

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:** Final rule.

SUMMARY: In this final rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA) is adopting regulatory amendments applicable to the reverse logistics shipments of certain hazardous materials by highway transportation. This final rule revises the Hazardous Materials Regulations (HMR) to include a definition of “reverse logistics” and provides appropriate provisions for hazardous materials within the scope of this definition. This final rule also expands a previously existing exception for return shipments of used automobile batteries transported between a retail facility and a recycling center. The PHMSA incorporated recommendations from petitions for rulemaking and public comment into this rulemaking.

DATES: *Effective:* March 31, 2016.**FOR FURTHER INFORMATION CONTACT:**

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I. Executive Summary

This final rule creates a new section (§ 173.157) in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) with provisions specific to reverse logistics (*e.g.*, returning shipments from retail stores to a product’s manufacturer, supplier, or distribution facility) by highway transportation. The PHMSA believes that the requirements adopted in this final rule will benefit retail operators by establishing a regulatory framework targeted to a distinct and limited segment of the supply chain that is associated with retail stores. In this rule, the PHMSA codifies a definition for the “reverse logistics” of hazardous materials as “the process of offering for transport or transporting by motor vehicle goods from a retail store for return to its manufacturer, supplier, or distribution facility for the purpose of capturing value (*e.g.*, to receive manufacturer’s credit), recall, replacement, recycling, or similar reason.” The PHMSA is also addressing the reverse logistics transportation of used automobile batteries to recycling centers. This change to the HMR will address the concerns of stakeholders pertaining to the consolidation of shipments of lead-acid batteries for recycling.

II. Background

As noted in its petition (P–1528), the Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) and the PHMSA entered into a partnership agreement in November 2006 for the purpose of enhancing hazardous materials transportation safety involving the return of consumer products to a manufacturer or distributor (referred to in the petition as “reverse logistics”). In an effort to reduce undeclared hazardous materials shipments and raise awareness of applicable regulations, COSTHA worked with the PHMSA to develop and disseminate outreach materials, training programs, and other resources.

Consequently, COSTHA engaged stakeholders in meetings, forums, and other communications to address the challenges posed by reverse logistics shipments. A product of this

engagement was the development of COSTHA’s 2008 petition for rulemaking. In its petition, COSTHA notes that its organization “identified an unquantifiable exposure to risk presented through undeclared hazmat, specifically from retail operations that unknowingly return articles containing hazmat to the product manufacturer or a distributor.”¹

This petition also notes that many reverse logistics shipments of hazardous materials were eligible (at the time the petition was drafted) to be classified as Other Regulated Material (ORM–D) and could be shipped under the “Consumer Commodity” proper shipping name.² COSTHA also notes that equipment powered by internal combustion engines may be returned to retail outlets after being used and may contain residual fuel, therefore posing a risk in transportation. As a result, such articles transported in forward logistics may not be initially regulated as hazardous materials, but once used, the same article transported in reverse logistics may be regulated as a hazardous material.

COSTHA’s petition requested that the PHMSA include a definition in § 171.8 for “reverse logistics” and add a new § 173.157 to outline the general requirements and exceptions for hazardous materials shipped in reverse logistics. In addition, the petitioner also requested regulatory relief from certain training, packaging, segregation, hazard communication, and other baseline provisions in the HMR.

After the acceptance of this petition, the PHMSA published a final rule: *Hazardous Materials: Harmonization With the United Nations Recommendations, the International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air*; PHMSA–2009–0126 (HM–215K) [76 FR 3308].³ HM–215K implemented a system for the shipment of limited quantities of hazardous materials consistent with the requirements in the United Nations Model Regulations.⁴ By

¹ P–1528, Page 2. <http://www.regulations.gov/#!docketDetail;D=PHMSA-2008-0249>.

² *Consumer commodity* means a material that is packaged and distributed in a form intended or suitable for sale through retail sales agencies or instrumentalities for consumption by individuals for purposes of personal care or household use. This term also includes drugs and medicines. 49 CFR 171.8.

³ 76 FR 3308.

⁴ *Limited quantity*, when specified as such in a section applicable to a particular material, means the maximum amount of a hazardous material for which there is a specific labeling or packaging exception. 49 CFR 171.8.

harmonizing the HMR with international standards, a common, internationally recognized mark was adopted.⁵ In making this change, HM-215K (as appealed) phased out the ORM-D classification and the use of packagings marked “Consumer commodity, ORM-D” in surface transportation after December 31, 2020. The majority of shipments in reverse logistics are within the scope and quantity limits of the HMR’s limited quantity provisions.

The PHMSA also received a petition for rulemaking (P-1561) from the Battery Council International (BCI) addressing return shipments of used lead-acid batteries. In its petition, the BCI requested that the PHMSA authorize the shipment of used batteries from multiple shippers on a single transport vehicle under the exception provided in § 173.159(e). The BCI noted in its petition that it is unclear whether the current exception in § 173.159(e) authorizes the shipment of used batteries from multiple shippers for the purposes of recycling.

This rule advances government-wide efforts to clarify, streamline, and allow for flexibility in regulations when possible. Accordingly, this final rule is part of the DOT’s Retrospective Regulatory Review (RRR) designed to identify ways to improve the HMR. There are three (3) Executive Orders that make up the RRR review process: Executive Order 13563 (“Improving Regulation and Regulatory Review”), Executive Order 12866 (“Regulatory Planning and Review”), and Executive Order 13610 (“Identifying and Reducing Regulatory Burden”). Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

Executive Order 13563 supplements and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 issued on September 30, 1993. Furthermore, Executive Order 13610 urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified or whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies. The PHMSA’s review of the reverse logistics process determined that current regulations could better account for what is a distinct and limited segment of the supply chain associated with the return shipment of consumer items containing hazardous materials from retail store for return to its manufacturer, supplier, or distribution facility. Therefore, consistent with the DOT’s RRR efforts, this final rule is intended to clarify, streamline, and allow for flexibility in the regulatory requirements with regards to reverse logistics.

As a result of investigative activities conducted by its field operations staff, the PHMSA identified a need to consider regulatory amendments to specifically address the unique issues encountered by this distinct and limited segment of the supply chain. Some of the unique problems that can occur during the reverse logistics of hazmat are:

- The lack of knowledge regarding the risks of transporting certain products;
- The lack of hazmat training by employees at a retail store;
- The difficulty in applying hazmat regulations to reverse logistics shipments;
- The different packaging(s) other than the original packaging being used to ship the material;
- The potential for hazmat to be subject to Environmental Protection Agency (EPA) waste manifest rules;
- The inclusion of items once classified as consumer commodities that no longer meet the “consumer commodity” definition.

In order to reduce undeclared, misdeclared, or improperly packaged hazmat from being offered and transported in commerce, we are

amending the HMR to better address the reverse logistics supply chain. Specifically, we are seeking to ensure retail employers properly identify hazardous materials in the reverse logistics chain and ensure that their employees have clear instructions to safely offer such shipments. Even when intended for ground transportation, the complex transportation network in the U.S. means that these shipments could inadvertently enter into air transportation—a mode of transportation where clear hazard communications is essential. Clear and correct hazard communication allows air carriers to manage the risk in their system by either rejecting, or properly accepting, handling, and segregating hazardous materials.

The PHMSA believes that the reverse logistics of hazmat will continue to rise with the increased consumption of goods in a growing economy. By adopting, in part, petitions P-1528 and P-1561, the PHMSA is seeking to account for the distinct challenges associated with this issue.

A. Advance Notice of Proposed Rulemaking

On July 5, 2012 [77 FR 39662], the PHMSA published an Advance Notice of Proposed Rulemaking (ANPRM) to request comments on reverse logistics. Specifically, we requested comments on regulatory changes intended to address retail operations that ship consumer products containing hazmat in the reverse logistics supply chain. We presented targeted questions in the ANPRM in order to evaluate reverse logistics shipments by highway, rail, and vessel, as these types of shipments are not intended for transportation by air. The PHMSA used the data collected by the ANPRM in its development of the NPRM.

B. Notice of Proposed Rulemaking

On August 11, 2014 [79 FR 46748], the PHMSA published a Notice of Proposed Rulemaking (NPRM) to request comments on a proposed new section of the regulations for reverse logistics shipments. In response to the NPRM, the PHMSA received comments from the following entities:

Advanced Auto Parts	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0056 .
Airline Pilots Association (APA)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0049 .
Alaska Airlines	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0043 .
American Coatings Association (ACA)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0060 .
American Pyrotechnics Association	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0070 .
American Trucking Association (ATA)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0055 .
Anonymous	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0050 .

⁵ See 49 CFR 172.315(a)(1).

Anonymous	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0039 .
Association of HAZMAT Shippers (AHS)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0061 .
Battery Council International (BCI)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0065 .
Billy Puk	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0052 .
C&S Wholesale Grocers	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0068 .
Council on the Safe Transportation of Hazardous Articles (COSTHA)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0064 .
Crazy Cracker	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0042 .
Dangerous Goods Advisory Council (DGAC)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0063 .
Federal Express (FedEx)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0053 .
g2 Revolution	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0044 .
Giant Cement Holding, Inc	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0073 .
Graylin Presbury	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0051 .
Heritage Environmental Services	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0059 .
Inmar Inc	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0045 .
Kellner's Fireworks Inc	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0046 .
National Association of Manufactures	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0071 .
National Fireworks Association	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0047 .
Orion Safety Products	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0062 .
Rechargeable Battery Association (PRBA)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0074 .
Retail Industry Leaders Association (RILA)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0058 .
RSR Corporation	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0066 .
Siemens Healthcare	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0072 .
Sporting Arms and Ammunition Manufacturers' Institute (SAAMI)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0069 .
Stephen Charles	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0040 .
United Parcel Service (UPS)	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0057 .
Wal-Mart	http://www.regulations.gov/#!documentDetail;D=PHMSA-2011-0143-0048 .

III. Review of Amendments and Response to Comments

With regard to providing clarity and concise hazmat transport regulations for reverse logistics shipments, the PHMSA considered petitions for rulemaking submitted by the regulated community, input from the PHMSA's enforcement division, and comments submitted to both the July 5, 2012 ANPRM and the August 11, 2014 NPRM. The PHMSA received 34 comments to the ANPRM and 33 comments to the NPRM. As a result, in this final rule, the PHMSA is amending the HMR to:

- Define the term “reverse logistics”;
- Establish a new section in the HMR specifically for the reverse logistics shipment of hazmat;
- Ensure employees have knowledge and familiarity in preparing hazardous materials shipments subject to the reverse logistics shipments;
- Define the authorized packaging for reverse logistics shipments;
- Allow more flexibility in the transportation of lead-acid batteries;
- Authorize certain materials to be offered in accordance with the new reverse logistics requirements when transported by private carrier.

A. Definition of “Reverse Logistics” and Applicability and Hazard Classes

Definition of “Reverse Logistics”

In the NPRM, we proposed to define “reverse logistics” as “the process of moving goods from their final destination for the purpose of capturing value, recall, replacement, proper disposal, or similar reason.” We

received several comments pertaining to this definition from the regulated community.

The American Coatings Association (ACA) supports a definition for “reverse logistics” provided the definition is broad enough to capture recycling, business-to-business transactions, and return scenarios that exist in the marketplace. While the PHMSA appreciates ACA's comments, this rule is more focused on the specific relationship between retail stores and distribution facilities, and not business-to-business operations. However, the PHMSA agrees with ACA's comment pertaining to recycling and is adding the term “recycling” to the definition for “reverse logistics” in § 171.8 of the HMR. In addition, the Retail Industry Leaders Association (RILA) suggests adding “such as a retail store” to the definition of “reverse logistics” to provide an example of a final destination. The PHMSA agrees with the intent of this comment and, in the final rule, has amended the definition of “reverse logistics” by removing the term “final destination” to clarify that, for the purposes of this rulemaking, reverse logistics applies solely to shipments of hazardous materials returned to their manufacturer, supplier, or distribution facility.

The American Trucking Association (ATA) and COSTHA are concerned that the proposed definition for “reverse logistics” did not include carriers. COSTHA asserts that the term “moving” is not appropriate and instead suggests adding the language “offering for transport or transporting” to include

carriers in the reverse logistics definition. The PHMSA agrees and is addressing COSTHA's comment by modifying the definition of “reverse logistics” to include both the process of offering hazmat for transport and the transport of hazmat.

The Dangerous Goods Advisory Council (DGAC) suggests limiting the carrier scenarios proposed in § 173.157(b)(1)(ii) and (iii) of the NPRM to only private or dedicated carriers. The DGAC is aware that contract and common carriers have significant concerns with aspects of this rulemaking, whereas private or dedicated carriers are supportive. It is DGAC's view that while exceptions are necessary, the shipper, as appropriate, should retain responsibility for the transportation of hazmat shipments and the responsibility without control should not be placed on contract or common carriers. The PHMSA agrees and is adopting revisions in this final rule so that reverse logistics shipments by non-private carriers are consistent with the HMR's marking requirements for limited quantity shipments. It should be noted that training requirements are an exception to this alignment. This issue is discussed later in this final rule (see heading “Training.”) We also note that certain types of hazmat proposed in the NPRM, such as retail fireworks, would not be appropriate for shipment as reverse logistics by non-private carriers. Therefore, we are limiting those hazard classes to private carriers only. For the purposes of this final rule, a non-private

carrier is anyone who does not own or operate its own fleet of vehicles.

The ACA asked for clarification of “capturing value” in the definition of “reverse logistics.” The PHMSA intended “capturing value” to be a way for retailers to return consumer products containing hazmat to their manufacturer, supplier, or distribution facility to receive manufacturer’s credit, be resold, or be donated, etc. This final rule seeks to clarify this term within the definition.

Several commenters, including Mr. Billy Puk and the ACA, raise concerns about the use of the term “proper disposal” in the definition of “reverse logistics.” These commenters express concern about potential overlaps with EPA rules for the Federal regulation of hazardous waste. In order to avoid confusion, the PHMSA is removing the term “proper disposal” and adding language to the general section in § 173.157 that specifically excludes hazardous waste as defined in § 171.8 as a material eligible for shipment under the reverse logistics section. By eliminating the term “proper disposal” from the definition, the PHMSA is avoiding any potential inconsistencies with EPA hazardous waste regulations. Furthermore, the PHMSA notes there is nothing in this final rule that supersedes EPA’s Resource Conservation and Recovery Act (RCRA) regulations related to when a material is considered a solid or hazardous waste. The PHMSA is therefore clarifying in §§ 171.8 and 173.157 that hazardous waste is outside the scope of this rulemaking.

As previously stated, the PHMSA is also clarifying that the definition of “reverse logistics” applies only to the return of hazardous materials from a retail store to the product’s manufacturer, supplier, or distribution facility. Therefore, in this final rule, the definition for “reverse logistics” has been revised to read, “Means the process of offering for transport or transporting by motor vehicle goods from a retail store for return to its manufacturer, supplier, or distribution facility for the purpose of capturing value (e.g. to receive manufacturer’s credit), recall, replacement, recycling, or similar reason.” In addition, the PHMSA notes that individual consumers are not considered hazmat employees under § 171.8 of the HMR and, therefore, would not be directly affected by the new requirements in this rulemaking.

Applicability and Hazard Classes

In the NPRM, we proposed hazard classes and quantities of hazmat authorized for reverse logistics

shipments. We also proposed to limit shipments under the reverse logistics to highway transportation only. Several commenters request that the PHMSA extend the applicability to rail and vessel transportation. These commenters believe the rule should authorize the use of domestic vessel and rail shipments where such modes of transportation are used as part of the reverse logistics process. Commenters express that without an extension of the proposed rule to cover domestic vessel and rail shipments utilized during reverse logistics, some retailers may have to create two reverse logistics processes, which will add complexity, confusion, and ultimately, difficulty in execution. Since additional modes were not proposed in the NPRM, these comments are beyond the scope of this rulemaking, and the PHMSA is not adding these modes to the applicability section of this final rule.

Heritage Environmental Services notes that the PHMSA already provides limited quantity provisions in Part 173 of the HMR for retail products that would typically be shipped under the reverse logistics section. The PHMSA agrees and notes that the hazmat classes and quantities addressed in this final rule are consistent with existing limited quantity provisions when using non-private carriers. One exception is that the final rule authorizes the transportation by private carrier of certain Division 2.1 and 2.2 cylinders without the cylinders being tested for pressure. This exception would authorize retail stores to offer certain returned cylinders as a hazardous material when they may no longer meet the definition of a Division 2.1 or Division 2.2 hazardous material. Other deviations from the limited quantities approach, which would allow for the shipment of 1.4G (fireworks and flares), Division 2.1 and 2.2 cylinders (that do not qualify as limited quantity shipments) sold as retail products, and the return of equipment powered by flammable liquids or flammable gases, are permitted under this section only when offered and transported by private carrier. As discussed later in this final rule, the PHMSA also revised employee training requirements for the shipments under the reverse logistics section.

Comments submitted by FedEx seek clarification on the methodology used to develop the authorized hazard classes for this rulemaking. The list of hazardous classes eligible for the reverse logistics section in the NPRM was developed based on information provided in petitions, comments to the ANPRM, and the initial regulatory analysis. However, in response to

comments to the NPRM, the PHMSA has revised this final rule to be consistent (with exception of the deviations noted in the previous paragraph) with the hazard classes and quantity limitations found in the applicable corresponding limited quantities sections of the HMR.

In the NPRM, we proposed to limit applicable Division 1.4 hazmat to consumer fireworks and ammunition. The PHMSA received comments from the American Pyrotechnics Association, Kellner’s Fireworks, the National Fireworks Association, and Greyland Presbury supporting the inclusion of 1.4S and 1.4G fireworks in the final rule. COSTHA commented that the PHMSA should implement a quantity-per-package limit for Division 1.4 hazmat and does not believe that the PHMSA demonstrated an adequate safety analysis to justify including flares and fireworks. The DGAC commented that Division 1.4 materials should not be limited to fireworks and flares and proposed a tiered approach to regulating Division 1.4 hazmat. United Parcel Service (UPS) indicates that Division 1.4 hazmat should not be included as part of this rulemaking since there are already applicable limited quantity provisions.

We agree. Therefore, in response to the comments, the PHMSA has revised the proposed language to include Division 1.4 materials in the final rule with certain limitations. For the purposes of fireworks and flares, the reverse logistics transportation of these materials will be limited to consumer grade fireworks sold at retail facilities. In addition, the PHMSA is requiring consumer grade fireworks to be packaged as required by the approval assigned to those fireworks. This will help to ensure that fireworks packages are shipped in an equivalent manner to when they were originally shipped in the forward logistics chain. In response to comments discussed later, the PHMSA has also added language that limits all reverse logistics shipment of Division 1.4 materials to 30 kg (66 pounds) per package. This is consistent with what is required for limited quantities shipments in the forward logistics chain. Also, in response to UPS and other commenters, the PHMSA is limiting the shipment of 1.4S and 1.4G fireworks and flares to transportation by private carrier when shipped as reverse logistics. By authorizing the shipment of these materials as limited quantities by private carrier, the PHMSA is providing an exception from existing limited quantity provisions to authorize for transportation the shipment of consumer fireworks and flares as reverse

logistics. However, we believe that the proposed controls coupled with limitation to private carrier-only appropriately balances any safety concerns.

With the exception pertaining to 1.4S and 1.4G fireworks and flares as noted above, explosive materials authorized under § 173.157 for non-private carrier will be consistent with the types of 1.4S (ammunition-related) materials authorized to be shipped as limited quantities. Specifically, the PHMSA is authorizing 1.4S hazardous materials that are allowed for shipment as a limited quantity under § 173.63(b) to be allowed for both private and non-private carrier transport of reverse logistics shipments. By ensuring consistent hazard communications for non-private carrier shipments under reverse logistics, air carrier employees will be better able to recognize and reject shipments not authorized for air transportation.

The PHMSA received several comments regarding other hazard classes proposed in the applicability section of the NPRM. Several commenters present concerns with including hazard Divisions of 5.2 (organic peroxides), 6.1 (toxic materials), and 6.2 (infectious substances). Specifically, ATA and COSTHA question the inclusion of Division 6.1 hazmat that is also toxic-by-inhalation (TIH). In addition to noting that these materials are inherently dangerous in transport and are not permitted to be shipped as limited quantities, COSTHA asserts its belief that it would be prudent to also prohibit these materials from being offered as reverse logistics shipments. Further, ATA notes its concern with the inclusion of Division 6.2 materials and adds that a shipper with limited training could ship Ebola, for example, under the proposed exception. FedEx and UPS also comment that Division 6.1 and 6.2 materials should not be included in the final rule. Specifically, FedEx contends that even when transported in limited quantities, Division 6.2 hazardous materials may pose a risk to health, safety, and property when transported under the scope of "reverse logistics." Further, UPS notes that including Division 6.2 materials could conflict with various state regulations involving the transportation of medical waste. UPS adds that under the limited quantities section, Division 6.1 hazmat is limited to Packaging Groups (PG) II and III.

We agree. Therefore, based on these comments, the PHMSA has determined that Division 5.2 and 6.2 materials would not be appropriate for reverse

logistics shipments. Therefore, we are removing the applicability of this rule to Division 5.2 and 6.2 hazardous materials. In addition, the PHMSA is also excluding Division 4.1 materials that are also self-reactive as these materials present a similar risk as Division 5.2 materials. With regards to Division 6.1 materials, the PHMSA notes that there are consumer products found in retail outlets (such as rat poison), that would meet the definition of Division 6.1 and be appropriate for reverse logistics shipments. Additionally, the PHMSA agrees with UPS that these materials should be limited to PG II and III in order to remain consistent with the limited quantities provisions of the HMR. The PHMSA also agrees that TIH materials should not be included and is clarifying in this final rule that Division 6.1 materials which also meet the definition of a TIH material cannot be transported as a reverse logistics shipment. Therefore, in this final rule we are limiting Division 6.1 materials (excluding TIH materials) to PG II and III only.

The DGAC suggested that the PHMSA should not include any materials found in Table 1 of the § 172.504 general placarding requirements as part of this rulemaking. Hazardous materials found in Table 1 of § 172.504 must display appropriate placards when any quantity of a material is being transported. We agree. Therefore, we are not including any materials found in Table 1 of the § 172.504 general placarding requirements as part of this rulemaking. In addition, we are also limiting this rulemaking to only a portion of materials found in Table 2 of § 172.504.

Wal-Mart requests that the PHMSA extend the applicability to Class 7 (radioactive) materials, which would include retail products such as smoke detectors. Since the PHMSA did not propose to include Class 7 materials as part of the NPRM, the comment is beyond the scope of this rulemaking, and we are not able to accommodate the change it as part of this rulemaking.

The ATA expresses concern about the inclusion of Division 4.3 (dangerous when wet) materials and notes that these substances can flare when exposed to water, thus causing issues for emergency responders. COSTHA adds that the PHMSA should consider limits on Division 4.3 materials. We agree. Therefore, based on comments received the PHMSA is no longer considering Division 4.3 materials for this rulemaking and is removing it from the applicability section. Similarly, the PHMSA believes that Class 8 and Class 5, PG I materials are not typically sold

as retail products and are otherwise inappropriate due to their risk profile. Therefore, the PHMSA is limiting Class 8 and Class 5 materials to PG II and III, which will also be consistent with the hazard classes authorized under the limited quantity provisions.

The PHMSA is not authorizing the shipment of lithium batteries as reverse logistics as the current exceptions for the shipment of lithium batteries in § 173.185 already provide a means for the return of these products. Specifically, § 173.185(d) authorizes the shipment of lithium cells and batteries (including lithium cells and batteries contained in equipment) for disposal and recycling. Section 173.185(f) authorizes the shipment of lithium cells and batteries that are damaged, defective, or recalled. Particularly with the international supply chain associated with these products, establishing a new, alternative, and domestic-only hazard communication requirement for these shipments would be duplicative and would not be in the interests of safety.

In summary, after careful review and consideration of the comments to the NPRM, the PHMSA is including certain consumer products in Classes 3, 8 (PG II and III), and 9 (except lithium batteries); certain Division 1.4S materials; and Divisions 2.1, 2.2, 4.1 (excluding self-reactive materials), 5.1 (PG II and III), and 6.1 (excluding TIH and PG I), within the scope of reverse logistics under this final rule.

The PHMSA believes, based on comments and petitions, that these hazard classes and divisions cover much of the hazmat in the reverse logistics process, and the risk presented by the quantities of such hazmat used in consumer products can be managed within the reverse logistics provisions established under this rule. In order to codify these hazmat and quantities, the PHMSA is providing an exception for reverse logistics shipments in each of the applicable sections for each hazard class or division that is included as a part of this rulemaking. For example, § 173.150 provides exceptions for flammable liquids. The PHMSA is adding new paragraph (h) to § 173.150 to authorize reverse logistics shipments that meet the limited quantity provision of § 173.150(b), the requirements in the new reverse logistics definition in § 171.8, and the new reverse logistics section in § 173.157. Similar language is being codified to the exceptions section for each hazard class or division included as a part of this rulemaking. However, we note that not all hazmat authorized under the limited quantity

provisions is authorized under the reverse logistics section.

B. Packaging

General Packaging

In the NPRM, the PHMSA proposed a set of packaging standards under the reverse logistics exception to ensure consistent and safe packaging requirements for low hazard items. The proposed standard included requiring the use of the original packaging or a packaging of equivalent strength or integrity. The NPRM also proposed to require that inner packagings be leak-proof for liquids and sift-proof for solids. Further, for liquids that require an outer packaging, enough absorbent material to contain a spill from the inner packagings must be present. The proposed exception also required shippers to secure products in cages, carts, or bins to prevent shifting during transport.

In response to this proposal, ATA suggests that the PHMSA redraft the packaging requirement to read “each material must be packaged in the manufacturer’s original packaging, if available, and in substantially similar condition to when it left the manufacturer, or a packaging of strength and integrity commensurate to the manufacturer’s original packaging.” The ACA states its belief that use of original packaging or one of equivalent strength containing absorbent material is problematic; the Airline Pilots Association supports the packaging standards proposed in the NPRM; and Siemens Healthcare suggests the packaging standards should only apply when original packaging is unavailable. FedEx adds that the PHMSA should require original packaging, and if one is not available, the PHMSA should require salvage drums for consolidation, asserting that it is unreasonable to expect minimally-trained employees to put damaged materials in packaging of equal strength. G2 Revolution expresses its concern that this section will interfere with the “salvage drums” requirements under § 173.3(c) of the HMR. UPS expresses concern pertaining to the reliance on fiberboard packages that could result in structural failures of the packagings. Giant Cement Holding, Inc. (Giant Cement) asks the PHMSA to clarify what constitutes a “packaging of equal or greater strength and integrity.” Wal-Mart seeks clarification on what items require an outer packaging and whether “receptacles” are the same as an “inner packaging.”

After consideration of the aforementioned comments, the PHMSA is modifying the packaging

requirements as proposed in the NPRM. The PHMSA disagrees with FedEx that salvage drums are necessary for the shipment of consumer-type products that are placed in a package of equal or greater strength and integrity. However, the PHMSA notes that packages that are leaking or damaged would not be in compliance with limited quantity provisions. The PHMSA believes that the consumer products that are authorized under this rulemaking are consistent with what is authorized under the limited quantities sections. As written, consumer-type products shipped under this final rule should not be in such a damaged state that a salvage drum would always be required. The PHMSA agrees with the language suggested by ATA and is adding this language to the packaging section for clarification that packages should be in the original packaging or a package of similar strength and integrity. Especially for transport by non-private carrier, it is the PHMSA’s intent is to ensure that hazmat shipped under the reverse logistics section will be transported in packages that are the same as what would be required under the limited quantities sections of the HMR.

The ACA suggests amending proposed § 173.157(a)(2)(ii) to incorporate Special Provision 149 in § 172.102 to authorize inner packagings not exceeding 5 L (1.3 gallons) for PG III materials, further adding that there should be some consideration of increasing the capacity threshold for Class 3, PG III materials to authorize the return of 5-gallon pails of paint.

As the PHMSA did not propose to expand the quantities for PG III materials, the ACA’s comment is beyond the scope of this rulemaking, and therefore, we are not adopting such a revision in this final rule. However, if the ACA believes that revision of the threshold quantities for certain materials authorized under “reverse logistics” is justified, the PHMSA suggests they submit a petition for rulemaking providing justification.

Several commenters from the regulated community express concern that there is no size limitation on the packages used in the reverse logistics process. COSTHA suggests implementing a 30 kg (66 pounds) limit on reverse logistics shipments. Conversely, Giant Cement suggests Large Gaylord boxes (large corrugated boxes) should be allowed as a strong outside package. The PHMSA agrees with the majority of commenters that there should be a limit on the size per package of shipments made under the reverse logistics section. As there is a size limit of 30 kg (66 pounds) per

package for hazmat shipped as limited quantities under Part 173 of the HMR, the types of packages shipped under the reverse logistics will be consistent with those products shipped as limited quantities. Otherwise, packages shipped under the reverse logistics section would be shipped in sizes larger than what is authorized by the limited quantities sections. Therefore, in this final rule, the PHMSA is setting a 30 kg (66 pound) limit for each package shipped under the reverse logistics section.

Giant Cement expresses concern that shippers will add absorbent material even when there is no damage to the products shipped under the reverse logistics section. Inmar Inc. suggests mandating absorbent materials is unnecessary and suggests that leak-proof cardboard boxes should be adequate for reverse logistics shipments. Inmar Inc. adds that the term “compromised receptacle” is unnecessarily vague and not needed in the provisions, therefore suggesting that the PHMSA clarify what types of receptacles would be considered compromised. In this final rule, the PHMSA is removing the language proposed in § 173.157(b)(2) and (b)(3) related to leaking products containing hazmat, as well as aligning the reverse logistics section with the limited quantities section of the HMR. Therefore, only packages that would be suitable for shipment under the limited quantities section would be eligible for shipment under this section.

Inmar Inc. also notes that the section in the NPRM discussing equipment with batteries needs clarification as to what type of products this section addresses. For clarification, the PHMSA is specifying that only equipment containing non-lithium batteries may be shipped as reverse logistics. Lithium cells or batteries, as well as products containing lithium cells or batteries, must be offered in accordance with the requirements in § 173.185 and are not within the scope of this final rule.

The RILA asks the PHMSA to clarify if there is a difference between “leak-proof” and “leak-tight,” with UPS and Wal-Mart stating that the PHMSA should clarify what is considered “leak-proof” or “sift-proof.” In addition, RILA suggests the PHMSA include a definition for “leak-proof,” while Wal-Mart expresses concern that there is neither a definition of “leak-proof” nor “leak-tight.”

For the purposes of packagings shipped under the reverse logistics requirements, the PHMSA is only requiring that the reverse logistics packages are closed in a manner that

leakage will not occur under normal conditions of transportation. This means transporting retail items in their original packaging or a packaging of equal or greater strength if the original packaging is unavailable. The PHMSA does not believe it is necessary to define “leak-proof” or “leak-tight” for the purposes of this rulemaking.

Cylinders and Aerosols

The ATA notes that the proposed rule extends to cylinders shipped as single packages. In addition, ATA comments that carriers’ hazmat training programs teach drivers to demand shipping papers, placards, etc. when receiving cylinder shipments and asserts that allowing cylinders to be shipped as reverse logistics hazmat without these documents undermines carriers’ overall hazmat training programs for their drivers. UPS also expresses concern that allowing the transport of Division 2.1 and 2.2 materials without a shipping paper could cause confusion concerning standard procedures that carriers use for the shipment of cylinders.

The PHMSA disagrees that shipments of cylinders returned from retail facilities to distribution centers in accordance with this rule would compromise safety. The cylinders shipped under this section are retail consumer products representing a low hazard and are limited to the return of products from the retail facility to the manufacturer, supplier, or distribution facility. Cylinders offered to non-private carriers must be in full compliance with existing limited quantity provisions—including existing hazard communications requirements. Cylinder or aerosols containing hazardous materials that are not limited quantities that weigh less than 66 pounds, and that are intended for retail sale are restricted to transportation by private carriers.

In the NPRM, the PHMSA proposed that aerosols shipped under this section must have caps and closures. Several commenters raise questions pertaining to the preparation of aerosols (see § 171.8 of the HMR for the definition of “aerosol”) for reverse logistics shipments. Giant Cement requests clarification that aerosols are not liquids for shipping purposes and, therefore, are not required to be shipped with absorbent material. The Association of Hazmat Shippers (AHS) and Inmar Inc. suggest that the stem of an aerosol should be allowed to be removed, while C&S Wholesale Grocers and Wal-Mart suggest that the PHMSA allow caps other than the original cap for the aerosol can. Inmar Inc. asks if receptacles include aerosols, and if so,

it suggests the PHMSA consider size limitation on the entire package.

The HMR currently authorizes the shipment of aerosol cans as consumer commodities in § 173.306. The PHMSA believes the provisions in § 173.306 are adequate to address the transportation of aerosol cans as reverse logistics shipments. Therefore, based on our intent to align the reverse logistics section with the limited quantity provisions, shipments of aerosol cans transported as reverse logistics shipments should be packaged in accordance with the limited quantity provisions specified in § 173.306.

Internal Combustion Powered Equipment

In the NPRM, the PHMSA proposed to authorize the transport of equipment powered by an internal combustion engine containing a flammable liquid under the reverse logistics section provided the flammable liquid source was drained and all shut-off devices were in the closed position. These products are unique in that they did not contain hazardous materials at the time of purchase but could become regulated by the HMR as return shipments. In its comments, DGAC seeks clarification from the PHMSA about whether equipment powered by an internal combustion engine (with either flammable liquid or gas fuel) and equipment powered by electric storage batteries are excepted from the packaging requirement in § 173.157(b)(2) as proposed. Inmar Inc. notes that the proposed § 173.157(c) requirements for internal combustion powered equipment (*i.e.*, lawn mowers, weed trimmers) seem more stringent than § 173.220, which authorizes gasoline to remain in equipment. Inmar Inc. believes these requirements should match what is currently required in § 173.220. Wal-Mart supports the proposal to allow reverse logistics shipment of items with a fuel tank provided they are drained with closures securely in place.

The PHMSA agrees with Inmar Inc. that the requirements for reverse logistics shipments of internal combustion powered equipment should align with what is currently allowed by highway in § 173.220(b)(4). Therefore, the PHMSA is allowing the return of internal combustion powered equipment by motor vehicle provided the fuel tank remains securely closed. The PHMSA is also restricting the allowances proposed in the NPRM for flammable liquid-powered equipment, flammable gas-powered equipment, and other equipment powered by flammable gas to transportation by private carrier.

Other Comments

The Rechargeable Battery Association (PRBA) suggests revising § 172.102 Special Provision 130 to allow for batteries utilizing different chemistries. Except for lead-acid batteries and lithium batteries, the PHMSA did not propose in the NPRM to authorize batteries utilizing different chemistries for reverse logistics shipments. Expanding these provisions in this final rule would be beyond the scope of this rulemaking. Therefore, we are unable to accommodate PRBA’s comments in this final rule.

C. Hazard Communication

In the NPRM, the PHMSA proposed that packages shipped under reverse logistics be marked with the common names or proper shipping names of the hazmat contained within the package. The PHMSA received several comments expressing safety concerns with this proposed requirement. For example, ATA notes that a common name could be as uninformative as “lawn care product” or “expired cosmetics,” further adding that a common name might also be a brand name, such as “Dutch Boy” to represent a flammable paint. Therefore, ATA suggests the PHMSA require the use of a “REVERSE LOGISTICS—HIGHWAY TRANSPORT ONLY” marking similar to other marking requirements in the HMR. C&S Wholesale Grocers suggests the PHMSA require a sticker advising that the box may contain limited amounts of hazmat. The DGAC adds that shipments made under reverse logistics should require a marking, contending that a marking would alert drivers and carriers to the presence of hazmat being transported under the reverse logistics section. The DGAC further suggests that the marking read, “This package conforms to 49 CFR 173.4 for domestic highway or rail transport only,” or, more preferably, that there be a pictogram to indicate a reverse logistics shipment.

FedEx and other commenters express concern that only requiring a common name on a package and not a hazmat marking could lead to reverse logistics shipments on aircraft. COSTHA comments that requiring the common name or shipping name of items in the package would not provide much value. Instead, COSTHA suggests requiring the marking, “This package conforms to the requirements of § 173.157 for domestic surface transport only.” Alaska Airlines comments that packages need more information on the outside regarding the contents and supports a marking similar to what ATA and COSTHA suggest. UPS states a lack of communication on

packages will result in difficulty when reporting spills of hazmat, such as is required by some states. Conversely, both Wal-Mart and Advanced Auto Parts suggested not requiring an additional marking when an outer packaging is already required.

After consideration of all the comments, the PHMSA agrees with the majority of the commenters that a more informative and recognizable marking is needed and that it is necessary to modify the marking requirement for packages shipped under the reverse logistics. Therefore, the PHMSA is replacing the proposed common name or proper shipping name marking requirement with the marking "REVERSE LOGISTICS—HIGHWAY TRANSPORT ONLY—UNDER 49 CFR 173.157." Moreover, this marking would only be permissible for shipments offered to and transported by private carriers. Conversely, as shipments made by non-private carriers meet all limited quantity conditions except for training, the limited quantity marking found in § 172.315(a)(1) will be required. We note that the limited quantity marking is well-recognized in both ground and air modes. This familiarity will help to ensure that air carriers are better able to identify shipments offered for non-private carrier transportation under the reverse logistics section of the HMR, thus safeguarding that hazmat shipments are even more readily recognized and, therefore, more easily rejected from inadvertent air transportation. This revision is intended to address the concerns of air carriers and other commenters that these shipments could enter into transportation modes other than highway.

Advance Auto Parts states its belief that the requirement to notify the driver of the presence of hazmat needs clarification or should be removed; FedEx and Inmar Inc. are not sure how the PHMSA expects the requirement to notify the driver of the presence of hazmat to be satisfied; and DGAC notes that a marking on the package would alert drivers and carriers to the presence of hazmat under the reverse logistics section.

We agree. Therefore, in this final rule, the PHMSA is removing the proposed requirement to notify drivers of the presence of hazmat with a reverse logistics shipment. The PHMSA believes that the revised reverse logistics marking on packages is sufficient to indicate the presence of a reverse logistics shipment is present and negates the need for driver notification.

D. Training

In the NPRM, the PHMSA proposed that retail employees who prepare hazmat shipments for return from retail facilities to the distribution centers be excepted from comprehensive training requirements. A central element of this training is the employee's knowledge of the types of materials that are being returned to manufacturers, suppliers, or distribution facilities. As proposed, for reverse logistics shipments, employees must be able to recognize hazmat and prepare the shipments in accordance with the requirements specified in the reverse logistics section—including adherence to the clear instructions provided by manufacturers, suppliers, or distribution facilities. This approach was considered acceptable in light of the wide array of hazmat common to many retail stores and the limited public exposure such shipments will have in the overall transport system. Moreover, consumer products in the retail industry are generally lower risk and easier to package than industrial-type hazardous materials.

The PHMSA received a range of comments pertaining to the reduced training requirements. The Airline Pilots Association and FedEx express their disagreement with the reduced training requirement: The Airline Pilots Association notes that currently there are occurrences of undeclared hazmat in the air mode, and it is concerned that a reduction in training will increase the opportunity for these shipments to be loaded onto an aircraft. FedEx also expresses concern about whether relaxed training requirements as proposed will provide an adequate level of safety. COSTHA adds that the PHMSA should better define who requires training and should eliminate the recordkeeping requirement for training under the reverse logistics section. C&S Wholesale Grocery, DGAC, ACA, and Kellner's Fireworks expressed support of the reduced training requirements. Giant Cement notes it should be made clear that management and supervisors should not be excepted from the full training requirements. G2 Revolution believes that the PHMSA is underestimating the savings with the reduced training requirement but did not quantify by how much.

The PHMSA considered and agreed in principle with commenters pertaining to training requirements and is simplifying these requirements in this final rule. Specifically, the PHMSA is clarifying that retail employees shipping hazardous materials as reverse logistics shipments must be familiar with the reverse logistics requirements adopted

in this final rule. Retail employees must also document that returned shipments of hazardous materials authorized in this final rule are done so in a manner that is consistent with instructions provided by the manufacturer, supplier, or distribution facility. For example, instructions could be emailed, retrieved from a Web site, or retained in hard copy with instructions on how to return certain hazardous materials as instructed by the manufacturer, supplier, or distribution facility. The PHMSA believes that these requirements, in conjunction with the requirement that retail employees have knowledge of the types of materials that are being returned, would be sufficient to properly prepare hazmat for reverse logistics shipments.

We recognize that hazmat employees of manufacturers, suppliers, or original distributors who have already been trained in accordance with the training requirements in § 172.704 of the HMR will assist in ensuring that a majority of shipments are being shipped in appropriate packaging. In this final rule, the PHMSA is clarifying that when performing hazmat functions for the purpose of transporting reverse logistics shipments, employees are subject only to those training requirements specified in this final rule for reverse logistics.

E. Segregation

In the NPRM, the PHMSA proposed to authorize the mixing of various hazard classes and divisions provided the contents of the packages are not leaking. The ATA suggests that parties offering shipments comprised of both traditional and "reverse logistics" hazmat be required to manifest all hazmat on the load's shipping papers, including hazmat moving under the reverse logistics exception. COSTHA adds that reverse logistics shipments transported with traditional hazardous materials should comply with all segregation, shipping paper, placarding, etc. requirements, unless some portion of the hazmat qualifies for a demonstrably safe exemption from these requirements, such as the limited quantity regulations. FedEx suggests that the segregation requirement should be re-worded to say, "Hazardous materials that may react dangerously with one another may not be offered for transportation in the same outer package." Inmar Inc. comments that the PHMSA should provide a table to make it easier for industry to know what types of materials would react dangerously and also suggests that the requirement for hazmat to be "adequately separated" is vague and needs clarification. COSTHA supports the proposed segregation language for

outer packages but notes that it is impractical for carriers to know if various outer packages meet the segregation requirement. Further, for simplicity, COSTHA suggests that the PHMSA include the reverse logistics segregation requirements in the reverse logistics exception section.

The PHMSA is aligning the reverse logistics section for transportation on non-private carriers with the requirements specified in the limited quantities section of the HMR. Therefore, for non-private carriers, no additional or specific language on segregation requirements is required under this rule. The PHMSA notes, however, that segregation requirements will apply for reverse logistics shipments of 1.4S and 1.4G fireworks and flares, which this final rule authorize for transport by private carrier only.

F. Incident Reporting

In the NPRM, the PHMSA proposed to limit incident reporting to those outlined in § 171.15 for shipments made under the reverse logistics requirements. In response to this proposal, the ACA suggests that incident reporting should not be required for reverse logistics shipments since incident reports are not required for materials of trade (MOTs) transport or limited quantities shipments. COSTHA suggests that the written report requirements of § 171.16 should not apply to the reverse logistics section and that this requirement poses difficulties for carriers, as much of the information required to be reported on a DOT-5800.1 will not be available. The ATA recommends either treating reverse logistics hazmat releases as if the carrier discovered undeclared hazmat under § 171.16(a)(4) or treating these releases as being exempt from incident reporting requirements under § 171.16(d). The ATA adds that filling out an incident form for a reverse logistics shipment will be impossible without shipping papers and other hazard communication (e.g., proper shipping name marking). FedEx asks how the PHMSA expects carriers to comply with incident reporting when there is little to no hazard communication required.

As noted in the hazard communication discussion above, the PHMSA believes that requiring a marking that indicates a shipment contains hazmat under the reverse logistics section provides the necessary information for carriers to report a hazmat release in accordance with the reporting requirements in § 171.15. For non-private carriers, the PHMSA has aligned with limited quantity provisions, thus subjecting these

shipments to the current incident reporting requirements and exceptions.

G. Battery Recycling

In the NPRM, the PHMSA proposed to revise § 173.159(e) to authorize the pick-up of used automobile batteries (i.e., electric storage batteries) from multiple shipper locations. The PHMSA received comments from DGAC, BCI, and the National Association of Manufacturers in support of modifying the battery exception in § 173.159(e) to authorize the pick-up of used automobile batteries from multiple shipper locations. However, RSR Corporation opposes the change and urges the PHMSA to keep the single shipper provision intact, further specifying that the removal of the provision would lead to an increase in incidents involving the transportation of used lead-acid batteries. The BCI and DGAC seek clarification on what the PHMSA meant by the language in this section that reads “pallets should be built.”

The 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. Rather, it is the PHMSA's position that because § 173.159(e) requires batteries to be loaded or braced to prevent damage and short circuits in transit, the likelihood of an incident is minimal. Allowing the collection of lead-acid batteries from multiple locations, as the BCI notes, will result in fewer miles traveled to accomplish battery collection activities. Therefore, this will reduce the number of highway miles traveled, the risk of highway accidents, and the impact on the environment. For these reasons, the PHMSA is revising § 173.159(e)(4) to authorize the pick-up of used automotive batteries from multiple retail locations for the purposes of recycling, provided those batteries are consolidated on pallets and loaded so as to not cause damage to the batteries during transportation.

When the PHMSA used the term “should be built” in the proposed revision to § 173.159(e)(4), we were referring to how the batteries were stacked on the pallet, not the construction of the pallet itself. In this final rule, the PHMSA is revising this language to clarify our intention. In addition, the PHMSA is requiring incident reporting for a spill that occurs while transporting under the revised battery exception. It should be noted that EPA export requirements (i.e., 40 CFR part 266, subpart G and 40 CFR part 273), such as notice and consent and annual reporting, apply even if

spent lead-acid batteries (SLABs) are recycled.

IV. Regulatory Review and Notices

A. Statutory Authority

Federal Hazardous Materials Transportation Law (49 U.S.C. 5101–5128) authorizes the Secretary of Transportation (Secretary) to “prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” The Secretary delegated this authority to the PHMSA in 49 CFR 1.97(b). The PHMSA is responsible for overseeing a hazardous materials safety program that minimizes the risks to life and property inherent in the transportation of hazardous materials in commerce. Annually, the HMR provides safety and security requirements for transport of more than 2.5 billion tons of hazardous materials (hazmat), valued at about \$2.3 trillion, accounting for 307 billion miles traveled on the nation's interconnected transportation network. In addition, the HMR includes operational requirements applicable to each mode of transportation.

This final rule is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This final rule provides regulations for the transport of hazardous consumer products in the reverse logistics process.

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

This final rule is not considered a significant regulatory action within the meaning of Executive Order 12866 (“Regulatory Planning and Review”) and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 13563 (“Improving Regulation and Regulatory Review”) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 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.⁶ 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 directed to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610 (“Identifying and Reducing Regulatory Burdens”), issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified or whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.⁷

These three Executive Orders act together to 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.”

Additionally, Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, the PHMSA invited public comment twice (ANRPM published on July 5, 2012 [77 FR 39662]; NPRM published on August 11, 2014 [79 FR 46748]) on these

considerations, including any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data. These comments aided the PHMSA in the evaluation of the proposed requirements. The PHMSA has since revised our evaluation and analysis to address the public comments received.

The PHMSA has evaluated the HMR with respect to reverse logistics and identified areas that could be modified to increase flexibility for the regulated community. In this final rule, the amendments are an optional means to comply with the HMR and will not impose increased compliance costs on the regulated industry. By proposing to add a new § 173.157 to the HMR for items shipped in the reverse logistics supply chain, the PHMSA will increase flexibility to industry. The PHMSA believes that the implementation of a regulatory approach addressing a distinct segment of the supply that transports consumer-type goods, coupled with outreach, will create a framework that will allow for the safe transportation of dangerous goods.

In addition to providing a new reverse logistics section for transporting specifically authorized hazmat, this rulemaking expands an existing exception for exclusive shipments of used automobile batteries. This exception is typically used for shipment of these batteries from a retail facility to a recycling center. This change to the HMR will allow the regulated

community to consolidate shipments of automotive batteries (*i.e.*, lead-acid batteries) for recycling.

A summary of the Regulatory Evaluation used to support the requirements presented in this final rule are discussed below, and 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

The PHMSA assumes that this rulemaking would reduce shipping paper preparation costs for shipments involving certain quantities of commodities. The packages will, however, require a marking indicating that the materials are being shipped in accordance with § 173.157 or the existing limited quantity marking. Transport vehicles carrying packages affected by the rule will no longer require placarding. Additionally, the training requirements are amended to reflect a distinct segment of the supply chain which transports consumer-type hazardous materials as return shipments from retail stores. Finally, the PHMSA is relaxing the requirements for exclusive use shipment of wet batteries (*i.e.*, lead-acid batteries). This change will reduce the transportation costs associated with shipment for the recycling of lead-acid batteries. A table identifying the benefits associated with this final rule is provided below:

BENEFITS OF THE FINAL 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.

Note that the numbers above represent an upper bound on the expected savings from this final rule. In this final rule, the PHMSA did remove some hazard classes from the applicability and reduced the size limit on packages to 30 kg (66 pounds). The hazard classes in this final rule represent a vast majority of the consumer-type products containing hazardous materials. In addition, the 30 kg (66 pound) package limit is consistent with limited quantity shipments used for these products in the forward logistics chain. Therefore, the PHMSA believes the above numbers

are a general representation of the savings expected from this final rule. The PHMSA does not expect any additional cost to the regulated community because of these changes.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”) and the President’s memorandum on (“Preemption”) published in the **Federal Register** on May 22, 2009 (74 FR 24693). This final rule will preempt State, local, and tribal government

requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the Federal 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 tribal government requirements on the following subjects:

⁶ See <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>.

⁷ See <http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf>.

(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;

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

This final rule addresses all the covered subject areas above. This final rule will preempt any State, local, or tribal requirements concerning these subjects unless the non-Federal requirements are “substantively the same” as the Federal requirements. Furthermore, this final rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal Hazardous Materials Transportation Law provides at § 5125(b)(2) that, if the DOT issues a regulation concerning any of the covered subjects, the 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. The PHMSA has determined that the effective date of Federal preemption for these requirements will be one year from the date of publication of the final rule in the **Federal Register**.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). The PHMSA did not receive any comments from or requests for consultation and coordination with tribal governments related to this rulemaking action. Because this final rule does not significantly or uniquely affect the communities of 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 reverse logistics shipments are shipped properly under § 173.157 and ensuring that its employees have access to the minimal training requirements as required under this new section.

The PHMSA expects this rule to have little or no impact on small entities since these entities are already subject to hazmat shipping requirements and this rule will provide an optional alternative to current regulations. 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 this final rule all have substantial numbers of small entities. The impacts of the final rule are expected to be favorable because of the new flexibility for the preparation and transport of certain hazmat within the scope of reverse logistics. However, the PHMSA does not expect that the impacts will be significant. A typical small entity would save roughly \$60 per affected new employee in training costs and \$0.17–\$2 per affected package in shipment preparation costs.

This rule applies to all shippers and carriers of hazardous materials, to the extent that they (1) are involved in reverse logistics movements and (2) choose to avail of the proposed new regulations rather than the existing HMR. Key affected industries are specialized freight trucking (NAICS 484200), general freight trucking (NAICS 484100), electronics and home furnishing retail (NAICS 442000), and health and personal care stores (NAICS 446000). The PHMSA does not have detailed data on the number of potentially affected entities by industry or their distribution by entity size; however, based on hazmat registration data, roughly 10,785 registered shippers are small entities (75 percent of the total) and 11,131 registered carriers are small businesses (85 percent of the total). Not all of these offer or transport materials in reverse logistics.

Based upon the above estimates and assumptions, the PHMSA certifies that the amendments in this final rule 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 Evaluation, which is available in the public docket for this rulemaking. This rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and the DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of 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 Evaluation document.

F. Paperwork Reduction Act

The 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 May 30, 2016. This final rule 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 the PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

The PHMSA received no comments on the information collection portion of this rulemaking. This final rule identifies revised information collection requests that the PHMSA will submit to OMB for approval based on the requirements in this final rule. The PHMSA has developed burden estimates to reflect changes in this final rule and approximates 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.

Requests for a copy of this information collection should be

directed to Steven Andrews or T. Glenn Foster, (202) 366–8553, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

G. Regulation Identifier Number (RIN)

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

H. Unfunded Mandates Reform Act of 1995

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

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies consider the environmental effects of final rule 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 final 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 action; (2) alternatives to the action; (3) environmental impacts of the action and alternatives; and (4) a list of the agencies and persons consulted during the consideration process [See 40 CFR 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. The PHMSA is revising the HMR to provide requirements that are more tailored to a consumer or retail environment. Further, the PHMSA is providing more flexibility for exclusive use shipments of wet batteries (*i.e.*, lead-acid batteries)

in order to promote recycling and to allow carriers to consolidate shipments of batteries from multiple shippers on a single transport vehicle.

2. Alternatives

The alternatives considered in this Environmental Assessment include the following:

Alternative 1: A final rule providing regulatory flexibility to allow low hazard consumer products to be returned to points of origination under a new section of the HMR. This action, Alternative 1, provides a mechanism for the regulated community to safely transport low hazard items back to distribution centers, for example, in the reverse logistics supply chain. The PHMSA believes that the incorporation of this section will address the unique aspects of reverse logistics in the retail sector.

Alternative 2: The “no action” alternative, meaning that the regulatory scheme will stay the same and the final rule would not be promulgated. This action, Alternative 2, results 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, neither would it account for the compliance obstacles and regulatory concerns raised by retailers and shared by the PHMSA.

3. Environmental Impacts of Selected Action

When developing potential regulatory requirements, the PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, the PHMSA evaluates the following: The risk of release of hazmat and resulting environmental impact; the risk to human safety, including any risk to first responders; the longevity of the packaging; and the circumstances in which the regulations would be carried out (*i.e.*, the defined geographic area, the resources, any sensitive areas) and how they could thus be impacted.

Of the regulatory changes in Alternative 1, none has negative environmental impacts. The revision of the exclusive use shipment of automobile batteries in § 173.159 promote and simplify the recycling of used automobile batteries. This revision will result in more consolidated shipments of such batteries from multiple shippers and, in turn, will reduce the number of highway shippers on the road. Currently, the HMR limits transport of these batteries to one

shipper, but by reducing the number of shipments by highway, this will result in lower emissions and fuel consumption. This change will also likely increase the lead-acid battery-recycling rate, thus reducing the number of these batteries that end up in landfills. This reduction in shipments will reduce the likelihood that hazmat is spilled into the environment. Overall, all of these impacts will have a net positive impact on the environment. The PHMSA does not believe that these environmental impacts will be significant.

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

4. Discussion of Environmental Impacts in Response to Comments

The PHMSA did not receive any comments on the environmental impact of this rulemaking. However, the PHMSA did receive comments from the EPA that were unrelated to the potential impact to the environment. These comments were related to inclusion of the word “disposal” in the definition of “reverse logistics.”

5. 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, the PHMSA, as part of its rulemaking development, consults other Federal agencies that this rule could affect. In developing this rulemaking action, the 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).

6. Conclusion

The provisions of this rule build on current regulatory requirements and are modeled after existing regulatory exceptions for low hazard materials. The PHMSA has calculated that this rulemaking will not increase the current risk of release of hazardous materials into the environment. Therefore, the PHMSA finds that there are no significant environmental impacts associated with this final rule.

J. Privacy Act

In accordance with 5 U.S.C. 553(c), the DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any

personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or if they 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 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The 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 final rule and have found that this domestic exception for the return of hazardous 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 the PHMSA’s obligations under the Trade Agreement Act, as amended.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities

unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This final rule does not involve voluntary consensus standards.

List of Subjects

49 CFR Part 171

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

49 CFR Part 173

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

In consideration of the foregoing, 49 CFR Chapter I is 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. 104–121, sections 212–213; Pub. L. 104–134, section 31001; 49 CFR 1.81 and 1.97.

■ 2. In § 171.8, a definition for “Reverse logistics” is added in alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Reverse logistics means the process of offering for transport or transporting by motor vehicle goods from a retail store for return to its manufacturer, supplier, or distribution facility for the purpose of capturing value (e.g., to receive manufacturer’s credit), recall, replacement, recycling, or similar reason. This definition does not include materials that meet the definition of a hazardous waste as defined in this section.

* * * * *

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. In § 173.63, add paragraph (d) to read as follows:

§ 173.63 Packaging exceptions.

* * * * *

(d) *Reverse logistics*. Hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with paragraph (b) of this section may be offered for transport and transported in highway transportation in accordance with § 173.157.

* * * * *

■ 5. In § 173.150, add paragraph (i) to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(i) *Reverse logistics*. Hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with paragraph (b) of this section may be offered for transport and transported in highway transportation in accordance with § 173.157.

■ 6. In § 173.151, add paragraph (f) to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(f) *Reverse logistics*. Except for Division 4.2 hazardous materials and self-reactive materials, hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with paragraph (b) of this section may be offered for transport and transported in highway transportation in accordance with § 173.157.

■ 7. In § 173.152, add paragraph (d) to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(d) *Reverse logistics*. Except for Division 5.2 hazardous materials, hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with paragraph (b) of this section may be offered for transport and transported in highway transportation in accordance with § 173.157.

■ 8. In § 173.153, add paragraph (d) to read as follows:

§ 173.153 Exceptions for Division 6.1 (poisonous materials).

* * * * *

(d) *Reverse logistics*. Hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with paragraph (b) of this section may be offered for transport and transported in highway transportation in accordance with § 173.157.

■ 9. In § 173.154, add paragraph (e) to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(e) *Reverse logistics.* Hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with paragraph (b) of this section may be offered for transport and transported in highway transportation in accordance with § 173.157.

■ 10. In § 173.155, add paragraph (d) to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

* * * * *

(d) *Reverse logistics.* Except for Lithium batteries, hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with paragraph (b) of this section may be offered for transport and transported in highway transportation in accordance with § 173.157.

■ 11. Add § 173.157 to subpart D to read as follows:

§ 173.157 Reverse logistics—General requirements and exceptions for reverse logistics.

(a) *Authorized hazardous materials.* Hazardous materials may be offered for transport and transported in highway transportation under this section when they meet the definition of reverse logistics as defined under § 171.8 of this subchapter. However, hazardous materials that meet the definition of a hazardous waste as defined in § 171.8 of this subchapter are not permitted to be offered for transport or transported under this section. Hazardous materials authorized for transport according to a special permit as defined in § 171.8 of this subchapter must be offered for transportation and transported as authorized by the special permit.

(b) *When offered for transport or transported by non-private carrier.*

Hazardous materials must be both authorized for limited quantity provisions as well as explicitly authorized for reverse logistics transportation under their applicable limited quantities section. Except for alternative training provisions authorized under paragraph (e) of this section, all hazardous materials must otherwise meet the requirements for a limited quantity shipment.

(c) *When offered for transport or transported by private carrier.* Hazardous materials are authorized under paragraph (b) of this section or are subject to the following limitations:

(1) Division 1.4G materials offered for transport and transported in accordance with § 173.65 of this subchapter.

(2) When sold in retail facilities; Division 1.4G or 1.4S fireworks, Division 1.4G ammunition, or Division 1.4G or 1.4S flares. Shipments offered for transport or transported under this subparagraph are limited to 30 kg (66 pounds) per package. All explosive materials subject to an approval must meet the terms of the approval, including packaging required by the approval.

(3) Equipment powered by flammable liquids or flammable gases.

(i) *Flammable liquid-powered equipment.* The fuel tank and fuel lines of equipment powered by an internal combustion engine must be in the closed position, and all fuel tank caps or closures must be securely in place.

(ii) *Flammable gas-powered equipment.* A 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.

(4) Division 2.1 or 2.2 compressed gases weighing less than 66 pounds and sold as retail products. 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.

(5) Materials shipped under this paragraph (c) must also comply with the segregation requirements as required in § 177.848.

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

(d) *Hazard communication.* Hazardous materials offered for transportation and transported by private carrier in accordance with paragraph (c) of this section may use the marking “REVERSE LOGISTICS—HIGHWAY TRANSPORT ONLY—UNDER 49 CFR 173.157” as an alternative to the surface limited quantity marking found under § 172.315(a). Size marking requirements found in § 172.301(a)(1) apply.

(e) *Training* (1) Any person preparing a shipment under this section must have clear instructions on preparing the reverse logistics shipment to the supplier, manufacturer, or distributor from the retail store. This includes information to properly classify, package, mark, offer, and transport. These instructions must be provided by the supplier, manufacturer, or distributor to ensure the shipment is correctly prepared for transportation or through training requirements prescribed under part 172 Subpart H of this subchapter.

(2) Employers who do not provide training under part 172 Subpart H of this subchapter must:

(i) Identify hazardous materials subject to the provisions of this section, verify compliance with the appropriate conditions and limitations, as well as ensure clear instructions from the manufacturer, supplier, or distributor associated with product’s origination or destination;

(ii) Ensure clear instructions provided are known and accessible to the employee at the time they are preparing the shipment; and

(iii) Document that employees are familiar with the requirements of this section as well as the specific return instructions for the products offered under this section. Documentation must be retained while the employee is employed and 60-days thereafter. Alternatively, recordkeeping requirements under part 172 Subpart H may be used.

■ 12. In § 173.159, revise paragraphs (e)(3) and (4) and add paragraph (e)(5) 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, batteries on pallets, must be stacked to not cause damage to another pallet in transportation;

(4) A carrier may accept shipments of batteries from multiple locations for the purpose of consolidating shipments of batteries for recycling; and

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

* * * * *

■ 13. In § 173.306, add paragraph (m) to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(m) *Reverse logistics.* Hazardous materials meeting the definition of “reverse logistics” under § 171.8 of this subchapter and in compliance with this section may be offered for transport and transported in highway transportation in accordance with § 173.157. For the purposes of this paragraph a cylinder or aerosol container may be assumed to meet the definition of a Division 2.1 or 2.2 material, respectively, even if the exact pressure is unknown.

Issued in Washington, DC on, March 25, 2016, under the authority delegated in 49 CFR 1.97.

Marie Therese Dominguez,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016-07199 Filed 3-30-16; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130403320-4891-02]

RIN 0648-XE542

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Resources of the South Atlantic; 2016-2017 Recreational Fishing Season for Black Sea Bass

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; recreational season length.

SUMMARY: NMFS announces that the length of the recreational season for black sea bass in the exclusive economic zone (EEZ) of the South Atlantic will extend throughout the 2016-2017 fishing year. Announcing the length of recreational season for black sea bass is one of the accountability measures (AMs) for the recreational sector. This announcement allows recreational fishermen to maximize their opportunity to harvest the recreational annual catch limit (ACL) for black sea bass during the fishing season while managing harvest to protect the black sea bass resource.

DATES: This rule is effective from 12:01 a.m., local time, April 1, 2016, until 12:01 a.m., local time, April 1, 2017, unless changed by subsequent notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727-824-5305, email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery includes black sea bass in the South Atlantic and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council prepared the FMP and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The final rule implementing Regulatory Amendment 14 to the FMP changed the recreational fishing season for black sea bass from June 1 through May 31 to April 1 through March 31 (79 FR 66316, November 7, 2014). The final rule also revised the recreational AMs for black sea bass. Prior to the start of each recreational fishing year on April 1, NMFS will project the length of the recreational fishing season based on when NMFS projects the recreational ACL to be met and will announce the recreational season end date in the **Federal Register** (50 CFR 622.193(e)(2)). The purpose of this revised AM is to implement a more predictable recreational season length while still constraining harvest at or below the recreational ACL to protect the stock from experiencing adverse biological consequences.

The recreational ACL for the 2016-2017 fishing year is 848,455 lb (384,853 kg), gutted weight, 1,001,177 lb (454,126 kg), round weight, and was established through the final rule for Regulatory Amendment 19 to the FMP on September 23, 2013 (78 FR 58249). In the 2015-2016 fishing year, harvest levels of black sea bass were not close to reaching the recreational ACL of 876,254 lb (397,462 kg), gutted weight, 1,033,980 lb (469,005 kg) round weight, and based on landings from the 2013-2014 through 2015-2016 fishing years, NMFS therefore estimates that the recreational ACL will not be met in the 2016-2017 fishing year. Accordingly, the recreational sector for black sea bass is not expected to close as a result of reaching its ACL, and the season end date for recreational fishing for black sea bass in the South Atlantic EEZ is the end of the current fishing year, March 31, 2017.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic black sea bass and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(e)(2) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The

Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement the recreational season length constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because prior notice and opportunity for public comment on this temporary rule is unnecessary. Such procedures are unnecessary, because the rule establishing the AM has already been subject to notice and comment, and all that remains is to notify the public of the recreational season length.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 28, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016-07292 Filed 3-28-16; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150413357-5999-02]

RIN 0648-XE531

Atlantic Highly Migratory Species; Commercial Aggregated Large Coastal Shark and Hammerhead Shark Management Group Retention Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS is adjusting the commercial aggregated large coastal shark (LCS) and hammerhead shark management group retention limit for directed shark limited access permit holders in the Atlantic region from 36 LCS other than sandbar sharks per vessel per trip to 3 LCS other than sandbar sharks per vessel per trip. This action is based on consideration of the regulatory determination criteria regarding inseason adjustments. The retention limit will remain at 3 LCS other than sandbar sharks per vessel per trip in the Atlantic region through the rest of the 2016 fishing season or until NMFS announces via a notice in the