



HAPPY NEW YEAR! We at Regulatory Resources extend our warmest wishes to each of you in this new year. We also hope this FREE newsletter is a benefit to you in your compliance activities. Please let others know...let's spread the hazmat news!

DOCKET ACTIONS since our last newsletter has been fairly busy given the holiday and election season. Here's what's happened.

- **Dec 15th:** RSPA published an interim final rule of HM-224E, "Prohibition on the Transportation of Primary Lithium Batteries and Cells Aboard Passenger Aircraft." Effective 12/29/04, RSPA imposed a limited prohibition on offering lithium (Li) batteries and cells, and equipment containing or packed with large Li batteries (e.g., >25 grams) as cargo aboard passenger aircraft. The ban does not affect Li batteries or devices containing batteries transported in passenger luggage for personal use (e.g. laptop, camera, etc.). One more thing, primary Li batteries and cells excepted from classification as Class 9 must be marked to indicate they are forbidden on passenger aircraft.

- **Dec 20th:** RSPA published the final rule to HM-215G, "Harmonization with the UN Recommendations, IMDG Code, and ICAO." Some of the changes include: revising the definition of "salvage packaging" in 49 CFR 171.8 to include "non-conforming" packages and "in-transportation" (more on this later); a new "KEEP AWAY FROM HEAT" handling label for air transport; the new marking "OVERPACK" that replaces the old phrase "Inner packages comply..."; the allowance of 6.1 PG II materials to qualify as limited quantities; and many others. The effective date of this rulemaking was 1/1/05 but may be delayed, as indicated, until 1/1/06.

- **Dec 21st:** RSPA published the SNPRM, FS-1, "Safeguarding Food from Contamination During Transportation." For those oldies like me this docket stems from the 1990 Sanitary Food Transportation Act (remember, hauling hazmat in the cargo tank one way and a food product back the other...yum). RSPA is proposing to refer to existing regulations in other federal agencies.

- **Dec 30th:** RSPA published the NPRM HM-213B entitled, "Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids." RSPA is proposing to amend the regulations to prohibit flammable liquids from being transported in unprotected product piping on existing and new DOT spec cargo tanks. Comments are due by 2/28/05.

- **Jan 21st:** RSPA published a comment extension to the NPRM, HM-228, "Revision of Requirements for Carriage by Aircraft" originally published on 11/10/04. The comment period is extended to 3/18/05.

- **Jan 24th:** The FMCSA published a NPRM/request for comments in their review and reconsideration of the hours of service of drivers originally published on 4/28/03 and amended on 9/30/03. Comments must be received by 3/10/05.

- **Jan 24th:** RSPA published the final rule, HM-233, "Incorporation of Exemption Into Regulations." This final rule amends the HMRs

by incorporating certain widely used DOT-Es which have established a history of safety. Three key DOT-Es included here are salvage cylinders (173.3(d)); meter provers (173.5a(b)); segregation requirements for cyanides, and for Division 4.2 with Class 8 liquids (173.12(e)); allowance for labpacks by rail and vessel (173.12(a)); passenger aircraft allowance for 173.13 materials; and some minor revisions to 173.22a.

HOLD ON SHIPPERS! The HM-215G final rule that revised the definition of salvage packaging to include non-conforming packages isn't as convenient as you may think. Most write-ups are focusing on the new addition of non-conforming packages. The term "non-conforming" includes those packages that are discovered to be inappropriate for the contents, e.g., insufficient PG tested package, liquid in solid tested package, inappropriate UN package selected, etc. This is a great amendment to the allowance of a salvage drum. BUT, here's the bigger hit. RSPA has reverted back to the 1990's authorized scope for the use of a salvage drum. That is to say that a shipper can no longer use a salvage drum for any damaged, defective, leaking or non-conforming package that is not yet "in-transportation". Remember, "in-transportation" begins when the carrier accepts the hazmat. As stated by RSPA in the docket (pg 76053), "Note that a package found to be leaking prior to its being placed in transportation may not be packaged in a salvage drum. Instead, it must be repackaged into an authorized packaging in accordance with applicable HMR requirements." This docket statement supercedes the letter issued by RSPA on February 11, 2000, to Mr. Steven H. Wisness (Ref. No. 99-0317) that allowed shippers to use salvage drums before "in-transportation" began.



BUT WAIT SHIPPERS... The final rule published 1/24/05, HM-233, incorporated into the HMR many DOT Exemptions. One of these is the use of salvage cylinders. A new §173.3(d) was added to allow the use of authorized salvage cylinders for damaged or leaking cylinders containing hazardous materials. Two important things to note about this; the first is that the use of the salvage cylinder is not contingent on being "in-transportation." Therefore, shippers can utilize this salvage pack without having to maintain your DOT-E. The second thing to note is the ambiguity between the scope of allowance for the use of the salvage cylinder by the first sentence of §173.3(d) and the definition of *salvage packaging* in §171.8. In §173.3(d) the authorization applies only to damaged or leaking cylinders and is not extended to out-of-specification cylinders. However, the definition of *salvage packaging* in §171.8 specifically includes "non-conforming" packaging and references all of §173.3. Follow-up with RSPA may be required. Definitions are mighty important in the regulatory world and it would appear that a non-conforming cylinder is an authorized use for the new §173.3 salvage cylinder allowance.