



WE'RE ALIVE! Have you missed us? It seems that the world wants to hear about the new DOT rad regs. We've been swamped (and thank you all) so this is a 3-month newsletter. For you new readers...our goal is to provide you with a FREE service to help you meet your DOT hazmat and RCRA waste compliance requirements. Pass it on to others you think could use something good that's free.

DOCKET ACTIONS for since February has been a little slow (it's an election year you see). I've kept the dialog brief so we can talk about other topics important since our last newsletter.

- **Mar 4th:** The FMCSA published a guidance document for the use of binding arbitration in civil penalty forfeiture proceedings where the only issues remaining to be resolved are the amount of civil penalty owed and length of time to pay. Get this under docket number FMCSA-2003-14794 at <http://www.dms.dot.gov>.

- **Mar 30th:** The FMCSA published the final rule concerning the minimum training req'ts for longer combination vehicles operators and driver/instructor req'ts. The effective date is June 1, 2004.

- **Mar 30th:** The FMCSA published the final rule amending the FMCSR to specify the safety performance history for new/potential CMV drivers, and where and from whom the information is sought. The effective date was April 29, 2004.

- **Apr 6th:** The TSA issued a final rule amending its May 5, 2003 Interim Final Rule that established security threat assessment standards for commercial drivers of hazardous materials. TSA changed the date on which fingerprint-based background checks must begin in all States to January 31, 2005.

- **Apr 19th:** RSPA published a final rule that extends compliance of the air eligibility marking (49 CFR 172.321) to October 1, 2006.

- **Apr 22nd:** EPA published an ANPRM seeking information on eleven main topics from stakeholders to evaluate the effectiveness of the RCRA hazardous waste generator reg program and identify areas for improvements. Comments are due by July 21, 2004.

- **Apr 30th:** EPA published a final rule amending the Comprehensive Procurement Guidelines by designating seven new items that are or can be made with recovered materials, and revising designations for three other items. The rule becomes effective on May 2, 2005.

- **May 6th:** RSPA published a NPRM to amend the HMRs to require that cylinders of compressed oxygen and packages of chemical oxygen generators be placed in an outer packaging that meets certain flame penetration and thermal resistance req'ts when transported aboard a passenger aircraft. RSPA is also proposing four other existing regulations concerning these same hazmats. Comments are due by August 13, 2004.

- **May 7th:** RSPA and the NRC seek comments for proposed changes to the IAEA international regs for radioactive materials (TS-R-1). Comments will be accepted until June 7, 2004.

- **May 13th:** RSPA has withdrawn the ANPRM, HM-213A, "Cargo Tank Rollover Damage Protection Requirements", published November 16, 1999. RSPA and the FMCSA have determined additional study is necessary. A future action may be pending.

- **May 21st:** The FMCSA published a final rule establishing four

specific topics for entry-level operators of CMVs who are required to hold or obtain a CDL. The effective date is July 20, 2004, except for 49 CFR 380.500 which is effective 7/20/04-6/30/05.

- **May 26th:** RSPA published a final rule with corrections and responses to the HM-229 hazmat incident reporting requirements final rule of December 3, 2003. Two appeals were granted, on topic clarified and six appeals denied. The effective date of the rule was extended from July 1, 2004 to January 1, 2005.

THE NEW INCIDENT REPORTING REQUIREMENTS in HM-229 (12/3/03 and 5/26/04) state that any undeclared hazmat triggers incident reporting in 49 CFR 171.15 and 171.16. Questions are already coming in as to how far this applies (do I really have to report when my supplier does something wrong?).

Q: What actually is an "undeclared shipment"? I know it's been defined in 49 CFR 171.8, but how far do I have to go? When, if discovered, do I have to report it to RSPA?

A: The definition appears to be confusing...it's the nature of the regs. However, RSPA does tell us what their intent is behind the "undeclared" rule. This, coupled with the new definition, appears to complete the picture. Here's what RSPA says: "Our intent in this rule is to discover undeclared hazardous material shipments that have been buried or hidden in order to prevent damage to property, loss of life, or lack of communication to emergency responders. In that regard, we are amending the definition of 'undeclared shipments' in § 171.8 to assist in further clarifying the regulations as follows: Undeclared hazardous material means a hazardous material that is: (1) Subject to any of the hazard communication requirements in subparts C (Shipping Papers), D (Marking), E (Labeling), and F (Placarding) of Part 172 of this subchapter, or an alternative marking requirement in Part 173 of this subchapter (such as §§ 173.4(a)(10) and 173.6(c)); and (2) offered for transportation in commerce without any visible indication to the person accepting the hazardous material for transportation that a hazardous material is present, on either an accompanying shipping document, or the outside of a transport vehicle, freight container, or package." [HM-229, 10/26/04, pg 30118] [emphasis added].

First, RSPA's intent is for hazmat that is "buried or hidden". **Second**, in part 2 of the definition RSPA states: "...without any visible indication to the person accepting the hazardous materials for transportation..." This second part clears it up in that if the person who is accepting the package: (1) is trained in the HMRs, (2) knows how and what to look for with regard to the HMRs, and (3) fulfills his/her requirements under the HMRs (e.g., all hazmat must be in full compliance to be accepted before transport), then he/she will have looked over the package and accompanying documentation. Hence, the only way an "undeclared" hazmat can enter transportation is if it is hidden or buried. **Lastly**, reporting to RSPA is required when the discovery is made while the hazmat is "in-transportation". This is from the point of loading the vehicle in the carrier's presence, all transport and storage then to its consigned location, and all unloading and receipt while the carrier is still on the consignee's premises. See HM-223 (FR 10/30/03) for the definition and application of "in-transportation." Cheers!