



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

JAN 16 2009

Ms.Carolynn Buenger
OSI
1212 N. Velasco
Angleton, Texas 77515

Ref. No.: 08-0303

Dear Ms. Buenger:

This responds to your December 9, 2008 request for clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as they apply to the transportation of materials that are poisonous by inhalation (PIH materials). Specifically, you suggest that there is an error in § 172.400a(d), which exempts PIH materials from labeling or placarding requirements under certain conditions.

As currently drafted, § 172.400a(d) exempts PIH materials transported in a closed transport vehicle or freight container from labeling or placarding requirements under the conditions set forth in § 171.23(b)(11). You are correct that this section reference is incorrect. The correct reference is § 171.23(b)(10)(iv), which establishes criteria for the use in the United States of labels and placards authorized under the International Maritime Dangerous Goods Code and Canada's Transport of Dangerous Goods regulations. We will correct this reference in a future rulemaking.

I hope this answers your inquiry.

Sincerely,

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards

Drakeford, Carolyn <PHMSA>

*Doornie
§ 172.400a(d)
Exceptions for Labeling*

08-0303

From: INFOCNTR <PHMSA>
Sent: Wednesday, December 10, 2008 10:35 AM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Feedback: Emergency Response Information (Sections 172.1 – 172.807)

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

From: PHMSA-Feedback [mailto:PHMSA-Feedback]
Sent: Tuesday, December 09, 2008 2:25 PM
To: PHMSA HM InfoCenter; PHMSA Webmaster
Subject: Feedback: Emergency Response Information (Sections 172.1 – 172.807)

I WROTE THE FOLLOWING TO THE NARA:
I am a technical writer and in preparing a course on labeling I found what may be an error in 49 CFR 172.400a.

Your page for Subpart E of Title 49 (Home Page>Executive Branch>Code of Federal Regulations>Electronic Code of Federal Regulations) says that it is current as of November 21, 2008. I had difficulty understanding 49 CFR 172.400a(d) and attempted to trace through the references to other parts and sections. On your webpage, it reads:

"A package containing a material poisonous by inhalation (see 171.8 of this subchapter) in a closed transport vehicle or freight container may be excepted from the POISON INHALATION HAZARD or POISON GAS label or placard, under the conditions set forth in 171.23(b)(11) of this subchapter."

173.23(b)(11) discusses Class 7 (radioactive) materials. I think this is an error since a version of 172.400a revised as of October 1, 2004 replaces this reference with 171.12 and 171.12a, both of which contain relevant information about labeling of materials poisonous by inhalation.

Please confirm, if you can. I do not want to misguide people with my writings!

Thank you,
Carolynn Buenger

THEY REPLIED:
Paragraph (d) was revised at 72 FR 21576, May 3, 2007, and is the version you quote now below. (You mention 171.12a, which was removed and reserved at 72 FR 25172 on the same day). It's not uncommon for agencies to miss bad cross-references when amending their regulations and we cannot make changes to text without published documentation from the agency. The people at the Research and Special Programs Administration, DOT, should be able to give you further clarification.
Ken Payne

Can you help me understand how to interpret 172.400a(d)?
Thanks

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