



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

1200 New Jersey Avenue, SE
Washington, DC 20590

June 23, 2022

Ms. Doris Soran
George W. Wright & Associates, LLC
505 Main Street, Suite 106
Hackensack, NJ 07601

Reference No. 21-0102

Dear Ms. Soran:

This letter is in response to your November 10, 2021, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the definition of an “undeclared hazardous material.” Specifically, you ask whether the requirement in § 171.16(a)(4) to file a Hazardous Materials Incident Report on DOT Form F 5800.1 is triggered when:

- (A) a shipping document fails to disclose a hazardous material;
- (B) a vehicle, container, or package fails to disclose exterior hazardous communication;
- or
- (C) both conditions of (A) and (B) exist.

As defined in § 171.8 of the HMR, an undeclared hazardous material is a hazardous material that is subject to any hazardous communication requirements and is offered for transportation without **any** visible indication to the person accepting the hazardous material for transportation that a hazardous material is present. The requirements of § 171.16(a)(4) specifically apply to a discovered undeclared hazardous material and not merely a shipment for which any given required piece of hazard communication is missing.

Please note that while an “undeclared hazardous material” is strictly defined in § 171.8, any omission of required hazard communication is a violation of the HMR, even when § 171.16(a)(4) does not apply.

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

Sincerely,

A handwritten signature in blue ink that reads "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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

From: [Foster, Glenn \(PHMSA\)](#)
To: [Dodd, Alice \(PHMSA\)](#); [Hillman, Kenetha CTR \(PHMSA\)](#)
Subject: FW: Definition of Undeclared Hazardous Material (49 CFR Sec. 171.8)
Date: Wednesday, November 10, 2021 12:18:22 PM
Attachments: [20211110115001808.pdf](#)

Alice and Kenetha.

Can one of you check in the attached as a LOI and assign to the next Specialist in the rotation, please?

Thanks,
Glenn

From: Doris Soran <dsoran@wright-associate.com>
Sent: Wednesday, November 10, 2021 11:56 AM
To: Foster, Glenn (PHMSA) <Glenn.Foster@dot.gov>
Cc: George Wright <gwright@wright-associate.com>
Subject: Definition of Undeclared Hazardous Material (49 CFR Sec. 171.8)

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.

Please see attached letter, dated November 8, 2021, from George W. Wright, Esq.

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Attorneys At Law

GEORGE W. WRIGHT
& ASSOCIATES, LLC

George W. Wright*
Narinder S. Parmar*

November 10, 2021

VIA E-MAIL (glenn.foster@dot.gov)

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

**Re: Definition of Undeclared Hazardous
Material (49 CFR Sec. 171.8)**

Dear Mr. Foster:

Our office counsels transportation industry clients with respect to the United States Department of Transportation's ("DOT's") regulations, including the Hazardous Materials Regulations (HMR).

Our review of 49 CFR Sec. 171.8 discloses an ambiguity in the definition of "Undeclared Hazardous Material" for which we respectfully request the PHMSA's advices. Section 171.8 recites, in relevant part, that an "Undeclared Hazardous Material" is one governed by the hazardous communication requirements and:

* * *

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(2) offered for transportation in commerce without any visible indication to the person accepting the hazardous material for transportation that a hazardous material is present, on *either* an accompanying shipping document *or* the outside of a transport vehicle, freight container, or package (emphasis added).

*Member NJ & NY Bars



Attorneys At Law

GEORGE W. WRIGHT
& ASSOCIATES, LLC

Sec. 171.16 requires the filing of a "Hazardous Materials Incident Report" (DOT Form F 5800.1) within 30 days in the event an undeclared hazardous material is discovered.

We would greatly appreciate the agency's clarification whether the duty to file a Form F 5800.1 pursuant to Section 171.16 is triggered if either of the following conditions are present: (A) a deficient shipping document failing to disclose a hazardous material and/or (B) a deficient vehicle, container or package placard or label failing to disclose a hazardous material.

Alternatively, is the reporting duty triggered only when both conditions (A) and (B) exist?

We thank you for your attention and assistance.

Very truly yours,

George W. Wright

GWW:ds