



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

OCT 27 1998

Mr. Robert C. Blake  
Materials Management Distribution Safety  
and Regulatory Affairs  
Bayer Corporation  
100 Bayer Road  
Pittsburgh, PA 15205-9741

Ref. No. 98-0260

Dear Mr. Blake:

This is in response to your letter dated August 28, 1998, requesting clarification of responsibility for loading and unloading packages of hazardous materials under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

It is the carrier's responsibility to comply with loading and unloading requirements. However, it is possible for shippers to conduct functions of a carrier, such as loading a vehicle trailer. In the event a shipper conducts or participates in the loading process of a hazardous material onto a transport vehicle, they must comply, as does the carrier, with applicable requirements of the HMR (§ 173.30).

I hope this satisfies your inquiry. If this office can be of further assistance, please contact us.

Sincerely,

Delmer F. Billings  
Chief, Standards Development  
Office of Hazardous Materials Standards

Bayer Corporation  
100 Bayer Road  
Pittsburgh, PA 15205-8741  
Phone: 412 777-2000

August 28, 1998

*Nelson*  
§ 173.30

Mr. Edward Mazzullo, Director  
Office of Hazardous Materials Standards  
Research and Special Programs Administration  
U.S. Department of Transportation  
DHM-10  
400 7<sup>th</sup> Street, S.W  
Washington, DC 20590-0001

Dear Mr. Mazzullo:

I have been requested to seek a formal interpretation for 49CFR 173.20 "Shippers-General Requirements for Shipments of Packages" and 49CFR 177.834 "General Requirements for Loading and Unloading".

Bayer Corporation contends that Section 173.30 is merely a general duty statement requiring shippers performing loading and unloading functions to reference the specific modal regulations (174-177). Section 177.800 identifies the specific loading and unloading responsibilities of the parties involved in these processes. These two specific regulations, have created an internal argument as to who is responsible for the securement of packages in a vehicle as required in paragraph 177.834(a).

To determine this responsibility reference is made to paragraph 177.800(b) titled "Responsibility for Compliance". This paragraph states, "Unless this subchapter specifically provides that another person shall perform a particular duty, each carrier, including connecting carrier, shall perform the duties specified and comply with all applicable requirements in this part ....". Furthermore, carrier is defined in Section 171.8 as meaning "a person engaged in transportation of passengers or property". Bayer Corporation does not meet the definition of a carrier. Therefore, as paragraph 177.834(a) does not make any specific requirements of a shipper, the carrier then becomes the responsible party for compliance with this paragraph as outlined in paragraph 177.800(b).

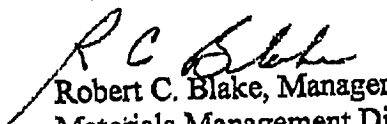
Our question concerns who is really responsible for the freight's securement. At Bayer's shipping locations, we assist the carrier during the loading process by placing 55 gallon drums, containing hazardous materials, inside of their trailers. In our carrier contracts we hold them responsible for the proper securement of all freight tendered. However,

recently a carrier has challenged our contract stating that Bayer Corporation is responsible for securement (blocking and bracing) as we are performing a carrier function under section 173.30. It is Bayer Corporation's opinion that as we are not performing a function as defined in section 171.8, "Carrier". We therefore, are not performing a carrier function. Therefore, it is the carrier's responsibility to assure the tendered shipment is properly secured by blocking and bracing according to the HMR.

Would you please advise me as to whose interpretation is correct, Bayer Corporation or the carrier?

**Your expedient response to this inquiry would be appreciated.** We are having a meeting with this carrier on September 11, 1998 and wish to finalize this disagreement during the scheduled meeting. Your response can be faxed to 412-777-2946 or by mailing it to the above address. Should you have any questions I can be reached at 800-662-2927 extension 2140.

Sincerely,



Robert C. Blake, Manager  
Materials Management Distribution Safety & Regulatory Affairs