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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2017-0130; Notice No. 2017-11]

Hazardous Materials: Emergency Waiver No. 5

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of emergency waiver order.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is issuing an emergency waiver order to persons conducting operations under the direction of the Puerto Rico Public Service Commission within the Hurricane Maria emergency and disaster areas of Puerto Rico. This Waiver Order is effective September 28, 2017, and shall remain in effect for 7 days from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Adam Horsley, Deputy Assistant Chief Counsel for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, telephone: (202) 366-4400.

SUPPLEMENTARY INFORMATION:

In accordance with the provisions of 49 U.S.C. 5103(c), the Acting Administrator for the Pipeline and Hazardous Materials Safety Administration (PHMSA), hereby declares that an emergency exists that warrants issuance of a Waiver of the Hazardous Materials Regulations (HMR, 49 CFR parts 171-180) to persons conducting operations under the direction of the Puerto Rico Public Service Commission (Carr. 8838 Km. 8.3, Sector El Cinco, San Juan, PR 00926) within the Hurricane Maria emergency and

disaster areas of Puerto Rico. The Waiver is granted to support the government of Puerto Rico in facilitating the transport of essential fuel.

On September 18, 2017, the President issued an Emergency Declaration for Hurricane Maria for the Commonwealth of Puerto Rico (EM-3391). On September 20, 2017, the President issued a Major Disaster Declaration for the Commonwealth of Puerto Rico (DR-4340).

This Waiver Order covers all areas identified in the Declarations. Pursuant to 49 U.S.C. 5103(c), PHMSA has authority delegated by the Secretary (49 CFR 1.97(b)(3)) to waive compliance with any part of the HMR provided that the grant of the waiver is: (1) in the public interest; (2) not inconsistent with the safety of transporting hazardous materials; and (3) necessary to facilitate the safe movement of hazardous materials into, from, and within an area of a major disaster or emergency that has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Given the continuing impacts caused by Hurricane Maria, PHMSA's Acting Administrator has determined that regulatory relief is in the public interest and necessary to ensure the safe transportation in commerce of hazardous materials while the Puerto Rican government executes its recovery and cleanup efforts. Specifically, PHMSA's Acting Administrator finds that issuing this Waiver Order will allow for the safe transportation of fuel. By execution of this Waiver Order, the hazardous materials training, testing, and certification requirements in 49 CFR part 172 subpart H and part 177 are waived except as specified below for persons conducting operations under the

direction of the Puerto Rico Public Service Commission within the Hurricane Maria emergency and disaster areas of Puerto Rico. Such persons are authorized to offer and transport fuel provided that the following conditions are met:

(1) The transport of the fuel must be accompanied by a law enforcement or military escort;

(2) The escort vehicle must have a copy of the Emergency Response Guidebook, Response Guide 128;

(3) Drivers must have three years of professional driving experience and otherwise be licensed to operate the vehicle based on its size and weight; and

(4) Unloading procedures must be overseen by a qualified person as defined in 49 CFR 177. 834(i)(4) or a driver who has received training (testing and certification is not required) that includes, at a minimum, these items:

- (a) Bonding the cargo tank;
- (b) Preventing overfilling of tanks at point of delivery;
- (c) Controlling the flow of product;
- (d) Using emergency cut-off equipment; and
- (e) Securing unloading equipment for transport.

Additionally, during driver unloading, the unloading area must be cleared of all non-essential personnel for a distance of 100 feet. Compliance with all other requirements of the HMR is required.

This Waiver Order is effective September 28, 2017, and shall remain in effect for 7 days from the date of issuance.

Issued in Washington, D.C.

Drue Pearce,
Acting Administrator
Pipeline and Hazardous Materials Safety Administration
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