



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

1200 New Jersey Ave., S.E.
Washington, DC 20590

NOV 02 2011

Mr. Henry E. Seaton Esq.
Law Office of Seaton & Husk, L.P.
2240 Gallows Road
Vienna, VA 22182

Reference No.: 11-0140

Dear Mr. Seaton:

This responds to your June 8, 2011 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the definition of a hazardous material employee. You reference a March 29, 2011 (Reference No. 11-0029) letter in which the Pipeline and Hazardous Materials Safety Administration (PHMSA) determined that if a broker of transportation services performs any of the hazmat functions the person would be considered a hazmat employee under the HMR. In your scenario, your law firm represents a number of transactional property brokers licensed by the Federal Motor Carrier Safety Administration (FMCSA) to arrange transportation for compensation pursuant to 49 CFR 371. On occasion, these clients are asked to arrange for the transportation of hazardous materials as defined by 49 CFR 171.8. You ask whether a transactional property broker meets the definition of a hazardous materials employee who requires hazardous material training.

As specified in § 171.1, the HMR govern the safe transportation of hazardous materials in intrastate, interstate and foreign commerce. Generally, a "hazmat employee" is any person who is employed on a full-time, part-time, or temporary basis and who, in the course of such employment, directly affects hazardous materials safety. (See § 171.8 for the complete definitions of "hazmat employee" and "hazmat employer.") In other words, a person who performs duties that are regulated under the HMR is considered to be a hazmat employee. A broker is considered a "hazmat employee" under § 171.8 if he or she performs a function of an offeror or carrier. Functions of an offeror include, but are not limited to: selection of the packaging for a hazardous material; physical transfer of the hazardous materials to a carrier; classifying hazardous materials; preparing shipping papers; reviewing shipping papers to verify compliance with the HMR or international equivalents; signing hazardous materials certifications on shipping papers; placing hazardous materials markings or placards on vehicles or packages; and providing placards to a carrier.

In addition, a carrier is defined in § 171.8 to mean a person who transports passengers or property in commerce by rail car, aircraft, motor vehicle, or vessel. If what you describe in your letter as a “broker of transportation services” does not perform any of these functions, this person would not be considered a “hazmat employee” under the HMR, and would not be required to have hazardous material training.

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

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
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June 8, 2011

Andrews
3171.8
Definitions
11-0140

T. Glenn Foster
Chief, Regulatory Review
and Reinvention Branch
U.S. Department of Transportation
Pipeline and Hazardous Materials
Safety Administration
1200 New Jersey Ave., SE
Washington, DC 20590
Via U.S. Mail

Re: Request for Interpretation of 49 C.F.R. 171.8 - Whether a Transactional Property Broker Meets the Definition of a Hazardous Material Employee

Dear Mr. Foster:

Our law firm represents a number of transactional property brokers licensed by the FMCSA to arrange transportation for compensation pursuant to 49 C.F.R. 371. On occasion, these clients are asked to arrange for the transportation of hazardous materials as defined by 49 C.F.R. 171.8. In a recent interpretation (11-0029) you provided some guidance relative to the need for training of property brokers as hazardous materials employees under relevant regulations.

We believe this interpretation was general in nature and should not apply where the function of transactional property brokers is narrowly defined as set forth herein. We request a clarification and the provision of additional guidelines with respect to this matter.

In the ordinary course of their business, pure transactional brokers arrange for transportation by an authorized carrier. "An employee or bona fide agent of a carrier is not a broker within the meaning of the regulations when it offers to arrange transportation of shipments which the carrier has accepted and is legally bound to transport." See 49 C.F.R. 371.2.

Similarly, transactional brokers do not provide the functions of an "Offeror" which you enumerated in that they do not select the packaging for hazardous materials, physically transfer shipments to a carrier, classify hazardous materials, prepare shipping documents, review shipping papers to verify HMR compliance, sign hazardous materials certifications or place hazardous material marking or placarding on vehicles or packages.

The role of the transactional broker is to negotiate shipping rates with carriers and transmit shipping instructions from the consignor or customer to the carrier to permit pickup. Bills of lading and placards are typically prepared and exchanged between the consignor (or customer) and the carrier involved.

By statute and regulation, a broker is not a carrier and does not meet the definition set forth in Section 171.8.

In your attached letter to Mr. Maham you opine that if a "broker of transportation services" performed any of the enumerated functions, the person would be considered a "hazmat employee" under the HMR. The purpose of this letter is to confirm that the reverse is true and that when a transactional broker limits its services as set forth above and performs none of the functions listed in your March 29, 2011 letter, special hazardous materials training otherwise required by "hazmat employees" is not required.

Yours truly,



Henry E. Seaton

HES/nre