



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - May 2014

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The information contained herein is provided by Veolia North America for general informational purposes only. This information should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you should have any questions, please contact Tom Baker, Veolia Director Environment & Transportation at tom.baker@veolia.com.

A. EPA Spring 2014 Semi-Annual Regulatory Agenda; Notice

On May 28, 2014, the Environmental Protection Agency (EPA) published the Spring 2014 Semi-Annual Regulatory Agenda as part of the 2014 Spring 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 including the following waste-related topics:

Solid Waste and Emergency Response – Final Rule Stage
1. Revisions to the Export Requirements of the Cathode Ray Tube (CRT) Rule
2. Rulemaking on the Definition of Solid Waste
3. Revising Underground Storage Tank Regulations – Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training
4. Standards for the Management of Coal Combustion Residuals Generated by Commercial Electric Power Producers
Solid Waste and Emergency Response – Proposed Rule Stage
1. Management Standards for Hazardous Waste Pharmaceuticals
2. Improvements to the Hazardous Waste Generator Regulatory Program
3. Hazardous Waste Export-Import Revisions Rule
4. Additions to List Section 241.4 Categorical Non-Waste Fuels
5. Polychlorinated Biphenyls (PCBs): Manufacturing (Import) Exemption for the Defense Logistics Agency (DLA)

Link

The link below will allow you to view/print the Spring 2014 Semi-Annual Regulatory Agenda.

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

B. DOT/FMCSA Notice of Regulatory Guidance: Automatic On-Board Recording Devices

On May 12, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of regulatory guidance (79 FR 26868-26869) on two issues involving roadside inspections of commercial motor vehicles (CMVs) equipped with automatic on-board recording devices (AOBRDs) to assist drivers with hours-of-service (HOS) recordkeeping and compliance.

Background

FMCSA has received information that inspection officials will sometimes request drivers to provide printouts from AOBRDs, or to email or fax records of duty status (RODS) to an enforcement official and that in some cases citations have been issued to CMV drivers because their AOBRDs did not display certain information. As a result, FMCSA is amending the April 4, 1997 publication by adding two questions and corresponding guidance to clarify what records from AOBRDs must be provided during a roadside inspection.

Summary

The following questions and guidance have been added:

Question 5:

What information is required to be displayed on the AOBDR?

Guidance:

- (1) 49 CFR 395.15(i)(5) requires that AOBDRs with electronic displays must be capable of *displaying* the following: “(i) Driver’s total hours of driving today; (ii) The total hours on duty today; (iii) Total miles driving today; (iv) Total hours on duty for the 7 consecutive day period, including today; (v) Total hours on duty for the prior 8 consecutive day period, including the present day; and (vi) The sequential changes in duty status and the times the changes occurred for each driver using the device.”
- (2) While 49 CFR 395.15(c) requires additional information be recorded by the AOBDR, only the specific information listed in 49 CFR 395.15(i)(5) must be displayed.
- (3) The two provisions differ because of the data display limitations of a minimally compliant AOBDR.

Question 6:

Must an AOBDR be capable of providing a hardcopy printout?

Guidance:

No, the FMCSRs do not require AOBDRs to provide a hardcopy printout for an enforcement official. As long as the information made available for display on the AOBDR meets the requirements of 49 CFR 395.15(i)(5), the driver and motor carrier are not required to provide additional RODS documentation to an enforcement official at the roadside. However, an enforcement official may request that additional information be provided by email, fax, or similar means within 48 hours for follow-up after the conclusion of the roadside inspection.

Effective Date

This regulatory guidance became effective on May 12, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10822.pdf>

C. DOT/FMCSA Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits; Final Rule

On May 15, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (79 FR 27766-27768) amending the Hazardous Materials Safety Permits rules to update the current incorporation by reference of the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials.

Summary

Currently, 49 CFR 385.415 prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. 49 CFR 385.415(b)(1) requires that motor carriers must ensure that a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in

accordance with the requirements of the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR 173.403.” With regard to the specific edition of the out-of-service criteria, 49 CFR 385.4, as amended on September 13, 2013 (78 FR 56618), and September 24, 2013 (78 FR 58481), references the April 1, 2013 edition. This final rule amends 49 CFR 385.4(b) by updating the reference from the April 1, 2013 edition to the new edition date of April 1, 2014.

FMCSA reviewed the April 1, 2014 edition and determined that there are no substantive changes that would result in motor carriers being subjected to a new or amended standard. It is necessary to update the reference to ensure that motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria that are referenced in the rules.

Effective Date

This final rule became effective on the date of publication, May 15, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-15/pdf/2014-10981.pdf>

D. DOT/FMCSA Coercion of Commercial Motor Vehicle Drivers; Prohibition; Notice of Proposed Rulemaking and Request for Comments

On May 13, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (79 CFR 27265-27274) that would adopt regulations prohibiting motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to operate commercial motor vehicles (CMVs) in violation of certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs), including drivers' hours-of-service limits and commercial driver's license (CDL) regulations, associated drug and alcohol testing rules, and the Hazardous Materials Regulations (HMRs).

Summary

This notice of proposed rulemaking (NPRM) includes procedures for drivers to report incidents of coercion to FMCSA, rules of practice FMCSA would follow in response to allegations of coercion, and describes penalties that may be imposed on entities found to have coerced drivers. The following are some of the amendments included in this NPRM.

49 CFR 390.5 – New Definitions

FMCSA is proposing to add the following new definitions:

Coerce or Coercion means either –

- (1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold, or the actual withholding of, current or future business, employment, or work opportunities from a driver for objecting to the operation of a commercial motor vehicle under circumstances which the motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers, or representatives, knew, or should have known, would require the driver to violate 49 CFR Parts 171-173, 177-180, 380-383, 390-399, or 385.105(b), 385.111(a), (c)(1), or (g), 385.415, or 385.421; or

- (2) A threat by a motor carrier, or its agents, officers or representatives, to withhold, or the actual withholding of, current or future business, employment, or work opportunities from a driver for objecting to the operation of a commercial motor vehicle, or to taking other action or to the failure to act, under circumstances which the motor carrier, or its agents, officers or representatives knew, or should have known would require the driver to violate 49 CFR Parts 356, 360, or 365-379.

Receiver or Consignee – means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in interstate commerce or hazardous materials transported in interstate or intrastate commerce.

Shipper – means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

Transportation Intermediary – means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but not limited to brokers and freight forwarders.

49 CFR 390.6 Coercion Prohibited – New

If adopted as proposed, FMCSA would add the following new section to the Federal Motor Carrier Safety Regulations:

49 CFR 390.6 Coercion Prohibited

- (a) *Prohibition.* (1) A motor carrier, shipper, receiver, or transportation intermediary, including their respective agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR Parts 171-173, 177-180, 380-383 or 390-399, or 385.105(b), 385.111(a)(1), (c)(1), or (g), 385.415, or 385.421;
- (2) A motor carrier or its agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR Parts 356, 360, or 365-379.
- (b) *Complaint process.* (1) A driver who believes he or she was coerced to violate a regulation described in paragraph (a)(1) or (2) of this section may file a written complaint under 49 CFR 386.12(e) of this subchapter.
- (2) A complaint under paragraph (b)(1) of this section shall describe the specific action that the driver claims constitutes coercion and identify the specific regulations the driver was coerced to violate.
- (3) A complaint under paragraph (b)(1) of this section may include any supporting evidence that will assist the Division Administrator in determining the merits of the complaint.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to FMCSA by August 11, 2014.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-13/pdf/2014-10722.pdf>

E. DOT/FMCSA Electronic Logging Devices and Hours of Service Supporting Documents; Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders; Notice of Availability of Research Report

On May 12, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) announced (79 FR 27040-27041) the availability of a new final report, "Evaluating the Potential Safety Benefits of Electronic Hours-of-Service Recorders."

Summary

The purpose of this study was to assess the benefits of installed Electronic Hours-of-Service Recorders (EHSRs) on safety and hours-of-service (HOS) violations related to Class 7 and 8 trucks as they operated during normal revenue-producing deliveries. The data was obtained through a third-party vendor (The Center for Truck and Bus Safety at the Virginia Tech Transportation Institute) that compiled previously-generated compliance data regarding participating motor carriers.

The study concluded that EHSR-equipped trucks had a lower total crash rate (11.7 percent reduction) and a lower preventable crash rate (5.1 percent reduction) than trucks not equipped with EHSRs. In addition, EHSR-equipped trucks had a 53 percent lower driving-related HOS violation rate and a 49 percent lower non-driving related HOS violation rate than trucks not equipped with EHSRs.

Comments

FMCSA is encouraging interested parties to submit comments on this report, but no deadline for comments was included in this notice.

Links

The link below will allow you to view/print the notice of availability of the research report.

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10813.pdf>

The report is available in the Federal eRulemaking Portal using the following link and searching for docket number "FMCSA-2010-0167."

<http://www.regulations.gov>

F. DOT/FRA/PHMSA Recommendations for Tank Cars used for the Transportation of Petroleum Crude Oil by Rail; Notice of Safety Advisory

On May 13, 2014, the Department of Transportation, Federal Railroad Administration (FRA) and Pipeline and Hazardous Materials Safety Administration (PHMSA) published a safety advisory (79 FR 27370-27371) advising all persons who offer for transportation, or transport, in tank cars by rail in commerce, to, from or within the United States, a bulk quantity of UN 1267, petroleum crude oil, Class 3, that originates in or is sourced from the Bakken formation to take additional precautionary measures to enhance the safe shipment of these materials.

Background

The number and type of railroad accidents involving Bakken crude oil has increased and the quantity of petroleum crude oil released as a result of these accidents has increased while the overall number of railroad accidents and derailments has decreased over the past several years. In response FRA and PHMSA are encouraging offerors and rail carriers of Bakken crude oil to take additional precautionary measures to enhance the safe shipment of these materials.

Summary

FRA and PHMSA are urging offerors and carriers of Bakken crude oil by rail tank car to select and use the railroad tank car designs with the highest level of integrity reasonably available within their fleet for shipment of these hazardous materials. The features offerors should consider when assessing tank car integrity include tank shell jacket systems, head shields, and top fittings protection. In addition, FRA and PHMSA are advising offerors and carriers of Bakken crude oil to avoid the use of older, legacy DOT Specification 111 or CTC 111 tank cars for the shipment of these materials to the extent reasonably practicable.

Link

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-13/pdf/2014-10914.pdf>

G. DOT/FMCSA Electronic Logging Devices and Hours of Service Supporting Documents; Supplemental Notice of Proposed Rulemaking; Extension of Comment Period

On May 16, 2014, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (79 FR 28471-28472) extending the comment period for the Electronic Logging Devices (ELD) and Hours of Service Supporting Documents supplemental notice of proposed rulemaking (SNPRM).

Background

On March 28, 2014, FMCSA published a SNPRM (79 FR 17655) that would amend the Federal Motor Carrier Safety Regulations (FMCSRs) to establish: minimum performance and design standards for hours-of-service (HOS) electronic logging devices (ELDs); requirements for the mandatory use of these devices; requirements for HOS supporting documents; and measures to address concerns about harassment resulting from the mandatory use of ELDs.

A summary of the SNPRM is included in the March 2014 Regulatory Update.

Summary

On May 7, 2014, the Commercial Vehicle Safety Alliance (CVSA) requested an extension of the comment period for this SNPRM due to the complexity and significance of the rulemaking and the new technical standards. FMCSA granted a 30-day extension of the comment period.

Comments Due

Following the extension of the comment period, comments must now be submitted to FMCSA on or before June 26, 2014.

Link

The link below will allow you to view/print the notice of the extension of the comment period.

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-16/pdf/2014-11244.pdf>

H. OSHA Spring 2014 Semi-Annual Regulatory Agenda; Notice

On May 28th, 2014, the Occupational Safety and Health Administration (OSHA) published the Spring 2014 Semi-Annual Regulatory Agenda as part of the 2014 Spring 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 Spring 2014 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
3. Improve Tracking of Workplace Injuries and Illnesses
Occupational Safety and Health Administration – Proposed Rule Stage
1. Occupational Exposure to Crystalline Silica
2. Occupational Exposure to Beryllium
3. Clarification of Employer’s Obligation to Make and Maintain Accurate Records of Work-Related Injuries and Illnesses
4. Updating OSHA Standards Based on National Consensus Standards: Eye and Face Protection
5. Standards Improvement Project IV
Occupational Safety and Health Administration – Long Term Actions
1. Bloodborne Pathogens
2. Infectious Diseases
3. Preventing Backover Injuries and Fatalities
4. Process Safety Management and Prevention of Major Chemical Accidents
5. Combustible Dust
6. Chemical Management and Permissible Exposure Limits (PELs)
7. Emergency Response and Preparedness

Link

The link below will allow you to view/print the Spring 2014 Semi-Annual Regulatory Agenda.

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

I. DHS Privacy Act of 1974; Department of Homeland Security National Protection and Programs Directorate – 002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program Systems of Records; Notice

On May 19, 2014, the Department of Homeland Security (DHS) published a notice (79 FR 28752-28757) proposing to update and reissue the “Department of Homeland Security/National Protection and Programs Directorate – 002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records” (System of Records).

Summary

This system of records allows DHS to collect and maintain records on individuals (facility personnel and unescorted visitors) who have or are seeking access to restricted areas and critical assets at high-risk chemical facilities and compare this information to the Terrorist Screening Database. As a result of a biennial review of this system and changes to the Chemical Facility Anti-Terrorism Standards Personnel Surety Program, DHS is updating the system as follows:

1. The Category of records has been updated to include Trusted Traveler Program information and information to assist in verifying the status of enrollment in another DHS program; and
2. The routine use of K has been added. Under routine use K, DHS may provide records to high-risk chemical facilities for the purpose of ensuring that information on all affected individuals submitted by or on behalf of the facility who have or are seeking access to restricted areas or critical assets has been appropriately submitted to DHS.
3. Global administrative updates to better align the description of the program with other CFATS Personnel Surety Program documentation.
4. Simplifying the formatting and text of the previously published notice.

Comments Due

Comments on this notice must be submitted to DHS on or before June 18, 2014.

Effective Date

These changes will become effective on June 18, 2014.

Link

The link below will allow you to view/print this notice of privacy act system of records.

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-19/pdf/2014-11431.pdf>

J. **DHHS/CDC Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review, Technical Amendment; Final Rule, and**

DoA/APHIS Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List; Amendments to the Select Agent and Toxin Regulations; Technical Amendment; Final Rule

On May 12, 2014, the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) published a final rule (79 FR 26860-26862) making technical amendments to the Possession, Use, and Transfer of Select Agents and Toxins regulations.

Also, on May 12, 2014, the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) published a companion final rule (79 FR 26829-26831) making technical amendments to the Agricultural Bioterrorism Protection Act of 2002; Biennial Review and Republication of the Select Agent and Toxin List; along with technical amendments to the Select Agent and Toxin Regulations.

Summary

These final rules correct inconsistencies in the language between the APHIS and CDC select agent final rules published on October 5, 2012 (77 FR 61056) and (77 FR 61084). The final rule also amends a clarifying term in the regulations that addresses the circumstances in which a virus strain or agent subspecies is excluded from the regulations because it is not considered to pose a severe threat to public health and safety. The word ‘verify’ is being replaced with “identify” because CDC and APHIS

believe that this is a more precise description of the categorization of a viral strain or subspecies agent. Also the words “inactive” and “inactivated” are replaced with the phrase “modified to be less toxic or potent” because a select agent may be modified to be less toxic or potent but not lose all functional activity.

The last amendment adds language stating that individuals that are not approved for access to registered space for activities not related to select agents or toxins (e.g., routine cleaning, maintenance, and repairs) would not have to be continuously escorted by an approved individual as long as they would not be able to gain access to select agents or toxins.

Effective Date

These final rules became effective on the date of publication, May 12, 2014.

Links

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10740.pdf>

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

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-12/pdf/2014-10741.pdf>

K. NRC Low-Level Radioactive Waste Regulatory Program; Strategic Assessment Update and Request for Comment

On May 15, 2014, the Nuclear Regulatory Commission (NRC) published a strategic assessment update (79 FR 27772-27774) in an effort to identify and prioritize activities that the NRC staff can undertake to ensure a stable, reliable and adaptable regulatory framework for effective low-level radioactive waste (LLRW) management while also considering future needs.

Background

In 2007, the NRC conducted a Strategic Assessment of the NRC’s regulatory program for LLRW. The results of the strategic assessment were documented in a publication titled “Strategic Assessment of Low-Level Radioactive Waste Regulatory Program.” NRC also developed a list of 20 activities to respond to the issues identified in the strategic assessment. Progress has been made in completing these activities, but NRC believes that with the continuing evolution of the LLRW program some changes need to be made to the strategic assessment and is therefore seeking public comment on what changes, if any, should be made to the current LLRW program as well as any specific actions that should be enacted to facilitate the changes.

Summary

The notice includes the following questions NRC is requesting comment on:

1. What changes are anticipated in LLRW with regard to safety, security, and protection of the environment?
2. What activities should remain on the list of proposed activities developed during the 2007 Strategic Assessment and are these activities properly prioritized?
3. What are the key safety concerns for LLRW disposal?
4. What actions could be taken by NRC, other Federal and State Authorities, private industry, and national scientific and technical organizations to optimize the management of LLRW?
5. Are there any additional actions that should be taken in regard to:

- a. Storage, disposal, tracking and security of LLRW waste;
- b. Extended storage of LLRW;
- c. Disposal options for low-activity waste and/or very low-level waste;
- d. On-site disposal of LLRW

Comments Due

Comments must be submitted to NRC by July 14, 2014.

Link

The link below will allow you to view/print this strategic assessment update and request for comments.

<http://www.gpo.gov/fdsys/pkg/FR-2014-05-15/pdf/2014-11285.pdf>