VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - September 2016

ENVIRONMENTAL UPDATES

A. EPA Notice of New Streamline Approval Process for Non-Regulatory Methods in SW-846; Notice

B. EPA NPDES Electronic Reporting Rule Implementation Guidance; Notice

TRANSPORTATION UPDATES

C. DOT/FMCSA Parts and Accessories Necessary for Safe Operation; Windshield-Mounted Technologies; Final Rule

D. DOT/PHMSA/OSHA Labeling of Hazardous Chemicals for Bulk Shipments; Joint Guidance Memorandum

E. DOT/PHMSA Hazardous Materials: Damaged, Defective, Recalled Lithium Cells or Batteries or Portable Electronic Devices; Safety Advisory Notice

F. DOT/FMCSA Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; Correction

G. DOT/PHMSA Hazardous Materials: California Meal and Rest Break Requirements; Public Notice and Invitation to Comment

H. DOT/PHMSA Hazardous Materials: Harmonization with International Standards (RRR) and (HM-215N); Notice of Proposed Rulemaking

HEALTH & SAFETY UPDATES

No Health and Safety Updates for September 2016

MISCELLANEOUS UPDATES

I. DOJ/DEA Schedules of Controlled Substances: Placement of PB-22, 5F-PM-22, AB-FUBINACA and ADB-PINACA into Schedule I; Final Rule

J. DOJ/DEA Schedules of Controlled Substances: Placement of Three Synthetic Phenethylamines into Schedule I; Final Rule

K. CDC/HHS Possession, Use, and Transfer of Select Agents and Toxins – Addition of Bacillus Cereus Biovar Anthracis to the HHS List of Select Agents and Toxins; Interim Final Rule and Request for Comments

A. EPA Notice of New Streamline Approval Process for Non-Regulatory Methods in SW-846; Notice

On September 27, 2016, the Environmental Protection Agency (EPA) published a notice (81 FR 66272-66274) of a new streamlined approval process for non-regulatory methods in the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" manual (SW-846).

Background

The SW-846 compendium consists of over 200 analytical methods for sampling and analyzing waste and other matrices. Most methods are guidance (i.e., non-regulatory methods) with the exception of those identified as "method defined parameters" (MDPs). In an effort to release new and updated non-regulatory methods more quickly EPA will begin using a new process to release validated non-regulated methods for public comment and to incorporate these methods into the official SW-846 compendium.

Summary

Following are the new steps that EPA will follow for the publication of non-regulatory SW-846 methods:

1. Obtain Agency organic and/or inorganic workgroup approval of new and/or revised methods.
    a. Agency workgroups consist of EPA scientists from the Regions and program offices
2. Post the methods on the "Validated Methods" web page and link to the Hazardous Waste Test Methods page. (Links included below)
3. Notify the SW-846 analytical community via emails and web posting on the comment-period initiation date. The comment period will be set for a minimum of 30 days, depending on the number and complexity of methods.
    a. The web pages will also indicate that the methods are drafts and that comments are being accepted until the end of the comment period.
4. Catalog and respond to public comments in a "Response to Comments" document.
5. Revise methods based on EPA's review of comments.
6. Post the new and/or revised methods, the "Response to Comments" background documents, and other supporting documents on the "SW-846 Compendium" web page.
7. Email the SW-846 mailing list, notifying all entities of the incorporation of the new additions to the SW-846 compendium.

Effective Date

EPA is not receiving comments on this notice which became effective on the date of publication, September 27, 2016.

Links

The "Validated Methods" web page link is:

https://www.epa.gov/hw-sw846/validated-test-methods-recommended-waste-testing

The Hazardous Waste Test Methods web page link is:

https://www.epa.gov/hw-sw846

The SW-846 Compendium web page link is:

https://www.epa.gov/hw-sw846/sw-846-compendium

Use the following link to sign up to be on the email list for SW-846 (mailing list):

https://www.epa.gov/hw-sw846/forms/contact-us-about-hazardous-waste-test-methods

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-27/pdf/2016-23299.pdf

B. EPA NPDES Electronic Reporting Rule Implementation Guidance; Notice

On September 9, 2016, EPA published a notice (81 FR 62395-62397) listing the initial recipients for electronic National Pollutant Discharge Elimination System (NPDES) information submittals.

Background

The NPDES Electronic Reporting Final Rule published on October 22, 2015 (80 FR 64063) requires NPDES regulated facilities to electronically submit NPDES compliance monitoring reports and notices (e.g., Discharge Monitoring Reports (DMRs), notices of intent to discharge in compliance with a general permit, other general permit waivers, certifications and notice of termination of coverage, and program reports) to their authorized NPDES program (e.g., State) or to EPA through the National Information Exchange Network. The final rule also requires EPA to publish in the **Federal Register** a listing of the initial recipients for electronic NPDES information (e.g., State or EPA).

Summary

In this final rule EPA is publishing the list of States that have opted-out of receiving the electronic NPDES information. The states that have opted-out of being the initial recipient of electronic NPDES reports are listed below:

State	EPA Will be the Initial Recipient for General Permit Reports	EPA Will be the Initial Recipient for DMRs	EPA Will be the Initial Recipient for Program Reports
Georgia	Yes (All)	Yes	Yes (All)
Nebraska	Yes (All)	Yes	Yes (All)
New Jersey	No	No	Yes (only for CAFO Annual Program Report)
North Carolina	Yes (only for Low Erosivity Waivers and No Exposure Certifications)	No	No
Oregon	Yes (All)	Yes	Yes (All)
Rhode Island	Yes (All)	Yes	Yes (All)

All other states not listed above will be the initial recipient for ALL NPDES Electronic Report Submittals.

Links

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-09/pdf/2016-21204.pdf

All full listing of NPDES program authorization for each state is available at the following link.

https://www.epa.gov/npdes/npdes-state-program-information

C. DOT/FMCSA Parts and Accessories Necessary for Safe Operation; Windshield-Mounted Technologies; Final Rule

On September 23, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (81 FR 65568-65574) that amends the Federal Motor Carrier Safety Regulations (FMCSRs) to allow voluntary mounting of certain devices on the interior of windshields of commercial motor vehicles (CMVs).

Summary

Section 5301 of the Fixing America's Surface Transportation (FAST) Act directs FMCSA to amend the FMCSRs to allow devices to be mounted on the windshield that utilize "vehicle safety technology," as defined in the Act. In addition, section 5301 states that all windshield mounted devices/technologies with a limited 2-year exemption in effect on the date of enactment, shall be considered to meet the equivalent-or-greater safety standards required for the initial exemption. This final rule includes a new definition for Vehicle Safety Technology and a revised section 49 CFR 393.60(e) regarding the prohibition on obstructions to the driver's field of view.

49 CFR 393.5 – New Definition

Vehicle safety technology – Vehicle safety technology includes a fleet-related incident management system, performance or behavior management system, speed management system, land departure warning system, forward collision warning or mitigation system, active cruise control system, and transponder.

49 CFR 393.60(e) – Revised

49 CFR 393.60(e) – Prohibition on obstructions to the driver's field of view – (1) Devices mounted on the interior of the windshield has been revised to now require:

Devices with vehicle safety technologies must be mounted:
(A) Not more than 100 mm (4 inches) below the upper edge of the area swept by the windshield wipers;
(B) Not more than 175 mm (7 inches) above the lower edge of the area swept by the windshield wipers; and
(C) Outside the driver's sight lines to the road and highway signs and signals.

Effective Date

This final rule will become effective on October 24, 2016.

Petitions for Reconsideration

Petitions for reconsideration of this final rule must be submitted on or before October 24, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-23/pdf/2016-22923.pdf

D. DOT/PHMSA/OSHA Labeling of Hazardous Chemicals for Bulk Shipments; Joint Guidance Memorandum

On September 19, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Occupational Safety and Health Administration (OSHA) published a joint memo that provides clarity regarding the general applicability of, and overall relationship between PHMSA's labeling requirements under the Hazardous Materials Regulations (HMR) and OSHA's labeling requirements for bulk shipments under the Hazardous Communication Standard (HCS 2012).

Summary

The HMR prohibits the display on a package of any marking or label that could be confused or conflict with a label required by the HMR. Specifically, 49 CFR 172.401(b) states:

> "No person may offer for transportation and no carrier may transport a package bearing any marking or label which by its color, design, or shape could be confused with or conflict with a label prescribed by this part."

However, the prohibition in 49 CFR 172.401(b) does NOT apply to packages labeled in conformance with certain international standards, including the UN Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The provisions of 49 CFR 172.401(c) apply only to labeling in accordance with the GHS, and subsequently in accordance with 29 CFR 1910.1200(f). The GHS labeling provisions require all hazard communication elements to be located on the label and these hazard communication elements must only appear as part of a complete GHS label.

Therefore, the display of a marking or label not required by the HMR, but conforming to OSHA's HCS 2012 and consistent with the GHS is NOT a violation of the HMR. Stated differently, an HCS 2012-compliant OSHA label and a DOT HMR label or marking may both appear on the same package.

Effective Date

This guidance became effective on the date of publication, September 19, 2016.

Link

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

http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/joint_phmsa_memo_09192016.pdf

E. DOT/PHMSA Hazardous Materials: Damaged, Defective, Recalled Lithium Cells or Batteries or Portable Electronic Devices; Safety Advisory Notice

On September 22, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a safety advisory notice (81 FR 65463) to inform the public of the risks associated with transporting damaged, defective, or recalled lithium cells or batteries or portable electronic devices (PEDs), including the Samsung Galaxy Note 7 smartphone.

Cargo Shipments of Damaged Lithium Cells/Batteries/Portable Electronic Devices

The safety advisory includes the following guidance. Lithium cells, batteries, or portable electronic devices that have been damaged or identified by the manufacturer as defective for safety reasons, and have the potential of producing a dangerous evolution of heat, fire, or short circuit may only be transported by highway, rail or vessel in accordance with 49 CFR 173.185(f) or under the conditions of a Special Permit or Approval issued by PHMSA. Transportation by other means is prohibited.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-22/pdf/2016-22777.pdf

F. DOT/FMCSA Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; Correction

On September 2, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule correction (81 FR 60633-60634) that includes several minor clerical corrections regarding the rear license plate lamp requirements and the periodic inspection requirements for antilock brake systems (ABS).

Summary

Following are the corrections to the final rule that was published on July 22, 2016.

1. In 49 CFR 393.11, FMCSA corrects Footnote 11 of Table 1 to read "No rear license plate lamp is required on vehicles that do not display a rear license plate." FMCSA inadvertently omitted the word "not" in the footnote.

2. Section 1.l.(4)(b) of Appendix G to Subchapter B of Chapter III, is corrected to read "only to the vehicle's stop lamp circuit." The phrase "vehicle's stop lamp circuit" was omitted from this section.

3. As noted in the final rule, the National Highway Traffic Safety Administration had extended the compliance date for antilock brake systems (ABS) on hydraulic-braked vehicles from March 1, 1999, to September 1, 1999, but that action was limited to an extension of the malfunction indicator lamp requirement in S5.3.3(b) of FMVSS No. 105 and not for the general requirement to install ABS on hydraulic-braked vehicles. As such, all hydraulic-braked vehicles were still expected to be equipped with ABS effective March 1, 1999. While FMCSA included footnotes to help explain the different effective dates for the various ABS requirements in the Appendix G period inspection requirements, those footnotes are amended and repositioned to accurately reflect the effective dates for the various ABS requirements in Appendix G.

4. Section 1.l.(5) is amended to note that it only applies to towed vehicles equipped with air brakes.

Effective Date

These corrections became effective on September 2, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-02/pdf/2016-20927.pdf

G. DOT/PHMSA Hazardous Materials: California Meal and Rest Break Requirements; Public Notice and Invitation to Comment

On September 2, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a public notice (81 FR 60777-60779) inviting interested parties to comment on an application by the National Tank Truck Carriers, Inc. (NTTC) for an administrative

determination as to whether Federal hazardous material transportation law preempts regulations of the State of California that prohibit an employer from requiring an employee to work during any mandatory meal or rest period.

Summary

The NTTC has applied to PHMSA for a determination of whether Federal hazardous material transportation law, 49 U.S.C 5101 *et seq*., preempts California meal and rest break requirements, as applied to hazardous materials carriers. NTTC states "California law…generally prohibits an employer (e.g., a motor carrier) from requiring an employee (e.g., driver) to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission (IWC). The IWC Order for the transportation industry, codified in the California Code of Regulations (CCR), title 8, section 11090, contains the requirements for meal and rest periods. Under the rules, an employee is entitled to a thirty minute meal period after five hours of work and a second thirty minute meal period after ten hours of work. Generally, the employee must be "off duty" during the meal period. For rest periods, employees are entitled to a ten minute rest period for every four hours worked. And, if a meal or rest period is not provided, the employer shall pay the employee one hour of pay.

NTTC presents three main arguments for why it believes the meal and rest break requirements should be preempted. First, NTTC contends that the California requirements "were not promulgated with an eye toward safe transportation of hazardous materials" or the Federal hours of service regulations, and thus, they create the potential for unnecessary delay when a driver must deviate from his or her route to comply with the requirements. Second, NTTC argues that the meal and rest break requirements conflict with the Hazardous Materials Regulations (HMR's) attendance requirements because under certain circumstances, the HMR "implicate the driver 'working' under California law." As such, NTTC says that a carrier (employer) cannot comply with both the State and Federal requirements. Last, NTTC points out that although not mandatory in the HMR security plan requirements, many motor carriers include a "constant attendance of cargo" requirement in their written security plans. However, NTTC contends that the California meal and rest break requirements are inflexible and may create unnecessary stops or prohibit constant attendance. Therefore, NTTC believes that the requirements are an obstacle to the security objectives of the HMR.

In summary, NTTC contends that the California meal and rest break regulations should be preempted because they:

1. Create unnecessary delay for the transportation of hazardous materials;
2. Conflict with the HMR attendance requirements; and
3. Create an obstacle to accomplishing the security objectives of the HMR.

Comments

Comments must be received by PHMSA on or before October 17, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-02/pdf/2016-21205.pdf

H. DOT/PHMSA Hazardous Materials: Harmonization with International Standards (RRR) and (HM-215N); Notice of Proposed Rulemaking

On September 7, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (81 FR 61741-61831) that would amend the Hazardous Materials Regulations (HMR) to maintain consistency with international

regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements.

Summary

The proposed changes are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods – Model Regulations. PHMSA is also proposing several amendments to the HMR that result from coordination with Canada under the U.S.-Canada Regulatory Cooperation Council.

The most significant proposed amendments that could impact the environmental services industry include:

1. Reciprocity of Cargo Tank and CTMV Facility Registration between the US and Canada;
2. Approval and Registration Requirements for US and Canadian Cylinder and pressure Receptacle Requalifiers;
3. Authorization for Use and Transport Canada Equivalency Certificates in the US;
4. Expanded Authorization for the Transportation and Use of Canadian Cylinders in the US;
5. Amended definitions (Aerosol, Large Salvage Packaging, UN Tube);
6. Changes to the 49 CFR 172.101 Hazardous Materials Table;
    a. 6 New Entries
    b. 3 Shipping Name Amendments
    c. Amendments to the Hazard Class for UN3507, Uranium hexafluoride, radioactive material, excepted package
    d. Addition of the Division 6.1 hazard label and subsidiary hazard class to 4 proper shipping names
7. Special Provisions – Various New and Amended Special Provisions including, but not limited to;
    a. SP 181 – Applicable to lithium ion batteries contained in or packed with equipment
    b. SP 422 – Requires the use of a new (proposed) lithium battery class 9 label
    c. W31, W32, W40 and W100 – Require new packaging requirements for certain materials transported by cargo vessel
8. New Class 9 Hazard Class Label for Lithium Batteries;
9. Revisions to Packaging and Marking Requirements for Small Lithium Batteries (49 CFR 173.185(c));
    a. Strong outer packagings must be rigid
    b. Replace the current text marking requirements that communicate the presence of lithium batteries and the flammability hazard that exists if damaged – to a single new lithium battery mark
    c. Removal of the requirements to include an alternative document indicating that the package contains lithium cells or batteries, must be handled with care and that a flammability hazard exists if damaged, special procedures to follow in the event the package is damaged and a telephone number for additional information
10. New size requirement for damaged/defective lithium ion or metal battery (49 CFR 173.185(f));
    a. Proposal to require the "Damaged/defective lithium ion battery" and/or "Damaged/defective lithium metal battery" marking must be in characters at least 12mm (.47 inch) high
11. Revisions and additions to the 49 CFR 173.225 Organic Peroxide Table;
12. New Transport Conditions for Radiation Detectors Containing Division 2.2 Non-Flammable Gas;
13. Relief to the Vessel Segregation Requirements for hazardous materials assigned with certain Organometallic substance shipping names.

Comments Due

Comments on this notice of proposed rulemaking must be received by PHMSA by November 7, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-07/pdf/2016-20580.pdf

I. DOJ/DEA Schedules of Controlled Substances: Placement of PB-22, 5F-PM-22, AB-FUBINACA and ADB-PINACA into Schedule I; Final Rule

On September 6, 2016, the Department of Justice, Drug Enforcement Agency (DEA) published a final rule (81 FR 61130-61133) placing quinolin-8-yl 1-pentyl-1*H*-indole-30carboxylate (PB-22; QUPIC), quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (5-fluoro-PB-22; 5F-PB-22), *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (AB-FUBINACA) and *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (ADB-PINACA), including their salts, isomers, and salts of isomers into Schedule I of the Controlled Substances Act (CSA).

Summary

On February 10, 2014, DEA published a final order (79 FR 7577) temporarily placing these four synthetic cannabinoids into Schedule I of the CSA. These four synthetic cannabinoids have been determined to have effects similar to THC and based on the consideration of all comments, the scientific and medical evaluations and accompanying recommendations of the HHS along with DEA's consideration of its own eight factor analysis, the DEA has determined that these facts and all other relevant data constitute substantial evidence of potential for abuse of these four substances. Therefore, this final rule subjects to the regulatory controls and administrative, civil, and criminal sanctions applicable to Schedule I substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) these four synthetic cannabinoids.

Effective Date

This final rule became effective on the date of publication, September 6, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-06/pdf/2016-21345.pdf

J. DOJ/DEA Schedules of Controlled Substances: Placement of Three Synthetic Phenethylamines into Schedule I; Final Rule

On September 27, 2016, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule placing three synthetic phenethylamines: 2-(4_iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25I-NCOMe; 2C-I-NBOMe; 25I; Cimbi-5), 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36), including their optical, positional, and geometric isomers, salts, and salts of isomers into Schedule I of the Controlled Substances Act (CSA).

Summary

On November 15, 2013, DEA published a final order (78 FR 68716) placing these three synthetic phenethylamines into Schedule I of the CSA. These three substnaces have been determined to have

effects similar to lysergic acid diethylamide (LSD) and based on the consideration of all comments, the scientific and medical evaluations and accompanying recommendations of the HHS along with DEA's consideration of its own eight factor analysis, the DEA has determined that these facts and all other relevant data constitute substantial evidence of potential for abuse of these three substances. Therefore, this final rule subjects the regulatory controls and administrative, civil, and criminal sanctions applicable to Schedule I substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess) these three synthetic phenethylamines.

Effective Date

This final rule will become effective on October 27, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-27/pdf/2016-23185.pdf

K. CDC/HHS Possession, Use, and Transfer of Select Agents and Toxins – Addition of Bacillus Cereus Biovar Anthracis to the HHS List of Select Agents and Toxins; Interim Final Rule and Request for Comments

On September 14, 2016, the Department of Health and Human Services of the Centers for Disease Control (HHS) published an interim final rule (81 FR 63138-63143) adding *Bacillus cereus* Biovar *anthracis* to the list of select agents and toxins as a Tier 1 select agent.

Summary

Recent research has determined that *Bacillus cereus* Biovar *anthracis* has all of the virulence determinants and threat potential of *Bacillus anthracis*, as a Tier 1 select agent. *Bacillus cereus* Biovar *anthracis* has the potential to pose a severe threat to public health and safety and it may present a great risk for deliberate misuse with significant potential for mass casualties or devastating effects to the economy, critical infrastructure, or public confidence. Therefore, this final rule adds this substance to the Tier 1 list of select agents subject to the biosafety and security requirements of the select agent regulations.

Effective Date

This interim final rule will become effective on October 14, 2016.

Comments Due

Comments on this interim final rule must be submitted to HHS by November 14, 2016.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2016-09-14/pdf/2016-22049.pdf