



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

JUN 6 2006

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

Mr. Todd A. Nash  
Director, Regulatory Compliance  
West Marine Products, Inc.  
500 Westridge Drive  
Watsonville, CA 95076

Reference No. 06-0075

Dear Mr. Nash,

This is in response to your March 24, 2006 letter requesting clarification on whether your retail organization's employees may routinely deliver hazardous materials to your store and customer locations using private and for-hire vehicles under the Materials of Trade (MOTs) exceptions prescribed in §§ 171.8 and 173.6 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You stated these items are for replenishment of inventory or to fulfill an existing sale. We have paraphrased your questions and answered them in the order provided.

- Q1. The wholesale business utilizes private company vehicles and drivers to deliver sold goods and return unwanted items from customer locations. May those drivers use the MOTs exception under these circumstances if the hazardous materials meet the MOTs definition prescribed in § 171.8 and comply with applicable requirements under § 173.6?
- A1. Yes. Under the HMR, one of the defining conditions for MOTs is a hazardous material, other than a hazardous waste, transported by a private motor carrier in direct support of a principal business that is other than transportation by motor vehicle. If a wholesale business uses its own vehicles and drivers to transport goods to and from customer locations, then the MOTs exception in § 173.6 may be utilized. Note, however, that if the wholesale company hires a motor carrier to transport goods to and from customer locations, the MOTs exception does not apply.
- Q2. May the drivers transport hazardous materials products marked with the proper shipping description "Consumer commodity, ORM-D" under the MOTs exception provided they comply with the definition for MOTs under § 171.8 and applicable requirements under § 173.6?
- A2. Yes. Consumer commodities that conform to the HMR requirements applicable to MOTs may be transported as MOTs.



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171.8  
173.6

Q3. Many of the items to be transported are not eligible for the limited quantity or consumer commodity exceptions under the HMR (e.g., a 1 gallon can of acetone). Provided a package containing these materials conforms to the MOTs requirements prescribed in §§ 171.8 and 173.6, and the weight of MOTs aboard the motor vehicle does not exceed 220 kg (440 pounds), would the package be eligible for the MOTs exceptions?

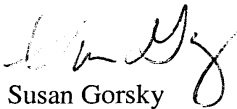
A3. Yes.

Q4. May a store associate transport hazardous materials in his or her own vehicle between stores or to a customer location using the MOTs exceptions provided the packages comply with the definition for MOTs under § 171.8 and applicable requirements under § 173.6?

A4. Yes. See Answer A1 above.

I hope this information is helpful.

Sincerely,



Susan Gorsky  
Regulations Officer  
Office of Hazardous Materials Standards

# West Marine

March 24, 2006

U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Hazardous Materials Standards (PHH-10)  
400 7<sup>th</sup> Street, S.W.  
Washington, DC 20590-0001

Re: Applicability of 173.6 to retailers

To: Susan Gorsky, Regulations Officer

This letter is to follow-up on the phone conversation we had on March 24, 2006 concerning compliance with the Materials of Trade exception covered under 49 CFR, Sections 171.8 & 173.6. West Marine has questions regarding a previous interpretation you provided in the August 23, 2005 letter to Mark U. DuBois at Reichold (Ref No. 01-0012).

According to the aforementioned letter, "It is acceptable for companies that routinely transport and deliver hazardous materials to use the MOTs exception." West Marine is a retail organization that also has a wholesale division named Port Supply. Routinely West Marine/Port Supply transports hazardous materials to our store and customer locations using both private and for hire vehicles. These products are either for replenishment of inventory or to fulfill an existing sale. West Marine would like to request an official letter of interpretation from your office clarifying the questions below.

1. The wholesale business utilizes private company vehicles and drivers to deliver sold goods and return unwanted items from customer locations. May those drivers utilize the MOTs exception in these circumstances assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?
2. May the drivers transport products marked "Consumer Commodity ORM-D" as their common or proper shipping name under the MOTs exceptions assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?
3. Many of the items transported would not be eligible for the Limited Quantity or Consumer Commodity ORM-D provision (e.g. 1 gallon can of acetone). Would a package with these products be acceptable under MOTs assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?
4. May a store associate transport a hazardous material in their own vehicle between stores or to a customer location assuming the hazardous materials meet the MOTs definition in §171.8 and all applicable conditions of §173.6?

I look forward to your response. Should you have any questions or require additional information, please do not hesitate to contact me at (831) 761-4470.

Very truly yours,



Todd A. Nash  
Director of Regulatory Compliance  
West Marine Products Inc.

Edmonson  
§ 173.6  
MOT  
06-0075