

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
White Ditch .....	Approximately 160 feet downstream of Michiana Drive .....	+ 604	Town of Michiana Shores, City of Michigan City, Unincorporated Areas of La Porte County.
	Approximately 1,840 feet upstream of Oakdale Drive .....	+ 607	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

#### ADDRESSES

##### City of Michigan City

Maps are available for inspection at City Hall, 100 East Michigan Boulevard, Michigan City, IN 46360.

##### Town of Long Beach

Maps are available for inspection at the Town Hall, 2400 Oriole Trail, Long Beach, IN 46360.

##### Town of Michiana Shores

Maps are available for inspection at the Town Hall, 601 El Portal South Drive, Michiana Shores, IN 46360.

##### Town of Pottawattamie Park

Maps are available for inspection at the La Porte County Government Complex, 809 State Street, Suite 503A, La Porte, IN 46350.

##### Unincorporated Areas of La Porte County

Maps are available for inspection at the La Porte County Government Complex, 809 State Street, Suite 503A, La Porte, IN 46350.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: July 12, 2013.

Roy E. Wright,

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

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#### DEPARTMENT OF TRANSPORTATION

##### Pipeline and Hazardous Materials Safety Administration

##### 49 CFR Parts 172 and 173

[Docket No. PHMSA-2010-0201 (HM-254)]

RIN 2137-AE62

##### Hazardous Materials: Approval and Communication Requirements for the Safe Transportation of Air Bag Inflators, Air Bag Modules, and Seat-Belt Pretensioners (RRR)

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

**ACTION:** Final rule.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations applicable to air bag inflators, air bag modules, and seat-belt pretensioners. The revisions incorporate

the provisions of two special permits into the regulations. In addition, PHMSA is amending the current approval and documentation requirements for a material classified as a UN3268 air bag inflator, air bag module, or seat-belt pretensioner. These revisions are intended to reduce the regulatory burden on the automotive industry and facilitate commerce, while continuing to maintain an equivalent level of safety.

**DATES:** *Effective date:* August 29, 2013.  
*Voluntary compliance date:* PHMSA is authorizing voluntary compliance beginning July 30, 2013.

##### FOR FURTHER INFORMATION CONTACT:

Matthew Nickels, Standards and Rulemaking Division, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, telephone (202) 366-8553.

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##### I. Executive Summary

In this final rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR) applicable to the transportation of air bag inflators, air bag modules, and seat-belt pretensioners in § 173.166. This rulemaking is responsive to one petition for rulemaking submitted by an industry representative: P-1523, asking that PHMSA remove unnecessary burdens on the industry that do not advance safety. Further, this final rule is incorporating into the HMR the provisions of two widely used and longstanding special permits with established safety records (DOT-SP 12332 and DOT-SP 13996). These revisions are intended to reduce the regulatory burden on the automotive industry and facilitate commerce, while continuing to maintain an equivalent level of safety.

This rulemaking specifically finalizes revisions to five regulatory initiatives. The first initiative modifies the approval process and documentation requirements associated with classifying air bag inflators, air bag modules, and seat-belt pretensioners. The second initiative incorporates provisions of DOT-SP 12332 into the HMR by excepting Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number on the shipping paper. The third initiative is a simple clarification that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR. The fourth initiative incorporates provisions of DOT-SP 13996 into the HMR by authorizing the use of non-DOT specification, reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners. The fifth initiative permits several additional types of packaging to maintain alignment with the 17th revised edition of the UN Model Regulations.

The costs and benefits of the amended regulations are dependent on the level of preexisting compliance with the two special permits and the overall effectiveness of the amended regulations (e.g., flexibility provided when incorporating portions or whole special permits). Additionally, we believe that this rulemaking will benefit the automobile industry because it will reduce the burden in how air bag inflators, air bag modules, and seat-belt pretensioners are authorized for shipment by eliminating the necessity to submit approval applications to PHMSA, and thus provide a significant cost savings.

The costs associated with the rule are negligible due to minor revisions to the recordkeeping requirements. DOT explosives test labs that test and examine air bag inflators, air bag modules, or seat-belt pretensioners will be required to provide the manufacturer a detailed report on each tested design. The DOT explosives test labs already provide manufacturers with test reports for classification purposes, but the amended reporting requirements will require minimal additions to the report (e.g., unique product identifier, etc.). Outside of this marginal impact, this rulemaking provides numerous benefits. PHMSA is currently spending/ expending an estimated \$82,800 per year to process and review special permits and approvals associated with Class 9 airbags and seat-belt

pretensioners. Further, industry incurs an estimated \$165,000 per year to prepare and submit applications for special permits and approvals, and \$890,000 per year to provide the EX numbers on shipping papers. Combined, these costs total \$1,137,800 per year. Since the objective of the rule is to eliminate these costs, the benefits that can be achieved are estimated to be \$1,137,800 per year.

However, notwithstanding the data above, because of the difficulty of and uncertainty associated with forecasting industry effects into the far future, we assumed a 10-year timeframe to outline, quantify, and monetize the costs and benefits of the rulemaking and to demonstrate the net effects of the rulemaking.

The net benefits of the rule are calculated by subtracting the costs from the benefits. Since the costs are assumed to be negligible, the first-year net benefits are estimated to be \$1.14 million. Based upon the market analysis presented in the regulatory impact assessment (RIA), it's assumed these benefits will grow at an annual average rate of 5 percent.<sup>1</sup> Calculating the present value of this net benefit over ten years produces an estimated benefit of between ten and twelve million dollars, using the discount rates of 7 percent and 3 percent, respectively. A summary of the expected annualized costs and benefits is provided in the table below.

Annualized benefit (in 2013 \$).	\$1.14 million.
Annualized Cost (in 2013 \$).	\$0 (negligible).
Benefit-Cost Ratio .....	All benefits.
10-Year Benefits at 7% and 3% Discount Rates.	\$10–12 million.

With this in mind, PHMSA has concluded that the aggregate benefits justify the final rule. For additional information and review of the analysis underlying these estimates, as well as possible approaches to reduce the costs of this rule while maintaining or increasing the benefits, please review the RIA available at the public docket for this rulemaking.

## II. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a notice of proposed rulemaking (NPRM) on March 26, 2012 [77 FR 17394] under Docket No. PHMSA–

<sup>1</sup> In its recent report, "Global Automotive Airbag Market 2011–2015," TechNavio is forecasting that the global airbag market will grow at a compounded annual average annual growth rate of 11.54 percent. Given the maturity of the airbag market in the United States, we believe the growth rate in the U.S. market will be less than the global growth rate and therefore assumed 5 percent for the U.S. market.

2010–0201 (HM–254) to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to the transportation of air bag inflators, air bag modules, and seat-belt pretensioners in § 173.166. This NPRM was part of an ongoing review by PHMSA to identify widely used and longstanding special permits with established safety records for adoption into HMR. The numbers of the special permits considered for incorporation in the NPRM were DOT-SP: 12332 and 13996. PHMSA identified these special permits as implementing operational techniques that achieve a safety level that corresponds to or exceeds the safety level required under the HMR. In addition, this rulemaking addresses petition for rulemaking P–1523, dated June 24, 2008 (P–1523) and two addendums submitted on February 26, 2009 and June 14, 2011 by the North American Automotive Hazmat Action Committee (NAAHAC). NAAHAC represents numerous automobile manufacturers and component suppliers located in North America as well as in Asia and Europe. NAAHAC's petition requested revisions to requirements in the HMR applicable to safety restraint systems (e.g., air bag inflators, air bag modules, and seat-belt pretensioners). NAAHAC suggested that subjecting Class 9, UN3268 safety restraint systems to the EX approval process in accordance with § 173.56 imposed an unnecessary burden on the industry that does not advance safety. Therefore, NAAHAC requested that PHMSA remove the requirement for manufacturers to apply for and receive an EX approval number for the shipment of Class 9, UN3268 safety restraint systems.

In addition, NAAHAC suggested that PHMSA incorporate the following longstanding special permits into the HMR:

- *DOT-SP 12332*—This special permit provides relief from § 173.166(c) in that it allows the devices to be shipped without listing the EX-approval numbers or product names on the shipping papers, and from § 173.166(e) in that an alternative packaging method is authorized. The special permit has been in effect since 2000, and has been utilized by more than 2,100 grantees with no known safety problems. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance. This special permit applies to Class 9, UN3268 materials that are packaged using either of the two following methods:

- a. Non-specification steel drums with a wall and lid thickness not less than 20 gauge. The lid must be securely affixed

with a lever-locking or bolted-ring assembly. The threaded bung closure in the top of the drum must be removed prior to shipment and the bung opening covered with waterproof plastic tape or a waterproof soft plastic cap that must easily provide ventilation of the drum contents in the event of a fire. The drum may be filled with any combination of air bag inflators, air bag modules, or seat-belt pretensioner devices to a capacity not greater than fifty (50) percent of the drum's total volume; inner packagings are not necessary; or

b. Outer packagings that are UN Standard 4H2 solid plastic boxes or non-specification rugged reusable plastic containers with either trays or cushioning material in the containers to prevent movement of articles during transportation. Inner packagings are static-resistant plastic bags or trays.

- *DOT-SP 13996*—This special permit provides relief from § 173.166(e)(4) in that it authorizes the transportation, under certain conditions, of Class 9, UN3268 air bag inflators, air bag modules, and seat-belt pretensioners in reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices. The special permit has been in effect since 2005, and has been utilized by 31 grantees with no known safety problems. A review of the Hazardous Materials Incident Data library did not reveal any incidents related to this special permit since the date of its issuance.

As stated above, in addition to NAAHAC's petition suggesting that subjecting Class 9, UN3268 safety restraint systems to the EX approval process in accordance with § 173.56 imposes an unnecessary burden on the industry that does not advance safety, the petition also suggested that PHMSA incorporate these two long-standing special permits into the HMR. PHMSA agrees with the petition and proposed to amend the HMR to incorporate certain requirements based on these two special permits issued under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127).

### III. Amendments Adopted in Final Rule

PHMSA agrees with the petitioner that requiring documentation for Class 9 air bag inflators, air bag modules, and seat-belt pretensioners to be submitted to PHMSA and assigned an EX Number is unnecessarily burdensome. PHMSA believes that eliminating this requirement will not adversely affect safety since the devices will still continue to be sent to the explosive test labs for classification purposes and assigned a unique product identifier by the lab, but the documentation will no

longer be forwarded to PHMSA and issued an EX Number (please see A. Approval Process below for further discussion). Further, PHMSA agrees that incorporating the terms of DOT-SP 12332 and DOT-SP 13996 into the HMR will promote compliance and safety. As a result, PHMSA proposed to revise § 173.166 to address the concerns highlighted in NAAHAC's petition. PHMSA believed that changes proposed by the NPRM promoted the safe transportation of Class 9 air bag inflators, air bag modules, and seat-belt pretensioners, while significantly reducing the financial burden on the overall automotive industry (and the device manufacturers specifically) for shipping these devices. The amendments adopted by this final rule are summarized below.

#### A. Approval Process

In the NPRM, PHMSA proposed to allow manufacturers of air bag inflators, air bag modules, or seat-belt pretensioners to receive a classification of Class 9 (UN3268) for new designs that pass Test series 6(c) of the UN Manual of Tests and Criteria, which is currently required by Special Provision 160. As was proposed, an air bag inflator, air bag module, or seat-belt pretensioner would be classed as Class 9 (UN3268) if the air bag inflator, air bag module, or seat-belt pretensioner design is examined and successfully tested by a person or agency (authorized testing agency) who is authorized by the Associate Administrator to perform such examination and testing of explosives under 173.56(b)(1).

As was proposed in the NPRM, persons who test and examine air bag inflators, air bag modules, or seat-belt pretensioners would be required to provide a detailed report on each tested design to the manufacturer. Key components of the report include a description of the design; explanation of the tests performed and results; and a recommended classification for tested designs. The manufacturer must retain the report for as long as the design is in production and for 15 years thereafter. Additionally, the manufacturer must make the report available to Department officials upon request. This record retention requirement ensures that a detailed test report of each air bag inflator, air bag module, or seat-belt pretensioner design is maintained and available for the useful life of the device. These records may be used to verify the accuracy and validity of the tests and classification recommendation.

In summary, the proposed NPRM amendments provided manufacturers of

air bag inflators, air bag modules, or seat-belt pretensioners with the option to utilize new designs that are proven to meet the criteria of a Class 9 through established test criteria, without receiving an EX approval from PHMSA. The result would be a significant cost savings and no change in the level of safety. Additionally, we proposed to permit manufacturers to continue to receive EX approval by submitting their designs for examination and testing in accordance with § 173.56(b) if they so choose.

If an air bag inflator, air bag module, or seat-belt pretensioner fails Test series 6(c) of the UN Manual of Tests and Criteria, as provided by Special Provision 160, then the device must continue to be approved by PHMSA in accordance with the explosive examination, classification, and approval process in § 173.56(b).

#### B. Shipping Papers

PHMSA proposed in the NPRM to except Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number on the shipping paper. As suggested by NAAHAC, the documentation requirement imposes a cost burden, but does not provide a safety benefit.

#### C. Safety Restraint Systems Installed in Vehicles

In the NPRM, PHMSA proposed to clarify that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR. This change made it clear that the exception will continue to apply to Class 9, UN3268 materials that are not approved by the Associate Administrator.

#### D. Packaging

In the NPRM, PHMSA also proposed to authorize the use of non-DOT specification, reusable containers manufactured from high strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners. This change would incorporate the provisions of Special Permit DOT-SP 13996 into the HMR.

Special Permit DOT-SP 13996 allows the specified packaging to be used for transportation from the manufacturing facility to an intermediate handling location; from an intermediate handling location to the assembly facility; from the assembly facility to an intermediate handling location; from the intermediate handling location back to the manufacturing facility; or from the

assembly facility directly to the manufacturer with no intermediate facility involved. As proposed in the NPRM, there would be no limit on the use of the authorized packaging to transportation between specific destinations. However, no modifications or changes may be made to the original package, and the transportation must be made by private or contract carrier. By prohibiting modifications to the original package, this would ensure that adequate packaging and handling considerations are maintained.

In the NPRM, PHMSA also proposed to authorize additional packaging alternatives for air bag inflators, air bag modules, and seat-belt pretensioners that have been removed from, or were intended to be used in, a motor vehicle that meets the requirements for use in the United States. The proposed change would incorporate the provisions of Special Permit DOT-SP 12332 into the HMR. In accordance with the special permit, this additional packaging option would be limited to devices that are offered for transportation and transported domestically by highway.

#### *E. Shipments for Recycling/Reuse*

In the NPRM, we did not propose any changes to the requirements for shipping air bag modules or seat-belt pretensioners for recycling. In the current HMR, when offered for domestic transportation by highway, rail freight, cargo vessel or cargo aircraft, a serviceable air bag module or seat-belt pretensioner removed from a motor vehicle that was manufactured as required for use in the U.S. may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in § 173.166(c), but the word "Recycled" must be entered on the shipping paper immediately after the basic description prescribed in § 172.202. However, we believed that the word "Reuse" might be a more appropriate description for the actual action that is taking place. We requested comments regarding a potential change from the word "Recycled" to "Reuse" that would appear on shipping papers in accordance with an altered § 173.166(d)(4).

#### *F. Additional Packaging Authorizations*

To maintain alignment of the HMR with international requirements, in the NPRM, we proposed to incorporate changes based on the Seventeenth revised edition of the UN Model Regulations. Specifically, in addition to the packagings authorized currently in § 173.166(e)(1), (e)(2), and (e)(3), we proposed to permit 1N2 and 1D drums,

3B2 jerricans, and 4A, 4B, 4N, and 4H1 boxes.

#### **IV. Comments Submitted Regarding the NPRM and PHMSA's Response to Those Comments**

In response to PHMSA's March 26, 2012 NPRM (77 FR 17394), PHMSA received comments from seven organizations, associations, and individuals. While the majority of commenters supported the proposals in the NPRM, some commenters had suggestions for additional revisions to the regulatory text. The comments, as submitted to this docket, may be accessed via <http://www.regulations.gov> and were submitted by the following entities:

(1) Hapag-Lloyd America; PHMSA-2010-0201-0002.

(2) United Parcel Service (UPS); PHMSA-2010-0201-0003.

(3) International Vessel Operators Dangerous Goods Association (IVODGA); PHMSA-2010-0201-0004.

(4) North American Automotive Hazardous Materials Action Committee (NAAHAC); PHMSA-2010-0201-0005.

(5) National Fire Protection Association (NFPA); PHMSA-2010-0201-0006.

(6) National Automobile Dealers Association (NADA); PHMSA-2010-0201-0007.

(7) Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA); PHMSA-2010-0201-0008.

The two special permits addressed in this final rule that authorize the transportation in commerce of certain air bag inflators, air bag modules, and seat-belt pretensioners under the HMR were initially issued to members of industry associations or similar organizations. They have well established safety records, and therefore PHMSA has determined that they are excellent candidates for incorporation into the HMR. Incorporating these special permits into the HMR will eliminate the need for over 2,100 current grantees to reapply for the renewal of two special permits every four years and for PHMSA to process the renewal applications, thereby eliminating a significant paperwork burden both on industry and the government.

Below is a discussion of comments we received regarding specific provisions proposed in the NPRM, and PHMSA's position regarding those comments. As discussed above, commenters were supportive of this rulemaking, and those comments within the scope of this rulemaking are discussed below.

#### *A. Comments on Paragraph (b) of § 173.166*

Paragraph (b) of § 173.166 provides for the classification requirements of an air bag inflator, air bag module, or seat-belt pretensioner. In the NPRM, PHMSA proposed to allow manufacturers of air bag inflators, air bag modules, or seat-belt pretensioners to receive a classification of Class 9 (UN3268) to new designs that pass Test series 6(c) of the UN Manual of Tests and Criteria—currently required by Special Provision 160. We also proposed that, an air bag inflator, air bag module, or seat-belt pretensioner may be classed as Class 9 (UN3268) if the air bag inflator, air bag module, or seat-belt pretensioner design is examined and successfully tested by a person or agency (authorized testing agency) who is authorized by the Associate Administrator to perform such examination and testing of explosives under 173.56(b)(1). PHMSA received comments in support of these proposed amendments because these changes would simplify the classification process. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (b).

One commenter suggested:

We would point out that at the present time there are air bag inflator designs which utilize a flammable gas mixture, and while these devices have tested out of Class 1 they have never been included in Class 9/UN3268. They have, instead, been classified as Class/Division 2.1. While we believe it would certainly be appropriate to allow flammable gas mixtures to be classed as 1.4G if the devices did not meet the criteria for exclusion from Class 1, we do not feel that they should be included in Class 9 as they meet the characteristics of a flammable gas.

We agree with the commenters point and revised the language in paragraph (b)(1) to reflect this in this final rule.

Another commenter suggested: "We ask that the reference to 'maximum parameters of each design' continue to be included in the regulation, as it is key to understanding that the approvals issued are not specific to individual part numbers but rather to design types." We agree with the commenters point and revised the language in both paragraph (b)(1) and (b)(2) to reflect this in this final rule.

Regarding § 173.166(b)(2), one commenter suggested:

We would ask the complete reference to 173.56(b)(1) be included rather than just to 173.56. This will match the similar reference contained in paragraph (b)(1) above. We are requesting this so that all parties who read both portions of the regulations are clearly pointed to 173.56(b)(1) which specifies those agencies authorized by the DOT, and particularly that they are US citizens.

We agree with the commenter's point and revised the language in paragraph (b)(2) to reflect this in this final rule.

*B. Comments on Paragraph (c) of § 173.166*

Paragraph (c) of § 173.166 provides for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 to be excepted from the requirement to provide the EX number on the shipping paper. As suggested by the original NAAHAC petition, the documentation requirement imposes a cost burden, but does not provide a safety benefit. PHMSA received comments in support of these proposed amendments because these changes would simplify the hazard communication process. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (c).

One commenter suggested: "We find the wording of this paragraph extremely confusing, and we would ask that the language be made clearer to ensure compliance." Another commenter suggested that: "PHMSA may simply be able to eliminate the proposed 173.166(c)(1) and create a new 173.166(c) by adapting the language found in the proposed 173.166(c)(2)." After reviewing the regulatory text from the NPRM, we agree partially with the commenters' issue and revised the language in paragraph (c) to reflect this in this final rule.

*C. Comments on Paragraph (d) of § 173.166*

Paragraph (d) of § 173.166 provides for certain exceptions for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners. In the NPRM, PHMSA proposed to clarify that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR. PHMSA determined that this change makes it clear that the exception will continue to apply to Class 9, UN3268 materials that are not approved by the Associate Administrator. PHMSA received comments in support of these proposed amendments because these changes would simplify the exceptions provided. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (d).

Regarding § 173.166(d)(1), one commenter suggested:

We are asking for the inclusion of the term 'inflator' in the exceptions so as to harmonize with the 17th Revised Edition of the Recommendations on the Transport of Dangerous Goods, UN Model Regulations, Special Provision 289. We also feel that it is important to clarify that in order to utilize

the exception offered in this paragraph in the U.S., the devices must have been classified as Class 9 per the 49 CFR. This is clear for the 1.4G's but not for the Class 9's. Additionally, we commend the DOT for clarifying that this relief applies to both the Class 9 and 1.4G devices.

We agree with the commenters points and revised the language in paragraph (d)(1) to reflect this in this final rule.

Regarding § 173.166(d)(2), one commenter suggested: "During previous discussions with PHMSA in the summer of 2011, this topic was addressed informally and the industry has been operating within this policy since that time. We strongly feel that placing this into the regulation significantly enhances understanding and compliance." After reviewing the language provided, we agree with the commenters point and revised the language in paragraph (d)(2) to reflect this in this final rule.

Regarding § 173.166(d)(4), one commenter suggested:

This paragraph is the basis of the special permit DOT-SP 12332, which expanded upon this exception and offered additional packaging options. Both this paragraph and the areas where DOT-SP 12332 were incorporated into the regulation should address both disposal and recycling, not just recycling. This should apply to inflators, modules and pretensioners of either Class 9 or 1.4G.

We agree with the commenter's point and revised the language in paragraph (d)(4) to reflect this in this final rule.

Also, the same commenter suggested: "We do not feel that the terms 'Reuse' or 'Reused' should be substituted for 'Recycle' or 'Recycled'. The Automotive Safety Council (formerly Automotive Occupant Restraints Council—AORC) has gone on record many times against the reuse of airbags." We appreciate the feedback since we asked the question in the NPRM regarding using the term "reuse" v. "recycled," and we agree with the commenter and will not be revising the language in paragraph (d)(4) in this final rule.

A commenter suggested: "While we do feel it is helpful to have the word 'Recycled' following the basic description when shipping to a recycling location, we hope that the requirement to have the word 'waste' in association with the basic description will only come into play when required by 172.101(c)(9)." We do agree with the commenter's point and note that while it doesn't affect the regulatory text in this final rule, shippers should use the word "waste" when required by § 172.101(c)(9).

Lastly, another commenter countered a previous point with:

In addition to this possible streamlining of the text, PHMSA may also be able to simplify the requirements for the shipment of recycled Air bag inflators, Air bag modules and Seat belt pretensioners that are assigned to Class 9. The current proposal retains the requirement to include the word 'Recycled' on the shipping paper immediately after the basic description. However, we submit there is no need for this additional text. The function of the word 'Recycled' is presumably to explain the absence of the EX number from a shipping paper. But the very purpose of the simplified procedures for Class 9 Air bag inflators, Air bag modules and Seat belt pretensioners appears to accomplish the same goal. By proposing to eliminate the need for inclusion of the EX number on a shipping paper associated with a Class 9 shipment of these articles, PHMSA eliminates the need to distinguish recycled Air bag inflators, Air bag modules and Seat belt pretensioners from those sent in new condition. We believe that with the changes proposed in Docket HM-254, there is no value in requiring the word 'Recycled' to appear on the shipping paper. It appears that PHMSA could simply delete the text of § 173.166(d)(4), and we respectfully requests that PHMSA consider this change.

While we do appreciate the feedback regarding the recycling provisions, we disagree on the statement that they provide no further value to the HMR; and, therefore we will not be further revising the language in paragraph (d)(4) in this final rule.

*D. Comments on Paragraph (e) of § 173.166*

Paragraph (e) of § 173.166 permits different types of packaging for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners. In the NPRM, PHMSA proposed to authorize the use of non-DOT specification, reusable containers manufactured from high strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners. PHMSA also proposed to authorize additional packaging alternatives for air bag inflators, air bag modules, and seat-belt pretensioners that have been removed from, or were intended to be used in, a motor vehicle that meets the requirements for use in the United States. PHMSA received comments in support of these proposed amendments because these changes would expand the options for shipping these products. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (e).

Regarding the introductory text of § 173.166(e), one commenter suggested:

During a meeting in 2011 with PHMSA, the Supplier Regulatory Workgroup of NAAHAC

explained that several of our OEMs (customers), have had difficulty with this paragraph in the past. The current wording of the regulation and the PHMSA's proposed wording do not clearly differentiate between the specification packagings in paragraphs 173.166(e)(1), (2) and (3) and the non-specification packagings in (4). With the changes suggested here any confusion would be eliminated. We are in complete agreement with the last sentence of this paragraph, as we believe it brings clarification to the issue of packaging dependent classifications.

After reviewing the introductory text to paragraph (e), we agree with the commenters point and revised the language to reflect this in this final rule.

Regarding § 173.166(e)(4)(i), one commenter suggested: "The industry feels that the use of returnable packagings has proven quite safe over the many years of shipping Class 9/ UN3268 products, and that there should be no limitations to the use of returnables that meet the performance criteria called out in 173.166(e)(4)(A)-(C)." While we understand the commenter's point of view, after reviewing the issue, we have determined to keep the language as is in this final rule.

Regarding § 173.166(e)(4)(ii), one commenter suggested:

DOT-SP 13996 allowed for this type of activity—it was designed to accommodate both returns of production shipments from the OEM's to the supplier and for sequencers (intermediate handlers) to receive/open/store/re-pack and ship parts on to the customer. Without the change suggested here, or something similar, this new regulation is actually more restrictive than DOT-SP 13996.

We agree with the commenters point and revised the language in paragraph (e)(4)(ii) to reflect this in this final rule.

Regarding § 173.166(e)(5), one commenter suggested:

Since expiration dates for EX approvals are not required, it is unclear why specific approvals are being targeted for what we assume to be re-testing. In order for products to be shipped in packagings previously approved by the Associate Administrator, neither the products nor the packagings may be changed. The testing previously performed and the results would, therefore, not have changed. We strongly disagree with this restriction, and ask for its removal.

While we understand the commenters viewpoint, the intent of paragraph (e)(5) was not to single out specific approvals for re-testing but to continue to permit previously approved air bag inflators, air bag modules, or seat-belt pretensioners to remain in circulation. However, we do recognize the confusion that an end-date may cause industry and we agree with the commenters point and revised the language in paragraph (e)(5) to reflect this in this final rule.

Regarding § 173.166(e)(6), one commenter suggested:

As noted above, DOT-SP 12332 was intended to be an expansion of the packaging methods allowed for disposal or recycling. We would ask that a clear reference to both be included. Additionally, DOT-SP 12332 does not include 1.4G product, so we have excluded the 1.4G/UN0431 product here as well.

We agree with the commenters point and revised the language in paragraph (e)(6) to reflect this in this final rule.

Regarding § 173.166(e)(6)(i), one commenter suggested:

When DOT-12332 was originally issued, the inclusion of the steel drum packaging option was based on testing performed in steel drums with a void in the top of the drum—no inner packagings, no cushioning. The void area, in combination with the lid ventilation, is intended to provide space for the appropriate venting of gases in the case of a fire without rupture of the drum. Obviously this would allow for movement of the devices inside the drum if there were rough handling, but the safety benefit of the void far outweighs concerns about movement of devices. Movement of devices inside a steel drum would not constitute a safety hazard—not regarding spillage or inadvertent operation.

We agree with the commenters point and revised the language in paragraph (e)(6)(i) to reflect this in this final rule.

#### *E. Comments on Paragraph (g) of § 173.166*

Paragraph (g) of § 173.166 provides the recordkeeping requirements for Class 9 air bag inflators, air bag modules, or seat-belt pretensioners. In the NPRM, PHMSA proposed to require record retention requirement to ensure that a detailed test report of each air bag inflator, air bag module, or seat-belt pretensioner design is maintained and available for the useful life of the device. As such, these records would be used to verify the accuracy and validity of the tests and classification recommendation. PHMSA received comments in support of these proposed amendments because these changes would allow for better accountability of tracking test records. However, commenters did provide PHMSA with some modifications to the proposed language in paragraph (g).

Regarding § 173.166(g), one commenter suggested: "While we see the need for the authorized testing agency to maintain test reports for a considerable period of time after testing, we feel it should be the manufacturer's responsibility to keep track of the duration of manufacture of a design type and maintain the test report for 15 years beyond manufacture." We agree with the commenters point in that a revision

is needed to more clearly articulate a timeline for each stakeholder's recordkeeping requirements, and revised the language in paragraph (g) to reflect this in this final rule.

#### *F. Additional Comments Outside of § 173.166*

PHMSA also received some comments that did not directly pertain to the proposed regulatory text from the NPRM; however, is relevant to the discussion of air bag inflators, air bag modules, or seat-belt pretensioners. While the majority of commenters supported the proposals in the NPRM, some commenters had suggestions for new regulatory text not proposed in the NPRM.

#### *Possible Revision to § 171.23(b)(2)*

One commenter suggested:

To ensure that the exception from including the EX number on the shipping paper for Class 9 air bag inflators, air bag modules, or seatbelt pretensioners is crystal clear for international shipments, we recommend revising § 171.23(b)(2) to add the following statement at the end of the paragraph: This requirement does not apply to Class 9 air bag inflators, air bag modules, or seatbelt pretensioners.

While we do understand the commenters point of view and also strive to be as clear as possible, we believe the current text in § 171.23(b)(2) is sufficient. We believe that the current language directing shippers to § 173.166(c) is still appropriate since § 173.166(c)(1) discusses the requirements for 1.4G air bag inflators, air bag modules, or seat-belt pretensioners, while § 173.166(c)(2) excepts Class 9 air bag inflators, air bag modules, or seat-belt pretensioners from the EX number requirements. Therefore, the text in § 171.23(b)(2) will remain as currently written.

#### *Possible Revision to § 172.102(c)(1)*

Upon further PHMSA review, we noticed that there was no direct connection to the exception provided in § 173.166(d)(1) for air bag inflators, air bag modules, or seat-belt pretensioners that have been classed as a Division 1.4G and approved by the Associate Administrator and are installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels. To rectify this, we are revising Special Provision 161 in § 172.102(c)(1) to direct stakeholders to § 173.166(d)(1) so that they are aware that these installed or completed components are not subject to the requirements of this subchapter

provided they comply with § 173.166(d)(1).

#### Possible Revision to § 175.33(a)

Another commenter suggested:

We believe revisions in Part 175 are needed to eliminate misunderstanding related to information required on the NOTOC. We are aware that PHMSA already believes that for an air carrier, the EX number for UN3268 need not be shown on the NOTOC. However, the regulations governing the NOTOC are, by PHMSA's own admission, ambiguous enough that UPS urges the agency to include a clarification in any Final Rule for Docket HM-254. Such a revision is discussed in a March 28, 2011 letter of interpretation (10-0194), in which PHMSA explains that it did not intend the EX number to be required in the NOTOC for shipments of UN3268 and mentions a future rulemaking in which a clarification will be proposed. Because there are numerous Class 9 Air bag inflators, Air bag modules and Seat belt pretensioners for which EX numbers have been issued, the HMR needs to be clear as to whether the EX number is a required part of the NOTOC. We believe that Docket HM-254 presents the needed opportunity for making this clarification to the requirements for the NOTOC. Prompt action is required, because FAA inspectors, perhaps unaware of PHMSA's view on the matter, have assessed civil penalties for missing EX numbers on the NOTOC. A simple adjustment to 49 CFR 175.33 would establish that the EX number for UN3268 is not required to be displayed on the NOTOC. In order to avoid any additional misunderstandings, a similar statement should be included explaining that the word 'Recycled' also is not required on the NOTOC. For example, a new subsection 175.33(a)(12) could be added, such as the following: (12) For articles classed as UN3268, notwithstanding the previous assignment of an EX number to any Air bag inflator, Air bag module or Seat belt pretensioner, the EX number is not required to be displayed on the notification of pilot-in-command. For a recycled Air bag inflator, Air bag module or Seat belt pretensioner assigned to Class 9, the word 'Recycled' is not required to be shown on the notification of pilot-in-command.

We appreciate the point that the commenter made, but this final rule specifically provides the exception in § 173.166(c)(2) where Class 9 air bag inflators, air bag modules, or seat-belt pretensioners are excepted from the EX number requirements on shipping papers. This specific revision to the way § 173.166(c) currently reads makes it clear that moving forward there are no EX numbers on Class 9 shipping papers. Therefore, the text in § 175.33(a) will remain as currently written.

## V. Regulatory Analyses and Notices

### A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal Hazardous

Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule incorporates the provisions of two special permits regarding air bag inflators, air bag modules, and seat-belt pretensioners, which will allow shipments of these hazardous materials more quickly and efficiently, without compromising safety. Furthermore, section 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

### B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. However, for those stakeholders who might be interested, a regulatory impact assessment (RIA) was developed for this final rule and is available for review in the public docket for this rulemaking.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness, and job creation.<sup>2</sup> Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome,

and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.<sup>3</sup>

By building off of each other, these three Executive Orders require agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society."

In this final rule, PHMSA is amending the HMR to incorporate alternatives this agency has permitted under widely used and longstanding special permits and competent authority approvals with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these provisions into the regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the final rule will reduce the paperwork burden on industry and this agency resulting from putting an end to the need for renewal applications for special permits. Taken together, the provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

PHMSA considered five potential regulatory alternatives.

- *Alternative 1: No Action.* Under this option, PHMSA would continue existing requirements for Special Permits to air bag inflators, air bag modules, and seat-belt pretensioners by taking no action. However, PHMSA believes that there are considerable benefits to taking action provided that a high level of safety is maintained. Furthermore, all costs and benefits are relative to this option.

- *Alternative 2: Expanding Provisions of DOT-SP 13996.* In incorporating the provisions of DOT-SP 13996, the final rule authorizes the use of certain types of packaging, as long as the transportation is conducted by private carrier or contract carrier. One alternative would be to extend that packaging options to common carriers

<sup>2</sup> See <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>.

<sup>3</sup> See <http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf>.



as well. However, while this option may grant additional regulatory relief to industry beyond that being provided by the final rule, we believe that it does so at the expense of safety and is, therefore, not viable.

- *Alternative 3: Expanding Provisions of DOT-SP 12332.* In incorporating the provisions of DOT-SP 12332, the final rule authorizes the use of certain types of packaging but limits that option to products between transported domestically on highways. A second alternative would be to allow such packaging to be used when such products are transported by air or rail. However, while this option may grant additional regulatory relief to industry beyond that being provided by the final rule, we believe that it does so at the expense of safety and is, therefore, not viable.

- *Alternative 4: Relaxing New Packaging Options.* The new packaging options being permitted in this final rule could be further relaxed, or industry could be permitted to adhere to voluntary packaging standards for Class 9 airbags and seat-belt pretensioners. However, while this option may grant additional regulatory relief to industry beyond that being provided by the final rule, we believe that it does so at the expense of safety and is, therefore, not viable.

- *Alternative 5: Incorporate Two Special Permits and Reduce Burdensome/Extraneous Provisions.* Under this option, PHMSA would incorporate DOT-SP 13996 and DOT-SP 12332, and streamline the classification process for Class 9 air bag inflators, air bag modules, and seat-belt pretensioners. More specifically, the revisions include five regulatory initiatives: (1) Modifies the approval process and documentation requirements associated with classifying air bag inflators, air bag modules, and seat-belt pretensioners; (2) incorporates provisions of DOT-SP 12332 into the HMR by excepting Class 9 air bag inflators, air bag modules, or seat-belt pretensioners assigned to UN3268 from the requirement to provide the EX number on the shipping paper; (3) a simple clarification that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR; (4) incorporates provisions of DOT-SP 13996 into the HMR by authorizing the use of non-DOT specification, reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices, for transportation of air bag inflators, air bag modules, and seat-belt pretensioners; and (5) permits several

additional types of packaging to maintain alignment with the 17th revised edition of the UN Model Regulations.

The final rule adopts Alternative 5, "Incorporate Two Special Permits and Reduce Burdensome/Extraneous Provisions." By amending the HMR with these requirements, PHMSA will be incorporating the provisions contained in two widely used or longstanding special permits that have established safety records. These revisions are intended to eliminate the need for future renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an equivalent level of safety.

#### Current Compliance Costs

As noted previously, current compliance costs consist primarily of paperwork requirements for both industry and the Government. Paperwork burden is encountered in three different areas: in the class approval process, in the granting of special permits, and in providing the required information on shipping papers.

Based upon a review of our special permits and general approvals databases, it is estimated that PHMSA reviews approximately 200 applications per year for classification approvals, other general approvals, and special permits associated with Class 9 air bags inflators, air bag modules, and seat-belt pretensioners. Assuming that PHMSA spends \$414 per application,<sup>4</sup> it's estimated the annual cost to the Government to be \$82,800.

Industry also incurs a cost for preparing and submitting these applications, as well as retaining records. According to the Institute for the Makers of Explosives, industry spends approximately \$825 to apply for each renewal, party status, or modification of a special permit that deals with the transportation of bulk explosives using multipurpose bulk trucks. Using this figure as a proxy for the cost to industry for preparing and submitting applications regarding air bag inflators, air bag modules, and seat-belt pretensioners, it's estimated the annual cost to the automobile industry to be \$165,000. Grantees are currently required to retain a copy of their application and all supporting documentation, but these recordkeeping costs are assumed to be negligible; even at 1 cent per page per year and 100

pages of documentation, such costs would only amount to \$200 per year.

The biggest cost to industry is assumed to be the cost of verifying and then transcribing the EX number on shipping papers. In its petition, NAAHAC estimated this cost to be approximately \$890K per year.

#### Timeframe for the Analysis

PHMSA estimates that the economic effects of this rulemaking, once finalized and adopted, will be sustained for many years into the future. Notwithstanding this, because of the difficulty of and uncertainty associated with forecasting industry effects into the far future, PHMSA assumes a 10-year time period to quantify and monetize the costs and benefits and demonstrate the net effects of the proposal.

#### Costs of the Final Rule

Costs to the public and PHMSA accrue from the factors associated with the requirements set forth in the regulations and the enforcement methods and procedures adopted by the Federal Government for carrying out the objectives of the rules and regulations. Examples of costs include (but are not limited to): Goods and services required to comply with the regulation; measures of productivity, such as losses related to work time; increases in incident-related death, illness, or disability that can be attributed to the rule; and payments to standard-setting organizations for the standards.

In this analysis, we consider two different costs of the rule. The primary cost is likely to be the increased risk associated with streamlining the class approval process for air bags and seat-belt pretensioners. Removing DOT's review of the explosives lab test results increases the chance that a product that should be designated as Class 1.4 is designated as Class 9. It is difficult to quantify this cost, but we do not believe it to be significant for two reasons. A review of PHMSA's approvals database finds that PHMSA has denied or rejected only 1.7 percent of UN3268 approval applications it has received. These denials include requests for consideration that fall outside the scope of the test result and only 0.5 percent was denied for technical reasons. Therefore, the chance of an incorrect class assignment is likely to be less than 0.5 percent. Second, a review of PHMSA's incident database shows that there have only been four incidents involving properly packaged and declared UN3268 air bags or seat-belt pretensioners since 1996. Minimal damages were reported for all four incidents. Therefore, even if a product

<sup>4</sup> This figure is based on an estimate provided by the Special Permits and Approvals Division regarding the cost of reviewing special permits for bulk explosives (email dated July 17, 2012).



is incorrectly assigned as Class 9, the risks associated with it will be small.

The other costs associated with the rule are negligible due to minor revisions to the recordkeeping requirements. People who test and examine air bag inflators, air bag modules, or seat-belt pretensioners will be required to provide the manufacturer a detailed report on each tested design. Key components of the report include a description of the design, an explanation of the tests performed and results, and a recommended classification for tested designs. The manufacturer must retain the report for as long as the design is in production and for 15 years thereafter. Additionally, the manufacturer must make the report available to DOT officials upon request. This record retention requirement ensures that a detailed test report of each air bag inflator, air bag module, or seat-belt pretensioner design is maintained and available for the useful life of the device. These records may be used to verify the accuracy and validity of the tests and classification recommendation.

It should be noted that PHMSA currently requires industry to retain a copy of the classification application, all supporting documentation, and a copy of the approval, as well to make such materials available to DOT upon request. So while there may be a marginal increase in the amount of documentation retained, we believe the cost will be negligible.

#### Benefits of the Final Rule

Typically the benefits of rules are derived from their health and safety factors. Since the Federal Regulatory Agencies often design regulation to reduce risks to life, evaluation of the benefits of reducing fatality risks can be the key part of the analysis. Examples of benefits in the form of reduced expenditures include (but are not limited to): Private-sector savings, Government administrative savings, gains in work time, and reduced costs of compliance. In this case, most of the benefits from the rule will be derived from reduced compliance costs and Government workload.

As discussed previously, PHMSA is currently incurring an estimated \$82,800 per year to process and review special permits and approvals associated with Class 9 air bags inflators, air bag modules, and seat-belt pretensioners. As shown above, industry incurs an estimated \$165,000 per year to prepare and submit applications for special permits and approvals, and \$890,000 per year to

provide the EX number on shipping papers. Combined, these costs total \$1,137,800 per year. Since the objective of the final rule is to eliminate these costs, the benefits that can be achieved are estimated to be \$1,137,800 per year.

It should be noted that reductions in the costs of transporting air bag inflators, air bag modules, and seat-belt pretensioners could be passed on to automobile manufacturers, which would give rise to additional demand and lead to further implementation of the technology within the motor vehicle fleet. Such a possibility would presumably contribute to a reduction in injuries and fatalities, a benefit we are not able to quantify but believe to be small, given the small savings being realized.

#### Summary of Discounted Net Benefits of the Final Rule

The net benefits of the final rule are calculated by subtracting the costs from the benefits. Since the costs are assumed to be negligible, the first-year net benefits are estimated to be \$1.14 million. Based upon the market analysis presented in Section 2.2 of the RIA, we assume these benefits will grow at an annual average rate of 5 percent.<sup>5</sup> Calculating the present value of this net benefit stream over a 10-year forecast horizon produces an estimate that ranges between \$10 million and \$12 million at 7 percent and 3 percent discount rates, respectively.

Overall, in this rulemaking effort we evaluated alternative proposals and ultimately chose to finalize the amendments presented in the NPRM. The amendments from this final rule promote retrospective analysis to modify and streamline existing requirements that are outmoded, ineffective, insufficient, or excessively burdensome.

#### C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"), and the President's memorandum on "Preemption" published in the **Federal Register** on May 22, 2009 (74 FR 24693). This final rule would preempt State, local, and Indian tribe requirements but does not amend any regulation that has substantial direct effects on the States,

<sup>5</sup> In its recent report, "Global Automotive Airbag Market 2011–2015," TechNavio is forecasting that the global airbag market will grow at a compounded annual average growth rate of 11.54 percent. Given the maturity of the airbag market in the United States, we believe the growth rate in the U.S. market will be less than the global growth rate and therefore assumed 5 percent for the U.S. market.

the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses subject areas (1), (3), and (5), above. With the adoption of this final rule, this rulemaking would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" as the Federal requirements. Furthermore, this final rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125 (b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of this final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for these requirements will be one year from the date of publication of this final rule in the **Federal Register**.

#### D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments").

Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

*E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. The final rule will not impose increased compliance costs on the regulated industry. Rather, the final rule incorporates current approval procedures for the transportation of air bag inflators, air bag modules, and seat-belt pretensioners into the HMR and provides additional flexibility for persons seeking to obtain such approval. In addition, the rulemaking excepts certain shipments from the specific documentation requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this final rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, we certify that this final rulemaking will not have a significant or negative economic impact on a substantial number of small entities, and in reality should provide positive economic benefits (i.e., reduced compliance burden) for those small entities.

*Consideration of alternative proposals for small businesses.* The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

The impact of this final rule is not expected to be significant. The amendments are generally intended to provide relief to shippers, carriers, and packaging manufacturers and testers, including small entities. This relief will provide positive economic benefits to shippers, carriers, and packaging manufacturers and testers, including small entities however; these benefits are not at a level that can be considered economically significant.

Therefore, this final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

*F. Paperwork Reduction Act*

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137-0051, entitled "Rulemaking, Special Permits, and Preemption Requirements," with an expiration date of April 30, 2014. This final rule will result in a decrease in the annual burden and costs under OMB Control Number 2137-0051 due to amendments to incorporate provisions contained in certain widely-used or longstanding special permits that have an established safety record.

PHMSA also has an approved information collection under OMB Control Number 2137-0557, entitled "Approvals for Hazardous Materials," with an expiration date of May 31, 2014. While this final rule will result in a slight increase in the annual burden and cost to OMB Control Number 2137-0557 for the minor recordkeeping requirements under § 173.166, this final rule will result in an overall decrease in the annual burden and cost to OMB Control Number 2137-0557 due to the larger cost savings of reducing the number of approvals required by testers of air bags inflators and air bag modules. PHMSA has an approved information collection under OMB Control Number 2137-0034, entitled "Hazardous Materials Shipping Papers and Emergency Response." This final rule will result in a decrease in the annual burden and cost due to shippers no longer being required to put the EX numbers on shipping papers for air bag modules.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This final rule identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in

this final rule. PHMSA has developed burden estimates to reflect changes in this rule and estimates that the information collection and recordkeeping burdens would be revised as follows:

OMB Control No. 2137-0051:  
Decrease in Annual Number of Respondents: 45  
Decrease in Annual Responses: 45  
Decrease in Annual Burden Hours: 360  
Decrease in Annual Burden Costs: \$18,000.00

OMB Control No. 2137-0557:  
Decrease in Annual Number of Respondents: 207  
Decrease in Annual Responses: 207  
Decrease in Annual Burden Hours: 569.25  
Decrease in Annual Burden Costs: \$11,385.00

OMB Control No. 2137-0034:  
Decrease in Annual Number of Respondents: 207  
Decrease in Annual Responses: 15,500  
Decrease in Annual Burden Hours: 285.33  
Decrease in Annual Burden Costs: \$5,706.60

PHMSA specifically requested comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under the proposed rule; and we did not receive any comments disputing these numbers. Therefore, we are proceeding as is with these numbers.

*G. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*H. Unfunded Mandates Reform Act of 1995*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

*I. Environmental Assessment*

The National Environmental Policy Act, 42 U.S.C. 4321-4375, requires that

federal agencies consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the action; (2) alternatives to the action; (3) probable environmental impacts of the action and alternatives; and (4) the agencies and persons consulted during the consideration process (40 CFR 1508.9(b)).

#### Description of Action

Docket No. PHMSA–2010–0201 (HM–254), Final Rule

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 *et seq.* To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

#### Purpose and Need

Promote regulatory relief for the classification and shipment of air bag inflators, air bag modules, and seat-belt pretensioners while maintaining safety. Respond to rulemaking petitions and provide efficiencies available to special permit holders to the air bag inflator, air bag module, and seat-belt pretensioner industry.

#### Alternatives Considered

*No Action Alternative (1):* Leave the previously-listed provisions in the HMR as is.

*Alternative (2):* Go forward with the proposed amendments to the HMR in the NPRM.

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rulemaking, and facilitate international commerce. Therefore, we rejected the no-action alternative and selected alternative 2.

#### Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The

hazardous materials regulatory system is a risk management system that is prevention oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. Most hazardous materials are assigned to one of three packing groups based upon its degree of hazard, from a high hazard Packing Group I material to a low hazard Packing Group III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation incidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short term impacts that can be reduced or eliminated through prompt clean up and decontamination of the accident scene.

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: (1) Risk of release and

resulting environmental impact; (2) risk to human safety, including any risk to first responders; (3) longevity of the packaging; and (4) if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations.

In this final rule, PHMSA revised the regulations to incorporate the terms of two special permits into the HMR. The revisions in this final rule involve the transportation of air bag inflators, air bag modules, or seat-belt pretensioners that have been classed as UN3268, miscellaneous hazardous materials (Class 9) and UN0431, Articles, pyrotechnic *for technical purposes*, Division 1.4G.

The Class 9 classification indicates that the material presents a hazard during transportation (but which does not meet the definition of any other hazard class in the HMR), a Class 9 material ranks last in all items regulated by the U.S. DOT in terms of hazard precedence and risk. The revisions in this final rule reflect that fact and will reduce the unnecessary burdens on not just the offerors of these UN3268 materials, but reduce PHMSA's own administrative costs from reviewing unnecessary approvals and special permits.

A Class 1 classification indicates that the material is any substance or article, including a device, which is designed to function by explosion (i.e., an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion. The term explosive may also include a pyrotechnic substance or article, depending on its characteristics. The unique properties of Class 1 materials require them to be classed and approved in accordance with § 173.56 of the HMR. The revisions in this final rule reflect that fact and will still require Division 1.4G's to be classified by explosive test labs and submitted to PHMSA for review and issuance of EX number approvals.

The primary environmental risk associated with streamlining the class approval process for air bags and seat-belt pretensioners is misclassification of devices that should be designated as Class 1.4G could be designated as Class 9. Removing DOT's review of the explosives lab test results increases this risk. It is difficult to quantify this risk, but we do not believe it to be significant for two reasons. A review of PHMSA's approvals database finds that PHMSA has denied or rejected only 1.7 percent of UN3268 approval applications it has

received. These denials include requests for consideration that fall outside the scope of the test result and only 0.5 percent was denied for technical reasons. Therefore, the chance of an incorrect class assignment is likely to be less than 0.5 percent. Second, a review of PHMSA's incident database shows that there have only been four incidents involving properly packaged and declared UN3268 air bags or seat-belt pretensioners since 1996. Minimal damages were reported for all four incidents. Therefore, even if a product is incorrectly assigned as Class 9, the risks associated with it will be small.

In considering the potential environmental impacts of the final action, PHMSA does not anticipate that the incorporation of the listed special permits will result in any significant impact on the human environment because the process through which special permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. PHMSA requested that commenters comment on foreseeable environmental impacts or risk associated with the incorporation of the proposed special permits, and we received no comments suggesting PHMSA overlooked any.

#### Agencies Consulted

This final rule would affect some PHMSA stakeholders, including hazardous materials shippers and carriers by highway, rail, and vessel, as well as manufacturers and test labs. PHMSA sought comment on the environmental assessment contained in the March 26, 2012, NPRM published under Docket PHMSA-2010-0201 [77 FR 17394] (HM-254) however, PHMSA did not receive any comments on the environmental assessment contained in that rulemaking. In addition, PHMSA sought comment from the following modal partners:

- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- United States Coast Guard

PHMSA did not receive any adverse comments on the amendments adopted in this final rule from these Federal Agencies.

#### Conclusion

PHMSA is making numerous amendments to the HMR in response to a petition for rulemaking and incorporation of two special permits. The amendments adopted in this final rule are intended to update, clarify, or

provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and, in general, make the requirements easier to understand and follow.

Given that this rulemaking amends the HMR to incorporate provisions contained in certain widely-used or longstanding special permits that have an established safety record, these changes in regulation should in fact increase safety and environmental protections. Furthermore, while the net environmental impact of this rule will be positive, we believe there will be no significant environmental impacts associated with this final rule.

#### J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (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) which may be viewed at: <http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>.

#### K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of

international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. In this final rule, PHMSA is revising the HMR to align with international standards by: permitting several additional types of packaging to maintain alignment with the 17th revised edition of the UN Model Regulations. This amendment is intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, ensure the smooth flow of hazardous materials from their points of origin to their points of destination, and facilitate effective emergency response in the event of a hazardous materials incident. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

#### L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This final rule does not involve a technical standard; therefore, there are no issues in this rulemaking that comprise the National Technology Transfer and Advancement Act of 1995.

#### List of Subjects

##### 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

##### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, PHMSA is amending 49 CFR Chapter I as follows:

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS**

■ 1. The authority citation for part 172 is revised to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 2. In § 172.102 in paragraph (c)(1), special provision 161 is revised to read as follows:

**§ 172.102 Special provisions.**

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*

161 For domestic transport, air bag inflators, air bag modules or seat-belt pretensioners that meet the criteria for a Division 1.4G explosive must be transported using the description, “Articles, pyrotechnic for technical purposes,” UN0431. See § 173.166(d)(1) of this subchapter for an exception regarding air bag inflators, air bag modules, or seat-belt pretensioners that are installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels.

\* \* \* \* \*

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

■ 3. The authority citation for part 173 is revised to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 4. Section 173.166 is revised to read as follows:

**§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.**

(a) *Definitions.* An *air bag inflator* (consisting of a casing containing an igniter, a booster material, a gas generant and, in some cases, a pressure receptacle (cylinder)) is a gas generator used to inflate an air bag in a supplemental restraint system in a motor vehicle. An *air bag module* is the air bag inflator plus an inflatable bag assembly. A *seat-belt pretensioner* contains similar hazardous materials and is used in the operation of a seat-belt restraining system in a motor vehicle.

(b) *Classification.* (1) An air bag inflator, air bag module, or seat-belt

pretensioner, excluding those which contain flammable or toxic gases or mixtures thereof, may be classed as Class 9 (UN3268) if the air bag inflator, air bag module, or seat-belt pretensioner, or if more than a single air bag inflator, air bag module, or seat-belt pretensioner is involved then the representative of the maximum parameters of each design type, is examined and successfully tested by a person or agency who is authorized by the Associate Administrator to perform examination and testing of explosives under § 173.56(b)(1), and who:

(i) Does not manufacture or market explosives, air bag inflators, air bag modules, or seat-belt pretensioners, is not owned in whole or in part, or is not financially dependent upon any entity that manufactures or markets explosives, air bag inflators, air bag modules, or seat-belt pretensioners;

(ii) Performs all examination and testing in accordance with the applicable requirements as specified in Special Provision 160 (see § 172.102 of this subchapter); and

(iii) Maintains records in accordance with paragraph (g) of this section.

(iv) By adhering to all the provisions specified in paragraph (b)(1) of this section, the Class 9 (UN3268) air bag inflator, air bag module, or seat-belt pretensioner design is not required to be submitted to the Associate Administrator for approval or assigned an EX number;

(2) An air bag inflator, air bag module, or seat-belt pretensioner may be classed as Division 1.4G if the maximum parameters of each design type has been examined and successfully tested by a person or agency who is authorized by the Associate Administrator to perform such examination and testing of explosives under § 173.56(b)(1). For domestic transport, air bag inflators, air bag modules or seat-belt pretensioners that meet the criteria for a Division 1.4G explosive must be transported using the description, “UN0431, Articles, pyrotechnic for technical purposes” as specified in Special Provision 161 (see § 172.102 of this subchapter). Further, as a Class 1 explosive, the manufacturer must submit to the Associate Administrator a report of the examination and assignment of a recommended shipping description, division, and compatibility group, and if the Associate Administrator finds the approval request meets the regulatory criteria, the explosive may be approved in writing and assigned an EX number; or

(3) The manufacturer has submitted an application, including a classification issued by the competent

authority of a foreign government to the Associate Administrator, and received written notification from the Associate Administrator that the device has been approved for transportation and assigned an EX number.

(c) *EX numbers.* (1) When an air bag inflator, air bag module, or seat-belt pretensioner is classed and approved as a Division 1.4G and offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator, module, or pretensioner in association with the basic description required by § 172.202(a) of this subchapter. Product codes must be traceable to the specific EX number assigned to the inflator, module, or pretensioner by the Associate Administrator. Further, if the EX number or product code is contained on the shipping paper then it is not required to be marked on the outside package.

(2) An air bag inflator, air bag module, or seat-belt pretensioner when classed as a Class 9 (UN3268) under the terms of paragraph (b)(1) of this section, is excepted from the EX number requirements of this paragraph (c).

(d) *Exceptions.* (1) An air bag inflator, air bag module, or seat-belt pretensioner that is classed as a Class 9 (UN3268) under the terms of paragraph (b)(1) of this section and is installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels, is not subject to the requirements of this subchapter. An air bag inflator, air bag module, or seat-belt pretensioner that has been classed as a Division 1.4G and approved by the Associate Administrator and is installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels, is not subject to the requirements of this subchapter.

(2) An air bag module containing an inflator that has been previously approved by the Associate Administrator for transportation is not required to be submitted for further examination or approval. For classifications granted after July 30, 2013, if the Class 9 designation for the inflator is contingent upon packaging or other special means specified by the authorized testing agency, the modules must be tested and certified separately to determine if they can be shipped as “UN3268, Air bag modules, 9, PG III”.

(3) An air bag module containing an inflator that has previously been approved by the Associate Administrator as a Division 2.2 material is not required to be submitted for

further examination to be reclassified as a Class 9 material.

(4) *Shipments to recycling or waste disposal facilities.* When offered for domestic transportation by highway, rail freight, cargo vessel or cargo aircraft, a serviceable air bag inflator, air bag module, or seat-belt pretensioner classed as either Class 9 (UN3268) or Division 1.4G removed from a motor vehicle that was manufactured as required for use in the United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, when these articles are shipped to a recycling facility, the word "Recycled" must be entered on the shipping paper immediately after the basic description prescribed in § 172.202 of this subchapter. No more than one device is authorized in the packaging prescribed in paragraph (e)(1), (2) or (3) of this section. The device must be cushioned and secured within the package to prevent movement during transportation.

(e) *Packagings.* Rigid, outer packagings, meeting the general packaging requirements of part 173 are authorized as follows. Additionally, the UN specification packagings listed in paragraphs (e)(1), (2), and (3) of this section must meet the packaging specification and performance requirements of part 178 of this subchapter at the Packing Group III performance level. The packagings must be designed and constructed to prevent movement of the articles and inadvertent activation. Further, if the Class 9 designation is contingent upon packaging specified by the authorized testing agency, shipments of the air bag inflator, air bag module, or seat-belt pretensioner must be in compliance with the prescribed packaging.

(1) 1A2, 1B2, 1N2, 1D, 1G, or 1H2 drums.

(2) 3A2, 3B2, or 3H2 jerricans.

(3) 4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, or 4H2 boxes.

(4) *Reusable high-strength containers or dedicated handling devices.* (i) Reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices are authorized for shipment of air bag inflators, air bag modules, and seat-belt pretensioners from a manufacturing facility to the assembly facility, subject to the following conditions:

(A) The gross weight of the containers or handling devices may not exceed 1000 kg (2205 pounds). Containers or handling devices must provide adequate

support to allow stacking at least three units high with no resultant damage;

(B) If not completely enclosed by design, the container or handling device must be covered with plastic, fiberboard, metal, or other suitable material. The covering must be secured to the container by banding or other comparable methods; and

(C) Internal dunnage must be sufficient to prevent movement of the devices within the container.

(ii) Reusable containers manufactured from high-strength plastic, metal, or other suitable material, or other dedicated handling devices are authorized for shipment of air bag inflators, air bag modules, and seat-belt pretensioners only to, between, and from, intermediate handling locations, provided they meet the conditions specified in paragraphs (e)(4)(i)(A) through (C) of this section and:

(A) The packages may be opened and re-packed by an intermediate handler as long as no modifications or changes are made to the packagings; and

(B) Transportation must be made by private or contract carrier.

(5) Packagings which were previously authorized in an approval issued by the Associate Administrator may continue to be used, provided a copy of the approval is maintained while such packaging is being used.

(6) *Devices removed from a vehicle.* When removed from, or were intended to be used in, a motor vehicle that was manufactured as required for use in the United States and offered for domestic transportation by highway to Recycling or Waste Disposal facilities, a serviceable air bag inflator, air bag module, or seat-belt pretensioner classed as Class 9 UN3268 may be offered for transportation and transported in the following additional packaging:

(i) Specification and non-specification steel drums with a wall and lid thickness not less than 20 gauge. The lid must be securely affixed with a lever-locking or bolted-ring assembly. The lid of the drum must provide ventilation of the drum contents in a fire. The drum may be filled with any combination of air bag inflators, air bag modules, or seat-belt pretensioner devices to a capacity not greater than fifty (50) percent of the drum's total volume. In addition, inner packagings or cushioning may not be used to fill the void space; or

(ii) Outer packaging consisting of 4H2 solid plastic boxes or non-specification rugged reusable plastic outer packaging and inner static-resistant plastic bags or trays. If not completely enclosed by design, the container or handling device

must be covered with plastic, fiberboard, metal or other suitable material. The covering must be secured to the container by banding or other comparable methods. The articles must be packed to prevent movement within the container during transportation.

(f) *Labeling.* Notwithstanding the provisions of § 172.402 of this subchapter, each package or handling device must display a CLASS 9 label. Additional labeling is not required when the package contains no hazardous materials other than the devices.

(g) *Recordkeeping requirements.* (1) Following the examination of each new design type classed as a Class 9 in accordance with paragraph (b)(1) of this section, the person that conducted the examination must prepare a test report and provide the test report to the manufacturer of the air bag inflator, air bag module, or seat-belt pretensioner. At a minimum, the test report must contain the following information:

(i) Name and address of the test facility;

(ii) Name and address of the applicant;

(iii) Manufacturer of the device. For a foreign manufacturer, the U.S. agent or importer must be identified;

(iv) A test report number, drawing of the device, and description of the air bag inflator, air bag module, or seat-belt pretensioner in sufficient detail to ensure that the test report is traceable (e.g. a unique product identifier) to a specific inflator design;

(v) The tests conducted and the results; and

(vi) A certification that the air bag inflator, air bag module, or seat-belt pretensioner is classed as a Class 9 (UN3268).

(2) For at least fifteen (15) years after testing, a copy of each test report must be maintained by the authorizing testing agency. For as long as any air bag inflator, air bag module, or seat-belt pretensioner design is being manufactured, and for at least fifteen (15) years thereafter, a copy of each test report must be maintained by the manufacturer of the product.

(3) Test reports must be made available to a representative of the Department upon request.

Issued in Washington, DC on July 25, 2013, under authority delegated in 49 CFR part 1.

**Cynthia L. Quartermann,**  
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