



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

**MAY 02 2018**

1200 New Jersey Avenue, SE  
Washington, DC 20590

Mr. Wade A. Winters  
President  
Regulatory Resources, Inc.  
379 Aragon Avenue  
Los Alamos, NM 87547

Reference No. 17-0050

Dear Mr. Winters:

This letter is in response to your May 5, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to bulk and non-bulk packaging definitions as they relate to solid material. Specifically, you ask several questions based on multiple letters of interpretation (see Reference Nos.) previously issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

We have paraphrased and answered your questions as follows:

- Q1. You ask if Reference Nos. 15-0168 and 16-0081 supersede Reference No. 10-0026, which was issued by PHMSA's Office of the Chief Counsel on January 20, 2010.
- A1. The answer is no. Because it is not consistent with the conclusions made by PHMSA's Office of the Chief Counsel in Reference No. 10-0026, Reference No. 15-0168 will be rescinded and replaced as Reference No. 15-0168R. Prior to 1990, the non-specification closed bin described in Reference No. 15-0168 would have been considered a bulk packaging. As currently defined in § 171.8 of the HMR, a bulk packaging must have a maximum net mass greater than 400 kg (882 pounds) and a maximum capacity greater than 450 liters (119 gallons) as a receptacle for a solid. Because the non-specification closed bin used to package a solid material described in Reference No. 15-0168 has a volumetric capacity of less than 450 liters (119 gallons) and a maximum capacity of greater than 400 kg (882 pounds), it does not meet the definition of a bulk packaging under the HMR; therefore, its use is not authorized under the entry's bulk packaging provisions prescribed in § 173.240(c) and may only be used to package solid material under the terms of an approval granted in accordance with § 178.601(h).

Reference No. 16-0081 remains valid and is not contradicted by Reference No. 10-0026. Reference No. 16-0081 states, "...the size of the battery determines whether a package meeting the requirements of § 173.159(d)(1) is considered bulk or non-bulk. Therefore, an electric storage battery exceeding 400 kg secured to a pallet is a bulk package..." The

forklift battery described in Reference No. 16-0081 has a net mass greater than 400 kg (882 pounds) and a capacity greater than 450 liters (119 gallons) and, as an article, is considered a solid.

Q2. You ask for explanation regarding PHMSA's rationale in identifying the hazard of the wet battery discussed in Reference No. 15-0014 and the memorandum issued on April 22, 2015, to the U.S. Department of Energy, Richland Operations Office, as being a liquid, while the hazard in the wet battery discussed in Reference No 16-0081 is identified as being a solid.

A2. The batteries described in Reference No. 15-0014 were contaminated with Class 7 (radioactive) material that exceeded limited quantity levels. Thus, the liquid (sulfuric acid) contained in them was considered when classifying the batteries for transportation. The batteries described in Reference No. 15-0014 were considered receptacles for liquids under that unique scenario and subsequently were classified as radioactive materials for transport.

The batteries described in Reference No. 16-0081 were non-radioactive. Therefore, they were appropriately classified as a solid.

Q3. You ask if Reference No. 16-0081 supersedes Reference No. 05-0017.

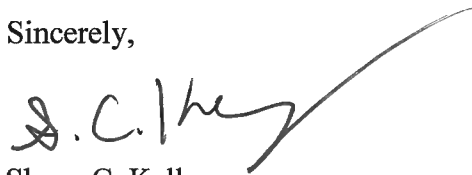
A3. The answer is no. Although the pallet of batteries described in Reference No. 05-0017 had a net mass greater than 400 kg (882 pounds), no one individual battery secured to the pallet exceeded 450 liters (119 gallons) in volumetric capacity.

Q4. Assuming the wet battery discussed in Reference No. 16-0081 is a solid, you ask for the proper shipping name and corresponding packaging reference, noting that § 173.159 is specific to batteries with fluid (i.e., liquid).

A4. In general, batteries and other articles are considered solids for the purposes of the HMR. Thus, the proper shipping name for the battery described in Reference No. 16-0081 is "Batteries, wet, filled with acid, *electric storage*" (UN2794) and the packaging reference is any method authorized in § 173.159.

Please accept our apologies for any inconvenience this reversal of our original guidance may cause. Please contact us if we can be of further assistance.

Sincerely,



Shane C. Kelley

Director

Standards and Rulemaking Division

Stevens  
\$171.8.  
Packaging Specs.  
17-0050

**Dodd, Alice (PHMSA)**

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**From:** INFOCNTR (PHMSA)  
**Sent:** Monday, May 08, 2017 9:32 AM  
**To:** Hazmat Interps  
**Subject:** FW: Request for Interpretation - Regulatory Resources, Inc. (May 5, 2017)  
**Attachments:** Questions on changes in bulk and non-bulk definitions (May 2017).pdf

Hi Shante/Alice,

Please submit this as a letter of interpretation. Mr. Winters spoke with Eamonn on this.

Also, please note that Mr. Winters' mailing address is in the attached letter request. Please let me know if you have any questions.

Thanks,  
Jordan

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**From:** Wade Winters [mailto:wade@regulatoryresources.net]  
**Sent:** Friday, May 05, 2017 6:12 PM  
**To:** PHMSA HM InfoCenter <PHMSAHMInfoCenter@dot.gov>  
**Subject:** Request for Interpretation - Regulatory Resources, Inc. (May 5, 2017)

Dear PHMSA,

Please find attached a request for formal interpretation of the Hazardous Materials Regulations.

Thank you,

Wade Winters  
President

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Regulatory Resources, Inc.  
Your Training and Compliance Professionals  
505-393-0111  
[www.reghead.net](http://www.reghead.net)

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May 5, 2017

Standards and Rulemaking Division  
Pipeline and Hazardous Materials Safety Administration  
Attn: PHH-10  
U.S. Department of Transportation  
East Building  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

Dear Standards and Rulemaking Division,

In recent letters, you have stated the definition of bulk and non-bulk for solids in § 171.8 is not correct and the conjunction "and" should be "or" when applying these terms for regulatory compliance. I am seeking further clarity concerning this change and its effect on other determinations.

Question 1.

Do letters Ref. No. 15-0168 and 16-0081 supersede letter Ref. No. 10-0026 from PHMSA Counsel with regard to the definition of bulk and non-bulk for solids?

Question 2.

Could you please explain the rationale used to identify the hazard of the wet battery discussed in the PHMSA Memorandum, April 22, 2015, to the U.S. Department of Energy, Richland Operations Office, as being a liquid and yet the hazard in the wet battery discussed in Letter Ref. No. 16-0081 as being a solid?

Question 3.

Does letter Ref. No. 16-0081 supersede letter Ref. No. 05-0017?

Question 4.

If the wet battery discussed in letter Ref. No. 16-0081 is a solid, what shipping name and subsequent packaging reference is appropriate since § 173.159 is specific to batteries with fluid (i.e., liquid)?

Thank you.

For Regulatory Resources, Inc.,

W. A. Winters  
President