



U.S. Department
of Transportation

**Research and
Special Programs
Administration**

MAY 18 2000

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

Mr. Kent D. Fleming
Federal Motor Carrier Safety Administration
U. S. Department of Transportation
105 Sixth Street
Ames, Iowa 50010-6337

Ref. No. 00-0139

Dear Mr. Fleming:

This is in response to your letter dated April 20, 2000, requesting clarification of the requirements for the display of a hazard warning label on a non-spillable wet battery. As shown in your enclosed photographs, the battery displays a reduced size CORROSIVE label, approximately 1.5 inches on each side. You asked if the reduced size label is in compliance with the provisions of § 172.407(c), especially taking into account the exception from regulations, including labeling, provided for batteries in § 173.159(d).

The reduced size label on the battery as shown in the photographs does not comply with the requirements in § 172.407(c). Even though § 173.159(d) provides a complete exception from the HMR under specified conditions, if the shipper attempts to comply with a portion of the HMR they must do so in compliance with that specific requirement. Since the shipper labeled the battery, the label must comply with the specifications in § 172.407(c), which states that a hazard warning label must be at least 100 mm (3.9 inches) on each side.

I hope this information is helpful.

Sincerely,

Delmer F. Billings
Chief, Standards Development
Office of Hazardous Materials Standards



000139

172.407



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Billings
§ 172.407
105 Sixth Street
Ames, Iowa 50010-6337
00-0139

April 20, 2000

Del Billings DHM-11
Research and Special Programs Administration
Office of Hazardous Materials Standards
400 7th St. SW
Washington, DC 20590

Dear Mr. ~~Billings~~:

Recently it was discovered during a dock inspection that a company was offering into transportation Batteries, wet, non-spillable, 8, UN2800, PG III, without the proper size hazardous materials label. The labels used are approximately 1.5 inches. The enclosed photograph shows the battery with the label. The ball point pen next to the label is 5.5 inches from tip to tip.

The label is accurate. However, it does not meet the required size of 49 CFR 172.407 (c).

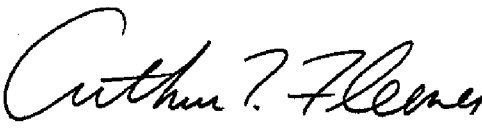
49 CFR 173.159 (d) allows certain exceptions from the regulations if the conditions of the section are met.

Our question is if the original shipper of the battery was able too met the requirements in 49 CFR 173.159 (d) and choose to place the hazardous materials label on the package, even when it is not required, would they be in violation of 49 CFR 172.407 (c) for the size of the label.

This becomes an important issue when the package is offered into transportation by other shippers that are not able to use 49 CFR 172.159 (d) and rely on the existing labels placed on the package by the original offer.

We have an enforcement case pending on the guidance that we will receive from your office.

Sincerely,


M Kent D. Fleming