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RSPA-03-15327-6



August 5, 2003

VIA FEDEX OVERNIGHT MAIL

Documents Management System
U.S. Department of Transportation
Room PL 401
400 Seventh Street, SW
Washington D.C. 20590-0001

RE: RSPA-03-15327 (HM-206B) Hazardous Materials: Changes to the Hazard Communication Requirements, Including Revision of Design of Labels and Placards for Materials Poisonous by Inhalation (PIH)

DEPT OF TRANSPORTATION
DOCKETS
RSPA-03-15327-6
AUG 5 2003

Dear Sir or Madam:

FedEx Express is the world's largest express transportation company and transports more dangerous goods shipments than any other air carrier.

FedEx Express submits the following comments in response to the Notice of Proposed Rulemaking: Hazardous Materials: Changes to the Hazard Communication Requirements, Including Revision of Design of Labels and Placards for Materials Poisonous by Inhalation (PIH) Docket No. RSPA-03-15327 (HM-206B). The NPRM seeks to propose regulatory changes to the Hazardous Materials Regulations to improve the safety of emergency responders and the public, and of offerors and transporters of hazardous materials.

In the NPRM, RSPA states, in part, "On March 25, 2003, we published a final rule under Docket HM-232 (68 FR 14510) that requires persons who offer for transportation and persons who transport in commerce certain hazardous materials to develop and implement security plans. Among the hazardous materials subject to the security plan requirement are infectious substances that are select agents and toxins regulated by the Centers for Disease Control and Prevention under 42 CFR part 73. Since publication of the HM-232 final rule, several carriers have suggested that carrier employees may not know that a package contains a select agent and, therefore, is subject to security plan requirements, unless that fact is communicated to the carrier. To address this potential problem, in this NPRM, we are proposing to add a new paragraph (p) to Sec. 172.203 that would require each person who offers a select agent for transportation in commerce to include the words "Select Agent" in association with the basic shipping description on the shipping paper that accompanies the shipment. Commenters are invited to suggest alternative methods for addressing this issue; we may modify this proposal in the final rule based on comments received."

FedEx Express reaffirms its position, as stated in our previous comments to HM-232, that to identify these type shipments as select agents on shipping papers could create a security risk, by raising attention to the agent. In fact, it is current security protocol not to designate certain restricted or high value articles for that very reason.

Further, RSPA does not take into account in HM-206B that select agents can be offered as Diagnostic Specimen shipments. Diagnostic Specimens only recently became regulated by RSPA in February 2003 in final rule HM-226. Diagnostic Specimen shipments only require the marking "Diagnostic Specimen" on the outer package. No other markings, labeling, specification markings or documentation is required. It would be difficult for a carrier to identify a Diagnostic Specimen shipment as a select agent even with an additional marking requirement that the item is a select agent.

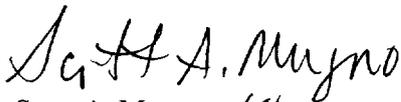
Finally, in addition, RSPA currently has an interim final rule, HM-232C, requiring an operator of a commercial motor vehicle that transports materials on the CDC select agent's list to have a hazardous materials endorsement to his or her CDL. As pick-ups can be made at various medical, laboratory and university locations that may or may not offer Infectious Substances but Diagnostic Specimen shipments, this can present carriers with the issue of ensuring the right licensed driver is on that day's needed route. A courier with a CDL would have to be on the right route on that particular day for acceptance of a shipment that contained a select agent. Presently there is no requirement in CFR 49 part 172.500 that requires a vehicle to be placarded if transporting any amount of an Infectious Substance or Diagnostic Specimen shipment, nor does FedEx Express recommend one.

The NPRM does not explain or justify how these requirements will enhance safety or security. Further, FedEx Express has never had a declared hazardous material shipment stolen from any of our vehicles or aircraft or had a vehicle or aircraft stolen for the hazardous materials on board. As proposed requirements would make it difficult, if not impossible, for FedEx Express to comply, we would be forced to review our decision to offer this service.

FedEx suggests that RSPA coordinate a meeting to be conducted with the various entities involved with the transportation of select agents before any new requirements are imposed. Specifically, the CDC, WHO and transportation companies should be contacted for the need for these measures and/or alternative methods for addressing any identified issues.

FedEx Express appreciates the opportunity to comment on this proposed rulemaking. If you have any questions concerning these comments, please contact me or David Littlejohn, Dangerous Goods Technical Advisor, at (901) 434-9567.

Think Safety, Act Safely, Be Safe



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