



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

February 3, 2022

Ms. Amanda White  
1125 Harvey Road  
Auburn, WA 98002

Reference No. 21-0107

Dear Ms. White:

This letter is in response to your November 12, 2021, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to an enforcement action regarding carrier responsibilities and intermediate bulk container (“IBC”) specifications. Specifically, you state that one of your company’s drivers was cited for a violation of § 178.704(e), which states that for each IBC containing a liquid, a secondary means of sealing the discharge aperture must also be provided, e.g., by a blank flange or equivalent device. You state that during the COVID-19 public health emergency, your company’s drivers have not been allowed inside shippers’ warehouses, and that your drivers take possession of the shipments after they have been packaged and loaded into sealed trailers. You ask—given this scenario—whether the carrier, the shipper, or both entities are in violation of the HMR requirements.

It is the opinion of this Office that—barring additional information pertinent to the scenario you describe—the person preparing the hazardous materials packages for transportation and loading those packages in the motor vehicle is in violation of the general IBC requirements specified in § 178.704(e) (i.e., in this instance, the shipper).

As specified in § 171.2(f), no person may transport hazardous materials unless they are transported in accordance with the HMR. In the absence of participating in the loading operation or having access to the loaded trailer, it is assumed that the carrier would rely on the shipping paper and the accompanying certification that the packages are in proper condition for transportation (i.e., using a secondary means of sealing the discharge aperture on the IBCs). Specifically, the carrier may rely on information provided by the offeror of the hazardous materials unless the carrier knows—or a reasonable person acting in the circumstances and exercising reasonable care would have known—that the information provided by the offeror is incorrect. (See § 171.8 for the definition of a “person who offers or offeror.”) Additionally, the carrier may not ignore readily apparent information that would indicate the packages are not properly sealed.

Finally, it should be noted that whenever a hazardous material has not been shipped in compliance with the HMR, the Department of Transportation will attempt to bring an enforcement proceeding against the person who first caused the transportation of the noncomplying shipment. See the formal interpretation of carrier responsibility when accepting hazardous material for transportation in commerce (June 4, 1998; 63 FR 30411)<sup>1</sup>.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,



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

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<sup>1</sup> See formal interpretation at: <https://www.govinfo.gov/content/pkg/FR-1998-06-04/pdf/98-14561.pdf>

Larson

**From:** [Raynor, T'Mia \(PHMSA\)](#)  
**To:** [Hazmat Interps](#)  
**Subject:** FW: Interpretation Response  
**Date:** Tuesday, November 16, 2021 5:03:36 PM  
**Attachments:** [image002.png](#)

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21-0107

Hello,

Please see below.

Thanks,

## **T'Mia Raynor**

Webmaster, Office of the PHMSA CIO  
US Department of Transportation  
**Pipeline and Hazardous Materials Safety Administration**  
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**From:** Amanda white <amandawhiteoc@gmail.com>  
**Sent:** Friday, November 12, 2021 5:02 PM  
**To:** PHMSA Website Manager <PHMSAWebsiteManager@dot.gov>  
**Subject:** Interpretation Response

**CAUTION:** This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hello ,

I need an interpretation regarding 178.704(e) IBC bottom discharge valve protection violation. In the particular case where I am requesting interpretation, the driver got a violation , namely , Secondary means of sealing discharge aperture (blank flange or similar device) not provided. So as a carrier that transports Hazardous Materials , is the driver responsible for this , take into account that in the context of the pandemic COVID-19 , warehouses don't allow drivers there , allowing the driver to take the cargo after sealing it.

Is it fair that a motor carrier company that transports hazardous materials is accused of his alleged violation ?

Thank you

Irina