



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

Office of
Chief Counsel

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

**Hazardous Materials Safety
Law Division**

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

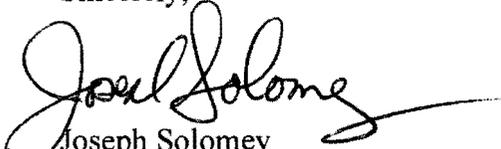
caution statement on the package with no accompanying shipping documentation, or a notation such as “flammable paint” without proper shipping declarations or labels or markings. We strongly recommend that UPS Store employees receive training in how to recognize a possible undeclared hazardous materials 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.d.
Applicability
06-0055



April 24, 2006

Mr. Edward T Mazzullo
Director, Office of Hazardous Materials Standards
S.S. DOT/PHMSA (PHH-10)
400 7th 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 unknowingly 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 enclosed, 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.

A handwritten signature in black ink, appearing to read "Nancy Scott", with a long horizontal line extending to the right.

Nancy Scott

Nancy Kasza-Scott

Owner



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Roscoe, IL 61073
815.623.5808 Tel
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May 23.2006

Office Of Hazardous Materials Standards
Director Edward T Mazzullo
S.S. DOT/PHMSA (PHH-10)
400 7th 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 phones call 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, with out 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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Nancy Scott

April 24, 2006

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