

DEPARTMENT OF TRANSPORTATION

Research and Special Programs
Administration

49 CFR Part 173

[Docket No. HM-210; Amdt. No. 173-228]

RIN 2137-AC15

Clarification of Requirements for
Limited Quantities of Compressed
GasesAGENCY: Research and Special Programs
Administration (RSPA), DOTACTION: Final rule, request for
comments

SUMMARY: RSPA is amending the Hazardous Materials Regulations (HMR, 49 CFR parts 171-180) to clarify for compressed gases the limited quantity and the consumer commodity provisions found in § 173.305 (a)(1) and (a)(3). This action is necessary to prevent a serious threat to life and property and to provide a clear understanding of the exceptions provided in these sections. The intended effect is to promote the safety of gases shipped under these provisions.

EFFECTIVE DATE: October 28, 1991.

ADDRESSES: Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: Because this final rule is necessary to prevent a serious threat to life and property, prior notice and public comment would be contrary to the public interest. Specifically, RSPA is taking this action to stop the misuse of its limited quantity and consumer commodity exceptions under the HMR by persons shipping flammable compressed gases such as butane in significant quantities without identifying their flammability hazard (by

labeling or placarding) and without complying with specification packaging requirements. For this same reason, this final rule is being made effective upon publication. Because this final rule was published without prior notice, RSPA is requesting comments by December 12, 1991. A notice will be published in the Federal Register addressing these comments.

The HMR contain exceptions from certain of its requirements for limited quantities of materials and for materials which are consumer commodities in the ORM-D (i.e., other regulated materials, category D) hazard class. A "limited quantity," as defined in § 171.8, means the maximum amount of a hazardous material for which there is a specific labeling and packaging exception. These limited quantity exceptions are specified in the packaging sections applicable to particular materials, which are usually referenced in column 5a of the Hazardous Materials Table in § 172.101. For compressed gases, the limited quantity provisions are contained in paragraph (a) of § 173.305. Materials meeting the criteria of this paragraph are excepted from: (1) Labeling requirements (other than when offered for transportation by aircraft), (2) specification packaging requirements, (3) placarding requirements, (4) most requirements of part 174 for transportation by rail, and (5) most requirements of part 177 for transportation by motor vehicle. For certain of these limited quantity materials, further exceptions are provided if they also meet the criteria in § 171.8 (see "consumer commodity").

Section 173.306(a)(1) authorizes the use of nonspecification packagings with a capacity of not more than 4 fluid ounces or 7.22 cubic inches each. Section 173.306(a)(2) authorizes the use of metal nonspecification packagings filled with a material that is not classed as a hazardous material to not more than 90 percent of capacity at 70 °F and then charged with nonflammable, nonliquefied gas with certain restrictions applying to internal pressure, filling limits and testing of the container. Section 173.306(a)(3) authorizes the use of metal nonspecification packagings charged with a solution of materials and compressed gas or gases (i.e., aerosols), with certain restrictions applying to internal pressure, filling limits and testing of the container. The capacity of this container may not exceed 50 cubic inches or 27.7 fluid ounces. Paragraph

(a)(3) applies only to solutions of materials and compressed gas or gases which are not poisonous. This would include most aerosol products, but would not apply to containers containing only compressed gas or gases. Both paragraphs (a)(1) and (a)(3) authorize compressed gases that meet the definition of a consumer commodity to be reclassified as an ORM-D.

A consumer commodity as defined in § 171.8 means a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use. If a material meets the definition of a consumer commodity, it may be reclassified and offered for shipment as an ORM-D material provided an exception is authorized in the particular packaging section in part 173 applicable to the material.

It has come to RSPA's attention that several companies are offering butane in containers with capacities of up to 27.7 fluid ounces as a limited quantity under § 173.306(a)(3) and as a consumer commodity, ORM-D, under this same section. One company has added minute quantities of isopropyl alcohol (a water drying agent), ethyl mercaptan (an odorant), and small quantities of oil to butane, claiming that the container contains a "compressed gas and a solution of materials" and that the gas is a propellant. It appears that others may be using the same artifice to ship flammable compressed gases (used as fuel in stoves or other applications wherein the flammable gases, rather than the additives, are the primary end use product) as aerosols. These materials then are offered for transportation without identification of their flammability hazard.

RSPA is concerned about the serious potential hazards posed by shipping flammable compressed gases, under limited quantity or consumer commodity provisions, when a compressed gas is the primary product and not merely an aerosol propellant additive. RSPA and its predecessor agencies never intended that gases other than those used as a propellant could be excepted from any of the HMR when a package has more than a 4-fluid ounce capacity. The limited quantity and consumer commodity provisions for containers of greater than 4-fluid ounce capacity up to 27.7 ounces are intended only for compressed gases that are used as

propellants for the purpose of expelling materials other than gases.

In order to eliminate any misunderstanding of the provisions of § 173 306(a)(3), RSPA is revising the first sentence of this paragraph to make it clear that it applies only to compressed gases used for the purpose of expelling a nonpoisonous liquid, paste or powder. RSPA is also revising the first sentence in § 173 306 paragraph (a)(2), for clarity.

The requirements for small containers of liquefied petroleum gas (larger than 7 22 cubic inches) are specified in § 173 304(d)(3)(ii). The requirements for small containers of refrigerant gases (larger than 7 22 cubic inches) are specified in § 173 304(e). These materials may not be reclassified and described as "Consumer commodity, ORM-D"

Administrative Notices

A Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) applies only to rules for which an agency publishes an NPRM. Therefore, the RFA does not apply to this rule.

B Executive Order 12291 and Administrative Notices

In view of the clarifying nature of changes, RSPA has determined that this final rule (1) is not "major" under Executive Order 12291, (2) is not "significant" under DOT Regulatory

Policies and Procedures (44 FR 11034 February 26, 1979), (3) does not warrant preparation of a full regulatory evaluation as the anticipated impact would be minimal, and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U S C 4321 *et seq*)

C Executive Order 12612

I have reviewed this regulation in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or the distribution of power and responsibilities among levels of government. Thus, this regulation contains no policies that have Federalism implications, as defined in Executive Order 12612, and no Federalism Assessment is necessary.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packagings and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, title 49, chapter I, subchapter C of the Code of Federal Regulations is amended as set forth below.

The following amendments apply to part 173 in effect as of the date of publication of this final rule.

1 The authority citation for part 173 continues to read as follows:

Authority: 49 App U S C 1803 1804 1805 1806 1807 1808 49 CFR Part 1 unless otherwise noted.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

2 In § 173 306, the first sentence in paragraph (a)(2) is amended by adding the word "and" immediately after "70 °F" and before the word "then", and the first sentence in paragraph (a)(3) is revised to read as follows:

§ 173 306 Limited quantities of compressed gases

(a) * * *

(3) When in a metal container for the sole purpose of expelling a nonpoisonous liquid, paste or powder, provided all of the following conditions are met, * * *

Issued in Washington DC on October 21, 1991 under authority delegated in 49 CFR part 1.

Travis P Dungan,
Administrator, Research and Specials
Programs Administration
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