



U.S. Department of Transportation  
**Pipeline and Hazardous Materials  
Safety Administration**

1200 New Jersey Ave, SE  
Washington, D.C. 20590

MAR 1 2010

Mr. George Kerchner  
Wiley Rein LLP  
1776 K Street NW  
Washington, DC 20006

Ref. No.: 09-0255

Dear Mr. Kerchner:

This is in response to your November 1, 2009 email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to the transport of small production runs of lithium batteries. The HMR except production runs of not more than 100 lithium cells or batteries from UN design type testing requirements under the conditions specified in § 172.102(c) Special provision 29. Your questions are paraphrased and answered below:

Q1. When untested lithium batteries contained in equipment are intended for transport in accordance with the provisions of Special provision 29, must the equipment be packaged in accordance with Special provision 29?

A1. Yes. Equipment containing lithium batteries offered for transportation in accordance with Special provision 29 must be placed in an outer packaging that is a metal, plastic or plywood drum or metal, plastic or wooden box that meets the criteria for Packing Group I packagings.

Q2. May equipment containing low production cells and batteries be transported in accordance with Special provision 188?

A2. Low production lithium cells and batteries, including cells and batteries packed with or contained in equipment, may be shipped in accordance with Special provision 188. However, the lithium cells and batteries must meet each of the requirements in Special provision 188, including the requirement for lithium cells and batteries to be of a type proven to meet each of the applicable tests outlined in the UN Manual of Tests and Criteria.

Q3. May equipment containing untested lithium cells and batteries complying with Special provision 29 be transported on aircraft?

A3. No. Special provision 29 permits transportation by motor vehicle, rail car and vessel only.

I trust this satisfies your inquiry. If we can be of further assistance, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts". The signature is written in a cursive style with a large, stylized initial "C".

Charles E. Betts  
Chief, Standards Development  
Office of Hazardous Materials Standards

Leary  
§ 172.102 SP29  
§ 173.185  
Lithium Batteries  
09-0255

**Drakeford, Carolyn (PHMSA)**

**From:** Leary, Kevin (PHMSA)  
**Sent:** Wednesday, November 04, 2009 2:11 PM  
**To:** Drakeford, Carolyn (PHMSA)  
**Cc:** Betts, Charles (PHMSA)  
**Subject:** FW: Special Provision 29 - Request for Interpretation

**From:** Kerchner, George [mailto:GKerchner@wileyrein.com]  
**Sent:** Sunday, November 01, 2009 6:34 AM  
**To:** Leary, Kevin (PHMSA)  
**Subject:** Special Provision 29 - Request for Interpretation

Mr. Leary -

I am writing to request an interpretation regarding Special Provision 29 in the U.S. hazardous materials regulations.

It is a common practice for battery assemblers to ship "small," low production lithium batteries to their customers pursuant to Special Provision 29. These customers will then ship the low production batteries installed in equipment or packed with equipment. My questions pertain to the packaging requirements for these low production batteries when they are installed in or packed with equipment. Must the equipment be shipped as Class 9 hazardous materials pursuant to the packaging requirements in Special Provision 29 or can they be shipped under Special Provision 188? Can the equipment be shipped by air? If so, what are the packaging requirements for these air shipments?

Thank you for your assistance.

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