



HAZARDOUS MATERIALS TRANSPORTATION

Kazmarek Mowrey Cloud Laseter LLP (KMCL) maintains one of the most robust domestic and international hazardous materials/dangerous goods practices in the country, assisting clients involved in all modes and aspects of transportation in a diverse array of complex compliance, litigation, transactional, and rulemaking matters.

U.S. Domestic Hazardous Materials Transportation

KMCL lawyers have experience counseling carriers, shippers, and transportation intermediaries, such as freight forwarders and customs brokers, on their obligations under the federal Hazardous Materials Regulations and state and local regulations affecting the transportation of hazardous materials. Our lawyers have brought that experience to bear in assisting clients in numerous complex business transactions involving the carriage of hazardous materials, including the drafting of logistics and supply chain agreements. This experience includes advising companies that transport and handle munitions and weapon systems for the U.S. Department of Defense under the hazardous materials-related provisions of the Defense Transportation Regulations.

KMCL lawyers have defended companies in civil and criminal enforcement actions before state and federal transportation authorities. For example, in one criminal action brought in San Diego, our lawyers obtained a dismissal with prejudice of all counts of a complaint that sought to impose California-wide hazardous materials training requirements costing tens of millions of dollars. Our lawyers also have significant experience defending clients in civil enforcement actions brought by U.S. Department of Transportation (DOT), including the DOT's Pipeline and Hazardous Materials Administration (PHMSA), the Federal Aviation Administration (FAA), and the Federal Railroad Administration (FRA).

Representative Matters:

- Obtained a DOT Interpretation Letter for a Fortune 100 beverages company confirming that the company could transport certain beverages under relaxed hazardous materials restrictions. The DOT Interpretation Letter was critical to the cost-effectiveness of the company's planned roll-out of a new product.
- Obtained complete withdrawal of an FAA Notice of Proposed Civil Penalty for Fortune 50 worldwide transportation and logistics company.
- Within 48 hours, obtained emergency modification to a Special Permit for Fortune 50 diversified chemical company that authorized shipments of quarantined hazardous materials and avoided lost product sales estimated at approximately \$300,000-\$500,000 per day.
- Successful defense of multiple civil penalty actions brought by PHMSA and the FAA against the world's largest office products company.
- Successful defense of multiple civil penalty actions brought by the FAA and the FRA against a multi-billion dollar manufacturer and marketer of cleaning and disinfecting products for the retail, health care, education, food service and recreational markets.

- Counseled one of the world's largest manufacturers of office products on proper transportation of flammable liquids under the Hazardous Materials Regulations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Maritime Dangerous Goods Code.
- Represented multinational oil and gas company in obtaining favorable DOT interpretation on complex hazardous materials classification issues concerning petroleum condensates.
- Obtained DOT Interpretation Letter for major global telecommunications provider authorizing return shipments of recalled lithium ion cell phone batteries. The letter was instrumental in allowing the company's recall program to move forward.
- Counseled numerous clients on HazMat jurisdictional issues affecting regulatory compliance under OSHA and environmental statutes such as EPCRA and the Clean Water Act.
- Successful representation of numerous entities in FAA and Federal Railroad Administration hazardous materials civil enforcement proceedings.

When new regulations are proposed, we comment on them during the rulemaking process. KMCL's lawyers have drafted comments submitted to the dockets of almost every significant hazardous materials rulemaking proposed by the DOT over the past several years, including:

- Notice of Proposed Rulemaking: Hazardous Materials Transportation: Revisions of Special Permits Procedures, Docket No. PHMSA-2009-0410 (HM-233B), issued by the Pipeline and Hazardous Materials Safety Administration on July 27, 2010.
- Notice of Proposed Rulemaking: Hazardous Materials: Transportation of Lithium Batteries, Docket No. PHMSA-2009-0095 (HM-224F), issued by the Pipeline and Hazardous Materials Safety Administration on January 11, 2010.
- Notice of Proposed Rulemaking: Railroad Safety Enforcement Procedures; Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions, Docket No. FRA-2007-28573, issued by the Federal Railroad Administration on April 16, 2008.
- Interim Final Rule: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments, Docket No. RSPA-04-18730 (HM-232E), issued by the Pipeline and Hazardous Materials Safety Administration on April 16, 2008.
- Notice of Proposed Rulemaking: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments, Docket No. RSPA-04-18730 (HM-232E), issued by the Pipeline and Hazardous Materials Safety Administration on December 21, 2006.
- Notice of Proposed Rulemaking: Rail Transportation Security, Docket No. TSA-2006-26514, issued by the Transportation Security Administration on December 21, 2006.
- Advance Notice of Rulemaking: Chemical Facility Anti-Terrorism Standards, Docket No. DHS-2006-0073, issued by the Department of Homeland Security on December 28, 2006.
- Interim Final Rule: Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107-296 – Delivery of Explosive Materials by Common or Contract Carrier, ATF No. 2, Docket No. ATF2002R-341P, issued by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives on September 11, 2003.
- Notice of Proposed Rulemaking: Hazardous Materials Training Requirements, Docket No. FAA-2003-15085, issued by the Federal Aviation Administration on May 8, 2003.

- Notice of Proposed Rulemaking: Availability of Information for Hazardous Materials Transported by Aircraft, Docket No. RSPA-00-7762 (HM-206C), issued by the Research and Special Programs Administration (RSPA) on February 13, 2002.
- Notice of Proposed Rulemaking: Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions, Docket No. RSPA- 2002-13658, issued by RSPA on December 3, 2002.
- Notice of Proposed Rulemaking: Security Requirements for Offerors and Transporters of Hazardous Materials, Docket No. RSPA-02-12064 (HM-232), issued by RSPA on May 2, 2002.
- Advance Notice of Proposed Rulemaking Hazardous Materials: Revision of Requirements for Carriage by Aircraft, Docket No. RSPA-02-11654 (HM-228), issued by RSPA on February 26, 2002.
- Notice of Proposed Rulemaking: Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage, Docket No. RSPA-98-4952 (HM-223), issued by RSPA on June 14, 2001.
- Notice of Proposed Rulemaking: Revisions to Incident Reporting Requirements and the Hazardous Materials Incident Report Form, Docket No. RSPA-99-5013, issued by RSPA on July 3, 2001.
- Notice of Proposed Rulemaking: Development of a North American Standard for Protection Against Shifting and Falling Cargo, Docket No. FMCSA-97-2289, issued by the Federal Motor Carrier Safety Administration on December 18, 2000.

International Dangerous Goods

KMCL advises clients on the international codes and standards that apply to the multi-modal transportation of dangerous goods. We are experts in the following international dangerous goods transportation codes: (1) International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods (ICAO); (2) International Air Transport Association's Dangerous Goods Regulations (IATA); (3) International Maritime Organization's IMDG Code; (4) European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR); (5) the European Agreement Concerning the Carriage of Dangerous Goods by Rail (RID); (6) the European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterway (ADN); and (7) the International Atomic Energy Agency's Regulations for the Safe Transport of Radioactive Material, No. TS-R-1.

KMCL lawyers have advised a major transportation company on issues related to (1) the import into the EU of regulated electrical equipment under Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) and Directive 2002/96/EC on waste electrical and electronic equipment (WEEE); and (2) multi-modal transportation, customs, emergency response, occupational health & safety and environmental disposal requirements for chemical agents, biological agents, diagnostic specimens and radioactive materials in the following countries: Argentina, Australia, Austria, Bahamas, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Jamaica, Latvia, Lebanon, Liechtenstein, Luxembourg, Malta, Martinique, Mexico, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru,

Poland, Portugal, Puerto Rico, Romania, Russia, Serbia & Montenegro, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, and Venezuela.