



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

JUN 3 2003

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

Mr. John S. Srokose
President
South Florida Plastics, Inc.
13245 N. W. 47th Avenue
Opa Locka, FL 33054

Reference No.: 03-0103

Dear Mr. Srokose:

This responds to your letter regarding applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to customers who purchase and transport in their vehicle diluted liquid chlorine, a Class 8, PG III material. The diluted liquid chlorine is in 2-1/2 gallon plastic containers.

You ask if these "will call" customers are subject to the HMR under the following scenarios:

SCENARIO 1: A consumer purchases a container of diluted liquid chlorine for personal use and transports the container in his personal vehicle to his home.

SCENARIO 2: A private business purchases a container of diluted liquid chlorine and transports the material in a company vehicle.

As specified in § 171.1, the HMR govern the transportation of hazardous materials in intrastate, interstate and foreign commerce. The term "in commerce" means in furtherance of a commercial enterprise. Accordingly, the hazardous materials that are sold to customers for personal, non-commercial use and transported by such persons in their personal vehicles are not subject to the HMR. Therefore, the customer in the first scenario is not subject to the HMR. Under the second scenario, the hazardous materials are "in commerce" and the customer is subject to the HMR. However, the customer may take advantage of the Materials of Trade exception if the applicable provisions in § 173.6 are met. By definition, a material of trade is a hazardous materials carried on a motor vehicle by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. Section 173.6(d) limits the aggregate gross weight of all materials of trade to not more than 440 pounds.

I trust this satisfies your inquiry.

Sincerely,

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



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**SOUTH
FLORIDA
PLASTICS, INC.**

13245 N.W. 47th Avenue, Opa-Locka, Florida 33054 (305) 687-9200 FAX (305) 687-1555

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\$ 173.6
MOT
03-0103

Mr. Edward T Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/RSPA (DHM-10)
400 7th Street
Washington, D.C. 20590-0001

April 1, 2003

Dear Sir:

We are a plastic container manufacturer and would like clarification on the use of a container by one of our customers. The container size is 2 ½ gallons. We sell the container empty to our customer and they in turn sell it empty to their retail stores. The container is filled at the store with diluted liquid chlorine, which is classified as Class 8, Packing Group III. The filled container is sold to the consumer and transported in their vehicle for home use. They also sell this filled container to individuals for private business, such as swimming pool service and roofing.

Question 1: In the case of the consumer, where the use is non-commerce, do any regulations under CFR49 apply governing the testing or transportation of this container?

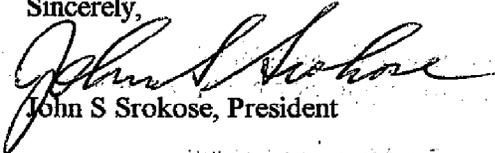
Question 2: In the case of the private business, would the 173.6 Materials of Trade (MOTs) apply, if the aggregate gross weight of 440 lbs is not exceeded?

If you have any questions, I may be contacted at 305-687-9200. Thank you for your advice on this matter.

Please forward your response to:

South Florida Plastics, Inc
John S Srokose
13245 NW 47th Avenue
Opa-Locka, Fl. 33054

Sincerely,


John S Srokose, President