



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

1200 New Jersey Avenue, S.E.,
PHC-10, Room E26-331
Washington, D.C. 20590-0001
Phone: (202)366-4400
Fax: (202) 366-7041
Email: joe.solomey@dot.gov

**Hazardous Materials Safety
Law Division**

LETTER OF INTERPRETATION

November 4, 2009

Mr. Thomas E. Evans
Wal-Mart Stores, Inc.
601 North Walton Boulevard, MS-L20
Bentonville, Arkansas 72716-0710

Dear Mr. Evans:

This letter is in response to the meeting that occurred on September 22, 2009 between Messrs. Sharkey, Dragash, yourself, and PHMSA. You asked PHMSA to clarify whether exception four in 49 C.F.R. §173.159(e) applies to only one shipper.

The answer to your question is yes, 49 C.F.R. §173.159(e)(4) applies to only one shipper. You suggest there is ambiguity in reading exception four: *the transport vehicle may not carry material shipped by any person other than the shipper of the batteries*. The Rules of Construction, which are found in 49 C.F.R. §171.9, state that "words imparting the singular include the plural" and vice versa. Based on 49 C.F.R. §171.9, the word shipper can be a singular shipper, or it can be multiple shippers. This creates ambiguity.

If a regulation is ambiguous, we would consult the preamble of the final rule as evidence of context or intent of the agency promulgating the regulations. The preamble provides guidance. In this situation, the preamble to the final rule stated that:

"interested persons were afforded an opportunity to participate in this rule making. Of the comments received no objection was taken to the provisions of the basic proposal except that one commenter believes the exemption extension is discriminatory because rail transportation was not included. The Board will consider this comment as a petition for further rule making since such a proposal was not made by the Board in the notice." HM-21, 34 Fed.Reg. 13871 (1969), 8/29/1969

The preamble was silent with respect to this exception. There was no mention of any objections, therefore no changes were proposed from the Notice of Proposed Rulemaking (NPRM.) In order to fully understand the intent of the exception, the preamble to the NPRM must be examined to determine the regulatory intent. It can be found under docket number HM-21, 34 Fed.Reg. 6444 (1969), 4/12/1969, which states:

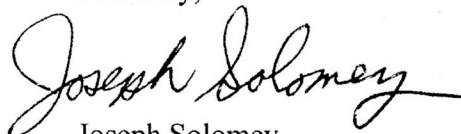
the Board believes that the exception should cover only those shipments where a motor vehicle is carrying only one shipper's goods. This limitation will thus achieve substantially the same type of control that is available in a private carriage shipment while not so limiting the types of carriage that may be used.

The plain language of the preamble to the NPRM clearly states only one shipper's goods are allowed on a transport vehicle under the exception. Interested parties had the opportunity to comment on the NPRM. In the final rule, no one proposed a change to the NPRM, therefore the original intent of the NPRM should stand.

To be consistent with the intent of the NPRM, only one shipper's goods are allowed on a transport vehicle under the exceptions listed in 49 C.F.R. §173.159(e).

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, reading "Joseph Solomey". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Joseph Solomey,
Assistant Chief Counsel for
Hazardous Materials Safety