



U.S. Department
of Transportation

Pipeline and Hazardous
Materials Safety
Administration

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

MAY 16 2012

Mr. Thomas W. Ferguson
Technical Consultant
Council on Safe Transport of Hazardous Articles, Inc.
7803 Hill House Court
Fairfax Station, VA 22039

Ref. No.: 11-0113

Dear Mr. Ferguson:

This responds to your May 6, 2011, letter posing several questions concerning the applicability of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to the carriage of an airline passenger's non-spillable battery in carry-on or checked baggage. You also asked about a carrier's obligation to accept a non-spillable battery-powered wheelchair or other non-spillable battery-powered mobility aid¹ in accordance with nondiscrimination requirements under 14 CFR Part 382, Subpart I, specifically, 14 CFR 382.121. Your questions have been paraphrased and are answered as follows:

Q1. Is a non-spillable battery that meets the conditions of § 173.159a(d) subject to the additional conditions of § 175.10(a)(15) when offered for transportation as checked baggage?

A1. Yes, a passenger may only transport a non-spillable battery as checked baggage if it meets the conditions of § 175.10(a)(15).

Q2. Is a carrier required to transport a non-spillable battery as checked baggage when it is not installed in a battery powered mobility aid?

A2. A non-spillable battery may be *separately packaged* and transported in the baggage compartment along with the wheelchair or mobility aid that it powers, if the removal of the battery from the device is necessary to prevent a short circuit or unintentional activation (see § 175.10(a)(15)). A carrier is required to transport a battery-powered mobility aid as checked baggage so long as such transportation is consistent with PHMSA's hazardous materials regulations specified in §§ 173.159a(d) and 175.10(a)(15). Furthermore, with respect to the carriers' responsibility, 14 CFR 382.127 prohibits a carrier from requiring that the non-spillable battery be removed from the wheelchair or other mobility aid unless it is necessary to do so for

¹ A battery-powered mobility aid means an assistive device that is used by individuals with mobility impairments such as a wheelchair, a scooter, or a Segway when it is used as a mobility device by a person with a mobility-related disability.

safety reasons. When the non-spillable battery must be detached from the assistive device, it may only be carried if it is placed in packaging meeting the requirements of § 175.10.

Q3. If a non-spillable battery meets the conditions of § 173.159a(d), is it permitted in the cabin of an aircraft as carry-on baggage (i.e. not installed in equipment)?

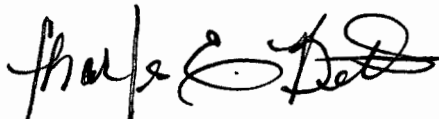
A3. No, as indicated in A1 above, a hazardous material carried by a passenger must meet an exception in § 175.10. Section 175.10 does not provide an exception for carriage of a non-spillable battery as carry-on baggage and as such does not permit a passenger to carry a non-spillable battery in the cabin of an aircraft, regardless of whether it is transported alone or attached to a device.

Q4. If a non-spillable battery meets the conditions of § 173.159a(d), is it permitted in the cabin of an aircraft as carry-on baggage when the battery is installed in medical equipment, assistive devices, or mobility aids?

A4. No. As indicated in A3 above, a non-spillable battery is not permitted in a passenger's carry-on baggage. The Department's disability regulation states that a carrier must permit passengers with a disability to bring manual wheelchairs, other mobility aids (e.g., canes), or other assistive devices into the aircraft cabin, *provided that their stowage in the cabin is consistent with FAA, PHMSA, TSA, or applicable foreign government requirements.* (see 14 CFR 382.121). If an assistive device cannot, consistent with government safety and security requirements, such as the HMR, be transported in the cabin, 14 CFR Part 382 does not require the carrier to accept it in the cabin. In fact, the carrier must not accept a material that would result in violation of the HMR.

I hope this answers your inquiry. If you need additional assistance, please contact the Standards and Rulemaking Division.

Sincerely,



Charles E. Betts
Director
Standards and Rulemaking Division



**COUNCIL ON SAFE TRANSPORTATION
OF HAZARDOUS ARTICLES, INC.**

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\$173.159
\$175.10
Batteries
11-0113

May 6, 2011

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Dear Dr. El-Sibaie:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits a request for interpretation regarding the applicability of 49 CFR, Part 175, §175.10, paragraph (a)(15) to wet, non-spillable batteries meeting the exceptions defined in 49 CFR, Part 173, §173.159a, paragraph (d).

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others 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.

The Hazardous Materials Regulations (HMR) provide specific provisions for the carriage of hazardous materials in checked or carry-on baggage in §175.10. Paragraph (a)(15) details provisions for the carriage of wheelchairs or mobility aids with non-spillable batteries when offered as checked baggage. Further, Subparagraph (a)(15)(i) includes the requirement for such a non-spillable battery to meet the requirements of §173.159a(d). Subparagraphs (a)(15)(ii), (iii), and (iv) detail additional requirements above §173.159a(d) which must be met including visual inspection of the battery, battery disconnection unless the wheelchair or mobility aid provides an effective means to do so, and additional specific handling procedures.

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In §173.159a, the HMR provides exceptions for non-spillable batteries. Paragraph (d) states:

(d) Non-spillable batteries are excepted from all other requirements of this subchapter when offered for transportation and transported in accordance with paragraph (c) of this section and the following:

- (1) At a temperature of 55 °C (131 °F), the battery must not contain any unabsorbed free-flowing liquid, and must be designed so that electrolyte will not flow from a ruptured or cracked case; and
- (2) For transport by aircraft, when contained in a battery-powered device, equipment or vehicle must be prepared and packaged for transport in a manner to prevent unintentional activation in conformance with §173.159(b)(2) of this Subpart.

The introduction sentence in paragraph (d) above indicates that if the conditions in (d) are met, the batteries are not subject to any other requirements of Subchapter C of Title 49 CFR. Subchapter C includes Part 175. Notwithstanding the conditions of §175.1, the wording in §173.159a(d) suggests the conditions detailed in §175.10(a)(15) are not applicable to batteries meeting the conditions of §173.159a(d). The wording “are excepted from all other requirements of this subchapter” is confusing to the reader and would indicate a battery prepared in accordance with §173.159a(d) may move freely through the transportation chain, including as checked or carry-on baggage.

Given the current wording of the HMR, COSTHA poses the following question:

1. Is a wet, non-spillable battery meeting the conditions of §173.159a(d) subject to the additional conditions of §175.10(a)(15) when offered for air transport as checked baggage?

In a separate but related issue, COSTHA is aware of language contained within 14 CFR, Part 382, §382.121, Paragraph (a) which addresses mobility aids and assistive devices that must be accepted by an air carrier as carry-on baggage. The language contained within §382.121(a)(3) states:

- (a) As a carrier, you must permit passengers with a disability to bring the following kinds of items into the aircraft cabin, provided that they can be stowed in designated priority storage areas or in overhead compartments or under seats, consistent with FAA, PHSMA, TSA, or applicable foreign government requirements concerning security, safety and hazardous materials with respect to the stowage of carry-on items.
....
- (3) Other assistive devices for stowage or use within the cabin (e.g., prescription medications and any medical devices needed to administer them such as syringes or auto-injectors, vision-enhancing devices, and POCs, ventilators and respirators that use non-spillable batteries, as long as they comply with applicable safety, security and hazardous material rules).

The language of §382.121(a)(3) indicates carriers must permit the stowage in the cabin of assistive devices that use non-spillable batteries as long as they comply with applicable hazardous material regulations. However, 49 CFR §175.10(a) does not provide any provisions for the carriage of non-spillable batteries other than those contained within mobility aids. Notwithstanding the answer to Question 1 above, this lack of clarity suggests that wet, non-

spillable batteries meeting the requirements of §173.159a(d) are not permitted in the cabin of the aircraft as carry-on baggage.

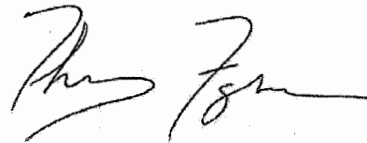
To clarify this point, COSTHA poses the following questions:

2. If a wet, non-spillable battery meets the conditions of §173.159a(d), is it permitted in the cabin of an aircraft as carry-on baggage (alone, not installed in equipment)?
3. If a wet, non-spillable battery meets the conditions of §173.159a(d), is it permitted in the cabin of an aircraft as carry-on baggage installed in medical equipment, assistive devices, or mobility aids?

COSTHA notes that if the answer to Question 2 is no, then 14 CFR, §382.121(a)(3) details a carrier requirement which is not permitted (the allowance of non-spillable batteries in assistive devices) per the HMR.

Timely clarification on these issues would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas W. Ferguson', written in a cursive style.

Thomas W. Ferguson, PG, CHMM, DGSA
COSTHA Technical Consultant