



U.S. Department
of Transportation

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1200 New Jersey Ave., S.E.
Washington, D.C. 20590

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

Jerry W. Cox, Esq.
Potomac Strategy Associates
P.O. Box 11231
McLean, VA 22102-9231

Dear Mr. Cox:

In response to your February 5, 2010 letter, I must respectfully maintain the position set forth in my January 20, 2010 letter that there was no defect in the adoption of the definition of a “non-bulk packaging” in the HM-181 rulemaking of the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Administration (PHMSA). As discussed in my letter, in the December 20, 1991 final rule responding to petitions for reconsideration and making editorial and technical corrections, RSPA revised the definition of “non-bulk packaging” to adopt upper limits for both mass (or weight) and volume (or capacity). Under those limits, a “non-bulk packaging” must have a “maximum net mass of 400 kg or less *and* a maximum capacity of 450L (119 gallons) or less as a receptacle for a solid.” 56 Fed. Reg. 66158 (emphasis supplied).

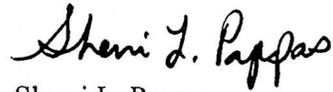
As also discussed in my letter, in the October 1, 1992 final rule, RSPA changed “400 kg or less” and “450L (119 gallons) or less” to “less than 400 kg (882 pounds)” and “less than 450 L (119 gallons),” respectively. 57 Fed. Reg. 45453. However, in the December 15, 1992 final rule, we reversed that change and returned to the “or less” language previously adopted in December 1991. 57 Fed. Reg. 59309. Accepting your argument that RSPA’s October 1, 1992 final rule was not validly adopted – which I do not – would simply mean that the definition of “non-bulk packaging” adopted in the December 20, 1991 final rule would remain in effect. In any event, all of the definitions adopted in the 1991 and 1992 final rules contain upper limits for *both* mass and volume, and a packaging that exceeds *either* 400 kg in weight or 450L in capacity cannot be a “non-bulk packaging.”

For the future, issues regarding the definition of “non-bulk packaging” would appear to be moot. In rulemaking docket No. PHMSA-06-25736 (HM-231), PHMSA specifically considered – and rejected – a petition for rulemaking requesting that PHMSA revise this definition to adopt the alternative criteria of a “maximum net mass of 400 kg (882 pounds) or less or a maximum net capacity of 450L (119 gallons) or less as a receptacle for a solid.” See the notice of proposed rulemaking 71 Fed. Reg. 52019 (Sept. 1, 2006), and the final rule, 75 Fed. Reg. 5377 (Feb. 2,

2010). We adopted a definition of a "large packaging" to specify that a large packaging is one that "[e]xceeds 400 kg net mass or 450 liters (118.9 gallons) capacity," and left the existing definition of "non-bulk packaging" unchanged. 75 Fed. Reg. 5390, 5378.

I hope this answers your questions.

Sincerely,

A handwritten signature in black ink that reads "Sherri L. Pappas". The signature is written in a cursive style with a large initial 'S' and a distinct 'L'.

Sherri L. Pappas
Acting Chief Counsel