



June 15, 2020

House Speaker Nancy Pelosi  
 1236 Longworth House Office Building  
 Washington DC 20510

Minority Leader Kevin McCarthy  
 2468 Rayburn House Office Building  
 Washington DC 20510

Chairman Peter DeFazio  
 2134 Rayburn House Office Building  
 Washington DC 20510

Ranking Member Sam Graves  
 1135 Longworth House Office Building  
 Washington DC 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Chairman DeFazio, and Ranking Member Graves:

We write today to express our views on Section 8201 of H.R. 7095, the Investing in a New Vision for the Environment and Surface Transportation (INVEST) in America Act, as expected to be reported to the House Committee on Transportation and Infrastructure. Section 8201, titled “Repeal of Certain Requirements Related to Lithium Cells and Batteries,” specifically repeals Section 828 of the bipartisan FAA Modernization and Reform Act of 2012 (49 U.S.C. § 44701 note).

The undersigned manufacturers, retailers, carriers, wholesalers, exporters, importers, and industries who rely on the safe transport of lithium batteries strongly support the promulgation of tough, protective, and internationally consistent regulations governing the air transportation of lithium batteries, as well as vigorous enforcement of those regulations around the world. We thus oppose Section 8201, as expected to be reported, because it would eliminate uniform

international safety transport requirements, weaken compliance and enforcement of those harmonized regulations, and unnecessarily increase costs on businesses and the public during this time of world economic recession.

Our position is grounded in our long-standing support of Section 828 of the bipartisan FAA Modernization and Reform Act of 2012 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 maximizes safety by avoiding confusion among shippers, carriers, and others. In fact, there is universal recognition that globally harmonized safety regulations increase protection and facilitate compliance. Without such harmonization, various entities within the supply chain may misunderstand their potentially conflicting obligations and unintentionally create hazardous shipping conditions.

While the world is experiencing an unprecedented economic recession amidst a global pandemic, the economic stakes in avoiding unnecessarily disruptive regulations cannot be overstated. Billions of lithium cells and batteries—and the 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 and equipment, including ventilators used by patients impacted by the COVID-19 pandemic. Other life-saving and life-enhancing medical devices powered by these batteries include pacemakers, defibrillators, spinal cord stimulators, portable oxygen concentrators, and blood glucose monitors. 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. Moreover, the U.S. military relies on lithium battery-powered products to train soldiers at home and in battlefield operations abroad. The equipment that these batteries power include radios, chemical agent detectors, night vision goggles, weapons systems, and thermal imaging devices.

The costs that could be imposed by inconsistent regulations could be tremendous and crushing on both businesses and the consuming public. Accordingly, Congress should not pass legislation that unnecessarily increases regulatory burdens on industries and people who have already been devastated by the economic impacts of the global pandemic. To quantify the potential impacts of this Section 8201, one can look to an analysis that came in response to the Department of Transportation’s misguided proposed rule on the transportation of lithium batteries in 2010, which would have led to U.S. lithium battery hazardous materials regulations completely inconsistent with the ICAO Technical Instructions. This unchallenged economic analysis prepared in response to the proposed rule showed a potential \$1.1 billion-dollar impact *in the first year alone*.<sup>1</sup> That rulemaking eventually was shelved, but it led directly to the enactment of Section 828 of the bipartisan FAA Modernization and Reform Act of 2012, referred to above.

Instead of enacting Section 8201 of the INVEST in America Act, Congress should work with DOT to reiterate the policies set forth in Section 828 of the FAA Modernization and Reform Act of 2012 by engaging internationally to increase strong enforcement of those rules. The problem is not the carriage of lithium batteries on aircraft, but rather it is the possible noncompliant packaging and shipping of those products.

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<sup>1</sup> See Exhibit 2 of comments submitted by PRBA – The Rechargeable Battery Association, March 12, 2010. Available at <https://www.regulations.gov/document?D=PHMSA-2009-0095-0120> (last accessed June 11, 2020).

For all these reasons, we strongly urge you and your colleagues to oppose Section 8201 of the INVEST in America Act, as expected to be reported, because it would eviscerate international regulatory harmonization, weaken the vigorous enforcement of those regulations around the world, and needlessly increase costs on the American public and businesses.

Signed,

Advanced Medical Technology Association  
Air Forwarders Association  
Association of Home Appliance Manufacturers  
Cargo Airline Association  
Consumer Technology Association  
Council on Safe Transportation of Hazardous Articles  
CTIA – The Wireless Association  
Dangerous Goods Advisory Council  
Express Association of America  
Information Technology Industry Council  
Medical Device Battery Transport Council

Medical Device Manufacturers Association  
Motor & Equipment Manufacturers Association  
National Association of Manufacturers  
National Electronic Manufacturers Association  
National Retail Federation  
Outdoor Power Equipment Institute  
PRBA – The Rechargeable Battery Association  
Power Tool Institute  
Retail Industry Leaders Association  
Security Industry Association

Cc: Majority Leader Mitch McConnell  
Minority Leader Charles Schumer  
Chairman Roger Wicker  
Ranking Member Maria Cantwell  
Chairman John Barrasso  
Ranking Member Thomas Carper