



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

MAY 18 2015

Mr. Gary Flaherty
LPS Industries
10 Caesar Place
Moonachie, NJ 07074

Reference No. 15-0004

Dear Mr. Flaherty:

This is in response to your January 05, 2015 e-mail requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to non-bulk combination packaging. You note that you are a manufacturer of non-bulk combination packagings and ask several questions related to the package manufacturers responsibility to ensure that shippers receive and use the proper components for a package. Your questions are paraphrased and answered as follows:

Q1. Must we always send the shipper the complete set of components used in the laboratory test? Or is it the responsibility of the shipper to request the components they want?

A1. Individual components of a packaging may be sold separately. Ultimately the responsibility for ensuring that the proper components are utilized rests with the shipper.

Q2. If requested by a customer, can the manufacturer send less than the entire amount of components required for a packaging? An example is provided where the shipper has the primary container or any of the other components to a package and they do not need to order more.

A2. Ultimately the responsibility for ensuring that the proper components are utilized rests with the shipper. In accordance with § 178.2(c)(1) the manufacturer or other person certifying compliance with the requirements of part 178 and each subsequent distributor of that packaging is responsible for notifying each person to whom the packaging is transferred with the closure instructions found in § 178.2(c)(1)(i)(B).

Q3. Is the manufacturer required to send the complete set of components even if the shipper does not need them?

A3. Nothing in the HMR prohibits the sale of individual components of an approved packaging.

Q4. If requested by a customer, can the manufacturer send the outer UN marked carton alone, expecting that the shipper will acquire the needed inner components before using the packaging?

A4. Yes. See A2.

Q5. If a packaging distributor purchases packaging for resale, do the same terms apply (regarding components) as a sale directly to a shipper?

A5. Yes.

Q6. Some of your packagings are tested with different components for different shipping methods (e.g can clips for ground transportation and locking rings for air transportation). Are we required to send the complete components for all shipping methods even though the customer won't use them and doesn't want them?

A6. No. You may supply the packaging in any configuration necessary.

Q7. The outer cartons of our packagings are printed with the complete assembly and closure instructions. This allows the shipper to perform a repeatable closure from the laboratory test. Do these instructions qualify as proper notification to the shipper of their responsibility to use the complete components for that packaging?

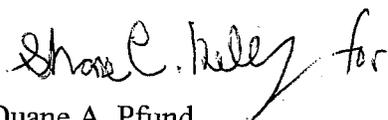
A7. Yes, provided the printed instructions contain all the information required by § 178.2(c)(1)(i)(B).

Q8. If we sell our packagings to a distributor that asks us to deliver the packaging directly to their customer, should we insist the distributor take delivery of the packaging so they can transfer the packaging to their customer and make proper notification?

A8. The HMR do not address this issue.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink that reads "Duane A. Pfund for". The signature is written in a cursive style.

Duane A. Pfund
International Standards Coordinator
Standards and Rulemaking Division

Webb
\$178.2
Applicability
15-0004

Dodd, Alice (PHMSA)

From: Ciccarone, Michael CTR (PHMSA)
Sent: Monday, January 05, 2015 3:32 PM
To: Hazmat Interps
Subject: FW: LPS Industries - Requests Formal Letter of Interpretation

Shante/Alice,

Please submit this for a formal letter of interpretation. Mr. Flaherty spoke to Raleigh in the HMIC.

Thanks,

Mike

From: Gary Flaherty [<mailto:gflaherty@lpsind.com>]
Sent: Monday, January 05, 2015 2:45 PM
To: INFOCNTR (PHMSA)
Subject: LPS Industries - Requests Formal Letter of Interpretation

LPS Industries is a manufacturer of Non Bulk Combination Packs. We sell these packs to domestic shippers. We are asking for guidance regarding our responsibility in the transfer of these packs to our customers. Specifically, we would like to know how many of the components we are required to give to our customer when they order the pack. The 49CFR does not seem to address this issue. Although we understand the shipper has the responsibility to use the pack with all the components used in the laboratory test, we would appreciate a clarification of our responsibility (if any) to insure the shipper receives and uses the proper components for one of our packs.

We contacted the DOT Hazardous Materials Information Center Hotline, but did not receive a definitive answer. They suggested we request a Formal Letter of Interpretation. **Here is our basic question;

- * Must we "ALWAYS" send the shipper the complete set of components used in the laboratory test?
- * Or, is it the shipper's responsibility to request the components they want?

We were prompted to ask for your help due to several recent, difficult questions, posed by potential customers. We believe the answer to the above question resolves these issues, but there are many other technical points to be considered. Here are some examples;

- * If requested by a customer, can the manufacturer send less than the entire amount of components required for a pack?
- * If the shipper has the primary container, or any of the other inner components to a pack and they do not need to order more, is the manufacturer required to send the complete set of components of the pack, even though they don't need them?
- * If requested by a customer, can the manufacturer send the outer UN marked carton alone, expecting the shipper will acquire the complete inner components before using the pack?

* If a packaging distributor purchases a pack for resale, do the same terms apply (regarding components) as a sale directly to a shipper?

Researching these topics prompted internal discussions resulting in further difficult questions the 49CFR does not seem to address. Examples;

* Some of our packs are tested with different components for different shipping methods. (Example; Can clips for ground, Locking rings for Air). Are we required to send the complete components for all shipping methods even though the customer won't use them and doesn't want them?

* The outer cartons of our packs are printed with the complete assembly and closure instructions allowing the shipper to perform a repeatable closure from the laboratory test. Do these instructions qualify as proper notification to the shipper of their responsibility to use the complete components for that pack?

* If we sell our pack to a distributor that asks us to deliver the pack directly to their customer, should we insist the distributor take delivery of the pack so they can transfer the pack to their customer and make proper notification?

I apologize for listing so many questions. But, we believe they illustrate our need for clarification and a more complete understanding of how to comply with regulations. To that end, we are asking for advice in writing, on how to operate in accordance with our responsibility as a manufacturer regarding transfer of components for combination packs. .

Thank you in advance for you kind consideration of our request. Your timely response is appreciated.

Regards,

Gary Flaherty
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