



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

DEC 16 1999

Ms. K. Jain Hershberg
Keller & Heckman
1001 G Street, N.W.
Washington, DC 20001

Ref. No. 99-0304

Dear Ms. Hershberg:

This is in response to your letter of October 22, 1999, requesting clarification of the definition for "consumer commodity" as provided by § 171.8 of 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. In general terms, a consumer commodity is a material that is packaged and distributed in a form intended or suitable for retail sale and personal 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. The fact that the aerosol can may display restrictive marketing information is not a factor in this determination. This exception may be used by distributors as well as manufacturers.

I hope this information is helpful.

Sincerely,

Thomas G. Allan
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards



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Delmer F. Billings, Chief
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400 Seventh Street, S.W.
Washington, DC 20590

Re: Clarification

Dear Mr. Billings:

We are requesting clarification on the applicability of the "consumer commodity" classification for the shipment of certain aerosol products by air. It is our understanding that the consumer commodity designation is appropriate if (1) a material is packaged and distributed in a form *intended or suitable* for sale through sale agencies or instrumentalities for consumption by individuals for purposes of personal or household use; (2) an aerosol does not exceed 17 fluid ounces; and (3) the completed package does not exceed a gross mass of 25 kg.

The products at issue are aerosols intended for use as glass and metal cleaners, lubricants and degreasers. These products may be used by professionals, or in industrial applications; and they also are suitable for home use (e.g., a home workshop) should they be sold through retail stores such as Trak Auto or Radio Shack.

We respectfully request your advice and opinion as to whether the products described above qualify for the "consumer commodity" description under either or both of the following circumstances:

- (i) If the products are marked "for professional and industrial use only;" and/or

Delmer F. Billings, Chief
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- (ii) If the offeror of the shipment is a distributor of the product rather than the manufacturer.

Should you require further information, please do not hesitate to contact us. Your immediate attention to this matter would be greatly appreciated.

Sincerely,



K. Jain Hershberg