



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

May 6, 2020

Andres A. Burgos
11221 Cyprus Leave Drive
Orlando, FL 32825

Reference No. 20-0032

Dear Mr. Burgos:

This letter is in response to your April 13, 2020, email and subsequent phone conversations with a member of my staff requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to a mobility aid equipped with a lithium ion battery and transported by air. Specifically, you state that you travel with an electric scooter used as a mobility aid which is powered by a non-removable lithium ion battery that is securely attached to the scooter. You further state the battery housing provides protection from damage and the battery terminals are protected from short circuit. You seek clarification on whether you are in compliance with § 175.10(a)(17) of the HMR if you travel by aircraft with a mobility aid that has the lithium ion battery installed.

Section 175.10(a)(17) states that the requirements of the HMR do not apply to a wheelchair or other mobility aid equipped with a lithium ion battery when carried as checked baggage, provided certain provisions are met. Specifically, the lithium ion battery must be of a type that has successfully passed each test in the United Nations (UN) Manual of Tests and Criteria, as specified in § 173.185, unless approved by the Associate Administrator. The operator must verify that visual inspection of the wheelchair or other mobility aid reveals no obvious defects; battery terminals are protected from short circuits (e.g., enclosed within a battery housing); the battery must be securely attached to the mobility aid; and electrical circuits are isolated. Additionally, the wheelchair or other mobility aid must be loaded and stowed in such a manner as to prevent its unintentional activation and its battery must be protected from short circuiting; and the wheelchair or other mobility aid must be protected from damage by the movement of baggage, mail, service items, or other cargo.

Provided both the mobility aid and the lithium ion battery contained therein meet the requirements specified in § 175.10(a)(17)(i) - (vi), the mobility aid you describe would not be subject to the requirements of the HMR when carried as checked baggage on an aircraft.

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, sweeping underline.

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

From: [INFOCNTR \(PHMSA\)](#)
To: [Hazmat Interps](#)
Subject: FW: Request for official interpretation of the regulation 49 CFR 175.10(a)(17)
Date: Tuesday, April 14, 2020 11:42:48 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Dear Alice and Ikeya,

Below is a request for letter of interpretation. See Email from Thursday, April 9 for request.

Thanks,

Jonathon, HMIC

From: Andres Burgos <aaburgos_usmc@msn.com>
Sent: Tuesday, April 14, 2020 10:26 AM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Re: Request for official interpretation of the regulation 49 CFR 175.10(a)(17)

Thank you yet again for a quick response.

My physical/mailling address is as follows:

Andres A Burgos, SGT/USMC(VET)
11221 CYPRESS LEAF DR
ORLANDO, FL 32825

From: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Sent: Tuesday, April 14, 2020 10:23 AM
To: Andres Burgos <aaburgos_usmc@msn.com>
Subject: RE: Request for official interpretation of the regulation 49 CFR 175.10(a)(17)

Dear Andres,

We have received your request for a written letter of interpretation regarding the hazardous materials regulations (49 CFR Parts 171-180). The hazardous materials regulations are available at the following URL:

<https://www.phmsa.dot.gov/phmsa-regulations>

However, before we can submit your request for processing, please respond to this email with:

- Physical Mailing Address

Sincerely,

Jonathon, Hazardous Materials Specialist

An e-mail response from this office is considered informal guidance. Formal guidance may be requested in accordance with 49 CFR 105.20. <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center>

From: Andres Burgos <aaburgos_usmc@msn.com>
Sent: Monday, April 13, 2020 1:12 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Re: Request for official interpretation of the regulation 49 CFR 175.10(a)(17)

Hello Jonathan,

First, I want to thank you for the timely response and for providing the reference material. While the letter provided is related to my initial inquiry, and does help to address concerns related to battery size, the letter does not directly serve my purpose as an official interpretation on the regulations related to simply traveling with "Wheelchairs and mobility devices with lithium ion batteries, normal design, battery installed". It was my hope that I'd be able to obtain a letter similar to the one Mr. Tsiyoni received in May 2016, specifically concerning whether one should be allowed to travel with a mobility aid such as an electric scooter with the battery installed; contingent on that it is "securely attached to the mobility device, the battery housing provides protection from damage, and the terminals are protected from short circuit. The battery cables may remain connected only if the device is protected from accidental activation."

Granted, the letter provided does "allude" to a confirmation of the aforementioned. However, I am concerned that if I were to approach the "dangerous goods specialist" for each airline and provide a copy of this letter as evidence in order to obtain approval for travel on their airline, they would try to enforce the policy that the battery "MUST" be removable.

Warm Regards,

Andres Burgos

From: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Sent: Monday, April 13, 2020 11:49 AM
To: Andres Burgos <aaburgos_usmc@msn.com>
Subject: RE: Request for official interpretation of the regulation 49 CFR 175.10(a)(17)

Dear Andres,

We have received your inquiry about the hazardous materials regulations (HMR) (49 CFR Parts 171-180). Please note that this response from the Hazardous Materials Information Center and its regulatory specialists is considered informal.

The HMR prescribes the requirements of the Department of Transportation governing the offering and transportation of hazardous materials in interstate, intrastate, and foreign commerce by rail car, aircraft, motor vehicle, and vessel. The hazardous materials regulations are available at the following URL:

<https://www.phmsa.dot.gov/phmsa-regulations>

I suggest you review the following attached [Letter of Interpretation].

If you require further assistance, you may contact the Hazardous Materials Information Center by phone resuming Monday January 23, 2017 at 9:00 AM EST.

The HMIC is staffed with regulatory specialists who can quickly answer your questions by phone, Monday through Friday, 9 AM - 5 PM EST at 1(800) 467-4922 or +1 (202) 366-4488.

Sincerely,

Jonathon, Hazardous Materials Specialist

An e-mail response from this office is considered informal guidance. Formal guidance may be requested in accordance with 49 CFR 105.20. <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center>

From: Andres Burgos <aaburgos_usmc@msn.com>
Sent: Thursday, April 09, 2020 8:59 AM
To: INFOCNR (PHMSA) <INFOCNR.INFOCNR@dot.gov>
Subject: Request for official interpretation of the regulation 49 CFR 175.10(a)(17)

Good Morning,

As you can see from the email thread included below, and per a recommendation from the FAA Office of Hazardous Materials Safety, ***I would like to request an official interpretation on the regulations related to traveling with "Wheelchairs and mobility devices with lithium ion batteries, normal design, battery installed"***.

I am a US Marine Corps Veteran with a right leg above-knee amputation. I am able to walk with a prosthetic leg. However, in situations where I know I may have to walk longer than normal distances, I utilize a electric scooter as a mobility aid device. This type of electric scooter is small, collapsible (Folded dimensions 37"L x 7"W x 10"H), and is powered by a non-removable Ternary Lithium Battery 48V 13AH (See information on the EMOVE Touring electric scooter [HERE](#)).

This type of device is classified by the DOJ under the Americans with Disabilities Act (ADA) as an "other power-driven mobility device" (OPDMD); defined as "any mobility device powered by batteries, fuel, or other engines... that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices... or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair". Per the ADA, when an OPDMD is being used by a person with a mobility disability, different rules apply under the ADA than when it is being used by a person without a disability

According to the FAA website, Regulation [49 CFR 175.10\(a\)\(17\)](#), and the confirmation received in the email thread below, I should be able to travel while the battery remains installed as long as it is "securely attached to the mobility device, the battery housing provides protection from damage, and the terminals are protected from short circuit. The battery cables may remain connected only if the device is protected from accidental activation."

However, when I checked with Delta Airlines they said that I could not travel with such a device unless the

battery was removable. They also indicated that this policy was universal amongst all airlines and that if the battery was not removable I would not be able to travel with the device. Unfortunately, there is only ONE of these devices that has a removable battery, and I exceed the max load weight capacity for that device. In fact, when one reviews the attached "Hazardous Materials Carried by Airline Passengers and Crew Members (49 CFR §175.10 Illustrated)" which was prepared and distributed by the FAA Office of Hazardous Materials Safety, one can understand the confusion; as this document doesn't even make reference to devices which the battery cannot be removed.

The FAA Office of Hazardous Materials Safety has provided all the assistance they could offer, and I'm hoping The U.S. DOT Pipeline and Hazardous Materials Safety Administration might be able to provide further assistance.

Please do not hesitate to contact me if you require any further information on the device or my disability, if such information would help your office provide an official interpretation on the regulations related to traveling with "Wheelchairs and mobility devices with lithium ion batteries, normal design, battery installed".

Kind Regards,



From: 9-AWA-ASH-ADG-HazMatInfo (FAA) <HazMatInfo@faa.gov>

Sent: Thursday, April 9, 2020 7:49 AM

To: Andres Burgos <aaburgos_usmc@msn.com>

Subject: Re: Message from www.faa.gov: hazmatinfo@faa.gov

There is one more thing that you may be able to do. The "owner" of the hazmat regs is an organization called the Pipeline and Hazardous Materials Safety Administration. They're a US Department of Transportation operating administration that writes, and makes official interpretations of the regs. You could request an official interpretation of the regulations from them. Hit up the Info Center (<https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center>) and see if they can provide some more in depth assistance with this.

As always, let me know if there is anything else we can answer!

If you require more information or clarification of this response, please feel free to reply to this message.

Regards,
Bill Strupczewski
FAA Office of Hazardous Materials Safety
<http://www.faa.gov/go/PackSafe>

From: Andres Burgos <aaburgos_usmc@msn.com>
Sent: Wednesday, April 8, 2020 8:56 AM
To: 9-AWA-ASH-ADG-HazMatInfo (FAA) <HazMatInfo@faa.gov>
Subject: Re: Message from www.faa.gov: hazmatinfo@faa.gov

Good Morning Bill,

Thank you VERY much for the follow-up.

My contact with Delta Airlines was able to confirm what you suspected. While FAA guidelines does, in my unique case, allow me to travel with a device that does not have a removable battery contingent on it meeting certain requirements, the airline chooses to enforce a stricter policy. My friend also asked his supervisor about other airlines, and they were under the presumption that the stricter policy is universal amigns all airlines.

I still plan to compose a detailed email - with references to the specs of the device as well as the applicable FAA regulation - and attempt to approach the "dangerous goods specialist" for each airline. It is my hope that I am able to obtain corporate authorization from each airline to travel with the device. As a final option, I will take a trip to the airport with the device and ride it from airline counter to airline counter and try to speak with anyone who may be able to aid me in my endeavor.

However, as back up plan, I have purchased two of the devices; one of which does have a removable battery. Unfortunately, the device with the removable battery (which is the ONLY option currently available anywhere) has a max load weight of 230 lbs, which I exceed by about 20-30 lbs. It will obviously not suit my needs on a regular basis, but if necessary I will use this device for travel purposes.

While my efforts are inspired by self-interests, I also hope that my efforts may be of assistance to other disabled veterans with similar mobility constraints. Many people are under the impression that if someone has an issue walking, the answer is just to put them in a wheelchair and maybe even have an able-bodied airport employee push them around the airport. What many people don't realize is that for many of us it can feel very embarrassing to have someone push us around like if we are some sort of invalid who can't take care of themselves. Even in a wheelchair that we push ourselves on, we are not able to move as quickly as we used to, and the movement requires a significantly greater amount of effort. I personally am a 38 year old, stocky/athletic build, Marine Corps Veteran that prefer to not rely on others to get me from point A to point B. I simply would like to be able to use mobility aid devices which allow me to travel while also holding onto my independence and self-respect.

Thanks again for the follow-up. I will be receiving my EMOVE Touring and LEVY electric scooter this Thursday. Once I actually receive them, I will continue my efforts obtain approval from airlines for the EMOVE Touring; which is the device with the max load weight that can better handle my weight.

I will definitely not hesitate to reach back out to you if I need any additional information or clarification.

Warm Regards,



Andres Burgos

SGT / USMC (VET)
p: 321-287-5073



 Please consider our environment before printing this email.

From: 9-AWA-ASH-ADG-HazMatInfo (FAA) <HazMatInfo@faa.gov>
Sent: Tuesday, April 7, 2020 6:15 PM
To: Andres Burgos <aaburgos_usmc@msn.com>
Cc: Strupczewski, William (FAA) <William.Strupczewski@faa.gov>
Subject: Re: Message from www.faa.gov: hazmatinfo@faa.gov

Hello.

I just wanted to follow up and see if you were able to get a workable solution to your question with your airline.

Hope you and yours are well and please let me know if there are any other questions that you may have.

If you require more information or clarification of this response, please feel free to reply to this message.

Regards,
Bill Strupczewski
FAA Office of Hazardous Materials Safety
<http://www.faa.gov/go/PackSafe>
215-872-6226

From: Andres Burgos <aaburgos_usmc@msn.com>
Sent: Wednesday, April 1, 2020 5:16 PM
To: 9-AWA-ASH-ADG-HazMatInfo (FAA) <HazMatInfo@faa.gov>
Subject: RE: Message from www.faa.gov: hazmatinfo@faa.gov

This is GREAT Information. Thank you!

I won't be carrying any spare batteries, since they are not removable or even accessible on this particular device.

Sent from [Mail](#) for Windows 10

From: [9-AWA-ASH-ADG-HazMatInfo \(FAA\)](#)
Sent: Wednesday, April 1, 2020 5:13 PM
To: [Andres Burgos](#)
Subject: Re: Message from www.faa.gov: hazmatinfo@faa.gov

Unfortunately, there is no "pass" or document that would be available from us. Your "permission" would come from the carriers in this case. I think I was on that ATL flight...

Luckily, you're citing the correct regulation. The regs do not explicitly define what would be considered a

"mobility aid" outside of the "socially acceptable" definition. 175.10 a (17) is the governing regulation in this instance. Another arrow in the quiver, so to speak, would be to mention this document (<https://www.iata.org/contentassets/6fea26dd84d24b26a7a1fd5788561d6e/mobility-aid-guidance-document-2019-en.pdf>), especially if the carrier is using the international rules on a domestic flight, which is permitted. In particular, the line on page 4 that says "If the battery is not removed, there is no limit to the Wh rating for the installed battery(ies)".

If checking is not an issue, then you may be able to prearrange with the carrier to "gate check" your device. This will allow you to use it in the airport, and up to boarding if necessary.

Will you be carrying any spare batteries? They have a hard ceiling of 300Wh and must be approved by the airline before you bring them on board.

If you require more information or clarification of this response, please feel free to reply to this message.

Regards,
Bill Strupczewski
FAA Office of Hazardous Materials Safety
<http://www.faa.gov/go/PackSafe>
215-872-6226

From: Andres Burgos <aaburgos_usmc@msn.com>
Sent: Wednesday, April 1, 2020 4:52 PM
To: 9-AWA-ASH-ADG-HazMatInfo (FAA) <HazMatInfo@faa.gov>
Subject: RE: Message from www.faa.gov: hazmatinfo@faa.gov

All of my flights are domestic. I haven't felt the need or desire to travel internationally since I was in the service.

Delta and Southwest Airlines are the two I travel with the most, but have had some connections through American Airlines, Spirit, Frontier as well.

In the past when I used to be wheelchair bound, I would gate check the wheelchair. I have no issues gate checking the device; in fact, I'd expect the need to and it would be most convenient for me to do so. However, it would be an issue if I had to check it at the counter.

One of the biggest need I have is to be able to use the device within the airports and at connections. There's no worse feeling than having a flight land behind schedule at Gate A in ATL and having only 30 min to get my one-legged butt all the way over to Gate G! It's happened twice already, which is what inspired me to begin this research and purchase of the electric scooter.

I will definitely reach out to the "dangerous goods specialist" for each airline. I was, however, hoping I could obtain some sort of document or communication confirming that the Segway Ninebot Kickscooter MAX electric scooter, if used as a mobility device by one with a clear and obvious disability, would be covered under regulation 49 CFR 175.10(a)(17) and allowed by the FAA for travel with the battery & cables permanently attached as long as it is securely attached to the mobility device, the battery housing provides protection from damage, the terminals are protected from short circuit, and the device is protected from accidental activation.

Note: The Segway Ninebot Kickscooter MAX also comes equipped with a Smart Battery Management System which closely monitors the battery status with multiple protection mechanisms such as short circuit protection, two-way charging and discharging protection, overcurrent protection, and temperature protection, to ensure the

battery safety and to extend its service life.

Sent from [Mail](#) for Windows 10

From: [9-AWA-ASH-ADG-HazMatInfo \(FAA\)](#)
Sent: Wednesday, April 1, 2020 4:26 PM
To: aaburgos_usmc@msn.com
Subject: Re: Message from www.faa.gov: hazmatinfo@faa.gov

Welcome home, Marine.

You may be correct, but it depends on a couple of factors:

1. Is this a domestic or international flight? There are some variances in the rules so I want to make sure I give you the most correct info.
2. What airline are you using? While it is correct that the rules may say this device is permitted, some carriers have rules that are more restrictive.

The only thing that I can see that might be an issue is that it has to go in checked baggage.

You might want to contact your airline and ask to speak with a "dangerous goods specialist". They have more in depth knowledge of the subject specific to your airline.

If you require more information or clarification of this response, please feel free to reply to this message.

Regards,

FAA Office of Hazardous Materials Safety
<http://www.faa.gov/go/PackSafe>
215-872-6226

From: aaburgos_usmc@msn.com <aaburgos_usmc@msn.com>
Sent: Wednesday, April 1, 2020 3:20 PM
To: 9-AWA-ASH-ADG-HazMatInfo (FAA) <HazMatInfo@faa.gov>
Subject: Message from www.faa.gov: hazmatinfo@faa.gov

This email was sent through the Federal Aviation Administration's public website. You have been contacted via an email link on the following page: www.faa.gov/hazmat/contact/

Message:

I'm a US Marine Corps Veteran with a right leg above-knee amputation disability. I utilize a Segway Ninebot Kickscooter MAX electric scooter as a mobility device to aid in traveling longer distances at a walking speed. This device utilizes 551Wh big capacity lithium batteries and uses a Smart Battery Management System with multiple protection mechanisms such as short circuit protection, overcurrent protection, and temperature protection. The battery, however, is not removable. According to your website, it sounds as though I am able to travel this device and that the battery may remain installed. The battery is securely attached to the electric scooter mobility device, the battery housing provides protection from damage (to include a water resistant rating of IPX5), and the terminals are protected from short circuit. In addition, while collapsed for carrying, the device is protected from accidental activation. Is there any way to confirm that I can in fact travel with a Segway Ninebot Kickscooter MAX as a mobility device?

