



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

JUN 16 2008

Mr. George Plum
Paxton Company
1111 Ingleside Road
P.O. Box 12103
Norfolk, VA 23502

Ref. No.: 08-0054

Dear Mr. Plum:

This is in response to your February 27, 2008 e-mail and subsequent telephone conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) requirements applicable to flammable liquids. Your questions are paraphrased and answered below.

Q1: A Class 3, PG II material and a Class 8, PG II material described as UN1263, Paint and UN3066, Paint Related Material, respectively, are packed in inner receptacles that are 1-quart and/or 1-gallon metal cans which are placed in non-specification fiberboard outer packaging. The outer packaging is marked "Paint Limited Quantity". Does this shipment meet the limited quantity provisions?

A1. No. The limited quantity provisions for Class 8 materials in Packing Group II authorize inner packagings that do not exceed 1 L net capacity (see § 173.154(b)). Similarly, the limited quantity provisions for Class 3 materials in Packing Group II authorize inner packagings that do not exceed 1 L (about 1 quart) net capacity (see § 173.150(b)(2)). Thus, neither UN3066, Paint Related Material, Class 8, Packing Group II, nor UN1263 Paint, Class 3, Packing Group II, packed in 1-gallon inner packagings may be shipped as limited quantities. However, both materials may be shipped as limited quantities if the strong outer packaging only contains 1-quart inner packagings.

Q2: If the inner receptacles (mix of quart and gallon sized receptacles) from the original strong outer packaging described in Q1 are removed and shipped in a different strong outer packaging, would this subsequent shipment still meet the limited quantity provisions?

A2. No. See A1 above.

Q3: A shipment described as "UN1170, Ethanol, Class 3, PGII" is received in a combination packaging with quart sized metal cans. The Material Safety Data Sheet (MSDS) for this

material states: "FOR INDUSTRIAL USE ONLY. NOT FOR HOUSEHOLD USE. NOT INTENDED OR PERMITTED FOR DRINKING BEVERAGE PURPOSES." Based on the information specified above, would this material be considered a "consumer commodity" as defined in the HMR?

A3: Yes. Section 171.8 defines a consumer commodity 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." Regardless of the wording on the MSDS, this material could meet the definition of a consumer commodity based on its packaging size.

Q4: If inner receptacles from the package described in Q3 were removed from the outer packaging and reshipped in a different stronger outer packaging, may this subsequent shipment be renamed "Consumer Commodity" and reclassified as "ORM-D"?

A4: Yes.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Hattie L. Mitchell", written in a cursive style.

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

§ 172.101

§ 173.156

§ 173.173

Applicability/ORM-D
08-0054

Drakeford, Carolyn <PHMSA>

From: INFOCNTR <PHMSA>
Sent: Wednesday, February 27, 2008 2:27 PM
To: Drakeford, Carolyn <PHMSA>
Subject: FW: Request for Interpretation 49 CFR Parts 171-180

From: George Plum [mailto:georgep@paxtonco.com]
Sent: Wednesday, February 27, 2008 1:53 PM
To: INFOCNTR <PHMSA>
Subject: Request for Interpretation 49 CFR Parts 171-180
757853 6781 ext. 4113

Paxton Co. is a Marine Supply Wholesale Distributor located in Norfolk, VA. We do intra and interstate shipments of Hazmat along the mid-Atlantic coast, as part of our normal distribution business. Most of the Hazmat is carried in company owned vehicles with company employee drivers. However some of the shipments to our out of state distribution centers are by common carriers.

Our customers are in three general categories:

- * marinas- who sale to end users
- * boat/ ship repair facilities- who are end users
- * boat builders- who are end users

We receive the following types of material from manufacturers for further distribution:

- UN 1263 Paint class 3 pg II
- UN 3066 Paint Related Material class 3 pg II

These items are received from the manufacturer in non-spec fiberboard boxes outerpackaging, with quart or gallon metal cans interpackaging. The outerpackaging is marked "Paint Limited Quantity"

Question (1) Does this material meet the criteria for Paint Limited Quantity for reshipping in commerce?

(2) If the interpackaging is reshipped in quantity of one quart or gallon or multiple there of, does it meet the criteria for Paint Limited Quantity?

We, also receive the following type of material from a manufacturer for further distribution:
UN 1170 Ethanol class 3 pg II

This item is received from the manufacturer in non-spec fiberboard boxes outerpackaging with quart metal cans interpackaging The outerpackaging is marked "Consumer Commodity" ORM-D .

Question (3) Does this product meet the criteria for Consumer Commodity ORM-D ?

Note: The MSDS (Section 16) for this product states, "FOR INDUSTRIAL USE ONLY. NOT FOR HOUSEHOLD USE. NOT INTENDED OR PERMITTED FOR DRINKING BEVERAGE PURPOSES."

(4) If the interpackaging is reshipped in quart or gallon or multiple there of does it meet the

criteria for Consumer Commodity ORM-D ?
Thank you for your assistance.

George Plum
georgep@paxtonco.com
1111 Ingleside rd. Norfolk ,VA 23502