



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, D.C. 20590

SEP 15 2016

Mr. Karsten Koller
Specialist, Certification Department
CETECOM Japan K.K.
Shin - Yokohama Business Center Building 4F
3-2-6 Shin-Yokohama, Kohoku-ku
Yokohama 222-0033, Japan

Reference No. 16-0072

Dear Mr. Koller:

This letter is in response to your April 21 and May 2, 2016, emails requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) applicable to classification testing of Class 9 seat belt pretensioners. Specifically, you ask how the design type testing requirements in § 173.166 apply to the scenarios you provided. We have paraphrased and answered your questions as follows:

- Q1. You provide several examples of packaging patterns where between 1 and 10 pretensioners are contained in either cardboard, plastic, or metal boxes or cartons. You ask whether the “bonfire” test may be performed on only the packaging pattern containing the most pretensioners or whether all variations must be tested.
- A1. Section 173.166(b) permits certain safety devices, including seat belt pretensioners, to be classed as Class 9 (UN3268) provided a representative of each safety device design type is tested in accordance with this paragraph by an authorized person or testing agency, and the testing requirements specified in special provision 160 (see § 172.102). Special provision 160 requires articles to be tested in accordance with Test Series 6(c) of the United Nations (UN) Manual of Tests and Criteria. The authorized examining agency should be provided with information about the parameters of the article design and the intended packaging arrangements in order to determine which article(s) and packaging must be tested. If, based upon the outcome of the test results, the testing agency determines that the classification is dependent upon a specific packaging arrangement or quantity; it must be clearly indicated in the test agency report and transportation of these devices must be as specified within the report. If not dependent upon the packaging, then any of the authorized packagings for safety devices specified in § 173.166(e) may be used for transport.

Q2. You provide a scenario where Company A designs and manufactures seat belt pretensioners and provides their design to Company B to manufacture the same design. You ask whether Company A's test report may be used for both companies.

A2. The answer is no. Under § 173.56, energetic materials made by a different manufacturer meet the definition of new explosives, and therefore a pretensioner made by Company B is also ineligible to be classed by comparison to pretensioners made by Company A under §173.166. For safety devices which are manufactured by the same company at multiple facilities, please see the enclosed January 5, 2014 letter from Mr. Shane C. Kelley to Mr. Mark Ludwikowski, Esq. (Ref. No.: 14-0047; copy enclosed).

Q3. You ask whether there are any exceptions from the requirements in § 173.166 for special circumstances, involving a one-time shipment of safety devices.

A3. The answer is no. Section 173.166 applies to single shipments of safety devices. However, special permits may authorize relief from any requirement in the HMR, provided the applicant demonstrates an equivalent level of safety to that intended by the regulation. To apply, you must submit an application to the Associate Administrator for Hazardous Materials Safety in conformance with the requirements prescribed in 49 CFR Part 107, Subpart B. You may obtain information on the special permit application process from our website at <http://www.phmsa.dot.gov/hazmat/regs/sp-a>, or by calling PHMSA's Approvals and Permits Division at (202) 366-4511.

Q4. You ask for confirmation of your understanding that classification of safety devices by an authorized test lab under the new requirements in § 173.166(b)(1) may apply to several similar products (within a "design type"), and that classification testing of type number is not required.

A4. Your understanding is correct. Section 173.166 of the HMR was recently revised in a final rule published in the *Federal Register* on July 30, 2013 [78 FR 45880 (HM-254)]. This final rule provides an exception from the requirements for U.S. DOT approval (i.e. EX number) for air bag inflators, air bag modules or seat-belt pretensioners (UN3268) that were examined and successfully tested by a person or agency who is authorized to do so by the Associate Administrator under the requirements of § 173.56(b)(1). Paragraph 173.166(b)(1) specifies that "safety devices, excluding those which contain flammable or toxic gases or mixtures thereof, may be classed as Class 9 (UN3268) if the safety device (or if more than a single safety device is involved then the representative of the maximum parameters of each design type) meets the requirements in 173.166(b)(1). Therefore, a classification made under this paragraph may be valid for seat-belt pretensioners with different part or product numbers as long as they fall within the same design type.

The parameters of the entire design type must be included within the report issued by the examining agency, or on a drawing referenced within the report issued by the examining agency.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, reading "T. Glenn Foster". The signature is written in black ink and is positioned below the word "Sincerely,".

T. Glenn Foster
Chief, Regulatory Review and Reinvention Branch
Standards and Rulemaking Division



U.S. Department
of Transportation

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Pipeline and Hazardous
Materials Safety
Administration

JAN 05 2015

Mr. Mark Ludwikowski, Esq.
Sandler, Travis & Rosenberg, P.A.
1300 Pennsylvania Avenue, N.W., Suite 400
Washington, DC 20004-3062

Ref. No.: 14-0047

Dear Mr. Ludwikowski:

This is in response to your email dated March 11, 2014, requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) relating to the classification of airbag inflators. Your client produces the same model or same family of inflators using the same designs across multiple manufacturing sites.

Q1. You ask whether a single testing lab report for a particular inflator model or inflator family can be used across your client's multiple manufacturing sites and if this is dependent upon whether the inflator is classed as Class 9 (UN3268) or if the company submits an application to PHMSA for and EX approval.

A1. An EX approval for an explosive article remains valid for the same article produced by the same manufacturer at multiple facilities within the United States. However, approvals issued for explosive articles manufactured at a facility outside the United States are only valid for articles produced at that facility unless an authorized laboratory has examined the article and issued a test report conforming to the provisions of §173.166(b)(1) for the article as produced at each additional facility outside of the United States. This applies regardless of whether the article is ultimately classed as a Class 9 (UN3268) or classed and approved as Division 1.4G and assigned an EX number by the PHMSA Associate Administrator.

Q2. You also ask whether the energetics used in the inflators must be exactly the same across manufacturing sites and if the energetics must be of the same origin.

A2. The energetic formulations used in inflators must be exactly the same in order to be included in a single design type under the provisions of § 173.166(b)(1). Variations in energetic formulations may be authorized under the provisions of the EX approval process in § 173.56 if the explosive examination laboratory documents the variations in a report by analogy to an inflator previously tested, and PHMSA concurs by issuing an EX approval for the inflator.

I trust this information is helpful. If you have further questions, please do not hesitate to contact this office.

Sincerely,

Shane C. Kelley
Acting International Standards Coordinator
Standards and Rulemaking Division



Babich
\$173.166
\$173.56(b)(1)
Air Bags Inflators
14-0047

SANDLER, TRAVIS & ROSENBERG, P.A.
ATTORNEYS AT LAW

MARK LUDWIKOWSKI, ESQ.
Member, D.C. Bar
(202) 730-4967 Direct
(202) 216-9307 Telephone
(202) 842-2247 Facsimile

E-MAIL ADDRESS:
mludwikowski@strtrade.com

March 11, 2014

VIA FIRST CLASS MAIL AND EMAIL: infocntr@dot.gov

Office of Hazardous Materials Standards
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
East Building
Washington, DC 20590-0001
Attn: PHH-10

**RE: Interpretation Request – Use of Test Reports for Multiple Manufacturing Sites
Daicel Corporation**

Dear Sir or Madam:

Further to our email communications with Mr. William Fink at PHMSA on February 6, 2014, on behalf of our client Daicel Corporation (“Daicel”) 823 Umaba, Ibogawa-Cho, Tatsuno-shi, Hyogo, Japan 671-1681, we hereby request an interpretation concerning the following issue.

Daicel and its affiliates in the United States, Thailand, Poland, China and Korea manufacture airbag inflators at these various locations. Often, the same exact model inflators (or inflator families) using the same designs are manufactured across these multiple Daicel manufacturing sites. The company would like to know whether a single testing lab report for a model inflator or inflator family can be used for its multiple manufacturing sites if the inflator designs are the same. Assuming that the test report can be used for multiple sites, is the origin of the energetics used in the inflator critical? In other words, must the energetics also be exactly the same across manufacturing sites and must the energetics be of the same origin? The new regulations at 49 C.F.R. 173.166(b) only reference design type, specifically:

(b) *Classification.* (1) An air bag inflator, air bag module, or seat-belt pretensioner, excluding those which contain flammable or toxic gases or mixtures thereof, may be classed as Class 9 (UN3268) if the air bag inflator, air bag module, or seat-belt pretensioner, or if more than a single air bag inflator, air bag module, or seat-belt pretensioner is involved **then the representative of the maximum parameters of each design type**, is examined and successfully tested by a person or agency who is

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March 11, 2014

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authorized by the Associate Administrator to perform examination and testing of explosives under § 173.56(b)(1)...

(emphasis added).

This question applies regardless of whether or not the company submits an approval application to PHMSA for an EX approval under the new inflator regulations. In the revised regulations, PHMSA explained that:

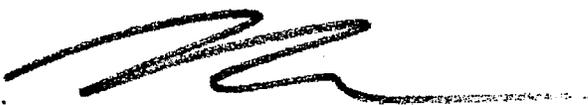
As was proposed in the NPRM, persons who test and examine air bag inflators, air bag modules, or seat-belt pretensioners would be required to provide a detailed report on **each tested design** to the manufacturer. Key components of the report include a description of the design; explanation of the tests performed and results; and a recommended classification for tested designs... In summary, the proposed NPRM amendments provided manufacturers of air bag inflators, air bag modules, or seat-belt pretensioners with the option to utilize new designs that are proven to meet the criteria of a Class 9 through established test criteria, without receiving an EX approval from PHMSA.

Hazardous Materials: Approval and Communication Requirements for the Safe Transportation of Air Bag Inflators, Air Bag Modules, and Seat-Belt Pretensioners (RRR), 78 Fed. Reg. 45880, 45882 (July 30, 2013). (emphasis added).

Thank you for your consideration of this inquiry. Please let me know if you have any questions or if we can be of assistance.

Sincerely yours,

SANDLER, TRAVIS & ROSENBERG, P.A.

By: 

Mark Ludwikowski

cc: William Fink

Drakeford, Carolyn (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Wednesday, March 12, 2014 1:13 PM
To: Drakeford, Carolyn (PHMSA)
Subject: FW: Interpretation Request - Use of Test Reports for Multiple Manufacturing Sites
Attachments: Interpretation Request - Use of Test Reports for Multiple Sites.pdf; Mark Ludwikowski.vcf; Mark Ludwikowski.vcf

Importance: High

Hi Carolyn,

This caller requested we submit this e-mail as a formal letter of interpretation.

Thanks,
Victoria
d

From: Mark Ludwikowski [<mailto:mludwikowski@strtrade.com>]
Sent: Tuesday, March 11, 2014 6:20 PM
To: INFOCNTR (PHMSA)
Cc: Fink, William (PHMSA)
Subject: Interpretation Request - Use of Test Reports for Multiple Manufacturing Sites
Importance: High

Dear Sir or Madam,

Attached, please find the interpretation request submitted on behalf of our client Daicel Corporation. Please let us know if you have any questions. A hard copy of this request is being sent by first class mail.

Thank you.

Mark Ludwikowski

Mark Ludwikowski
Member

Sandler, Travis & Rosenberg, P.A.
1300 Pennsylvania Avenue, N.W., Suite 400 Washington, D.C. 20004
T:(202) 730-4967 C:(703) 888-8380 F:(202) 842-2247
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Goodall, Shante CTR (PHMSA)

Lehman
173.166
Safety Devices
16-0072 Pt 2

From: Betts, Charles (PHMSA)
Sent: Monday, May 02, 2016 7:28 AM
To: Goodall, Shante CTR (PHMSA)
Cc: Dodd, Alice (PHMSA)
Subject: FW: [PHMSA] Question about testing and test report requirements for seatbelt pretensioners

Good morning Shante –

Please add the below email to Ms. Karsten's previous request for interpretation.

Thanks,
Charles

From: Koller, Karsten [CETECOM] [mailto:Karsten.Koller@cetecom.com]
Sent: Monday, May 02, 2016 3:33 AM
To: Betts, Charles (PHMSA); Kelley, Shane (PHMSA)
Cc: Herrera, Jacqueline (PHMSA); Ogino, Izumi [CETECOM]; Murata, Yuki [CETECOM]; Watanabe, Naomi [CETECOM]
Subject: RE: [PHMSA] Question about testing and test report requirements for seatbelt pretensioners

Dear Mr. Betts,

Thank you very much, we will wait for your response.

In addition to the questions in my previous email, the customer would like to add one additional question:

When the customer visited PHMSA in 2011, they learned that they would need to obtain an EX Number for every type number.

However, in 2013, part 173.166 has been revised and EX numbers were no longer required for Class 9 pretensioners, but instead a classification by an authorized lab was required.

The customer would like to know, if it is possible now that one generic type is given to type numbers (=several products) in which characteristics are identical as judged by an authorized lab and to get only one classification for each generic type, instead of for each type number?

Thank you very much for your support.

Best Regards,
Karsten Koller
Specialist
Certification Department

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3-2-6 Shin-Yokohama, Kohoku-ku,
Yokohama 222-0033, Japan
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Fax: +81 (0) 45 471 1212
E-Mail: karsten.koller@cetecom.com

From: Betts, Charles (PHMSA) [mailto:charles.betts@dot.gov]
Sent: Thursday, April 21, 2016 8:58 PM
To: Koller, Karsten [CETECOM] <Karsten.Koller@cetecom.com>; Kelley, Shane (PHMSA) <shane.kelley@dot.gov>

Cc: Herrera, Jacqueline (PHMSA) <Jacqueline.Herrera@dot.gov>; Ogino, Izumi [CETECOM] <Izumi.Ogino@cetecom.com>; Murata, Yuki [CETECOM] <Yuki.Murata@cetecom.com>; Watanabe, Naomi [CETECOM] <Naomi.Watanabe@cetecom.com>
Subject: RE: [PHMSA] Question about testing and test report requirements for seatbelt pretensioners
Importance: High

Good morning Ms. Karsten –

We are in receipt of your inquiry. Your request will be logged into our tracking system and assigned to a specialist for response. Please note, that a response generally take 4 to 6 weeks (sometimes longer), depending on the number of inquiries in our system and the level of difficulty involved in drafting a response. If you have additional questions, please feel free to reach out to me.

Regards,
Charles

From: Koller, Karsten [CETECOM] [mailto:Karsten.Koller@cetecom.com]
Sent: Thursday, April 21, 2016 12:55 AM
To: Kelley, Shane (PHMSA)
Cc: Betts, Charles (PHMSA); Herrera, Jacqueline (PHMSA); Ogino, Izumi [CETECOM]; Murata, Yuki [CETECOM]; Watanabe, Naomi [CETECOM]
Subject: [PHMSA] Question about testing and test report requirements for seatbelt pretensioners

Dear Mr. Kelley and Mr. Betts,

One of our customers is interested in the conformance testing and test report requirements of a seatbelt pretensioner according to part 173.166.

Regarding this we have the following questions and would appreciate it, if you could answer them:

1. The customer is considering various packing patterns:
 - A) Put one in one cardboard box
 - B) Put 5 in one returnable plastic carton
 - C) Put 10 in one returnable metal carton.

A previous report from this customer mentioned "not package dependent", so we are wondering if it would be okay to perform the bonfire test only on one of the patterns. For example can the test only be performed for the pattern, where the most pretensioners can fit in the 0.15cm³ space?

2. For the case when seatbelt pretensioners are designed by company A, but manufactured by company A and company B, the applicant will be company A, and the manufacturer will be company A and B. Is it possible to cover this by one test and test report or will this be not sufficient?

3. In the case there are extraordinary shipments of class 9 pretensioners, is there any approval scheme, where it is not required to test according to Part 173.166? If there are such exemption cases, please let us know the conditions for the exemption.

Extraordinary shipments means that the transport / shipment is not repeated frequently but instead that the shipment only occurs one time.

Thank you very much for your support.

Best Regards,
Karsten Koller
Specialist
Certification Department

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Yokohama 222-0033, Japan
Phone: +81 (0) 45 594 9991
Fax: +81 (0) 45 471 1212
E-Mail: karsten.koller@cetecom.com

-----Original Message-----

From: shane.kelley@dot.gov [mailto:shane.kelley@dot.gov]
Sent: Tuesday, April 1, 2014 6:53 AM
To: Koller, Karsten [CETECOM] <Karsten.Koller@cetecom.com>
Cc: charles.betts@dot.gov
Subject:

Dear Karsten

Thank you for your inquiry which Mr. Betts had asked me to look into, and my apologies for the delay in responding.

First, it should be noted that when an amendment is made to our U.S. Hazardous Materials Regulations, that amendment is effective irrespective of when our U.S. Variations are updated though it is our goal to update them as quickly as possible. In the case of a conflict, our regulations would take precedence. So the amendment is indeed applicable today regardless of the status of the updating of the variation in other standards.

The legal standard recognized for international air shipments (upon which the IATA DGR are based) is the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air. Normally, once the amendment is posted by ICAO, the IATA will issue an addendum recognizing the most recent revision to our variations. You may wish to contact IATA directly if you would like to inquire as to their status in updating the IATA DGR, our contact there is:

David BRENNAN
Asst. Director Cargo Safety & Standards
(: +41-22-770-2947
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*: brennand@iata.org

International Air Transport Association
33, Route de l'Aéroport
1215 Geneva 15 Airport
Switzerland
www.iata.org/dangerousgoods

I hope this helps and please let us know if we can be of further assistance.

Kind regards,

Shane

From: Koller, Karsten [CETECOM] [mailto:Karsten.Koller@cetecom.com]
Sent: Monday, March 31, 2014 04:29 AM Eastern Standard Time
To: Betts, Charles (PHMSA)
Subject: RE: [PHMSA / Standards] Question about EX number rules for seatbelt pretensioners

Dear Mr. Betts,

Did you already had the time to have a look into our questions below?

We would highly appreciate it, if you could answer them soon or forward them to the responsible person for such questions.

Thank you very much for your support.

Best Regards,

Karsten Koller
Specialist
Certification Department

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Tokyo 151-0063, Japan
Phone: +81 (0) 3 6663 8990
Fax: +81 (0) 3 3485 2965
E-Mail: karsten.koller@cetecom.com

From: Koller, Karsten [CETECOM]
Sent: Monday, March 24, 2014 5:30 PM
To: 'Charles.betts@dot.gov'
Subject: [PHMSA / Standards] Question about EX number rules for seatbelt pretensioners

Dear Mr. Betts,

Nice to meet you.

We have a question regarding the regulation for seatbelt pretensioners and I heard from a person inside PHMSA that the Standard section would be the right section for it. Therefore I would appreciate it, if you could answer our questions below or forward them to the correct contact person.

In Federal Register issued on July 30, 2013, there has been a revision in the regulation that pretensioner seatbelts are now exempted from obtaining EX numbers. However, as far as we understand this change has not been reflected in "State Variations" in IATA DGR*

*IATA DGR = International Air Transport Association Dangerous Goods Regulations

One of our customers has been told by a transportation company that this company will not handle (ship) pretensioner seatbelts without EX numbers, unless DGR has been properly revised (updated). We would very much appreciate if you could confirm the following:

- 1) Is there any plans that IATA DGR will be updated to reflect the above-mentioned change?
- 2) If so, when will it be?

Thank you very much for your support.

Best Regards,
Karsten Koller
Specialist
Certification Department

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