



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

MAR 28 2013

Mr. Johnny Rogers
Ameresco
125 Johnny Dufrene Drive
Suite 102
Matthews, LA 70375

Ref. No. 13-0057

Dear Mr. Rogers:

This responds to your March 5, 2013, request for clarification on shipping non-spillable batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you request clarification on transporting, by highway, shipments containing over 1,000 pounds of non-spillable batteries under the exceptions provided in § 173.159a.

According to your letter, you transport shipments of batteries packaged inside fiberglass shipping boxes with the batteries blocked inside these boxes so they do not move. You indicate these batteries meet all the requirements of § 173.159a. You note that when transporting greater than 1,000 pounds of these non-spillable batteries by highway, these shipments are often frustrated or rejected. Specifically, trucking companies insist these shipments must have a bill of lading, and that the vehicle must be placarded. Furthermore, dock operators are refusing these shipments because they are labeled as hazardous materials but the Material Safety Data Sheet (MSDS) for the batteries does not provide a UN number. You also note that MSDS for non-spillable batteries are inconsistent with some listing a UN number and others noting simply § 173.159a.

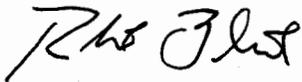
You indicate that a member of our Hazardous Materials Information Center (HMIC) staff recently provided you guidance on this issue stating that a shipment of non-spillable batteries meeting all of requirements in § 173.159a is excepted from the HMR. The guidance provided to you by the HMIC is correct. If all the requirements of § 173.159a are met, non-spillable batteries are not subject to any other requirements of the HMR (including shipping papers, marking, labeling, placarding, etc.), except for incident reporting requirements in §§ 171.15 and 171.16. It should be noted that batteries meeting the requirements of § 173.159a are not required to be labeled and that permissively labeling, as you described above, may frustrate your shipment.

The United States Department of Transportation's (USDOT) Federal Motor Carrier Safety Administration (FMCSA) issues the regulations in 49 CFR Part 383 that require a driver who transports hazardous material shipments to obtain a hazmat endorsement on a commercial driver's license (CDL), however, the requirement for a hazmat endorsement applies only to shipments for which a placard is required under the HMR. Since § 173.159a provides an exception from placarding, a shipment of non-spillable batteries prepared and transported in accordance with § 173.159a would not require a hazardous materials endorsed CDL driver.

Finally, under the HMR, MSDS are not required to be included with a shipment of hazardous materials. The requirements for MSDSs are promulgated by the Occupational Safety and Health Administration (OSHA) and can be found in 29 CFR §1910.1200.

I hope this answers your inquiry. If you need additional assistance, please call this office at (202) 366-8553.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Benedict".

Robert Benedict
Chief, Regulations Development Branch
Standards and Rulemaking Division

Boothe
\$173.159
Batteries

Drakeford, Carolyn (PHMSA)

13-0057

From: INFOCNTR (PHMSA)
Sent: Tuesday, March 05, 2013 3:13 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Shipping over 1000 pounds of Non-Spillable batteries
Attachments: 8A - DOT IATA Compliance List.pdf.pdf; 7722msdsgelagm.pdf; 8G27-DEKA.pdf; 8A31DT-DEKA[1].pdf; trojanvalvemsgs.pdf; PHMSA_battery_guide.pdf; US DOT - request letter of interpretation.doc

Importance: High

Hi Carolyn,

This caller requested we submit his e-mail as a formal letter of interpretation.

Thanks,
Victoria

-----Original Message-----

From: Rogers, Johnny [<mailto:jrogers@ameresco.com>]
Sent: Tuesday, March 05, 2013 12:53 PM
To: INFOCNTR (PHMSA)
Cc: Bruce Habeck
Subject: FW: Shipping over 1000 pounds of Non-Spillable batteries
Importance: High

Good afternoon, below is a previous request but it seems that I have sent this to the wrong address for the request. Could you please process the attached letter (.doc) and I have also attached some of the other support documents.

Thanks again,

Johnny Rogers
985-532-8810

-----Original Message-----

From: Rogers, Johnny
Sent: Wednesday, February 27, 2013 8:11 AM
To: 'phmsa.hmhazmatsafety@dot.gov'
Subject: Shipping over 1000 pounds of Non-Spillable batteries

Good morning, I work for Ameresco and we are a distributor of East Penn Non-spillable Batteries. Could you please offer some type of clarification to the rules on shipping Non-Spillable batteries by highway?

We have been getting a great deal of trouble from our dealer customers as they try to ship these batteries to dock in Louisiana. Most of these customer are located in Louisiana and the batteries are shipped to facilities along the coast like Chevron, Shell and Apache using trucking services like Acme Trucking, Ace transport and United Vision logistics. These batteries are packaged inside fiberglass shipping boxes and the batteries are blocked inside so they do not move. Each battery also has a protective cover on them with non-spillable tagging and for post protection. These batteries also meet all of the requirement of 49CFR 172.159a.]

Here are where the problem exist.

When they try to ship batteries over 1000 pounds, the trucking companies are told the load must use a hazardous bill of lading. Some of the trucking companies say they also need to placard the load as Hazmat and or corrosive. When this load get to the docks, the receiver most of the time has refused the shipment because the load is label as hazardous BUT the MSDS for East Penn (MK Batteries) Do Not has a "UN" number.

We this same scenario happens with the Trojan AGM battery (MSDS attached) they Always except the load as they see in section 14 that "UN2800" number. To me it looks like they are just using the same MSDS for their batteries do meet 173.159a and also for the batteries that do not meet this.

We have be going in circles with everyone's "opinion" and on was would like an expert to help us.

Yesterday, I called and spoke to a gentleman in your hazmat group and he explained to me the when a battery meet all of 173.159a then this non-spillable battery has no special requirement for weight limits, does not need to have a hazardous bill of lading, does not need to be placarded and the driver does not need a hazmat endorsement. Could you please offer me something I could share with these customers?

Do you have any type of documents to support this, I shared the "PHMSA_battery_guide" with some of these customers but they push back as its cover is about shipping by air.

The Trojan AGM batteries as section 14 has listed UN2800 but the MK Deka section 14 just makes reference the 49 CFR 173.159A.

Thanks in advance for any support you could offer,

Johnny Rogers
Ameresco
985-532-8810
jrogers@ameresco.com

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