U.S. Department
of Transportation

**Research and
Special Programs
Administration**

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

DEC 9 1999

Ref. No. 99-0259

Mr. Gene Secor
HB Fuller Company
25200 Malvina Ave.
Warren, MI 48089

Dear Mr. Secor:

This is in response to your letter dated August 25, 1999, regarding the definition of a hazardous substance under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). The example given in your letter is a product that contains 11 pounds of n-Butyl phthalate packaged in a 55-gallon drum at a 2.2% concentration.

Under § 171.8, a hazardous substance (other than radionuclides) is defined as a material, including its mixtures and solutions, that: (1) Is listed in the appendix A to § 172.101 of the HMR; (2) is in a quantity, in one package, which equals or exceeds its reportable quantity (RQ) listed in the appendix A to § 172.101 of the HMR; and(3) when in a mixture or solution, is in a concentration by weight which equals or exceeds the concentration corresponding to the RQ of the material, as shown in the table in § 171.8.

N-Butyl phthalate has an RQ of 10 pounds. To meet the definition of a hazardous substance, the quantity of n-Butyl phthalate in each package must equal or exceed 10 pounds, and the concentration by weight must be equal to or greater than 0.02% (200 PPM). Therefore, based on your example, the n-Butyl phthalate mixture meets the definition of a hazardous substance under § 171.8.

In addition, in your letter you state that you have heard trainers state that the concentration exception under the definition of a hazardous substance under § 171.8 only applies to bulk packages that weigh at least 50,000 pounds. This statement is true. For a material to exceed the RQ listed in Appendix A to

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171.8

§ 172.101 and be in a concentration by weight which does not equal or exceed the concentration corresponding to the RQ of the material as shown in the table in § 171.8, the quantity of the material in one package must be greater than 50,000 pounds.

I hope this satisfies your request.

Sincerely,

John A. Gale
Transportation Regulations Specialist
Office of Hazardous Materials Standards

EHH

§171.8 HazSub

Americas

EFTEC

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August 25, 1999 990259

171.8

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Re: RQ's and the HAZARDOUS SUBSTANCE Definition in 171.8

Gentlemen:

I know this particular item has been beaten to death but I feel some clarification on the subject will be worthwhile and is needed. Repeatedly, I have heard trainers in DOT Hazmat make cavalier statements such as the concentration requirements contained in the definition of a hazardous substance have minimal application and apply primarily to Bulk packagings containing 45000 to 50000 pounds of hazardous materials.

I completely disagree with this concept and agree with DOT's interpretation dated May 1, 1992 on the same subject. My understanding of this requirement is that to have an RQ'able product, it needs to have a component included in Appendix A to 172.101, the quantity of that component must be in a single container in an amount equal to or greater than its RQ, AND the percentage concentration by weight of that component must equal or exceed the concentration by weight given in the Hazardous Substance definition in 171.8.

By way of example, a product is made that contains n-butyl Phthalate (RQ is 10 pounds) and is packaged into 55-gallon drums. By coincidence, the drums have a net mass of 500 pounds and contain 11 pounds of n-butyl Phthalate. This is equivalent to 2.2% by weight nBP. It seems to me that, de facto, this product would be a hazardous substance, Class 9, and be RQ'ed, thus each container and the shipping paper must be marked RQ for this particular material. There are a multitude of industrial products in the market place that meet the hazardous substance definition and are packaged in either non-bulk packagings or smaller bulk packagings such as IBC's.

The disturbing thing to me is the presumption by some individuals that simply dividing the RQ by the concentration by weight percent given in the Hazardous substance definition gives the false illusion that RQ's are for bulk containers only. When done in this fashion, one would assume that the minimum container size has a Net mass of product of 50,000 pounds, i.e., bulk, in every case. Obviously, non-bulk containers and IBC's can frequently be RQ'ed and the shipping community should be aware of this. Trainers should be aware of this also.

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Is my interpretation correct? If there are any questions feel free to call me at 1-248-526-4783.

Sincerely,

Gene Secor

Gene Secor
EHS/Transportation Specialist

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