

motor vehicles and motor vehicle engines (19 CFR 12.73).

The regulations appearing below prescribe procedures for the importation of new motor vehicles and new motor vehicle engines beginning with the 1970 model year. The Department finds that it is in the public interest and that good cause exists for the adoption of these regulations effective immediately upon publication in the FEDERAL REGISTER. To insure that all parties and interests may participate in the further formulation of the regulations, interested persons are invited to submit written data, views, comments, or arguments concerning the regulations hereby promulgated within 30 days after the publication of this document in the FEDERAL REGISTER to the Commissioner, National Air Pollution Control Administration, 801 North Randolph Street, Arlington, Va. 22203. Consideration will be given such submitted materials as fully as though they had been received in response to a proposal.

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Authority: The provisions of this subpart issued under sec. 301(a), sec. 2, Public Law 90-148; sec. 203, 81 Stat. 499; 42 U.S.C. 1857f-2.

§ 85.200 Applicability.

The provisions of this subpart are applicable to new motor vehicles and new motor vehicle engines which are subject to the standards prescribed in this part and are offered for importation into the United States for sale or resale. As used in this subpart, the term United States means the customs territory of the United States as defined in 19 U.S.C. 1202 and the Virgin Islands, Guam, and American Samoa.

§ 85.201 Admission of test vehicles or engines.

Any new motor vehicle or new motor vehicle engine offered for importation as a test vehicle or engine shall not be refused entry if the entry documents contain a declaration by the importer that such vehicle or engine is being supplied to the Secretary of Health, Education, and Welfare for certification testing pursuant to § 85.51.

§ 85.202 Admission of new motor vehicles and new motor vehicle engines covered by a certificate of conformity.

Any new motor vehicle or new motor vehicle engine which is in all material respects of substantially the same construction as the test vehicle or engine for which a certificate of conformity has been issued under § 85.52 shall not be refused admission into the United States if the entry documents include a declaration by the importer that such certificate of conformity has been issued, giving the

number and date thereof, and that the new motor vehicle or new motor vehicle engine for which entry is requested is in all material respects of substantially the same construction as the test vehicle or engine for which the certificate was issued and is being entered during the period for which the certificate is effective.

§ 85.203 Admission of new motor vehicles and new motor vehicle engines not covered by a certificate of conformity at the time of entry.

(a) Any new motor vehicle or new motor vehicle engine which is in all material respects of substantially the same construction as a test vehicle or engine for which an application for certification is pending before the Secretary may be conditionally admitted in accordance with 19 CFR 12.73, but shall be refused final admission into the United States unless:

(1) Not later than 5 days following such conditional admission the importer has submitted to the Secretary a written request that such vehicle or engine be permitted entry pending certification of the test vehicle or engine to which such vehicle or engine conforms, which request shall contain the following:

(i) A statement that the vehicle or engine is in all material respects of substantially the same construction as a test vehicle or engine for which application for a certificate of conformity is pending before the Secretary;

(ii) Identification of the place where the vehicle or engine will be stored while certification is pending, and an acknowledgement of responsibility for the custody of the vehicle or engine during that period;

(2) The bonding and entry requirements of the Bureau of Customs set forth in 19 CFR 12.73 have been met; and

(3) The Secretary has issued the requested certificate of conformity.

(b) Any new motor vehicle or new motor vehicle engine which is not in all material respects of substantially the same construction as a test vehicle or engine for which a certificate of conformity has been issued may be conditionally admitted in accordance with 19 CFR 12.73, but shall be refused final admission into the United States unless:

(1) Not later than 5 days following such conditional admission the importer has submitted to the Secretary a written request that he be allowed to modify the vehicle or engine to make it conform to applicable standards, which request shall contain the following:

(i) A statement, acceptable to the Secretary, specifying the modifications or alterations which are necessary to render the vehicle or engine in all material respects substantially the same construction as such test vehicle or engine;

(ii) The date by which the modifications or alterations will be accomplished, said date to be not later than 75 days from the date of entry, and the place where the vehicle or engine will be stored pending a determination of conformity under this paragraph;

(iii) An acknowledgement of responsibility for the custody of the vehicle or

engine while the modifications or alterations are being made and while a determination of conformity is pending;

(iv) Authorization for representatives of the Department of Health, Education, and Welfare to inspect the vehicle or engine at any reasonable time for the purpose of making a determination of conformity;

(2) The bonding and entry requirements of the Bureau of Customs set forth in 19 CFR 12.73 have been met; and

(3) The Secretary has issued to the importer a written determination of conformity, stating that the vehicle or engine is in all material respects of substantially the same construction as a test vehicle or engine for which a certificate of conformity has been issued.

§ 85.204 Prohibited importations.

The importation of new motor vehicles and new motor vehicle engines subject to the standards prescribed in this part, otherwise than in accordance with the provisions of this subpart, is prohibited.

Approved: November 17, 1969.

ROBERT H. FINCH,
Secretary.

[F.R. Doc. 69-13852; Filed, Nov. 20, 1969; 8:46 a.m.]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-18; Amdt. No. 173-17]

PART 173—SHIPPERS

Benzoyl Peroxide, Wet

The purpose of this amendment to the Hazardous Materials Regulations of the Department of Transportation is to authorize shipments of benzoyl peroxide, wet, in specification 12B fiberboard boxes having inside polyethylene bags that are at least 0.004-inch thick and that have a capacity of not more than 10 pounds each.

On March 12, 1969, the Hazardous Materials Regulations Board issued a notice of proposed rule making (Docket No. HM-18; Notice No. 69-6) (34 F.R. 5113) requesting public comment on a proposal to authorize shipment of benzoyl peroxide, wet, with not less than 30 percent water in polyethylene bags overpacked in DOT specification 12B fiberboard boxes. Interested persons were afforded an opportunity to participate in this rule making.

Comments were received from three respondents, none of which specifically opposed the basic proposal. One commenter raised several questions concerning the physical characteristics of the composite package as compared to presently authorized packages. This commenter pointed out that (1) depending on manufacturing specifications, a 0.004-inch polyethylene bag could be weaker than a paper bag lined with 0.002-inch polyethylene; (2) the limitation of 10

pounds per inside container is inconsistent with the 1-pound limitation per inside container for wooden boxes; (3) details of the service experience, i.e., one 10-pound bag per box or five 10-pound bags per box, are unknown. With respect to the first comment, the Board considers it unlikely that the difference between the two types would be significant. With respect to the second comment, the authorized capacity of the polyethylene bag is based on satisfactory experience gained under special permit conditions. It may be that, consistent with this amendment, a larger capacity would be warranted for inside containers when wooden boxes are used. However, this is beyond the scope of this rule making action. With respect to the third point, the service experience under special permit has been satisfactory, as previously mentioned. The number of inside bags could vary depending on the size of the bags used, up to the maximum of 10 pounds, and subject to the overall limits of 65 pounds.

In the notice, the Board proposed to amend paragraph (a) (3) of § 173.157. However, it has been decided to add this authorization as a separate paragraph, both for the sake of simplicity and to make it clear that the authorized gross weight is 65 pounds. This is the weight that was authorized in the special permit under which the experience was gained justifying the change and there was no intention to authorize the higher weight specified in paragraph (a) (3).

In consideration of the foregoing, 49 CFR Part 173 is amended effective December 30, 1969, by adding a new paragraph (a) (5) to § 173.157 to read as follows:

§ 173.157 Benzoyl peroxide, chlorobenzoyl peroxide (para), cyclohexanone peroxide, dimethylhexane dihydroperoxide, lauroyl peroxide, or succinic acid peroxide; wet.

(a) * * *

(5) Specification 12B (§ 178.205). Fiberboard boxes having inside polyethylene bags constructed of material having minimum thickness of 0.004 inch. The capacity of each bag must not exceed 10 pounds. Each bag must be surrounded by asbestos, or other fire-resistant cushioning material which will protect the contents with equal efficiency. Gross weight must not exceed 65 pounds. Authorized only for benzoyl peroxide.

(Sec. 831-835, title 18, United States Code; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; title VI and sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430, 1472(h))

Issued in Washington, D.C., on November 17, 1969.

SAM SCHNEIDER,
Board Member, for the Federal Aviation Administration.

F. C. TURNER,
Federal Highway Administrator.

CARL V. LYON,
Acting Administrator,
Federal Railroad Administration.

[F.R. Doc. 69-13847; Filed, Nov. 20, 1969; 8:46 a.m.]

[Docket No. HM-4, Amdt. 174-5, 175-3, 177-9]

PART 174—CARRIERS BY RAIL FREIGHT

PART 175—CARRIERS BY RAIL EXPRESS

PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

Miscellaneous Restrictions Against Loading and Transporting Poisons (Class A or B) With Foodstuffs

The purpose of these amendments to the Hazardous Materials Regulations is to modify certain restrictions on the loading and transporting of poisons (class A or B) with foodstuffs, feed, or other material intended for consumption by humans or animals.

On May 8, 1969, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-4; Notice No. 69-12 (34 F.R. 7456) proposing to modify the existing restrictions against commingling poisons and foodstuffs during shipment. The comments in response to the notice for the most part supported the proposed changes. Several comments raised questions that indicated that the intent of both the present and proposed requirements could be further clarified. One commenter raised numerous objections to both the present and proposed restrictions, most of which had been previously submitted to, and considered by, the Board. The most significant comments and changes to the regulations are as follows:

One commenter indicated that there was still some confusion as to the intent of the words "foodstuffs, feeds, or any other material intended for consumption by humans or animals". This commenter questioned whether these words could be interpreted to cover any materials that normally might come in contact with the human body or did they exclude " * * * clothing, cosmetics, and other consumer items capable of transmitting poisons." as indicated in an advance notice of proposed rule making published by the Director of the Office of Hazardous Materials on May 9, 1969 (34 F.R. 7545). The intent of these words is to cover edibles and the language of the regulation has been clarified in this regard. The Board recognizes that there are many items such as clothing that could become a hazard to human life if contaminated by certain poisons. However, these items were not included in the original amendment adopted in December of 1967 or in the proposal upon which this amendment is based. The need for further rule making in this regard is still being considered based on the response to the aforementioned advance notice of proposed rule making.

Two commenters suggested that the Board require foodstuffs to be marked as such. The Board recognizes that the marking of foodstuffs would greatly enhance both the problems of compliance and the safety benefits resulting from the subject regulation. However, the

Hazardous Materials Regulations Board has no jurisdiction directly over the transportation of foodstuffs. Similarly, the Board does not have the authority, as suggested by one commenter, to prescribe requirements for the safe disposal of the poisonous products resulting from any decontamination.

One commenter suggested that with respect to the car cleaning requirements it would be helpful if acceptable contamination levels could be prescribed. The Department of Health, Education, and Welfare (Public Health Service and Food and Drug Administration) is presently working actively in this field and the Board intends to make use in future regulatory changes of any significant information developed from these studies.

Two commenters suggested that foodstuffs and poisons could be shipped in the same vehicle provided they are separated by airtight and nonpermeable partitions. Such a provision would appear to have all of the inherent problems and confusion that arose from the use of the terms "airtight" and "nonpermeable" in the original amendment. For rail cars and highway vehicles, the Board believes that it is not too much of a burden, considering the potential dangers, to make the prohibition against commingling apply to each car.

One commenter suggested that the inspection of aircraft cargo compartments should only be carried out if a package has been found to be leaking or damaged. The Board has been concerned, however, with the number of instances of contamination of other goods by poisons when it was not immediately known that a package had leaked. By the time the package leakage was noticed, the other freight had been transshipped in many different directions. Therefore, the Board does not consider it appropriate to limit the inspection requirement to cases of known leakage.

One commenter protested the application of the prohibition against mingling to all classes A and B poisons. This commenter indicated that the Board should single out and limit the restriction only to the most dangerous items, such as parathion and other organic phosphates. The Board does not agree. While there is necessarily a difference in the degree of hazard among classes A and B poisons, the Board believes that the leakage of any class A or B poison on edible foodstuffs is so potentially hazardous that no effort should be made at this time to determine "safe" class A or B poisons insofar as shipments with foodstuffs are concerned. This commenter also suggested that the restriction should be imposed only on liquid poisons and not on solid poisons. The Board believes that the restriction should be total regardless of state of the poisonous material. Many food products are shipped in packagings that could be penetrated by dry materials, or which could retain deposits of dry material in or near discharge openings.

One commenter pointed out an inconsistency existing in the present regulations that results from the present exemptions for small quantities of class B poisons when transported by highway.

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The Board recognizes that there is no justification for permitting a small quantity of a class B poison in a motor vehicle carrying foodstuffs while the same quantity of class B poison would be barred from a railroad car carrying foodstuffs. The Board is presently reconsidering in toto the authorized small quantity exemptions and intends to include this item for consideration in that study.

One commenter suggested that the rule could be averted by shippers who fail to mark the edible nature of the contents on the package and by originating carriers who fail to carry forward the "poison" notation on the interchange forms. The Board recognizes that these restrictions are not foolproof and that the effectiveness of its regulation is directly related to the ease of identifying foodstuffs. However, as indicated above, solution of this problem is to some extent outside the scope of the Board's authority. This rule, as is any rule, is effective only if complied with. That persons may render regulations ineffective by ignoring them is not valid reason against regulating.

One commenter stated that both the present rule and the proposed changes would disrupt the marketing and distribution of class B poisons by grocery warehouses that reship along with edibles. This commenter made this same point earlier with respect to the Board's first action in this regard in December 1967. The present regulation has been in effect now for over 18 months and the Board has received no evidence that commerce of any kind has been adversely affected thereby to any significant degree. Nor has the Board received any specific evidence that this amendment will have such an effect. Therefore, the Board must conclude that neither the present rule nor the changes adopted herein will adversely affect the grocery industry in the United States.

In consideration of the foregoing, 49 CFR Parts 174, 175, and 177, are amended as follows:

I. Part 174 is amended as follows:

(A) In § 174.532 paragraph (m) is amended to read as follows:

§ 174.532 Loading other dangerous articles.

(m) Material marked as or known to be poison (class A or B) must not be transported in the same car with material which is marked as or known to be foodstuffs, feeds, or any other edible material intended for consumption by humans or animals.

(B) In § 174.566 paragraph (a) (1) is amended to read as follows:

§ 174.566 Cleaning cars.

(a) * * *

(1) A car which has been used to transport material marked as or known to be poison (class A or B) must be inspected for contamination before reuse. A car which has been contaminated must not be returned to service until such contamination has been removed. This subparagraph does not apply to cars used solely for transporting such poisons so long as they are used in that service.

II. Part 175 is amended as follows:

(A) In § 175.655 paragraph (k) and (l) are amended to read as follows:

§ 175.655 Protection of packages.

(k) Material marked as or known to be poison (class A or B) must not be transported in the same car with material which is marked as or known to be foodstuffs, feeds, or any other edible material intended for consumption by humans or animals.

(l) A car which has been used to transport material marked as or known to be poison (class A or B) must be inspected for contamination and must not be returned to service until such contamination has been removed.

III. Part 177 is amended as follows:

(A) In § 177.841 paragraph (e) is amended to read as follows:

§ 177.841 Poisons.

(e) Material marked as or known to be poison (class A or B) must not be transported in the same vehicle with material which is marked as or known to be foodstuffs, feeds, or any other edible material intended for consumption by humans or animals.

(B) In § 177.860 paragraph (a) (1) is amended to read as follows:

§ 177.860 Accidents or leakage; poisons.

(a) * * *

(1) *Leakage.* A vehicle which has been used to transport material marked as or known to be poison (class A or B) must be inspected for contamination before reuse. A vehicle which has been contaminated must not be returned to service until such contamination has been removed. This subparagraph does not apply to vehicles used solely for transporting such poisons so long as they are used in that service.

These amendments are effective December 30, 1969.

(Secs. 831-835, title 18, United States Code; sec. 9, Department of Transportation Act, 49 U.S.C. 1657; title VI and sec. 902(h), Federal Aviation Act of 1958, 49 U.S.C. 1421-1430, 1472(h))

Issued in Washington, D.C., on November 17, 1969.

SAM SCHNEIDER,
Board Member, for the
Federal Aviation Administration.

F. C. TURNER,
Federal Highway Administrator.

R. N. WHITMAN,
Administrator,
Federal Railroad Administration.

[F.R. Doc. 69-13846; Filed, Nov. 20, 1969;
8:46 a.m.]

[Docket No. HM-25; Amdt. 178-8]

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Special Composite Package for Electrolyte (Acid) or Alkaline Corrosive Battery Fluid

The purpose of this amendment to the Hazardous Materials Regulations of the Department of Transportation is to au-

thorize a new type of composite package comprised of a specification 12B fiberboard box and an inside plastic bag for electrolyte acid or alkaline corrosive battery fluid.

On May 28, 1969, the Hazardous Materials Regulations Board published a notice of proposed rule making, Docket No. HM-25; Notice No. 69-15 (34 F.R. 8245) which proposed an amendment of 49 CFR 178.205-37 (Specification 12B fiberboard box) to specify packaging requirements for electrolyte (acid) or alkaline corrosive battery fluid consistent with the terms of special permits in existence for several years.

Interested persons were afforded an opportunity to participate in this rule making. Of the comments received, no objections were taken to the basic proposal. One commenter took exception to the requirement of a top and bottom pad for regular slotted style boxes having capacities of 6 quarts or less on the premise that the special permit issued to him by the Department contained no such requirements. The commenter stated that many millions of units of 6 quarts capacity or less have been shipped without pads and with good experience. Reports of shipping experience under the provisions of this permit have been reviewed and the Board has determined that the experience has been satisfactory. In view of this and in view of the requirement specifying fiberboard having strength greater than that prescribed for general application in § 178.205-16, the Board is withdrawing the requirement for top and bottom pads in regular slotted style boxes having capacities of 6 quarts or less.

Another commenter expressed concern over what material would be considered equivalent to fiberboard pads having at least 200 pound test and thus meet the equivalency proviso set forth in proposed § 178.205-37(b) (1) and (2). It was the Board's intent to allow the use of pads made not only of fiberboard but also of other material such as chipboard having the same protective capability as fiberboard. The proposal was vague in this respect and has been clarified in the amendment.

In consideration of the foregoing, 49 CFR Part 178 is amended as follows:

In § 178.205-37 paragraphs (a), (b), (c) (1) and (2) are amended to read as follows:

§ 178.205 Specification 12B; fiberboard boxes.

§ 178.205-37 Special box; authorized polyethylene or other suitable plastic bags for packaging of electrolyte (acid) or alkaline corrosive battery fluid only.

(a) Box must comply with this specification except as follows: Box must be one-piece construction of slotted style and may have die-cut areas of minimum size to provide access to an inside closure part. Box must have two polyethylene or other suitable plastic bags, one within the other, and a closure adequate to prevent leakage under conditions incident to transportation. Each bag must be formed from tubing of virgin plastic material not