



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

October 13, 2022

Mr. Jim Powell
President
Transportation Development Group, LLC
190 W. Continental Rd. Ste 216-401
Green Valley, AZ 85614

Reference No. 22-0044

Dear Mr. Powell:

This letter is in response to your April 6, 2022, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to offering lithium batteries for transportation. Specifically, you ask about the required lithium battery test summaries and if your client would be considered an offeror.

In your letter, you state that your client offers audiology equipment including a headset and tablets that contain either a small cell (20 watt-hours (Wh) or less) or a battery (100 Wh or less). You further state that while some manufacturers have made the lithium battery test summaries available, others have provided only a statement certifying the cells and batteries have been successfully tested and meet the requirements of the United Nations (UN) Manual of Test and Criteria Part III, subsection 38.3. Your questions have been paraphrased and addressed below.

- Q1. You ask whether your client needs a lithium battery test summary to ship a commercially available tablet computer that has been purchased from a retail store and is incorporated into the “kit” that your client sells to its customers.
- A1. The answer is yes. While the lithium battery test summary is not required to be physically present with the shipment, your client must make available a lithium battery test summary that contains all the required information specified in § 173.185(a)(3) of the HMR.
- Q2. You ask whether a product summary/confirmation—provided to your client from the manufacturer that attests compliance with the UN 38.3 requirements for their tablets but does not contain all the required information specified in § 173.185(a)(3)—is sufficient for your client to demonstrate compliance with the requirement to “make available a test summary” when your client acts as a subsequent distributor.

- A2. The answer is no. Although a shipper could rely on information provided by the battery or product manufacturer as evidence that the cell or battery meets the required tests, this would not meet the requirement for a manufacturer or distributor to make available a lithium battery test summary as required by § 173.185(a) of the HMR.
- Q3. You ask whether retailers of lithium battery-powered tablets are obligated to provide retail customers, such as your client, with a complete lithium battery test summary.
- A3. The answer is yes. As required in § 173.185(a), “each manufacturer and subsequent distributor of lithium cells or batteries manufactured on or after January 1, 2008, must make available a test summary.” For additional clarification, the lithium battery test summary is considered “complete” if it contains all of the required information specified in § 173.185(a)(3) of the HMR.
- Q4. You ask what the penalties are if retailers fail to provide a lithium battery test summary as required under § 173.185(a)(3) to your client.
- A4. The enforcement process and possible penalties are detailed in 49 CFR Part 107 subpart D (Enforcement).

In your letter, you also state that your client has a reverse logistics aspect to its business. The “kits” are shipped back to your client after use, utilizing guidance that your client has prepared.

- Q5. You ask whether your client is performing the role of an “offeror” if it provides general instructions to its customer as outlined in your letter.
- A5. Without reviewing the actual guidance, this Office cannot determine whether your client is performing the role of an offeror. However, if the guidance provided performs any pre-transportation function—such as selecting the packaging—your client would be considered an “offeror.” See the definition of “pre-transportation function” in § 171.8 of the HMR.
- Q6. You ask whether providing a return shipping label as outlined in your letter places your client in the role of an “offeror.”
- A6. The answer is no. Solely providing a return shipping label is not considered a pre-transportation function and therefore does not make your client an “offeror.”

Q7. You ask whether providing both guidance and a shipping label to the customer places your client in the role of an “offeror.”

A7. See answer A5.

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 "T. Glenn Foster". The signature is written in a cursive style with a long horizontal flourish extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division



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April 6, 2022

Pipeline Standards and Rulemaking

U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration

1200 New Jersey Avenue, SE

Washington, DC 20590

Email pdf to infocntr@dot.gov Phone: 202-366-8553

Interpretation request – Lithium Batteries, 49 CFR 173.185

My client ships a hard sided impact-resistant case (like a Pelican Case) that encloses audiology equipment to test a patient’s hearing in the field, without having to go to a dedicated facility with an audiology booth.

Inside the case is a lithium-battery powered headset that uses their proprietary technology and a lithium-battery powered commercial tablet computer, such as an iPad or a Samsung Galaxy. Though a variety of tablet and mobile devices are used, their headset is always the same. For the purpose of recalibration, the customer needs to be able to return the entire “kit” to the client.

The headset and tablets contain either a small cell (20 Wh or less) or battery (100 Wh or less).

We have questions surrounding the lithium battery requirements in 49 CFR 173.185 as it affects these shipments.

Topic #1: Lithium Battery Test Summary Report Availability

We have the lithium battery test summary for the device they manufacture; that’s not an issue. The problem is with obtaining the TS reports from the manufacturers of the commercial tablet computers.

49 CFR 173.185(a)(3) says that *each manufacturer and subsequent **distributor** of lithium cells or batteries manufactured on or after January 1, 2008, must make available a test summary.*

If they purchase an Apple iPad, a Samsung Galaxy or other tablet computer at a retailer (i.e. Best Buy, Acme Electronics, or wherever...) and they ship this device by air or ground to their customer as part of the kit, does this make my client a “distributor” as mentioned in 173.185(a)(3)?

This is important because some computer manufacturers have stated my client is not a “distributor” of their tablets and is not entitled to a Lithium Battery Test Summary report.

Some manufacturers have put their Lithium Battery Test-Summary reports behind a “paywall” of sorts, where you must subscribe to a third-party service to access them.

My client has free access to a summary document from *some* of the manufacturers showing a list of the devices and the battery information in a summary, but it does not comport with the Test-Summary report requirement in 49 CFR 173.185(a)(3) as it’s missing many of the details such as the information in 49 CFR 173.185(a)(3)(i) through (v). Here’s an example of this attestation from Apple computer. It includes a list of the part numbers and this statement:

Apple/Beats product batteries have been successfully tested and comply with the UN Manual of Test and Criteria, Part III, subsection 38.3, Revision 3, Amendment 1 or any subsequent revision and amendment. Product batteries have been manufactured under a quality management program as specified in 2.9.4 of the UN Model Regulations.

Here’s our question in three parts:

Question 1A: Does my client (the shipper of hearing equipment) need a Lithium Battery Test Summary Report to ship a commercially available tablet computer, purchased at retail, that is incorporated into the kit that they sell to their customers for hearing-testing? They are not a distributor of computer equipment, but they are an offeror of someone else’s tablet. *We are assuming that yes, my client does need a Test Summary Report, since they are offering these tablet computers for transportation in commerce as part of their “kit” . Please confirm this assumption.*

Question 1B: If my client does need a Test Summary Report, but is unable to get it, is a product summary/confirmation from the manufacturer that attests compliance with the UN 38.3 requirements for all their tablets and cell phones sufficient?

That summary does NOT comport with the detailed requirements of 49 CFR 173.185(a)(3)(i) through (x). However, it attests that the device meets the requirements of the UN Manual of Tests and Criteria Part III, subsection 38.3, Revision 3, Amendment.1

Is my client’s possession of this summary nonetheless sufficient for my client to demonstrate to FAA or DOT inspectors its compliance with the requirement to “make available a test summary”? Or would my client need possession of the actual test summary report in the format prescribed by 49 CFR 173.185(a)(3)(i) through (x)?

Question 1C: Are the retailers of lithium battery powered tablet computers legally obligated to provide retail customers, such as my client, with a complete test summary report? What are the penalties if retailers fail to provide a test summary report to my client as required under 173.185(a)(3)? What is my client’s recourse if the seller of the electronics does not comply with my client’s request for a Test Summary Report?

What course of action should my client take? Should this violation be reported to DOT PHMSA?

Topic 2 – Reverse Logistics

Product Returns from a Customer and Pre-Transportation Functions

Customers will need to ship hearing equipment back to my client for recalibration. The package will contain a headset and a commercially-available tablet computer that each contain a small lithium cell or battery. The package will not be marked, as it qualifies for the exception of smaller cells and batteries (49 CFR 173.185(c)(1)(iii)) contained in equipment and within the number of battery and consignment limits.

My client wants to provide customers with general guidance on how to return the hearing test kit within the applicable shipping regulations of 49 CFR. However, as my client does not have access to the equipment being offered for return shipment, they do not want to assume the liability of acting as an "offeror".

1. Would issuing either of the following be considered "pre-transportation" services, or cause my client to assume the role of "offeror"? **My client wants to provide general instructions:**

Inspect the tablet and headset for physical damage or swelling. If damage or swelling are found, please reach out to the manufacturer for further instructions. If the tablet and headset pass this inspection, prepare the package for shipment:

- a. Place the headset in shipping mode by setting the shipping switch to the "off" position. This switch can be found inside the right (red) earcup. Refer to the photo below to confirm the switch is in the off position.



- b. Turn the tablet off by holding down the power button and selecting the option to shut the device down.
- c. *Place the equipment back in the original hard-sided case as shown in the photo below.*



- d. Ensure that no more than (2) headset packages are shipped in one consignment.

Follow the instructions of the carrier you are using. Here are lithium battery guides for FedEx and UPS

Fedex: [How to Ship Wet, Dry, and Lithium Batteries | FedEx](#)

UPS: [How To Ship Batteries | UPS - United States](#)

My client wants to issue a UPS or FedEx return shipping label to the customer for returning the equipment. The shipping label would be paid freight collect to my client's account and would solely act as a consignment label with an air waybill number. The shipping label would NOT act as a DG/HazMat label, nor would it be used to prepare HazMat paperwork, as the equipment qualifies under the exception for smaller cells and batteries (49 CFR 173.185(c)) and does not require specific package marking.

Question 2A: Would my client, in providing general instructions to the customer as outlined in item 1 above, place my client in the role of an offeror?

Question 2B: Would providing a return shipping label as outlined in item 2 above place my client in the role of an offeror?

Question 2C: Would performing both item 1 and 2 functions for the same customer possibly put my client in the role of an offeror?

Thank you in advance for your guidance, and please do not hesitate to reach out with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Powell'.

Jim Powell, DGSA, CDGP
President
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