



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

MAR 25 2014

David H. Baker, Esq.
General Counsel
Lighter Association, Inc.
1701 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006

Ref. No.: 14-0034

Dear Mr. Baker:

This responds to your February 19, 2014 letter and previous conversations with members of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to lighters. In your letter, you describe a difficulty in attempting to comply with the shipping paper and marking requirements in §§ 173.308(d) and (e). According to your letter, you state that:

A lighter company must place each and every lighter design report identifier on the outer package for the shipment. In the case of many companies, this means that they must place 20 or more LAAs on the outer packaging. This is extremely cumbersome as there is only so much room on the corrugated box used for these shipments. In addition, companies are routinely adding new lighters to their product line, and, therefore, new LAA numbers must be added regularly to the packaging. Hence, boxes must be thrown out and new boxes ordered, with the new LAA number added.

Additionally, you summarize three alternatives informally discussed with the Pipeline and Hazardous Materials Safety Administration (PHMSA) staff that could satisfy these requirements for lighters. These alternatives are paraphrased below:

1. Place all of the LAA numbers for the company on each box and simply place whatever lighter was being shipped in the box.
2. Place every LAA number on the box with little boxes (squares) next to the approval number and check off exactly what lighters are in the box by manually putting a check mark in the applicable square.
3. Place the predominant approval numbers on the outer packaging. If a lighter company sold twenty lighters, they could place the approval number for the five predominant lighters on the outer packaging.

Finally, you ask PHMSA to allow the outer packaging and shipping papers for approved lighters to be marked as follows (in lieu of the current HMR requirements provided in §§ 173.308(d) and (e)):

LIGHTERS: In compliance with 49 Part 173.308

Paragraph (d) of § 173.308 prescribes the shipping paper and package marking requirements for lighters. Prior to publication on January 23, 2006 [71 FR 3418] of the final rule entitled “Hazardous Materials: Requirements for Lighters and Lighter Refills,” under Docket No. RSPA-2004-18795 (HM-237), the previous shipping paper and marking requirements required packages of lighters to be marked and shipping papers to be annotated with the approval numbers assigned by PHMSA. After the January 1, 2007 effective date of the HM-237 final rule, we instead require the identification code and test report identifier to be annotated on a shipping paper, in association with the basic description, and marked on a package, for all designs contained therein.

The consistency in pertinent information is important, as the shipping paper notation and package marking requirements enable enforcement personnel to identify the person who tested and approved the lighters for transportation should they identify a problem with the shipment.

In paragraph (e) of § 173.308, we continue to allow the exception from Subparts C through H of Part 172, and Part 177, for no more than 1,500 lighters carried aboard a transport vehicle by highway. This exception allows for the use of non-specification outer packaging meeting the general requirements of Subpart B of Part 173. This paragraph does not, however, contain an exception from marking the test report identifier on the outer package because of the potential for transportation by common or contract carriage. In all cases, the test report identifier marking is the only information available to enforcement personnel and carriers to identify the types of lighters that are contained in a package and to ascertain whether the lighters have been examined in accordance with the HMR. Distributors should be aware of the test report identifiers for each design type in their inventory.

We agree that marking the outside of the packaging may impose a burden on distributors. At the same time, we maintain our belief that some record of the test report identifiers for lighters transported in a package must be available to enforcement personnel and carriers during transportation. Therefore, we cannot authorize the fourth alternative you requested. Nonetheless, to alleviate the possible burden on distributors, we do allow a list of test report identifiers to be included inside, or attached to the outside of a package as a means of complying with the requirement.

If you believe a rulemaking change, such as a revision, addition, or deletion is warranted, we invite you to file a petition in accordance with §§ 106.95, 106.100 and 106.105 of the HMR, including all information needed to support your petition. Your request will be further evaluated for merit to address in an upcoming rulemaking. For regulations in 49 CFR Parts 171 through 180, please submit the petition to: Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, PHH-10, U.S. Department of

Transportation, East Building, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.
Please contact Mr. Steven Andrews in the Regulatory Review and Reinvention Branch of the
Standards and Rulemaking Division at 202-366-8553 for more information.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

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

Nickels
§173.308(b)(4)(i)(c)
Lighters
14-0034

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VIA EMAIL AND HAND DELIVERY

December 5, 2012

Mr. Michael Stevens
Office of Hazardous Materials Standards
Pipeline & Hazardous Materials Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E
Washington, D.C. 20590

Re: Request for Interpretation Regarding Placement of Approval Numbers for Lighters on Outer Packagings and Shipping Papers

Dear Mr. Stevens:

We are writing to you about an issue which has been particularly difficult for the lighter industry.

As you know, under the “new” PHMSA lighter regulation (71 Fed. Reg. 3427, January 23, 2006; as amended at 73 Fed. Reg. 57006, October 1, 2008), individual approvals are issued for each lighter design reviewed for “gas escape” and a specific approval number is designated for that lighter. 49 CFR Part 173.308(b)(4)(i)(C). Under 49 CFR Part 173.308(d)(2), these approval numbers must then be set forth on the outer packaging for the lighter. This framework worked perfectly fine, under the old regulation, when a single T number was issued to a company for *all* of its lighters. The company simply placed the T number on its outer packaging and used it for all lighter shipments. However, under the new regulation, it appears that companies have to place every LAA number on the outer packaging. As stated in the new lighter regulation:

“...a lighter design test report identifier...must be marked on a packaging containing lighters.” 49 CFR Part 173.308(d)(2).

While the language speaks in the singular, “*a* lighter design report identifier”, it has been generally interpreted to mean all identifiers must be marked on the outer packaging.

Moreover, this point is clarified further in Part 173.308(e), *Exceptions*, stating:

“In addition, the package must include the test report identifier for *each* lighter design...”

So under the new regulation, a lighter company must place each and every lighter design report identifier on the outer package for the shipment. In the case of many companies, this means that they must place 20 or more LAAs on the outer packaging. This is extremely cumbersome as there is only so much room on the corrugated box used for these shipments. In addition, companies are routinely adding new lighters to their product line, and, therefore, new LAA numbers must be added regularly to the packaging. Hence, boxes must be thrown out and new boxes ordered, with the new LAA number added.

The cost of modifying packaging each time a new LAA number has to be added is enormous. New packaging costs tens of thousands of dollars (because it is much more cost effective to purchase large quantities) and testing of a packaging is expensive (ranging from \$800 to \$2000 or more).

The same situation applies to printing all of the LAA numbers on the shipping papers. Large retailers are complaining to Lighter Association members that it could hundreds of thousands of dollars to change their computer programs to print fifteen, twenty or thirty LAA numbers on the shipping paper.

And the logistics of keeping track of what lighters are in the box (outer packaging) are extraordinary. Because each box may contain a different assortment of lighters, under the new system, each box shipped must be manually examined by an employee to be certain that the lighters in the box match the LAA numbers on the box. As a result, lighter companies with many different models, have been forced to hire additional employees simply to ensure that the lighters that go in the box meet exactly the particular LAA numbers pre-printed on the box.

Lighter Association representatives have raised this issue informally with PHMSA staff and have received varying guidance on how to respond to this problem.

One suggestion was to place all of the LAA numbers for the company on each box and simply place whatever lighter was being shipped in the box. In this manner, the box always contained the LAA number for a lighter being shipped.

Another suggestion was to place every LAA number on the box with little boxes (squares) next to the approval number and check off exactly what lighters are in the box by manually putting a check mark in the applicable square.

Yet another discussion was to follow the example of the interpretation issued many years ago to the fireworks industry for assortment packages and place the *predominant approval numbers* on the outer packaging. This process was codified at 49 CFR Part

172.320(c), so today an explosives company shipping more than five products in the same box, can place five approval numbers on the box and ship any number of Division 1 items. Similarly, the logic followed that if a lighter company sold twenty lighters, they could place the approval number for five lighters on the outer packaging. This concept was discussed at our November 2011 meeting at PHMSA.

The Lighter Association believes that this is a problem that falls under the “no harm – no foul” aphorism. All outer packagings utilized by Association members contain the following information:

Division 2.1 Lighters

Company Name or Brand

Flammable

Flammable Symbol

Approval Number

So there is absolutely no doubt for the first responder what is in the packaging – it contains lighters with a tiny amount of butane fuel (50 to 80 mg). In the unlikely event of an issue with the transportation of the lighters, the first responder would immediately know the Hazardous Materials Classification for the product and the safety risk. The addition of a long listing of LAA numbers does not add any relevant information to the situation. Moreover, there has not been an issue involving the transportation of lighters in at least 25 years. So there is no safety risk, regardless of what resolution is settled upon here.

Frankly, even though the Association actively participated in the rulemaking on the revision to Part 173.308 from 2004 to 2006, we suspect that no one considered this point when adding the requirement of individual LAA numbers for each lighter. So now we have a situation where some of our members must place 20 or more approval numbers on an outer packaging, then discard it when a new lighter is added. This is certainly not consistent with the overall national and state policy to recycle and to reduce energy consumption.

The Lighter Association respectfully requests that PHMSA stay all enforcement activity related to this issue, since 100% technical compliance with this requirement serves no apparent purpose and is virtually impossible given the large variety of lighters shipped. We are not aware of any enforcement activity on this precise issue, but it is a concern of our members since, like all offerors, they are subject to periodic PHMSA inspections.

More importantly, the Lighter Association respectfully requests that an interpretation be issued stating that the outer packaging and shipping papers for approved lighters can be marked as follows:

LIGHTERS: In compliance with 49 Part 173.308

This would eliminate manual checking off of boxes and would be more comprehensive than the exception for the explosives industry. Moreover, it would meet the needs of PHMSA and first responders as they would know exactly what is in the box. There really is no reason for them to know the various approval numbers. Accordingly, we would respectfully request that an interpretation letter to this effect be issued.

Thank you for your consideration of our concerns.

Very truly yours,

David H. Baker
General Counsel

DHB:bd