

## REGULATORY UPDATE – November 2012

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**A. R2:2013 The Responsible Recycling Standard (R2); Proposed Revisions**

On November 1, 2012, R2 Solutions published proposed revisions to The Responsible Recycling (R2) Standard.

**Background**

EPA encourages all electronics recyclers to become certified by an accredited, third-party auditor verifying that they meet specific standards to safely recycle and manage electronics. The R2Standard is one of two accredited electronics recycling programs. The certification program is based on environmental standards that maximize reuse and recycling, minimize exposure to human health and the environment, ensure the safe management of materials by downstream vendors, and require the destruction of all data on used electronics.

**Summary**

Some of the more significant proposed revisions include:

1. A new requirement for the electronics recycler as a pre-requisite, or simultaneously, and on an ongoing basis to be certified to one or more environmental, health, and safety management system standards (ISO 14001 and OHSAS 18001) by an independent, Accredited Certification Body.
2. Adds an annual timeframe for electronics recyclers to confirm that downstream facilities meet the R2 requirements for Focus Materials. No timeframe is currently specified in the R2 standard.
3. Would require that data destruction processes be reviewed and validated by an independent party on a period basis, but does not define the qualifications of the independent party.
4. Requires electronics recyclers to verify that the transporters used for the transportation of electronic equipment have all the necessary regulatory authorizations and maintain an acceptable vehicle and driver safety record.

**Comments Due**

Comments on the proposed revisions must be submitted to R2 Solutions by December 16, 2012.

**Link**

The link below will allow you to view/print the Draft R2:2013 Standard.

<http://www.r2solutions.org/clientuploads/Draft%20R2%20Standard%20Revision%20for%20Public%20Comment.pdf>

**B. EPA Information Collection Request Submitted to OMB for Review and Approval; Comment Request; 2013 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification (Revision of Management Method Codes); Notice**

On November 15, 2012, the Environmental Protection Agency (EPA) published an information collection request (77 FR 68120), “2013 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification (Revision).” This is a proposed amendment of the information collection request, which is currently approved through December 31, 2014 for the collection of information in the Hazardous Waste Biennial Report.

In this information collection request, EPA is proposing changes to the 2013 Hazardous Waste Report Instructions and Forms booklet for the 2013 biennial report that must be submitted by March 1, 2014. The proposed changes to the 2013 booklet include:

1. Some management method codes will be consolidated in order to ease reporting,
2. The waste minimization codes will be revised in order to provide assistance when reporting waste minimization activities, and
3. Editorial changes to the description of some source codes to improve clarity.

**Comments Due**

Comments on this information collection request must be submitted to EPA on or before December 17, 2012.

**Link**

The link below will allow you to view/print this information collection request.

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-15/pdf/2012-27788.pdf>

**C. EPA PCB Bulk Product Waste Reinterpretation; Guidance**

On November 16, 2012, EPA posted a guidance document sent to the Regional Toxic Substances Control Act (TSCA) and Resource Conservation and Recovery Act (RCRA) Division Directors titled “Polychlorinated Biphenyl (PCB) Bulk Product Waste Reinterpretation” on October 24, 2012.

**Background**

EPA has received several questions regarding the disposal and cleanup requirements for PCB-contaminated building materials. The disposal and cleanup requirements for the PCB-contaminated building material depend on whether the material is classified as a PCB bulk product waste or PCB remediation waste. On February 29, 2012, EPA published in the *Federal Register* a

draft reinterpretation of their position regarding PCB-contaminated building materials, specifically addressing the definition of PCB bulk product waste and PCB remediation waste. Based on comments received, EPA has modified the proposed reinterpretation.

### **Summary**

The guidance allows building material “coated or serviced” with PCB bulk product waste (caulk, paint, mastics, sealants) at the time of designation for disposal to be managed as PCB bulk product waste, even if the PCBs have migrated from the overlying bulk product waste into the substrate. However, if the caulk or paint has been removed from the building material and the substrate is contaminated with PCBs that have migrated from the bulk product waste, the substrate would be considered a PCB remediation waste.

In addition, EPA has modified their interpretation to allow for the possibility that, during a cleanup or demolition process, PCB bulk product waste (e.g., caulk, paint, mastics, and sealants) could separate from the contaminated building material before all of the waste is physically placed into the final disposal location. At the time of designation for the disposal, the contaminated building material would be deemed a PCB bulk product waste if the PCB material is still attached. EPA recommends the development of an abatement plan to document the decision to designate building materials as bulk product waste.

PCB bulk product wastes may be disposed in a Subtitle D or industrial landfill, whereas, a PCB remediation waste must be disposed in a TSCA Permitted Landfill.

### **Effective Date**

This guidance became effective on the date of publication, October 24, 2012.

### **Link**

The link below will allow you to view/print the guidance document.

<http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/pdf/pcb-bulk-waste-memo102412.pdf>

### **D. ASTSWMO Position Paper Seeking Guidance from EPA on Post-Closure Beyond 30 Years at RCRA Subtitle C Facilities**

On November 15, 2012, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) published a position paper seeking guidance from EPA on the regulations regarding the post-closure care at facilities regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA) that require care beyond the 30-year period mandated by law.

### **Background**

Regulations promulgated under RCRA Subtitle C include provisions regarding the post-closure care of hazardous waste land disposal units. 40 CFR 264.117 requires a 30-year post-closure care period as a default requirement. The regulations include provisions allowing the 30-year period to be extended or shortened. ASTSWMO states in their position paper that facilities are coming to the end of the initial 30-year post-closure period and many State regulators have questions regarding what criteria should be used to determine if the post-closure care needs to be extended or ended.

### **Summary**

ASTSWMO has requested guidance on the following aspects of post-closure care at Subtitle C disposal facilities:

1. A statement from EPA that there is a presumption that a Subtitle C post-closure care obligation remains as long as hazardous waste remains in a closed land disposal unit, even if there is no evidence of a release after 30 years of post-closure care;
2. The criteria necessary to base decisions on the need for continued post-closure care;
3. The process that should be implemented to determine if the ending of the post-closure care obligation is warranted;
4. Whether the burden falls on permit-holders to show additional post-closure care is not necessary; and
5. What financial assurance obligations are required for extended post-closure care periods.

ASTSWMO has requested that EPA issue supplemental guidance on the implementation of post-closure care obligations beyond the 30-year timeframe required by regulation.

### **Link**

The link below will allow you to view/print ASTSWMO's Position Paper.

[http://www.astswmo.org/Files/Policies\\_and\\_Publications/Hazardous\\_Waste/2012-10-15-Subtitle\\_C\\_Post-Closure\\_Care\\_Position\\_Paper-Final.pdf](http://www.astswmo.org/Files/Policies_and_Publications/Hazardous_Waste/2012-10-15-Subtitle_C_Post-Closure_Care_Position_Paper-Final.pdf)

### **E. EPA Launches New Website Regarding How Industrial Facilities Prevent Pollution from Toxic Chemicals**

On November 19, 2012, EPA announced the launch of a new website that provides information on how industrial facilities prevent pollution from toxic chemicals. The Pollution Prevention Act of 1990 requires industries to include details on the quantities of toxic chemicals recycled, combusted for energy recovery, and on and off-site treatment in their annual Toxics Release Inventory (TRI) report. The new website shows the progress made by industry in reducing waste generation and improving the safety of waste management.

**Link**

The website is available at:

<http://www.epa.gov/tri/P2/index.html>

**F. Basel to Finalize Guidance Regarding the Transboundary Movement of Electronic Waste**

In November, 2012, Jim Puckett, executive director of the Basel Action Network, announced that a Control of Transboundary Movements of Hazardous Waste workgroup under the Basel Convention has made progress on draft guidance on this issue. The workgroup plans to issue final guidance on the transboundary movement of electronic waste by March 2013. Under the final guidance most non-functional electronic equipment will be considered a hazardous waste by the Basel Convention and for the transboundary movement of electronic waste. There will be NO change in the current RCRA regulations for electronic wastes.

**Link**

The Basel Action Network website address is:

<http://www.ban.org/>

**G. Washington State Mercury Containing Lights Product Stewardship Program; Final Rule**

On November 29, 2012, the Washington Department of Ecology published a final rule titled, “The Standard Plan for Washington Mercury-Containing Lights Product Stewardship Program.” In 2010, the Washington Legislature passed the Mercury-Containing Lights – Proper Disposal Law. One of the requirements of the 2010 law was to establish a producer-financed product stewardship program for the collection, transportation, and recycling of mercury-containing lights.

The Mercury-Containing Lights product stewardship program will become fully implemented on January 1, 2013. Beginning on that date no producer may distribute, sell, or offer for sale mercury-containing lights for residential use unless they are participating in the product stewardship program and all users must recycle mercury-containing lights. In addition, a collection program of state-wide permanent collection sites along with some curb-side collection programs have been developed for the collection of mercury-containing lights.

**Effective Date**

The disposal of all mercury-containing lights in a land disposal facility will be banned and the stewardship program will be fully implemented beginning January 1, 2013.

**Link**

The link below will allow you to view/print the Stewardship Program Document.

<http://www.ecy.wa.gov/programs/swfa/mercurylights/pdf/FinalStandardPlan.pdf>

**H. DOT/PHMSA Safety Advisory for Shippers and Carriers of Air Bags; Safety Advisory Notice**

On November 21, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a Safety Advisory Notice (77 FR 69927-69928) alerting the transportation industry of counterfeit air bags that have been sold as replacement parts to consumers and repair professionals.

**Background**

The National Highway Traffic Safety Administration (NHTSA) has recently advised PHMSA that consumers and repair professionals may face a potential safety risk involving the sale of counterfeit air bags for use as replacement parts. Many air bags use a pyrotechnic device that meets the definition of an explosive. These air bags must be approved by PHMSA. An air bag without an approval, including counterfeit air bags, are considered forbidden explosives as specified in 49 CFR 173.54(a).

**Transportation Requirements for Approved Air Bags**

An approved airbag may be shipped using the description “UN3268, Air bag inflators, or Air bag modules, or Seat-belt pretensioners, 9, PGIII.” The air bag must be in a rigid outer packaging that meets the general packaging requirements of 49 CFR Part 173, packaging specification requirements of 49 CFR Part 178, and is designed and constructed to prevent movement of the articles and inadvertent operation. Authorized packagings include: 1A2, 1B2, 1G or 1H2 drums; 3A2 or 3H2 jerricans; and 4C1, 4C2, 4D, 4F, 4G, or 4H2 boxes. Shipments of Class 9 air bags must display a Class 9 label when offered for transportation and shipping papers must contain the EX number or product code for each approved device.

**Guidance for Unapproved Air Bags**

Counterfeit air bags containing unapproved explosives increase the potential hazards during transportation. An explosive that has not been approved as specified in 49 CFR 173.56 is regulated as a forbidden explosive, 49 CFR 173.54(a). Therefore, per 49 CFR 173.21(b), offering for transportation an unapproved explosive is forbidden by the Hazardous Materials Regulations.

Suspected counterfeit air bags must be approved by the Associate Administrator for Hazardous Materials as explosive devices, using classification criteria in 49 CFR 173.56 prior to being offered for transportation.

If a shipper or carrier believes they are in possession of an unapproved air bag, they are asked to contact the Hazardous Materials Information Center at (800) 467-4922.

**Link**

The link below will allow you to view/print this Safety Advisory Notice.

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-21/pdf/2012-28238.pdf>

**I. DOT/PHMSA Assessment of Hazardous Materials Incident Data Collection, Analysis, Reporting and Use; Notice**

On November 21, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice (77 FR 69925-69926) requesting comments and information to be used for an assessment to improve the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous materials.

**Background**

On July 6, 2012, the “Moving Ahead for Progress in the 21<sup>st</sup> Century” (MAP-21) Act was passed. MAP-21 requires PHMSA to conduct an assessment to improve the collection, analysis, reporting, and use of data related to accidents and incidents involving the transportation of hazardous materials. The assessment is required to be completed within six months and the action plan is due three months later. The action plan and timeline must be submitted to congress 15 days later.

**Summary**

In this notice, PHMSA is requesting comments on how industry and the public views the methods used to collect, analyze, report and use data. The notice includes the following specific topics PHMSA is requesting comment and suggestions for improvement.

1. Information requested on the accident and incident reporting forms required to be submitted to PHMSA;
2. Methods used by PHMSA to verify that the information provided on the forms is accurate and complete;
3. Accident and incident reporting requirements, including whether the requirements should be expanded to include shippers and consignees of hazardous materials;
4. Resources related to data collection, analysis, and reporting , including staff and information technology; and
5. The database used by PHMSA for recording and reporting accidents and incidents, including the ability of users to adequately search the database.

**Comments Due**

Comments must be received by PHMSA on or before December 28, 2012.



**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-21/pdf/2012-28245.pdf>

**J. DOT/FMCSA Patterns of Safety Violations by Motor Carrier Management; Notice of Proposed Rulemaking**

On November 13, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (77 FR 67613-67624) that would allow the Agency to suspend or revoke the operating authority registration of motor carriers that have shown egregious disregard for safety compliance or that permit persons who have shown egregious disregard for safety compliance to act on their behalf.

**Summary**

FMCSA has determined that each year a small number of motor carriers have attempted to avoid regulatory compliance or conceal noncompliance by submitting new applications for registration, often under a different name, to continue operations after being placed out of service. Other carriers attempt to avoid compliance or conceal noncompliance by creating or using an affiliated company under common operational control and shifting customers, vehicles, drivers, and other operational activities to the affiliated company when FMCSA places the company out of service.

This notice of proposed rulemaking would allow FMCSA to suspend or revoke the operating authority registration of motor carriers that have shown egregious disregard for safety compliance, permit persons who have shown egregious disregard for safety compliance to exercise controlling influence of their operations or operate multiple entities under common control to conceal noncompliance with safety regulations.

**Comments Due**

Comments on this notice of proposed rulemaking must be submitted to FMCSA by January 14, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-13/pdf/2012-27569.pdf>

**K. NIOSH Medical Surveillance for Healthcare Workers Exposed to Hazardous Drugs; Guidance**

On November 20, 2012, the National Institute for Occupational Safety and Health (NIOSH) published an alert describing measures that should be utilized to control exposures to hazardous drugs in healthcare.

**Summary**

Drugs are considered hazardous if studies in animals or humans show that they have the potential to cause cancer, reproductive toxicity, birth defects, or damage to organs at low doses. In the United States an estimated 8 million healthcare workers are potentially exposed to hazardous drugs or drug waste at their workplace. Healthcare workers with potential exposures include; nurses, pharmacists, physicians, operating room personnel, and housekeeping and laundry personnel.

To minimize or prevent exposure to these hazards, NIOSH is recommending that employers establish a medical surveillance program as part of a comprehensive prevention program that includes engineering controls, good work practices, personal protective equipment, and training to protect workers.

**Link**

The link below will allow you to view/print this publication.

<http://www.cdc.gov/niosh/docs/wp-solutions/2013-103/pdfs/2013-103.pdf>

**L. US Postal Service New Marking Standards for Parcels Containing Hazardous Materials; Final Rule**

On November 28, 2012, the United States Postal Services (USPS) published a final rule (77 FR 70895-70902) revising the *Mailing Standards of the United States Postal Service* to adopt new mandatory marking standards for parcels containing hazardous materials that align with the revised requirements provided by the Department of Transportation (DOT).

**Summary**

On January 19, 2011, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule HM-215K (76 FR 3308) harmonizing the requirements of the Hazardous Materials Regulations (HMR) with international standards. This final rule will eliminate the “Other Regulated Material: (ORM-D) classification for all forms of transportation and the “consumer commodity” category for products in hazard Classes 4, 5, and 8 and portions of 9. These revisions become effective on January 1, 2013 for air transportation and January 1, 2015 for highway transportation.

This final rule harmonizes the USPS regulations with the revised PHMSA and international standards.

**Effective Date**

These final rules become effective for air transportation on January 1, 2013, and for highway transportation on January 1, 2015.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2012-11-28/pdf/2012-28673.pdf>