

Chief Safety Officer
Federal Motor Carrier Safety Administration
1200 New Jersey Ave SE
Washington, DC 20590

DEPT. OF TRANSPORTATION
DOCKETS

2009 MAY -7 A 11: 31

4/23/2009

FMCSA-2009-0138



US DOT # 388351

I had an investigation by the FMCSA on 04/16/2009. We received a conditional rating based on 7 violations. I am petitioning to have 2 violations removed because we feel they are incorrect.

Violation # 1) Failing to retrain hazardous materials employees every 3 years. The driver in question is Steve Clay. Steve is a port supply van driver and falls under the MOTS exemption. His vehicle does not transport product weighting more then 440 lbs. I have attached the clarification from the US Dept of Transportation.

Violation # 3) Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper.

Basic Description: Flares aerial, 1.4G, PGII, 1 fiberboard box.

The violation is that the EX number is missing. The EX number is not noted anywhere on the hazardous material table. There is a marking requirement in 172.320. We do write the EX numbers on the cartons.

Your help in removing the above mentioned violations would be greatly appreciated.

Thank you

A handwritten signature in black ink, appearing to read "Maria S. Brandon".

Maria S. Brandon
West Coast Transportation Manager
West Marine Products
2395 Bert Dr
Hollister, CA 95023

2009 MAY -1 AM 11: 26

FMCSA
OFFICE OF CHIEF COUNSEL



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.

06/06/2006 08:59AM

04/24/2007 03:41PM

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?

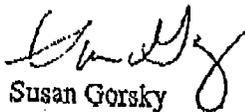
A3. Yes.

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

06/06/2006 08:59AM

04/24/2007 03:41PM



WEST MARINE PRODUCTS INC
U.S. DOT #: 388351

Review Date:
04/16/2009

Part B Violations

| 1 FEDERAL | Primary: 172.704(c)(2) | Discovered 2 | Checked 20 | Drivers/Vehicles In Violation | Checked 20 |
|--|---|-----------------|---------------|----------------------------------|---------------|
| Description Failing to retrain hazardous material employees every three years. Example Name: Steve Clay Date started as HM employee: early 2005 HM Function: Port driver Last HM training: 05/21/05. | | | | | |
| 2 FEDERAL | Primary: 177.800(c) | Discovered 1 | Checked 3 | Drivers/Vehicles In Violation | Checked 3 |
| Description Failing to train hazardous material employee as required by Subpart H of Part 172. Example Name: Roy Fuller HM Function: driver Date hired: 02/09/88 Transported placardable quantity of HM to San Diego. | | | | | |
| 3 FEDERAL CRITICAL | Primary: 177.817(a) | Discovered 2 | Checked 5 | Drivers/Vehicles In Violation | Checked |
| Description Transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper. Example Date: 04/13/09 Basic description: flares, aerial, 1.4G, UN0403, PGII, 1 fiberboard box. Violation: The associated "EX" number is missing. | | | | | |
| 4 FEDERAL CRITICAL | Primary: 395.3(a)(1) | Discovered 6 | Checked 60 | Drivers/Vehicles In Violation | Checked 2 |
| Description Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 11 hours Example Mike Swain, 02/24/09. | | | | | |
| 5 STATE | Primary: 395.3(a)(1) CFR Equivalent: 395.3(a)(1) | Discovered 5 | Checked 30 | Drivers/Vehicles In Violation | Checked 1 |
| Description Requiring or permitting a property-carrying commercial motor vehicle driver to drive more than 12 hours Example George Ayo, 03/16/09. | | | | | |





WEST MARINE PRODUCTS INC
U.S. DOT #: 388351

Review Date:
04/16/2009

Part B Violations

| | | | | | |
|------------|---|-----------------|---------------|---------------------------------------|--------------|
| 6 STATE | Primary: 395.3(a)(2) CFR Equivalent: 395.3(a)(2) | Discovered 5 | Checked 30 | Drivers/Vehicles In Violation 1 | Checked 1 |
|------------|---|-----------------|---------------|---------------------------------------|--------------|

Description

Requiring or permitting a property-carrying commercial motor vehicle driver to drive after the end of the 16th hour after coming on duty.

Example

03/16/09, George Ayo drove 8 hours after being on duty 16 hours.

| | | | | | |
|--------------|-------------------|------------------|---------------|---------------------------------------|--------------|
| 7 FEDERAL | Primary: 395.8(f) | Discovered 41 | Checked 60 | Drivers/Vehicles In Violation 2 | Checked 2 |
|--------------|-------------------|------------------|---------------|---------------------------------------|--------------|

Description

Failing to require driver to prepare record of duty status in form and manner prescribed.

Example

Mike Swain, 03/34/09. Drivers do not list bill of lading number or commodity.

Safety Fitness Rating Information:

Total Miles Operated 2,666,674
Recordable Accidents 0
Recordable Accidents/Million Miles 0.00

OOS Vehicle (CR): 0
Number of Vehicle Inspected (CR): 2
OOS Vehicle (MCMIS): 1
Number of Vehicles Inspected (MCMIS): 3

Your proposed safety rating is :

CONDITIONAL

| Rating Factors | | Acute | Critical |
|----------------|---|-------|----------|
| Factor 1: | S | 0 | 0 |
| Factor 2: | S | 0 | 0 |
| Factor 3: | U | 0 | 2 |
| Factor 4: | S | 0 | 0 |
| Factor 5: | C | 0 | 1 |
| Factor 6: | S | - | - |

This rating will become the final rating 60 days from the date indicated on a forthcoming official notice from the Federal Motor Carrier Safety Administration headquarters in Washington, D.C.

However, if this rating improves a previous Unsatisfactory rating, it will become effective on the date of the official notice from the FMCSA headquarters.

Corrective actions must be taken for the violations (deficiencies) listed on Part B of this review. Title 49 CFR Sections 385.15 and 385.17 provide for administrative review and a change to a safety rating based on corrective actions, respectively. A request for a change to a safety rating under section 385.17 may be made at any time. A request for administrative review under section 385.15 must be made within 90 days of the date of the proposed safety rating issued under section 385.11(c) or a final safety rating issued under section 385.11(b), or within 90 days after denial of a request for a change in rating under section 385.17.

Null

