



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

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

JUL 10 2013

Mr. Jason P. Wapiennick  
Great Lakes Custom Law  
32437 Five Mile Road  
Livonia, Michigan 48154

Reference No. 13-0112

Dear Mr. Wapiennick:

This is in response to your request for clarification of the Hazardous Materials Regulations (HMR; 49 CFR 171-180) applicable to your client transporting anatomical parts by motor vehicle to and from various states, Mexico, and Canada for medical programs. In your letter, you state that the anatomical parts are non-infectious, and are often transported with medical and clinical equipment and laboratory products. Specimens, equipment and products are packaged to prevent any risk of exposure or contamination. At the conclusion of the medical program, the anatomical parts will either be cremated or, if their condition allows, returned to the client's facility for use in future medical programs.

Your questions are paraphrased and answered as follows:

- Q1. If the anatomical parts being transported meet the Division 6.2 (Infectious substance) definition in § 173.134(a)(1), would § 173.134(b)(10) and/or (b)(14) except the shipper from the requirements of Parts 171 through 177 of the HMR, or only the requirements of § 173.134?
- A1. Provided the anatomical parts being transported meet the Division 6.2 (Infectious substance) definition in § 173.134(a)(1), the shipper would be excepted from only the requirements of § 173.134.
- Q2. For purposes of your response and as presented above, please assume the anatomical parts are excepted from the requirements of either § 173.134 or Parts 171 through 177 of the HMR, and further that they are erroneously assigned identification number "UN3373." Is there a violation of § 171.2(k)? Is there a violation of § 172.303(a)?
- A2. The answer is yes. Section 171.2(k) specifies that no person may, by marking or otherwise, represent that a hazardous material is present in a package, container, motor vehicle, rail car, aircraft, or vessel if the hazardous material is not present. Section 172.303(a) specifies that no person may offer for transportation or transport

a package which is marked with the proper shipping name, the identification number of a hazardous material or any other markings indicating that the material is hazardous unless the package contains the identified hazardous material or its residue. Therefore, if the markings are not covered and are visible during transportation, a violation of § 171.2(k) (marking a package as though a hazardous material is present when it is not) and § 172.303(a) (prohibited marking) has occurred.

- Q3. For purposes of your response, please assume the anatomical parts are erroneously assigned “UN3373,” but are loaded and unloaded by the shipper and transported in a trunk or cargo area and are not visible “without close inspection.” Is the erroneous “UN3373” assignment prohibited by § 172.303(a) or is that section inapplicable under § 172.303(b)(1) or (2)?
- A3. Section 172.303(b) states that the prohibited marking requirements in paragraph (a) of § 172.303 do not apply to transportation of a package in a transport vehicle or freight container if the package is not visible during transportation and is loaded by the shipper and unloaded by the shipper or consignee. In your scenario, although the package is loaded and unloaded by the shipper and transported in a trunk or cargo area, the incorrect markings are still visible, and therefore the package is not in compliance with the HMR.
- Q4. Again, for purposes of your response and assuming the same scenario as Q3, is the incorrect “UN3373” assignment prohibited and does § 172.303(b)(1) or (b)2 apply? Would there still be a violation of § 171.2(k)?

A4. See A3.

I hope this information is helpful. Please contact this office should you have additional questions.

Sincerely,



T. Glenn Foster  
Chief, Regulatory Review and Reinvention Branch  
Standards and Rulemaking Division

GREAT LAKES CUSTOMS LAW

CUSTOMS & INTERNATIONAL TRADE LAW

McIntyre  
§ 172.101  
§ 173.134  
§ 172.303  
Definitions/Marking  
13-0112  
Tel: (734) 855-4999  
Fax: (734) 573-6032  
jason@greatlakescustomslaw.com

Jason P. Wapiennik  
32437 Five Mile Road  
Livonia, Michigan 48154

May 22, 2013

U.S. DOT  
PHMSA Office of Hazardous Materials Standards  
Attn: PHH-10  
East Building  
1200 New Jersey Avenue, SE.  
Washington, DC 20590-0001

VIA E-MAIL ONLY

INFOCNTR@DOT.GOV

**RE: Request for formal interpretation**

Dear Sir/Madam:

We request a formal interpretation of the applicability of the Federal Hazardous Material Regulations ("FHMR") to a Client's operations ("Client").

The Client is a bio-medical skills and research company that utilizes donated human anatomical parts for medical programs to advance medical and surgical techniques by providing doctors with valuable hands-on experience, allowing them to learn new procedures and skills before working with living patients. The medical programs occur at facilities designed for or specially outfitted to accommodate the anatomical parts and the medical program.

As part of its mission, the Client frequently travels via motor vehicle to and from various States, and on occasion into Canada and Mexico, with human anatomical parts for use in the medical programs. The anatomical parts are non-infectious, and are often transported with medical/clinical equipment and laboratory products. Both specimens and equipment/products are packaged to prevent any risk of exposure or contamination. At the conclusion of the medical program, anatomical parts will either be cremated or, if their condition allows, returned to Client's facility for use in future medical programs.

In view of the foregoing, we present the following questions for an interpretation of the FHMR:

1. If the anatomical parts transported by Client should ever meet the definition of 173.134(1), would 49 CFR 172.134(b)(10) and/or (14) exempt Client from the requirements of Parts 171 through 177 of the FHMR, or just the requirements of 173.134?

2. For purposes of your response, please assume the anatomical parts are exempt from the requirements of either 173.134 or Parts 171 through 177, as posed above, and further that they are erroneously assigned UN 3373. Is there a violation of 171.2(k)? Is there a violation of 172.303(a)?
3. For purposes of your response, please assume the anatomical parts are erroneously assigned UN 3373, but are loaded and unloaded by Client and transported in a trunk or cargo area and are not visible without close inspection. Is that erroneous UN 3373 assignment prohibited by 172.303(a) or is that section inapplicable under 172.303(b)(1) or (2)?
4. For purposes of your response, please assume the same situation as item 3 above and, furthermore, that 172.303(b)(1) or (2) applies. Can there still be a violation of 171.2(k)?

If you should require additional information, please do not hesitate to contact me at your earliest convenience by any means indicated above.

We appreciate your consideration and look forward to your response.

Very truly yours,

  
**GREAT LAKES CUSTOMS LAW**

By: Jason P. Wapiennik