

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

**REGULATORY UPDATE – February 2014**

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**A. EPA Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests; Final Rule**

On February 7, 2014, the Environmental Protection Agency (EPA) published a final rule (79 FR 7517-7563) establishing new requirements authorizing the use of electronic manifests (e-Manifests) as a means to track off-site shipments of hazardous waste from a generator's site to the destination site (e.g., treatment, disposal, storage, recycling facility).

**Summary**

This final rule establishes the legal and policy framework for the national e-Manifest system authorized by the e-Manifest Establishment Act. These regulations allow hazardous waste manifest users to use an electronic hazardous waste manifest system. EPA's long-term goal is to completely replace the paper hazardous waste manifest system with the e-Manifest system. Some of the benefits of the e-Manifest system over the traditional paper system include:

1. Reduced paperwork burden for completing the paper manifest;
2. Improved access to higher quality and more timely waste shipment data;
3. Near real-time shipment tracking capabilities for users;
4. Enhanced manifest inspection and enforcement capabilities for regulators;
5. Improved notification and responses to problems or discrepancies encountered with shipments;
6. Greater access for emergency responders to the types and sources of hazardous wastes that are in movement between generator sites and waste management facilities;
7. One-stop manifest copy submission to EPA and to all interested states through the Exchange Network architecture; and
8. New data management possibilities that could ultimately simplify the Resource Conservation and Recovery Act (RCRA) biennial reporting requirements and consolidation of various federal and state reporting requirements for domestic and transboundary shipments.

**Key Provisions in the Final Rule**

**1. Centralized e-Manifest System**

In this final rule EPA is adopting a national, centralized e-Manifest system instead of the decentralized approach that was originally proposed. The technical details of the system design, operation, and security will be developed in the next phase of this project.

The adoption of a centralized e-Manifest system will allow hazardous waste manifest users to obtain and execute the electronic hazardous waste manifest on a national e-Manifest system that EPA intends to host on its CDX portal or another system designated by the Administrator.

**2. State Implementation**

The consistent implementation of the e-Manifest was determined to be critical to the success of the e-Manifest system therefore this issue was addressed in the e-Manifest Act. Section 2(g)(2) of the Act states that, "any regulations promulgated by EPA to authorize and implement the electronic manifest shall take effect in each state as of the implementation date

that EPA specifies by regulation.” In addition, Section 2(g)(3) provides that “EPA shall carry out the federal electronic manifest regulations promulgated under the e-Manifest Act in each state unless the state program is fully authorized to carry out such regulations in lieu of EPA.”

Therefore, the e-Manifest regulations will be effective in all states and the system will be implemented federally by EPA in all states on the same implementation and compliance date. This date will be announced by EPA in a future rulemaking.

3. Use of the e-Manifest is NOT Mandatory

Users may elect to continue using paper manifest forms to track their shipments. A generator may prepare an e-Manifest for a shipment only if it is known at the time of shipment that all waste handlers (transporters and designated facility) named on the manifest participate in the e-Manifest system. Transporters may participate in the e-Manifest system by accessing the electronic data from either the transporter’s own electronic equipment or by accessing it on equipment provided by the participating generator, another transporter, or a designated facility.

4. E-Manifest and Paper Manifest Fees

EPA did not establish any user fees in this final rule. The fees for utilizing the e-Manifest system and paper manifests will be established in a future rule once the costs of operating the manifest system are determined. The fees assessed for paper manifests are necessary so that the manifest data can be incorporated into the centralized e-Manifest system. EPA intends to implement a higher fee for using paper manifests than for e-Manifests to encourage the use of e-Manifests.

5. “State Only” Hazardous Wastes

Certain states have more stringent programs than the federal government that require the use of a hazardous waste manifest for “State Only” hazardous wastes or industrial wastes. The e-Manifest system will be available for use for these wastes.

6. Universal Wastes

The e-Manifest will be available for use for the transportation of Universal Hazardous Wastes.

7. Conditionally Exempt Small Quantity Generator’s

Conditionally Exempt Small Quantity Generator’s (CESQG’s) may also use the e-Manifest if they choose to use a hazardous waste manifest for a shipment of hazardous wastes.

8. Rejected Hazardous Waste and Regulated Container Residues

The e-Manifest may be used to track shipments of rejected wastes or regulated container residues from the site of the rejecting facility (or facility shipping residues) to either an alternate facility or back to the original generator.

9. Paper Manifest Submittal to EPA

This final rule requires that a designated facility that receives a paper manifest must submit one paper copy of the completed manifest to EPA for data processing. EPA also intends to establish a fee for the submittal of a paper manifest that the destination facility will be required to pay for the processing costs incurred by EPA for inputting the manifest information into the e-Manifest system.

10. Paper Shipping Documents May Still be Required to be Carried in Transport Vehicles

At this time it will still be necessary to carry a printed copy of the electronic manifest on the transport vehicle during the transportation of hazardous wastes that are subject to the DOT Hazardous Materials Regulations (HMR). The HMR requires that a hard copy of a shipping paper be carried on transport vehicles for shipments of hazardous materials. When/if DOT amends the HMR to authorize the use of an electronic shipping document, the transporter will no longer be required to carry a printed copy of the manifest in the transport vehicle.

11. Electronic Signatures

This final rule does not designate the method that will be utilized for obtaining valid electronic signatures on the e-Manifest. The rule simply states that the designation of an electronic signature method should be no less secure and trustworthy than the conventional handwritten signatures that now appear on paper manifests. The method used for electronic signatures will be developed in the next phase of the development of the e-Manifest project. EPA is recommending that the first generation e-Manifest system use the PIN/password electronic signature method for electronic signatures.

12. Manifest Retention Requirements

This final rule does not address the retention of electronic manifests beyond the 3-year record retention period required of paper manifests. EPA intends to discuss the possibility for extended storage options (with a fee for this service) with stakeholders and the e-Manifest System Advisory Board in the future.

13. Confidential Business Information Claims for e-Manifest Information

In this final rule EPA states that information submitted and collected electronically through the e-Manifest System is NOT eligible under Federal Law for treatment as Confidential Business Information.

14. E-Manifest Data Available On-Line 90-Days After the Waste is Received at the TSDF

Only regulators, emergency responders, and the waste handling facilities named on manifests will have access to on-line manifest data for 90-days after the waste is received at the destination facility. The 90-day timeframe is designated to provide manifest preparers and waste handlers sufficient time to address discrepancies and verify and correct manifest data. During this 90-day timeframe the manifest data will be considered to be “in process.”

#### 15. Replacement Manifests

If the e-Manifest becomes unavailable once the waste is in the possession of a transporter a “replacement copy” of the manifest must be printed and carried on the transport vehicle. The transporter must print a sufficient number of copies for all handlers named on the manifest along with one copy to be sent to the generator and one copy to be forwarded to the e-Manifest system. The transporter must also note in Section 14 (Special Handling or Additional Information Item) of the manifest that the copies are a replacement manifest for an e-Manifest that could not be completed. The tracking number of the e-Manifest that the replacement manifest replaces must also be noted in Section 14.

#### 16. Manifest Corrections

EPA acknowledges that errors do occur in the completion of a hazardous waste manifest. The most frequent errors identified by EPA are nonexistent EPA ID Numbers due to transposed numbers, incorrect dates, missing required data fields, such as quantity, units of measure, waste codes, reported units of measure that are not appropriate for the waste stream, and errors in the proper shipping name. EPA believes the number of errors will be reduced with the implementation of the e-Manifest system but acknowledges that errors will still occur and that the system must be designed to allow for the correction of errors on e-Manifests and paper manifests.

This final rule does not include any information on how the e-Manifest system will allow these corrections to be made. Rather, EPA states that a process for allowing corrections and notifications to occur will be developed in the next phase of the e-Manifest process.

#### **Effective Date**

This final rule will become effective on August 6, 2014. However, the implementation and compliance date for the regulations will be delayed until the e-Manifest system has been developed and the manifest fee schedule has been announced. EPA will publish a document announcing the fee schedule and the date the use of the e-Manifest system will commence. Under the e-Manifest Act, EPA is required to establish the national e-Manifest system by October 2015.

#### **Links**

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-07/pdf/2014-01352.pdf>

The link below provides access to EPA’s e-Manifest webpage.

<http://www.epa.gov/epawaste/hazard/transportation/manifest/e-man.htm>

**B. EPA Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on the Practices to Enhance Effectiveness to the Resource Conservation and Recovery Act Program; Notice of Data Availability and Request for Comment**

On February 14, 2014, EPA published a notice of data availability (79 FR 8926-8935) requesting comment on the hazardous waste management practices of establishments in the retail sector.

**Background**

EPA acknowledges that the regulation of hazardous waste generated by the retail sector presents unique challenges for retail companies. In 2008, EPA began an effort to review the application of RCRA hazardous waste regulations to the retail sector by conducting meetings, conference calls and site visits with retail companies. Some of the companies included in these meetings were: Lowe's, Walmart, the Retail Industry Leaders Association (RILA), Proctor and Gamble, the National Retail Federation, Strong Environmental, and the Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA).

**Summary**

In this notice of data availability (NODA) EPA is continuing its efforts to better understand the retail sectors concerns regarding the applicability of the hazardous waste regulations to their industry and what options may exist for addressing these issues. Following are some of the topics EPA is requesting comment on in this NODA:

1. Suggestions for improving the RCRA hazardous waste management policies, guidances, and regulations for retail operations.
2. Information about how retail facilities operate and the hazardous wastes they generate.
3. Information regarding episodic waste generation or waste quantity generation fluctuation at retail facilities.
4. Information about retail stores current hazardous waste management programs.
5. Employee training at retail operations.
6. The management of aerosol cans at retail operations.
7. The transportation and reverse logistics of hazardous wastes.
8. Information regarding sustainability efforts currently in place at retail facilities.

**Comments Due**

Comments on this NODA must be received by EPA on or before April 15, 2014.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-14/pdf/2014-02930.pdf>

**C. EPA Inquiry to Learn whether Businesses Assert Business Confidentially Claims Regarding Waste Import and Export; Notice and Request for Comment**

On February 10, 2014, EPA published a notice and request for comment (79 FR 7662-7665) to inform “affected businesses” of Freedom of Information Act (FOIA) requests for information received by EPA pertaining to the export and import of RCRA hazardous waste, the export of cathode ray tubes (CRTs), spent lead acid batteries (SLABs), and universal wastes and to provide the “affected businesses” the opportunity to assert claims that the information is entitled to be treated as confidential business information (CBI).

**Summary**

EPA receives FOIA requests periodically for documentation or data related to hazardous waste exports and imports that may identify or reference multiple parties. This notice informs “affected parties,” including “transporters” and “consignees,” of the FOIA requests EPA has received for information in EPA database systems or in one or more of the following documents in calendar years 2013 or before:

1. Documents related to the export of RCRA hazardous waste;
2. Documents related to the import of RCRA hazardous waste;
3. Documents related to the export of cathode ray tubes;
4. Documents related to the export of non-crushed lead acid batteries;
5. Submissions for Transporters or RCRA treatment, storage, or disposal (TSDF) facilities related to exports or imports of hazardous waste; and
6. Documents related to the import or export of Universal Wastes.

Any business that submitted documentation or information to EPA regarding the above listed topics and did not submit a CBI at the time of submittal is NOT allowed to claim the information as CBI at this time.

Other business identified or referenced in documents or information submitted may have a right to assert a CBI claim concerning information that pertains to them.

The notice includes instructions on how to submit a CBI claim.

**Comments**

Comments on this notice must be submitted to EPA on or before March 12, 2014.

**Link**

The link below will allow you to view/print this notice and request for comment.

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-10/pdf/2014-02832.pdf>

**D. DOT/FMCSA Commercial Driver’s License Drug and Alcohol Clearinghouse; Notice of Proposed Rulemaking**

On February 20, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (79 FR 9703-9727) that would establish a Commercial Driver’s License Drug and Alcohol Clearinghouse that would contain controlled substances (drug) and alcohol test result information for commercial driver’s license (CDL) holders.

**Background**

CDL drivers who use drugs or alcohol while operating a commercial motor vehicle (CMV) pose a significant risk to public safety. Under FMCSA’s current drug and alcohol screening program, employers do not have the necessary tools to identify CDL holders who have received positive drug or alcohol test results, have refused a drug or alcohol test, or have otherwise violated the drug and alcohol testing requirements and are not legally qualified to operate a CMV. Employers must currently rely on information provided by the driver. As a result, drivers who do not disclose prior positive drug or alcohol test results or refusals to test continue to operate CMVs.

**Summary**

This proposed rule would require employers and service agents to report information about current and prospective employees’ drug and alcohol test results to a Drug and Alcohol Clearinghouse (Clearinghouse). It would also require employers and service agents to search the database for current and prospective employees’ positive drug and alcohol tests results, and refusals to test, as a condition of permitting those employees to perform safety-sensitive functions. FMCSA believes that the Clearinghouse would provide employers the necessary tools to identify drivers who are prohibited from operating a CMV due to drug and alcohol program violations.

**Comments Due**

Comments on this notice of proposed rulemaking must be submitted to FMCSA by April 21, 2014.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-20/pdf/2014-03213.pdf>

**E. DOT/PHMSA Hazardous Materials: Cargo Tank Motor Vehicle Loading and Unloading Operations; Withdrawal of Notice of Proposed Rulemaking**

On February 25, 2014, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a withdrawal (79 FR 10461-10465) of a notice of proposed rulemaking that would have amended regulations associated with cargo tank motor vehicle loading and unloading operations.



## Overview

Originally published on March 11, 2011, PHMSA proposed to amend the hazardous materials regulations (HMR) by requiring each person who engages in cargo tank motor vehicle (CTMV) loading or unloading operations to perform a risk assessment of the loading and unloading operations and develop and implement safe operating procedures based on the results of the risk assessment. PHMSA also proposed additional personnel training and qualification requirements for persons who perform these operations.

Based on negative comments received in response to the NPRM and uncertainties about regulatory action as well as the uncertainties of the regulatory assessment, PHMSA conducted a supplementary policy analysis to help decision-makers determine whether this effort is the best course of action. The analysis raised concerns on the effectiveness of implementing any new regulations covering loading and unloading operations including whether any proposed regulations would be:

1. Redundant because the activity is already covered in some manner under the current HMR;
2. Impactful in that many of the incidents having occurred in the past would probably continue to occur because of the human element in incidents indicating that further regulation may be ineffective; and
3. Confusing to implement without a memorandum of understanding (MOU) among the agencies that have oversight clearly defining roles and enforcement of these types of operations.

In lieu of adopting new regulations at this time, PHMSA intends to do the following: (1) prepare a guidance document that together with current regulations, provides direction on bulk loading and unloading operational procedures, use of personal protective equipment, and maintenance and inspection of transfer equipment; (2) engage in a rigorous outreach campaign to raise awareness; (3) implement a human factor study associated with bulk loading and unloading operations; and (4) finalize a (MOU) with OSHA and possibly EPA in order to specify any new regulatory requirements and enforcement roles.

## Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-25/pdf/2014-03205.pdf>

## **F. DOT Next Phase of the Regulatory Review of Existing DOT Regulations; Notice and Request for Comment**

On February 27, 2014, the Department of Transportation (DOT) published a notice (79 FR 11051-11052) that they will be reviewing their existing regulations to evaluate their continued validity and determine whether they are designed effectively to solve current transportation issues.

### **Background**

On January 18, 2011, President Obama issued Executive Order 13563, which outlined a plan to improve regulation and regulatory review. On February 16, 2011, DOT began a process to review existing regulations, which included a public meeting and other opportunities for interested parties to submit public comments. In response DOT drafted a Plan for Implementation of Executive Order 13563 that was published in August 2011.

### **Summary**

In this notice, DOT is announcing a second round of retrospective review of existing regulations. However, instead of soliciting suggestions on specific rules, DOT is seeking suggestions on how this review should be managed. To accomplish this, DOT is seeking comment on the following topics:

1. Should DOT publish a notice in the Federal Register asking for suggestions for specific existing rules to be reviewed, as they did during the initial round?
2. Should DOT focus on the 56 rules identified in the 2011 plan as having potential savings? Or are there any particular rules from that list that should be?
3. Should DOT publish a notice and request for comment in the Federal Register:
  - a. Focus instead on the existing regulations of one or more specific Operating Administrations? If so, which operating administration(s) and why?
  - b. Focus instead on one or more cross-cutting issues such as access rules or drug and alcohol testing? If so, which cross-cutting issues and why?
  - c. Focus on a combination of one or more specific operating administrations and specific cross-cutting issues? If so, which and why?
4. Hold a series of listening sessions, each one tailored to a specific operating administration or cross-cutting issue. Ideas developed at these sessions could be developed at additional public workshops, workshops run by the operating administration, and/or through publication of a notice and request for comment.
5. Any other suggestions/alternatives on how to implement this second round of retrospective review.

### **Comments Due**

Comments must be submitted to DOT on or before March 31, 2014.

### **Link**

The link below will allow you to view/print this notice and request for comment.

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-27/pdf/2014-04008.pdf>

### **G. Virginia Lawmakers Approve Bill to Eliminate Hazardous Waste Transporter Permit**

On February 18, 2014, the Virginia Senate approved a bill to eliminate the requirement for hazardous waste transporters to obtain a hazardous waste permit from the State of Virginia. Hazardous waste transporters in Virginia would no longer be required to obtain a Department of

Environmental Quality permit to operate in the State. House Bill No. 856 would amend §10.1-1426 of the Code of Virginia by removing the word “transport.” The applicable section of House Bill 856 is included below.

1. That §10.1-1426 of the Code of Virginia is amended and reenacted as follows:

§10.1-1426. Permits required; waiver of requirements; reports; conditional permits.

A. No person shall ~~transport~~, store, provide treatment for, or dispose of a hazardous waste without a permit from the director.

**Effective Date**

Prior to becoming law this bill must be signed by the Governor of Virginia.

**Link**

The link below will allow you to view/print amended House Bill 856.

<http://lis.virginia.gov/cgi-bin/legp604.exe?141+ful+HB856+hil>

**H. DHS Chemical Facility Anti-Terrorism Standards Personnel Surety Program; Notice**

On February 3, 2014, the Department of Homeland Security (DHS) submitted an information collection request (79 FR 6417-6452) to the Office of Management and Budget for review and clearance of the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program.

**Summary**

On March 22, 2013, DHS published a notice regarding the CFATS Personnel Surety Program Information Collection Request in the Federal Register. In this notice, DHS is (1) responding to 28 comments submitted in response to the notice previously published about this information collection request and (2) soliciting public comments on this information collection request.

The CFATS Personnel Surety Program will provide high-risk chemical facilities the ability to submit certain biographic information about affected individuals to DHS. Affected individuals are facility personnel who have access, either unescorted or otherwise, to restricted areas or critical assets and unescorted visitors who have access to restricted areas or critical assets. For each affected individual a high-risk chemical facility would have at least three options for identifying and conducting background checks on individuals:

1. Direct Vetting

High-risk chemical facilities (or their designees) may submit information to DHS about an affected individual to be compared against information about known or suspected terrorists;

2. Use of Vetting Conducted under other DHS Programs  
High-risk chemical facilities (or their designees) may submit information to DHS about an affected individual's enrollment in another DHS program so that DHS may electronically verify and validate that the individual is enrolled in the other program; and/or
3. Electronic Verification of TWIC  
High-risk chemical facilities may electronically verify and validate an affected individual's TWIC, through the use of TWIC readers (or other technology) which is periodically updated with revoked card information), rather than submit information about the affected individual to DHS.

In the event that there is a potential match, DHS has procedures in place that it will follow to resolve the match and coordinate with appropriate law enforcement entities as necessary.

**Comments Due**

Comments on this information collection request must be submitted to DHS by March 5, 2014.

**Link**

The link below will allow you to view/print this information collection request.

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-03/pdf/2014-02082.pdf>

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

On February 10, 2014, the Department of Justice, Drug Enforcement Administration (DEA) published a final order (79 FR 7577-7582) to temporarily place four synthetic cannabinoids into Schedule I of the Controlled Substances Act (CSA).

**Summary**

Synthetic cannabinoids are a family of compounds that are functionally (biologically) similar to delta9-tetrahydrocannabinol (THC), the main active ingredient in marijuana and a schedule I hallucinogen. The following four synthetic cannabinoids have been determined to have effects similar to THC and therefore DEA is publishing this final order subjecting these four synthetic cannabinoids to the regulatory controls and administrative, civil, and criminal sanctions applicable to Schedule I Controlled Substances.

1. Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22; QUPIC)
2. Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22)
3. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA)
4. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA)

**Effective Date**

This final order became effective on the date of publication, February 10, 2014.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-10/pdf/2014-02848.pdf>

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

On February 27, 2014, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule (79 FR 10985-10989) placing alfaxalone [5 $\alpha$ -pregnan-3 $\alpha$ -ol-11,20-dione] including its salts, isomers, and salts of isomers, into Schedule IV of the Controlled Substances Act (CSA).

**Summary**

Alfaxalone is a neurosteroid with central nervous system depressant properties that is a derivative of 11-alpha-hydroxy-progesterone. On October 23, 2012, the Food and Drug Administration (FDA) published a final rule to approve a New Animal Drug Application for alfaxalone as an intravenous injectable anesthetic in cats and dogs. Based on a consideration of all comments, the scientific and medical evaluation and recommendation from the Department of Health and Human Services, and based on DEA's consideration of their eight factor analysis, the DEA has determined that a potential for abuse of alfaxalone exists. Therefore, DEA is publishing this final rule subjecting alfaxalone, its salts, isomers, and salts of isomers to all the regulatory controls as Schedule IV Controlled Substances.

**Effective Date**

This final rule will become effective on March 31, 2014.

**Link**

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-02-27/pdf/2014-04332.pdf>