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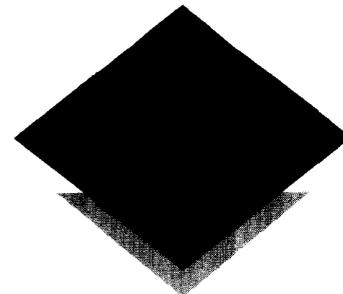
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March 6, 1995



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Mr. Alan I. Roberts
Associate Administrator for
Hazardous Materials Safety
Research & Special Programs Administration
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590-0001

Re: **Petition for Rulemaking to Create Exception
for Ethyl Alcohol Solutions**

Dear Mr. Roberts:

Pursuant to 49 CFR § 106.31, COSTHA, The Conference on Safe Transportation of Hazardous Materials, Inc., respectfully petitions the Research and Special Programs Administration (RSPA) to initiate rulemaking to establish an exception from 49 CFR Parts 171-180, for ethyl alcohol solutions currently subject to DOT-E 9275.

Under DOT-E 9275, beverages, food, cosmetics, medicines, and concentrates used therein, containing small quantities of ethyl alcohol solutions, are exempt from 49 CFR parts 100 to 199 in all modes of transportation, except as specified in the exemption.

COSTHA's request for an exception for certain ethyl alcohol solutions is based on the degree of care used in transporting these materials due to their high commercial value, the excellent shipping experience of parties to DOT-E 9275 over a period of many years, and the long standing ADR/RID exception for limited quantities of ethyl alcohol solutions.

Commercial value of ethyl alcohol solutions. In a recent final rule issued in Docket No. HM-215A, DOT significantly expanded regulatory relief for alcoholic beverages, i.e., potable ethyl alcohol, shipped in the U.S. Under HM-215A, the prior 4-liter exception was increased to 5 liters for alcoholic beverages in Packing Group II, and a total exception is now provided for Packing Group III alcoholic beverages in packagings up to 250 liters (unless transported by air). The expanded relief provided under HM-215A is consistent with changes incorporated in the eighth revised edition of the UN Recommendations on the Transport of Dangerous Goods.

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The new broad exceptions for alcoholic beverages are based on the commercial value of those materials. The high commercial value of distilled spirits ensures that they are packaged and handled with care, obviating the need for additional regulatory safeguards. Likewise, the consumer items covered by DOT-E 9275, i.e., non-potable ethyl alcohol in cosmetics, fragrances, and their concentrates, are valuable commodities. For the same reasons, both in terms of the packaging used and the care taken in distribution, these ethyl alcohol solutions are comparable to alcoholic beverages. This was the basis upon which the exemption initially was issued and now, after years of excellent experience in transportation, these materials should be afforded greater relief in the regulations of general applicability.

In keeping with the relief provided for potable ethyl alcohol in HM-215A, COSTHA requests that RSPA adopt a 5-liter exception for non-potable ethyl alcohol solutions covered by DOT-E 9275. The 5-liter exception would apply to ethyl alcohol solutions in Packing Groups II and III when shipped by highway, rail, vessel or cargo aircraft. For shipments by passenger aircraft, COSTHA requests that RSPA adopt an exception for ethyl alcohol solutions in inner packagings of 500 ml or less.

We are aware that an Austrian proposal to extend the current UN exemptions for alcoholic beverages to all ethyl alcohol solutions was rejected by the UN Sub-Committee of Experts during the last Biennium. However, the Austrian paper sought relief for ethyl alcohol solutions in packagings up to 250 liters. In contrast, COSTHA seeks relief for high value ethyl alcohol solutions in packagings of only 5 liters or less (500 ml or less for shipments by passenger air).

Shipping experience under DOT-E 9275. The care taken with respect to the ethyl alcohol solutions covered by DOT-E 9275 in view of their high commercial value is responsible for the excellent shipping experience of all parties to the exemption. During the ten years since the original issuance of DOT-E 9275, parties to the exemption have made millions of shipments of ethyl alcohol solutions. In fact, a review of RSPA's files on DOT-E 9275 indicates that parties have shipped roughly 200 million packages containing ethyl alcohol solutions since 1985. Not one application in RSPA's files discloses any transportation incident or leakage in connection with use of the exemption. Clearly, DOT-E 9275 has been widely used for 10 years without any negative impact on transportation safety.

Parties to DOT-E 9275 are obligated to renew their "party to" status every two years. The current renewal process imposes substantial paperwork burdens on both RSPA and the more than 50 companies that are parties to the exemption. In view of the excellent shipping experience of all parties to DOT-E 9275, COSTHA believes that these

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administrative burdens are no longer justified by any rational concern for transportation safety.

ADR/RID relief for ethyl alcohol solutions. Burdens associated with continual renewal of DOT-E 9275 are exacerbated by the fact that European shippers of non-potable ethyl alcohol solutions enjoy expansive regulatory relief under the ADR/RID regulations. Under ADR/RID Marginal 2301a non-potable ethyl alcohol solutions are virtually exempt from the ADR/RID counterpart to RSPA's 49 CFR Parts 172, 173, and 177. Solutions not exceeding 70 percent ethyl alcohol by volume, i.e., Packing Group III materials, are exempt if shipped in inner packages of 5 liters or less and outer packages of 45 liters or less. For solutions exceeding 70 percent ethyl alcohol by volume, i.e., Packing Group II materials, inner packages may not exceed 3 liters and outer packages are limited to 12 liters.

In addition, Marginal 2301a contains a further qualification that significantly increases the potential quantities excepted. This provision states:

In the case of homogeneous mixtures containing water, the quantities specified relate only to the substances of this class contained in those mixtures.

Under this provision, large quantities of dilute ethyl alcohol solutions may be exempt from regulation because shippers need only count the ethyl alcohol component in applying the quantities limits outlined in Marginal 2301a.

Relief provided under the ADR/RID rules places U.S. companies shipping products containing non-potable ethyl alcohol solutions to Europe at a competitive disadvantage. Unless parties to the exemption, U.S. shippers face the added expense of shipping these materials in accordance with DOT's limited quantity rules for the domestic portion of the trip. In contrast, European competitors ship the same solutions by highway and rail in Europe with minimal restrictions under the ADR/RID rules. COSTHA's request for an exception for ethyl alcohol solutions is consistent with the relief provided in the ADR/RID rules.

The original applicants for an ethyl alcohol exemption in the U.S. pointed to Marginal 2301a, the ADR/RID counterpart to what was then RSPA's limited quantity regulation, in support of their application. Since that time, the relief provided in Marginal 2301a has been expanded to include larger inner receptacles for ethyl alcohol solutions in Packing Group III. The expansion of Marginal 2301a strongly supports

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COSTHA's conclusion that an exception for ethyl alcohol solutions is consistent with public health and safety.

Proposed regulation. Based on the foregoing, COSTHA specifically requests that RSPA undertake rulemaking to adopt the following proposed revision to § 173.150:

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| 49 CFR § 173.150 | Exceptions for Class 3 (flammable and <u>combustible liquids</u>). |
|------------------|--|

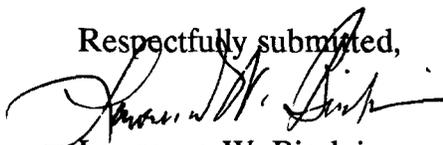
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- (g) Ethyl alcohol solutions. Food, cosmetics, and medicines containing ethyl alcohol are not subject to the requirements of this subchapter when shipped by highway, rail, vessel, or cargo aircraft in inner packagings of 5 liters or less (500 ml or less for shipments by passenger aircraft), *provided* that the remaining contents, if tested without the alcohol, are not subject to the requirement of this subchapter.

Conclusion. COSTHA believes that the proposed exception is in keeping with RSPA's regulatory mandate to limit its rules to materials that in quantity and form may pose unreasonable risks to health, safety, or property (49 U.S.C. § 5103). The commercial value of ethyl alcohol solutions, the excellent shipping experience of parties to DOT-E 9275, and the long standing ADR/RID exception for limited quantities of ethyl alcohol solutions prove that these materials do not pose a public safety hazard warranting continued regulation by RSPA.

If you have any questions concerning this petition, or if you need additional information, please do not hesitate to contact me.

Respectfully submitted,



Lawrence W. Bierlein
COSTHA General Counsel