VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - September 2014

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A. EPA Addition of Nonylphenol Category; Community Right-to-Know Toxic Chemical Release Reporting; Final Rule

On September 30, 2014, the Environmental Protection Agency (EPA) published a final rule (79 FR 58686-58693) adding a nonylphenol category 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 June 20, 2013, EPA published a proposed rule to add a nonylphenol category to the EPCRA list of toxic chemicals because nonylphenols are highly toxic to numerous species of aquatic organisms. The proposed rule defined the nonyphenol category using the chemical structure and text for the nonyphenol.

Summary

EPA received three comments on the proposed rule. All three commenters requested that EPA define the nonylphenol category by chemical name and Chemical Abstract Service Registry Number (CASRN) instead of by the chemical structure. In the final rule EPA has made this modification and is listing the nonylphenol as a group of defined by the existing names and CASRNs. The list of nonylphenol chemicals regulated under the nonylphenol catergory is:

CAS Number	Chemical Name
104-40-5	4-Nonylphenol
11066-49-2	Isononylphenol
25154-52-3	Nonylphenol
26543-97-5	4-Isononylphenol
84852-15-3	4-Nonylphenol, branched
90481-04-2	Nonylphenol, branched

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 September 30, 2014, and reporting is required for the reporting year beginning on January 1, 2015 with the first report due July 1, 2016.

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-30/pdf/2014-23255.pdf

B. Operating Permit Program: Notice of Reporting Requirements for Compliance Certifications; Title V

On September 15, 2014, EPA published a notice (79 FR 54978) stating that the submittal of Title V compliance certifications to the EPA Region V authorized State permitting authorities, with the exception of Michigan, fulfills the facility reporting requirements.

Summary

This notice allows facilities subject to the Title V operating permitting program to fulfill their federal reporting requirements by submitting the Title V compliance certifications to their authorized state permitting authorities in Illinois, Indiana, Minnesota, Ohio, and Wisconsin. Facilities in these five states will no longer be required to submit the compliance certifications to both the EPA and the state agencies.

Effective Date

This notice became effective on September 15, 2014.

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-15/pdf/2014-21943.pdf

C. EPA Polychlorinated Biphenyls (PCBs): Manufacturing (Import) Exemption for the Defense Logistics Agency (DLA); Final Rule

On September 29, 2014, EPA published a final rule (79 FR 58266-58270) approving a petition from the United States Defense Logistics Agency (DLA) to import foreign manufactured polychlorinated biphenyls (PCBs) currently owned by the Department of Defense (DoD) in Japan for disposal in the United States.

Background

On April 23, 2013, DLA submitted a petition seeking a one-year exemption to import PCBs and PCB items currently in storage at U.S. military installations in Japan. DLA estimates that over 1,000,000 million pounds of waste contaminated with PCBs could be generated in Japan through the 2014 calendar year. The material in storage in Japan includes transformers (drained and un-drained), large and small capacitors, voltage regulators, switches, used dielectric fluids containing PCBs, and PCB contaminated soil and debris.

Summary

This final rule grants the DLA's petition for an exemption for the importation of up to 1,014,222 pounds of PCBs and PCB items stored or in use in Japan for disposal in the United States. This exemption is approved for one year beginning on October 1, 2014.

Effective Date

This importation exemption became effective on October 1, 2014 and is valid for one year.

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-29/pdf/2014-23104.pdf

D. DOT/PHMSA Hazardous Materials: Revisions of the Emergency Response Guidebook; Notice and Request for Comment

On September 2, 2014, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice (79 FR 52106-52107) requesting comment on ways to improve the Emergency Response Guidebook (ERG) while the 2016 version is in development.

Summary

The ERG is used by emergency services personnel and provides guidance for the initial response to hazardous materials incidents. The ERG is updated every four years and is a joint effort involving the transportation agencies of the United States, Canada, and Mexico.

PHMSA has set up an email address for the receipt of ideas to improve the Emergency Response Guidebooks. The email address is: ERGComments@dot.gov

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-02/pdf/2014-20683.pdf

E. DOT/PHMSA Hazardous Materials: Reverse Logistics (RRR); Notice of Proposed Rulemaking; Extension of Comment Period

On September 25, 2014, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published an extension of the comment period for the "Hazardous Materials: Reverse Logistics" proposed rule published on August 11, 2014 (79 FR 57494-57495).

Background

On August 14, 2014, PHMSA published a notice of proposed rulemaking (79 FR 46748) that would revise the Hazardous Materials Regulations (HMR) applicable to return shipments of certain hazardous materials by motor vehicle. PHMSA received a request to extend the comment period by thirty days from the American Trucking Association (ATA). ATA requested the extension in order to have sufficient time to fully evaluate the proposed requirements and develop any related comments. In this publication PHMSA is granting a 30 day extension of the comment period.

A Summary of the Hazardous Materials: Reverse Logistics notice of proposed rulemaking is included in the August, 2014 Regulatory Update.

Comments

Following the 30-day extension comments must now be submitted to PHMSA by November 10, 2014.

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-25/pdf/2014-22759.pdf

F. DOT/FRA Securement of Unattended Equipment; Notice of Proposed Rulemaking

On September 9, 2014, the Department of Transportation, Federal Railroad Administration (FRA) published a notice of proposed rulemaking (79 FR 53356-53383) that would amend the brake system safety standards for freight and other non-passenger trains and equipment to strengthen the requirements relating to the securement of unattended equipment.

Background

On August 7, 2013, FRA published Emergency Order 28, Establishing Additional Requirements for Attendance and Securement of Certain Freight Trains and Vehicles on Mainline Track or Mainline Siding Outside of a Yard or Terminal. Emergency Order 28 established safety plan and securement procedures that apply to:

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 (UN1005) 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).

Summary

This notice of proposed rulemaking would codify most of the requirements in Emergency Order 28. FRA proposes to amend existing regulations to include additional securement requirements for unattended equipment, primarily for trains transporting the hazardous materials listed in the background above, however, the proposed rule would also apply to **any** loaded freight car containing a material poisonous by inhalation as defined above. Additional communication requirements relating to job briefings and securement is also included in this proposed rule. FRA also proposes to require that all locomotives left unattended outside of a yard must be equipped with an exterior locking mechanism. If a locomotive does not have a means of being locked it must be attended.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to FRA by November 10, 2014.

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-09/pdf/2014-21253.pdf

G. California Assembly Bill 380; Spill Response for Railroads Signed by Governor Brown

On September 25, 2014, California Governor Jerry Brown, signed Assembly Bill (A.B.) 380, Spill Response for Railroads into law. A.B. 380 requires rail carriers to provide state and local emergency officials with more information regarding crude oil and other hazardous materials that may be shipped through their jurisdictions, so that first responders can be better prepared in the event of train derailments or other accidents.

Summary

A.B. 380 requires rail carriers to provide the following information to state and local emergency officials:

1. No later than January 31, 2015, and every three months thereafter, a rail carrier shall prepare and submit to the Office of Emergency Services commodity flow data for the prior three months broken down by county and track route relevant to the 25 largest hazardous materials commodities transported through the state, including tank cars loaded with oil cargo.

2. Beginning on January 31, 2015, a rail carrier shall estimate and submit to the Office of Emergency Services notification of the weekly movements of trains through a county, including, but not limited to, track route and volumes of shipments of Bakken oil in amounts equal to or greater than 1,000,000 gallons per train.

3. The rail carrier shall maintain a response management communications center, which shall provide real-time information to an authorized public safety answering point or 911 emergency response center about a training involved in a hazardous material or oil cargo spill or other critical incident.

4. Each rail carrier shall provide the Office of Emergency Services with a summary of the rail carrier's hazardous materials emergency response plan.

Effective Date

California A.B. 380, Spill Response for Railroads will become effective on January 31, 2015.

Link

The link below will allow you to view/print A.B. 380, Spill Response for Railroads.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB380

H. OSHA Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions; Final Rule

On September 18, 2014, the Occupational Safety and Health Administration (OSHA) published a final rule (56129-56188) revising the requirements for reporting work-related fatality, injury, and illness information and updating the appendix to the Injury and Illness Recording and Reporting regulations to replace the reference to Standard Industrial Classification (SIC) codes with the North American Industry Classification System (NAICS).

Summary

The OSHA Injury and Illness Recording and Reporting regulation (29 CFR Part 1904) requires employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses that occur at their business. 29 CFR 1904.2 partially exempts establishments in select lower-hazard industry groups for the injury and illness recording requirements. The current industries that are exempt from the recordkeeping requirements are classified with SIC Codes 52-89 that have an average Lost Workday Injury and Illness (LWDII) rate at or below 75 percent of the three-year-average national LWDII rate for private industry.

This final rule identifies the list of partially-exempt industry group facilities using NAICS Codes 44-81 that have a Days Away, Restriction, or Transfer (DART) rate of 1.5.

This final rule also amends the reporting requirements for work-related fatalities and employee in-patient hospitalizations. The rule leaves in place the requirement that employers report all work-related fatalities to OSHA within eight hours. It amends the current regulations by now requiring employers to report all work-related in-patient hospitalizations that require care or treatment, all amputations, and all losses of an eye to OSHA within 24 hours. All employers covered by OSHA including employers who

are partially exempt from maintaining injury and illness records are required to comply with these facility and hospitalization reporting requirements.

Effective Date

This final rule will become effective on January 1, 2015.

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-18/pdf/2014-21514.pdf

I. DOJ/DEA Disposal of Controlled Substances; Final Rule

On September 9, 2014, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule (79 FR 53519-53570) regulating the secure disposal of controlled substances collected by registrants from ultimate users. These regulations implement the Secure and Responsible Drug Disposal Act of 2010 by expanding the options available to collect controlled substances from ultimate users for the purpose of disposal.

Background

On October 12, 2010, the Secure and Responsible Drug Disposal Act of 2010 (Disposal Act) was finalized. Prior to the Disposal Act, ultimate users of prescription drugs (prescription holders) who wanted to dispose of unused, unwanted, or expired controlled substance pharmaceuticals had few options. The only option available to the ultimate users was for them to destroy the substances themselves by flushing, discarding, or surrendering them to a law enforcement agency. The lack of disposal options created a situation where controlled substances were accumulated in households which made them available for abuse and misuse.

The Disposal Act amended the Controlled Substances Act (CSA) authorizing ultimate users to deliver their controlled substances to another person for disposal and/or destruction. On December 12, 2012, DEA published a notice of proposed rulemaking (77 FR 75784) that would create regulations for the secure disposal of controlled substances by both DEA registrants and ultimate users. DEA received 192 comments on the notice of proposed rulemaking. After reviewing and considering the comments submitted DEA has published this final rule governing the secure disposal of controlled substances by registrants and ultimate users.

Summary

DEA has established three options for the collection of controlled substances from ultimate users for the purpose of disposal/destruction. These options are:

1. Take-Back Events
2. Mail-Back Programs
3. Collection Receptacles

DEFINITIONS

The final rule adds or revises definitions in 21 CFR 1300.01. Some of these definitions are included below:

1. *Collection* means to receive a controlled substance for the purpose of destruction from an ultimate user, a person lawfully entitled to dispose of an ultimate user decedent's property, or a long-term care facility on behalf of an ultimate user who resides or has resided at that facility.

2. *Collector* means a registered manufacturer, distributor, reverse distributor, narcotic treatment program, hospital/clinic with an on-site pharmacy, or retail pharmacy that is authorized under this chapter to so receive a controlled substance for the purpose of destruction.

3. *Reverse Distribute* means to acquire controlled substances from another registrant or law enforcement for the purpose of:
   a. Return to the Registered manufacturer or another registrant authorized by the manufacturer to accept returns on the manufacturer's behalf; or
   b. Destruction.

4. *Reverse Distributor* is a person registered with the Administration as a reverse distributor.

5. *Employee* means an employee as defined under the general common law of agency.

6. *Law Enforcement Officer* means a person who is described in paragraph (a), (b), or (c) of this definition:
   a. Meets all of the following criteria:
      i. Employee of either a law enforcement agency, or law enforcement component of a Federal Agency;
      ii. Is under the direction and control of a Federal, State, tribal, or local government;
      iii. Acting in the course of his/her official duty; and
      iv. Duly sworn and given the authority by a Federal, State, tribal, or local government to carry firearms, execute and serve warrants, make arrests without warrant, and make seizures of property;
   b. Is a Veterans Health Administration (VHA) police officer authorized by the Department of Veterans Affairs to participate in collection activities conducted by the VHA; or
   c. Is a Department of Defense (DoD) police officer authorized by the DoD to participate in collection activities conducted by the DoD.

7. *Non-Retrievable* means, for the purpose of destruction, the condition or state to which a controlled substance shall be rendered following a process that permanently alters that controlled substance's physical or chemical condition or state through irreversible means and thereby renders the controlled substance unavailable and unusable for all practical purposes.

8. *On-Site* means located on or at the physical premises of the registrant's registered location.

AUTHORIZATION TO COLLECT CONTROLLED SUBSTANCED FROM ULTIMATE USERS

DEA has approved three methods for the collection of controlled substances from ultimate users. These methods and applicable requirements are:

1. Take-Back Events

   a. Federal, State, tribal, or local law enforcement may conduct a take-back event and collect controlled substances from ultimate users.
   b. Law enforcement is allowed to partner with any person (company) to hold a take-back event.
   c. A law enforcement officer employed by the agency running the take-back event must oversee the take-back event and take custody of the controlled substances until secure transfer, storage, or destruction has occurred.
   d. Only Schedule II-V controlled substances may be disposed at the take-back event.
   e. A collection receptacle should be used for the collection of controlled substances.

2. Mail-Back Programs

   a. Collector or Federal, State, tribal, or local law enforcement agencies may conduct mail-back programs.
   b. The collector conducting a mail-back program must have a method of destruction at the registered location where the mail-back packages will be received.
   c. Mail-back packages cannot be opened, x-rayed, analyzed, or otherwise penetrated.
   d. The mail-back packages will be made available for sale or for free.
   e. The mail-back packaging specifications are:
      i. The package must be non-descript and shall not include markings or information that would indicate that the package contained a controlled substance.
      ii. The package must be water-proof, spill-proof, tamper-evident, tear-resistant, and sealable.
      iii. The mail-back package must be pre-addressed with the registered collector's address.
      iv. The mail-back package must be postage paid.
      v. The package must have a unique identification number that allows the package to be tracked.
      vi. The package must include instructions on what substances can be shipped in the package, the process for mailing the package, instructions that the package can only be mailed in the United States, the District of Columbia, and Puerto Rico, and a notice that only packages provided by the collector will be accepted for destruction.
   f. A collector conducting a mail-back program must only accept mail-back packages that the collector has made available for the collection of controlled substances.
   g. Within three days of receiving a mail-back package that the collector did not make available the collector must notify the local DEA Field Division Office.
   h. If a collector decides to exit the mail-back program the collector must:
      i. Notify the public prior to discontinuing the program; and
      ii. Obtain written agreement from another collector to receive mail-back packages addressed to the original collector.

3. Collection Receptacles

   a. Collectors or Federal, State, tribal, or local law enforcement may manage and maintain collection receptacles for controlled substances.
   b. Collectors may NOT handle the controlled substances, but they may view the substances prior to placement in the collection receptacles.
   c. Substances in a collection receptacle cannot be counted, sorted, inventoried, or otherwise handled.
   d. A collection receptacle must meet the following design specifications:
      i. Securely fastened to a permanent structure so that it cannot be removed;
      ii. Securely locked and constructed with a permanent outer container and a removable inner liner;
      iii. The outer container shall have a small opening that allows contents to be added, but does not allow for the removal of contents;
      iv. The collection receptacle must display a sign indicating that only Schedule II-V controlled substances may be placed into the container; and
      v. A collector may also allow non-controlled substances to be placed into the collection receptacle.
   e. The inner liner must meet the following specifications:
      i. Waterproof, tamper-evident, and tear resistant;
      ii. Removable and sealable immediately on removal without emptying or touching the contents;
      iii. The contents of the inner liner shall not be viewable when the liner is sealed;
      iv. The size of the inner liner must be marked on the outside of the liner; and
      v. An identification number that is permanent and unique must be written on the inner liner.

f. The collection receptacles may be located inside a collector's registered location, inside law enforcement's physical location, or at an authorized long-term care facility.
g. The collection receptacle must be located in the immediate proximity of a designated area where controlled substances are stored and where employees are present (e.g., can be seen from the pharmacy counter).
h. The opening of the collection receptacle must be locked when an employee is not present.
i. The removal and replacement of the inner liner must be conducted by or under the supervision of at least two employees of the authorized collector.

4. Collection Receptacles at Long-Term Care Facilities

a. Collection receptacles can only be managed and maintained by retail pharmacies, hospitals, or clinics with an on-site pharmacy.
b. Long-Term café facilities may dispose of controlled substances into an on-site collection receptacle on behalf of an ultimate user who resides, or has resided, at the long-term care facility.
c. The controlled substances must be placed into the collection receptacle by the long-term care facility staff within three days of discontinuation of use by the ultimate user.
d. Inner liners must be removed by or under the supervision of one employee and one supervisor-level employee of the long-term care facility.
e. The removed, sealed inner liner may be stored at the long-term care facility for up to three business days in a securely locked, substantially constructed cabinet or a securely locked room with controlled access.

DESTRUCTION OF CONTROLLED SUBSTANCES

1. Controlled substances are considered to be destroyed when the substance is "rendered to a non-retrievable state."

2. When the controlled substances are transferred for destruction, two employees of the transferring registrant shall load and unload or observe the loading and unloading of the controlled substances.

3. Transportation to a registered location:
   a. The controlled substances must be transported directly to the registered location with no unnecessary or unrelated stops;
   b. Two employees of the transporting registrant must accompany the controlled substance shipment;
   c. Two employees of the transporting registrant shall load and unload the controlled substances.

4. Transportation to a Non-Registered Location:
   When controlled substances are transported to a destruction location that is not a registered location in addition to (a) through (c) above, two employees of the transporting registrant shall handle or observe the handling of all controlled substances until they have been rendered non-retrievable and shall "witness" the destruction.

5. On-Site Destruction:
   Two employees of the registrant must handle or observe the handling of all controlled substances until they have been rendered non-retrievable and shall "witness" the destruction.

REVERSE DISTRIBUTORS – SPECIAL REQUIREMENTS

1. The reverse distributor shall destroy or cause the destruction of any controlled substance received for the purpose of destruction no later than 30 calendar days after receipt.

2. A reverse distributor may apply to modify their registration to become authorized as a collector by submitting a written request or on-line request to DEA. The e-mail address for the on-line application is: www.DEAdiversion.usdoj.gov.

INVENTORY AND RECORDKEEPING REQUIREMENTS FOR REVERSE DISTRIBUTORS

1. Inventory

    a. Name of the substance;
    b. The quantity of the substance;
    c. Bulk controlled substances, the nearest metric unit weight consistent with unit size;
    d. For controlled substances in finished form; the number of units of volume of each finished form in each commercial container and the number of commercial containers of each finished form;
    e. For controlled substances in a commercial container, carton, crate, drum, or other receptacle that has been opened, an exact count or measure of the contents for Schedule II substances and an estimated count or measure for Schedule II-V substances unless the container holds more than 1,000 tablets then an exact count must be conducted;
    f. The number and size of sealed inner liners and mail-back packages;
        i. The date of receipt;
        ii. The unique identification number of each inner liner and mail-back package;
        iii. The registration number of the person from whom the inner liner or mail-back package was received, if applicable;
        iv. The date, place, and method of destruction;
        v. The number of sealed inner liners and mail-back packages destroyed;
        vi. The name, address, and registration number of the person from whom the inner liner or mail-back package was received, if applicable;
        vii. The unique identification number of each inner liner and mail-back package destroyed; and
        viii. The name and signature of the two employees that witnessed the destruction.

2. Recordkeeping of Controlled Substances Acquired from Return or Recall to a Manufacturer or other Registrant

    a. The date of receipt;
    b. The name and quantity of each controlled substance received;
    c. The name, address, and registration number of the person from whom the substance was received;
    d. The reason for the return (e.g., recall or return);
    e. The date of return to the manufacturer or other registrant;
    f. The name and quantity of each controlled substance returned;
    g. The name, address, and registration number of the person from whom the substance was received;
    h. The name, address, and registration number of the registrant from whom the substance was returned; and
    i. The method of return (e.g., common or contract carrier).

3. Recordkeeping for Controlled Substances Acquired from Registrant Inventory for Destruction

    a. The date of receipt;
    b. The name and quantity of each controlled substance received;
    c. The name, address, and registration number of the person from whom the substance was received;
    d. The date, place, and method of destruction;
    e. The name and quantity of each controlled substance destroyed;
    f. The name and signature of the two employees of the registrant that witnessed the destruction;
    g. DEA Form 41 must be used to document the destruction of controlled substances.

Effective Date

This final rule will become effective on October 9, 2014.

All Memoranda of Agreement (MOAs) and Memoranda of Understanding (MOUs) regarding the management of controlled substances from ultimate users will be rescinded and no longer valid on October 9, 2014.

Link

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-09/pdf/2014-20926.pdf

J. DHS/CDC Multi-Agency Informational Meeting Concerning Compliance with the Federal Select Agent Program; Notice of Public Webcast

On September 18, 2014, the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) published a notice (79 FR 56077) announced a public webcast that will be hosted by the Division of Select Agents and Toxics (DSAT) and the Agricultural Select Agent Services (AgSAS) to provide guidance related to the Federal Select Agent Program.

Summary

The webcast provides an opportunity for effected parties (i.e., registered entity responsible officials, alternate responsible officials, and entity owners) to learn specific regulatory guidance and information concerning biosafety, security, and incident response issues related to the Federal Select Agent Program. Federal Select Agent Program representatives will address questions and concerns during the webcast.

Webcast Date and Registration

The webcast will be haled on Friday, November 14, 2014 from 10:00 AM to 4:00 PM EST.

Individuals interested in participating in the conference call must register online by October 24, 2014.

Links

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

http://www.gpo.gov/fdsys/pkg/FR-2014-09-18/pdf/2014-22253.pdf

The link below will allow you to register for the public webcast.

http://www.selectagents.gov