



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

NOV 27 2007

Mr. Mike Tobin, CHMM
Manager Dangerous Goods
Alaska Airlines, Inc. SEADG
P.O. Box 68900
Seattle, WA 98168

Ref. No.: 07-0192

Dear Mr. Tobin:

This responds to your September 26, 2007 letter requesting clarification of the requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transportation of batteries by aircraft as company material (COMAT). Specifically, you ask whether shipments of COMAT batteries are subject to the quantity limitations and accessibility requirements specified in §175.75 of the HMR.

As noted in your letter, the requirements applicable to the transportation of operator equipment and items of replacement were revised and placed in new §175.8 in a final rule published on March 22, 2006, under Docket HM-228. Section 175.8(a)(3)(ii) specifies that aircraft batteries are not subject to quantity limitations. This section provides two section references as examples of quantity limitations that do not apply to the transportation of aircraft batteries. One of the section references, to §175.75(a), is incorrect; the correct reference is §175.75(c). This error has now been corrected in a final rule under Docket HM-244, entitled "Minor Editorial Corrections and Clarifications" published on October 1, 2007 (72 FR 55678). Note, however, that the inclusion of the section references is not intended to limit the exception from quantity limitation authorized in §175.8(a)(3)(ii). Aircraft batteries are excepted from any quantity limitations, including the limits on the quantity of hazardous materials that may be loaded in an inaccessible manner specified in §175.75(c).

Thank you for bringing this error to our attention. I hope this answers your inquiry.

Sincerely,

John A. Gale
Chief, Standards Development
Office of Hazardous Materials Standards

Boothe
§175.8(a)(3)(ii)
§175.75
Air
07-0192



September 26, 2007

via email

Ms. Deborah Boothe
Office of Hazardous Materials Standards – PHH-11
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue,
SE East Building, 2nd Floor
Washington, DC 20590

Re: changing 49CFR175.8(a)(3)(ii) to point to §175.75(c) instead of §175.75(a)

Dear Ms. Boothe,

Erin of the Hazmat Info Center just called to relay the answer to my question about COMAT aircraft batteries: PHMSA's view is that they are subject to the accessibility requirements when over 25 Kg. This question was posed by me in an email (included at the end of this letter) whereby I point out a problem exists post HM-228. Previously, quantity limits and accessibility were exempt for COMAT aircraft batteries, and I believe the reference just wasn't updated during the creation of §§175.8 and modification of 175.75.

Now I am told that the rule stands as published.

Very few aircraft in service allow airlines to load COMAT aircraft batteries in an accessible manner and thus comply with §175.75(c): "For each package containing a hazardous material acceptable for carriage aboard passenger-carrying aircraft, no more than 25 kg (55 pounds) net weight of hazardous material may be loaded in an inaccessible manner."

The consequences of this are that most airlines can no longer transport within the United States their aircraft batteries! The economic and operational impact to the airline industry will be enormously detrimental. I can think of no safety issue that prompts this change, and therefore respectfully request the reasoning and justification behind it.

At Alaska Airlines, our typical UN2785 Batteries, wet, filled with alkali, class 8 package is 50 kilograms each, and we have many shipments every day.

Because §175.75(b) forbids us to transport hazmat in the passenger cabin or flight deck, we are limited to loading in the lower cargo holds on passenger aircraft, which are inaccessible. We are thus restricted to transporting COMAT aircraft batteries on our cargo only aircraft, which do not serve all our stations. Very few U.S. airlines have this ability at all.

I see three possible remedies, in order of desirability:

- 1) PHMSA changes §175.8(a)(3)(ii) to point to §175.75(c) instead of §175.75(a);
- 2) PHMSA issues a written interpretation that “such as” is not limited to just the 2 citations in 175.8(a)(3)(ii) “Aircraft batteries are not subject to quantity limitations *such as* those provided in §172.101 or § 175.75(a) of this subchapter.” And therefore the actual quantity limitations which now are located in §175.75(c) are included in the exclusion;
- 3) PHMSA grant a Special Permit request for operators which exempts the accessibility requirement. I expect almost every certificated Part 121, 129 and 135 air carrier to seek Party Status, and thus this approach seems at odds with PHMSA’s regulatory reform effort – seen most recently in HM-233A whereby PHMSA sought to incorporate widely-used special permits with proven safety records into the Hazardous Materials Regulations. I know of no safety issues with COMAT aircraft batteries prior to HM-228.

Thank you for your consideration and assistance. If you have any questions please feel free to contact me.

Sincerely,



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