

# Legal Preparedness Reporter

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## Maintain HIPAA Compliance During Public Emergencies

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It is important for emergency managers to know that HIPAA rules and regulations are not relieved during public emergencies.

Foremost, the Health Insurance Portability and Accountability Act (HIPAA) was enacted by Congress in 1996. Its purpose is to provide safeguards to protect the confidentiality of voluminous medical information that moves throughout the many offices within the nations healthcare system. Pursuant to HIPAA provisions:

- It enables patients to find out how their information may be used, and about certain disclosures of their information that have been made;
- It generally limits release of information to the minimum reasonably needed for the purpose of the disclosure;
- It generally gives patients the right to examine and obtain a copy of their own health records and request corrections; and
- It empowers individuals to control certain uses and disclosures of their health information.

Congress sees protection of privacy as a high priority. So much so that even during natural disasters and emergencies the provisions of HIPAA will stand.

However, it is possible for the Secretary of Health and Human Services (HHS) to waive some provisions which include Project Bioshield Act of 2004 (PL 108-276) and section 1135(b)(7) of the Social Security Act. Also, the Secretary may waive sanctions and penalties against those in violation of the Act.

Hence, emergency managers should be fully aware of HIPAA as its provisions are related to the emergency management function.

**More information on HIPAA is available at the Health and Human Services website:**

<http://www.hhs.gov/ocr/hipaa>

*Legal Preparedness in the homeland security/emergency management context, speaks to the statutory and regulatory framework necessary to carry out those actions related to prevention, preparation, response, and recovery from terrorist incidents or catastrophic disasters. It precedes, co-exists with, and extends beyond the physical logistics of the preparedness cycle.*

## Nations Emergency Preparedness is Graded

Trust For America's Health (TFAH) and the Robert Wood Johnson Foundation (RWJF) issued *Ready or Not? Protecting the Public's Health from Diseases, Disasters, and Bioterrorism* report. The report indicates progress in the nation's emergency preparedness, while highlighting the need for more work in areas such as preparedness surge capacity, disease detection, and food safety.

This is the partnership's sixth report and this one noticeably identifies cuts in federal funding and reduced state funding. The funding cuts are due to a shrinking economy as reasons of losing ground on early gains on preparedness.

The complete report can be viewed at:

<http://healthyamericans.org/assets/files/bioterror-report-2008.pdf>



Picture Source: [<http://www.7holycrapwordpress.com> ]

## Rare Bacteria Outbreak Brings Class Action

Listeriosis is a rare bacterium that is typically found in infants, the elderly, and those with compromised immune systems.

However, The Public Health Agency of Canada confirms that contaminated meat has been found in a meat plan in Maple Leaf's Toronto. The outbreak of Listeriosis has resulted in at least 15 deaths from the outbreak.

Resulting from this outbreak, a Plaintiffs class action suit has been initiated by over 1,100 people.

Although a massive recall of the meat has been conducted, the financial fallout from this public health breach could be quite costly.

The recall itself is expected to reach at least 20 million. It is already reported that the company's stocks are affected and have lost over 1/3 of its value behind this immediate crisis.

It will be awhile before the real cost are known, as the class action litigation is certain to be costly!



Listeriosis Bacterium.

Picture Source: [<http://www.zimbio.com> ]

### Listeriosis

### Bacterium

### Facts:

#### Listeriosis:

*"Is an uncommon food-borne illness. The bacteria that cause listeria infections (Listeria Monocytogenes) are found in soil and water. Wild and domestic animals also carry the bacteria."*

#### Did you know:

*"Most otherwise healthy people exposed to listeria don't become ill. However, it can be devastating for pregnant women and people who have weak immune systems."*

**Symptoms:** *"You may experience fever, muscle aches, nausea, diarrhea, headache, stiff neck, confusion, loss of balance, or convulsions."*

### Listeriosis

#### Related Deaths:

*"Listeria infections cause about 500 deaths a year in the United States, according to the Centers for Disease Control and Prevention (CDC)."*

#### Source:

<http://www.mayoclinic.com/health/listeria-infection/DS00963>

## Aviation Emergency Response Suit Filed

In October of 2008, an emergency medical services (EMS) helicopter was carrying 14 month old Kirstin Blockinger when it crashed.

The Air Angels chopper was en route to Children's Memorial Hospital in Aurora, Illinois when it struck a radio tower.

A lawsuit for the accident was filed in the Circuit Court of Cook County and alleges negligence. Several allegations include the following:

- 1) Negligently and carelessly failed to require and provide two pilots for operation of subject flight;
- 2) Negligently and carelessly failed to equip the subject helicopter with a proper and adequate Terrain Awareness and Warning System (TWAS);
- 3) Negligently and carelessly failed to provide proper and adequate time and information to the pilot for flight planning;
- 4) Negligently and carelessly failed to keep safe and proper separation between the subject helicopter and existing tower hazard;
- 5) Negligently and carelessly failed to provide proper and adequate flight following measures; and
- 6) Negligently and carelessly operated, controlled, equipped, and maintained the subject helicopter in particulars to be determined through the course of discovery.

Early 2009, public hearings are scheduled to address safety of helicopters involved in emergency medical services.

## Changes to the Emergency Planning and Right-to-Know ACT

In October 2008, the Environmental Protection Agency (EPA) announced changes to the Emergency Planning and Community Right-to-Know Act (EPCRA) that became effective December 2008. EPCRA was enacted out of growing concerns of environmental and safety hazards resulting from the storage of toxic chemicals.

Essentially, EPCRA applies to federal, state, and local governments. The provisions mandate that the communities in and around potential hazardous locations deserve a right-to-know of chemicals at those locations.

Congress sought legislation after the incident in Bhopal, India where over 2,000 people were fatally injured after an accidental release of the chemical "methlisocyanate."

Changes involving the reporting of hazardous chemical reporting consist of Tier I and II forms, and the reporting of hazardous chemicals in a mixture. The EPA identifies the changes as:

### Tier I and Tier II Forms

- The Tier I and Tier II forms and their instructions have been removed from the code of federal regulations (CFR).
- The revised regulation includes a description of the requirements for Tier I and Tier II. Facilities are now required to report their North American Industry Classification System (NAICS) code on the Tier I or Tier II form.
- The chemical or common name of the chemical as provided on the Material Safety Data Sheet must be provided on the Tier II form.
- The EPA encourages facilities to contact their state to determine whether any additional requirements or formats are required by the state.

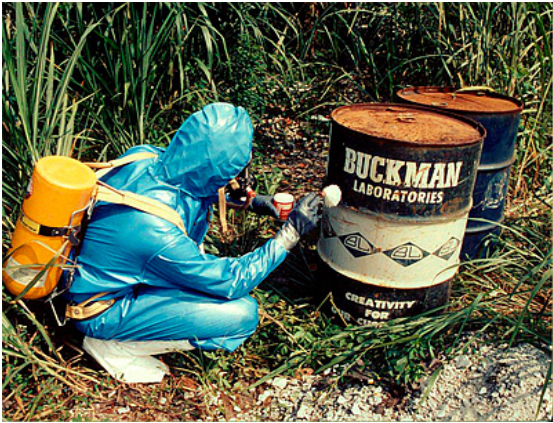
Tier I and Tier II forms and their instructions can now be found on the EPA's web site: <http://www.epa.gov/emergencies>

## Hazardous Chemical Inventory Reporting for Chemicals in Mixture

When determining whether the threshold quantity of an extremely hazardous substance (EHS) has been met, facilities must include the total quantity of that EHS present in the pure form as well as in any mixture, even if any mixture including the EHS is also being reported as a hazardous chemical.

For hazardous chemicals that are mixtures and do not contain any extremely hazardous substance, facilities have an option when determining whether the threshold quantity is present: (1) add together the quantity present in its pure form and as a component in all mixtures (even if the mixture is also being reported as a hazardous chemical), or (2) consider the total quantity of each mixture separately.

Additional information is available at the EPA website: <http://www.epa.gov/emergencies>



Hazardous Materials

Picture Source: [<http://www.miamidade.gov/mdpd/images/IGB/hazmat1.jpg>]

## PHMSA Improves Transport of Hazardous Materials on Rail

Effective March 16, 2009 is the amended rule to improve the safety of railroad tank car transportation of hazardous materials.

Under 74 FR 1769 – Final Rule, the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Railroad Administration (FRA) has amended the regulation regarding hazardous materials to provide for safer measures when railroads transport of poison inhalation hazard (PIH) materials.

The new measure will also include design standards of railroad cars and restricts speed to fifty mph for rail tank cars loaded with PIH materials.

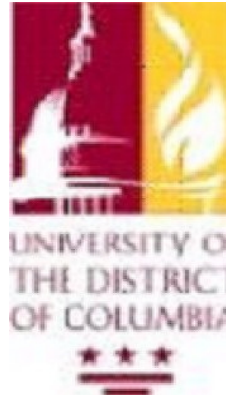


Freight Train

Picture Source: [<http://gristmill.grist.org/tory/2006/11/20/115457/90>]

The *Homeland Security/Emergency Management Division-National Legal Preparedness Program* results from a Cooperative Agreement between the Department of Homeland Security, Federal Emergency Management Agency and the University of the District of Columbia to establish a national scope training program for legal issues in preparation, response, and recovery from terrorist incidents and catastrophic events.

The HSEMD-NLPP is a project of the University's Institute for Public Safety & Justice.



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Translating Research into Policy—Translating Policy into Practice

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