



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

Office of the  
Chief Counsel

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

(202) 366-4400  
Room 8407

Mr. Lee Schuman  
President  
Majestic Distilling Company, Inc.  
2200 Monumental Road  
P.O. Box 7372  
Baltimore, MD 21127

AUG - 8 1999

Dear Mr. Schuman:

Thank you for your July 15, 1999 letter to Mr. David Donaldson concerning the requirement that an offeror of a hazardous material in a bulk packaging, container, or tank with a capacity of 3,500 gallons or more must register with the Research and Special Programs Administration (RSPA) and pay a registration fee.

Based on your correspondence, I understand Archer Daniels Midland Corp. (ADM) ships to your company in 30,000-gallon rail tank cars two materials that (in these quantities) are regulated under the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180: high-proof grain neutral spirits and gin. I also understand that (1) these tank cars contain a residue when they are returned to ADM; (2) an employee of Majestic prepares the tank cars for the return shipment (e.g., assuring that closures are secured and that the required markings on the tank car are legible); and (3) Majestic's employee signs the "shipping instruction" form as an "agent" for ADM.

As stated in RSPA's interpretation No. 88-1, published at 55 Fed. Reg. 6758, 6760-61 (Feb. 26, 1990), "responsibilities generally are placed on 'offerors' for performance of the functions associated with 'offering' hazardous materials for transportation" in commerce. "Any person who performs, attempts to perform or, under the circumstances involved, is contractually or otherwise responsible to perform any of the functions assigned by the HMR to the offeror, is legally responsible under the HMR for the proper performance of those functions." Under certain circumstances, there can be more than one offeror of the same shipment of hazardous materials. See interpretation No. 89-1, 55 Fed. Reg. at 6761-62.

When there is an agency relationship, RSPA considers that both the agent who actually performs functions of an offeror of hazardous materials and the principal of that agent are

"offerors" and responsible for compliance with all the obligations of an offeror. Because it is an offeror, Majestic (as well as ADM) must register and pay the registration fee; Majestic (as well as ADM) must train its employees that actually perform functions subject to the requirements of the HMR; and both Majestic and ADM would be liable for violations of the HMR actually committed by a Majestic employee acting as an agent of ADM.

I hope this information is helpful. If you have any further questions, please feel free to contact me or Frazer Hilder of my staff, at the above address or by telephone at 202-366-4400.

Sincerely,

A handwritten signature in dark ink, appearing to read 'E. H. Bonekemper, III', with a long, sweeping horizontal stroke extending to the right.

Edward H. Bonekemper, III  
Assistant Chief Counsel for  
Hazardous Materials Safety and  
Research and Technology Law