



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

SEP 15 2016

Mónica Fernández
Edmundo B. Fernández, Inc.
P.O. Box 368
Bayamón, PR 00960-0368

Reference No. 16-0094

Dear Ms. Fernández:

This letter is in response to your May 30, 2016, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to alcoholic beverages. Your questions are paraphrased and answered as follows:

- Q1. You ask whether alcoholic beverages utilizing the exception in § 173.150(d) are considered a hazardous material for vessel transportation and, therefore, require the associated hazardous materials fee.
- A1. The HMR apply to the shipment and transportation of hazardous materials in commerce. Alcoholic beverages are Class 3 flammable liquids and are subject to the HMR when shipped and transported in commerce. However, § 173.150(d) states that alcoholic beverages are excepted from the requirements in Subchapter C of the 49 CFR provided the conditions of the exception are met.
- Hazmat handling fees are neither mandated nor regulated by the HMR. The Pipeline and Hazardous Materials Safety Administration (PHMSA) does not have jurisdiction over shipping charges imposed by carriers and cannot provide any relief from such fees.
- Q2. You ask whether 86 proof rum containing 43% alcohol packaged in 750 ml bottles, with 12 bottles to a case, may utilize the exception in § 173.150(d)(1) for vessel transportation if all three conditions of paragraph (d)(1) are not met.
- A2. For transportation by motor vehicle, rail, or vessel, § 173.150(d)(1) excepts an alcoholic beverage (as defined in 27 CFR 4.10 and 5.11) from all requirements of this subchapter if it meets any one of the following conditions: (1) contains 24% or less alcohol by volume; (2) is in an inner packaging of 5 L (1.3 gallons) or less; or (3) is a Packing Group III alcoholic beverage in a packaging of 250 L (66 gallons) or less.

- Q3. You ask whether alcoholic beverages meeting the exception in § 173.150(d)(1) require additional hazardous materials communication.
- A3. The answer is no. When transporting or offering for transportation a material that is not subject to the requirements of the subchapter, a shipper or carrier is not obligated to comply with the HMR beyond specific applicable provisions. For example, when you meet one of the three exceptions listed in § 173.150(d)(1), none of the other provisions of the HMR apply for transportation by rail, highway, or vessel.
- Q4. You ask when the exception in § 173.150(d) was created.
- A4. The HMR have included exceptions for alcoholic beverages in containers not exceeding one gallon since the 1970s. The exception for alcoholic beverages moved to § 173.150(d) before October 1, 1991. However, these provisions have undergone several revisions to better harmonize with the international regulations. On December 29, 1994, a final rule entitled, "Implementation of the United Nations Recommendations, IMDG Code, and ICAO Technical Instructions," published in the *Federal Register* under Docket No. HM-215A amended the exception to include alcoholic beverages in packages not exceeding 5 liters [59 FR 36488]. On March 11, 2013, a final rule entitled, "Hazardous Materials: Miscellaneous Amendments (RRR)," published in the *Federal Register* under Docket No. PHMSA-2011-0138 (HM-218G) separated the requirements for aircraft from the requirements for highway, rail, and vessel to better harmonize with the International Civil Aviation Organization Technical Instructions (ICAO TI)[78 FR 15303].

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Goodall, Shante CTR (PHMSA)

Xehman
173,150
Exceptions For Class 3
16-0094

From: Rivera, Jordan CTR (PHMSA)
Sent: Wednesday, June 01, 2016 1:57 PM
To: Hazmat Interps
Subject: FW: Alcoholic Beverage (Rum) Maritime transportation

Hi Shante/Alice,

Please submit this for a letter of interpretation. Mr./Ms. Fernandez spoke with Isaac in the Info Center.

Please let me know if you have any questions.

Thanks,
Jordan

From: Manuel Fernandez [mailto:ebfinc@outlook.com]
Sent: Tuesday, May 31, 2016 4:39 PM
To: INFOCNTR (PHMSA)
Subject: Re: Alcoholic Beverage (Rum) Maritime transportation

Our mailing address is

Edmundo B. Fernández, Inc.
P.O. Box 368
Bayamón, P.R. 00960-0368

Tel 787-785-3490

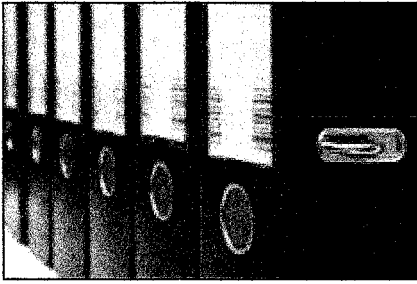
Thanks,
Mónica Fernández,
Edmundo B. Fernández, Inc.

From: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Sent: Tuesday, May 31, 2016 10:58 AM
To: Manuel Fernandez
Subject: RE: Alcoholic Beverage (Rum) Maritime transportation

Dear Monica,

We have received your request for a written letter of interpretation regarding the hazardous materials regulations (49 CFR Parts 171-180). The hazardous materials regulations are available at the following URL:

<http://phmsa.dot.gov/regulations>



PHMSA - Regulations

phmsa.dot.gov

PHMSA is responsible for regulating and ensuring the safe and secure movement of hazardous materials to industry and consumers by all modes of transportation ...

In order for your request to be submitted you must respond to this email with a mailing address and phone number where you can be reached.

Typically, written letters of interpretation are responded to at minimum of approximately 8 weeks from when they are received by the Office of Hazardous Materials Standards. However, delivery time of a written interpretation can vary markedly based on topic complexity and the backlog of letters to be completed.

Sincerely,

Jordan, Hazardous Materials Specialist

An e-mail response from this office is considered informal guidance. Formal guidance may be requested in accordance with 49 CFR 105.20. <http://phmsa.dot.gov/hazmat/regs/interps>

From: Manuel Fernandez [<mailto:ebfinc@outlook.com>]
Sent: Monday, May 30, 2016 11:18 AM
To: PHMSA HM InfoCenter
Subject: Fw: Alcoholic Beverage (Rum) Maritime transportation

We would like to have a formal interpretation in writing regarding the laws of transporting alcoholic beverage via maritime transportation. Is it considered hazardous material or not therefore requiring extra cost for transporting hazardous materials.

We have always declared it as hazardous but have several clients in the US and Europe claiming it should not be considered hazardous to avoid extra costs. We have contacted several freight forwarders, read the CFR and there is no clear answer. Even with your hazardous specialist by phone one said it was hazardous and as I kept asking questions the person changed the position therefore it was not very reassuring what is the correct version.

Our rum is 43% alc./vol., (86 proof) and is packaged in 12/750ML glass bottles in a carton case when shipped to the U.S. and 12/700ML case to Spain/Europe. The UN3065 applies to alcoholic beverages as hazardous materials. We were told that the 49 CFR 173.150 exception would apply to our case because the inner packaging (each bottle) is less than 5 Liters. First of all I would like to clarify that this exception applies when you meet only one of the three options. If this exception does apply, does it require other paperwork, labeling, etc. ?? When was the 49 CFR 173.150 exception created?

Please let us know how to correctly ship the rum to comply with the US and International laws.

Regards,

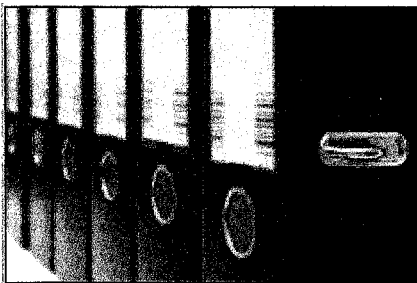
Mónica Fernández
Edmundo B. Fernández, Inc.

From: Rivera, Jordan CTR (PHMSA) <jordan.rivera.ctr@dot.gov>
Sent: Thursday, May 12, 2016 3:47 PM
To: Manuel Fernandez
Subject: RE: Alcoholic Beverage (Rum) Maritime transportation

Dear Monica,

We have received your inquiry about the hazardous materials regulations (49 CFR Parts 171-180). The hazardous materials regulations are available at the following URL:

<http://phmsa.dot.gov/regulations>



PHMSA - Regulations

phmsa.dot.gov

PHMSA is responsible for regulating and ensuring the safe and secure movement of hazardous materials to industry and consumers by all modes of transportation ...

A hazardous materials regulatory specialist would be happy to speak with you regarding your inquiry. You may contact the Hazardous Materials Information Center, which is staffed with regulatory specialists who can quickly answer your questions by phone, Monday through Friday, 9 AM - 5 PM EST at (800) 467-4922 or (202) 366-4488. Alternatively, if you would like a regulatory specialist to contact you directly, please respond to this e-mail with a telephone number where you can be reached between 9 AM and 5 PM EST.

Sincerely,

Jordan, Hazardous Materials Specialist

An e-mail response from this office is considered informal guidance. Formal guidance may be requested in accordance with 49 CFR 105.20. <http://phmsa.dot.gov/hazmat/regs/interps>

From: Manuel Fernandez [<mailto:ebfinc@outlook.com>]
Sent: Thursday, May 12, 2016 11:14 AM
To: PHMSA HM InfoCenter
Subject: Alcoholic Beverage (Rum) Maritime transportation

We are rum producer in Puerto Rico. We have always classified our rum as hazardous materials when shipping via vessel. Currently we have a client is Spain that do not want to pay the extra cost of shipping the merchandise as hazardous and they claim that rum should not be classified as hazardous.

Can you provide us what are the correct guidelines when shipping rum to Spain and the U.S. via vessel. Our rum is 43% alc./vol (86 proof) and is packaged in 12/750ML case to the US and 12/700ML case to Spain.

Thanks,

Mónica Fernández
Edmundo B. Fernández, Inc.