Cardez

22-0009

From: Nickels, Matthew (PHMSA)
To: Hazmat Interps
Subject: Fwd: COSTHA Request for Letter of Interpretation | 175.33(c)(3)
Date: Tuesday, February 15, 2022 7:43:54 PM
Attachments: 2022 COSTHA LOI re175.33(c)(3).pdf

Hey Alice and Kenetha, please process this interpretation request. Email below and attached PDF. Thanks!

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From: L'Gena Shaffer <Lgena@costha.com>
Sent: Tuesday, February 15, 2022 5:39 PM
To: Kelley, Shane (PHMSA)
Cc: INFOCNTR (PHMSA); Chris Yakush; Tom Ferguson; Webb, Steven (PHMSA); Nickels, Matthew (PHMSA); Wiener, Aaron (PHMSA); DerKinderen, Dirk (PHMSA); Patrick, Eamonn (PHMSA); L'Gena Shaffer
Subject: COSTHA Request for Letter of Interpretation | 175.33(c)(3)

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Good Afternoon Shane,

I hope you are well!

Please find attached a formal letter of interpretation regarding the requirements to retain and make readily accessible a copy of the notice to the pilot in command (NOPC), or information contained in it, at the airport of departure, airport of arrival, and during flight as required in § 175.33(c)(3). and the ability to provide the information electronically.

We appreciate your assistance.

Regards,

L'Gena Shaffer, CDGP
Director, Regulatory Compliance
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Council on Safe Transportation of Hazardous Articles

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Council on Safe Transportation of Hazardous Articles

February 15, 2022

Mr. Shane Kelley
Director, Standards and Rulemaking Division
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590 USA
cc: infocntr@dot.gov

Dear Mr. Kelley,

The Council on Safe Transportation of Hazardous Articles (COSTHA) requests a formal letter of interpretation regarding the requirements to retain and make readily accessible a copy of the notice to the pilot in command (NOPC), or information contained in it, at the airport of departure, airport of arrival, and during flight as required in § 175.33(c)(3).

The requirements to provide information on the hazardous materials aboard the aircraft in the event of an emergency were promulgated in HM-206C Final Rule published February 24, 2005 and adopted without changes from the NPRM HM-206C published February 13, 2002. This rulemaking amended the HMR to assure information on the hazardous materials carried aboard aircraft is available to emergency responders and that the information was available outside of the cockpit in the event of an emergency.

COSTHA requests confirmation of our understanding of § 175.33(c)(3), specifically the requirement for information to be readily accessible at the airport of departure and the intended airport of arrival during the duration of the flight to mean "a copy of the NOPC, or the information contained in it" as provided in the preamble of HM-206C. We would like to confirm 'ready access' to the information on the NOPC includes electronic access and is not limited to an actual paper copy.

The current text of § 175.33(c)(3) states the aircraft operator must –

> "*Have the shipping paper and information to the pilot-in-command readily accessible at the airport of departure and the intended airport of arrival for the duration of the flight*." [emphasis added].

However, based on text from the preamble of the rulemaking, the need to have both the shipping paper and information to the pilot-in-command was not the intent of the requirement.

Specifically, HM-206C NPRM states (page 6671, 3rd column):

> *Therefore, we are proposing to amend the HMR to require an aircraft operator to:*
> *…*
> *(3) retain and make readily accessible a copy of the NOPC, or the information contained in [NOPC], at the airport of departure until the flight leg is completed; and*
> *(4) make readily accessible a copy of the NOPC, or the information contained in [NOPC], at the planned airport of arrival until the flight leg is completed.*
> *…*

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These changes to the HMR will provide emergency responders with timely and consolidated information about the identity (including proper shipping name, hazard class, quantity, and number of packages), and location of all hazardous material on an airplane.

The ICAO Technical Instructions Chapter 4, section 4.1 - Information to the Pilot-in-Command requires the operator of an aircraft in which dangerous goods are to be carried *"to provide personnel with responsibilities for operational control of the aircraft (e.g. the flight operations officer, flight dispatcher, or designated ground personnel responsible for flight operations) with the same information that is required to be provided to the pilot-in-command*." See 4.1.1(b). [Emphasis added].

COSTHA members noted the current text in the HMR is being interpreted by enforcement agents to mean both a shipping paper and a NOPC is required to be readily available at departure, destination, and during flight. However, we believe this was not PHMSA's intention based on the pre-amble to the rule when adopted.

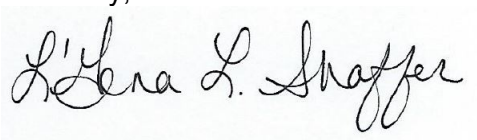
Therefore, based on the NPRM preamble language in HM-206C, which was adopted without changes into the Final Rule, COSTHA requests confirmation of the following:

- the text currently in 49CFR (provided above) requires either a shipping paper **OR** the NOPC be readily accessible, but not both; and
- the information required § 175.33(c)(3) may be provided in an electronic format.

COSTHA is confident that PHMSA did not have the intention to burden air carriers with the need to provide both.

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

Sincerely,



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