



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

MAY 16 2002

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

Mr. Andrew Romach  
URS Corporation  
P.O. Box 13000  
Research Triangle Park, NC 27709

Ref. No. 01-0290

Dear Mr. Romach:

This is in response to your letter requesting clarification of the requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) regarding the materials of trade exceptions in § 173.6 and whether a shipping paper (bill of lading) must be prepared for over-the-counter sales of hazardous materials. We have framed our response in the following series of questions and answers.

Q1. Do the materials of trade exceptions apply to over-the-counter sales of hazardous materials?

A1. Yes. If all the requirements in § 173.6 are met, other requirements in the HMR (including shipping papers) do not apply.

Q2. For purposes of the materials of trade exceptions, who is responsible to inform the operator of a motor vehicle of the requirements in § 173.6, and that the motor vehicle contains hazardous materials, including any reportable quantities?

A2. The employer of the motor vehicle operator is responsible for providing this information to the operator. However, in practice, it may also be necessary for an over-the-counter sales employee to be able to distinguish between those types and quantities of hazardous materials that qualify for the materials of trade exceptions, and those that do not, in order to determine whether the materials of trade exceptions apply.

Q3. If the requirements of the materials of trade exceptions are not met (for example, the total quantity exceeds 440 pounds gross weight or an individual package is larger than allowed), do the HMR apply to over-the-counter sales of hazardous materials?



010290

173.6

A3. Yes. The seller of hazardous materials over-the-counter is an "offeror" who is responsible for assuring that the materials are packaged, marked, labeled, and described on a shipping paper as required by the HMR whenever the over-the-counter sales employee knows (or has reason to know) that the customer will transport the hazardous material in commerce (such as the customer is transporting the hazardous material as part of a business). (Note that other exceptions, such as those for limited quantities and consumer commodities, may be available.) In this situation, the over-the-counter sales employee must be trained as required in Subpart H of Part 172.

Q4. Does a purchaser of hazardous materials over-the-counter become the shipper (offeror) responsible for compliance with the HMR when it "takes ownership" of the materials upon purchase?

A4. No. The status of an offeror does not depend on ownership. Under most circumstances, the purchaser of hazardous materials over-the-counter is a carrier (or transporter) who may not accept and transport hazardous materials that are not in compliance with the HMR but who is not responsible for performing the responsibilities of an offeror.

Q5. Is an over-the-counter sales employee responsible for asking purchasers of hazardous materials whether they will be transporting the materials in commerce?

A5. The HMR do not require a person selling hazardous material to ask this specific question, but it may be appropriate under the circumstances of over-the-counter sales. The over-the-counter sales employee must consider readily apparent facts that indicate a customer will transport the purchased hazardous materials in commerce. The employee would not be "absent the knowledge" that its customer will transport the purchased hazardous material in commerce when a reasonable person would realize that the customer is purchasing the hazardous materials for use at (or delivery to) another location as part of any type of business enterprise.

Q6. Does an over-the-counter sales employee need to know whether a purchaser of hazardous materials will be transporting the materials in interstate commerce?

A6. No. The distinction between interstate and intrastate commerce in RSPA's January 19, 1996 letter to Arizona Refrigeration Supplies, Inc. (ARS) is no longer relevant because, after October 1, 1998, the HMR apply to all transportation in

commerce. The passage you quote from that letter should be read to delete the word "interstate" as follows:

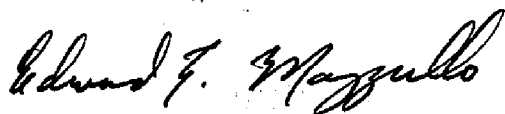
If an offeror makes an over-the-counter sale to a customer who then transports the hazardous material in his own vehicle and the offeror has reason to know that the customer is engaged in commerce, the offeror must comply with the shipping paper requirement. Absent the knowledge of the customer in commerce, an offeror need not provide a shipping paper.

RSPA's specific answer to the question raised by ARS whether it is responsible for preparing a shipping paper when it makes over-the-counter sales of refrigerant gases, in the second paragraph of that letter, must now be read:

if the refrigerant gas, which I presume is a Class 2 material, is offered to a[] carrier, the answer is yes; the original offeror or shipper of the hazardous material must prepare a shipping paper unless other arrangements for this responsibility are made.

I hope this information is helpful. Please contact this office if you need additional information.

Sincerely,



Edward T. Mazzullo  
Director, Office of Hazardous  
Materials Standards

**URS**

November 7, 2001

MC Intyre  
 § 173.6(c)(4)  
 MOT § 1761  
 APPLICABILITY  
 01-0290

Mr. Ed Mazzullo, Director  
 Office of Hazardous Material Standards  
 Research and Special Programs Administration  
 U.S. Department of Transportation  
 400 7th Street, SW  
 Washington, DC 20590-0001  
 FAX: (202) 366-3012

Dear Mr. Mazzullo:

I am writing to you to request a written regulatory interpretation about the following situation. Would a company that conducts over-the-counter sales of refrigerant gases and other heating, ventilation, air conditioning (HVAC) supplies be responsible for providing a hazardous material bill of lading to contractors and installation/service technicians who pick up such items, if such items meet the definition of a DOT hazardous material?

Also, I am requesting clarification about a paragraph in 49 CFR 173.6(c)(4) found in the Materials of Trade Exception section, which states:

*The operator of a motor vehicle that contains a material of trade must be informed of the presence of the hazardous material (including whether the package contains a reportable quantity) and must be informed of the requirements of this section.*

This paragraph is not clear about who is responsible for informing the operator about the presence of hazardous material. For a contractor or installation/service technician, it would seem that it is the HAZMAT employers responsibility to ensure that its HAZMAT employee(s) are trained sufficiently to make the distinction about which HAZMAT items qualify for the MOTs exception and which ones do not.

I am also requesting clarification about the statement appearing in a regulatory clarification issued by Ms. Hattie Mitchell on January 19, 1996, to Mr. Joe Ward of Arizona Refrigeration Supplies, Inc [prior to the promulgation of the MOTs exception (62 FR 1216, January 8, 1997)]. This interpretation includes the following statement:

*If an offerer [sic] makes an over-the-counter sale to a customer who then transports the hazardous material in his own vehicle and the offeror has reason to know that the customer is engaged in interstate commerce, the offeror must comply with the shipping paper requirement. Absent the knowledge of such involvement of the customer in interstate commerce, an offeror need not provide a shipping paper.*

URS Corporation  
 P.O. Box 13000  
 Research Triangle Park, NC 27709  
 1600 Perimeter Park Drive  
 Morrisville, NC 27560  
 Tel: 919.461.1100  
 Fax: 919.461.1416



Mr. Ed Mazullo  
DOT/RSPA  
November 5, 2001  
Page 2 of 2

Does it become the responsibility of each supply house employee to ask the purchaser whether or not he is engaged in interstate commerce--whether he drives his vehicle over the state line, or whether he works for a national HVAC company that participates in interstate commerce? Further clarification of the statement: "Absent the knowledge of such involvement of the customer in interstate commerce..." is needed. Does this interpretation mean that unless the customer tells the supply house employee conducting the sale that he is involved in interstate commerce the employee remains "absent the knowledge."

Contractors and installation/service technicians purchase HAZMAT items at the supply house, taking ownership of the items at the time of pickup. These contractors and installation/service technicians are in the HVAC repair business rather than the transportation business, so they are able to take advantage of the Materials of Trade (MOTs) exception in 49 CFR 173.6. So long as they meet the requirements set out under MOTs, they are excepted from HAZMAT paperwork requirements, as well as marking, labeling, packaging requirements.

Occasionally, purchased items may exceed the allowable quantities under MOTs. The contractor or installation/service technician may purchase and transport cylinders of refrigerant; with welding supplies (cylinders of acetylene and oxygen) already onboard their vehicle, they could exceed the allowed 440-pound MOTs limit. Infrequently, they may purchase single package volumes greater than 8 gallons or a combined number of refrigerant gas cylinders in excess of 440 pounds. In these cases, the MOTs exception would not apply based on the quantity of material transported. As stated above, these hazardous materials are used to perform HVAC installation/repair work. In other instances, an HVAC company may arrange for a courier to come to the supply house to pick up HVAC installation/service parts and supplies for the contractors/installers/service technicians.

If the contractor or service technician takes ownership of the HAZMAT at the time of purchase, then it follows that the contractor or service technician would become the shipper when he transports the material off site. Therefore, if a HAZMAT bill of lading were required, it would be the contractor or service technician's responsibility to prepare it.

If you have any questions concerning this request for regulatory interpretation, please call me directly at (919) 461-1220.

Sincerely,



Andrew N. Romach  
Corporate Regulatory Manager  
URS Corporation