

Prepare for the October 1, 2010 Changes to the 49 CFR

Hazardous Materials Regulations

With revised versions of the Code of Federal Regulations printed annually taking into account regulation changes that are effective as of October 1 of that particular year, PHMSA, for practical reasons, has chosen October 1, 2010, as the effective date for a number of recent regulations. Those affected should ensure they are in compliance on the date the requirements take effect. The Journal covered each of the relevant rules in detail when they were published. The purpose here is to provide a checklist of provisions to which hazmat companies should pay particular attention from a compliance perspective. Here is a rundown of some of the more important aspects of the regulation changes taking effect on October 1, 2010, when you do your compliance check.

HM-206F Hazardous Materials: Revision of Requirements for Emergency Response Telephone Numbers; October 19, 2009 (discussed in the November/December 2009 edition of the Journal)

This rulemaking deals with the 24 hour emergency response number. Key changes effective October 1 include:

1. In §172.604(a), PHMSA has made provision for telephone numbers outside the United States, by requiring that international numbers include the international access code or the “+” (plus) sign, country code, and city code, as appropriate.
2. In §172.604(b)(1), when the emergency response number is that of the shipper, the shipper’s name must be prominently displayed on the shipping paper or provided in association with the emergency response number.
3. In §172.604(b)(2), when the emergency number is that of a third party, the shipper who registered with the third party must be identifiable by placing their name or contract number in association with the emergency response number. HM-244C (published September 1, 2010) corrected the HM-206F requirement so that shippers are excepted from this requirement when their name is already prominently displayed on the shipping paper.
4. A new requirement §172.604(b)(3) clarifies that subsequent offerors such as freight forwarders are also responsible for ensuring that emergency response numbers are linked to the shipper who registered with the third party provider.
5. In the regulations also PHMSA also clarified:
 - that written information from a 3rd party provider must be transmitted in English;
 - what it means for the shipper’s name to be “in association” with the telephone number; and

- what it means for an emergency response telephone number to be “clearly visible”. HM-232F Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements; March 9, 2010 (discussed in the March/April 2010 edition)

This rule for the most part relaxes existing security requirements. Changes introduced in HM-232F effective October 1, 2010 that tighten requirements so that you should check for continued compliance include:

1. While in general the range of hazmat requiring preparation of security plans decreased under this rule, in the case of radioactive materials (RAM), the range increased when the description of RAM requiring a security plan went from “Highway route controlled quantities” to “Highway route controlled quantities plus NRC/IAEA Special Nuclear Materials”.
2. In-depth security training requirements in §172.704(a)(5) were revised to clarify who must be trained and to add training on the “organizational security structure” as part of the required training. Note that all hazmat employees involved with a hazmat requiring a security plan must have in-depth security training, including those who have no responsibility under the plan.
3. The recurrent training requirement in §172.704(c) was revised so that retraining on the security plan must occur every three years or within 90 days of implementation of a revision of the plan.
4. §172.802(a) was revised to clarify that the assessment is part of the security plan and must take into account site specific concerns of facilities.
5. §172.802(b) was revised to require that the plan identify the responsible senior management official and the security duties of each position or department.
6. §172.802(b) was revised to require a training plan for affected hazmat employees.
7. A new §172.802(c) was added to require that the plan, including the assessment, be in writing and be retained as long as it is in effect. The plan is required to be reviewed at least annually and revised as appropriate. The most recent version must be available to employees. All copies must be up to date.
8. A new §172.802(d) was added to ensure availability of the plan upon request by an authorized DOT or TSA official.

HM-231 Hazardous Material; Miscellaneous Packaging Amendments, February 2, 2010 (discussed in the March/April edition of the Journal)

This rule introduced a range of packaging related changes. Those of note from a compliance perspective that become effective on October 1, 2010, include:

1. Amendment of the definition of bulk packaging. PHMSA deleted the expression “with no intermediate form of containment” from the definition. The purpose of the deletion was to include “Large Packagings” (LPs) as bulk packagings. A seeming unintended consequence was that they redefined transport vehicles and freight containers as bulk packagings when they are loaded with one or

more hazmat packages. This and other changes in HM-231 were appealed by DGAC. PHMSA has informally indicated that appeals would be addressed – hopefully by 1 October.

2. Through revisions in part 178, USA-marked UN certified Large Packagings (LPs) will have to be vibration tested.
3. Under §173.22(a)(4), the shipper is required to maintain closure instructions for a package at least 365 days from the time the package was offered unless the instructions are printed or embossed on the package itself. This requirement is easily verifiable and inspection personnel may be expected to frequently check for compliance with this new provision.
4. Under a new requirement in §173.22(a)(4), a shipper using a package based on the selective testing variation in §178.601(g)(1) is required to maintain a record of how it was determined that an equivalent level of safety was provided. A record of the determination must be kept for a period of 365 days after the package was offered. Again, this will be an item inspectors will look for upon coming across the use of this packaging variation. The requirement applies to packages currently in use and those that will be used in the future. Packaging records should be updated to indicate “some” basis for the equivalent level of safety determination.
5. PHMSA modified 173.28(a) by adding a new sentence relative to the reuse, reconditioning and remanufacture of steel and plastic drums and jerricans. While the current regulations already impose minimum thickness limits on steel and plastic drums and jerricans that are reused or reconditioned in 173.28(b)(4)(i), the new sentence would also impose the minimum thickness limit on remanufactured drums. This change was also appealed by DGAC.
6. §178.2(c)(1)(ii) was revised to specify that the closure instructions “must provide for a consistent and repeatable means of closure that is sufficient to ensure the packaging is closed in the same manner as it was tested.” Existing closure instructions should be evaluated against the newly added criterion. DGAC appealed to extend the implementation date since potential consequences of this requirement could be that test reports may need to be amended and packagings may require retesting to take account of updated closure procedures.

HM-233A Hazardous Material; Incorporation of Special Permits into Regulations, May 14, 2010

This rule incorporated a number of special permits into the Hazardous Material Regulations as part of PHMSA’s on-going program to review long-standing special permits to see which can be safely and logically incorporated into the HMR.

HM-244C Hazardous Material; Minor Editorial Corrections and Clarifications, September 1, 2010

This rule contains editorial corrections and minor regulatory changes geared towards enhancing clarity and reducing misunderstandings in the regulations. As mentioned above, this rule made a small change to HM-206F by excepting shippers from the §172.604(b)(2) requirement when their name is already prominently displayed on the shipping paper.

E85/Gasohol

As noted in the currently published regulations, those engaged in transporting E85 gasoline and other ethanol/gasoline blends should note that new hazard communication requirements become effective on October 1, namely:

1. 171.14(h). The proper shipping name "Gasohol gasoline mixed with ethanol, with more than 20 percent alcohol" may no longer be used. The new proper shipping name "Ethanol and gasoline mixture" along with other alternative proper shipping names or the revised proper shipping name "Gasohol gasoline mixed with ethanol with more than 10% ethanol" must be used as appropriate.
2. 172.336(h). When both gasoline and UN 3475 are on the same vehicle. Identification number "3475" must also be displayed.

Air shipper's certification

Under 172.204(c)(1), the word "packed" in place of the word "packaged" may no longer be used in the shipper's certification for air transport.

Summary

The above list of requirements is not a comprehensive listing of new requirements that become effective on 1 October 2010. For example, the list does not note that HM-231 introduced US provisions for certifying large packagings as UN packaging or that the regulations will now authorize water as the medium for conducting a vibration test for IBCs. However, the above list of requirements are ones you may wish you implemented, should a PHMSA inspector come a calling on 2 October.

A revised version of Title 49 CFR Parts 100 to 185 of the Code of Federal Regulations is re-printed annually, dated October 1 of each year. It incorporates the regulation changes that are effective as of October 1 of that particular year which include, as well, any changes that may have become effective during the year since the previous October 1 year date. Those affected should always ensure they are in compliance on the date the requirements take effect. The Journal covers each of the relevant rules in detail when they are published. The specific purpose of this article is to provide a checklist that facilitates verification by hazmat companies of the typically many rules finalized through the year that were assigned an October 1, 2010 effective date. It provides a summary rundown of some of the more important regulation changes taking effect on October 1, 2010. As highlighted above, however, companies should also use this opportunity to assure that they have not missed other rules that became effective since October 1, 2009. In other words, these are rules that were adopted having an effective date between October 1, 2009 to September 30, 2010.

These rule changes are found in Dockets HM-208H (FR 15613, March 30, 2010, eff. April 29, 2010), HM-224D (FR 63, January 4, 2010, eff. January 4, 2010), HM-215J (FR 63, January 4, 2010, eff. January 4, 2010), HM-224G (FR 52896, October 15, 2009, effective November 16, 2009), HM-224G (FR 65696, December 11, 2009, eff. November 16, 2009), and HM-244B (FR 53182, October 16, 2009, eff. October 16, 2009). The dates given, together with Federal Register page number, are the publication date in the Federal Register followed by the new rule's effective date.

A Side Note On Package Closure Notification

Effective October 1, 2010:

A comprehensive closure notification must incorporate, at a minimum, the following:

- A list of all components required to assemble and close the packaging including any components not provided.
- Instructions on how the packaging should be assembled, as well as how it is closed. Closing instructions must be repeatable and consistent.
- Information on packaging suitability, such as packing group, authorized gross mass, product specific gravity, pressure ratings and any requirements that may not have been met at the time of transport, such as whether the inner packaging of a combination packaging has met the pressure requirements for air transport
- Information that may help the shipper meet the shipping requirements, including that notifications must be kept on file for a minimum of 365 days from the date of issuance or the date the package is offered. 'Date of issuance' is a packaging manufacturing requirement from section 178.2. 'Date of offering' of the package is a shipper requirement from section 173.22.
- Indication to promptly transfer the closure notification to whomever is responsible for closing the packaging. Notifications must be sent every time a package is transferred. All end users must receive closure instructions. See 49 CFR§173.22(a)(4) & §178.2(a)(c)