



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAY 21 2015

Shelley Elzer, CAFM
Fleet Manager
Club Assit, North America
155 Technology Park
Lake Mary, FL 32746

Reference No. 14-0234

Dear Ms. Elzer:


This is in response to your recent e-mail and March 27, 2015 conversation with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the registration requirements prescribed in 49 CFR Part 107, Subpart G. You state your company transports three rows of batteries by motor vehicle in conformance with § 173.159(e), each row is separated by corrugated cardboard, the batteries are shrink-wrapped to pallets, and the entire package measures 44 inches long, 40 inches wide, and 33 inches in height. Specifically, you ask if shippers who offer for transportation and transport “UN 2794, Batteries, wet, filled with acid, *electric storage*, 8 (corrosive), Packing Group (PG) III,” in conformance with § 173.159(e) are required to register with the Pipeline and Hazardous Materials Safety Administration (PHMSA) under this subpart.

Based on the information you provided, the answer is no. Only companies that engage in the activities specified in § 107.601 are required to register with PHMSA. For Class 8, wet acid batteries, these activities may include shipments of: 1) bulk packagings with a capacity of more than 13.24 cubic meters (468 cubic feet) for solids, 2) non-bulk packagings with a gross weight of 2,268 kg (5,000 pounds) or more for which placarding is required, or 3) a quantity of hazardous material that requires placarding under 49 CFR Part 172, Subpart F. Shippers and carriers of packages that do not meet the size requirements prescribed in § 107.601(a)(4), such as your company’s packages, are not required to register under 49 CFR Part 107. Packages of batteries prepared and offered for transportation in conformance with § 173.159(e) are excepted from placarding. Packages of wet acid batteries that are not required to be placarded are not subject to the registration

requirements prescribed in § 107.601(a)(5) and (a)(6); therefore, shippers and carriers of these wet acid batteries are not required to register with PHMSA under 49 CFR Part 107.

I hope this satisfies your request.

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Edmonson
§§ 107.601(a)(5), 173.159(e)
Applicability
14-0234

Dodd, Alice (PHMSA)

From: Ciccarone, Michael CTR (PHMSA)
Sent: Monday, December 01, 2014 4:10 PM
To: Hazmat Interps
Subject: FW: Must we Register for Hazardous Materials?
Attachments: 4-5-93 Response to SCEason Ref No 93-0008.pdf; 10-13-00 Response to Michael Ritchie Ref No 00-0242.pdf

Shante/Alice,

Please submit this for a formal letter of interpretation. Ms. Elzer spoke with Eileen Edmonson.

Thanks,

Mike

From: Shelley Elzer [<mailto:Shelley.Elzer@clubassist.com>]
Sent: Monday, December 01, 2014 3:50 PM
To: INFOCNTR (PHMSA)
Subject: FW: Must we Register for Hazardous Materials?

Hello,

Our company distributes automotive batteries, (batteries, wet, filled with acid; UN2794). We do not placard for hazardous materials citing Title 49, Subchapter C, Part 173, Subpart E section 173.159(e)(1-4). Some of our batteries are transported on pallets, with rows separated by corrugated cardboard and shrink-wrapped. The other conditions of 173.159(e)(1-4) are met as well.

During a recent DOT inspection the inspector asked why we are not registered for hazardous materials, stating that even if we are compliant with 173.159, being registered is a separate matter and is required. After a lengthy discussion, the officer cited 49 CFR 107.601 and provided our driver with a printed copy of it. We did not receive a violation.

It is our understanding that our individual batteries and pallets of batteries are not considered bulk packaging therefore none of 107.601 applies to us. Therefore our compliance with 173.159 provides that we are not subject to any other requirements of subchapter C.

Would you please verify that we do not have to be registered for hazardous materials and provide documentation that I can provide to my drivers in case this question arises again?

Thank you in advance for your consideration and response.

SHELLEY ELZER, CAFM | FLEET MANAGER | CLUB ASSIST, North America
155 Technology Park | Lake Mary | FL | USA | 32746
TEL: Direct 407-215-0524 | MOBILE: 407-462-9019 | FAX: 407-322-5403

From: eileen.edmonson@dot.gov [<mailto:eileen.edmonson@dot.gov>]
Sent: December 01, 2014 2:55 PM
To: Shelley Elzer
Subject: RE: Clarification letters Ref Nos. 93-0008 & 00-0242

Hello Shelley,

Per your request, attached are the PDF images of letters of clarification the Pipeline and Hazardous Material Safety Administration (PHMSA) letter issued concerning the 49 CFR 173.159(e) battery exception. Please note that the reference in one of the letters to § 173.159(c)(1) is incorrect. This section was moved to § 173.159(d)(1).

If you would prefer to have your own letter of clarification issued on this matter, you may e-mail your questions to infocntr@dot.gov.

I hope this satisfies your request.

Sincerely,

Eileen Edmonson
USDOT/PHMSA
(202) 366-4481 (w)
(202) 366-7041 (f)
1-800-467-4922 (Hazmat Info Center)
eileen.edmonson@dot.gov (e-mail)
www.phmsa.dot.gov/hazmat (website)

This email message and any attachments are confidential. If you are not the intended recipient, you must not disclose or use the information contained within it. If you have received this email in error, please inform the sender by return email, and then immediately delete the document.

Mr. S.C. Eason III
 EMS Inc.
 1892 McFarland Avenue
 Rossville, GA 30741

Dear Mr. Eason:

This is in response to your letter dated August 11, 1992, in which you asked several questions concerning the transportation of lead acid storage batteries under this Department's Hazardous Materials Regulations (HMR). Your questions are paraphrased and answered as follows.

Q1. Is our company required to register under the rules of HMTA?

A1. If your company does not engage in any of the activities specified in 49 CFR 107.601, your company is not required to register. Informational material on the registration program is enclosed.

Q2. May we continue to operate a truck transporting batteries without displaying placards as permitted by § 173.260(e)?

A2. Yes. The provisions contained in former § 173.260(e) have been moved to § 173.159 in the current edition of the HMR. Section 173.159(e) provides that electric storage batteries containing electrolyte or corrosive battery fluid are not subject to any other requirements in Subchapter C, including placarding, when transported by highway or rail, provided they are in full conformance with the requirements prescribed in paragraph (e).

Q3. Is there a distinction between spent lead acid batteries being returned for recycling and batteries that are either new or being returned for repairs?

A3. No, there is no distinction for transportation purposes between spent lead acid batteries being returned for recycling and batteries that are either new or being returned for repairs. If the batteries contain corrosive battery fluid, they must meet the requirements in § 173.159.

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 3/31/93



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I trust this satisfies your inquiries. If you have further questions, please feel free to contact us.

Sincerely,

LSI

Hattie L. Mitchell, Chief
Exemptions and Regulations Termination
Office of Hazardous Materials Standards

Enclosure

Posten;gt:dhm-12:64488:03-29-93
File:181/107.601
SC:526,127

EMS, incorporated

1892 McFARLAND AVE.
ROSSVILLE, GA 30741
PHONE 404-866-7027
404-861-2531
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11 AUG. 1992

AUG 17 1992

ED MAZZULLO
DIRECTOR OFFICE OF HAZARDOUS MATERIALS STANDARDS
CODE: DHM-10 US DOT/RSPA
400 SEVENTH ST. SW
WASHINGTON DC 20590-001

AL-

DEAR MR. MAZZULLO,

EMS INC. IS A SMALL BUSINESS INVOLVED IN THE DISTRIBUTION AND REPAIR OF INDUSTRIAL LEAD ACID STORAGE BATTERIES OPERATING UNDER EXCEPTION/EXEMPTION OF CFR PART 49 173.260 (e).

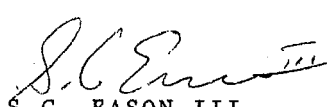
WE REQUEST CLARIFICATION OF THE RECENTLY PROMULGATED HAZARDOUS MATERIALS TRANSPORTATION ACT AS AMENDED (49 APP. U.S.C. 1801 ET SEQ.)

SPECIFICALLY:

1. ARE WE REQUIRED TO REGISTER UNDER THE RULES OF THE HMTA ?
2. MAY WE CONTINUE TO OPERATE A TRUCK TRANSPORTING BATTERIES WITH OUT DISPLAYING PLACARDS AS PERMITTED BY 173.260 (e)?
3. IS THERE A DISTINCTION BETWEEN SPENT LEAD ACID BATTERIES BEING RETURNED FOR RECYCLING AND BATTERIES THAT ARE EITHER NEW OR BEING RETURNED FOR REPAIRS?

A PHONE CONVERSATION WITH MS. BETH RAMO ON 8/11/92 INDICATED THAT WE MAY CONTINUE TO OPERATE WITH OUT REGISTRATION UNDER THE RULES OF 173.260 (e).

EARLY RESPONSE TO THIS REQUEST WOULD BE SINCERELY APPRECIATED SO THAT WE MAY COMPLY, IF REQUIRED, BY THE DATE REQUIRED BY THE HMTA REGISTRATION INSTRUCTIONS.


SINCERELY: S.C. EASON III
EMS INC.
1892 MCFARLAND AVE.
ROSSVILLE, GA 30741
706 866 7027

Handwritten initials or mark at the bottom right of the page.



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

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

OCT 13 2000

Mr. Michael Ritchie
Minnesota Department of Transportation
Office of Motor Carrier Services
Mail Stop 420
1110 Centre Pointe Curve
Mendota Heights, MN 55120-4152

Ref. No. 00-0242

Dear Mr. Ritchie:

This is in response to your August 24, 2000 letter regarding the applicability of the registration requirements to various scenarios involving small quantity hazardous waste generators offering a shipment of waste at one loading facility using one vehicle for transport by highway. Specifically, you are requesting clarification on whether the offeror/generator in the following examples is required to register.

The following scenarios from your letter are presented and answered in numerical sequence:

- (Q1) A Conditionally Exempt Small Quantity Generator (CESQG) offers 3 drums, with an aggregate gross weight of 1500 pounds, of Class 3 and Class 8 waste to a transporter in a single shipment. The transporter loads and removes the drums.
- (A1) The generator/offeror must register.
- (Q2) A generator accumulates and temporarily stores its wastes in non-bulk drums. The transporter pumps 100 gallons (700 pounds) of Class 3 waste from the drums into its 4,000-gallon capacity cargo tank vehicle, and leaves the drums with the generator for reuse as storage containers.
- (A2) The generator/offeror must register.
- (Q3) A generator accumulates and temporarily stores its waste in non-bulk drums. The generator offers the drums to the transporter, but the transporter opts to pump the 100 gallons (700 pounds) of Class 3 waste from the drums to its 4,000-gallon cargo tank vehicle, rather than return with a vehicle equipped to haul drums.
- (A3) The generator/offeror must register if he/she allows the transporter to use the 4,000-gallon cargo tank instead of a vehicle equipped to haul drums.



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107.606

- (Q4) A generator offers 2,600 pounds of Class 8 waste, which is pumped from a storage tank to the transporter's 2,500-gallon capacity cargo tank.
- (A4) The generator/offeror must register.
- (Q5) A hazardous materials shipper offers a non-bulk 750-pound shipment of Class 3 material to a motor carrier. The carrier already has 500 pounds of non-bulk Class 3 materials on board from another shipper. The truck now requires placards.
- (A5) The shipper/offeror does not have to register.
- (Q6) A transporter is hauling 6,000 pounds of electric storage batteries in conformance with the exception provided in § 173.159(e). That exception states that the shipment is not subject to the requirements of Subchapter C. The hazmat registration requirements are in Subchapter A.
- (A6) The transporter does not have to register.
- (Q7) A shipper offers for transportation 20 pounds of a Division 1.1 explosive material, a Table 1 hazardous material, by highway.
- (A7) The shipper must register.

I hope this answers your inquiry.

Sincerely,



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



Minnesota Department of Transportation

Office of Motor Carrier Services
Mail Stop 420
1110 Centre Pointe Curve
Mendota Heights, MN 55120-4152

Boothe Edmonson
Tel: 651/ 405-6060
Fax: 651/ 405-6082

August 24, 2000

Mr. Delmer Billings
Chief of Regulations Development
United States Department of Transportation
RSPA DHM-11
400 Seventh St S.W.
Washington, D.C. 20590

§ 107.606(a)(6)
Registration

CO-C 292

Dear Mr. Billings

The changes to the USDOT Hazardous Materials Registration Program applicability standards found in 49 CFR 107.601 has raised some questions from waste generators and some small volume shippers or offerors of hazardous materials. Waste generators that meet the U.S. Environmental Protection Agency or State Environmental Agency definition of a Conditionally Exempt Small Quantity Generator (CESQG) may be excepted from the Uniform Hazardous Waste Manifest requirements by environmental rules. However, much of this waste still meets the USDOT definition of a Class 3 flammable liquid, Class 6 poison, Class 8 corrosive, or other hazard classes, and is regulated when offered into transportation as a hazardous material.

Many smaller generators offer waste to licensed and registered hazardous materials transporters, rather than transport themselves. CESQG's do not offer 5000 pound non-bulk shipments, because environmental regulations don't allow them to accumulate that quantity of waste. Some CESQG's offer waste for transportation to carriers operating cargo tank vehicles. The manner of offering the waste has become important because of the addition of subparagraph § 107.601 (a) (6), which requires registration of any person who offers or transports a quantity of hazardous material that requires placarding.

Please indicate if the generator/offeror and transporter in the following examples will be required to register with RSPA. In the first examples, the waste offered is a DOT Table 2 hazardous material. Each shipment is offered at one loading facility using one vehicle for transport by highway.

1. A CESQG offers 3 drums, with an aggregate gross weight of 1500 pounds, of Class 3 and Class 8 waste to a transporter in a single shipment. The transporter loads and removes the drums.
2. A generator accumulates and temporarily stores its wastes in non-bulk drums. The transporter pumps 100 gallons (700 pounds) of class 3 waste from the drums into its 4,000 gallon capacity cargo tank vehicle, and leaves the drums with the generator for reuse as storage containers.

3. A generator accumulates and temporarily stores its waste in non-bulk drums. The generator offers the drums to the transporter, but the transporter opts to pump the 100 gallons (700 pounds) of Class 3 from the drums to its 4,000 gallon cargo tank vehicle, rather than return with a vehicle equipped to haul drums.
4. A generator offers 2600 pounds of Class 8 waste, which is pumped from a storage tank to the transporters 2,500 gallon capacity cargo tank.
5. A hazardous materials shipper offers a non-bulk 750 pound shipment of Class 3 to a motor carrier. The carrier already has 500 pounds of non-bulk Class 3 materials on board from another shipper. The truck now requires placards.
6. A transporter is hauling 6000 pounds of electric storage batteries in conformance with the exception provided in § 173.159 (e). That exception states that the shipment is not subject to the requirements of Subchapter C. The hazmat registration requirements are in Subchapter A.

The last example covers the offering or transport of a Table 1 hazardous material by highway.

7. A shipper offers for transportation 20 pounds of a Division 1.1 explosive.

Please review these examples and respond in writing. State and local environmental regulators, hazardous waste generators, and hazardous materials transporters, requesting clarification of these issues, have contacted our office. One local transporter reports he serves more than 1000 small quantity hazardous waste generators, and the capacity of the cargo tank he uses may determine if his customers need to register with RSPA.

Thank you for your assistance. If you have any questions, please contact me at (651) 405-6120, or by e-mail at michael.ritchie@dot.state.mn.us.

Yours truly,



Michael Ritchie
Hazardous Materials Specialist
Minnesota Department of Transportation
Office of Motor Carrier Services