



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

OCT 7 1998

Mr. Robert Van Duzer
Hazardous Materials Consultant
Sporting Arms and Ammunition
Manufacturers' Institute, Inc.
121 Beverly Drive
Kennett Square, PA 19348

Ref. No. 98-0227

Dear Mr. Van Duzer:

This is in response to your letter dated July 29, 1998, requesting clarification of the mixed packaging requirements under § 173.61(a) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

The intent of § 173.61 is to prohibit the packaging of explosive items with any other material in the same outside packaging. As used in § 173.61, the phrase "any other material" includes hazardous material and non-hazardous material. Thus, no other material may be placed in the same outside packaging with the explosive.

I hope this satisfies your inquiry. If you need additional assistance, please do not hesitate to contact us.

Sincerely,

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

S A A M I

SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC.

R. Van Duzer
Consultant

Stevens
§ 173.61

July 29, 1998

U.S. Department of Transportation
Research and Special Programs Administration
Office of Hazardous Materials Standards
400 Seventh Street, S.W.
Washington, DC 20590

Attention: Mr. Edward T. Mazzullo, Director

Dear Mr. Mazzullo:

I am writing to you for an interpretation of the language contained in § 173.61(a) of 49 CFR, Mixed packaging requirements. This section pertains to the mixed packaging requirements for explosives and reads as follows:

Unless specifically authorized in this subchapter, an explosive may not be packed in the same outside packaging with any other material, unless packaged by the DOD or DOE in accordance with § 173.7(a) of this subchapter.

Applying a literal translation, it would appear that the regulations preclude us from including **any** material, hazardous or non-hazardous, in the same outside packaging containing explosives, except for those enumerated in § 173.61.

Occasionally, our member companies find it necessary to include product information, operational instructions (literature and or video), or promotional materials, i.e., ball-caps, T-shirts, belts, etc. together in the same shipment containing various explosive products. The majority of our products are included in hazard class 1.4S with certain items being classified as 1.4B and 1.3C.

Are we permitted to include non-hazardous materials in the same outside packaging containing explosive products?

We appreciate your assistance and look forward to your reply.

Sincerely yours,



Robert Van Duzer
Hazardous Materials Consultant

EX PARTE CONTACTS

GENERAL

- An ex parte contact is an oral contact between the public and the rulemaking agency outside a public hearing.
- If a DOT employee has a substantive, ex parte communication, he or she must place in the rulemaking docket (or the preamble to a proposed rulemaking) a report (1) listing the participants in the discussion, (2) summarizing the discussion and (3) a specific statement of any commitments made by DOT personnel.
- Contacts made before a rulemaking document is issued that influence a rulemaking should be noted in the preamble to the proposed rule (or the rulemaking docket once it is opened).
- The closer we are to the issuance of a proposed rule, the more oral communications should be discouraged.
- Oral contacts after a proposed rule is issued also should be discouraged. Commenters should be encouraged to make their comments through regular procedures.
- Oral contacts after a comment period ends should be strongly discouraged. In addition, oral communications that occur after the end of a comment period must be carefully reviewed to see whether reopening of the comment period will be required.

EXCEPTIONS

- It is permissible to talk to the public at all stages of a rulemaking but only to provide them with information otherwise available to the public. (E.g., after an NPRM is issued, you may generally describe the substance of a proposal or explain the terminology that is used in the proposal. Before an NPRM is issued, you should not advise someone about its specific proposals or the date it will be issued.)
- It may also be permissible to talk to the public to clarify written comments or to obtain up-to-date information needed for the rulemaking (e.g., on the availability of parts that may be required). Such communication should occur only following clearance from the Chief Counsel's or General Counsel's office.
- Oral contacts with another executive branch agency are generally permissible as long as the other agency is not acting as a conduit for public comments and as long as the other agency does not intend to submit comments to the rulemaking docket.

ALTERNATIVES

- ANPRMs (*Not legal document or under admin. procedures act*)
- Federal Register notices asking questions or seeking information or data. (*usually not considered in court in decision*)
- Public meetings or workshops to discuss specific issues.
- Federal Advisory Committees.

173.87(a) Clarification of phrases - This section is intended to prohibit the packaging of explosive items with different shipping names in the same outside package unless a specific regulation elsewhere in Part 173 provides otherwise. It also prohibits the packaging of explosive items with items of a foreign nature in the same outside package. To this end the following phrases are defined:

(a) "With each other" means with explosives covered by different descriptions or different shipping names.

(b) "With other articles" means with articles foreign to the explosive or device packaged, and other hazardous materials.

(c) Weight of any interior package of explosives does not exceed 8 ounces" means the total weight of the interior package including the inner packaging, cushioning material and the explosive or explosive device does not exceed 8 ounces. - OHMO letter to McDonnell-Douglas - June 12, 1974

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