



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

AUG 22 2017

Paul M. Grocki  
Law Offices of Paul A. Lange, LLC  
80 Ferry Boulevard  
Stratford, CT 06615

Reference No. 17-0004

Dear Mr. Grocki:

This letter is in response to your January 13, 2017, e-mail and letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the signage requirement in § 175.26. Specifically, you ask if Office Depot, Inc. (Office Depot) is required to display notices informing persons who offer hazardous materials for transport by aircraft of the requirements for transporting these materials and the penalties for non-compliance. You note that Office Depot does not accept packages that contain hazardous materials, a policy that is made evident via in-store signs, advisory statements in the intake package processing system, questions from store staff, and contractual agreement with FedEx. You also state posting notices in conformance with § 175.26 may create an adverse effect on aviation and public safety.

The answer is yes. Section 175.26 requires those who receive cargo for transport by aircraft to display notices that inform all persons who offer cargo for transport by aircraft of the requirements for transporting hazardous materials by aircraft and the penalties for violating these requirements. The intent of these notices is to provide these persons with information that may help avert potential risks in aviation caused by undeclared hazardous materials.

You further question whether Office Depot meets the definition of a "person" as defined in 49 CFR 171.8. Office Depot undoubtedly qualifies as a "person" under the HMR when conducting its normal business activities pertaining to selling office products. The HMR do not allow for a company to be considered a person for some purposes, but not others. Even if this were not true, however, Office Depot would unintentionally become a person if it were to accept an undeclared shipment for air transportation not knowing that it contained hazardous materials.

You may wish to submit an application for a special permit or a petition for rulemaking to obtain the requested relief from the § 175.26 requirement. See 49 CFR 106.95–106.130 and 107.101–107.127, respectively. Special permits may authorize relief from the requirements in the HMR provided the applicant demonstrates an equivalent or greater level of safety to that intended by the regulation. You may obtain information on the special permit application process from our Web site at <http://www.phmsa.dot.gov/hazmat/regs/sp-a>, or by calling the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Approvals and Permits Division at (202) 366-4511. An applicant may also request PHMSA add, amend, or delete a regulation in

the HMR by submitting a petition for rulemaking. You may obtain information on the petition for rulemaking application process from our Web site at <http://www.phmsa.dot.gov/hazmat/standards-rulemaking/petitions>, or by calling PHMSA's Standards and Rulemaking Division at (202) 366-8553.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

**Dodd, Alice (PHMSA)**

Edmanson  
§ 105.20(a)  
Definitions  
17-0007

**From:** INFOCNTR (PHMSA)  
**Sent:** Tuesday, January 17, 2017 11:25 AM  
**To:** Hazmat Interps  
**Subject:** FW: Request for Legal Interpretation Pursuant to 49 C.F.R. 105.20(a); Attn: PHH-10  
**Attachments:** 2017.01.13 Office Depot Request for Legal Interp from PHMSA Final.pdf  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Shante/Alice,

Please submit this as a letter of interpretation. Please let me know if you have any questions.

Thanks,  
Jordan

---

**From:** Paul M. Grocki [mailto:pmg@lopal.com]  
**Sent:** Friday, January 13, 2017 10:41 AM  
**To:** INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>  
**Subject:** Request for Legal Interpretation Pursuant to 49 C.F.R. 105.20(a); Attn: PHH-10

Dear Sir or Madam:

Attached please find a request for legal interpretation from the Pipeline and Hazardous Materials Safety Administration pursuant to 49 C.F.R. 105.20(a). Please do not hesitate to contact me should you have any questions. I kindly request that you please confirm your receipt of this email and the attachment. Thank you.

Regards,

Paul M. Grocki, [pmg@lopal.com](mailto:pmg@lopal.com)

Law Offices of Paul A. Lange, LLC [www.lopal.com](http://www.lopal.com)  
Practicing in CT, NY & MA; nationwide in aviation regulatory and transactional matters

Law Offices of  
**Paul A. Lange LLC**  
NAVIGATING THE WAY >>>  
New York > Connecticut > Massachusetts

CT office: 80 Ferry Blvd., Stratford, CT 06615-6079 | 203.375.7724 x104 | 203.375.9397 (F)  
NY office: 445 Park Ave., 9th Fl., New York, NY 10022-8632 | 212.385.1215 | 212.608.1215 (F)

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Writer's Direct Extension: 104

[pmg@lopal.com](mailto:pmg@lopal.com)

[www.lopal.com](http://www.lopal.com)

80 Ferry Boulevard  
Stratford, CT 06615  
Phone (203) 375-7724  
Fax (203) 375-9397

445 Park Avenue, 9<sup>th</sup> Floor  
New York, NY 10022  
Phone (212) 385-1215  
Fax (212) 608-1215

Please Reply To: CT Office

January 13, 2017

**SENT VIA EMAIL TO [infocntr@dot.gov](mailto:infocntr@dot.gov)**

Standards and Rulemaking Division  
Pipeline and Hazardous Materials Safety Administration  
Attn: PHH-10  
U.S. Department of Transportation  
East Building, 1200 New Jersey Avenue, SE.  
Washington, DC 20590-0001

Re: Request for Legal Interpretation Concerning the Applicability of 49 C.F.R. § 175.26

Dear Sir or Madam:

Pursuant to 49 C.F.R. § 105.20 (a), Office Depot, Inc. ("Office Depot") respectfully requests a legal interpretation of the Hazardous Materials Regulations ("HMRs"). Specifically, Office Depot requests a legal interpretation regarding the following issue: "Whether the signage requirement of 49 C.F.R. § 175.26 ("§ 175.26") applies to Office Depot where Office Depot categorically does not accept hazardous materials ("HAZMAT") for transportation and where posting said signage creates the risk of an adverse effect on aviation safety and the safety of the public at large."

Office Depot maintains that the signage required under § 175.26 does not apply to it because it does not accept HAZMAT for shipment. As set forth more fully below, this conclusion is supported by both the interests of aviation safety and by applicable law.

**I. FACTS**

Office Depot is a leading provider of office supplies and services. One of such services is the acceptance of packages at its stores. Pursuant to a contract with FedEx, Office Depot accepts packages for transportation on behalf of FedEx. The contract explicitly prohibits Office Depot from accepting for shipment any packages containing HAZMAT. There are two methods by which packages are tendered for transportation at Office Depot stores:

- (1) customers process a package for shipment directly with FedEx by phone or through the FedEx website and drop off the package at an Office Depot store; or



- (2) customers bring packaged or unpackaged items to an Office Depot store and process the shipment in the store through a computerized kiosk with a sales associate.

Pursuant to its contract with FedEx and pursuant to its own internal protocols in the interest of aviation safety, Office Depot categorically prohibits acceptance for transportation of any packages that contain HAZMAT. Indeed, Office Depot implements various policies and protocols to clearly and unequivocally inform its customers and its associates that it does not accept packages that contain HAZMAT. Specifically, when a customer processes a package for shipment in an Office Depot store, the computerized kiosk prompts the customer to confirm that the package does not contain HAZMAT before the customer can continue processing the shipment, expressly noting that the shipment of HAZMAT is prohibited. Moreover, through screens on the kiosk the customer is informed of items considered HAZMAT. After completing processing on the computerized kiosk, the customer must then further confirm with a sales associate that the package does not contain HAZMAT. Office Depot also prominently displays signs at its stores, in plain sight for its customers to see, which explicitly and clearly state that the shipping of HAZMAT is strictly prohibited.

## II. TEXT OF 49 C.F.R. § 175.26

49 C.F.R. § 175.26 provides in relevant part:

(a) Each person who engages in the acceptance or transport of cargo for transportation by aircraft shall display notices to persons offering such cargo of the requirements applicable to the carriage of hazardous materials aboard aircraft, and the penalties for failure to comply with those requirements, at each facility where cargo is accepted. Each notice must be legible, and be prominently displayed so it can be seen. At a minimum, each notice must communicate the following information:

(1) Cargo containing hazardous materials (dangerous goods) for transportation by aircraft must be offered in accordance with the Federal Hazardous Materials Regulations (49 CFR parts 171 through 180).

(2) A violation can result in five years' imprisonment and penalties of \$250,000 or more (49 U.S.C. 5124).

(3) Hazardous materials (dangerous goods) include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials.

(b) The information contained in paragraph (a) of this section must be printed:

(1) Legibly in English, and, where cargo is accepted outside of the United States, in the language of the host country; and

(2) On a background of contrasting color.

**III. Both the Interests of Aviation Safety and Applicable Law Establish that § 175.26 does not Apply to Office Depot**

Based upon these facts, and as discussed in detail below, both the interests of aviation safety and applicable law support a finding that the signage requirements of § 175.26 do not apply to Office Depot.

**A. Posting the Signage Pursuant to § 175.26 is Adverse to Aviation Safety and the Safety of the Public at Large**

Office Depot is fully committed to complete and total compliance with the Federal Aviation Regulations ("FARs") and ensuring/promoting aviation safety. It is for this exact reason that Office Depot is hesitant to display the § 175.26 signage, because doing so in these circumstances could have an adverse impact on aviation safety and the safety of the public at large.

As discussed above, Office Depot does not accept packages containing HAZMAT for shipment. Indeed, Office Depot prominently displays signs at its stores, which explicitly and unequivocally state that the shipping of HAZMAT is strictly prohibited. Moreover, the computerized kiosks necessary to process a shipment at an Office Depot store also explicitly advise customers that shipping HAZMAT is prohibited. In addition, the Office Depot associate confirms with the customer that his or her package does not contain HAZMAT. In light of the clear and prominent messaging that Office Depot **does not** ship HAZMAT, simultaneously displaying signage containing directions that **if HAZMAT is shipped** sends a contrary message that undoubtedly will create confusion with customers. This dichotomy would create confusion where none otherwise exists, and it creates a serious risk that customers would ship HAZMAT from an Office Depot store because the § 175.26 signage would be inviting them to do so. Moreover, by encouraging customers to ship HAZMAT, a litany of other FARs and HMRs might then apply to Office Depot as an unintended consequence.

In light of the foregoing, the interest of aviation safety and the safety of the public at large supports a finding that § 175.26 does not apply to Office Depot under these circumstances.

**B. Applicable Law and Legal Interpretations Establish that § 175.26 does not Apply to Office Depot**

In addition to the interests of aviation safety and the safety of the public at large, applicable law and legal interpretations support a finding that § 175.26 does not apply to Office Depot.

1. Applicable Regulatory Law Establishes  
Entities that ship HAZMAT

Applicable regulatory law unequivocally establishes entities that accept HAZMAT for air transport. Depot categorically prohibits accepting HAZMAT for air transport; it applies to it.

As stated above, § 175.26 applies to "[e]nities that offer acceptance or transport of cargo for transportation by aircraft as used in the HMRs is defined as follows:

**Person** means an individual, corporation, partnership, society, joint stock company; or authority of a government or Tribe, that offers a hazardous material for transportation in commerce, transports a hazardous material to support a commercial enterprise, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

(Emphasis Added.) 49 C.F.R. § 171.8. Based upon this definition of "person," it is unequivocal that § 175.26 applies solely to entities that offer HAZMAT for air transportation or otherwise work with HAZMAT that is transported in commerce. This limitation of the applicability of § 175.26 is further confirmed by the HMRs only "applies to the offering, acceptance, and transport of **materials in commerce** by aircraft to, from, or within the United States registry anywhere in air commerce." (Emphasis Added.) 49 C.F.R. § 175.1 (b).

Additionally, the preamble to the regulation lends further support to the conclusion that § 175.26 only applies to entities that accept HAZMAT for air transport. Federal Register Vol. 1, No. 25, March 22, 2006, provides that entities that are also subject to the requirements in part 175 when accepting HAZMAT for air transportation." (Emphasis added.) Pg. 14587. The regulation also provides that the HMRs "apply to any person who performs, or is required to perform any function subject to the HMRs as a carrier, indirect air carrier and freight forwarder and employees, agents, subsidiary and contract personnel that accept HAZMAT for air transportation." (Emphasis added.) *Id.*, pg. 14591.

*I find it hard to believe that OD doesn't ship HAZMAT on its own behalf, even if it doesn't ship it for customers*

*Should we address the possibility of undeclared shipments?*

2. Legal Interpretations Further Establish that § 175.26 does not Apply to Office Depot

In the UPS Interpretation, a UPS Store inquired about the circumstances under which it HMRs for accepting undeclared HAZMAT shipments for transportation. The UPS Interpretation noted shipments containing HAZMAT.<sup>2</sup> The UPS Interpretation stated: **Store that does not accept hazardous materials not apply to that store's operations.** (Emph unequivocally does not accept shipments containing HAZMAT.) (UPS Interpretation, § 175.26 does not apply to it.)

Therefore, the UPS Interpretation provides further support that § 175.26 does not apply to Office Depot.

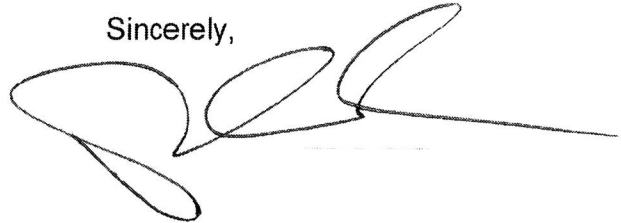
#### IV. CONCLUSION

<sup>1</sup> It should be noted that § 175.26 (d) (1) provides that the signage requirements do not apply to “[a]n unattended location (e.g., a drop box) provided a general notice of advising customers of a prohibition on shipments on hazardous materials through that location is prominently displayed . . . .”

<sup>2</sup> Except for ORM-D. It should be noted that Office Depot does not permit the shipment of ORM-D.

Based upon the foregoing, Office Depot maintains that both the interests of aviation safety and the applicable law support the conclusion that § 175.26 does not apply to it. Office Depot respectfully requests a legal interpretation confirming its analysis of this issue.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a long horizontal stroke extending to the right.

Paul M. Grocki

PMG/jlr

Enclosure

cc: Mr. Paul Serafin  
Hazardous Materials Safety Section Manager  
Federal Aviation Administration  
AHC-520  
[paul.serafin@faa.gov](mailto:paul.serafin@faa.gov)



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

Office of  
Chief Counsel

**Hazardous Materials Safety  
Law Division**

1200 New Jersey Ave, S.E.,  
Room E26-326  
Washington, D.C. 20590-0001  
Phone: (202) 366-4400  
Fax: (202) 366-7041

SEP 11 2007

Ms. Nancy Kasza-Scott  
Owner  
The UPS Store  
4962 Hononegah Road  
Roscoe, Illinois 61073

Ref. No.: 06-0085

Dear Ms. Kasza-Scott:

This responds to your April 24, 2006 letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to certain acceptance functions performed at your place of business. Specifically, you ask about the circumstances under which a UPS Store could be found to be in violation of the HMR for accepting undeclared shipments or non-compliant packages for transportation. I apologize for the delay in responding and any inconvenience it may have caused.

It is our understanding that UPS Stores, which are owned and operated by independent franchisees, do not accept hazardous materials shipments on behalf of UPS. The one exception to this policy is the acceptance of ORM-D materials offered for carriage by ground transportation at some UPS Store locations.

For a UPS Store that does not accept hazardous materials shipments, the HMR generally do not apply to that store's operations. However, for purposes of the HMR, a UPS Store is considered to be an agent of UPS because it accepts packages for transportation on behalf of UPS. The HMR permit a carrier or the carrier's agent to rely on information provided by the person offering a package for transportation unless the carrier or agent knows or a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided is incorrect (see § 171.2(f)). Thus, a UPS Store could be found to be in violation of the HMR if it accepts an undeclared hazardous materials shipment for transportation when it knows that the shipment contains a hazardous material, or a reasonable person, acting in the circumstances and exercising reasonable care, would know that the shipment contains a hazardous material. Some possible indicators of hazardous materials include a hazard label or

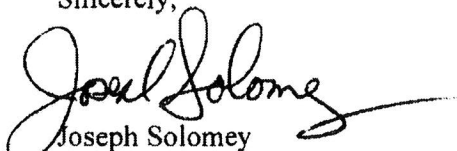
caution statement on the package with no accompanying shipping documentation, or a notation such as "flammable paint" without proper shipping declarations or labels or markings. We strongly recommend that UPS Store employees receive training in how to recognize a possible undeclared hazardous materials shipment.

We note that an offeror who fails to properly declare (and prepare) a shipment of hazardous materials bears the primary responsibility for a hidden shipment. Indeed, whenever hazardous materials have not been shipped in accordance with the HMR, DOT generally will attempt to identify and bring an enforcement proceeding against the person who first caused the transportation of a non-complying shipment.

UPS Store personnel accepting ORM-D materials offered for ground transportation on behalf of UPS must ensure that the shipment conforms to all applicable HMR requirements prior to accepting the shipment. Again, the UPS Store may rely on information provided by the person offering the package for transportation unless it knows, or a reasonable person acting in the circumstances and exercising reasonable care, would have knowledge that the information provided is incorrect. Employees of the UPS Store who accept packages must be trained in accordance with Subpart H of Part 172 of the HMR.

You should also be aware that the Federal Aviation Administration has issued regulations governing air carriers that do not accept or transport hazardous materials, and these regulations may apply to some aspects of your operation. You may wish to contact the Director, Office of Hazardous Materials, ADG-1, Federal Aviation Administration, 800 Independence Ave. SW, Room 300 East, Washington, DC 20591, 202-267-9864, for additional information.

Sincerely,



Joseph Solomey  
Assistant Chief Counsel



**Nancy Kasza-Scott**

Owner

4962 Hononegah Road  
Roscoe, IL 61073  
815.623.5808 Tel  
815.623.3388 Fax  
store3915@theupsstore.com

Stevens  
§ 171.1  
Applicability  
06-0055



April 24, 2006

Mr. Edward T Mazzullo  
Director, Office of Hazardous Materials Standards  
S.S. DOT/PHMSA (PHH-10)  
400 7<sup>th</sup> St. SW  
Washington, D.C. 20590-0001

Sir,

We are seeking a formal letter of determination from the DOT. The UPS Stores are owned and operated by independent franchisees. We believe that we are exposed to potential liability for fines levied by the DOT for hazardous materials that we may unknowing be introducing into the shipping system. Although we have tried many times, in many different ways, to get an answer from our Franchisor, we have not been able to get a clear, consistent response.

Here is the situation; we are contractually required to accept pre-paid packages for customers of UPS. These are NOT our customers: they simply use our locations as a drop-off point. They are direct customers of UPS. UPS does not assume responsibility for these packages until they are placed in their truck. These packages come to us closed, taped and labeled for shipping. Often the person dropping the package off does not even know the contents of the package. Occasionally, a pre-paid package will have the ORM-D label on the box, with a pre-paid return label, given to that person by the company who originally sent the product. The person bringing the package to us has no understanding of the meaning of that ORM label and cannot tell us if the materials inside are hazardous. Please provide a letter of determination for the following question:

Under what circumstances would a storeowner be fined, by the Department of Transportation, for violating Hazmat regulations?

**The UPS Store**



**Nancy Kasza-Scott**

Owner

4962 Hononegah Road  
Roscoe, IL 61073  
815.623.5808 Tel  
815.623.3388 Fax  
store3915@theupsstore.com



Please take the following into consideration:

- We are NOT instructed to inspect the contents of packages, nor are we trained or compensated to perform this function.
- It is our understanding that hazmat shippers are required to attend training. If so, can companies like UPS, Avon, etc., knowingly provide shipping labels to consumers who they know have no understanding of hazmat procedures.
- Can UPS legally require us to accept packages that we have no control over?
- If a UPS Store franchisee were fined by the DOT for unknowingly introducing a hazmat package into the system, would the sender (i.e., Avon...) and UPS also be fined?

One of our fellow storeowners had a fire damage his store. There is suspicion that the fire was started by a drop-off package. One can assume that this package would also contain hazardous materials, since it was flammable. How would the Department of Transportation rule if this same package caught on fire in a UPS truck, plane or at a hub?

Thank you, in advance, for your assistance in this manner. A letter of determination will help us, as storeowners, develop policies and procedures to protect our business from unnecessary liability and to promote proper handling of all packages.

If you have questions regarding this request, please contact me at 815-623-5808.

Thank you.

  
Nancy Scott

**The UPS Store**

**Nancy Kasza-Scott**

Owner

4962 Hononegah Road  
Roscoe, IL 61073  
815.623.5808 Tel  
815.623.3388 Fax  
store3915@theupsstore.com



May 23.2006

Office Of Hazardous Materials Standards  
Director Edward T Mazzuillo  
S.S. DOT/PHMSA (PHH-10)  
400 7<sup>th</sup> St SW  
Washington, D.C. 20590-001

Sir,

As a small business owner, I am seeking clarification, in written form, for DOT regulations that relate to acceptance of and shipping of packages as a retail shipping outlet. Obviously we package and ship items for our customers and, in that capacity, are responsible for following HAZMAT guidelines. However, we are required, by contract with UPS, FedEx, etc to accept pre-paid packages, which are simply dropped off at our business for later pick-up by a carrier's driver.

I will not re-hash all of the issues involved. Enclosed are copies of my previous requests. It is our understanding that if one of these packages was found to contain HazMat we could be fined for 'introducing' the package into the shipping system. We are not trained to identify hazardous materials. Recently, The Home Office of Mail Boxes Etc, Inc, began instructing franchisee's that they are to inspect packages.

I have made 3 attempts to get written clarification on these issues. I need a written letter of Determination, so that we, as small business owners, can develop policies and procedures to protect our employees, our businesses and ourselves. Only an official, written, letter of determination will allow us to go back to the carriers and effect changes in the contractual requirements that put us at risk.

I do not mean to imply that your office has not been helpful. I have received phone calls from staff, attempting to answer questions. However, the carriers have not responded to our concerns, and, as mentioned, are now trying to force us to open and inspect packages, without benefit of training or compensation.

I would appreciate acknowledgement of this letter and an approximate date a Letter of Determination can be expected.

Thank You,

Nancy Scott

**The UPS Store**

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Thank you.

Nancy Scott

April 24, 2006

Mr. Edward T Mazzullo  
Director, Office of Hazardous Materials Standards  
S.S. DOT/PHMSA (PHH-10)  
400 7<sup>th</sup> St. SW  
Washington, D.C. 20590-0001

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