



U.S. Department  
of Transportation

1200 New Jersey Avenue SE  
Washington, DC 20590

**Pipeline and Hazardous  
Materials Safety  
Administration**

SEP 27 2011

Mr. Samuel Elkind  
Corporate Regulated Goods Manager  
55 Glenlake Parkway, NE  
Atlanta, GA 30328-3474

Ref. No.: 11-0164

Dear Mr. Elkind:

This responds to your July 13, 2011 letter seeking clarification of the requirements in the International Civil Aviation Organization's (ICAO) Technical Instructions and the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the absorbent material requirements of the HMR in 173.27(e) apply to export air shipments, or if they apply to all air shipments, i.e, domestic, import and export shipments, when they are prepared and offered in accordance with the ICAO Technical Instructions.

Section 171.22 gives shippers and carriers the option of preparing shipments of hazardous materials offered or intended for transportation by aircraft in conformance with the ICAO Technical Instructions. However, as you state in your letter, § 171.22(g)(5) requires that export shipments conform to the general packaging requirements in §§ 173.24 and 173.24a. Section 173.24(i) states that "Except as provided in subpart C of part 171 of this subchapter, packages offered or intended for transportation by aircraft must conform to the general requirements for transportation by aircraft in § 173.27." Subpart C of part 171 includes § 171.22. Therefore, when using the ICAO Technical Instructions, the absorbent material requirements of the HMR in 173.27(e) apply to export air shipments.

ICAO recently adopted revised packing instructions for incorporation in the ICAO Technical Instructions. These packaging instructions require a secondary means of closure for all liquids in combination packagings, or when a secondary means of closure cannot be applied, this requirement may be satisfied by using a liner or other form of containment, such as absorbent material. ICAO Packing Instructions require enough absorbent material to absorb the entire contents for Packing Group I material and require absorbent material for certain materials within

specific Packing Instructions. As information, an upcoming final rule under Docket No. PHMSA-07-29364 (HM-231A), Hazardous Materials; Packages Intended for Transport by Aircraft, will address the ICAO revisions.

I hope this answers your inquiry. If you need additional assistance, please contact the Standards and Rulemaking Division at (202) 366-8553.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Supko", with a long horizontal flourish extending to the right.

Ben Supko  
Acting Chief, Standards Development  
Standards and Rulemaking Division

55 Glenlake Parkway, NE  
Atlanta, GA 30328-3474

July 13, 2011

Winter  
§ 173.27(e)  
§ 173.22  
Packaging  
11-0164



Mr. Charles Betts  
Director, Standards and Rulemaking  
Pipeline and Hazardous Materials Safety Administration  
U.S. Department of Transportation – PHH-10  
1200 New Jersey Ave., SE – East Bldg, 2<sup>nd</sup> Floor  
Washington, DC 20590

Re: Application of 49 CFR 173.27(e) for shipments prepared under  
ICAO Technical Instructions

Dear Mr. Betts:

UPS seeks clarification as to whether and when the absorbent material requirements identified in 49 CFR 173.27(e) apply to air shipments that are prepared and offered in accordance with the ICAO Technical Instructions (TI). While in the past, the ICAO TI contained general requirements for absorbent materials that were very similar to those prescribed by §173.27(e), in the current ICAO edition, absorbent materials are now prescribed by each applicable packing instruction. In other words, there is no longer a general requirement for absorbent material stated in the ICAO TI.

On the other hand, there may be some intent in the HMR to apply a general requirement for absorbent material, but the cross-references among applicable regulations obscure the exact intent. Specifically, in §173.22, the authorization to use international regulations such as the ICAO TI, § 171.22(g)(5) states the following:

*(g) Additional requirements for the use of international standards and regulations.* All shipments offered for transportation or transported in the United States in accordance with this subpart must conform to the following requirements, as applicable:

\* \* \*

(5) For export shipments, the general packaging requirements in §§173.24 and 173.24a of this subchapter;

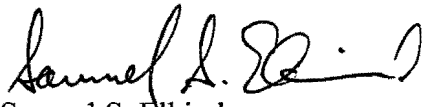
A reference to the general package requirements for air shipments appears in §173.24(i), which provides the following limited reference to the requirements of §173.27:

*(i) Air Transportation.* Except as provided in subpart C of Part 171 of this subchapter, packages offered or intended for transportation by aircraft must conform to the general requirements for transportation by aircraft in § 173.27.

Since Subpart C of Part 171 includes §171.22, the emphasis appears to settle specifically on export shipments. In other words, this pair of requirements appears to create a situation in which absorbent material conforming to §173.27(e) is required for export shipments conducted in accordance with the ICAO TI, but not for any other type of shipment prepared under the ICAO TI. A purely domestic shipment appears to be excepted from §173.27(e), as apparently also are import or transit shipments.

However, that result appears to yield an inconsistent application of absorbent material requirements, which may not be PHMSA's intent. Therefore, UPS requests PHMSA's clarification of the requirements for use of absorbent for air shipments prepared in accordance with the ICAO TI. Such confirmation will enable UPS to fully understand the requirements and guide its customers as appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel S. Elkind". The signature is fluid and cursive, with a prominent initial "S" and a long, sweeping underline.

Samuel S. Elkind  
Corporate Regulated Goods Manager