



U.S. Department
of Transportation

Research and
Special Programs
Administration

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

MAY 24 1999

172-101(9)

Ms. Elly Heller-Toig
Marcus & Shapira LLP
One Oxford Centre, 35th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219-6401

Ref. No. 99-0036

Dear Ms. Heller-Toig:

This is in response to your letter dated February 2, 1999, regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to certain hazardous materials. You state that the materials are transported by common or private carriers from a distribution center to retail stores (a supermarket chain). Your questions are paraphrased and answered as follows:

- Q1. If a package of ORM-D material is opened and individual units are removed and offered for transportation, does the product retain its status as ORM-D?
- A1. The answer is yes. The ORM-D material must be offered for transportation in full conformance with the requirements in § 173.156. Also note that if a common carrier is used, the vehicle must be under exclusive use for such service.
- Q2. If a package of ORM-D material is open and the individual units are placed in a tote with other materials for a specific delivery, does the material retain its ORM-D status?
- A2. Yes. Same response as A1 above.
- Q3. Can an ORM-D product be placed in a tote with non-ORM-D products and retain its status as an ORM-D?
- A3. Yes. Same response as A1 above.
- Q4. Must the tote containing the ORM-D materials be marked ORM-D, or may it be unmarked?
- A4. If the ORM-D materials are offered in conformance with the requirements in § 173.156 (b)(1), the marking requirements specified in subpart D of part 172 and the 66 pounds gross weight limitation do not apply.



990036

- Q5. If an order is being shipped in a tote marked "ORM-D", and there is no ORM-D product in the tote, does this cause a problem?
- A5. The answer is yes. Section 172.303 (a), "Prohibited marking", states that no person may offer for transportation or transport a package which is marked with the proper shipping name or identification number of a hazardous material unless the package contains the identified hazardous material or its residue, or unless transportation of the package conforms to the provisions in § 172.303 (b).

Finally, the enclosed chart of your analysis of the applicable requirements contains two discrepancies. First, you indicate that disposable Lighters, UN 1057 are excepted from specification packaging when no more than 1,500 devices are transported in one (1) motor vehicle. This is not true. Section 173.308 (b) provides exceptions from the requirements of subparts C through H of part 172 as well as part 177 of the HMR when no more than 1,500 devices are transported in one motor vehicle by highway. Those exceptions do not exclude the use of specification packagings. Disposable lighters must conform to the requirements in §§ 173.21, 173.308, and the packaging requirements prescribed in Special Provision N10.

I hope this information is helpful. Please contact us if we can assist you further.

Sincerely,



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