



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - December 2015

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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 Notice of eDisclosure Portal Launch: Modernizing Implementation of EPA’s Self-Policing Incentive Policies; Notice

On December 9, 2015, the Environmental Protection Agency (EPA) announced the availability of the eDisclosure web-based portal (80 FR 76476-76481). The eDisclosure portal is a centralized, web-based system designed to improve EPA’s ability to efficiently receive and process violations disclosed under EPA’s self-disclosure policies.

Background

On April 11, 2000, EPA issued the “Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations” audit policy (65 FR 19618). EPA’s stated goal of the Audit Policy was to enhance the protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose, and correct and prevent the recurrence of environmental violations. EPA has received such a large number of companies self-disclosing violations that their ability to promptly resolve the self-disclosures has been taxed. EPA believes that the eDisclosure portal will result in faster and more efficient resolution of self-disclosures.

Summary

The eDisclosure portal will accept new reports involving almost all civil violations. The disclosures will be grouped into two Categories.

1. Category 1 disclosures include EPCRA violations that meet the Audit Policy conditions. The eDisclosure system will automatically issue an electronic Notice of Determination (eNOD) confirming that the violations are resolved with no assessment of civil penalties as long as the violations are corrected within 60 days of the date of discovery.
2. The Category 2 disclosures include all non-EPCRA violations; EPCRA violations where the violator can only certify compliance with Audit Policy conditions 2-9; EPCRA violations that resulted in significant economic benefit; and EPCRA and CERCLA violations excluded from Tier 1. The eDisclosure system will issue an electronic Acknowledgement Letter (AL) confirming EPA’s receipt of the disclosure that includes a statement from EPA that a determination regarding the eligibility of penalty mitigation will be made at a later date.

To submit a disclosure using the eDisclosure portal a company must:

1. Register with the system;
2. Disclose the violations within 21 days of discovery; and
3. Submit an on-line Compliance Report certifying that the non-compliance was timely corrected. The Compliance Report is due within 60 days of submitting the initial disclosure for a Category 1 disclosure. Companies may request a 30-day extension on-line for Category 2 disclosures. The 30 day extension may be requested with no explanation required.

Effective Date

The eDisclosure Portal was launched on December 9, 2015 with its use effective on that date.

Link

The link below will allow you to view/print the notice of the launch of the eDisclosure Portal.

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-09/pdf/2015-30928.pdf>

B. EPA Name Change from the Office of Solid Waste and Emergency Response (OSWER) to the Office of Land and Emergency Management (OLEM); Final Rule

On December 15, 2015, EPA published a final rule (80 FR 77575-77578) changing the name of the Office of Solid Waste and Emergency Response (OSWER) to the Office of Land and Emergency Management (OLEM).

Summary

The name is being changed to more accurately reflect the current functions of the OLEM. This final rule also amends 40 CFR 1.47 to provide a more complete list of the land protection and pollution emergency laws regulated by the OLEM. The list is included below:

1. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)
2. Superfund Amendments and Reauthorization Act of 1986 (SARA)
3. Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)
4. Oil Pollution Act (OPA)
5. Resource Conservation and Recovery Act (RCRA)
6. Clean Water Act Section 311
7. Mercury-Containing and Rechargeable Battery Management Act

Effective Date

This name change became effective on December 15, 2015.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-15/pdf/2015-31061.pdf>

C. EPA Revisions to the Public Notice Provisions in Clean Air Act Permitting Programs; Proposed Rule

On December 29, 2015, EPA published a proposed rule (80 FR 81234-81251) that would revise the public notice rule provisions for the New Source Review (NSR), Title V, and Outer Continental Shelf (OCS) permit programs of the Clean Air Act (CAA).

Summary

This proposed rule would allow EPA, State and local air regulatory agencies to provide the public notice of draft NSR, Title V, and OCS permits electronically, eliminating a mandatory requirement to publish the notices in newspapers. Draft major source permits that are issued by EPA or delegated air agencies implementing federal rules would be required to be published electronically.

States would have the option of continuing to publish notices in newspapers for draft major source permits issued under State rules.

In a 2012 memorandum, EPA adopted a similar media-neutral requirement for the public notifications for minor source permits.

Comments Due

Comments on this proposed rule must be submitted to EPA on or before February 29, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-29/pdf/2015-32639.pdf>

D. DOT/FMCSA Electronic Logging Devices and Hours of Service Supporting Documents; Final Rule

On December 16, 2015, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (80 FR 78291-78416) that establishes minimum performance and design standards for hours-of-service (HOS) electronic logging devices (ELDs); requirements for the mandatory use of these devices by drivers; requirements concerning HOS supporting documents; and measures to address concerns regarding harassment resulting from the mandatory use of ELDs.

Background

In August 2011, the United States Court of Appeals for the Seventh Circuit vacated the April 2010 final rule on the use of electronic on-board recorders (EOBRs) that included the device performance standards. After several public meetings and the review of requests for comments FMCSA published a supplemental notice of proposed rulemaking (SNPRM) titled Electronic Logging Devices and Hours of Service Supporting Documents. This final rule was published after consideration of the comments received on the SNPRM.

Summary

Below are the major changes from the SNPRM:

1. Documents Requirements

The maximum number of supporting documents that must be retained was lowered from 10 to 8. In addition, the timeframe in which a driver must submit records of duty status (RODS) and supporting documents to a motor carrier has been extended from 8 to 13 days.

2. Technical Specifications

Two of the options for the required electronic data transfer were removed (Quick Response (QR) codes and TransferJet). Electronic data transfer must be made by either:

- a. Wireless Web services and email; or
- b. Bluetooth and USB 2.0

To facilitate roadside inspections and ensure authorized safety officials are always able to access this data an ELD must have either display or printout capabilities.

3. Exemptions

Two optional exceptions were added from the required use of ELDs:

- a. Drivers who use paper RODs for not more than 8 days during any 30 day period.
- b. ELDs are not required on commercial motor vehicles (CMVs) older than model year 2000.

4. Prevention of Harassment

FMCSA prohibits a motor carrier from harassing a driver, and provides a means for a driver to file a written complaint under 49 CFR 386.12(b) if the driver has been subjected to harassment. Provisions to ensure a driver is not subject to harassment include:

- a. A mute function on the ELD to ensure the driver is not interrupted in the sleeper berth;
- b. The design of the ELD allows only limited edits of an ELD record by both the driver and the motor carrier; and
- c. The original record generated by the ELD cannot be changed.

Effective Date

This final rule will become effective on February 16, 2016 and the compliance date is December 18, 2017.

Petitions for reconsideration must be submitted to FMCSA by January 15, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-16/pdf/2015-31336.pdf>

E. DOT/FMCSA Annual Random Controlled Substances Testing Percentage Rate for Calendar Year 2016; Notice of Program Change

On December 24, 2015, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of program change (80 FR 80446-80447) announcing pursuant to 49 CFR 382.305) that it is reducing the minimum annual percentage rate for random controlled substances testing for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL).

Summary

FMCSA is reducing the rate from 50 percent to 25 percent of the average number of driver positions, effective on January 1, 2016.

The FMCSA Administrator has the discretion to decrease the minimum annual random testing percentage rate based on the reported positive random test rate for the entire motor carrier industry. Based on the controlled substances random test data in FMCSA's Management Information System (MIS) for calendar years 2011-2013, the positive rate for controlled substances testing fell below the 1.0 percent threshold for three consecutive calendar years. As a result, FMCSA will lower the controlled substances minimum annual percentage rate for random controlled substances testing to 25 percent of the average number of driver positions.

In accordance with 49 CFR 382.305(e)(2), if in the future, the reported positive rate for any calendar year is equal to or greater than 1.0 percent, the FMCSA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

Effective Date

The reduced rate of random controlled substances testing became effective on January 1, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-24/pdf/2015-32364.pdf>

F. DOT/FMCSA Guidance on Medical Examiner’s Certification Integration Final Rule Regarding Use of Driver Examination Forms; Guidance

On December 21, 2015, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published guidance (80 FR 79273) announcing a 120-day grace period during which Medical Examiners may use either the current or the newly revised versions of the Medical Examiners Report (MER) Form and Medical Examiner’s Certificate (MEC). This period is from December 22, 2015 through April 20, 2016. This action is being taken to ensure that Medical Examiners have sufficient time to become familiar with the new forms and to program electronic medical records systems.

120-Day Grace Period

The 120-day grace period is from December 22, 2015 through April 20, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-21/pdf/2015-32001.pdf>

G. DOT/PHMSA Hazardous Materials: Requirements for the Safe Transportation of Bulk Explosives (RRR); Final Rule

On December 21, 2015, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (80 FR 79424-79453) amending the Hazardous Materials Regulations by establishing standards for the safe transportation of explosives on cargo tank motor vehicles and multipurpose bulk trucks transporting materials for blasting operations.

Background

This rulemaking is in response to two petitions for rulemaking submitted by industry representatives: P-1557, concerning the continued use of renewal applications, and P-1583, regarding the incorporation of an industry standard publication (IME Standard 23). Developing these requirements provides wider access to the regulatory flexibility currently only offered by special permits and competent authorities.

Summary

The requirements of this final rule mirror the majority of provisions contained in nine widely-used longstanding special permits that have established safety records. These requirements eliminate the need for future renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining a commensurate level of safety.

This final rule authorizes the transportation of certain explosives, ammonium nitrates, ammonium nitrate emulsions, and other specific hazardous materials in both non-bulk and bulk packagings, which are not otherwise authorized under current regulations. These hazardous materials are used in blasting operations on cargo tank motor vehicles and specialized vehicles, known as multipurpose bulk trucks, which are used as mobile work platforms to create blends of explosives that are unique to each blast site. This final rule also addresses the construction of new multipurpose bulk trucks.

Effective Date

This final rule will become effective on January 20, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-21/pdf/2015-31880.pdf>

H. DOT/PHMSA Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids

On December 30, 2015, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a withdrawal of a notice of proposed rulemaking (80 FR 81501-81503) “Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids” (HM0213D) published on January 27, 2011 (76 FR 4847).

Summary

The notice of proposed rulemaking proposed to stop flammable liquids from being transported in unprotected product piping (generally referred to as the “wetlines”) on the cargo tank of existing and newly manufactured DOT specification cargo tank motor vehicles.

The MAP-21 Rule, enacted in July 2012, temporarily stopped PHMSA from issuing a final rule and required the Government Accountability Office (GAO) to examine the risks of, and alternatives to, transporting flammable liquids in wetlines. The GAO examined PHMSA’s process for identifying wetlines incidents among its reported hazardous materials incidents, analyzed how useful PHMSA’s incident data from January 1999 through March 2011 are for identifying such incidents, and examined whether the data accurately captured information about the incidents’ consequences. In its final report the GAO concluded that because PHMSA does not specifically provide an option to indicate a wetlines incident on its incident reporting form, it is difficult to identify the number of wetlines incidents from PHMSA’s incident data. Additionally, due to the inaccuracy of the damages associated with incidents, GAO believes the magnitude of the risks wetlines pose to safety is unclear. GAO also cited their concern regarding the usefulness of PHMSA’s data for evaluating wetlines incidents, the economic analysis used to support the notice of proposed rulemaking, and the analysis of market uncertainty regarding the technology selected.

Although a safety hazard exists, the regulatory assessment and further analysis indicate that prohibiting the transportation of flammable liquids in wetlines is unlikely to be cost beneficial. Additionally, the GAO report has pointed out a number of uncertainties with the data collection and analysis that would have a direct impact on PHMSA’s ability to fully characterize the degree of risk that wetlines containing flammable liquids pose to the safety of transportation.

PHMSA is therefore withdrawing this rulemaking in accordance with the FAST Act. PHMSA will continue to examine this issue, particularly by monitoring flammable liquid wetlines incidents, in consideration of any future actions. Likely future actions include non-regulatory initiatives to improve the safety of transporting flammable liquid in unprotected external product piping on CTMVs.

Effective Date

The notice of proposed rulemaking was withdrawn on December 30, 2015.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-30/pdf/2015-32681.pdf>

I. DOT/FMCSA Driving of Commercial Motor Vehicles: Use of Seat Belts; Notice of Proposed Rulemaking

On December 10, 2015, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (80 FR 76649-76653) that would require passengers in property-carrying commercial motor vehicles (CMVs) to use seat belts whenever the vehicles are operated on public roads.

Summary

FMCSA proposes to revise the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit the driving of a property-carrying CMV unless the driver and all other occupants have fastened their seat belts, if the vehicle is equipped with seat belts.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to FMCSA by January 25, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-10/pdf/2015-30864.pdf>

J. DOT/NHTSA Rear Impact Guards, Rear Impact Protection; Proposed Rule

On December 16, 2015, the Department of Transportation, National Highway Traffic Safety Administration (NHTSA) published a proposed rule (80 FR 78418-78460) that would upgrade the Federal Motor Vehicle Safety Standard (FMVSS) No. 223, "Rear Impact Guards," and No. 224, "Rear Impact Protection," which address rear underride protection for crashes into trailers and semi-trailers.

Summary

Rear underride crashes are those in which the front end of a vehicle impacts the rear of a generally larger vehicle, and slides under the rear-impacted vehicle. Underride may occur to some extent in collisions in which a small passenger vehicle crashes into the rear end of a large trailer or semi-trailer because the bed and chassis of the impacted vehicle is higher than the hood of the passenger vehicle.

NHTSA is proposing to adopt the requirements of the Canada Motor Vehicle Safety Standard (CMVSS) for underride guards (CMVSS No. 223, rear impact guards) that became effective in 2007. The CMVSS No. 223 requirements are intended to provide rear impact guards with sufficient strength and energy absorption capability to protect occupants of compact and subcompact passenger cars impacting the rear of trailers at 35 mph. The current requirements in FMVSS Nos. 223 and 224 were developed with the intent of providing underride crash protection to occupants of compact and subcompact cars in impacts up to 30 mph into the rear trailers.

This NPRM also proposes to adopt Transport Canada’s definition of “rear extremity” to define where on a trailer aerodynamic fairings are to be located to avoid posing a safety hazard in rear underride crashes.

If adopted, the improved rear impact provisions would apply to newly manufactured trailers (excluding: pole trailers, logging trailers, low chassis trailers, wheels back trailers and special purpose trailers). At this time, NHTSA has decided not to require used trailers to be retrofitted with CMVSS No. 223 compliant rear impact guards.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to NHTSA by February 16, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-16/pdf/2015-31228.pdf>

K. OSHA Injury Reporting Webpage Simplified and On-Line Filing Made Available

In December 2015, the Occupational Safety and Health Administration (OSHA) announced the availability of a streamlined on-line reporting webpage to report serious injuries or fatalities. This webpage can be utilized to report worker fatalities and severe injuries. Fatalities must be reported to OSHA within 8 hours and severe injuries (defined as amputations, hospitalization, or loss of an eye) must be reported within 24 hours.

Link

The link below will open OSHA’s webpage for reporting Serious Injuries and Fatalities.

<https://www.osha.gov/report.html>

L. DOL/DOJ Announce Expansion of Worker Endangerment Initiative to Address Environmental and Worker Safety Violations; Memorandum of Understanding

On December 17, 2015, the Departments of Justice and Labor signed a memorandum of understanding outlining cooperation between these departments in matters concerning worker safety that could lead to criminal prosecution by the Department of Justice. The cooperation will include: developing and carrying out training, data and information exchanges, technical and professional assistance, referrals of alleged violations, and related matters concerning compliance and law enforcement activity to ensure the health and well-being of the Nation’s workforce.

Under this plan, the Justice Department’s Environment and Natural Resources Division will examine cases brought to it by OSHA to determine whether other environmental charges could be brought.

Link

The link below will allow you to view/print the memorandum of understanding.

<http://www.justice.gov/enrd/file/800526/download>

M. DHS Enhancement of the National Terrorism Advisory System (NTAS); Release

On December 16, 2015, the Department of Homeland Security (DHS) released an enhancement to the National Terrorism Advisory System (NTAS) to better keep the public informed of terrorist threats.

Summary

DHS will now issue two types of advisories – Alerts and Bulletins – depending on the credibility and specificity of a threat.

1. **Bulletins** will provide general information, focusing on trends and issues that are important for the public to be aware of as well as recommendations on how they can contribute to the counterterrorism effort.
2. **Alerts** will be more specific in nature and focus on credible threats of a more immediate nature in the United States.

DHS will announce the release of Alerts and Bulletins publicly on their website (www.dhs.gov), social media channels and the media. This will not replace existing notifications or alerts from federal agencies but rather be in addition to existing reporting protocols and products.

Link

The following link will provide access to the most recent advisories and NTAS program specific information.

<http://www.dhs.gov/national-terrorism-advisory-system>

N. DHS Chemical Facility Anti-Terrorism Standards Personnel Surety Program; Implementation

On December 18, 2015, the Department of Homeland Security (DHS) announced the implementation of the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program (80 FR 79058-79066).

Summary

CFATS requires regulated chemical facilities to implement security measures designed to ensure that certain individuals with or seeking access to the restricted areas or critical assets are screened for terrorist ties. The CFATS Personnel Surety Program enables regulated chemical facilities to meet this requirement using one or more of the four options described below.

1. Option 1

High-risk chemical facilities may submit certain information about affected individuals that the Department will use to vet those individuals for terrorist ties. The identifying information about affected individuals will be compared against identifying information of known or suspected terrorists contained in the federal government's consolidated and integrated terrorist watchlist (the Terrorist Screening Database) which is maintained by the Federal Bureau of Investigation (FBI) in the Terrorist Screening Center.

2. Option 2

High-risk chemical facilities may submit information about individuals who already possess certain credentials that rely on security threat assessments conducted by DHS. This will enable DHS to verify the continuing validity of these credentials.

3. Option 3

High-risk chemical facilities may comply with RBPS 12(iv) without submitting to the DHS information about affected individuals who possess Transportation Worker Identification Credentials (TWICs), if the facility electronically verifies and validates the affected individuals TWICs through the use of TWIC readers (or other technology that is periodically updated using the Canceled Card List).

4. Option 4

High-risk chemical facilities may visually verify certain credentials or documents that are issued by a Federal screening program that periodically vets enrolled individuals against the Terrorist Screening Database. DHS continues to believe that visual verification has significant security limitations and, accordingly, encourages facilities choosing this option to identify in their Site Security Plans the means by which they plan to address these limitations.

DHS will be implementing this initially at Tier 1 and Tier 2 facilities and will be contacting the facilities individually to coordinate this program.

Effective Date

This program became effective on the date of publication, December 18, 2015.

Link

The link below will allow you to view/print the notification of the implementation of the CFATS Personnel Surety Program.

<https://www.gpo.gov/fdsys/pkg/FR-2015-12-18/pdf/2015-31625.pdf>