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**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 172, 173, 175**

**[Docket No. PHMSA-2009-0095 (HM-224F)]**

**RIN 2137-AE44**

**Hazardous Materials: Transportation of Lithium Batteries**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of proposed rulemaking; request for additional comment.

**SUMMARY:** In this document, PHMSA is seeking additional comment on the impact of changes to the requirements for the air transport of lithium cells and batteries that have been adopted into the 2013-2014 International Civil Aviation Organization Technical Instructions on the Transport of Dangerous Goods by Air (ICAO Technical Instructions), and subsequently incorporated by reference on **[insert publication date]** with the publication of a final rule under Docket HM-215L. PHMSA is considering the long-term impacts of permitting shippers and carriers to choose between compliance with the existing HMR, or compliance with the ICAO Technical Instructions 2013-2014 edition, when transporting batteries domestically by air. Incorporation by reference of the 2013-2014 Edition of the ICAO Technical Instructions will allow each shipper and carrier to choose the method of compliance that is most appropriate for its operation; likewise, each shipper and carrier will have the responsibility to ensure that the proper method of compliance is chosen for each shipment, since the chosen method may not comply with the ICAO Technical Instructions. PHMSA is seeking supplemental comments to our January 11, 2010, Notice of Proposed Rulemaking (NPRM) and our April 11, 2012, request

for additional comment in light of the publication of the HM-215L final rule. Specifically, PHMSA is seeking comment on whether to require mandatory compliance with the 2013-2014 ICAO Technical Instructions for all shipments of lithium batteries by air, both foreign and domestic. Based on the comments received, PHMSA may issue a final rule to revise the HMR to reflect the lithium battery provisions specified in the 2013-2014 Edition of the ICAO Technical Instructions.

**DATES:** Comments must be received by **[Insert date 60 days after the publication date]**.

**ADDRESSES:** You may submit comments identified by the docket number PHMSA-2009-0095 (HM-224F) by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> Follow the instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: Docket Management System; US Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue, S.E., Washington, DC 20590.
- Hand Delivery: To the Docket Management System; Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see ADDRESSES).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477) or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505/pdf>.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Betts or Kevin A. Leary, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366-8553; Michael Locke, Program Development Division, Pipeline and Hazardous Materials Safety Administration, telephone (202) 366-1074.

## **Background**

### HM-224F Notice of Proposed Rulemaking (NPRM)

On January 11, 2010, PHMSA, in consultation with the Federal Aviation Administration (FAA), issued a Notice of Proposed Rulemaking (NPRM) under Docket HM-224F (75 FR 1302, RIN 2137-AE44) proposing to amend requirements in the Hazardous Materials Regulations (HMR) on the transportation of lithium cells and batteries, including lithium cells and batteries packed with or contained in equipment.

### HM-224F Request for additional comment

In the spring of 2012, the ICAO Dangerous Goods Panel incorporated into the 2013-2014

Edition of the ICAO Technical Instructions certain changes applicable to the air transport of lithium cells and batteries. Accordingly, on April 11, 2012, PHMSA issued a subsequent notice requesting additional comment on the expected costs and benefits of adopting these changes into the HMR (77 FR 21714). While the commenters supported harmonization of the HMR with the 2013-2014 ICAO Technical Instructions, several commenters expressed uncertainty whether the requirements in 2013-2014 ICAO Technical Instructions were replacing the proposals in PHMSA's January 11, 2010 NPRM.

As a result of changes to the ICAO Technical Instructions over the past two years, and the statutory prohibition contained within the FAA Modernization and Reform Act of 2012 (§ 828, Pub. L 112-95; 126 Stat. 133 (Feb 14, 2012)), PHMSA is no longer considering many of the provisions in the January 11, 2010 notice of proposed rulemaking.

PHMSA received many comments on issues related to harmonization with ICAO Technical Instructions in its April 2012 notice; PHMSA will respond to all of those comments, as well as the comments on the January 2010 NPRM, in this same docket at a later date. However, in order to focus the comments in this notice on the few remaining issues where we would like to receive additional information, we are not seeking further comment on the following issues at this time:

- Replacing the equivalent lithium content requirements for lithium ion cells and batteries with Watt-hours consistent with international standards;
- Provisions for “small” and “medium” size lithium cells and batteries;
- Provisions for shipments of prototype lithium ion batteries in vehicles;
- Provisions for shipments of “small production” and prototype lithium cells and batteries consistent with the IMDG Code and ICAO Technical Instructions;

- Provisions for the transport of damaged, defective and recalled lithium batteries; and
- Harmonization of the relevant lithium battery proper shipping names and descriptions listed in the Hazardous Materials Table with those listed in the IMDG Code and ICAO Technical Instructions.

#### HM-215L Notice of Proposed Rulemaking (NPRM) and Final Rule

On August 15, 2012, PHMSA published an NPRM under Docket HM-215L (PHMSA-2012-0027; 77 FR 49168) that did not propose any specific amendments regarding the requirements for the air transportation and handling of lithium batteries. However, the NPRM did propose the incorporation by reference of the 2013-2014 Edition of the ICAO Technical Instructions, which addresses the air transportation of lithium batteries. In the final rule issued under Docket HM-215L (PHMSA-2012-0027) on **[insert publication date]**, PHMSA incorporated the 2013-2014 Edition of the ICAO Technical Instructions by reference. Accordingly, for purposes of the HMR, a shipment of lithium batteries are permitted to be transported by air in accordance with the 2013-2014 Edition of the ICAO Technical Instructions (with the exception of primary lithium batteries and cells aboard passenger carrying aircraft and unapproved prototype lithium batteries and cells aboard passenger carrying aircraft), or the applicable requirements currently specified in the HMR (see §§ 171.24(d)(1)(ii) and 171.24(d)(1)(iii)). Incorporation by reference of the 2013-2014 Edition of the ICAO Technical Instructions provides shippers and carriers with the flexibility to choose the method of compliance most appropriate for their operation and transportation scenario. However, it also places the responsibility to ensure that the proper method is chosen for each shipment, as domestic requirements may differ from those contained in the 2012-2014 Edition of the ICAO

Technical Instructions. In the HM-215L final rule, PHMSA noted that it “is requesting additional comment on various issues related to the air transportation and handling of lithium batteries in a separate Notice.” This Notice is the notice referenced in the HM-215L final rule.

### **Request for Information**

Under the Docket HM-215L final rule issued on **[insert publication date]** shipments of lithium batteries may be prepared in accordance with the ICAO Technical Instructions, 2013-2014 Edition (subject to the additional conditions specified in §§ 171.24(d)(1)(ii) and 171.24(d)(1)(iii)) or the applicable requirements currently specified in the HMR. Incorporating the 2013-2014 ICAO Technical Instructions into the HMR authorizes the use of these standards, but without additional action, differing domestic standards will remain in the HMR.

In this notice, PHMSA now seeks comments on potential amendments to the appropriate sections of the HMR consistent with provisions in the 2013-2014 ICAO Technical Instructions, not to the provisions proposed in the January 11, 2010, NPRM, as PHMSA is currently prohibited by the FAA Modernization and Reform Act of 2012 from imposing requirements more stringent than the ICAO standards.

PHMSA seeks qualitative and quantitative information from the public on the following questions. In your comments please refer to the specific question number(s) to which you are responding.

- 1.) Do you anticipate any unintended consequences for shippers or carriers if PHMSA authorizes the use of the 2013-2014 ICAO Technical Instructions as an optional method of compliance with the HMR, **but does not** issue a final rule revising the HMR to require domestic shipments of lithium batteries to comply with the lithium

battery provisions specified in the 2013-2014 Edition of the ICAO Technical Instructions? Please note that, HM-215L final rule allows compliance with the current HMR to be met through voluntary compliance with the ICAO Technical Instructions.

- 2.) As adopted in the HM-215L final rule, which individuals, and how many, will chose to comply with the ICAO Technical Instructions 2013-2014 Edition (except those specified in §§ 171.24(d)(1)(ii) and 171.24(d)(1)(iii)) as opposed to the current requirements of the HMR?
- 3.) Do you anticipate confusion and/or inappropriately packaged/prepared shipments if PHMSA were to authorize the use of the 2013-2014 ICAO Technical Instructions, **but does not** issue a final rule revising the HMR to require compliance with the specific lithium battery provisions with those contained in the 2013-2014 Edition of the ICAO Technical Instructions? If so, which entities would be confused and what specifically would cause confusion? If you believe there will be confusion, under what circumstances and over what period of time would you expect such confusion or errors to occur? Are there ways to mitigate such problems without adding additional regulatory burdens?
- 4.) What changes, if any, would be made to shipments and/or operational processes if PHMSA were to **require** compliance with the applicable provisions for lithium batteries specified in the 2013-2014 Edition of the ICAO Technical Instructions? Specifically, what costs and/or benefits (if any) would result if PHMSA were to publish a final rule that adopts the lithium battery provisions of the 2013-2014 ICAO Technical Instructions into the HMR? If there would be any costs or benefits, if

possible, please provide data to support the comments. As noted above, this final rule would replace the proposals in the January 11, 2010, NPRM.

- 5.) What are the benefits of allowing shippers and carriers the option to choose between alternative standards, depending on the type of shipment? How do these benefits from flexibility compare to the benefits of requiring a single standard? Are there any disadvantages or costs to allowing domestic shipments to follow a standard specific to domestic shipments?

Comments should be directed to the docket for the lithium battery rulemaking, which can be found at <http://www.regulations.gov> under docket number PHMSA–2009–0095.

Issued in Washington, DC on December 21, 2012 under authority delegated in 49 CFR Part 106.

**X** R. Ryan Posten

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R. Ryan Posten  
Deputy Associate Administrator Policy and Pro...  
Signed by: RAYMOND R POSTEN

R. Ryan Posten

Deputy Associate Administrator

Office of Hazardous Materials Safety

Pipeline and Hazardous Materials Safety Administration