

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: FALCON CREST AVIATION SUPPLY, INC.

FAA Order No. 2007-6

Docket No. CP02SO0008
DMS No. FAA-2000-11976¹

Served: August 1, 2007

DECISION AND ORDER²

Falcon Crest Aviation Supply, Inc. (“Falcon Crest”) has appealed the administrative law judge’s (ALJ’s) decision³ assessing Falcon Crest a \$38,000 civil penalty for shipping battery acid without complying with regulations requiring markings, labels, shipping papers, certifications, and emergency response information.⁴ This decision reverses the ALJ’s decision because, under the circumstances presented, the material was excepted from the regulations alleged in the complaint.⁵ The material was

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation’s (DOT’s) Docket Management System (DMS) at the following Internet address: <http://dms.dot.gov>.

² The Administrator’s civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. In addition, Thomson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the website.

³ A copy of the ALJ’s written initial decision, dated April 20, 2005, is attached, but is not included on the FAA website.

⁴ The appendix contains the regulations that Falcon Crest allegedly violated.

⁵ Falcon Crest has petitioned for leave to file a response to the FAA’s reply brief, arguing that the FAA, “now represented by new counsel who did not participate in the adjudicatory hearing or prior briefing, makes a number of factual and legal assertions [in its reply brief] that had not been previously raised.” (Petition at 1.) Under 14 C.F.R. § 13.233(f), the Administrator “may grant leave to file an additional brief if the party demonstrates good cause for allowing additional

in limited quantities, was a consumer commodity, ORM-D (Other Regulated Material – Domestic), and was not offered or intended for air transport. As such, the regulations cited in the complaint did not apply.

I. Facts

Falcon Crest, located in Houston, Texas, is a seller of aviation parts and supplies and routinely ships hazardous materials. On or about July 9, 1999, Falcon Crest's warehouse manager prepared a shipment to send to a Falcon Crest branch in Atlanta, Georgia. The shipment included a box containing 22 one-quart bottles of battery acid. The bottles, in turn, were contained in nine inner fiberboard boxes, five with two bottles and four with three bottles. Each inner box was marked "Battery Fluid, Acid," "UN 2796," and "Corrosive." The outer box also contained a variety of other parts, such as spark plugs, which are not at issue here. Falcon Crest combined the outer box with other boxes and secured them with shrink-wrap on a pallet.

FedEx's Service Guide, which was incorporated by reference in Falcon Crest's contract with FedEx, provided that "dangerous goods must be limited to the materials and quantities authorized for air transportation." However, the FedEx representative told Falcon Crest that its shipments would go by ground. The cost estimate that Falcon Crest received from FedEx was consistent with ground transportation, and a FedEx eighteen-wheel truck picked up the shipment at Falcon Crest's facility. However, after picking up Falcon Crest's shipment, FedEx elected to send it by air aboard a cargo plane to a FedEx sort facility in Tennessee. FedEx reported the shipment to the FAA after FedEx employees in Tennessee noticed stains on the outside of the box that contained the battery

argument" Falcon Crest has failed to identify the assertions that the FAA allegedly made for the first time in its reply brief and, therefore, has not demonstrated good cause. Further, in view of the outcome of this appeal, additional briefing from Falcon Crest is not necessary.

acid.

An FAA inspector examined the Falcon Crest shipment and observed an unmarked, unlabeled, and stained outer box containing, among other things, the nine boxes and 22 bottles of battery acid. He concluded, however, that the battery acid had not leaked and had not caused the stain on the box. Although FedEx was not able to provide any of the shipping papers for the Falcon Crest shipment, the inspector believed – consistent with Falcon Crest’s assertion – that the box containing the battery acid bottles had been part of a multi-piece, palletized shipment.

II. Case History

On March 29, 2002, the FAA filed a complaint alleging that Falcon Crest violated a number of hazardous materials regulations by offering the box containing the bottles of battery acid for air transport without shipping papers, certifications, markings, labels, and emergency response information.⁶ The FAA sought a \$42,000 civil penalty.

Falcon Crest filed an answer on May 6, 2002, and an amended answer on June 19, 2002. On August 22, 2003, Falcon Crest moved for a decision in its favor, which the ALJ denied on April 1, 2004. The ALJ held a hearing on August 26, 2004, after which the parties filed post-hearing briefs and replies.

III. ALJ’s Decision

On April 20, 2005, the ALJ issued a written initial decision finding that the FAA had proven most but not all of the violations that it had alleged, and assessed a \$38,000 civil penalty.

⁶ The FAA alleged that the hazardous materials regulations classify “battery fluid, acid” as a hazardous material. The FAA alleged further that it is in Hazard Class 8, Packing Group II, its identification number is UN2798, and its proper label is “corrosive.” *See* the appendix for the regulations allegedly violated.

A. “Knowingly” Requirement

Although Falcon Crest contended that it did not know that FedEx would transport the shipment by air instead of by ground, the ALJ found that Falcon Crest should have known that FedEx could do so at its option under the contract Falcon Crest signed with FedEx. Therefore, the ALJ held, Falcon Crest “knowingly” offered the box for air transport under the hazardous materials statute, 49 U.S.C. § 5123(a)(1), which provides that a person acts knowingly not just when the person has actual knowledge of the facts giving rise to a violation, but also when “a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.”

B. Shipping Papers, Certifications, Markings, and Labels

The ALJ also held that the battery acid was a corrosive material requiring shipping papers, certifications, markings, and labeling. He rejected Falcon Crest’s arguments that these were not necessary under 14 C.F.R. § 173.154.

More specifically, the ALJ disagreed with Falcon Crest’s argument that the bottles were “inner packages” which met the “limited quantities” exemption in 49 C.F.R. § 173.154(b), and therefore that it did not have to label the outer box.⁷ He rejected this contention for three reasons:

(1) Under the definitions contained in Section 171.8, the bottles were not

⁷ Section 173.154(b)(1) provides, in pertinent part:

(b) Limited quantities of corrosive materials (Class 8) in Packing Groups II and III are excepted from labeling, unless offered or intended for transportation by aircraft The following combination packagings are authorized;

(1) For corrosive materials in Packing Group II, in inner packagings not over 1.0 L (0.3 gallon) net capacity each for liquids

“inner packages,”⁸ but were “inner receptacles,”⁹ because they acted as “containment vessel[s] for receiving and holding materials.”

- (2) Because each of the inner boxes contained two to three 1-quart bottles,¹⁰ they did not meet the 1-liter “limited quantities” requirement.
- (3) Falcon Crest offered the box for air transport, and the limited quantities exception did not apply to materials offered or intended for air transport.

The ALJ rejected Falcon Crest’s argument that the battery acid was an ORM-D material exempt from the shipping paper and certification requirements. The ALJ held that the material did not meet the “limited quantities” and “consumer commodity” requirements for ORM-D materials. The battery acid was not a “consumer commodity” under Section 171.8, the ALJ held, because it was not “for consumption by individuals for purposes of personal care or household use.”

The ALJ disregarded an interpretation from the Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation, to Concorde Battery Corporation, the battery acid’s manufacturer. This interpretation stated that “the battery fluid described in your letter may be reclassified as a consumer commodity, ORM-D.” The ALJ also disregarded a September 9, 1996, letter from Concorde Battery Corporation stating that its “Battery Value Packs” were consumer commodities. According to the ALJ, the interpretations were not binding and provided

⁸ Section 171.8 provides: “*Inner packaging* means a packaging for which an outer packaging is required for transport. It does not include the inner receptacle of a composite packaging.” (Italics in original.)

⁹ Section 171.8 provides: “*Inner receptacle* means a receptacle which requires an outer packaging in order to perform its containment function. The inner receptacle may be an inner packaging of a combination packaging or the inner receptacle of a composite packaging.” (Italics in original.)

¹⁰ 1 quart = .95 liter; 2 quarts = 1.9 liters; 3 quarts = 2.85 liters.

no analysis. Concerning the “Battery Value Packs,” the ALJ pointed out that the interpretation referred to both the battery pack and the battery acid, not to the acid alone.

C. Emergency Response Information

The ALJ declined to find violations of 49 C.F.R. §§ 172.600 and 172.602(b)(3), which require the offeror of hazardous materials to make available emergency response information, because the FAA did not introduce any evidence showing that Falcon Crest violated these regulations.

The other alleged emergency response violation involved Section 172.604(a)(3), which requires a 24-hour emergency response telephone number on the shipping paper. Stating that Falcon Crest admitted that it did not provide shipping papers, the ALJ concluded that it could not have provided the 24-hour emergency response telephone number. In response to Falcon Crest’s argument that it was exempt from marking and emergency response requirements under Sections 172.301(f) and 172.600(d), the ALJ stated that Section 172.301(f) did not exist at the time, and Section 172.600(d) did not apply because it only applied to “hazardous material ... excepted from the shipping paper requirements ... or ... an ORM-D [material].”

IV. Analysis

A. Introduction

Under Department of Transportation regulations, “Battery fluid, acid,” is a hazardous material that falls within hazard class 8 (corrosive materials), packing group II. 49 C.F.R. § 172.101, table; § 173.154. Shipments of battery acid must have proper markings, labels, shipping papers, certifications, and emergency response information, unless one or more exceptions apply.

On appeal, Falcon Crest argues that its shipment consisted of limited quantities and was an ORM-D consumer commodity that was exempt from all the regulations alleged in the complaint, as long as it was not offered or intended for air transport. Falcon Crest further argues that it did not offer or intend the battery acid for air transport. As discussed below, the regulations provide an exception to the labeling requirement for corrosives if shipped in limited quantities. The regulations also provide exceptions to the shipping paper, certifications, and emergency response information requirements if the material is a consumer commodity. Finally, the regulations provide an exception to the marking requirements if the material is a consumer commodity that meets certain requirements. None of these exceptions apply, however, if Falcon Crest offered or intended to ship the battery acid by air.

B. “Knowingly”

In hazardous materials cases, only a person that acts “knowingly” is liable for a civil penalty. 49 U.S.C. § 5123(a); 49 C.F.R. § 171.1(c). A person acts “knowingly” not only when the person has “actual knowledge of the facts giving rise to the violation,” but also when “a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.” (*Id.*) As discussed in the sections that follow, Falcon Crest’s shipment would not have been excepted from the regulations alleged in the complaint if Falcon Crest knowingly offered or intended the battery acid for transport by air.

On this issue, both Falcon Crest’s warehouse manager and its vice president testified without rebuttal that they did not intend for the shipment to go by air (Tr. 142, 179-180) and that a FedEx customer service representative expressly told them that their

shipments would go by ground (Tr. 145, 174).¹¹ While the FAA argues that these Falcon Crest employees may have been biased, the ALJ found them credible. The ALJ stated at the hearing's close, "I think all the witnesses have been honest, I think they've been forthright, and I think they've testified just on their recollections. I don't think any of them have tried to spin anything." (Tr. 200.) The FAA has provided no reason to overturn the ALJ's credibility determinations. Credibility determinations are accorded deference on appeal, because the ALJ had the opportunity to observe the witnesses' demeanor. *See, e.g., In the Matter of Delaware Skyways*, FAA Order No. 2005-6 at 6 (March 18, 2005).

Not only did FedEx not tell Falcon Crest that its shipments would go by air, but the cost estimates that FedEx gave Falcon Crest were even less than those in the industry for ground transport (air shipment is usually more expensive than ground shipment), and a FedEx eighteen-wheel truck picked up the shipment. (Tr. 144.) Although the FAA argues that it was unreasonable for Falcon Crest to believe that a carrier could transport the shipment by ground from Houston, Texas to Atlanta, Georgia within a reasonable time frame, the approximate driving time would be only 12 hours.¹² Under all of these circumstances, it was not unreasonable for Falcon Crest to believe that the shipment

¹¹ The FAA special agent testified that the FedEx representative told him that: (1) the transport mode is not determined until the shipment reaches the FedEx facility; (2) the customer cannot choose the mode of transport; and (3) FedEx e-mailed her a year before the incident emphasizing that representatives should remind customers that FedEx is an air carrier and customers' packages must comply with International Air Transport Association (IATA) dangerous goods regulations.

But the FAA presented no evidence concerning what the customer service representative actually told Falcon Crest. The representative was not a witness at the hearing, so the ALJ was unable to hear her testimony and determine her credibility, and the special agent's record of his interview with her is silent as to whether she told Falcon Crest that its shipments would go by air or by ground.

¹² *See, e.g.,* www.mapquest.com.

would go by ground, especially where, as the testimony at trial indicated, it was a routine rather than a priority shipment. (Tr. 143.)

Nevertheless, the ALJ found that Falcon Crest should have known that FedEx could transport the shipment by air because of Falcon Crest's contract with FedEx.¹³ The contract incorporated by reference the FedEx Service Guide. The ALJ relied on the following portion of the Service Guide, which provides in relevant part:

All packages containing dangerous goods must be limited to the materials and quantities authorized for air transportation according to the current edition of the International Air Transport Association ("IATA") Dangerous Goods Regulations, except as noted in paragraph (D) below.

...

D. The following dangerous goods may be shipped in accordance with the current edition of Title 49 Code of Federal Regulations.

...

2. ORM-D

From this passage, the ALJ determined that:

[T]he Service Guide required packages of dangerous goods be limited to the materials and quantities authorized for *air transportation* according to the current edition of the International Air Transport Association Dangerous Goods Regulations or the Code of Federal Regulations, depending upon the type of dangerous goods being shipped. That statement gave notice that packages containing dangerous goods might be shipped by air transportation.

(Initial Decision at 7 n. 21; emphasis in original.)¹⁴

The contract provision upon which the ALJ relied is ambiguous, however.

Regardless of what FedEx might have meant, the contract does not clearly state that

¹³ The FedEx Express Saver Agreement.

¹⁴ The FAA also relies on the following portion of the Service Guide for the proposition that Falcon Crest should have known that the shipment could go by air: "A federal excise tax, when required by the Internal Revenue Code on the air transportation portion of this service, if any, is paid by FedEx." This provision is not relevant to this case, but assuming, *arguendo*, that it was, it does not support the FAA's contention. On the contrary, this provision is evidence that some shipments will not travel by air. More importantly, the issue in this appeal is not what "could" have happened, but rather what Falcon Crest intended.

FedEx reserved the right to send any and all packages by air. The contract limits packages containing dangerous goods to the *materials* and *quantities* authorized for air transportation. It does not require compliance with any of the other requirements that are at issue here, regarding marking, labeling, shipping papers, certifications, and emergency response information. FedEx could simply have meant that it intended to hold its ground shipments to a higher standard.

Under all of the circumstances, the evidence does not support the ALJ's conclusion that Falcon Crest knowingly offered or intended to ship the battery acid by air.

C. "Limited Quantities"

Section 173.154(b) provides that limited quantities of corrosive materials (Class 8) in packing group II ... are excepted from labeling requirements, unless offered or intended for transportation by aircraft. Section 173.154(b) further provides that this exemption applies only where the inner packagings containing corrosive liquid materials in packing group II do not exceed 1.0 L (0.3 gallon) net capacity each.

The ALJ held that the bottles were inner receptacles rather than inner packagings and, therefore, that the exception in Section 173.154(b) did not apply. This determination was incorrect, based upon Section 171.8's definition of the term "bottle," as "an *inner packaging* having a neck of relatively smaller cross section than the body and an opening capable of holding a closure for retention of the contents." Section 171.8 (emphasis added). Each 1-quart bottle's capacity did not exceed 1.0 L.¹⁵ Thus, the bottles in this shipment met the limited quantities exception in Section 173.154(b).

¹⁵ See note 10 above for the conversion of quarts to liters.

D. “Consumer Commodity”

Section 173.154(c) provides that a limited quantity that is a consumer commodity “may be renamed ‘consumer commodity’ and reclassified as ORM-D material.” ORM-D, or “Other Regulated Material – Domestic” is “[a] material such as a consumer commodity which ... presents a limited hazard due to its form, quantity, and packaging.” Section 173.154(c) provides that ORM-D shipments are not subject to either the labeling or shipping paper requirements, unless they are offered or intended for air transport.

Section 171.8 defines “consumer commodity” as “a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for purposes of personal care or household use.” 14 C.F.R. § 171.8. Falcon Crest’s bottles of battery acid met these criteria. While Falcon Crest’s aviation parts and supply business sold the 1-quart bottles of battery acid to owners of private and corporate aircraft, the same 1-quart bottles of battery acid are readily available for use in consumer vehicles. Indeed, the ALJ asked the special agent whether a consumer can buy battery acid “for retail,” and the response was “yes.” (Tr. 44.) In addition, the Research and Special Programs Administration (RSPA) – the agency within the Department of Transportation that issued the hazardous materials regulations – had provided an interpretation to the battery acid manufacturer stating that “the battery acid described in your letter may be reclassified as a consumer commodity, ORM-D.”¹⁶ RSPA’s interpretation of its own regulations is entitled to deference. For all of these reasons, the battery acid in this case fits the regulatory definition of “consumer commodity.”

¹⁶ According to RSPA’s letter of interpretation, the manufacturer had described the battery fluid as follows: “[T]he battery fluid meets the definition for Class 8, Packing Group II, and is packed in one quart containers.” Letter from RSPA to Concorde Battery Corporation, dated December 11, 1998.

As for marking requirements, although Section 172.316 provides that offerors must mark packagings containing ORM-D materials, once the material is classified as a “Consumer commodity,” it falls within the packaging exceptions contained in Section 173.156. Section 173.156(b)(1) provides that marking requirements do not apply for materials classed as ORM-D when the materials are unitized¹⁷ in boxes or similar overpacks, offered for transportation by contract motor carrier, and transported to or from a distribution center.¹⁸ Hence, the marking requirements in the hazardous materials regulations did not apply to this shipment of battery acid, fluid.

V. Conclusion

In summary, it cannot be said that a reasonable person exercising reasonable care would have known that the Falcon Crest shipment would be transported by air, given:

- FedEx’s express representations to Falcon Crest that its shipments would go by ground;
- the circumstances consistent with ground shipment (the cost, pickup by an 18-wheel truck); and
- the contract between FedEx and Falcon Crest, which failed to indicate clearly that FedEx reserved the right to ship packages by air.

Therefore, Falcon Crest did not offer or intend the shipment for air transport within the

¹⁷ Unitized in this context means multiple items placed in a single box or similar overpack.

¹⁸ Section 173.156 provides, in relevant part:

- (b) ... In addition to other exceptions specified for ORM-D materials in this part:
- (1) ... marking requirements specified in subpart D of part 172 of this subchapter ... are not required for materials classed as ORM-D when –
- (i) Unitized in ... boxes or similar overpacks;
- (ii) Offered for transportation or transported by: ...
- (B) Private or contract motor carrier; ...and
- (iii) Transported to or from a manufacturer, a distribution center, or a retail outlet
-

meaning of the regulations, and did not knowingly violate them. As a result, the shipment fell into the exceptions from the labeling and shipping paper requirements contained in Sections 173.154(b) & (c).

Because the shipment was exempt from the shipping paper requirements, it was also exempt from the certification requirements, given that certifications are included on the shipping paper. (*See* Section 172.204(a), which provides that “each person who offers a hazardous material shall certify that the material is offered for transportation in accordance with this subchapter by printing ... on the shipping paper the certification”)

As for emergency response information requirements, Section 172.600(d) specifically exempts from these requirements, “hazardous material which is excepted from the shipping paper requirements ... or a material properly classified as an ORM-D.”

Finally, under Section 173.156(b)(1), marking requirements do not apply to the consumer commodity ORM-D materials in the instant case.

For the foregoing reasons, this decision reverses the ALJ’s decision and dismisses the FAA’s complaint with prejudice.

[Original signed by Marion C. Blakey]

MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

APPENDIX

Section 171.2(a)¹⁹ provides:

No person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by this subchapter

Section 172.200(a) provides:

Description of hazardous materials required. . . . [E]ach person who offers a hazardous material for transportation shall describe the hazardous material on the shipping paper in the manner required by this subpart.

Sections 172.202(a)(1)-(5) provide:

(a) The shipping description of a hazardous material on the shipping paper must include:

(1) The proper shipping name prescribed for the material in Column 2 of the § 172.101 Table;

(2) The hazard class or division prescribed for the material as shown in Column 3 of the § 172.101 Table (class names or subsidiary hazard class number may be entered following the numerical hazard class, or following the basic description)

(3) The identification number prescribed for the material as shown in Column 4 of the § 172.101 Table;

(4) The packing group, in Roman numerals, prescribed for the material in column 5 of the § 172.101 table, if any. . . . ; and

(5) . . . [T]he total quantity . . . , including the unit of measurement, of the hazardous material covered by the description

Section 172.203(f) provides:

Transportation by air. When a package containing a hazardous material is offered for transportation by air and this subchapter prohibits its transportation aboard passenger aircraft, the words “Cargo aircraft only” must be entered after the basic description.

¹ All citations are to Title 49 of the Code of Federal Regulations.

Section 172.204(a) provides:

(a) . . . [E]ach person who offers a hazardous material for transportation shall certify that the material is offered for transportation in accordance with this subchapter by printing . . . on the shipping paper containing the required shipping description the certification contained in paragraph (a)(1) of this section or the certification (declaration) containing the language contained in paragraph (a)(2) of this section.

Section 172.204(c)(1) provides:

(c) *Transportation by air*—(1) *General*. Certification containing the following language may be used in place of the certification required by paragraph (a) of this section:

I hereby certify that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packaged, marked and labeled, and in proper condition for carriage by air according to applicable national governmental regulations.

Section 172.204(c)(2)-(3) provides:

(c) *Transportation by air*—

(2) *Certificate in duplicate*. Each person who offers a hazardous material to an aircraft operator for transportation by air shall provide two copies of the certification required in this section. . . .

(3) *Passenger and cargo aircraft*. Each person who offers for transportation by air a hazardous material authorized for air transportation shall add to the certification required in this section the following statement:

This shipment is within the limitations prescribed for passenger aircraft/cargo aircraft only (delete nonapplicable).

Section 172.300(a) provides:

(a) Each person who offers a hazardous material for transportation shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.

Section 172.301(a) provides:

(a) *Proper shipping name and identification number*. . . . [E]ach person who offers for transportation a hazardous material in a non-bulk packaging shall mark the package with the proper shipping name and identification number

(preceded by “UN” or “NA,” as appropriate) for the material as shown in the § 172.101 table. . . .

Section 172.312(a)(2) provides:

(a) . . . [E]ach non-bulk combination package having inner packagings containing liquid hazardous materials must be:

...

(2) Legibly marked, with package orientation markings that conform pictorially to the illustration shown

Section 172.400(a) provides:

(a) . . . [E]ach person who offers for transportation or transports a hazardous material in any of the following packages or containment devices, shall label the package or containment device with the labels specified for the material in the § 172.101 Table and in this subpart

Section 172.600 provides:

(c) *General requirements.* No person to whom this subpart applies may offer for transportation . . . a hazardous material unless:

(1) Emergency response information conforming to this subpart is immediately available for use at all times the hazardous material is present

172.602(b)(3) provides:

(b) *Form of information.* The information required for a hazardous material by paragraph (a) of this section must be:

...

(3) Presented—

(i) On a shipping paper;

(ii) In a document, other than a shipping paper, that includes both the basic description and technical name of the hazardous material . . . and the emergency response information . . .; or

(iii) Related to the information on a shipping paper, a written notification to pilot-in-command, or a dangerous cargo manifest, in a separate document (e.g., an emergency response guidance document), in a manner that cross references the description of the hazardous material on the shipping paper with the emergency response information contained in the document.

Section 172.604(a)(3) provides:

(a) A person who offers a hazardous material for transportation must provide an emergency response telephone number The telephone number must be –

(3) Entered on a shipping paper