



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, D.C. 20590

MAY 03 2013

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

Ref. No. 13-0002

Dear Mr. Elkind:

This responds to your letter requesting clarification of the overpack requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for clarification on shipping paper requirements applicable to overpacks that contain both a fully regulated hazardous material package and a separate limited quantity package.

In your incoming letter, you describe the following scenario: An overpack contains both a fully regulated hazardous material package and a separate package meeting the limited quantity requirements. The overpack is opaque, so that the actual packages are not visible; and the overpack is marked with the word "Overpack" and displays the required proper shipping name, identification number, and hazard label for the fully regulated package; it also displays a Limited Quantity mark corresponding to the limited quantity package contained therein. Based on the above scenario your questions are paraphrased below.

Q1. When a shipper overpacks a fully regulated hazardous materials package with a limited quantity package, must the limited quantity package be listed on the shipping paper?

A1. Under the HM-215K (76 FR 3308) final rule published on January 19, 2011, § 172.200(b) was revised to except limited quantity shipments of hazardous material by rail and highway from the shipping paper requirements. Therefore, no shipping paper is required for limited quantity shipments by rail or highway. Limited quantity shipments by air and vessel must still be accompanied by a shipping paper.

Q2. How would a carrier distinguish between the following overpack conditions, two of which represent shipper errors?

a. An overpack containing fully regulated hazardous material packages together with packages containing limited quantity packages, as described above;

- b. An overpack containing limited quantity packages requiring a shipping paper that, through shipper error, does not include the required phrase "Limited Quantity"; and
- c. An overpack not containing limited quantity packages that through shipper error has been mis-marked with the limited quantity marking.

A2. Section 173.22 requires the shipper to properly describe the hazardous materials to be transported. Although the HMR place primary responsibility on the shipper, or "person who offers," to properly class and communicate the hazard of a hazardous material, a carrier may be held responsible for non-compliance with applicable requirements to the extent that the carrier knows, or should have known, that a material offered for transportation is hazardous. A carrier may rely on information provided by the shipper, unless the carrier knows, or a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided is incorrect.

Q3. What is the carrier's responsibility under the regulations in connection with the limited quantity marking on the package? May the carrier simply assume the accuracy of the shipping paper and view the limited quantity marking as additional information unrelated to the fully regulated shipment within the overpack?

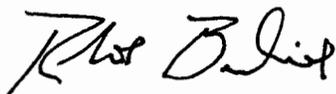
A3. See A2 above.

Q4. If the limited quantity package is not required to be listed on the shipping paper and the carrier is not permitted to assume the accuracy of the shipping paper in such instances, how is the carrier to interpret the package markings in light of the shipping paper information? (See, for example, conditions 2(a) through 2(c) above.)

A4. See A2 above.

I hope this answers your inquiry. If you need additional assistance, please contact this office at (202) 366-8553.

Sincerely,



Robert Benedict  
Chief, Standards Development Branch  
Standards and Rulemaking Division

Boothe  
§ 172.203  
Shipping Papers & Limited Quantities  
13-0002



55 Glenlake Parkway, NE  
Atlanta, GA 30328-3474

Mr. Charles Betts  
Director, Hazardous Materials Standards Division  
Pipeline and Hazardous Materials Safety Administration  
U.S Department of Transportation  
1200 New Jersey Avenue, SE – PHH-10  
East Building, Second Floor  
Washington, DC 20590

Re: 49 CFR 172.203(b) – Shipping Papers and Limited Quantities

Dear Mr. Betts:

On behalf of UPS, I write seeking clarification of the shipping paper requirements applicable to overpacks that contain both a fully regulated hazardous materials package and a separate Limited Quantity package. The overpacks are opaque, such that the actual packages contained within are not visible. In addition to the word "Overpack," such overpacks display the required proper shipping name, identification number and hazard label for the fully regulated package; they also display a Limited Quantity marking to correspond to the Limited Quantity package contained therein. The shipping paper that accompanies the overpack certainly must list the fully regulated hazardous materials package contained in the overpack. It is unclear, however, whether the shipping paper is also required to identify the presence of the material shipped as a Limited Quantity.

Under different circumstances, such as when a Limited Quantity is offered for ground transportation by itself, UPS recognizes that the package need not be accompanied by a shipping paper, unless it also contains a hazardous waste, a marine pollutant, or a hazardous substance in a reportable quantity. This relief from shipping papers for ground shipments is explicit in §§173.63, 173.150 – 173.155 and 173.306. Also, a single package containing only a Limited Quantity would not be required to display the proper shipping name or identification number for any material contained within it.

For the purposes of this inquiry about shipping papers involving an overpack as described above, UPS believes the relevant section of the Hazardous Materials Regulations is 49 CFR 172.203(b), which provides the following requirement:

(b) *Limited quantities.* When a shipping paper is required by this subchapter, the description for a material offered for transportation as "limited quantity," as authorized by this subchapter, must include the words "Limited Quantity" or "Ltd Qty" following the basic description.

In light of this regulation, the case of the overpack containing both a fully regulated hazardous material package and materials shipped in a Limited Quantity package *appears* to require the listing of the Limited Quantity shipment on the shipping paper. For such an overpack, a shipping paper is clearly required, meeting the initial condition of this regulation. Less clear, however, is whether in the case of such an overpack, the requirement applies for the listing of "Limited Quantity" together with the associated shipping description for the materials packaged under Limited Quantity provisions. One view holds that the normal conditions applicable to a ground shipment of materials packed under the Limited Quantity provisions should also apply to such an overpack – i.e., that for the Limited Quantity package no proper shipping name or identification number is required to be shown on the overpack and no shipping paper description is required for the material. However, §172.203(b) does not *appear* to support that view.

UPS believes that while such overpacks appear to be permitted to be offered under the HMR, their status under the shipping paper regulations is just one area in which they cause uncertainty. If, for example, the Limited Quantity package in such an overpack is not required to be listed on the shipping paper, how is a carrier to know whether the shipping paper is accurate in its listing of only the fully regulated package? The appearance of the Limited Quantity marking implies the inaccuracy of the description on the shipping paper; for example, the description presented for the fully regulated shipment appears to be incomplete because the phrase "Limited Quantity" is not associated with the basic description. Moreover, without a description of the Limited Quantity package on the shipping paper, a carrier has no accurate way to determine the extent to which the overpack is subject to placarding limitations.

For these reasons, UPS requests PHMSA's guidance on the following questions:

1. When a shipper overpacks a fully regulated hazardous materials package with a Limited Quantity package, must the Limited Quantity package be listed on the shipping paper?
2. If the answer to Question 1 is "no," then how would a carrier distinguish between the following overpack conditions, two of which represent shipper errors:
  - a. An overpack containing fully regulated hazardous material packages together with packages containing Limited Quantity packages, as described above?
  - b. An overpack containing Limited Quantity packages requiring a shipping paper that, through shipper error, does not include the required phrase "Limited Quantity"?
  - c. An overpack not containing Limited Quantity packages that through shipper error has been mis-marked with the limited quantity marking?
3. If the answer to Question 1 is "no," then what is the carrier's responsibility under the regulations in connection with the Limited Quantity marking on the package? May the carrier simply assume the accuracy of the shipping paper and view the Limited Quantity marking as additional information unrelated to the fully regulated shipment within the overpack?
4. If the Limited Quantity package is not required to be listed on the shipping paper and the carrier is not permitted to assume the accuracy of the shipping paper in such

instances, how is the carrier to interpret the package markings in light of the shipping paper information? *See, for example, conditions 2(a) through 2(c) above.*

UPS trusts PHMSA will recognize the need to clear up the ambiguities presented by the practice of offering overpacks such as are described here. PHMSA's guidance will be very much appreciated.

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