

The text of the 60-day notice of the proposed extension of this ICB, published on May 28, 2009 (74 FR 25607), failed to cite the Motor Carrier Act of 1935, upon which this ICR is primarily based. Today's authority for this driver training activity is cited correctly and as it should have been cited in that notice. There has been no change in the statutory authority for this training since publication of the 60-day notice. For a more details of the Agency's analysis, see the section titled, "Legal Basis for the Rulemaking," on the first page of the Notice of Proposed Rulemaking titled, "Minimum Training Requirements for Entry-Level CMV Operators" (72 FR 73226, December 26, 2007).

On May 21, 2004, by final rule, FMCSA mandated training for all interstate CDL operators in four subject areas, effective July 20, 2004 (69 FR 29384). In 2005, the final rule was challenged in the U.S. Court of Appeals for the D.C. Circuit. While the court ordered a remand so the Agency could review the matter, the court did not vacate the rule. Consequently, the 2004 final rule is currently in effect (*Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration*, 429 F. 3d 1136 (D.C.Cir. 2005)).

*Public Comments Invited:* You are asked to comment on any aspect of this

information collection request, including: (1) Whether the proposed collection is necessary for the FMCSA's performance of functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: August 18, 2009.

**David Anewalt,**

*Acting Associate Administrator for Research and Information Technology.*

[FR Doc. E9-20391 Filed 8-24-09; 8:45 am]

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

[Docket No. PHMSA-2009-0253; Notice No. 09-4]

**Notice of Approval: Lithium Battery Shipping Descriptions**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA).

**ACTION:** Notice of approval.

**SUMMARY:** PHMSA is authorizing persons who offer lithium metal and

lithium ion cells and batteries for transportation in commerce, and persons who transport lithium metal and lithium ion cells and batteries in commerce, to describe those articles in the same manner as recently adopted in international regulations. PHMSA will consider adopting these alternate shipping descriptions into the Hazardous Materials Regulations at a future date.

**DATES:** *Effective Date:* This notice of approval is effective August 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Donald Burger, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, telephone (202) 366-4535.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The § 172.101 Hazardous Materials Table (HMT) in the Hazardous Material Regulations (HMR; 49 CFR Parts 171-180) contains the following entries for lithium batteries, which apply to both lithium metal (primary; non-rechargeable) and lithium ion (secondary; rechargeable) batteries:

Lithium battery .....	9	UN3090	PG II
Lithium batteries contained in equipment .....	9	UN3091	PG II
Lithium batteries packed with equipment .....	9	UN3091	PG II

In 2006, the United Nations Committee of Experts on the Transport of Dangerous Goods adopted separate entries for lithium metal and lithium ion batteries (see chart below) into the dangerous goods list in the Fifteenth revised edition of the UN Recommendations on the Transport of Dangerous Goods, in order to distinguish lithium metal from lithium ion batteries. The International Civil Aviation Organization (ICAO) and the International Maritime Organization subsequently adopted these entries into their respective dangerous goods lists.

We did not adopt these new shipping descriptions for lithium batteries in a final rule published January 14, 2009 under Dockets HM-224D and HM-215J (74 FR 2200) harmonizing the HMR with recent changes to international regulations because we had not proposed these changes in the notice of proposed rulemaking (NPRM) (73 FR 44803; July 31, 2008). In response to comments to the NPRM that urged

PHMSA to adopt the separate entries for lithium metal and lithium ion batteries, we noted that the HMR permit compliance with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (Technical Instructions). Thus, the separate shipping descriptions for lithium metal and lithium ion batteries may be used for air transportation, both domestically and internationally, and for transportation by motor vehicle and rail immediately before or after being transported by aircraft. [74 FR 2207] We also stated we planned to complete an assessment of the costs and benefits of further restrictions and available alternatives before developing additional lithium battery rulemaking proposals and therefore, PHMSA did not adopt changes to the lithium battery requirements including the separate shipping descriptions. [74 FR 2207]

Since that time, we have concluded that assigning the same shipping descriptions to both lithium metal and

lithium ion batteries, which are regulated differently based on differences in chemistry, functionality, and behavior when exposed to a fire, causes significant problems in acceptance procedures for carriers and may unnecessarily hinder or delay the transportation of these products. While the HMR permit the use of the ICAO Technical Instructions as well as the International Maritime Dangerous Goods Code (IMDG Code) for domestic transportation when a portion of the transportation is by aircraft or vessel, subsequent domestic transportation of packages containing lithium batteries remains difficult.

PHMSA is currently working on a rulemaking intended to enhance the safe transportation of lithium batteries. As part of this rulemaking, we are considering adoption of the international shipping descriptions for lithium metal and lithium ion batteries. To facilitate commerce, however, PHMSA believes shippers should be

permitted to use the international lithium battery shipping descriptions for the domestic transportation of lithium batteries even though the shipping descriptions have not been adopted into the HMR.

Section 172.101(l)(2) of the HMR permits alterations to the shipping descriptions in the HMT with prior written approval of the Associate

Administrator for Hazardous Materials Safety. In accordance with § 172.101(l)(2), PHMSA is authorizing use of the lithium battery shipping descriptions (i.e., the lithium battery hazardous materials descriptions and UN identification numbers) that have been adopted into dangerous goods lists in the international regulations as alternatives to the lithium battery

hazardous materials descriptions and UN identification numbers currently authorized in the HMT, effective as of the date of publication of this notice in the **Federal Register**. For clarity, the following chart provides a comparative list of the current shipping descriptions in the HMT and the corresponding international shipping descriptions that may be used.

HMR Shipping Description		International Shipping Description	
Lithium battery .....	UN3090	Lithium ion batteries <i>including lithium ion polymer batteries</i> Lithium metal batteries <i>including lithium alloy batteries</i> .....	UN3480 UN3090
Lithium batteries contained in equipment .....	UN3091	Lithium ion batteries contained in equipment <i>including lithium ion polymer batteries</i> . Lithium metal batteries, contained in equipment <i>including lithium alloy batteries</i> .	UN3481 UN3091
Lithium batteries packed with equipment .....	UN3091	Lithium ion batteries packed with equipment <i>including lithium ion polymer batteries</i> . Lithium metal batteries packed with equipment <i>including lithium alloy batteries</i> .	UN3481 UN3091

**II. Approval**

*Regulatory Authority*

Authority is granted under 49 CFR 172.101(l)(2) to persons who offer lithium metal and lithium ion cells and batteries for transportation in commerce, and persons who transport lithium metal and lithium ion cells and batteries in commerce, to use the following hazardous materials descriptions and UN identification numbers as alternatives to the

hazardous materials descriptions and UN identification numbers set forth in the 49 CFR 172.101 Hazardous Materials Table, as applicable:

- Lithium ion batteries contained in equipment *including lithium ion polymer batteries* ..... UN3481
- Lithium ion batteries *including lithium ion polymer batteries* ..... UN3480
- Lithium ion batteries packed with equipment *including lithium ion polymer batteries* ..... UN3481

- Lithium metal batteries contained in equipment *including lithium alloy batteries* ..... UN3091
- Lithium metal batteries *including lithium alloy batteries* ..... UN3090
- Lithium metal batteries packed with equipment *including lithium alloy batteries* ..... UN3091

For the convenience of the user of this approval, the complete entries with the authorized alternative hazardous materials descriptions and UN identification numbers are as follows:

§ 172.101 HAZARDOUS MATERIAL TABLE

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification Nos.	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	Packaging (§ 173.***)			Quantity limitations		Vessel stowage	
							(8A) Excep- tions	(8B) Non-bulk	(8C) Bulk	(9A) Pas- senger aircraft/ rail	(9B) Cargo aircraft only	(10A) Location	(10B) Other
	Lithium ion batteries contained in equipment including lithium ion polymer batteries.	9	UN3481	II	9	29, 188, 189, 190, A54, A55, A104.	185	185	None	See A104.	35 kg	A.	
	Lithium ion batteries including lithium ion polymer batteries.	9	UN3480	II	9	29, 188, 189, 190, A54, A55, A100	185	185	None	See A100.	35 kg gross.	A.	
	Lithium ion batteries packed with equipment including lithium ion polymer batteries.	9	UN3481	II	9	29, 188, 189, 190, A54, A55, A103.	185	185	None	See A103.	35 kg gross.	A.	
	Lithium metal batteries contained in equipment including lithium alloy batteries.	9	UN3091	II	9	29, 188, 189, 190, A54, A55, A101, A104.	185	185	None	See A101.	35 kg	A.	
	Lithium metal batteries including lithium alloy batteries.	9	UN3090	II	9	29, 188, 189, 190, A54, A55, A100	185	185	None	Forbidden. See A100.	35 kg gross.	A.	
	Lithium metal batteries packed with equipment including lithium alloy batteries.	9	UN3091	II	9	29, 188, 189, 190, A54, A55, A101, A103.	185	185	None	See A101.	35 kg gross.	A.	

### Conditions for Approval

This notice of approval does not provide relief from any other requirements of the Hazardous Materials Regulations (49 CFR Parts 171–180) except as stated herein. Lithium metal batteries continue to be prohibited onboard passenger-carrying aircraft except as provided in Special Provision A101 of § 172.101(c)(2). This approval is effective August 25, 2009 until terminated by the Associate Administrator for Hazardous Materials Safety.

### Modes of Transportation Authorized

Motor vehicle, passenger and cargo aircraft, cargo vessel, and rail.

### General Provisions

Failure by any person using this approval to comply with the terms and conditions of this approval or the HMR may result in suspension or termination of the authority to use this approval. Failure to comply may also subject persons to penalties prescribed in 49 U.S.C. 5123 and 5124.

Issued in Washington, DC, on August 18, 2009.

**Robert Richard,**

*Acting Associate Administrator for Hazardous Materials Safety.*

[FR Doc. E9–20343 Filed 8–24–09; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

#### SMS Rail Service (Waiver Petition Docket Number FRA–2009–0068)

The SMS Rail Service (SLRS) seeks a waiver from compliance of certain provisions of the Federal hours of service law (49 U.S.C. Chapter 211; HSL). Specifically, SLRS requests relief from 49 U.S.C. § 21103(a)(4) which states that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee

has had at least 48 hours off duty at the employee's home terminal.

SLRS is not unionized and is not subject to any collective bargaining agreements. In current operations, SLRS train employees voluntarily work 6 days per week. Under the provisions of U.S.C. § 21103(a)(4), these employees would be prohibited from returning to duty without 48 hours off duty following the volunteer day. The entire SLRS petition may be viewed at <http://www.regulations.gov> under the docket number listed above.

The HSL, at 49 U.S.C. 21108(a), contemplates that any request for a waiver from its requirements will be a joint waiver involving the relevant railroad carrier(s) and nonprofit employee labor organization(s) representing the class or craft of directly affected covered service employees. Because SLRS's covered service employees are not represented by any employee labor organization, SLRS's waiver request is made solely by the carrier. FRA recognizes that the intent of 49 U.S.C. 21108(a) is to ensure that covered service employees are provided meaningful input into any potential waiver of the HSL that would affect their work schedules. Accordingly, before considering the requested relief, FRA is requiring that within 30 days of the publication date of this notice, SLRS submit evidence to the docket demonstrating that it has sought employee input into the waiver request, what that employee input was, and that it has provided each covered employee affected by the request with a copy of the waiver petition, along with information on how to submit comments to FRA on the request. FRA will consider this additional information, along with all other relevant factors, in determining whether granting the requested relief would be in the public interest and consistent with railroad safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0068) and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on August 18, 2009.

**John Leeds,**

*Director, Office of Safety Analysis.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Petition for Waiver of Compliance

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