



U.S. Department  
of Transportation  
**Research and  
Special Programs  
Administration**

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

JUN 3 2004

Mr. Walter D. Smith  
Director of Safety and Compliance  
Teton Transportation, Inc.  
Post Office Box 909  
Seymour, TN 37865

Ref. No. 04-0103

Dear Mr. Smith:

This is in response to your April 9, 2004 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to non-spillable wet batteries. According to your letter, your company transports batteries containing corrosive battery fluid from one shipping point without additional products loaded on your trucks. You state these shipments are excepted from subchapter C of the HMR as provided by § 173.159(e). You state that you placard your trucks for information purposes although not required by the HMR to do so.

You ask whether your shipments of wet batteries meet the criteria found under § 173.159(e). You ask whether your company is required to comply with subchapter C of the HMR when transporting these materials. You ask if your company can require a hazardous materials endorsement on commercial drivers licenses for your drivers even if these shipments are excepted from the HMR. You also ask whether placarding is allowed when not required.

Your understanding is correct. Batteries containing corrosive battery fluid that are transported by highway or rail are excepted from the HMR provided they are transported in accordance with the conditions in § 173.159(e). Even though placarding is not required, under § 172.502(c), you may elect to placard the hazardous material if the placarding otherwise conforms to the requirements of Subpart F of Part 172. Similarly, you may require the drivers of the motor vehicles transporting the excepted shipment to have a commercial drivers license with a hazardous materials endorsement as a matter of company policy.



040103

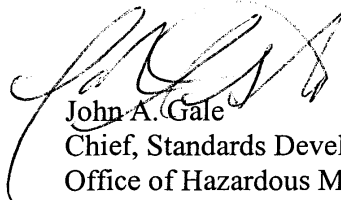
173.159(e)

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You ask if your company is required to comply with any of the requirements of the HMR, other than § 173.159 (e), if you transport only batteries that are excepted from the HMR requirements under § 173.159(e) and no other hazardous materials. The answer is no.

I hope this information is helpful.

Sincerely,



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



Foster  
§ 173.159(e)  
Batteries  
04-0103

April 9, 2004

Director Edward Mazullo  
Office of Hazardous Materials Standards  
Research and Special Programs Admin.  
U.S. Dept. of Transportation  
400 Seventh Street, SW  
Washington, DC 20590-0001

Re: 173.159 (e)

Dear Sir:

We request your opinion on two matters. This company is registered as a hazmat carrier and we require drivers in our van division to maintain a CDL hazmat endorsement. However, the only hazmat loads we pull are for our customer, Exide Technologies. The enclosed bills represent typical Exide loads. Exide marks wet battery loads HM, labels the cargo and placards our trailers. These are truckload deliveries originating at one shipping point with no other product loaded on the trailer.

We assert that these loads meet the requirements of 173.159 (e) and are exempt from Title 49, Subchapter C. We also assert that even though, therefore, a CDL hazmat endorsement and placards are not required to pull these loads, the *permissive placarding* rule allows placarding for information purposes, and we can require the hazmat endorsement as a matter of company policy in response to our customer's requirement. Further, that neither of these conditions, however, affects the exempt status of the loads.

First, we would appreciate your opinion as to whether these types of loads meet 173.159 (e) and, if so, whether our reasoning reflected above is sound. Second, if these loads are exempt and if our company policy is to carry no other hazmat loads, are we, as a company then exempt from the requirements of Title 49, Subchapter C even though we are registered as a hazmat carrier?

Your guidance on these issues is important to us and would be very much appreciated. We would be pleased to provide any additional information that you may need.

Yours truly,

Walter D. Smith  
Director of Safety and Compliance