U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

March 3, 2025

Robert Stewart
President
Automotive Anti-Counterfeiting Council, Inc.

Reference No. 24-0083

Dear Mr. Stewart:

This letter is in response to your September 13, 2024 email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to transportation of used and counterfeit airbags, airbag inflators, micro-gas generators, and other supplemental restraint system (SRS) component parts.[1] Specifically, you state that the Automotive Anti-Counterfeiting Council's (A2C2) interest is in preventing the sale of these devices on e-commerce platforms, and ask several questions regarding how the HMR's requirements apply to the same.

We have paraphrased and answered your questions as follows:

Q1. Are e-commerce platforms responsible for confirming that third party sellers have PHMSA approval to transport explosive devices in commerce?

A1. The answer depends on whether the e-commerce platform performs a function subject to the HMR. It is the shipper's (*i.e.*, the offeror's) responsibility to offer hazardous materials for transportation in compliance with the requirements of the HMR, including proper classification (*see* Section 173.22(a)(1)). If an e-commerce platform participates in the transport of hazardous material (*i.e.*, acts as a carrier), tenders, or makes the hazardous material available to a carrier for transportation in commerce, or otherwise performs or is responsible for performing any pre-transportation functions for the material, it is responsible for performing those functions in accordance with the HMR.

Please be advised that shipments of hazardous materials may have more than one offeror responsible for pre-transportation functions. In such cases, each offeror who performs a pre-transportation function may rely upon information provided by another offeror, unless that offeror knows or, a reasonable person, acting in the circumstances and exercising reasonable care, would have knowledge that the information provided by the

[1] These devices, which contain pyrotechnic substances or other hazardous materials, and are used in vehicles, vessels, or aircraft to enhance safety to persons are typically classified as "UN3268, Safety Devices, *electrically initiated*, 9" for transportation - see PHMSA's Safety Device Classification Policy (87 FR 62177, 10/13/2022) for further details: https://www.federalregister.gov/documents/2022/10/13/2022-22200/hazardous-materials-safety-device-classification-policy.

other offeror is incorrect. To the extent that an e-commerce platform is not performing any pre-transportation or transportation functions, they are not responsible for confirming a seller's approval to transport a hazardous material.

Please also note that specific safety devices—airbags, airbag inflators, and seatbelt pretensioners—may be classified as "UN3268, Safety Devices, *electrically initiated*, 9" by a PHMSA-approved explosives testing laboratory without further approval by PHMSA or assignment of an EX-approval number (*see* Section 173.166(b)(1)).[2]

Q2. Does a rebuilt safety device, such as a device created by installing a new micro-gas generator[3] into a seatbelt pretensioner from another manufacturer, require a new approval?

A2. A rebuilt safety device would require examination and classification by a PHMSA-approved explosives testing laboratory; however, as stated in answer A1, certain Class 9 safety devices may be classified by a PHMSA-approved explosives testing laboratory without further approval by PHMSA. To the extent that a new design type of a seatbelt pretensioner exceeds the maximum parameters of the original design type tested by a PHMSA-approved explosives testing laboratory, the new design type must be examined and tested by a PHMSA-approved explosives testing laboratory prior to transportation. Also, if a person, other than the original manufacturer, rebuilds a safety device by installing a new micro-gas generator into a seatbelt pretensioner, that person is making a new explosive (*see* Section 173.56(a)(1)) that must be examined and tested by a PHMSA-approved explosives testing laboratory prior to transportation.

You ask the following additional questions about PHMSA's Hazardous Materials Program Procedures (*see* Part 107).

Q3. To whom and by what process can A2C2 and affiliated members report suspected counterfeit and non-approved parts?

A3. A2C2 and affiliated members may submit reports of suspected violations of the requirements of the HMR to HM-Enforcement@dot.gov. There is no prescribed format for such reports; however, inclusion of specific details, such as the location of the suspected violation, when the suspected violation occurred, and any other pertinent details, will assist PHMSA's investigators in evaluating the report.

Q4. Would PHMSA consider working with other governmental agencies to create a standardized notification form to report suspected counterfeit and non-compliant safety devices?

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[2] Other types of Class 9 safety devices must be approved by PHMSA prior to transportation.

[3] Micro-gas generators transported separately from a mechanical device used in vehicles, vessels or aircraft that enhances safety to persons are generally not classified as UN3268 and must be approved and assigned an EX-number by PHMSA prior to transportation. 87 FR 62179.

A4. We have no plans to engage with other governmental agencies to develop such a form at this time, however we would welcome input from your organization and other government agencies about the usefulness of such a form. As discussed in answer A3, please note that PHMSA accepts reports of suspected violations of the HMR in any format.

Q5. Can PHMSA publish approved explosives testing laboratory certificates on its website for increased transparency?

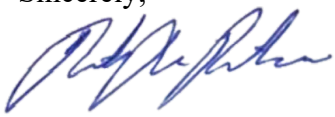
A5. PHMSA currently publishes the contact information for all PHMSA-approved explosives testing laboratories on its website here: https://www.phmsa.dot.gov/hazmat/energetic-materials-approvals/explosive-test-labs. The approvals held by each of these explosives testing laboratories may be found by searching the company's name in PHMSA's Hazardous Materials Approvals Search Page: https://www.phmsa.dot.gov/approvals-and-permits/hazmat/approvals-search.

As discussed in answer A1 of this response, PHMSA-approved explosives testing laboratories are not required to submit the certifications for certain Class 9 safety devices to PHMSA for approval. Therefore, as a general practice, PHMSA does not maintain records of certifications issued by explosives testing laboratories for individual Class 9 airbags, airbag inflators, and seatbelt pretensioners. Records of Class 9 airbag, airbag inflator, and seatbelt pretensioner certifications that PHMSA requests from explosives testing laboratories or safety device manufacturers during investigations of suspected violations of the HMR, or during routine compliance inspections, are generally not made publicly available and not published on the PHMSA website. Other Class 9 safety device approvals, as well as approvals for Division 1.4G safety devices are available on the PHMSA website at the approvals search page linked above.

PHMSA shares A2C2's concerns related to unexamined and untested safety devices in transportation, particularly those devices that contain pyrotechnic material. PHMSA looks forward to working with you to identify these non-compliant safety devices and remove them from transportation.

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

Sincerely,



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