

## REGULATORY UPDATE – July 2012

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### **HEALTH & SAFETY UPDATES**

No Health and Safety Updates for the Month of July

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**A. EPA Hazardous Chemical Reporting: Revisions to the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II); Final Rule**

On July 13, 2012, the Environmental Protection Agency (EPA) published a final rule (77 FR 41300-41316) adding new data elements and revising existing data elements to the Emergency Planning and Community Right-to-Know (EPCRA) Section 313 Tier I and Tier II Emergency and Hazardous Chemical Inventory Forms.

**Background**

EPCRA requires owners or operators of a facility that possess a hazardous chemical above the threshold reporting level to submit an emergency and hazardous chemical inventory form (Tier I or II) to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the local fire department by March 1<sup>st</sup> of each year. The Tier I form requires facilities to submit minimum information on the general types and locations of hazardous chemicals at the facility. The Tier II form requires the reporting of specific information on the amounts and locations of hazardous chemicals managed at the facility. The Tier I and II forms were first published in 1987 and modified in 1990. States and local agencies have requested that EPA modify these forms to include new elements and revise existing elements to make them more useful for emergency planning and response.

On August 8, 2011, EPA published a proposed rule (76 FR 48093) to revise the Tier I and II reporting forms. After reviewing comments received on the proposed rule EPA published this final rule.

**Summary**

Following are the revisions included in this final rule:

1. Facilities are required to report the latitude and longitude and the identification numbers assigned under TRI and the risk management program.
2. Facilities must indicate if the storage location for the hazardous chemicals is manned or unmanned.
3. The maximum number of occupants that may be present at the facility at any time must be reported.
4. Facility Emergency Coordinator contact information must be included in the report along with the email addresses of the owner or operator and emergency contact(s).
5. Page one of the Tier II Inventory form will include a table of range codes and amounts for reporting maximum and average daily quantities of hazardous chemicals on-site.
6. Facilities will be required to indicate if the facility is subject to EPCRA Section 302 and if the facility is subject to the Risk Management Program of the Clean Air Act (CAA) section 112(r).
7. Separate data fields will be provided for reporting pure chemicals and mixtures.
8. Facilities are required to provide a description of the storage types and conditions .
9. The reporting forms are revised to allow facilities to report State or local required information or to voluntarily report hazardous chemicals below the reporting thresholds.

The reporting of parent company contact information will be an optional data element on the new forms.

**Effective Date**

This final rule will become effective on January 1, 2014 for the Tier I and II reports that must be submitted by March 1, 2014..

**Link**

The link below will allow you to view/print this final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-13/pdf/2012-16951.pdf>

**B. House Energy and Commerce Committee Approves Hazardous Waste Tracking Modernization Bill**

On July 31, 2012, the House Energy and Commerce Committee approved an amended version of the Hazardous Waste Electronic Manifest Establishment Act (s. 710). The subcommittee on Energy and Environmental amended the bill on July 26, 2012, changing the source of funding for the electronic manifesting system. The funds would be collect through user fees. This version of the bill would authorize up to \$2 million annually for fiscal years 2013 through 2015 to fund development and implementation of the electronic manifesting system. The amended bill will now be sent to the full House for a floor vote.

**Link**

The link below will allow you to track the progress of the Hazardous Waste Electronic Manifest Establishment Act.

<http://thomas.loc.gov/cgi-bin/bdquery/z?d112:SN00710:@@L&summ2=m&>

**C. EPA National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants; Proposed Rule**

On July 18, 2012, EPA published a proposed rule (77 FR 42367-42412) that would amend the National Emission Standards for Hazardous Air Pollutants for the Portland cement industry for Portland cement plants issued under the Clean Air Act (CAA) sections 112(d).

**Background**

EPA published a final rule (75 FR 54970) on September 9, 2010, amending the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Portland Cement Kiln Manufacturing

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Industry and the New Source Performance Standards (NSPS) for Portland Cement Plants. Various parties filed petitions for reconsideration of the final rule and on May 17, 2011, EPA granted reconsideration of various issues and denied others. On December 9, 2011, the D.C. Circuit Court issued an opinion upholding the NESHAP, but found EPA had arbitrarily failed to grant reconsideration to consider the effect of the Non-Hazardous Secondary Material rule on these standards. In this proposed rule, EPA is amending portions of the rule while also responding to the D.C. Circuit Courts remand.

**Summary**

Following is a summary of the major proposed revisions.

1. Particulate Matter (PM) Emission Standards

The final rule requires compliance with the particulate matter standard to be conducted using a continuous emission monitoring system (CEMS). However, the current PM CEMS cannot meet the mandated Performance Specification 11 (PS 11). Therefore, EPA is proposing to amend the standards to require manual stack testing in place of PM CEMS for compliance demonstrations.

EPA is also proposing to amend the PM Standard for existing sources to 0.07 pounds per ton (lb/ton) of clinker and 0.02 lb/ton for new sources using manual stack testing.

In addition, EPA is proposing that a site-specific parametric operating limit be established and that the limit be monitored using a PM CEMS. An exceedance of the site-specific operating limit would be considered a deviation and will trigger reporting and corrective action including conducting a Method 5 performance test within 45 days.

2. The MACT floor standards have been recalculated after EPA removed all of the CISWI kilns as required by the court remand. The proposed standards are included in the table below:

| <b>Pollutant</b>                               | <b>Existing Source Standard</b>             | <b>New Source Standard</b>                  |
|--|---|---|
| Mercury  | 55 lb/MM tons clinker                       | 21 lb/MM tons clinker                       |
| Total Hydrocarbon (THC)                        | 24 ppmvd                                    | 24 ppmvd                                    |
| Particulate Matter (PM)                        | 0.07 lb/ton clinker<br>(3-run test average) | 0.02 lb/ton clinker<br>(3-run test average) |
| Hydrochloric Acid (HCl)                        | 3 ppmvd                                     | 3 ppmvd                                     |
| Organic HAP (alternative to Total Hydrocarbon) | 12 ppmvd                                    | 12 ppmvd                                    |

3. Standards during Startup and Shutdown

EPA is proposing to retain the startup/shutdown standards for mercury and THC, to amend the PM Standard to be consistent with the proposed numeric levels in this proposed rule, and to amend the level of HCl to 3 ppm. In addition, EPA is proposing that facilities monitor compliance with the startup/shutdown standards using recordkeeping.

4. Proposed Extension of Compliance Dates

In this proposed rule EPA is proposing that the compliance date for all existing source standards be extended until September 9, 2015.

**Comments Due**

Comments on this proposed rule must be received by EPA on or before August 17, 2012.

**Link**

The link below will allow you to view/print this proposed rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-18/pdf/2012-16166.pdf>

**D. DOT/PHMSA Hazardous Materials; Reverse Logistics (RRR); Advance Notice of Proposed Rulemaking**

On July 5, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published an advance notice of proposed rulemaking (77 FR 39662-39666) to identify ways to reduce the regulatory burden for persons who ship consumer products containing hazardous materials in the “reverse logistics” supply chain.

**Background**

Under the current Hazardous Materials Regulations (HMR), consumer products that are no longer suitable for retail sale are considered fully regulated. This presents a problem to retail outlets. Many may not have the necessary training or resources to handle fully regulated hazardous materials. PHMSA is looking to identify ways to potentially reduce the regulatory burden associated with the return of these hazardous materials in the “reverse logistics” supply chain, while ensure safe transportation.

In addition, the return of online purchases including electronics and batteries will continue to increase. PHMSA is seeking comment on how the retail industry should manage the shipment of batteries for recycling and/or disposal.

Currently, the exception in 49 CFR 173.159(e) that allows for the transportation of used batteries from multiple shippers on a single transport vehicle does not clearly allow for shipment of used batteries from multiple shippers for the purpose of recycling. Also, 49 CFR 173.149(e)(4) prevents a battery recycler from picking up shipments of used batteries from multiple locations. PHMSA believes this section should be modified to allow recyclers to pick up lead acid batteries from multiple locations.

### **Summary**

The purpose of this ANPRM is to request comments on “reverse logistics.” Some of the specific issues PHMSA is requesting comment on are included below:

1. The definition of “reverse logistics.”
2. Creation of a section on the shippers’ responsibilities for “reverse logistics” shipments and the contents of this section.
3. What are the types and volumes of hazardous materials that are frequently returned?
4. Are returns directed to a disposal facility or the original manufacturer?
5. Should returns be the responsibility of the manufacturer?
6. Should certain hazard classes/divisions be excluded when considering regulations for “reverse logistics?”
7. Should PHMSA define specification packages for materials shipped under “reverse logistics?”
8. What role do third party logistics providers play in the reverse logistics process?

### **Comments Due**

Comments on this ANPRM must be submitted to PHMSA by October 3, 2012.

### **Link**

The link below will allow you to view/print this advance notice of proposed rulemaking.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-05/pdf/2012-16177.pdf>

### **E. US House Bill 4348 Transportation of Hazardous Wastes; Increased Penalties for Operating Without a Permit**

President Obama signed House Bill 4348, authorizing funds for Federal-aid highways, highway safety programs, transit programs, and other transportation programs. Inside this bill was a section increasing the fines for hauling hazardous wastes without the appropriate permit. The fines are increased by removing language stating that fines are “not to exceed \$20,000” and replacing it with the statement “not less than \$20,000, but not to exceed \$40,000.”

### **Effective Date**

The penalty increase became effective on July 1, 2012.

### **Link**

The link below will allow you to view/print House Bill 4348.

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr4348enr/pdf/BILLS-112hr4348enr.pdf>

**F. DOT/PHMSA Clarification Policy on Initial Fitness Review for Classification Approvals**

On July 5, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a clarification providing guidance on PHMSA's policy on conducting fitness reviews of applicants for classification approvals, including fireworks, explosives, organic peroxides, and self-reactive materials.

**Summary**

Effectively immediately, Initial Fitness Reviews (IFR) will no longer be performed by PHMSA as part of the processing for classification approvals, including: fireworks, explosives, organic peroxides and self-reactive materials. The use of the available agency information in the Hazmat Intelligence Portal (HIP) and the Federal Motor Carrier Safety Fitness Electronic Records (SAFER) databases do not directly and adequately indicate a company's capability to manufacture the approved product in accordance with the application submitted to PHMSA.

Fitness of applicants for classification approvals will continue to be reviewed through application evaluation, inspection, oversight, and intelligence received from PHMSA or other administrations (FAA, FMCSA, FRA, or USCG).

**Effective Date**

This policy became effective on the date of publication, July 5, 2012.

**Link**

The link below will allow you to view/print this policy clarification.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-05/pdf/2012-16363.pdf>

**G. DOJ/DEA Classification of Two Steroids, *Prostanazol* and *Methasterone*, as Schedule III Anabolic Steroids under the Controlled Substances Act; Final Rule**

On July 30, 2012, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule (77 FR 44456-44462) classifying two steroids as Schedule III "anabolic steroids" under the Controlled Substances Act (CSA).

**Background**

In a notice of proposed rulemaking (NPRM) published on November 23, 2011 (75 FR 72355), DEA proposed classifying two steroids, prostanazol and methasterone, as Schedule III anabolic steroids under the CSA. A drug or hormonal substance is classified as an anabolic steroid by meeting the following four definitional requirements: (1) the substance is chemically related to testosterone; (2) the substance is pharmacologically related to testosterone; (3) the substance is not an estrogen, progesterin, or corticosteroid; and (4) the substance is not DHEA.

### **Summary**

Following an extensive review, DEA has concluded that prostanazol and methasterone meet the definition of an anabolic steroid warranting control under Schedule III of the Controlled Substances Act.

### **Effective Date**

This final rule will become effective on August 29, 2012.

### **Link**

The link below will allow you to view/print this final rule.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-30/pdf/2012-18495.pdf>

## **H. Low-Level Radioactive Waste Regulatory Management Issues; Public Meeting and Request for Comment**

On July 11, 2012, the Nuclear Regulatory Commission (NRC) published a notice of a public meeting (77 FR 40817-40820) to discuss proposed changes to the NRC's current regulatory requirements for the disposal of low-level radioactive waste (LLW) in near-surface facilities.

### **Background**

In March 2009, NRC issued a staff requirements memorandum (SRM) directing the NRC staff to start a 10 CFR Part 61 rulemaking to specify requirements for a site-specific analysis for the disposal of large quantities of depleted uranium and to develop a guidance document for public comment. In a second SRM, NRC staff were directed to include blended LLW streams as a part of the rulemaking. On January 19, 2012, NRC staff were directed to amend the existing draft rulemaking to include the following items:

1. Allow licensees the flexibility to use International Commission on Radiological Protection dose methodologies in a site specific performance assessment for the disposal of all radioactive waste.
2. A two-tiered approach that establishes a compliance period that covers the reasonably foreseeable future and a longer period of performance. The period of performance is developed based on the site characteristics (waste package and form, disposal technology, cover technology, and geohydrology) and the peak dose.
3. Flexibility for disposal facilities to establish site-specific waste acceptance criteria based on the site's performance assessment and intruder assessment.
4. A compatibility category for the revised rule that establish the requirements for site-specific performance assessments and the development of site-specific waste acceptance criteria that ensures alignment between the States and Federal government.



### **Summary**

In the January SRM, the NRC staff were also directed to conduct stakeholders meetings to solicit feedback on the proposed amendments. Public meetings were held in March and May, 2012 with the third being held on July 19, 2012 in Rockville, Maryland. Some of the topics discussed in the public meetings include:

1. Limits or methods to manage long-term uncertainties;
2. The use of tiered approaches and how to define the tiers;
3. Requirements for long-term performance;
4. Site-specific requirements;
5. Protection of future generations;
6. Regulatory approaches to allow site-specific waste acceptance criteria;
7. Specification of specific requirements; and
8. Longevity of institutional controls for site-specific waste acceptance criteria.

### **Comments Due**

Comments must be received by NRC by July 31, 2012.

### **Link**

The link below will allow you to view/print this notification of a public meeting.

<http://www.gpo.gov/fdsys/pkg/FR-2012-07-11/pdf/2012-16657.pdf>