



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

MAY 25 2005

400 Seventh Street, S.W.
Washington, D.C. 20590

Mr. Nicholas H. Cobbs
Law Offices of Nicholas H. Cobbs
1730 M. Street, NW, Suite 503
Washington, DC 20036-4516

Reference No.: 05-0117

Dear Mr. Cobbs:

This responds to your letter concerning the classification of vanilla extract under the Hazardous Materials Regulations (HMR; 49 CFR Parts 100-180). Your letter states that the vanilla extract contains 35% ethyl alcohol and is packaged in 4 ounce glass bottles. You ask if your client can take advantage of the exception for "Alcoholic beverages" in § 173.150(d)(3).

The answer is no. The HMR require you to select the most appropriate shipping description for your hazardous material. Vanilla extract is most appropriately described as "flavoring extract" rather than "alcoholic beverage." The Hazardous Materials Table (HMT) lists two entries for "Extracts, flavoring, liquid"; one entry for a PG II material, the other for a PG III material. Both entries reference the exceptions in § 173.150 in column 8a of the HMT. A material that meets the limited quantities provisions in § 173.150(b) and is a consumer commodity as defined in § 171.8, may be renamed "Consumer Commodity" and reclassified as ORM-D. In addition to the exceptions in § 173.150(b), ORM-D materials are not subject to shipping paper requirements unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft. In addition, ORM-D materials are eligible for the exceptions provided in § 173.156.

I trust this satisfies your inquiry.

Sincerely,

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



050117

173.150(d)

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ADMITTED IN DC, MD, VA & NY

May 3, 2005

By Facsimile and Mail: 202-366-3012

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
USDOT /PHMSA (DHM-10)
400 7th Street SW
Washington DC 20590-0001

Re: Request for Interpretation
49 C.F.R. § 173.150 (d), Alcoholic Beverages

Dear Mr. Mazzullo:

I represent The Pampered Chef, Ltd., a company based in Addison, Illinois that sells cookware and food products to consumers. One of the new products that the company plans to offer is vanilla extract for baking. The extract contains 35% ethyl alcohol. The product is packaged in 4 ounce glass bottles which may be combined with other bottles for larger orders but will never be shipped in bulk quantities. Under the hazardous materials table, products containing less than 70% ethyl alcohol are classified as Class 3 flammable liquids, Packing Group III. But they are eligible for the exceptions set forth in 49 C.F.R. § 173.150.

My client asked for an opinion as to whether the vanilla qualifies for an exception as an "alcoholic beverage" under 49 C.F.R. § 173.150 (d). If so, ground shipments of the product would not be subject to hazmat regulation. § 173.150 (d) (3). Although I am confident that the vanilla extract qualifies as an alcoholic beverage under this section, the definition of an alcoholic beverage is somewhat vague. To avoid any uncertainty, I would appreciate your confirmation of this status.

The definition of an alcoholic beverage under § 173.150 (d) adopts the definition used by the Bureau of Alcohol, Tobacco and Firearms in 27 C.F.R. § 5.11. This section defines alcoholic beverage to include distilled spirits which, in turn, are defined as "Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use."

The presence of 35% ethyl alcohol alone would seem to define the vanilla extract as an alcoholic beverage under this definition. Moreover, ethyl alcohol is the product of distillation.

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In addition, the extract is intended for human consumption like the other distilled spirits enumerated in 27 C.F.R. § 5.11. Consequently, it should qualify as an alcoholic beverage under 27 C.F.R. § 5.11 and 49 C.F.R. § 173.150 (d).

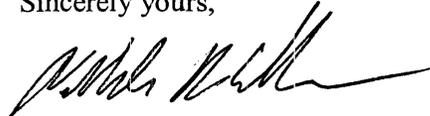
The alcoholic beverage exception is not only appropriate as a chemical category; it is also consistent with the minimal risks that would ensue from transport of the vanilla extract under the relaxed requirements of the exception. The vanilla contains less alcohol than most brands of liquor. It is packaged in small bottles and is shipped in small quantities. In the unlikely event that one or more of the bottles should break and spill, the possibility of fire is extremely remote. The product is less of a safety risk than the alcoholic beverages like rum and brandy that are explicitly eligible for the exception.

For these reasons, I believe the vanilla extract properly falls within the alcoholic beverages exception of 49 C.F.R. § 173.150 (d). Please confirm this status in writing so my client can make plans to ship the product.

We would appreciate as quick a response as possible because my client has already made commitments that are time sensitive. Please let me know you should need any further information or if there is anything we can do to help with your response.

Thank you.

Sincerely yours,



Nicholas H. Cobbs

NHC: nm

Cc: Cathy Landman, Esq., The Pampered Chef