



# THE HAZMAT NEWS NETWORK



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**WHERE'S JANUARY?** Wow! The first month of '07 is gone already. Welcome to the February 2007 issue of *THE HAZMAT NEWS NETWORK*. The goal of this free newsletter is to provide info on the latest DOT hazmat and RCRA hazardous waste rulemaking actions, and discuss topics about both that may help you in your compliance efforts.

## DOCKET ACTION WAS REAL MELLOW IN JANUARY.

Only a couple of docket actions to speak of occurred since the last newsletter. Please note that we do not address Special Permit (formerly Exemptions) actions.

Jan 25<sup>th</sup>: The Department of Homeland Security (DHS), through the Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard), issued a final rule to further secure our Nation's ports and modes of transportation. The rule implements the Maritime Transportation Security Act of 2002 and the Security and Accountability for Every Port Act of 2006. Those statutes establish requirements regarding the promulgation of regulations that require credentialed merchant mariners and workers with unescorted access to secure areas of vessels and facilities to undergo a security threat assessment and receive a biometric credential, known as a Transportation Worker Identification Credential (TWIC). With this final rule, the Coast Guard amends its regulations on vessel and facility security to require the use of the TWIC as an access control measure. The Coast Guard also amends its merchant mariner regulations to incorporate the requirement to obtain a TWIC. Also included, TSA applies its security threat assessment standards that currently apply to commercial drivers authorized to transport hazardous materials in commerce to merchant mariners and workers who require unescorted access to secure areas on vessels and at maritime facilities. The rule goes into effect on March 26, 2007. However, the requirements to hold a TWIC, and to restrict access to secure areas of a facility or OCS facility, will be effective only after the regulated party is notified by DHS. These notifications will be published in the Federal Register and will require compliance on a Captain of the Port (COTP) by COTP basis. Those seeking unescorted access to secure areas aboard affected vessels, and all Coast Guard credentialed merchant mariners must possess a TWIC by September 25, 2008.



Jan 31<sup>st</sup>: PHMSA published the final rule, HM-224B, "Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft." The HMR is being amended to: (1) require cylinders of oxygen and other oxidizing gases and packages of chemical O<sub>2</sub> generators to be placed in an outer packaging that meets certain flame penetration and thermal resistance requirements when transported aboard an aircraft; (2) revise the pressure relief device setting limit on cylinder of O<sub>2</sub> and other oxidizing gases on aircraft;

(3) limit the types of cylinders authorized for transporting O<sub>2</sub> aboard aircraft; and (4) convert most of the provision of an O<sub>2</sub> generator approval into requirements in the HMR. The effective date of this final rule is October 1, 2007; however, voluntary compliance is authorized as of March 2, 2007.

## VISIT OUR WEBSITE TO SEE OUR TRAINING DATES!

RRI's 2007 training schedule is available on our website at [www.regulatoryresources.net](http://www.regulatoryresources.net). You also are provided a link to the course syllabus. These open-enrollment courses are on a first-come, first-serve basis and have limited attendance. Don't delay in getting your registration in. **Our first class is May 7-11!** Be sure to make your hotel arrangements early to ensure a room is available.

**OPPS!** In a letter issued by PHMSA on June 7, 2006 (Reference No. 05-0235), clarification was made to the 49 CFR 173.12(c) reuse of packagings for wastes. In their response, PHMSA stated that the term "waste" as it is used in this section and §173.28 is restricted to those materials meeting EPA's definition of a 'hazardous waste'. This is quite a departure from the previous years (or decades) of the definition and use of the terms "hazardous waste" and "waste". RRI contacted PHMSA about our concern of the apparent change in the application of the term "waste" and "hazardous waste". We're happy to report that the PHMSA letter is in error and a retraction will be issued. The term "hazardous waste" is a defined term in §171.8 and applies to those wastes subject to the EPA Uniform Hazardous Waste Manifest requirements of 40 CFR 262. Hence, if the Federal RCRA hazardous waste regulations require the use of a Manifest, it is a "hazardous waste". If a Manifest is required by any other regulation, Federal or State, the waste is not considered "hazardous waste" for purposes of 49 CFR 100-185 (the Hazardous Materials Regulations or HMR). Therefore, when the term "waste" is used in the HMR, the requirements associated with this term apply to all wastes. If the term "hazardous waste" is used, the requirement is applicable only to Federal RCRA hazardous wastes that require a Manifest for transport. Here's an example of each. In 49 CFR 172.101(c)(9), the word "Waste" must precede the proper shipping name (PSN) anytime the description is of a "hazardous waste". An inorganic aqueous acid solution with a pH of <2 is subject to RCRA as a D002 hazardous waste. The PSN used to describe this must be preceded with the word *Waste*, e.g., *Waste Corrosive Liquid, Acidic, Inorganic*, nos. On the other hand, the labpack allowance in §173.12(b) is applicable to "wastes", not just hazardous waste. Therefore, a corrosive solid not subject to the RCRA hazardous waste regulations but which is a DOT Class 8 may be labpacked under this section. The bottom line in all of this...the package reuse requirements of §173.12(c) are applicable to all wastes, not just hazardous wastes.

