



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

JUN 19 2017

Mr. Timothy W. Wiseman
Managing Partner
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1400
Indianapolis, IN 46204

Reference No. 16-0193

Dear Mr. Wiseman:

This letter is in response to your November 17, 2016, e-mail requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to exceptions for transporting alcoholic beverages. Specifically, you ask 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.

You provided the following information:

- The Pipeline and Hazardous Materials Safety Administration (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.

We have paraphrased and answered your questions as follows:

- Q1. You ask for confirmation of your 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. For example, a shipment of alcoholic beverages that exceed 24 percent alcohol by volume (ABV) but are contained in an inner packaging of 5 L (1.3 gallons) or less would be eligible for the exception.
- A1. Your understanding is correct. 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 wine or distilled spirits must either: (1) contain 24 percent or less ABV; (2) be contained in an inner packaging of 5 L (1.3 gallons) or less; or (3) be a Packing Group III alcoholic beverage contained in a packaging of 250 L (66 gallons) or less.

- Q2. You ask if 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.
- A2. 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).
- Q3. You ask how § 173.150(d) and (g) are supposed to be reconciled concerning alcoholic beverages.
- A3. The exceptions for alcoholic beverages in § 173.150(d) and those for limited quantities of retail products that contain 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.
- Q4. You ask if 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. For example, would a shipment of beer containing only 4 percent ABV qualify for the exception found in § 173.150(d)(1)(i)? If not, could that same shipment of beer qualify for the exception found in § 173.150(g), assuming the quantity limitations are met?
- A4. “Alcoholic beverage” as it is used in § 173.150(d)(1) and (d)(2) introductory paragraphs only encompasses wine as defined in 27 CFR 4.10 and distilled spirits as defined in 27 CFR 5.11. PHMSA 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 (see Docket No. HM-102 (40 FR 22263; May 22, 1975)). Additionally, the Hazardous Materials Table (HMT; § 172.101 Table) lists “Alcoholic beverages” as United Nations (UN) 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 in PG III. Under this definition, and to respond to your example, beer with a 4 percent ABV is not a hazardous material and, therefore, not subject to the HMR.

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

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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