

# Transportation/Hazardous Materials June 19th U.S. Pipeline and Hazardous Materials Safety Administration Letter Addressing Alcoholic Beverages



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The United States Pipeline and Hazardous Materials Safety Administration (“PHMSA”) addressed in a June 19th letter certain Hazardous Materials Regulation (“HMR”) issues applicable to exceptions for transporting alcoholic beverages.

PHMSA was responding to a query from Mr. Timothy Wiseman, Scopelitis, Garvin, Light, Hanson & Feary, P.C.

The November 17, 2016, letter from Mr. Wiseman posed several questions about alcoholic beverages that comply with § 173.150(d) and whether they must also comply with § 173.150(g) to be excepted from the HMR.

The November 17, 2016, letter from Mr. Wiseman provided certain information as part of its query which included:

- The PHMSA added § 173.150(g) to the HMR in 2014 to incorporate special permits that were originally issued to provide relief from the requirements in § 173.150(d).
- Both § 173.150(d) and (g) appear to provide exceptions for transporting alcoholic beverages under different conditions, making it unclear if an alcoholic beverage that complies with § 173.150(d) must also comply with § 173.150(g).
- In a letter of interpretation issued under Reference No. 16-0094 (Sept. 15, 2016), PHMSA stated § 173.150(d)(1) does not require additional hazardous materials communication when a package meets one of the exceptions in that paragraph.

The questions posed by Mr. Wiseman include:

1. Confirmation of an understanding that the three conditions set forth in § 173.150(d)(1) are disjunctive, such that the satisfaction of only one of the conditions entitles a person to a complete exception from the HMR. An example cited is “a shipment of alcoholic beverages that exceed 24 percent alcohol by volume but are contained in an inner packaging of 5 L (1.3 gallons) or less would be eligible for the exception.”

PHMSA answers in the affirmative stating that when alcoholic beverages, as defined in 27 CFR 4.10 (wine) and 27 CFR 5.11 (distilled spirits), are transported by motor vehicle, vessel or rail, these materials are not subject to the requirements of the HMR if they meet any one of the criteria prescribed in §

173.150(d)(1)(i), (d)(1)(ii), or (d)(1)(iii). The agency further notes that the wine or distilled spirits must either:

- (1.) contain 24 percent or less ABV;
- (2.) be contained in an inner packaging of 5 L or less; or
- (3.) be a Packing Group III alcoholic beverage contained in a packaging of 250L or less.

2. PHMSA is asked whether a shipment of alcoholic beverages that satisfies any of the conditions set forth in § 173.150(d)(1) is completely excepted from the HMR, or if it must also meet the quantity limitations set forth in § 173.150(g) in order to be excepted.

The agency responds that a package of alcoholic beverages that is wine or distilled spirits as defined in 27 CFR 4.10 and 5.11, respectively, that complies with 49 CFR 173.150(d)(1) is excepted from the HMR and is not required to comply with § 173.150(g).

3. The agency is asked how § 173.150(d) and (g) are supposed to be reconciled concerning alcoholic beverages.

PHMSA responds that:

. . . The exceptions for alcoholic beverages in § 173.150(d) and those for limited quantities of retail products that contains ethyl alcohol in § 173.150(g) are stand-alone provisions meant to be applied separately from one another. The provisions for § 173.150(d) are discussed earlier in Answer A1. Section § 173.150(g) applies to limited quantities that are defined by § 171.8 as the maximum amount of a hazardous material for which there is a specific labeling or packaging exception.

4. The agency is asked whether the term “alcoholic beverage” in § 173.150(d) encompasses only wine and distilled spirits, as defined in 27 CFR 4.10 and 5.11, or if it also includes malt beverages such as beer. An example cited is a shipment of beer containing only 4 percent ABV qualifying for the exception found in § 173.150(d)(1)(i). It is further asked whether, if not, could that same shipment of beer qualify for the exception found in § 173.150(g), assuming the quantity limitations are met?

PHMSA responds that an “alcoholic beverage” as it is used in § 173.150(d)(1) and (d)(2) introductory paragraphs only encompass wine as defined in 27 CFR 4.10 and distilled spirits as defined in 27 CFR 5.11. The agency notes that it restricts this exception to wine and distilled spirits and certain packaging and modal criteria because the Department of Treasury’s Alcohol and Tobacco Tax and Trade Bureau controls for these products make it unnecessary from a transportation safety standpoint to subject them to the HMR. It is further noted that the Hazardous Materials Table lists “alcoholic beverages” as United Nations identification number “UN3065.” UN3065 is defined by the UN Recommendations on the Transport of Dangerous Goods Dangerous Goods List as alcoholic beverages with more than 70 percent ABV to be in Packing Group PG II and alcoholic beverages with more than 24 percent ABV but not more than 70 percent ABV to be PG III. Under this definition, and to respond to the example posed, PHMSA states beer with a 4 percent ABV is not a hazardous material and, therefore, not subject to the HMR.

[A copy of the letter can be downloaded here.](#)