



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

AUG 4 1999

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

Mr. Nels Samuelson
EdgeCo
47 Therin Drive
Hamburg, NY 14075

Ref. No. 99-0180

Dear Mr. Samuelson:

This is in response to your letter dated June 29, 1999, regarding reclassification of a material as a Consumer commodity under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask if a material that is suitable for retail sale meets the definition for Consumer commodity even though it is not intended for retail sale.

The answer is yes. The definition of a Consumer commodity in § 171.8 includes materials that are 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. This definition includes materials that are suitable for retail sale even if not specifically so intended and which may, in fact, be used in some other fashion.

I hope this satisfies your request.

Sincerely,

John A. Gale
Transportation Regulations Specialist
Office of Hazardous Materials Standards



990180

171.8

June 29, 1999

Mr. Edward Mazzullo
Director Office of Hazardous Material
Hazmat Standard
US DOT RSPA
400 7th Street S.W.
Washington, DC 20590-0001

BWK
§ 171.8
Consumer
Commodity

99-0180

RE: Definition of "Consumer Commodity" per 49CFR Section 171.8.

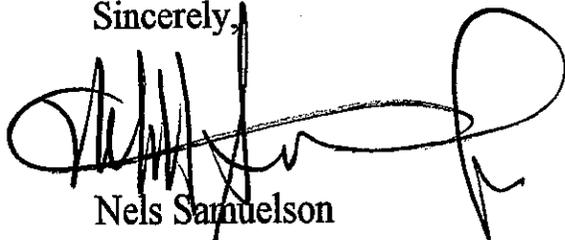
Dear Mr. Mazzullo,

We are contemplating Internet sales of our products, many of which are considered hazardous materials. Our ground shippers insist that even though our packaging volumes, packing group and various classes meet 49CFR and 173.15X requirements, it is their contention that our products could not be found under a *kitchen sink*. Therefore, they charge a "HAZMAT" surcharge.

According to the US DOT person I spoke to the other day, the test to determine "consumer commodity" is; **can the product be purchased at a retail store?** If the answer is yes then it is a consumer commodity and if the product meets all the requirements set out in 49CFR for an exception under ORM-D, our shippers should not charge a HAZMAT surcharge.

Mr Mazzullo, please confirm in writing that the "retail store" test is the criteria for consumer commodity and the ORM-D exception. I believe that we will need this document to change the shippers practices.

Sincerely,



Nels Samuelson

Manager

EdgeCo

47 Therin Drive

Hamburg, New York 14075