



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

October 16, 2024

Mr. Marv Miller
Director, Technical Operations—Compliance
Polar Service Centers
8801 North Vancouver Avenue
Portland, OR 97217

Reference No. 24-0030

Dear Mr. Miller:

This letter is in response to your May 24, 2024, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to United Nations (UN) portable tank inspections. Specifically, you ask about the applicability of your company's competent authority approval (CAA) when portable tanks inspected by your company are transported internationally.

The International Maritime Dangerous Goods (IMDG) Code requires inspections and tests for portable tanks to be performed or witnessed by experts approved by the competent authority or its recognized body—see IMDG Code 6.7.4.14.10. The United States recognizes designated approval agencies through the issuance of an approval as a Designated Approval Agency (DAA), please see 49 CFR Part 107, Subpart E¹. Each DAA approval indicates the types of inspections the DAA is approved to perform and on what types of tanks. Polar Service Centers holds a CAA (CA2006010015) which authorizes, among other things, the periodic testing of UN portable tanks and periodic testing and inspections of existing Department of Transportation (DOT) Intermodal (IM) specification IM 101 and IM 102 portable tanks. This CAA, issued under 49 CFR § 107.402 to Polar Service Centers, allows the DAA to conduct periodic inspections on UN portable tanks. It is not dependent on the portable tanks being inspected and originally approved in a particular country or region and applies to all portable tanks covered by the approval.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

Alexander Wolcott
Acting Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

¹ <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-A/part-107/subpart-E>

Jones, Jessie Jane CTR (PHMSA)

From: Nickels, Matthew (PHMSA)
Sent: Friday, May 24, 2024 12:48 PM
To: Dodd, Alice (PHMSA); Jones, Jessie Jane CTR (PHMSA)
Cc: Nickels, Matthew (PHMSA)
Subject: FW: ISO periodic testing in Memphis for M&S

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Hey Alice and Jessie, please assign this email chain as a new interp request ASAP. Whoever is assigned to, can work directly with Duane Cassidy's and Duane Pfund's teams on a response. Thanks!

From: Pfund, Duane (PHMSA) <Duane.Pfund@dot.gov>
Sent: Friday, May 24, 2024 11:25 AM
To: Marv Miller <marv.miller@quala.us.com>; Cassidy, Duane (PHMSA) <Duane.Cassidy@dot.gov>; Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Cc: Webb, Steven (PHMSA) <steven.webb@dot.gov>; Falat, Lad (PHMSA) <lad.falat@dot.gov>; Bueno, Pedro (PHMSA) <pedro.bueno@dot.gov>; Wiener, Aaron (PHMSA) <Aaron.Wiener@dot.gov>
Subject: RE: ISO periodic testing in Memphis for M&S

Marv – my apologies, I believed the issue was answered. Below I'll expand the response to your question as comprehensively as possible:

- 1) My earlier response relates to UN portable tank periodic inspection regimes, not the approval, inspection, and maintenance of "containers" under the CSC Convention. These are two different issues. The CSC convention is designed to address the initial approval, marking, and continued inspection of containers so that there is a consistent design system to account for stacking and continued reuse of freight containers. The UN Model Regulations and the applicable international and national regional regulations recognize the use of CSC for the structural serviceability, marking, etc. of "containers", but that the periodic inspection and testing requirements applicable to portable tanks required for portable tanks transporting dangerous goods are as provided in the Model Regulations and the other implementing regulations. The provisions for periodic inspection of the tanks themselves reside within the Model, modal, and domestic/regional regulations. See 6.7.1.1 of the IMDG Code which states:

"The provisions of this chapter apply to portable tanks intended for the transport of dangerous goods, and to MEGCs intended for the transport of non-refrigerated gases of class 2, by all modes of transport. In addition to the provisions of this chapter, unless otherwise specified, the applicable provisions of the International Convention for Safe Containers, 1972 (CSC Convention), as amended, shall be fulfilled by any multimodal portable tank or MEGC which meets the definition of a "container" within the terms of that Convention. Additional provisions may apply to offshore portable tanks that are handled in open seas."

Note the following text in Article V of the CSC convention

“provided, however, that nothing in the present Convention shall preclude the application of provisions of national regulations or legislation or of international agreements, prescribing additional structural safety requirements or tests for containers specially designed for the transport of dangerous goods”

- 2) There is very little specific information within your email string, the email did not contain any actionable documentation. However, from that dialogue it appears this is a commercial dispute. US DOT/PHMSA has no authority to engage in commercial disputes between private entities. We can assist in providing additional confidence within the distribution system by support of our PHMSA issued approvals in the form of an interpretation letter.
- 3) If you can document evidence of a foreign government policy that results in a technical barrier to trade contrary to international conventions, the US government authority is under the Office of the United States Trade Representative. As a safety agency, we have little experience in this area but if you'd like to pursue or want more information we can connect you with the appropriate expertise in the DOT Office of the Secretary.

Conclusion: We will take your email as a request for interpretation that explicitly explains the PHMSA approval, it's scope and application. Someone from our Standards Office may be in touch with you if they have any questions.

I hope this answers your questions.

v/r

Duane A. Pfund

International Program Coordinator, Office of Hazardous Materials Safety

From: Marv Miller <marv.miller@quala.us.com>

Sent: Wednesday, May 22, 2024 11:24 AM

To: Cassidy, Duane (PHMSA) <Duane.Cassidy@dot.gov>; Pfund, Duane (PHMSA) <Duane.Pfund@dot.gov>

Cc: Webb, Steven (PHMSA) <steven.webb@dot.gov>; Falat, Lad (PHMSA) <lad.falat@dot.gov>; Bueno, Pedro (PHMSA) <pedro.bueno@dot.gov>; Wiener, Aaron (PHMSA) <Aaron.Wiener@dot.gov>

Subject: RE: ISO periodic testing in Memphis for M&S

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Duane,

Thank you for the reply. I understand and was hoping that Mr. Pfund would respond to the question on the UN treaty. Other than the statements made from the aforementioned competition, PSC is not aware of any recognition issues with other countries and would welcome an interpretation that would support international recognition as per the UN Treaty and IMO.

Thanks again.

Marv Miller

Director Technical Operations-Compliance

Polar Service Centers

Mobile: (503) 348-7525

www.polarservicecenters.com

From: Marv Miller <marv.miller@quala.us.com>
Sent: Wednesday, May 22, 2024 9:33 AM
To: Pfund, Duane (PHMSA) <Duane.Pfund@dot.gov>; Cassidy, Duane (PHMSA) <Duane.Cassidy@dot.gov>
Cc: Chris Webb <chris.webb@quala.us.com>; Webb, Steven (PHMSA) <steven.webb@dot.gov>; Falat, Lad (PHMSA) <lad.falat@dot.gov>; Bueno, Pedro (PHMSA) <pedro.bueno@dot.gov>; Wiener, Aaron (PHMSA) <Aaron.Wiener@dot.gov>
Subject: FW: ISO periodic testing in Memphis for M&S

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Hello again Duane,

Could you please comment on my last email regarding the UN Treaty I cited and it's validity, specifically Article V Paragraph 1. My original complaint was of our competition telling our customers, most of which we have been doing business with for many years, that our US DAA Authority is not recognized internationally. Since some of these customers have new management our USDAA Authority has been challenged as a result. Please advise.

Thank you.

Marv Miller
Director Technical Operations-Compliance
Polar Service Centers
Mobile: (503) 348-7525
www.polarservicecenters.com

From: Marv Miller <marv.miller@quala.us.com>
Sent: Monday, May 6, 2024 8:15 AM
To: 'Pfund, Duane (PHMSA)' <Duane.Pfund@dot.gov>; 'Cassidy, Duane (PHMSA)' <Duane.Cassidy@dot.gov>
Cc: 'Webb, Steven (PHMSA)' <steven.webb@dot.gov>; 'Falat, Lad (PHMSA)' <lad.falat@dot.gov>; 'Bueno, Pedro (PHMSA)' <pedro.bueno@dot.gov>; 'Wiener, Aaron (PHMSA)' <Aaron.Wiener@dot.gov>
Subject: RE: ISO periodic testing in Memphis for M&S

Hello Duane,

Thank you for your response. Still a little confused on the last paragraph. Are you saying that the countries who signed the 1972 CSC Multi-Lateral Agreement, whereby agreeing to recognize each other's Competent Authority does not take precedence? Please see below Article IV and most specifically, Article V, item 1. Please comment.

Article III. APPLICATION

1. The present Convention applies to new and existing containers used in international transport, excluding containers specially designed for air transport.
2. Every new container shall be approved either in accordance with the provisions for type-testing or for individual testing as contained in Annex I.
3. Every existing container shall be approved in accordance with the relevant provisions for approval of existing containers set out in Annex I within 5 years from the date of entry into force of the present Convention.

Article IV. TESTING, INSPECTION, APPROVAL AND MAINTENANCE

1. For the enforcement of the provisions in Annex I every Administration shall establish an effective procedure for the testing, inspection and approval of containers in accordance with the criteria established in the present Convention, provided however that an Administration may entrust such testing, inspection and approval to organizations duly authorized by it.
2. An Administration which entrusts such testing, inspection and approval to an organization shall inform the Secretary-General of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") for communication to Contracting Parties.
3. Application for approval may be made to the Administration of any Contracting Party.
4. Every container shall be maintained in a safe condition in accordance with the provisions of Annex I.
5. If an approved container does not in fact comply with the requirements of Annexes I and II the Administration concerned shall take such steps as it deems necessary to bring the container into compliance with such requirements or to withdraw the approval.

Article V. ACCEPTANCE OF APPROVAL

1. Approval under the authority of a Contracting Party, granted under the terms of the present Convention, shall be accepted by the other Contracting Parties for all purposes covered by the present Convention. It shall be regarded by the other Contracting Parties as having the same force as an approval issued by them.
2. A Contracting Party shall not impose any other structural safety requirements or tests on containers covered by the present Convention, provided however that nothing in the present Convention shall preclude the application of provisions of national regulations or legislation or of international agreements, prescribing additional structural safety requirements for tests for containers specially designed for the transport of dangerous goods, or for those features unique to containers carrying bulk liquids or for containers when carried by air. The term "dangerous goods" shall have that meaning assigned to it by international agreements.

I very much appreciate your tanking the time.

Thanks.

Marv Miller
Director Technical Operations-Compliance
Polar Service Centers
Mobile: (503) 348-7525
www.polarservicecenters.com

From: Pfund, Duane (PHMSA) <Duane.Pfund@dot.gov>

Sent: Friday, May 3, 2024 8:36 AM

To: Marv Miller <marv.miller@quala.us.com>; Cassidy, Duane (PHMSA) <Duane.Cassidy@dot.gov>

Cc: Webb, Steven (PHMSA) <steven.webb@dot.gov>; Falat, Lad (PHMSA) <lad.falat@dot.gov>; Bueno, Pedro (PHMSA)

<pedro.bueno@dot.gov>; Wiener, Aaron (PHMSA) <Aaron.Wiener@dot.gov>

Subject: RE: ISO periodic testing in Memphis for M&S

Hi Marv – I apologize for our delay in response as we considered your email.

The IMDG Code requires inspections and tests for portable tanks to be performed or witnessed by experts approved by the competent authority or its recognized body (see IMDG Code 6.7.4.14.10). The U.S. recognizes designated approval agencies through the issuance of an approval as a Designated Approval Agency (DAA). Each DAA approval indicates the types of inspections the DAA is approved to perform and on what types of tanks.

Polar Service Centers holds CA2006010015 which authorizes, among other things, the periodic testing of UN portable tanks and periodic testing and inspections of existing Department of Transportation (DOT) Specification IM 101 and IM 102 Intermodal (IM) Portable Tanks. This approval is issued under the conditions laid out in 49 CFR 107.402.

The approval to conduct periodic inspections on UN portable tanks issued to Polar Service Centers is not dependent on the portable tank being inspected being originally approved in a particular country or region and apply to all tanks covered by the approval.

The UN system does not take precedence over any country's sovereign authority to require/accept/or approve a hazmat transportation function. Further, DOT has no authority over a company or carriers business practices. However, if a letter of interpretation would assist you in reiterating what DOT/PHMSA has approved, we would be happy to assist.

Kind regards

Duane A. Pfund

International Program Coordinator, Office of Hazardous Materials Safety

From: Marv Miller <marv.miller@quala.us.com>

Sent: Thursday, March 28, 2024 10:01 AM

To: Cassidy, Duane (PHMSA) <Duane.Cassidy@dot.gov>; Pascal, Irwin (PHMSA) <irwin.pascal@dot.gov>

Subject: FW: ISO periodic testing in Memphis for M&S

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Gentlemen,

I believe I've contacted you before regarding our US DAA Authority being accepted by those countries that signed the 1972 Geneva treaty. Unfortunately, even though we have been inspecting ISO tanks for the last 11 years as PSC and another 16 years prior to that as Beall we are still contending with disinformation provided by our competitors, i.e. Silver and Gold. I am unaware of any ISO tanks that we have inspected ever being rejected by another country. Failing to recognize US Competent Authority and its authorized agencies would be a UN Treaty violation and also not in accordance with IMDG Code. Is this not the case? Could use your help on this.

Thanks.

Marv Miller

Director Technical Operations-Compliance

Polar Service Centers

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From: Jim Simmons <jsimmons@heniff.com>
Sent: Thursday, March 28, 2024 6:07 AM
To: Marv Miller <marv.miller@quala.us.com>; Kyle Waller <kyle.waller@quala.us.com>
Cc: Dennis Cleveland <dennis.cleveland@quala.us.com>; Daniel Richardson <daniel.richardson@quala.us.com>; Shellea K Mcdougal <smcdougal@heniff.com>
Subject: Re: ISO periodic testing in Memphis for M&S

Ok. Just saw this message from Sarah MacFarlane from M&S. Guess the answer is no for now.

"Good Morning Jim,

Unfortunately, Polar are not credited worldwide and we will have issues once the tank arrives in the Far East & Europe.

The only credited surveyors that we are approved to use are our first preference Silver(CIMS) which we have a contract in place with along with BV and Gold (ABS). We also pay the surveyor companies direct (not via the depots) and have competitive rates in place due to the large volume of periodic testing we perform worldwide.

Please note we do not use LRQA (formerly Lloyd's Register) for periodic testing as we have no contract in place and wish to keep our competitive rates globally with Silver (CIMS).

Kind Regards

Sarah"

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From: Jim Simmons <jsimmons@heniff.com>
Sent: Thursday, March 28, 2024 7:59:26 AM
To: Marv Miller <marv.miller@quala.us.com>; Kyle Waller <kyle.waller@quala.us.com>
Cc: Dennis Cleveland <dennis.cleveland@quala.us.com>; Daniel Richardson <daniel.richardson@quala.us.com>; Shellea K Mcdougal <smcdougal@heniff.com>
Subject: Re: ISO periodic testing in Memphis for M&S

Yeah that's right except it was Trifleet who was informed that Polar certs were not valid at certain country's ports. They said they were told by, paraphrasing here: " 'someone high up in the industry' that the Netherlands would impound any tanks with Polar certs and force a transload." And that "only classification society's (DNV, ABS, BV) certs are valid worldwide." But unlike Trifleet who we never convinced, M&S at first agreed and they accepted some tests by Polar but are now backpedaling. I'm trying to see if I can find contact info for someone relevant in corporate at M&S and pass it on to you guys. If you guys can check records and see if you have certified their tanks in other regions/countries, that would be nice.

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From: Marv Miller <marv.miller@quala.us.com>
Sent: Wednesday, March 27, 2024 8:28:50 PM
To: Kyle Waller <kyle.waller@quala.us.com>
Cc: Jim Simmons <jsimmons@heniff.com>; Dennis Cleveland <dennis.cleveland@quala.us.com>; Daniel Richardson <daniel.richardson@quala.us.com>; Shellea K Mcdougal <smcdougal@heniff.com>
Subject: RE: ISO periodic testing in Memphis for M&S

Certificate attached. Pretty we've gone down this road already.

From: Kyle Waller <kyle.waller@quala.us.com>

Sent: Wednesday, March 27, 2024 2:37 PM

To: Marv Miller <marv.miller@quala.us.com>

Cc: Jim Simmons <jsimmons@heniff.com>; Dennis Cleveland <dennis.cleveland@quala.us.com>; Daniel Richardson <daniel.richardson@quala.us.com>; Shellea K Mcdougal <smcdougal@heniff.com>

Subject: Re: ISO periodic testing in Memphis for M&S

They had previously stated that they believe our certification is not valid for overseas containers. I know we have provided our Toolbox screenshot showing it is but I believe they're needing something more concrete such as an actual certificate and/or someone reach out to them from our corporate side to explain we are certified.

On Wed, Mar 27, 2024 at 2:53 PM Marv Miller <marv.miller@quala.us.com> wrote:

Folks,

I'm curious as to what the "Bad Information" was and also if there was any problem with the tanks you inspected.

Thanks.

From: Jim Simmons <jsimmons@heniff.com>

Sent: Wednesday, March 27, 2024 12:23 PM

To: Dennis Cleveland <dennis.cleveland@quala.us.com>; Marv Miller <marv.miller@quala.us.com>; Blair Stentz <blair.stentz@quala.us.com>; Kyle Waller <kyle.waller@quala.us.com>; Daniel Richardson <daniel.richardson@quala.us.com>

Cc: Shellea K Mcdougal <smcdougal@heniff.com>; Hannah Hodges <hannah.hodges@quala.us.com>

Subject: ISO periodic testing in Memphis for M&S

Hey guys. Marv, Dennis, if you remember last time we spoke it was because we were having trouble getting some container leasing companies to use Polar for periodic tests. We're back at it again. Just wanted to bring it to your attention that M&S is no longer accepting periodic ISO tests from Polar. Found out yesterday. They were using you guys for a while there but our contact, Kathleen Gerik, said she was "given bad information" before and could no longer use Polar. Was hoping maybe you guys could reach out to them and maybe hash it out, or at least get an answer. Holler if you get time.

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