



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - January 2016

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A. EPA 2015 Revisions and Confidentiality Determinations for Data Elements under the Greenhouse Gas Reporting Rule; Proposed Rule

On January 15, 2016, the Environmental Protection Agency (EPA) published a proposed rule (81 FR 2535-2625) that would amend specific provisions of the Greenhouse Gas Reporting Rule to streamline and improve implementation of the rule, improve the quality and consistency of the data collected, and to clarify or provide minor updates to certain provisions that have been the subject of questions from reporting entities. One proposed revision would require facilities that destroy more than 25,000 metric tons of carbon dioxide equivalents (mtCO_{2e}) or more of industrial greenhouse gases and/or heat transfer fluids to submit annual destruction reports.

Background

In an effort to develop an accurate estimate of the U.S. supply of greenhouse gases (GHGs), EPA believes it is necessary to track all significant additions to and subtractions from that supply. Currently 40 CFR 98, Subpart OO requires producers and importers to report the quantities of fluorinated GHGs that they produce, import, transform, destroy, or send to another facility for destruction. EPA believes that there may be significant underestimation of the quantities destroyed due to the destruction of fluorinated GHGs by reclaimers and hazardous waste treatment facilities.

By requiring facilities that destroy fluorinated GHGs to report such destruction, EPA could eliminate a potential overestimation of the U.S. supply of fluorinated GHGs.

Summary

EPA is proposing to require facilities that destroy a total of 25,000 mtCO_{2e} or more of previously produced fluorinated GHGs that are not already required to report any residuals emissions to submit annual destruction reports. EPA estimates that five to ten destruction facilities would be covered by this proposed requirement some of which are hazardous waste treatment facilities.

Comments Due

Comments on this proposed rule must be received by EPA on or before February 29, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-01-15/pdf/2015-32753.pdf>

B. DOT/PHMSA Hazardous Materials: Adoption of Special Permits (MAP-21) (RRR); Final Rule

On January 21, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (81 FR 3636-3686) amending the Hazardous Materials Regulations to adopt provisions contained in certain widely-used or long-standing special permits that have an established safety record.

Summary

These revisions are intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. PHMSA conducted an extensive analysis of all active special permits and, in this rulemaking, those special permits deemed suitable are being adopted into the regulations.

PHMSA is adopting requirements into the HMR that are contained in 96 existing special permits (SP). Other SPs are not being adopted into the HMR because PHMSA concluded that they contain requirements where (1) would not have, or are being applied in a manner which would not have, broad applicability; or (2) have already been adopted into the HMR, are covered by authorizations in the HMR, or are being addressed in other rulemakings.

Special Permits Adopted into the HMR that are Currently Used by Veolia

Following is a list of the Special Permits that this final rule adopts into the HMR that Veolia currently holds party status to:

1. **DOT-SP 11043** – Authorizes the transportation of Division 2.3 materials on the same transport vehicle with materials classed as Division 2.1, Class 3, Class 4, Class 5, and Class 8. The provisions of this SP are adopted into 49 CFR 177.840(a)(3).
2. **DOT-SP 11055** – Authorizes the transportation of certain Division 6.1, PG I, Hazard Zone A materials in combination packages and provides relief from segregation requirements. The provisions of this SP have been adopted into the regulations under new paragraph 49 CFR 173.226(f).
3. **DOT-SP 11296** – Authorizes the transportation of certain leaking or improperly filled waste aerosol cans containing flammable gas propellants, including isobutane and propane, overpacked in a UN1A2 steel drum or a UN1H2 plastic drum for disposal. PHMSA adopted the provisions of the special permit into 49 CFR 173.306(k)(2) but with some differences.
4. **DOT-SP 11470** – Authorizes the transportation of shrink wrapped pallets containing boxes of waste ORM-D materials with the word “WASTE” marked on the outside of the pallet instead of on each individual box. The provisions of the SP have been adopted into the HMR under 49 CFR 173.12(h) with one difference, the waste consumer commodities are no longer limited to “expired” products only.
5. **DOT-SP 11624** - Authorizes the transportation of certain waste paints and paint related materials, Class 3, in metal or plastic pails, packed in cubic yard boxes, dump trailers and roll-off containers. The provisions of this SP have been adopted into the regulations under 49 CFR 172.102(c)(3) as new Special Provision B131.
6. **DOT-SP 11984** – Authorizes the transportation of certain unapproved chemical oxygen generators with only one positive means of preventing unintentional actuation of the generator and without the required approval number marked on the outside of the package. Although PHMSA is adopting the provisions of the SP into new paragraph 49 CFR 173.168(g), it will continue to be Veolia’s policy that shipments of unapproved OCG’s shipped in this manner are not authorized without evaluation by a Veolia Reactives Specialist.

Additional Special Permits Adopted into the HMR which could Impact Veolia

Veolia does not currently hold party status to the following Special Permits that have been adopted into the HMR in this final rule.

1. **DOT-11151** – Provides segregation relief and authorizes highway transportation by private or contract motor carrier of WASTE Division 6.1, PG I, Hazard Zone A materials on the same transport vehicle with materials classed as Class 3, Class 4, Class 5, and Class 8. The provisions of this SP are adopted into the regulations under new paragraph 49 CFR 177.841(f).
2. **DOT- SP 11197** – For highway transportation by private carrier this SP provides relief from the requirement to display the limited quantity marking on packages containing materials assigned to Packing Group II or III prepared in accordance with the limited quantity requirements in 49 CFR 173. The relief offered by SP-11197 does not include materials assigned to Classes 1 and 7 and Division 6.1 and 6.2 materials. PHMSA adopted the provisions of this SP into new paragraph 49 CFR 172.315(a)(3).
3. **DOTSP 11373** – Authorizes the transportation of Division 4.2 (self-heating) materials in Packing Group II or III on the same transport vehicle with Class 8 liquids when the materials are appropriately separated. The provisions of this SP are adopted into 49 CFR 173.838(i).

4. **Revisions to Nitric Acid Packaging** – PHMSA also adopted provisions of certain SPs that currently authorize alternative packaging methods for nitric acid into new paragraphs 49 CFR 173.158(i) and (j). The changes now authorize the use of a plastic packaging not over 2.5L capacity as an inner packaging.

Effective Date

This final rule will become effective on February 22, 2016.

Voluntary Compliance Date

Voluntary compliance is authorized beginning on February 22, 2016.

Delayed Compliance Date

Unless otherwise specified, compliance is required beginning on January 23, 2017.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-01-21/pdf/2016-00780.pdf>

C. DOT/FMCSA Carrier Safety Fitness Determination; Proposed Rule

On January 21, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a proposed rule (81 FR 3561-3634) that would revise the current methodology used for the issuance of a safety fitness determination (SFD) for motor carriers.

Background

As the Federal Agency responsible for commercial motor vehicle (CMV) safety, FMCSA is required to identify unfit motor carriers. Under the existing regulations, a compliance review must be conducted to issue a Safety Fitness Determination SFD and, if a motor carrier receives a final unsatisfactory safety rating, FMCSA declares the motor carrier to be unfit to operate on U.S. highways.

The current SFD process does not permit FMCSA to use all of the on-road safety data in the Motor Carrier Management Information System (MCMIS) in making a SFD. FMCSA and the National Transportation Safety Board (NTSB) believe that the integration of on-road safety data into the SFD process would improve the assessment of motor carriers and the identification of unfit motor carriers.

Summary

In this proposed rule FMCSA is proposing to eliminate the current three-tier rating system (satisfactory, conditional, and unsatisfactory) for determining safety fitness and to allow an unfit determination to be based on a carrier's on-road safety data alone. A single determination of unfit would be instituted.

FMCSA proposes to evaluate carriers monthly to determine if they failed two or more Behavior Analysis and Safety Improvement Categories (BASICs) using data from inspections or investigations or both. A motor carrier would be determined to be unfit if:

1. The motor carrier failed two or more BASICs based exclusively from on-road safety data from 11 or more inspections with 1 or more violations in each in a single BASIC;
2. The motor carrier had violations on a proposed set of critical and acute regulations, identified through an investigation, that cause the motor carrier to fail two or more BASICs; or

3. The motor carrier failed two or more BASICs based on a combination of data from inspections and investigation results.

Comments Due

Comments on this proposed rule must be received by FMCSA on or before March 21, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-01-21/pdf/2015-33153.pdf>

D. **DHHS Possession, Use, and Transfer of Select Agents and Toxins; Biennial Review of the List of Select Agents and Toxins and Enhanced Biosafety Requirements; Notice of Proposed Rulemaking**

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; Proposed Rule

On January 19, 2016, the Department of Health and Human Services (DHHS) and Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) published proposed rules (81 FR 2805-2818 and 81 FR 2762-2774 respectively) that would amend and republish the list of select agents and toxins that have the potential to pose a severe threat to public health and safety, animal or plant health, or animal or plant products. In addition, this proposed rule would amend provisions for the inactivation of select agents, biocontainment and biosafety, and clarify regulatory language regarding security, training, incident response, and records.

Background

The Federal Select Agent Program (FSAP) is the collaboration of the Centers for Disease Control (CDC), Division of Select Agents and Toxins (DSAT) and APHIS Agriculture Select Agent Services to administer the select agent regulations. The Bioterrorism Response Act requires the list of select agents and toxins to be reviewed and republished on at least a biennial basis. On February 27, 2015, HHS and APHIS published advanced notices of proposed rulemaking (80 FR 10656 and 80 FR 10627) seeking comment on whether any biological agents or toxins should be added or removed from the list of select agents and toxins including eight select agents and toxins that were proposed for removal from the list.

Summary

HHS and APHIS are proposing the following amendments:

DEFINITIONS

HHS/APHIS are proposing to add two new definitions:

1. *Inactivation* – A method to render a select agent non-viable but retain characteristic of interest for future use, or to render any nucleic acids that can produce infectious forms of any select agent virus non-infectious for future use.
2. *Kill Curve* – The results of a dose-response experiment where a select agent is subjected to increasing amounts of the inactivating treatment to determine the minimum conditions required to render it non-viable or to render any nucleic acids that can produce infectious forms of any select agent virus as non-infectious.

SELECT AGENTS AND TOXINS TO BE REMOVED FROM THE LIST OF SELECT AGENTS AND TOXINS

1. Coxiella Burnetii
2. Rickettsia Prowazekii
3. Bacillus Anthracis - Pasteur Strain
4. Brucella Abortus
5. Brucella Melitensis
6. Brucella Suis
7. Peronosclerospora Philippinensis (Peronosclerospora Sacchari)
8. Sclerophthora Rayssiae
9. Phoma Glycinicola (formerly (Pyrenochaeta Glycines)

INACTIVATION OF A SELECT AGENT

This proposed rule would add specific requirements to address the requirements for rendering a select agent or toxin “non-viable.” Inactivation would be required to use one of the following:

1. The exact conditions of a commonly accepted method that has been validated as applied (e.g., autoclaving);
2. A published method with adherence to the exact published conditions (i.e., extrapolations or deductions are to be avoided); or
3. In-house methods, only if the validation testing includes the specific conditions used and appropriate controls.

OTHER

Other proposed revisions include amendments to:

1. Security Risk Assessments
2. Security, Biocontainment/Biosafety , and Incident Response Plans
3. Security Plan
4. Biocontainment/Biosafety Plan
5. Training
6. Records including Records for Select Agents in Long-Term Storage

Comments Due

Comments on these proposed rules must be submitted to HHS and/or APHIS by March 21, 2016.

Links

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-01-19/pdf/2016-00758.pdf>

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-01-19/pdf/2016-00681.pdf>