



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

JUN - 3 2008

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

Captain Bruce Bugg
Motor Carrier Compliance Division
Georgia Department of Public Safety
PO Box 1456
Atlanta, GA 30371

Ref. No. 01-0054

Dear Captain Bugg:

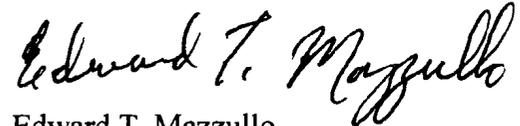
This letter serves as a rescission of our April 20, 2001 letter responding to your request for clarification of requirements for the transportation of batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you asked if electric storage batteries resting on a rubber friction mat and pushed against the forward wall of a compartment meets the requirements of § 173.159(e)(2). Upon further review, we find our previous response to your question to be incomplete. Your question is answered below. We apologize for any inconvenience this may have caused.

Electric storage batteries must be loaded or braced in order to prevent damage and short-circuits in transit. It is the opinion of this Office that placing electric storage batteries on a slip-resistant surface such as a rubber friction mat and pushing the batteries against the forward wall of a less-than-full compartment may not by itself be sufficient to achieve the performance standards of § 173.159(e)(2) and therefore, the batteries may have to be loaded differently or braced in a manner to achieve the standard. However, loading and transporting the batteries without bracing using a method that includes placing the batteries on a slip-resistant surface and pushing the batteries against the forward wall may be sufficient. For example, a number of distributors of electric storage batteries use a method of loading batteries in a specially-designed "Mickey Body" truck that incorporates the use of a slip-resistant surface and tightly loaded batteries pushed toward the forward and interior walls of a less-than-full compartment in combination with shelves in compartments that slope downward to the interior of the compartment. This method of loading and transport has had widespread and historical use without incidence of damage or short circuiting while in transit. This information is described in greater detail in our enclosed letter to Mr. Dan Lane of the Interstate Battery System of America, Inc. (Ref. no. 08-0067). If a company transports the electric storage batteries as described in the enclosed letter, then the batteries do not need to be braced. However, if evidence indicates batteries transported using this loading method and truck design are damaged or short circuited while in transport, then the performance standards of § 173.159(e)(2) are not achieved. This does not necessarily mean the batteries

must then be braced but rather that the batteries must be loaded differently or braced in a manner to prevent damage or short circuiting while in transit.

I have enclosed a copy of prior correspondence with Mr. Dan Lane of Interstate Battery System of America, Inc. related to this issue. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Edward T. Mazzullo". The signature is written in a cursive style with a large, prominent initial "E".

Edward T. Mazzullo
Director
Office of Hazardous Materials Standards

Enclosure:

Letter of Interpretation 08-0067



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

JUN -3 2008

Mr. Dan Lane
Interstate Battery System of America, Inc.
12770 Merit Drive, Suite 1000
Dallas, TX 75251

Ref. No. 08-0067

Dear Mr. Lane:

This responds to your March 6, 2008 letter requesting clarification of the "loaded" or "braced" requirement of § 173.159(e)(2) for the transportation of electric storage batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether our letter dated April 20, 2001 (Ref. no. 01-0054) to Captain Bruce Bugg, of the Georgia Department of Public Safety, supersedes the response given to your company by the Associate Administrator regarding an application for an exemption (now referred to as a special permit) from § 173.159(e) of the HMR.

You provide a copy of the April 20, 2001 interpretation letter, a copy of the Associate Administrator's response to the application, and copies of the materials originally submitted with the application. The April 20, 2001 letter states that "electric storage batteries resting on a rubber friction mat that are pushed forward so they are against the forward wall of a compartment do not meet the requirements of § 173.159(e)(2) because the batteries are not braced to prohibit lateral or aft shifting." The letter from the Associate Administrator states that your application was denied as unnecessary based on the conclusion that electric storage batteries loaded and transported in the manner presented in the application meets the requirements of § 173.159(e)(2). And finally, the materials submitted with the application provide information, data, and visual evidence supporting your claim that electric storage batteries loaded without bracing, and transported in specially-designed motor vehicles known as "Mickey Body" trucks, prevents damage and short circuits in transit in conformance with the requirements of § 173.159(e)(2). You indicate that some enforcement officials are asserting that the April 20, 2001 letter renders the letter from the Associate Administrator invalid and thus, are requiring your company to strap (brace) electric storage batteries transported in your specially-designed "Mickey Body" trucks.

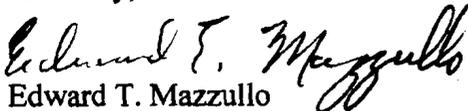
The April 20, 2001 interpretation letter does not supersede nor affect the response your company received from the Associate Administrator concerning your application for a special permit. Interpretations do not create legally-enforceable rights or obligations but are provided to help the public understand how to comply with the HMR. Based on a review of the materials you provided, this Office agrees with the original response from the Associate Administrator that electric storage batteries loaded and transported in "Mickey Body" trucks as described in the application achieves the performance standards of § 173.159(e)(2). According to your

application, a Mickey Body truck is designed so that shelves in the compartments of a truck slope downward from the exterior toward the interior of the vehicle and the shelves are covered with a slip-resistant surface. Additionally, when loaded, the majority of the batteries are wrapped in plastic; the batteries are placed tightly to the front and interior of each compartment that is less-than-full; and the batteries are not stacked. If your company or another company transports batteries as described, then the batteries do not need to be braced. However, if evidence indicates batteries transported using this loading method and truck design are damaged or short circuited while in transport, then the performance standards of § 173.159(e)(2) are not achieved and the batteries must be loaded differently or braced in a manner to prevent damage or short circuiting while in transit.

Our letter of April 20, 2001 to Captain Bruce Bugg failed to fully consider the information provided by your original application for a special permit relative to the questions posed. Confusion may arise due to the similarity of the loading method described by Captain Bugg and the loading method used by your company. It is the opinion of this Office that, as was posed by Captain Bugg, placing electric storage batteries in a less-than-full compartment with a slip-resistant surface or pushing the batteries against the forward wall in combination with a slip-resistant surface by itself may not be sufficient to achieve the performance standards of § 173.159(e)(2). These batteries may need to be loaded differently or braced to meet the requirements of § 173.159(e)(2). However, loading electric storage batteries in a "Mickey Body" truck as described above differs in that, for example, shelving in the compartments of the truck slopes downward to the interior of the compartment to provide further resistance against shifting or jostling of the batteries that could cause damage or short circuiting. Additionally, information provided by your company as well as a number of other companies that distribute electric storage batteries indicates the widespread and historical use of this loading method and truck design without incidence of damage or short circuiting while in transit. Therefore, it is the opinion of this Office that this loading method and truck design sufficiently provides for achievement of the performance standards without having to brace the batteries. We will address the discrepancy between the Associate Administrator's letter and the letter to Captain Bugg by rescinding the April 20, 2001 letter and issuing a new letter to Captain Bugg noting that electric storage batteries loaded in a "Mickey Body" truck as described in your application is a method of achieving the performance standard of § 173.159(e)(2).

I have enclosed a copy of correspondence with Captain Bruce Bugg of the Georgia Department of Public Safety related to this issue. If we can be of further assistance, please contact us.

Sincerely,


Edward T. Mazzullo

Director

Office of Hazardous Materials Standards

cc:

Charles A. Key
Auto Supply Company, Inc.

Randy Clark
Tri-State Battery Supply, Inc.

Arthur Calhoun
Central Georgia Battery Co.

Rodney Burns
Continental Battery Company

Carolina L. Mederos
Patton Boggs LLP

Enclosure:

Letter of Interpretation 01-0054