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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 173

[Docket No. PHMSA-2011-0143 (HM-253)]

RIN 2137-AE81

Hazardous Materials: Reverse Logistics (RRR).

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA is proposing to revise the Hazardous Materials Regulations applicable to return shipments of certain hazardous materials by motor vehicle. PHMSA proposes a definition for "reverse logistics" for hazardous materials that are intended to be returned to or between a vendor, distributor, manufacturer, or other person for the purpose of returning for credit, recalling product, replacement, or similar reason (for instance, from a retail or wholesale outlet). PHSMA proposes to establish a new section in the regulations to provide an exception for materials that are transported in a manner that meets the definition of "reverse logistics." In this exception, PHMSA proposes to clearly identify the hazardous materials authorized, packaging, hazard communication, and training requirements applicable to reverse logistics shipments. In addition to providing a new reverse logistics exception, this rulemaking also proposes to expand an

existing exception for reverse logistics shipments of used automobile batteries that are being shipped from a retail facility to a recycling center.

DATES: Comments must be received by [INSERT 60 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

ADDRESSES: You may submit comments by identification of the docket number (PHMSA-2011-0143 (HM-253)) 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, S.E., Washington, DC 20590.
- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, S.E., 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.

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).

FOR FURTHER INFORMATION CONTACT: Steven Andrews, Standards and Rulemaking Division, Office Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, at (202) 366-8553.

SUPPLEMENTAL INFORMATION:

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I. Executive Summary

This notice of proposed rulemaking (NPRM) proposes to create a new section in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) with provisions tailored to the unique characteristics of reverse logistics. By creating an exception from existing regulations for certain reverse logistics shipments, this NPRM offers opportunities for reduced compliance costs among hazmat shippers and carriers, without any decrease in safety. In addition, PHMSA is also handling a reverse logistics issue related to the transportation of used automobile batteries to recycling centers. This change to the HMR will reduce the burden on the regulated community when consolidating shipments of lead acid batteries for recycling.

PHMSA published an ANPRM on July 5, 2012 (77 FR 39662), to request comments from the public on changes to the regulations that would simplify requirements and reduce the burden on retail outlets. In response to PHMSA efforts in the area of reverse logistics, petitions for rulemaking, and comments submitted to the ANPRM, PHMSA is proposing the following changes in this NPRM:

- Define the term “reverse logistics”;
- Establish regulations for the shipment of hazardous material in the reverse logistics supply chain;
- Establish clear applicability to the training requirements associated with “reverse logistics” shipments;
- Provide authorized packaging for reverse logistics shipments;
- Establish segregation requirements for reverse logistics shipments; and

- Allow more flexibility for the transportation of lead acid batteries.

There are no quantified costs associated with this proposed rule—PHMSA estimates that the simplified requirements proposed in this NPRM will create a safer environment for consumer products to be returned to distribution centers. However, we do not expect any significant change in the current level of safety. Benefits have been estimated in the areas of training and shipment preparation. Due to limited data availability, the benefit estimates associated with this NPRM are based on certain key assumptions and are presented as ranges. Annual figures are presented rather than a time-series of future values since no major variations are expected from year to year.

Benefits of the Proposed Rule (Reduced Compliance Costs)		
Relevant HMR Citation	Category	Amount of annual savings
§ 173.157	Training	$4-8 million
§ 173.157	Shipment Preparation	$0-1 million
§ 173.159	Transportation Costs – Battery Recycling	$1-2 million

A complete copy of the regulatory evaluation for this rulemaking is available at http://www.regulations.gov under Docket No. PHMSA-2011-0143.

II. Background

Currently, the HMR do not provide any specific exceptions for shipments made in the reverse logistics supply chain. Therefore, a hazardous material that is shipped from a retail outlet back to a distribution facility is subject to the HMR in the same manner as

the original shipment to the retail outlet. The retail outlet is fully subject to the shipper's responsibility requirements provided in § 173.22 of the HMR. Key shipper responsibilities include classification, selecting a packaging, closing the packaging, communicating the hazard, and ensuring the employees are properly trained in the functions they perform. In conducting enforcement actions and outreach, we have learned that these requirements are often misunderstood or overlooked. In addition, PHMSA received two petitions requesting that we take action to provide reverse logistics requirements in a single section that is both clear and easily understood. PHMSA's observations and the petitions are described below:

PHMSA Observations

During investigations conducted by PHMSA field operations staff, we identified several instances where damaged hazardous materials were being shipped from retail outlets back to distribution centers without proper packaging or segregation. In most instances, non-compliant shipments were due to a lack of understanding of the HMR and hazardous materials shipping requirements. Often, returned hazardous materials and packages are damaged or compromised. Very often, the employees at the retail outlets responsible for packing and shipping these materials have little or no hazardous materials training. This may result in inadequate packaging and hazard communication. Below we identify potential problems that can occur in the reverse logistics of hazardous materials:

- Lack of hazardous materials training by the employees at the retail outlet;
- Different packaging from the original packaging being used to ship the material;

- Lack of knowledge regarding the hazards of the material;
- Potential for hazardous materials to be subject to Environmental Protection Agency (EPA) waste manifest rules;
- Items that were once classified as consumer commodities that no longer meet that exception;
- Undeclared hazardous materials shipped within the stream of commerce;
- Properly-marked and labeled original packaging being improperly re-used to ship returned products that are either not hazardous materials or hazardous materials for which said packaging is not authorized; and
- Shipments that are not accompanied by appropriate hazardous communication, such as shipping papers, emergency response numbers, placards, labels, markings, and other requirements of the HMR.

PHMSA believes that reverse logistics issues involving hazardous materials will continue to rise with the increased consumption of goods in a growing economy. We also believe that it would be beneficial to identify those areas where PHMSA and the regulated community can work together to facilitate the movement of hazardous materials in the reverse logistics supply chain. Based on stakeholder petitions, the regulated industry seems to agree that we can work together to improve the reverse logistics supply chain. Specifically, PHMSA has received two petitions that provide a potential path forward to address the issues that both industry and government face. These petitions are outlined as follows:

P-1528

PHMSA received a petition from the Council on the Safe Transportation of Hazardous Articles Inc. (COSTHA) outlining issues related to the return shipment of hazardous materials. In its petition for rulemaking (P-1528), COSTHA proposed that the HMR include a definition for "reverse logistics" in § 171.8 and add a new section, § 173.157 to outline the general requirements and exceptions for hazardous materials shipped in the context of reverse logistics. Additionally, in its petition, COSTHA identified an unquantifiable exposure to risk presented through undeclared hazmat from retail outlets. This includes retail operations that unknowingly return articles containing hazardous materials to the product manufacturing that are potentially compromised. COSTHA has indicated that the majority of these hazardous materials are returned to the retail outlet by the customer. COSTHA also noted that equipment powered by internal combustion engines may be returned to retail outlets after being used and may contain residual fuel, posing a hazardous materials risk.

P-1561

PHMSA received a petition (P-1561) from the Battery Council International (Battery Council) involving the reverse logistics of used lead acid automobile batteries. In its petition, the Battery Council requests that PHMSA allow the shipment of used batteries from multiple shippers on a single transport vehicle under the exception provided in § 173.159(e). The Battery Council notes in their petition that currently the exception in § 173.159(e) does not clearly allow for shipment of used batteries from multiple shippers for the purposes of recycling.

ANPRM

On July 5, 2012 (77 FR 39662), PHMSA published an Advanced Notice of Proposed Rulemaking (ANPRM), to request comments on reverse logistics. Specifically, we requested comments on regulatory changes intended to reduce the burden on retail outlets that ship consumer products containing hazardous materials in the reverse logistics supply chain. We targeted questions in the ANPRM to evaluate reverse logistics shipments by highway, rail, and vessel. In response to the ANPRM, we received comments from the following individuals and organizations:

1. NUCON International, Inc.
2. Call 2 Recycle
3. Federal Express (FedEx)
4. Lisa M. Brosseau
5. United Parcel Service (UPS)
6. International Foodservice Distributors Association (IFDA)
7. RSR Corporation
8. American Trucking Associations (ATA)
9. VaporLok Products, LLC.
10. Council on Safe Transportation of Hazardous Articles (COSTHA)
11. PSC Environmental Services
12. Veolia ES Technical Solutions, L.L.C.
13. Healthcare Distribution Management Association (HDMA)
14. PharmaLink, Inc.
15. American Coatings Association, Inc. (ACA)
16. National Electrical Manufacturers Association (NEMA)

17. Hazardous and Medical Waste Program, Army Public Health Command

18. VaporLok Products, LLC.

19. Dangerous Goods Advisory Council (DGAC)

20. Minnesota Pollution Control Agency (MPCA)

21. Nickel City Ventures, Inc.

22. Battery Council International (BCI)

23. The Rechargeable Battery Association (PRBA)

24. The Food Marketing Institute (FMI)

25. MBSource, LLC

26. Association of Hazmat Shippers, Inc.

27. Retail Industry Leaders Association (RILA)

28. Labelmaster

29. Wal-Mart

30. National Association of Chain Drug Stores (NACDS)

A large majority of commenters were supportive of PHMSA's efforts to provide an exception to current regulations. However, some commenters did not see a need for relief for hazardous materials in the reverse logistics supply chain. As noted in the comments to the ANPRM, reverse logistics includes such commodities as perfumes, automotive parts, medical supplies, and batteries. Detailed responses to the comments are found below in the **Review of Proposed Amendments** section of this rulemaking.

III. Review of Proposed Amendments

PHMSA's reverse logistics initiative is the result of efforts by the Federal government to clarify and streamline regulations and reduce regulatory burden where

possible. The overall intent is to provide clear and concise regulatory requirements that maintain a high level of safety. In regard to reverse logistics, PHMSA has considered petitions for rulemaking submitted by the regulated community, input from our field staff, and comments submitted to the July 5, 2012 ANPRM. As a result, PHMSA is proposing to make the following changes in this NPRM:

- Define the term "reverse logistics;"
- Establish a single section in the regulations for the shipment of hazardous material in the reverse logistics supply chain;
- Establish training requirements tailored to reverse logistics shipments;
- Define the authorized packaging for reverse logistics shipments;
- Establish segregation requirements for reverse logistics shipments; and
- Allow for more flexibility in the transportation of lead acid batteries.

Below we describe each proposal in detail and provide our rational for the change.

A. Definition of "Reverse Logistics" and Applicable Hazard Classes

In the ANPRM we asked how we should best define the term "reverse logistics." In response, we received proposed definitions for reverse logistics from both COSTHA and Wal-Mart. We relied heavily on the input provided by the commenters to develop a proposed definition for the term. Specifically, we are proposing to add the definition to § 171.8 of the HMR. The proposed definition for reverse logistics is the process of moving goods from their final destination for the purpose of capturing value, recall, replacement, proper disposal, or similar reason. PHMSA notes that as proposed in this NPRM, individual consumers would not be considered hazmat employees under § 171.8

of the HMR and thus would not be directly affected by the new requirements in this rulemaking. However, individual consumers should also be sure to check United States Postal Service (USPS) or other common carrier requirements before shipping hazardous materials.

B. Applicability and Hazard Classes

In the ANPRM we asked for information on the hazard classes and quantities of hazardous materials that are shipped in the reverse logistics supply chain. Based on that information, we are proposing to limit the exceptions for reverse logistics to shipments made by highway. UPS notes in its comments that the consequences of aviation incidents are too great to allow these shipments by air. PHMSA agrees and is not allowing shipments under the reverse logistics section by air. Further, PHMSA is concerned that allowing shipments by rail or vessel will promote consolidation of multiple reverse logistics shipments. The intent of this exception is to provide a means of safely transporting a consumer product containing a hazardous material from a final destination, such as a retail outlet, to a disposal or repackaging location. It is not our intent for reverse logistics shipments to be consolidated and shipped overseas, for example.

PHMSA also received several comments on what hazard classes should be included in a reverse logistics exception. UPS indicates that PHSMA should not include explosives such as Division 1.1, 1.2, and 1.3 that have specific defined packaging and handling instructions. In addition, UPS indicates that PHMSA should not include toxic gases (Class 2.3), dangerous when wet (Division 4.3), Oxidizers (5.1), Organic Peroxides

(5.2), and Class 7 materials that require a Radioactive White-I, Yellow-II, or Yellow-III label. Wal-Mart indicates that waiving the fully-regulated hazmat requirements for reverse logistics on Classes 2.1, 2.2, 3, 4.1, 5.1, 6.1, 7, 8 and 9 would significantly reduce the burden and expense incurred in the reverse logistics supply chain.

After careful review of the comments in the ANPRM, PHMSA has decided to include consumer products in hazard classes 1.4 (ammunition), 2.1, 2.2, 3, 4.1, 5.1, 5.2, 6.1, 6.2, 8 and 9 in the reverse logistics exception. PHMSA believes that limited quantities of hazardous materials in these hazard classes that are used in consumer products present a risk that is easily managed by the proposed reverse logistics exception. In addition, PHSMA believes, based on comments and petitions, that these hazard classes cover the vast majority of hazardous materials in the reverse logistics supply chain and will effectively reduce an unnecessary burden on retail outlets.

C. Training Requirements

In the ANPRM we asked to what extent should retail employees who package hazardous materials for shipments back to the distribution centers be subject to the requirements in 49 CFR Part 172, Subpart H. PHMSA also asked if retail employees are currently being trained for the shipment of hazardous materials under 49 CFR Part 172, Subpart H. Most comments indicate that full training is not necessary given the low risk of the materials covered. UPS supported employees meeting the full training requirements but stated that if PHMSA does reduce the training requirements, function specific training of the employees should not be compromised. PHMSA believes the training requirements proposed in this rulemaking will satisfy UPS concerns.

Currently under the HMR, any person who meets the definition of a hazardous material employee is subject to the training requirements in § 172.700. PHMSA recognizes that in a retail setting, it is unlikely that employees are meeting the training requirements, as their primary function is not shipping hazardous materials. In comments to the ANPRM, FMI states that any training required under the reverse logistics exception should take into account the small quantities of hazardous materials and minimal danger to the public and safety. Wal-Mart notes that requiring retail employees to meet the full training requirements in § 172.700 requires tens of thousands of employees to be trained on how to package, mark, and label hazardous materials. The RILA notes that due to the seasonal sales nature of the retail industry, the retail industry can experience a very high-turnover in staff making it difficult to cost effectively train all retail staff in accordance with the HMR. In addition, Wal-Mart adds that only a small portion of items returned to retail outlets are classified as hazardous materials and vast majority of those items present little to no safety risk. Wal-Mart also adds that retail employees should be exempt from being trained in the special permit functions of a retail item.

UPS sees no reason to provide exceptions from training for employees in retail establishments that routinely stock and sell inventory that is regulated as hazardous materials. However, UPS adds that if PHMSA determines to reduce the required scope of the applicable training regulations, it should take care not to waive function-specific requirements that contribute to safe shipment preparation. UPS indicates that employees should have the full capability to create safe shipments, while understanding the basic packaging requirements, hazard segregation, and hazard communication requirements.

PHMSA agrees with most commenters and is not proposing to require retail employees shipping under the proposed reverse logistics section to be fully trained under 49 CFR Part 172, Subpart H. After considering the comments from industry, PHMSA is proposing a relaxed set of training requirements. This NPRM proposes that employees shipping hazardous materials under the reverse logistics section have a minimal amount of hazardous materials training. Key to this training is the employee's knowledge of the types of materials that are being returned to the distribution centers. Further, required training would be clearly specified in the reverse logistics exception.

D. Segregation Issues

In the ANPRM we asked if hazardous materials are currently being properly segregated as required by § 177.843 of the HMR when being shipped from retail outlets to distribution centers. Generally, commenters indicate that in many cases segregation is not necessary given the low risk associated with the materials covered. UPS noted that while there is no direct evidence that incidents involving segregation issues were necessarily associated with reverse logistics, the incidents resulting from the dangerous combination of incompatible materials underscore the need to segregate hazards in all transportation - including reverse logistics activity.

In the comments to the ANPRM, ATA notes that the segregation tables could be revised to allow some hazard classes to be transported together. ATA adds, since reverse logistics would most likely encompass smaller quantities of hazardous materials or hazardous materials that are packed inside another product; the current segregation standards may not be necessary. COSTHA notes that in most cases the materials previously classified as ORM-D are in small quantities and the designation as ORM-D do

not identify the hazard class. The Association of Hazmat Shippers indicates that segregation of Class 2 and Class 3 materials is unnecessary under the reverse logistics exception.

Wal-Mart adds that that the most volatile classes should not be excepted from segregation requirements such as Classes and Divisions 1.1, 1.2, 2.3, 4.2, 5.2, and 6 Inhalation hazards. However, Wal-Mart adds that most of these do not appear in the retail arena, and therefore, are not generally transported in a retail reverse logistics scenario.

PHMSA agrees with most commenters and is proposing a section in the NPRM to allow the mixing of various hazard classes provided the packages are not leaking. If the packages are compromised, those products would need to be placed in a leak proof inner packaging for liquids or sift proof inner packaging for solids to prevent leakage if further damage were to occur. Further, for simplicity, we propose to include the reverse logistics segregation requirements in the reverse logistics exception section.

E. Packaging

In the ANPRM we asked if PHMSA should define specification packages for materials shipped under reverse logistics. PHMSA received multiple comments on the types of packaging that should be required under the reverse logistics exception. In addition, through investigations, PHMSA discovered that currently many shipments of hazardous materials are improperly packaged in the reverse logistics supply chain.

In its comments, UPS notes that shipments made under the reverse logistics exception may contain packages with unsecured closures that are subject to leakage. In addition, UPS expresses concern that the outer packaging used in the reverse logistics

process may not be designed to contain spills from damaged retail items. UPS indicates that PHMSA should require packages that are used in the reverse logistics supply chain to incorporate an outer packaging and absorbent material capable of fully containing any leakage from the inner packagings. The Association of Hazmat Shippers adds that limited quantity and consumer commodity shipments might track the Canadian limited quantity example in TDG 1.17. Specifically, each package meeting the general packaging requirements, weighing no more than 30 kg, meeting limited quantity inner packaging limits, and marked with ORM-D or the new limited quantity diamond, should be excepted from specification packaging requirements, any other markings, labels, placards, hazmat employee training, unintended release reporting, and security requirements when shipped by road, rail, or vessel when engaged in domestic transportation.

Wal-Mart indicates that there is no need for specification packaging for consumer products in the reverse logistics supply chain based on the limited transportation risk they present. Rather, Wal-Mart recommends a common sense requirement that is simple to understand and execute. For instance, inner containers should be securely closed, protected against damage, and secured against movement within the outer package along with a compatible packing material. Outer packaging should be strong outer packaging of good integrity that clearly identifies the content.

Wal-Mart also presents a scenario where a fully regulated cylinder of a non-flammable gas is returned to a retail outlet. In these cases, a retail associate cannot determine whether a container is empty, making it impossible for the associate to determine if the cylinder still meets the definition for class 2.2 non-flammable

compressed gas. Wal-Mart suggests allowing the shipment of these cylinders as hazmat even if they may not meet the definition of a Class 2 non-flammable gas.

Another commenter, RILA suggests that any sturdy, six-sided container will adequately protect the consumer products in the reverse logistics supply chain. Further, RLA suggests the use of orientation arrows and securement.

After carefully weighing the comments from the ANPRM, PHMSA is proposing a set of packaging standards under the proposed reverse logistics exception that will ensure consistent and safe packaging requirements for these low hazard items. This includes requiring the use of the original package or a package of equivalent strength or integrity. It also requires that inner packagings be leakproof for liquids and siftproof for solids. Further, for liquids, the outer packaging must contain enough absorbent material to contain a spill from the inner packagings. The exception will also provide that packages be secured against shifting through the use of cages, carts, and bins.

F. Battery Recycling

This NPRM also addresses an existing exception concerning the reverse logistics shipment of lead acid batteries. As noted in the ANPRM and in the **Background** section above, PHMSA received a petition from BCI to modify the exception in § 173.159(e) to allow for the pickup of batteries from multiple retail entities for the purposes of recycling. Currently, the HMR include a single shipper provision which prohibits the pickup of batteries from multiple locations.

PHMSA received several comments in support of modifying the battery exception in § 173.159(e) to allow for pickup of used automobile batteries from multiple shipper locations. However, RSR Corporation urges PHMSA to keep the single shipper

provision in intact. RSR Corporation indicates that the removal of the provision would lead to an increase in incidents involving the transportation of used lead acid batteries.

PHMSA does not believe that allowing a battery recycler to pick up batteries from multiple shipping locations will lead to an increase in incidents involving the transportation of used automobile batteries. PHMSA believes that the proposed requirements in § 173.159(e) that batteries shipped under this section must be blocked, braced, or otherwise secured to prevent contact with or damage to batteries will prevent an increase in incidents. In addition, reducing the regulatory burden on lead acid battery recyclers is likely to encourage an even greater rate of recycling among lead acid battery recyclers. Also, as noted by BCI, allowing the collection of lead acid batteries from multiple locations will result in more batteries on a single truck and fewer miles traveled to accomplish battery collection activities. This will lead to a reduction in the number of highway miles traveled, thus reducing the risk of accidents on the highway. PHMSA does not anticipate any negative impacts on safety. Therefore, in this NPRM PHMSA is proposing to revise § 173.159(e)(4) to allow for the pick-up of used automotive batteries from multiple retail locations for the purposes of recycling as long as the pallets are built so they will not cause damage to another pallet during transportation. In addition, PHMSA is requiring an incident report to be filed for any spill that occurs while operating under the expanded battery exception.

V. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM 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 NPRM provides for regulations for the shipment of consumer products in the reverse logistics supply chain.

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

This notice of proposed rulemaking is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).[1] A regulatory evaluation is available for review in the public docket for this rulemaking, and PHMSA seeks comments on the methodology, assumptions, and calculations contained within it.

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.[2] 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 were asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and

[1] See http://www.whitehouse.gov/omb/inforeg_riaguide/
[2] See http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order

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.[3]

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."

PHMSA has evaluated the HMR with respect to reverse logistics and identified areas that could be modified to enhance the program and increase flexibility for the regulated community. In this NPRM, the proposed amendments to the HMR will not impose increased compliance costs on the regulated industry. By proposing to add a § 173.157 to the HMR for items shipped in the reverse logistics supply chain, PHMSA will reduce regulatory burden and increase flexibility to industry, while maintaining an equivalent level of safety. There may be a number of retailers who are currently not in compliance with the HMR when shipping hazardous materials in the reverse logistics supply chain. It is not feasible for PHMSA to quantify the number of retail outlets who are in non-compliance. However, PHMSA believes through a simplified regulatory

[3] See http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf

approach and outreach, the proposed standards will create regulatory framework that will assist these retail outlets in complying with the HMR.

In addition to providing a new reverse logistics exception, this rulemaking also proposes to expand an existing exception for reverse logistics shipments of used automobile batteries that are being shipped from a retail facility to a recycling center. This change to the HMR will reduce the burden on the regulated community when consolidating shipments of lead acid batteries for recycling.

A summary of the regulatory evaluation used to support the proposals presented in this NPRM are discussed below. A complete copy of the regulatory evaluation for this rulemaking is available at http://www.regulations.gov under Docket No. PHMSA-2011-0143.

Regulatory Evaluation

For the regulatory evaluation of this NPRM, PHMSA assumes that this rulemaking would reduce shipping paper preparation costs for shipments involving relevant quantities of the affected commodity types, through the elimination of requirements to describe the hazardous materials in shipping papers. Similarly, the rule also eliminates the requirement for emergency response information for those shipments that currently require a shipping paper. Packages affected by the proposed rule would no longer require either material-specific markings and labels, or limited-quantity or ORM-D markings. Vehicles carrying packages affected by the proposed rule would no longer require placarding. The training requirements would also be reduced to a level commensurate with the risk posed by these consumer products. In addition, PHMSA is

proposing to relax the requirements for recycling used lead acid batteries. The change will reduce the transportation costs associated with recycling of lead acid batteries. A table identifying the benefits associated with this NPRM is provided below:

Benefits of the Proposed Rule (Reduced Compliance Costs)		
Relevant HMR Citation	Category	Amount of annual savings
§ 173.157	Training	$4-8 million
§ 173.157	Shipment Preparation	$0-1 million
§ 173.159	Transportation Costs – Battery Recycling	$1-2 million

PHMSA does not expect any additional cost to the regulated community as a result of the proposed changes. PHMSA welcomes additional comments from the regulated community on any cost or benefits resulting from this proposed action.

C. Executive Order 13132

This proposed 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 proposed rule will 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. 5101-5128, 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 proposed rule addresses all the covered subject areas above. If adopted as final, this rule will 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 primary costs to small entities include ensuring that damaged consumer commodities are shipped properly under § 173.157 and ensuring that its employees have access to the minimal training requirements as required under this section.

PHMSA expects impacts of this rule will be quite limited for many small entities. The estimated benefits and costs figures discussed below should be viewed as upper bounds, both of which will be reduced by the extent of current practice.

Retail, trucking, and other industries potentially affected by the proposed rule all have substantial numbers of small entities. The impacts of the proposed rule are expected to be favorable because of the significant new flexibility being proposed for the preparation and transport of certain hazardous materials in reverse logistics. However, PHMSA does not expect that the impacts will be significant. A typical small entity would save roughly $60 per affected new employee on training costs, and $0.17 to $2 per affected package in shipment preparation costs. PHMSA invites comments on these estimates.

Based upon the above estimates and assumptions, PHMSA certifies that the proposals in this NPRM will not have a significant economic impact on a substantial number of small entities. Further information on the estimates and assumptions used to evaluate the potential impacts to small entities is available in the Regulatory Impact Assessment that has been placed in the public docket for this rulemaking.

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. More information can be found in the Initial Regulatory Flexibility Act (IFRA) that is included in the Regulatory Impact Analysis (RIA) document.

F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control Number 2137-0034, entitled "Hazardous Materials Shipping Papers & Emergency Response Information," with an expiration date of April 30, 2015. This NPRM will result in a decrease in the annual burden and cost to OMB Control Number 2137-0034 due to the decrease in the number of shipments subject to the shipping paper requirements.

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 will be revised as follows:

OMB Control No. 2137-0034:

Decrease in Annual Number of Respondents:	**12,600**
Decrease in Annual Responses:	**630,000**
Decrease in Annual Burden Hours:	**210,000**

Decrease in Annual Burden Costs: $5,250,000

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. Draft Environmental Assessment Prepared in Compliance with the National Environmental Policy Act

The National Environmental Policy Act, 42 USC § 4321 et seq., (NEPA) requires that federal agencies consider the environmental effects of proposed actions in their decision making process. In accordance with the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), which implement NEPA, an agency may prepare an environmental assessment (EA) when it does not anticipate that the proposed action will have significant environmental effects. An EA must provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact and include (1) the need for the proposed action (2) alternatives to the proposed action (3) environmental impacts of the proposed action and alternatives and (4) a list of the agencies and persons consulted during the consideration process. 40 C.F.R. § 1508.9(b).

1. Purpose and Need

The purpose of this rulemaking is to provide an exception in the HMR for the shipment of low hazard items in the reverse logistics supply chain. Currently, shipment of hazardous material shipped from retail outlets to distribution centers are considered fully regulated. PHMSA is proposing to revise the HMR to provide requirements that are more logical in a consumer/retail environment. Additionally, PHMSA expects a reduction in the burden to industry when shipping these low hazard consumer products back to the distribution center. Further, PHMSA is proposing to provide more flexibility

for lead acid battery recyclers that would promote recycling and allow carriers to consolidate shipments of batteries from multiple shippers on a single transport vehicle.

2. Alternatives

The alternatives considered in this draft EA include:

Alternative 1: allowing proposed rule to allow low hazard consumer items to be returned under a new section of the HMR. This is the action that PHMSA proposes to select. This action would provide a mechanism for the regulated community to safely transport low hazard items back to distribution facilities in the reverse logistics supply chain. PHMSA believes incorporation of this section will simplify the return process and maintain an equivalent level of safety.

Alternative 2: the "no action" alternative, meaning that the regulatory scheme will stay the same and the proposed rule would not be promulgated. This alternative would result in no change to the HMR, which requires full regulation for low hazard items shipped to distribution facilities via the reverse logistics supply chain. While this alternative would not impose any new cost or change any environmental impacts, it would not account for the compliance obstacles and regulatory concerns raised by retailers and shared by PHMSA.

3. Environmental Consequences

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates: the risk of release and resulting environmental impact; the risk to human safety, including any risk to first responders; longevity of the packaging; and 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.

Of the regulatory changes in Alternative 1, none have negative environmental impacts. The relaxation of the battery recycling regulations in § 173.159 may promote and simplify the recycling of used automobile batteries. In turn, this may lead to fewer shipments of such batteries on highways. Positive impacts of the NPRM include the reduction in the number of shipments by highway that will lead to lower emissions through a reduction in fuel consumption. This change will also further increase the lead acid battery recycling rate thus reducing the number of these batteries that end up in landfills. This reduction in the likelihood of spills will reduced the likelihood that any hazardous materials are spilled into the environment. Overall, all of these impacts will have a net positive impact on the environment. PHMSA does not believe that these environmental impacts will be significant, but invites comment on this issue.

Alternative 2, the no-action alternative, would not lead to any environmental costs or benefits.

4. Federal Agencies Consulted and Public Participation

In an effort to ensure all appropriate federal stakeholders are provided a chance to provide input on potential rulemaking actions, PHMSA, as part of its rulemaking development, consults other federal agencies that a proposed rule could affect. In developing this rulemaking action, PHMSA consulted the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and the Consumer Products Safety Commission (CPSC).

PHMSA invites other interested parties and members of the public to provide input on this draft EA. PHMSA welcomes any data or information related to environmental impacts that may result from the proposed action discussed in this notice. PHMSA will consider any comments it receives in preparing the final EA, which would accompany any 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 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.

K. 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 will 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 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 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. We have assessed the effects of the proposed rule, and found that this domestic exception for the return of consumer products through the reverse logistics supply chain will not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 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 proposed rulemaking does not involve voluntary consensus standards.

VI. List of Subjects

49 CFR Part 171

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and record keeping requirements.

49 CFR Part 173

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

In consideration of the foregoing, 49 CFR chapter I is proposed to be amended as follows:

PART 171—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

2. In § 171.8, in alphabetical order add the definition for "Reverse logistics" to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Reverse logistics is the process of moving goods from their final destination for the purpose of capturing value, recall, replacement, proper disposal, or similar reason.

* * * * *

PART 173--SHIPPERS--GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

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

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

4. Add § 173.157 to read as follows:

§ 173.157 Reverse Logistics - General requirements and exceptions for reverse logistics

General. Reverse logistics is defined in § 171.8 of this subchapter. When transported by motor vehicle in conformance with this section, a hazardous material is not subject to any other requirements of this subchapter besides those set forth or referenced in this section.

(a) Applicability. Hazardous materials authorized for transportation under this section are limited to the following materials within the quantity limitations specified.

(1) Division 1.4S and 1.4G fireworks, flares and signals and ammunition;

(2) A Class 3, 8, 9, Division 4.1, 5.1, 5.2, 6.1, 6.2 material contained in a packaging having a gross mass or capacity in each inner packaging not exceeding:

(i) 0.5 kg or 0.5 L for a Packing Group I material;

(ii) 1.0 kg or 1 L for a Packing Group II;

(iii) 5kg or 5L for a Packing Group III, or ORM-D material;

(iv) 30 L for a diluted mixture, not to exceed 2 percent concentration, of a Class 3, 8 or 9 material or a Division 6.1 material;

(3) A Division 2.1 or 2.2 material in a cylinder or aerosol container with a gross weight not over 30 kg. For the purposes of this section a cylinder or aerosol container

may be assumed to meet the definition of a Division 2.1 or 2.2 materials, respectively, even if the exact pressure is unknown.

(4) A Division 4.3 material in Packing Group II or Ill contained in a packaging having a gross capacity not exceeding 1 L.

(b) Packaging.

(1) Packagings must be leak tight for liquids and gases, sift proof for solids, and be securely closed, secured against shifting, and protected against damage. Inner packagings must be secured against movement within the outer package and protected against damage under conditions normally incident to transportation. For liquids, the inner packaging must be leak proof, and the outer packaging must contain sufficient absorbent material to absorb the entire contents of the inner packaging. For solids, inner packaging must be sift proof.

(2) Each material must be packaged in the manufacturer's original packaging if available, or a packaging of equal or greater strength and integrity.

(3) Outer packagings are not required for receptacles (e.g., cans and bottles) that are secured against shifting in cages, carts, bins, boxes or compartments. However, any compromised receptacle must be placed in an inner packaging or outer packing that will prevent spillage in transportation.

(4) The fuel tank and fuel lines of equipment powered by an internal combustion engine must have the flammable liquid fuel drained to the greatest degree possible, shut-off valves, if present, must be in the closed position, and all fuel tank caps or closures must be securely in place.

(5) Equipment powered by an internal combustion engine using flammable gas

fuel, or other devices using flammable gas fuel (such as camping equipment, lighting devices, and torch kits) must have the flammable gas source disconnected and all shut-off devices in the closed position.

(6) Equipment powered by electric storage batteries must have the batteries properly installed within the equipment and protected against short circuit. The activation switch on the equipment must be protected to prevent inadvertent activation. If the equipment is damaged to the extent that the battery or switches may not be protected, the battery should be removed and packaged separately in a manner that will protect the terminals from short circuit. Batteries should also indicate the proper orientation during transportation and storage.

(7) Aerosols must be packed to prevent inadvertent discharge of the contents from the aerosol packaging during transport. Each aerosol container must be secured with a cap to protect the valve stem.

(8) Cylinders or other pressure vessels containing a Division 2.1 or 2.2 materials such as DOT-39 cylinders and cylinders containing limited quantities of compressed gases must conform to the packaging, qualification, maintenance, and use requirements of this subchapter.

(9) Materials authorized for transport according to a special permit as defined in § 171.8 of this subchapter:

(i) Each outer packaging that has not been opened and is in the original undamaged condition with the closure secure, shall be offered for transportation and transported in the original packaging as authorized by the special permit;

(ii) When the inner receptacles have been removed from the outer packaging of a

combination packaging and remain undamaged with closure secure they must be packed either in the original packaging authorized by the special permit if available and undamaged or packed in a suitably strong outer packaging with suitable cushioning material and securely closed.

(c) Hazard communication.

(1) The outer packaging, other than a cylinder shipped as a single packaging, must be marked with a common name or proper shipping name to identify the hazardous material it contains.

(2) A DOT specification cylinder (except DOT specification 39) must be marked and labeled as prescribed in this subchapter. Each DOT Specification 39 cylinder must display the following markings:

(i) DOT-39.

(ii) NRC.

(iii) The service pressure.

(iv) The test pressure.

(v) The registration number (M****) of the manufacturer.

(vi) The lot number.

(vii) The date of manufacture if the lot number does not establish the date of manufacture.

(viii) With one of the following statements:

(A) For cylinders manufactured prior to October 1, 1996: “Federal law forbids transportation if refilled-penalty up to $25,000 fine and 5 years imprisonment (49 U.S.C. 1809)” or “Federal law forbids transportation if refilled-penalty up to

$500,000 fine and 5 years imprisonment (49 U.S.C. 5124)."

(B) For cylinders manufactured on or after October 1, 1996: "Federal law forbids transportation if refilled-penalty up to $500,000 fine and 5 years imprisonment (49 U.S.C. 5124)."

(d) Training. Each person who offers or transports a hazardous material under the requirements of this section must be familiar with the requirements of this section. Employees preparing reverse logistics shipments, as defined in § 171.8 of this subchapter and authorized by this section, are not subject to the Subpart H of Part 172 - Training requirements of this subchapter provided:

(1) The employer has identified the hazardous materials subject to the provisions of this section, has verified compliance with the appropriate conditions and limitations, and has provided training and supervision to persons preparing or offering these shipments for transportation, or transporting shipments in reverse logistics to make the provisions of this section effective.

(2) The employee has received appropriate training applicable to the material to be offered in transport in accordance with the provisions of this section. The training must enable the employee to recognize the hazardous materials, identify the hazards associated with the applicable material and prepare the shipment as provided by this section.

(3) The employer must maintain a record of those employees receiving the training required by this section.

(4) The operator of a motor vehicle that contains a reverse logistics material must be informed of the presence of the hazardous material and must be informed of the

requirements of this section.

(e) Exceptions.

(1) A reverse logistics material may be transported by motor vehicle under the provisions of this section with other hazardous materials without affecting its eligibility for exceptions provided by this section.

(2) Hazardous materials that may react dangerously with one another may not be transported in the same outer packaging.

(3) Different hazard classes of materials in reverse logistics may be transported in the same cargo transport unit provided that they are adequately separated to prevent commingling of materials that may result in a dangerous reaction in the event of an accidental release during transport.

(4) Shipments made under this section are subject to the incident reporting requirements in § 171.15.

(5) Shipments prepared, offered for transportation, or transported according to this section are not subject to any other requirements of this subchapter.

5. In § 173.159, revise paragraphs (e)(3) and (e)(4) paragraphs (e)(5) and (e)(6)are added to read as follows:

§ 173.159 Batteries, wet.

* * * * *

(e) * * *

(3) Any other material loaded in the same vehicle must be blocked, braced, or otherwise secured to prevent contact with or damage to the batteries. In addition, pallets

used should be built as to not cause damage to another pallet in transportation.

(4) A carrier may accept shipments of lead acid batteries from multiple locations for the purpose of consolidating shipments of lead acid batteries for recycling.

(5) Class 8 lead acid batteries are the only hazardous material authorized on the transport vehicle under this section.

(6) Shipments made under this section are subject to the incident reporting requirements in § 171.15.

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Issued in Washington, DC, under authority delegated in 49 CFR Part 1.97(b).

Dr. Magdy El-Sibaie
Associate Administrator for Hazardous Materials Safety
Pipeline and Hazardous Materials Safety Administration

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