



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

1200 New Jersey Avenue, SE
Washington, DC 20590

FEB 14 2011

Ms. Erin N. Jarman
Environmental Scientist
URS Corporation
1600 Perimeter Park Drive, Suite 400
Morrisville, NC 27560

Reference No. 10-0242

Dear Ms. Jarman:

This is in response to your letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the retention of closure instructions. Your inquiries pertain to the requirements prescribed in § 178.2(c)(1)(ii) for retaining closure instructions for hazardous materials (hazmat) packagings, which became effective on October 1, 2010, in two final rules issued under Docket No. PHMSA-06-25736 (HM-231) (2/2/10, 75 FR 5376; 9/30/10, 75 FR 60333). We paraphrased your questions and answered them in the order you provided.

- Q1. If a recipient of a completed hazardous materials package reoffers it in commerce in the same manner that he or she received it, i.e., without ever opening or modifying the package, does the requirement prescribed in § 178.2(c)(1)(ii) to retain closure instructions for this package apply to this shipment?
- A1. As specified in § 178.2(c)(i)(A), closure instruction notification is required to inform the user of a hazardous materials packaging of all the requirements the packaging does not meet at the time of transfer. A completed package that is properly closed meets all the requirements contained in its closure instruction notification at the time it is offered for transportation. The reuse provisions in § 173.28(a) require that all packagings and receptacles used more than once be in such condition that they conform in all respects to the HMR. Therefore, provided the package is not opened and continues to meet its performance standard, the HMR does not require the person who received the package and is re-offering it for transportation to retain its closure instructions.
- Q2. The recipient of a product wishes to reuse the packaging that previously held the product to ship waste material for disposal or recovery. Section 173.12(c) states this reused packaging is not subject to the reconditioning and reuse requirements prescribed in § 173.28 and 49 CFR Part 178. Does this exception from 49 CFR Part 178 also extend to the requirement to retain the manufacturer's closure instructions for a period of 365 days as prescribed in § 178.2(c)(1)(ii)?
- A2. The exception in § 173.12(c) applies only to the reuse and reconditioning requirements for packagings prescribed in § 173.28 and 49 CFR Part 178 and not to the packaging closure instructions prescribed in § 178.2(c). These closure instructions apply to all 49 CFR Part 178

packagings, except as specifically provided in §§ 178.337-18 and 178.345-10, that must be closed before being offered for transportation. A previously authorized hazardous materials package that was closed and then re-opened has been altered. To meet its performance standard, the packaging must be properly closed in conformance with its closure instructions. See § 178.2(c). Whoever performs this closure action must obtain and retain these closure instructions for 12 months for a single or composite packaging and every 24 months for a combination packaging from the date the package is offered for transportation and must make this document available for inspection by a representative of the Department of Transportation.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink that reads "T. Glenn Foster". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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



Edmonson
§ 178.2(c)(1)(ii)
Applicability
10-0242

November 10, 2010

Mr. Charles E. Betts
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Dear Mr. Betts:

I am writing to you with regards to the new requirement for the retention of manufacturer's closure instructions that became effective October 1, 2010. Per a conversation with Mr. Arthur Pollack on November 3, 2010, we have already received a verbal clarification for these questions, however a formal written interpretation is needed.

It is clear from the February 2, 2010 Final Rule (75 FR 5376) that copies of each manufacturer's closure instruction must be retained for at least 365 days from the date that the package is offered to the transporter. However, it is unclear under which circumstances this retention requirement applies.

My questions are as follows:

- 1) If a recipient of a completed package reoffers the package for transportation in commerce exactly as they received it, without ever having opened it or modified the package, does the requirement to retain closure instructions for the package apply to this shipment?
- 2) The recipient of a product wishes to reuse the packaging that previously held their product to ship a waste material for disposal or recovery. Per 49 CFR §173.12(c), the reuse of such packaging is not subject to the reconditioning and reuse provisions contained in 49 CFR §173.28 and Part 178. Would this exception from Part 178 also extend to the requirement to retain the manufacturer's closure instructions for a period of 365 days as set out in 49 CFR §178.2(c)(1)(ii)?

Thank you in advance for your assistance. I look forward to your response.

Sincerely,

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