



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

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DEPT. OF TRANSPORTATION
DOCKETS

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Mr. Mike Morrisette
President
Dangerous Goods Advisory Council
Suite 740
1100 H Street NW
Washington, DC 20005

Dear Mr. Morrisette:

This responds to your appeal of the final rule issued under Docket No. PHMSA 2005-21812 (HM-218D), "Hazardous Materials: Miscellaneous Amendments." For the reasons set forth below your appeal is denied.

Marine Pollutant Amendments

The HM-218D final rule amends the exception for marine pollutants in non-bulk packages in § 171.4(c) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to clarify that shipments for which all or part of the transportation is by vessel must conform to applicable marine pollutant provisions, even if the initial transportation is by rail or highway. In addition, we amended § 172.203(l), which addresses shipping paper requirements for shipments of marine pollutants, to clarify that marine pollutants in non-bulk packages for which all or part of the transportation is by vessel must be identified on the shipping paper with the words "Marine Pollutant" appearing in association with the basic description. You express concern that these amendments will cause many activities that were once unregulated to become subject to the HMR as shippers will begin offering all of their ground shipments of non-bulk marine pollutants as hazardous material shipments "due to uncertainty as to which shipments or portions thereof will ultimately be transported by vessel." You assert that the effect of these amendments will be to impose new transportation costs on shippers and carriers and, thus, would be contrary to our conclusion that the HM-218D final rule will yield net economic benefits.

We do not agree that the marine pollutant provisions in the HM-218D final rule will impose significant new costs on shippers and carriers. The amendments do not impose new requirements on shipments of non-bulk packages containing marine pollutants. Highway

and rail shipments of marine pollutants in non-bulk packagings continue to be excepted from requirements applicable to marine pollutants in accordance with § 171.4. Thus, a domestic shipper of a marine pollutant in a non-bulk packaging offering the shipment for transportation by highway or rail to a domestic consignee without knowing the ultimate destination, including whether or not vessel transport will be involved, is not required to offer the shipment as a regulated marine pollutant. If the shipping paper indicates that the shipment was from a domestic shipper to a domestic consignee, such as a warehouse, transportation would end at the warehouse. Note that the original shipper is not responsible for any subsequent transportation of the marine pollutant from the warehouse to a new destination. If the warehouse ships the material to a different destination and all or part of the transportation is by vessel, such as would be the case for a shipment to a foreign destination, then the warehouse must prepare the shipment in accordance with the provisions applicable to marine pollutants.

The clarification of the requirement to identify a marine pollutant on a shipping paper adopted in the HM-218D final rule applies when a shipper knows that a marine pollutant in a non-bulk packaging will be transported by vessel. For example, if the shipment is to be transported from a domestic consignor to a foreign or offshore consignee, the shipper must identify the marine pollutant on the shipping paper and comply with all applicable regulatory requirements. Similarly, if the shipper utilizes a freight forwarder for a shipment intended for delivery to a foreign consignee, as indicated on the shipping paper, the marine pollutant must be identified on the shipping paper, and the shipment must conform to applicable regulatory requirements.

The amendments adopted in the HM-218D final rule will facilitate the movement of marine pollutants by ensuring that they are appropriately identified for vessel transportation. Proper identification will also reduce the number of undeclared shipments of such materials. The amendments do not impose new requirements; rather, the amendments clarify current requirements applicable to marine pollutants in non-bulk packages. Moreover, shippers may continue to utilize the exception for highway and rail shipments in § 171.4. Thus, transportation costs associated with the transportation of non-bulk packages of marine pollutants should not increase.

Safety Permits

In the HM-218D final rule, we revised § 173.22 to require shippers who offer materials that are subject to the Federal Motor Carriers Safety Administration's (FMCSA) Safety permit program to use only carriers with authorized safety permits. You suggest that offerors, including interlining carriers, do not have an efficient means of verifying whether a motor carrier is a holder of a valid safety permit and further request that DOT provide such a system prior to the effective date of the rule. As specified in the preamble of the final rule, compliance with the newly adopted requirement will be satisfied if the shipper of a material

for which a safety permit is required, obtains the carrier's safety permit number or a copy of the carrier's safety permit. For your information, FMCSA is considering several options for facilitating verification of a carrier's safety permit status.

If you have any questions, please contact Edward Mazzullo, Director, Office of Hazardous Materials Standards, 202-366-8553. I look forward to working with you and your organization to assure that hazardous materials are transported safely and securely.

Sincerely,

A handwritten signature in black ink, appearing to read "Theodore L. Willke". The signature is written in a cursive style with a large initial "T".

Theodore L. Willke
Associate Administrator