



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 22 2003

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

Ms. Rosalind A. Knapp
Deputy General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Ms. Knapp:

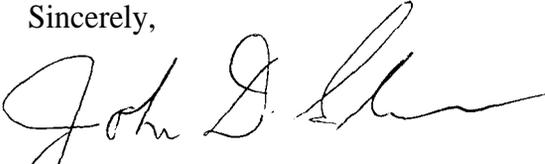
On June 6, 2003, the Department of Transportation (DOT) submitted a Research and Special Programs Administration (RSPA) draft final rule titled "Hazardous Materials: Transportation of Lithium Batteries" to the Office of Management and Budget (OMB) for review Under Executive Order No. 12866. This final rule would make changes to the test methods for lithium batteries, eliminate existing exceptions from the hazard communication and packaging requirements of the Hazardous Materials Regulations (HMR) for larger batteries and revise the exceptions for smaller batteries.

After discussions with staff at the Small Business Administration, we are returning the final rule for your reconsideration. We believe a full Initial Regulatory Flexibility Analysis (IRFA) should be prepared in order to receive additional public comment and to provide further support for RSPA's certification that the rule would not have a significant impact on a substantial number of small entities. The IRFA should include additional information that will allow RSPA to more fully address comments disputing the need for regulating lithium ion batteries, and we believe it would also be beneficial for RSPA to provide as much detail as possible on their cost estimates as there is some amount of disagreement concerning the cost of this rulemaking. It may also be prudent to gather additional information on the number of small businesses impacted and their annual revenues as some commenters have indicated this rule will cause them to incur significant costs.

Please note that the preparation of an IRFA does not necessarily mean a Supplemental Notice of Proposed Rulemaking (SNPRM) must be prepared. An IRFA can be prepared independently and published in the Federal Register seeking public comment. The results of the IRFA process will determine if the next step for the rulemaking should be a Final Rule or a SNPRM.

Our staff and the staff at SBA are available for further discussion with you on the concerns that have been raised. We look forward to working with you to improve this important rulemaking effort.

Sincerely,



John D. Graham, Ph.D.
Administrator