



U.S. Department
of Transportation
**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Ave., S.E.
Washington, DC 20590

JUL 31 2008

Mr. Jeffrey A. McKinney
Vice President and Chief Patent Counsel
Altair Nanotechnologies, Inc.
204 Edison Way
Reno, NV 89502

Ref. No. 08-0186

Dear Mr. McKinney:

This responds to your July 11, 2008 letter requesting clarification of the requirements for shipment of lithium batteries under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether § 173.185(e), *Shipments for testing (prototypes)*, applies to shipments of prototype lithium cells or batteries transported for purposes of product performance and field demonstration testing.

The answer is yes. Section 173.185(e) is not limited to transportation of prototype lithium cells or batteries for the purpose of UN testing in accordance with § 173.185(a). Prototype lithium cells or batteries may also be transported under the provisions of § 173.185(e) for product performance testing or field demonstration testing in connection with product development programs.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

Susan Gorsky,
Regulations Officer
Office of Hazardous Materials Standards



Der Kinderen
§173.185
Lithium Batteries
08-0186

July 11, 2008

Edward Mazzullo
Director
Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration (PHMSA)
PHH-10
U.S. Department of Transportation, East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Dear Mr. Mazzullo:

Altair Nanotechnologies, Inc. (“Altairnano”) is a nanotechnology company based in Reno, Nevada, that specializes in the production of lithium ion cells and batteries. As such, Altairnano is subject to the federal laws regulating the shipment of hazardous materials, specifically 49 C.F.R. §173.185, Lithium cells and batteries. We have received what appear to be different explanations from PHMSA officials as to the circumstances under which a manufacturer can ship prototype cells or batteries via motor vehicle without prior PHMSA approval.

Accordingly, we are requesting PHMSA’s views on the proper interpretation of the term “testing”, as that term is used in 49 C.F.R. §173.185(e). Section 173.185(e) states in relevant part: “*Shipments for Testing (prototypes)*. A lithium cell or battery is excepted from the requirements of [§173.185] (a)(1) of this section when transported by motor vehicle for purposes of testing.”(Emphasis added) This section is important because it governs the circumstances in which prototype cells or batteries can be shipped via motor vehicle without prior approval from PHMSA.

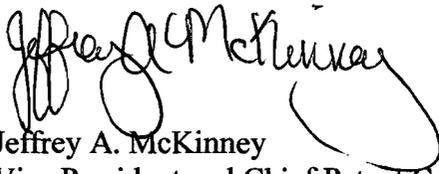
One possible interpretation of this section is that the only circumstances in which the cell or battery can be shipped by motor vehicle without prior approval from PHMSA is if the shipment is to a location where some or all of the UN tests referenced in section (a)(1) will be performed. Under this construction, the purpose of section (e) would be to permit a manufacturer to ship its product by motor vehicle to a testing facility for the purpose of performing UN testing and, in this circumstance, the manufacturer would not be required to apply for a Competent Authority Approval (“CAA”) under 49 C.F.R. §173.185 (f). The Competent Authority in this instance would be PHMSA.

An equally plausible interpretation of section (e) is that it covers not only shipments made for the purpose of UN testing, but also prototype shipments made by motor vehicle exclusively for the purpose of conducting non-UN performance and field demonstration tests of the product. Under this interpretation, PHMSA's prior approval would not be required for prototype shipments made only for the purpose of product performance and demonstration testing (i.e. non-UN testing).

We want to make certain that we are in full compliance with the Department of Transportation's lithium battery shipping requirements. In light of the ostensibly differing explanations we have received about the scope of the testing regulation, your prompt response to this inquiry would be appreciated.

Please feel free to contact me at (775) 856-2500 or Kenneth Mead, our outside counsel with Baker Botts, LLP, at 202-639-7744, if you have any questions. Thank you in advance for your consideration.

Sincerely,



Jeffrey A. McKinney
Vice President and Chief Patent Counsel
Altair Nanotechnologies, Inc.
204 Edison Way
Reno, Nevada 89502
(775) 856-2500