



U.S. Department
of Transportation

1200 New Jersey Avenue SE
Washington, DC 20590

**Pipeline and Hazardous
Materials Safety
Administration**

FEB 23 2012

Mr. Shannon M. Trevithick
Britton & Associates Attorneys at Law
735 North Water Street, 16th Fl West
Milwaukee, WI 53202

Ref. No. 12-0012

Dear Mr. Trevithick:

This responds to your January 12, 2012 letter regarding the transportation requirements for wet (electric storage) batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for clarification of procedures that satisfy the requirement of § 173.159(e)(2) that batteries must be loaded or braced to prevent damage and short circuits in transit.

According to your letter, Johnson Controls Battery Group (JCI) uses the following procedure of loading and bracing battery pallets on a motor vehicle: (1) a pallet is placed flush against the front end of the vehicle trailer and secured by subsequent pallet(s) or secured with load bars or straps; (2) subsequent pallet(s) are loaded flush against preceding pallets (and allowing for gaps) until loading is complete; and (3) the rearmost pallet(s) are secured by load bars or straps. Your letter included photographs of the loading procedure.

It is the opinion of this Office that the method of loading or bracing the palletized batteries described in your letter satisfies § 173.159(e)(2) so long as no damage or short circuit occurs in transit. However, this requirement is a performance standard, so that if the batteries are capable of shifting to the extent of causing damage or short circuit, this method of loading would not satisfy § 173.159(e)(2).

Note that motor carriers may be subject to additional requirements to protect against shifting and falling of cargo under the Federal Motor Carrier Safety Regulations in 49 CFR Part 393, Subpart I.

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

Sincerely,

Ben Supko
Acting Chief, Standards Development Branch
Standards and Rulemaking Division

Der Kinderen
§173.159(e)(2)
Batteries 12-0012

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January 12, 2012

Magdy El-Sibaie
Associate Administrator
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
East Building, 2nd Floor
Mail Stop: E21-317
1200 New Jersey Ave., SE
Washington, DC 20590

**REQUEST FOR CLARIFICATION OF LOADING/BRACING UNDER
49 C.F.R. § 173.159(e)(2)**

Dear Dr. El-Sibaie:

This office represents Johnson Controls Battery Group, Inc. ("JCI"). JCI is a manufacturer of lead-acid batteries for public sale. JCI also arranges the pick-up and transportation of spent lead battery "cores" from customer locations to recycling facilities.

JCI ships the battery cores pursuant to the exemption contained at 49 CFR § 173.159(e). That exemption from the normal hazardous materials regulatory requirements applies to shippers/carriers of lead-acid batteries, as long as four conditions are met:

1. No other hazardous materials may be transported in the same vehicle;
2. The batteries must be loaded or braced so as to prevent damage and short circuits in transit;
3. Any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries; and
4. The transport vehicle may not carry material shipped by any person other than the shipper of the batteries.

This letter seeks interpretation/clarification of subpart 2. of the exemption, the "loading or bracing" requirement.

JCI utilizes a protocol for the loading and bracing of used battery "pallets" on the transportation trailers.¹ That protocol is provided to carriers with instructions on how to implement its use. JCI's protocol is to load transportation trailers from the front according to the following pattern:

The pallets are placed flush/snug against the front of the trailer or secured with load bars or straps at the front, with subsequent pallets loaded flush against the preceding. Once the loading is complete the rearmost pallets are secured by load bars or straps to secure the load. Two sample photographs of this loading procedure are attached hereto.

By letter dated July 30, 2010 (Ref. No. 10-0129, attached hereto) PHMSA indicated that similar loading of palletized lead-acid batteries for transport was acceptable under 49 CFR § 173-159(e)(2), even if "gaps" existed between the pallets, so long no damages or short-circuits occurred in transit.

JCI thus asks for PHMSA to clarify that its pallet loading protocol is in compliance with the "loaded or braced" requirement contained at 49 CFR § 173.159(e)(2).

Please advise in response to this request for interpretation/clarification.

Respectfully submitted,

BRITTON & ASSOCIATES, S.C.

A handwritten signature in black ink, appearing to read 'S. M. Trevithick', with a large, sweeping flourish extending to the right.

Shannon M. Trevithick
Enclosures

¹ The construction of the pallets is addressed in a separate request for clarification previously submitted to PHMSA.