



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

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

Mr. Ben Barrett
President
DG Advisor, LLC
1930 East Blue Ridge Boulevard
Kansas City, MO 64146

JUL 11 2013

Reference No.: 13-0072

Dear Mr. Barrett:

This is in response to your April 9, 2013 letter to the Standards and Rulemaking Division of the Office of Hazardous Materials Safety requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) relating to the applicability and responsibility for specification packaging.

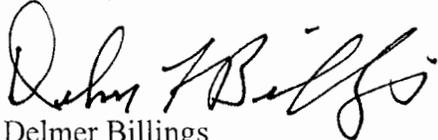
You believe: 1) A person who self-certifies specification packaging by conducting their own tests assumes responsibility for those decisions in their control; 2) If a self-certifier provides instructions to a packaging manufacturer, and further requests them to print the specification marking including the name or symbol of the self-certifier on the packaging, that the packaging manufacturer only assumes responsibility for producing the packaging according to the instructions of the self-certifier and is not responsible to guarantee the results of the drop or stack tests which the packaging manufacturer does not conduct; and 3) a self-certifier may ask a manufacturer to provide a packaging including a specification marking without substantiating to the packaging manufacturer all details concerning the drop and stack tests specified in HMR part 178.

You are correct. In accordance with § 178.2(b)(2), when a specification marking is required and applied to a packaging, the mark is certification that all functions performed by, or on behalf of the person whose name or symbol appears as part of the marking conform to the specified requirements. In the scenario you describe, the self-certifier whose name or symbol is ultimately displayed on the packaging is certifying that the packaging conforms to the specified

requirements. On behalf of the self-certifier, the manufacturer of the packaging, performing the functions of producing the packaging and printing the certification marking on the packaging is only responsible for ensuring those functions are performed correctly. The packaging manufacturer, in following the self-certifier's instructions, does not need to know the details of the packaging tests.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Delmer Billings". The signature is written in a cursive style with a large initial "D".

Delmer Billings
Senior Regulatory Advisor
Standards and Rulemaking Division



Babich
§178.2
Packaging
13-0072

9 April 2013

Mr. Charles Betts, Director
Standards and Rulemaking Division,
Pipeline and Hazardous Materials
Safety Administration, Attn:
PHH-10, U.S. Department of Transportation,

Re: Responsibility of M Number Self-Certifying Specification Packaging

Dear Mr. Betts:

This is a request for an interpretation per 49 CFR 105.20.

The Hazardous Materials Regulations in 49 CFR 178.2 discuss the applicability and responsibility for specification packaging, and states:

(2) A manufacturer of a packaging subject to the requirements of this part is primarily responsible for compliance with the requirements of this part. However, any person who performs a function prescribed in this part shall perform that function in accordance with this part.

This does not specifically address the scenario of self-certification by the packaging user. It is our belief based on a reading of the regulations that a person who self-certifies specification packaging by conducting their own testing assumes responsibility for those decisions within their control. We believe that if the self-certifier provides instructions to a package manufacturer, and further requests them to print the specification package certification including the name or M-number of the self-certifier on the package, that the packaging manufacturer only assumes responsibility for producing the packaging according to the instructions of the self-certifier, and is not responsible to guarantee results of the drop or stack tests which the packaging manufacture does not conduct.

We have a situation where a self-certifier has thousands of packages and reports, and a package manufacturer thinks they have a responsibility to review each test report before manufacturing a packaging. Provision of such a quantity of information is a burden. We wish to NOT provide every package test report to the package manufacturer.

We note PHMSA's interpretation numbered 02-0139 and dated July 18, 2003, which states:

"If a customer is willing to assume responsibility for certifying compliance, a packaging fabricator may fabricate a packaging to a tested UN standard, but not place any packaging certification marks on the packaging. The customer would then self-certify as the manufacturer by placement of the complete required UN standard marking on the packaging. To satisfy the UN certification marking requirements of § 178.503(a)(8), at the direction of the customer, a packaging manufacturer may mark the packaging with the customer's name and address or symbol, if used. (See §§ 178.2(e) and 178.503)"

Based on our reading of the regulations and this interpretation, we believe that a self-certifier may ask a manufacturer to provide a packaging including a specification packaging certification marking without substantiating to the package manufacturer all details concerning the drop and stack tests specified in 49 CFR 178. We believe in this case that the packaging manufacturer is responsible for due diligence to the package purchaser, but not to PHMSA, since they are only printing a certification mark at the instruction of the self-certifier.

Please confirm whether our understanding is correct.

Sincerely,
DG Advisor, LLC

A handwritten signature in black ink, appearing to read 'B Barrett', with a long horizontal line extending to the right.

Ben Barrett
President

cc: Mr. Del Billings, Standards



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 18 2003

Mr. Jason Perrone
Neeley Sales Co. Inc.
P.O. Box 523
Highway 25 South
Greenwood, South Carolina 29648

Ref. No.: 02-0139

Dear Mr. Perrone:

This responds to your letter regarding self-certification of packages initially tested and certified by an independent laboratory. We apologize for the delay in responding and hope it has not caused any inconvenience.

You stated that your company imports and distributes 1.4G consumer fireworks. These fireworks are packaged in fiberboard boxes for purposes of transportation. The boxes were constructed, tested and certified by an independent laboratory, and remained unchanged for the past ten years. The boxes have been periodically recertified by other laboratories. Since all of the specifications are the same, when the boxes are made again, you would like to perform the appropriate performance tests, and print your company's name on the box as the box certifier. You ask if there is any prohibition against self-certifying UN performance-oriented packagings.

The answer is no. A manufacturer is defined as the person whose name and address or symbol appears as part of the specification markings required in Part 178 or, for a packaging marked with the symbol of an approval agency, the person on whose behalf the approval agency certifies the packaging. In this context, a manufacturer may or may not be the actual fabricator of the packaging. The mark may or may not represent the person or party who makes the packaging or conducts the performance tests, but represents the person or party who certifies, by applying the mark displaying a name and address or manufacturer's symbol, that the packaging was manufactured to a successfully tested design type and complies with all applicable requirements of Part 178. If a customer is willing to assume responsibility for certifying compliance, a packaging fabricator may fabricate a packaging to a tested UN standard, but not place any packaging certification marks on the packaging. The customer would then self-certify as the manufacturer by placement of the complete required UN standard marking on



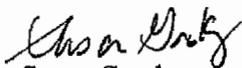
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178.503

the packaging. To satisfy the UN certification marking requirements of § 178.503(a)(8), at the direction of the customer, a packaging manufacturer may mark the packaging with the customer's name and address or symbol, if used. (See §§ 178.2(e) and 178.503)

I hope this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,



Susan Gorsky

Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards

NEELEY SALES CO. INC.

P.O. BOX 523, HWY. 25 SOUTH
GREENWOOD, SOUTH CAROLINA 29648
TELE.864-223-6636 FAX.864-223-2264

5-7-02

Engraving
\$178.503
Marking
02-0139

ATTN: Ed Mazzullo
Office of HazMat Standards

Dear Mr. Mazzullo,

I have just spoken with Christine Whitney in the Dept. of Approvals and she said that perhaps you could help me solve a problem I am having interpreting a portion of 49CFR.

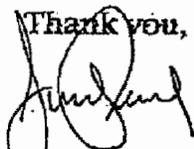
Our company imports and distributes 1.4g consumer fireworks. We use cardboard boxes to transport our assortments. These boxes have remained unchanged for at least the past ten years. When they were initially constructed they were tested and certified by an independent lab. They have been periodically recertified in other labs at a significant cost. Since all of the specs are the same, when we have these boxes made again it would be much simpler and cheaper to have our company name printed on the cartons as the box certifier and perform the appropriate tests ourselves instead of paying other people to do it.

The problem is that every box company I have spoken with is hesitant to make boxes for us because they have not heard of self-certification or else they believe it is a misinterpretation of 49CFR. I believe if you were to explain the policy and point out relevant sections of the regulations that these companies would be much more at ease. Several companies have mentioned that they feel that even if our name appeared

on the box that they could somehow be held liable as the manufacturer. Although I have cited the regulations and provided literature from the American Pyrotechnics Association, my say-so just doesn't have a very authoritative ring to it.

I would certainly appreciate a letter that conveys the essence of recertification as quickly as your schedule permits.

Thank you,



Jason Perrone