



U.S. Department  
of Transportation  
**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

SEP 28 2011

Mr. M. David Brooks  
Project Engineer  
Pira International  
6539 Westland Way, Suite 24  
Lansing, MI 48917

Reference No. 11-0050

Dear Mr. Brooks:

This is in response to your February 23, 2011 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to package testing prescribed in § 178.602(c) of the HMR. Specifically, this section permits package samples sent for testing to have the hazardous material contained within the package replaced with a non-hazardous material provided certain conditions are met. We have paraphrased your questions and answered them in the order you provided.

- Q1. If a company sends a solid article, such as an inert lithium cell battery, in a package for non-bulk performance testing in conformance with Subpart M of Part 178 of the HMR, does it matter what material the company fills the battery cell with?
- A1. The answer is yes. Under the HMR, each packaging and package must be closed in preparation for testing and tests must be carried out in the same manner as if prepared for transportation, including inner packagings in the case of combination packagings (see § 178.602(a)). Section 178.602(c) permits the hazardous material intended for the packaging to be replaced with a non-hazardous material for test purposes provided the material used is of the same or higher specific gravity as the hazardous material and it corresponds as closely as possible to the intended hazardous material's other physical properties (e.g., grain, size, viscosity) that might influence packaging test results. If these conditions are not met, the test results for these packagings are invalid.
- Q2. If a company does not fill a solid article with a substance that is similar to the hazardous material it is designed to contain, e.g., the article is filled with sand instead of a liquid, what is our liability as a third party certification agency if we are unaware of this difference when testing the package?
- A2. Under the HMR, the performance testing results are invalid for each packaging and package intended for performance testing in conformance with Subpart M of Part

178 that is not filled and prepared in a manner that is the same as if it were prepared for transportation in commerce. The person, as defined in § 171.8, that prepares and provides these packagings and packages for testing must prepare them in conformance with the HMR, and are liable for their non-conformance. A third party certification agency that is not aware a packaging or package it is testing does not comply with § 178.602 is not liable for this error. However, it is the opinion of this Office that the third party testing agency must make every effort to the extent possible to determine that the packagings and packages it receives for testing comply with Subpart M of Part 178.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

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02/23/2011



To: Hazardous Materials Information Center

From: Dave Brooks  
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Edmonson  
§ 178.602 (2)  
Testing  
11-0050

I work for a third party certification agency and I have a few questions in regards to 178.602(c). Any clarification would be greatly appreciated.

Q1. If a company sends in a package with a solid article, such as an inert lithium cell, does it matter what they fill that cell with?

Q2. If the company does not fill that solid article with similar substance as actual product (uses sand instead of liquid) inside the article, what is our liability if we are unaware of the difference?

Sincerely,

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