



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

MAY 16 2012

Mr. Wade Winters
Regulatory Resources, Inc.
167 Keen Road
Richland, WA 99352

Reference No.: 12-0004

Dear Mr. Winters:

This responds to your January 2, 2012 letter regarding the requirements for limited quantities of compressed gases under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you seek clarification on the requirements and applicable exceptions for aerosols transported for disposal. Your statements and questions are paraphrased and addressed below.

The exceptions for limited quantities of compressed gases (including in aerosol containers) are specified in § 173.306 of the HMR. You note in your incoming letter that Department of Transportation (DOT) Special Permit (SP) 12842 was incorporated into the HMR in a final rule under Docket Number PHMSA-2009-0289 (HM-233A), entitled "Incorporation of Special Permits Into Regulations," and published in the Federal Register on May 14, 2010 [75 FR 27205]. Under DOT-SP 12842, PHMSA authorized the transport of limited quantities of certain Division 2.1 (flammable) and Division 2.2 (non-flammable) gases in aerosol containers packaged in strong outer packagings with gross weights of up to 500 kg (1,100 pounds). The Pipeline and Hazardous Materials Safety Administration (PHMSA) allowed the increase in gross weight for the purpose of packaging discarded empty, partially used, and full aerosol containers to be transported to a recycling or disposal facility. In HM-233A, PHMSA added a new paragraph (k) to § 173.306 incorporating specific provisions from DOT-SP 12842 into the exceptions for limited quantities of compressed gases.

Q1: It is your understanding that aerosols shipped for disposal or recycling in compliance with § 173.306(k) are permitted the same exceptions (i.e. the marking and labeling requirements of Part 172 Subparts D and E respectively, and shipping paper requirements, unless it is a hazardous waste or hazardous substance, of 172 Subpart C) granted under §§ 173.306(i) and 173.156(b) without being reclassified as an ORM-D material. You state that under SP 12842, aerosols shipped for disposal or recycling were excepted from the marking and labeling and shipping paper requirements, unless a hazardous waste or hazardous substance without being reclassified as an ORM-D material. You seek confirmation from PHMSA that your understanding is correct.

A1: Your understanding is correct, provided the aerosols shipped for recycling or disposal meet all the requirements of § 173.306(k) and contain a limited quantity that conforms to the provisions of paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of § 173.306. SP 12842 permitted aerosols not meeting the weight limitations for an ORM-D shipment to be transported as an ORM-D without requiring the package to be marked as an ORM-D, under specific conditions including, but not limited to, limiting the strong outer packaging and its contents to a gross weight of not more than 500 kg (1,100 pounds) and requiring each aerosol container to be secured with a cap to protect the valve stem or to have the valve stem removed. Under this special permit, these shipments would be eligible for the same exceptions provided for ORM-D materials.

The intention of HM-233A was to incorporate SP 12842 into the HMR as the special permit was designed to be used. Therefore, aerosols shipped for recycling or disposal containing a limited quantity which conforms to the provisions of paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of § 173.306 are not subject to the 30 kg (66 pounds) gross weight limitation when transported by motor vehicle under the specific conditions provided in § 173.306(k) and are afforded the applicable exceptions provided for ORM-D materials (including the marking and labeling requirements of Part 172 Subparts D and E respectively, and shipping paper requirements, unless it is a hazardous waste or hazardous substance, of 172 Subpart C for ground transport) granted under §§ 173.306(i) and 173.156(b).

It should also be noted that while the words “ORM-D” or “Consumer Commodity” need not be marked on packages in compliance with § 173.306(k), the language “INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS” is required for shipments of aerosols shipped for disposal or recycling in compliance with paragraphs (a)(3), (a)(5), or (b)(1) of § 173.306.

We intend to clarify this exception in a future rulemaking.

Q2: It is your understanding that the limited quantity marking specified in § 172.315 is not required on aerosols shipped in accordance with § 173.306(k). You seek confirmation from PHMSA that your understanding is correct.

A2: Your understanding is not correct. Packages containing aerosols meeting the limited quantity requirements of § 173.306(k) and subsequently the provisions of paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of § 173.306 must be marked in accordance with § 172.315(a) or (b), as appropriate. However, until December 31, 2012, a limited quantity package meeting the requirements of § 173.306(i) and containing a “Consumer Commodity” may be renamed “Consumer Commodity” and reclassified as ORM-D or ORM-D-AIR material and offered for transportation and transported in accordance with the marking requirements specified in § 172.316 in effect on October 1, 2010.

Q3: You seek clarification on the application of § 173.24a(c) to aerosols shipped under § 173.306(k) and the appropriate shipping description for these mixed content packages. You note that normal waste operations collect aerosols into a single container without regard to the flammable or non-flammable nature of the aerosol. When both Division 2.1 and 2.2 aerosols are reclassified to ORM-D the shipper is authorized to rename them as "Consumer Commodity." It is your understanding that this allowance, in essence, removes the mixed aerosols from being subject to § 173.24a(c) and simplifies the shipping description. You seek confirmation from PHMSA that your understanding is correct.

A3: Your understanding is not entirely correct. Provided the aerosols meet all the requirements of § 173.306(k), contain a limited quantity that conforms to the provisions of paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of § 173.306, and meet the Consumer Commodity requirements specified in § 173.306(i), the aerosols may be reclassified as a "Consumer Commodity." In this scenario, for ground transport, a shipping paper is not required. However, until December 31, 2013, the package may be marked on at least one side or end with the ORM-D designation immediately following or below the proper shipping name of the material, in this case "Consumer Commodity" as specified in § 172.316 or with just the limited quantity marking currently specified in § 172.315. After December 31, 2013, the proper shipping name will not be required on the outside of the package.

If a mixed shipment of Division 2.1 and 2.2 aerosols shipped for disposal or recycling under § 173.306(k) does not meet the Consumer Commodity requirements in § 173.306(i), the shipping description on the outside of the packaging may bear either the proper shipping names for both the Division 2.1 and 2.2 materials with the marking requirements specified in § 172.315 in effect on October 1, 2010, or the limited quantity marking and the proper shipping names if transported by air, as currently specified in § 172.315. Please note that for surface transport, only the limited quantity marking and not the proper shipping name is required as currently specified in § 172.315. After December 31, 2013, the requirements specified in § 172.315 in effect on October 1, 2010 will no longer be authorized.

Finally, you ask PHMSA to permit the marking of a single description based on the Division 2.1 hazard on a package containing both Division 2.1 and 2.2 aerosols. You note a similar hazard communication is permitted for placarding in § 173.504(f)(3) when both Division 2.1 and 2.2 gases are present. You also note that all aerosols share a single Identification Number, UN1950, and except for Aerosols, flammable, n.o.s. (Division 2.1), all aerosols share the same proper shipping name. You do not believe permitting a single description based on the Division 2.1 hazard on a package containing both Division 2.1 and 2.2 aerosols will adversely affect safety in transportation since mixed waste aerosols reclassified as ORM-D have been safely transported as Consumer Commodities for many years.

We appreciate your bringing this issue to our attention. PHMSA cannot make regulatory changes through a request for interpretation of the HMR. However, if you believe a rulemaking change is warranted, we invite you to file a petition for rulemaking in accordance with § 106.95 including all information (see § 106.100) needed to support your petition.

I hope this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "T. Glenn Foster". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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

Benedict
§173.306(k)
§173.156
§172.101
Applicability
12-0004

January 2, 2012

Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
Mr. Charles E. Betts
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Dear Mr. Betts,

On May 14, 2010, Special Permit (SP) 12842 was adopted into regulations at §173.306(k).¹ This SP allowed the transport in commerce of certain Division 2.1 and Division 2.2 materials in aerosol cans under §173.306(h) (now paragraph (i)) and §173.156(b) even though the aerosol can did not meet the definition of an ORM-D material. The referenced regulations allowed these aerosol cans to be excepted from all marking and labeling requirements of Part 172 Subparts D and E respectively, and shipping paper requirements (unless a hazardous waste or hazardous substance) of 172 Subpart C. Furthermore, the outer packaging marking "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS" was excepted as well as the 30 kg gross weight package limitation. Two stipulations were mandated, however, by the SP: (1) a strong outer packaging was required (normally excepted under §173.156(b)); and (2) each aerosol can had to be packaged with a protective cap secured or the valve stem removed.

The adoption of this SP into the Hazardous Materials Regulations (HMR) was due to the safety record over the years and the limiting conditions under which the SP could be used. As stated in the final rule:

"Based on the safe record of transportation of these aerosol containers under this special permit; and based on the condition that some limited quantity materials reclassified as ORM-D material, as authorized under §173.306, are not subject to the 30 kg (66 pound) gross weight limitation when unitized in packages and offered for transportation in accordance with §173.156 of the HMR, in the December 2009 NPRM, PHMSA proposed, in §173.306(k), to authorize the highway transport of aerosol containers conforming to §173.306 in strong outer packaging not to exceed 500 kg (1,100 pounds) when transported for the purpose of recycling or disposal."

The new text of §173.306(k) fails to accurately identify the exemptions granted by SP 12842. As written, the shipper is not excepted from any marking, labeling, shipping paper, or placarding requirements of Part 172. In addition, the shipper must mark the outer package, "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS" as specified when meeting §173.306(a)(3).

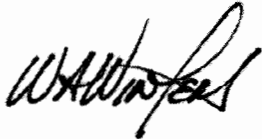
Regulatory Resources, Inc. is seeking confirmation that, although not clearly indicated in the new §173.306(k) text, aerosol cans shipped for disposal or recycling in compliance with §173.306(k) are allowed the exceptions granted under §173.306(i) and §173.156(b) as was prescribed under SP 12842. Furthermore, given the historical exceptions granted for these aerosol cans and the exceptions granted under SP 12842, RRI is seeking confirmation that the limited quantity marking of §172.315 is not required for aerosols cans shipped in accordance with §173.306(k).

¹ 75 FR 27205 (HM-233A)

RRI is also seeking PHMSA's opinion on the application of §173.24a(c) to aerosol cans shipped under §173.306(k) and the shipping description for these mixed content packages. Unless treated onsite to some degree, normal waste operations collect aerosols into a single container without regard to their flammable or non-flammable nature. When both Division 2.1 and 2.2 aerosols are reclassified to ORM-D the shipper is authorized to rename them as "Consumer Commodity". This allowance, in essence, removes the mixed aerosol cans from being subject to §173.24a(c) and simplifies the shipping description. This reclassing and renaming is not specified under the new §173.306(k). RRI would like PHMSA to allow the description of a package mix of Division 2.1 and 2.2 aerosol cans be described using a single description based on the Division 2.1 hazard. A similar hazard communication is allowed for placarding in §173.504(f)(3) when both Division 2.1 and 2.2 gases are present. We seek this concurrence because all aerosols share a single Identification Number, UN1950, and except for *Aerosols, flammable, nos* (Division 2.1), all other aerosol cans share the same proper shipping name. Naturally, if an aerosol(s) with a subhazard is present the subhazard would have to be identified as required in §172.202(a)(3). RRI does not believe allowing this will aggravate or lessen emergency response nor adversely affect safety in transportation since mixed waste aerosol cans reclassified to ORM-D have been safely transported as *Consumer Commodities* for many years.

Thank you in advanced for your timely reply.

For Regulatory Resources, Inc.,



W. A. Winters, CET, CHMM
President

WAW/lom