Billing Code: 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA-2025-0091 (HM-268C)]

RIN 2137-AG05

Hazardous Materials: Reducing Burdens on Domestic Companies Using Battery-Powered Equipment in Trades

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to amend the Materials of Trade (MOTs) exceptions to allow for the transportation of increased quantities of lithium batteries. The current MOT exceptions unnecessarily limit the number and size of lithium batteries that can be safely transported by domestic construction, landscaping, mowing, tree service, food service, and entertainment companies in support of performing a trade.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by the Docket Number PHMSA-2025-0091 using any of the following methods:

E-Gov Web: https://www.regulations.gov. This site allows the public to enter comments on any Federal Register notice issued by any agency. Follow the online instructions for submitting comments.

Mail: Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, D.C. 20590–0001.

Hand Delivery: U.S. DOT Docket Management System: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: 1-202-493-2251.

Instructions: Please include the docket number PHMSA-2025-0091 at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at https://www.regulations.gov.

Note: Comments are posted without changes or edits to https://www.regulations.gov, including any personal information provided. There is a privacy statement published on https://www.regulations.gov.

Privacy Act: In accordance with 5 U.S.C. § 553(c), DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to https://www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at https://www.dot.gov/privacy.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA, 5 U.S.C. § 552), CBI is exempt from public disclosure. It is important that you clearly designate the comments submitted as CBI if: your comments responsive to this document contain commercial or financial information that is customarily treated as private; you actually treat such information as private; and your comment is relevant or responsive to this notice. You may ask PHMSA to provide confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as "Confidential"; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3)

explain why the information that you are submitting is CBI. Submissions containing CBI should be sent to Steven Andrews, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE, Washington, D.C. 20590-0001, or by email at steven.andrews@dot.gov. Any materials PHMSA receives that is not specifically designated as CBI will be placed in the public docket.

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov. Follow the online instructions for accessing the docket. Alternatively, you may review the documents in person at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Arthur Pollack, Transportation Regulations Specialist, 1200 New Jersey Avenue, SE Washington, D.C. 20590, 202-366-8553, arthur.pollack@dot.gov.

SUPPLEMENTARY INFORMATION:

I. GENERAL DISCUSSION

This NPRM proposes to revise the Material of Trade (MOTs) exceptions in § 173.6 to address limitations faced by domestic companies using lithium battery-powered equipment. PHMSA proposes to increase the allowable quantities of lithium batteries, including those contained in equipment transported in support of a business as MOTs.

This proposal addresses a petition for rulemaking submitted by the Portable Rechargeable Battery Association (PRBA). In the petition (P-1758),[1] PRBA asked PHMSA to amend the MOTs exceptions in § 173.6 to distinguish the weight limits for lithium batteries from other Class 9 hazardous materials. PRBA explained that the current MOT quantity limits impose outdated and overly restrictive requirements on lithium batteries, making their transportation by companies difficult and expensive. PRBA further explained that the impact is especially

[1] P-1758 – PRBA (PHMSA-2021-0051), https://www.regulations.gov/docket/PHMSA-2021-0051

burdensome for small, family-owned businesses that do not have the expertise to understand the implications of transporting lithium batteries outside the provisions of MOTs.

PHMSA has made a preliminary determination to adopt PRBA's proposed changes to the MOT exceptions for lithium battery transportation. PRBA's proposed safeguards—such as preventing short circuits, protecting against damage from inadvertent shifting, and avoiding accidental activation—should effectively reduce or eliminate the risk of hazardous incidents. PHMSA also agrees with PRBA that packages of batteries weighing more than 30 kg and transported in accordance with the MOTs exception should have labels and marks similar to those used for non-MOTs shipments of lithium batteries. Requiring Class 9 labels and United Nations (UN) identification numbers on packages containing lithium batteries being transported as MOTs will ensure first responders and others are aware lithium batteries are present, providing a level of hazard communication comparable to batteries transported in non-MOTs shipments. PHMSA is including language to clarify that lithium batteries used under the MOTs exceptions must have passed the applicable required tests under § 173.185.

PHMSA has conducted a preliminary economic and determined that the proposed revisions will not impose any costs to industry. Rather, the proposed changes are expected to reduce costs by providing appropriate flexibility to regulated parties (e.g., avoided costs associated with an unnecessary approval application process or use of an outdated securement method).

For these reasons, PHMSA is proposing to revise paragraph § 173.6 to specifically authorize lithium metal and lithium ion batteries under the MOTs exception and allow a net weight (i.e., the weight of the batteries themselves) of 30 kg (66 lbs.) for each lithium ion and metal battery, a gross weight of 500 kg of lithium batteries on the vehicle, and no limit for lithium ion and lithium metal batteries when contained in equipment. PHMSA is also proposing a set of safety standards for lithium batteries transported under the MOTs exception to include the prevention of short circuits, damage from shifting, the accidental activation of the equipment,

and ensuring that all lithium batteries are of a type tested in conformance with the HMR. PHMSA does not expect that these proposed revisions will any adverse impact on safety.

II. REGULATORY ANALYSIS AND NOTICES

A. Legal Authority

This proposed rule is published under the authority of the Secretary of Transportation set forth in the Federal Hazardous Materials Transportation Laws (49 U.S.C. § 5101 *et seq*.) and delegated to the PHMSA Administrator pursuant to 49 CFR § 1.97.

B. Executive Orders 12866; Regulatory Planning and Review

Executive Order (E.O.) 12866 ("Regulatory Planning and Review"),[2] as implemented by DOT Order 2100.6B ("Policies and Procedures for Rulemaking"), requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." DOT Order 2100.6B specifies that regulations should generally "not be issued unless their benefits are expected to exceed their costs." In arriving at those conclusions, E.O. 12866 requires that agencies should consider "both quantifiable measures . . . and qualitative measures of costs and benefits that are difficult to quantify" and "maximize net benefits . . . unless a statute requires another regulatory approach." E.O. 12866 also requires that "agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating." DOT Order 2100.6B directs that PHMSA and other Operating Administrations must generally choose the "least costly regulatory alternative that achieves the relevant objectives" unless required by law or compelling safety need.

E.O. 12866 and DOT Order 2100.6B also require that PHMSA submit "significant regulatory actions" to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President's Office of Management and Budget (OMB) for review. This

[2] 58 FR 51735 (Oct. 4, 1993).

proposed rule is a not significant regulatory action pursuant to E.O. 12866; it also has not designated this rule as a "major rule" as defined by the Congressional Review Act (5 U.S.C. § 801 *et seq.*).

PHMSA has complied with the requirements in E.O. 12866 as implemented by DOT Order 2100.6B and made a preliminary determination that this proposed rule will result in cost savings by reducing regulatory burdens and regulatory uncertainty for the construction, landscaping, food, and entertainment industries by distinguishing the weight limits for lithium batteries from other Class 9 hazardous materials. PHMSA expects those cost savings will also result in reduced costs for the public to whom those entities generally transfer a portion of their compliance costs.

C. Executive Orders 14192 and 14219

This proposed rule, if finalized as proposed, is expected to be an E.O. 14192 deregulatory action.[3] PHMSA seeks data that would be helpful to generate an estimate of the cost savings from this rule. PHMSA's initial estimates are that the total costs of the rule on the regulated community will be less than zero. Nor does this proposed rule does implicate any of the factors identified in section 2(a) of E.O. 14219 indicative of a regulation that is "unlawful . . . [or] that undermine[s] the national interest."[4]

D. Energy-Related Executive Orders 13211, 14154, and 14156

The President has declared in E.O. 14156 ("Declaring a National Energy Emergency")[5] a national emergency to address the United States's inadequate energy development production, transportation, refining, and generation capacity. Similarly, E.O. 14154 ("Unleashing American Energy")[6] asserts a Federal policy to unleash American energy by ensuing access to abundant supplies of reliable, affordable energy from (inter alia) the removal of "undue burden[s]" on the

[3] 90 FR 9065 (Jan. 31, 2025).

[4] 90 FR 10583 (Feb. 19, 2025).

[5] 90 FR 8353 (Jan. 29, 2025).

[6] 90 FR 8353 (Jan. 29, 2025).

identification, development, or use of domestic energy resources. PHMSA preliminarily finds this proposed rule is consistent with each of E.O. 14156 and E.O. 14154. The proposed rule will give affected entities, in this case construction, landscaping, mowing, tree service, food, and entertainment companies, regulatory relief by providing an exception for lithium battery powered equipment and spare batteries under MOTs. PHMSA therefore expects the regulatory amendments in this proposed rule will in turn affect companies' ability to provide services to their customers at reduced costs in response to residential, commercial, and industrial demand.

However, this proposed rule is not a "significant energy action" under E.O. 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"),[7] which requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." Because this proposed rule is not a significant action under E.O. 12866, it will not have a significant adverse effect on supply, distribution, or energy use; OIRA has therefore not designated this proposed rule as a significant energy action.

E. Executive Order 13132: Federalism

PHMSA analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism")[8] and the Presidential Memorandum ("Preemption") published in the Federal Register on May 22, 2009.[9] E.O. 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government." The Federal Hazardous Materials Transportation laws contain an express preemption provision at 49 U.S.C. § 5125(b) that preempts state, local, and tribal

[7] 66 FR 28355 (May 22, 2001).

[8] 64 FR 43255 (Aug. 10, 1999).

[9] 74 FR 24693 (May 22, 2009).

requirements on certain covered subjects, unless the non-federal requirements are "substantively the same" as the federal requirements, including the following:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items in paragraph I above and would preempt state, local, and Tribal requirements not meeting the "substantively the same" standard. While the proposed rule may (when finalized) operate to preempt some State requirements, it would not impose any regulation that has substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. The preemptive effect of the regulatory amendments in this proposed rule is limited to the minimum level necessary to achieve the objectives of the Federal Hazardous Materials Transportation laws. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) requires Federal agencies to conduct an Initial Regulatory Flexibility Analysis (IRFA) for a proposed rule subject to notice-and-comment rulemaking under the APA unless the agency head certifies that the proposed rule in the rulemaking will not have a significant economic impact on a substantial number of small

entities. E.O. 13272 ("Proper Consideration of Small Entities in Agency Rulemaking")[10] obliges agencies to establish procedures promoting compliance with the Regulatory Flexibility Act. DOT posts its implementing guidance on a dedicated webpage.[11] This proposed rule was developed in accordance with E.O. 13272 and DOT implementing guidance to ensure compliance with the Regulatory Flexibility Act. The proposed rule is expected to reduce burdens. Therefore, PHMSA certifies the proposed rule does not have a significant impact on a substantial number of small entities.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMRA, 2 U.S.C. § 1501 et seq.) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any proposed or final rule that includes a Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate of $100 million or more (in 1996 dollars) in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

This proposed rule does not impose unfunded mandates under UMRA. PHMSA does not expect the proposed rule will result in costs of $100 million or more (in 1996 dollars) per year for either State, local, or Tribal governments, or to the private sector.

H. National Environmental Policy Act

The National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 et. seq.) requires that Federal agencies assess and consider the impact of major Federal actions on the human and natural environment.

---

[10] 67 FR 53461 (Aug. 16, 2002).

[11] DOT, "Rulemaking Requirements Related to Small Entities," https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities (last accessed Sept 3, 2024).

PHMSA analyzed this proposed rule in accordance with NEPA and has preliminarily determined that the rulemaking will not adversely affect safety and therefore will not significantly affect the quality of the human and natural environment. The public is invited to comment on the impact of the proposed action.

I. Executive Order 13175

PHMSA analyzed this proposed rule according to the principles and criteria in E.O. 13175 ("Consultation and Coordination with Indian Tribal Governments")[12] and DOT Order 5301.1A ("Department of Transportation Tribal Consultation Policies and Procedures"). E.O. 13175 requires agencies to assure meaningful and timely input from Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing "substantial direct compliance costs" or "substantial direct effects" on such communities or the relationship or distribution of power between the Federal government and Tribes.

PHMSA assessed the impact of the proposed rule and determined that it will not significantly or uniquely affect Tribal communities or Indian Tribal governments. The rulemaking's regulatory amendments have a broad, national scope; therefore, this proposed rule will not significantly or uniquely affect Tribal communities, much less impose substantial compliance costs on Native American Tribal governments or mandate Tribal action. For these reasons, PHMSA has concluded that the funding and consultation requirements of E.O. 13175 and DOT Order 5301.1A do not apply.

J. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. § 3501 et seq.) and its implementing regulations at 5 CFR 1320.8(d) requires that PHMSA provide interested members of the public and affected agencies with an opportunity to comment on information collection and

[12] 65 FR 67249 (Nov. 9, 2000).

recordkeeping requests. This rulemaking will not create, amend, or rescind any existing information collections.

K. Executive Order 13609 and International Trade Analysis

E.O. 13609 ("Promoting International Regulatory Cooperation")[13] requires agencies consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA engages with international standards setting bodies to protect the safety of the American public. PHMSA has assessed the effects of the proposed rule and has determined that its regulatory amendments will not cause unnecessary obstacles to foreign trade.

[13] 77 FR 26413 (May 4, 2012).

L. Cybersecurity and Executive Order 14028

E.O. 14028 ("Improving the Nation's Cybersecurity")[14] directed the Federal government to improve its efforts to identify, deter, and respond to "persistent and increasingly sophisticated malicious cyber campaigns." PHMSA has considered the effects of the proposed rule and has determined that its regulatory amendments would not materially affect the cybersecurity risk profile for affected entities.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR chapter I as follows:

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

2. In § 173.6:

a. Add paragraph (a)(7)(iii);

b. Add paragraphs (b)(6) and (b)(6)(i), (ii), (iii);

c. Revise paragraph (c)(4);

d. Add paragraph (c)(5); and

e. Revise paragraph (d).

All revisions to read as follows:

[14] 86 FR 26633 (May 17, 2021).

§ 173.6 Materials of trade exceptions.

(a) * * *

(7) * * *

(iii) Except when the cell or battery is contained in equipment, lithium cells and batteries may not exceed 30 kg (66 pounds) net weight for each lithium cell or battery and 500 kg (1102 pounds) aggregate net weight on a motor vehicle. Lithium cells and batteries, including when contained in or packed with equipment, 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).

* * * * *

(b) * * *

(6) Cells and batteries, including cells and batteries contained in equipment, must be packaged or secured in a manner to prevent:

(i) Short circuits;

(ii) Damage caused by shifting or placement within the package, if applicable; and

(iii) Accidental activation of the equipment.

* * * * *

(c) * * *

(4) Lithium cells or batteries, including when contained in or packed with equipment, in packages exceeding 30 kg (66 pounds) net weight of batteries must be labeled with the lithium battery Class 9 label as specified in § 172.477 and marked with the four-digit UN identification number, as applicable.

(5) The operator of a motor vehicle that contains a material of trade must be informed of the presence of the hazardous material (including whether the package contains a reportable quantity) and must be informed of the requirements of this section.

(d) *Aggregate gross weight.* Except for a material of trade authorized by paragraphs (a)(1)(iii) and (a)(7)(iii) of this section, the aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

* * * * *

Issued in Washington, D.C., on June 26, 2025, under the authority delegated in 49 CFR § 1.97.

Benjamin D. Kochman,
Acting Administrator.
[FR Doc. 2025-12065 Filed: 6/27/2025 4:15 pm; Publication Date: 7/1/2025]