



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue SE
Washington, DC 20590

OCT 03 2012

Mr. David Littlejohn
Corporate Safety Advisor
FedEx Express
P.O. Box 727
Memphis, TN 38194-7622

Ref. No. 12-0167

Dear Mr. Littlejohn:

This responds to your August 7, 2012 email requesting clarification on the prohibited labeling requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if a "square-on-point" or diamond shaped red label printed with the word "FRAGILE," affixed to a package shown in your attached photograph violates the prohibited labeling requirements under § 172.401(b) of the HMR, even if the package does not contain a hazardous material.

Section 172.401(b) provides that no person may offer for transportation and no carrier may transport a package bearing any marking or label which by its color, design, or shape could be confused with or conflict with a label prescribed in Part 172 of the HMR. This prohibition applies to packages containing hazardous materials as well as non-hazardous materials.

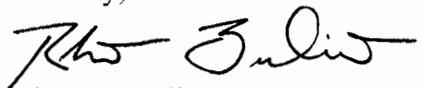
DOT prescribed labels and placards are designed to facilitate the immediate and reliable communication of information concerning the nature and quantity of hazardous materials moved in transportation, so that carrier personnel, law enforcement officials, and first responders know to take appropriate precautions in handling, law enforcement, and emergency response situations. Ultimately, the hazard communication system is only as effective as the ability of these individuals to identify and distinguish among designs. Accordingly, we cannot tolerate the use in transportation of designs and logos that are confusingly similar to hazmat labels or placards.

Therefore, it is this Office's opinion that the square-on-point, "FRAGILE" label in the photograph that you provided is intended to mimic hazmat labels as it is similar in shape (square-on-point or diamond shape), size (approximately 4 inches x 4 inches), and color

(red with a white border) to hazard warning labels used on packages containing hazardous materials; therefore, the square-on-point label with the word "FRAGILE" affixed to the package is unacceptable and prohibited under § 172.401(b).

I hope this answers your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Benedict". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert Benedict
Chief, Standards Development Branch
Standards and Rulemaking Division

Winter
§ 172.401
Labeling
12-0167

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Tuesday, August 07, 2012 2:51 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Interpretation 49 CFR 172. 401(b)

Carolyn,

We received the following request for a formal letter of interpretation.

Thanks,
Victoria

From: David Littlejohn [<mailto:mdlittlejohn@fedex.com>]
Sent: Tuesday, August 07, 2012 10:20 AM
To: INFOCNTR (PHMSA)
Subject: Interpretation 49 CFR 172. 401(b)

Dear Sir or Madam:

FedEx Express is requesting an interpretation regarding 49 CFR § 172.401(b). It is our understanding after discussion with the Pipeline and Hazardous Materials Safety Administration (PHMSA) Hazardous Materials Information Center that this section only applies to regulated hazardous materials shipments. This section does not apply to non-hazardous shipments nor is a shipper prohibited from using a label described in this section. Attached is an example of a package with a red fragile label affixed to a package that does not contain hazardous materials. We are only seeking confirmation that the verbal interpretation is correct and is not a violation of this section. Thank you in advance for your review and if any additional information is required please do not hesitate to contact me directly.

David Littlejohn
Corporate Safety Advisor
901-434-9567
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