



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

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

APR 18 2000

Ms. Diane H. Kennedy, R.E.H.S.
Director, Safety and Environmental Affairs
Trojan Battery Company
12380 Clark Street
Santa Fe Springs, California 90670-3804

Ref. No. 00-0047

Dear Ms. Kennedy:

This is in response to your letter dated February 1, 2000, requesting clarification on the shipment of electric storage batteries under the Hazardous Materials Regulations (HMR; 49 CFR 171-180). Specifically, you are requesting clarification on the use of the exception in § 173.159(e).

According to your letter, it is your understanding that this exception must be used in its entirety or not at all. You state as an example, labeling a pallet of batteries is in violation of the HMR when using this exception, and that all requirements, such as shipping papers, marking, labeling, placarding now apply. Another example you give, if shipping papers are supplied, but the pallet of batteries is not labeled, this is a violation.

Partial use of this exception is permissible. Therefore, labeling a pallet of batteries or placarding a transport vehicle when using this exception is not a violation of the HMR. If a shipping paper is used under this exception, it must be in compliance with the HMR. However, we do not recommend partial use of this exception because it can create confusion in the enforcement or emergency response community that may result in issuance of a ticket and frustration of your shipment.

Your understanding of § 173.159(e)(4) as stated in your letter is not correct. The transport vehicle may not carry material shipped by any person other than the shipper of the batteries. In reference to your example, it is permissible to use this exception after delivering all the batteries on the motor vehicle to one customer and then picking up waste batteries from a customer (one customer only).

I hope this answers your inquiry.

Sincerely,

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



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173.159



February 1, 2000

Mr. Delmer F. Billings
Chief Regulations Development
Office of Hazardous Materials Standards
U.S. Department of Transportation
Research and Special Programs Administration
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§ 173.159
00-0047

Dear Mr. Billings:

This is a letter seeking clarification regarding the transportation of electric storage batteries under 49 CFR 173.159 (e)(1) through (e)(4).

In a DOT training course I attended a couple of years ago, the instructor taught us that if we use this 4-part exemption, we cannot label the battery packages, cannot supply paperwork, cannot mark or placard. In other words, if we are going to comply with the regulations, we must do so ALL THE WAY OR NOT AT ALL. For example, if we place a corrosive label on a pallet of batteries, that label automatically knocks us out of the exemption. We now have to have paperwork, marking, and placarding. Another example, if paperwork is supplied, but the pallet of batteries does not have any labels, this is incorrect. Please clarify.

The second issue is that the first three provisions (e)(1) through (e)(3) are self-explanatory, however, (e)(4) also causes some problems. For example, in the same course, we were taught that when one of our drivers is delivering batteries to one client and only one client, we fall under the 4-part exemption. However, after delivering the batteries in the truck, we then pick-up junk batteries from that one customer, and only one customer, we now violate section (e)(4) because we are no longer the shipper (the customer is the shipper) we are the carrier. So at this point we must comply with the regulations all the way (i.e., labels, placards, marking, paperwork (supplied by the customer), etc.) Please clarify.

The final questions are, if we are transporting batteries using the 4-part exemption and we supply paperwork and label the pallets but do not mark or placard, are we in violation of the HMR? Does the ALL OR NOTHING principle apply with this exemption?

Thank you for your consideration. If I can provide anything further, or if you wish to discuss this matter further, please do not hesitate to contact me at (562) 946-8381, or at the address noted on this letter at the California location.

Respectfully,

Diane H. Kennedy, R.E.H.S.
Director, Safety and Environmental Affairs
Environmental Health Specialist

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