



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

Mr. David Tobin
Supply Operations Support
Safeway, Inc.
6441 C St.
Anchorage, AK 99518

July 25, 2013

Ref. No.: 13-0070

Dear Mr. Tobin:

This is in response to your April 3, 2013 email requesting clarification of the requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). In your email you state that your company ships products made by another company that are offered under DOT-SP 14887, and that the outer packages are not marked to indicate the special permit number. You ask several questions which are paraphrased and answered as follows:

Q1. Is my company required to tender a copy of DOT-SP 14887 when we ship these items?

A1. If you are a shipper of a package offered under a special permit you are required to tender a copy of the special permit to the carrier. Paragraph 8, special provisions, of DOT-SP 14887 allows a person who is not a holder of the special permit who receives a package covered by the special permit to reoffer it for transportation provided no modification or change is made to the package, and it is reoffered for transportation in conformance with the special permit and the HMR. Paragraph 10, modal requirements, of DOT-SP 14887 requires a current copy of the special permit to be carried aboard each cargo vessel, aircraft, or motor vehicle used to transport packages covered by the special permit.

Q2. Is the original manufacturer of the cans authorized in DOT-SP 14887 required to mark the outer packaging with the special permit number?

A2. When offering a package containing aerosol cans manufactured under DOT-SP 14887 the original manufacturer is required to mark the outside of the package used to contain the cans. Section 172.301(c) requires the outside of each package authorized by a special permit to be durably marked "DOT-SP" followed by the special permit number assigned. The special permit in question does not waive this requirement.

Sincerely,

Delmer Billings
Senior Regulatory Advisor
Standards and Rulemaking Division

Webb
§172.301
Marking
13-0070

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, April 04, 2013 1:40 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Question regarding SP14887 and 172.301(c)
Attachments: SP14887_2011081001.pdf; SP15793_2013010939.pdf

Hi Carolyn,

This caller would like their letter submitted a letter of interpretation.

Thanks,
Victoria

From: David Tobin [mailto:David.Tobin@safeway.com]
Sent: Wednesday, April 03, 2013 7:29 PM
To: INFOCNTR (PHMSA)
Cc: David Tobin
Subject: Question regarding SP14887 and 172.301(c)

Hello,

Am looking for an interpretation regarding 172.301(c); could you please respond back that you have received this request; thank you.

At the end of last year we became aware that SC Johnson was shipping aerosol Glade products with the cans marked DOT SP-14487; however, the cases are not marked.

When I called Special Permits and spoke with Kenny Herzog he did not see where the permit exempted 172.301(c). In email correspondence with SC Johnson, Georgia Barr, Trade Compliance, of SC Johnson, emailed me that in a phone conversation Mick Nicks of PHMSA Special Permits informed them that they need not print the SP number on the case. I've been back and forth with Special Permits but have been unable so far to reach a definitive conclusion. Yesterday Stacy Gray of Special Permits called me, and suggested I send this in email to you.

As the permits calls out that a current copy of the permit must be carried aboard various modes of transport, without the case being marked, we aren't aware a copy needs to be included.

Therefore we're asking for a letter of interpretation that states we are not required to tender a copy of the permit when we ship these items. If not, then we'd request the SC Johnson mark their cases so we know. My understanding is their approval not to print is only via a phone call; am unaware if they've obtained a letter of interpretation allowing this.

I trust you can appreciate our predicament that it appears a permit exists which requires us to do something, yet the item in question seemingly does not need to give us this information to act upon.

If it helps, am copying part of the email with Georgia below, and attaching SP-14887, as well as SP-15793 (15793 an example of where Section 4 in the SP explicitly waives 172.301(c)).

Thank you,

David Tobin

Email correspondence with SC Johnson:

Thank you Georgia,

It does help, and will be interesting to learn more from Kenny and Mike's discussion. We agree the one "package" is the container (aerosol can). However, within the permit, section 8.c calls out "Each container ... and shipped in a strong outside packagings." This takes us to 171.8 for the definition, where we see "Package or Outside Package" and from there to 172.301(c) where we see "...the outside of each package authorized by a special permit must be plainly and durably marked "DOT-SP" followed by the special permit number assigned." Thus the 'package' is in an 'outside package' and the 'outside package' must be marked.

As you mention, they could have explicitly stated the outside case be marked, but by omission, that does not negate 172.301(c) which would require a Letter of Interpretation. And am curious, if the purpose is to alert users/offerors/others, why you would *not want* it on the case? If the purpose is to alert us, then why would it not be visible on the case:

The purpose of the SP is not to allow for some fundamentally different way of over packing, or provide outer packaging for, a shipment of a hazmat. Thus, **the functionality of listing the SP number (on the aerosol can) is to alert users/offerors/others** that this package has been constructed differently.

Especially since section 10 of the permit 10 states "A current copy of this special permit must be carried aboard each cargo vessel, aircraft, or motor vehicle used to transport packages covered by this special permit." As we are required to provide current copy of this permit we need to know which items have this permit, hence the value, and appeared requirement, that this knowledge be discernible by viewing the outside package.

Thank you,
David

8. SPECIAL PROVISIONS:

- a. A person who is not a holder of this special permit who receives a package covered by this special permit may reoffer it for transportation provided no modification or change is made to the package and it is reoffered for transportation in conformance with this special permit and the HMR.
- b. A current copy of this special permit must be maintained at each facility where the package is offered or reoffered for transportation.
- c. Each container must be marked "DOT-SP 14367" as specified in § 172.301(c) and shipped in a strong outside packagings.
- d. Containers filled with a material that meets the definition of a "Consumer commodity" in § 171.8 may be reclassified as ORM-D and shipped as "Consumer commodity" in accordance with § 173.305(a).

9. MODES OF TRANSPORTATION AUTHORIZED: Motor vehicle, rail freight, cargo vessel, cargo aircraft only, and passenger-carrying aircraft.

10. MODAL REQUIREMENTS: A current copy of this special permit must be carried aboard each cargo vessel, aircraft, or motor vehicle used to transport packages covered by this special permit. The shipper must furnish a current copy of this special permit to the air carrier before or at the time the shipment is tendered.

171.8

Package or Outside Package means a packaging plus its contents. For radioactive materials, see § 173.403 of this subchapter.

Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of this subchapter. For radioactive materials packaging, see § 173.403 of this subchapter.

172.301(c)

Special permit packagings. Except as provided in § 173.23 of this subchapter, the outside of each package authorized by a special permit must be plainly and durably marked "DOT-SP" followed by the special permit number assigned. Packages authorized by an exemption issued prior to October 1, 2007, may be plainly and durably marked "DOT-E" in lieu of "DOT-SP" followed by the number assigned as specified in the most recent version of that exemption.

From: Barr, Georgia [<mailto:GBarr@SCJ.COM>]

Sent: Friday, January 18, 2013 10:15 AM

To: David Tobin

Cc: Gordon, Rob G.; Santos, Kimberly A.; Hall, Joseph L.; Wiley Jr, Clayton L.; Ceschin, Ann P.

Subject: RE: SC Johnson Special permit

David,

Mike Nicks is the PHMSA Special Permits Officer that advised us of the below interpretation. Kenny Herzog is out of the office today.

Mike is in agreement with our conclusion.

Mike noted that pursuant to the definitions under 171.8, the "package" authorized in this case is the "container" (the aerosol can) plus the hazmat. He further stated that if PHMSA, through the SP, wanted the outside packaging to be marked with the SP number, then the agency could have expressly required this with clear language to this effect. For example, PHMSA could have stated in the SP that the container and the outside packaging must be marked with the SP number.

In addition he added that it is important to note that the purpose of the SP is to authorize a specific construction of a container or package – the aerosol can – that deviates from the HMR. The purpose of the SP is not to allow for some fundamentally different way of over packing, or provide outer packaging for, a shipment of a hazmat. Thus, the functionality of listing the SP number (on the aerosol can) is to alert users/offerors/others that this package has been constructed differently.

Hope this helps!

Georgia Barr

Trade Compliance

From: David Tobin [<mailto:David.Tobin@safeway.com>]

Sent: Friday, January 18, 2013 11:13 AM

To: Barr, Georgia

Cc: Gordon, Rob G.; Santos, Kimberly A.; Hall, Joseph L.; Wiley Jr, Clayton L.; Ceschin, Ann P.

Subject: RE: SC Johnson Special permit

Thank you Georgia,

However the concern is the cases are not marked with DOT-SP 14887 per the regs. SC Johnson has taken a position that this is not required, based on a phone call with PHMSA. However when we contacted PHMSA they did not come to that same conclusion. And without a Letter of Interpretation stating an exception exists, we would require the cases be marked with the SP number for us to be in compliance while shipping them.

If SC Johnson can provide the name at PHMSA with whom they had their conversation, Kenny Herzog at PHMSA with whom I spoke would be willing to talk with them so that we can resolve this difference.

Thank you,
David

From: Barr, Georgia [<mailto:GBarr@SCJ.COM>]

Sent: Friday, January 18, 2013 8:00 AM

To: David Tobin

Cc: Gordon, Rob G.; Santos, Kimberly A.; Hall, Joseph L.; Wiley Jr, Clayton L.; Barr, Georgia; Ceschin, Ann P.

Subject: SC Johnson Special permit

Importance: High

David,

Dear David,

In response to your inquiry regarding the re-offer requirements for our special permit SP 14887, we will provide you the list of codes you purchase from SC Johnson that are regulated under this special permit.

I believe you mentioned you have a copy of the special permit but if needed please let me know or it can be found on the PHMSA website.

Thank you,
Georgia Barr

"Email Firewall" made the following annotations.

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