

## Aviation Group Client Update

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### PHMSA ISSUES TWO FINAL RULES ON INTERNATIONAL HARMONIZATION

On January 7, 2013, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued two final rules regarding amendments to the Hazardous Materials Regulations (HMR).

#### **Hazardous Materials: Harmonization with International Standards (RRR)**

PHMSA has issued a [final rule](#) that amends the HMR to maintain alignment with international standards set forth in the International Maritime Dangerous Goods (IMDG) Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations). Specifically, the amendments include changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements.

Not only does federal law and policy strongly favor the harmonization of domestic and international standards for HazMats transportation, PHMSA takes the position that harmonization facilitates international trade by minimizing the costs and burdens of complying with multiple or inconsistent HazMats transportation rules.

Notable amendments to the HMR include: (1) updated references to international regulations including the ICAO Technical Instructions, the International Convention for the Safety of Life at Sea, the IMDG Code, the UN Model Regulations, the UN Manual of Tests and Criteria the Canadian Transportation of Dangerous Goods Regulations, and various technical standards; (2) various revisions to the proper shipping name, hazard class, packing groups, special provisions, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits of particular HazMats; (3) adoption of an exception for the transport of aircraft batteries aboard passenger aircraft in excess of the quantity limits specified in column 9A of the Hazardous Materials Table (49 CFR Section 172.102); and (4) adoption of various changes throughout Part 173 (packaging requirements).

The voluntary compliance date for these changes is January 1, 2013, while the delayed compliance date is January 1, 2014. Please contact our office for additional information or for assistance with compliance with these amended requirements.



## **Hazardous Materials: Harmonization with the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air**

PHMSA has issued a [final rule](#) responding to certain administrative appeals brought to challenge PHMSA's adoption of amendments on January 19, 2011 intended to harmonize certain HMR provisions with international standards. PHMSA has adopted certain revisions to the January 19, 2011 final rule in response to issues raised in the administrative appeals. By and large, these revisions provide for delayed compliance with specific provisions of the January 19, 2011 final rule.

The final rule includes several notable revisions. First, in order to align the HMR with international standards, PHMSA is phasing out its system of reclassing and transporting limited quantity material as ORM-D. Under this system, a limited quantity of hazardous material that also meets the definition of a "consumer commodity" may be reclassified as ORM-D, which makes it eligible for additional exceptions from regulation. Under the January 19, 2011 final rule, the ORM-D system was to begin phasing out for material transported by modes of transportation other than aircraft on January 1, 2014. For aircraft, the ORM-D system began phasing out on January 1, 2013. While the phase out for transportation of ORM-D materials by aircraft remains January 1, 2013, for all other modes of transportation, PHMSA has extended authorization of the ORM-D classification and the use of packagings marked "Consumer, commodity, ORM-D" until December 31, 2020.

Second, as a result of an administrative appeal, PHMSA realized that it had inadvertently revised HMR requirements for certain consumer commodities intended for transportation by aircraft in a way that was not consistent with international standards. PHMSA has adopted language to bring new section 173.167 of the HMR in line with international requirements.

Finally, PHMSA clarified the requirement that the "OVERPACK" marking be placed on an overpack containing limited quantity packaging if all markings are not visible. PHMSA revised the language to clarify that the HMR do not require that every individual mark or label on each package contained in an overpack be visible. Rather, if markings and labels representative of each hazardous material in the overpack are visible, the "OVERPACK" marking is not necessary.

Please contact our office for additional information or for assistance with compliance with these amended requirements.

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