

January 30, 2015

Timothy P. Butters
Acting Administrator
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: *Hazardous Materials: Transportation of Lithium Batteries*, Docket No. PHMSA-2009-0095

Dear Acting Administrator Butters:

The Retail Industry Leaders Association, the Food Marketing Institute, the National Retail Federation, and the Rechargeable Battery Association (collectively the “Associations”) will continue to support the work of the Pipeline and Hazardous Materials Safety Administration (PHMSA) in its efforts to enhance all aspects of safety involving the transportation of lithium batteries. However, we respectfully request the agency to grant an extension for compliance with the new transportation regulations regarding the transport of lithium batteries. The requested delay would help to ensure that the domestic retail sector meets the numerous compliance requirements set forth in the regulation.

As you are aware, the regulations were originally proposed in early 2010, but were not published in final form until August 6, 2014 (79 F.R. 46012). The final version of the rule differed significantly from the original proposed rule. Generally, the new regulations require that domestic ground shipments of products with lithium batteries adhere to shipping standards previously only required for international air and sea transportation. Domestic ground shipments now require additional marking and labeling of packages containing lithium ion (rechargeable) and lithium primary (non-rechargeable) batteries and battery containing products, shipping documents and a Watt-hour marking on all lithium ion batteries.

The detailed information regarding lithium batteries and battery containing consumer products necessary for compliance does not currently exist in any format the retail sector can access and utilize,¹ thus making it difficult for the retail sector to comply by February 6, 2015. Since August, retail businesses and their suppliers have worked diligently to develop IT systems and business processes to identify consumer products impacted by the regulation. Systematic solutions are being developed but will take additional time to be created and implemented by the retail sector. Our initial estimate is that a minimum of six more months is necessary to build the sector IT infrastructure necessary to effectively implement the regulations. The new infrastructure will support most major retailers, but even with an extension, smaller retail businesses will likely need significant additional outreach and assistance from the agency to effectively comply.

¹ Under the previous regulatory regime, domestic retail operations only needed to identify that a product included a lithium battery and to ensure that it was never shipped by air or by ground in large numbers (12/24). Under the new regulations, the exact type, size, and location of the battery, is required to ensure proper marking and labeling for all ground transportation of more than one product or two batteries.

Given the timing of the implementation date, retail companies face an insurmountable set of challenges. First, larger retail businesses must rely on their suppliers to provide the detailed information required regarding consumer products with lithium batteries. Unfortunately, suppliers themselves are struggling to identify what products are impacted to the specific level of detail required by the rule. Most major national retailers rely on suppliers to provide them with the relevant compliance information associated with a product prior to the item being entered into a company's product data base. To date, many suppliers have not yet provided retailers with the required information.

Typically, major retail businesses require that their suppliers provide hazardous material transportation information for consumer products to them or an independent third-party. The regulatory information is then electronically "attached" to each product's UPC code and downloaded into the retail company's data base. The retail company then systematically distributes the pertinent regulatory information to all relevant parts of its business; the end result being that an employee in the back of a retail store or distribution facility can access the needed regulatory information by scanning the product UPC. In addition to awareness training, these kinds of electronic systems are commonly at the core of retail compliance programs. Supplemented with training and consultation with highly trained professional experts, these systems allow the retail world to comply with the complicated PHMSA hazardous material rules and other laws.

Tens of thousands of consumer products may be impacted by the rule, many of which are necessary for the health, safety, and well-being of the public. Our estimate, based on discussions with retail members, is that to date, retail suppliers have provided the required information for less than 25% of those products. Retail companies will continue to work with suppliers, but suppliers will need additional time to send all of the product regulatory information to retailers. Many suppliers source lithium batteries from overseas and are themselves struggling to get information from battery manufacturers.

The second major issue faced by large retailers is that even after suppliers provide the necessary information, the retailers' internal IT systems are not currently structured to accept the kind of detailed information pertinent to compliance with the new lithium battery rule. For example, one company's systems are currently configured to transmit a certain amount of PHMSA data attached to each product's UPC. However, their current systems are not able to handle the level of detail needed for "front-line" employees to comply with the new rule since previous requirements only applied to international air and sea shipping. At the risk of oversimplifying a complex IT issue, companies' IT systems are currently capable of only "carrying" information regarding whether a product is fully-regulated, limited quantity (ORMD) or not regulated, but cannot carry information on battery type, Watt-hours, and markings and labeling. One major retailer reported that the reconfiguration of its IT systems is under way, but will take over 10,000 additional hours of software coding to complete.

Additionally, because the new rule impacts many different locations within a retail business, including Distribution Centers, Return Logistics Centers, Stores, and Import and Export facilities, many retail companies are reporting the need to reconfigure multiple internal systems. In one case, a company has identified twelve internal IT systems that require recoding to meet the new rule's

requirements. Similar projects are underway at most major retailers, but few if any, will be able to meet the February 6 implementation date.

The final hurdle major retail businesses face is developing, tracking, and implementing training programs for hundreds of thousands of employees to enable them to be able to execute the nuanced marking and labeling requirements of the new rule. Companies are at different stages in this process but all are working intensely to implement programs throughout their supply chains.

While the entire retail sector is struggling to develop compliance programs to meet the requirements of the new lithium regulations, it should be noted that smaller retail businesses are also experiencing many trials. For local and regional retail businesses, the primary challenge is a general lack of awareness of the new rule. Small businesses also have few resources available to provide them detailed information regarding the rule. Additionally, small businesses need significant compliance assistance from the agency.

The Associations anticipated these problems and highlighted them in their original comments to the 2010 proposed rule, noting that the original 75 day effective deadline was inadequate. PHMSA was gracious to extend that deadline to six months in the final rule. However, because the final rule differed significantly from the proposed rule, the reality is that even six months is not an adequate time period for the retail sector to develop and implement the programs necessary to ensure compliance. Therefore, the Associations respectfully request that PHMSA consider a six month extension to the effective date.

The safe transportation of all hazardous materials, including lithium batteries, is of the utmost importance to the retail industry, and we look forward to working with PHMSA and the product supplier community to make that happen. We thank you in advance for your consideration of this request.

Sincerely,



Kelly Kolb
Vice President, Government Affairs
Retail Industry Leaders Association



Stephanie K. Barnes
Regulatory Counsel
Food Marketing Institute



David French
Senior Vice President, Government Relations
National Retail Federation



George A. Kerchner
Executive Director
PRBA - The Rechargeable Battery Association