



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

**MAY 16 2018**

Ben Barrett  
Consultant  
DG Advisor, LLC  
1930 E. Blue Ridge Boulevard  
Kansas City, MO 64146

Reference No. 17-0121; 07-0029R; 06-0129R

Dear Mr. Barrett:

This letter is in response to your October 31, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to closure instructions. Specifically, you ask for reconsideration of letters of interpretation previously issued by this Office under Reference Nos. 06-0129 (September 14, 2006) and 07-0029 (August 20, 2007) that state, "Changing the size (e.g., width) of the tape from that specified in the packaging test report and closure notification constitutes a change in design." You state that a change to a wider tape of the same type as that originally specified in the United Nations (UN) specification packaging test report would improve, rather than detract from the packaging's performance either under the UN performance tests or conditions normally incident to transportation.

Having reviewed Reference Nos. 06-0129 and 07-0029 and the relevant requirements in the HMR, the Pipeline and Hazardous Materials Safety Administration rescinds both letters and issues the following interpretation with respect to the matters disclosed within them.

It is the opinion of this Office that a wider tape of the same specification (e.g., tensile strength and other relevant properties from industry testing standards) originally tested may perform the same when tested or transported. A different packaging as defined in § 178.601(c)(4) is one that differs (i.e., is not identical) from a previously produced packaging in structural design, size, material of construction, wall thickness, or manner of construction. The packaging manufacturer must specify the type(s) and dimensions of the closures, including components needed to satisfy the performance requirements, as required in § 178.2(c)(1)(i)(B). The manufacturer or other person certifying compliance with the specifications must notify, in writing, each person to whom the package is transferred of such requirements in accordance with § 178.2(c).

Therefore, increasing the width of the tape from that specified in the packaging test report and closure notification does not constitute a change in design, provided the tape is otherwise of the same specification originally tested.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shane C. Kelley" with a stylized flourish at the end.

Shane C. Kelley  
Director,  
Standards and Rulemaking Division  
Office of Hazardous Materials Standards

lehman  
\$ 178.601  
Testing  
17-0121

**Dodd, Alice (PHMSA)**

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**From:** Foster, Glenn (PHMSA)  
**Sent:** Wednesday, November 01, 2017 3:14 PM  
**To:** Dodd, Alice (PHMSA); January, Ikeya CTR (PHMSA)  
**Cc:** Heneghan, John (PHMSA); Kelley, Shane (PHMSA); Meidl, Rachel (PHMSA)  
**Subject:** Request for reconsideration of packaging tape width interpretations  
**Attachments:** 06-0129 Tape.pdf; 07-0029 Tape width.pdf

Alice / Ikeya,

Please check in the incoming from Ben Barrett as a request for Letter of Interpretation and assign to a Specialist.

Thanks,  
Glenn

**From:** Heneghan, John (PHMSA)  
**Sent:** Wednesday, November 01, 2017 2:10 PM  
**To:** Kelley, Shane (PHMSA) <shane.kelley@dot.gov>; Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>  
**Cc:** Meidl, Rachel (PHMSA) <rachel.meidl@dot.gov>  
**Subject:** FW: Request for reconsideration of packaging tape width interpretations

Guys, what is the right way for this to be requested for official action?

Thanks

John

**From:** Ben Barrett [<mailto:ben.barrett@dgadvisor.com>]  
**Sent:** Tuesday, October 31, 2017 11:38 PM  
**To:** Heneghan, John (PHMSA) <[John.Heneghan@dot.gov](mailto:John.Heneghan@dot.gov)>  
**Cc:** Delmer Billings <[dbillings@dgac.org](mailto:dbillings@dgac.org)>  
**Subject:** Request for reconsideration of packaging tape width interpretations

Hello John,

I'm following up on our conversation from last week. Interpretation 06-0129 was issued in 2006. Answer 2 says that a wider version of an approved tape is considered a new design type and can't be used without additional testing and certification. Interpretation 07-0029 was issued in 2007 based on a request for reconsideration of Interpretation 06-0129, which was denied.

I am requesting reconsideration of these interpretations based on a common sense approach consistent with current regulatory reform efforts. I don't see how there could be any logical doubt that a certain specification of tape would only be improved by using more of the same tape, in fact 06-0129 interprets extra layers of tape as being allowed. It seems that we should be referring to a minimum rather than an absolute, for which approach there is abundant precedence in the HMR. I am interested to engage further on this matter in whatever way would be helpful.

I'm copying my colleague Del Billings who provided some assistance to me in this matter.

Thanks for your willingness to receive this request.

Ben

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Ben Barrett, PE, Consultant  
DG Advisor, LLC  
Dangerous Goods Regulations Experts  
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U.S. Department  
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**Pipeline and Hazardous  
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1200 New Jersey Ave., S.E.  
Washington, DC 20590

AUG 20 2007

Ref. No. 07-0029

Mr. Robert J. Ten Eyck  
Director, Technical Services  
TEN-E Packaging Services, Inc.  
1666 County Road 74  
Newport, MN 55055

Dear Mr. Ten Eyck:

This responds to your letter dated January 30, 2007, requesting an interpretation of what constitutes a non-bulk packaging design change under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for reconsideration of a previous interpretation issued by this office (06-0129) that states "Changing the size (e.g., width) of the tape from that specified in the packaging test report and closure notification constitutes a change in design." It is your opinion that a change to a wider tape of the same specification as that originally certified would not detract from the packaging's performance either under the UN performance tests or conditions normally incident to transportation.

We agree it is possible that a wider tape applied to a package may create a more "robust" package; however, it does not conclusively demonstrate how the package will perform when tested or transported. Additionally, a strict interpretation of the HMR does not provide for regulatory relief under such a scenario. One solution you may consider is to annotate the test report and customer notification to read "identical specification tape, minimum width 2 inches" if you can conclusively ascertain that using wider tape will not impair the performance of the package as the design was originally tested. This recordkeeping solution would not constitute a different package design type provided a minimum width or a range of widths of identical specification tape was applied by the package assembler. This analogy could also be applied retroactively to previously tested package designs.

Because our previous response (06-129) offered a similar solution to this issue, we consider our previously issued response to be valid and with merit.

I trust this adequately responds to your inquiry. Please contact us if we can be of further assistance.

Sincerely,

Susan Gorsky  
Regulations Officer  
Office of Hazardous Materials Standards



070029

178.601



Stevens  
8178-601  
Testing  
07-0029

January 30, 2007

John A. Gale  
U.S. Department of Transportation  
**Pipeline and Hazardous Materials Safety Administration**  
Office of Hazardous Materials Standards PHH-10  
400 Seventh Street, S.W.  
Washington, DC 20590

Ref. No.: 06-0129

Dear John:

TEN-E Packaging Services is writing to request a reconsideration concerning the interpreted design change when a shipper substitutes a wider tape of the same material specification to that which was originally certified under UN combination package testing. A shipper may have reason to substitute a "wider" variation of tape due to different box sealing equipment being employed at its various production operations. A change to a wider tape of the same specification as that originally UN certified would not, in TEN-E's opinion, detract from the packaging's performance either under the UN performance tests or conditions normally incident to transportation. Requiring a re-certification of this tape substitution places an unnecessary burden on industry and it is for this reason that we ask the agency to consider amending the above clarification.

Sincerely,

  
Robert J. Ten Eyck  
Director, Technical Services  
TEN-E Packaging Services, Inc.

TEN-E Packaging Services, Inc.  
1666 County Road 74  
Newport, MN 55055  
Phone: 651-459-0671  
Fax: 651-459-1430  
Email: info@ten-e.com  
Web: www.ten-e.com  
UNITED STATES - MN



U.S. Department  
of Transportation

**Pipeline and  
Hazardous Materials Safety  
Administration**

SEP 14 2006

400 Seventh Street, S.W.  
Washington, D.C. 20590

Mr. Lonny Jaycox  
C.L. Smith Company  
1311 South 39<sup>th</sup> Street  
St. Louis, Missouri 63110

Ref. No.: 06-0129

Dear Mr. Jaycox:

This is in response to your May 30, 2006 email regarding the application of selective testing Variation 4 in § 178.601(g) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you state that your company has a performance oriented packaging design type that is tested and certified with a closure method specified in the notification as follows: "Tape XXXX, 48mm wide, poly PST, single strips top and bottom, centered both longitudinally along and spanning the flap seams, extending a minimum of 2.5" onto the sides of the carton, with tape adhered firmly in place." However, your company would like to use Tape XXXX, 72mm wide, which is different from the original notification. Your questions are paraphrased and answered below:

Q1: If a shipper complies with the closure method specified in the notification, then adds some additional strips of the same tape, either in a similar manner slightly offset from the flap seams, or in a different manner, would that package be considered a "different packaging design type" under the HMR and require retesting?

A1: The answer is no. A different packaging as defined in § 178.601(c)(4), is one that differs (i.e., is not identical) from a previously produced packaging in structural design, size, material of construction, wall thickness, or manner of construction. The packaging manufacturer may specify the type and dimensions of the tape needed to satisfy the performance requirements. The manufacturer or other person certifying compliance with the specifications must notify, in writing, each person to whom the package is transferred of such requirements (§ 178.2(c)). If the packaging is closed as specified by the manufacturer, the application of additional tape would not be considered a different design. Therefore, if your company adds additional tape to your package, it would not be considered a different packaging design type.

Q2: If a shipper uses the 72mm wide version of the tested 48mm wide tape and applies it consistent with the closure method specified in the notification, would that package be considered a "different packaging design type" under the HMR and require retesting?



060129

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178.601

A2: The answer is yes. Changing the size of the tape from that specified in the packaging test report and closure notification constitutes a change in design. To eliminate this problem, two packagings should be tested with the different tapes and the packaging notification amended to specify the actual widths or a range of widths.

Q3: If a shipper applied both 48mm and 72mm wide tape consistent with the closure method specified in the notification, would that package be considered a "different packaging design type" under the HMR and require retesting?

A3. See preceding answers.

I hope this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,



John A. Gale  
Chief, Standards Development  
Office of Hazardous Materials Standards



Jarman, Erin <PHMSA>

Stevens  
Reberford  
§178.1  
§178.819  
Packagings  
06-0129

From: ljaycox@clsmith.com  
Sent: Tuesday, May 30, 2006 11:27 AM  
To: INFOCNTR <PHMSA>  
Subject: Information Center Comments/Questions

Below is the result of your feedback form. It was submitted by Lonnie Jaycox (ljaycox@clsmith.com) on Tuesday, May 30, 2006 at 11:27:08.

-----  
Email: ljaycox@clsmith.com

Name: Lonnie Jaycox

Category: Specifications for Packagings (Sections 178.1 - 178.819) ←

Organization: C L Smith Co.

Street: 1311 South 39th Street

City: St. Louis

State: Missouri

Zip Code: 63110

Phone: 314-771-1202

Fax: 314-773-2354

Comments: Scenario:

A performance oriented packaging design type is tested and certified, and with a carton closure method specified in the notification as follows:  
"Tape XXXX, 48mm wide, poly PST, single strips top and bottom, centered both longitudinally along and spanning the flap seams, extending a minimum of 2.5" onto the sides of the carton, with tape adhered firmly in place."

Tape XXXX, is a specific stock number manufactured by a particular vendor to a consistent, acceptable specification. This same tape is also available in 72mm width. This would be identical tape just slit to the wider specification. (Tape is manufactured in wide "logs" then slit to width.)

Q1: If a shipper applied the carton closure above in the specified manner first; then added some additional strips of the same tape, either in a similar manner slightly offset from the flap seams, or in a different manner (i.e.: added additional strips to complete an "H" pattern) to enhance flap retention or to keep handlers from using the flap edges as lift points; would that package be "different" under the regulations and require re-testing?

Q2: If the shipper needed to use the 72mm wide version of the tested 48mm tape and applied it consistent with the notification, to satisfy application equipment needs, or from the desire for a more robust package (perhaps for parcel shipment); would that package be "different" under the regulations and require re-testing?

Q3: Assuming the answer to Q1 is yes: If the shipper needed to use the 72mm wide version of the tested tape applied consistent with the application variations in Q1; would that package be "different" under the regulations and require re-testing?



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SEP 14 2006

400 Seventh Street, S.W.  
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Mr. Lonny Jaycox  
C.L. Smith Company  
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Ref. No.: 06-0129

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A1: The answer is no. A different packaging as defined in § 178.601(c)(4), is one that differs (i.e., is not identical) from a previously produced packaging in structural design, size, material of construction, wall thickness, or manner of construction. The packaging manufacturer may specify the type and dimensions of the tape needed to satisfy the performance requirements. The manufacturer or other person certifying compliance with the specifications must notify, in writing, each person to whom the package is transferred of such requirements (§ 178.2(c)). If the packaging is closed as specified by the manufacturer, the application of additional tape would not be considered a different design. Therefore, if your company adds additional tape to your package, it would not be considered a different packaging design type.

Q2: If a shipper uses the 72mm wide version of the tested 48mm wide tape and applies it consistent with the closure method specified in the notification, would that package be considered a "different packaging design type" under the HMR and require retesting?



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Jarman, Erin <PHMSA>

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06-0129

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Name: Lonnie Jaycox

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Q2: If the shipper needed to use the 72mm wide version of the tested 48mm tape and applied it consistent with the notification, to satisfy application equipment needs, or from the desire for a more robust package (perhaps for parcel shipment); would that package be "different" under the regulations and require re-testing?

Q3: Assuming the answer to Q1 is yes: If the shipper needed to use the 72mm wide version of the tested tape applied consistent with the application variations in Q1; would that package be "different" under the regulations and require re-testing?