



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

MAY 15 2006

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

Mr. Timothy W. Wiseman
Managing Partner
Scopelitis, Garvin, Light & Hanson
10 W. Market Street
Suite 1500
Indianapolis, IN 46204

Ref. No.: 06-0077

Mr. Wiseman:

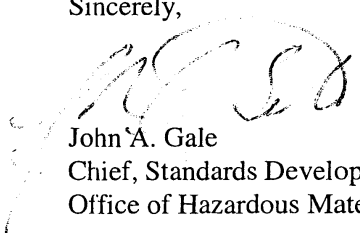
This is in response to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if § 172.303(b) allows for the transportation of totes marked with "ORM-D" if they contain no hazardous material.

The intent of § 172.303 is to prohibit, with certain exceptions, the offering of a package that is marked to indicate the presence of a hazardous material when a hazardous material is not actually present in the package. Section 172.303 is consistent with the empty packaging requirements provided in § 173.29(b).

More applicable to the scenario you describe are 49 U.S.C. § 5104(a)(2) and § 171.2(k) of the HMR, which provide that no person may mark a package or otherwise represent that a hazardous material is present in a package unless the hazardous material is actually present. Therefore, under § 171.2(k), any marking (e.g., ORM-D) or other hazard communication indicating the presence of a hazardous material when a hazardous material is not actually present must be removed, obliterated, or securely covered in transportation.

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

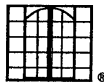
Sincerely,


John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



060077

172.303
171.2(k)
5104(a)(2)



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Supko
§ 172.303
Markings
06-0077

March 23, 2006

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials
Standards
U.S. DOT/PHMSA (PHH-10)
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

Re: Request for Hazardous Material Regulation Interpretation

Dear Mr. Mazzullo:

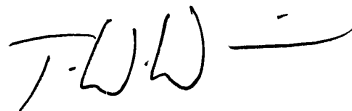
I write to request your office's assistance in understanding the applicability of the hazardous material regulations to the specific operations of one of my clients. Specifically, my client is a large retail pharmaceutical company that receives various shipments from one of its vendors in totes marked "ORM-D", which mostly consist of cigarettes, at my client's distribution center. My client then arranges to have these same totes transported from its central distribution centers to various retail stores by common or private carriers.

My client's specific question deals with the package marking requirements under 49 C.F.R. § 172.303. In this case, my client's vendor may, on occasion, tender totes marked as "ORM-D", but containing no hazardous materials, pursuant to the limited exception contained in 49 C.F.R. § 172.303(b). My client would like to be able to then move those totes from its distribution centers to its various retail stores without having to repackage or remark the totes. The question posed by my client is whether 49 C.F.R. § 172.303(b) would allow my client to transport totes marked as "ORM-D", but containing no hazardous materials, to its various retail establishments.

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If you need any additional information to respond to this request for interpretation, please do not hesitate to contact me. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T.W.W.' followed by a horizontal flourish.

Timothy W. Wiseman

TWW/kkc