



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

APR 02 2012

Mr. W. Eugene Sanders III
Manager
W.E. Train Consulting
8710 W. Hillsborough Avenue # 112
Tampa, FL 33615

Reference No.: 11-0189R

Dear Mr. Sanders:

This is a revised response to your August 15, 2011 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) as they pertain to UN 1044, Fire Extinguishers. Specifically, you asked if highway or rail shipments of fire extinguishers conforming to the requirements of § 173.309(a) meet the definition of limited quantity in § 171.8. Further you asked whether such shipments are permitted to be marked with the limited quantity marking in accordance with § 172.315(a) and are eligible for the exception to the shipping paper requirement provided in § 172.200(b)(3).

In order to qualify under the limited quantity provision, a fire extinguisher must meet the requirements contained in § 173.309(a). If the container is packaged and offered for transportation in accordance with § 173.309(a) the limited quantity provision applies. For domestic transportation, as defined by § 171.8, by highway or rail, such limited quantity shipments of fire extinguishers are permitted to be marked with the limited quantity marking in accordance with § 172.315(a).

However, such shipments of fire extinguishers are not excepted from the shipping paper requirement. The shipping paper requirements specified in § 173.309(a) take precedence over the shipping paper exception for limited quantity packages in § 172.200(b)(3). My previous response indicated that these shipments are excepted from the shipping paper requirement, which is not correct.

I apologize for any confusion my earlier response may have caused, and hope this matter is now resolved. Please contact us if we can be of further assistance.

Sincerely,

Delmer Billings
Senior Regulatory Advisor
Standards and Rulemaking Division

Drakeford, Carolyn (PHMSA)

Babich
3173.309
Fire Extinguishers
11-0189R

From: Supko, Ben (PHMSA)
Sent: Thursday, February 16, 2012 8:26 AM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Formal interpretation request for 173.309

Carolyn,

Please log this in as 11-0189R and assign to Vincent.

Thank you,
Ben

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

From: Winter, Lisa (PHMSA)
Sent: Thursday, February 16, 2012 6:39 AM
To: Chuck Kimball
Cc: Supko, Ben (PHMSA)
Subject: RE: Formal interpretation request for 173.309

Dear Mr. Kimball:

While we do plan to reconsider the shipping paper requirements, the letter that you received is accurate. Shipping papers are currently required for limited quantity shipments of compressed gas in fire extinguishers; the interpretation stating otherwise (Ref. No. 11-0189) is inaccurate. We will rescind the incorrect letter (Ref. No. 11-0189).

I apologize for any inconvenience this has caused you.

Sincerely,

Lisa (Winter) O'Donnell
Transportation Regulations Specialist
Pipeline and Hazardous Materials Safety Administration United States Department of
Transportation
202.366.6415
<http://www.phmsa.dot.gov/hazmat>

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

From: Chuck Kimball [mailto:CKimball@BHCISS.com]
Sent: Wednesday, February 08, 2012 10:40 AM
To: Winter, Lisa (PHMSA)
Subject: RE: Formal interpretation request for 173.309

Good morning Ms. O'Donnell,

I hope that 2012 is going well for you!

I wanted to follow-up on the November 21, 2011 letter of interpretation that I received regarding the transportation of fire extinguishers that we have discussed on several occasions. In the letter (interpretation 11-0196), the issue of fire extinguishers being eligible for the limited quantity exception was confirmed and also, in accordance with 173.309(a), shipping papers are required for all modes.

Shortly after, we discovered another letter of interpretation (11-0189, also dated November 21, 2011) which confirmed that fire extinguishers are eligible for the limited quantity exception but differed in stating that shipping papers are not required for transportation by highway and rail under 172.200(b)(3) if the packages were marked in accordance with 172.315(a).

The letter of interpretation that I received specifically addressed this question of precedence as follows:

"A2. Yes. The shipping paper requirements specified in § 173.309(a) take precedence over the shipping paper exception for limited quantity packages in § 172.200(b)(3)."

(We believe that the marking of packages in accordance with 172.315(a) is assumed in either case.)

As the result of the interpretation that was addressed to me we are compelled to attach shipping papers to packages containing fire extinguishers. Other shippers, we are finding out, are not attaching shipping papers based on, we assume, the other letter of interpretation. This results in confusion, additional work for our employees, competition not following the same rules, and the potential violations of the HMR.

We were told through a third party that additional rulemaking would be issued by the end of 2011. Final Rule 76 FR 82163 (dated December 30, 2011) does address issues related to the limited quantity marking of packages in accordance with 172.315(a), but does not address any issues with fire extinguishers or 173.309.

Can you advise us which interpretation we should follow regarding shipping papers?

Also, are there any changes currently in the rulemaking process related to this topic or to fire extinguishers?

One final thought (and I am sorry for the lengthy email). We received notice on a seminar that will be presented February 25th at the Florida State Fire College in Ocala, Florida. Mr. Stuart Streck, DOT HMSAT Transportation Specialist, will be speaking on the topic of "DOT requirements for fire equipment professionals". I don't know if this issue will come up there, but my concern is that the message may differ from what we received in the letter of interpretation. The attendees at this seminar will include many of our Florida customers. I only seek a uniform interpretation of the regulations in this matter. Any insight that you have will be appreciated.

As always, I appreciate you help with my questions.

Regards,
Chuck Kimball

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

From: lisa.winter@dot.gov [mailto:lisa.winter@dot.gov]
Sent: Friday, September 02, 2011 10:40 AM
To: Chuck Kimball
Subject: RE: Formal interpretation request for 173.309

Dear Mr. Kimball:

I am well. I hope you are too.

With respect to the turn-around on a request for written interpretation, it really depends on a variety of factors. Unfortunately, with your request, it is somewhat complicated and will

require many levels of review. We try to reply as quickly as possible, usually within 6 weeks of the request, but sometimes because of the number of people who must review letter, it takes longer.

This might not be the answer that you are looking for, but I hope it helps.

Lisa

Lisa (Winter) O'Donnell
Transportation Regulations Specialist
Pipeline and Hazardous Materials Safety Administration United States Department of
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202.366.6415 <http://www.phmsa.dot.gov/hazmat>

From: Chuck Kimball [mailto:CKimball@BHCISS.com]
Sent: Thu 9/1/2011 4:16 PM
To: Winter, Lisa (PHMSA)
Subject: RE: Formal interpretation request for 173.309

Hi Ms. O'Donnell,

I hope you are doing well!

I know that getting an interpretation may take some time, but was just curious if it could be determined how long it might take. I did not know if it is a "first-in, first-out" process or if they are all looked at monthly, or some other procedure. Is there any way to track the progress?

Also, I noticed that my terminology was probably incorrect, but it appears that you knew what I meant. You said in your email below that you made a request for a "letter of interpretation". If I now understand it correctly, a letter of interpretation is a less formal response than a formal interpretation (which seems to be a lengthier process). A letter of interpretation is what I should have asked for. Thank you for making that correction.

Again, thank you for all your help with this issue.

Regards,

Chuck Kimball

From: lisa.winter@dot.gov [mailto:lisa.winter@dot.gov]
Sent: Wednesday, August 17, 2011 12:35 PM
To: Chuck Kimball
Subject: RE: Formal interpretation request for 173.309

Dear Mr. Kimball:

I have forwarded your request for a letter of interpretation to the person responsible for assigning them. We clearly need some clarification on this issue.

Sincerely,

Lisa (Winter) O'Donnell

Transportation Regulations Specialist

Pipeline and Hazardous Materials Safety Administration

United States Department of Transportation

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<http://www.phmsa.dot.gov/hazmat> <<http://www.phmsa.dot.gov/hazmat>>

From: Chuck Kimball [mailto:CKimball@BHCISS.com]
Sent: Wednesday, August 17, 2011 10:48 AM
To: Winter, Lisa (PHMSA)
Subject: Formal interpretation request for 173.309

Good morning Ms. O'Donnell,

Referencing our conversations regarding whether fire extinguishers meeting the requirements of 173.309(a) could be shipped as "limited quantity" and marked per section 172.315(a), and, shipped without shipping papers per 172.200(b)(3), your response was that fire extinguishers were not eligible for treatment as "limited quantity". Since our last conversation, it was brought to our attention that there is an existing interpretation, 02-0149, which contains these two questions and answers:

Q. Can a hazardous material classified in accordance with § 172.101 Hazardous Material Table as "Fire extinguisher, 2.2, UN1044" be considered a limited quantity under the HMR and therefore excepted from the emergency response telephone number requirement under § 172.604?

A. The requirements for shipping fire extinguishers are found in § 173.309(a). In order to qualify under the limited quantity provision, a fire extinguisher must fully meet the limited quantity requirements contained in § 173.309(a) through 173.309(a)(3)(iv). If the container is packaged and offered for transportation in accordance with § 173.309 (a) through 173.309(a)(3)(iv) the limited quantity provision applies, and the package is excepted from the emergency response telephone number requirement in § 172.604.

Q. If a fire extinguisher is packaged and offered for transportation under the limited quantity provision in § 173.309 (a) must the description on the shipping paper include the words "Limited Quantity" or "Ltd Qty" as specified in § 172.203(b)?

A. Yes. Section 172.203(b) requires offerors of hazardous materials as limited quantities, including fire extinguishers, to include the words "Limited Quantity" or "Ltd Qty" following the basic description on the shipping paper.

The first question addresses limited quantity in relation to the emergency response telephone number requirement and not the question of shipping papers. The second question is based upon the assumption that shipping papers are required, and addresses the inclusion of the words "Limited Quantity" or "Ltd Qty" on those shipping papers.

As we initially discussed, section 173.309 does not except fire extinguishers from the shipping paper requirements found in 174.24 and 177.817 (for rail and highway, respectively). So regardless of whether fire extinguishers are eligible for treatment as limited quantity, it seems that shipping papers are required. Since there appears to be some differing interpretations on this topic, please consider this email as a request for a formal interpretation with the questions below.

Q1. Are fire extinguishers which meet the requirements of 173.309(a) eligible to be shipped as "limited quantity"?

Q2. Does the specific reference in 173.309(a) to the shipping paper requirements 174.24 and 177.817 take precedence over 172.200(b)(3) for shipments of fire extinguishers by highway or rail and therefore mean that shipping papers are required regardless of whether fire extinguishers are eligible to be shipped as "limited quantity"?

Thank you for your continuing help with this matter. We look forward to your earliest response.

Regards,

Chuck Kimball

Director of Engineering

Integrated Support Services

704-916-3445

Dear Mr. Kimball:

In discussing this issue further with my coworkers, we believe that the provisions in Section 173.309 do not indicate that fire extinguishers are a limited quantity packaging. Rather, it says "Fire extinguishers charged with a limited quantity of compressed gas." The limited quantity exception for compressed gasses is in Section 173.306. Section 173.306 is not an authorized packaging exception for fire extinguishers in the Hazardous Materials Table, column 8a. For this reason, shipping papers are required with shipments of fire extinguishers.

I hope this helps.

Sincerely,

Lisa (Winter) O'Donnell

Transportation Regulations Specialist

Pipeline and Hazardous Materials Safety Administration

United States Department of Transportation

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<http://www.phmsa.dot.gov/hazmat> <<http://www.phmsa.dot.gov/hazmat>>

From: Chuck Kimball [mailto:CKimball@BHCISS.com]
Sent: Friday, June 17, 2011 10:56 AM
To: Winter, Lisa (PHMSA)
Subject: Guidance

Dear Ms. Winter,

We spoke previously about the new limited quantity marking (172.315) and the applicability to shipments of fire extinguishers under 173.309. Specifically, whether shipping papers were

required. At that time you indicated that there would be some issues addressed and that I should monitor HM-215K for any corrections and changes. However, I have a follow-up question that I would like to ask you on this matter. Could you call me at 704-916-3445 or provide a direct phone number where I could reach you?

Thank you,

Chuck Kimball

Director of Engineering

Integrated Support Services

704-916-3445