



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

APR 17 2014

Mr. Joseph E. Connelly
P.O. Box 231
Elkton, MD 21922

Ref. No. 13-0242

Dear Mr. Connelly:

This responds to your December 23, 2013 letter requesting clarification of the applicability of material incorporated by reference under § 171.7 of the hazardous materials regulations (HMR; 49 CFR Parts 171-180). In your letter, you refer to a previous letter of interpretation (Ref. No. 06-0147; June 29, 2006) that indicates, for purposes of the HMR, the specific version of a document incorporated by reference must be used regardless of whether the document has been updated after being made part of the HMR. Your questions regarding material incorporated by reference are paraphrased and answered as follows:

Q1. Section 171.7 still references the December 2000 edition of the Association of American Railroads *Manual of Standards and Recommended Practices, Section C-Part III, Specification for Tank Cars, Specification M-1002* (see § 171.7(k)(1)) even though there are more recent versions including the current 2007 version and its amendments. Is there any circumstance in which the Department of Transportation (Department) can enforce provisions of the 2007 edition or its amendments?

A1. The answer is no. Incorporated by reference, as defined in § 171.8, means a publication or a portion of a publication that is made a part of the HMR. In accordance with § 171.7(a)(1), material not specifically set forth but incorporated by reference is considered to be part of the HMR. Matter is incorporated only as it is in effect on the date of issuance of the regulation(s) referring to that material. In other words, material incorporated by reference is a snapshot in time of the material at the time a regulation is published in a final rulemaking that references the material. The material listed in § 171.7 is approved by the Director of the *Federal Register* and is incorporated as it exists on the date of the approval. A notice of any change in the material incorporated by reference into the HMR would require regulatory action and would be published in the *Federal Register*. Regarding enforcement, the Department, along with PHMSA and the relevant modal administrations, have the authority to enforce the Federal hazardous material law, 49 CFR Subchapter A-Hazardous Materials and Oil Transportation, and the HMR (see § 107.301). Thus, as the Department specifically enforces the HMR, provisions of any publication or portion thereof (e.g., an updated version of a standard) not made a part of the HMR are not enforceable by the Department.

Q2. Is there any circumstance in which the Department can enforce provisions of the 2000 edition of the manual that are not listed in § 171.7(k)(1)?

A2. The answer is no. Only the provisions of a publication or the portions thereof that are made part of the HMR are enforceable. Thus, any material from the 2000 edition not incorporated by reference as part of § 171.1(k)(1) is not enforceable.

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,



for Robert Benedict
Chief, Standards Development Branch
Standards and Rulemaking Division

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§171.7
Applicability
13-0242

December 23, 2013

Mr. Charles E. Betts
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Dear Mr. Betts:

I am requesting a formal interpretation with regards to 49 CFR §171.7, concerning incorporation by reference. I had previously sent the request through the INFO Center on September 18, 2013 but to date have not received a response.

On July 27, 2006, Mr. John A Gale responded to Mr. Patrick Riley as follows:

Jul 27, 2006

*Mr. Patrick F. Reilly
919 Parkview Road
Moscow, PA 18444*

Reference No. 06-0147

Dear Mr. Reilly:

This responds to your June 29, 2006 letter requesting clarification on § 171.7 Reference material, materials incorporated by reference into the Hazardous Materials Regulations (HMR; 49 CFR 171-180). Specifically, you ask whether the "Association of American Railroads, AAR Manual of Standards and Recommended Practices, Section C-Part III, Specification for Tank Cars, Specification M-1002, December 2000 edition" referenced in § 171.7 is the most current version.

The AAR standard you reference was updated as of December 1, 2003. However, the updated standard has not been incorporated by reference into the HMR. Therefore, for purposes of the HMR, the 2000 edition referenced in § 171.7 must be used.

I hope this answers your inquiry.

Sincerely,

*John A. Gale
Chief, Standards Development
Office of Hazardous Material Standards*

171.7

Since Mr. Riley's letter and Mr. Gale's response, the Association of American Railroads released a 2007 version of this very same manual, which has been constantly updated to reflect industry changes. My questions are as follows:

Given that the incorporation by reference in §171.7 still references the December 2000 edition of the manual is there any circumstance in which the Department of Transportation can enforce the provisions listed in the 2007 manual or its amendments?

Given that the incorporation by reference in §171.7 incorporates only the following provisions of the December 2000 edition of the manual as follows:

- (1) AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M-1002, (AAR Specifications for Tank

Cars), December 2000, § 173.31; 179.6; 179.7; 179.15; 179.16; 179.20; 179.22; 179.100-9; 179.100-10; 179.100-12; 179.100-13; 179.100-14; 179.100-18; 179.101-1; 179.102-1; 179.102-4; 179.102-17; 179.103-5; 179.200-7; 179.200-9; 179.200-10; 179.200-11; 179.200-13; 179.200-17; 179.200-22; 179.201-6; 179.220-6; 179.220-7; 179.220-10; 179.220-11; 179.220-14; 179.220-18; 179.220-26; 179.300-9; 179.300-10; 179.300-15; 179.300-17; 179.400-5; 179.400-6; 179.400-8; 179.400-11; 179.400-12; 179.400-15; 179.400-18; 179.400-20; 179.400-25; 180.509; 180.513; 180.515; 180.517.

Is there any circumstance by which the Department of Transportation can enforce provisions of the manual which are not listed above?

Thank You in advance for your time in reviewing this matter.



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