



DEC 17 2015

Reply to the attention of:

Mr. Robert A. Richard  
Vice President of Regulatory Affairs  
Labelmaster Services, Inc.  
7867 Unbridled Court  
Manassas, Virginia 20112

Dear Mr. Richard:

Thank you for your letter to the Occupational Safety and Health Administration's (OSHA) Directorate of Enforcement Programs. Your letter requested an interpretation whether a lithium ion battery would be considered an "article" under the Hazard Communication standard (HCS), 29 CFR 1910.1200. This letter constitutes OSHA's interpretation only of the requirements herein, and may not be applicable to any questions not delineated within your original correspondence. Your question has been paraphrased below, followed by our response.

**Scenario:** Labelmaster Services represents a number of manufacturers and distributors of lithium batteries and lithium battery-powered devices. Electronics manufacturers and distributors are experiencing shipping delays due to forwarders and airlines requesting safety data sheets (SDSs) for lithium batteries.

**Question:** Is a lithium battery or a lithium battery-powered device considered an "article" under the HCS?

**Response:** The HCS places responsibility for hazard classification on the manufacturer or importer of the chemical. 29 CFR 1910.1200(b)(1) and (d)(1). OSHA does not classify or approve of classifications of hazardous chemicals for manufacturers or importers. In classifying chemicals, manufacturers and importers must consider "any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency." 1910.1200(b)(2). As a part of a manufacturer's or importer's hazard classification process, the manufacturer or importer must take into consideration the downstream uses and potential exposures of the chemical or product to workers.

The HCS does not apply to "articles." See 29 CFR 1910.1200(b)(6)(v). Articles are defined as "a manufactured item other than a fluid or particle: (i) which is formed to a specific shape or design during manufacture; (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (iii) which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts of a hazardous chemical (as determined under paragraph (d) of this section), and does not pose a physical hazard or health risk to employees." See 29 CFR 1910.1200(c).

In considering normal conditions of use and foreseeable emergencies, it is important to consider the potential to leak, spill, or break. As OSHA explained in the 2004 Enfonde letter (see

(as determined under paragraph (d) of this section), and does not pose a physical hazard or health risk to employees.” See 29 CFR 1910.1200(c).

In considering normal conditions of use and foreseeable emergencies, it is important to consider the potential to leak, spill, or break. As OSHA explained in the 2004 Enfonde letter (see enclosed), lead acid batteries cannot be considered articles because they have the potential to leak, spill, break, and emit hydrogen, which could result in a fire or explosion upon ignition. Similarly, lithium-ion batteries (or lithium battery-powered devices) on a whole, although sealed, have the potential to leak, spill, or break during normal conditions of use and foreseeable emergencies and expose employees to chemicals which can pose health (e.g., lithium cobalt, graphite) and/or physical (e.g., burns, fire) hazards, and therefore, cannot be considered an article. For examples, a manufacturer may have employees, such as maintenance workers, who access the area where batteries are stored; a freight forwarder or carrier may have workers who need to access a tractor trailer or rail car where rejected or damaged batteries or devices are boxed; or workers may handle or manipulate damaged batteries or devices during electronic recycling (e.g., crushing the products prior to disposal). Therefore, as explained in the 2004 Enfonde letter, a manufacturer or importer of lithium-ion batteries or products which contain lithium-ion batteries that are not consumer products must develop and make available safety data sheets. See 29 CFR 1910.1200(g)(1). In addition, the battery or product must be properly labeled in accordance with HCS 2012. See 29 CFR 1910.1200(f)(1).

As you may be aware, the Virginia Department of Labor and Industry (Virginia Occupational Safety and Health), administers an OSHA-approved state occupational safety and health program for both private and public sector employers and employees in the State of Virginia. State Plan Programs are required to implement regulations that are “at least as effective” as the federal standards. If you would like further information regarding Virginia occupational safety and health requirements, you may contact the Virginia Department of Labor and Industry at the following address:

Virginia Department of Labor and Industry  
Occupational Safety and Health  
Main Street Centre  
600 East Main Street  
Richmond, Virginia 23219  
(804) 371-2327

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA’s requirements are set by statute, standards, and regulations. Our letters of interpretation do not create new or additional requirements but rather explain these requirements and how they apply to particular circumstances. This letter constitutes OSHA’s interpretation of the requirements discussed. From time to time, letters are affected when the Agency updates a standard, a legal decision impacts a standard, or changes in technology affect the interpretation. To ensure that you are using the correct information and guidance, please consult OSHA’s website at <http://www.osha.gov>.

If you have further questions, please feel free to contact the Office of Health Enforcement at (202) 693-2190.

Sincerely,

A handwritten signature in cursive script that reads "Thomas Galassi".

Thomas Galassi, Director  
Directorate of Enforcement Programs

Enclosure

Cc: Virginia Department of Labor and Industry