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Mr. Theodore L. Willke
Associate Administrator, Hazardous Materials Safety
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US Department of Transportation
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Dear Mr. Willke:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits a **petition for new rulemaking pursuant to 49 CFR, Part 106, Subpart B, §106.95, and requesting amendment to 49 CFR, Part 175, Subpart A, §175.8.**

COSTHA is a non-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.

Amongst our members, COSTHA proudly represents thirteen (13) air carriers, representing the majority of U.S. carriers involved in the domestic and international carriage of passengers and cargo by aircraft. In order to meet the specific needs of these members we sponsor an Air Carriers Roundtable which serves as a forum for discussion of issues which relate specifically to the airline industry and their customers, many of whom are also COSTHA members.

In the Final Rule PHMSA Docket No. RSPA-02-11654 (HM-228) effective October 1, 2006, amendments were made to 49 CFR, Part 175. The rulemaking was promulgated for the purpose of clarifying the exceptions for operator equipment and supplies, special aircraft operations, and passengers and crewmembers; revise separation distances for the shipment of radioactive materials by cargo aircraft; and updates the regulations to comply with security requirements for explosive special permits. These changes were made to finalize outstanding petitions for rulemaking, convert certain special permits into regulations, and promote international harmonization, where appropriate. Of particular interest were the addition of aircraft batteries (applicable sections are bolded and underlined) into §175.8 (a) *Operator equipment* (3)(ii):

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§ 175.8 Exceptions for operator equipment and items of replacement.(a) *Operator equipment*

. This subchapter does not apply to—

- (1) Aviation fuel and oil in tanks that are in compliance with the installation provisions of 14 CFR, chapter 1.
- (2) Hazardous materials required aboard an aircraft in accordance with the applicable airworthiness requirements and operating regulations. Items of replacement for such materials must be transported in accordance with paragraph (a)(3) of this section.
- (3) Items of replacement (company material (COMAT)) for hazardous materials described in paragraph (a)(2) of this section must be transported in accordance with this subchapter. **When an operator transports its own replacement items described in paragraph (a)(2), the following exceptions apply:**

(i) In place of required packagings, packagings specifically designed for the items of replacement may be used, provided such packagings provide at least an equivalent level of protection to those that would be required by this subchapter.

(ii) Aircraft batteries are not subject to quantity limitations such as those provided in §172.101 or § 175.75(c) of this subchapter.

This exception was provided to allow aircraft batteries to be moved via passenger carrying aircraft when the per package quantity limitations in §172.101 (9A) of 30 kg gross are exceeded as well as the quantity limitations and cargo location requirements in §175.75. However; unlike ICAO, 49 CFR as currently written only makes this exception “when an operator transports its own replacement items”. ICAO has assigned a special provision A51 to both UN2794 and UN2795. ICAO Special Provision A51 reads:

A51 - Irrespective of the limit specified in column 11 of Table 3-1, aircraft batteries up to a limit of 100 kg gross mass per package may be transported. Transport in accordance with this special provision must be noted on the dangerous goods transport document.

The movement of aircraft batteries is not limited to COMAT shipments on a given carrier’s aircraft. There are occasions when a carrier needs to move aircraft batteries on another carrier other than themselves. For example Aircraft on the Ground (AOG) situations to bring an out of service aircraft back into service. In certain cases, a carrier may not have a scheduled flight to a particular location that would allow a timely return of the aircraft to service, or in the event of a return of borrowed batteries to the lending carrier when the borrowing carrier doesn’t have service to the location the lending carrier needs the battery returned. Under this current 49 CFR 175.8 exception, will-not-carry carriers are completely limited to CAO or ground transportation and could not utilize a will-carry passenger carrier to move their aircraft batteries exceeding the current weight limitations when in an AOG situation. Finally, some carriers may send batteries for repair to locations where they do not have service yet where the use of CAO is not the most timely means.

COSTHA therefore proposes the §175.8 (a)(3)(ii) exception be moved into §175.8 (b)(5) *Other operator exceptions*. Such an action would align the 49 CFR exceptions with ICAO, allowing carriers to offer aircraft batteries on other carriers. The proposed §175.8 is presented below:

(b) *Other operator exceptions* . This subchapter does not apply to—

- (1) Oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with 14 CFR 121.574 or 135.91. For the purposes of this paragraph, an aircraft operator that does not hold a certificate under 14 CFR parts 121 or 135 may apply this exception in conformance with 14 CFR 121.574 or 135.91 in the same manner as required for a certificate holder. See §175.501 for additional requirements applicable to the stowage of oxygen.
- (2) Dry ice (carbon dioxide, solid) intended for use by the operator in food and beverage service aboard the aircraft.

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- (3) Alcoholic beverages, perfumes, colognes, and liquefied gas lighters carried aboard a passenger-carrying aircraft by the operator for use or sale on the aircraft. Liquefied gas lighters must be examined by the Bureau of Explosives and approved by the Associate Administrator.
- (4) A tire assembly with a serviceable tire, provided the tire is not inflated to a gauge pressure exceeding the maximum rated pressure for that tire, and the tire (including valve assemblies) is protected from damage during transport. A tire or tire assembly which is unserviceable or damaged is forbidden from air transport; however, a damaged tire is not subject to the requirements of this subchapter if it contains no material meeting the definition of a hazardous material (e.g., Division 2.2).
- (5) Aircraft batteries are not subject to quantity limitations such as those provided in §172.101 or § 175.75(c) of this subchapter.**

COSTHA would point out that ICAO adopted SP A51 in the 1999-2000 edition of the Technical Instructions for the Safe Transport of Dangerous Goods by Air. To our knowledge, there has not been any incidents associated with an aircraft battery moved in association with the SP. It is also worth noting that prior to the realignment of §175, most U.S. carriers utilized either the SP or the relief granted in §175.10 with no incidents involved. Safety would not be compromised by adopting the proposal in our petition since transporting the replacement equipment at issue would be equally as safe on aircraft of another airline under the same conditions of transport as applicable to the same replacement equipment on the owner airline transporting as COMAT.

COSTHA appreciates the timely review of the petition for rulemaking and requests due consideration be given to this petition as the current regulatory scheme is putting U.S. carriers at monetary and operational disadvantages with international counterparts.

If you have any questions, please do not hesitate to contact me at tom@costha.com.

Sincerely,



Tom Ferguson
Technical Consultant