



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

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

MAY 08 2014

Mr. Gregory Sutherland Ph.D.  
Shane Havoc Consulting, LLC  
1905 English Ivy Ct.  
Mount Pleasant, SC 29464

Ref. No.: 14-0051

Dear Mr. Sutherland:

This is in response to your March 17, 2014 email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to empty packagings. Specifically you ask if a packaging that contains only the residue of a limited quantity of a Class 8 PG III material is subject to the HMR.

Currently, the exceptions in § 173.29(b) only specifically address the residue of an ORM-D that does not meet the definitions in §171.8 for a hazardous substance, a hazardous waste, or a marine pollutant. However, PHMSA published a final rule in the Federal Register on January 19, 2011 (76 FR 3308) that amended the HMR to phase out the ORM-D class. Consequently we amended various sections throughout the HMR to replace references to ORM-D with references to limited quantities (e.g. exceptions from incident reporting and materials of trade exceptions). However, due to an editorial error we did not amend the provisions for empty packagings in § 173.29 to reflect the eventual phase out of ORM-D. We plan to address this issue in a future rulemaking action.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Shane C. Kelley  
Acting International Standards Coordinator  
Standards and Rulemaking Division

**Drakeford, Carolyn (PHMSA)**

Leary  
\$173.29  
\$172.101

**From:** Leary, Kevin (PHMSA)  
**Sent:** Tuesday, March 18, 2014 8:24 AM  
**To:** Drakeford, Carolyn (PHMSA)  
**Subject:** FW: 49 CFR Corrections - ORM / Limited Quantity  
**Attachments:** 568ml limited quantity Class 8 PGIII.docx

Empty  
14-0051

Carolyn,

Please log this in for a request for a letter. Note the attached is flagged as confidential.

Thanks,

Kevin

-----Original Message-----

**From:** Gregory Sutherland [mailto:grsuthe@attglobal.net]  
**Sent:** Monday, March 17, 2014 3:47 PM  
**To:** Leary, Kevin (PHMSA)  
**Subject:** RE: 49 CFR Corrections - ORM / Limited Quantity

I have a package that consists of a 568ml multi layer barrier plastic bag inside a plastic case that is shipped in a box as a limited quantity Class 8 PGIII. (Picture attached)

When the package is empty, it is desired to dispose of it as an empty package as only 5 ml is left in the bag. If this were an ORM it could be disposed of as regular garbage. As a Limited Quantity, even though it is EPA Empty, it cannot. Since the ORM regulatory changes did not address the empty container issue I would like a statement to the effect that packages containing residue of limited quantity is not subject to the empty packaging provisions, in the interim period it takes to amend the regulations.

Thank you for your consideration in this matter.

Gregory Sutherland Ph.D. (DGSA)  
Shane Havoc Consulting, LLC  
1905 English Ivy Ct.  
Mount Pleasant, SC 29464  
(843) 849-1463  
Cell: (260) 414-4335  
FAX: (561) 423-3907

-----Original Message-----

**From:** Kevin.Leary@dot.gov [mailto:Kevin.Leary@dot.gov]  
**Sent:** Friday, March 07, 2014 9:24 AM  
**To:** grsuthe@attglobal.net  
**Subject:** RE: 49 CFR Corrections - ORM / Limited Quantity

No, but if you require a statement to the effect that packages containing residue of limited quantity is not subject to the empty packaging provisions, I suggest that you pose a question or scenario in writing and we can provide a written response, that should suffice for the interim period.

-----Original Message-----

From: Gregory Sutherland [mailto:grsuthe@attglobal.net]  
Sent: Friday, March 07, 2014 9:21 AM  
To: Leary, Kevin (PHMSA)  
Subject: RE: 49 CFR Corrections - ORM / Limited Quantity

Thanks

Any idea when that may happen as I have an LTD QTY application that could benefit from this.

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-----Original Message-----

From: Kevin.Leary@dot.gov [mailto:Kevin.Leary@dot.gov]  
Sent: Friday, March 07, 2014 9:14 AM  
To: grsuthe@attglobal.net  
Subject: RE: 49 CFR Corrections - ORM / Limited Quantity

The issues were noted. They will likely be considered in a rulemaking designed to correct editorial errors.

-----Original Message-----

From: Gregory Sutherland [mailto:grsuthe@attglobal.net]  
Sent: Tuesday, March 04, 2014 7:03 PM  
To: Leary, Kevin (PHMSA)  
Subject: RE: 49 CFR Corrections - ORM / Limited Quantity

Can you advise where this is?

Thanks

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-----Original Message-----

From: Kevin.Leary@dot.gov [mailto:Kevin.Leary@dot.gov]  
Sent: Monday, November 04, 2013 2:37 PM  
To: grsuthe@attglobal.net  
Subject: RE: 49 CFR Corrections

It does not look like those two issues have been corrected. I will investigate to see if there is a rule in process addressing them or if they can be inserted into a rulemaking action.

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From: Gregory Sutherland [grsuthe@attglobal.net]  
Sent: Saturday, November 02, 2013 10:43 AM  
To: Leary, Kevin (PHMSA)  
Subject: RE: 49 CFR Corrections

Can you advise if this has been addressed?

Thanks

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From: Kevin.Leary@dot.gov [mailto:Kevin.Leary@dot.gov]  
Sent: Monday, March 04, 2013 10:00 PM  
To: grsuthe@attglobal.net  
Subject: Re: 49 CFR Corrections

Thanks doctor Greg. I will put these items onto the radar screen.

Kevin

From: Gregory Sutherland [mailto:grsuthe@attglobal.net]  
Sent: Monday, March 04, 2013 09:24 PM  
To: Leary, Kevin (PHMSA)  
Subject: 49 CFR Corrections

As we discussed today:

- 1) ORM-D issue

49 CFR §173.29 Empty Packagings.

(a) General. Except as otherwise provided in this section, an empty packaging containing only the residue of a hazardous material shall be offered for transportation and transported in the same manner as when it previously contained a greater quantity of that hazardous material.

(b) Notwithstanding the requirements of paragraph (a) of this section, an empty packaging is not subject to any other requirements of this subchapter if it conforms to the following provisions:

(b)(1) Any hazardous material shipping name and identification number markings, any hazard warning labels or placards, and any other markings indicating that the material is hazardous (e.g., RQ, INHALATION HAZARD) are removed, obliterated, or securely covered in transportation. This provision does not apply to transportation in a transport vehicle or a freight container if the packaging is not visible in transportation and the packaging is loaded by the shipper and unloaded by the shipper or consignee;

(b)(2) The packaging--

(b)(2)(i) Is unused;

(b)(2)(ii) Is sufficiently cleaned of residue and purged of vapors to remove any potential hazard;

(b)(2)(iii) Is refilled with a material which is not hazardous to such an extent that any residue remaining in the packaging no longer poses a hazard; or

(b)(2)(iv) Contains only the residue of--

(b)(2)(iv)(A) An ORM-D material; or

This should be changed to Limited QTY.

ITEM 2) for UN3363

SP (136) This entry only applies to machinery and apparatus containing hazardous materials as in integral element of the machinery or apparatus. It may not be used to describe machinery or apparatus for which a proper shipping name exists in the §172.101 Table. Except when approved by the Associate Administrator, machinery or apparatus may only contain hazardous materials for which exceptions are referenced in Column (8) of the §172.101 Table and are provided in part 173, subpart D, of this subchapter. Hazardous materials shipped under this entry are excepted from the labeling requirements of this subchapter unless offered for transportation or transported by aircraft and are not subject to the placarding requirements of part 172, subpart F, of this subchapter. The machinery or apparatus, if unpackaged, or the packaging in which it is contained shall be marked "Dangerous goods in machinery" or "Dangerous goods in apparatus", as appropriate, with the identification number UN3363. For transportation by aircraft, machinery or apparatus may not contain any material forbidden for transportation by passenger or cargo aircraft. The Associate Administrator may except from the requirements of this subchapter, equipment, machinery and apparatus provided:

a. It is shown that it does not pose a significant risk in transportation;

b. The quantities of hazardous materials do not exceed those specified in §173.4a of this subchapter; and

c. The equipment, machinery or apparatus conforms with §173.222 of this subchapter.

173.4a is the Excepted Quantity reference to align with the IMDG code it should reference

IMDG Code UN3363

SP301

This entry only applies to machinery or apparatus containing dangerous substances as a residue or an integral element of the machinery or apparatus. It shall not be used for machinery or apparatus for which a Proper Shipping Name already exists in the Dangerous Goods List. Machinery and apparatus transported under this entry shall only contain dangerous goods which are authorized to be transported in accordance with the provisions in chapter

3.4<<https://outlooksfc.dot.gov/owa/UrlBlockedError.aspx>> (Limited quantities). The quantity of dangerous goods in machinery or apparatus shall not exceed the quantity specified in column 7a of the Dangerous Goods List for each item of dangerous goods contained. If the machinery or apparatus contains more than one item of dangerous goods, the individual substances shall not be capable of reacting dangerously with one another (see

4.1.1.6<<https://outlooksfc.dot.gov/owa/UrlBlockedError.aspx>>). When it is required to ensure liquid dangerous goods remain in their intended orientation, package orientation labels meeting the specifications of ISO

780:1985 shall be affixed on at least two opposite vertical sides with the arrows pointing in the correct direction. The transport of dangerous goods in machinery or apparatus where the quantity of dangerous goods exceeds the quantity specified in column 7a of the Dangerous Goods List is authorized when approved by the competent authority, except where special provision 363 applies.

Column 7a is the Limited Quantity

Hope this helps you.

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**In a Sustainable Package Format**

