HAZMAT SAFETY CONSULTING, LLC

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Shane Kelley
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Standards and, PHH-10
1200 New Jersey Avenue, SE
East Building, 2nd floor
Washington, DC 20590-0001

Dear Mr. Kelley,

I am writing to address a matter related to a potential PHMSA policy that effects the UN Third Party Certification Agencies and impacts the safe transportation of hazardous materials. Based on a 1994 UN Third Party Certification Agency meeting, PHMSA has stated that a UN packaging may only be marked with the "USA" designation in the UN specification marking if the packaging is manufactured in the United States. Additionally, PHMSA has since clarified that physically marking the package in the United States is the last step in the manufacturing process and therefore a company could source all or part of the packaging manufacturing and supply of materials outside of the United States, test the package and then import the packaging and apply the UN mark with "USA".

During the November 29, 1994 meeting of the UN Third Party Certification Agencies, PHMSA informed the UN Third Party Certification Agencies that when testing a foreign manufactured packaging, they can only apply their "+" designation if the country in question recognizes the laboratory. It is not entirely clear if this remains to be PHMSA's position. This requirement is difficult because many countries including Columbia, Mexico or China are not responsive or willing to recognize USA third party labs. This has caused serious issues for US companies that want to use U.S. third party labs to test and certify packagings where packaging components are sourced in other countries. This is particularly critical for companies that manufacture the same packagings both in the USA and other countries such as Mexico.

PHMSA's position on not allowing third party labs to assign the USA and "+" designation to foreign produced packaging is putting US third party labs at a disadvantage and does not enhance safety. US third party labs are designated agents of PHMSA and are the subject of significant oversight by DOT enforcement personnel and the Office of Special Permits and Approvals in coordination with the Office of Science, Engineering and Research. Test reports from labs in other countries are not as comprehensive and competent authorities don't provide equivalent oversight of packaging manufacturers or the test labs. UN Third Party Certification Agency reports are reviewed and scrutinized by PHMSA and in many cases, are more comprehensive that those produced by foreign test labs because they must comply with the approvals issued by PHMSA. They provide a high quality and compliant service promoting safety and ensuring that both US and foreign made packagings meet the HMR including additional US requirements required by the HMR (e.g. vibration standard). PHMSA has

no jurisdiction over foreign test labs or packaging manufacturers so it makes no sense that they would not allow the highly regulated UN Third Party Certification Agencies to test and certify these packagings and apply their "+" mark designations.

PHMSA included specific requirements related to foreign made packaging in the HMR to prevent foreign countries from not recognizing US manufactured and approved packaging and to ensure compliance with additional HMR requirements in §173.24 General requirements for packagings and packages:

(d) *Specification packagings and UN standard packagings manufactured outside the U.S.*—(1) *Specification packagings.* A specification packaging, including a UN standard packaging manufactured in the United States, must conform in all details to the applicable specification or standard in part 178 or part 179 of this subchapter.

(2) UN standard packagings manufactured outside the United States. A UN standard packaging manufactured outside the United States, in accordance with national or international regulations based on the UN Recommendations (IBR, see §171.7 of this subchapter), may be imported and used and is an authorized packaging under the provisions of paragraph (c)(1) of this section, subject to the following conditions and limitations:

(i) The packaging fully conforms to applicable provisions in the UN Recommendations and the requirements of this subpart, including reuse provisions;

(ii) The packaging is capable of passing the prescribed tests in part 178 of this subchapter applicable to that standard; and

(iii) The competent authority of the country of manufacture provides reciprocal treatment for UN standard packagings manufactured in the U.S.

However, PHMSA has not consistently or aggressively used the requirements to address non-compliant foreign made packing or confronted competent authorities that do not provide reciprocal treatment for UN standard packagings manufactured in the U.S.

PHMSA is out of step with how markings are assigned in Europe and Canada where their transport authorities allow the country code marking to foreign manufactured packagings if they are certified by a recognized laboratory or in the case of Canada, registered with Transport Canada. The requirement in the HMR in §178.503 Marking of packagings states:

"(7) The state authorizing allocation of the mark. The letters 'USA' indicate that the packaging is manufactured and marked in the United States in compliance with the provisions of this subchapter;"

This is not consistent with the requirement in the UN Model Regulations in 6.1.3.1(f) which states:

"The State authorizing the allocation of the mark, indicated by the distinguishing sign used on vehicles in international road traffic"

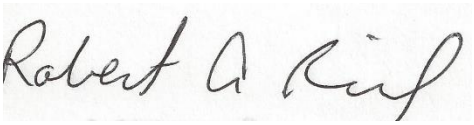
The UN Model regulations do not require that the state authorizing the mark be the same as the state of manufacture. A package can only carry a UN marking if it meets the performance testing so it makes no sense that PHMSA will not authorize US third party labs to test and certify foreign made packaging or at

least when the final step in manufacturing is applied in the U.S. A DOT recognized laboratory should be allowed to assign a specification marking that includes USA and the "+" designation regardless of where it is manufactured. There is no safety rationale for not allowing U.S. third party labs to test and certify foreign made packagings. In fact, authorizing U.S. third party labs to do so would enhance compliance and safety.

It is requested that your office confirm PHMSA's position on whether a UN Third Party Certification Agency when testing a foreign manufactured packaging, they can only apply their "+" designation if the country in question recognizes the laboratory. If this is PHMSA's position, I urge you to reconsider your position on this matter.

Additionally, based on the lack of harmonization with the UN Model Regulations related to the indication of the use of the "USA" mark it is requested that under the upcoming UN harmonization rule that you align the HMR with the UN model Regulations. In addition to this request a formal petition for rulemaking in this regard will be submitted.

Thank you in advance for your attention to this matter. Feel free to reach out to me to discuss this matter or to address any questions.



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