

Dangerous Goods Advisory Council

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

November 10, 2008

Re: Petition for rulemaking; hazardous materials transportation, amendment of the requirements for combustible liquids to reduce port congestion and improve transportation efficiency

Dear Dr. Willke:

The Dangerous Goods Advisory Council (DGAC), in accordance with §106.95 of the hazardous materials regulations (HMR), hereby petitions for amendment of the requirements for combustible liquids in bulk packagings in order to reduce port congestion and improve transportation efficiency in port areas.

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 are engaged in the transportation of combustible liquids and currently experience significant delays in transporting these materials in international trade due to the differences between US domestic and international dangerous goods transport regulations. An evaluation of PHMSA's hazardous materials incident data base indicates no adverse safety impacts would result from the petitioned amendments designed to alleviate port congestion and improve transportation efficiency.

BACKGROUND AND JUSTIFICATION

While PHMSA and its predecessor, RSPA, have endeavored to harmonize the Hazardous Materials Regulations (HMR) with the international regulations based on the UN Model Regulations, an important difference remains relative to liquids with a flashpoint greater than 60°C and less than or equal to 93°C (hereafter referred to as High Flashpoint Combustible Liquids or HFCL) when transported in bulk packagings. While HFCL are not regulated under the International Maritime Dangerous Goods Code (IMDG Code), they are regulated under the HMR as hazardous materials when in bulk packagings having a capacity greater than 450 liters. Based on the regulatory history and the HMR requirements, we understand these materials to be regulated primarily for purposes of communicating their presence in the event of an incident.

In the NPRM for docket HM-215I, PHMSA made a proposal relative to HFCL that had the potential for alleviating some of the problems encountered with transporting HFCL as US import or export shipments. Regrettably, the PHMSA proposed amendments were not adopted in the HM-215I final rule. PHMSA did state that it intended to take this issue up in a subsequent rulemaking.

The HMR requirements for HFCL are disruptive to the flow of goods in port areas and contribute to port congestion. The required markings and labels and/or placards (safety marks) that must be applied for purposes of US domestic transport of an HFCL export shipment must be removed in the port area in order to bring the shipment into compliance with the requirements of the IMDG Code. Conversely, they must be applied when import HFCL shipments arrive in a US port. HFCL export shipment containers awaiting removal of safety marks are on average delayed for 3 days and import shipments for 5 days, contributing to the congestion in already overcrowded US ports. In addition, the extra steps increase shipping costs from \$300 to \$500 per container.

The regulatory differences between domestic and international regulations applying to HFCL also place carriers and cargo handlers in the untenable situation of having to contravene either the HMR or the IMDG Code. While removal or application of safety marks is only practicable in the port area before an HFCL container is loaded, the HMR apply to shipments within the US territorial waters so that the HMR requirement is for the HFCL safety marks to be kept on packages and containers until the vessel is outside US territorial waters. On the other hand, maintaining the required safety marks on the packages when they are placed on a vessel misrepresents the hazard of the material from the perspective of the IMDG Code. Like the HMR, which treats misrepresentation of a material's hazard as a violation of the regulations, the regulations of a vessel's Flag State and other Port States visited by a vessel may also prohibit such misrepresentation.

Industry practice in transporting HFCL by vessel provides a higher level of safety than that afforded by the HMR, providing further justification for regulatory changes facilitating transport of HFCL transported by vessel. When HFCL are transported by vessel they are transported in ISO portable tanks or Intermediate Bulk Containers (IBCs) conforming to the UN performance requirements. These packagings provide considerable package integrity beyond that provided by the HMR requirements which permit HFCL to be transported in nonspecification packagings. DGAC has reviewed 5 years of incident data from PHMSA's HMIS data base to evaluate the safety basis for regulating HFCL transported by vessel. The analysis showed that while there were incidents involving domestic transport of HFCL in nonspecification packagings there were no recorded incidents involving HFCL in IBCs or ISO portable tanks even though DGAC members transport these products in these types of packagings extensively.

The HMR requirements for HFCL predate amendments that substantially harmonized the HMR with the international requirements. At the time the requirements were drafted, the primary concern was petroleum based materials in cargo tank motor vehicles. Even though these substances do not produce a flammable vapor under worst case ambient conditions, they can in the event of an incident produce flammable vapors when contacting heated surfaces such as engine exhaust manifolds and may ignite in the presence of an ignition source. Originally the difference between the HMR and the international regulations posed minimal difficulties in that the bulk packagings most affected by the difference were cargo tank motor vehicles and rail tank cars, which, aside from trade with Canada, were not instruments of international commerce. Increased interest in international trade and containerization has subsequently led to the widespread use of portable tanks in ISO frames and use of Intermediate Bulk Containers (IBCs) which were not contemplated when the original requirements were developed.

DGAC's petition is to relieve HFCL transported in ISO tanks as import and export shipments from the currently required HMR safety marks.

In recognition of industry practices with respect to IBCs, DGAC further petitions PHMSA to relieve IBCs containing HFCL from currently required HMR safety mark requirements independent of whether they are being transported in international commerce. For IBCs, a common practice is to hold filled IBCs in inventory in independently operated warehouses. Even assuming PHMSA were to provide relief from affixing required safety marks on IBCs in international transport, IBCs transported to a warehouse would still require HFCL safety marks and those safety marks could only be removed once a foreign destination was known. DGAC's petition would eliminate the need to apply safety marks for the domestic transport and then to remove them in preparation for international transport.

Transport of HFCL in specification IBCs and ISO portable tanks offers increased safety over that provided by the applicable HMR requirements. In addition, transport in IBCs and ISO portable tanks presents a decreased risk of contact with hot surfaces such as engine exhaust manifolds as contemplated when HFCL requirements were originally drafted. On this basis, DGAC petitions PHMSA to modify the applicability of HFCL requirements so that they do not apply when in specification packages of less than 3000 liters capacity (the upper capacity limit for IBCs) or when in an ISO (UN) portable tank in international commerce.

Draft regulatory text accomplishing the above petitions is attached.

We recognize that requirements for HFCL are intended primarily for purposes of communicating their presence to emergency responders in the event of an incident. While DGAC considers the risk of transporting HFCL in specification bulk packagings to be considerably less than the risk posed in transporting HFCL in nonspecification bulk packagings, suggesting that hazard communication may be unnecessary, we have considered hazcom alternatives. For example, we considered an alternative marking, such as a "COMBUSTIBLE LIQUID" marking, to communicate the presence of HFCL but concluded that this would not resolve the port congestion issue for import shipments due to the likelihood of missing markings and that this may frustrate export shipments in foreign ports where port officials may call into question the proper classification of an HFCL. Should the emergency response community deem it necessary, PHMSA may wish to consider, for purposes of domestic transport, retention of a shipping paper notation indicating the presence of a combustible liquid (i.e; NA 1993 Combustible Liquid or an alternative NA number and shipping name, as appropriate).

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

Sincerely,



Michael Morrisette
President

Attachment

Amendments to the HMR Accomplishing DGAC's HFCL Petition

Modify §171.22(c) to read as follows:

(c) Materials excepted from regulation under international standards and regulations. **(1) Except as provided in (c)(2)**, a material designated as a hazardous material under this subchapter, but excepted from or not subject to the international transport standards and regulations authorized in paragraph (a) of this section (e.g., paragraph 1.16 of the Transport Canada TDG Regulations excepts from regulation quantities of hazardous materials less than or equal to 500 kg gross transported by rail) must be transported in accordance with all applicable requirements of this subchapter.

(2) A combustible liquid with a flashpoint greater than 60oC and not a hazardous substance, a hazardous waste or a marine pollutant that is contained in a UN certified IBC or a UN portable tank or another portable tank meeting a specification in Part 178 of this Subchapter is not subject to the provision in (c)(1).

Modify §173.150(f)(2) to read as follows:

(f)(2) The requirements in this subchapter do not apply to a material classed as a combustible liquid in a non-bulk packaging **or to a combustible liquid with a flashpoint greater than 60oC in a specification packaging with a capacity of 3000 liters or less** unless the combustible liquid is a hazardous substance, a hazardous waste, or a marine pollutant.

(3) Except as provided for a combustible liquid in a bulk packaging in (f)(2), a combustible liquid that is in a bulk packaging or a combustible liquid that is a hazardous substance, a hazardous waste, or a marine pollutant is not subject to the requirements of this subchapter except those pertaining to: