



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

NOV 15 2018

Robert Richard
President
Hazmat Safety Consulting
10036 Lake Occoquan Drive
Manassas, VA 20111

Reference No. 18-0108

Dear Mr. Richard:

This letter is in response to your July 17, 2018, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the marking of United Nations (UN) packagings. You note that the Pipeline and Hazardous Materials Safety Administration (PHMSA) has stated in the past that a UN packaging may only be marked with the "USA" designation in the UN specification marking if the packaging is manufactured in the United States. Therefore, you ask whether a Department of Transportation recognized laboratory can assign a "USA" or "+" marking regardless of where it is manufactured.

The answer is no. As specifically written in § 178.503(a)(7), the letters "USA" indicate that the packaging is manufactured and marked in the United States in compliance with the provisions of the HMR.

However, PHMSA has received your petition for rulemaking to revise the HMR to allow for packagings manufactured outside the United States to be marked with the "USA" designation. It has been assigned petition number P-1720 (PHMSA-2018-0033) and will be evaluated for merit in a future rulemaking.

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

Sincerely,

T. Glenn Foster
Chief, Regulatory Review and Reinvention
Standards and Rulemaking Division

INTERPRETATION LETTERS

Requester	Robert Richard	Date Received:	7/20/2018
Company	Hazmat Safety Consulting	Tracking	18-0108
Phone	773-540-0837	Revision Date:	7/20/2018

Date Assigned	7/20/2018	Date of Letter	7/19/2018
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Staff	Andrews	First Draft Due:	8/10/2018
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Section	173.24	First Draft Date:	
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Subject	Marking
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Concurrence	
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Status	PHH-10-Specialist	Status Date	7/20/2018
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Sign Date		Signor	
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Comment	HBP <input type="checkbox"/>	Copy to Docket <input type="checkbox"/>	Copy to DHM-60 <input type="checkbox"/>
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Andrews
Markberg
18-0108



HAZMAT SAFETY CONSULTING, LLC

July 17, 2018

Shane Kelley
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Standards and, PHH-10
1200 New Jersey Avenue, SE
East Building, 2nd floor
Washington, DC 20590-0001

Dear Mr. Kelley,

I am writing to address a matter related to a potential PHMSA policy that effects the UN Third Party Certification Agencies and impacts the safe transportation of hazardous materials. Based on a 1994 UN Third Party Certification Agency meeting, PHMSA has stated that a UN packaging may only be marked with the "USA" designation in the UN specification marking if the packaging is manufactured in the United States. Additionally, PHMSA has since clarified that physically marking the package in the United States is the last step in the manufacturing process and therefore a company could source all or part of the packaging manufacturing and supply of materials outside of the United States, test the package and then import the packaging and apply the UN mark with "USA".

During the November 29, 1994 meeting of the UN Third Party Certification Agencies, PHMSA informed the UN Third Party Certification Agencies that when testing a foreign manufactured packaging, they can only apply their "+" designation if the country in question recognizes the laboratory. It is not entirely clear if this remains to be PHMSA's position. This requirement is difficult because many countries including Columbia, Mexico or China are not responsive or willing to recognize USA third party labs. This has caused serious issues for US companies that want to use U.S. third party labs to test and certify packagings where packaging components are sourced in other countries. This is particularly critical for companies that manufacture the same packagings both in the USA and other countries such as Mexico.

PHMSA's position on not allowing third party labs to assign the USA and "+" designation to foreign produced packaging is putting US third party labs at a disadvantage and does not enhance safety. US third party labs are designated agents of PHMSA and are the subject of significant oversight by DOT enforcement personnel and the Office of Special Permits and Approvals in coordination with the Office of Science, Engineering and Research. Test reports from labs in other countries are not as comprehensive and competent authorities don't provide equivalent oversight of packaging manufacturers or the test labs. UN Third Party Certification Agency reports are reviewed and scrutinized by PHMSA and in many cases, are more comprehensive than those produced by foreign test labs because they must comply with the approvals issued by PHMSA. They provide a high quality and compliant service promoting safety and ensuring that both US and foreign made packagings meet the HMR including additional US requirements required by the HMR (e.g. vibration standard). PHMSA has

no jurisdiction over foreign test labs or packaging manufacturers so it makes no sense that they would not allow the highly regulated UN Third Party Certification Agencies to test and certify these packagings and apply their "+" mark designations.

PHMSA included specific requirements related to foreign made packaging in the HMR to prevent foreign countries from not recognizing US manufactured and approved packaging and to ensure compliance with additional HMR requirements in §173.24 General requirements for packagings and packages:

(d) Specification packagings and UN standard packagings manufactured outside the U.S.—(1) Specification packagings. A specification packaging, including a UN standard packaging manufactured in the United States, must conform in all details to the applicable specification or standard in part 178 or part 179 of this subchapter.

(2) UN standard packagings manufactured outside the United States. A UN standard packaging manufactured outside the United States, in accordance with national or international regulations based on the UN Recommendations (IBR, see §171.7 of this subchapter), may be imported and used and is an authorized packaging under the provisions of paragraph (c)(1) of this section, subject to the following conditions and limitations:

(i) The packaging fully conforms to applicable provisions in the UN Recommendations and the requirements of this subpart, including reuse provisions;

(ii) The packaging is capable of passing the prescribed tests in part 178 of this subchapter applicable to that standard; and

(iii) The competent authority of the country of manufacture provides reciprocal treatment for UN standard packagings manufactured in the U.S.

However, PHMSA has not consistently or aggressively used the requirements to address non-compliant foreign made packing or confronted competent authorities that do not provide reciprocal treatment for UN standard packagings manufactured in the U.S.

PHMSA is out of step with how markings are assigned in Europe and Canada where their transport authorities allow the country code marking to foreign manufactured packagings if they are certified by a recognized laboratory or in the case of Canada, registered with Transport Canada. The requirement in the HMR in §178.503 Marking of packagings states:

“(7) The state authorizing allocation of the mark. The letters ‘USA’ indicate that the packaging is manufactured and marked in the United States in compliance with the provisions of this subchapter;”

This is not consistent with the requirement in the UN Model Regulations in 6.1.3.1(f) which states:

“The State authorizing the allocation of the mark, indicated by the distinguishing sign used on vehicles in international road traffic”

The UN Model regulations do not require that the state authorizing the mark be the same as the state of manufacture. A package can only carry a UN marking if it meets the performance testing so it makes no sense that PHMSA will not authorize US third party labs to test and certify foreign made packaging or at

least when the final step in manufacturing is applied in the U.S. A DOT recognized laboratory should be allowed to assign a specification marking that includes USA and the "+" designation regardless of where it is manufactured. There is no safety rationale for not allowing U.S. third party labs to test and certify foreign made packagings. In fact, authorizing U.S. third party labs to do so would enhance compliance and safety.

It is requested that your office confirm PHMSA's position on whether a UN Third Party Certification Agency when testing a foreign manufactured packaging, they can only apply their "+" designation if the country in question recognizes the laboratory. If this is PHMSA's position, I urge you to reconsider your position on this matter.

Additionally, based on the lack of harmonization with the UN Model Regulations related to the indication of the use of the "USA" mark it is requested that under the upcoming UN harmonization rule that you align the HMR with the UN model Regulations. In addition to this request a formal petition for rulemaking in this regard will be submitted.

Thank you in advance for your attention to this matter. Feel free to reach out to me to discuss this matter or to address any questions.



Robert A. Richard
President, Hazmat Safety Consulting
Phone: 773-540-0837
Email: brichard@hazmatsafety.com
www.hazmatsafety.com



Dodd, Alice (OST)

From: Kelley, Shane (PHMSA)
Sent: Friday, July 20, 2018 4:01 PM
To: January, Ikeya CTR (PHMSA); Dodd, Alice (OST)
Cc: DerKinderen, Dirk (PHMSA); Foster, Glenn (PHMSA); Nickels, Matthew (PHMSA)
Subject: FW: 3rd party lab use of "+" mark for foreign made packaging used in the USA
Attachments: 010236.pdf

Please make sure this email chain and attachment are provided to whomever is assigned to the incoming from Bob Richard I forwarded today.

Thanks

From: Wiener, Aaron (PHMSA)
Sent: Friday, July 20, 2018 3:34 PM
To: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Cc: Leary, Kevin (PHMSA) <Kevin.Leary@dot.gov>; Pfund, Duane (PHMSA) <Duane.Pfund@dot.gov>
Subject: RE: 3rd party lab use of "+" mark for foreign made packaging used in the USA

I think I found it. Q & A #13

From: Kelley, Shane (PHMSA)
Sent: Friday, July 20, 2018 3:25 PM
To: Wiener, Aaron (PHMSA) <Aaron.Wiener@dot.gov>
Cc: Leary, Kevin (PHMSA) <Kevin.Leary@dot.gov>; Pfund, Duane (PHMSA) <Duane.Pfund@dot.gov>
Subject: RE: 3rd party lab use of "+" mark for foreign made packaging used in the USA

Thanks I believe we had another one for flexible IBCs imported from MX but tested and marked in the USA where we once said the application of the mark could be considered the last step in the mfr. process. But it likely predates filemake. This find is very helpful. Thanks again!

From: Wiener, Aaron (PHMSA)
Sent: Friday, July 20, 2018 3:19:42 PM
To: Kelley, Shane (PHMSA)
Cc: Leary, Kevin (PHMSA); Pfund, Duane (PHMSA)
Subject: RE: 3rd party lab use of "+" mark for foreign made packaging used in the USA

I found this one in Filemaker to Dzintars Petersons at Advanced Packaging Technology. [98-0255](#). I have not been able to locate a pdf copy

This is in response to your letter of August 25, 1998, and subsequent telephone conversation with Diane LaValle, or my staff, requesting information on the marking and use of Intermediate Bulk Containers (IBCs) that are manufactured in Thailand under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180).

An IBC that is manufactured and marked in Thailand should be marked "TI" for the country of origin and may not bear a USA mark. It must also be marked with the name or symbol of the manufacturer and other identification of the IBC as specified by the competent authority for Thailand. A U.S. third party test lab may be used to test the IBC provided this is acceptable to the competent authority of Thailand. Unless the Thailand competent authority has approved the use of the U.S. third test laboratory symbol, the U.S. third party laboratories designation should not be used in the UN packaging

marking. An IBC that is manufactured in Thailand but assembled and marked in the U.S. may be marked "USA" as the country authorizing the UN mark. The person placing the UN symbol on the packaging takes responsibility for the packaging conforming to the IBC requirements. An IBC that is marked "TI" is qualified for use in the U.S. provided the conditions of § 173.24(d) are met. You should note that flexible IBCs including foreign manufactured IBCs, must be capable of withstanding the vibration test in § 178.819.

I hope this information is helpful.

From: Kelley, Shane (PHMSA)
Sent: Friday, July 20, 2018 2:18 PM
To: Wiener, Aaron (PHMSA) <Aaron.Wiener@dot.gov>
Cc: Leary, Kevin (PHMSA) <Kevin.Leary@dot.gov>; Pfund, Duane (PHMSA) <Duane.Pfund@dot.gov>
Subject: FW: 3rd party lab use of "+" mark for foreign made packaging used in the USA

As this goes through our loop, can you help me check for any interps on this? I thought we had one that said the marking can be considered the last step in the manufacturing process, thereby allowing a foreign made package to be tested and subsequently marked in the US. It would still not allow the mark to be applied outside the US. The interp I recall was issued in the 90s and signed by Frits, so if not in Filemaker I can search our old int'l interp binder...which I think I gave to Kevin. I am not suggesting we would give the same answer today, but would like to have it for review if we can find it.

From: Kelley, Shane (PHMSA)
Sent: Friday, July 20, 2018 1:53:09 PM
To: January, Ikeya CTR (PHMSA); Dodd, Alice (OST)
Cc: Nickels, Matthew (PHMSA); Foster, Glenn (PHMSA); DerKinderen, Dirk (PHMSA)
Subject: FW: 3rd party lab use of "+" mark for foreign made packaging used in the USA

Colleagues

Please log for response as an interp

Thanks

Shane

From: Bob Richard [mailto:brichard@hazmatsafety.com]
Sent: Thursday, July 19, 2018 7:46 AM
To: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Subject: 3rd party lab use of "+" mark for foreign made packaging used in the USA

Shane,

The attached letter is addressed to you. Can you please ensure it is appropriately logged and a response is prepared. I also mailed a copy to your attention.

Best Regards,

Bob Richard
President, Hazmat Safety Consulting
Phone: 773-540-0837
Email: brichard@hazmatsafety.com



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