



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

JUL 29 2015

Paul Lezak
Schlumberger Technology Corporation
14910 Airline Road
Rosharon, TX 77583

Ref. No. 15-0082

Dear Mr. Lezak:

This responds to your April 27, 2015 letter requesting clarification on the marking requirements for non-bulk, performance-oriented packaging (e.g., UN 4G fiberboard boxes) under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you have asked which entity should mark the packaging with their name and address or symbol to comply with the packaging certification requirement under § 178.503(a)(8). Your questions have been paraphrased and answered as follows.

Q1. Does the HMR allow your company, a manufacturer and shipper of hazardous materials, to mark the non-bulk, performance-oriented packagings with the markings required under § 178.503(a)(8)?

A1. Yes. Under § 178.503(a)(8), a packaging conforming to a UN standard must be marked with the “name and address or symbol of **the manufacturer or the approval agency** [emphasis added] certifying compliance with subpart L and subpart M of this part.” The marking per § 178.503(a)(8) indicates the responsible party who certifies that the packaging was manufactured to a successfully-tested design type and complies with all applicable requirements of Part 178. Under § 178.2, “manufacturer” is defined as “the person whose name and address or symbol appears as part of the specification markings required by this part [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.” Thus, according to this definition, your company could be the “manufacturer,” as the manufacturer may or may not be the actual “fabricator” of the packaging (e.g., the entity that physically manufactures the UN 4G fiberboard boxes).

While your company may not be the actual fabricator of the packaging, your company is able to “self-certify” by marking the packaging in conformance with the certification requirement in § 178.503(a)(8). Alternatively, at the direction of your company, the packaging fabricator could mark the packaging on your behalf with your company's name and address or symbol. Please see the enclosed Letter of Interpretation (Ref. No. 02-0139) for additional information on the self-certification of packagings.

In addition, the HMR allows for an approval agency (i.e., a DOT-recognized, "UN Third-Party Packaging Certification Agency" as described in § 107.402(c)) to mark and certify the packaging. In order to be designated and approved as a UN Third-Party Packaging Certification Agency, an organization or person must apply to the Associate Administrator in accordance with the instructions and requirements in Part 107, Subpart E—Designation of Approval and Certification Agencies. A DOT-recognized, UN Third-Party Packaging Certification Agency would be assigned a unique symbol, beginning with a plus sign ("+").

Therefore, under § 178.503(a)(8), your company may mark and certify the packaging as the manufacturer (as defined in § 178.2). The fabricator could also mark the packaging on your company's behalf with your company's name and address or symbol. In addition, a DOT-recognized, UN Third-Party Packaging Certification Agency may mark and certify the packaging as the approval agency using its unique symbol.

Please note that under § 178.3(a)(2), "Symbols, if used, must be registered with the Associate Administrator. Unless authorized in writing by the holder of the symbol, symbols must represent either the packaging manufacturer [as defined in § 178.2] or the approval agency responsible for providing the most recent certification for the packaging through design certification testing or retesting, as applicable. Duplicative symbols are not authorized."

Q2. In order to satisfy § 178.503(a)(8), does PHMSA prefer that the non-bulk, performance-oriented packaging be marked by the manufacturer or the approval agency?

A2. PHMSA does not have a preference. Under § 178.503(a)(8), the non-bulk, performance-oriented packaging may be marked by either: (1) the manufacturer (as defined in § 178.2); or, (2) the approval agency (as described in § 107.402(c)). The marking per § 178.503(a)(8) indicates the responsible party who certifies that the packaging was manufactured to a successfully-tested design type and complies with all applicable requirements of Part 178.

I hope this answers your inquiry. If you need additional assistance, please contact this Office again.

Sincerely,



Dirk Der Kinderen
Acting Chief, Standards Development Branch
Standards and Rulemaking Division



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



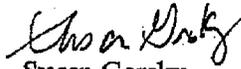
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the packaging. To satisfy the UN certification marking requirements of § 178.503(a)(8), at the direction of the customer, a packaging manufacturer may mark the packaging with the customer's name and address or symbol, if used. (See §§ 178.2(e) and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

Engram
\$178.503
Marking
02-0139

ATTN: Ed Mazzullo
Office of HazMat Standards

Dear Mr. Mazzullo,

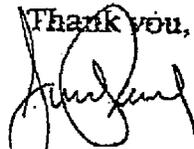
I have just spoken with Christine Whitney in the Dept. of Approvals and she said that perhaps you could help me solve a problem I am having interpreting a portion of 49CFR.

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

Kesko
178.503
Marking & Packaging
15-0082

Goodall, Shante CTR (PHMSA)

From: Geller, Shelby CTR (PHMSA)
Sent: Monday, April 27, 2015 2:42 PM
To: Hazmat Interps
Subject: FW: Interpretation Request 49CFR 178.503(a)(8)
Attachments: Interpretation Request - Manufacturer specified in UN POP code - April 27 2015.pdf

Dear Shante and Alice,

Attached is a formal letter of interpretation. Mr. Lezak spoke with Aaron Weiner in regards to his question.

Thanks,
Shelby

From: Paul Lezak [<mailto:lezak1@slb.com>]
Sent: Monday, April 27, 2015 11:39 AM
To: PHMSA HM InfoCenter
Subject: Interpretation Request 49CFR 178.503(a)(8)

Dear Hazmat Standards Office,

Attached is an interpretation request for clarification of section 178.503(a)(8). Please review and let me know if you need any additional information.

Best regards,

Paul Lezak
Schlumberger Technology Corp
Regulatory Compliance Specialist
(281)285-5676

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Schlumberger

April 27, 2015

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE.
Washington, DC 20590-0001
Subject: Interpretation Request - 49 CFR 178.503

Dear Hazardous Materials Standards Office,

Our facility manufactures, packs and ships dangerous goods in specification packages that are manufactured by a third party company. Specifically, the non-bulk performance-oriented packagings (UN 4G fiberboard boxes) we use are manufactured to our specifications by a third party, and these packages are independently tested and certified by a non-affiliated third party laboratory.

49CFR §178.503(a)(8) states: The name and address or symbol of the manufacturer or the approval agency certifying compliance with subpart L and subpart M of this part. Symbols, if used, must be registered with the Associate Administrator.

We understand §178.503(a)(8) to mean:

- that the name and address or symbol of either the third party manufacturer of our packagings or the third party laboratory certifying compliance with subpart L and subpart M shall be marked on the package, and
- that we, as the manufacturer of the dangerous goods, should not mark the packagings with our name and address or symbol since the packagings themselves are not manufactured at our facility.

Is this understanding correct, and if so, does PHMSA prefer the package manufacturer's or certifying lab's information be marked on the package?

Best regards,



Paul Lezak

Schlumberger Technology Corporation
Regulatory Compliance Specialist