



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JUL / 2006

Mr. Stephen Cansler
SJC Compliance Education, Inc.
16516 El Camino Real
Suite 417
Houston, TX 77062

Ref. No. 05-0075

Dear Mr. Cansler:

This responds to your letter concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to a company that sells and distributes hazardous materials to customers who may subsequently reship the materials. Specifically, you ask about the company's responsibility for compliance with the HMR under a variety of different scenarios. I apologize for the delay in responding and any inconvenience it may have caused. Your questions are paraphrased and answered below.

Q1. A company sells hazardous materials to customers who pick up the materials from the company's facility. The material sold is usually ORM-D material, but it is not packaged, marked, or labeled for transportation. The company does not release orders to commercial carriers. What is the company's responsibility for compliance with the HMR?

A1. The HMR apply to the offering for transportation or transportation of hazardous materials in commerce. Transportation of hazardous materials by an individual for a non-commercial purpose in a private motor vehicle is not subject to the HMR (see § 171.1(d)(6)). A company selling hazardous materials to a private individual is not subject to the HMR. However, if a company sells hazardous materials to a commercial customer (that is, someone who is transporting the hazardous materials for a commercial purpose), then the seller must comply with all applicable provisions of the HMR. Note that many hazardous materials sold to commercial customers may qualify for the exceptions from specification packaging, hazard communication, and



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171.1(d)(6)
173.22

other HMR requirements applicable to materials of trade (see § 173.6).

Q2. A company sells hazardous materials to a customer, who then may reship the material by air. Examples include an airline that may reship the hazardous materials as company-owned materials, a U.S. government agency, an APO address, or a distributor. Is the company or the customer who reships the material responsible for compliance with HMR requirements for transportation of hazardous materials by aircraft?

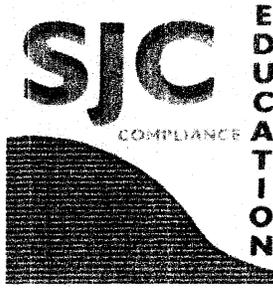
A2. See A1 above. A company selling hazardous materials to a commercial customer must comply with all applicable provisions of the HMR. However, if the commercial customer then reships the hazardous material, the commercial customer must ensure that the shipment conforms to all applicable HMR requirements.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Hattie L. Mitchell". The signature is written in dark ink and is positioned below the word "Sincerely,".

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



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STEVENS
§ 173.22
Shipper's Responsibility
05-0075

FAX TRANSMISSION

DATE: March 28, 2005
TO: Shane Kelly
FROM: Stephen Cansler
PAGES: 3
RE: Shippers Responsibilities

My client is an industrial distributor, selling primarily through a catalog offering over 400,000 items. They do not manufacture any of their products. Hazardous items include: solvents, cleaners, adhesives, paints, acid filled batteries, fire extinguishers and lubricants. The material packaging can range from aerosols to cans, buckets or bottles generally less than or equal to 5 gallons. A 100% of their hazardous materials shipments are ground and are made via small package carriers. The following questions are my clients concerns in regards to their compliance with 173.21 Shipper's Responsibility.

1) Will-Call shipments for pick-up by the customer.

They currently allow customers to pick up hazardous material from their Will-Call Department. Although the material is most often ORM-D, it is not packaged, marked or labeled for transportation. However, they will not release orders to any commercial couriers, and require all Will-Call customers to sign a waiver indicating that they are not a courier and will not place the material "in commerce". Their concern continues to center around the liability if the person picking up the material subsequently hands the material to an air carrier.

The following is wording of the waiver:

This order contains items which may be classified as hazardous material by the Department of Transportation, but which are not packed for any mode of transportation.

The undersigned hereby acknowledges that they are not a courier / carrier and accepts responsibility for properly packing, marking and labeling this material.

Signed: _____

2) Hazard shipments to a customer whose name or location suggests the material may ship via air:

They are concerned a customer like United Airlines, who they know have significant ground maintenance facilities, may also be buying the material to ship by air elsewhere in their system. A previous opinion on this question indicated that their regulatory responsibility ends where and when the freight bill is signed. However, they wonder if these would pass the “did know”, or “could we have known” test which would still make them responsible. . Is this a correct assumption?

They ship HAZMAT to Puerto Rico via a domestic freight carrier that has ensured us that the material will ship on an ocean vessel. They believe that this alone eliminates their liability in the event the carrier chooses on their own to place the material on aircraft. Is this also a correct assumption?

3) Hazard shipments to customers who might re-ship via air:

The State of Alaska is a customer that has sent a letter asking that hazards material be shipped to them. Their letter stated that they would accept liability for forwarding material within the state.

They also ship material to cruise lines, for example supply depots. In these cases they currently hesitate to ship hazardous material due to the “know or could have known” or “constructive knowledge” tests that the material could ship air from the land side ship-to address to the final point where the material will actually be used.

A third variation involves shipments to distributors that they know might re-ship to one of their customers. In some cases, their customer purchase order might indicate that the material will ship beyond the distributor, while in other cases their knowledge of the distributor leads them to believe that they turn the material around and re-ship.

In all these cases, my clients question if their responsibility ends when the customer takes possession of the material by signing the freight bill?

4) Domestic Government Facilities:

All hazard materials are presently prevented from being shipped to domestic customers that my client deems to be U.S. Government Facilities. They are concerned that a shipment of hazard material to an air force base might be subsequently shipped via an aircraft. But they have had at least one instance of an irate call from a U.S. Army General indicating that once The U.S. Department of Defense takes possession of the material, my client is no longer responsible. Is this statement true?

They likewise prevent shipments of hazard material to APO/FPO since they often do not know the final destination of the material. The APO/FPO might be located in

Washington, DC, or New York City, and they may sometimes have an indication that the material is heading to an overseas air force base, etc. They have asked some of these APOs for something in writing limiting their liability but to no avail. Does their liability end when the APOs take possession of the material?

5) Hazard shipments to forwarders with a domestic address.

My Client is currently not shipping any hazards material to any export customer, they understand the regulatory liability when making shipments to export customers through a forwarder. Their concern centers on the responsibility when shipping hazards material to customers that could subsequently ship by air. At one time my client used to secure a release letter on every order from the customer that they were aware that the shipment was hazardous and confirming that the shipment would not travel via air. Their question is would the use of this letter eliminate any citation which may occur if the customer subsequently ship by air?

6) HAZMAT returns from customers:

My client's concern is centered on their liability in the event that they instruct the customer to return the material, but the customer fails to meet Hazardous Material Regulations for the shipment of the hazardous material. They have been operating on the premise that the customer would be responsible for their failure to ship the material properly. Would this a correct assumption?

7) Batteries:

Currently my client does not ship any batteries via air that they cannot ensure that the supplier packaging adequately protects the batteries from short-circuiting. Their question is if there is a subsequently ship by air and the packaging fails to protect the batteries from short-circuiting, would they or the supplier be responsible?

8) Gas Springs:

There is an exemption in the Hazardous Materials Regulations which would allow gas springs to be shipped as non-hazardous, as per 173.306(f)(4), if specific requirements were met by the manufacturer. My client has received letters from their suppliers indicating that those requirements have been met with their units. Their concerned would they be liable if the gas spring subsequently fails in an aircraft?