



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

AUG 24 2006

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

Mr. Jim Powell
President
Transportation Development Group
2390 Crenshaw Blvd, Ste 513
Torrance, CA 90501

Ref. No.: 06-0169

Dear Mr. Powell:

This responds to your letter of July 19, 2006 regarding interpretation of the term "retail sale" as it applies to sales of consumer commodities shipped in accordance with the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

According to your letter, Transportation Development Group (TDG) has a client who manufactures and distributes fragrances and flavorings. Most items are sold to other businesses that repackage them for sale to a consumer. Your client also has a manufacturer-direct model where a consumer can log into their website and buy the same product in the same configuration. For example: TDG sells product ABC, a PG II flammable liquid, as a perfumery product and packages it in a 5 L metal can in a fiberboard box. The package meets all of the requirements for consumer commodity (i.e., up to 5 L for PG II perfume [SP149]) and not over 30 kg gross weight. Packages are marked as an ORM-D and shipped overnight by UPS (marked ORM-D Air) for delivery to a person who ordered it on the internet.

Q1. Could TDG mark and label all of its shipments of product "ABC" as a Consumer Commodity, regardless of the nature of an individual shipment because it's theoretically possible that a "consumer" would want to purchase a gallon size metal can of perfume?

A1. A consumer commodity is defined as a material that is both packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use. Even though a material may not be intended for retail consumption, it may be suitable for such usage and, therefore, may meet the definition of consumer commodity. Such products may include fragrances and flavorings. Therefore, if the fragrances and flavorings described in your letter qualify for reclassification and are packaged accordingly, they may be described as a "Consumer commodity", and reclassified as ORM-D material, even if not intended for personal or household use.



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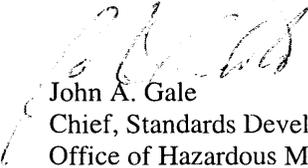
171.8
173.150

Packages of ORM-D material must be marked "Consumer Commodity, ORM-D" in accordance with § 172.316. Shipments of ORM-D materials are not subject to the shipping paper requirements of Subpart C of Part 172 of the HMR unless the material meets the definition of a hazardous substance, hazardous waste, or marine pollutant, or unless offered for transportation by air. Section 173.156 provides additional exceptions for shipments of ORM-D materials.

- Q2. Is sale from a manufacturer over the Internet direct to a user considered "retail" sale, or is there some obligation on the part of the seller/shipper to determine the nature of the person buying the product before allowing the product to be reclassified as a "consumer commodity"?
- A2. In order for your products to be renamed "Consumer commodity" and reclassified as ORM-D, each product must meet the following requirements: (1) the definition for consumer commodity in § 171.8; (2) the material is authorized in packaging exceptions in Column (8A) of the § 172.101 Hazardous Materials Table; (3) the referenced packaging exception allows an exception for shipment as an ORM-D; and (4) the material is properly prepared for shipment in accordance with the consumer commodity provisions.

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,



John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



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July 19, 2006

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

Engram
\$ 171.8
\$ 173.150
Definition / ORM-D
06-0169

Dear Mr. Mazzullo:

What is the definition and or interpretation of the term "retail sale"?

Before the internet and the "big box" stores I think it was easier to determine what was retail and what was "wholesale". Go in to any Costco store and you'll see businesses buying materials and regular consumers buying the same items, maybe in lesser amounts. Moreover, it is now possible (and easy) to buy items directly from a manufacturer which bypasses all the traditional channels of distribution.

So, in looking at the definition of a consumer commodity, numerous other interpretations by your office have made it clear that the item doesn't actually have to be sold at retail, or even sold to a customer; it just must be in a form "suitable" for such a sale.

I have a client who manufactures and distributes fragrances and flavorings. Most of these items are sold to other businesses who then repackage them for sale to a consumer. However, they do have a manufacturer-direct model where consumer can log into their website and buy the same product in the same configuration.

Example: this company sells product ABC, a PG II flammable liquid as a perfumery product and packages it in a 5 L metal can in a fiberboard box. The package meets all of the requirement for consumer commodity (i.e. up to 5L* for PG II perfume [*SP 149] and not over 30 kg gross weight. It is marked and labeled as an ORM-D and is shipped overnight by UPS (marked ORM-D Air) for delivery to someone who orders it over the internet.

Question #1: Could this company mark and label all of shipments of product ABC as a Consumer Commodity as a matter of course, regardless of the nature of an individual shipment because it's theoretically possible that a "consumer" would want to purchase a gallon size metal can of perfume?

Question #2: Is sale from a manufacturer over the internet direct to a user considered "retail" sale, or is there some obligation on the part of the seller/shipper to determine the nature of the person buying the product before allowing the product to be reclassified as a "consumer commodity". I hope the answer is "no" but this doesn't seem very practicable.

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Thank you!

Sincerely,

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