



March 12, 2019

Mr. William Schoonover
Associate Administrator
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Ave, SE
Washington, DC 20590

Re: Enforcement of PHMSA March 6, 2019, Interim Final Rule on Lithium Batteries (HM-224I)

Dear Mr. Schoonover:

We write to follow up on a conversation George Kerchner, the Executive Director of PRBA – The Rechargeable Battery Association, had with Dirk DerKinderen of your office regarding our concerns with the Pipeline and Hazardous Materials Safety Administration’s (PHMSA) Interim Final Rule (IFR) on Lithium Batteries (HM-224I) published in the Federal Register on March 6, 2019. (84 Fed. Reg. 8006.) We appreciate that Mr. DerKinderen promptly contacted Mr. Kerchner after he raised our concerns with others on the PHMSA staff about the challenges our members face in having to comply immediately with the new lithium battery package mark and label requirements set forth in the IFR.

We want to emphasize that our associations fully support PHMSA’s efforts to harmonize the U.S. lithium battery hazardous materials regulations with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air. We believe that harmonization will improve on the safe transport of lithium ion batteries by air and other modes of transport. Our concern with the IFR is not related to air transport, however.

Instead, we ask for PHMSA action to address the potential impact of the mandate for immediate compliance with a new mark or label for packages of lithium ion batteries transported by highway or rail. Having received no warning from PHMSA that this rule was about to appear, and seemingly to impose a March 6 compliance deadline, thousands of offerors and carriers who in good faith comply with applicable rules likely now find themselves out of compliance because, as a practical matter, they are unable to immediately obtain new marks and labels, train personnel, and implement new marking and labeling procedures. This concern is substantial: a very large volume of new and used lithium ion batteries are shipped and transported daily by highway and rail in the U.S. that are now subject to the new mark and label requirements.

To alleviate these concerns, Mr. Kerchner suggested to Mr. DerKinderen that PHMSA issue a “Notice of Enforcement Policy” regarding the IFR analogous to one that was issued on December 18, 2018 in connection with the HM-2150 harmonization rulemaking. To allow time for implementation of the new requirement without unduly disrupting transportation and commerce, such a Policy should state that PHMSA and other federal Agencies (*e.g.*, Federal Motor Carrier Safety Administration) will not take enforcement action for some reasonable period of time against any offeror or carrier who offers or accepts for domestic transportation by highway and rail lithium ion batteries shipped in accordance with the requirements of 49 CFR § 173.185(c) that were in effect prior to March 6, 2019. We suggest that the period to come into compliance not be less than 120 days, *i.e.*, until July 6, 2019.

Again, we appreciate that Mr. DerKinderen contacted Mr. Kerchner to discuss this issue. It is a very important one for our members. Please contact Mr. Kerchner at 202.719.4109 or gkerchner@wileyrein.com if you have any questions or would like to discuss the matter.

Respectfully,

PRBA – The Rechargeable Battery Association
Medical Device Battery Transport Council
Council On Safe Transportation of Hazardous Articles
Dangerous Goods Advisory Council
Power Tool Institute
National Electrical Manufacturers Association
Outdoor Power Equipment Institute
International Vessel Operators Dangerous Goods Association