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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, and 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: Final rule; extension of compliance date.

SUMMARY: PHMSA is extending for modes of transportation other than air the mandatory compliance date of a final rule published on August 6, 2014, under Docket No. HM-224F from February 6, 2015, until August 7, 2015. This extension is made in response to formal comments received from multiple stakeholders outlining challenges faced by the regulated community in fully implementing the provisions of the final rule by the February 6, 2015 mandatory compliance date.

DATES: The compliance date for the final rule published August 6, 2014, at 79 FR 46012, is extended until August 7, 2015.

FOR FURTHER INFORMATION CONTACT: Vincent Babich or Steven Webb
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Administration, telephone (202) 366-8553.

SUPPLEMENTARY INFORMATION: On August 6, 2014 [79 FR 46012], PHMSA in consultation with the Federal Aviation Administration (FAA) published a final rule under Docket No. PHMSA-2009-0095 (HM-224F) modifying requirements governing

the transportation of lithium cells and batteries. The final rule revised hazard communication and packaging provisions for lithium batteries to harmonize the Hazardous Materials Regulations (HMR; CFR parts 171-180) with applicable provisions of the United Nations (UN) Model Regulations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the International Maritime Dangerous Goods (IMDG) Code. In the August 6, 2014 final rule, PHMSA authorized a mandatory compliance date of February 6, 2015 (six months after publication in the **Federal Register**) for shippers to incorporate the new requirements into standard operating procedures and complete training of affected personnel.

The Retail Industry Leaders Association, the Food Marketing Institute, the National Retail Federation, and the Rechargeable Battery Association submitted a joint request for an extension of six months to the current mandatory compliance date. These groups contend that the six month transitional period adopted in the final rule did not provide sufficient time to comply with the new requirements and has proven extremely challenging for the retail industry to implement in particular for surface transportation. The request notes that "generally, the new regulations require that domestic ground shipments of products with lithium batteries adhere to shipping standards previously only required for international air and sea transportation". The groups further note that the detailed information necessary for compliance, such as the specific number of lithium cells or batteries contained in a package and whether a package contains lithium ion or lithium metal cells or batteries, as required by § 173.185(c)(3), does not currently exist in any format that the retail sector can access and utilize. In addition the requestors state that

tens of thousands of consumer products may be impacted by the rule, and estimate that to date, the necessary information has been obtained from retail suppliers for less than 25% of the affected products. Furthermore, they relate that since August 2014, retail businesses and their suppliers have been working diligently to develop information technology (IT) systems and business processes to identify consumer products impacted by the regulation. Systematic solutions are being developed but will take additional time to implement. They estimate that a minimum of six additional months is necessary to identify all affected products and build the IT infrastructure necessary to effectively implement the regulations. Finally, the commenters point out that the new provisions require the developing, tracking, and implementing of training programs for hundreds of thousands of employees to enable them to execute the nuanced marking and labeling requirements of the final rule.

PHMSA appreciates the additional information submitted and has reviewed the information in conjunction with the information considered during the rulemaking process. Based on this review, PHMSA believes the additional arguments and justification provided by the commenters have merit and that an extension of the mandatory compliance date for modes of transportation other than aircraft is warranted. PHMSA recognizes that the primary focus of the HM-224F final rulemaking as outlined in published notices preceding the final rule was to align the requirements of the HMR for air transportation of lithium batteries with those of the ICAO Technical Instructions. PHMSA believes that maintaining the February 6, 2015 compliance date for air transport is appropriate and important for aviation safety and is therefore maintaining the February 6, 2015 effective date for offering, acceptance, and transportation by aircraft. Therefore,

in consultation with the FAA and consistent with the information set forth in the joint request, this extension does not apply to transportation by aircraft. In the event an air carrier becomes aware of a non-compliant shipment offered to it, the air carrier should report the incident to the FAA in addition to taking specific actions required by the regulations as to that shipment. For questions regarding reporting of such incidents, carriers may contact the nearest FAA Regional or Field Security Office by telephone or electronically.

In summary, in response to commenters' requests PHMSA is extending the mandatory compliance date for the final rule published under Docket No. HM-224F on August 6, 2014, until August 7, 2015 for all modes other than transportation by aircraft to allow additional time to implement the requirements of the rule. The mandatory compliance date of February 6, 2015 remains in effect with respect to offering, acceptance and transportation by aircraft.

Issued in Washington, DC on February 13, 2015 under authority delegated in 49 CFR 1.97.

Timothy P. Butters,
Acting Administrator

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