



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

FEB 18 2014

Mr. Norman Dodson  
Technical Services  
Occidental Chemical Company  
6200 South Ridge Road  
Wichita, KS 67026

Reference No. 13-0051

Dear Mr. Dodson:

This is in response to your letter, e-mails, and telephone conversations with a member of my staff requesting that Pipeline and Hazardous Materials Safety Administration (PHMSA) reconsider its response in its December 11, 2012 clarification letter, Reference No. 12-0208, to you concerning the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the Materials of Trade (MOTs) regulations. Specifically, you ask if the portion of transportation where your customers' employees transport chemical samples by private motor vehicle from their places of business to the facilities of companies they hire (e.g., FedEx) to package and prepare these samples for transportation on your customers' behalf allows the samples to qualify as MOTs.

In addition, you state the following:

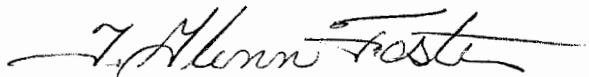
- Your company supplies these products to its customers in bulk packages and the samples returned to your company are packaged in quantities of one pint or less;
- The chemical products your company supplies its customers meet the following hazard class definitions: Divisions 5.1 (oxidizer) Packing Group (PG) II, and 6.1 (poisonous) PG II and III, and Class 8 (corrosive) PG II and III; and
- Your customers' employees are not hazmat trained in conformance with Subpart H (Training) of Part 172 the HMR, and do not possess the packaging and other materials needed to prepare these samples for transportation.

The answer is no. The intent of the MOTs exception is to provide relief for a private carrier that permits him or her to transport by motor vehicle certain hazardous materials, other than hazardous waste, that are used in direct support of the carrier's principal business other than transportation (see § 171.8). Although the HMR do not specifically define "direct support of a principal business that is other than transportation," it is this Office's intent that this phrase means the company is transporting its own business products for the purpose of carrying out the activities of its business and not to offer these materials for transportation. Therefore, a hazardous material prepared in conformance with the MOTs requirements no longer qualifies

as a MOTs the moment a shipper offers it for transportation in a manner not authorized under § 173.6. However, the HMR permits the hazard classes you described, with certain exceptions, to be transported by motor vehicle, rail car, and aircraft, in combination packagings that comply with the provisions in § 173.13. Packagings that comply with § 173.13 are excepted from the labeling, placarding, and segregation requirements of the HMR. Please note that this exception does not permit materials that are poisonous by inhalation to be transported by motor vehicle, railcar, or aircraft. Also, while employees that transport hazardous materials under the MOTs exception must be trained on and comply only with the MOTs requirements prescribed in § 173.6, employees that transport hazardous materials in conformance with § 173.13 must be hazmat trained in conformance with 49 CFR Part 172, Subpart H (Training).

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

Edmonson  
§ 173.6  
Material of Trade

13-0051

**Drakeford, Carolyn (PHMSA)**

**From:** INFOCNTR (PHMSA)  
**Sent:** Friday, February 22, 2013 9:56 AM  
**To:** Drakeford, Carolyn (PHMSA)  
**Subject:** FW: Appeal of Letter of Interpretation  
**Attachments:** 060075.pdf; Oxy Letter of Interpretation.pdf; Request for formal letter of interpretation

-----Original Message-----

From: INFOCNTR (PHMSA)  
Sent: Thursday, February 14, 2013 1:29 PM  
To: 'norman\_dodson@oxy.com'  
Subject: FW: Appeal of Letter of Interpretation

Hi Carolyn,

We received the following request for a formal letter of interpretation.

Thanks,  
Victoria

-----Original Message-----

From: [Norman\\_Dodson@oxy.com](mailto:Norman_Dodson@oxy.com) [mailto:[Norman\\_Dodson@oxy.com](mailto:Norman_Dodson@oxy.com)]  
Sent: Thursday, February 14, 2013 10:45 AM  
To: INFOCNTR (PHMSA)  
Subject: Appeal of Letter of Interpretation

I requested a formal letter of interpretation regarding 49 CFR 173.6 Materials of Trade exceptions in September of 2012 (see attached email). I received the formal letter dated December 11, 2012 in December. Mr. Foster, Chief of the Regulatory Review and Reniventation Branch, essentially denies my company's ability to use this exception to enable our customers to transport samples of our product to a certified packager of Hazardous Goods in a private vehicle. The purpose of doing so is to send the sample to us for analysis. I have attached Mr. Foster's letter.

Mr. Foster cites as the reason for the denial of this exception is that the samples we are having our customers transport are being transported solely for the purpose of being packaged for shipment. Not in direct support of their business. I wish to state that our customers are transporting these samples in support of their business because the product is not performing correctly and therefore has disrupted their process. For this reason, they must send it to us for analysis. Since they have no one certified to do this correctly, it must be transported to someone who can.

I would like to respectfully appeal this decision, and site as an example that we can use this exemption, another attached letter of interpretation to West Marine Products Inc. in June of 2006, reference No. 06-0075. I cite as an example, the first question that is answered yes. OxyChem's letter of interpretation is reference no. 12-0208. Please let me know your decision as soon as possible. Thanks and best regards.

Norman Dodson  
Technical Services  
OxyChem  
Office: 316-529-7577  
Fax: 713-985-1507

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U.S. Department  
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Pipeline and Hazardous  
Materials Safety  
Administration

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

DEC 11 2012

Mr. Norman Dodson  
Occidental Chemical Company  
6200 South Ridge Road  
Wichita, KS 67026

Reference No. 12-0208

Dear Mr. Dodson:

This is in response to your September 14, 2012 e-mail requesting clarification of the exceptions for Materials of Trade (MOTs) under § 173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your letter, you state that to analyze the quality of the chemicals your company supplies to its customers, these customers send samples of these chemicals in amounts of one pint or less to your company for testing.

You state customers return the following materials to your company for testing:

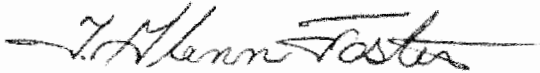
- 1) UN 1496 Sodium Chlorite, 5.1 (oxidizer), PG II
- 2) UN 1593 Dichloromethane, 6.1 (poisonous), PG III
- 3) UN 1789 Hydrochloric acid, 8 (corrosive), PG II and III
- 4) UN 1846 Carbon tetrachloride, 6.1, PG II
- 5) UN 1888 Chloroform, 6.1, PG III
- 6) UN 1897 Tetrachloroethylene, 6.1, PG III
- 7) UN 1908 Chlorite solution, 8, PG II and III (the primary material being shipped)

You also state some of your customers do not have employees trained to prepare and offer hazardous materials for transport in conformance with the HMR, but a carrier informed you that your customers can transport their chemicals as MOTs by motor vehicle to the carrier for its staff to properly package and transport because your customers are not transporting the samples for commercial purposes. You ask if this statement is correct. The answer is no. A "Material of trade" is a hazardous material, other than a hazardous waste, that is carried on a motor vehicle: (1) for the purpose of protecting the health and safety of the motor vehicle operator or passengers; (2) for the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment); or (3) by a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle (see § 171.8). Your customers are transporting chemical samples to the carrier solely for the purpose of offering them for transportation in

commerce, not to perform tasks that are in direct support of a business that is other than transportation by motor vehicle, criteria (3) in the definition of "material of trade." Therefore, the chemicals must be transported under other provisions in the HMR authorized for the specific hazards each sample contains at the time it is offered for transportation.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

## Drakeford, Carolyn (PHMSA)

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**From:** Norman\_Dodson@oxy.com  
**Sent:** Friday, September 14, 2012 4:20 PM  
**To:** INFOCNTR (PHMSA)  
**Subject:** Request for formal letter of interpretation  
**Importance:** High

I would like to request a formal letter of interpretation regarding 49 CFR 173.6 Materials of trade exceptions.

My company sells commodity chemicals to other companies. On occasion, questions arise regarding the quality of this product making it necessary for the customer to need to ship a small sample ( 1 pint or less) to us for follow up analyses. Problems arise when the customer does not have trained and certified people to prepare and offer for shipment, these hazardous products. The next choice would be for them to take this one pint sample to a company that offers these services. An example of such a company would be AirPack Inc. A problem may exist with this option if an employee of the customer company places the sample in a motor vehicle and drives it to the packaging company. I have been told by AirPack Inc., that they could lawfully do this under 49 CFR 173.6 as long as the container was of the proper integrity and secured from shifting. The reasoning being that the customer is not transporting the samples over the road for commercial purposes. The one pint chemical samples that these customers would be transporting would be the following:

Chloroform // UN1888 // Toxic // 6.1 // PG III Dichloromethane // UN1593 // Toxic // 6.1 // PG III Tetrachloroethylene // UN1897 // Toxic // 6.1 // PG III Carbon Tetrachloride // UN1846 // Toxic // 6.1 // PGII Sodium Chlorite // UN1496 // Oxidizer // 5.1 // PGII

Chlorite Solution // UN1908 // Corrosive // 8 // PGII & III (This would be the primary one shipped)

Hydrochloric Acid // UN1789 // Corrosive // 8 // PG II & III

We would like to be able to advise these customers that they can legally transport these samples to a certified hazmat packager for preparation for shipping. However, we need to know that we are interpreting this correctly. Your prompt attention to this request would be greatly appreciated. You may send the letter to my attention at this email address, or if you need to send it by regular mail delivery, the address is:

Attn: Norman Dodson  
Occidental Chemical Co.  
6200 South Ridge Road  
Wichita, KS 67026

Thanks and best regards.

Norman Dodson  
Technical Services  
OxyChem  
Office: 316-529-7577  
Fax: 713-985-1507  
[norman\\_dodson@oxy.com](mailto:norman_dodson@oxy.com)

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U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

JUN 6 2006

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

Mr. Todd A. Nash  
Director, Regulatory Compliance  
West Marine Products, Inc.  
500 Westridge Drive  
Watsonville, CA 95076

Reference No. 06-0075

Dear Mr. Nash,

This is in response to your March 24, 2006 letter requesting clarification on whether your retail organization's employees may routinely deliver hazardous materials to your store and customer locations using private and for-hire vehicles under the Materials of Trade (MOTs) exceptions prescribed in §§ 171.8 and 173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You stated these items are for replenishment of inventory or to fulfill an existing sale. We have paraphrased your questions and answered them in the order provided.

- Q1. The wholesale business utilizes private company vehicles and drivers to deliver sold goods and return unwanted items from customer locations. May those drivers use the MOTs exception under these circumstances if the hazardous materials meet the MOTs definition prescribed in § 171.8 and comply with applicable requirements under § 173.6?
- A1. Yes. Under the HMR, one of the defining conditions for MOTs is a hazardous material, other than a hazardous waste, transported by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. If a wholesale business uses its own vehicles and drivers to transport goods to and from customer locations, then the MOTs exception in § 173.6 may be utilized. Note, however, that if the wholesale company hires a motor carrier to transport goods to and from customer locations, the MOTs exception does not apply.
- Q2. May the drivers transport hazardous materials products marked with the proper shipping description "Consumer commodity, ORM-D" under the MOTs exception provided they comply with the definition for MOTs under § 171.8 and applicable requirements under § 173.6?
- A2. Yes. Consumer commodities that conform to the HMR requirements applicable to MOTs may be transported as MOTs.



060075

171.8  
173.6



Q3. Many of the items to be transported are not eligible for the limited quantity or consumer commodity exceptions under the HMR (e.g., a 1 gallon can of acetone). Provided a package containing these materials conforms to the MOTs requirements prescribed in §§ 171.8 and 173.6, and the weight of MOTs aboard the motor vehicle does not exceed 220 kg (440 pounds), would the package be eligible for the MOTs exceptions?

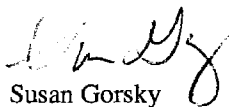
A3. Yes.

Q4. May a store associate transport hazardous materials in his or her own vehicle between stores or to a customer location using the MOTs exceptions provided the packages comply with the definition for MOTs under § 171.8 and applicable requirements under § 173.6?

A4. Yes. See Answer A1 above.

I hope this information is helpful.

Sincerely,



Susan Gorsky  
Regulations Officer  
Office of Hazardous Materials Standards



March 24, 2006

U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Hazardous Materials Standards (PHH-10)  
400 7<sup>th</sup> Street, S.W.  
Washington, DC 20590-0001

Re: Applicability of 173.6 to retailers

To: Susan Gorsky, Regulations Officer

This letter is to follow-up on the phone conversation we had on March 24, 2006 concerning compliance with the Materials of Trade exception covered under 49 CFR, Sections 171.8 & 173.6. West Marine has questions regarding a previous interpretation you provided in the August 23, 2005 letter to Mark U. DuBois at Reichold (Ref No. 01-0012).

According to the aforementioned letter, "It is acceptable for companies that routinely transport and deliver hazardous materials to use the MOTs exception." West Marine is a retail organization that also has a wholesale division named Port Supply. Routinely West Marine/Port Supply transports hazardous materials to our store and customer locations using both private and for hire vehicles. These products are either for replenishment of inventory or to fulfill an existing sale. West Marine would like to request an official letter of interpretation from your office clarifying the questions below.

1. The wholesale business utilizes private company vehicles and drivers to deliver sold goods and return unwanted items from customer locations. May those drivers utilize the MOTs exception in these circumstances assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?
2. May the drivers transport products marked "Consumer Commodity ORM-D" as their common or proper shipping name under the MOTs exceptions assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?
3. Many of the items transported would not be eligible for the Limited Quantity or Consumer Commodity ORM-D provision (e.g. 1 gallon can of acetone). Would a package with these products be acceptable under MOTs assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?
4. May a store associate transport a hazardous material in their own vehicle between stores or to a customer location assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?

I look forward to your response. Should you have any questions or require additional information, please do not hesitate to contact me at (831) 761-4470.

Very truly yours,

Todd A. Nash  
Director of Regulatory Compliance  
West Marine Products Inc.

Edmonson  
§ 173.6  
MOT  
06-0075