



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

Mr. Jim Powell
President
Transportation Development Group
415 Dairy Road, PMB E234
Kahului, HI 96732

Reference No.: 04-0213

Dear Mr. Powell:

This responds to your letter concerning differences in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) and the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. Your client ships trace amounts of arsenic embedded deep within and bonded to the machinery under the proper shipping name "Dangerous Goods in Apparatus" by air under the ICAO Technical Instructions. You ask if your client must obtain approval from the Associate Administrator for transporting "Dangerous Goods in Apparatus" when the hazardous material contained therein is arsenic and it is transported by motor vehicle.

The answer is yes. Under § 171.11, materials packaged in accordance with ICAO are accepted for transport in and through the United States, with certain exceptions. Special Provision 136, assigned to the entry "Dangerous Goods in Apparatus" in column 7 of the Hazardous Materials Table (HMT), disallows use of this shipping name when column 8A of the HMT does not authorize an exception for the hazardous material contained in the apparatus. Approval may be obtained from the Associate Administrator to transport arsenic contained in an apparatus by motor vehicle under the proper shipping name "Dangerous Goods in Apparatus." The application procedures for an approval are found in § 107.705 of the HMR. You may also contact our Office of Hazardous Materials Exemptions and Approvals at (202) 366-4512 or visit our website at <http://hazmat.dot.gov/reqappro.htm>.

I trust this satisfies your inquiry.

Sincerely,

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



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171.11



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Corbin
§ 171.11
ICAO
04-0213

Friday, September 10, 2004

Mr. Edward T. Mazzullo
RSPA Office of Hazardous Materials Standards
400 7th Street S.W. DHM10
Washington, DC 20590-0001

Dear Mr. Mazzullo:

I am requesting an interpretation of 49 CFR Special Provision 136 and indirectly of 49 CFR 171.11.

My client has a product that when shipped internationally by air under the ICAO rules, is classified as Dangerous Goods in Apparatus. The unit contains trace amounts of Arsenic embedded deep within and bonded to the machinery. Under ICAO rules this shipment is acceptable as DG in Apparatus.

Under DOT rules it is not. Under DOT Special Provision 136 an apparatus containing Arsenic would not be allowed because there are no exceptions provided for Arsenic in Column 8(A) of the Hazardous Materials Table.

Under 171.11 I can use the ICAO regulations as a substitute for many parts of 49 CFR when moving domestically or internationally by air.

This seems to mean that I could move this apparatus by air, under ICAO and IATA rules as "Dangerous Goods in Apparatus, UN 3363 but when shipping by ground only, under 49 CFR, I could NOT use this proper shipping name unless special approval were granted under Special Provision 136.

If I requested and were granted the approval under special provision 136, I would be compelled to comply with the terms of the approval (such as sending a copy of it with the cargo and referencing it on the shipping papers) when shipping by truck, but when shipping by air under ICAO I would not need any approval, because the requirements are different.

Is this interpretation of the regulations correct?

Sincerely,

Jim Powell
President
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