



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

JAN - 5 2006

400 Seventh Street, S.W.
Washington, D.C. 20590

Mr. Terry Campbell
Director of Transportation
U.S Battery Manufacturing Company
1675 Sampson Avenue
Corona, CA 92879-1889

Ref. No. 05-0297

Dear Mr. Campbell:

This responds to your letter of November 14, 2005, and subsequent telephone conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to electric storage batteries and storage incidental to transportation. According to your letter, your company transports batteries containing corrosive battery fluid from one shipping point without addition products loaded on your trucks. You state these shipments are excepted from subchapter C of the HMR as provided by § 173.159(e). Your questions are paraphrased and answered as follows:

- Q1: If all requirements in §173.159(e) of the HMR are met, are placarding or driver hazardous materials endorsements required?
- A1: No. Under § 173.159(e), electric storage batteries must: (1) be the only hazardous material on the vehicle; and (2) be loaded or braced so as to prevent damage and short circuits. In addition, any other material loaded in the vehicle must be blocked and braced to prevent contact with or damage to the batteries and the vehicle may not carry material shipped by any person other than the shipper of the batteries. Electric storage batteries meeting the criteria specified in § 173.159(e) are not subject to the HMR. The HMR include, but are not limited to, shipping paper, marking, labeling, and placarding requirements. If the shipper chooses to provide a hazardous materials shipping paper, the shipper must do so in accordance with all the requirements in Part 172, Subpart C; however, the vehicle need not be placarded. In addition, you may require the drivers of the motor vehicles transporting the excepted shipment to have a commercial drivers license with a hazardous materials endorsement as a matter of company policy.
- Q2: Are shipping papers required for shipments positioned in a staging area waiting for transportation?
- A2: No. In accordance with § 171.8 of the HMR, storage incidental to movement means any temporary storage that may occur between the time a hazardous material is offered for transportation to a carrier until it reaches its intended destination and is accepted by the consignee. This would include temporary storage of a shipment during this time period at a carrier's terminal, consolidation or storage facility, or on a dock area waiting for



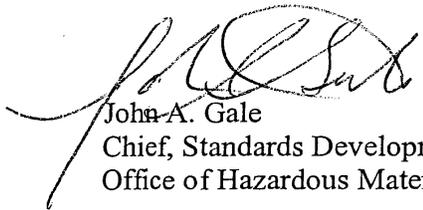
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172.200 (a)
173.159 (e)

loading. Hazardous Materials stored at a shipper facility prior to pick-up by a carrier are not stored incidental to movement.

I hope this information is helpful. Please contact us if you require additional assistance

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale". The signature is written in a cursive style with a large, sweeping initial "J".

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards



Reiterford
§ 172.200 (a)
§ 173.159 (e)
Batteries
05-0297

14-November-2005

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
400 7th Street S.W.
Washington, D.C. 20590-0001

Dear Mr. Mazzullo,

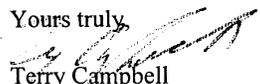
Recently, during a FMCSA compliance review, two issues came up that we would respectfully request clarification on.

The first comes about from the exception afforded battery transporters in CFR 49 sec. 173.159 (e). It is our understanding that if all of the criteria are met, neither placarding or drivers hazardous materials endorsements are required. The Special Agent in charge of our review stated that this was not true. It was his position that because a driver is responsible for the safe loading of the materials on his vehicle, it would be necessary for him to hold a hazardous materials endorsement to ensure the safe loading of the hazardous materials. Obviously this is not our understanding. As a company policy, we require a hazardous materials endorsement for our drivers, but we do not believe it would be mandatory per the regulations. Are our assumptions incorrect?

Secondly, as we understand the regulation in CFR 49 sec. 172.200 (a), shipping papers are not required until the shipment is "offered". There is some confusion on just what the definition of "offered" is. Our understanding is that the shipment is not "offered" until the shipment is completed and just before the transport vehicle arrives. The inspecting Agent stated that "offered" can be defined as any time a shipment is "staged" for shipping, regardless of the level of completion or date of that shipment. He went on to say that once a shipment is placed in a shipping or staging area, shipping papers would now need to be generated. In our estimation, this would not be reasonable or prudent, due to the fact the particular logistics and disposition of various shipments can change. Are we once again incorrect?

We appreciate any assistance your office can provide us in interpreting the regulations.

Yours truly,


Terry Campbell
Director of Transportation