



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

AUG 22 2012

Mr. Kenneth Kelton
Safety Director
Brothers Group, Inc.
513 East Desoto Avenue
St. Louis, MO 63147

Reference No. 12-0085

Dear Mr. Kelton:

This is in response to your letter postmarked March 21, 2012 requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to marking and placarding of a Class 9 (miscellaneous) hazardous material shipment, and hazardous material endorsement requirements on a commercial driver's license (CDL).

In your letter, you describe a shipment that consists of 72, 55-gallon drums of "UN 3082, Environmentally hazardous substances, liquid, n.o.s. (2,6-Di-tert-butylphenol), 9 (miscellaneous), PG III, Marine Pollutant," has a total weight of 34,603 pounds, and is being transported in a motor vehicle trailer from St. Louis, MO, to Houston, TX. The drums will be loaded into another container in Houston and transported by motor vehicle to the coast for eventual overseas shipment via vessel transportation. Based on a September 14, 2011 letter my agency issued under Reference No. 11-0171, you state it is your understanding that because the shipment you describe is not regulated as a hazardous material when transported domestically, your company is not required to place placards on all four sides of the trailer or container used to transport this shipment while in the United States. You further state it is your understanding that the container of drums must be placarded when offered for transportation by vessel.

Your understanding is correct. Marine pollutants transported in non-bulk packages are excepted from regulation under the HMR unless they are transported by vessel or meet a hazard class definition (see § 171.4(c)). Therefore, marine pollutants are not subject to the requirements for shipping papers, markings, labels or placards when transported by highway, rail or air. However, please note that §§ 171.22(d) and 171.25(a) provide that a hazardous material subject to the requirements of the International Maritime Dangerous Goods (IMDG) Code, that is offered or intended for eventual transportation by vessel, but not subject to the HMR may be transported in the U.S. when described, marked and labeled in accordance with the IMDG code.

In addition, under § 172.504(f)(9), a Class 9 placard is not required for domestic transportation. The HMR defines "domestic transportation" as specified in § 171.8, to include not only transportation exclusively within the United States, but also that domestic

portion of "international transportation" which occurs between places within the United States. Therefore, your driver is not required to display Class 9 placards on a vehicle that contains Class 9 hazardous material while it is within the United States but, if applicable, the vehicle may be required to be marked. Section 172.301(a)(3) requires a transport vehicle or freight container that encloses 4,000 kg (8,820 pounds) or more of a single hazardous material in non-bulk packages when the entire shipment has the same proper shipping name and is loaded at the same facility to be marked on each side and each end with the identification number of the hazardous material. Also, drums containing Class 9 material must be marked with the applicable proper shipping name and identification number and labeled with the Class 9 hazard warning label to comply with §§ 172.301(a) and 172.400(a)(5) of the HMR.

You also state it is your understanding from the Reference No. 11-0171 letter that a hazmat endorsement is not needed on a CDL when the material you described is transported domestically. Your understanding is correct. Under the HMR, a driver is not required to have a CDL with a hazmat endorsement to transport a Class 9 material by motor vehicle in the United States, even when the eventual destination of the shipment is outside of the United States. However, the HMR does require that the driver must receive hazardous materials training (see §§ 177.800(c) and 177.816). This training must include general awareness, function-specific, safety, and security awareness training as specified in § 172.704(a) of the HMR, as well as driver training in the applicable requirements of Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR parts 390 through 397) and the procedures necessary for the safe operation of that motor vehicle. Training conducted to satisfy compliance with the current Federal Motor Carrier Safety Administration (FMCSA) requirements for a CDL with a tank vehicle or hazardous materials endorsement, may be used to satisfy the training requirements set forth in § 172.704 to the extent that such training addresses the training components specified in § 172.704(a). Where this training does not satisfy the HMR, the employer or self-employed person performing these tasks must provide additional training that satisfies these requirements (see § 177.816(c) and (d)). In addition, CDLs and hazardous materials endorsements are regulated by FMCSA in accordance with 49 CFR Part 383. Questions regarding FMCSA regulations should be directed to the appropriate FMCSA field office. A list of FMCSA field offices and contact information is available at "<http://www.fmcsa.dot.gov/about/contact/offices/displayfieldroster.asp>," or you may contact FMCSA at their headquarters offices in Washington, D.C., at (202) 366-6121.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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

3-2112

Edmonson
§172.504
Placarding
12-0085

BROTHERS GROUP INC.

513 EAST DESOTO AVENUE
PO BOX 470218
ST. LOUIS, MO 63147
314 231 0805 FAX 314 231 6875

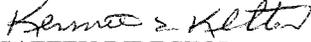
U S DOT
PHMSA Office Of Hazardous Materials Standards
Attn: PHH-10
East Building
1200New Jersey Ave, SE.
Washington, DC 20590-0001

Dear Sir Or Madam

I am requesting a clarification for a shipment of 72 drums 34603 lbs of UN 3082, ENVIRONMENTALLY HAZARDOUS SUBSTANCES, LIQUID, N.O.S.

(2,6-DI-TERT-BUTYLPHENOL) 9, III MARINE POLLUTANT

This shipment was loaded at one facility with no other product on the trailer. The shipment is going from St Louis Mo to Houston TX and from there it will be loaded on a container and taken to the coast for shipment over seas. I know it must be placard for the vessel over seas. I believe this shipment can be transported to Houston TX without placards according to 49 CFR 172.504 and I believe that 49CFR 172.301 (3) does not apply to this shipment because this is not consider a hazardous material when shipped domestically.(172-301 (3) Large Quantities Of A Single Hazardous Material In Non Bulk Packages) sometimes referred to as the 8820 lb rule. According to PHMSA Interpretation # 11-0171 the driver does not need the hazmat endorsement to transport domestically is another reason to believe that I would not be required to mark the trailer on all 4 sides. If it is decided that I need to mark the trailer does the driver then need the hazmat endorsement? Thank you for your help on this matter.

BROTHERS GROUP INC
513 EAST DESOTO AVE
ST LOUIS MO 63147
KENNETH KELTON

SAFTEY DIRECTOR
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