



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

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

JUN 02 2016

Marco Boasso
Safety & Occupational Health Specialist
Department of the Army
Military Surface Deployment and Distribution Command
1 Soldier Way
Scott AFB, IL 62225-5006

Reference No. 15-0207

Dear Mr. Boasso:

This letter is in response to your October 16, 2015, letter requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) applicable to the transportation of lithium batteries. Specifically, you state the following: 1) the Department of Defense (DOD) possesses lithium batteries that have been purchased over the years for systems that are critical and irreplaceable; 2) in most instances, the manufacturers of the lithium batteries used in these systems are not direct vendors to the DOD and the lithium batteries are simply subcomponents of a higher assembly that the DOD has previously procured; 3) some of the companies from which the DOD has procured items have gone out of business, making it impossible for the DOD to obtain pertinent information on systems that are critical to mission readiness; and 4) the DOD presumes that the lithium battery manufacturers complied with the requirements as stated in § 173.185 of the HMR at the time of manufacture and that the final lithium battery devices were legally shipped to the DOD when originally purchased. We have paraphrased and answered your questions as follows:

- Q1. To what versions of the United Nations (UN) Manual of Tests and Criteria must lithium cells or batteries be tested prior to being approved for transportation?
- A1. As provided in § 173.185(a)(1), each lithium cell or battery must be of the type proven to meet the criteria in part III, subsection 38.3 of the UN Manual of Tests and Criteria (incorporated by reference (IBR); see § 171.7 of the HMR). The following are the UN Manual of Tests and Criteria currently IBR: (i) Fifth revised edition (2009); (ii) Fifth revised edition, amendment 1 (2011); and (iii) Fifth revised edition, amendment 2 (2013). Lithium cells and batteries are subject to these tests regardless of whether the cells used to construct the battery are of a tested type.

Furthermore, as provided in § 173.185(a)(1)(i), cells and batteries manufactured according to a type meeting the requirements of subsection 38.3 of the UN Manual of Tests and Criteria, Revision 3, Amendment 1, or any subsequent revision and amendment applicable at the date of the type testing, may continue to be transported, unless otherwise provided in the HMR.

- Q2. If the exact date of manufacture of the lithium batteries can be determined and that date was prior to July 2003, can those lithium batteries be shipped?
- A2. The answer is yes. As provided in § 173.185(a)(1)(ii), cell and battery types manufactured after July 2003 only meeting the requirements of the UN Manual of Tests and Criteria, Revision 3, are not authorized for transportation. However, cells and batteries manufactured in conformity with such types before July 2003 may continue to be transported if all other applicable requirements are fulfilled.
- Q3. If the exact date of manufacture cannot be determined and the lithium batteries only meet the UN Manual of Tests and Criteria, Revision 3, are the lithium batteries now unacceptable for shipment?
- A3. The answer is yes (see A2). Lithium batteries only meeting the UN Manual of Tests and Criteria, Revision 3, are only acceptable for shipment if they were manufactured in conformity with such types prior to July 2003.
- Q4. What are the requirements for the end user to verify that the lithium batteries they are re-shipping have been classified correctly and comply with the test requirements as outlined in § 173.185?
- A4. In accordance with § 171.1(b), requirements of the HMR apply to each person who offers a hazardous material for transportation in commerce, causes a hazardous material to be transported in commerce, or transports a hazardous material in commerce and who performs or is responsible for performing a pre-transportation function. Pre-transportation functions include, but are not limited to, determining the hazard class of a hazardous material. If unable to confirm that the lithium cells and battery types are in compliance with the HMR, the shipper may need to apply for a Department of Transportation (DOT) special permit to offer those lithium cells and battery types described in your letter.

To apply, you must submit an application to the Associate Administrator for Hazardous Materials Safety in conformance with the requirements prescribed in 49 CFR part 107, subpart B. You may obtain information on the special permit application process from our website at <http://www.phmsa.dot.gov/hazmat/regs/sp-a> or by contacting PHMSA's Approvals and Permits Division at (202) 366-4511.

Finally, please note that the Federal government (and therefore the DOD) is not subject to the HMR unless it offers for transportation or transports a hazardous material in commerce or in furtherance of a commercial enterprise. Transportation is not in furtherance of a commercial

enterprise if it is carried out by governmental personnel (military or civilian) for a governmental purpose. However, if the DOD decides to use contractors, it is subject to the requirements of the HMR when shipping hazardous materials on conveyances operated by contractor personnel (see § 171.1(d)(5)).

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

Sincerely,

A handwritten signature in cursive script that reads "T. Glenn Foster". The signature is written in black ink and is positioned above the typed name.

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division

Nickels
\$173.185
Batteries
15-0207

Dodd, Alice (PHMSA)

From: Rivera, Jordan CTR (PHMSA)
Sent: Friday, October 16, 2015 4:50 PM
To: Hazmat Interps
Subject: FW: Interpretation Request
Attachments: Interpretation Request 173.185.pdf
Signed By: jordan.rivera.ctr@dot.gov

Hi Shante/Alice,

Please submit for a letter of interpretation.

Thanks,
Jordan

-----Original Message-----

From: Boasso, Marco CIV USARMY SDDC (US) [<mailto:marco.boasso.civ@mail.mil>]
Sent: Friday, October 16, 2015 3:30 PM
To: INFOCNTR (PHMSA)
Cc: Cantu, Elias V CIV USARMY SDDC (US)
Subject: Interpretation Request

To whom it may concern,
Attached is an interpretation request submitted by the Department of Defense.
Thank you for your assistance, please contact this office if you have any questions.

V/r

Marco Boasso
Safety & Occupational Health Specialist
Surface Deployment and Distribution Command
Scott AFB IL
PHONE: (618) 220-5040, DSN 770-5040
marco.boasso.civ@mail.mil



DEPARTMENT OF THE ARMY
MILITARY SURFACE DEPLOYMENT AND DISTRIBUTION COMMAND
1 SOLDIER WAY
SCOTT AFB, IL 62225-5006

Director, Command Safety Office

October 16, 2015

Standards and Rule Making Division
Pipeline Hazardous Materials Safety Administration
Attn: PHH-10
U.S. Department of Transportation
1200 New Jersey Avenue, SE
East Building, 2nd Floor
Washington, DC 20590-0001

To whom it may concern,

In accordance with the provisions of Title 49, CFR, Part 105, Section 105.20, the Department of Defense (DOD) hereby requests an Interpretation of the Hazardous Materials Regulations as outlined below. DOD petitions for a clarification of 49 CFR 173.185(a)(1), 173.185(a)(1)(i) and 49 CFR 173.185(a)(1)(ii).

File Number: Interpretation 173.185(10-08)
Re: Request Interpretation of 49 CFR 173.185(a)(1)(i) and 173.185(a)(1)(ii)
Proponent: Department of Defense (DOD)

49 CFR 173.185(a)(1)(i) and (ii) states:

“(a) Classification. (1) Each lithium cell or battery must be of the type proven to meet the criteria in Part III, sub-section 38.3 of the UN Manual of Tests and Criteria (IBR; see §171.7 of this subchapter). Lithium cells and batteries are subject to these tests regardless of whether the cells used to construct the battery are of a tested type.

(i) Cells and batteries manufactured according to a type meeting the requirements of sub-section 38.3 of the UN Manual of Tests and Criteria, Revision 3, Amendment 1 or any subsequent revision and amendment applicable at the date of the type testing may continue to be transported, unless otherwise provided in this subchapter.

(ii) Cell and battery types only meeting the requirements of the UN Manual of Tests and Criteria, Revision 3, are no longer valid. However, cells and batteries manufactured in conformity with such types before July 2003 may continue to be transported if all other applicable requirements are fulfilled.”

The DOD is in the possession of batteries that were purchased in prior years for systems that are critical and irreplaceable. In most instances, the manufacturer of the batteries used in these systems are not direct vendors to the DOD as the batteries and spares are simply subcomponents of a higher assembly that the DOD is procuring. Many times companies that the DOD has procured items from go out of business, making it impossible for the DOD to obtain pertinent

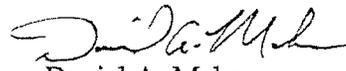
information on systems that are critical to mission readiness, and are irreplaceable. The DOD presumes that the battery manufacturer complied with the requirements as stated in the 49 CFR 173.185 at the time of manufacturer and the end items were legally shipped to the DOD when purchased.

The DOD must ship these systems, including batteries and spares, to different locations as needed. What is the requirement for the end user to verify that the batteries they are re-shipping are in compliance to the test requirements as outlined in the 49 CFR? If the exact date of manufacture can be determined and was prior to 2003, do the same requirements apply? If the exact date of manufacturer cannot be determined, and the battery may only meet the UN Manual of Tests and Criteria, Revision 3 requirement, are the batteries now unacceptable for shipment?

The DOD respectfully asks for clarification in this matter.

My point of contacts for this matter are Mr. Marco Boasso, (618) 220-5040, e-mail marco.boasso.civ@mail.mil and Mr. Elias Cantu, (618) 220-5041, e-mail elias.v.cantu.civ@mail.mil or usarmy.scott.sddc.mbx.omb-for-safety@mail.mil Safety Team, Military Surface Deployment and Distribution Command..

Sincerely,


Daniel A. Maham
Director of Safety