



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

JUL 2 2008

Mr. Merle M. Schnackenberg
2068 NE Juniper Court
Gresham, Oregon 97030

Ref. No.: 08-0088

Dear Mr. Schnackenberg:

This responds to your letter dated February 20, 2008, regarding violations of the marking requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to a Category B infectious substance, marked UN 3373.

You ask whether the following shipping scenarios are a violation of the prohibited marking requirement in §172.303(a) of the HMR:

- (1) A package shipped by air or ground transport that does not contain a Category B infectious substance, but marked UN 3373;
- (2) An empty package shipped by air or ground transport that does not contain a residue of Category B infectious substance, but marked UN 3373;
- (3) A package shipped by ground transport that contains a non-hazardous material that is marked with a UN number inside a triangle (i.e., limited quantities).

The answer is yes. Generally, it is a violation of the HMR to represent that a hazardous material is present in a container, motor vehicle, rail car, aircraft or vessel by marking or otherwise if the hazardous material is not present (See §171.2(k)). Specifically, it is a violation of the marking requirement in §172.303(a) to offer for transportation or transport a package that is marked with the proper shipping name, the identification number of a hazardous material (e.g. UN 3373) or any other markings indicating that the material is hazardous unless the package contains the identified hazardous materials or its residue. However, exceptions are provided from the prohibited marking and labeling requirements as prescribed in §§172.303(b) and 172.401(d), respectively.

You also ask if a 1-gallon metal single container may be filled with 2.5 liters of a material identified as "UN 3469", PG I, for transport by cargo-only aircraft. A single non-bulk packaging may be filled with a liquid hazardous material only when the specific gravity of the material does not exceed that marked on the packaging, or a specific gravity of 1.2 if not marked. A non-bulk packaging may not be filled with a hazardous material to a gross mass

(the weight of a packaging plus the weight of its contents) greater than the maximum gross mass marked on the packaging. Provided a 1-gallon metal single container filled with 2.5 liters of a material described as "Paint, flammable, corrosive, 3, UN 3469, PG I" meets these requirements, the package may be transported by cargo-only aircraft. (See §173.24a(b)(1) and (2)).

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Gorsky", written in a cursive style.

Susan Gorsky
Acting Chief, Standards Development
Office of Hazardous Materials Standards

Engram
3172.303(a)
Marking
08-0088

February 20, 2008

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
USDOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE Building, 2nd Floor
Washington, DC 20590

Dear Mr. Mazzullo,

I need written clarification regarding the following shipping situations:

1. Is it a violation of 49 CFR, 172.303(a) if I ship a package (by air or ground) that I do not suspect contains a Category B infectious substance but utilize a package marked UN 3373?
2. Is it a violation of 49 CFR, 172.303(a) if I ship an empty package (by air or ground) that is marked UN 3373?
3. Is it a violation of 49 CFR, 172.303(a) if I ship a package (by ground) containing a non-hazardous material that is marked with a UN number inside a triangle (limited quantities)?
4. Can I utilize a 1-gallon metal container (single container) filled with only 2.5 liters of a material classified as UN 3469, PG I for transport on a cargo aircraft?

Thank you for the opportunity to submit this letter and I look forward to your timely written response. My daytime number is 503-665-4394.



Merle M. Schnackenberg
2068 NE Juniper Court
Gresham, Oregon 97030