

## **REGULATORY UPDATE – August 2012**

### **ENVIRONMENTAL UPDATES**

- A. [International Trade Commission Environmental and Related Services; Institution of Investigation and Scheduling of Public Hearing](#)

### **TRANSPORTATION UPDATES**

- B. [DOT/FMCSA Self Reporting of Out-of-State Convictions; Notice of Proposed Rulemaking](#)
- C. [DOT/PHMSA Hazardous Materials: Harmonization with International Standards \(RRR\); Proposed Rule](#)
- D. [DOT/FMCSA Parts and Accessories Necessary for Safe Operation: Brakes; Adjustment Limits; Final Rule](#)

### **HEALTH & SAFETY UPDATES**

No Health and Safety Updates for the Month of August

**A. International Trade Commission Environmental and Related Services; Institution of Investigation and Scheduling of Public Hearing**

On August 27, 2012, the International Trade Commission (ITC) published a notice (77 FR 51824-51825) announcing the start of an investigation into the global markets for environmental and related services and renewable energy and related services.

**Summary**

The United States Trade Representative (USTR) submitted a request to the U.S. International Trade Commission (ITC) requesting that the ITC investigate and prepare reports on environmental and related services and renewable energy and related services. The report on environmental and related services is to be completed in eight months and the report on renewable energy and related services is to be completed in eleven months.

The information that USTR has requested to be included in the environmental and related services is included below:

1. Estimate the size of the U.S. and global markets for environmental and related services (water and wastewater services, solid and hazardous waste services, and remediation services). The estimates should identify the top suppliers and key country markets, discuss the factors affecting supply and demand in these markets, and highlight market developments that have occurred in the past five years.
2. Estimate the value of trade and investment in the environmental services segments, identify key export and import markets, and discuss recent trends in environmental trade and investment; and
3. Identify barriers to trade and investment in the environmental services segment, discuss recent efforts to liberalize trade and investment in environmental services, and investigate the potential impact of further liberalization in environmental services.

The schedule and topics for the renewable energy and related services report will be included in a separate federal register notice.

**Public Hearing**

A public hearing will be held on October 22, 2012, beginning at 9:30 AM at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC.

**Comments Due**

Written comments must be submitted to ITC by October 30, 2012.

**Link**

The link below will allow you to view print this notice.

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-27/pdf/2012-20956.pdf>

**B. DOT/FMCSA Self Reporting of Out-of-State Convictions; Notice of Proposed Rulemaking**

On August 2, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (77 FR 46010-46014) proposing changes to the requirement that holders of commercial driver's licenses must self-report out-of-state convictions.

**Summary**

Current regulations require both commercial driver's license (CDL) holders and States with certified CDL programs to report a CDL holder's out-of-state traffic conviction to the driver's State of licensure. This rule proposes to reduce the burden on individuals and States by harmonizing the requirements of 49 CFR 383.31 and 49 CFR 384.209. There currently exists a reporting redundancy because all 51 eligible jurisdictions have certified CDL programs and therefore must report a CDL holder's out-of-state traffic convictions. To reduce this redundancy, FMCSA proposes to amend 49 CFR 383.31 to provide that if the State in which a CDL holder is convicted for a traffic control violation has an FMCSA-certified CDL program, the Agency will consider the CDL holder to be in compliance with 49 CFR 383.31(a) because the State where the conviction occurred will report the violation to the CDL holder's State of licensure. As a result, the CDL holder would not need to file a separate report.

**Comments Due**

Comments on this notice of proposed rulemaking must be received by FMCSA on or before October 1, 2012.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-02/pdf/2012-18902.pdf>

**C. DOT/PHMSA Hazardous Materials: Harmonization with International Standards (RRR); Proposed Rule**

On August 15, 2012, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (77 FR 49167-49276) to

amend the hazardous materials regulations in order to maintain alignment with international standards.

### **Summary**

In this notice, PHMSA is proposing to amend the hazardous materials regulations (HMR) to maintain alignment with international standards. These revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code (IMDG), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO), and the United Nations Recommendations on the Transport of Dangerous Goods – Modal Regulations.

Listed below are proposed revisions that could potentially effect Veolia's operations. Please refer to the federal register for a complete summary of all proposed changes.

#### 1. Expanded Packaging Authorizations

PHMSA proposes to adopt changes throughout 49 CFR Part 173, packaging requirements, to authorize more flexibility when choosing packages for hazardous materials. These changes include, but are not limited to, the authorization to allow wood as a material of package construction for certain explosives; the authorization to use metals other than steel or aluminum for drums and boxes; and the authorization, where appropriate, to permit the use of non-removable head drums where removable head drums are otherwise authorized.

#### 2. Adopt Packaging Standards for New Packaging: Flexible Bulk Container

PHMSA proposes to incorporate a new packaging definition, operational controls, performance-oriented standards and testing requirements for Flexible Bulk Containers (FBC). FBCs are bulk packages with a capacity over the currently authorized maximum volumetric capacity for intermediate bulk containers (IBCs). The maximum proposed volumetric capacity of FBCs is 15 cubic meters. FBCs provide shippers the opportunity to utilize a reusable packaging for bulk shipments of certain authorized low-hazard commodities.

#### 3. Adopt Chemical Under Pressure Provisions:

Currently the HMR does not address liquids or solids transported under pressure. A typical product that would meet this description is a combination of a propellant (gas phase) and a liquid or solid component. These types of products are often incorrectly classified and transported as liquefied gases. Accordingly, the term "liquefied gas" does not correctly identify the contents of the container, nor can the material accurately be described by the name of the gas or liquid/solid component alone.

In this NPRM, PHMSA is proposing to revise the hazardous materials table (HMT) to include entries for chemical under pressure as well as incorporate other safety requirements including but not limited to packaging requirements, segregation requirements, quantity limitations, and

filling limits into the HMR. This revision does not alter the existing definition and shipment of similar materials in aerosol dispensers.

4. Specify Minimum Size Requirements for ID Number Markings on Non-Bulk Packages

To maintain consistency with 49 CFR 178.3(a)(4) and the UN Modal Regulations, PHMSA is proposing to add specific size requirements to 49 CFR 172.301 for identification number (i.e., “UN”, “NA”, “ID”) markings for non-bulk packages.

If adopted, effective January 1, 2014, these markings would be required to be marked in characters at least 12mm (0.47 inches) high. Packages with a maximum capacity of 30 liters (7.92 gallons) or 30 kg (66 pounds) or less must be marked with characters at least 6 mm (0.2 inches) high. Packages having a maximum capacity of 5 liters (1.32 gallons) or 5 kg (11 pounds) or less must be marked in a size appropriate for the size of the package.

5. Orientation Arrow Exception for Small Quantities of Liquid Hazardous Materials Shipped by Air

For packages offered or intended for transportation by aircraft, PHMSA is proposing to extend the exception for the display of the package orientation arrows to all liquid hazardous materials in inner packaging of 120 mL (4 fluid ounces) or less when packed with sufficient absorption material between the inner and outer packaging to completely absorb the liquid contents. Currently, this exception exists only for packages prepared in accordance with 49 CFR 173.150(b) or (c) – Exceptions for Class 3 (flammable and combustible liquids); Limited quantities and consumer commodities.

6. Mercury

PHMSA is proposing to add an internationally recognized proper shipping name and ID number for UN3506, Mercury contained in manufactured article, to replace the existing entry of, Mercury contained in manufactured articles, under ID number UN2809. With the adoption of this new proper shipping name, PHMSA is also adding a new special provision, 365, stating that manufactured instruments and articles containing mercury should be offered as UN3506, and not UN2809. Also proposed, is the addition of a Division 6.1 (toxic) subsidiary hazard risk to the existing Class 8 hazard for UN2809, Mercury.

7. New Requirements for Electric Double Layer Capacitors

A new section, 49 CFR 173.176, is added to address the shipment of capacitors and includes design, marking, and packaging instructions. Capacitors not installed in equipment must be transported in an uncharged state. Capacitors with an energy storage capacity of 10 Wh or less must be protected against short circuiting or fitted with a metal strap between terminals while those capacitors over 10 Wh must be fitted with a metal strap between terminals. The new proper shipping name is UN3499, Capacitor, *electric double layer (with an energy storage capacity greater than 0.3 Wh)*, Class 9. Also, a new special provision, 361, is added

to clarify that certain capacitors with limited energy storage capacity (0.3 Wh or less) are excepted from the HMR.

8. Hazardous Solution/Mixture Classification

PHMSA is proposing to revise 49 CFR 172.101(c)(10) to clarify how mixtures or solutions not identified specifically by name in the HMT are described. This change will clarify that for a mixture or solution composed of one or more components that are classified as a hazardous material, the resulting mixture or solution must meet the definition of one or more hazard classes to be classified as a hazardous material.

9. New Authorized Outer Packaging for Lab Packs

PHMSA is proposing to revise 49 CFR 173.12(b)(2)(ii)(a) by adding 1N2 metal drums to the permitted outer packagings currently authorized for a lab pack.

10. Expanded Packaging Requirements for Explosives

PHMSA is proposing to revise the packaging provisions for explosives in the “Table of Packing Methods” in 40 CFR 173.62 by permitting various explosives to be transported in closed head drums in addition to the already permitted removable head drums and by also adding the option to utilize wooden inner and intermediate packagings in various packaging provisions.

11. Expanded Authorized Packagings for Nitric Acid Mixtures

PHMSA is proposing to authorize additional packaging options for nitric acid mixtures in addition to packaging options currently authorized.

12. Expanded Authorized Packagings for Pyrophoric Materials

PHMSA is proposing to revise 49 CFR 173.181(b) by authorizing additional types of specification non-bulk outer packagings for pyrophoric liquids and 49 CFR 173.187 for pyrophoric solids, metals or alloys, n.o.s..

13. New Entries for Organic Peroxides Tables in 49 CFR 173.225

PHMSA is proposing to add new entries and revise current entries to account for new organic peroxides and formulations that are commercially available.

14. Responsibility for Assigning Vessel Segregation Groups

PHMSA is proposing to revise 49 CFR 176.83(m)(2) and (3) to clarify that the offeror of hazardous materials for transportation by vessel is responsible for identifying and assigning a relevant segregation group as appropriate. These revisions will replace the current term

“shipper” with the terms “offeror” and “person who offers” which are defined terms in 49 CFR 171.8.

15. Hazardous Materials Table

PHMSA is proposing numerous revisions to the Hazardous Materials Table and special provisions requirements.

**Comments Due**

Comments on this notice of proposed rulemaking must be submitted to PHMSA by October 15, 2012.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-15/pdf/2012-18431.pdf>

**D. DOT/FMCSA Parts and Accessories Necessary for Safe Operation: Brakes; Adjustment Limits; Final Rule**

On August 6, 2012, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (77 FR 46633-46640) amending the requirements for brake readjustment limits in the Federal Motor Carrier Safety Regulations (FMCSRs).

**Summary**

In response to a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA), FMCSA is amending the requirements regarding brake readjustment limits. This rule amends the readjustment limits, clarifies their application, and corrects an error in cross-referencing a Federal Motor Vehicle Safety Standard (FMVSS).

Following are the amendments included in this final rule.

1. Revise and Expand the Readjustment Limit Tables, and Include in 49 CFR 393.47 and Appendix G

FMCSA is amending 49 CFR 393.47(e) and Appendix G to include revised readjustment limit tables. The revised tables cover readjustment limits not only for clamp-, bolt-, and rotochamber-type brake chambers, but also for Bendix DD-3 brake chambers. The table for clamp-type brake chambers also differentiates between readjustment limits for more sizes of standard-stroke and long-stroke chambers. The Agency has included metric measurements to the tenth of a millimeter as suggested by CMSA and has also corrected a typographical error concerning the Type A chamber outside diameter.

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2. Threshold for Brake Adjustment Violation, 49 CFR 393.47(e)

FMCSA is amending 49 CFR 393.47(e) to read “The pushrod stroke for clamp- and rotochamber brake actuator must not be greater than the values specified in the following tables:” to clarify that the pushrod stroke measured to be at the adjustment limit indicated in the tables is not considered to be out of adjustment.

3. Threshold for Periodic Inspection, Appendix G

To maintain consistency between 49 CFR 393.47 and Appendix G, FMCSA is amending the Appendix G threshold to be the same as that in the amended 49 CFR 393.47(e), “Any brake stroke exceeding the readjustment limit will be rejected.”

4. Eliminate the Incorporation by Reference to SAEJ1817 in 49 CFR 393.7(b)(15)

To reduce further confusion, FMCSA is eliminating the incorporation by reference to SAEJ1817, Long Stroke Air Brake Actuator Marking, July 2001, in 49 CFR 393.47(e). Inclusion of the new tables in 49 CFR 393.47(e) provide explicit readjustment limits for each type of actuator eliminating the need for the cross-reference.

5. Revise 49 CFR 393.53 to Add a Cross-Reference to the FMVSS Applicable to Trailers

FMCSA is amending 49 CFR 393.53(b) and (c) to add a cross-reference to FMVSS No. 121, S 5.2.2. Although the introductory text of each paragraph clearly states that it is applicable to “each commercial motor vehicle”, the inclusion of this cross-reference to the FMVSSs applicable to trailers (S 5.2.2) eliminates any potential confusion.

6. Recommendation to Use Common Terminology

FMCSA is revising common terminology to be consistent with the terminology used by other safety agencies and by standards development organizations. FMCSA will use the terms, “pushrod stroke” rather than “pushrod travel”, and “readjustment limit” rather than “adjustment limit” in regulatory text.

In an effort to improve proficiency in brake adjustment, specifically that brake systems with automatic slack adjusters should not be manually adjusted, the following language will now be used on inspection reports.

“This vehicle has brake adjustment violations. Section 393.53 of 49 CFR requires that this vehicle be equipped with a self-adjusting brake system. A qualified service technician needs to determine why the defective brake has excessive stroke and make the appropriate repair. Simply re-adjusting a self-adjusting brake adjuster, or replacing it, does not guarantee that the problem is corrected. The problem may exist in the foundation brake system. By certifying this inspection report you have indicated that this vehicle now has a properly functioning self-adjustment system.”



**Effective Date**

This final rule became effective on September 5, 2012.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2012-08-06/pdf/2012-18899.pdf>