



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

September 13, 2022

Meaghan G. Boyd
Alston & Bird
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309

Reference No. 22-0053

Dear Ms. Boyd:

This letter is in response to your May 27, 2022, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to packages with mixed contents of hazardous materials. You state that your client operates a warehouse and distribution center that receives incoming retail boxes—not marked or labeled—from a third-party carrier shipped on behalf of a retail company. These retail boxes contain various quantities of loose limited quantity packages of different hazard classes—including lithium batteries on some occasions—and non-hazardous materials that are not packaged in an organized manner (e.g., liquids are not packaged upright, fully regulated hazardous material packages are mixed in with limited quantity material packages, etc.). The shipping documents show the client warehouse and distribution center's address as the third-party destination, where the retail company is the shipper and recipient. Moreover, the shipping documents do not indicate that hazardous materials may be present inside the retail boxes. Lastly, you explain that your client wants to provide a third-party shipping service—at the direction of the retail company—and wants to ensure compliance with the requirements of the HMR and ask related questions. You note that the retail boxes are not opened in the presence of the third-party carrier which, for the purpose of the HMR, indicates unloading incidental to movement has not occurred.

You also provide photographs showing how these retail boxes are packaged with various hazardous materials and non-hazardous materials.

We have paraphrased and answered your questions as follows:

- Q1. You ask whether your client is performing pre-transportation functions when the retail boxes are opened and the inner packages are segregated and classified, in consideration that those goods are intended for transportation again sometime in the future.
- A1. This is dependent on the specific scenario. For instance, opening the retail box and separating the inner packages for on-site storage would not be considered a pre-transportation function subject to the HMR. Whereas, preparing those inner packages for

transportation by performing functions such as determining appropriate hazard communication and packaging would be considered a pre-transportation function. Please refer to § 171.8 for the definition and meaning of pre-transportation function.

- Q2. You ask whether your client is performing transportation functions under the scope of storage incidental to movement when the retail boxes are opened and the inner packages are segregated and classified, in consideration that those goods are intended for transportation again sometime in the future.
- A2. The answer is no. Based on the information you provided, it is the opinion of this Office that the hazardous material is no longer in transportation in commerce and thus this activity is not considered storage incidental to movement. Hazardous material at its final destination—as indicated on the shipping documents—is no longer in transportation, and storage of a hazardous material at the final destination is not storage incidental to movement (see § 171.1(c)(4)).
- Q3. You ask whether your client would be responsible for reporting undeclared hazardous materials after the third-party carrier has departed the warehouse and distribution center for which unloading incidental to movement did not occur, and later it was discovered that the retail boxes contained such materials during the performance of pre-transportation or during storage incidental to movement functions.
- A3. Regarding your specific line of questioning, the answer is no. Because the third-party carrier has delivered the retail boxes to your client’s warehouse and distribution center and has departed the premises, the shipment is no longer in transportation in commerce, and a Hazardous Materials Incident Report is therefore not required. Performance of pre-transportation functions is not considered “in transportation in commerce.”^a Performance of a transportation function during storage incidental to movement is “in transportation in commerce” and would require reporting upon discovery of undeclared hazardous material. However, as noted in answer A2, the scenario as presented in your letter would not be considered storage incidental to movement.
- Q4. You ask whether a retail box of mixed, loose goods that includes hazardous materials—as illustrated by the photographs you provided—meets the definition of “unitized” as described in § 173.156(b)(1).
- A4. The answer is no. Although the HMR does not define the term “unitized,”^b it is our understanding that the term means “to form or convert into a unit.” Based on the

^a In accordance with 171.1(c), transportation of a hazardous material in commerce begins when a carrier takes physical possession of the hazardous material for purpose of transporting it and continues until the package containing the hazardous material is delivered to the destination.

^b Merriam-Webster’s dictionary defines the term “unitize” to mean “to form or convert into a unit.”

photographs you provided, the inner packages would not be considered “unitized” because the contents inside the retail boxes are not packaged in a manner forming a unit or unified whole.

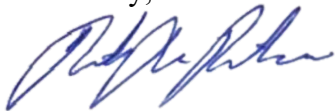
Q5. You ask whether limited quantity hazardous materials shipped in accordance with § 173.156(b)(1) are considered “undeclared hazardous material” as defined in § 171.8 if the package does not comply with the packing requirements found in §§ 173.156(b), 173.24, or 173.24a, and does not display a limited quantity marking.

A5. An “undeclared hazardous material” means a hazardous material that is subject to any of the hazard communication requirements such as shipping papers, marking, labeling, and placarding in Part 172 or an alternative marking requirement in Part 173, but has been offered for transportation in commerce without any visible indication to the person accepting the hazardous material for transportation that a hazardous material is present, on either an accompanying shipping document, or the outside of a transport vehicle, freight container, or package. Compliance with §§ 173.24 and 173.24a has no bearing on the determination of an undeclared hazardous material.

However, compliance with § 173.156(b)(1) is relevant for the determination of an undeclared hazardous material. A condition for not having to mark in accordance with Part 172, Subpart D is that the limited quantity material must be unitized in cages, carts, boxes, or similar overpacks. As stated in answer A4, the contents inside the retail boxes were not packed in a manner forming a unit or unified whole, and thus the transport of the materials would still be subject to marking requirements (i.e., the limited quantity marking). In such a case, the retail boxes would be considered undeclared hazardous materials because of the absence of the limited quantity marking.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dirk Der Kinderen', is written over a light blue horizontal line.

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

ALSTON & BIRD

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Meaghan G. Boyd

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Via Email

May 27, 2022

Bill Schoonover
Associate Administrator for Hazardous Materials Safety
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
william.schoonover@dot.gov

Re: Letter of Interpretation

Dear Mr. Schoonover,

I am writing on behalf of a client of my firm that is engaged in warehousing, logistics, and distribution services on behalf of a retail client. I am writing to seek a letter of interpretation from the Pipeline and Hazardous Materials Safety Administration with respect to three questions, as set forth below.

The facts relevant to the three questions are as follows: My client operates a warehouse and distribution center that receives incoming boxes from a retail company. The retail company's boxes contain limited quantity hazmat and lithium batteries of different types and configurations, along with retail items that are not regulated in transportation (e.g., pillows, towels). The limited quantity hazmat is a mix of different hazard classes. The boxes are packaged at the retail company's stores and are first transported to the retail company's distribution center and then transported by a third-party dedicated carrier to my client's warehouse and distribution center. The bill of lading that accompany the retail company's packages contain no indication that hazardous materials may be present inside the boxes; the BOLs identify the contents as "dry goods." The BOLs show the warehouse and distribution center's address as the final destination with the retail company as the intended recipient.

The retail company's packages are not marked or labeled in any way upon arrival at my client's warehousing and distribution center. The retail company asserts that marking on such packaging is not required because the packages comply with 49 CFR 173.156(b)(1). The hazardous materials inside the unmarked boxes are loose and are often of mixed hazard classes. In many cases, liquids are not upright or placed in such a way as to prevent spillage. The contents of

these boxes include items sold in retail stores containing flammable liquids, flammable solids, aerosols, and lithium battery-containing equipment. At times, fully-regulated hazmat like lighters and fireworks and/or lithium battery containing equipment have been mixed in with the limited quantity hazmat. Photos of representative inbound shipments are attached.

The inbound boxes are opened and unpacked after the dedicated third-party carrier leaves the warehouse and distribution center. Currently, the items in these boxes that are known or suspected to be regulated in transportation are quarantined and not intended for future shipment at this time. My client understands that undeclared hazmat discovered in these inbound boxes would not need to be reported if the undeclared hazmat is discovered after the third-party carrier departs and the goods are not intended for future movement. *See, e.g.*, LOI # 05-0011.

However, my client anticipates providing a shipping service for the retail customer in the future and is currently attempting to design that service in compliance with the HMRs. My client's shipping service is anticipated to involve the unpacking, segregation and classification of goods by hazard class, and properly packaging the goods for shipment (including any required marking or labeling). The goods, after receipt and processing, may be temporarily stored in the warehouse and distribution center, and will then be shipped from my client's warehouse and distribution center through one of three streams, as directed by the retail company: (1) products sold directly to consumer on ebay-like platform; (2) products sold to another business for resale (e.g., B2B); or (3) products returned to manufacturer/supplier. To ensure my client's shipping service complies with the HMRs, we would appreciate your response to the following three questions:

Q1: Is my client, the warehouse/distribution center, performing pre-transportation functions or storage incidental to movement when it opens, segregates, and classifies the items in the retail shipper's inbound boxes when those goods are intended for future transportation? Would my client be responsible for reporting undeclared hazmat if discovered during its performance of those pre-transportation functions and/or storage incidental to movement?

Q2: Do the inbound boxes of mixed, loose goods (as depicted in the exemplar photographs attached to this letter) meet the definition of "unitized" in 49 CFR 173.156(b)(1)?

Q3: Are limited quantity hazmat shipped pursuant to 49 CFR 173.156(b)(1) considered an "undeclared hazardous material" under 49 CFR 171.8 if the package does not comply with the packaging requirements in 49 CFR 173.156(b), 173.24, or 173.24a and does not bear a limited quantity mark?

Sincerely,



Meaghan G. Boyd

From: [Foster, Glenn \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#); [Hillman, Kenetha CTR \(PHMSA\)](#)
Subject: FW: Request for Letter of Interpretation
Date: Monday, June 6, 2022 12:28:44 PM
Attachments: [LOI Photos.pdf](#)
[2022_05_27_Letter of Interpretation.pdf](#)

Alice and Kenetha,

Did anyone forward this incoming request for LOI to either one of you?

Thanks,
Glenn

From: Schoonover, William (PHMSA) <william.schoonover@dot.gov>
Sent: Tuesday, May 31, 2022 8:50 AM
To: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>; Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>; DerKinderen, Dirk (PHMSA) <Dirk.DerKinderen@dot.gov>
Subject: FW: Request for Letter of Interpretation

For your handling...

Bill

William S. Schoonover

Associate Administrator, Office of Hazardous Materials Safety

USDOT, PHMSA
1200 New Jersey Ave, SE, Washington, DC 20590
Office: 202.366.0656 ♦ Mobile: 202.495.9510

From: Boyd, Meaghan <Meaghan.Boyd@alston.com>
Sent: Friday, May 27, 2022 5:32 PM
To: Schoonover, William (PHMSA) <william.schoonover@dot.gov>
Subject: Request for Letter of Interpretation

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Mr. Schoonover,

Please see the attached letter requesting an interpretation from your office.

Thank you in advance for your attention to this request.

Kind regards,

Meaghan

Meaghan G. Boyd

ALSTON & BIRD

Partner and Co-Practice Group Leader, Environmental, Land Use, and Natural Resources

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Incoming pallets, showing as-delivered boxes after shrink wrap removed



Close-up view of inside of one box on pallet shown above. This box included hand sanitizer mixed with soaps, liquids, and other products.



Easy Off not upright in package, mixed with other items



Lysol disinfectant spray not upright, mixed in with other products

