



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

Mr. Samuel S. Elkind  
Air Operations  
United Parcel Service  
Airlines  
8203 National Turnpike  
Louisville, KY 40213

MAY 5 1998

Dear Mr. Elkind:

This is in response to your letter requesting clarification of the package marking statement in 49 CFR 175.30(e)(3), "inside packages comply with prescribed specifications." Specifically, you asked for guidance as to what reasonable steps an aircraft operator must take to establish that a shipment conforms to the requirements of 49 CFR parts 172 and 173.

In the case of a DOT-39 specification cylinder, § 173.301(k) requires that a cylinder must be further contained within a strong outside packaging. Furthermore, the outside packaging required under § 173.301(k) is not an "overpack" as defined in § 171.8 and applied in § 173.25. Section 175.30(e) refers only to overpacks, it does not apply to individual packages that are properly prepared for shipment. There is no requirement in the Hazardous Materials Regulations (HMR) to mark the strong outside packaging required by §173.301(k) with the statement "inside packages comply with prescribed specifications." However, we plan to propose that the strong outside packaging conform to the requirements of § 173.25 in a future action.

In its acceptance of a shipment of hazardous materials, no carrier may simply rely on the shipper's certification as a basis for its determination that a package conforms to the requirements of the HMR when there are obvious discrepancies. Section 175.30 requires, in part, that an air carrier verify that a hazardous material is authorized for transportation aboard aircraft and the quantity of material in one package when offered for transportation aboard a passenger-carrying or cargo-only aircraft is within the limitations prescribed by § 172.101. For overpacks, a carrier has an obligation to verify the presence of the inside containers comply statement within a reasonable limit. Section 175.3 states that a hazardous material not prepared for shipment in accordance with Subchapter C, including part 173, of the HMR may not be accepted for transportation or transported aboard an aircraft. Therefore, within recognizable limitations and reasonable discretion, a carrier must be able to recognize discrepancies of packaging, shipping papers, labeling, and placarding.

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

Sincerely,

Hattie L. Mitchell  
Chief, Regulatory Review and Reinvention  
Office of Hazardous Materials Standards



United Parcel Service 1400 North Hurstbourne Pkwy., Louisville, KY 40223  
(502) 329-3000

Handwritten: 173-301  
7/11/96  
SC 334, 116

December 13, 1996

Mr. Edward Mazzullo  
Director, Office of Hazardous Materials Standards  
Research & Special Programs Administration  
U.S. Department of Transportation - DHM-10  
400 Seventh Street, SW  
Washington, D.C. 20590

Dear Mr. Mazzullo:

In response to ongoing discussions involving UPS and two customers, a major automotive shipper, and one of its suppliers, I write for clarification of the rules governing the statement "Inside containers comply with prescribed specifications." We wish to clarify the application of this statement in a specific situation and to receive guidance on associated requirements as they relate to an accepting carrier's responsibilities under the Hazardous Materials Regulations. When referring to a carrier's responsibility, I mean both a motor carrier's and an air carrier's obligations.

In seeking to clarify the requirements governing the use of this statement for outer packages containing DOT Specification 39 cylinders, I placed two calls on December 12 to the Hazardous Materials Information Line, speaking first to Theresa Gwynn and later to Diane LaValle. My purpose was to determine whether the "Inside containers comply..." statement is required on packages containing Spec 39 cylinders, and, if so, whether a carrier has an obligation to verify the presence of the statement.

Unfortunately, I received partially contradictory answers, so the clarification sought by this letter is especially important. Ms. Gwynn determined, through reference to §173.301(k), that the absence of a specific requirement for that statement on packages containing Spec 39 cylinders means that the statement is not required and added that a carrier would have no obligation to check for it in the first place. Ms. LaValle, by contrast, indicated that she believed the statement is required, and, on hearing Ms. Gwynn's interpretation, sought and received guidance from Hattie Mitchell, that it is RSPA's *intent* to require the "Inside containers comply..." statement through future rulemaking. On the question of a carrier's obligation to verify the presence of "Inside containers comply..." statement, Ms. LaValle echoed Ms. Gwynn's sentiment that Part 173 requirements are the province of the shipper, not the carrier.

This exchange leaves some important questions open. First, does a carrier need to verify that a package correctly states "Inside containers comply..." and, if so, how does a carrier determine that it is required? We note that, in apparent contradiction of Ms. Gwynn's advice, an air carrier is specifically instructed to verify that the "Inside containers comply..." statement appears when it is required [§175.30(e)(3)]. Yet the troubling feature of this Part 175 requirement with regard to gases is that since only some situations clearly appear to require the statement (2P and 2Q cylinders, aerosols, foodstuffs under pressure), only an expert in gases would have the knowledge to apply this requirement, and even then such a person might need to know exactly which



Mr. Edward Mazzullo

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containers are inside a package. Such information would be unavailable to a carrier, since they are, after all, inside.

With respect to the original question -- whether a package containing a Spec 39 cylinder actually requires the statement -- in light of Ms. LaValle's comment about RSPA's *intent* (as distinct from the actual *content* of the regulations), I can only comment that the situation is so confusing that neither shippers nor carriers know what is required. Your clarification is needed.

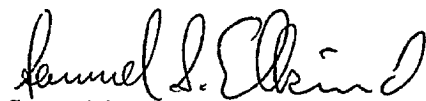
My December 12 discussions leave open additional issues, as well. If a carrier need not verify that a package correctly states "Inside containers comply..." then do other shipper's requirements also lie outside a carrier's responsibility? Ms. Gwynn and Ms. LaValle point to the shipper's certification as relieving a carrier from the duty to check such issues.

The concept that Part 173 requirements are obligations of the shipper (only) would appear to place the burden of package selection -- up to and including packages tested for the appropriate Packing Group -- strictly on the shipper, and relieve the carrier from any duty to check. It would appear, in other words, to remove any obligation to ensure such features of a shipment as: whether an appropriate package has been used; whether the gross mass of a UN spec package has not been exceeded; whether for air shipments of Classes 4, 5, and 8 in Packing Group III, a package tested to the Packing Group II requirements is used.

The essential points of this letter are to understand what is required with respect to the "Inside containers comply..." statement and then to determine if it is true that a motor carrier or air carrier may with confidence assume that Part 173 requirements lie outside its purview when accepting a package. In addition to resolving the marking question, it would be helpful if RSPA could provide guidance as to where a carrier's obligations end. For example, some requirements elsewhere in the regulations appear impossible for a carrier to verify (see, for example, the many alternatives to marking the EX number on a package, in §172.320, in addition to §173.166). If RSPA telephone representatives are suggesting that carriers have no responsibilities in areas that pertain exclusively to shippers, then we need to have that stated clearly in writing. We note with interest that a carrier recently paid a penalty partly due to the absence of an EX number, and yet this, by virtue of its appearance in §173.166, would seem -- according to the guidance offered by RSPA's telephone representatives -- to be only a shipper's responsibility. (See Hazardous Materials Penalty Report, FY95, FAA Case 93CE710034, enclosed.)

As this is a matter of ongoing commercial concern, we look forward to your timely reply. If it would expedite the process, you may fax your reply to me at (502) 359-1899. Thank you very much for your assistance in this matter.

Sincerely,



Samuel S. Elkind  
Air Dangerous Goods

Enclosure

*Federal Aviation Administration*

ADAMS AIR CARGO (Carrier)	Accepted and offered for shipment by air HM when that material was not properly classed, described, packaged, labeled, and in the condition required by the HMR; materials were incompatible when packaged together (Class 5 and Class 8). [171.2(a), 171.11] Case No. 93WP710639(HM)	\$4,000
ADVANCED PLASMA INC (Shipper)	Offered paint for transportation by air when the material was not properly classed, described, packaged, marked, labeled, named, identified, certified, cushioned, secured, and in the condition required by the HMR; the shipping papers did not include the proper shipping, name, hazard class, ID number, total quantity, proper certification; there was significant release of the HM to the environment. [171.2(a), 172.200(a), 172.202(a)(1), 172.300, 172.301(a), 172.400(a), 173.1(b), 173.117(a)] Case No. 91SO730260	\$1,000
AIR PRODUCTS JAPAN INC (Shipper)	Offered one metal can containing triethyl silicate for transportation by air when the HM was not properly classed, described, marked, labeled, named, identified, and certified as required by the HMR; the shipping papers did not include the total quantity of the HM covered by the description. [171.2(a), 172.200(a), 172.202, 172.202(a)(1), 172.202(a)(2), 172.202(a)(3), 172.202(a)(4), 172.202(b), 172.202(c), 172.204, 172.204(a) or (c)(1), 172.204(c)(2), 172.204(c)(3)] Case No. 94AL700049	\$5,000
AIRBORNE EXPRESS (Carrier)	Transported by air HM - paint related materials and a corrosive liquid, and although the shipment was accompanied by a Shippers Declaration of Dangerous Goods, the shipment was still not properly classed, described, packaged, marked, labeled, and in the condition for shipment. [171.2(a), 171.11, ICAO Part 1, Ch.2, para. 2.6.3.3(a), Part 4, Ch. 3, para. 3.2.10(b), Part 4, Ch.4, para. 4.1.3(f)] Case No. 93WP710575(HM)	\$10,000
AIRBORNE EXPRESS (Carrier)	Accepted and transported four shipments of HM in air commerce consisting of radioactive material. [175.31(a), 171.2(a), 171.2(b), 171.11(a), 175.3, 175.30(a)(2)] Case No. 93WP750251	\$10,000
AIRBORNE EXPRESS INC (Carrier)	Accepted an air bag inflator from Toyota Motor Distributors without the proper documentation in that the shipping papers did not contain <u>the EX number</u> , emergency phone number, the proper ID number. [171.2(a), 175.20(a), 175.30(a)(2)] Case No. 93CE710034	\$5,500
AJIT SHAH INCORPORATED (Shipper)	Offered paint related material, adhesive, and flammable liquid for transportation by air when the material was not properly classed, described, packaged, marked, labeled, named, identified, certified, cushioned, secured, and in the condition required by the HMR; the shipping papers did not include the proper shipping name, hazard class,	\$10,000

intent of the DOT regulations would not be precluded by this restriction.

172.306 (§§ 173.401(b) and 177.816; HM-103, § 172.302(e)) Provides for marking the name and address of the consignee on the package and specifies the exceptions to this requirement. One commenter recommended that the exceptions be extended to packages in a freight container. The Bureau agrees, has made such provisions, and has added a clarification of the intent of the provision as pertaining to "carload lot", "truckload lot" and "freight container load".

172.308 (§ 173.400(a); HM-103, § 172.302(c)) Provides for the use of certain abbreviations in markings. No substantive change.

172.310 (HM-111, § 173.401(f)) Provides for additional markings for packages containing radioactive materials. This requirement proposed under Docket HM-111, was published after notice and published comment on December 31, 1974, and became effective on March 31, 1975 (39 FR 45238).

172.312 (§ 173.401(c); HM-103, § 172.302(h)) Provides for markings on certain packages containing liquid hazardous material to indicate the orientation of the inside packaging. One commenter recommended that specification containers 6D, 21P, 37M and 27P containing liquid hazardous materials be excepted from the "This Side Up" marking requirement because the intent of the package orientation marking is to identify the top of a package that has been overpacked. The Bureau agrees and has provided for this exception. This section also provides for the use of arrows to augment the required package orientation marking. This was not in the notice, however, it was recommended by a commenter and the Bureau believes the use of arrows will contribute to safety. To prevent confusion and make the use of arrows effective, this amendment provides that arrows on packages containing hazardous material may not be used for purposes other than to indicate the correct package orientation.

172.316 (HM-103, § 172.302) Provides for marking an outside packaging containing a material classed as ORM by identifying the ORM immediately following or below the proper shipping name. Those classed as ORM-A and C must be marked ORM-A and ORM-C, as appropriate. Those classed as ORM-B must be marked ORM-B unless corrosive only to aluminum when wet, and then must be marked ORM-B-KEEP DRY to indicate the precautions needed to prevent corrosive action. Since ORM-D materials essentially are consumer commodities packaged in limited quantities, the Bureau believes that, as recommended by several commenters, the marking of the proper shipping name and the appropriate ORM are adequate except that those ORM-D packages intended or offered for transportation by air must be marked ORM-D-AIR to indicate they meet the requirements of § 173.6. Although not contained in the

notice, this amendment provides for attaching the marking to an ORM package with a tag when circumstances prevent the application of the marking to the package surface.

Also, the Bureau has added a provision authorizing the marking on a package containing a material classed as ORM to be accepted in lieu of the certification required on shipping papers in those instances wherein shipping papers are not required. This was not proposed in the notice, but the Bureau believes this will accomplish the requirements to enhance safety without requiring additional paperwork.

172.326 (§ 173.401(a)(1); HM-103, § 172.305(f)) Provides for marking the proper shipping name on the head and one side of each portable tank when appropriate or on two opposing sides. The Bureau agrees with commenters who recommended one marking be placed on an "operating side" of a portable tank, and has made such provision. Based on one commenter's recommendation, the Bureau reconsidered the proposed definition of portable tanks and has excluded multi-unit-tank-car-tanks. The most significant change from existing rules is the requirement that the marked name of contents on each portable tank must properly identify the actual hazardous material the portable tank contains.

172.328 (§ 177.823(b); HM-103, § 172.308) Provides for markings on cargo tanks. The most significant change from existing rules is that for gases, the marking must be the proper shipping name or an appropriate common name.

172.330 (HM-101, § 173.31(a)(6); HM-103, § 172.310) Provides for markings on tank cars including the marking visibility and the location of the marking on both sides of the tank car near the stencilled DOT specification marking. Also requires that markings indicate the actual hazardous material the tank car contains. The most significant changes from existing rules are the provisions indicated above and the fact that tank car marking requirements are implemented by references in Part 173 of the regulations as originally proposed under Docket HM-101 (37 FR 7104).

172.400 (§ 172.402(b); HM-103, §§ 172.400(a) and 172.402) Provides for general labeling requirements, and exceptions thereto. The most significant changes to existing requirements are: (a) The establishment of a maximum size for freight containers wherein labels are required instead of placards; (b) the exclusion of packages containing materials classed as ORM from labeling; and (c) modification of the labeling prohibition in existing § 173.404(b).

In accordance with the CGA (Compressed Gas Association) proposal in response to the notice, the Bureau has adopted in this section a change to CGA Pamphlet C-7, Appendix A ("A Guide for the Preparation of Precautionary Markings for Compressed Gas Containers") which will identify one additional hazard when appropriate for a nonflammable or a flammable compressed gas.

Adoption of the amended standard was proposed in Notice 73-10A (39 FR 43091). The standard has since been revised to remove references to hazard information numbers. Commenters recommended that a hazardous material classed as a "Poisonous compressed gas" be authorized under the provisions of the CGA Pamphlet C-7, Appendix A. This recommendation is not adopted because the Bureau believes that materials classed as Poison A must be labeled because of the special requirements applicable to them. Other comments recommended that packages in freight containers and palletized loads be excepted from labeling requirements. The Bureau believes that the hazards must be identified for proper handling and as an assistance to emergency response personnel during incidents involving hazardous transportation. This was (preamble to Docket No. H of Label Exemptions) an language from the preamble appropriate: "In the sector, even when truckload involved, it is essential that consistent labeling system in order to assure its maximum. Also, there are occasions necessitate the 'breaking load lots even though not time of shipment." (See 36 19, 1971.) The Bureau believes thinking applies to pallet freight containers.

172.401 (§§ 173.404 and 173.86; HM-103, § 172.401) Specifies labeling that is prohibited by the regulations in this subchapter and provides for the use of certain labeling on packages in import and export shipments. The Bureau agrees with the commenters who recommended that proposed § 172.401(a) be clarified to permit the shipment of packages of hazardous and nonregulated materials (unless otherwise prohibited) in the same outside packaging, and has reworded the paragraph accordingly. Several commenters discussed the problem a carrier could encounter in determining whether or not a labeled package offered for transportation contained regulated material for which the label was appropriate. The intent of the regulation is to prevent a carrier from "knowingly" accepting for transportation an improperly labeled package. The carrier is not expected to open a package to inspect its contents. The certification of the shipper is to be accepted unless inspection or other information leads the carrier to believe the labeling may be in error. The Bureau agrees with the commenters who recommended that proposed § 172.401 be reworded to better identify the exceptions therein and has rewritten the section accordingly. The most significant change from existing rules is the labeling exception for a package containing a sample of a material being shipped to a laboratory for testing to determine its hazard characteristics.

172.402 (§§ 173.402 and 173.388; HM-103, § 172.402) Provides additional la-

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Action  
Report

Federal Aviation Administration

TIFFIN ATHLETIC  
MATS INC (Shipper)

Offered a shipment of HM for transportation by air consisting of halogenated irritating liquid which had leaked; material was not properly classed, described, packaged, marked, labeled, named, identified, certified, secured, and otherwise in a condition required by the HMR; shipping papers did not include the proper shipping name, hazard class, ID number, total quantity, proper certification. [171.2(a), 172.200(a), 172.202, 172.202(a)(1), 172.202(a)(2), 172.202(a)(3), 172.202(a)(4), 172.204(a), 172.204(c)(1), 172.204(c)(2), 172.204(c)(3), 172.600(c)(1), 172.600(c)(2), 172.602(b), 172.604(a), 172.400(a), 172.204(d), 172.202(b), 172.202(c), 172.304(a)(1), 172.300(a), 172.301(a)(1), 172.312(a)(2), 173.22(a)(1), 173.22(a)(2), 173.24(b), 172.702, 173.1(b)] Case No. 94WP750303

\$10,000

TORO CO THE  
(Shipper)

Offered a shipment of containing a power lawn mower with an internal combustible engine and gasoline in the gasoline tank which had leaked, and four dry cell batteries; material was not properly classed, described, packaged, marked, labeled, named, identified, certified, secured, and otherwise in a condition required by the HMR; shipping papers did not include the proper shipping name, hazard class, ID number, total quantity, proper certification. [171.2(a), 172.200(a), 172.202(a)(1), 172.202(a)(2), &(3), &(4), 172.202(b), 172.202(c), 172.204(a), 172.204(c)(1), &(2), &(3), 172.204(d), 172.300, 172.301(a), 172.304(a)(1), 172.400(a), 172.600(c)(1), 172.600(c)(2), 172.602(b), 172.604(a), 173.1(b), 173.22(a), 173.24(b)(1), and 173.220] Case No. 94WP720003

\$25,000

TOYOTA MOTOR  
SALES USA INC  
(Shipper)

Offered an air bag inflator for transportation by air when the shipment was not marked with the proper shipping name; shipping papers did not contain the packing group and EX number, and emergency phone number, and proper ID number. [171.2(a), 172.202(a)(3), 172.202(a)(4), 172.301(a), 172.604(a), 173.166(c)] Case No. 93CE710028

\$20,000

TRACK N TRAIL  
(Shipper)

Offered compressed gas and adhesive for transportation by air when the material was not properly classed, described, packaged, marked, labeled, named, identified, certified, cushioned, secured, and in the condition required by the HMR; shipping papers did not include the proper shipping, name hazard class, ID number, total quantity, proper certification. [171.2(a), 172.200(a), 172.202, 172.202(a)(1), 172.202(a)(2), 172.202(a)(3), 172.202(a)(4), 172.202(b), 172.204, 172.204(a) or (c)(1), 172.04(c)(2), 172.204(c)(3), 172.300 & 172.301(a), 172.400(a), 173.1(b)] Case No. 91AL700032

\$16,500

TRADEGLOBE  
IMPORT & EXPORT  
LTD (Shipper)

Offered a package described as "Matches" which included 8 inner packages, each containing 50 to 70 fireplace matches, for transportation by air when the HM was not properly classed, described, marked, labeled, and certified as required by the HMR. [171.2(a), 172.204(a), 172.204(c)(3), 172.400(a)] Case No. 95AL700010

\$750