



March 30, 2016

Senate Majority Leader Mitch McConnell
 S-230 Capitol Building
 Washington DC 20510

Senate Minority Leader Harry Reid
 S-221 Capitol Building
 Washington DC 20510

Dear Majority Leader McConnell and Minority Leader Reid:

We write today to express our views on Section 2317 of S. 2658, the Federal Aviation Administration Reauthorization Act of 2016, as it was ordered to be reported by the Committee

on Commerce, Science, and Transportation on March 16, 2016. Section 2317 is titled “Safe Air Transportation of Lithium Batteries on Passenger Aircraft.”

The undersigned manufacturers, retailers, wholesalers, exporters, importers, and industries who rely on safe lithium battery transportation strongly support the promulgation of tough and internationally-consistent regulations governing the cargo air transportation of lithium batteries, as well as vigorous enforcement of those regulations around the world. We thus support inclusion in this legislation of a provision that includes several of the elements of Section 2317. However, Section 2317, as ordered to be reported, does not contain several key protections necessary to ensuring the viability of air transportation of lithium batteries. It also does not provide appropriate exceptions for medical device lithium batteries that need to be shipped to remote locations not serviced by cargo aircraft or those that must be shipped at a state of charge greater than 30% in the interest of public health.

Our position is grounded in a long-standing endorsement of Section 828 of the bipartisan FAA Modernization and Reform Act of 2013 (49 U.S.C. § 44701 note) and recognition of the ongoing work of the International Civil Aviation Organization (“ICAO”) in addressing lithium battery transportation safety. Section 828 mandated that U.S. regulation of those products be harmonized with international regulations, because harmonization avoids confusion among shippers, carriers, and others and maximizes safety.

Furthermore, ICAO, which develops the international air transport regulations for hazardous materials, has addressed aggressively concerns with lithium battery air cargo issues. The industries and companies we represent are currently working hard to meet new ICAO lithium battery transportation requirements, which go into effect on April 1st. Among other things, the new standards will limit the amount of energy stored in lithium ion batteries shipped by air (what is referred to as the batteries’ “state of charge”) and prohibit, until new protective packaging can be developed and approved, shipments of lithium ion batteries as cargo on passenger aircraft.

The economic stakes in avoiding unnecessarily-disruptive regulations are enormous. Billions of lithium cells and batteries and products containing them are manufactured annually, and reliable air transport is a critical part of the logistics chain for product manufacturers and consumers. We depend on lithium batteries in our jobs, in our personal lives, and for life-saving medical procedures. Everyday products that contain lithium batteries include laptops, cellular phones, portable music/video devices, navigation/GPS systems, cameras, smoke/security alarms, hybrid electric and all-electric vehicles, and power tools. Life-saving and life-enhancing medical devices powered by these batteries include pacemakers, defibrillators, spinal cord stimulators, portable oxygen concentrators, and blood glucose monitors. Moreover, the U.S. military relies on lithium battery-powered products to train soldiers at home and in battlefield operations abroad. The equipment which these batteries power include radios, chemical agent detectors, night vision goggles, weapons systems, and thermal imaging devices.

The most recent quantification of the costs that could be imposed by inconsistent and inappropriate regulations came in response to the Department of Transportation’s misguided January 11, 2010, proposed rule on transportation of lithium batteries. An unchallenged economic analysis prepared in response to the proposed rule showed a potential \$1.1 billion dollar impact *in the first year alone*. That rulemaking eventually was shelved, but led directly to the enactment of Section 828 of the bipartisan FAA Modernization and Reform Act of 2012, referred to above.

An important next step for Congress is to reiterate the policies set forth in Section 828 and to direct DOT to quickly harmonize U.S. rules with the ICAO regulations going into effect on April 1st and engage internationally to increase strong enforcement of those rules. The problem is not the carriage of lithium batteries on aircraft, but possible noncompliant packaging and shipping of those products. Too many manufacturers and shippers, especially in certain regions of the world, ignore existing labelling and packaging requirements. This will continue until enforcement is substantially increased. The U.S. should lead the effort to see that happen.

However, our industries and companies are concerned that cumbersome, costly, and unnecessary regulations could be added to S. 2658 that would disrupt harmonization and distract from enforcement. For example, the seemingly-innocuous proposal to impose a new Notice to Captain (“NOTOC”) requirement on shipments is far more problematic than it might first appear. Requiring that all shipments of lithium batteries and products containing them shipped on any commercial aircraft be listed on the NOTOC means these products would have to be shipped and offered to carriers as “fully-regulated” hazardous materials. It could mean that every single product containing a lithium battery – phones, laptops, and other products you use and rely on daily and that the pilots have in the flight deck – would have to be shipped with packaging equivalent to that used for large electric vehicle lithium ion batteries. This would frustrate carefully-tailored provisions, approved by ICAO, that allow these shipments of a handful of small replacement batteries by air and do not interfere with product shipments. There has been sufficient growth in the use of lithium battery powered equipment alone in the last five years that the 2010 \$1.1 billion cost impact estimate will have to be revised substantially upwards.

Concerning medical devices more specifically, there is little doubt that there is a significant need for appropriate exemptions to facilitate ready shipment of replacement batteries and products anywhere in the world. Ensuring timely patient access to life-critical medical technology is a vital public health objective. However, requiring all lithium batteries to be listed on the NOTOC would undermine all health exemptions. Similarly, requiring that all lithium batteries be shipped as fully-regulated hazardous materials would limit the ability of medical device firms to get their replacement power for their products to where it is needed. Medical device issues should be addressed separately and not be politicized.

For all these reasons, we strongly urge you and your colleagues to support efforts to amend Section 2317 as reported, so that it truly advances international regulatory harmonization and promotes the vigorous enforcement of those regulations around the world. At the same time, we urge opposition to efforts to weaken harmonization or frustrate delivery of small quantities of lithium batteries, medical devices, and other lithium battery-powered products of any type.

Signed,

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Airlines for America
Advanced Medical Technology Association
Apple
Association of Home Appliance Manufacturers
Air Forwarders Association
AT&T
Boston Power
Boston Scientific Corporation
Cargo Airline Association
Council on Safe Transportation of Hazardous Articles
CTIA – The Wireless Association
Dangerous Goods Advisory Council
Dell
DHL
Express Association of America
Fedco Batteries
GP Batteries (Americas)
Hit Promotional Products
HP
Intel
Inventus Power

Information Technology Industry Council
Lenovo
Medical Device Battery Transport Council
Medical Device Manufacturing Association
Medical Imaging and Technology Alliance
Motor & Equipment Manufacturers Association
Motorola
National Association of Manufacturers
National Electrical Manufacturers Association
National Industrial Transportation League
National Retail Federation
NEC Energy Solutions
Outdoor Power Equipment Institute
PRBA – The Rechargeable Battery Association
Panasonic
Philips
Power Tool Institute
Retail Industry Leader Association
Rockwell Automation
Saft
Zebra Technologies