



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

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

OCT 13 2010

Mr. John Edgcomb
Edgcomb Law Group
115 Sansome Street, Suite 700
San Francisco, CA 94104

Ref. No.: 10-0164

Dear Mr. Edgcomb:

This responds to your letter dated July 23, 2010 regarding the requirements for shipping a "Consumer commodity, ORM-D" material in accordance with the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). According to your letter, your client is a pharmaceutical distributor, and proposes to unitize products classified as "Consumer commodity, ORM-D" into securely fastened, plastic boxes ("totes") for delivery from its distribution centers to its customers by contract carrier. On occasion the contract carrier delivers the unitized products to a cross-dock under exclusive use by the motor carrier or your client where the unitized products are transferred to multiple smaller private carriers to be delivered directly to the customers. You ask, would the exception from marking in § 173.156(b)(1) apply to these ORM-D materials.

Consumer commodity, ORM-D materials may be transported utilizing the exceptions in § 173.156(b)(1), including the exception from the marking requirements of Subpart D of Part 172 (i.e., "ORM-D" marking), provided the material is (1) unitized in cages, carts, boxes, or similar overpacks; (2) offered for transportation or transported by rail, private or contract motor carrier; or common carrier in a vehicle under exclusive use for such service; and (3) transported to or from a manufacturer, a distribution center, or a retail outlet, or transported to a disposal facility from one offeror. The exception in § 173.156(b)(1) applies to ORM-D material provided all of the conditions are satisfied. The exception may be used when unitized ORM-D products are transferred from one transport vehicle to another at a cross-dock location, provided both carriers qualify for the exception in accordance with condition (2) above, and the materials remain unitized in accordance with § 173.156(b)(1), (i.e., the material is not removed from the unitized boxes and totes when transferred to the smaller carriers at the cross-dock location).

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,

Ben Supko
Acting Chief, Standards Development
Office of Hazardous Materials Standards

EDGCOMB LAW GROUP

115 Sansome Street, Suite 700
San Francisco, California 94104
415.399.1555 direct
415.399.1885 fax
jedgcomb@edgcomb-law.com

BY OVERNIGHT MAIL

July 23, 2010

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001

Eichenlaub
§173.156(b)
Exceptions for ORM
Materials
10-0164

Re: Request for Interpretation of 49 C.F.R. § 173.156(b)

Dear Mr. Mazzullo:

I write to request your guidance regarding the applicability of the exception to the marking requirements for ORM-D materials provided in 49 C.F.R. § 173.156(b) to a specific scenario.

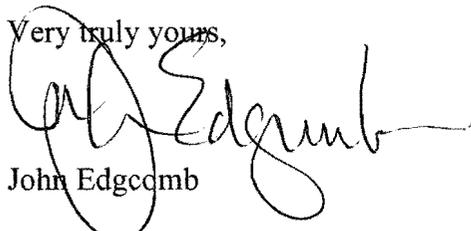
Section 173.156(b)(1)(ii) and (iii) state, in relevant part, that the ORM-D marking exception applies when a package is transported by “[p]rivate or contract motor carrier” and “[t]ransported to or from a manufacturer, a distribution center, or a retail outlet.”

Our client, a large pharmaceutical distributor, unitizes products classified as ORM-D (consumer commodity) materials into boxes/plastic totes for delivery to its customers. Our client contracts with a dedicated motor carrier, which sometimes delivers these boxes/ plastic totes to a cross-dock under exclusive use by the motor carrier or by the client itself. At the cross-docking location, the totes are then separated into individual local routes on smaller dedicated private carriers to be delivered directly to customers. Thus, the boxes/totes remain under the control of the dedicated motor carriers or our distributor client until ultimately delivered to our client’s customers.

We seek your confirmation that in this cross-docking factual scenario, the exception to the ORM-D marking requirement described in §173.156(b)(1) still applies.

Thank you for your attention to this request. We look forward to your response.

Very truly yours,


John Edgcomb