



U.S. Department  
of Transportation

Pipeline and Hazardous Materials  
Safety Administration

1200 New Jersey Ave., SE  
Washington, DC 20590

AUG 11 2009

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

Ref. No. 08-0218R

Dear Mr. Strasma:

This letter supersedes our October 23, 2008 response to your August 14, 2008 letter and follow-up telephone discussions in which you requested clarification of the exceptions for non-specification cylinder fire extinguishers shipped by motor vehicle in conformance with § 173.309(a) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You also requested clarification of the marking requirements for different packaging configurations of these fire extinguishers. This letter contains additional clarifying information including reference to the non-bulk quantity limitation for packaging used for fire extinguishers.

Your letter described two packaging configurations in which fire extinguishers are packaged in 4-color consumer packaging and placed in a master carton or placed in a larger cardboard box display pallet. The consumer packaging may contain one or two fire extinguishers (e.g., a "2-pack") depending on the product. You also provided us with pictures illustrating the two packaging configurations and the various stages of consolidation for the configurations. The descriptions and pictures of the two packaging configurations are summarized as follows:

Configuration 1: Each fire extinguisher is placed individually in a consumer packaging, with several packagings consolidated into trays that are stretch-wrapped, and these tray units are placed in a large corrugated box that is stretch-wrapped to a pallet (i.e., the display pallet). The consumer packaging is not marked except that the proper shipping name "Fire extinguisher" is printed on the packaging as part of the product information. The display pallet is marked "Fire extinguishers, 2.2, UN1044, Limited Quantity." No Division 2.2 nonflammable gas labels are applied.

Configuration 2: Each fire extinguisher is placed individually in a consumer packaging, and 2-6 of these consumer packages are placed in a master carton. The master cartons may be shipped individually or stretch-wrapped to a pallet. The consumer packaging is not marked except that the proper shipping name "Fire extinguisher" is printed on the packaging as part of the product information. Each master carton is marked "Fire extinguishers, Limited Quantity, UN1044." No Division 2.2 nonflammable gas labels are applied.

Your understanding of the exceptions provided in § 173.309(a) is correct. For transportation by highway, non-specification cylinders used as fire extinguishers and designed, manufactured, and filled with limited quantities of compressed gas in conformance with § 173.309(a) are not subject to the labeling or placarding requirements of the HMR. Your understanding of the hazardous materials endorsement requirements for a commercial driver's license (CDL) is also correct. Because the shipment of fire extinguishers is 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.

Section 173.309(a) specifies that each fire extinguisher must be shipped *as an inner packaging*. The outside packaging must be marked in conformance with § 172.301. You indicate in a telephone conversation that it is company policy to protect the appearance of the consumer packagings by shipping them in either the master carton or the display pallet. It is the opinion of this Office that you may consider the consumer packaging as the outer packaging and the master carton or display pallet as an overpack.

With regards to the marking requirements prescribed in Subpart D of Part 172, the packagings are appropriately marked. The proper shipping name "Fire extinguisher" is prominently displayed on the outer consumer packagings. For limited quantities, the identification number "UN1044" is not required to be marked on the outer packaging as provided in § 172.301(a). The overpack (master carton) is appropriately marked with the proper shipping name in accordance with § 173.25. The overpack is not required to be marked "limited quantity" or with the hazard class division number, although the use of these markings is not precluded.

Also, note that if you believe the consumer packaging is not sufficient to meet the general packaging requirements prescribed in § 173.24, then for purposes of compliance with § 173.309(a), the consumer packaging may be considered an intermediate packaging and the display pallet (Configuration 1) or master carton (Configuration 2) may be considered the outer packaging. However, under this scenario, the display pallet in Configuration 1 would be limited to a non-bulk packaging, which is restricted to having a net mass of 400 kg (882 pounds) or less and a maximum capacity of 450 L or less as a receptacle for a solid. See definitions of "non-bulk packaging" and "outer packaging" in § 171.8.

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

Sincerely,



Susan Gorsky  
Regulations Officer  
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, 2<sup>nd</sup> 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.

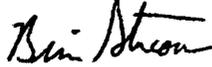
BRK's fire extinguishers are packaged in 4-color inner packaging (as defined in 49 CFR § 171.8) and shipped in master cartons of 2 -6 units each or larger displayer pallets. The master cartons and displayer pallets are marked as required by 49 CFR § 172.301 with the proper shipping name, "Fire extinguishers, 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, flowing style.

Brian J. Strasma  
Vice President, Finance and Operations