



U.S. Department  
of Transportation

**Research and  
Special Programs  
Administration**

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

APR 24 2001

Mr. Joseph Cormier  
1 Horseshoe Pond Lane  
Concord, NH 03301

Ref. No. 01-0010

Dear Mr. Cormier:

This responds to your January 10 and January 17, 2001 letters and subsequent telephone conversation with Eric Nelson of my staff requesting clarification of the provisions of § 173.159 of the Hazardous Materials Regulations (HMR) applicable to transportation of non-spillable batteries. The HMR are the regulatory requirements contained in Title 49, Subtitle B, Chapter I, Subchapter C, Parts 171-180 of the Code of Federal Regulations (CFR). For the purposes of the HMR, "subchapter" means 49 CFR Parts 171-180. Your questions are paraphrased and answered as follows:

Q1. What is the definition of a non-spillable wet electric storage battery?

A1. A non-spillable electric storage battery is a battery that is capable of passing the vibration and pressure differential tests as provided by § 173.159(d)(3). Non-spillable batteries manufactured after September 30, 1995 must be plainly and durably marked "NONSPILLABLE" or "NONSPILLABLE BATTERY."

Q2. Does each non-spillable battery have to pass the vibration and pressure differential tests?

A2. No. A battery must be *capable* of passing the tests as prescribed by § 173.159(d)(3). Individual batteries are not required to actually be tested.

Q3. Are batteries transported in accordance with the packaging requirements in § 173.159(d) excepted from all DOT transportation requirements, including those of the Federal Motor Carrier Safety Administration?

A3. No. Compliance with § 173.159(d) excepts non-spillable batteries from the HMR. Regulations of the Federal Motor Carrier Safety Administration (FMCSA) may still apply. You may contact the FMCSA by writing to:

Federal Motor Carrier Safety Administration  
400 7th Street SW  
MC-PS  
Washington, DC 20590

You may also contact FMCSA via the Internet at <http://www.fmcsa.dot.gov> or by telephone at (202) 366-4012.

Q4. What is the definition of "securely packaged" as used in § 173.159(d)?

A4. "Securely packaged" means packaged in a manner so that under conditions normally incident to transportation, there is no identifiable release of the contents.

Q5. If a battery is not in compliance with § 173.159(d), is the shipment subject to the full scope of the HMR?

A5. Yes.

Q6. Where can I go for assistance in understanding the requirements of the HMR?

A6. You may contact any RSPA Hazardous Materials Enforcement Office for assistance at the following addresses or telephone numbers:

Eastern Region  
820 Bear Tavern Road Suite 306  
West Trenton, NJ 08628  
(609) 989-2256

Southwest Region  
2320 La Branch Street Suite 2100  
Houston, Texas 77002  
(713) 718-3950

Central Region  
2350 East Devon Avenue, Suite 136  
Des Plaines, Illinois 60018  
(847) 294-8590

Southern Region  
1701 Columbia Avenue Suite 520  
College Park, Georgia 30337  
(404) 305-6120

Western Region  
3200 Inland Empire Boulevard, Suite 230  
Ontario, California 91764  
(909) 483-5624

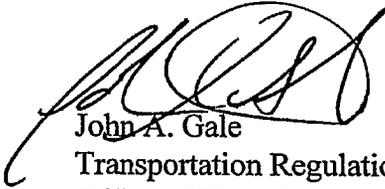
Headquarters  
400 7th Street SW DHM-41  
Washington, DC 20590  
(202) 366-4700

Page -3-

You may also contact the Hazardous Materials Information Center toll-free hotline between the hours of 9:00 A.M. and 5:00 P.M. ET at (800) 467-4922.

I hope this satisfies your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. A. Gale', written over a horizontal line.

John A. Gale  
Transportation Regulations Specialist  
Office of Hazardous Materials Standards

Nelson  
8173.159(d)  
Applicability  
00-0010

Joseph Cormier  
IBEW UNION Local 2320 (NH)  
48 Third Street  
Manchester St. NH 03102  
Tel. 603-669-8657  
Fax. 603-669-7089  
Jan. 10, 2001

Mr. Edward T. Mazzullo  
Director  
Office of Hazardous Materials Standards  
Department of Transportation  
Research and Special Programs Administration  
440 7<sup>th</sup> Street Southwest  
Washington, D.C. 20590

Dear Mr. Mazzullo,

I am a union CDL A driver, and this is a letter seeking guidance and clarification of 49 CFR 173.159(d).

First, however, we would like to thank Jeff Furr of your organization for the help he provided us today. His professionalism and patience in dealing with us, uninitiated, is a credit to your organization.

We would also like to commend you on your website. We found the "letters of clarification" section to be an excellent and efficient way of sharing, with others, previous problems/issues that you have resolved.

Let me begin by providing some background information on the issues we are working. The Union and management are formulating/negotiating programs that provide more cost-effective means of transporting new lead-acid batteries, and the reclamation of spent lead-acid batteries within our company theatre of operation.

The issue at hand, at the moment, is the interpretation of 49CFR173.159(d).

I am going to beg your indulgence as I pose the following questions. The format is targeted to my own parochial audience, and serves several venues.

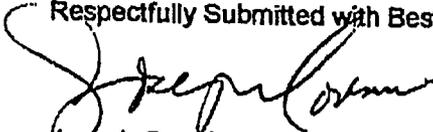
1. 49CFR173.159(d) states that "a nonspillable wet electric storage battery is excepted from all other requirements of this subchapter under the following conditions:
  - (1) The battery must be protected against short circuits and securely packaged.
  - (2) For batteries manufactured after September 30, 1995, the battery and the outer packaging must be plainly and durably marked "NONSPILLABLE" or "NONSPILLABLE BATTERY".
  - (3) The battery must be capable of withstanding the following two tests, without leakage of battery fluid from the battery: namely, the vibration test and the pressure differential test described, herein.

This is a fair representation of 49CFR173.159(d) is it not?
2. Is not RSPA 's definition of a nonspillable wet electric storage battery, a battery that passes the vibration and pressure differential tests?

3. Is it not true then, that if a manufacturer's battery does not pass the vibration and pressure differential tests, it is not a nonspillable battery, and is, therefore, not "excepted from all other requirements of this subchapter...?"
4. The term "subchapter" used in 49CFR173.159(d) means 49CFR parts 171 thru 180, does it not?
5. The term "subchapter" used in 49CFR173.159(d) is a subset to CHAPTER I Subtitle B of Title 49 CFR, **Research and Special Programs Administration, DOT**, is it not?
6. CHAPTER III Subtitle B of Title 49 CFR is **Federal Highway Administration, DOT**, is it not?
7. 49CFR177.834 deals with "bracing" of loads, and falls within the exception of parts 171 thru 180 and would not be binding, if the three conditions of 49CFR173.159(d) are met, is that not correct?
8. The Federal Highway Administration deals with Parts 350 thru 399; special attention to Parts 390-397, is that not correct?
9. 49CFR392.9 Safe loading states in (a)(1) that no person shall drive a commercial vehicle unless the vehicle's cargo is properly distributed and adequately secured; (b) of same, burdens the driver with compliance to (a), is that not correct?
10. Does 49CFR173.159(d) "except" a driver from 49CFR392.9?
11. When referencing 49CFR173.159(d), if a document, states " **No other DOT requirements apply when transporting non-spillable lead acid batteries**", is this an accurate statement?
12. What is the definition of "securely packaged" in 49CFR173.159(d)(1)?
13. We have an internal document that states " A new or used non-spillable lead acid battery is exempted from all other requirements of the Hazardous Materials Transportation Regulations Parts 171 through 180 as long as the conditions indicated under Packaging Requirements are met. No other DOT requirements apply." I could not find these Packaging Requirements in the CFR's. Do you have these Packaging Requirements? Could/would you provide them to us.
14. Is it true that Enforcement will provide help in determining "securely packaged" as it pertains to 49CFR173.159(d)(1)?
15. If batteries fail to meet the conditions of exception under 49CFR173.159 (any subset), does that mean those batteries default to their status of Hazardous Material and must be handled accordingly?

Again, Mr. Mazzullo we thank you for your understanding and patience with the format of this letter. Please, do not feel obligated to respond in the same format. It has been a pleasure dealing with your organization!

Respectfully Submitted with Best Regards,



Joseph Cormier