



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

MAY 2 1 2001

Ref. No. 01-0037

Mr. Randy Geesing
VP Buildings, Inc.
P.O. Box 4369
St. Joseph, MO 64504-0369

Dear Mr. Geesing:

This is in response to your letter and subsequent telephone conversation with a member of my staff requesting clarification of the requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 100 to 185) pertaining to "Consumer commodity," ORM-D. You state that your products, small quantities of touch-up paint and primer, were initially classed as "Paint" UN1263, Packing Group II and are packaged in 1-quart cans and 2-ounce plastic bottles that you ship by highway as "Consumer commodity," ORM-D. Specifically, you ask for clarification of the consumer commodity definition, the applicable consumer commodity requirements and whether your products meet the provision in § 173.156(b)(1)(iii).

A consumer commodity, as defined in § 171.8, is a material that is packaged and distributed in a form suitable for retail sale or consumption by individuals for purposes of personal care or household use. Such materials may include paint and paint related materials. You are correct in your understanding that this definition includes materials that are suitable for retail sale even if not specifically so intended and, in fact, may be used in some other fashion.

With regard to the applicable requirements for transporting "Consumer commodity," inner packages (not over 1.0 liter (0.3 gallon) net capacity for Packing Group II) must be placed in a strong outer packaging not to exceed 30 kg (66 pounds gross



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weight). The outer packaging must be marked on at least one side or end with the ORM-D designation immediately following or below the proper shipping name "Consumer commodity" (see § 173.316). Based on the information you submitted, we agree that under § 173.150, you may transport your product as "Consumer commodity," ORM-D, provided it meets the general packaging provisions in §§ 173.24 and 173.24a, as well as the limited quantity packaging provisions. In addition, unless the material is a hazardous substance, hazardous waste or marine pollutant, your product would also be excepted from the shipping paper requirement. However, the marking exception in § 173.156 would not apply because transporting consumer commodities from your company's manufacturing facility to its construction site does not meet the provision in paragraph (b)(1)(iii).

You also ask whether you may package nuts, bolts and other non-hazardous materials in the same outer packaging with the paint. The answer is yes, provided the materials are not capable of reacting dangerously with each other as set forth in § 173.24(e)(4).

I hope this information is helpful. Please contact us if you need further assistance.

Sincerely,



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



McIntyre
§ 173.150
Flammable Liquid
01-0039 + Except

VP Buildings, Inc.
2250 Lower Lake Rd.
P.O. Box 4369
St. Joseph, MO 64504-0369
Tel 816-238-7550
Fax 816-238-8127 ←

January 30, 2001

Mr. Edward Mazzullo, Director
Office of Hazardous Materials Standards
U.S. Department of Transportation
Research and Special Programs Administration
400 7th Street Southwest
Washington, DC 20590

Dear Mr. Mazzullo:

VP Buildings, Inc. is a manufacturer of pre-engineered steel buildings and ships small quantities of touch up paint and primer for use on our product. I am requesting written confirmation to verify that the small quantities of Paint, 3, UN1263, PG II that we ship, may be renamed "Consumer Commodity": and reclassified as ORM-D material per 173.150(c). Both the bronze primer (quart cans) and the acrylic lacquer touch up paint (2 oz plastic bottles) meet the requirements of limited quantities as outlined in 173.150(b). Although the formulas and colors are specific to our product and not intended for personal care or household use, it is my interpretation that they are packaged and distributed in a form suitable for this purpose, and similar products are available at many retail outlets.

I would also like clarification on the shipping requirements of a consumer commodity. It is my understanding that if reclassified as an ORM-D, the only shipping requirements would be: (1) strong outer package that conforms to 173.24, (2) 66 pounds maximum gross weight, (3) marked on at least one side or end with the ORM-D designation immediately below the proper shipping name "Consumer Commodity". However, based on the exceptions in 173.156(b1), would these requirements apply when the small quantities of primer and touch up paint are packaged with nuts, bolts, etc. in a large overpack box and transported with our product by contract motor carrier to a specific jobsite and builder?

I have enclosed MSDS sheets and a picture for your use. Please feel free to call me at 816-238-7550 if you have questions or need further clarification.

Sincerely,

Randy Geesing
Corporate Traffic Manager

RMG/gbw