



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

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

OCT 19 1998

Mr. Barry Rauworth  
Fluoroware, Inc.  
102 Jonathan Boulevard North  
Chaska, Minnesota 55318

Ref. No. 98-0245

Dear Mr. Rauworth:

This is in response to your letter dated August 18, 1998, regarding your client's concerns relative to the transportation of hazardous materials in a dual marked container, under the Hazardous Materials Regulations (HMR; 49 CFR 171-180).

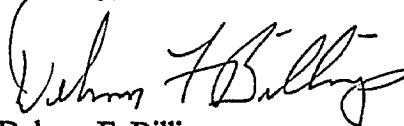
Your company, Fluoroware, Inc., manufactures containers used for the transportation of "Nitric acid." Fluoroware Inc., was also the holder of exemption "DOT-E-9316" to manufacture, mark and sell composite drums that utilize PFA Teflon liners as the primary containment and polyethylene or steel outer packagings for the shipment of up to 71% Nitric acid mixture. Although Fluoroware, Inc., no longer manufactures these packagings under the above-mentioned exemption, it continues to sell such packagings manufactured and marked to the UN standard. Your clients (shippers) who use these containers for the shipment of regulated materials are concerned that the containers permanently dual marked with both the UN standard marking and the exemption number could cause confusion among the enforcement community. You asked if your understanding is correct that the exemption number can remain on the container as long as the exemption is not being used as a means to ship the regulated materials.

As you are aware, RSPA issued a final rule [Docket HM-181H; 61 FR 50616; 9/26/96], which revised 49 CFR 173.158(f)(1) to authorize 6HH1 and 6HA1 composite packagings with PFA Teflon inner receptacles for nitric acid concentrations of 70% or less. The composite packagings, having been previously authorized under several exemptions, had demonstrated an equivalent level of safety.

Your understanding is correct. The prohibited marking requirements, in 49 CFR 172.303, do not require removal or obliteration of the exemption number from the packaging, even when the packaging is not being used under the terms of the exemption. However, in order to minimize confusion or frustration of the shipment, you may wish to cover or obliterate the exemption number marking when the packaging is not being used under the terms of the exemption.

I hope this satisfies your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Delmer F. Billings". The signature is written in a cursive style with a large initial "D" and "F".

**Delmer F. Billings**  
Chief, Standards Development  
Office of Hazardous Materials Standards



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400 Seventh Street S W  
Washington, D C 20590

DOT-E 9316  
(EIGHTH REVISION)

EXPIRATION DATE: July 31, 1998

(FOR RENEWAL, SEE 49 CFR 107.105.)

1. GRANTEE: Fluoroware, Incorporated, Chaska, Minnesota.
2. PURPOSE AND LIMITATIONS: This exemption authorizes the manufacture, mark and sell of a non-DOT specification composite packaging consisting of an inner receptacle of Teflon PFA plastic, contained in a steel or polyethylene outer packaging, for the shipment of up to 71% nitric acid, subject to the limitations and special requirements specified herein, and provides no relief from any regulation other than as specifically stated.
3. REGULATORY SYSTEM AFFECTED: 49 CFR Parts 106, 107 and 171-180.
4. REGULATIONS FROM WHICH EXEMPTED: 49 CFR Section 173.158.
5. BASIS: This exemption is based on Fluoroware, Incorporated's application dated June 21, 1996, submitted in accordance with 49 CFR 107.105.
6. HAZARDOUS MATERIALS (49 CFR 172.101):

Hazardous materials description/proper shipping name	Hazard Class/ Division	Identification Number	Packing Group
Nitric acid	8	UN 2031	II

7. PACKAGING(S) and SAFETY CONTROL MEASURES:

a. PACKAGING -A composite packaging consisting of an inner receptacle comparable to DOT-2S or 2SL, except that the inner packaging is rotationally molded of Teflon PFA resin and has a minimum thickness of 0.040-inch. The outer packaging shall be either of the following:

i. a cylindrical steel overpack (of all 16 gauge construction) of 15-, 30-, or 55-gallon capacity; or

ii. 5-, 15-, 30-, or 55-gallon capacity polyethylene outer packaging comprising two components, a top shell and a base. The components are joined together by 1/4-inch rivets or 1/4-inch bolts after the Teflon PFA inner receptacle is inserted.

b. TESTING - The composite packaging, assembled as for shipment, must be tested in accordance with 49 CFR Subpart M of Part 178, at the Packing Group II level for liquids.

c. MARKING - i. Each packaging manufactured under the authority of this exemption must be either (1) marked with the name of the manufacturer and location (city and state) of the facility at which it is manufactured or (2) marked with a registration symbol designated for a specific manufacturing facility.

ii. The outside of each package must be plainly and durably marked "DOT-E 9316."

8. SPECIAL PROVISIONS:

a. Offerors for transportation of the hazardous materials specified in this exemption may use the packaging described in this exemption for the transportation of such hazardous materials so long as no modifications or changes are made to the packages, all terms of this exemption are complied with, and a copy of the current exemption is maintained at each facility from which such offering occurs.

b. A copy of this exemption, in its current status, must be maintained at each manufacturing facility at which this packaging is manufactured and must be made available to a DOT representative upon request.

c. Shippers using the packaging covered by this exemption must comply with all provisions of this exemption, and all other applicable requirements contained in 49 CFR Parts 171-180.

d. Any change in the material used to manufacture the Teflon PFA liner or polyethylene overpack must be approved by the Associate Administrator for Hazardous Materials Safety. Prototype test results for the tests required in paragraph 7 of this exemption must accompany any request for changes in the plastic resin.

9. MODES OF TRANSPORTATION AUTHORIZED: Motor vehicle, rail freight, and cargo vessel.

10. MODAL REQUIREMENTS:

a. A copy of this exemption must be carried aboard each cargo vessel or motor vehicle used to transport packages covered by this exemption.

11. COMPLIANCE: Failure by a person to comply with any of the following may result in suspension or revocation of this exemption and penalties prescribed by the hazardous materials transportation law, 49 U.S.C. Section 5101 et seq.:

- o All terms and conditions prescribed in this exemption and the Hazardous Materials Regulations, 49 Parts 171-180.
- o Registration required by 49 CFR 107.601 et seq., when applicable.

No person may use or apply this exemption, including display of its number, when the exemption has expired or is otherwise no longer in effect.

12. REPORTING REQUIREMENTS: The carrier is required to report any incident involving loss of packaging contents or packaging failure to the Associate Administrator for Hazardous Materials Safety (AAHMS) as soon as practicable. (49 CFR 171.15 and 171.16 apply to any activity undertaken under the authority of this exemption.) In addition, the holder(s) of this exemption must also inform the AAHMS, in writing, as soon as practicable of any incidents involving the package and shipments made under this exemption.

Issued at Washington, D.C.

*Marilyn E. Morris*  
for Alan I. Roberts

Associate Administrator for  
Hazardous Materials Safety

*September 3, 1996*  
(DATE)

Address all inquiries to: Associate Administrator for Hazardous  
Materials Safety, Research and Special Programs Administration,  
Department of Transportation, Washington, D.C. 20590.  
Attention: DHM-31.

The original of this exemption is on file at the above office.  
Photo reproductions and legible reductions of this exemption are  
permitted. Any alteration of this exemption is prohibited.

Dist: FHWA, FRA, USCG



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SFP 3 1996

ATTENTION EXEMPTION HOLDER(S)

Enclosed is the 5<sup>th</sup> Revision of DOT-E 9316. Please note the  
modification(s) to Paragraph(s) 5, 10, expiration date.

Sincerely,

*J. Suzanne Hedgepeth*  
for *Audrey Breeding*  
J. Suzanne Hedgepeth, Director  
Office of Hazardous Materials  
Exemptions & Approvals



Engrum  
\$172.301

98-0245

Fluoroware, Inc.  
102 Jonathan Boulevard North  
Chaska, Minnesota 55318  
USA

612.448.3131 Tel.  
612.368.8022 Fax

August 18, 1998

Mr. Ed Mazzullo  
Director of Hazardous Materials Standards  
RSPA, DHM-10  
U.S. Dept. of Transportation  
Washington, D.C. 20590-0001

Dear Mr. Mazzullo:

We would appreciate a letter of interpretation regarding a concern a shipper has regarding the transportation of regulated materials in a dual marked container.

We are the manufacturers of containers that are used for the transportation of Nitric acid. Specifically, we have held an exemption (E-9316) since 1984 to manufacture, mark, and sell composite drums that utilize PFA Teflon liners as the primary containment and polyethylene or steel outerpacks for handling. These containers have been extremely successful in the safe shipment of nitric acid, and as such, the RSPA has adopted a new regulation (49CFR 173.158(f)(1)) to recognize this as a standard.

Fluoroware has always dual marked our containers with a UN number as well as the exemption number. The performance standards set forth by the UN recommendations are, as you are aware of, almost exactly the same as the old DOT performance standards. We have always made sure our containers meet both standards.

Because of RSPA's recent recognition of PFA Teflon for applications specified in 173.158, Fluoroware and the Exemptions branch of the RSPA agreed that our exemption E-9316 was no longer necessary. As such, we did not renew the exemption.

We recognize that the DOT allows dual marked containers. We also have had some concerns in the field by our customers regarding the dual markings on containers that are being used for shipment of regulated materials. Their concerns stem from the fact that the containers still have on them the exemption number, even though the exemption has expired. Let me make it clear that we no longer manufacture our containers with an exemption number and have not manufactured them with these numbers for some time. The containers of concern are those that were manufactured when the exemption was still in affect. These containers have both the UN number as well as the expired exemption number permanently molded into the side of the outerpack. Even though the shippers of the regulated materials are doing so under the umbrella of the UN numbers on the containers, they are concerned that enforcement officers might be confused when they see an expired exemption number on a container being used for shipments of regulated materials.

I have been advised verbally, via a telephone call, by the Hazardous Materials Regulations Information Center (800) 467-4922, that there is no where in the regulations that says that a container cannot have markings that are not being utilized for the shipment of regulated materials. As such, the exemption

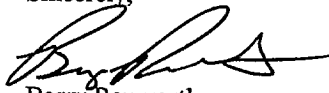


number can remain on the container as long as the exemption is not being used as a means to ship the regulated materials.

It only makes sense that a container that is dual marked can continue to be used for shipment of regulated materials as long as it is being done in accordance to current regulations and under the umbrella of the UN markings that are on the container. The container is the same. No design, manufacture, or material changes have been made.

Please confirm this via a written letter of interpretation so that our customers have documentation to show potential enforcement inspectors. This documentation will help to clarify any possible misinterpretation that could occur due to the confusion of having an expired exemption number on a container even though the UN number is being used to ship the regulated material.

Sincerely,



Barry Rauworth

Senior Project Engineer