

New DOT Rule Governs Reverse Distribution

April 2016

Product Stewardship and Sustainability Report

The U.S. Department of Transportation (DOT) on March 31, 2016, issued a final “reverse logistics” rule that applies streamlined hazardous materials shipping requirements to retailers who return retail goods to manufacturers, suppliers, and distribution facilities. The new rule applies only to highway transportation. It allows the return of cleaning materials, beauty and art supplies, fuels, expired over-the-counter drugs, and other regulated liquids and solids without full compliance with hazmat regulations, as long as specified and reduced requirements are met. The requirements address labeling, packaging, training/instructions, materials segregation, and recordkeeping and incident reporting obligations.

The new rule also allows highway return of equipment containing flammable liquids or gases (e.g., generators, ATVs, camping equipment), provided appropriate fuel isolation precautions are taken, and simplifies regulation of return shipments of lead batteries for recycling.

Unsold retail goods need to be returned for many reasons, including recalls, recycling, replacement, and obtaining manufacturer credit for overstock. Often, however, these goods are hazardous materials (or contain hazardous materials). And retailers often find the full-scale hazmat regulations unnecessarily burdensome.

Responding to an industry petition and comments on two stages of proposed rules (advanced notice and proposed), DOT concluded that it is safer and more effective to give retailers reasonable and achievable shipping requirements to follow for reverse logistics product returns. Examples of covered classes of hazardous materials include certain flammable and combustible liquids; limited quantities

Practice Areas

Environment & Product Regulation
Extended Producer Responsibility and Recycling

of compressed gases (i.e., in cylinders and aerosol cans); limited quantities of retail fireworks, ammunition, and flares; flammable solids; oxidizers; certain poisonous materials; corrosive materials; and miscellaneous Class 9 hazardous materials except lithium batteries. All shipments must utilize limited quantity compliant packaging.

Hazardous wastes are not eligible for the reverse logistics provision. Nor are organic peroxides, self-reactive materials, spontaneously combustible materials, or materials that are dangerous when wet or poisonous by inhalation.

The rule provides more flexibility to shipments by private or dedicated carriers (i.e., shipper owned transport vehicles). For example, materials shipped by private carriers under the new reverse logistics provisions may be marked with "REVERSE LOGISTICS – HIGHWAY TRANSPORTATION ONLY – UNDER 49 CFR 173.157" in lieu of surface limited quantity marking. This marking, subject to size specifications, provides clear notice to carriers that only highway transportation is allowed.

Non-private carrier shipments (e.g., contract or common carriers) are also eligible for reverse logistics coverage, but more limitations apply. For example, materials shipped by non-private carriers must be specifically authorized for reverse logistics *and* limited quantity shipment, and must meet all the limited quantity shipment requirements (e.g., marking).

Suppliers, manufacturers, and distributors must provide retailers with clear instructions on how to properly classify, package, mark, offer, and transport all reverse logistics shipments. Employers must either provide appropriate training based on these instructions or make the instructions available to employees.

In this same rule, DOT also separately authorizes the pickup of used automotive batteries from multiple retail locations for purposes of recycling, provided those batteries are consolidated on pallets and loaded so as not to cause damage to the batteries during transportation. This new provision codifies a long-utilized special permit that DOT had granted to industry to allow fuel-efficient "milk run" battery collection shipments.