

Dangerous Goods Advisory Council

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April 14, 2008

Dr. Ted Willke
Associate Administrator for
Hazardous Materials Safety
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
Washington, DC 20590

Re: Petition for rulemaking; hazardous materials transportation, implementation of new international requirements for substances hazardous to the environment

Dear Dr. Willke:

The Dangerous Goods Advisory Council (DGAC), in accordance with §106.95 of the hazardous materials regulations (HMR), hereby petitions for the adoption of requirements implementing international requirements for substances hazardous to the environment.

INTRODUCTION

DGAC is a non-profit educational organization that promotes hazmat transportation safety by providing classroom training, seminars and conferences, and participation in domestic and international regulatory activities in its promotion of not only safe, but also efficient transportation of hazardous materials/dangerous goods in commerce. Our members have an interest in ensuring that substances hazardous to the environment (SHAE) as defined in the 15th revised edition of the United Nations (UN) Model Regulations and in amendment (34-08) of the International Maritime Dangerous Goods Code (IMDG Code) move seamlessly between US and foreign locations. At the same time, we recognize the considerable cost associated with the new requirements and we seek to minimize the impact of the new requirements when materials are transported domestically, consistent with existing PHMSA regulatory policies.

BACKGROUND AND JUSTIFICATION

The UN adopted criteria for SHAE in the UN Model Regulations. These new criteria were introduced into the IMDG Code (34-08) which may be applied on 1 January 2009 but will become mandatory on 1 January 2010. To permit SHAE to move seamlessly between the US and foreign locations on vessels in accordance with the IMDG Code, it is important that for all modes of transportation, the Hazardous Materials Regulations permit voluntary compliance with the new SHAE requirements by 1 January 2009. In addition to adopting by reference the IMDG Code with amendment (34-08), this will also entail adoption of the new mark depicting a dead tree and dead fish in place of the current marine pollutant mark in §172.322(e).

While the IMDG Code requires that all substances meeting the SHAE criteria in packages of capacity or gross mass exceeding 5 liters or 5 kilograms, the HMR in the case of the current

marine pollutant requirements have limited applicability to packages meeting the definition of a bulk packaging when transported by highway, rail or air. Recognizing the considerable cost impact of the new requirements, DGAC recommends that PHMSA maintain the current bulk packaging limit for applicability of the SHAE requirements for purposes of domestic transportation, while permitting smaller packages to be transported in accordance with SHAE requirements on a voluntary basis.

The new criteria for SHAE are complex and the rules for classifying mixtures introduce additional complexities. Under IMDG Code amendment 34-08, substances which have up until now been identified as marine pollutants are identified as SHAE to overcome some of the complexities of classification. DGAC recommends that for domestic transportation the marine pollutant list be maintained as the basis for regulating substances as SHAE while voluntarily permitting substances meeting the IMDG Code SHAE criteria to be transported as SHAE. In addition, we recommend that the current 10% rule for classifying mixtures containing marine pollutants be maintained while allowing voluntary compliance of SHAE mixture calculation methods included in the IMDG Code.

PETITION

On the basis of the above, DGAC petitions PHMSA to implement new requirements for SHAE through the following amendments:

1. Adopt IMDG Code (34-08) by reference in §171.7.

2. Amend the definition of “marine pollutant” in §171.8 to read as follows:

“Marine pollutant, means a material which is listed in appendix B to §172.101 of this subchapter (also see §171.4), except when the material is shown through the application of the criteria in section 2.9.3.3 of the IMDG Code (34-08) to not qualify as a substance hazardous to the environment and, when in a solution or mixture of one or more marine pollutants:

(1) is in a concentration which equals or exceeds ten percent by weight of the solution or mixture for materials listed in the appendix; or

(2) may alternatively be classified in accordance with the procedures for classifying mixtures in 2.9.3.4 of the IMDG Code (34-08).”

3. Amend “Appendix B to §172.101 – List of Marine Pollutants” as follows:

.1 delete paragraph 3 in the introduction to the list and renumber the remaining paragraphs;

.2 update the reference to Chapter 2.10; and

.3 delete the column headings and all of column 1 of the List of Marine Pollutant.

4. Amend §172.322(d) by:

.1 deleting subparagraph (1);

.2 deleting the phrase “other than a severe marine pollutant” from subparagraph (2); and

.3 renumbering the existing subparagraphs (2) and (3) as (1) and (2).

5. Amend §172.322(e) by replacing the symbol with the symbol in 5.2.1.6.3 of the IMDG Code (34-08) and making corresponding changes to the minimum size of the mark; and

6. Retain §171.4 (pre HM-218D as addressed in a separate DGAC appeal dated 27 February 2008) and SP 146 in §172.101.

DGAC recommends that these changes be adopted in the next HM-215 rulemaking docket, that voluntary compliance be permitted effective 1 January 2009 and that the regulations become effective on 1 January 2010.

DGAC recommends that further harmonization with the international SHAE criteria not be undertaken until more experience is gained in their application.

Please contact us directly at 202-289-4550 if you have any questions on this petition for rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Michael Morrissette". The signature is written in a cursive, slightly slanted style.

Michael Morrissette
President