



Volume 48

October 1, 2007

DHS Update: Appendix A Delay Continues....into October

We anticipate a final Appendix A will be released in early October. The Asmark Institute has prepared, and plans to release, a *"How to Comply"* guidance document for the new Chemical Facility Anti-Terrorism Standards (CFATS). The guidance document will provide step-by-step instructions and is designed to assist retailers with the CFATS process, requiring the review of Appendix A and the possible registration and submittal of the Top-Screen assessment to DHS.

SPECIAL NOTE: Watch for your *How to Comply* guidance document. We will mail it immediately upon release of Appendix A, the final list of chemicals regulated by DHS. Regulated facilities have 60 days from the day DHS publishes Appendix A to submit their Top-Screen.



*The Department of Homeland Security
has approved the Asmark Institute
SVA for use by Tier 4 facilities.*

More Fines for Failing to Provide Immediate Notification of Ammonia Spills

We last reported in the September edition about 2 Wisconsin companies fined by U.S. EPA officials in Region 5 to settle administrative cases involving the release of anhydrous ammonia. Ammonia releases greater than 100 pounds must be reported immediately. Since our last newsletter, Region 5 has issued press releases concerning fines on 5 Indiana and Ohio companies. All of the settlements reflect releases that occurred in the 2004-05 timeframe. Heads up!

Spotlight: Affiliated State Associations

We received great news recently from **Renee Pinel**, President of the Western Plant Health Association (WPHA) in Sacramento, California. WPHA is the latest state association to sign on as an affiliate of the Asmark Institute. **Randy Lawrence**, Vice-President of the Asmark Institute, traveled to Fresno at the end of August to meet with their Regulatory Committee. This brings the number of affiliated State Associations to 22. Welcome Renee and WPHA! We look forward to working with you! Our appreciation goes out to all the state associations that have signed on as affiliates since launching the Institute on September 1, 2005:

AgriBusiness Association of Kentucky
Agribusiness Association of Iowa
Agribusiness Council of Indiana
Alabama Agribusiness Council
Far West Agribusiness Association
Florida Fertilizer & Agrichemical Association
Georgia Agribusiness Council
Illinois Fertilizer & Chemical Association
Kansas Agribusiness Retailers Association
Michigan Agri-Business Association

**Minnesota Crop Production Retailers
Missouri Agribusiness Association
Montana Agricultural Business Association
New York State Agri-Business Association
Ohio AgriBusiness Association
Oklahoma Agribusiness Retailers Association
South Carolina Fertilizer & Agrichemical Association
South Dakota Agri-Business Association
Texas Ag Industries Association
Western Plant Health Association
Wisconsin Crop Production Association
Wyoming Ag-Business Association**

DOT Will Enforce Language Rule

WASHINGTON, D.C. - After 37 years of largely turning a deaf ear to the dangers posed by over-the-road truck and bus drivers who can't speak English, the U.S. Department of Transportation has decided it's time to start cracking down on drivers who no habla Ingles. In a policy memorandum issued in late August, the Federal Motor Carrier Safety Administration (FMCSA) directed its field personnel to begin enforcing the regulation that says drivers must be able to communicate in English, and to place out of service those drivers who can't. Although the English language proficiency regulation has been around since 1970, its enforcement largely has been at the discretion of individual enforcement officials and it was not an out-of-service item in the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria. According to the 1970 federal rule, commercial drivers must be able to read English, converse with the public, understand highway signs and signals, respond to official inquires, and make entries on reports or records.

There was no indication in the memorandum written by FMCSA's Acting Associate Administrator for Enforcement and Program Delivery, **William A. Quade**, what prompted the policy shift; however, agency contacts indicated concern with states that began administering CDL examines in languages ranging from Spanish to Vietnamese. The new policy enforcing that nearly 40-year-old rule applies to any commercial bus or truck driver operating in the U.S. and takes effect immediately.

OSHA Updates HAZWOPER Standard

A directive updating enforcement procedure for compliance officers conducting inspections of emergency response operations was published on August 29 by OSHA. Compliance Directive CPL 02-02-073 specifically addresses inspection policies to ensure uniform enforcement of 29 CFR 1910.120 and 29 CFR 1926.65, the Hazardous Waste Operations and Emergency Response Standard (HAZWOPER). OSHA does not consider terrorist incidents to be foreseeable workplace emergencies for the purposes of requiring employers to anticipate and prepare for them, the directive said. "The release of chemicals or hazardous substances into a workplace whether caused by an accidental release or by a terrorist event would, however, be considered a hazardous materials incident," the directive said. Emergency response efforts for such releases would therefore be covered by the HAZWOPER standard. The directive can be found on OSHA's website by [clicking here](#) and also addresses:

- The definition of first receivers
- Issues involving damaged packages during shipping
- Emergency responder training levels
- Medical surveillance for emergency responders
- Computer-based training
- Updates to citations guidelines

Information for this article was provided by Bill St. Peters with Safety Partners, LTD.

Pesticide Registration Improvement Act II Passed

A coalition of members from the pesticide registrant community recently commended Congress for passing legislation to reauthorize the Pesticide Registration Improvement Act (PRIA) II. The coalition consists of both agricultural and non-agricultural uses, antimicrobial companies, large and small companies, biotech companies and biopesticides, along with environmentalists. PRIA was first enacted in 2003 and has been a win-win-win for all parties involved: it has provided stable funding for EPA, predictable registration timelines for industry, new products for consumers, and funds for completion of various registration activities (tolerance reassessment/re-registration) for the activist communities.

PRIA expires in 2008. PRIA II builds upon the tradition of the first PRIA legislation. It also increases and clarifies categories covered, uses maintenance fees for registration review, protects funds for grant programs, increases funding levels, and prevents free-riding. The coalition, led by CropLife America, included members such as the National Resources Defense Council, the American Chemistry Council and Responsible Industry for a Sound Environment (RISE). "PRIA II reauthorizes the solid legislation created four years ago by a broad coalition of pesticide manufacturers, public interest groups, and pesticide user groups. Predictable timelines have allowed industry to provide the American farmer with better and more innovative methods to produce the safe, affordable and abundant food supply Americans enjoy," said **Jay Vroom**, President and CEO of CropLife America. "We are enthusiastic about the reauthorization of the legislation and applaud Congress for swiftly passing it."

Update: Recent Rash of Activity Surrounds SPCC

- **Rule Revisions:** We anticipate the next round of revisions to be released in the next couple of weeks. There may be additional relief for small entities in the impending revisions.
- **New web-based mySPCC tool:** Comments have been received from U.S. EPA and programming is in the final testing stages.
- **GAO Report Released:** On August 16, the Government Accountability Office (GAO) released a report entitled, *Aboveground Oil Storage Tanks: Observations on EPA's Economic Analyses of Amendments to the Spill Prevention, Control, and Countermeasure Rule*. The report was prepared at the request of **Senator James Inhofe** (R-OK), Ranking Member of the Committee on Environment and Public Works.

GAO Report Summary: To prevent certain oil spills, U.S. EPA issued the Spill Prevention, Control, and Countermeasure (SPCC) rule in 1973. EPA estimated that, in 2005, about 571,000 facilities were regulated under this rule. When finalizing amendments to the rule in 2002 and 2006 to both strengthen the rule and reduce industry burden, EPA analyzed the amendments' potential impacts and concluded that the amendments were economically justified. As requested, GAO assessed the reasonableness of EPA's economic analyses of the 2002 and 2006 SPCC amendments, using Office of Management and Budget (OMB) guidelines for Federal agencies in determining regulatory impacts, among other criteria, and discussed EPA's analyses with EPA officials.

GAO found that EPA's economic analysis of the 2002 SPCC amendments had several limitations that reduced its usefulness for assessing the amendments' benefits and costs. In particular, EPA did not include in its analysis a number of the elements recommended by OMB guidelines for assessing regulatory impacts. In the analysis, EPA assumed that certain facilities were already complying with at least some of the rule's provisions and, as a result, they would not incur any additional compliance costs because of the amendments. However, the extent of facility compliance with the rule was highly uncertain. EPA did not analyze the effects of alternative rates of industry compliance on the estimated costs and benefits of the revised rule and, therefore, potentially misstated these amounts.

GAO also found that EPA's economic analysis of the 2006 amendments addressed several of the limitations of its 2002 analysis, but it also had some limitations that made it less useful than it could have been for assessing the amendments' costs and benefits. As with the 2002 analysis, EPA did not estimate

the potential benefits of the 2006 amendments, such as the extent to which they would affect the risk of an oil spill and public health and welfare and the environment. Additionally, EPA did not have available nationally representative samples for its analysis; therefore, its estimates of the number of facilities that would be affected by the 2006 amendments may not be accurate.

GAO recommended EPA improve its analysis of future changes to the SPCC rule by more closely following OMB guidance. In commenting on a draft of this report, EPA generally agreed with this recommendation and stated that, consistent with it, the agency will continue gathering data to improve its understanding of the regulated universe and oil spill risks and to address uncertainty and quantify benefits.

Ohio Enacts "SIS"

The Ohio AgriBusiness Association reported recently that **Governor Strickland** signed the Speed Identification Symbol (SIS) bill into law in mid-July. The law, effective October 19, 2007, is primarily directed to identifying farm machinery (includes commercial applicators and some towed equipment) which has been designed in its original equipment configuration for specified ground speeds greater than 25 mph. The law allows said machinery to operate above 25 mph when displaying both Slow Moving Vehicle (SMV) and SIS emblems. For details on the requirements of the new law, [click here](#).



Roadcheck 2007 Final Statistics

A total of 62,370 inspections were conducted during the 72-hour Roadcheck 2007 event from June 5–7, 2007. The following out-of-service statistics emerged for drivers and vehicles:

Driver Out-of-Service Violations

Violation	Number	Percentage
HOS	3,027	65.9%
False Logs	522	11.4%
Suspended	177	3.9%
Driver Qualification	166	3.6%
Endorsement	120	2.6%
Expired License	78	1.7%
Drugs/Alcohol	71	1.5%
Age	15	0.3%
Revoked License	12	0.3%
Withdrawn License	11	0.2%
Cancelled License	9	0.2%
Other	607	13.2%
TOTAL	4,815	

Vehicle Out-of-Service Violations

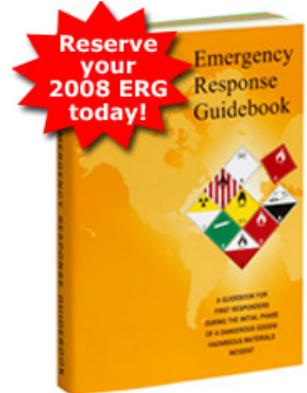
Violation	Number	Percentage
Brake Adjustment	6,954	27.7%
Brake System	6,566	26.2%
Lights	3,521	14.0%
Loading (securement)	2,610	10.4%
Tires and wheels	2,286	9.1%
Suspension	1,159	4.6%
Steering	533	2.1%
Frame	345	1.4%
Hazardous materials	261	1.0%
Coupling device	178	0.7%

Fuel system	166	0.7%
Exhaust	48	0.2%
Other	924	3.7%
TOTAL	25,551	

The number of U.S. state inspections totaled 53,451 (85.70%); Canadian inspections totaled 7,274 (11.66%); U.S. FMCSA inspections totaled 1,506 (2.41%); and Mexican inspections totaled 139 (0.22%).

New 2008 Emergency Response Guidebook (ERG)

The new 2008 version of the little orange book is scheduled to be shipped sometime in early 2008 barring any delays. The 2008 version will replace the existing 2004 version. Don't miss out on the special "group" price offered by the Asmark Institute. We pre-order a substantial volume from our supplier and pass the savings on to our clients and affiliates. We anticipate the 2008 ERG price to be about \$1.25 plus freight. The "group" price will be passed along to all locations placing their order with us **BEFORE** we have to report our final total to our supplier. Cost per ERG will be higher after the early order program ends. When the release date of the new ERG is announced, you will receive a special opportunity to reserve your order at the best price.



New Area Code (364) in the Works for KY

The Kentucky Public Service Commission announced the western portion of the current area code 270 will change to 364. Optional use of the new code will begin July 1, 2008. The new area code includes cities of Henderson, Hopkinsville, Madisonville, Murray and Paducah. Cities remaining in the 270 area code include Bowling Green, Columbia, Glasgow, Elizabethtown and Owensboro. **Note:** We appreciate any advance notice from our clients around the country on upcoming area code changes.

Organic Food Has 'Significantly Higher' Contamination...

A new study on food safety reveals that organic produce may contain a significantly higher risk of fecal contamination than conventionally grown produce. A recent comparative analysis of organic produce versus conventional produce from the University of Minnesota shows that the organically grown produce had 9.7 percent positive samples for the presence of generic E. coli bacteria versus only 1.6 percent for conventional produce on farms in Minnesota. The study, which was published in May in the Journal of Food Protection, concluded, "The observation that the prevalence of E. coli was significantly higher in organic produce supports the idea that organic produce is more susceptible to fecal contamination."

Worth Repeating...Doing what you like is freedom; liking what you do is happiness.

© 2007 Asmark Institute, Inc.

This information is believed to be reliable by the Asmark Institute, however, because of constantly changing government regulations, interpretations and applicability or the possibility of human, mechanical or computer error, the Asmark Institute does not guarantee the information as suitable for any particular purpose.