



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

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MAY 22 2003

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Ref. No.: 03-0117

Dear Mr. Bierlein:

This responds to your letter dated May 2, 2003, requesting a clarification of 49 CFR 177.841(e)(3) which prohibits the transportation of hazardous materials packages bearing a POISON label with materials that are marked as containing or known to contain foodstuffs, feed or edible materials for consumption by humans or animals.

You state that Fisher Scientific Company, a laboratory chemical supplier, ships hazardous materials packages bearing POISON labels with other chemicals, such as dextrose, yeast extract, sodium chloride, sucrose, and deionized water. While, under certain circumstances, these other chemicals may be used in food products or may be food products themselves, in the scenario you described, Fisher plainly marks and identifies these materials as "for laboratory/manufacturing use only and not for drug, food, or household use." You further explain that California authorities have taken the position that, regardless of package markings, knowledge, or intention of the shipper or carrier, a product that may be found at a waste facility or unauthorized secondary market might be misused and consumed by people or animals.

You ask whether Fisher's shipping practices violate 49 CFR 177.841(e)(3). The answer is no. There is no violation of § 177.841(e)(3) when a package bearing a POISON label is co-loaded with the materials as described in the above scenario. Fisher clearly does not intend that these materials be used as food or foodstuffs for consumption by humans or animals.

I hope this information satisfies your inquiry. Please contact us if you require additional assistance.

Sincerely,

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



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May 2, 2003

Mr. Delmer Billings
Standards Development
Research and Special Programs Administration
Department of Transportation
Washington, DC 20590

**Re: Request for interpretation
of 49 CFR 177.841(c)**

Dear Mr. Billings:

I am writing to request an interpretation of Section 177.841 of the hazardous materials regulations pertaining to carriage of labeled Class 6.1 materials.

Fisher Scientific Company is a major supplier of laboratory chemicals in the U.S. and abroad. Some of these materials are labeled for Class 6.1 and are subject to 49 CFR 177.841.

Among other laboratory products distributed by Fisher Scientific are chemicals such as sucrose, dextrose, yeast extract, sodium chloride, and deionized water. Fisher Scientific specifically declares in its catalog to its customers that such materials are "for laboratory or manufacturing use only - not food, drug, or household use."

Such an advisory message also appears as part of each label of each inner receptacle containing this material (see attached examples of product labels).

Section 177.841(e) states in pertinent part that labeled poisons should not be loaded in the same vehicle "with material that is marked as or known to be a foodstuffs, feed or edible material intended for consumption by humans or animals."

California authorities have taken the position that, regardless of package markings, knowledge, or intention of the shipper or the carrier, a product that might be found in a waste facility or in an unauthorized secondary market like a flea market might be misused and consumed by people or animals. Their position is that potential misuse and

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consumption of a chemical product by humans or animals means that product is "foodstuffs" and precludes loading that product on the same vehicle with labeled Class 6.1 materials.

The extensive rulemaking record in Docket No. HM-4, however, does not support such a position. Many commenters pointed out the difficulty in transportation in identifying foods or materials that might be consumed. Hence the original 1967 rule was modified, with the agency preamble saying -

One major difficulty in attempting to comply with the [original] amendment was a lack of certainty as to how far a carrier was required to go in identifying foodstuffs, feeds, or any other material intended for consumption by humans or animals under the provisions of the amendment. The [Hazardous Materials Regulations] Board recognizes the difficulties inherent in attempting to segregate packages of foodstuffs under normal cargo handling procedures. It is proposed to clarify and relax this requirement. Only those foodstuffs and feed, etc., which are clearly marked as such or are known to be such need be considered in applying these [co-loading] regulations.

Docket No. HM-4, Notice No. 69-12; 34 Fed. Reg. 7456; May 8, 1969. The rule adopted as proposed in 1969 remains essentially unchanged today.

Fisher Scientific as well as the carriers utilized by Fisher Scientific to transport the materials do not consider them to be foodstuffs or feed, nor do they have any intention of having humans or animals consume these laboratory chemicals. Such consumption would be in direct contradiction of the marking on the package.

I would appreciate your concurrence in my interpretation of this regulation, that products that are clearly marked as not being foodstuffs, for which there is no intention of human or animal consumption, are not subject to the co-loading restrictions in Section 177.841(e).

Please contact me if you have any questions on this request for interpretation. Thank you.

Sincerely,



Lawrence W. Bierlein
For Fisher Scientific Company