



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

AUG 4 1999

Mr. J. Christopher Lory
FPPF Chemical Co., Inc.
117 West Tupper Street
Buffalo, NY 14201-2193

Ref. No. 99-0201

Dear Mr. Lory:

This is in response to your letter dated July 20, 1999, regarding reclassification of a material as a Consumer commodity under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically you ask if a material that is suitable for retail sale meets the definition for Consumer commodity even though it is not intended for retail sale.

The answer is yes. The definition of a Consumer commodity in § 171.8 includes materials that are both 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. This definition includes materials that are suitable for retail sale even if not specifically so intended and which may, in fact, be used in some other fashion.

I hope this satisfies your request.

Sincerely,



John A. Gale
Transportation Regulations Specialist
Office of Hazardous Materials Standards



990201



FPPF CHEMICAL CO., INC.
FUEL ADDITIVES • TREATMENTS • CONDITIONERS

July 20, 1999

Mr. Edward Mazzullo
Director Office of Hazardous Material
Hazmat Standard
US DOT RSPA
400 7th Street S.W.
Washington, DC 20590-0001

BAH
171.8
Consumer
Commodity
99-0201

RE: Definition of "Consumer Commodity" per 49CFR Section 171.8.

Dear Mr. Mazzullo,

We ship many of our chemical products by United Parcel Service (UPS), some of these products are considered hazardous materials. UPS insist that even though our packaging volumes, packing group and various classes meet 49CFR and 173.15X requirements, it is their contention that our products could not be found under a *kitchen sink*, therefore, they charge us a "hazardous materials" surcharge.

We contacted your department last month and according to the US DOT person we spoke to, the test to determine "consumer commodity" is; "**can the product be purchased in a retail store?**" If the answer to that question is yes, then it is a consumer commodity provided the product meets all the other requirements set forth in 49CFR for exception under ORM-D. Therefore, UPS should not charge FPPF Chemical Company a hazardous materials surcharge.

Mr Mazzullo, please confirm in writing that the "retail store" test is the criteria for consumer commodity and the ORM-D exception. We will need this document to change the shippers practices.

Sincerely,

J. Christopher Lory
President