



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

JAN 09 2020

Ray Miller  
McAnally Wilkins Inc.  
110 W. Louisiana, Suite 150  
Midland, TX 79701

Reference No. 19-0115

Dear Mr. Miller:

This letter is in response to your September 23, 2019, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to prohibited placarding. You explain that it is a common industry practice when transporting frac sand to designate the shipping containers with a solid colored square that communicates the grade of sand only. You further explain that these squares come in various solid colors (e.g., blue, red, etc.) and do not communicate hazard classifications (e.g., Class 3 "Flammable Liquid" or Class 4 "Dangerous When Wet"). Specifically, you seek confirmation of your understanding that the colored squares alone are not prohibited by § 172.502(a)(2) and that the vehicles are not subject to the HMR since they do not transport any hazardous materials, specification packages, or provide any hazard communication.

Your understanding is correct. Based on the photographs you provided, the solid colored squares would not be prohibited by the HMR. Although they have similar colors to placards subject to the HMR, the square display (i.e., not "square-on-point") and lack of content is different from the hazardous materials placard and would not be confused with prescribed placards in the HMR.

Please note that in accordance with § 172.502(a)(2), no person may affix or display on a freight container any sign, advertisement, slogan (such as "Drive Safely"), or device that, by its color, design, shape or content, could be confused with any placard prescribed in the HMR.

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

Sincerely,

Dirk Der Kinderen  
Chief, Standards Development Branch  
Standards and Rulemaking Division

Geller

19-0115

**Dodd, Alice (PHMSA)**

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**From:** INFOCNTR (PHMSA)  
**Sent:** Friday, September 27, 2019 9:20 AM  
**To:** Hazmat Interps  
**Subject:** FW: Request for Interpretation  
**Attachments:** blue pic.jpg; box pic.jpg

Hello Alice and Ikeya,

Please see below and attached documents for letter of interpretation request. It is the opinion of the HMIC that letter 13-0230 (which he provided to enforcement) and letter 16-0058 fit his situation, however, enforcement will not accept these letters so the requestor is moving forward with the LOI request. He spoke with Robert from the HMIC and made it clear that he took multiple actions to make the communication on his truck *not* look like HMR placards, since he is not hauling any hazardous materials. Enforcement is still taking action against him so he is hoping to use a specific letter to contest enforcement.

Please contact our office with any questions.

Thanks,

Kathryn, HMIC

**From:** Ray Miller [mailto:Ray@mcanallywilkins.com]  
**Sent:** Monday, September 23, 2019 5:40 PM  
**To:** INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>  
**Subject:** Request for Interpretation

Completed by Robert on 09/24/2019 @ 11:19AM.  
Left voicemail.

See LOI **16-0058**

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To Whom It May Concern,

I originally requested an interpretation on this issue in May. I was contacted and referred to interpretation reference number 13-0230. I do not believe that interpretation 13-0230 applies to these circumstances due to the lack of background color and the specific communication present in the photos submitted with 13-0230. I am again requesting that an interpretation be made based on the use of markings like those I have attached to this email with a colored square and no forms of communication present on the colored square. My reasons for believing that HMR 172.502(a)(2) do not apply to the attached devices are outlined below. If an interpretation exists that addresses colored squares with no communication printed thereon, I would appreciate a reference to the interpretation. Thank you again for your consideration.

I would like to request an interpretation on applicability of HMR 172.502(a)(2) Sign or Device Could Be Confused With HM Placard. FMCSR 172.502(a)(2) states: that no person may attach "Any sign, advertisement, slogan (such as "Drive Safely"), or device that, by its color, design, shape or content, could be confused with **any placard prescribed in this subpart.**" It is now common in the transportation of frac sand containers to designate the grade of sand with a solid colored

square placed on the side of the container. I believe that in and of itself, a colored square alone, does not meet the elements needed to establish a violation of CFR 49 HMR 172.502(a)(2), and furthermore, a vehicle not transporting HM, spec packages, and not communicating that HM is being transported, is not subject to HMR.

All placards described in the placarding regulations are required to be displayed as shown in the diagrams ranging from 172.521 to 172.560. All of these diagrams require that the placard be mounted in a "square on point" configuration. The colored squares located on the sand boxes are mounted horizontally rather than in the square on point positions to specifically ensure that they will not be confused with placards "prescribed" in the placarding section of HMR. All placards described in the placarding regulations are required to have certain words, numbers, and/or symbols on them printed in prescribed sizes and colors to communicate the hazards associated with the HM commodity being transported. These colored squares are free of any words, numbers, and/or symbols so as to specifically ensure that they will not be confused with any placard "prescribed" in the placarding section of HMR.

#### **§171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.**

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation to establish regulations for the safe and secure transportation of hazardous materials in commerce, as the Secretary considers appropriate. The Secretary is authorized to apply these regulations to persons who transport hazardous materials in commerce. In addition, the law authorizes the Secretary to apply these regulations to persons who cause hazardous materials to be transported in commerce. The law also authorizes the Secretary to apply these regulations to persons who manufacture or maintain a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce. Federal hazardous material transportation law also applies to anyone who indicates by marking or other means that a hazardous material being transported in commerce is present in a package or transport conveyance when it is not, and to anyone who tampers with a package or transport conveyance used to transport hazardous materials in commerce or a required marking, label, placard, or shipping description. Regulations prescribed in accordance with Federal hazardous materials transportation law shall govern safety aspects, including security, of the transportation of hazardous materials that the Secretary considers appropriate. In 49 CFR 1.53, the Secretary delegated authority to issue regulations for the safe and secure transportation of hazardous materials in commerce to the Pipeline and Hazardous Materials Safety Administrator. The Administrator issues the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180) under that delegated authority. This section addresses the applicability of the HMR to packaging represented as qualified for use in the transportation of hazardous materials in commerce and to pre-transportation and transportation functions.

The vehicles transporting these sand boxes do not fall into any of the categories that would make them subject to HMR. They are not used to transport HM in commerce. The carrier is not causing HM to be transported in commerce. The carrier is not manufacturing a package or component of a spec package or a package qualified to transport HM. They are not marking a package to communicate that HM is being transported. They do not meet any of the conditions found in HMR 171.1 required to be present for HMR to apply to the carrier or the driver.

I would also ask you to consider that the use of a colored square, in and of itself, is not to be confused with a placard simply because of its square shape and solid color. If this is confused with a placard, based only on shape and color, then every CMV with its flip placards turned to solid white while not carrying HM would be in violation of HMR 172.502 (a)(2). These white flip placards are more likely to be confused with placards "prescribed" in the HMR placarding regulations based on the diamond shape than a solid square mounted horizontally on the transport vehicle or package.

I have attached two example pictures for your review to assist in offering an interpretation.

Thank you for your consideration in this matter. I look forward to your response.

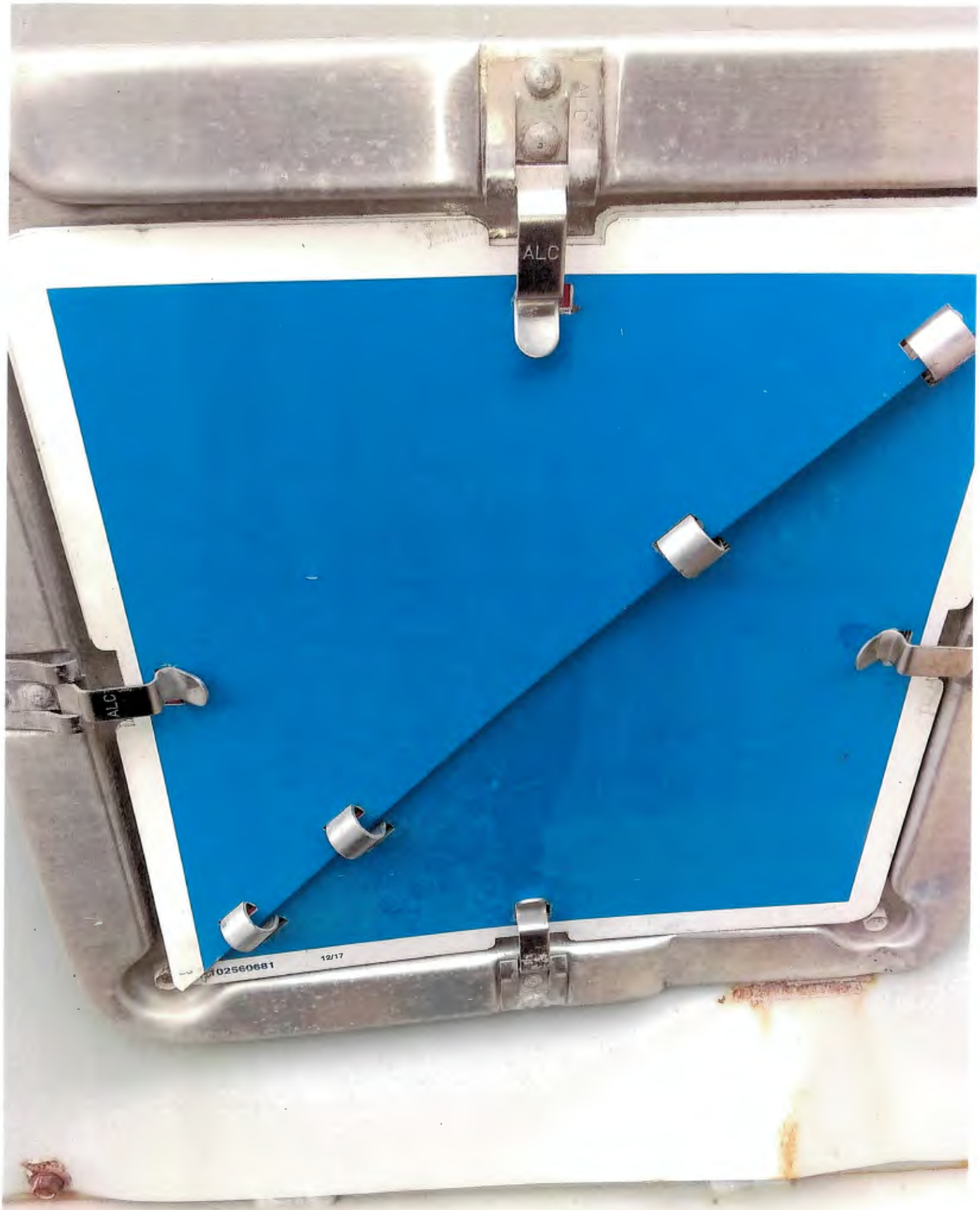
Respectfully,

Ray Miller  
DOT Compliance and Safety Services

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