



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

July 2, 2024

Fern B. Miller, Esquire  
Pillinger Miller Tarallo  
1880 John F Kennedy Blvd  
Suite 1803  
Philadelphia, PA 19103

Reference No. 24-0004

Dear Ms. Miller:

This letter is in response to your January 15, 2024, email and subsequent phone conversation requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to elemental mercury. Specifically, you ask for clarification regarding the need for closure instructions when shipping 2,000 lbs. of “UN2809, Mercury” by motor vehicle in an 18.5-gallon non-specification reusable metal packaging. It is your understanding that for a non-bulk packaging allowed in § 173.164(d), “UN2809, Mercury” may be shipped in non-specification reusable metal packagings and, therefore, no closure instructions are required.

Your understanding is correct. Closure instruction requirements in §§ 173.22(a)(4) and 178.2(c) apply to specification packagings only. A hazardous material properly described as “UN2809, Mercury” may be packaged in *non-specification* [emphasis added] reusable metal packagings as prescribed in § 173.164(d)(2) for transportation other than by aircraft.

We note that “UN2809, Mercury” is subject to the HMR only when offered for transportation by aircraft or vessel unless the material is a hazardous substance or hazardous waste. Given the quantity of transport, it meets the definition of a hazardous substance and, therefore, is subject to the HMR when transported by motor vehicle.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dirk Der Kinderen'.

Dirk Der Kinderen  
Chief, Standards Development Branch  
Standards and Rulemaking Division

**From:** [INFOCNTR \(PHMSA\)](#)  
**To:** [Dodd, Alice \(PHMSA\)](#)  
**Cc:** [Hazmat Interps](#)  
**Subject:** FW: Letter of Interpretation Request  
**Date:** Wednesday, January 17, 2024 4:49:01 PM

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Hi Alice,

Please see the below interpretation request.

Let me know if you need anything.

Regards,

-Breanna

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**From:** Fern B. Miller <[fmiller@pmtlawfirm.com](mailto:fmiller@pmtlawfirm.com)>  
**Sent:** Monday, January 15, 2024 11:05 AM  
**To:** INFOCNTR (PHMSA) <[INFOCNTR.INFOCNTR@dot.gov](mailto:INFOCNTR.INFOCNTR@dot.gov)>  
**Subject:** Letter of Interpretation Request

**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.

Good morning –

I would like to request a formal letter of interpretation regarding the following:

This letter is to seek clarification of the Hazardous Material Regulations, 49 CFR 171-180, regarding the need for closure instructions when shipping elemental mercury in a non-specification reusable metal container. My client is a recycler that removes and collects mercury from old lights and batteries and ships the mercury via common carrier over-the-road from their recycling facility to a company that retires the mercury, both located in the United States. The retiring facility supplies a 2204 lb. (metric ton) reusable metal container to be used to ship the elemental mercury. The manufacturer of the container advertises that the container satisfies the HM181 DOT requirements. There are no DOT or UN markings on the container. Closure instructions did not accompany the reusable metal container and the retiring company that provides the container advised that there were no instructions.

I am seeking a letter of interpretation regarding whether closure instructions are required when shipping 2000 pounds of elemental mercury in a non-specification reusable metal container over-the-road by trailer. I have reviewed 49 CFR 173.164, 49 CFR 172.101, and 172 CFR 240. It is my understanding from telephone conversations with two different individuals at the Hazardous Materials section of the DOT, that a non-specification metal container is the appropriate container to use when shipping 2000 pounds of elemental mercury and that the Code of Federal Regulations (CFR), does not require closure instructions when shipping elemental mercury in this type of container. It is also my understanding that there is no requirement of the manufacturer or supplier of the container to provide closure instructions since this is a non-specification metal container.

I am confused however by the requirements of 49 CFR 178.2(c) dealing with “Specifications for Packaging” and 49 CFR 173.22(4)(ii) “Shipper’s Responsibility”, as they relate to the need for and retention of closure instructions,

and I am seeking clarification. Specifically, are the "closure instruction" requirements stated at 49 CFR 178.2(c)1(i) and 49 CFR 173.22(4)(ii) applicable to a non-specification metric ton reusable metal container transporting elemental mercury over-the-road in the United States.

I appreciate any guidance you can give me whether closing instructions are required when shipping 2000 pounds of mercury in a non-specification reusable metal container. I may add that prior to being picked up, the container is placed on a pallet twice its weight, banded and then shrink wrapped to the pallet.

Very truly yours,

Fern B. Miller, Esquire

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