



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

JAN 17 2006

Mr. Loren Wish
Compliance Manager
J.B. Hunt Transport, Inc.
615 J.B. Hunt Corp Drive
Lowell, AR 72745

RefNo.: 05-0216

Dear Mr. Wish:

This responds to your September 9, 2005 letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if a carrier may use the exception for electric storage batteries provided in § 173.159(e) when the original shipper of the batteries chooses not to use the exception. Additionally, you ask if the bill of lading must include a statement indicating that the batteries are transported in accordance with § 173.159(e).

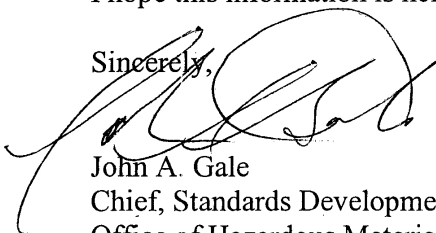
Section 173.159(e) provides relief from the requirements of the HMR for shipments of electric storage batteries containing electrolyte or corrosive battery fluid when the following conditions are met:

- (1) Transportation is by highway or rail;
- (2) No other hazardous materials are transported in the same vehicle;
- (3) The batteries are loaded or braced to prevent damage or short circuits during transportation;
- (4) Any other material loaded in the same vehicle is blocked, braced, or otherwise secured to prevent contact with or damage to the batteries; and
- (5) The transport vehicle does not carry material shipped by any person other than the shipper of the batteries.

A carrier may use the exception in § 173.159(e), even when the shipper of the batteries does not choose to use the exception. For example, if a shipper provides placards to the carrier for a shipment of batteries, the carrier may choose not to display the placards on the transport vehicle if the shipment satisfies the conditions of the exception provided in § 173.159(e). The bill of lading is not required to include a statement indicating that the batteries are transported in accordance with § 173.159(e).

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

173.159(e)



050216



J.B. HUNT TRANSPORT, INC.

September 9, 2005

Eichenlaub
§173.159(e)
Batteries

05-0216

Mr. Edward T. Mazzullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
400 7th Street, S.W.
Washington, D.C. 20590-0001

Dear Mr. Mazzullo:

I am in need of your assistance concerning § 173.159(e). J.B. Hunt Transport, Inc. hauls batteries for some of our customers, and many of these customers use this exception. Our concerns revolve around how use of the exception is declared, and which parties have the authority to declare use.

1. Are shippers required to declare the use of this exception?
2. If so, do they need to state this on the bill of lading, such as stamping or writing §173.159(e) on the bill?
3. Is the shipper the only group with authority to claim this exception?
4. Is the motor carrier authorized to claim the exception as well, if the shipper declines to?

Our concern is that one of our drivers without a HazMat endorsement on their CDL could possibly be sent to pick up a load of batteries from a shipper that normally uses this exception, but for some reason the shipper gives the driver placards. At that time, our driver would not be able to transport the load due to the placards on the trailer. Does J.B. Hunt, as the motor carrier for this load, have the authority to verify that the load has met all the requirements of § 173.159(e) and then pull the placards from the trailer?

If you need any additional information, feel free to contact me at (479) 659-6018. Thank you for your assistance in this matter.

Sincerely,

Mr. Loren Wish
Compliance Manager
J.B. Hunt Transport, Inc.
615 J.B. Hunt Corp Drive
Lowell, AR 72745