



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

1200 New Jersey Ave, SE
Washington, D.C. 20590

DEC 15 2010

Mr. Monte Shaw
Executive Director
Iowa Renewable Fuels Association
5505 NW 88th Street, #100
Johnston, IA 50131

Ref. No.: 10-0206

Dear Mr. Shaw:

This responds to your September 24, 2010 letter requesting clarification of the pre-transportation functions under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You indicate that one of your ethanol and biodiesel member producers receives methanol in a tank car, unloads the methanol, closes the valve or lid, and returns the placarded tank car containing a possible residue of the methanol. Specifically, you ask if closing the valve or lid, as described above, is considered “securing a closure” under § 171.1(b)(4) or if it means sealing the package to prevent tampering.

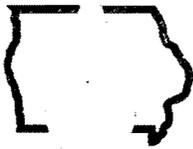
As used in § 171.1(b)(4), the phrase “securing a closure” would apply to a person who closes the valve or lid on a package or container containing a residue of hazardous material. It does not refer to sealing a package to prevent tampering.

I trust this satisfies your inquiry. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Ben Supko".

Ben Supko
Acting Chief, Standards Development Branch
Standards and Rulemaking Division



Iowa Renewable Fuels Association

5505 NW 88th Street #100 Johnston, IA USA 50131-2948 515-252-6249 FAX 515-225-0781

September 24, 2010

Winter
§ 171.1
Applicability
10-0206

U.S. Department of Transportation
PHMSA Office of Hazardous Materials Standards
Attn: PHH 10
East Building
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Sir or Madam:

We are writing to request a letter of interpretation on the meaning of the term, "securing a closure," as found in 49 CFR 171.1(b)(4). This request stems from recent confusion and disagreement that has arisen in regards to the proper application of this term.

The Iowa Renewable Fuels Association (IRFA) is the largest trade association representing Iowa's ethanol and biodiesel producers. Recently, employees from one of our producer members (an Iowa biodiesel refinery) were notified by a Federal Railroad Administration (FRA) official that their facility was required to register as a hazardous material "offerer." This proclamation came as quite a shock to these personnel because the products their facility manufactures and ships (biodiesel and glycerin) are not hazardous, do not require placards, and are generally regarded as safe. Apparently, the issue in question is related to the occasional rail tank cars of methanol this facility receives and unloads for use in its process. These workers were told by FRA that allowing any empty rail car with placards and possible chemical residue to leave their property made them an "offerer" of hazardous materials.

After reading the Hazardous Materials Regulations (HMR), specifically 49 CFR 171.1, this biodiesel producer's staff felt that their facility's activities were restricted to those which are clearly exempted from the HMR in 171.1(d)(2,3 & 4). However, these personnel were referred to an interpretation letter (see Attachment 1) which indicated that a consignee who participated in any of the pre-shipment functions listed in 171.1(b) would be considered an "offerer," and would be forced to register with the Department of Transportation using Form F 5800.2. While these employees felt their facility was able to answer "NO" to all the points in 171.1(b), there was some confusion as to what was meant by "securing a closure" in 171.1(b)(4).

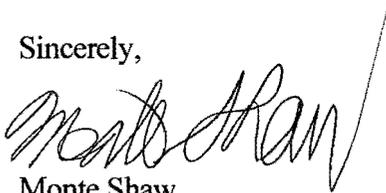
In our understanding of general industry terms, a closure is "secured" when it is locked, blocked, or sealed in some way that prevents tampering with the load. Simply closing the valve or lid would not be considered "secured." However, this biodiesel refinery's staff was told by an FRA official that PHMSA interpreted "securing a closure" to mean simply shutting a valve, closing a lid, or screwing on a cap or plug. Obviously, this runs counter to our historical understanding of this term. We have been unable to find any documented evidence that clearly defines the act of "securing a closure," and therefore, we have been unable to properly advise this biodiesel producer regarding this issue.

Since this matter is one of serious importance to our member biodiesel refineries (not to mention other similar industrial settings in which empty rail cars with hazardous chemical residue are allowed to leave a private siding), we would appreciate your prompt response to the following question:

Could you please provide a letter of interpretation to clarify the meaning of the term, "securing a closure," as found in the Hazardous Materials Regulations at 49 CFR 171.1(b)(4), specifically in regards to an empty rail car which still contains residue of a hazardous chemical and whether simply closing a lid or shutting a valve on an empty railcar is considered "securing a closure"?

We appreciate your time and attention to this matter, and we eagerly await your response. Please contact me at (515) 252-6249 or mshaw@iowarfa.org if you have any questions or need any additional information in order to provide the interpretation.

Sincerely,

A handwritten signature in black ink, appearing to read "Monte Shaw". The signature is written in a cursive style with a long, sweeping flourish extending upwards and to the right.

Monte Shaw
Executive Director

ATTACHMENT 1

PHMSA Interpretation #06-0043

May 8, 2006

PHMSA Response Letter

May 8, 2006

Mr. David Hiromura Reference No. 06-0043
NRS Logistics, Inc.
10 Bank St. Suite 1110
White Plains, NY 10606

Dear Mr. Hiromura,

This is in response to your letter dated February 16, 2006, and subsequent telephone conversation with a member of my staff requesting clarification of the terms "hazmat employer" and "offeror" under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). You describe a scenario in which hazardous materials are delivered to your facility in a portable tank. Upon delivery, the driver disconnects from the trailer chassis, leaving the portable tank to be unloaded by your employees. The carrier then returns to pick up the portable tank for return shipment to its original offeror. Your questions are paraphrased and answered below.

Q1. Are you an offeror for purposes of the HMR when your employees contact a carrier to pick up a portable tank containing the residue of a hazardous material?

A1. As provided in § 171.8, an "offeror" is any person who: (1) performs, or is responsible for performing, any pre-transportation function required under the HMR for transportation of a hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce. Pre-transportation functions are functions specified in the HMR that are required to assure the safe transportation of a hazardous material in commerce, including, but not limited to: (1) determining the hazard class of a material; (2) selecting a packaging; (3) filling a packaging; (4) securing the closures on a filled or partially filled packaging; (5) marking and labeling a package; (6) preparing a shipping paper; (7) providing and maintaining emergency response information; and (8) certifying that a hazardous material is in proper condition for transportation in conformance with HMR requirements. If your employees perform any pre transportation functions to prepare the portable tank containing the residue of a hazardous material for transportation in commerce, then you are an offeror for purposes of the HMR.

Note that if you contract with the carrier to perform all pre-transportation functions related to the residue shipment, including securing the closures on the portable tank, preparing the shipping paper, providing emergency response information, and certifying the shipment is in proper condition for transportation in conformance with HMR requirements, then you are not considered an offeror for purposes of the HMR.

Q2. Would your company be responsible for: (1) providing hazardous materials training to your employees; (2) implementing a security plan; and (3) registering with the Department of Transportation as a person who offers or transports hazardous materials?

A2. Generally, empty packagings containing a residue of a hazardous material must be transported in the same manner as when they previously held a greater quantity of the material. If your employees perform any pre-transportation functions to prepare the residue shipment for transportation in commerce, then those employees must be trained in accordance with requirements in Subpart H of Part 172 of the HMR. Further, persons who offer for transportation or transport certain hazardous materials in commerce are required to register with PHMSA in accordance with 49 CFR Part 107, Subpart G and to develop and implement a security plan in accordance with Subpart I of Part 172. See the discussion under A1 above.

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

Sincerely,

Edward Mazzullo, Director
Office of Hazardous Materials Standards