

**VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.**

**REGULATORY UPDATE – May 2013**

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**A. EPA Request for Information for Electronic Manifest (e-Manifest) System**

On May 30, 2013, the Environmental Protection Agency (EPA) published a Request for Information (RFI) seeking comments on the electronic manifest (e-manifest) system authorized by the “Hazardous Waste Electronic Manifest Establishment Act.”

**Background**

On October 5, 2012, President Obama signed the “Hazardous Waste Electronic Manifest Establishment Act” amending the Resource Conservation and Recovery Act (RCRA) and directing EPA to establish a hazardous waste electronic manifest system. The electronic manifest system will provide an alternative to the current paper-based manifest system and is to be funded by a collection of fees from the users of the electronic manifest system and government appropriations money.

**Summary**

EPA is seeking comment on the following areas:

1. Is there an existing commercial e-Manifest system available or can one be adapted for use as the national standard for tracking and transporting hazardous wastes under RCRA?
2. If current technology does not exist, EPA requested “innovative recommendations” on technologies that would not have to be custom-coded.
3. Information on “cloud hosting” for the remote storage of information.
4. The four proposed funding solutions to the funding challenge while creating the e-Manifest system until fees can be collected from the users of the e-Manifest System.

**Comments Due**

Comments must be submitted to EPA by June 7, 2013.

**Link**

The link below will allow you to view/print this Request for Information.

[http://www.epa.gov/oamhpod1/admin\\_placement/emanifest/index.htm](http://www.epa.gov/oamhpod1/admin_placement/emanifest/index.htm)

**B. EPA Technical Guidance for Assessing Environmental Justice in Regulatory Analysis; Announcement of Issuance of Draft Guidance for Public Comment**

On May 9, 2013, EPA announced (78 FR 27235-27236) the issuance of “Technical Guidance for Assessing Environmental Justice in Regulatory Analysis” to provide EPA analysts with technical information on how to consider environmental justice in regulatory analyses.

**Summary**

The Technical Guidance for Assessing Environmental Justice in Regulatory Analysis directs EPA analysts to assess whether potential environmental justice concerns exist prior to the rulemaking

and whether these concerns are likely to be exacerbated or mitigated for each regulatory option under consideration. The guidance also makes recommendations designed to ensure consistency across EPA assessments of potential environmental justice concerns.

#### **Webinars**

EPA hosted two webinars, on May 29, 2013 and June 6, 2013, on this draft guidance.

#### **Comments Due**

Comments on this draft guidance must be submitted to EPA on or before July 8, 2013.

#### **Link**

The “Technical Guidance for Assessing Environmental Justice in Regulatory Analysis” can be found at the following link by entering Docket Number EPA-HQ-OA-2013-0320.

<http://www.regulations.gov>

The link below will allow you to view/print the announcement of the issuance of the draft guidance document.

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-09/pdf/2013-11165.pdf>

### **C. EPA Activities to Promote Environmental Justice in the Permit Application Process; Notice of Availability of Regional Actions to Promote Public Participation in the Permitting Process**

On May 9, 2013, EPA published “Actions that EPA Regional Offices are Taking to Promote Meaningful Engagement in the Permitting Process by Overburdened Communities” and “Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities” (78 FR 27220-27233) in their ongoing efforts to integrate environmental justice into all EPA programs.

#### **Summary**

On June 26, 2012, EPA published a notice (77 FR 38051) announcing the availability of proposed regional actions to promote public participation in the permitting process and draft best practices for permit applicants seeking EPA-issued permits and seeking public comment on these actions. The documents published in May reflect the suggestions and input received following the June 2012 publication and request for comments.

1. Actions that EPA Regional Offices are Taking to Promote Meaningful Engagement in the Permitting Process by Overburdened Communities

This document describes actions that EPA regional offices are taking when issuing EPA permits to promote greater participation in the permitting process by communities that have historically been underrepresented in the permitting process.

2. Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways to Engage Neighboring Communities

This notice describes promising practices for permit applicants that are designed to encourage and assist permit applicants to reach out to neighboring communities when applying for permits that may affect communities' quality of life, including their health and environment.

**Link**

The link below will allow you to view/print the documents referenced above.

<http://www.epa.gov/environmentaljustice/plan-ej/permitting.html#actions>

The link below will allow you to view/print the notice of availability of these publications.

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-09/pdf/2013-10945.pdf>

**D. EPA Federal Plan Requirements for Hospital/Medical/Infectious Waste Incinerators Constructed On or Before December 1, 2008, and Standards of Performance for New Stationary Sources: Hospital/Medical/Infections Waste Incinerators; Final Rule**

On May 13, 2013, EPA published a final rule (78 FR 28051-28078) finalizing amendments to the federal plan and the new source performance standards for hospital/medical/infectious waste incinerators (HMIWI). This final action implements national standards promulgated in the 2009 amendments that will result in reductions in emissions of certain pollutants from all affected units.

**Background**

On October 6, 2009, EPA published final revisions to the September 1997 new source performance standards (NSPS) and emissions guidelines (EG) to respond to a remand and satisfy the 5-year review requirement under the Clean Air Act (CAA). This final rule adopts the emissions limits as proposed in the October 2009 revisions.

The final rule removes the startup, shutdown, malfunction (SSM) exemption from the federal plan and finalizes that the emissions limits apply at all times. The federal plan requires all HMIWI conduct a one-time initial ash handling fugitive emissions test using EPA Method 22 to provide additional assurance that the source continues to operate at the levels established during their initial performance test. Large HMIWI are also required to demonstrate compliance with a 5 percent visible emissions limit for fugitive emissions and test annually using EPA Method 22. A list of the EG Emissions Limits for Large HMIWI are included below:

Pollutant (units)	Final Limit
HCl (ppmv)	6.6
CO (ppmv)	11
Pb (mg/dscm)	0.036
Cd (mg/dscm)	0.0092
Hg (mg/dscm)	0.018
Particulate Matter (gr/dscf)	0.011

Dioxins/furans, total (ng/dscm)	9.3
Dioxins/Furans, TEQ (ng/dscm)	0.054
NOX (ppmv)	140
SO2 (ppmv)	9.0
Opacity (%)	6.0

**Effective Date**

This final rule will become effective on June 12, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-13/pdf/2013-09427.pdf>

**E. R2 Solutions to Begin Charging Annual Fee for Certification**

R2 Solutions has stated in a communication to its members that an annual \$1,500 certification fee per facility beginning with the implementation of the revised R2:2013 standard. The Responsible Recycling (R2) standard establishes environmental, health, safety, and security practices for electronics recyclers. Electronics recycler’s certify to meeting these standards through an accredited third-party Certification Body.

**Effective Date**

The effective date for R2:2013 and the R2 Code of Practices is anticipated to be July 1, 2013. The \$1,500 fee will be connected to the annual surveillance audit performed at each certified facility.

**F. Minnesota Governor Signs Paint Stewardship Bill into Law**

In May 2013, Minnesota Governor signed a bill (House File 976) into law that will require all paint manufacturers to fund and operate a post-consumer take-back program for their products. The bill requires paint manufacturers to establish a stewardship program for their products. The stewardship plans must be submitted to the Minnesota Pollution Control Agency by March 1, 2014 and the programs must be started by July 1, 2014. Minnesota is the sixth state to enact paint stewardship legislation along with California, Connecticut, Oregon, Rhode Island, and Vermont.

**Link**

The link below will allow you to view/print House File 976.

<https://www.revisor.leg.state.mn.us/laws/?id=114&year=2013&type=0>

**G. California Releases Regulations for Recycling Old Mercury Thermostats**

On May 22, 2013, the California Department of Toxic Substances Control (DTSC) published a news release announcing regulations for the collection and recycling of used mercury containing thermostats.

In 2006, California banned the sale of new mercury containing thermostats. The Mercury Thermostat Collection was enacted in 2008, requiring former producers of mercury containing thermostats to operate collection and recycling programs for these devices when they become wastes.

These new regulations require manufacturers to collect and recycle 30 percent (32,500) of the estimated number of mercury containing thermostats that will become wastes in the second half of 2013. The recycling goals will be increased each year until 2017 when the goal will be a 75 percent collection and recycling rate.

**Effective Date**

The new Mercury Thermostat Collection and Performance Requirements will become effective on July 1, 2013.

**Link**

The link below will allow you to view/print the Mercury Thermostat Collection and Performance Requirements.

[http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Mercury\\_Therm\\_Recovery\\_Reg.cfm](http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Mercury_Therm_Recovery_Reg.cfm)

**H. EPA Industry, Environmental Groups File Lawsuits Challenging Non-Hazardous Secondary Materials Rule**

In May 2013, several industry organizations, environmental groups, and an electric utility filed lawsuits challenging EPA's Non-Hazardous Secondary Materials Final Rule published in December 2012. The final rule lists several non-hazardous secondary materials (NHSM) that meet a categorical non-waste determination when used as a fuel (scrap tires, resinated wood, coal refuse recovered from legacy piles, and dewatered pulp and paper sludges) and establishes legitimacy criteria for NHSM used as fuels.

Petitions in opposition to this final rule have been filed by:

- American Chemistry Council
- American Forest and Paper Association
- Cement Kiln Recycling Coalition
- Cemex, Inc.
- Holcim, Inc.
- Louisiana Environmental Action Network
- National Association of Clean Water Agencies
- Portland Cement Association

- Treated Wood Council
- Waste Management, Inc.
- Wisconsin Electric Power Company

Most of these cases have been consolidated with the first petition filed May 2, 2013 by the National Association of Clean Water Agencies.

## **I. DOT/FMCSA Revised Driver's Hours of Service Regulations Become Effective on July 1, 2013**

On December 27, 2011, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule revising the Driver's Hours of Service Regulations. The revisions to the 34-hour restart rule and the newly adopted mandatory 30 minute rest break become effective on July 1, 2013.

### **Mandatory 30 Minute Rest Break**

The final rule requires that if more than 8 consecutive hours on duty have passed since the last off-duty (or sleeper berth) period of at least half an hour, a driver must take a break of at least 30 minutes before driving. Drivers have complete flexibility in deciding when to take the break and the 8 hour time limitation applies to all on-duty time, not only driving time.

#### Examples

1. If a driver started driving immediately after coming on duty, he/she could drive for 8 consecutive hours, take a half-hour break, and then drive another 3 hours for a total of 11 hours.
2. If a driver started driving immediately after coming on duty, he/she could drive for 3 hours, take a half hour break, and then drive another 8 hours for a total of 11 hours.

#### Exception

Drivers of commercial motor vehicles (CMVs) carrying Division 1.1, 1.2, or 1.3 explosives may count on-duty time spent attending the CMV, but doing no other on-duty work, toward the 30 minute rest break. The rest break must be recorded as on-duty time in their record of duty status with remarks to indicate the specific on-duty periods that were used to meet the requirement for the 30 minute break.

### **34 Hour Restart Rule – Revised**

The 34 hour restart rule has been revised to require that the off-duty period of 34 or more consecutive hours must include two periods from 1 A.M. to 5 A.M. A driver may not utilize the 34 hour restart provision until at least 168 hours (7 days) have passed since the beginning of the last 34 hour restart period. Drivers must indicate in the Remarks section of the record of duty status when an off-duty period is being used as the 34 hour restart.



**Effective Date**

These rules become effective on July 1, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2011-12-27/pdf/2011-32696.pdf>

**J. DOT/PHMSA Hazardous Materials: Enhanced Enforcement Procedures – Resumption of Transportation; Notice of Proposed Rulemaking**

On May 22, 2013, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (78 FR 30258-30266) that would amend PHMSA’s enhanced enforcement procedures.

**Summary**

On March 2, 2011, PHMSA published a final rule that implemented enhanced inspection, investigation, and enforcement authority by establishing procedures for issuance of emergency orders (restrictions, prohibitions, recalls, and out-of-service orders) to address unsafe conditions or practices posing an imminent hazard; opening of packages to identify undeclared or non-compliant shipments, when the person in possession of the package refuses a request to open it; and the temporary detention and inspection of potentially non-compliant packages.

**PERISHABLE HAZARDOUS MATERIALS**

In this notice of proposed rulemaking (NPRM), PHMSA is proposing to amend the opening of packages provision of the Department’s hazardous materials procedural regulations for the opening of packages, emergency orders, and emergency recalls. The amendment recognizes the special characteristics and handling requirements of perishable hazardous material by clarifying that an agent will stop or open a package containing a perishable hazardous material only after the agent has considered appropriate alternatives.

A perishable hazardous material is a hazardous material that is subject to significant risk of speedy decay, deterioration, spoilage, or hazardous materials consigned for medical use, in the prevention, treatment, or cure of a disease or condition in human beings or animals where expeditious shipment and delivery meets a critical medical need.

**NOTICE OF ENFORCEMENT MEASURES**

PHMSA is also proposing to add a notification provision to 49 CFR Part 109, Subpart B – Inspections and Investigations. The provision will provide for the immediate and reasonable notification of enforcement action taken by an inspector or investigator whenever he/she exercises one of the inspection and investigation authorities under 49 CFR Part 109, Subpart B, which includes the opening of packages; removing a package and related packages in a shipment from transportation; directing a package to be transported to a facility for examination and analysis; and

authorizing properly qualified personnel to assist in activities conducted under Subpart B. The notice will include the reason for the action being taken, the results of any preliminary investigation including apparent violations of the hazardous materials regulations (HMR), and any further action that may be warranted. The agent will verbally notify the person in possession and if the person in possession is not the original offeror, the agent will also take reasonable measures to notify the original offeror.

#### APPROPRIATE TRAINING AND EQUIPMENT FOR INSPECTORS

PHMSA is proposing to add a new provision to address appropriate equipment for inspectors when they exercise a Part 109 authority. The new equipment section will be added to 49 CFR Part 109 under a new Subpart D – Equipment. The provision will require an agent to use the appropriate safety, handling, and other equipment authorized by his/her operating administration's equipment requirements for hazardous material inspectors and investigators.

#### Comments Due

Comments must be received by PHMSA on or before July 22, 2013.

#### Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-22/pdf/2013-12123.pdf>

#### **K. DOT/FMCSA Medical Examiner's Certification Integration; Notice of Proposed Rulemaking**

On May 10, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (78 FR 27343-27363) that would require medical examiners performing physical examinations of commercial motor vehicle drivers to use a new developed Medical Examination Report Form in place of the current form and to use a new form for the medical examiner's certificate.

#### Summary

This NPRM would require Medical Examiners (MEs) to report results via the National Registry website all completed commercial driver's physical examinations (including the results of examinations where the driver was found to be not qualified) to FMCSA by the close of business on the day of the examination. This would include all commercial motor vehicle (CMV) drivers who are required to be medically certified to operate in interstate commerce, not only those who hold or apply for a commercial learner's permit (CLP) or commercial driver's license (CDL). For holders of CDLs and CLPs, FMCSA is also proposing to electronically transmit driver identification, examination results, and restriction information and medical variance information from the National Registry system to the State Driver Licensing Agencies (SDLAs) for entry in to the appropriate CDL driver record within one business day of receipt from FMCSA. This includes those that have been voided by FMCSA because the ME has certified a driver who does not meet the physical certification standards. Transmission of this information would allow authorized

State and Federal enforcement officials to view the most current and accurate information regarding the medical status of the CMV driver, all information on the medical examiner's certificate (MEC), and the medical variance information including the issued and expiration dates.

**Comments Due**

Comments on this notice of proposed rulemaking must be submitted to FMCSA by July 9, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-10/pdf/2013-11080.pdf>

**L. DOT/FMCSA Gross Combination Weigh Rating; Definition; Notice of Proposed Rulemaking**

On May 7, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (78 FR 26575-26581) that would revise the definition of "gross combination weight rating" (GCWR).

**Summary**

PHMSA is proposing to redefine the definition of GCWR to be the greater of:

1. The GCWR specified by the manufacturer of the power unit, if displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration (NHTSA), or
2. The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and towed unit(s), or any combination thereof, that produces the highest value.

For instances in which the manufacturer's GCWR indicates that the vehicle should not be subject to the safety regulations, but the sum of the GVWR, GVWs, or the highest combination of those values, is greater than the manufacturer's GCWR, the combination would be deemed to be a CMV subject to the Federal rules.

**Comments Due**

Comments on this notice of proposed rulemaking must be submitted to FMCSA by July 8, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-07/pdf/2013-10735.pdf>

**M. DOT/FMCSA Agency Information Collection Activities; Approval of a New Information Collection Request: Driver and Carrier Surveys Related to Electronic Onboard Recorders (EOBRs), and Potential Harassment Deriving from EOBR Use; Notice and Request for Comment**

On May 28, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (78 FR 32001-32005) of intent to submit an Information Collection Request (ICR) to examine, by the collection of survey data, the issue of driver harassment and determine the extent to which Electronic Onboard Recorders (EOBRs) used to document drivers' hours of service (HOS) could be used to harass drivers or monitor driver productivity.

**Summary**

These surveys will explore the relevant issues from the point of view of both drivers and carriers toward the use of EOBRs. The survey results will be used by FMCSA in its ongoing rulemaking on EOBRs, including potential countermeasures or best practices that could ensure that EOBRs are not used to harass or coerce commercial motor vehicle (CMV) drivers.

**Comments Due**

Comments on this information collection request must be submitted to Office of Management and Budget on or before June 27, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-28/pdf/2013-12564.pdf>

**N. DOJ/DEA Schedules of Controlled Substances: Placement of Lorcaserin into Schedule IV; Final Rule**

On May 8, 2013, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule (78 FR 26701-26705) placing lorcaserin, including its salts, isomers and salts of isomers into Schedule IV of the Controlled Substances Act (CSA).

**Summary**

Lorcaserin ((*R*)-8-chloro-1-methyl-2,3,4,5-tetrahydro-1*H*-3-benzepine hydrochloride hemihydrate) is a new chemical entity which has central nervous system hallucinogenic properties. Lorcaserin was approved by the Food and Drug Administration (FDA) on June 27, 2012, as an addition to a reduced-calorie diet and exercise, for chronic weight management and will be marketed under the trade name BELVIQ. Based on a review of the scientific and medical evaluation and comments received, DEA has found that the data constitute substantial evidence of the potential for abuse of lorcaserin. Therefore, DEA will regulate lorcaserin as a Schedule IV Controlled Substance.

**Effective Date**

This final rule became effective on June 7, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-08/pdf/2013-10895.pdf>

**O. DOJ/DEA Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cannabinoids into Schedule I; Final Order**

On May 16, 2013, the Department of Justice, Drug Enforcement Administration (DEA) published a final order (78 FR 28735-28739) temporarily placing three synthetic cannabinoids into Schedule I of the Controlled Substances Act.

**Summary**

UR-144 (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone), XLR11 ([1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144)), and AKB48 (*N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide) are pharmacologically similar to Schedule I substances THC and JWH-018 as well as other synthetic cannabinoids. DEA believes that, based on the available data, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of these chemicals pose an imminent hazard to public safety. DEA is unaware of any currently accepted medical uses of these synthetic cannabinoids in the U.S. Therefore, DEA is publishing this final order subjecting these three cannabinoids, their salts, isomers, and salts of isomers to all the regulatory controls as Schedule I Controlled Substances.

**Effective Date**

This final order became effective on the date of publication, May 16, 2013.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-05-16/pdf/2013-11593.pdf>