



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

1200 New Jersey Ave., S.E.  
Washington, DC 20590

JUN 12 2007

Mr. Frank Nesbihal, CHMM  
Principal Environmental Specialist  
Florida Power and Light Co.  
700 Universe Blvd. JES/JB  
Juno Beach, FL 33408

Ref. No.: 07-0092

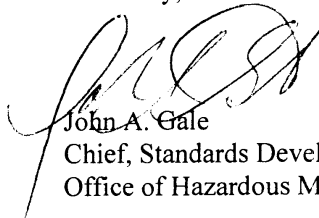
Dear Mr. Nesbihal:

This is in response to your May 9, 2007 letter requesting clarification of the requirements for lead acid batteries prescribed by the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the provisions in § 173.159(e)(1) stating, "no other hazardous materials may be transported in the same vehicle," prohibit you from equipping each trailer with a fire extinguisher for use in the event of an emergency.

As provided in § 171.1, the HMR apply to the transportation of hazardous materials in commerce. For the purposes of your letter, we have assumed that the fire extinguisher is indeed a hazardous material. However, given that the fire extinguisher is an integral part of the motor vehicle (e.g., fuel systems, fire extinguishers, cargo heaters, and air conditioners), it is not in commerce. The intent of § 173.159(e)(1) is to prohibit the transportation in commerce of any other hazardous materials in the same vehicle with the batteries. Therefore, § 173.159(e)(1) does not prohibit you from equipping each trailer with a fire extinguisher for use in the event of an emergency.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,



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



070092

173.159(e)(1)  
171.1

**Drakeford, Carolyn <PHMSA>**

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**From:** Betts, Charles <PHMSA>  
**Sent:** Wednesday, May 09, 2007 4:04 PM  
**To:** Drakeford, Carolyn <PHMSA>  
**Subject:** FW: Question - Battery Exception

Supko  
§ 173.159(e)(1)  
Batteries  
07-0092

PLEASE LOG THIS IN AS A NEW INTERPRETATION LETTER.

Thanks,  
Charles

-----Original Message-----

From: Frank\_J\_Nesbihal@fpl.com [mailto:Frank\_J\_Nesbihal@fpl.com]  
Sent: Wednesday, May 09, 2007 1:35 PM  
To: Betts, Charles <PHMSA>  
Cc: D\_M\_Rawson@fpl.com  
Subject: Question - Battery Exception

Dear Mr. Betts,

Our company owns several trailers that are permanently equipped with acid-filled batteries. The trailers are towed, when needed, either by company-owned or contractor-owned vehicles to company facilities that are in need of emergency back-up power. The batteries in the trailers are secured in racks to prevent their movement while being towed. Since the trailers are considered separate "transport vehicles" under 49 CFR 171.8, and they have no other hazardous materials on them (just the batteries), and the batteries are secured and owned by the shipper, they are towed using the battery exception at 49 CFR 173.159(e).

In the paragraph at 49 CFR 173.159(e)(1), it states that "no other hazardous materials may be transported in the same vehicle". However, we are planning to equip each trailer with a fire extinguisher, a hazardous material, in the event of a fire caused by battery shorting. The question I have is; since no other hazardous materials can be transported on the same vehicle when using the battery exception, would this regulation prohibit us from equipping each trailer with a fire extinguisher? We have reviewed the regulation at 49 CFR 173.220(e) which exclude fire extinguishers from the hazardous materials regulations ("HMR"). But that section appears to pertain when fire extinguishers are carried on self propelled and internal combustion powered vehicles. Our trailers are "towed" transport vehicles. In addition, we reviewed the "Materials of Trade" exception at 49 CFR 173.6, and are unclear if it would also exempt carrying fire extinguishes from the HMR.

I very much appreciate the opportunity to submit this question. We do not think it's the intent of the Pipeline and Hazardous Materials Safety Administration to prohibit safety equipment on transport vehicles that carry acid-filled batteries under the battery exception at 49 CFR 173.159 (e). If you have any questions or need additional information, please do not hesitate to call me at 561-691-7013.

Respectfully,

Frank Nesbihal, CHMM  
Principal Environmental Specialist  
Florida Power and Light Co.  
700 Universe Blvd. JES/JB  
Juno Beach, FL 33408