



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

OCT 23 2008

1200 New Jersey Ave., SE
Washington, DC 20590

Mr. Brian J. Strasma
First Alert BRK Brands, Inc.
3901 Liberty Street Road
Aurora, IL 60504-8122

Ref. No. 08-0218

Dear Mr. Strasma:

This responds to your August 14, 2008 letter and follow-up telephone discussions requesting clarification of the exceptions for non-specification cylinder fire extinguishers shipped in conformance with § 173.309(a) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You also request clarification of the marking requirements for different packaging configurations of these fire extinguishers.

You describe two packaging configurations in which fire extinguishers are packaged in 4-color inner packagings (i.e., consumer packaging) and then placed in a master carton at 2-6 fire extinguishers per carton or in a larger display pallet. You indicate the master cartons and display pallet are marked "Fire extinguishers, UN1044, Limited Quantity" and no labels are applied. You also provided us with pictures illustrating the packaging configurations. The pictures included a packaging configuration consisting of the consumer packaging stacked and shrink-wrapped to a pallet without markings or labels.

The descriptions and pictures of packaging configurations are summarized as follows:

Configuration 1: The fire extinguishers are placed in consumer packaging and packaged in a corrugated cardboard box shrink-wrapped to a pallet (i.e., a display pallet). The consumer packaging is not marked and the display pallet is marked "Fire extinguishers, UN1044, Limited Quantity." No label.

Configuration 2: The fire extinguishers are placed in consumer packaging, packaged in a "master carton" at 2-6 fire extinguishers per carton, and then shrink-wrapped to a pallet. The consumer packaging is not marked and each carton is marked "Fire extinguishers, UN1044, Limited Quantity." No labels.

Your understanding of the exceptions provided in § 173.309(a) is correct. Non-specification cylinders used as fire extinguishers and designed, manufactured, and filled in conformance with § 173.309(a) are not subject to the labeling or placarding requirements of Part 172 of the HMR. Therefore, no label is required on the outer packaging for either configuration.

Your understanding of the marking requirements for the display pallet and master cartons is also correct except that you are not required to mark the outer packagings with "limited quantity." As a condition of the exceptions provided under § 173.309(a), each fire extinguisher must be shipped as an inner packaging of a combination packaging. It is the opinion of this Office that for both configurations, the combination of the fire extinguisher and consumer packaging may be considered the "inner packaging." Inner packagings of combination packagings are not required to be marked. Therefore, the display pallet and master cartons are required to be marked with the proper shipping name "Fire extinguishers" and the identification number "UN1044" and the "inner" consumer packagings are not required to be marked. Note that for the configuration of consumer packages shrink-wrapped to a pallet without an outer package, the fire extinguisher is the "inner package" and the consumer packaging is the outer package and must be marked accordingly if intended for shipment.

With regard to whether your drivers need a commercial driver's license (CDL) with a hazardous materials endorsement, the answer is no. It is our understanding that, since fire extinguishers transported in conformance with § 173.309(a) are not subject to placarding requirements, a hazardous material endorsement is not required. Please consult the Federal Motor Carrier Safety Regulations (49 CFR Parts 300-399) for more detailed information on CDL requirements.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



Susan Gorsky
Acting Chief, Standards Development
Office of Hazardous Materials Standards

First Alert

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Der Kinderen
§173.309
Fire Extinguishers
08-0219

August 14, 2008

Mr. Edward T. Mazzullo
Director of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd floor
Washington, DC 20590

Reference: Request for Interpretation of 49 CFR § 173.309 Fire Extinguishers

Dear Mr. Mazzullo:

BRK Brands, Inc. ("BRK") designs, manufactures, packages and distributes fire extinguishers that meet each of the conditions in 49 CFR § 173.309. Under this provision, such fire extinguishers,

“are excepted from labeling (except when offered for transportation by air) ... In addition, shipments are not subject to subpart F of part 172 of this subchapter, to part 174 of this subchapter except Sec. 174.24 or to part 177 of this subchapter except Sec. 177.817.”

Despite the language contained in 49 CFR § 173.309 BRK has been requested to provide labeling, placarding and CDL drivers with hazmat endorsements. In addition BRK has been told by a third party that it is required to mark the proper shipping name and “limited quantity” exception on each inner packaging as well as on the external shipping packaging. This appears to be contrary to the requirements of 49 CFR § 172.301.

BRK’s fire extinguishers are packaged in 4-color inner packaging (as defined in 49 CFR § 171.8) and shipped in master cartons of 2 -6 units each or larger displayer pallets. The master cartons and displayer pallets are marked as required by 49 CFR § 172.301 with the proper shipping name, “Fire extinguishers, UN1044, Limited Quantity.” Division 2.2 non-flammable gas labels are not applied.

We are requesting confirmation of our interpretation of the following issues:

- Fire extinguishers that comply with 173.309 are excepted from labeling requirements in Part 172;
- Fire extinguishers that comply with 173.309 are not subject to subpart F of part 172 and therefore do not require placards, and;

- Since fire extinguishers compliant with 173.309 do not require placards, CLD drivers, are not required to have hazardous materials endorsements on their CDL drivers licenses
- Provided that the proper shipping name and the “limited quantity” exception is marked on the external master package or displayer pallet, it is not required to be also marked on each “inner packaging.”

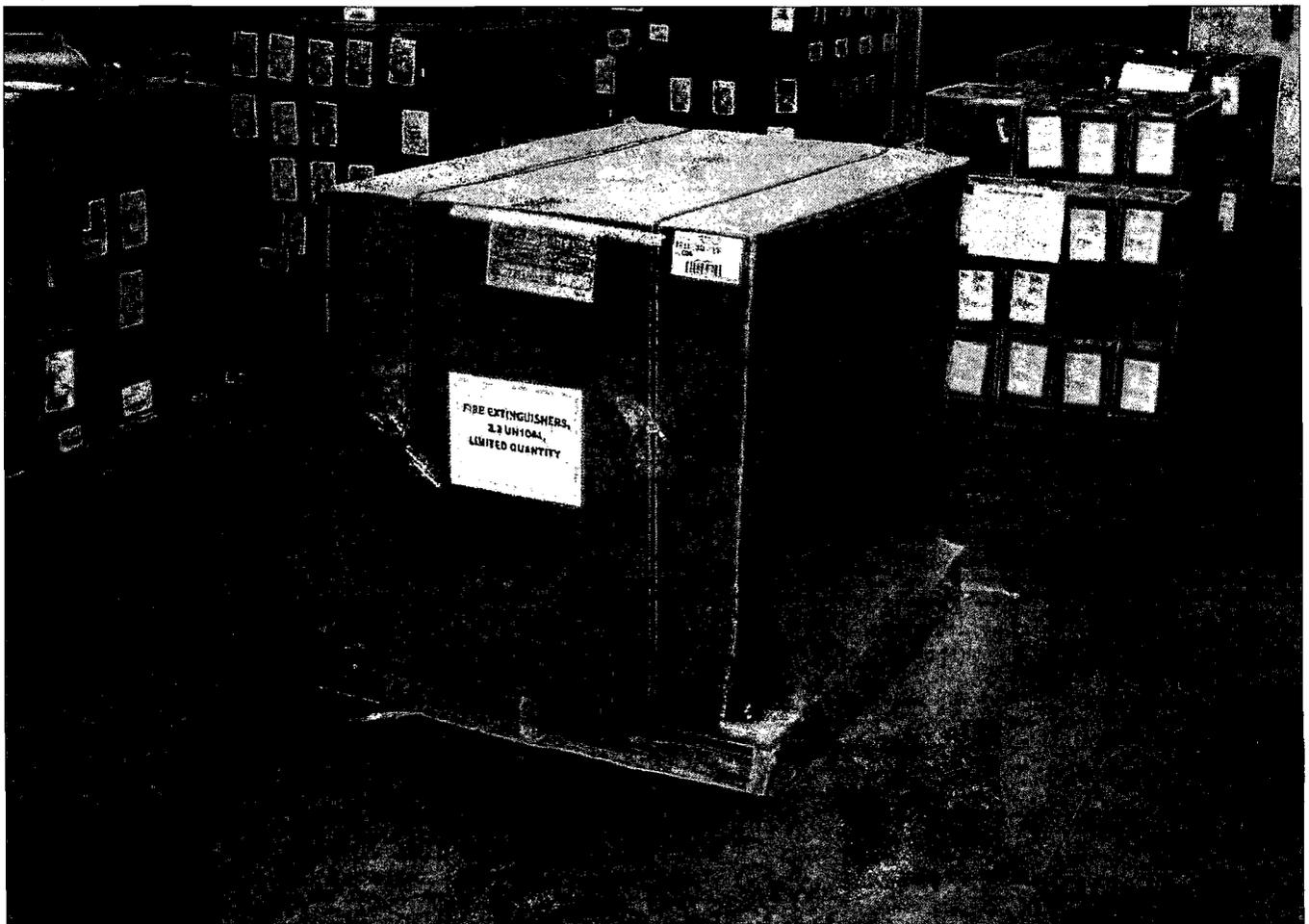
Sincerely,

A handwritten signature in black ink, appearing to read "Brian Strasma". The signature is written in a cursive style with a large initial "B" and "S".

Brian J. Strasma
Vice President, Finance and Operations



PALLET OF INNERS



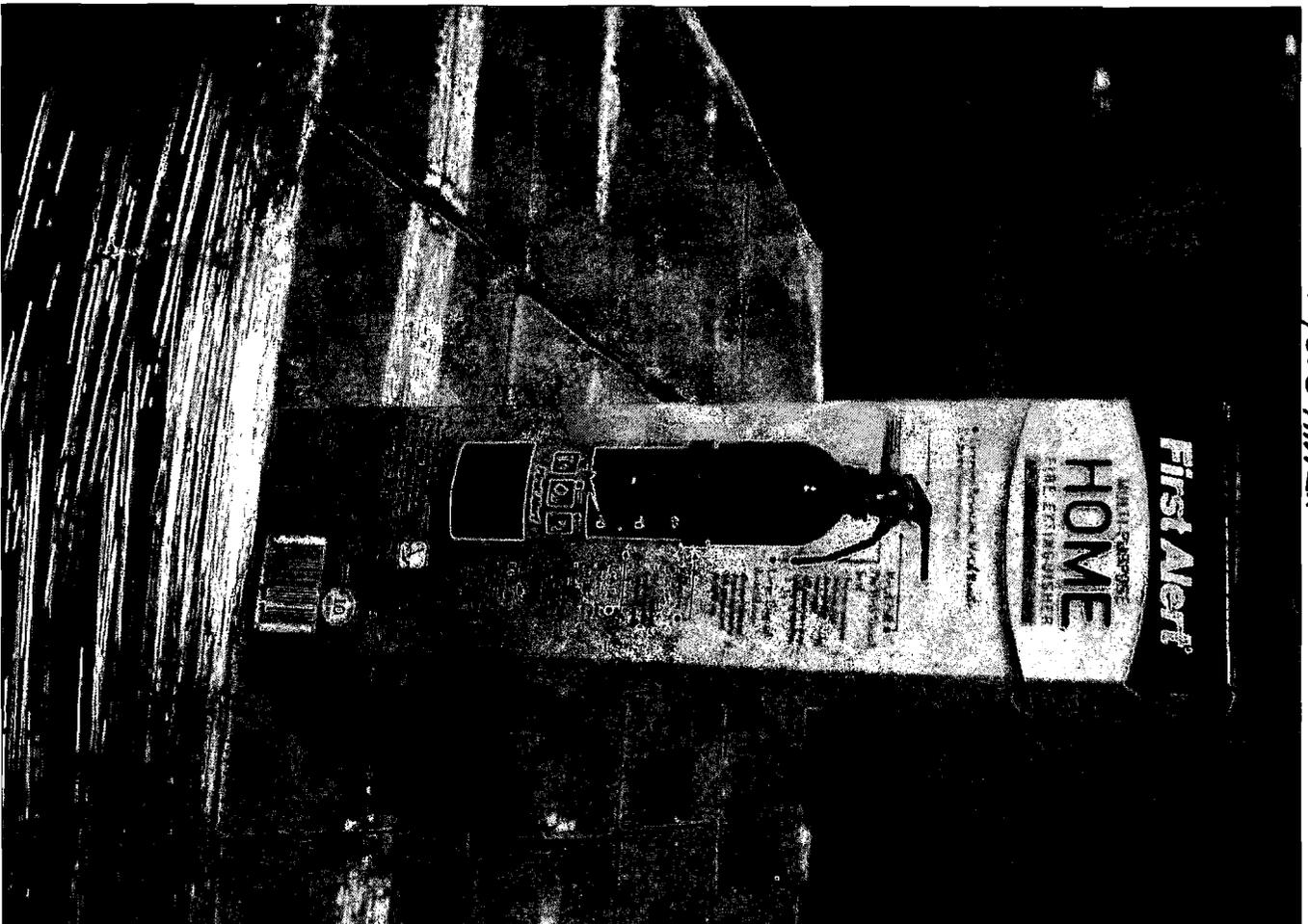
double wall outer carton

PK0D FE1A10GI15

FE1A-10G-Z15 INNER

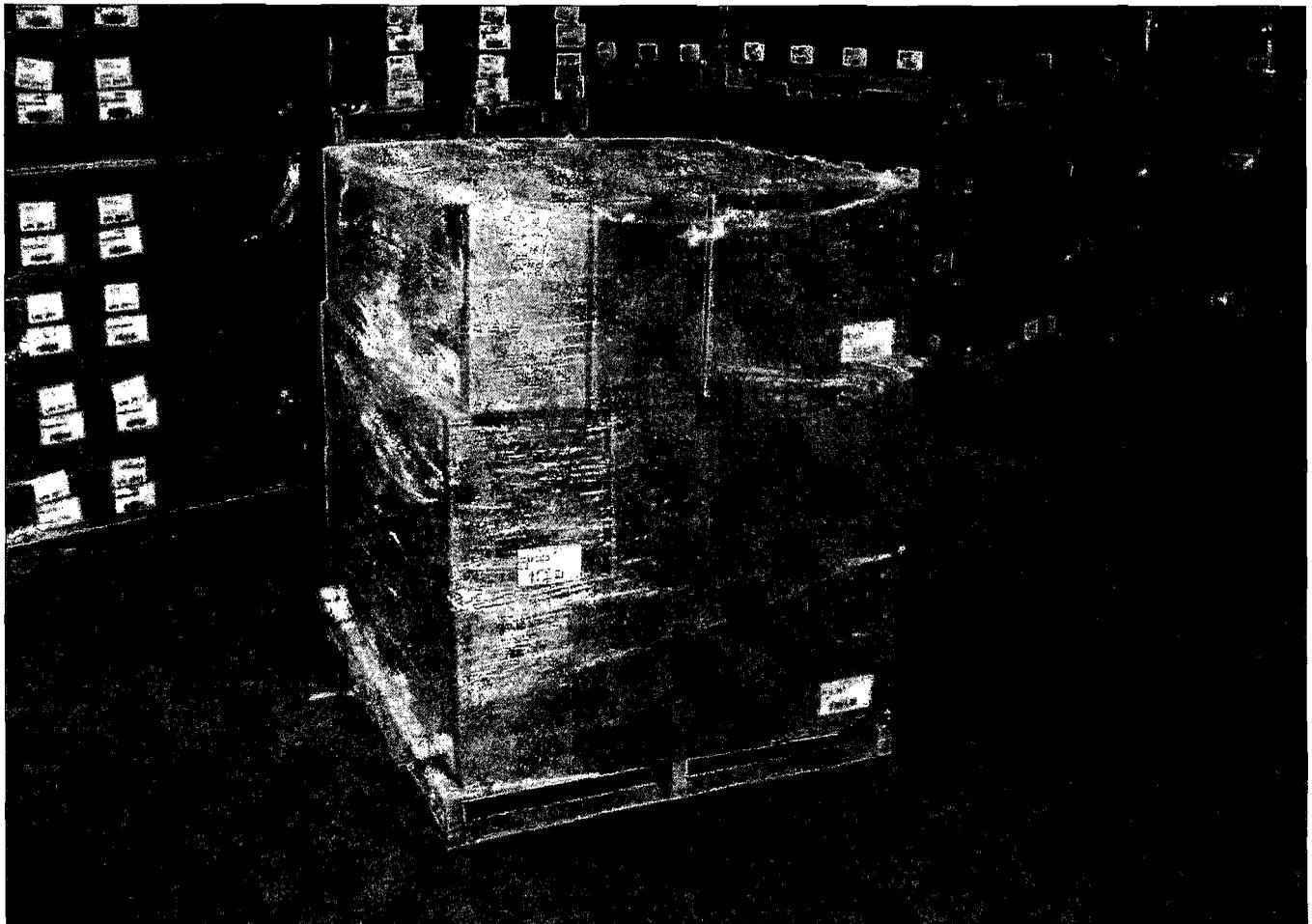


FE1060 6 PACK



FE1060 INNER

FE10G0 CASE



FE10G0 PALLET

