



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

April 30, 2020

Graham Walsh
President
Explosives Test Center, LLC
5698 Brennan Ave
Colorado Springs, CO 80923

Reference No. 19-0108

Dear Mr. Walsh:

This letter is in response to your August 22, 2019, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to an approval of a new explosive. In your email, you describe scenarios in which your customer is an importer and/or package manufacturer that has paid for the development and testing of a new explosive but will not be manufacturing the new explosive itself. In these scenarios, you explain that your customers would like the EX number to be in their name to prevent the manufacturer from selling the exclusive product elsewhere. Therefore, you ask whether an EX number can be granted to the designer of an explosive instead of the manufacturer.

The definition of a new explosive as defined in § 173.56 of the HMR includes a person who has not previously produced that explosive. When a new person manufactures an explosive for the first time, they must obtain their own EX number and any changes to the explosive or explosive configuration would require reexamination and separate approval. As such, a person who purchases an approved explosive in order to repackage and offer it for transportation would be defined as the manufacturer of a new explosive, and must have their configuration examined and approved in order to be issued a new EX number. A person who is merely importing an approved explosive without making changes is not producing a new explosive and would not be issued their own EX number. Therefore, the EX approval will be issued to the manufacturer.

Finally, although EX numbers are not transferable, any contracts or agreements made between the explosive manufacturer and importers, exporters or packaging designers to protect the interests of the relevant parties is outside the scope of PHMSA regulations.

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 Branch
Standards and Rulemaking Division

Wolcott
19-0108

January, Ikeya CTR (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Friday, August 23, 2019 9:57 AM
To: Hazmat Interps
Subject: FW: Letter of Interpretation Request

Hello Alice and Ikeya,

Please see below for letter of interpretation request. The requester has been in contact with Ryan Larson and has been told by Ryan to write in for a letter request. I have not found any existing letters that answer his request.

Thank you,
Kathryn, HMIC

From: Graham Walsh [mailto:gwalsh@explosivestestcenter.com]
Sent: Thursday, August 22, 2019 6:24 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Cc: Larson, Ryan (PHMSA) <ryan.larson@dot.gov>
Subject: Letter of Interpretation Request

Hello,

Please see below for my request for a letter of interpretation.

EX approvals are granted to the manufacturer of the article or substance itself (except for rare circumstances where someone repackages the material, or makes a slight modification, etc). I can't point to a regulation that says that EX approvals MUST be issued to the manufacturer, I believe it's an internal PHMSA policy. So, my question is as follows...

There are situations where my customers would prefer an EX be issued to them, even if they are not the actual manufacturer of the product (of course the product manufacturer is always called out in the test report). These situations are:

1. My customer is a packaging manufacturer, and has developed a packaging solution for a certain product. The packaging manufacturer will sell the packaging materials to the explosive manufacturer, but without the EX being issued in the packaging manufacturer's name, the explosive manufacturer can go around the packaging manufacturer and buy from another packaging company. In this case the packaging manufacturer has sunk expenses in development of the packaging and testing or analysis required to get the EX approval, so they believe the EX approval should be in their name.
2. My customer is an importer (I've had this in fireworks, pyrotechnic tools and fuzes just this year), and has paid for the development and testing of a new product. This product is to be sold through the importer / distributor exclusively. The importer/distributor wants the EX approval in their name so that the manufacturer cannot sell to other companies using the EX that was paid for by the importer / distributor.
3. Basically the same as 2, but my customer (Design Firm) has developed a product and is now having that product built by another company (Manufacture Firm). Again, the manufacturer must be called out in the report, but the design firm is the one that has developed the product and it is sold as Design Firm Detonator rather than Manufacture Firm Detonator. The EX being issued to Manufacturer can cause confusion in shipping when folks order a Design Firm Detonator.

I'm sure there are more examples, but there are a few I've run in to in the past few months. Basically my question is: are there times when a company that is not the manufacturer of a device or substance can be issued the EX approval? If yes, what instances are they, what is the justification, etc. I need to be able to tell my customer who the EX is going to be issued to, because sometimes that determines who pays for testing, if they will bother running the tests at all, etc.

Thank you,

Graham Walsh, PhD
President
Explosives Test Center, LLC
5698 Brennan Ave
Colorado Springs, CO 80923
505.515.4430

From: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Sent: Wednesday, August 14, 2019 9:27 AM
To: Graham Walsh <gwalsh@explosivestestcenter.com>
Cc: Larson, Ryan (PHMSA) <ryan.larson@dot.gov>
Subject: Request for a Letter of Interpretation

Dear Graham,

We have received your inquiry to the Pipeline and Hazardous Materials Safety Administration's (PHMSA's) Hazardous Materials Information Center (HMIC). If you would like to request a formal letter of interpretation, please send an email to the Hazardous Materials Information Center at infocntr@dot.gov. In the subject line of the email, type "Letter of Interpretation Request." In the body of the email, include your name, phone number, and a physical mailing address. Please be as detailed as possible in your interpretation request.

For further assistance, you may contact the Hazardous Materials Information Center, which is staffed with regulatory specialists who can quickly answer your questions by phone, Monday through Friday, 9 AM - 5 PM EST at (800) 467-4922 or (202) 366-4488. Alternatively, if you would like a regulatory specialist to contact you directly, please respond to this e-mail with a telephone number where you can be reached between 9 AM and 5 PM EST.

Sincerely,

Breanna, Hazardous Materials Specialist

An e-mail response from this office is considered informal guidance. Formal guidance may be requested in accordance with 49 CFR 105.20. <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center>