



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

APR 4 2007

Mr. Mark Smith
Northern Air Cargo, Inc.
3900 Old International Airport Rd.
Anchorage, AK 99502

Ref. No. 06-0228

Dear Mr. Smith:

This responds to your September 27, 2006 letter requesting clarification of the consumer commodity exceptions under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask about the applicability of the consumer commodity exception to packages of battery fluid shipped with snowmobiles and all-terrain vehicles.

Under the HMR, a consumer commodity is defined as a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use (see § 171.8). This definition includes materials that are suitable for retail sale even if not specifically so intended and that may, in fact, be used in some other fashion. Thus, a shipment of battery fluid classed as a corrosive (Class 8) material, Packing Group II or III, UN2796, that meets the definition of a consumer commodity may be renamed "Consumer commodity" and reclassified and transported as an ORM-D material provided it meets the packaging and quantity limitations in § 173.154.

In a final rule published on March 22, 2006 (71 FR 14598) under Docket HM-228, we amended the HMR to clarify air transportation requirements for hazardous materials shipments. Among other revisions, we revised requirements applicable to consumer commodities to clarify that hazardous materials that are forbidden for transportation by aircraft may not be transported on board aircraft as consumer commodities. Further, we revised those sections of the HMR that permit certain hazardous materials to be transported as limited quantities to clarify that only hazardous materials authorized for transportation on board passenger-carrying aircraft may be transported as limited quantities on board passenger-carry aircraft. We also clarified that for limited quantities transported on board passenger-carrying aircraft, the requirements in § 173.27 also apply to the shipment, including the quantity limitations in § 173.27(f). Because a shipment must conform to the applicable limited quantity provisions to qualify for the consumer commodity exception, the quantity limitations in § 173.27(f) will apply to consumer



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173.154
173.27(A)

commodity shipments on board passenger aircraft. A copy of the final rule is enclosed for your information.

Finally, you did not supply information about the vehicles; however, an internal combustion engine, self-propelled vehicle, or mechanized equipment containing an internal combustion engine is subject to the HMR if the engine or fuel tank contains a liquid or gaseous fuel, is equipped with a wet electric storage battery, or contains other hazardous materials subject to the requirements of the HMR. A battery powered vehicle or equipment is subject to the HMR if it is equipped with a wet electric storage battery or contains other hazardous materials. These vehicles must be assigned the proper shipping name "Vehicle, flammable gas powered," UN3166 or "Vehicle, flammable liquid powered," UN3166. Vehicles, machinery and equipment powered by wet batteries, sodium batteries, or lithium batteries that are transported with the batteries installed must be assigned the proper shipping name "Battery-powered vehicle," UN3171 or "Battery-powered equipment," UN3171. Reclassification to "Consumer commodity" is not authorized for these vehicles.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell", written over a horizontal line.

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

Enclosure



McIntyre
173.154
Exceptions
06-0228

September 27, 2006

Edward T. Mazullo
Director, Office of Hazardous Materials Standards
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
400 7th St. S.W.
Washington D.C. 20590-0001

RE: Reclassification of Battery fluid, acid 8 UN 2796 II to Consumer Commodity ORM-D

Dear Mr. Mazullo,

In a letter dated 01 Aug 95, the US Department of Transportation (DOT) allowed limited quantities of Battery fluid, acid UN 2796 II, to be reclassified as a consumer commodity ORM-D material. This interpretation does not seem to be consistent with the HMR in its definition of a consumer commodity in 171.8. Also stated in the letter from the submitter, it was not intended that this material be used for personal care or household use.

There are many items that are packaged for retail sale and sold through retail sales agencies but are unable to meet the definition of a consumer commodity ORM-D. One example would be a Battery, wet, filled with acid 8 UN2794 III, it poses less of a hazard for transportation, has far greater availability and are purchased by far more individuals than battery acid itself, but is not a consumer commodity for lack of meeting the definition.

This was brought to our attention when we found hidden, undeclared packages of battery fluid inside the crates of snowmobiles and all-terrain vehicles. The outer crates had no markings or labels on them and had been air freighted in the past in this condition. FAA was notified and investigation is continuing.

After this, we started receiving snowmobiles for air transport and on the crating of the snowmobile was a consumer commodity ORM-D-AIR marking. Further research brought this interpretation to our attention and the concern associated with it. The battery fluid boxes inside the crates are already packaged in specification combination packages, marked and (most are) labeled for proper air transport as Battery fluid, acid 8 UN 2796 II but are being reclassified as ORM-D consumer commodity.





As an air carrier, this concerns us. Given the regulation classification of a consumer commodity ORM-D material, one can take a limited quantity of Battery fluid, acid 8 UN2796 II, now not limited to the 1L quantity limitation per package listed in column 9a of the HMT, a shipper can now place up to 66 lbs gross per package (strong outer package) of battery acid (each inner package not to exceed 1L 173.154(b) (1)) and ship on a passenger carrying aircraft. A 66 lb combination package of battery acid will come to the rough equivalent of 6 gallons that can be loaded in an inaccessible location without concern to quantity limit, accessibility or segregation issue.

As is the concern with Battery acid, there is also a similar concern with all other hazard class items that consumer commodity pertains to. Being able to reclassify, for example, Acetone 3 UN1090 II to a consumer commodity 173.150 (c), one can now package up to 66 lbs of acetone in 1 L inner packaging and proceed to fill any compartment in a passenger carrying aircraft or cargo only aircraft basically without concern of segregation, accessibility or quantity.

I do not know if this is the intent of the regulations to allow this, but this is what is permissible and, on a small scale, does take place. This seems to be a 'loophole' to circumvent the HMR restrictions listed in column 9a.

There is new wording in the HMR for a consumer commodity, which states that in order for an item to be considered a consumer commodity, it must be able to fly passenger aircraft. If so, how would this new wording reign in consumer commodity materials if reasonable quantity restrictions are not included that would be more in line with column 9a in the HMR?

A much clearer definition of consumer commodity is needed.

With this interpretation, if it were to become common knowledge, one can see it being taken advantage of in a region where most villages rely solely on snowmobiles, all terrain vehicles and many common hazardous items.

Here in Alaska we rely heavily on air transport for everyday basic needs, but not at the risk of passenger and aircrew safety.

If any further information or clarification is needed, please feel free to contact me at:
907-243-3331

Thank you for your consideration in this matter,

A handwritten signature in black ink, appearing to read "Mark Smith", is written over a faint, larger signature.

Mark Smith
Hazardous Materials
Northern Air Cargo

