



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

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

MAR 06 2014

Mr. George Kerchner  
Senior Regulatory Analyst  
Wiley Rein LLP  
1776 K Street, NW  
Washington, DC 20006

Ref. No. 14-0003

Dear Mr. Kerchner:

This responds to your January 6, 2014 email regarding the exception for wet electric storage batteries specified in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) in § 173.159(e). Specifically you ask if a carrier can utilize the exception for electric storage batteries in § 173.159 when the transport vehicle also contains, lithium batteries prepared in accordance with § 172.102(c), special provisions 188 or 189 or nickel metal hydride batteries prepared in accordance with § 172.102(c), special provision 130.

The answer is no. One of the conditions specified in § 173.159(e) states that no other hazardous materials may be transported in the same vehicle. The definition of a hazardous material does not exclude materials that meet one or more of the defining criteria but are being transported under exceptions. Therefore, if the transport vehicle contains any other hazardous materials, even those excepted from all or part of the HMR (e.g., lithium batteries prepared in accordance with special provisions, limited quantities, materials of trade etc.), the exception in § 173.159(e) does not apply.

I hope this information is helpful. If you have further questions, please contact this office.

Sincerely,

Duane Pfund  
International Standards Coordinator  
Office of Hazardous Materials Standards

**Drakeford, Carolyn (PHMSA)**

Leary  
§173.159(e)  
§172.102 SP 188 & 189

**From:** INFOCNTR (PHMSA)  
**Sent:** Monday, January 06, 2014 3:22 PM  
**To:** Drakeford, Carolyn (PHMSA)  
**Subject:** FW: Request for Interpretation: 49 CFR 173.159(e) and Special Provisions 188 and 189 and Special Provision 130

Batteries  
14-0003

**From:** Kerchner, George [<mailto:GKerchner@wileyrein.com>]  
**Sent:** Monday, January 06, 2014 10:36 AM  
**To:** INFOCNTR (PHMSA)  
**Subject:** Request for Interpretation: 49 CFR 173.159(e) and Special Provisions 188 and 189 and Special Provision 130

January 6, 2014

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

Re: Request for Interpretation on 49 CFR 173.159(e) and Special Provisions 188 and 189 and Special Provision 130

I am writing to request a letter of interpretation on the following scenario: May a vehicle transporting lead batteries (UN2794) under the exception found at 49 CFR 173.159(e) still take advantage of this exception if it also contains the following batteries:

1. Lithium batteries (UN3090 or UN3091) packaged in accordance with Special Provisions 188 and 189; or
2. Batteries, nickel metal hydride (UN3496) packaged in accordance with Special Provision 130?

49 CFR 173.159(e) provides an exception from the HMR for lead batteries that are transported by highway and rail provided the four requirements under 173.159(e) are met. The first requirement under 49 CFR 173.159(e) states "No other **hazardous materials** may be transported in the same vehicle;" See 49 CFR 173.159(e)(1). (Emphasis added.)

Lithium batteries packaged and offered for transportation in accordance with Special Provisions 188 and 189 are not declared or shipped as fully-regulated hazardous materials and are not subject to any other requirements of the HMR. Nickel metal hydride batteries are only regulated as hazardous materials when transported by sea and thus are excepted from the HMR when packaged in accordance with Special Provision 130. Therefore, it would appear in the two scenarios above that these batteries could in fact be transported on the same vehicle with lead batteries (UN2794) that are being transported under the exception found at 49 CFR 173.159(e).

Thank you for your assistance.

Sincerely,

George A. Kerchner | Senior Regulatory Analyst | **Wiley Rein LLP** | 1776 K Street NW | Washington, DC 20006  
(Tel) 202.719.4109 | (Fax) 202.719.7049 | [GKerchner@wileyrein.com](mailto:GKerchner@wileyrein.com)

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