

49 CFR Parts 171, 172 and 173

[Docket No. HM-166L; Amdt. Nos. 171-72, 172-79, 173-163]

Regulation of Consumer Commodities; Paint and Paint Related Material Adhesive

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to reduce the shipping names associated with paint and paint related products from 28 to 7. This action will eliminate confusion over shipping names used by DOT and those used in the freight classification system. This action will result in a reduced burden in the shipment of these commodities without compromising safety. The proposal to expand the coverage of the consumer commodity category for flammable liquids by lowering the flash point limitation for one gallon inside containers is not adopted.

DATE: This amendment is effective April 1, 1984. However, compliance with the regulations as amended herein, is authorized April 21, 1983.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau, 400 7th Street, SW., Washington, D.C. 20590 (202-472-2726).

SUPPLEMENTARY INFORMATION: On Monday, February 1, 1982, the Materials Transportation Bureau (MTB) published a Notice of Proposed Rulemaking (NPRM) Docket Number HM-166L (47 FR 4538) which addressed paints and paint related materials. The NPRM proposed to reduce the number of shipping names associated with paint in the Hazardous Materials Table (49 CFR 172.101) from approximately 28 to 7. In addition, the NPRM proposed to relax certain shipping requirements for paint and paint related material by allowing a flammable liquid with a flash point higher than 20°F. to be shipped as "Consumer commodity," ORM-D when in inside packagings of one gallon or less. At present, the Hazardous Materials Regulations (HMR) restrict the volume of flammable liquids having flash points below 73°F. being shipped as "Consumer commodity" to one quart. The effect of such change would be to allow four one gallon metal cans of paint in fiberboard boxes to be shipped without requiring that they be labeled or accompanied by shipping papers except when carried aboard aircraft.

MTB received a total of 37 comments in response to the NPRM. While the paint manufacturing industry and

carriers generally favored the proposal, persons interested in fire protection strongly opposed those portions of the notice which would have allowed the increased quantity of paint with a flash point below 73°F. to be shipped as "Consumer commodity, ORM-D". There was little opposition to consolidation of shipping names and much support for it. Fourteen comments received from industrial firms that manufacture or ship paints and adhesives support the NPRM without exception. One manufacturer did want the shipping names "varnish" and "enamel" retained because products with these names are used to coat electrical wires, a use which most people do not associate with "paint." The purpose of shipping names in the hazardous materials table is not to pinpoint the ultimate use of a product, with great exactitude, but rather to provide a standardized format which succeeds in communicating the basic properties, or kinds of hazardous materials in transportation.

In addition to industrial firms, seven trade associations, representing paint producers, carriers, and shippers supported the NPRM.

MTB received comments from four carriers. Two supported the NPRM. One air carrier expressed concern that the relaxed requirements would exclude shipments by air and would cause confusion and inadvertent violation of the regulations because shippers may not know that one portion of a journey might be accomplished by air, requiring shipping papers. Since the package would not be labeled and marked so the contents could be identified, a violation might ensue if the package was shipped by air with no shipping papers. A rail carrier expressed concern that the proposed shipping names would not identify whether the hazardous material was a hazardous substance identified under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"). The identification of CERCLA hazardous substances is addressed at length in a previous MTB publication (see Docket No. HM-145C, 46 FR 17738, March 19, 1981). It is extremely unlikely that a hazardous substance, as presently defined in the HMR, in packagings addressed in this NPRM would be a constituent of paint in sufficient quantity to constitute a reportable quantity (RQ). If a hazardous substance were present in sufficient quantity, the marking provisions of § 172.324 would apply and the package would have to be marked with the name of the hazardous substance and the letters "RQ".

If a package contains a material which is listed in the CERCLA List

(§ 172.101) but which is not a hazardous material or "hazardous substance" as presently defined in § 171.8, that material is not subject to the requirements of the HMR regardless of whether it is a "Consumer commodity" or not. This issue is discussed at length in Docket HM-145C and this final rule has no effect on it.

The Air Transport Association (ATA) expressed concern that the NPRM did not include all paint related items that appear in the ICAO Technical Instructions, specifically paint driers and thinners. One purpose of the NPRM was to reduce the number of shipping names associated with paint, including thinners, driers, removers and reducers. MTB feels that these materials can all be safely shipped under the shipping names "Paint" or "Paint related material" with separate entries for the flammable liquid, combustible liquid and corrosive material hazard classes.

MTB received comments from the fire departments of 7 municipalities, two from Members of the International Associations of Fire Chiefs, one from a fire protection engineer, and one from the National Fire Protection Association, all opposing the relaxation of shipping requirements (the use of the Consumer commodity, ORM-D hazard class) for flammable liquids as proposed in the NPRM. Comments from the fire departments and fire chiefs opposed relaxation of the communications requirements (labels and shipping papers) associated with shipments under the ORM-D hazard class. They expressed the opinion that the absence of labels and shipping papers would increase the danger to fire service personnel, or the general public, or both. The fire protection engineer expressed the view that the present regulations are consistent with National Fire Protection Association (NFPA) requirements and OSHA regulations and if the NPRM became final, the HMR would no longer be consistent. He also thought that there would be precedence for opening up the Consumer commodity, ORM-D hazard class to other flammable liquids which are not paints.

Comments received from the NFPA expressed the view that hazards at warehouses storing paints would be greatly increased. The comments stated that DOT labels and markings on outside containers are used for purposes of material classification of flammable liquids into various NFPA subclasses based on flash point and that this classification system is vital to the nationally recognized and widely used Flammable and Combustible Liquids Code, NFPA 30-1981, and without it the NFPA maintained there could be severe "fire overloading" of storage and warehousing facilities.

An evaluation of the merits of the comments reveals some concern for relaxation of shipping requirements, as proposed in the NPRM, is justified. It is true that accident data compiled from incident reports do not reveal a serious fire problem with paint as it is now shipped, however, an argument can be raised that this condition exists because of the adequacy of the present regulations and that relaxation of requirements would produce more problems than benefits. Prior to issuing the notice, MTB did not fully consider the problems that could arise if paints were inadvertently shipped by air as pointed out by the air carrier, or the non-transportation impacts of the proposals, such as the storage classification problem pointed out by the NFPA. In addition, while the comments from fire service personnel did not provide any factual data to support their concerns for increased risk to fire fighters and the public, the opinions of fire protection professionals should be given further consideration before action is taken. Because of these factors MTB has decided to withdraw those portions of the NPRM which would allow paints with flash points between 20°F. and 73°F. to be shipped as "Consumer commodity, ORM-D".

The NPRM explained the reasons why a change was needed for the entry "Adhesive, n.o.s. See Cement, liquid, n.o.s." However, it has been noted that "liquid, n.o.s." is not a part of the proper shipping name for the entry "Adhesives" in the United Nations Recommendations for the Transportation of Dangerous Goods and "liquid, n.o.s." is not a part of the proper shipping name for the entry "Cement" in the IMDG Code. For these reasons, "liquid, n.o.s." has been deleted from both shipping names in the § 172.101 Table. Also, § 173.132 has been changed accordingly.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Regulations and definitions.

49 CFR Part 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts 171, 172, and 173 of 49 CFR are amended to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. In § 171.16, paragraph (c)(3) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(c) * * *

(3) Paint and paint related material when shipped in packagings of five gallons or less.

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PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

2. In § 172.101 the Hazardous Materials Table is amended by adding and removing the following named entries to read as follows:

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9 CFR
 Dock 172.101 Hazardous Materials Table

(1) + EAW	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) Identification number	(4) Label(s) required (if not excepted)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
					(a) Excep- tions	(b) Specific require- ments	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo ves- sel	(b) Pas- senger vessel	(c) Other require- ments
	(Remove).....										
	Adhesive. See Cement, liquid, n.o.s.										
	Aluminum, liquid. See Paint, Enamel, Lacquer, Stain, Shellac, Varnish, etc.										
Cement, liquid, n.o.s.	Combustible liquid...	NA1133	None	173.118a	None	No limit	No limit	1,2		1,2	
	Cement, liquid, n.o.s.	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	10 gallons	1,2		1
	Compound, enamel.	.....do	NA1263	.....do	173.118	173.128	.....do	55 gallons	1,2		1
	Compound, lacquer, paint, or varnish, removing, reducing, or thinning, liquid.	Combustible liquid	NA1142	None	173.118a				1,2		1,2
	Compound, lacquer, paint, or varnish, removing, liquid.	Corrosive material	NA1760	Corrosive	173.244	173.245	.....do	1 gallon	1,2		1,2
	Compound, lacquer, paint, or varnish, removing, reducing, or thinning, liquid.	Flammable liquid	NA1142	Flammable liquid	173.118	173.128	.....do	55 gallons	1,2		1
Regu of Ha Ma	Drier. See Paint drier, liquid.										
	Enamel. See Paint, Enamel, Lacquer, etc.										
	Lacquer. See Paint, Enamel, Lacquer, Stain, etc.										
	Lacquer base, liquid. See Paint, Enamel, Lacquer, Stain, etc.										
	Lacquer removing, reducing, or thinning, compound. See Compound, lacquer, paint, or varnish, removing, reducing or thinning liquid.										
	Mortar stain, liquid	Combustible liquid	UN1263	None	173.118a	None	No limit	No limit	1,2		1,2
	.....do	Flammable liquid	UN1263	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2		1
	Paint drier, liquid	Combustible liquid	UN1168	None	173.118a	None	No limit	No limit	1,2		1,2
	.....do	Flammable liquid	UN1168	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2		1
	Paint, Enamel, Lacquer, Stain, Shellac, or Varnish; Aluminum, Bronze, Gold, Wood filler, liquid or Lacquer base, liquid.	Combustible liquid	UN1263	None	173.118a	None	No limit	No limit	1,2		1,2
pa wil ar	Paint, Enamel, Lacquer, Stain, Shellac, or Varnish; Aluminum, Bronze, Gold, Wood filler, liquid or Lacquer base, liquid.	Flammable liquid	UN1263	Flammable liquid	173.118	173.128	1 quart	55 gallons	1,2		1

(1) + EAW	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class	(3A) Identification number	(4) Label(s) required (if not exempt)	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
					(a) Exempt bulk	(b) Specific requirements	(a) Passenger carrying aircraft or railer	(b) Cargo only aircraft	(a) Cargo vessel	(b) Pas- senger vessel	(c) Other require- ments
	Paint, reducing or thinning compound. See Compound, lacquer, paint, or varnish, reducing, reducing or thinning, liquid.										
	Reducing compound, paint, varnish, lacquer, etc. See Compound, lacquer, paint or varnish, reducing, reducing or thinning, liquid.										
	Removall compound, paint, varnish, lacquer, etc. See Compound, lacquer, paint or varnish, removing, reducing or thinning, liquid.										
	Shelac. See Paint, Enamel, Lacquer, Stain, Shellac, Varnish, etc.										
	Thinning compound, paint, varnish, lacquer, etc. See Compound, lacquer, paint or varnish, removing, reducing or thinning, liquid.										
	Varnish. See Paint, Enamel, Lacquer, Stain, Shellac, Varnish, etc.										
	Varnish drier. See Paint drier, liquid.										
	Varnish remover or reducer. See Compound, lacquer, paint or varnish, removing, reducing or thinning, liquid.										
	Varnish thinning compound. See Compound, lacquer, paint or varnish, removing, reducing or thinning, liquid.										
	Wood filler, liquid. See Paint, Enamel, Lacquer, Stain, Shellac, Varnish, etc.										
	(Add)										
	Adhesive	Combustible liquid	UN1133	None	173.118a	None	No limit	No limit	1.2	1.2	
	do	Flammable liquid	UN1133	Flammable liquid	173.118	173.132	1 quart	10 gallons	1.2	1	
	Cement	Combustible liquid	NA1133	None	173.118a	None	No limit	No limit	1.2	1.2	
	do	Flammable liquid	NA1133	Flammable liquid	173.118	173.132	1 quart	10 gallons	1.2	1	
	Driers, paint or varnish, liquid, n.o.s.	Combustible liquid	UN1168	None	173.118a	None	No limit	No limit	1.2	1.2	

(1) +EAW	(2) Hazardous materials description and proper shipping name	(3) Hazard class	(4A) Identification number	(4) Labels required if not excepted	(5) Packaging		(6) Maximum net quantity in one package		(7) Water shipments		
					(a) Exceptions	(b) Specific requirements	(a) Passenger carrying aircraft or railcar	(b) Cargo only aircraft	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements
do	Flammable liquid	UN1188	Flammable liquid	173.118 173.128	173.128	173.128	1 quart	55 gallons	1.2	1	
Paint	Combustible liquid	UN1263	None	173.118a	None	None	No limit	No limit	1.2	1.2	
do	Flammable liquid	UN1263	Flammable liquid	173.118 173.128	173.128	173.128	1 quart	55 gallons	1.2	1	
Paint or paint related material	Corrosive material	NA1780	Corrosive	173.244	173.245	do	1 gallon		1.2	1.2	
Paint related material	Combustible liquid	NA1263	None	173.118a	None	None	No limit	No limit	1.2	1.2	
do	Flammable liquid	NA1263	Flammable liquid	173.118 173.128	173.128	173.128	1 quart	55 gallons	1.2	1	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. In § 173.128, the heading and the introductory text of paragraph (a) are revised, paragraph (c) is redesignated paragraph (b), and a new paragraph (c) is added to read to follows:

§ 173.128 Paint and paint related material (flammable liquids).

(a) Except as otherwise provided in this part, the description "Paint" is the proper shipping name for paint, lacquer, enamel, stain, shellac, varnish, liquid aluminum, liquid bronze, liquid gold, liquid wood filler, and liquid lacquer base. The description "Paint related material" is the proper shipping name for a paint thinning, reducing or removing compound. However, if a more specific description is listed in § 172.101, that description must be used. Paint and paint related material must be packaged as follows:

(c) Special exceptions for shipment of paint and paint related material in the ORM-D class are provided in subpart N of this Part.

4. In § 173.132, the heading, introductory text of paragraph (a), and paragraph (b) are revised to read as follows:

§ 173.132 Adhesive; cement; container cement; linoleum cement; pyroxylin cement; rubber cement; tile cement; wallboard cement, and coating solution.

(a) Except as otherwise provided in this Part, a flammable liquid which is an adhesive; cement; container cement; linoleum cement; pyroxylin cement; rubber cement; tile cement; wallboard cement, or coating solution must be packaged as follows:

(b) The adhesive and cements identified in paragraph (a) of this section, except any adhesive or cement containing carbon bisulfide (carbon

disulfide), in glass or leakproof packagings consisting of a fiberboard body and metal top and bottoms of not over 1-quart capacity each, or metal packagings of not over 5 gallons capacity each, further overpacked in a strong outside packaging are excepted from the specification packaging requirements of this Part.

(49 U.S.C. 1803, 1804, 1805; 49 CFR 1.53, App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under the terms of Executive Order 12281 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11094), nor require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). Based on information available concerning size and nature of entities likely to be affected by this amendment, I certify that this amendment will not have a significant economic impact on a substantial number of small entities because the overall economic impact of this amendment will be minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

Issued in Washington, D.C. on April 14, 1983.

L. D. Santman,
Director, Materials Transportation Bureau.
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