



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

MAY 15 2007

Mr. Earl Thomas
Network Environmental Systems
1141 Sibley Street
Folsom, CA 95630

Ref. No. 07-0066

Dear Mr. Thomas:

This is in response to your March 22, 2007 letter requesting clarification of the requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you inquire about the applicability of the "materials of trade" exceptions.

A "material of trade" is defined as a hazardous material, other than a hazardous waste, that is carried on a motor vehicle: (1) to protect the health and safety of the operator or passengers; (2) to support the operation or maintenance of the motor vehicle, including its auxiliary equipment; or (3) by a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle.

Your questions are paraphrased and answered as follows:

Q1. Is § 173.6 applicable to the transport of an aircraft battery (i.e., a lead acid battery) in a motor vehicle, owned and operated by an airline, from an aircraft to a maintenance shop or from an aircraft to a different location for repackaging and subsequent shipment?

A1. Yes, under the scenario described in the question, the transport of the battery is eligible for "materials of trade" exceptions under § 173.6 because it satisfies the third condition in the definition of a "material of trade." A hazardous material transported in conformance with § 173.6 is not subject to any other requirements in the HMR besides those set forth or referenced in the section. You should be aware that if the battery is repackaged and transported using a commercial carrier, it is no longer eligible for the "materials of trade" exceptions. Additionally, the transport of the lead acid battery may be eligible for exceptions under § 173.159. Specifically, section 173.159(e) provides that electric storage batteries containing electrolytes are not subject to the HMR for transportation by highway (or rail) provided that no other hazardous materials are transported in the same vehicle; the batteries are loaded and braced so as to prevent damage and short circuits in transit; any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the



070066

173.6
173.159

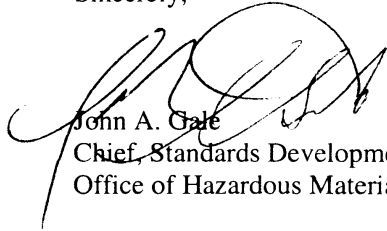
batteries; and the transport vehicle may not carry material shipped by any person other than the shipper of the batteries.

Q2. Is § 173.6 applicable to the transport of a life raft (i.e., a “Life-saving appliance”) in a motor vehicle, owned and operated by an airline, from an aircraft to a location for repackaging and subsequent shipment? Would § 173.6 be applicable if a courier was used in place of an airline owned and operated vehicle?

A2. Yes. A Class 9 material such as a life raft properly classified as a “Life-saving appliance, self inflating,” UN2990, for example, is eligible for “materials of trade” exceptions in § 173.6. The transport of the life raft is not eligible for “materials of trade” exceptions when a commercial carrier (or a contracted driver) is used because this transport does not meet one of the three conditions for defining a “material of trade.”

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

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Gale', is written over the typed name and title.

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

Jarman, Erin <PHMSA>

From: Mannion, Doreen <PHMSA>
Sent: Thursday, March 22, 2007 10:10 AM
To: INFOCNTR <PHMSA>
Subject: FW: Web Site Feedback

Der Kinderen
§ 173.6
§ 173.159
MOT/Battery
07-0066

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

From: ethomas@networkenvironmental.com [mailto:ethomas@networkenvironmental.com]
Sent: Thursday, March 22, 2007 10:11 AM
To: HMIS <PHMSA>
Subject: Web Site Feedback

Below is the result of your feedback form. It was submitted by Earl Thomas (ethomas@networkenvironmental.com) on Thursday, March 22, 2007 at 10:10:45.

Email: ethomas@networkenvironmental.com

Name: Earl Thomas

1141 Sibley St.
Folsom, CA 95630

Message Type: Other

Organization: Network Environmental Systems, Inc.

Phone: 916-439-2937

Comments: The purpose of this correspondence is to obtain written concurrence from the Department of Transportation (DOT), regarding the transport of a lead acid battery from an aircraft to a maintenance shop for servicing or to a different location for repackaging for subsequent shipment. 173.159(e) 173.6 applicable to other haz mat on vehicle

It was concluded that the ground transportation occurring between the plane and the aforementioned destinations falls under the DOT's "Materials of Trade" provision, and, provided that the applicable requirements contained in this exception are adhered to, movement of the battery from the aircraft to the locations mentioned above is not subject to the Hazardous Materials Regulations (HMR).

The battery, as well as the motor vehicle used to transport the battery, are owned by the airlines.

A second question, yet similar, can a life raft, used by an airline as a "life-saving appliance" (Class 9) be transported from an aircraft to a location under the Materials of Trade provision, to be packed for shipment pursuant to the HMR? And...would the exception still apply if a courier was used that was not employed by the airlines?

In this latter scenario, the life raft is being returned to the manufacturer for recertification.

Your professional support is greatly appreciated.