



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

JAN 28 2015

Ms. Cynthia Hilton
Executive Vice President
Institute of Makers of Explosives
1120 Nineteenth Street, NW, Suite 310
Washington, DC 20036

Reference No. 14-0171

Dear Ms. Hilton,

This is in response to your recent e-mail and attached letter to Mr. William Schoonover, Deputy Associate Administrator, Field Operations, Pipeline and Hazardous Materials Safety Administration (PHMSA). You ask for clarification of what is meant by the wording "damaged package" as this term is used in § 173.54(c) concerning the commercial transportation of explosives under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Mr. Schoonover forwarded your letter to PHMSA's Standards and Rulemaking Division for reply.

You provided as examples five photographs of fiberboard boxes with a crease, dents, torn shrink-wrap, pallet shift of several inches, and peeled outer surface paper, and two photographs of fiberboard boxes with one outer-surface puncture and one outer-surface paper tear. You state that airlines are refusing shipments of Class 1 (explosive) materials in packages your organization believes have minor damage, i.e., have not lost their structural integrity. You also state the International Air Transport Association's (IATA's) Instruction 5.0.2.5 states that each packaging must be inspected for damage before being filled and offered for transportation, and packagings that show signs of reduced strength in comparison with their design type must not be used.

Although the HMR does not specifically define "damaged package," this wording essentially means a completed package that does not comply with the packaging requirements prescribed in the HMR for the hazardous material it contains. At a minimum, these requirements include those for general packaging prescribed in §§ 173.24, 173.24a, and 173.24b, as well as 173.27 if transported by air. For explosives, this also includes the packaging's ability to protect the explosive material it contains from external stimuli that might initiate the material's energetic components. The structural integrity of the package is critical to achieving this result.

A hazardous materials packaging or package that is damaged (e.g., through compression, forceful contact with materials inside or outside the packaging such as those that result in tears or punctures, exposure to environmental elements, or sudden inner packaging

expansion) may be sufficiently reduced in effectiveness to no longer meet the HMR's general packaging requirements and increases the probability that the package may release the hazardous materials or other substances or articles it contains. Therefore, packages containing explosives that exhibit tears or punctures, or are impaired in a manner that indicates their internal packagings may be crushed or considerably damaged should be considered significantly reduced in structural integrity such that they are unable to protect the materials they contain or carry loads imposed upon them, which can result in an unsafe shipping environment. However, damage (e.g., creases and/or dents in an outer packaging that contains an explosive, or small shifts of such packages on a pallet) that does not inhibit the structural integrity of the package should not be considered a "damaged package." This should be evaluated on individual per package basis.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script, reading "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

Goodall, Shante CTR (PHMSA)

Edmonson
173.54(c)
Definition
14-0171

From: Betts, Charles (PHMSA)
Sent: Tuesday, September 16, 2014 12:50 PM
To: Goodall, Shante CTR (PHMSA)
Cc: Schoonover, William (PHMSA)
Subject: FW: Damage Package - Request for Letter of Interpretation
Attachments: PHMSA Damage Packagings (FINAL).pdf

Importance: High

Shante –

Please log and assign to a specialist for handling. The assigned specialist should work closely with Field Operations in drafting a response.

Thanks,
Charles

From: Cynthia Hilton [<mailto:chilton@ime.org>]
Sent: Monday, September 15, 2014 12:25 PM
To: Schoonover, William (PHMSA)
Cc: Betts, Charles (PHMSA)
Subject: Damage Package - Request for Letter of Interpretation

Bill –
You recall that we talked a couple of weeks ago about instances of airline rejection of Class 1 packages for inconsequential imperfections in the packaging.
The attached letter requests your help to clarify what PHMSA means when it states the “explosives shall not be offered for transportation or transported [in] ... a... damaged package.”
Your attention to this request is appreciated,
Cynthia

Cynthia Hilton
Executive Vice President
Institute of Makers of Explosives
202-266-4319

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IME
institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

September 15, 2014

Bill Schoonover
Deputy Associate Administrator
Office of Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, Southeast
East Building, 2nd Floor
Washington, D.C. 20590

Re: Damaged Packages

Dear Mr. Schoonover,

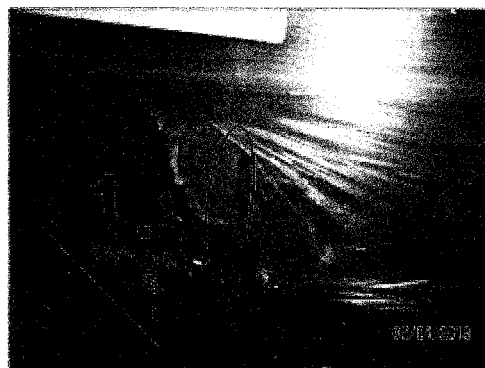
On behalf of the Institute of Makers of Explosives (IME)¹, I am writing to request an interpretation of the term "damaged package" as used in 49 CFR 173.54(c).

IME represents companies that are world leaders in the manufacture of explosive articles and devices. These items are transported globally. Many of these shipments are moved by air, and in most cases, this is the only commercially-viable means of transportation.

It seems that airlines are more frequently refusing shipments of correctly packaged explosive materials based on a subjective interpretation of 49 CFR 173.54(c). This standard states in part that "explosives shall not be offered for transportation or transported [in] ... a ... damaged package" We believe this prohibition was intended to apply to the integrity of the packaging used for the shipment. If the packaging has not lost its structural integrity, the package should not be refused. However, packages are being refused for minor dents, creases, or tears. Examples of packages that have been rejected, yet are still safe for air transportation, follow:

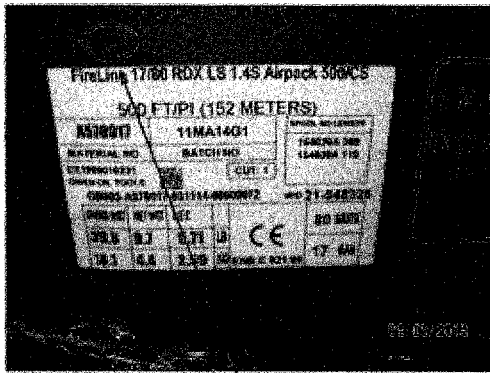


Crease



Dent

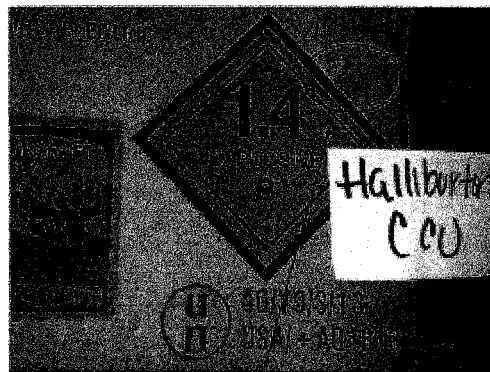
¹ IME is a nonprofit association founded in 1913 to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials.



Dent

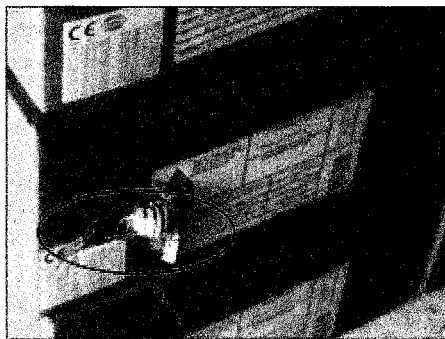


Boxes shifted on pallet

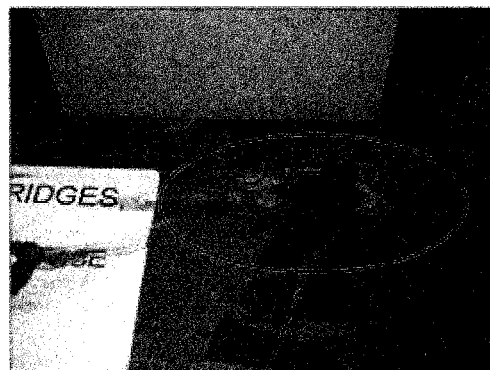


Peel

IME understands the hazards and safety concerns associated with transporting explosive materials by air. Below are examples that show torn and punctured packages that should be (and were) rejected because the imperfections would likely be sufficient to void the rating on the packaging. These are packages that IME would consider damaged and unsafe for air transportation until re-packaged.



Puncture



Tear

In support of this policy, IATA technical instructions contain the following restriction.

5.0.2.5 Packaging Test Requirements: New, remanufactured, reused or reconditioned packagings, which are listed in Table 5.0.C, must meet the applicable requirements of Section 6 of these regulations. Such packaging must be manufactured and tested under a quality

assurance program, which satisfies the appropriate national authority, in order to ensure that such packaging meets those applicable requirements. Where packaging is required to be tested in accordance with Subsection 6.3, their subsequent use must be as specified in the applicable test report and conform in all respects with the design type which was tested, including the method of packing and size and type of any inner packaging, except as provided for in 5.0.2.12.2 and 6.3.1.2. Before being filled and handed over for transport, every packaging must be inspected to ensure that it is free from corrosion, contamination or other *damage*. Any packaging which shows signs of reduced strength as compared with the approved design type must no longer be used or must be so reconditioned that it is able to withstand the design type tests. For definitions of remanufactured packages and re-conditioned packages as used in these Regulations, see Appendix A.

Importantly, this instruction does not disqualify all packages with “damage”, only those packages where the damage has compromised the approved design of the packaging. The requirement at 49 CFR 175.30 is consistent with the policy; disqualifying a package intended for air transport only if the integrity of the packaging has been compromised. However, the current regulation at 49 CFR 173.54 could lead to another outcome. As noted above, 49 CFR 173.54(c) prohibits the transportation by air of explosives in a “damaged package.” The HMRs appear to send a mixed message to air carriers, and absent further clarification, these carriers would likely rely on the most restrictive rule.

The needless frustration of air shipments of explosives presents safety and security concerns as well as lost business opportunities. To help address these concerns, we ask that PHMSA issue an interpretation of “damaged package” as used in 49 CFR 173.54(c).

Thank you for your attention to this matter. We look forward to your response.

Sincerely,

Cynthia Hilton

Cynthia Hilton
Executive Vice President
Institute of Makers of Explosives
chilton@ime.org