



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 24 2002

Mr. Gary W. Koch
Gislason & Hunter LLP
P.O. Box 458
New Ulm, MN 56073-0458

Ref No. 02-0157

Dear Mr. Koch:

This responds to your letter dated June 3, 2002, regarding marking and labeling requirements and exceptions for certain explosives under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request confirmation that your client may reclassify imported packages of shot gun cartridges from Division 1.4S to ORM-D. In addition, you inquire whether these packages may contain multiple (international and domestic U.S.) markings and labels. For international transport, each package of cartridges would be marked "Cartridges, small arms, UN0012" and labeled "1.4S", and for domestic U.S. transport, would be marked "Cartridges, small arms, ORM-D."

As prescribed in § 173.63(b), small arms cartridges which have been classed as a Division 1.4S explosive may be reclassified, offered for transportation, and transported as ORM-D material when packaged in accordance with § 173.63(b)(2). In addition, the HMR do not prohibit multiple markings and labels on packages when required by authorized regulatory agencies. To maintain the effectiveness of these markings and labels, we suggest that their placement on the package be clearly distinguishable from each other.

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

Sincerely,

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards



02-0157

173.63

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VIA FACSIMILE AND MAIL

Mr. Edward Mazzulo
Director Office of Hazardous Materials Standard
DHM-10
Research Special Programs Administration
Federal Motor Carrier Safety Administration
400 7th Street SW, Room 8422
Washington, D.C. 20590

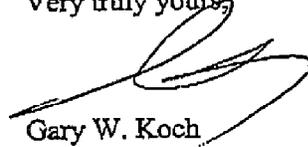
Re: Orion Cartridge Company
Our File No. 13530-002

Dear Mr. Mazulo:

I attach another copy of my June 3, 2002 letter addressed to you. After we spoke, I sent you an additional copy. I am in need of a written response as soon as possible. The absence of a response is preventing shipment of product. Could you please advise as soon as possible.

Thank you for your attention.

Very truly yours,



Gary W. Koch

GWK:jah
Enclosure

cc: Mike Stevens (via fax w/enc.)
Joe Cantey (via fax w/enc.)

NULIB:102924.1

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June 3, 2002

VIA FACSIMILE AND MAIL

Mr. Edward Mazzulo
Director Office of Hazardous Materials Standard
DHM-10
Research Special Programs Administration
Federal Motor Carrier Safety Administration
400 7th Street SW, Room 8422
Washington, D.C. 20590

Re: Orion Cartridge Company
Our File No. 13530-002

Dear Mr. Mazulo:

This letter will follow my recent telephone conversations with Mr. James Simmons, who is with the Federal Motor Carrier Safety Administration offices in Columbia, South Carolina. The subject of our discussion was the above named company, which our office represents.

We are seeking a letter from you, after talking to Mr. Simmons and his associates, that will confirm our client's ability to import shot gun cartridges and thereafter have them shipped domestically with package markings as described below. We have had some confusion, on our end, with respect to the proper markings on the boxes. I believe the matter has been resolved to the satisfaction of Mr. Simmons, but we would ask that you send us the letter of confirmation so that our shippers may have the comfort of knowing that we have made the necessary due diligence.

You are advised:

1. The items that are imported and distributed by our client, consists of shot gun cartridges.
2. Pursuant to 49 C.F.R. § 172.301, the boxes are marked with the proper shipping name ("cartridges, small arms") and the identification

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Page 2

June 3, 2002

number ("UN0012"). In addition, the Orion Cartridge Company boxes also include the designation 1.4S, which indicates the hazard class or division pursuant to the section 172.101 hazardous materials table.

3. Pursuant to § 173.63, we believe it is appropriate that small arms cartridges classified as division 1.4S explosives may be re-classified and offered for transportation domestically as "ORM-D material". Orion Cartridge Company has labeled its boxes accordingly, again using the proper shipping name and the identification number under the table found at section 172.101.

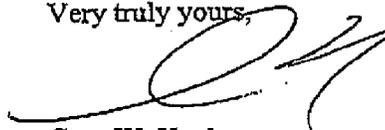
4. Prior to this time, the boxes also contained a designation of "Consumer Commodity." This item has been covered up on old boxes and will be removed on new manufacture.

5. We do not believe that the regulations prohibit the marking of the packaging with both sets of markings as described above.

6. We ask that your office issue a letter confirming the accuracy of our understanding of the regulations. Such a letter is necessary for the comfort of our domestic shippers. We would ask that if possible, you expedite your response so that we can provide the document to those shippers and begin moving Orion Cartridge Company's product.

Please call with any questions. Thank you for your attention.

Very truly yours,



Gary W. Koch

GWK:jah
cc: Joe Cantey

P.S. For your convenience, I also attach a copy of the our May 24, 2002, letter which was sent to Ms. Angela Hagen in Columbia, SC and which she circulated to Mr. Simmons.

NEJLB:101466.1

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May 24, 2002

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VIA FACSIMILE AND U. S. MAIL

Ms. Angela Hagen
Federal Program Specialist
Federal Motor Carrier Safety Administration
1835 Assembly Street
Suite 1253
Columbia, SC 29201

Re: Orion Cartridge Company
Our File No. 13530-002

Dear Ms. Hagen:

This will confirm our recent telephone conversations regarding markings on boxes that my client is using to ship shotgun cartridges.

As I informed you, an issue has arisen about whether the cartridge boxes can be "marked" in two ways pursuant to the applicable regulations. Because my client imports the shells from Spain, it wishes to mark the boxes under two applicable regulations that do not appear to us to be in conflict. Those regulations are as follows:

1. Under 49 C.F.R. § 172.301. This section requires that the boxes be marked with the proper shipping name (in this case "cartridges, small arms") and the identification number (in this case "UN0012"). It is my understanding that the Orion Cartridge Company boxes are labeled in this fashion and include the designation 1.4S which indicates the hazard class or division pursuant to the section 172.101 hazardous materials table.

2. Under § 173.63, it also appears appropriate that small arms cartridges classed as division 1.4S explosives may be re-classed and offered for transportation as "ORM-D material." Orion Cartridge Company has labeled its boxes accordingly, again using the proper shipping name and the identification number under the table found at section 172.101.

GISLASON & HUNTER LLP

Page 2

May 24, 2002

As we discussed in our telephone conversation, I could find nothing in the regulations which prohibits a package from carrying markings under both sections 173.63 and 172.301, provided of course that the markings are proper for the material being packaged. It appears in this case that marking the packages under both sections of the regulations is appropriate in that they are small arms cartridges and qualify for the described markings under both sections of the regulations.

Based on our conversations, I understand that you could not find anything in the regulations that prohibited using both sets of markings. I understand you also discussed the matter with Lt. James Hooten of the hazardous materials section of the state transportation police.

I would appreciate it if your office could confirm to Orion Cartridge Company, in writing, that the markings we have discussed would be appropriate under the regulatory scheme. Mr. James Simmons of your office has previously discussed this matter with Mr. Joe Cantey of the Orion Cartridge Company and has raised some question about the appropriateness of marking the boxes in both fashions. This has inhibited our ability to ship product. As a side note, our research indicates that other cartridge companies mark their boxes with both types of markings and that those boxes regularly move in commerce and are deemed to be in compliance with the regulatory scheme.

This issue is of some urgency so we would request your prompt reply to our request for written clarification or approval of our proposed marking.

Yours truly,



Wade R. Wacholz
wwacholz@gislason.com

WRW/kcm

CC: Mr. Joe Cantey
Mr. Gary W. Koch

MPLIB:89061.1