

On March 7, 2013, two of the rule amendments published by PHMSA in the Federal Register could affect the corrugated industry.

1.) Revise §178.3 (of 49 CFR) to indicate that a “Manufacturer” or Third Party laboratory “mark” (the “+” number of the third party laboratory); or the “M” Number (manufacturer’s number) or name and address of the manufacturer, may not be used when continued certification of a package is conducted by someone other than the original “Manufacturer” or the (original) Third Party testing laboratory, unless authorized by the original “Manufacturer” or the (original) Third Party testing laboratory.

This change will ensure that the mark used is tied to the entity that was issued the mark.

- PHMSA defines the “Manufacturer” as the entity whose name and address or symbol appears as part of the (UN) required specification markings, or for a packaging marked with the symbol of an approval agency (ie the symbol of the third party testing laboratory), the entity on whose behalf the approval agency certifies the packaging. [Ref. §178.2(e)]
- The purpose of the clarification of the regulations is to reinforce the prohibition of the continued use of a certification mark from a third party lab when there has been a subsequent certification test done by an entity different from the entity performing the original or most recent subsequent package certification.
- Corrugated packaging manufacturers, when accepting orders from customers who package hazardous materials, should make sure the customer has a current, valid Certification Test Report and that the “+” mark is that of the third party lab that performed the current Certification testing or, alternately, the “M” number (or name and address) of the entity on whose behalf the Certification Testing was done, typically the customer of the box supplier.
- Note: Corrugated Combination (4G) packagings must be retested at a minimum of every two years.
- Since “M” numbers for manufacturers are specific to the company and physical address, box makers, when accepting new HazMat packaging orders, should ensure that the “M” number is only that of your customer.
- Nothing in this rule clarification prohibits the practice of a corrugated packaging supplier from certification testing of packaging for a customer. When the corrugated supplier performs certification testing for a 4G package for a customer, the “M” number or name and address of either the corrugated supplier or the corrugated supplier’s customer may appear in the last section of the required “UN” specification markings that shows the identity of the entity certifying compliance with the hazardous materials packaging regulations.
- Box suppliers may sub-contract certification testing. Depending on whose name is listed on the Certification Test Report, several options exist regarding whose ID information appears in the UN specification marking.
- Advantages and Disadvantages of using the box supplier’s ID (“M” number or name and address) on a HazMat packaging.
  - Advantages
    - Builds rapport with the customer
    - Theoretically, the box supplier, as long as their ID is in the required set of “UN” specification markings, could sell the package to other Hazmat shippers that need or utilize the same “Design Type” packaging. In fact, there are some box suppliers who make this activity a regular part of their business. The Hazardous Material Regulations provide limits on product variability and the packaging constructions that must be observed when selling a certified package for other HazMat Packaging uses
    - As long as the box supplier’s “M” number is on the box in the specified location, the customer may not have another box company produce that box. However, the customer may use their

own “M” number, even if it is based on a Certification Test report that the first box supplier provided to the customer (as long as the 2-year certification period has not lapsed), and ask another box maker to produce the box.

➤ Disadvantages

- The box supplier, if doing the Design Qualification testing, must prepare Test Report that, at a minimum, must include the ten items listed in §178.601(l) of 49 CFR.
- Since the box supplier’s “M” number or name and address is shown in the required set of “UN” specification markings, if there are any transportation issues with the package, the box supplier will get the first call. Also, by definition in §178.2(e), a “Manufacturer “ means the person whose name and address or symbol (“M” number) appears as part of the specification markings required by this part (Part 178 of 49 CFR) and the manufacturer must certify all construction and performance requirements of the packaging. However, §173.22(a)(2) of 49 CFR states that it is the HazMat shipper’s responsibility to make sure that the package (box, innerpacking, inner container, etc) has been manufactured, assembled, and marked in accordance with the regulations. Given the complexities regarding the responsibilities of “Manufacturers” and the responsibilities of “Shippers” (the box plant’s customers), there are differences of opinion within the corrugated industry as to whether or not box suppliers will want to use their “M” number on their corrugated HazMat packagings.
- Nothing in this rule clarification prohibits a box supplier’s HazMat packaging customer from switching corrugated suppliers during the valid 2-year certification period, as long as the ID is the customer’s own “M” number (or name and address) and the box manufactured is identical in every respect. Continued use of the “+” number of the third party lab could depend on any contractual language between the third party lab and the box customer prohibiting switching of box suppliers during the certification period.
- It is not advisable for a corrugated box supplier to put their ID in the required set of “UN” markings unless that supplier has done the actual testing or the box supplier has contracted with a third party lab to perform the certification testing. . There are far too many unknowns for which the box supplier would be accepting responsibility to justify this action.

2.) Revise §§178.601(l), 178.801(l), and 178.955(i) of 49 CFR to require that the Test Report must be maintained at each location where the packaging is manufactured and at each location where the design qualification tests are conducted for the duration of the certification plus five years beyond the last certification. (The former requirement was that the Test Report was to be maintained until the package is no longer made.)

- This revision extends the time limits for which HazMat Packaging Certification Test Reports must be maintained. If your company/plant has these documents, proceed per the new requirements. At a minimum, a plant location would be expected to have Certification Test Reports for those items for which the plant has performed certification testing for a customer. It would also be a good idea to maintain purchase orders and manufacturing records for all HazMat orders.

To read the relevant sections of the Federal Register for these two changes, use the following link and go to pages 14705, 14706 and 14711 for background information and pages 14714-14716 for the actual rules.

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-07/pdf/2013-04197.pdf>

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On March 11, 2013 one of the rule amendments published by PHMSA in the Federal Register on this date could also affect the corrugated industry.

1.) Revised §172.704 (of 49 CFR) to add the following language: A hazmat employer must make a hazmat employee's record of current training available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or of an entity explicitly granted authority to enforce the HMR (Hazardous Materials Regulations).

- The purpose of the expansion of the original regulation was to formally allow authorized representatives of the Department of Homeland Security, U.S. Coast Guard, Federal Aviation Administration, Federal Railroad Administration, and the Federal Motor Carrier Safety Administration to have access to training records, as these government entities are already authorized to enforce the HazMat regulations.
- To refresh everyone's memory, the HazMat Recordkeeping requirements include the following (ref 49 CFR §172.704(d):
  - Employees' name
  - Most recent HazMat training completion date for that employee
  - A description, or copy, or the location of the training materials used to meet the HazMat training requirements
  - The name and address of the person providing the training
  - Certification that the employee has been trained and tested, as required by the regulations

To read the relevant sections of the Federal Register for this change in the HazMat packaging regulations, use the following link and go to pages 15309 and 15314 for background information and page 15326 (middle column) for the actual rule.

<http://www.gpo.gov/fdsys/pkg/FR-2013-03-11/pdf/2013-04198.pdf>

While these clarifications and changes have been published as formal additions to the rules in the HMR, they are subject to change from an appeal, should one arise.