



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

APR 6 2007

400 Seventh Street, S.W.  
Washington, D.C. 20590

Mr. George A. Kerchner  
Wiley Rein & Fielding LLP  
1776 K Street, NW  
Washington, DC 20006

Ref. No. 06-0261

Dear Mr. Kerchner:

This is in response to your November 1, 2006 letter requesting clarification under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) concerning the shipment of a large buoy as a "Vehicle, flammable liquid powered." Specifically, you ask for clarification of requirements when shipping the buoy domestically and internationally using different modes of transportation.

You describe the contents of the buoy, which has an internal combustion engine, as follows: diesel fuel (FP > 125°F) in a 32 gallon fuel tank, 3 gallons of lubricant oil, less than one gallon of antifreeze, and nonspillable lead acid batteries. Based on your review of the HMR and ICAO Technical Instructions (TI), you describe the buoy as "Vehicle, flammable liquid powered, 9, UN3166."

Under § 173.22 of the HMR, it is the shipper's responsibility to properly classify and describe a hazardous material. This office generally does not perform this function. However, based on the information you provided, it is our opinion that the buoy should be described as "Engines, internal combustion, 9, UN3166."

Your questions are paraphrased and answered as follows:

Q1. Is the buoy excepted from regulation when shipped domestically by motor vehicle or rail car pursuant to § 173.220(g)?

A1. For transportation by motor vehicle or rail car, provided the fuel tank is securely closed, the batteries securely installed, fastened in an upright position, and protected against short circuits and leakage (or removed and packaged separately under § 173.159), and other hazardous materials, if any, which are integral components are securely installed, mechanical equipment containing an internal combustion engine and a flammable liquid fuel tank is not subject to any other requirements under the HMR (see § 173.220).

Q2. Is the buoy excepted from regulation when shipped domestically by vessel when compliant with § 173.220 pursuant to § 176.905(i)(2)?



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173.220

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A2. For transportation by vessel, provided there are no leaks in any portion of the fuel system, the mechanical equipment is not subject to any other requirements under the HMR.

Q3. What markings are required when the buoy is shipped by aircraft, both domestically and internationally?

A3. Except as provided in § 173.220(e)(2), shipments made under the provisions of § 173.220 are not subject to the marking requirements of the HMR (Subpart D of Part 172). Under the ICAO TI, Special Provision A87 excepts articles, which are not fully enclosed by packaging, crates or other means that prevent ready identification, from the marking requirements of 5;2. Mechanical equipment packed (fully enclosed) in a non-specification crate would be subject to the marking requirements. Mechanical equipment secured to a pallet (and readily identified) would not be subject to the marking requirements.

Q4. Is a Class 9 label required when the buoy is shipped by aircraft, both domestically and internationally?

A4. Except as provided § 173.220(e)(2), shipments made under the provisions of § 173.220 are not subject to the labeling requirements of the HMR (Subpart E of Part 172). Under the ICAO TI, Special Provision A87 excepts articles, which are not fully enclosed by packaging, crates or other means that prevent ready identification, from the labeling requirements of 5;3. Mechanical equipment packed (fully enclosed) in a non-specification crate would be subject to the labeling requirements. Mechanical equipment secured to a pallet (and readily identified) would not be subject to the labeling requirements.

Q5. May the buoy be shipped in non-specification packaging or secured to a pallet (without UN specification packaging) when shipped by aircraft, both domestically and internationally?

A5. Neither specification packaging nor non-specification packaging is required under § 173.220. Under the ICAO TI, neither specification packaging nor non-specification packaging is required but mechanical equipment must be shipped according to Packing Instruction 900.

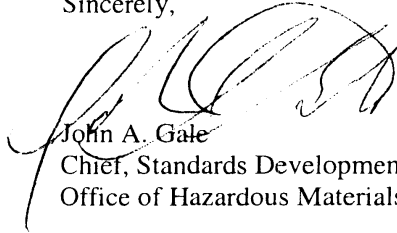
Q6. May diesel fuel remain in the tank in the buoy when shipped by aircraft, both domestically and internationally?

A6. A fuel tank for mechanical equipment that contains a Class 3 diesel fuel must be drained and securely closed, except that up 500 mL (17 ounces) of residual fuel may remain in the tank provided the fuel tank is securely closed. A quantity of Class 3 diesel fuel greater than 500 mL may remain in mechanical equipment under the condition outlined in § 173.220(b)(4)(iii). Under the ICAO TI, mechanical equipment must be


shipped in accordance with Packing Instruction 900(a). Accordingly, Class 3 diesel fuel must be drained from the tank of an internal combustion engine in mechanical equipment.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale", written over a light blue circular stamp.

John A. Gale  
Chief, Standards Development  
Office of Hazardous Materials Standards

  
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November 15, 2006

Mr. Edward Mazzullo  
Director of Hazardous Materials Standards  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation  
400 7<sup>th</sup> Street, SW  
Washington, DC 20590

Re: Shipping Vehicle, flammable liquid powered

Dear Mr. Mazzullo:

I am writing to request a clarification on the shipping requirements for a large buoy that contains the following materials:

- o #2 diesel fuel with a flash point of >125° F
- o Three gallons of lube oil
- o Less than one gallon of anti-freeze/coolant
- o 6V sealed (nonspillable) lead acid batteries connected in a series/parallel arrangement (The batteries are marked NONSPILLBALE and meet the testing requirements in 49 CFR 173.159(d)(3) and 173.159(d)(4).)
- o A bladder-type 32 gallon fuel tank
- o The system is a sealed pressure vessel and weighs approximately 3200 pounds
- o Each unit will be secured to a pallet for shipment.

Based on our review of the U.S. hazardous materials regulations and ICAO Technical Instructions, it appears the buoy is classified as a "Vehicle, flammable liquid powered" with an assigned Hazard Class 9 and identification (UN) number of UN3166. Therefore, we have the following questions regarding the requirements for shipping the buoy domestically and internationally:

1. Is the buoy excepted from regulation when shipped domestically by motor vehicle and rail car pursuant to 49 CFR 173.220(g)?
2. Is the buoy excepted from regulation when shipped domestically by vessel because it meets the requirements noted above and 49 CFR 176.905(i)(2)?

Der Kinderen  
§173.159  
§173.220  
Applicability  
06-0261

George Kerchner  
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**Wiley Rein & Fielding LLP**

November 15, 2006

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3. When shipped domestically and internationally by aircraft the buoy will be offered as "Vehicle, flammable liquid powered," packed in a non-specification crate or secured to a pallet, and the diesel will remain in the fuel tank.
- a) Are any of the following markings required when shipped by aircraft: UN number, shipping name, orientation arrows, NONSPILLABLE?
  - b) Is a Class 9 label required when shipped by aircraft?
  - c) May the buoy be packed in a non-specification crate or secured to a pallet without the use of any UN specification packaging when shipped by aircraft?
  - d) Is it acceptable for the diesel to remain in the tank when shipped by aircraft?

\* \* \* \* \*

Thank you for taking the time to address these questions. If you have questions regarding these issues, I can be reached at 202.719.4109 or [gkerchner@wrf.com](mailto:gkerchner@wrf.com).

Sincerely,

*George A. Kerchner*

George A. Kerchner