

**Matter of:** Tri-State Motor Transit Company  
**File:** B-253293, B-254374, B-254375, B-254381  
**Date:** December 10, 1993

---

**DIGEST**

Shipment of commodities classified as "ammunition for cannon with smoke projectiles" and "special fireworks" are not subject to additional shipping charges that apply to "chemical ammunition" since, according to the applicable hazardous materials regulations, each of the three designations identifies a clearly distinguishable explosive.

---

**DECISION**

Tri-State Motor Transit Company requests review of the General Services Administration's denial of claims in which Tri-State sought additional charges for the transport of certain Government Bill of Lading (GBL) munitions shipments for the Department of Defense. We affirm GSA's settlements.

Tri-State's claims are predicated on items 325 and 327 of the Military Traffic Management Command's Freight Traffic Rules Publication No. 1A (MFTRP 1A), which generally provide for minimum weights of 2,500 and 7,500 pounds, respectively, for all ammunition shipments. Each item also contains a Note 3 stating that "when shipper provides additional descriptive information . . . on the GBL, which identifies chemical ammunition with incendiary charges or white phosphorus," such commodities are subject to line-haul minimum weights of 5,000 or 10,000 pounds under the respective items. Since the GBLs here included "incendiary" or "white phosphorus" as additional descriptive information, Tri-State argues that the higher minimum weights applied.

GBL transaction D-0,674,301, tendered to Tri-State in September 1989, is illustrative of the white phosphorus type of shipment. The GBL described the contents as "ammunition for cannon with smoke projectile," a Class A explosive. Specifically, the shipment involved two pallets mortars, which include "white phosphorus" in the descriptive nomenclature. The mortars are used to produce a screening

---

<sup>1</sup>The items apply to different types of dromedary service.

smoke and as incendiary devices against personnel and equipment.<sup>2</sup>

GBL transaction D-0,687,296, transported in February 1990, is illustrative of the incendiary charge type of shipment. The GBL described the shipment as one pallet of "FIREWORKS, SPECIAL-CLASS B EXPLOSIVE - CAT 3 - (Grenade, Hand, Incendiary, AN-M14)." These incendiary grenades are used primarily to provide a source of intense heat, to destroy equipment.

Tri-State argues that the American Trucking Association's Hazardous Materials Tariff and the Department of Transportation's hazardous materials regulations, which are in Title 49 of the Code of Federal Regulations, should be the basis for determining whether the shipments in issue were "chemical ammunition." Section 173.53(r) of the regulations defines "chemical ammunition" as "all kinds of explosive chemical projectiles . . . loaded with toxic, tear, or other gas, smoke or incendiary agent. . . ." Tri-State contends that this means that "chemical ammunition" by definition includes any explosive ammunition containing white phosphorus (a recognized smoke agent), incendiary agent, or other agent named in section 173.53(r). Tri-State also argues that white phosphorus and incendiary agents are incompatible with Class A and B Explosives, thus justifying higher minimum weights on shipments.

In its administrative report, MTMC acknowledges that the mortar, for example, has a white phosphorus filler as a component part. MTMC contends, however, that the word "chemical" in the term "chemical ammunition" in Note 3 of items 325 and 327 "refers to ammunition containing toxic chemical agents, which are designed to produce an incapacitating effect, whereas this is not true of the white phosphorus contained in the ammunition at issue here." MTMC says that all ammunition, including rifle bullets, contains

---

<sup>2</sup>Department of the Army Technical Manual (TM) 43-0001-28, p. 4-44.1 (C6, Mar. 18, 1980).

<sup>3</sup>TM 43-0001-29, p. 2-31 (C8, Nov. 28, 1986).

<sup>4</sup>We refer throughout to the 1988 and 1989 revisions to title 49, which applied at the time of the shipments involved here. A new classification system for hazardous materials became effective after 1990.

<sup>5</sup>Tri-State cites section 177.848, footnote 3, which states that Class A/B explosives cannot be loaded or stored with chemical ammunition containing incendiary charges or white phosphorus.

some form of chemicals, but not all ammunition is chemical ammunition. If the increased minimums were intended to apply to any ammunition containing chemicals, which in effect would mean all ammunition shipped, there would be no reason to have a higher minimum for "chemical ammunition."

We agree with Tri-State that the Hazardous Materials Tariff and the regulations are relevant in interpreting the term "chemical ammunition" in Note 3 of items 325 and 327. Item 5 of MFTRP 1A specifically incorporates the Tariff, and the Tariff is subject to the regulations. We do not agree, however, that the fact that explosive ammunition contains white phosphorous or other incendiary agent means that it necessarily falls within the regulation's definition of "chemical ammunition."

Section 173.53 includes a series of precise definitions of Class A Explosives other than "chemical ammunition." For example, section 173.53(j) defines "ammunition for cannon with smoke projectiles" (including smoke and incendiary projectiles) as "fixed ammunition assembled in a unit consisting of a cartridge case containing the propelling charge and primer, and the projectiles, or shell, fuzeed or unfuzeed." The GBL mortar description noted above was for ammunition for cannons with smoke projectiles. Section 173.88(d) describes "Special fireworks" (a Class B Explosive), which were the subject of the grenade GBL, as "manufactured articles designed primarily for the purpose of producing visible or audible pyrotechnic effects by combustion or explosion"; the description specifically includes incendiary grenades.

In sum, none of the items shipped here were identified on the GBLs as "chemical ammunition," but instead were described as other explosives specifically defined in the Department of Transportation's hazardous materials regulations. Since Note 3 of MFTRP 1A items 325/327 only authorizes higher minimum charges where the GBL includes "additional descriptive information . . . which identifies chemical ammunition," the Note properly was not applied to the shipments.

GSA's settlements are sustained.

James F. Hinchman  
General Counsel