



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

JUL 27 2000

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

Ms. Joan N. McNamara
Deputy City Attorney
City of San Diego
1200 Third Avenue, Suite 700
San Diego, California 92101-4106

Ref No.: 99-0208

Dear Ms. McNamara:

This is in further reference to your letter dated July 20, 1999 and our reply dated February 10, 2000, regarding the materials of trade (MOTs) exception found in § 173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether a company may use the MOTs exception for private delivery of hazardous materials purchased by its customers.

In our February 10, 2000 reply to your letter we indicated that a company that routinely transports and delivers hazardous materials to customers may not take advantage of the materials of trade exception. That interpretation was intended to be consistent with the definition of MOTs provided in § 171.8; however, it actually narrowed the intended scope of the exception. As indicated by more recent interpretations (example enclosed), it is acceptable for companies that routinely transport and deliver hazardous materials to use the MOTs exception. Therefore, provided the hazardous material meets the MOTs definition in § 171.8 and all applicable conditions in § 173.6, a company may use the MOTs exception for delivery to its customers.

I hope this information is helpful.

Sincerely,

Susan Gorsky
Acting Director Hazardous Materials Standards
Office of Hazardous Materials Standards

Enclosure



990208

173.6
171.8

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July 20, 1999

Mr. Edward T. Mazzullo, Director of OHMS
Office of Hazardous Materials Standards
United States DOT/RSPA (DHM-10)
400 - 7th Street SW
Washington, DC 20590-0001

Dear Mr. Mazzullo:

Materials of Trade Exception

Recently a case was submitted to our office with the following facts. A company, using their own vehicle, was delivering to a customer sixty buckets of a product labeled corrosive. Although each bucket weighed twenty-two pounds, each bucket was a combination package which contained only 1.3 pounds of corrosive material (UN 2735). Therefore, they were transporting approximately seventy-eight pounds of corrosives. The product had not been re-classified as ORM-D. The shipping papers did not identify the product as hazardous material.

The company argued they were entitled to the materials of trade exception because their "principal business" was selling products and solutions, not transportation. Among other things, the company sells and distributes bearings, mechanical and electrical drive system products, industrial rubber products and maintenance and specialty repair items (manufactured by others). They are described as wholesale trade - industrial suppliers.

The company relied on an April 4, 1997, DOT opinion letter to Degussa Corporation which expressly states that salespeople are entitled to the materials of trade exception. They further relied on the preamble to the materials of trade regulation which expressly states that door-to-door salesmen of consumer goods are entitled to the exception.

Here, to our knowledge, the company does not sell door-to-door. However, customers do order products from them which are delivered using a company owned vehicle. We request that

Edward T. Mazzullo

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July 20, 1999

you provide an opinion as to whether the materials of trade exception would apply to the delivery of hazardous materials as described above. Thank you for your attention to this matter.

Sincerely yours,

CASEY GWINN, City Attorney

By


Joan N. McNamara
Deputy City Attorney

JNM:mt