

and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

#### D. Unfunded Mandates

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this regulatory action would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538).

#### E. Federalism

This action would not have federalism implications because it is not expected to have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999).

#### F. Indian Tribal Governments

This action would not have tribal implications as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action is not expected to have substantial direct effects on Indian Tribes, would not significantly or uniquely affect the communities of Indian Tribal governments, and would not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

#### G. Protection of Children

This action is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

#### H. Effect on Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### I. Technical Standards

Because this action would not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note), does not apply to this action.

#### J. Environmental Justice

This action would not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 20, 2012.

**Wendy C. Hamnett,**

*Director, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. Add § 721.10281 to subpart E to read as follows:

#### § 721.10281 Hexabromocyclododecane and 1,2,5,6,9,10-hexabromocyclododecane.

(a) *Chemical substances and significant new uses subject to reporting.*

(1) The chemical substances identified as hexabromocyclododecane (CASRN 25637–99–4) and 1,2,5,6,9,10-hexabromocyclododecane (CASRN 3194–55–6) are subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is use in consumer textiles, other than for use in motor vehicles.

(b) *Specific requirements.* The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Definitions.* The definitions in § 721.3 apply to this section. In addition, the following definitions apply:

*Consumer textile* means any cloth, fabric, or other item produced during the milling process (including spinning, weaving, knitting, felting, or finishing), consisting in whole or in part as a product that is sold to or made available to a private individual who uses the product in or around a permanent or temporary household or residence, during recreation, or for any personal use or enjoyment. Consumer textiles include, but are not limited to, upholstered household furniture, mattresses, and draperies.

*Motor vehicle* has the meaning found at 40 CFR 85.1703.

(2) *Revocation of article exemption.* The provisions of § 721.45(f) do not apply to this section. A person who imports or processes the chemical substances identified in paragraph (a)(1) of this section as part of an article for the significant new use described in paragraph (a)(2) of this section must submit a significant new use notice (SNUN).

[FR Doc. 2012–7207 Filed 3–23–12; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** In this NPRM, PHMSA is proposing to revise the Hazardous Materials Regulations applicable to air bag inflators, air bag modules, and seat-belt pretensioners. The proposed changes would incorporate the provisions of two special permits into the regulations. In addition, PHMSA proposes to revise the current approval and documentation requirements for a material appropriately classified as a

UN3268 air bag inflator, air bag module, or seat-belt pretensioner. The proposed changes will, if adopted, reduce the regulatory burden on the automotive industry while maintaining the current level of safety.

**DATES:** Comments must be submitted by May 25, 2012. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

**ADDRESSES:** You may submit comments identified by the docket number (PHMSA–2010–0201 (HM–254)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information. Please see the Privacy Act section within the Regulatory Analyses and Notices.

**Docket:** For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

**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 comment (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) or you may visit <http://www.dot.gov>.

**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.

**SUPPLEMENTARY INFORMATION:**

## Table of Contents

- I. Background
- II. Summary Review of Proposed Amendments
- III. Regulatory Analyses and Notices
- IV. List of Subjects

### I. Background

The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) are issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and govern the safe transportation of hazardous materials by highway, rail, vessel, and air. The scope of the HMR includes hazardous materials classification, packaging, hazard communication, emergency response information, and training, etc. Furthermore, included within these provisions are the regulations for the transportation of air bag inflators, air bag modules, and seat-belt pretensioners in § 173.166.

Found in § 173.166(a), PHMSA provides definitions for an air bag inflator (a gas generator used to inflate an air bag in a supplemental restraint system in a motor vehicle), an air bag module (the air bag inflator plus an inflatable bag assembly), and a seat-belt pretensioner (containing similar hazardous materials and is used in the operation of a seat-belt restraining system in a motor vehicle). In § 173.166(b)–(f), PHMSA also provides the regulatory requirements for the classification, EX number assignments, exceptions, packagings, and labeling requirements for these air bag inflators, air bag modules, and seat-belt pretensioners.

In a petition dated June 24, 2008 (P–1523) and two addendums submitted on February 26, 2009 and June 14, 2011, the North American Automotive Hazmat Action Committee (NAAHAC), representing numerous automobile manufacturers and component suppliers located in North America as well as in Asia and Europe, 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 suggests 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.

In addition, NAAHAC suggests that PHMSA incorporate the following long-standing special permits into the HMR:

- *DOT–SP 12332*—This special permit authorizes the transportation in commerce of certain air bag inflators, air bag modules, and seat-belt pretensioners that meet the requirements for use in the United States, and have been removed

from or were intended to be used in a motor vehicle without listing the EX-approval numbers or product names on the shipping papers. 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, as appropriate.

- *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.

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 suggests that PHMSA incorporate these two long-standing special permits into the HMR. PHMSA agrees with the petition and proposes to amend the HMR to incorporate certain requirements based on these two existing special permits issued under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127). These special permits set forth alternative requirements (variances) to the requirements in the HMR by means that achieve a safety level that at the least corresponds to the safety level required under the regulations and that is consistent with the public interest. Congress expressly authorized DOT to issue variances in the Hazardous Materials Transportation Act of 1975, when appropriate.

The HMR generally are performance-oriented regulations that provide the regulated community a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. The hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively and safely integrate new products and technologies into the production and transportation stream. Thus, special permits allow developing products and technologies to move in commerce for testing and other purposes, promote increased transportation efficiency and productivity, and support global competitiveness.

A special permit must achieve at least an equivalent level of safety to that specified in the HMR. Implementation of new technologies and operational techniques can enhance safety because the authorized operations or activities achieve a greater level of safety than currently required under the regulations. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers. PHMSA conducts ongoing reviews of special permits to identify widely-used and longstanding special permits with established safety records for incorporation into the HMR for broader applicability.

Incorporating these two special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether a specific special permit is a candidate for regulatory action include: The safety record for hazardous materials transported; transportation operations conducted under a special permit; the potential for broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

Regarding the proper classifying of air bag inflators, air bag modules, and seat-belt pretensioners, NAAHAC notes that it is the responsibility of the device manufacturer to ensure that testing,

verification, and classification of its products has been conducted in accordance with the HMR. Special Provision 160 (see § 172.102 of the HMR) requires the manufacturer to get the air bag inflators, air bag modules, and seat-belt pretensioners tested by a DOT explosives test lab, in accordance with Test series 6(c) of Part I of the UN Manual of Tests and Criteria (incorporated by reference; see § 171.7 of the HMR), and then the manufacturer must submit a hazard classification recommendation from that DOT explosives test lab to the DOT. This test is performed to ensure that air bag inflators, air bag modules, and seat-belt pretensioners meet the criteria for classification as Class 9 materials. To pass the test there must be no fragmentation of the device casing or pressure vessel, and no projection hazard or thermal effect that would significantly hinder emergency response efforts in the immediate vicinity. Failure of Test series 6(c) necessitates treatment as an explosive in Class 1, including the EX approval process and inclusion of the EX number on the shipping documentation.

NAAHAC indicates that the current requirement to reference the EX number on the shipping paper for Class 9, UN3268 safety restraint systems is a burden that offers little in terms of hazard communication or transportation safety. In fact, NAAHAC states that the requirement imposes unnecessary costs to obtain, record, and transfer the EX number to shipping documents. According to NAAHAC, the industry-wide costs associated with first verifying and then transferring the EX number to the shipping paper is in excess of \$890,000.00 annually.

## II. Summary Review of Proposed Amendments

PHMSA agrees with the petitioner that requiring Class 9 air bag inflators, air bag modules, and seat-belt pretensioners to be subjected to the EX approval process is unnecessarily burdensome and that eliminating the approval requirement will not adversely affect safety. 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 proposes to revise § 173.166 to address the concerns highlighted in NAAHAC's petition. PHMSA believes changes proposed by this NPRM will promote the safe transportation of Class 9 air bag inflators, air bag modules, and seat-belt pretensioners, while significantly reducing the financial burden on the automotive industry for shipping these

devices. The changes proposed by this NPRM are described in detail below.

### A. Approval Process

In this NPRM, PHMSA proposes 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. As proposed, 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).

As proposed in this NPRM, persons who test and examine air bag inflators, air bag modules, or seat-belt pretensioners will 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 amendment provides 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 is a significant cost savings and no change in the level of safety. Additionally, we propose 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.

Air bag inflators, air bag modules, or seat-belt pretensioners that meet the criteria for a Division 1.4G explosive, (e.g., a device that fails Test series 6(c) of the UN Manual of Tests and Criteria, as provided by Special Provision 160) 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 is proposing in this 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 this NPRM, PHMSA proposes to clarify that a safety restraint device that is installed in a vehicle or vehicle component is not subject to the HMR. 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.

#### *D. Packaging*

In this NPRM, PHMSA is also proposing 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. 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.

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 this 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 requiring no modifications to the original package, this will ensure that

adequate packaging and handling considerations are maintained.

In this NPRM, PHMSA also proposes 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. 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. 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 this 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 believe that the word "Reuse" might be a more appropriate description for the actual action that is taking place. We request 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 this NPRM, we are proposing 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 propose to permit 1N2 and 1D drums, 3B2 jerricans, and 4A, 4B, 4N, and 4H1 boxes.

### **III. Regulatory Analyses and Notices**

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

This notice of proposed rulemaking is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. If adopted as proposed, the final rule would amend the regulations incorporating a petition and provisions from certain widely-used and longstanding special permits that have established a history of safety and which may, therefore, be converted into the regulations for general use.

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

This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. Furthermore, this rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

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. By building off of each other, these two Executive Orders 12866 and 13563 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 NPRM, the proposed amendments to the HMR will not impose increased compliance costs on the regulated industry. Rather, the proposed 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 proposals in this NPRM will reduce the paperwork burden on industry and this agency caused by continued renewals of special permits. The provisions of this proposed rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency. Therefore, the requirements of Executive Orders 12866 and 13563, and the DOT policies and procedures concerning these orders have been satisfied. Overall, this proposed rule should reduce the compliance burden on the regulated industry without compromising transportation safety.

### C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This proposed rule would preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, 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. 5101–5127, 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 proposed rule addresses subject areas (1), (3), and (5), above. If adopted as final, this rule 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 proposed 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 the 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 a final rule in the **Federal Register**.

### D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this NPRM 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 that a rule is not expected to have a significant impact on a substantial number of small entities. The proposed rule will not impose increased compliance costs on the regulated industry. Rather, the proposed 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 proposed rulemaking exempts certain shipments from the specific documentation requirements of the HMR; these exception provisions will increase shipping options and reduce shipment costs. Overall, this proposed rule should reduce the compliance burden on the regulated industry without compromising transportation safety. Therefore, we certify that this proposed rulemaking will not have a significant or negative economic impact on a substantial number of small entities, and in reality

should provide a slight positive economic benefit (i.e., reduced compliance burden) for those small entities.

This notice 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 NPRM may result in a decrease in the annual burden and costs under OMB Control Number 2137–0051 due to proposed changes 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 NPRM may result in a slight increase in the annual burden and cost to OMB Control Number 2137–0557 for proposed minor recordkeeping requirements under § 173.166, this NPRM should 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 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 NPRM may 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 notice identifies revised information collection requests that PHMSA will submit to OMB for

approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed 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 requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number (202) 395–6974.

#### 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 proposed 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 of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

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.

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). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the incident scene. In this NPRM, we are requesting comments on the potential environmental impacts of the proposals.

In this NPRM, PHMSA proposes to incorporate the terms of two special permits into the HMR. Further, all of the proposals in this NPRM 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). While this 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 proposals in this NPRM reflect that fact and if finalized, would 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.

The purpose and need of this rulemaking is to incorporate widely-used special permits or those with an established safety record into the HMR for universal use. More information about the advantages of the proposed action can be found in the preamble (i.e., Summary Review of Proposed Amendments) to this rulemaking. The alternatives considered in the analysis include: (1) The proposed action, that is, incorporation of the proposed special permits as amendments to the HMR; and (2) the "no action" alternative, meaning that none of the proposed special permits would be incorporated into the HMR. PHMSA believes that either of these alternatives would result in equal environmental risk and/or impact because special permits are intended to offer equivalent safety and environmental protection as the HMR.

In considering the potential environmental impacts of the proposed

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. However, PHMSA welcomes and will consider and address comments about foreseeable environmental impacts or risk associated with the incorporation of any proposed special permit that commenters believe PHMSA might have overlooked in this NPRM.

Given that this rulemaking proposes to amend the HMR to incorporate provisions contained in certain widely-used or longstanding special permits that have an established safety record, these proposed changes in regulation should increase safety and environmental protections.

#### J. International Trade Analysis

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. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes 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 notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure that it does not exclude imports that meet this objective. As a result, this proposed rule is not considered as creating an unnecessary obstacle to foreign commerce.

#### IV. List of Subjects in 49 CFR Part 173

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

In consideration of the foregoing, we propose to amend 49 CFR Chapter I as follows:

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

1. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

2. Section 173.166 is proposed to be revised 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 pre-tensioner* 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 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) of this subchapter, 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); and

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

(iv) By adhering to all the provisions specified in § 173.166(b)(1), 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 it has been 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 of this subchapter. 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). 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 will 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 as a Division 1.4G, the packaging is subject to the EX number marking requirements in § 172.320 (or the shipping paper requirements in § 172.202(a)). For shipping papers, the EX number or product code for each approved inflator, module or pretensioner must be listed 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. The EX number or product code 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), is excepted from the EX number requirements of paragraph (c).

(d) *Exceptions.* (1) An air bag module or seat-belt pretensioner that is classed as a Class 9 (UN3268) 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 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.

(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 for Recycling.* 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 United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, 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, and the packaging specification and performance requirements of part 178 of this subchapter at the Packing Group III performance level are authorized as follows. The packagings must be designed and constructed to prevent movement of the articles and inadvertent operation. 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 full 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 to, between, and from, intermediate handling locations, provided they meet the conditions specified in paragraph (e)(4)(i)(A)–(C) of this section and:

(A) 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 until January 1, 2018, 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, a serviceable air bag inflator, air bag module, or seat-belt pretensioner 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 are not required; 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, as appropriate. 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 properly classed as a Class 9 (UN3268).

(2) 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 authorized testing agency that performed the examination and testing, and by the manufacturer of the product.

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

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