

Japan Machinery Center for Trade and Investment

No.401 Kikai Shinko Building
5-8, Shibakoen 3-chome,
Minato-ku, Tokyo 105-0011
Japan

Tel :81-3-3431-9507
Fax:81-3-3436-6455

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Pipeline and Hazardous Material Safety Administration (“PHMSA”)
U.S. Department of Transportation

Re: Docket Number PHMSA-2009-0095(HM-224F)
RIN 2137-AE44
Comment on Notice of Proposed rulemaking, Federal Register Vol. 75, No. 6,
January 11, 2010.
Hazardous Materials: Transportation of Lithium Batteries

The Japan Machinery Center for Trade and Investment (“JMC”) hereby submits comments on the Notice of Proposed rulemaking issued by the Pipeline and Hazardous Material Safety Administration, U.S. Department of Transportation, Federal Register Vol. 75, No. 6, January 11, 2010, “Hazardous Materials: Transportation of Lithium Batteries”

JMC is an association of 270 firms that manufacture and export machinery products worldwide. It includes most of the major companies in Japan that export electronics and machinery goods to the U.S.A. JMC was established in 1952 under Japan’s Export and Import Transactions Law to represent the interests of Japanese machinery exporters.

Ensuring Product safety has ever been the top priority among all the JMC member companies. To that end, the JMC member companies who export various electronics devices using Lithium Batteries have been striving to meet the international safety standards for Lithium Batteries such as UL (Underwriters Laboratories) or IEC (International Electrotechnical Commission), and adopted only Lithium Batteries certified the conformity of the international standards and regulations.

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While JMC recognizes the importance of ensuring the safety relating to transportation of Lithium Batteries, JMC is also concerned about the possible disruptive effects of the measures stated in the proposed rule on the efficient flow of international commerce because the proposed rule raises a number of concerns.

In view of foregoing, JMC strongly recommends that PHMSA address the issues described below.

Before proceeding, we would like to thank PHMSA in advance for taking the following comments into account.

1. Enhancing the level of compliance with the current rules and regulations

It is highly regrettable that a number of battery-related incidents were reported. However, those incidents should have been averted if compliance with the current rules and regulations had been fully ensured as stated in the notice of proposed rulemaking. JMC believes much more efforts should be made to enhance and improve the level of compliance with the current rules and regulations before introducing the new rule.

2. Extending the preparatory period before entry into force.

In order for industries to be ready for the new rule, JMC recommends that the preparatory period should be extended from 75 days to 18 months at earliest after publication of the final rule in the Federal Register for following reasons;

- (1) Because only a limited number of certification bodies and suppliers of packing materials meeting the requirements of the proposed rule are available, it will take long time for industries to be ready for the new rule.
- (2) There left a substantial volume of Lithium Batteries packaged in accordance with the current rules in the inventory.

3. Avoiding unilateral measures against the international standards.

In the absence of consistency to the international standards and regulations, it could cause different country to establish different rules and could lead to disruption in exporting to and importing from the U.S.A. Regarding the transportation safety of Lithium Batteries, ICAO (International Civil Aviation Organization) and other relevant international bodies have spent a long time in deliberating measures for the transportation of lithium batteries and have already

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established the new rules satisfying the current transportation safety needs. JMC believes that the U.S. rules and regulations should be prescribed in a way consistent with the international standards and regulations. If one country implements such that stringent regulations unilaterally, it could work like a trade barrier to foreign products, and could affect the consumers' benefits in the U.S. eventually.

4. Possible practical troubles caused by designating of Lithium Battery as dangerous goods

(1) Burdensome of administrative procedures

If Lithium Batteries are designated unilaterally as dangerous goods by the U.S., it will inevitably lead to higher transportation costs and longer transportation time because it will make trade related procedures including customs clearance burdensome for export to/import from the U.S, and transit/transship to the third countries via the U.S.

(2) Disruption in air freight

If Lithium Batteries are designated as dangerous goods, it could disrupt seriously air cargo transportation. The consignments of cargo would flood into a limited number of air freighter available, furthermore, shippers might be unable to book air freighters in timely manner. In addition, shippers might be forced to change their transport mode from air to ocean. If those trouble happen, it could not only cause consumers inconvenience but also disrupt efficient flow of commerce along with the supply chain. If it causes shippers to miss business opportunity, the dealers in the U.S. will face with serious business loss. (It is estimated that the amount of inventory could rise by 10-20% because of raising various business costs. Those costs include warehouse rental costs, loading and unloading costs, insurance costs, personnel costs, utilities costs, system operation costs, depreciation costs, fixed asset taxes, inventory valuation losses, inventory depletion costs, inventory disposal losses, disposal costs, transport and delivery costs and marketing (sales promotion) costs)

By designation as dangerous goods, there will be significant increase in the cost of packaging, transporting and storing products, which will eventually be borne to a large extent by the U.S. consumers.

Furthermore, the disruption in air freight could diffuse globally. Because the shippers cannot always designate their air carriers or freighters, hence, they

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have to prepare for the possibility that their cargo is loaded aboard the U.S. air freighter even when the cargo is destined for other countries.

(3) Prolonged delivery time of products to consumer's hands

If the proposed rule, as currently written, is enacted, it could cause prolonged delivery lead time of products to consumers, which implies to harm the U.S. consumers benefits because it will make difficult to acquire products quickly in taking advantage of "built to order" under current global supply chain.

(4) Returning products for repair, or recycling

If the proposed rule, as currently written, is enacted, it could make difficult for consumers, retailers, or venders in the U.S. to return the products for repair or recycling purpose in a timely manner.

(5) Broader impact on lithium battery-related equipments

The troubles mentioned above will not only be limited to Lithium Batteries themselves, but will spill over to a broad range of products such as cellular handsets and smart phones, PCs, digital video cameras, portable DVD players, and etc.

5. Marking Requirement

A new marking requirement in the proposed rule seems to have no practical effect on securing transportation safety of Lithium Batteries for following reasons;

- (1) Lithium Batteries and electronics products using the Lithium batteries are generally packed in the boxes or cartons and transported. No one can verify if each Lithium Battery or Product is properly marked from outside of the original package in the process of transportation. Hence JMC believe the marking requirement indicated in the proposed rule will have no practical effect.
- (2) The UN regulations on transportation have already mandated marking on the surface of a battery and a package. JMC believes that there is no reason to add the new marking requirement to the current marking requirement placed by the UN regulations.

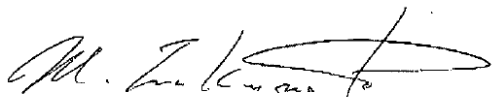
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6. Exempting certain type of Lithium Batteries

- (1) Lithium-metal batteries should be exempted from the requirements in the proposed rule because any external shorting is unlikely to occur in the case of small batteries embedded to a printed circuit board inside the devices.
- (2) Low energy Lithium-ion Batteries should be exempted from the requirements in the proposed rule. The rule proposed exemption of ultra small low-energy batteries (for example, 0.3g or 3.7Wh or less) when packaged with or incorporated in the devices. However, lithium-ion batteries used in many cellular handsets in the U.S. market are over 3.7Wh, and it implies that it could impose a huge impact on the transportation of cellular handsets to the U.S. market. Ultra small batteries usable for cellular handsets in the U.S. market should be included in the range of low energy.
- (3) A charged Lithium-ion Battery possesses various level of energy depending on its SOC (State of Charge), therefore, it is possible to elevate a transportation safety by lowering SOC under certain level of it. It might be effective to add a clause to allow for exemption in exchange for the decreased level of SOC during the transportation.(We have yet to discuss to define the allowable threshold of SOC)

Thank you for your consideration of our comments.

Regards,



Masanori Fukumoto

Chairman

Committee on Facilitation of Global Operation and e-Trade

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