



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

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

JUN 20 2003

Ms. Erica Jenkins
Logistics Coordinator
AeroVironment Inc.
4685-3H Industrial Street
Simi Valley, California 93063

Ref. No.: 02-0314

Dear Ms. Jenkins:

This is in response to your letter regarding the use of the material of trade exception as it applies to highway shipments of lithium cells and batteries under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). Your questions are paraphrased and answered as follows:

- Q1:** Would the lithium batteries qualify for the MOTs exception, while being transported to various locations for testing in solar powered aircraft and small-unmanned air vehicles?
- A1:** The answer is yes. The materials of trade definition in § 171.8 includes a private motor carrier transporting hazardous materials in direct support of a principal business that is other than transportation by motor vehicle.
- Q2:** Would the lithium batteries qualify for the MOTs exception, while they are transported between AeroVironment facilities for testing and modifications?
- A2:** The answer is yes. One criteria for a MOT is that a hazardous material is transported by a private carrier in direct support of its principal business which is not transportation by motor vehicle. Therefore, a hazardous material transported between a company's facilities for purposes of quality control testing meets the definition of MOT. In addition, prototype lithium cells and batteries may be transported for performance testing (i.e., product evaluation) in connection with development programs when transported in conformance with § 173.185(j).
- Q3:** You asked at what point does your hazardous material compliance liability terminate, after your customers accept delivery of lithium batteries at one your facilities?



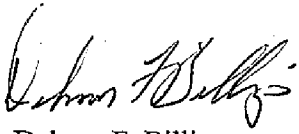
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A3: Each person who performs a function governed by the HMR is responsible for complying with the appropriate requirements of the HMR. The degree of regulatory liability is usually determined on a case-by-case basis, as determined by the facts of the issue.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards



AeroVironment Inc.
4685-3H Industrial Street
Simi Valley, CA 93063

Rekerford
§ 173.6
MOT

Lithium Batteries
02-03/4

December 6, 2002

Mr. Edward Mazzullo
Director, Office of Hazardous Materials Safety
U.S. DOT/ RSPA (DHM-10)
400 7th Street S.W.
Washington, DC 20590-0001

Dear Mr. Mazzullo,

Subject: Need confirmation on 49 CFR (173.6 and 173.7)

The purpose of this letter is to obtain clarification on a few issues that we have some immediate concerns about. The primary material in question is UN3090 (Lithium Batteries), class 9, PGII, P.I. 903. I have contacted the DOT Office of Hazardous Materials Safety and was advised to direct this letter to your attention. In an effort to eliminate confusion on the interpretation of the two regulations I am requesting written confirmation on the *three* issues that are listed below.

Issue One: Would the Lithium batteries UN3090 be considered "Materials of Trade" as stated in CFR49 173.6 while we are transporting them to various sites for testing? We are a design and development company that specializes in solar powered aircraft and small-unmanned air vehicles. Our primary business relies on government contracts with both NASA and the Department of Defense (DOD). Our clients require us to go to various sites to conduct flight testing which is essential to the continuing growth and success of our business.

Issue Two: Would these lithium batteries be considered "Materials of Trade" as stated in CFR49- 173.6, while we are transporting them between AeroVironment facilities for testing and modifications? The logistical location of our facilities requires us to transport these batteries between facilities during different phases of research, development, and production. There are three buildings that are close in proximity to one another with an estimated 6 miles between them and two with approximately seventy miles separating them. Again, this is another vital function of our business and is essential for the time restraints that NASA and the DOD place upon us.

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Issue Three: At what point is our Hazardous Material Compliance liability expunged when our customers from the DOD accept delivery of equipment, which includes hazardous material UN3090 at one of our facilities? Occasionally our customers will accept delivery of the equipment we build for them, then transport it to destinations of which we do not know, nor do we know what mode of transportation they are utilizing. Are we liable for that hazardous material until it arrives at its final destination or is the DOD? If the DOD is responsible for these shipments are we required to furnish any hazardous material shipping declarations or any other pertinent hazardous material documents to them?

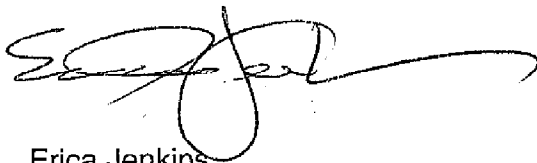
In closing, I would like to request the paperwork requirements needed for each of these issues. Depending on the answers that you provide, there may or may not be additional shipping documents required. We want to insure that we are in full compliance with all federal and state regulations that pertain to the shipping of hazardous materials.

Thank you for taking the time to review this letter. I can be contacted at (805) 581-2198 ext.218 or by e-mail/ jenkins@aerovironment.com.

Please send your response to:

AeroVironment Inc.
Attn: Erica Jenkins
4685-3H Industrial Street
Simi Valley, CA 93063

Sincerely,



Erica Jenkins
Logistics Coordinator
AeroVironment Inc.