



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - July 2016

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A. EPA Hazardous Waste Management System; User Fees for the Electronic Hazardous Waste Manifest System and Amendments to Manifest Regulations; Proposed Rule

On July 26, 2016, the Environmental Protection Agency (EPA) published a proposed rule (81 FR 49071-49110) that would establish the user fee methodology applicable to electronic and paper manifests submitted to the national electronic manifest system (e-Manifest System) that is being established by EPA under the Hazardous Waste Electronic Manifest Establishment Act.

Background

The Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act) authorizes EPA to impose reasonable service fees on manifest users as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system is in operation. The e-Manifest Act does not set e-Manifest user fees, but instead allows EPA to establish user fees through regulations. This proposed rule is the first step in the regulatory development process to establish the user fees and other actions necessary to establish the e-Manifest system.

Summary

This proposed rule does not set the user fees for the e-Manifest. Instead, it proposes a “User Fee Methodology” that would be used to establish the user fees and which entities will be required to pay the fees.

The hazardous waste receiving facilities designated on the manifests to receive shipments for off-site management are the only facilities that would be required to pay the e-Manifest user fees under these proposed rules.

The proposed rule also includes several revisions to the hazardous waste manifest system regulations that are not fee related. The proposed non-fee revisions include:

1. A proposal to allow certain changes to the routing of manifested waste shipments to be made while the shipment is in transportation,
2. A process to allow hazardous waste receiving facilities to electronically make corrections to previously submitted manifest data, and
3. A proposal that would allow a manifest user, in certain instances to execute and use a hazardous waste manifest that combines the use of a paper manifest with the use of an electronic manifest.

Comments

EPA is requesting comment on the following topics:

1. Which users of manifests or manifest data should be charged user fees?
2. What transactions or services should give rise to fee obligations?
3. How should users be billed for e-Manifest services and how should fee payments be made?
4. What model or formula should EPA rely upon for the determination of users’ fees?
5. How should the rule address fee schedule revisions?
6. What sanctions should be implemented to promote the prompt payment of fees?

Comments Due

Comments must be submitted to EPA on or before September 26, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-15845.pdf>

B. DOT/FMCSA Amendments to Regulatory Guidance Concerning Periodic Inspection of Commercial Motor Vehicles

On July 22, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published an amendment (81 FR 47732-47733) to previously published guidance regarding the periodic inspection of commercial motor vehicles (CMVs).

Summary

In FMCSA's final rule entitled, Parts and Accessories Necessary for Safe Operation: Inspection, Repair, and Maintenance; General Amendments, also published on July 22, 2016, FMCSA amended the FMCSRs to, among other things, eliminate the option for a motor carrier to satisfy the periodic (annual) inspection requirements through a violation-free roadside inspection. As a result of this amendment to the FMCSRs, certain regulatory guidance is amended to ensure consistency between the FMCSRs and the published guidance.

FMCSA's, Parts and Accessories Necessary for Safe Operation: Inspection, Repair, and Maintenance; General Amendments final rule amended 49 CFR 396.17(f) and removed 49 CFR 396.23(a) to eliminate the option for a motor carrier to meet the periodic inspection requirements through roadside inspections.

Because not every element of Appendix G is reviewed/inspected during a roadside inspection conducted under the North American Standard Inspection, most roadside inspections do not meet the periodic (annual) inspection requirements in 49 CFR 396.17. For this reason, FMCSA does not believe it is appropriate to continue to allow motor carriers to use roadside inspections conducted by enforcement officials to satisfy the annual inspection requirements in 49 CFR 396.17(f). Motor carriers or their agents will now be required to complete a periodic inspection of every CMV under their control in accordance with Appendix G at least once every 12 months, irrespective of whether a roadside inspection is performed, unless the vehicle is subject to a mandatory State inspection program in accordance with 49 CFR 396.23 which has been determined to be as effective as the requirements of 49 CFR 396.17.

The final rule also removes 49 CFR 396.23(a), which currently permits a roadside inspection program of a State or other jurisdiction to be considered as meeting the periodic inspection requirements of 49 CFR 396.17.

As a result of the final rule and to maintain consistency between the amended FMCSRs and the published regulatory guidance, two regulatory guidance questions/answers are amended as follows:

49 CFR 396.17, Question 1

Question 1: Some of a motor carrier's vehicles are registered in a State with a mandated inspection program which has been determined to be as effective as the Federal periodic inspection program, but these vehicles are not used in that State. Is the motor carrier required to make sure the vehicles are inspected under that State's program in order to meet the Federal periodic inspection requirements?

Guidance: If the State requires all vehicles registered in the State to be inspected through its mandatory program, then the motor carrier must use the State program to satisfy the Federal requirements. If, however, the State inspection program includes an exception or exemption for vehicles which are

registered in the State but domiciled outside of the State, then the motor carrier may meet the Federal requirements through a self-inspection, a third party inspection, or a periodic inspection performed in any State with a program that the FMCSA determines is comparable to, or as effective as, the part 396 requirements.

49 CFR 396.23, Question 1

Question 1: Can a violation-free Commercial Vehicle Safety Alliance (CVSA) Level I or Level V inspection be used to satisfy the periodic inspection requirements of 49 CFR 396.17?

Guidance: No, a CVSA Level I or Level V inspection is not equivalent to the Federal periodic inspection requirements.

Effective Date

This guidance became effective on the date of publication, July 22, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-22/pdf/2016-17362.pdf>

C. DOT/FMCSA Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments; Final Rule

On July 22, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (81 FR 47722-47732) revising several requirements in the Federal Motor Carrier Safety Regulations (FMCSRs).

Summary

In response to several petitions for rulemaking from the Commercial Vehicle Safety Alliance (CVSA) and the American Trucking Associations (ATA), and two safety recommendations from the National Transportation Safety Board (NTSB), FMCSA is making several amendments to the FMCSRs. The revisions that impact Veolia operations are included below.

1. Major Tread Groove – New Definition

FMCSA is amending 49 CFR 393.5 to define major tread groove as: “The space between two adjacent tread ribs or lugs on a tire that contains a tread wear indicator or wear bar. In most cases, the locations of tread wear indicators are designated on the upper sidewall/shoulder of the tire on original tread tires.”

2. License Plate Lights

Since not all States issue two license plates for commercial motor vehicles, but only require a plate to be affixed to the front of the commercial motor vehicle (CMV), FMCSA is clarifying the regulations to require that an operable rear license plate lamp is required only when there is a license plate present at the time of the inspection. FMCSA is amending Footnote 11 on Table 1 of 49 CFR 393.11 – Required Lamps and Reflectors on Commercial Motor Vehicles to indicate that “no rear license plate lamp is required on vehicles that do not display a rear license plate.”

3. Anti-Lock Brake System – Added to Periodic Inspection

FMCSA is amending Appendix G to Subchapter B of Chapter III – Minimum Periodic Inspection Standards to include a review of Anti-Lock Brake Systems, automatic brake adjusters, and brake adjustment indicators as part of the periodic inspection requirements.

4. 49 CFR 369.9 – Inspection of Motor Vehicles and Intermodal Equipment in Operation

FMCSA is adding a new paragraph (d)(2) to clarify that motor carriers and intermodal equipment providers shall examine the roadside inspection report. Violations or defects noted in the roadside inspection report shall be corrected in accordance with 49 CFR 396.11(a)(3). This amendment clarifies that any defects or deficiencies identified during a roadside inspection must be noted on the driver's daily vehicle inspection report (DVIR) and will ensure that the vehicle is not operated again until the defect or deficiency is corrected and signed off by the motor carrier.

5. Periodic Inspection – 49 CFR 396.17

In this final rule, FMCSA is removing 49 CFR 396.23(a) to ensure that the FMCSRs are consistent regarding the determination that a roadside inspection will no longer be considered as meeting the periodic inspection requirements of 49 CFR 396.17. Most roadside inspections do not include every element of Appendix G, therefore, they do not meet the periodic (annual) inspection requirements under 49 CFR 396.17. Motor carriers or their agents will now be required to complete a periodic inspection of every CMV under its control in accordance with Appendix G at least once every 12 months, irrespective of whether a roadside inspection is performed.

6. Inspector Qualifications

FMCSA is amending 49 CFR 396.19(b) to remove the exception to the requirement that motor carriers must retain evidence of an inspector's qualifications who performed a random roadside inspection since these inspections may no longer be used to satisfy the periodic (annual) inspection requirement.

7. Speed Restricted Tires

49 CFR 393.75 is being amended to prohibit the use of speed-restricted tires labeled for 55 mph or less in accordance with S6.5(e) of FMVSS No. 199 on vehicles that operate at speeds that exceed the rated speed limit of the tire. Additionally, FMCSA is amending Appendix G – Minimum Periodic Inspection Standards to prohibit the use of speed-restricted tires unless specifically designated by the motor carrier. This will require every CMV to be examined for possible improper use of speed-restricted tires at least once per year.

Effective Date

This final rule became effective on the date of publication, July 22, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-22/pdf/2016-17364.pdf>

D. DOT/FMCSA Unified Registration System; Final Rule; Correction

On July 28, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (81 FR 49553-49555) correcting the effective and compliance dates for the August 23, 2013, Unified Registration System (URS) Final Rule.

Summary

The 2013 URS final rule was issued to improve the registration process for motor carriers, property brokers, freight forwarders, Intermodal Equipment Providers (IEPs), hazardous materials safety permit (HMSP) applicants, and cargo tank facilities required to register with FMCSA, and streamline the existing Federal registration processes to ensure the Agency can more efficiently track these entities. In an October 2015 final rule, FMCSA made slight revisions to the 2013 rule and deleted the effective dates of that rule. This final rule corrects the effective and compliance dates revised in 2015 and corrects regulatory provisions that have not yet gone into effect, as well as several temporary sections that are in effect already, to allow FMCSA additional time to complete the information technology (IT) systems work.

Effective Dates

The effective date of this rule is July 28, 2016.

The effective date of the rule published on October 21, 2015 (80 FR 63695) is delayed until January 14, 2017, and 49 CFR 365.T106, 368.T3, and 390.T200 are effective until January 13, 2017.

The corrections to the rule published on October 21, 2015, are effective on January 14, 2017.

The effective date of the rule published on August 23, 2013 (78 FR 52608) is further delayed until January 14, 2017.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-28/pdf/2016-17461.pdf>

E. DOT/PHMSA Hazardous Materials: Pittsburgh, Pennsylvania Permit Requirements for Transportation of Hazardous Material; Notice Dismissing Application and Closing the Docket

On July 12, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice (81 FR 45219) dismissing an application for a preemption determination because the City of Pittsburgh, Pennsylvania is not enforcing permit and permit fee requirements for the transportation of hazardous materials.

Summary

The American Trucking Associations, Inc. (ATA) applied for an administrative determination concerning whether Federal hazardous transportation law preempted requirements of the City of Pittsburgh, PA for a permit to transport hazardous materials by motor vehicle and a fee to obtain the permit. On July 20, 2015, the City of Pittsburgh responded to a PHMSA letter informing PHMSA that the “City of Pittsburgh at this time is not accepting applications for the ‘Transportation of Hazardous Materials’ permit and has not done so since 2013.” The City of Pittsburgh’s Solicitor sent a second letter to PHMSA on March 11, 2016, confirming that the City of Pittsburgh had stopped enforcing its permit and fee requirements to transport hazardous materials in 2013, and further stated that it had no intention of reinstating the program in the future.

Effective Date

ATA's application for a preemption determination and the docket for the determination were closed on July 12, 2016.

Link

The link below will allow you to view/print the notice dismissing the application and closing the docket.

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-12/pdf/2016-16386.pdf>

F. DOT/FMCSA Crash Weighting Analysis; Notice; Response to Public Comments

On July 12, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (81 FR 45206-45210) responding to public comments from crash weighting analysis questions posed by FMCSA.

Background

FMCSA is dedicated to reducing crashes, injuries, and fatalities involving large trucks and buses. The Compliance, Safety, Accountability (CSA) program is FMCSA's enforcement model that allows the Agency and State Partners to address motor carrier safety problems before crashes occur. The foundation of the CSA is the Safety Measurement System (SMS), which quantifies the on-road safety performance of motor carriers in an effort to prioritize enforcement resources. The SMS uses recordable crash records involving commercial motor vehicles (CMVs) that are submitted by the States through the Motor Carrier Management Information System (MCMIS) to assess motor carriers' crash risk and prioritize the motor carriers for safety interventions using the SMS Crash Indicator. The crash data reported to FMCSA does not specify a motor carrier's role in the crash.

Since FMCSA's implementation of the SMS some stakeholders have expressed concern that the Crash Indicator may not identify the highest risk motor carriers because it looks at all crashes without regard to the role of the carrier in the crash. On January 23, 2015, FMCSA announced the results of a study on the feasibility of using a motor carrier's role in crashes in the assessment of the company's safety and requested comment on the study.

Summary

FMCSA received 54 docket submissions from motor carriers, drivers, industry associations, safety advocates, and State enforcement partners in response to the January 23, 2015 request for comments. The comments focused on: (1) the impacts of the SMS information, (2) methodology changes need in SMS, and (3) the preventability determination process.

1. Impacts of SMS Information

There was a majority opinion from the commenters that the establishment and use of a Crash Indicator BASIC percentile without consideration of crash preventability has been detrimental to motor carriers. Even though this percentile is not publicly available (it is only available to FMCSA, law enforcement, and motor carriers who log into FMCSA's Portal to view their own data) commenters expressed concern that the percentile is inaccurate, unfair, and negatively impacts their businesses. Some shippers are requiring motor carriers to show their percentiles before they will sign contracts and motor carriers believe the percentiles are inaccurate because non-preventable crashes are included which portray motor carriers as unsafe even when their drivers or vehicles did not cause the crash.

FMCSA Response: FMCSA is proposing a demonstration program (via DataQs) in which certain types of non-preventable crashes would be removed from the SMS. FMCSA will continue the use of the Crash Indicator BASIC for its own resource prioritization during the analysis period. FMCSA has noted that crashes will not affect a motor carrier's safety rating unless the carrier's role in the crashes is considered first.

2. Methodology Changes

a. Separate Safety Event Groups for Passenger and Property Carriers

The passenger carrier industry suggested that FMCSA establish separate safety event groups for passenger and property carriers because this change would result in a more balanced comparison of crashes.

FMCSA Response: As part of a correlation study required by Section 5221 of the FAST Act, this issue will be studied by the National Academy of Sciences and any recommendations will be addressed upon completion of that study.

b. Normalize Based on Vehicle Miles Traveled (VMT)

The American Bus Association (ABA) and the National School Transportation Association (NSTA) recommended that FMCSA normalize the number of crashes using VMT to adjust the percentiles for the exposure of large carriers.

FMCSA Response: FMCSA aligned its VMT data requirements with the Unified Registration System (URS). Previously, the SMS only used VMT data from a carrier's registration form when the VMT-associated calendar year was within 24 months of the current year. This improvement enables the SMS to use a carrier's VMT data regardless of VMT-associated calendar year.

3. Minimum Number of Crashes

FMCSA is proposing to change the minimum number of crashes from two to three before a percentile is calculated in the Crash Indicator BASIC. This change is being added to the list of proposed enhancements announced in the "Future Enhancements to the Safety Measurement System (SMS)" published on June 29, 2015.

4. Preventability Determination Process

The American Trucking Associations (ATA) provided a list of certain types of non-preventable crashes and suggested that FMCSA establish a process by which documents could be submitted on these crashes and they could be removed from the motor carrier's record. These crashes included when the CMV is struck by a motorist who:

- a. Was found responsible by law enforcement for the crash;
- b. Was the sole party cited;
- c. Was driving under the influence;
- d. Crossed the centerline or median;
- e. Was driving the wrong way;
- f. Struck the truck in the rear; or
- g. Struck the truck while legally stopped.

ATA also recommended that FMCSA consider a crash non-preventable when an individual commits suicide or vehicles are incapacitated by animals.

FMCSA Response: FMCSA has agreed to consider whether certain of these scenarios are most often non-preventable. As a result, FMCSA is developing a demonstration program and a process

for submitting documentation about these crashes through the DataQs program, similar to the process by which individuals may submit documentation of adjudicated citations. It will then evaluate the data to determine if the hypothesis offered by ATA (that certain types of crashes are non-preventable) is proven correct, and if so, whether changes should be made to FMCSA's programs.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-12/pdf/2016-16427.pdf>

G. DOT/FMCSA Crash Preventability Program; Notice; Request for Public Comment

On July 12, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (81 FR 45210-45213) proposing to develop and implement a demonstration program to determine the efficacy of a program to conduct preventability determinations on certain types of crashes that generally are less complex.

Background

The Compliance, Safety, Accountability (CSA) program is FMCSA's enforcement model that allows FMCSA and its State partners to identify and address motor carrier safety problems before crashes occur. FMCSA uses the Safety Measurement System (SMS) to quantify the on-road safety performance of motor carriers to prioritize enforcement resources. Violations are sorted into Behavior Analysis and Safety Improvement Categories (BASICs), which include a Crash Indicator BASIC.

The crash data reported to FMCSA by the States does not specify a motor carrier's role in the crash or whether the crash was preventable. The Crash Indicator BASIC weights crashes based on crash severity, with more weight given to fatality and injury crashes than those that resulted in a vehicle towed from the scene with no injuries or fatalities. Because the Crash Indicator BASIC includes all crashes (without regard to the preventability of the crash) stakeholders have expressed concern that it may not identify the highest-risk motor carriers for interventions.

To identify a methodology and process for conducting preventability reviews, FMCSA completed a study on the feasibility of using a motor carrier's role in crashes as an indicator of future crash risk. The analysis focused on three broad questions addressing the procedural issues surrounding a crash-weighting program and the feasibility of implementing such a program. The questions used for the study were:

1. Do Police Accident Reports (PARs) provide sufficient, consistent, and reliable information to support crash-weighting determinations?
2. Would a crash-weighting determination process offer an even stronger predictor of crash risk than overall crash involvement, and how would crash weighting be implemented in the SMS?
3. Depending upon the analysis results for the questions above, how might FMCSA manage the process for making crash-weighting determinations, including public input in the process?

On January 23, 2015, FMCSA announced the results of this study and requested comments on the results.

Proposal for Demonstration Program

1. Types of Crashes

The American Trucking Associations (ATA) has provided FMCSA with a list of what ATA believes are non-preventable crashes and has suggested that FMCSA establish a process by which documents could be submitted on these crashes and they could be removed from the motor carriers' records. ATA has also suggested that FMCSA consider a crash non-preventable when an individual commits suicide or vehicles are incapacitated by animals. FMCSA is proposing a demonstration program which would accept requests for data reviews (RDRs) that would establish the non-preventability of certain crashes through the national data correction system known as DataQs. FMCSA would accept an RDR as part of this program when documentation establishes that the crash was not preventable by the motor carrier or commercial driver.

A crash would be considered not preventable if the CMV was struck by a motorist who was convicted of one or more of the following offenses or a related offense:

- a. Driving under the influence;
- b. Driving in the wrong direction;
- c. Striking the CMV in the rear; or
- d. Striking the CMV while it was legally stopped.

FMCSA is interested in information related specifically to these four crash scenarios that would be useful for this demonstration program.

FMCSA proposes that evidence of a conviction, as defined in 49 CFR 383.5 and 390.5, for one of the above offenses must be submitted with the RDR to document that the crash was not preventable by the motor carrier or driver. In addition to the documentation of the conviction, these RDRs should include all available law enforcement reports, insurance reports from all parties involved in the crash, and any other relevant information.

RDRs could also be submitted through DataQs when the crash did not involve other vehicles, such as crashes in which an individual committed suicide by stepping or driving in front of the vehicle or the vehicle was incapacitated by an animal in the roadway or the crash was the result of an infrastructure failure. The RDR must present sufficient evidence that the driver of the CMV took reasonable action to avoid the crash and did not contribute to the crash.

Crashes determined to be not preventable will NOT be listed on the carrier's list of crashes on the public SMS Website.

2. Reviewers

For this demonstration program, FMCSA is proposing to use DataQs to direct these types of requests to a group of reviewers under FMCSA's direct supervision. The RDRs would not be directed to the States.

3. Preventability Decisions

Upon receipt of a complete RDR, FMCSA staff or a contractor would review the submission using the preventability definition in 49 CFR 385. FMCSA proposes that the RDR would result in one of the following three decisions and actions:

- a. Not Preventable – The crash is removed from SMS.
- b. Preventable – The crash is not removed from SMS for purposes of calculating the Crash Indicator BASIC percentile. FMCSA is considering options for weighting these crashes and is looking at the impacts if the current severity weighting is used (based on crash severity) or if a

higher weighting is used since a preventability decision has been made. When crashes are determined to be preventable, the crash is still listed on the web sites with a note that reads, “FMCSA reviewed this crash and determined that it was preventable.”

- c. Undecided – The documentation submitted did not allow for a conclusive decision by reviewers. When crash reviews are undecided, the crash is not removed from the SMS and the severity weighting is unchanged. The crash will still be listed on the web sites with a note that reads, “FMCSA reviewed this crash and could not make a preventability determination based on the evidence provided.”

If a post-crash inspection determines that the motor carrier, vehicle, or driver was in violation of an out-of-service regulation at the time of the crash, the crash will be determined to have been “Preventable.”

4. Review

The public, including motor carriers and drivers, would be allowed to seek review of the RDR decision using the DataQs system and processes currently in place.

5. Quality Controls

In order to ensure the quality and consistency of reviews, FMCSA will build a quality control standard into either its contract or its internal procedures. For example, it is anticipated that a process will be established to require a certain percent of reviews to be checked by a different reviewer to confirm consistent decisions are made. When a different conclusion is reached by the second reviewer, a supervisor will be responsible for reviewing the case and rendering a decision.

6. Fraudulent Requests

In accordance with FMCSA’s existing DataQs program, any intentionally false or misleading statement, representation, or document that is provided in support of an RDR may result in prosecution for a violation of Federal law punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 5 years, or both.

7. Agency Analysis

Throughout this test period, FMCSA will maintain data so that at the conclusion of the test, FMCSA can conduct an analysis. It is expected that the Agency’s analysis would include, but not be limited to, cost of operating the test, future crashes of carriers that submitted RDRs, future crash rates of motor carriers with preventable crashes, and impacts to SMS crash rates. The analysis will be used to examine ATA’s assertion that crashes of these types are not the responsibility of the motor carrier, and inform future policy decisions on this issue.

8. Testing Period

FMCSA proposes that the minimum time period for this crash preventability test would be 24 months.

Comments Due

Comments on the proposed preventability test must be submitted to FMCSA by September 12, 2016.

Link

The link below will allow you to view/print the notice and request for comments.

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-12/pdf/2016-16426.pdf>

H. DOT/PHMSA Hazardous Materials: Miscellaneous Amendments Pertaining to DOT-Specification Cylinders (RRR); Notice of Proposed Rulemaking

On July 26, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (81 FR 48978-49022) that would incorporate by reference or update references to several Compressed Gas Association (GSA) publications; amend filling requirements for compressed and liquefied gases; expand the use of salvage cylinders, revise and clarify the manufacture and requalification requirements for cylinders; and adopt a special permit (DOT-SP 14237).

Summary

Except for the following proposed revisions, the proposed changes would have limited to no impact to Veolia operations:

1. Overpack Marking Requirements

The 3M Corporation submitted P-1563 requesting that PHMSA address the regulatory confusion between marking requirements for overpacks in 49 CFR 173.25 and outside packages for certain thin-walled cylinders specified in 49 CFR 173.301(a)(9). 3M noted that the differing marking requirements create confusion and makes training difficult and requests that PHMSA modify the HMR to permit materials packaged in conformance with 49 CFR 173.301(a)(9) except aerosols “2P” and “2Q” to display the “OVERPACK” marking described in 49 CFR 273.25 in place of the current requirement for an indication that the “inner packaging conforms to prescribed specifications.”

In accordance with 49 CFR 173.301(a)(9), DOT-specification 2P, 2Q, 3E, 3HT, spherical 4BA, 4D, 4DA, 4DS, and 39 cylinders must be packed in strong non-bulk outer packagings. This configuration meets the definition of a combination package as indicated in paragraph (a)(9) and further, as defined in 49 CFR 171.8. Paragraph (a)(9) requires the outside of this combination packaging to be marked with an indication that the inner packagings conform to the prescribed specifications. The completed combination package is subject to marking and labeling, as appropriate; however, the inner packagings do not have to be marked or labeled. These combination packages cannot also then be considered “overpacks.” For each completed package bearing required marking(s) and label(s) that is placed in an overpack, for consolidation or ease of handling, the overpack must also display the appropriate marking(s) and label(s) unless visible through the overpack. The “OVERPACK” mark must be applied when specification packagings are required by the HMR to communicate that the overpack contains specification packagings in conformance with the HMR.

PHMSA recognizes that differing marking requirements in 49 CFR 173.25 and 173.301(a)(9) to communicate the same intended meaning may be causing confusion without enhancing safety. In order to address the petition and provide for greater, PHMSA is proposing to revise 49 CFR 173.301(a)(9) to authorize the use of the “OVERPACK” marking as specified in 49 CFR 173.25(a)(3) as a method to satisfy the current requirements in paragraph (a)(1) to mark the completed package with an indication that the inner packaging conform to prescribed specifications for the listed cylinders.

The proposed revision would also include instructional language that the combination package is not to be considered an “overpack.”

2. Request for Authorization to Allow Class 4 and Class 5 Materials in Salvage Cylinders

Chemically Speaking, LLC submitted P-1596 requesting that PHMSA revise the HMR pertaining to salvage drums. Specifically, they propose amending 49 CFR 173.3(d) to allow Class 4 and Class 5 materials to be placed into salvage cylinders.

For over 30 years the gas industry, public agencies, gas cylinder users, and gas disposal companies have used open head salvage cylinders fabricated to ASME specifications to quickly and safely contain and transport leaking cylinders to locations where they can be safely emptied or repaired.

Salvage cylinders were originally permitted under special permits (exemptions) specific for each design, but these exemptions were adopted into the HMR in 2005. Class 4 or 5 materials were not included in the adoption; however, there is no preamble language in the rules specifically indicating reasons for the exclusion. A salvage cylinder made to ASME specifications as a pressure vessel and packaged as prescribed in 49 CFR 173.3(d) is a more robust package than a salvage container, which is used for liquids or solids. The addition of a pyrophoric material will not add a new hazard in the use of salvage cylinders, as some of the compressed gases that are also authorized have pyrophoric properties, such as silane, 2.1 (UN2203) or phosphine, 2.3 (UN2199). Moreover, these gases also have the added hazards of high pressure (1,500 psig), with the latter also being a toxic material.

Over a period of four years (2006-2010) the use of salvage pressure receptacles was debated at the UN Subcommittee on Transportation of Dangerous Goods. In the December 2010 session, the use of salvage pressure receptacles was approved and published in the “Amendments to the Sixteenth Revised Edition of the Recommendations on the Transport of Dangerous Goods, Model Regulations.” The amendments include the authorization of salvage cylinders for Class 4 and 5 materials.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to PHMSA by September 26, 2016.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-26/pdf/2016-16689.pdf>

I. EPA/FAA/NHTSA/NRC Civil Monetary Penalty Inflation Adjustment Rule; Interim Final Rules

In July 2016, EPA (81 FR 43091-43096), NHTSA (81 FR 43524-43529), NRC (81 FR 43019-43021), and FAA (81 FR 43463-43464) published interim final rules revising their civil penalties as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act requires these agencies to update their civil penalties to reflect statutorily mandated ranges as adjusted for inflation.

The civil penalties for RCRA violations had ranged from \$5,000 to \$25,000 per violation per day. EPA’s interim final rule will increase these penalties to \$14,023 to \$70,000 per violation per day. The Clean Air Act maximum penalties will be increased from \$25,000 to \$93,750 per violation per day.

Effective Date

The civil penalty adjustments became effective on August 1, 2016.

Links

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-01/pdf/2016-15411.pdf>

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-05/pdf/2016-15800.pdf>

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-01/pdf/2016-15399.pdf>

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-07-05/pdf/2016-15744.pdf>