



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

MAY 25 2012

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

Ref. No. 12-0051

Dear Mr. Elkind:

This responds to your February 3, 2012 letter regarding the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you inquire as to the appropriate marking requirements for shipments of material used for diagnostic or treatment purposes that are refrigerated with dry ice as specified in § 173.199(d)(2). You reference a letter of interpretation issued by PHMSA on July 20, 2011 (Ref. No.: 11-0112), which states that "UN3373" and "frozen medical specimens" satisfies the marking requirements. You indicate that such medical shipments could be transported for a variety of purposes unrelated to treatment or diagnosis and ask if the proper shipping name "Biological Substances, Category B" would also satisfy the marking requirement in § 173.199(d)(2).

We have reviewed our July 20, 2011 letter and we continue to believe that our interpretation is consistent with the language and intent of the regulatory requirement set forth in § 173.199(d)(2). Section 173.199(d)(2) requires that the package is marked with the wording "Carbon dioxide, solid" or "Dry ice" and an indication that the material being refrigerated is used for diagnostic treatment purposes. It provides the example "frozen medical specimens" as an acceptable marking. For this reason, the proper shipping name "Biological Substances, Category B" would not satisfy the marking requirements for materials intended for diagnostic or treatment purposes that are refrigerated with dry ice.

I hope this answers your inquiry. If you have further questions, please contact this office.

Sincerely,

Ben Supko
Acting Chief, Standards Development Branch
Standards and Rulemaking Division

55 Glenlake Parkway, NE
Atlanta, GA 30328-3474

February 3, 2012

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 173.217(d) and Interpretation Reference No. 11-0112

Dear Mr. Betts:

On behalf of UPS, I write for additional clarification of PHMSA's expectations related to the type of information required to be marked on shipments offered in conformance with 49 CFR 173.217(d). This subsection offers the following exception for certain dry ice shipments:

Carbon dioxide, solid (dry ice), when used to refrigerate materials being shipped for diagnostic or treatment purposes (e.g., frozen medical specimens), is excepted from the shipping paper and certification requirements of this subchapter if the requirements of paragraphs (a) and (c)(2) of this section are met and the package is marked "Carbon dioxide, solid" or "Dry ice" and is marked with an indication that the material being refrigerated is being transported for diagnostic or treatment purposes.

In this inquiry, we focus specifically on the marking, which is required to be "an indication that the material being refrigerated is being transported for diagnostic or treatment purposes." PHMSA's answer to a May 2011 inquiry from Mr. Jeremy Nantz states that the UN3373 marking would not, of itself, satisfy the conditions of this exception (letter to Mr. Nantz, dated July 20, 2011; Reference No. 11-0112). PHMSA states that the example provided in the subsection, "frozen medical specimens," is an illustration of an acceptable marking.

In this answer, PHMSA appears to focus specifically on the UN3373 marking, which is displayed within a hollow diamond. However, that marking alone is not sufficient to comply with §173.199. A compliant shipment must display the UN3373 marking in association with the proper shipping name, "Biological Substances, Category B." UPS seeks to understand whether PHMSA's interpretation holds that a properly marked package of Biological Substances, Category B – displaying both the proper shipping name and the associated UN3373 marking – is deemed to require some supplemental notation in order to be understood as "being transported for diagnostic or treatment purposes."

The question arises because PHMSA's July 2011 response runs counter to expectations. While the marking UN3373 does not contain information that reveals the purpose of the shipment, the

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same could be said of the phrase "Frozen Medical Specimens." Such medical shipments could be transported for a variety of purposes unrelated to treatment or diagnosis, ranging from basic biological research to long-term storage associated with tissue preservation. In light of the evident ambiguity that PHMSA tolerates for the phrase "Frozen Medical Specimens," it appears that the proper shipping name, "Biological Substances, Category B" would be equally satisfactory, and UPS seeks to understand whether, in consideration of the full marking required for a shipment of Biological Substances, Category B, PHMSA continues to hold that supplemental information must be marked on such a package in order to derive the benefit of §173.217(d).

While helping UPS management to better understand the intent of this requirement, your answer will help UPS to guide its customers and employees. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel S. Elkind". The signature is fluid and cursive, with a large initial "S" and a distinct "E".

Samuel S. Elkind

Corporate Regulated Goods Manager