



*Council on Safe Transportation of Hazardous Articles*

October 23, 2014

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Dear Dr. El-Sibaie:

The Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) hereby submits comments to the Notice of Proposed Rulemaking (NPRM) published in Docket No. PHMSA-2013-0260 (HM-215M) on August 25, 2014.

COSTHA is a not-for-profit organization representing manufacturers, shippers, distributors, carriers, freight forwarders, trainers, packaging manufacturers and others associated with the hazardous materials transportation industry. In addition to promoting regulatory compliance and safety in hazardous materials transportation, COSTHA assists its members and the public in evaluating the practicality and efficacy of laws, rules and regulations for the safe transportation and distribution of hazardous materials.

COSTHA membership includes industries that are affected by nearly every aspect of this rule, from manufacturers of lithium batteries, to shippers of batteries, consumer electronics, aircraft, automobile and supporting parts manufacturers, as well as air, road, and vessel operators. As expected, we fully support and commend PHMSA's ongoing initiative to harmonize the HMR with the UN Model Regulations.

**Marine Pollutants (§171.4)**

COSTHA supports the amendment to §171.4 to harmonize the requirements for small packages containing Marine Pollutants with the requirements of the IMDG Code to reduce the impediments to multi-modal transport of these Marine Pollutants. The continued expansion of the definition of Environmentally Hazardous Substances (EHS) has resulted in a significant increase in regulating materials which have never been regulated before. Many of these materials are not regulated under the EPA's hazardous substance list (§172.101, Appendix A) while others may be transported in quantities far below the published reportable quantity. We believe the exception adopted by the United Nations and adopted in the ADR (SP375), ICAO TI (SP192), and the IMDG Code (Chapter 2.10) provides an appropriate step to reduce the regulatory burden for materials which provide a very limited risk to the environment.

***Council on Safe Transportation of Hazardous Articles***

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**Definitions (§171.8)**

We concur with the proposal to amend the definitions to include recent changes in the UN Model Regulations.

**Safety Devices (§172.101)**

A new proper shipping name “Safety devices, *electrically initiated*” is proposed to be assigned to identification number UN3268. Current proper shipping names assigned to UN3268 are “Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.” The proposed proper shipping name more appropriately describes materials authorized under this HMT entry in conjunction with the proposed revision to special provision 160 to include a number of vehicle, vessel or aircraft industry life-saving appliances that are actuated by the electric signal of the crash sensor. A new proper shipping name “Safety devices, *pyrotechnic*” is proposed to be assigned to identification number UN0503. The current proper shipping names assigned to UN0503 are “Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.” The proposed proper shipping name more appropriately describes Class 1 materials authorized under this HMT entry. COSTHA supports this new provision as an enhancement to the efficiency in properly identifying and transporting these articles.

This initiative was originally proposed by the North American Automotive Hazmat Action Committee (NAAHAC) through COSTHA at the United Nations Subcommittee on the Transport of Dangerous Goods. The new proper shipping name reflects the broader nature of the entry while reducing the burden on shippers to maintain various proper shipping names in electronic systems and marking supplies for no added safety benefit. COSTHA does note that stocks of these materials are well into the millions, and therefore we request that PHMSA identify a transition period during which the previous proper shipping names may continue to be used in association with the relevant UN number. NAAHAC believes a 1-year transition (until January 1, 2016) would be sufficient to remark packages already in the supply chain. We realize there is no such transition period for air shipments prepared in accordance with the ICAO TI. Therefore COSTHA requests the transition period be provided for ground and vessel shipments.

**Special Provision 367 (§172.102)**

PHMSA proposes a new special provision 367 to clarify that the proper shipping name “Paint related material” or “Printing ink related material” may be used for consignments of packages containing both “Paint” and “Paint related material” or “Printing Ink” and “Printing ink related material” in the same package and sharing the same identification number (UN 1210, UN 1263, UN 3066, UN 3469, or UN 3470). COSTHA supports this new provision as under the same UN entry, there is no difference between “Paint” and “Paint related material” with regard to transport or emergency response requirements. This provision will greatly enhance the efficiencies of businesses transporting these materials.

**Special Provision 372 (§172.102)**

PHMSA proposes adding new special provision 372 and assigning it to the new HMT entry “UN3508, Capacitor, asymmetric.” This special provision states that this entry applies to asymmetric capacitors with an energy storage capacity greater than 0.3 watt hours (Wh) and that asymmetric capacitors with an energy storage capacity of 0.3 Wh or less are not subject to the requirements of this subchapter. This special provision also provides that nickel-carbon asymmetric capacitors containing Class 8 alkaline electrolytes must be transported as UN 2795, Batteries, wet, filled with alkali, electric storage. COSTHA supports this provision as it now gives clear guidance on how manufacturers are to ship these articles.

### **First Aid and Chemical Kits (§173.161)**

COSTHA notes shippers have experienced significant confusion when completing shipping papers for first aid and chemical kits which contain hazardous materials that are not assigned a packing group, such as compressed gases. We support the minimal packaging requirement of Packing Group II, but applaud PHMSA's clarification that in certain cases, a packing group will not be assigned for the purposes of documentation.

### **Safety Devices (§173.166)**

PHMSA notes in the preamble: "...Air bag inflators, air bag modules, and seat-belt pretensioners have a long history of safety in their design and manufacture. However, new types of safety devices such as pyromechanical devices do not yet have an established history. Therefore in the interest of safety PHMSA is proposing not to extend this exception to all Class 9 safety devices but only maintain this exception for air bag inflators, air bag modules, and seat-belt pretensioners and still require that other types of safety devices, such as pyromechanical devices, that are candidates for Class 9 be submitted to the Associate Administrator for approval or assigned an EX number."

COSTHA, NAAHAC and especially the Air Carriers strongly object to this proposal. In 2013 PHMSA codified in §173.166(b)(1)(iv) that under certain conditions a 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. Also, current §173.166(c)(2) excepts the marking of EX numbers on shipping papers for air bag inflators, air bag modules or seat-belt pretensioners, when classified as Class 9 (UN3268), under the terms and conditions of 173.166(b)(1).

The industry has adopted and implemented this regulation, changing software systems and training hazardous materials employees to comply with this regulation. Requiring PHMSA approval and EX numbers for certain Class 9 (UN3268) Safety Devices and the marking of the EX number for these Class 9 safety devices on shipping papers is not a workable proposal for the following reasons:

First, employees who prepare shipping papers will have a difficult task to determine when an EX number is or is not required to be contained on the shipping paper. Training of this requirement by January 1, 2015 will be difficult if not impossible to achieve.

Second, automated software used to prepare shipping papers for hazardous materials will not be capable of differentiating between air bag inflators, air bag modules, seat-belt pretensioners and all other Class 9 (UN3268) safety devices. Software programs are set up to either require an EX number or not require an EX number for UN3268 (Class 9) devices.

Third, carriers are not capable of determining when a Class 9, UN3268 "Safety Device" does or does not require an EX number on the shipping papers. Therefore, if this language is adopted, carriers would likely require an EX number be provided even if one was not associated with the particular safety device.

Fourth, PHMSA approved explosives test labs will witness testing of Safety Devices, other than air bag inflators, air bag modules and seat-belt pretensioners, to determine proper classification. The devices will either pass criteria for classification as Class 9 (UN3268), Class 1.4G (UN0503) or they will fail to obtain classification as a Safety Device. COSTHA and NAAHAC assert that there will be no increased risk to safety based on the explosives examiner's classification determination.

Fifth, adding the requirement for certain Safety Devices to be submitted to PHMSA for approval and an EX number will add to PHMSA's workload of parts that require approval. Current processing time for approvals is 180 to 200 days. This delay in bringing new products to market will hurt US manufacturers and carriers because new products will be sourced to other nations.

Sixth, the new Safety Devices, other than air bag inflators, air bag modules and seat-belt pretensioners, have already been manufactured and shipped for several years, but with classifications such as Class 1.4S (UN0323) or "Not regulated as a Class 1 Explosive". These devices typically contain significantly lower amounts of pyrotechnics, and therefore pose less risk to safety when shipping and handling. COSTHA and NAAHAC are not aware of any incidents or accidents involving these devices.

Due to the reasons stated above, we recommend the following wording for §173.166:

*§173.166(b)(iv): By adhering to all the provisions specified in paragraph (b)(1) of this section, the Class 9 (UN3268) safety device design is not required to be submitted to the Associate Administrator for approval or assigned an EX number; ...*

*§173.166(c) EX numbers. (1) When a Safety Device, Pyrotechnic 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 Safety Device, Pyrotechnic 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 safety device, pyrotechnic 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) A safety device 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).*

*§173.166(d)(2): An air bag module containing an inflator and / or safety device that has been previously classified as Class 9 under the terms of paragraph (b)(1) 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 or safety device 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, Safety Devices, 9,".*

### **Lithium Batteries (§173.185)**

COSTHA supports the elimination of packing groups for lithium batteries. For articles, the packing group does not relate to the degree of hazard posed by the material but rather is assigned generically to the article. There is limited value in requiring an indication of the packing group in association with the shipment. Currently and without specific rationale, some articles are assigned packing groups while others are not. This proposed change provides a level of consistency for all articles specifically listed in the HMT.

We also support the inclusion of large packagings for lithium batteries under §173.185(b). Large packages are beneficial when used for single large batteries and equipment powered by such batteries when non-bulk packagings are simply too small to accommodate the material being shipped. These packaging options are used internationally, and therefore it would be beneficial to allow them for use domestically in the US as well.

We strongly support the option to use the “Cargo Aircraft Only” or “CAO” label on shipments of small lithium metal batteries under (c)(iii) in place of the existing “Forbidden on passenger aircraft” statement. This provision allows for the use of a commonly recognized handling label which may be more effective at communicating the prohibition than the current wordy marking.

### **Adsorbed Gases (§173.302(c))**

PHMSA proposes revising the Hazardous Materials Table (HMT) in § 172.101 to include seventeen new entries for adsorbed gases. Additionally, PHMSA proposes to add into the HMR a definition for adsorbed gas, authorized packagings, and safety requirements including but not limited to quantity limitations and filling limits. Entries classified as Division 2.3 gases are forbidden for transport by aircraft.

COSTHA applauds the USDOT for their support and involvement at the UN to create Hazardous Materials Table entries to address shipments of gas, which when packaged for transport, are adsorbed into a solid porous material in a pressure receptacle. We note that Entegris has submitted comments addressing the specific proposals. These comments included:

- Adding the entry “UN3522, Arsine, adsorbed” to the table as it was apparently omitted from consideration;
- Removing the reference to §173.302c in §172.101, Hazardous Materials Table, Column 8C for the new entries. Entegris notes cylinders constructed under §173.302c would not be considered “bulk” and therefore should not be referenced as such; and
- A request for PHMSA to consider adding additional language to permit the use of DOT specification cylinders which are currently authorized for the transport of adsorbed gases. COSTHA supports the inclusion of such a section as it enables industry to utilize existing DOT cylinders without the use of a special permit. The approach proposed in the comments submitted by Entegris would be similar to the approach taken in §173.302a and §173.302b for non-liquefied compressed gases in DOT and UN cylinders, respectively.

### **Aviation Rulemaking Committee (§175.25)**

COSTHA applauds PHMSA’s action of revising §175.25(b) to harmonize with the ICAO TI regarding the clarification that for ticket purchases, the hazardous materials notification must be presented at the point of ticket purchase or, if this is not practical, made available in another manner to passengers prior to the check-in process.

COSTHA would like to note however, that there is a question of how the Advisory Circular will be drafted after implementation date of the final rule. Will the FAA continue to update the circular after the Final Rule comes into force or will this guidance information be eliminated? Will PHMSA continue to communicate with the FAA in the future on this issue?

### **Inspecting Shipments (§175.30)**

PHMSA is proposing to harmonize with the ICAO TI by removing a redundant statement in §175.30(e)(i). We agree that this statement is not relevant and leads to confusion.

We further support the removal of the new paragraph §175.30(a)(5) adopted in HM-224F. With the requirement of a shipping paper for Section IB shipments in the ICAO TI, the allowance of an alternate document in the HMR would create significant confusion for air carrier acceptance agents.

**Notice to Pilot in Command (§175.33)**

The COSTHA Air Carrier Roundtable (ACR) applauds PHMSA's proposal to remove the requirement for inclusion of the technical name on Notices to Pilot in Command (NOPC) to align with decisions made by the ICAO Dangerous Goods Panel. As presented in previous public meetings on requirements on the NOPC, the technical name creates significant and unnecessary complication in providing information to the flight crew. The NOPC already includes other components of the basic description (identification number, proper shipping name, hazard class, packing group). Flight crews are trained to utilize the ICAO Emergency Response Guidance for Aircraft Incidents Involving Dangerous Goods, Doc 9481 for emergency response, which is driven by the identification number, not the proper shipping name. Given that consignments may include numerous technical names, the additional information adds to an already lengthy document. While emergency responders on the ground may utilize technical names to assist in emergency response, the NOPC is not intended as an emergency response document for ground responses. It is to provide notification to the flight crew of the hazardous materials loaded aboard the aircraft. Both operators and shippers maintain additional information which can be readily provided to emergency responders on the ground that would include additional information relevant to the response.

During the drafting of the 2011-2012 edition of the ICAO TI, the ICAO Dangerous Goods Board, on which PHMSA and the FAA actively participate, decided to remove the requirement to include "LIMITED QUANTITY" or "LTD QTY" on the shipping paper when a material is packed in accordance with the limited quantity provisions for air. This difference is referenced in a letter of interpretation regarding limited quantity shipping papers (Ref. No. 12-0035). Since the contents of the ICAO NOPC originate with the requirements of an ICAO shipping paper, the requirement to reference limited quantities on the NOPC was also removed.

COSTHA notes the difference between the limited quantity notations on shipping papers between the ICAO TI and §172.203(b) creates confusion with shippers, air carriers, and enforcement officials. This confusion is highlighted when one considers the requirement to include all elements of the shipping paper on the Notice to Pilot in Command in §175.33. Therefore, COSTHA requests PHMSA harmonize with ICAO by removing the requirement to reference limited quantity shipments on the NOPC.

COSTHA also believes PHMSA should be proactive in a continuing review of the contents of the NOPC and consider removing additional requirements which are burdensome. We note that PHMSA and the FAA have held joint public meetings on the issue of the NOPC in the past. We would encourage PHMSA to consider removing the requirement for a special permit or competent authority reference number as well. These documents are not generally maintained with the NOPC and flight crews would not have ready access or a need to reference these documents in an emergency. Instead, these documents would be available with the shipping paper for communication to a possible diversion point for emergency response.

**Quantity Limitations on Aircraft (§175.75)**

COSTHA notes continued frustration at the continued lack of harmonization with the ICAO TI regarding the quantities of hazardous materials permitted on aircraft. The limitations in §175.75 continue to impose a significant economic disadvantage to domestic air carriers in global transport. Air incidents internationally do not suggest any correlation with quantity limitations and reduced incidents. Therefore, the COSTHA ACR continues to urge PHMSA to reconsider the limitations noted in §175.75.

**Removal of Segregation Requirements (§175.630)**

COSTHA agrees with PHMSA that harmonizing the HMR with recent amendments that will appear in the 2015-2016 ICAO TI deleting special segregation requirements for Division 6.1 and 6.2 enables carriers to operate more efficiently. Without harmonization US carriers are placed at an economic disadvantage. As PHMSA noted, the segregation was originally required in the ICAO TI. However, increased packaging standards within relevant packaging instructions, which are currently harmonized with the HMR, resulted in a negligible risk to contamination of food stuffs. We believe this effort would provide a positive benefit to shippers and carriers alike and create a more harmonized system globally.

COSTHA fully appreciates and supports PHMSA's continuing leadership and participation as the voice of the United States regulatory agencies and industry at international forums. We continue to believe a single voice presented at all international regulatory forums provides a consistent and authoritative approach to the global regulatory process.

If you have any questions regarding our comments, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Ferguson", followed by a long horizontal line extending to the right.

Tom Ferguson  
Sr. Technical Consultant