



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

APR 24 2018

Richard J. Lloyd
RCN Corporation
31 Bastian Lane
Allenton, PA 18104

Reference No. 17-0140

Dear Mr. Lloyd:

This letter is in response to your December 19, 2017, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to transportation of lithium metal batteries by vessel. You describe several scenarios involving overpacks containing packages of lithium metal batteries (UN 3090), lithium metal batteries packed with equipment (UN 3091), and lithium metal batteries contained in equipment (UN 3091) that meet the conditions for exceptions found in both the International Maritime Dangerous Goods (IMDG) Code Special Provision 188 and 49 CFR 173.185(c).

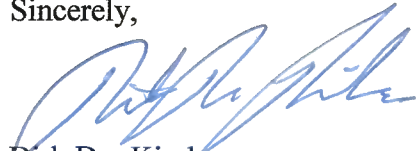
You ask if the lithium battery handling marking, the “PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT” mark, the “LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT” mark, or the “CARGO AIRCRAFT ONLY” label must be replicated on an overpack containing packages of UN 3090 or UN 3091 for vessel transportation.

The answer is no. For vessel, highway, and rail transportation the overpack is not subject to the marking requirements of §§ 173.185(c), 171.25(b)(3), or the currently incorporated edition of IMDG Code (Amendment 38-16) Special Provision 188. Therefore, the overpack would not require the lithium battery handling marking, the “PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT” mark, the “LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT” mark, or the “CARGO AIRCRAFT ONLY” label, even if the packages inside the overpack are required to bear any of the above markings.

Please note that Special Provision 188 has been amended in the next edition of the IMDG Code (Amendment 39-18). Effective January 1, 2020, the IMDG Code would require the reproduction of the lithium battery handling marking on the outside of the overpack, unless the mark is clearly visible on a package inside the overpack. Additionally, the overpack must be marked with the word "OVERPACK." PHMSA will consider this provision in a future rulemaking action.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dirk Der Kinderen".

Dirk Der Kinderen
Chief, Standards Development Branch
Standards and Rulemaking Division

Patrick
§171.25
Batteries

January, Ikeya CTR (PHMSA)

17-0140

From: INFOCNTR (PHMSA)
Sent: Thursday, December 21, 2017 9:52 AM
To: Hazmat Interps
Subject: FW: Regulatory Interpretation Request

Good Morning All,

Please see the below request for Interpretation.

Regards,

-Breanna

From: dickchar@rcn.com [mailto:dickchar@rcn.com]
Sent: Tuesday, December 19, 2017 8:38 AM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Regulatory Interpretation Request

Dear Sir:

Please clarify whether overpacks containing lithium batteries (UN 3090), or lithium batteries packed with equipment (UN 3091), or lithium batteries contained in equipment (UN 3091) need to be marked and labeled similar to the packages of batteries in the overpack when shipped by vessel under the exceptions specified in the IMDG Code Special Provision 188. This special provision assigned to the above lithium batteries states that "Cells and batteries offered for transport are not subject to other provisions of this Code if they meet the following...." Based on this "broad" exception, it is my understanding that IMDG Code paragraph 5.1.2 Use of Overpacks and Unit Loads does not apply to marking and labeling of overpacks having inside packages of the types of lithium batteries mentioned above, i.e., UN 3090 and UN3091 if the batteries are offered for transport in compliance with Special Provision 188.

To understand overpack marking for vessel shipments of excepted lithium batteries, I have described in the following paragraphs various shipping scenarios for overpack shipments of lithium batteries. Please assume that in each shipment scenario, the batteries are overpacked and are in compliance with the conditions of Special Provision 188, i.e., for a lithium metal battery, the aggregate lithium content is not more than 2 grams, the batteries meet the provisions of UN Tests and Criteria, etc.

Scenario #1 Lithium Metal Batteries UN 3090:

Individual packages of these batteries in the overpack are marked with the lithium battery mark (Special Provision 188.6), the PRIMARY LITHIUM BATTERIES - FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT or labeled with a Cargo Aircraft Only label (49 CFR 171.25).

The overpack would not have to be marked with the lithium battery mark based on the broad exception indicating IMDG Code 5.1.2 does not apply but the overpack would have to be marked with the PRIMARY LITHIUM BATTERIES - FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT or labeled with a Cargo Aircraft Only label.

Scenario #2 Lithium Metal Batteries Contained in Equipment UN 3091 (Packages have no more than two lithium batteries contained in the equipment and there are no more than two packages in the shipment):

Individual packages of these batteries in the overpack are not required to be marked with the lithium battery mark per IMDG Code Special Provision 188.6.2.

The overpack would not have to be marked with the lithium battery mark since the packages in the overpack are not required to be marked.

Scenario #3 Lithium Metal Batteries Contained in Equipment UN 3091 (Packages have more than two lithium batteries contained in the equipment or more than two packages per shipment)

Individual packages of these batteries in the overpack are marked with the lithium battery mark Special Provision 188.6. 2.

The overpack would not have to be marked with the lithium battery mark based on the broad exception indicating IMDG Code 5.1.2 does not apply

Scenario #4 Lithium Metal Batteries Contained in Equipment UN 3091 (Packages contain more than 5 kg (11 lbs.) net weight of lithium metal batteries contained in the equipment)

Individual packages of these batteries in the overpack are marked with the PRIMARY LITHIUM BATTERIES - FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT or labeled with a Cargo Aircraft Only label (49 CFR 171.25).

The overpack would have to be marked with the PRIMARY LITHIUM BATTERIES - FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT or labeled with a Cargo Aircraft Only label.

Scenario #5 Lithium Metal Batteries Packed with Equipment UN 3091

Individual packages of these batteries packed with equipment in the overpack are marked with the lithium battery mark (Special Provision 188.6)

The overpack would not have to be marked with the lithium battery mark based on the broad exception indicating IMDG Code 5.1.2 does not apply.

Scenario #6 Lithium Metal Batteries Packed with Equipment UN 3091 (Packages contain more than 5 kg (11 lbs.) net weight of lithium metal batteries packed with equipment)

Individual packages of these batteries in the overpack are marked with the PRIMARY LITHIUM BATTERIES - FROBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT or are labeled with a Cargo Aircraft Only label (49 CFR 171.25)

The overpack would have to be marked with the PRIMARY LITHIUM BATTERIES - FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT or labeled with a Cargo Aircraft Only label

If my description for marking and labeling overpacks with inside packages of lithium metal batteries is incorrect in any of the above scenarios, I will appreciate an explanation as to the correct marking and labeling compliance for vessel transportation.

Thank you for your assistance.

Richard J. Lloyd
31 Bastian Lane
Allentown, PA 18104
Telephone: 610-398-3954
E-mail: dickchar@ren.com