



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

January 25, 2023

Rich Kovaleski  
R@K Testing  
7635 Supreme Ave., NW  
North Canton, OH 44720

Reference No. 22-0123

Dear Mr. Kovaleski:

This letter is in response to your November 1, 2022, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the legal liability of shipping hazardous material (hazmat) in a non-bulk performance-oriented UN specification packaging. In your email, you state that it is your understanding that the ultimate responsibility for a non-bulk UN hazmat package is with the hazardous materials shipper and that you further understand that the shipper is the entity that fills, closes, and marks the package, and then offers the package into transportation. We note that your incoming request referred to a “hazmat manufacturer” which we understand to have meant a hazmat shipper. Further, the answers provided herein are associated with liability in regard to non-compliance with the HMR.

Your understanding is not entirely correct. Liability associated with a non-compliant packaging or package, or a package failure, is determined on a case-by-case basis. Placement of the name of the packaging manufacturer or approval agency certifying compliance with a UN packaging specification standard does not necessarily assign sole responsibility of a completed hazmat package to that entity. All persons engaged in performing covered functions under the HMR related to the completed package would be considered. With respect to a hazmat package, each person who offers—i.e., each shipper of—such a package for transportation in commerce must assure that the package remains in condition for shipment until it is in the possession of the carrier and no carrier may accept such a package unless it is in condition for shipment. See §§ 171.2(e), (i), and (j). With respect to a packaging, a manufacturer of a packaging subject to the requirements Part 178 of the HMR is primarily responsible for compliance with the requirements of Part 178. However, any person who performs a function prescribed in Part 178 must perform that function in accordance with requirements. See § 178.2(a)(2).

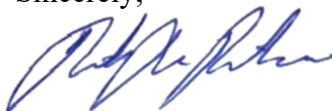
We have paraphrased and answered your questions as follows:

- Q1. You ask whether there is a difference in legal liability based on whose name and address (or M number) appears as part of the UN specification marking (see §§ 178.3 and 178.503) that is required for the manufacturer or the person certifying compliance with a UN standard on a package.

- A1. The answer is it depends. As defined in § 171.8, “packaging” means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of the HMR and “package” means a packaging plus its contents. Further, as defined in § 178.2(e), a “manufacturer” means the person whose name and address or symbol appears as part of the required specification markings, or for a packaging marked with the symbol of an approval agency, the person on whose behalf the approval agency certifies the packaging. Thus, the manufacturer or approval agency that is included on that marking assumes a certain level of liability with respect to the packaging; however, that does not mean that other persons cannot also be held liable, such as manufacturers of component parts. Furthermore, with respect to a package, more than one individual or entity may be deemed liable with regards to non-compliant packagings or packages, or a package failure. That liability is determined on a case-by-case basis.
- Q2. You ask whether there is a difference in liability based on whether the name and address provided in the UN specification string belongs to the packaging manufacturer, third party testing lab, hazmat manufacturer/shipper, self-certified testing lab, or packaging component manufacturer.
- A2. The answer is it depends. Also, note that only the manufacturer or an approval agency certifying compliance of a packaging may be included in the specification marking. Liability may be assigned to the entity whose name and address appears as part of the UN specification marking because they are certifying the packaging complies with the UN standard and testing for the packaging. However, PHMSA also has the authority under the HMR to determine liability of persons or companies other than those whose name appears on the packaging (i.e., any persons engaged in performing covered functions under the HMR related to the packaging).
- Q3. You ask whether a packaging manufacturer would have more legal liability (i.e., responsibility) for a UN packaging if they mark the packaging with their M number, or if their liability would be limited only to the part of the packaging that they can control (e.g., the outer box, paper combinations, manufactures joint, etc.).
- A3. See answers A1 and A2.

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

Casey  
22-0123

## R@K Testing, LLC

To: Standards & Rulemaking Division PHMSA,  
Attn: PHH-10, U.S. DOT, East Building, 1200 New Jersey Ave. SE  
Washington, DC 20590-0001  
Date: 11-1-22  
Re: Marking and Responsibility of UN Packaging

Our question is there a DOT legal liability difference based on whose name and address or M number that is printed in the UN code on a hazmat package? Our understanding that the actual hazmat **manufacture** is the ultimate responsible party for the UN hazmat package. We understand that the hazmat **manufacture** as defined as the DOT is the one that fills the hazmat into the package, closes the package, marks the package, and offers the package for transportation. Do you agree?

Based on the five marking scenarios please give us the legal liability differences:

1. UN 4G/Y20.5/S/22/USA/M5466 (box manufacture).
2. UN 4G/Y20.5/S/22/USA /XYZ Lithium Battery Co. (hazmat maker and shipper).
3. UN 4G/Y20.5/S/22/USA /AA+5677 (3<sup>rd</sup> party testing lab).
4. UN 4G/Y20.5/S/22/USA /ABC Fulfillment Inc. (UN Hazmat box kit supplier) This company buys all the hazmat packaging components (boxes, partitions, bags, etc.), warehouses and ships the components as needed to the hazmat maker and shipper.
5. UN 4G/Y20.5/S/22/USA/RAK Testing, LLC (self-certified testing lab).

For instance, does the box manufacture scenario #1 have more legal liability (responsibility) for this UN package if they use their M number? Or is their liability limited only to the part of this package that they can control, i.e., the outer box, paper combinations, manufactures joint etc. In scenario #5 we use our name and address in the UN code does this make our testing company responsible for this UN package or are we just responsible for our part of this package? Which is to properly test and report on this UN package.

Please respond in writing with references to the 49 CFR sections that pertain to these questions. Please email your response to [raktesting@gmail.com](mailto:raktesting@gmail.com).

Please contact: Rich Kovaleski with any questions concerning this testing.  
R@K Testing 7635 Supreme Ave NW North Canton, OH 44720; Cell: 740.624.1314

**From:** [DerKinderen, Dirk \(PHMSA\)](#)  
**To:** [Hazmat Interps](#)  
**Subject:** FW: R@K Testing Correspondence  
**Date:** Monday, November 14, 2022 10:03:13 AM  
**Attachments:** [EO - Kelley\(R@KTesting\) 14Nov22.pdf](#)

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Alice,

Please log the attached into the system as an interp request.

Thanks,  
Dirk Der Kinderen  
Chief, Standards Development Branch  
PHMSA  
202-366-4460 (desk)  
202-365-4684 (cell)

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**From:** Kelley, Shane (PHMSA) <[shane.kelley@dot.gov](mailto:shane.kelley@dot.gov)>  
**Sent:** Monday, November 14, 2022 9:53 AM  
**To:** DerKinderen, Dirk (PHMSA) <[Dirk.DerKinderen@dot.gov](mailto:Dirk.DerKinderen@dot.gov)>; Nickels, Matthew (PHMSA) <[Matthew.Nickels@dot.gov](mailto:Matthew.Nickels@dot.gov)>  
**Subject:** Fwd: R@K Testing Correspondence

Can we get this logged?

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**From:** Lisak, Frank (PHMSA) <[frank.lisak@dot.gov](mailto:frank.lisak@dot.gov)>  
**Sent:** Monday, November 14, 2022 9:01:20 AM  
**To:** Kelley, Shane (PHMSA) <[shane.kelley@dot.gov](mailto:shane.kelley@dot.gov)>  
**Subject:** R@K Testing Correspondence

Hi, Shane:

The attachment is for your review.

Frank