



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JAN 17 2006

Mr. George A. Kerchner
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, DC 20006

Ref. No. 05-0312

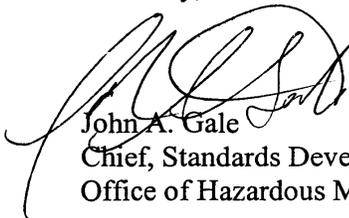
Dear Mr. Kerchner:

This responds to your letter of November 30, 2005, requesting clarification of the placarding requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if a shipper who offers a carrier a shipment consisting of excepted nonspillable lead acid batteries, Batteries, wet filled with acid, 8 UN2794 PG III and Battery fluid, acid, 8, UN2796, PG II must consider the weight of the excepted nonspillable batteries when determining the aggregate gross weight of Table 2 materials on the vehicle under §172.504(c) of the HMR?

The answer is no. Hazardous materials listed in Table 2 in § 172.504(e) of the HMR that do not require placards are not included in the aggregate gross weight used for placarding determinations.

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

Sincerely,



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



050312

172.504(c)
173.159(d)



Wiley Rein & Fielding LLP

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 §172.504(c)
 §173.159(d)

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November 30, 2005

Placarding
 Batteries
 05-0312

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Mr. Edward Mazzullo
 Pipeline and Hazardous Materials Safety Administration
 U.S. Department of Transportation
 400 7th Street, SW
 Washington, DC 20590

Re: Request for Interpretation on Placarding Shipments of Nonspillable
 Batteries, Batteries, Wet, Filled with Acid (UN2794), and Battery Fluid,
 Acid (UN2796)

Dear Mr. Mazzullo:

I am writing for a clarification on the placarding requirements for a shipper who offers a shipment consisting of the following materials:

1. Nonspillable lead acid batteries that are excepted from regulation pursuant to 49 CFR 173.159(d);
2. *Batteries, wet, filled with acid* (UN2794) – Offered as a Class 8 Corrosive hazardous material; and
3. *Battery fluid, acid* (UN2796) – Offered as a Class 8 Corrosive hazardous material.

It is a very common practice for a battery manufacturer or distributor to offer a carrier such as Yellow Freight or Roadway a single shipment consisting of *Battery fluid, acid* (UN2796), *Batteries, wet, filled with acid* (UN2794), and nonspillable lead acid batteries. The UN2794 and UN2796 materials are packaged and offered as fully regulated Class 8 Corrosive hazardous materials but the nonspillable batteries are packaged and offered pursuant to the exception found at 49 CFR 173.159(d).

As you know, 49 CFR § 172.504(c) provides an exception from placarding requirements if the aggregate gross weight of certain hazardous materials (including Class 8 Corrosives) is less than 1001 pounds. However, the regulation is not explicit regarding how to calculate this weight when both regulated and non-regulated materials are included in a single shipment. My question therefore is as follows:

If a shipper offers a carrier a shipment consisting of excepted nonspillable lead acid batteries, *Batteries, wet, filled with acid* (UN2794), and *Battery fluid, acid* (UN2796), must the shipper consider the weight

Wiley Rein & Fielding LLP

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**of the excepted nonspillable batteries when determining the total weight
of the hazardous materials?**

Thank you for your assistance on this matter.

Sincerely,

George A. Kerchner

George A. Kerchner