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**A. Puerto Rico Adopts the Universal Waste Rule; Final Rule**

On May 22, 2012, Puerto Rico incorporated by reference the federal Universal Waste rule, 40 CFR Part 273.

**Summary**

The Puerto Rico Environmental Quality Board approved Resolution R-12-9 to adopt the federal “Universal Waste Rule” to exempt

- Batteries
- Pesticides
- Equipment containing mercury
- Fluorescent lamps

from the Hazardous Waste regulations so that they can be recycled and managed as universal hazardous wastes.

**Effective Date**

The adoption of the Universal Waste Rules in Puerto Rico became effective on May 22, 2012.

**B. EPA Inaction in Identifying Hazardous Waste Pharmaceuticals May Result in Unsafe Disposal; Inspector General Report**

On May 25, 2012, the EPA Office of Inspector General (OIG) published a report titled *EPA Inaction in Identifying Hazardous Waste Pharmaceuticals May Result in Unsafe Disposal*.

**Summary**

A variety of pharmaceuticals have been discovered in waters (e.g., lakes, rivers, streams, groundwater, treated wastewater effluents, and drinking water) raising concerns regarding the potential adverse environmental consequences of these contaminants. However, since 1980 EPA has not used its authority under the Resource Conservation and Recovery Act (RCRA) to determine whether pharmaceutical wastes may qualify as hazardous wastes and have not established a process for the identification and review of pharmaceuticals that may qualify for regulation as a hazardous waste.

A review of pharmaceuticals by the OIG identified eight chemicals in pharmaceuticals that meet EPA’s criteria for being regulated as acute hazardous wastes and over 100 drugs that federal occupational safety organizations have identified as hazardous waste but may not have been reviewed by EPA. This “inaction” from EPA may have allowed hazardous waste pharmaceuticals to be unsafely disposed and released into the environment.

OIG is recommending that EPA establish a process to review pharmaceuticals for regulation as hazardous wastes and develop an outreach and compliance assistance plan for health care facilities managing pharmaceutical hazardous wastes.

Within 90 days of the publication of this document, EPA is required to submit a written response to OIG that includes an action plan with actual or estimated milestone completion dates.

**Link**

The link below will allow you to view/print the *EPA Inaction in Identifying Hazardous Waste Pharmaceuticals May Result in Unsafe Disposal* report.

<http://www.epa.gov/oig/reports/2012/20120525-12-P-0508.pdf>

**C. DOT/FMCSA Commercial Driver’s License Testing and Commercial Learner’s Permit Standards; Notice of Regulatory Guidance and Applicability of “Tank Vehicle” Definition**

On May 24, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of regulatory guidance (77 FR 30919-30921) to clarify the applicability of the new definition of “tank vehicle” and how it applies to commercial motor vehicles (CMVs) transporting intermediate bulk containers (IBCs).

**Summary**

On May 9, 2011, FMCSA published a final rule which revised the definition of “tank vehicle.” The change required drivers transporting certain tanks temporarily attached to the CMV to obtain a tank vehicle endorsement on their commercial driver’s license (CDL). This notice responds to numerous questions and requests for clarification about the new definition of “tank vehicle” and the compliance date for drivers to obtain the tank vehicle endorsement.

**DEFINITION**

**Tank Vehicle** – means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A CMV transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

**APPLICABILITY TO IBCs**

FMCSA’s guidance clarifies that the new definition of tank vehicle is intended to cover :

1. A vehicle transporting an IBC or other tank used for any liquid or gaseous materials, with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis, or
2. A vehicle used to transport multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or chassis.

The definition of tank vehicle does not cover the transportation of empty IBCs or other tanks when these containers are manifested as either empty or as residue on a bill of lading. The definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

#### LOAD SECUREMENT

FMCSA confirmed that the final rule covers IBCs that are attached to the vehicle, whether they are secured by bolts, straps, chains, or by blocking and bracing. The aggregate capacity of the tanks, not the details of their securement, determines the applicability of the rule.

#### Compliance Date for the Tank Vehicle Definition

The effective date of the final rule was July 8, 2011. While the compliance date for the State requirements under 49 CFR Part 384 is three years from the effective date of the rule, July 8, 2014, the definition of tank vehicle is not in 49 CFR Part 382 and is therefore currently effective. States that adopt amendments to the Federal Motor Carrier Safety Regulations by reference, or complete their administrative adoption procedures quickly, will be able to take action against a driver transporting materials in a tank vehicle without the proper endorsement before July 8, 2014.

FMCSA recommends that drivers affected by the tank vehicle definition obtain the needed endorsement as quickly as possible or investigate the requirements of the States in which they travel so that they do not transport tanks in States already requiring the endorsement.

#### Link

The link below will allow you to view/print this notice of regulatory guidance.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-24/pdf/2012-12692.pdf>

#### **D. DOT/PHMSA Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR); Notice of Proposed Rulemaking**

On May 24, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (77 FR 30976-30987) that would amend the Hazardous Materials Regulations (HMR) by updating, clarifying, or providing relief from miscellaneous regulatory requirements.

### Summary

In response to petitions for rulemaking submitted by the regulated community, PHMSA is proposing the following amendments:

1. Revise the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging;
2. clarify an acceptable range in specifications for resins used in the manufacture of plastic drums and intermediate bulk containers (IBCs);
3. remove the listing for “Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA 1204”;
4. harmonize internationally and provide a limited quantity exception for Division 4.1 Self-reactive solids and Self-Reactive liquids Types B through F;
5. allow smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax regulatory requirements for these materials without compromising safety; and
6. allow the Dangerous Cargo Manifest to be in a location designated by the master of the vessel in addition to “on or near the vessel’s bridge” while the vessel is in a US port.

### Comments Due

Comments on this notice of proposed rulemaking must be submitted to PHMSA by July 23, 2012.

### Link

The link below will allow you to view/print this notice of proposed rulemaking.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-24/pdf/2012-12471.pdf>

## **E. DOT/PHMSA Hazardous Materials Regulations: Combustible Liquids; Withdrawal of Advance Notice of Proposed Rulemaking**

On May 30, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a withdrawal of an advance notice of proposed rulemaking (HM-242) and denial of petitions P-1498, P-1531, and P-1536 (77 FR 31815-31827).

### Summary

On April 5, 2010, PHMSA published an advance notice of proposed rulemaking soliciting comments on whether PHMSA should consider harmonization of the hazardous materials regulations (HMR) applicable to the transportation of combustible liquids with the UN Recommendations and international transportation standards, while maintaining an adequate level of safety and provided a series of questions. PHMSA indicated that they were examining ways to revise, clarify, or relax certain regulatory requirements to facilitate the transportation of these materials while maintaining an adequate level of safety. As a result of the commenter’s opposition

to the harmonization that would eliminate the combustible liquids hazard class altogether, thereby removing the combustible liquids exceptions in domestic transportation, along with PHMSA's economic analysis showing that implementation costs could be significant, PHMSA is denying three petitions for rulemaking and withdrawing the April 5, 2010 advance notice of proposed rulemaking.

**Link**

The link below will allow you to view/print this withdrawal of the advance notice of proposed rulemaking.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-30/pdf/2012-12958.pdf>

**F. DOT/PHMSA Announces the Release and Summary of Changes to the 2012 Emergency Response Guidebook**

On May 30, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) announced the release of the 2012 Emergency Response Guidebook. Previously on May 4, 2012, PHMSA released a summary of the changes for the 2012 Emergency Response Guidebook (ERG).

**Background**

The ERG is developed jointly by the US Department of Transportation, Transport Canada, and the Secretariat of Communications and Transportation of Mexico and is intended to be used by firefighters, police, and other emergency services personnel responding to hazardous material transportation incidents. The ERG guide is intended to provide emergency responders a means to quickly identify the classification of materials involved in the incident and information for protecting themselves and the public. The ERG is updated every four years.

**Summary**

The cover of the 2012 ERG has been changed and some sections of the General Information (white pages) have been moved to the back of the 2012 guidebook. Various sections have been expanded and/or revised. Some of these sections are listed below:

- Shipping Documents
- Table of Placards and Initial Response Guide to use On-Scene
- Fire and Spill Control
- Who to Call for Assistance
- Isolation and Evacuation Distances
- Rail Car Identification Chart
- Emergency Response Telephone Numbers
- User's Guide

The guidebook has been updated to include all of the new dangerous goods listed the 17<sup>th</sup> Edition of the UN Recommendations on the Transport of Dangerous Goods, the yellow and blue bordered pages.

Added Table 3 for six gases that are toxic-by-inhalation to the Table of Initial Isolation and Protective Action Distances, and the Table of Water-Reactive Materials which Produce Toxic Gases, green bordered pages.

#### **Release Date**

PHMSA announced the release of the 2012 Emergency Response Guidebook on May 30, 2012.

#### **Links**

The link below will allow you to view/print PHMSA's notification of the release of the 2012 ERG.

<http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Press%20Release%20File/erg2012-press-release.pdf>

The link below will allow you to view/print PHMSA's Summary of Changes to the 2012 ERG.

[http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Hazmat/hzmt\\_lib\\_erg2012\\_change\\_summary\\_from\\_2008.pdf](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Hazmat/hzmt_lib_erg2012_change_summary_from_2008.pdf)

#### **G. DOT/PHMSA Hazardous Materials: Harmonization with the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air; Notice of Proposed Rulemaking**

On May 25, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (77 FR 31274-31289) responding to administrative appeals and soliciting public comment on amendments adopted in international harmonization final rule HM-215K.

#### **Summary**

On January 19, 2011, PHMSA published the HM-215K final rule that revised the hazardous materials regulations (HMR) to align with various international standards. In this notice of proposed rulemaking (NPRM), PHMSA is proposing amendments in response to administrative appeals regarding revisions to the HMR adopted in the final rule.

Following is an abbreviated listing of the proposed revisions. Please see the federal register publication for a complete listing of other proposed regulatory changes.

1. Transitional Dates for ORM-D

PHMSA is proposing to extend the date for the continued use of packagings marked “Consumer commodity, ORM-D” until December 31, 2015 for domestic highway, rail, and vessel transportation. The compliance date adopted in the HM-215K final rule was originally January 1, 2014. The compliance date for air shipments has not changed is required beginning January 1, 2013.

2. Overpacks Containing Limited Quantity or ORM-D Material

PHMSA is proposing to revise 49 CFR 173.25(a)(6) to clarify that an overpack must be marked with a limited quantity marking or ORM-D marking unless the marking or the material in the overpack is visible.

PHMSA is also adding new paragraph 49 CFR 173.25(a)(7) specific to the overpack marking requirements for excepted quantities.

3. Transitional Dates for the Use of Square-On-Point and ID Number Limited Quantity Markings

Consistent with the transitional date for continued use of the ORM-D marking, PHMSA is proposing that for other than air transportation, continued use of the square-on-point mark containing the ID number for limited quantities would be authorized until December 31, 2015. The expiration date remains December 31, 2012 for air shipments.

PHMSA is also soliciting comment on whether for other than air transportation, a previously authorized limited quantity package marking (i.e., proper shipping name only) should be reauthorized for a similar transition period.

4. Incident Reporting for Limited Quantity Material

PHMSA is proposing to revise the incident reporting requirements in 49 CFR 171.16(d)(2) to provide relief from incident reporting previously provided to ORM-D material to continue to be provided for such materials now transported as limited quantities. This exception does not apply to air shipments or to shipments of limited quantity Class 7 radioactive material, instruments, or articles. An incident involving a limited quantity that is also a hazardous waste does not qualify for the exception and must be reported.

5. Materials of Trade

PHMSA is proposing to extend the materials of trade (MOTS) exceptions to limited quantity packages consistent with the exception provided to ORM-D material. This exception does not apply to limited quantities of Division 4.3 dangerous when wet liquid material or Class 7 radioactive material, instruments or articles that were never authorized to be reclassified and transported as ORM-D. PHMSA also proposes to clarify that exceptions for limited quantity



material also include limited quantity material authorized under 49 CFR 173.63 for certain Division 1.4S explosives and 49 CFR 173.306 for compressed gases.

6. Retention of Packaging Manufacturer's Notification

In a final rule published on February 2, 2010, PHMSA revised recordkeeping requirements in 49 CFR 173.22 for shipper's retention of manufacturer notification (including closure instructions) by requiring shippers to maintain a packaging's manufacturer notification for 365 days after offering the package for transportation. Then, in a September 30, 2010 final rule, PHMSA revised the recordkeeping requirement from 365 days to a two-year period for combination packagings and a one-year period for single packagings.

In this NPRM, PHMSA is proposing to amend 49 CFR 178.2(c)(1)(ii) to revert back to the original recordkeeping retention period for manufacturer notification of 365 days adopted in the February 2, 2010 final rule. Additionally, PHMSA is proposing to amend 49 CFR 173.22(a)(4)(ii) by requiring a shipper to retain manufacturer notification (including closure instructions) for a period of 90 days after a package is offered to the initial carrier for transportation in commerce. PHMSA is also clarifying that only bulk packagings and cylinders manufactured in accordance with 49 CFR Part 178 are excepted from the manufacturer notification retention requirements specified in 49 CFR 173.22(a)(4) in this information is permanently embossed or printed on the packaging.

**Comments Due**

Comments on this notice of proposed rulemaking must be received by PHMSA on or before July 24, 2012.

**Link**

The link below will allow you to view/print this notice of proposed rulemaking.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-25/pdf/2012-12523.pdf>

**H. DOT/FMCSA Electronic On-Board Recorders for Hours-of-Service Compliance; Removal of Final Rule Vacated by Court**

On May 14, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (77 FR 28448-28451) rescinding the "Electronic On-Board Recorders for Hours-of-Service Compliance" published on April 5, 2010.

**Summary**

The rescission is in response to a decision of the Court of Appeals for the Seventh Circuit that vacated the April 10, 2010 final rule. The April 2010 final rule: (1) prescribed new performance standards for Electronic On-Board Recorders (EOBRs) installed in commercial motor vehicles

(CMVs) manufactured on or after June 4, 2012; (2) provided for the issuance of remedial directives to carriers that demonstrated non-compliance with Hours-of-Service rules at a prescribed level during the course of compliance reviews, requiring such carriers to use EOBRs for a 2-year period; (3) altered the Agency's safety fitness standard to take into account the issuance of a remedial directive when determining a carrier's fitness; and (4) modified supporting document requirements and compliance review procedures for those carriers that voluntarily chose to use EOBRs. The court's decision does not affect carriers that voluntarily elect to use EOBRs that satisfy preexisting regulatory requirements to track compliance with Hours-of-Service regulations.

**Effective Date**

The rescission of the final rule became effective on the date of publication, May 14, 2012.

**Link**

The link below will allow you to view/print the rescission of the final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11437.pdf>

**I. DOT/PHMSA Hazardous Materials; Miscellaneous Amendments Pertaining to DOT Specification Cylinders (RRR); Advance Notice of Proposed Rulemaking**

On May 29, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published an advance notice of proposed rulemaking (77 FR 31551-31562) that would revise and clarify the hazardous materials regulations (HMR) applicable to cylinder manufacture, maintenance, and use.

**Summary**

This advance notice of proposed rulemaking (ANPRM) was published by PHMSA in response to ten petitions for rulemaking submitted by the compressed gas industry. The ANPRM also seeks comment on incorporating the provisions of three special permits into the HMR. At this time PHMSA is not proposing specific amendments to the HMR, rather, they are seeking comment on the petitions for rulemaking and the incorporation of the special permit provisions.

The goal of the proposed amendments are update and expand the use of currently authorized industry consensus standards, revise the construction, marking, and testing requirements of DOT-4 series cylinders, clarify the filling requirements for cylinders, discuss the handling of cylinders used in fire suppression systems, and revise the requalification and condemnation requirements for cylinders.

**Comments Due**

Comments on this advance notice of proposed rulemaking must be submitted to PHMSA by August 27, 2012.

**Link**

The link below will allow you to view/print this advance notice of proposed rulemaking.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-29/pdf/2012-12832.pdf>

**J. DOT/FMCSA Improvements to the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Measurement System (SMS); Extension of Comment Period**

On May 24, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published an extension of the comment period (77 FR 31066) proposed modifications to the Carrier Safety Measurement System (SMS).

**Summary**

In December 2010, FMCSA implemented the SMS to identify high-risk motor carriers for on-site investigations or to receive warning letters, and to be used in roadside inspection software designed to recommend motor carriers with known performance and compliance problems for additional inspections. The SMS quantifies the safety performance of motor carriers using data available in FMCSA's motor carrier database, the Motor Carrier Management Information System (MCMIS). The MCMIS database includes violations found during roadside inspections, traffic enforcement, and the intervention process.

Based on FMCSA's ongoing analysis of the SMS and feedback from enforcement personnel, and the motor carrier industry, FMCSA published proposed changes/improvements to the SMS on March 27, 2012 (77 FR 18298). A preview of the changes/improvements and their potential effects on a motor carrier's status has been available since March 27, 2012, also.

The system changes were scheduled to be implemented and made available on the SMS public web site on July 2012. However, based on feedback received by FMCSA to allow companies additional time to preview how the changes will impact company's safety data in SMS the comment period is being extended until July 30, 2012.

A summary of the proposed modifications to the Carrier Safety Measurement System published on March 27, 2012 is included in the March 2012 Regulatory Update.

**Comments Due**

Comments must be received by FMCSA on or before July 30, 2012.

**Link**

The link below will allow you to view/print the extension of the comment period.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-24/pdf/2012-12634.pdf>

**K. DOT Procedures for Transportation Workplace Drug and Alcohol Testing Programs: 6-acetylmorphine (6-AM) Testing; Interim Final Rule**

On May 4, 2012, the Department of Transportation (DOT) published an interim final rule (77 FR 26471-26473) amending certain provisions of the DOT drug testing procedures for 6-acetylmorphine (6-AM), a unique metabolite of heroin.

**Summary**

Laboratories and Medical Review Officers (MROs) will no longer be required to consult with one another regarding the testing for the presence of morphine when the laboratory confirms the presence of 6-AM. This rule is intended to streamline the laboratory process for analyzing and reporting 6-AM results and will facilitate MRO verification 6-AM positive results.

**Effective Date**

This interim final rule will become effective on July 3, 2012.

**Link**

The link below will allow you to view/print this interim final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-04/pdf/2012-10665.pdf>

**L. OSHA Establishing Indicators to Determine whether State Plan Operations are At Least as Effective as Federal OSHA: Stakeholder Meeting; Notice of Public Meeting**

On May 29, 2012, the Occupational Safety and Health Administration (OSHA) published a notice of a public meeting (77 FR 31647-31649) on establishing definitions and measures to determine whether OSHA approved State Plans for occupational safety and health (State Plans) are at least as effective as the Federal OSHA program as required by the Occupational Safety and Health Act of 1970.

**Summary**

The Occupational Safety and Health Act encourages States to develop and operate their own workplace safety and health plans. OSHA is responsible for the approval and monitoring of State Plans. As a condition of OSHA approval, State Plans must be “at least as effective as” the federal

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OSHA program. Currently there are 27 OSHA-approved State occupational safety and health plans.

In 2011 the Office of the Inspector General (OIG) published a report titled “OSHA Has Not Determined If State OSHA Programs Are At Least As Effective in Improving Workplace Safety and Health as Federal OSHA’s Programs.” In response, OSHA is reviewing their State Program monitoring system and respond to the recommendation included in OIGs report “to define effectiveness, design measures to quantify impact, establish a baseline for State Plan evaluations, and revise monitoring to include an assessment of effectiveness.”

The goal of the public meeting is to receive feedback from the public on how to define and measure effectiveness and to develop a revised monitoring system (in place of the interim guidance) to ensure consistency and effectiveness across the State Plans. OSHA included specific issues in the notice of the public meeting that they are seeking feedback on. These issues are:

1. OSHA’s mission is “to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance.”
  - a. How would you define or describe the components that constitute an OSHA approved State Plan that was “effective” in achieving this mission (e.g., funding, staffing, standards setting, strong enforcement program, etc.)?
  - b. What outcome based measures would you use to determine whether OSHA-approved State Plans were achieving this mission (e.g., reductions in injury and illness rates, reductions in fatality rates, etc.)?
  - c. What activity based measures would you use to determine whether OSHA-approved State Plans were achieving this mission (e.g., number of inspections conducted, number of violations issued, etc.)?
2. Should there be a core set of effectiveness measures that both OSHA and State Plan programs must meet?
3. What activity and outcome based measures would you use to assess effectiveness as it relates to the reduction of health hazardous?
4. What activity and outcome based measures would you use to assess the effectiveness of the whistleblower program?
5. What indicators would you use to determine and monitor whether OSHA-approved State Plans are “at least as effective” as federal OSHA.

**Meeting Date and Location**

The public meeting was conducted in Washington, DC on June 25, 2012.

**Link**

The link below will allow you to view/print this notice of a public meeting.

<http://www.gpo.gov/fdsys/pkg/FR-2012-05-29/pdf/2012-12913.pdf>