

Dear Clients and Friends:

This is the first edition of a regular complimentary update on hazardous materials transportation regulation. Should you have any comments on these articles or suggestions for future topics, please contact the editor, Peter L. Gray, at 202-496-7707 or pgray@mckennalong.com.

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▸ DOT's Research and Special Programs Administration Reorganized Under New Law

On November 30, 2004, President Bush signed into law the Research and Special Programs Administration Act, which reorganizes the Department of Transportation's Research and Special Programs Administration ("RSPA") into two new units: (1) the Pipeline and Hazardous Materials Safety Administration ("PHMSA"); and (2) the Research and Innovative Technology Administration ("RITA"). Within RITA, the research-related functions of RSPA will be combined with the formerly separate Bureau of Transportation Statistics. PHMSA will take over administration of the Hazardous Materials Regulations, which had been a RSPA function. The organization changes mandated by the Act go into effect on March 1, 2005.

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▸ Fingerprinting Now Required to Obtain Hazmat Driver's License

As of January 31, 2005, fingerprinting will be required for background checks of individuals applying for a hazardous materials endorsement for a commercial driver's license. For drivers transferring, renewing, or upgrading licenses with a hazardous materials endorsement, the fingerprinting requirements start four months later, on May 31. The Transportation Security Administration ("TSA") had promulgated interim final rules implementing the background check requirements of the Patriot Act in 2003 (68 Fed. Reg. 23832). But industry opposition to the fingerprint-based background check led TSA to repeatedly postpone the effective date of the background check rules. The January 31, 2005 effective date for new applications, however, may yet be postponed, as the American Trucking Associations recently filed an administrative appeal of the rule within TSA.

▸ Proposed Prohibition of Flammable Liquids in Unprotected Tank Truck Piping

On December 30, 2004, RSPA published a long-expected, controversial proposal to prohibit flammable liquids from being transported in unprotected product piping ("wetlines") on existing and newly manufactured DOT specification tank trucks (69

Fed. Reg. 78375). The prohibition, if promulgated, would take the form of a performance standard requiring that there be less than one liter of product in each pipe after it is drained. RSPA is not proposing a specific method for achieving this standard. The proposed changes would become effective two years after the rule is finalized for newly manufactured tank trucks. Existing tank trucks would be required to retrofit at the first required pressure re-test after the effective date. Comments on the Proposed Rule are due by February 28, 2005.

▶ DOT Prohibits Cargo Containing Lithium Batteries from Passenger Aircraft

On December 15, 2004, RSPA published an interim final rule (effective December 29, 2004) prohibiting packages of "primary lithium batteries" (i.e., rechargeable lithium batteries weighing more than 25 grams) and equipment containing such lithium batteries from being transported as cargo in passenger planes (69 Fed. Reg. 75208). The interim final rule also requires that all such packages -- whether intended for highway, rail or air transport -- be marked with the words "PRIMARY LITHIUM BATTERIES - FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT". This new marking requirement will have a significant impact on non-complying packages that were already in transit at the time DOT published the interim final rule (e.g., packages stored at warehouses and distribution facilities). Such packages must be remarked immediately to comply with the interim final rule.

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