



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

October 1, 2024

Frank Lopez
Regulatory Compliance Specialist
Council on Safe Transportation of Hazardous Articles
10 Hunter Brook Lane
Queensbury, NY 12804

Reference No. 24-0041

Dear Mr. Lopez:

This letter is in response to your May 28, 2024, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to determining responsibility for compliance with lithium ion cell and battery state of charge (SOC) requirements—see § 172.102 Special Provision A100. You ask for confirmation that subsequent offerors of lithium ion cells and batteries may generally rely on information from the initial offeror that the SOC does not exceed 30 percent of the cell or battery’s rated capacity.

The answer is yes. Section 171.2(b) states that “...each offeror may rely on information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the other offeror is incorrect.” Additionally, § 171.2(f) would apply to the scenario you provided, because it states that “carriers that transport hazardous materials may rely on information provided by the offeror of the hazardous material or a prior carriers, unless the carrier knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the offeror or prior carrier is incorrect.” Therefore, subsequent offerors of lithium ion cells and batteries may rely on information provided by another offeror—or a previous carrier—unless it is known to the offeror or a reasonable person acting in the circumstances and exercising reasonable care that the other offeror’s or carrier’s information is incorrect.

Finally, please note that whenever a hazardous material has not been shipped in compliance with the HMR, the Department of Transportation will attempt to bring an enforcement proceeding against the person who first caused the transportation of the noncomplying shipment. See the formal interpretation^[1] of carrier responsibility when accepting hazardous material for transportation in commerce (June 4, 1998; 63 FR 30411).

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Alexander Wolcott". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alexander Wolcott
Acting Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

From: [INFOCNTR \(PHMSA\)](#)
To: [Hazmat Interps](#)
Subject: FW: COSTHA Letter of Interpretation Request regarding §171.2(b) and the requirement for lithium ion batteries to be at a state of charge of 30% or less
Date: Tuesday, June 4, 2024 10:12:51 AM
Attachments: [image001.png](#)
[COSTHA LOI 171.2 and SOC.pdf](#)

Please see attached request for letter of interpretation.

Thanks,
Jonathon, HMIC

From: Frank Lopez <frank@costha.com>
Sent: Tuesday, May 28, 2024 4:09 PM
To: Kelley, Shane (PHMSA) <shane.kelley@dot.gov>
Cc: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>; L'Gena Shaffer <Lgena@costha.com>; Chris Yakush <Chris@costha.com>; Tom Ferguson <Tom@costha.com>; Julie Prescott <Julie@costha.com>; Anne Barry <anne@costha.com>
Subject: COSTHA Letter of Interpretation Request regarding §171.2(b) and the requirement for lithium ion batteries to be at a state of charge of 30% or less

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Shane Kelley,

Attached please find COSTHA's request for a letter of interpretation on §171.2(b) regarding the air transportation requirement for lithium ion batteries to be at a State of Charge (SOC) of 30% or less as it relates to subsequent offerors ability to rely on information from the manufacturer or previous offeror on the SOC.

Please contact me if you should have any questions or need any additional information.

We appreciate your consideration.

Best regards,

Frank

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COSTHA 2025 ANNUAL FORUM & EXPO

MAY 4-9, 2025

ATLANTA, GA

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Council on Safe Transportation of Hazardous Articles

May 28, 2024

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Mr. Shane Kelley
Director, Standards and Rulemaking Division
Pipeline and Hazardous Materials Safety Administration
Attn: PHH-10
U.S. Department of Transportation
East Building, 1200 New Jersey Ave., SE
Washington, D.C. 20590-0001
Submitted: Via Email
cc: infocntr@dot.gov

Dear Mr. Kelley,

The Council on Safe Transportation of Hazardous Articles (COSTHA) requests a formal letter of interpretation on behalf of the air carrier roundtable regarding the requirements of §175.33(c)(1)(i). COSTHA member airlines have experienced differences in interpretation regarding the requirement to ensure a copy of a shipping paper accompanies a shipment it covers during transportation aboard an aircraft.

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and other associated with the hazardous materials transportation industry. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials. COSTHA is also pleased to have 17 air carriers included in our membership.

The 49 CFR Subpart A, Part 175, [§175.33\(c\)\(1\)\(i\)](#) currently reads:

Ensure a copy of the shipping paper required by [§175.30\(a\)\(2\)](#) accompanies the shipment it covers during transportation aboard the aircraft.

COSTHA requests this interpretation confirm our understanding that the requirement of [§175.33\(c\)\(1\)\(i\)](#) aligns with the requirements of the International Civil Aviation Organization (ICAO) Technical Instructions on the Safe Transport of Dangerous Goods by Air (TI) in that, one shipping paper will accompany the entire consignment versus a copy of the shipping paper be provided for each individual package *within* the shipment. The ICAO Technical Instructions reference a “consignment” vs. the HMR stating “shipment”.

The ICAO Technical Instructions (Doc 9284) 2023-2024 Ed states:

Part 7, Chapter 1, 1.2.2 - *Where a dangerous goods transport document is provided in accordance with 1.2.1 a), one copy must accompany the consignment to final destination and one copy must be retained by the operator at a location on the ground where it will be possible to obtain access to it within a reasonable period; the document must be retained at this point until the goods have arrived at final destination, after which time it may be stored elsewhere.*

The ICAO Technical Instructions define:

Consignment One or more packages of dangerous goods accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address.

Shipment The specific movement of a consignment from origin to destination.

Example

A shipment containing 10 packages as a single *consignment* accepted by an operator from a single shipper at one time and at one address, receipted for as a single lot and moving to a single consignee at a single destination address, would require only one shipping paper on the “*number one*” piece.

COSTHA members have experienced instances where Federal Aviation Administration (FAA) inspectors or Principal Hazmat Inspectors (PHIs) interpreted the requirement of §175.33(c)(1)(i) to require a copy of the shipping paper for each individual package within the consignment or shipment. COSTHA member airlines do not believe this to be the requirement or intent of §175.33(c)(1)(i).

COSTHA member airlines believe the inclusion of a copy of the shipping papers for every piece of a multi-piece shipment would cause undue burden on the carrier through time and resources required, is contrary to standard procedures aligned with international regulations, and provides no added safety benefit. However, in the situation where a multi-piece shipment must be split for accommodation purposes during transportation, a second shipping paper, properly annotated, will accompany the split pieces.

In closing, COSTHA asks PHMSA to confirm our understanding that the provisions in §175.33(c)(1)(i) require a single copy of the shipping paper to accompany a “consignment” or shipment of multiple pieces of hazardous materials.

COSTHA appreciates your review of this interpretation request, and we look forward to hearing from you soon.

Sincerely,



Frank Lopez
Regulatory Compliance Specialist