

VEOLIA ES TECHNICAL SOLUTIONS, L.L.C.

REGULATORY UPDATE – November 2013

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A. EPA The Concept of Operations for the E-Manifest System Document Posted on EPA's Website

In September 2013, the Environmental Protection Agency (EPA) published a Concept of Operations (CONOPS) document on their website that outlines the proposed design for the electronic hazardous waste manifest tracking system (e-Manifest).

The e-Manifest is the national electronic manifest system that will facilitate the transmission of a unified form to track the management of hazardous wastes between EPA, States, industry, and other related stakeholders. The Concept of Operations (CONOPS) describes the e-Manifest system's architecture and design approach, and how the system will integrate with OSWER's functional segment architecture as well as with the Agency-wide enterprise architecture. The CONOPS, combined with the e-Manifest Requirements Spreadsheet provide a detailed analysis of the system and process. The e-Manifest CONOPS describes how data flows through the e-Manifest system and how the system uses common EPA data services, technologies and infrastructure. Business Process Flows (BPFs), Conceptual System Model, and Inventories are contained within this e-Manifest CONOPS.

EPA's primary goal in developing e-Manifest is to reduce industry cost and burden. EPA recognizes that the current paper process is limited and/or unable to meet all the information capture, analysis, communication and dissemination needs which EPA requires, in order to meet its goals of security, transparency, and support of both its internal and external stakeholders.

The Hazardous Waste Electronic Manifest Establishment Act was signed in October 2012, authorizing EPA to implement an e-Manifest system. The final rule has not yet been released by EPA. The development of the e-Manifest system and regulations have been slowed by the fact that funding for the project has not been appropriated by Congress.

Link

The link below will allow you to view/print the CONOPS document.

http://www.epa.gov/osw/hazard/transportation/manifest/pdf/eman_conops.pdf

B. EPA Civil Monetary Penalty Inflation Adjustment Rule; Final Rule

On November 6, 2013, EPA published a final rule (78 FR 66643-66648) amending the Civil Monetary Penalty Inflation Adjustment Rule.

Background

The Debt Collection Improvement Act of 1996 requires EPA to adjust for inflation statutory civil monetary penalties that may be assessed for violations of EPA statutes and regulations. EPA is

required to review the civil monetary penalties at least every four years. The last adjustment to EPA civil penalty amounts was finalized on January 7, 2009.

Summary

Due to the low rate of inflation and a rounding requirement only 20 of 88 civil penalty provisions are being adjusted.

The final rule did NOT include any increases in civil monetary penalties for violations of Resource Conservation and Recovery Act (RCRA) statutes or regulations.

One noteworthy increase is the maximum allowable penalties for EPCRA 325(b) which were increased to \$117,500 from \$107,500.

Effective Date

The penalty increases will become effective on December 6, 2013.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-06/pdf/2013-26648.pdf>

C. EPA Addition of ortho-Nitrotoluene; Community Right-to-Know Toxic Chemical Release Reporting; Final Rule

On November 7, 2013, EPA published a final rule (78 FR 66848-66851) adding *ortho*-nitrotoluene (*o*-nitrotoluene) to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Background

On March 13, 2013, EPA published a proposed rule to add *o*-nitrotoluene to the EPCRA list of toxic chemicals because it was classified as “Reasonably Anticipated to be a Human Carcinogen” by the National Toxicology Program and that it was expected to be manufactured, processed, or otherwise used in quantities exceeding the EPCRA 313 reporting thresholds.

Summary

EPA did not receive any comments on the proposed rule to add *o*-nitrotoluene to the list of toxic chemicals therefore EPA published this final rule adding *o*-nitrotoluene to the list of toxic chemicals.

EPCRA Section 313 requires facilities that manufacture, process, or otherwise use listed chemicals in amounts above reporting thresholds to report their environmental releases, other waste management quantities, pollution prevention activities, and recycling data for these

chemicals annually. This report is commonly referred to as the Toxic Release Inventory (TRI) report.

Effective Date

This final rule became effective on November 29, 2013, and reporting is required for the reporting year beginning on January 1, 2014 with the first report due on July 1, 2015.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-07/pdf/2013-26475.pdf>

D. EPA Draft FY 2014-2018 EPA Strategic Plan; Notice of Availability and Request for Comment

On November 19, 2013 EPA published a notice of availability (78 FR 69412-69413) of the Draft Fiscal Years 2014-2018 EPA Strategic Plan (Strategic Plan) for review and comment.

Summary

The Government Performance and Results Act (GPRA) of 2010 requires Agencies to develop Strategic Plans which include a mission statement, long-term goals, objectives, and strategic measures, and strategies to achieve these objectives over a four year period. The Draft Strategic Plan presents five strategic goals for the protection of human health and the environment and four cross-cutting fundamental strategies to improve the way EPA does business with the public sector and the regulated community.

The Five Strategic Goals are:

1. Addressing Climate Change and Improving Air Quality
2. Protecting America's Waters
3. Cleaning Up Communities and Advancing Sustainable Development
4. Ensuring the Safety of Chemicals and Preventing Pollution
5. Protecting Human Health and the Environmental by Enforcing Laws and Assuring Compliance

The Four Cross-Cutting Fundamental Strategies are:

1. Working Toward a Sustainable Future
2. Working to Make a Visible Difference in Communities
3. Launching a New Era of State, Tribal, Local, and International Partnerships
4. Embracing EPA as a High-Performing Organization

The Strategic Plan outlines a reduction in enforcement activity in the 2014-2018 years as compared to 2005-2009 data. A comparison shows the Strategic Plan calls for 35,000 fewer inspections, 7,900 fewer lawsuits initiated, and 9,000 fewer civil suits.

EPA’s Electronic Enterprise (E-Enterprise) initiative is also a key focus of the draft Strategic Plan. The E-Enterprise initiative would increase electronic reporting, advance emissions/pollutant detection technologies, make information more accessible to the public, and increase the use of data analytics and targeting in enforcement initiatives.

Comments Due

Comments on the Draft Strategic Plan must be submitted to EPA on or before January 3, 2014.

Link

The link below will allow you to view/print the Draft FY 2014-2018 EPA Strategic Plan.

<http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OA-2013-0555-0002>

E. EPA Fall 2013 Semi-Annual Regulatory Agenda; Notice

On November 26, 2013, EPA published the Fall 2013 Semi-Annual Regulatory Agenda as part of the 2013 Fall Unified Agenda and Regulatory Plan.

Summary

EPA publishes a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review. The Fall 2013 Semi-Annual Regulatory Agenda includes the following waste-related topics:

Solid Waste and Emergency Response – Final Rule Stage
1. Hazardous Waste Manifest Revisions – Standards and Procedures for Electronic Manifests
2. Revisions to the Export Requirements of the Cathode Ray Tube (CRT) Rule
3. Rulemaking on the Definition of Solid Waste
4. Hazardous Waste Management System: Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geological Sequestration Activities
5. Revising Underground Storage Tank Regulations – Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training
Solid Waste and Emergency Response – Proposed Rule Stage
1. Management Standards for Hazardous Waste Pharmaceuticals
2. Improvements to the Hazardous Waste Generator Regulatory Program (Parts 261-265)
3. Hazardous Waste Export-Import Revisions Rule
4. Additions to List Section 241.4 Categorical Non-Waste Fuels
Solid Waste and Emergency Response – Long Term Actions
1. Hazardous Waste Requirements for Retail Products; Clarifying and Making the Program More Effective

Link

The link below will allow you to view/print the Fall 2013 Semi-Annual Regulatory Agenda.

<http://www.reginfo.gov/public/do/eAgendaMain>

F. EPA Inspector General Report; EPA Should Assess the Utility of the Watch List as a Management Tool; Notice

On September 30, 2013, the EPA Office of Inspector General (OIG) published a report titled “The EPA Should Assess the Utility of the Watch List as a Management Tool.”

Summary

The Watch list was developed in 2004 to provide EPA regions and states with a list of facilities that are in significant violation of Clean Air Act, Clean Water Act, and/or Resource Conservation and Recovery Act (RCRA) laws that have not been addressed in a timely manner with enforcement actions. However, the OIG has found that the use of the Watch List differs between headquarters and regional offices; the number of facilities on the Watch List varies between regional offices; and the public version of the Watch List has limited search capabilities and information.

The OIG has recommended that EPA review the usefulness of the Watch List. The report also included suggestions should EPA determine to continue maintaining the Watch List.

Review of Watch List

EPA has agreed to assess the Watch List by September 30, 2014.

Link

The link below will allow you to view/print the OIG’s report.

<http://www.epa.gov/oig/reports/2013/20130930-13-P-0435.pdf>

G. DOT/FMCSA Proposed Enhancements to the Motor Carrier Safety Measurement System (SMS) Public Web Site; Notice and Request for Comment

On November 5, 2013, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (78 FR 66420-66422) on proposed enhancements to the display of information on the Agency’s Safety Measurement System (SMS) public website.

Summary

FMCSA is proposing changes to the design of the SMS website that are the direct result of feedback from stakeholders. The proposed changes do not include any changes to the SMS methodology. The proposed enhancements are an extension of FMCSA’s effort to provide more comprehensive, informative, and regularly updated safety and compliance performance data.

On November 4, 2013, FMCSA began a preview of the proposed website enhancements. Motor carriers are able to log in with their Portal account to view their own data in the redesigned format.

The general public will be able to access simulated motor carrier data to view the redesigned website. During the preview period, FMCSA will hold several webinars to provide detailed information about the proposed SMS display changes.

List of Proposed Enhancements

The proposed website enhancements seek to accomplish three key objectives:

1. Provide easier, more intuitive navigation and user-friendly features and descriptions to clarify the SMS's role as FMCSA's prioritization tool for interventions;
2. Consolidate FMCSA safety information so users do not have to go to multiple sites; and
3. Provide improved access to detailed information and new performance monitoring tools.

The proposed website enhancements are summarized below:

1. Displaying a summary of BASIC status to better clarify if a motor carrier's performance in the individual BASICs causes it to be prioritized for an intervention. Detailed data such as the motor carrier's percentile ranking in each BASIC has been moved to the individual drill down pages for each BASIC.
2. A new "Take a Tour" feature to highlight enhancements to the SMS display and show visitors how to locate and use the site.
3. Allowing the website user to download the data for all of the carriers in the same safety event group used to rank a carrier's BASIC percentile. The SMS determines a BASIC percentile for each motor carrier within a BASIC based on how the individual carrier's BASIC measure ranks relative to other carriers with a similar number of safety events (i.e., inspections, violations, or crashes).
4. Highlighting a motor carrier's individual performance measure in each BASIC to more clearly identify its performance trends over time. The measure is based on the results of the carrier's roadside inspections or crashes, and is not relative to other carriers in its safety event group.
5. Reordering the display of the BASICs based on their association to crash rates, with the BASICs with the strongest associations at the left.
6. Displaying any motor carrier safety rating from a compliance review issued in accordance with 49 CFR Part 385. Previously, users had to go to FMCSA's Safety and Fitness Electronic Records System (SAFER) website.
7. Displaying current insurance and authority status. Previously, users had to access FMCSA's Licensing and Insurance Online website.
8. Providing a motor carrier's enforcement case history, including the date the case was closed, the applicable violations, and the associated fines.
9. Enhancing the display of safety performance over time through a variety of displays and graphs users can customize.
10. Displaying the total number of inspections as well as a breakdown of the number of inspections with violations used in the SMS in each carrier's detail.
11. Clarifying terminology in the SMS, such as the definition of the terms "0%" and "< 3 inspections with violations," in the new glossary named "SMS Display Key Terms."

Comments Due

Comments on the proposed enhancements to the SMS website must be submitted to FMCSA by January 6, 2014.

Public Webinars

FMCSA hosted several educational webinars for the public addressing the proposed enhancements to the SMS public website in November.

Link

The link below will allow you to view/print the notice of proposed enhancements to the SMS website.

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-05/pdf/2013-26543.pdf>

H. DOT/PHMSA/FRA Safety and Security Plans for Class 3 Hazardous Materials Transported by Rail; Notice of Safety Advisory

On November 20, 2013, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) and Federal Railroad Administration (FRA) jointly published a safety advisory (78 FR 69745-69746) as a follow-up to FRA's Emergency Order No. 28 in response to a serious train accident that occurred in Quebec on July 6, 2013.

Summary

Over the past few months, PHMSA and FRA have jointly published several safety advisories related to the July 6, 2013 accident that occurred in Quebec involving an unattended freight train. The freight train shipment contained flammable hazardous materials (petroleum crude oil) that derailed, resulting in multiple explosions and almost 50 fatalities. As a result, an emergency order was issued to railroads requiring that certain safety related recommendations related to attendance of the shipment and railcar securement on the mainline track or mainline siding outside of a yard or terminal be followed to ensure the safe transportation by rail of certain hazardous materials. The hazardous materials falling under the emergency order include:

1. Five or more tank car loads of any one or any combination of materials poisonous by inhalation as defined in 49 CFR 171.8, and including anhydrous ammonia (UN 1005) and ammonia solutions (UN 3318); or
2. 20 rail car loads or intermodal portable tank loads of any one or any combination of materials listed in (1) above, or, any Division 2.1 flammable gas, Class 3 flammable liquid or combustible liquid, Class 1.1 or 1.2 explosive, or hazardous substance listed in 49 CFR 173.31(f)(2).

Most recently, on November 20, 2013, PHMSA and FRA issued a follow-up advisory reinforcing the proper characterization, classification and selection of packing group for Class 3 materials, and the corresponding requirements in the hazardous materials regulations (HMR) for safety and security planning. The Agencies also reinforced the expectation of offerors by rail and rail carriers

to revise their safety and security plans including the required risk assessments, to address the safety and security issues of leaving railcars unattended. Offerors of hazardous materials for transportation by rail must ensure that their current practices and operations align with the HMR requirements, especially in regard to existing safety and security planning requirements for Class 3 materials.

PHMSA and FRA are assessing regulated entities' compliance with the expectations outlined in the advisories to ensure the safe transportation of hazardous materials by rail. PHMSA has initiated a compliance investigation initiative, "Operation Classification." Operation Classification involves unannounced inspections and testing by PHMSA and FRA to verify the material classification and packing group assignments selected and certified by offerors of petroleum crude oil. In addition, PHMSA is accompanying FRA on audits to evaluate safety and security plans and to determine whether the plans address safety vulnerabilities.

Link

The link below will allow you to view/print the notice of the safety advisory.

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-20/pdf/2013-27785.pdf>

I. OSHA Updating OSHA Standards Based on National Consensus Standards; Signage; Final Rule; Confirmation of Effective Date

On November 6, 2013, the Occupational Safety and Health Administration (OSHA) published a confirmation of the effective date for the Updating Standards Based on National Consensus Standards; Signage; Direct Final Rule (78 FR 66642-66643).

Summary

On June 13, 2013, OSHA published a direct final rule to update general industry and construction signage standards by adding references to the latest versions of the American National Standards Institute (ANSI) standards on specifications for accident prevention signs and tags. The updates included in the direct final rule are:

1. Updating the general industry and construction signage standards by adding references to the latest versions of the ANSI standards Z535.1-2006, Z535.2-2011, and Z535.5-2011. OSHA is retaining the existing references to the earlier ANSI standards to provide employers the option of complying with the updated or earlier standards.
2. Incorporating by reference Part VI of the Manual of Uniform Traffic Control Devices, 1998 Edition, Revision 3, into the incorporation-by-reference section of the construction standards.

Confirmation of Effective Date

OSHA has confirmed that the effective date of this final rule is September 11, 2013.

Link

The link below will allow you to view/print the notice of confirmation of the effective date.

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-06/pdf/2013-26336.pdf>

J. OSHA Improve Tracking of Workplace Injuries and Illnesses; Proposed Rule and Notice of Public Meeting

On November 8, 2013, OSHA published a proposed rule (78 FR 67253-67283) to amend workplace injury and illness data collection requirements. Also, on November 15, 2013, OSHA published a notice of a public meeting (78 FR 68782-68783) to allow interested parties to submit oral remarks regarding this proposed rule.

Summary

In this proposed rule OSHA is proposing to amend the injury and illness recordkeeping regulations to add requirements for the electronic submission of information that employers are currently required to maintain. OSHA has proposed the following three amendments:

1. Employers with 250 or more employees that are required to maintain injury and illness records would be required to electronically submit information from these records to OSHA on a quarterly basis.
2. Employers with 20 or more employees from designated industries that are required to maintain injury and illness records would be required to electronically submit the information from the OSHA annual summary form (Form 300A) to OSHA annually.
3. All employers will be required to submit specified information from injury and illness records to OSHA if requested.

Public Meeting

The public meeting will be held on Thursday January 9, 2014 from 9 AM to 4:30 PM at the U.S. Department of Labor in Washington, DC.

Comments Due

Comments must be submitted to OSHA by February 6, 2014.

Links

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-08/pdf/2013-26711.pdf>

The link below will allow you to view/print the notice of the public meeting.

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-15/pdf/2013-27366.pdf>

K. OSHA Letter of Interpretation Clarifies Requirements for Labeling Small Containers of Hazardous Chemicals

On June 4, 2013, OSHA published a Letter of Interpretation (LOI) clarifying requirements for labeling small containers of hazardous chemicals (5 milliliter vials or 50 milliliter bottles) under the revised Hazard Communication Standard (HCS 2012).

Summary

In the LOI OSHA defended its position that labels must be attached to a hazardous chemical's immediate container, that the label may not be attached to the outside packaging, and that it is not acceptable to use a key linking the chemical to a sheet with the required HCS information. However, pull out labels, fold back labels, or tags attached to the small container may be utilized to satisfy the HCS requirements.

When a chemical manufacturer or shipper can show that it is not feasible to use pull-out labels, fold back labels, or tags, the small container must contain the following information, at a minimum:

1. Product identifier;
2. Appropriate pictograms;
3. Manufacturer's name and phone number
4. Signal word
5. A statement indicating the full label information for the chemical is provided on the outside package.

In addition, the outside package must contain the following information, at a minimum:

1. All applicable label elements, as defined in 29 CFR 1910.1200(f)(1);
2. The outside package must be clearly marked to ensure the complete label elements are visible and it must clearly inform users that the small container must be stored in the outer container bearing the complete label;
3. The manufacture/shipper must ensure that any alternative labeling used does not conflict with any other standard.

Link

The link below will allow you to view/print this letter of interpretation.

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28805

L. OSHA Fall 2013 Regulatory Agenda; Notice

On November 26, 2013, OSHA published the Fall 2013 Semi-Annual Regulatory Agenda as part of the 2013 Fall Unified Agenda and Regulatory Plan.

Summary

OSHA publishes a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review. The Fall 2013 Semi-Annual Regulatory Agenda includes the following topics:

Occupational Safety and Health Administration – Final Rule Stage
1. Walking and Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Protection)
2. Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Provisions
Occupational Safety and Health Administration – Proposed Rule Stage
1. Occupational Exposure to Crystalline Silica
2. Occupational Exposure to Beryllium
3. Combustible Dust
4. Injury and Illness Prevention Program
5. Improve Tracking of Workplace Injuries and Illnesses
6. Clarification of Employer’s Obligation to Make and Maintain Accurate Records of Work-Related Injuries and Illnesses
7. Updating OSHA Standards Based on National Consensus Standards: Eye and Face Protection
Occupational Safety and Health Administration – Long Term Actions
1. Bloodborne Pathogens
2. Infectious Diseases
3. Reinforced Concrete in Construction and Preventing Backover Injuries and Fatalities
4. Standards Improvement Project IV
5. Review/Lookback of OSHA Chemical Standards
6. Process Safety Management and Prevention of Major Chemical Accidents
7. Subpart E: Scaffolds, Ladders and Other Working Surfaces

Link

The link below will allow you to view/print the Fall 2013 Semi-Annual Regulatory Agenda.
http://www.reginfo.gov/public/do/eAgendaMain;jsessionid=B7C184D8E185E9F327942F611E38F6AE?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1200&Image58.x=45&Image58.y=10

M. DOJ/DEA Schedules of Controlled Substances: Temporary Placement of Three Synthetic Phenethylamines into Schedule I; Final Order

On November 15, 2013, the Department of Justice, Drug Enforcement Administration (DEA) published a final order (78 FR 68716-68719) temporarily placing three synthetic phenethylamines into Schedule I of the Controlled Substances Act.

Summary

25I-NBOMe, 25C-NBOMe, and 25B-NBOMe are purported to be similar to schedule I hallucinogens like lysergic acid diethylamide (LSD). DEA believes that, based on the available data, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of these chemicals poses an imminent hazard to public safety. DEA is unaware of any currently accepted medical uses of these synthetic phenethylamines in the U.S. Therefore, DEA is publishing this final order subjecting these three synthetic phenethylamines, and their optical, positional, and geometric isomers, salts, 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, November 15, 2013.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2013-11-15/pdf/2013-27315.pdf>