



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

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

APR 11 2011

Thomas W. Ferguson, DGSA
Technical Consultant
The Council on Safe Transportation
of Hazardous Articles, Inc.
7803 Hill House Court
Fairfax Station, VA 22039

Reference No. 11-0027

Dear Mr. Ferguson:

This is in response to your February 3, 2011 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to closure instructions. You presented a transportation scenario and ask how these requirements apply to a company that does not fill or close a package but only reoffers it for transportation? Your scenario is paraphrased and addressed below.

In your letter, you state a packaging manufacturer of a UN 4G fiberboard box with four inner plastic containers produces closure instructions for the packaging that clearly indicate the proper way to close each inner container (using the tops and seals provided), how to place each inner container in the outer packaging (with cushioning), and how to seal the outer packaging (using the tape provided). The manufacturer then sells and ships the packagings to Company A. Company A fills the inner packagings with an authorized hazardous material for the packaging, properly closes the inner and outer packagings, and subsequently ships the completed package to Company B. Company B is a storage and reseller company. It does not open or alter the package. Company B receives an order from Company C for the hazardous material and ships the package to Company C for its eventual use.

You state it is your organization's understanding that the closure notification requirements prescribed in § 178.2(c) require the packaging manufacturer to prepare the closure instructions and provide them to Company A, the company that fills and closes the package, in either an electronic format or permanently printed or embossed on the packaging. You also state it is your organization's understanding that Company A must retain a copy of closure instructions and make them available for inspection for 365 days from the date the package is offered for transportation, but that Company B is not required to do this because the package was never opened.

Your understanding is correct. As specified in § 178.2(c)(i)(A), closure instruction notification is required to inform the user of a hazardous materials packaging of all the requirements the packaging does not meet at the time of transfer. A completed package that is properly closed

meets all the requirements contained in its closure instruction notification at the time it is offered for transportation. The reuse provisions in § 173.28(a) require that all packagings and receptacles used more than once be in such condition, including closure devices and cushioning materials, that they conform in all respects to the HMR. Therefore, provided the package is not opened and continues to meet its performance standard, the HMR do not require the person who received the package and is re-offering it for transportation to retain its closure instructions as prescribed in § 173.22(a)(4). In addition, please note that effective October 1, 2010, the time period for retaining the closure instructions prescribed in § 173.22(a)(4) was revised to 12 months for single or composite packagings and 24 months for combination packagings in response to an appeal to the February 2, 2010 final rule. This change was published in a second final rule issued under Docket No. HM-231 on September 30, 2010 [75 FR 60333]. The appellant has since requested that we rescind this change and reinstate the 365 day retention requirement. We will consider this change in a future rulemaking.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

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



COUNCIL ON SAFE TRANSPORTATION
OF HAZARDOUS ARTICLES, INC.

Edmonson
§173.22 (a)(4)
§178.2 (c)
Shipper's Responsibility & Applicability
11-0827

February 3, 2011

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Dear Dr. El-Sibaie:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits a request for interpretation regarding the requirement to maintain closure instructions identified in §178.2(c) and required to be maintained by §173.22(a)(4).

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials.

§173.22(a)(4) requires a person using DOT Specification or UN Standard packaging subject to the requirements of Part 178 to prepare and close the packaging in accordance with instructions provided by the packaging manufacturer or subsequent distributor. In the Final Rule HM-231 issued February 2, 2010, PHMSA revised §173.22(a)(4) to require a shipper to maintain package closure instructions for a minimum of 365 days after offering the package for transportation. However, in referencing a "package" in the discussion of "packaging" closure instructions, confusion has been introduced as to whom is actually required to maintain the closure instructions.

In the preamble at paragraph E, *Packaging closure instructions*, PHMSA states "In accordance with §178.2 (c) a packaging manufacturer and subsequent distributors of the packaging must provide written instructions for assembling and closing the packaging so that it will maintain its integrity during transportation.

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Consider the following scenario. A packaging manufacturer produces a 4G box with 4 inner plastic containers. The manufacturer produces closure instructions that clearly indicate the proper way to close each inner container (using the tops and seals provided), how to place each inner container in the outer packaging (with cushioning), and how to seal the outer package (using specified tape provided).

The manufacturer then sells and ships the packagings to Company A. Company A fills the packagings, properly closes the packagings, and subsequently ships the completed package (packagings and hazardous material contents) to Company B. Company B is a storage and reseller and does not open the package. Company B receives an order from Company C for the hazardous material, and the completed package as prepared for shipment by Company A is shipped to Company C for eventual use.

It is clear §178.2(c) requires the packaging manufacturer to produce closure instructions and provide them to Company A when selling or distributing packaging. The instructions may be paper or electronic, or permanently printed or embossed on the packaging. It is also clear from the Preamble to HM-231 and per §173.22(a)(4) that Company A, who must fill and close the packaging in accordance with the closure instructions, must retain a copy of the closure instructions and have them available for inspection for a period of 365 days from the date the completed package is offered for transportation.

However, what is the applicability of §173.22(a)(4) to Company B who does not fill or close the package, but only reoffers the package for transport? Company B will certify on the shipping paper that the package was prepared in accordance with the applicable requirements in 49 CFR. But since the package was never opened, the closure instructions were never needed, utilized or provided to them by Company B.

COSTHA contends that the §178.2(c) notification requirements apply to the manufacturer of the packaging and each subsequent distributor of that packaging. §178.2(c) does not provide any such applicability to the secondary shipping of a package that was properly closed by the original offeror and not reopened and reclosed by Company B. Phrased another way, the closure instruction maintenance requirements of §173.22(a)(4) are applicable to a shipper who performs the act of closing the packaging prior to it being offered for transportation, and would also include shippers who open and reclose those packagings (for example, packaging covered by §173.28). We believe §173.22(a)(4) is not applicable to a shipper who subsequently reoffers a package that has not been opened and reclosed since this shipper did not actually perform the closure function.

As this situation has immediate and significant enforcement liability, we would appreciate a timely response.

Sincerely,



Thomas W. Ferguson, DGSA
Technical Consultant