



U.S. Department  
of Transportation

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

**Pipeline and Hazardous  
Materials Safety Administration**

JUL 9 2007

Mr. Frits Wybenga  
Technical Director  
Dangerous Goods Advisory Council  
1100 H Street, N.W., Suite 740  
Washington, DC 20005

Ref. No.: 07-0130

Dear Mr. Wybenga:

This is in response to our June 19, 2007 conversation regarding the regulatory requirements appearing in § 173.306 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

As explained in the language following § 173.306 in the Government Printing Office's electronic version of the CFR, an oversight occurred in the paragraph designations. In the January 23, 2006 final rule, the consumer commodity and the less than 50 ml aerosol provisions in paragraphs (h) and (i) respectively were redesignated as paragraphs (i) and (j) and the lighter refill provisions were added in new paragraph (h). In the December 29, 2006 final rule, the less than 50 ml aerosol provisions were revised, but made to paragraph (i) instead of paragraph (j), and a new paragraph (k) was added referencing the requirements in § 173.307. Both final rules had a January 1, 2007 effective date. We will issue a final rule to correct the wording in § 173.306 as soon as possible.

Paragraphs (i), (j) and (k) should read as follows:

(i) A limited quantity which conforms to the provisions of paragraph (a)(1), (a)(3), or (b) of this section and is a "consumer commodity" as defined in § 171.8 of this subchapter, may be renamed "consumer commodity" and reclassified as ORM-D material. Each package may not exceed 30 kg (66 pounds) gross weight. In addition to the exceptions provided by paragraphs (a) and (b) of this section—

(1) Outside packagings are not required to be marked "INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS";

(2) Shipments of ORM-D materials are not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, a hazardous waste, or a marine pollutant or unless offered for transportation or transported by aircraft; and

(3) Shipments of ORM-D materials are eligible for the exceptions provided in § 173.156.



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173.306(h)  
173.307

(j) Aerosols and receptacles small, containing gas with a capacity of less than 50 ml. Aerosols, as defined in § 171.8 of this subchapter, and receptacles small, containing gas, with a capacity not exceeding 50 ml (1.7 oz.) and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter. The pressure limit may be increased to 2000 kPa (290 psig) at 55 °C (131 °F) provided the aerosols are transported in outer packages that conform to the packaging requirements of Subpart B of this part. This paragraph (i) does not apply to a self-defense spray (e.g., pepper spray).

(k) For additional exceptions, also see § 173.307.

Also, note the outside packaging is the outer of a combination packaging, not an “overpack.” Paragraph (i) provides an exception from the “INSIDE CONTAINERS COMPLY WITH PRESCRIBED REGULATIONS” marking.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Mitchell', written in a cursive style.

Hattie L. Mitchell  
Chief, Regulatory Review and Reinvention  
Office of Hazardous Materials, Standards

Mitchell  
§ 173.306(h)  
Cylinders  
07-0130

**Drakeford, Carolyn <PHMSA>**

**From:** Mitchell, Hattie <PHMSA>  
**Sent:** Thursday, June 28, 2007 5:26 PM  
**To:** Drakeford, Carolyn <PHMSA>  
**Subject:** FW: 173.306(h)

**From:** Frits Wybenga [mailto:fwybenga@dgac.org]  
**Sent:** Tuesday, June 19, 2007 4:31 PM  
**To:** Mitchell, Hattie <PHMSA>  
**Subject:** 173.306(h)

Hi Hattie – I don't know if anybody has noted this to you but there may be a problem (possibly created by those publishing the HMR). The old 173.306(h) allowed compressed gas according to (a)(1) etc to go as ORM-D. I have now looked at three different versions of the HMR and all three are different. The electronic version accessed from the website does not have the provision even though (a)(3) references provisions for ORM-D in 173.306(i). The Oct 2006 Labelmaster version shows two different 173.306(h) paras – the old one and the old beginning followed by "lighter" specific text. A GSI version shows it renumbered as 173.306(i). Who is right? GSI appears to be but ...

Hope all is well - Frits

Frits Wybenga  
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Technical Director  
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6/28/2007