Packing Group (and as also seen in §172.203(c)(2)).

The requirement in §172.203(b) specifies the additional information must appear after the basic description. The verb is “must” and the location is specified.



Once again, it appears the reply in your letter is one of common sense rather than true compliance.

RRI Question 2: Is the requirement to add the words "Limited Quantity" or "Ltd Qty" after the required basic description for a Class 7 (radioactive) material an option or requirement?

RRI Question 3. Because the additional description requirement in §172.203(b) does not include the phrase "for example" (or other like means of denoting such), is what is in quotes exactly how the additional information is to appear on the document?

Thank you in advance for your consideration of these questions and timely reply.

For Regulatory Resources, Inc.

W. A. Winters
President

WAW/lom