



U.S. Department  
of Transportation

**Pipeline and Hazardous  
Materials Safety  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

February 24, 2026

Mr. Frank Lopez  
Council on Safe Transportation of Hazardous Articles  
101 Ridge St. Suite I  
Glenn Falls, NY 12801

Reference No. 24-0051

Dear Mr. Lopez,

This letter is in response to your June 6, 2024, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the responsibility to obtain a Competent Authority Approval (CAA) for the transportation of hazardous materials. In your email, you provide several examples of provisions found in the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI) that require approval from the "State of Origin" and "State of the Operator," such as Special Provisions (SP) A88 and A99.

We have paraphrased and answered your questions as follows:

- Q1: Is it the shipper's (i.e., offeror's) or air carrier's (i.e., operator's) responsibility to obtain an approval for the State of Origin and the State of the Operator, as required in ICAO TI Special Provisions A88 and A99?
- A1: The HMR apply to the offering, acceptance, and transportation of hazardous materials to, from, or within the United States, and to any aircraft of United States' registry anywhere in global air commerce. When ICAO TI SP A88 and A99 stipulate authorization from both the "State of Origin" and the "State of the Operator," as the competent authority for the United States, PHMSA issues a single competent authority approval (CAA) based on authority provided within the HMR. Typically, the approval is granted to the offeror requesting as part of the pre-transportation functions, outlined in 49 CFR § 171.1(b). The operator's capability to handle specific material is evaluated during the approval process, in coordination with the Federal Aviation Administration (FAA).
- Q2: Is the only approval an operator is required to seek, or provide in accordance with ICAO TI Special Provisions A88 and A99, the operator's agreement to accept a dangerous goods shipment under a CAA?

A2: Yes. Generally, it is the responsibility of the offeror (i.e., shipper) to seek a CAA—including under ICAO TI Special Provisions A88 and A99. However, in some circumstances the air operator seeks this approval, either through a contractual arrangement with the offeror, or because the operator itself is the offeror of the hazardous materials (e.g., COMAT). In these circumstances, the operator is the responsible party for obtaining a CAA.

Independent of the HMR, operators should refer to the FAA provisions under 14 CFR §§ 121.135(b)(25) and 135.23(p) concerning operator manual requirements for accepting and transporting dangerous goods shipments.

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:** [Nickels, Matthew \(PHMSA\)](#)  
**To:** [Hazmat Interps](#)  
**Subject:** FW: Letter of Interpretation Request to clarify obtaining a foreign CAA  
**Date:** Thursday, June 20, 2024 10:17:01 AM  
**Attachments:** [image001.png](#)  
[COSTHA Requesting a Letter of Interpretation Request for foreign CAA.pdf](#)

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Hey Alice and Jessie, please assign to next person up. Thanks!

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**From:** Kelley, Shane (PHMSA) <[shane.kelley@dot.gov](mailto:shane.kelley@dot.gov)>  
**Sent:** Tuesday, June 18, 2024 4:56 PM  
**To:** Nickels, Matthew (PHMSA) <[Matthew.Nickels@dot.gov](mailto:Matthew.Nickels@dot.gov)>; DerKinderen, Dirk (PHMSA) <[Dirk.DerKinderen@dot.gov](mailto:Dirk.DerKinderen@dot.gov)>; Patrick, Eamonn (PHMSA) <[eamonn.patrick@dot.gov](mailto:eamonn.patrick@dot.gov)>  
**Cc:** Burger, Donald (PHMSA) <[donald.burger@dot.gov](mailto:donald.burger@dot.gov)>; Pfund, Duane (PHMSA) <[Duane.Pfund@dot.gov](mailto:Duane.Pfund@dot.gov)>  
**Subject:** FW: Letter of Interpretation Request to clarify obtaining a foreign CAA

Gents

Not sure which branch will handle, but I would appreciate if I could be kept in the loop on this response. Please also make sure we coordinate with Duane's team as well as Don's.

Thank you

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**From:** Frank Lopez <[frank@costha.com](mailto:frank@costha.com)>  
**Sent:** Tuesday, June 18, 2024 4:09 PM  
**To:** Kelley, Shane (PHMSA) <[shane.kelley@dot.gov](mailto:shane.kelley@dot.gov)>  
**Cc:** INFOCNTR (PHMSA) <[INFOCNTR.INFOCNTR@dot.gov](mailto:INFOCNTR.INFOCNTR@dot.gov)>; L'Gena Shaffer <[Lgena@costha.com](mailto:Lgena@costha.com)>; Tom Ferguson <[Tom@costha.com](mailto:Tom@costha.com)>; Chris Yakush <[Chris@costha.com](mailto:Chris@costha.com)>; Julie Prescott <[Julie@costha.com](mailto:Julie@costha.com)>; Anne Barry <[anne@costha.com](mailto:anne@costha.com)>  
**Subject:** Letter of Interpretation Request to clarify obtaining a foreign CAA

**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 to clarify the responsibility for obtaining competent authority approvals for air transport, and confirm our understanding that a Competent Authority Approval (CAA) is an authorization required for specific dangerous goods (i.e., lithium batteries greater than 35 kg transported by air, prototype lithium batteries) or a waiver or modified compliance with a regulatory requirement (i.e., non-specification cylinder construction), and that it is the responsibility of the offeror (shipper) to obtain the appropriate "approvals" prior to offering the dangerous goods for air transport.

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

We appreciate your consideration.

v/r  
Frank

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**Frank Lopez**  
Regulatory Compliance Specialist  
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*This information is intended to provide interpretative and authoritative information in regard to the subject matter covered as a service to our clients and has been answered to the best of our ability based on the information provided to us. We do not guarantee the accuracy or completeness of any such interpretation or information, however, nor do we warrant that compliance with any advice we provide will guarantee compliance with any legal or regulatory requirements. Our statements or opinions do not convey legal interpretation and government authorities or legal counsel should be contacted for such a response.*



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American Airlines

**General Counsel**  
Richard Schweitzer, PLLC

June 6, 2024

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](mailto:infocntr@dot.gov)

Dear Mr. Kelley,

The Council on Safe Transportation of Hazardous Articles (COSTHA) requests a formal letter of interpretation to clarify responsibility for obtaining competent authority approvals for air transport. The International Civil Aviation Organization Technical Instructions on the Safe Transport of Dangerous Goods by Air (ICAO TI) uses the terms “state of origin” and “state of the operator” in Special Provisions A88 and A99. Specifically, we request confirmation from PHMSA that the responsibility to obtain approvals from the competent authority of the origin country and of the operator is exclusively that of the shipper and not the carrier (operator). COSTHA Air Carrier Roundtable member airlines have experienced requests from foreign competent authorities to produce a Competent Authority Approvals (CAA) for lithium batteries greater than 35 kg and prototype lithium battery shipments.

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.

COSTHA requests this interpretation to confirm our understanding that a Competent Authority Approval (CAA) is an authorization required for specific dangerous goods (i.e., lithium batteries greater than 35 kg transported by air, prototype lithium batteries) or a waiver or modified compliance with a regulatory requirement (i.e., non-specification cylinder construction), and that it is the responsibility of the offeror (shipper) to obtain the appropriate “approval” prior to offering the dangerous goods for air transport.

*Council on Safe Transportation of Hazardous Articles*

10 Hunter Brook Lane, Queensbury, NY 12804 • Phone: (518)761-0389 • Fax: (518)792-7781 • [www.costha.com](http://www.costha.com)

US air carriers have documented operational certificates that are approved through the Federal Aviation Administration (FAA) for accepting and transporting dangerous goods. The decision to accept dangerous goods covered under a CAA or Special Permit is at the discretion of the air carrier.

49 CFR defines an offeror as:

- 1) Any person who does either or both of the following:
  - (i) Performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.
- 2) A carrier is not an offeror when it performs a function required by this subchapter as a condition of acceptance of a hazardous material for transportation in commerce (e.g., reviewing shipping papers, examining packages to ensure that they are in conformance with this subchapter, or preparing shipping documentation for its own use) or when it transfers a hazardous material to another carrier for continued transportation in commerce without performing a pre-transportation function.

The ICAO TI defines State of the Operator and State of Origin as:

STATE OF THE OPERATOR: *The country (State) in which the operator's principal place of business is located or, if there is no such place of business, the operator's permanent residence.*

STATE OF ORIGIN: *The country (State) in the territory of which the consignment is to first be loaded on an aircraft.*

COSTHA seeks confirmation that the "State of Origin" is the national authority or Competent Authority Approver of the location of departure and the "State of the Operator" is the national authority or Competent Authority Approver of the air carrier's (operator's) country.

## Examples

**Special Provision A88** *Pre-production prototypes of lithium batteries or cells, when these prototypes are transported for testing... that have not been tested to the requirements in subsection 38.3 of the UN Manual of Tests and Criteria may be transported aboard cargo aircraft, if approved by the appropriate authority of the State of origin and the State of the operator and the requirements in Packing Instruction 910 of the ICAO Supplement to the Technical Instructions are met.*

*When lithium batteries are shipped under an approval in accordance with this special provision...*

*A copy of the document of approval must accompany the consignment.*

*Transport in accordance with this special provision must be noted on the Shipper's Declaration...*

**Special Provision A99** *Irrespective of the per package quantity limit for cargo aircraft specified in Column L of the List of Dangerous Goods (Subsection 4.2) and in Section I of Packing Instructions 965, 966, 967, 968, 969 or 970, a lithium cell or battery (UN 3090 or UN 3480), including when packed with, or contained in equipment (UN 3091 or UN 3481) that meets the other requirements of Section I of the applicable packing instruction may have a mass exceeding 35 kg, if approved by the appropriate authority of the State of origin and the State of the operator and the requirements in Packing Instruction 974 of the ICAO Supplement to the Technical Instructions are met.*

*When lithium batteries are shipped under an approval in accordance with this special provision, the packing instruction number shown on the Shipper's Declaration must be "974".*

*A copy of the document of approval must accompany the consignment. Transport in accordance with this special provision must be noted on the Shipper's Declaration.*

While a US air carrier may require shippers to have an arrangement or "approval" to transport a dangerous goods under a CAA approval such as the requirements provided in special provisions A88/A99, this agreement is not a Competent Authority Approval but an agreement to accept and transport the dangerous goods.

In closing, COSTHA requests PHMSA confirm our understanding that the responsibility to obtain an authorization from the competent authority of the origin country and state of the operator is exclusively that of the shipper and not the carrier (operator). The only "approval" necessary related to air carriers is the agreement to accept a dangerous goods shipment under a Competent Authority Approval.

COSTHA appreciates your review of this interpretation request, and we look forward to hearing from you soon. Please contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Lopez', written in a cursive style.

Frank Lopez  
Regulatory Compliance Specialist