



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

MAY 16 2008

Ms. Tara Higgins
Sutherlands
4000 Main Street
Kansas City, MO 64111

Ref. No. 08-0096

Dear Ms. Higgins:

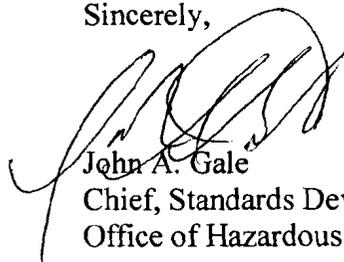
This responds to your March 5, 2008 request for clarification on the Materials of Trade (MOTs) exception in §173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180.) Specifically, you ask if you qualify for use of this exception.

In your letter you state that you operate several lumber/hardware/home improvement stores. You want to transfer a surplus of Thompson's Deck Wash packaged in one gallon plastic jugs with four jugs per box to one of your stores. The product contains Sodium Hypochlorite (3% by weight). You further state that this is in furtherance of your business and that you are a private motor carrier. You ask if this product qualifies for the MOTs exception.

Based on the information provided in your letter, it is the opinion of this Office that you do qualify for use of the MOTs exception, providing you comply with all of the provisions of §173.6. It is the shipper's responsibility to properly describe and classify their material in accordance with §173.22. If your material meets the defining criteria for a Class 8 material in Part 173, "Sodium Hypochlorite Solutions" would be an appropriate proper shipping name.

I hope this answers your inquiry.

Sincerely,



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

Boothe
§173.6
MOT

08 - 0096

INFOCNTR <PHMSA>

From: Tara Higgins [THiggins@cimlbr.com]
Sent: Wednesday, March 05, 2008 3:11 PM
To: INFOCNTR <PHMSA>
Subject: [Fwd: Interpretation Requested for Materials of Trade]

Thank you,

Tara Higgins

----- Original Message -----

Subject: Interpretation Requested for Materials of Trade
Date: Thu, 07 Jun 2007 14:58:37 -0500
From: Tara Higgins <THiggins@cimlbr.com>
To: infocntr@dot.gov

We would like an interpretation of 173.6 Materials of Trade Exception based on the following facts and the specific example provided:

1. Our business is retail lumber/hardware/home improvement stores. It is our policy not to ship hazardous materials.
2. One of our stores has a surplus of Thompson's Deck Wash and would like to transfer (on our own delivery vehicles) some of this to another store.
3. The Deck Wash is packaged in one(1) gallon plastic jugs and there are 4 jugs per box.
4. The MSDS for the Deck Wash has no data available for the "Transportation Section" and the only ingredient listed on the MSDS is Sodium Hypochlorite (3% by weight).
5. When looking up Sodium Hypochlorite in the HMT, the reader is referred to Hypochlorite Solutions. This is a Class 8 Corrosive and could be packing group II or III.
6. Section 173.154 provides for some Exceptions for Class 8 Materials but none of them eliminate all of the requirements of Subchapter C.

However.....I am wondering if this would be considered a material of trade

7. In Section 171.8 **Material of trade** means a hazardous material, other than a hazardous waste, that is carried on a motor vehicle -(3) By a *private motor carrier* (including vehicles operated by rail carrier) in direct support of a principal business that is other than transportation by motor vehicle. We are a **private motor carrier** as our delivery vehicles are only used to deliver product to customers or to our other stores. Both of these activities are in direct support of our principal business which is retail lumber & hardware/home improvement stores.
8. Section 173.6 **Materials of Trade Exception** states that "When transported by motor vehicle in conformance with this section, a material of trade (see §171.8 of this subchapter) is not subject to any other requirements of this subchapter besides those set forth or referenced in this section." It goes on to say in Section 173.6(a) "A material of

Trade is limited to the following:

- (1) A Class 3, 8, 9, Division 4.1, 5.1, 5.2, 6.1 or ORM-D material contained in a packaging having a gross mass or capacity not over -.....
- (ii) 30 kg (66 pounds) or 30 L (8 gallons) for a Packing Group II, Packing Group III or ORM-D Material.

Questions:

- a.) Would this product be considered a "Hypochlorite Solution"?
- b.) Could this be considered a Material of Trade based on the Material of Trade Definition?
- c.) Does this fall under the exception in 173.6 based on its class, quantity and packaging?
- d.) If this product falls under this exception, what name must appear on the package? It probably will not state the proper shipping name (hypochlorite solutions) but what is the common name - Thompson's Water Seal Deck Wash?
- e.) If we use this exception, do we just need to make sure we are in compliance with 173.6(b), (c) & (d).
- f.) 173.6(c)(4) requires that our driver be informed of the presence of the hazmat and of the requirements of this section. Would notifying the driver and giving him a copy of this section 173.6 meet this requirement?

Please reply at your earliest convenience.

Sincerely,

Tara Higgins

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Tara Higgins
 Sutherlands
 4000 Main Street
 Kansas City, MO 64111
 Direct line 816-360-2147
 Fax 816-756-3594

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Tara Higgins
 Sutherlands
 4000 Main Street
 Kansas City, MO 64111
 Direct line 816-360-2147
 Fax 816-756-3594

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