U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

SEP 27 2016

Mr. Edward F. Walker, Jr.
Deputy Chief Surveyor Pacific Ports
National Cargo Bureau
17 Battery Place, Suite 1232
New York, NY 10004

Reference No. 16-0129

Dear Mr. Walker:

This letter is in response to your July 28, 2016, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to exceptions for waste materials prescribed in § 173.12 and their segregation requirements in transportation. You note that the HMR define "hazardous waste" but not "waste materials." We have paraphrased and answered your questions as follows:

Q1. You ask the meaning of "waste materials" as it is used in the title and text of § 173.12.

A1. As you state in your letter, the HMR do not define "waste materials." However, "waste materials" as it is used in § 173.12 means hazardous materials intended for disposal that meet the applicable criteria prescribed in § 173.12. The HMR define a "hazardous material" as "a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce…includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in" 49 CFR Part 173. (See § 171.8.)

Q2. You ask if the segregation requirements prescribed in § 173.12(e) apply to hazardous wastes shipped in the same freight container with wastes that are exempt from the Environmental Protection Agency's (EPA) Hazardous Waste Manifest Requirements but are being shipped for disposal and meet the definition of a hazardous material under the HMR.

A2. The answer is no. The segregation requirements prescribed in § 173.12(e) apply to hazardous wastes, as defined in § 171.8, that comply with the requirements in § 173.12(b). Under the HMR, waste hazardous materials not subject to EPA's

Hazardous Waste Manifest Requirements do not meet the definition of a "hazardous waste" under § 171.8, but do meet the definition of a "hazardous material" under the HMR. Therefore, these materials are subject to the applicable segregation requirements for hazardous materials prescribed by mode and/or material in the HMR (e.g., see §§ 174.81 (rail), 175.78 (aircraft), 176.83 (vessel), and 177.848) (highway)) and, if transported internationally, the segregation requirements for international hazardous materials shipments prescribed in 49 CFR Part 171, Subpart C.

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

Sincerely,

T. Glenn Foster

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

Lehman
§ 173.159
Batteries
16-0131

600 North 18th Street/12N-0831
Birmingham, AL 35203

ALABAMA POWER
A SOUTHERN COMPANY

July 22, 2016

U.S. DOT
PHMSA Office of Hazardous Materials Standards
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Submitted via email: phmsa.hm-infocenter@dot.gov

Re: Request for Written Clarification
49 CFR 173.159

To Whom It May Concern:

Our company ships varying numbers and sizes of used batteries (primarily lead acid) from the field back to a central facility where they are accumulated for shipment to a recycler. Often, the lead acid batteries can vary in size, up to 120 pounds each. A pallet serves as our non-specification package for the batteries per 49 CFR 173.159(d)(1).

In order to further secure the batteries and provide additional protection from short circuit and damage to the terminals [49 CFR 173.159(a)(2) and (3)], we are considering the addition of a non-specification, durable fiberboard box to the process. The packaging process would be as follows:

(1) Place an unconstructed box bottom on a standard pallet
(2) Place a heavy polyethylene battery bag on top of the cardboard box base (precautionary in the event of a spill during transport)
(3) Place non-leaking batteries inside the bag
(4) Band the batteries together with non-metallic banding
(5) Ensure each battery's terminals are taped, and caps are in place
(6) Secure the bag around the banded batteries
(7) Insert a cardboard piece designed to form the sides of the box
(8) Insert waffleboard material (1" and 2" thick pieces available) inside the box to fill any voids and close the box
(9) Place top on box
(10) Band (with non-metallic banding) the box to the pallet, using at least 4 straps.

These steps are demonstrated in the enclosure.

Our interpretation is that the package remains the non-specification pallet per 49 CFR 173.159(d)(1), and the non-specification box further secures the batteries and the terminals per 49 CFR 173.159(a)(2)

and (3). In addition, it is our interpretation that the addition of a non-specification box to the pallet as described will not subject the non-specification package to the limitations on the weight and number of batteries outlined in 49 CFR 173.159(d)(3) through (7), but rather the non-specification package remains subject to the weight limitations of 49 CFR 159.173(d)(1).

On May 25, 2016, we spoke with a representative of the Hazardous Materials Information Center and the representative agreed the box would provide further protection of the terminals and would help ensure the batteries are firmly secured to the pallet. As such, the pallet would remain the non-specification package (and thus the box does not have to meet UN specifications).

Questions:

We request DOT's confirmation that:

1. The box added to the packaging process is not required to be a specification package, as the added box is to further secure the batteries and terminals per 49 CFR 173.159(a)(2) and (3).
2. The pallet remains the non-specification package per 49 CFR 173.159(d)(1)
3. The non-specification box added to the packaging process would not be subject to the limitations on the weight and number of batteries outlined in 49 CFR 173.159(d)(3) through (7).

Our mailing address is as follows:

Attn: Sharon Trippany
Alabama Power
Environmental Compliance – Land
600 North 18th Street / 12N-0831
Birmingham, AL 35203

We appreciate your time in reviewing this request. Please do not hesitate to contact the undersigned at (205) 257-4462 or sctrippa@southernco.com.

Sincerely,

Sharon C. Trippany, CHMM

Enclosure (1)

ENCLOSURE

Battery transport.

This program will outline the proper method to:

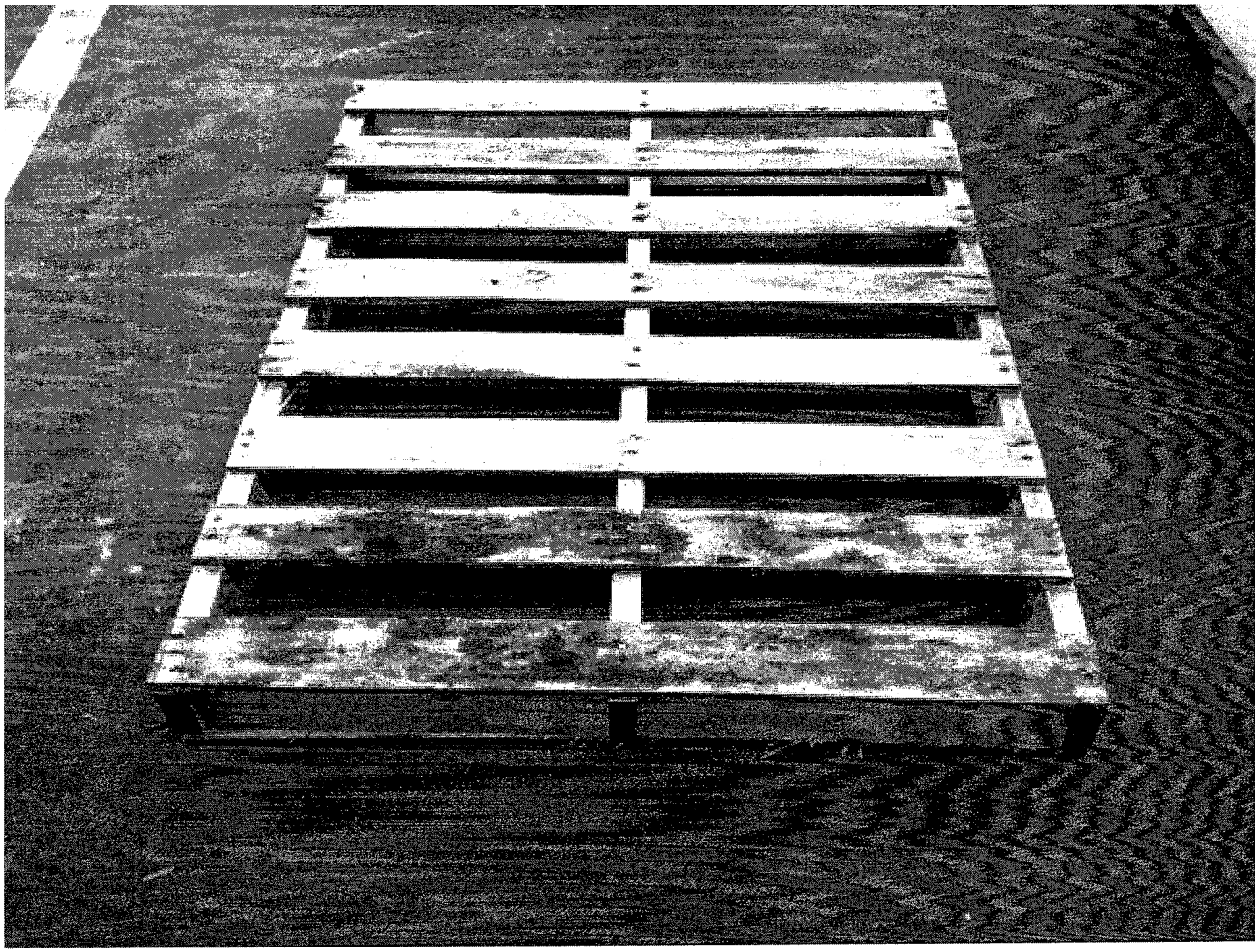
1. Package
2. Load
3. Secure
4. Transport batteries from one location to another.

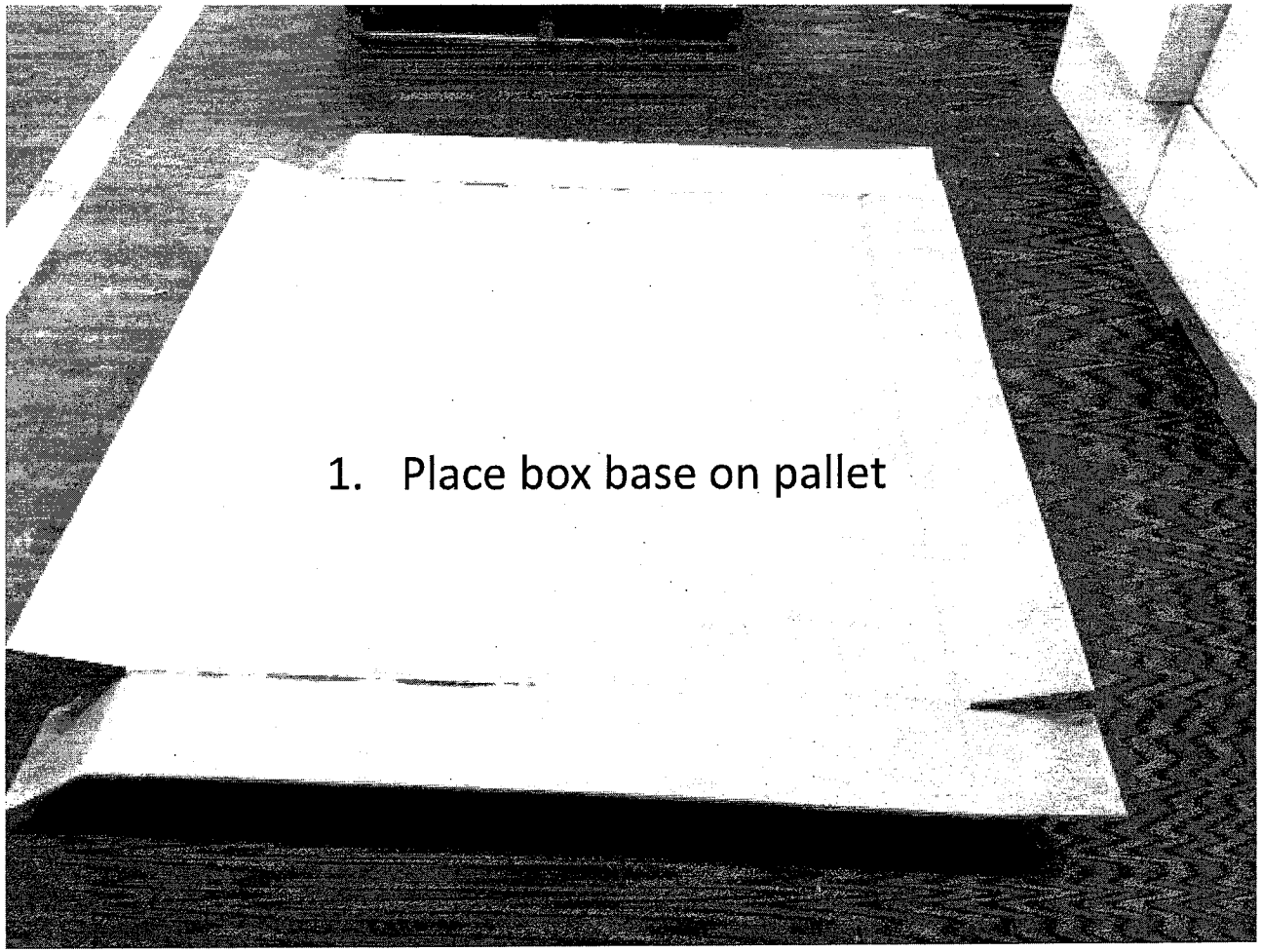
*Battery transport boxes come in two sizes to accommodate the various number of batteries being shipped.

Steps involved in battery transportation include,

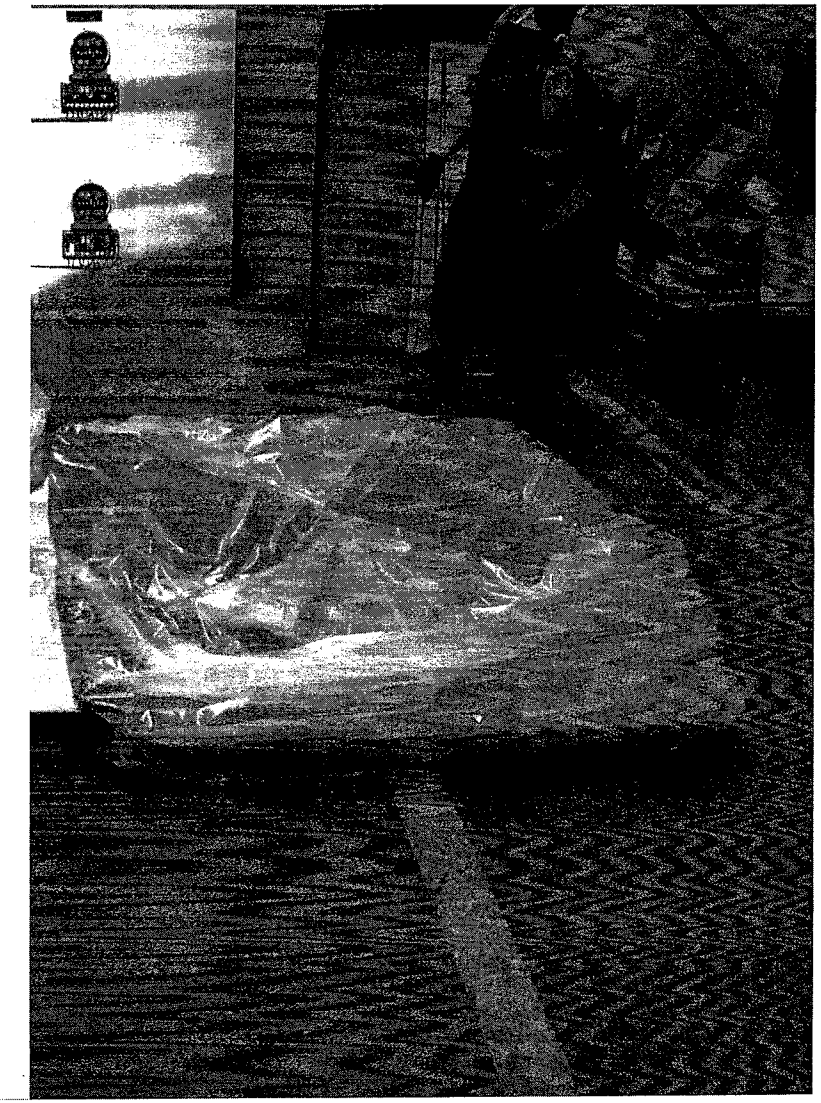
1. Place box base on pallet
2. Place plastic bag on box base
3. Install shipping caps
4. Tape terminals
5. Place the batteries inside plastic bag on pallet
6. Band batteries together
7. Seal bag around batteries
8. Install shipping box side portion
9. Fill any voids around plastic bag inside shipping box
10. Install top portion of shipping box
11. Band shipping box to the pallet for transport.
    (Minimum of 4 bands)
12. Label shipping box with UTR #, number of batteries, battery type (lead acid), shipped form (location) and shipping to (location).

Standard 40”X48” pallet.

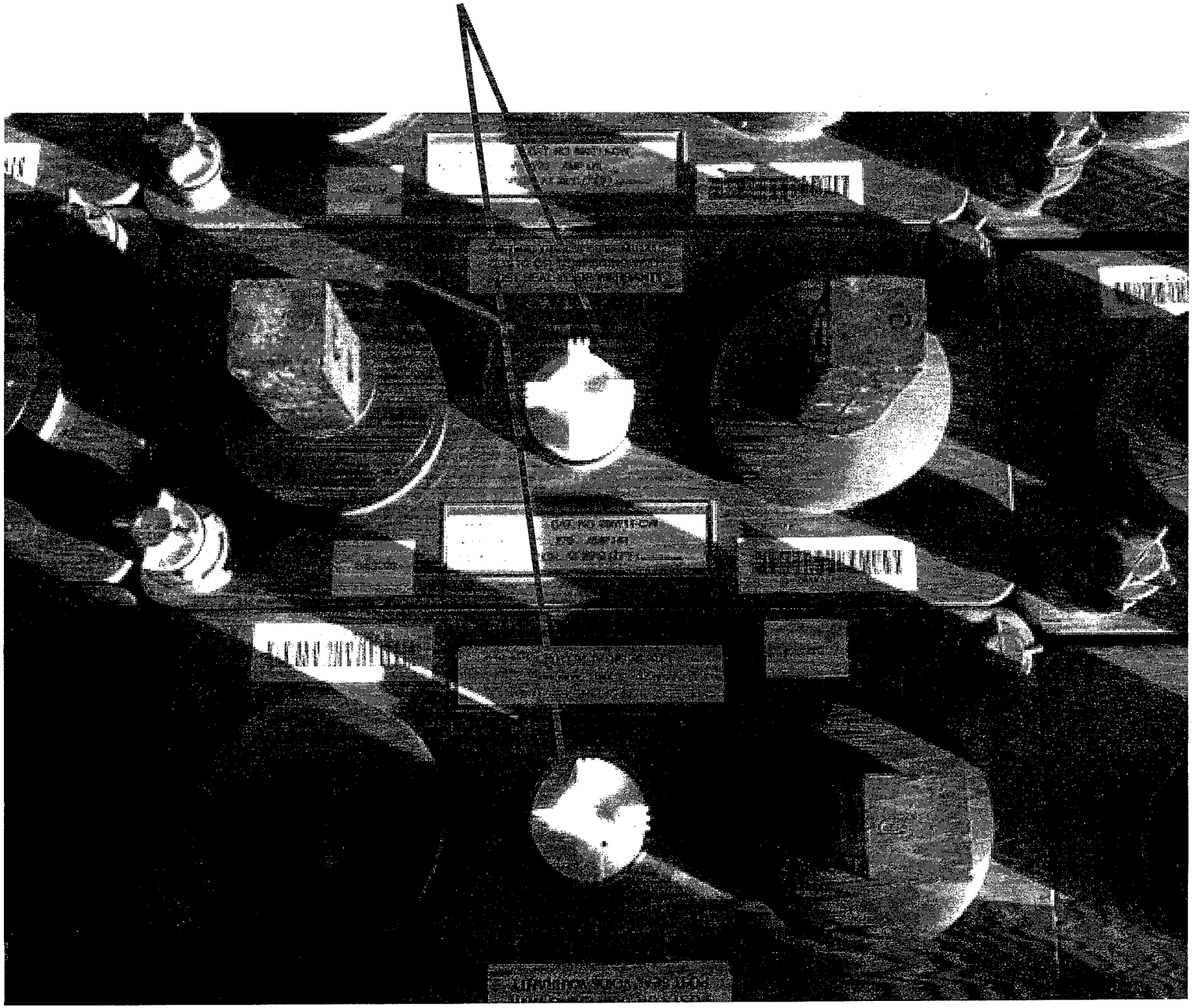



1. Place box base on pallet

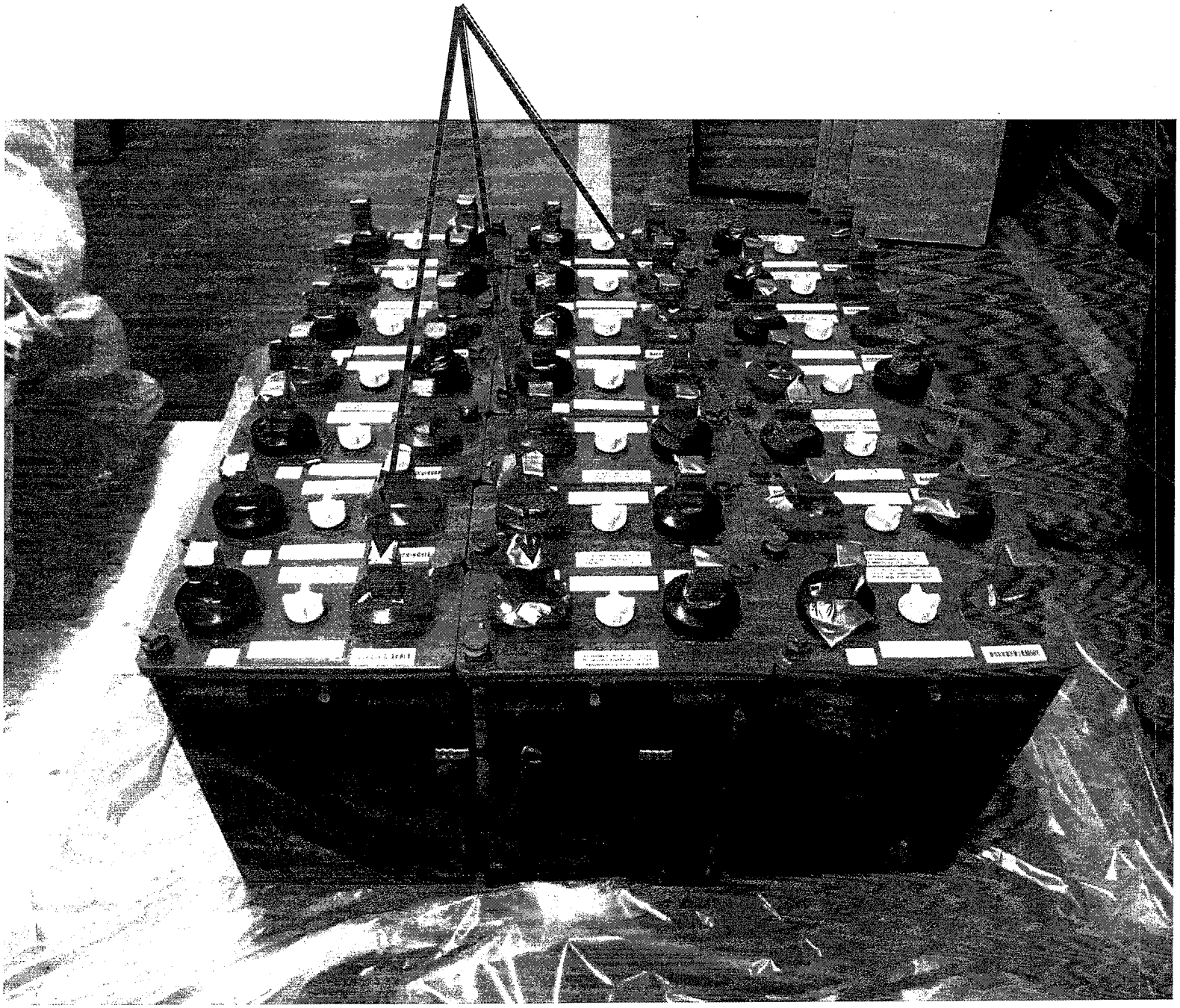
Place plastic bag on box base.



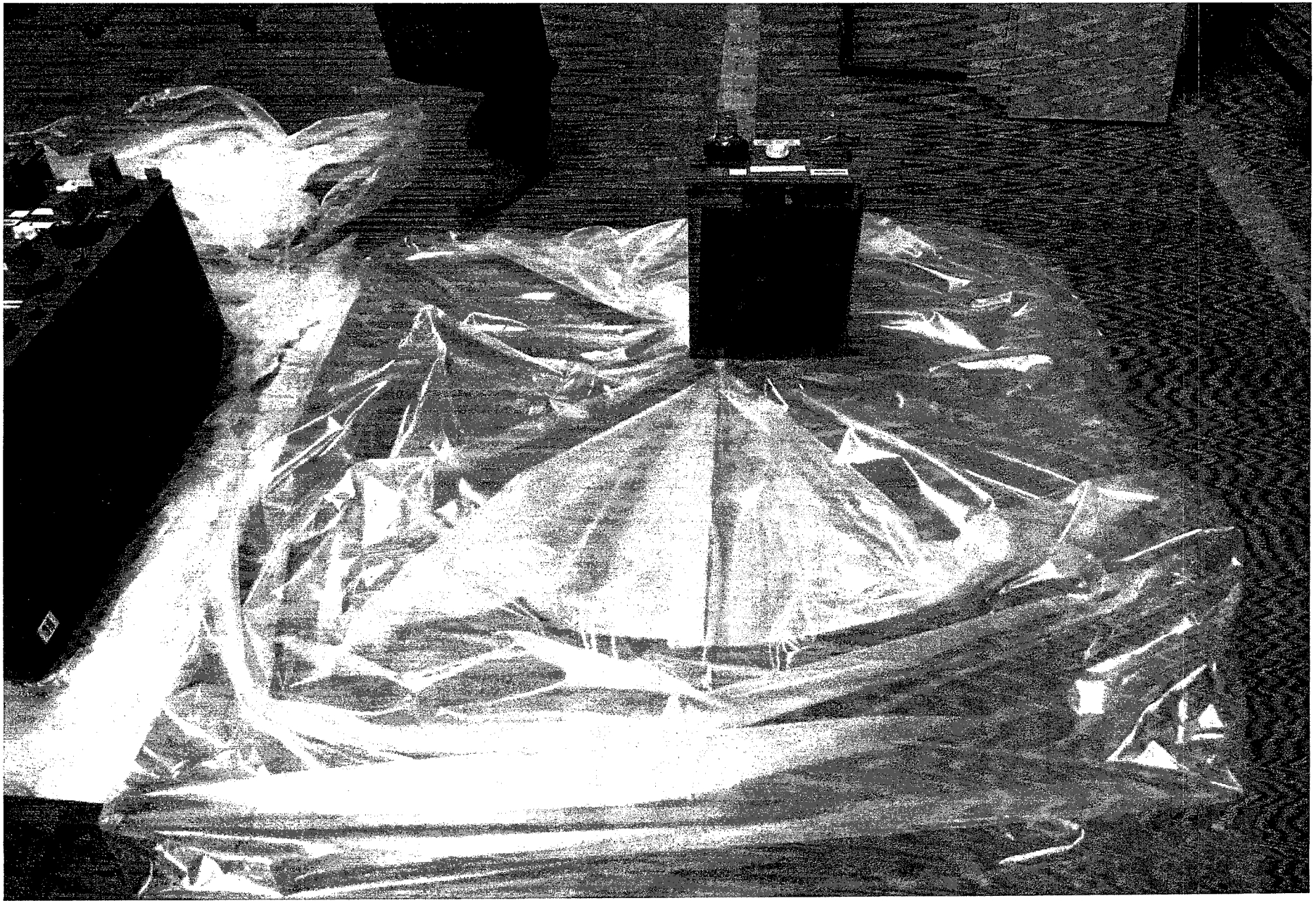
Install shipping caps.



Tape terminals.

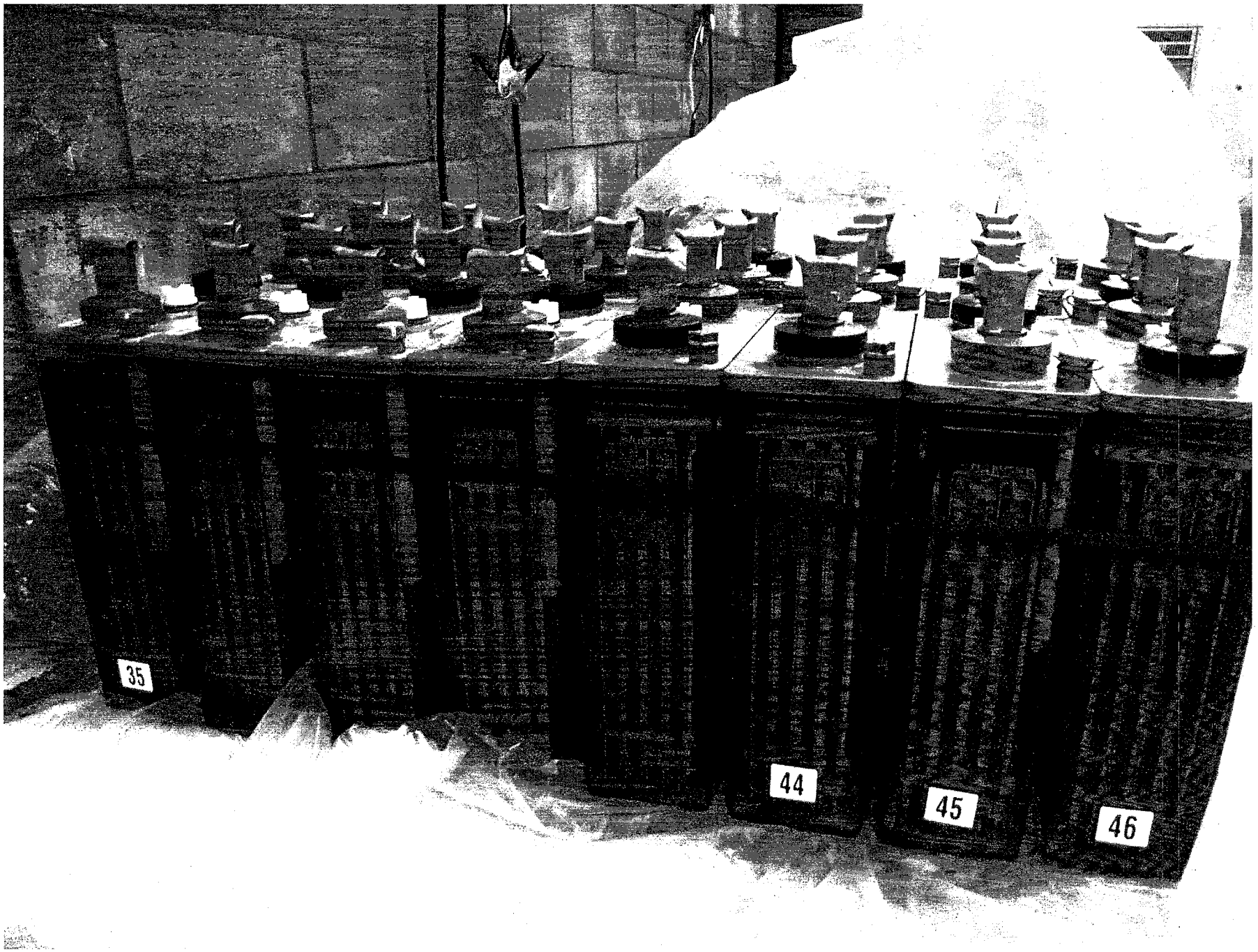


Place the batteries inside plastic bag on pallet.



Band batteries together.

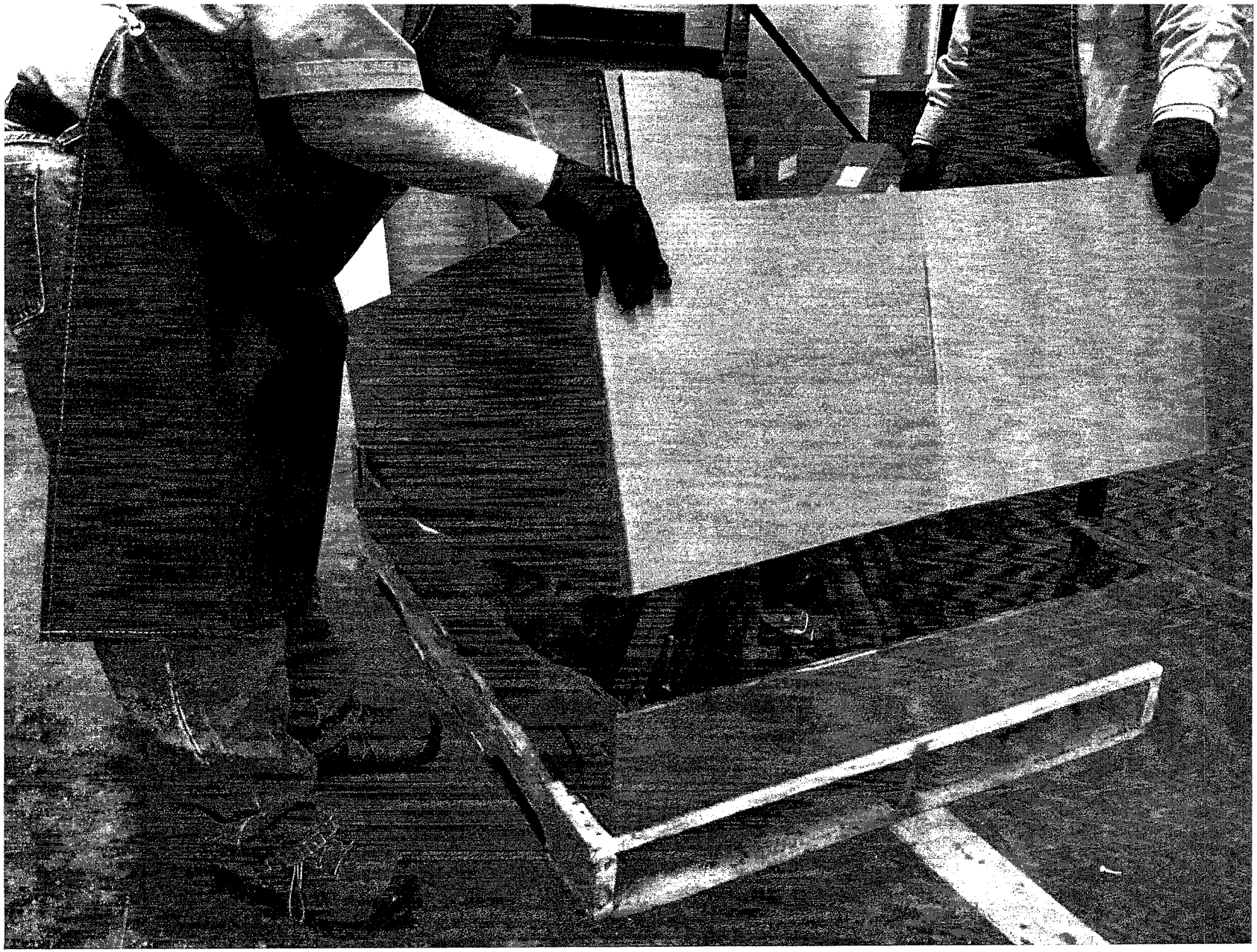
Band batteries together.



Seal bag around batteries.

Fold bottom corners of shipping box base.

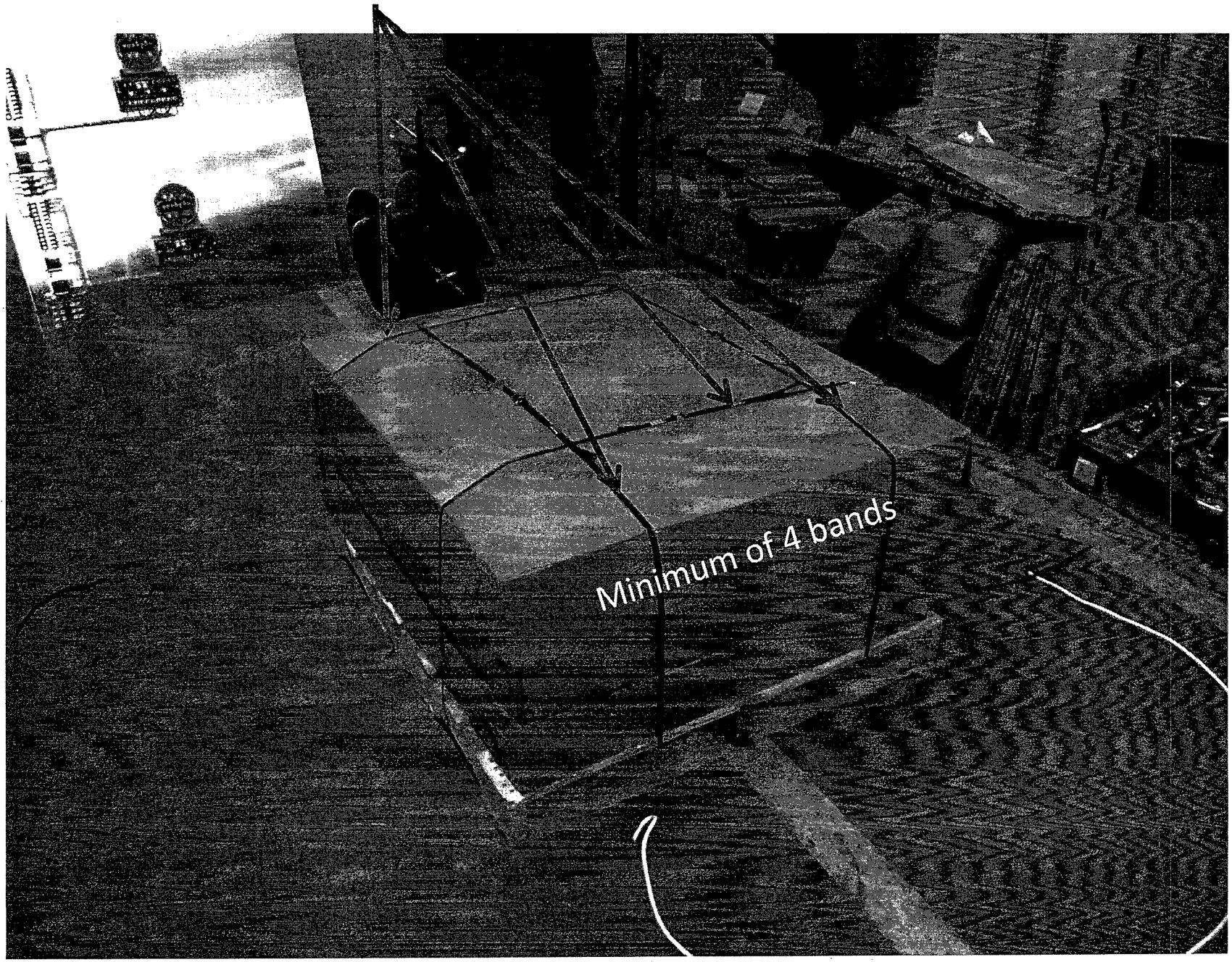
Install shipping box side portion.



Fill any void around plastic bag inside shipping box.

Install top portion of shipping box.

Band shipping box to pallet for transport.



Label shipping box with DOT label, number of batteries, battery type (lead acid), shipped form (location) and shipping to (location).