



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

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

NOV 28 2001

Mr. E. A. Altemos
HMT Associates, L.L.C.
603 King Street, Suite 300
Alexandria, VA 22314-3105

Ref. No. 01-0259

Dear Mr. Altemos:

This is in response to your inquiry concerning the use of limited quantity markings authorized by the European Agreement for the Transport of Dangerous Goods by Road (ADR). These markings include a diamond displaying the letters "LQ" or a diamond with a UN number displayed. You ask whether these markings would be acceptable on packages shipped by air within the United States under the provisions of the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI).

Currently the Hazardous Materials Regulations (U.S. HMR; 49 CFR Parts 100-185) prohibit markings which by their color, design, or shape could be confused with or conflict with labels required by 49 CFR (see 49 CFR 172.401). In a letter to the European Safety Institute dated February 20, 2001. We stated the following:

In previous correspondence we have stated that we consider the ADR limited quantity markings to be confusing and prohibited from use by 49 CFR 172.401, which forbids markings which by their "color, design, or shape could be confused with or conflict with" labels required by 49 CFR. However, the IMDG Code does not include a prohibition consistent with § 172.401. Furthermore, § 171.12 authorizes shipments which are made in accordance with the IMDG Code to be transported within the United States subject to the limitations of § 171.12. As the IMDG Code does not specifically prohibit the use of the labels authorized by the ADR, packages which are transported in accordance with the IMDG Code may be marked with the current ADR markings and are acceptable for transportation within the United States.

We recommended that the ADR-marked packages transported under the IMDG Code be limited to closed freight containers and transport vehicles in order to avoid potential frustration of shipments due to the markings not being recognized in the HMR.



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171.12

The ICAO TI differ from the IMDG Code in that it is impracticable to expect that packages shipped in accordance with the ICAO TI would be in closed freight containers or transport vehicles for transport by air. Also, the ICAO TI contain specific marking and labeling prohibitions (see Part 5, 2.4.11 and 3.2.13) for markings and labels which could be confused with or conflict with any of the markings and labels prescribed by the ICAO TI because of their color, design or shape. Therefore, acceptability of the ADR markings under the two standards is not analogous. Furthermore, it is our opinion that the ADR marking of a diamond containing an "LQ" mark is not acceptable under provisions of the ICAO TI and 49 CFR 171.11. The UN Committee of Experts on the Transport of Dangerous Goods did not adopt the diamond containing the "LQ" mark on the basis that it did not adequately convey sufficient information relative to the hazards posed by the substances contained in the packagings.

We have reconsidered the acceptability of the ADR marking of a diamond containing one or more UN numbers in light of the fact that this marking has been adopted in the UN Recommendations. Based on the language of 49 CFR 172.401(c)(1), it is our opinion that this marking is not prohibited under the HMR and would be acceptable for use under the provisions of 49 CFR 171.11 and 171.12. We intend to propose inclusion of this marking in a future international harmonization rulemaking

I trust this is responsive to your inquiry. If this office can be of further assistance, please contact us.

Sincerely,


Edward T. Mazzullo
Director, Office of Hazardous
Materials Standards

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June 7, 2001

Mr. Frits Wybenga
Deputy Associate Administrator
for Hazardous Materials Safety (DHM-2)
Research and Special Programs
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Washington, D.C. 20590-0001

Dear Mr. Wybenga:

The enclosed interpretation letter was recently issued to clarify RSPA's position regarding whether the markings required by the *European agreement concerning the international carriage of dangerous goods by road* ("the ADR") to be displayed on limited quantities packages are considered a prohibited display pursuant to § 172.401 of the Hazardous Materials Regulations ("the HMR"; 49 CFR Parts 171-180). That letter addressed the acceptability of those markings only in the context of shipments moving at least in part by vessel in conformance with the provisions of the *International Maritime Dangerous Goods Code* ("the IMDG Code"), as authorized under § 171.12 of the HMR. The purpose of this letter is to seek clarification of the acceptability of display of the ADR limited quantities markings on packages under other circumstances.

First, based on the rationale offered in the attached interpretation relative to the acceptability of ADR limited quantities markings on packages transported at least in part by vessel pursuant to the provisions of the IMDG Code and § 171.12 of the HMR, I conclude that packages bearing the ADR limited quantities markings and transported at least in part by aircraft pursuant to the

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provisions of the ICAO *Technical Instructions for the Transport of Dangerous Goods by Air* ("the Technical Instructions") and § 171.11 of the HMR, are, similarly, acceptable for transportation in the United States. In this regard, I note that neither the prohibited marking provisions nor the prohibited labeling provisions in the ICAO Technical Instructions (see Part 5;2.3 and Part 5;3.3 of the Technical Instructions, respectively) prohibit the ADR limited quantity markings. Moreover, § 171.11 of the HMR authorizes shipments made in accordance with the ICAO Technical Instructions to be transported in the United States subject to the limitations of § 171.11. Therefore, as the ICAO Technical Instructions do not prohibit the use of the limited quantities markings authorized by the ADR, packages which are transported in accordance with the ICAO Technical Instructions may be marked with the current ADR markings and would be acceptable for transportation within the United States. Your confirmation of this conclusion, which is in direct analogy to the rationale provided in the enclosed interpretation relative to authorized transport in accordance with the IMDG Code, is requested.

Furthermore, I note that the *Twelfth Revised Edition* of the UN Recommendations, which should be published in the very near future, will contain a limited quantities marking provision that conforms to one option provided under the current ADR limited quantities marking provisions - that is, a marking consisting of the UN number of the dangerous goods placed within a "diamond" (i.e., a square-on-point) made by a line at least 2.0 mm wide (see paragraph 3.4.8 of the *Twelfth Revised Edition* of the UN Recommendations). In this regard, I further note that § 172.401(c)(1) of the HMR excepts from the prohibited display provisions in that section packages labeled in conformance with "[a]ny United Nations recommendation...in the document entitled '*Transport of Dangerous Goods*.'" (emphasis added). Importantly, this paragraph specifically excepts labeling in conformance with "any United Nations recommendation" - not only those recommendations in the edition of the UN Recommendations currently incorporated by reference into the HMR. Thus, upon publication of the *Twelfth Revised Edition* of the UN Recommendations, § 172.401(c)(1) would except from the prohibited display provisions of that section any ADR limited quantities marking that also conforms to the new UN limited quantity identification provision appearing in paragraph 3.4.8 of the *Twelfth Revised Edition* of the UN Recommendations. Moreover, this exception applies without regard to whether the packages concerned have, or will be transported by vessel or aircraft pursuant to the provisions of the IMDG Code and § 171.12, or to the provisions of the ICAO Technical Instructions and § 171.11, respectively. Your confirmation of this understanding is also requested.

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Confirmation at your earliest convenience of my understanding of the acceptability of display of the ADR limited quantities markings in the two circumstances described above will be most appreciated. Thank you for your consideration, and please do not hesitate to contact me if you have questions concerning this request.

Sincerely,



E. A. Altemos

Enclosure