



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

1200 New Jersey Avenue, SE
Washington, DC 20590

JUN 2 2011

Mr. Mark A. Connolly
Manager, Transportation Regulations and Security
AkzoNobel
525 W Van Buren Street
Chicago, IL 60607-3823

Ref. No. 11-0024

Dear Mr. Connolly:

This responds to your letter of February 3, 2011 requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the HMR requirement to provide closure instructions in § 178.2(c) applies to non-bulk packages that are sealed and closed by your company then transported to distributors who deliver the packages, unaltered, to customers who consume the products without any intention of reusing the packaging to transport hazardous material.

The answer to your question is no. Under § 178.2(c)(1), each person to whom a packaging is transferred must be notified of all requirements not met at the time of transfer and must receive written closure instructions. It is the responsibility of the manufacturer or other person certifying compliance with Part 178, and each subsequent distributor of the packaging, to provide the notification. In the scenario described in your letter, the “package” (packaging and its contents) is transferred from the shipper to the end user through a distributor. The packaging is not expected to be reused for the transportation of hazardous materials (i.e., it is not being transferred to a person who is expected to open and reclose the packaging for transportation of hazardous material). Therefore, closure instructions are not required to be provided by the shipper in the scenario described in your letter.

It should be noted that in specific scenarios the shipper may also be a “subsequent distributor of a packaging.” In such scenarios, the shipper must provide notification in accordance with § 178.2(c). For example, PHMSA issued a letter of interpretation on October 10, 2006 (Ref.

No. 06-0123; attached) applicable to a specific scenario involving the transfer of intermediate bulk containers (IBCs) that were intended to be reused for the transportation of hazardous material.

I hope this answers your inquiry. If you need additional assistance, please contact this office at 202-366-8553.

Sincerely,

A handwritten signature in black ink that reads "Ben Supko". The signature is written in a cursive, flowing style.

Ben Supko
Chief, Standards Development Branch
Standards and Rulemaking Division

Attachment (1)



AkzoNobel
Tomorrow's Answers Today

Eichenlaub
§178.2(c)(1)
Applicability
11-0024

February 3, 2011

PHMSA
U.S. DOT PHH-10
Standards and Rulemaking
Charles Betts Director,
1200 New Jersey Avenue, SE
East Building, 2nd Floor
Washington, DC 20590

Subject: Request clarification of the Applicability of 49CFR178.2(c)(1) to Shippers of Nonbulk packages filled with hazardous Materials

Dear Mr. Betts,

Akzo Nobel Chemicals Inc. requests clarification of the applicability of this requirement to provide closure instructions to persons that offer filled nonbulk packages of hazardous materials. Our customers consume or products. Our distributors do not open the package prior to subsequent delivery of small volume orders to other customers.

It is my interpretation that this requirement to provide closure instructions to subsequent distributor of the packaging does not apply to shippers of packages containing hazardous materials. This is based upon the DOT definition of packaging vs a package:

In accordance with 49CFR171.8

Packaging "... Means the receptacle and any other components or materials necessary for the receptacle to perform its containment function in accordance with the minimum packing requirements.

Package "means a packaging plus its contents..."

Based upon the above definitions, the requirement to provide closure instructions applies to persons that offer nonbulk packaging which does not contain hazardous materials.

If a person chooses to provide closure instructions for packages containing hazardous materials to customers or distributors, they may do so, but are not required by DOT regulations.

Your assistance providing clarification is appreciated.

Sincerely,

Mark A. Connolly
Manager, Transportation Regulations and Security
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Email: mark.connolly@akzonobel.com



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

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

OCT 10 2006

Mr. Frits Wybenga
Technical Director
Dangerous Goods Advisory Council
Suite 740
1100 H Street, N.W.
Washington, DC 20005

Ref. No.: 06-0123

Dear Mr. Wybenga:

This is in response to your April 18, 2006 letter regarding closure notification requirements in § 178.2(c)(1) of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask this office to reconsider the interpretation in our March 4, 2005 letter to Ms. Rebecca Cernick of Bayer MaterialScience LLC (Bayer) regarding packaging closure notification requirements.

In your letter you state your view that an offeror of a hazardous material in a package is never required to provide closure notification instructions to the person to whom the shipment is delivered, apparently based on your understanding that the offeror is distributing a package rather than a "packaging" as referred to in § 178.2(c)(1). Your understanding is incorrect. In the scenario provided, Bayer supplies a hazardous material to its customer in a bulk package (specifically, an intermediate bulk container or "IBC") which is to be returned, containing the residue of the material, by the customer to Bayer. A package, as defined in 49 CFR 171.8, "means a packaging plus its contents". In this scenario, Bayer not only offers a package for transportation but also distributes a packaging to its customer for return shipment to Bayer containing its hazardous material residue and, therefore, is subject to the notification provisions of § 178.2(c)(1). If, in the scenario described in Ms. Cernick's letter, the IBCs were to be cleaned and purged prior to their return to Bayer, no notification would have been required.

You suggest that, as a result of our March 4, 2005 letter, consignees could be faced with the dilemma of having to re-close



060123

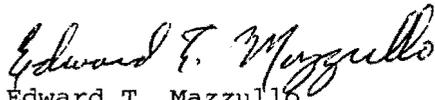
178.2(c)(1)

emptied packages from different suppliers in different ways. We agree that such complications do exist for offerors of empty packagings; however, these complications result from the offering of multiple package designs. Such complications are not a result of our interpretation of the unique scenario described in Bayer's letter. This same scenario exists for offerors of full packagings.

You indicate you see no apparent safety benefit in a supplier such as Bayer providing notification of closure requirements to its customers who will return packages. We disagree. Ensuring that a package is closed in a manner which precludes the release of a hazardous material is essential to safe transportation, regardless of whether the package is filled or contains only a residue. In accordance with § 173.29, an empty packaging containing only the residue of a hazardous material must be offered for transportation and transported in the same manner as when it previously contained a greater quantity of that hazardous material. This includes properly closing the packaging for transportation.

It remains our opinion that, in the scenario described in Ms. Cernick's letter, Bayer provides its customers with IBCs for return shipment containing residue and therefore must provide the written notification required under § 178.2(c)(1). Considering the apparent misunderstanding of this requirement, we will try to provide clarification in future rulemaking action. If your association has recommendations for change, please let us know. If you have further questions, please do not hesitate to contact this office.

Sincerely,



Edward T. Mazzullo

Director, Office of Hazardous Materials Standards