



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

JUL 09 2013

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

Ref. No. 13-0085

Dear Mr. Elkind:

This responds to your April 18, 2013 letter seeking clarification of immediate notification requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), when § 171.15(b)(6) specifies one must immediately notify the National Response Center (NRC) of an incident during transportation by aircraft that occurred as a direct result of a battery or battery-powered device. Specifically you ask what circumstances would trigger the requirement that you immediately notify the NRC of such an incident. Your questions are paraphrased and answered below.

Q1. Does the phrase “during transportation by aircraft” in § 171.15(b)(6) mean that the only incidents that must be immediately reported are those when the battery or battery-powered device has been loaded on an aircraft and the incident occurred on the aircraft during transportation?

A1. No. Section 171.1(c) states that transportation of a hazardous material in commerce begins when a carrier takes physical possession of the hazardous material for the purpose of transporting it and continues until the package containing the hazardous material is delivered to the destination...” Section 171.15(b)(6) specifies that a telephone report is required whenever any of the following occurs during the course of transportation in commerce (including loading, unloading, and temporary storage): during transportation by aircraft, a fire, violent rupture, explosion or dangerous evolution of heat (i.e. , an amount of heat sufficient to be dangerous to packaging or personal safety to include charring of packaging, melting of packaging, scorching of packaging, or other evidence) occurs as a direct result of a battery or battery-powered device. As further evidence to the intent of § 171.15(b)(6), the immediate notification requirement for batteries or battery-powered devices was added to the HMR¹ in response to incidents that occurred as a direct result of a battery or battery-powered device either on board an aircraft in cargo, checked, or in carry-on baggage, or in ground transport facilities associated with air transportation. Accordingly, the phrase “during

¹ See Docket Nos. PHMSA-2007-0065 (HM-224D) and PHMSA-2008-0005 (HM-215J)).

transportation by aircraft” in § 171.15(b)(6) includes incidents that occur in the course of performing pre-transportation functions for air shipments.

Q2. If there is no outward evidence that a dangerous evolution of heat has occurred, such as charring, melting or scorching, but the battery or battery-powered device requires attention, concern, or action on the part of the carrier, such as it is warm to the touch or is vibrating, must a carrier comply with the requirements of § 171.15(b)(6)?

A2. No, unless another condition set forth in § 171.15(b) has occurred, you are not required to immediately notify the NRC if there is no evidence that a battery or battery-powered device caused a fire, violent rupture, explosion or dangerous evolution of heat and there is no evidence of amount of heat sufficient to be dangerous to packaging or personal safety.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Benedict". The signature is written in a cursive style with a large initial "R".

Robert Benedict
Chief, Standards Development Branch
Standards and Rulemaking Division

O'Donnell
§ 171.15(b)(6)
Incidents Report Notification
13-0085



55 Glenlake Parkway, NE
Atlanta, GA 30328-3474

April 18, 2013

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

Request for Interpretation – 49 CFR 171.15(b)(6)

Dear Mr. Betts:

On behalf of UPS, I seek a clarification of certain battery-related conditions that trigger a requirement for telephonic or electronic notification of the National Response Center. These conditions are described in 49 CFR 171.15(b)(6), as follows:

During transportation by aircraft, a fire, violent rupture, explosion or dangerous evolution of heat (*i.e.*, an amount of heat sufficient to be dangerous to packaging or personal safety to include charring of packaging, melting of packaging, scorching of packaging, or other evidence) occurs as a direct result of a battery or battery-powered device.

UPS seeks confirmation of its interpretation of the regulation: that notification to the National Response Center is only *required* when all of the following elements are met with respect to a shipment (assuming the absence of any other threshold condition contained in §171.15):

- The use of the phrase “[d]uring transportation by aircraft” means the shipment in question must have been loaded onto an aircraft before detection of the incident (*i.e.*, fire, violent rupture, explosion or dangerous evolution of heat) and the evidence must indicate that the incident occurred while the shipment was aboard the aircraft engaged in active transportation. In other words, an incident that occurs while a package is being handled prior to its being loaded aboard an aircraft does not meet the “during transportation by aircraft” element of §171.15(b)(6) for purposes of reporting the incident to the National Response Center. Similarly, an incident that occurs in ground handling or ground transportation subsequent to flight would not require a report to the National Response Center under §171.15(b)(6).

- Because of the use of the phrase “other evidence” in the parenthetical summary of conditions requiring a report, in order for the carrier to be compelled solely by such *other* evidence (i.e., in the absence of charring, melting, or scorching) to make a report, the carrier, using its subjective judgment, must determine that the battery or device has generated heat on a scale similar to heat that would scorch, char, or melt the packaging or components of the shipment – outcomes which, on their face, reasonably provide evidence of the presence of a “dangerous evolution of heat.” In other words, in the absence of objective evidence that such high heat was present (such that could cause conditions such as scorching, charring or melting of packaging or shipment components), an enforcement action cannot properly be brought against a carrier for failure to make a notification of the National Response Center. For example, considering a package that is found simply to be vibrating or even “warm to the touch” without any additional indicia of a “dangerous evolution of heat” during handling in ground operations due to activation of a battery operated device contained within – while such a package may require attention, concern and action on the part of a carrier, it does not, by the sole reason of the vibration or warmth, require a telephone notification to the National Response Center.

UPS notes that during the rulemaking process that introduced this language into the Hazardous Materials Regulations, PHMSA made significant efforts to avoid ambiguity that could result in misunderstandings between carriers and enforcement personnel.¹ UPS believes that the phrasing of §171.15(b)(6) is consistent with its interpretation, as described above. However, recent experience suggests that some U.S. DOT inspectors may hold contrary views. While UPS recognizes the importance of transportation safety with respect to packages containing batteries, and seeks to minimize the risks posed by such shipments throughout its operations, UPS also recognizes that unnecessary incident reporting to the National Response Center has the potential to divert critical resources from serious hazardous material incidents involving injuries or fatalities addressed by the bulk of §171.15. Accordingly, PHMSA’s definitive guidance on these matters will be greatly appreciated.

Sincerely,



Samuel S. Elkind
Corporate Regulated Goods Manager

¹ 74 Fed. Reg. 2,200 – 2,270, Final Rule, Dockets HM215J and 224F, January 14, 2009. See especially page 2,204, in which PHMSA acknowledged concerns about ambiguous reporting standards and made specific efforts to reduce the potential for such ambiguity.