



## VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - October 2016

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### **MISCELLANEOUS UPDATES**

No Miscellaneous Updates for October 2016

**A. EPA Hazardous Waste Generator Improvements; Final Rule**

On October 28, 2016, the Environmental Protection Agency (EPA) Administrator signed the Hazardous Waste Generator Improvements Final Rule. The final rule will be published in the *Federal Register* in 2-6 weeks and will become effective 6 months after the date of publication in the *Federal Register*.

**Summary**

EPA believes that the revisions to the Hazardous Waste Generator rules will make the rules easier to understand, facilitate better compliance, provide greater flexibility in how hazardous wastes are managed, and close important gaps in the regulations. This final rule includes approximately 60 changes to the hazardous waste regulations. Some of the changes are included below:

1. Replaces the phrase “conditionally exempt small quantity generator” with the phrase “very small quantity generator.”
2. Allows very small quantity generators (VSQGs) to ship hazardous wastes to a large quantity generator (LQG) that is under the control of the same person/company for consolidation prior to shipping to a RCRA Treatment Storage and/or Disposal Facility (TSDF) for management.
3. Allows a VSQG or small quantity generator (SQG) to maintain its generator category for episodic events that increase the quantity of hazardous wastes generated that would otherwise “bump” the generator into a more stringent generator category.
4. Requires the re-notification of generator status every four years for SQGs.
5. Revises the container and tank labeling and marking requirements.
6. Moves the VSQG regulations from 40 CFR 261.5 to 40 CFR 262.

**Webinars**

EPA will be hosting 2 webinars discussing the Hazardous Waste Generator Improvements Final Rule. The dates of the webinars are:

November 30, 2016 at 2:00 PM Eastern Time  
December 5, 2016 at 2:00 PM Eastern Time

**Links**

The link below will allow you to view/print a pre-publication copy of the final rule.

[https://www.epa.gov/sites/production/files/2016-10/documents/disclaimeradded\\_hazardous\\_waste\\_generator\\_improvements\\_final\\_rule\\_october\\_26\\_2016\\_1.pdf](https://www.epa.gov/sites/production/files/2016-10/documents/disclaimeradded_hazardous_waste_generator_improvements_final_rule_october_26_2016_1.pdf)

The link below can be used to register for the webinars.

<https://clu-in.org/conf/tio/hwgenerators/>

**B. EPA Hazardous Waste Export-Import Revisions; Final Rule**

On October 28, 2016, the EPA Administrator signed the Hazardous Waste Export-Import Revisions Final Rule. The final rule will be published in the *Federal Register* in the next 2-6 weeks and will become effective in all states on December 31, 2016.

**Summary**

EPA believes this final rule will strengthen the tracking and reporting of individual export and import shipments, bring the United States into compliance with their Organization for Economic Cooperation

and Development (OECD) obligations, and streamline the export/import process. This final rule establishes:

1. Improved export and import shipment tracking;
2. One consolidated and streamlined set of requirements applying to all exports and imports;
3. Mandatory electronic reporting to EPA; and
4. A Link for the consent to export with the electronic export information submitted to the U.S. Customs and Border Protection.

#### Link

The link below will allow you to view/print a pre-publication copy of the final rule.

[https://www.epa.gov/sites/production/files/2016-10/documents/prepubversion\\_export-import\\_final\\_rule\\_october\\_25\\_2016.pdf](https://www.epa.gov/sites/production/files/2016-10/documents/prepubversion_export-import_final_rule_october_25_2016.pdf)

#### C. **DOT/FMCSA General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations; Final Rule**

On October 4, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (81 FR 68336-68359) that makes technical corrections throughout the FMCSA regulations.

#### Summary

This final rule includes minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, and improve clarity and consistency of certain regulatory provisions. These amendments also remove all remaining references to the terms “common carrier” and “contract carrier” as required by the ICC Termination Act (ICCTA) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This final rule does not make any substantive changes to the regulations, except to remove obsolete provisions.

The revisions to the Federal Motor Carrier Safety Regulations (FMCSRs) in this final rule that are applicable to Veolia operations include:

1. 49 CFR 382.305 - Controlled Substances Testing Annual Random Percentage Rate

This amendment relates to the lowered minimum annual percentage rate for random controlled substances testing made effective for all testing in 2016 and later. 40 CFR 382.305(b)(2) is amended to state that the minimum annual percentage rate for random controlled substances testing shall be 25 percent of the average number of driver positions, as it has been effective since January 1, 2016. On December 24, 2016 (80 FR 80446), FMCSA announced the reduction of the minimum annual percentage rate for random controlled substances testing for drivers of commercial motor vehicles (CMVs) requiring a commercial driver license (CDL) from 50 percent of the average number of driver positions to 25 percent of the average number of driver positions, effective in calendar year 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, 2012, and 2013, the positive rate for controlled substances random testing fell below the 1.0 percent threshold for 3 consecutive years. As a result, the Agency lowered the controlled substances minimum annual percentage rate for random controlled substances testing to 25 percent of the average number of driver positions.

2. 49 CFR 385.503 - New Entrant Motor Carrier Safety Assurance Applications

FMCSA revised the URL link to accurately reflect where to obtain the forms for new entrant motor carriers. Since December 2015, new applicants must apply for a USDOT number and if applicable, operating authority, by electronically filing Form MCSA-1, the URS on-line application. Registrants who registered and were issued a USDOT number before December 2015 may still use form MCS-150 and if applicable, Form OP-1 to update their registration information.

FMCSA is revising how new entrant motor carriers may contact the Agency for application materials. In 49 CFR 385.503, the Agency is changing a 703 area code fax number to a 202 area code fax number and is adding the option that new entrant motor carriers may locate application materials on-line at one of two web pages, the precise location is determined by whether they received a USDOT number before or after December 12, 2015.

3. 49 CFR Part 385, Appendix B - List of Critical and Acute Regulations

During a review of the list of acute and critical regulations in Appendix B of 49 CFR Part 385, FMCSA discovered that the terminology used to identify two of the critical violations is confusing. In these provisions, the critical violations occur when a motor carrier fails to ensure that drivers (or third parties) submit records of duty status (or supporting documents); while there is still a violation if those documents are submitted late, late submissions are not typically critical violations that could affect the motor carrier's safety rating. It is only when the motor carrier fails completely to require drivers to submit the documents that such a violation could occur. Thus, two provisions that are identified as critical regulations in section VII of the List of Acute Critical Regulations, Appendix B, are being revised to remove the words "in a timely manner, as set out below:

- a. 49 CFR 395.8(a)(2)(ii) - Failure to require a driver to submit record of duty status (critical); and
- b. 40 CFR 395.11(b) – Failing to require a driver to submit supporting documents (critical)

This change reflects how FMCSA currently treats these violations and will therefore have no direct impact on motor carriers.

4. 49 CFR 386.1 - Filing of Substantial Complaints, Filing of Harassment Complaints, and Filing of Coercion Complaints

In a 2015 ELD rule, FMCSA changed 49 CFR 386.1, *Scope of rules in this part*, to include references to complaints of substantial violation, coercion, and harassment. However, the Agency overlooked the recent addition of a new paragraph (49 CFR 381.6(c)) in its separate Coercion final rule published two weeks before the ELD rule, and the amendatory instruction was incorrect. To correct this inadvertent error, this technical amendment adds new 49 CFR 386.1(c)(1), (2), and (3) as was described in the amendatory instructions of the ELD rule. These new regulations concern the filing of substantial complaints, the filing of harassment complaints, and the filing of coercion complaints, respectively. Similarly, the ELD rule failed to modify a reference to the coercion complaint process made necessary by the rule's restructuring of 49 CFR 386.12. This rule corrects the applicable cross-reference in 49 CFR 390.6(b)(1).

5. 59 CFR 391.42 - Schedule for Use of Medical Examiners Listed on the National Registry

This final rule removes 49 CFR 391.42, the requirement that all medical examinations performed "on or after May 21, 2014...must be conducted by a medical examiner" listed on the National Registry. This regulation was unnecessary because it duplicated the requirements in 49 CFR 391.43.

6. 49 CFR 391.43 - Medical Examination and Certificate of Physical Examination

FMCSA is making several amendments to a driver's medical exam, the form used to record the results of the exam, and the certificate used upon completion of the exam. 49 CFR 391.43(a) is amended to remove the reference to 49 CFR 391.43 as discussed above. Paragraph (f) is also being amended by removing paragraph (f)(1) because the use of the previous form authorized by this paragraph is no longer permitted. The remaining text (from paragraph (f)(2) which went into effect on December 22, 2015) is revised to remove the effective date. Finally, the latest approved version of the Medical Examination Report (MER) Form, MCSA-5875 replaces the previous version.

Similar changes are made in 49 CFR 391.43(h), removing paragraph (h)(1) because the use of the previous form authorized by that paragraph is no longer permitted. The Agency also revised the remaining text (from paragraph (f)(2) which went into effect on December 22, 2015) to remove the effective date. The version of the Medical Examiner's Certificate (MEC) Form, MCSA-5876 is updated to reference both forms (MER and MEC) that have been approved by OMB for use through August 31, 2017 under OMB number 2126-0006.

7. 49 CFR 392.9b - Safety Registration

The heading and text of 49 CFR 392.9b(a) has been revised to replace the term "USDOT Registration" with "safety registration." This change should have been made as part of the Unified Registration System rule published on August 23, 2013 (78 FR 52608) and it should have gone into effect along with other changes to this section on November 1, 2013. This term is being revised to conform to the terminology that is currently in place within the Unified Registration System where there is no "USDOT Registration." Instead, there are USDOT numbers, operating authority registrations and safety registrations. This revision should have no impact on the type of registrations that a motor carrier receives from FMCSA.

8. 49 CFR 395.1 - Restoration of Supporting Documents Exception for 100 Air-Mile Radius Drivers

FMCSA has revised 49 CFR 395.1(e)(1) to restore the supporting documents exception for 100 air-mile radius drivers that was inadvertently removed by a FAST Act final rule published on July 22, 2016.

9. 49 CFR 395.8 - Driver's Record of Duty Status

Since the publication of the ELD rule in December 2015, FMCSA has received a significant number of questions asking how a motor carrier can determine whether a commercial motor vehicle was manufactured before model year 2000, thus allowing its driver to use paper records of duty status instead of the ELD required in most other cases. 49 CFR 395.8(a)(1)(iii)(A)(4) was amended to include an additional qualifying phrase inserted after "model year 2000." The model year 2000 will be determined during roadside inspections "as reflected in the vehicle identification number as shown on the vehicle's registration."

**Effective Date**

This final rule became effective on September 30, 2016.

**Link**

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-22996.pdf>

**D. DOT/FMCSA Physical Qualifications and Examinations: Medical Examination Report and Medical Examiner’s Certificate Forms; Notice**

On October 27, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (81 FR 74700-74711) that allows certified Medical Examiners (MEs) to use the Medical Examination Report (MER) Form, MCSA-5875, and Medical Examiner’s Certificate (MEC), Form MCSA-5876, with October, November, and December, 2015 revision dates until the existing stocks of these forms are depleted.

**Summary**

All revisions to the MER and MEC forms since the August 5, 2015, revision date have been non-substantive therefore MEs are allowed to use MER Form, MCSA-5875 and MEC Form, MCSA-5876 with October, November, and December, 2015 revision dates until the existing stocks are depleted. Also, for MEs in an office where these forms have been programmed into an electronic system that will require IT programming, the current approved versions of the forms should be programmed as soon as practicable. MEs are also encouraged to use the current versions of the forms that no longer include the Privacy Statement, or a revision date in the top left corner. These forms can be found on the FMCSA and National Registry Web sites.

**Effective Date**

This notice became effective on the date of publication, October 27, 2016.

**Link**

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-27/pdf/2016-25976.pdf>

**E. DOT/FMCSA Future Enhancements to the Safety Measurement System (SMS); Notice**

On October 5, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice (81 FR 69185-69189) proposing enhancements to the information on the public Safety Measurement System (SMS) Web site and responds to comments received in response to FMCSA’s “Proposal for Future Enhancements to the Motor Carrier Safety Measurement System (SMS)” notice published in the *Federal Register* on June 29, 2015.

**Summary**

These enhancements are a continuation of FMCSA’s efforts to provide law enforcement, the motor carrier industry, and motor carriers with more informative safety data. This notice explains FMCSA’s proposed enhancements to the public SMS Web site, including two additional changes that were not originally proposed, which were identified during the development of the SMS Preview.

1. List of Proposed Enhancements in the June 29, 2015 Notice
  - a. Increasing the SMS intervention thresholds for Vehicle Maintenance, Controlled Substances and Alcohol, HM Compliance and Driver Fitness categories to better reflect the BASIC’s correlation to crash risk.
  - b. Two changes to the HM Compliance BASIC including: Segmenting the HM Compliance BASIC by cargo tank (CT) and non-CT carriers; and releasing motor carrier percentile rankings under the HM Compliance BASIC to the public.
  - c. Reclassifying violations for operating while OOS as under the Unsafe Driving BASIC, rather than the BASIC of the underlying OOS violation.

- d. Increasing the maximum Vehicle Miles Travelled (VMT) used in the utilization factor (UF) to more accurately reflect operations of high-utilization carriers.

2. Additional Enhancements Announced in this Notice

In addition to the enhancements proposed in the June 29, 2015 notice, FMCSA proposes two additional changes based on issues identified and analysis conducted during the development of the preview.

a. Data Sufficiency Standards for the Crash Indicator BASIC

In response to comments received, FMCSA conducted additional analyses on the feasibility of using a motor carrier's role in crashes in the assessment of a company's safety. One of the areas reconsidered was the minimum number of crashes used to establish the data sufficiency standard in the Crash Indicator BASIC. Currently, FMCSA assigns a percentile to carriers in the Crash Indicator BASIC if they have at least two reportable crashes in the past two years. The Agency is proposing increasing the minimum number of crashes required for a percentile from two to three.

b. Carriers with Recent Violations

Currently, FMCSA assigns percentiles to carriers in the Hours of Service (HOS) Compliance, Vehicle Maintenance, Hazardous Materials (HM) Compliance, and Driver Fitness BASICs if the most recent inspection in the previous 24 months resulted in a violation. Recently, FMCSA reviewed its data sufficiency standards to make them more effective at prioritizing carriers that pose the greatest safety risk. Based on this assessment, the Agency is proposing assigning BASIC percentiles only to carriers that have had an inspection with a violation in the past year. This change could increase the Agency's focus on carriers with recent violations and remove carriers with no violations in the past year from prioritization and would reduce the number of carriers with a BASIC at or above the Intervention Threshold.

**Comments Due**

Comments must be received by FMCSA on or before December 3, 2016.

**Link**

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-05/pdf/2016-24114.pdf>

**F. OSHA Extended Delay of Enforcement of the Employee Involvement Provisions in the Improve Tracking of Workplace Injuries and Illnesses Final Rule and Interpretation of Anti-Retaliation Provisions; Memorandums**

On October 18, 2016, the Occupational Safety and Health Administration (OSHA) published a memorandum announcing a delay in enforcement of the employee involvement provisions of the Improve Tracking of Workplace Injuries and Illnesses final rule until December 1, 2016.

On October 19, 2016, OSHA published a memorandum clarifying the anti-retaliation provision of the Improve Tracking of Workplace Injuries and Illnesses final rule.

## Background

On May 12, 2016, OSHA published a final rule (81 FR 29623) revising the Recordkeeping and Reporting of Occupational Injuries and Illnesses regulations and amended requirements on how employees report work-related injuries and illnesses. The final rule clarified the existing implicit requirement that an employer's procedures must be reasonable and therefore must not deter or discourage reasonable employees from reporting work-related injuries or illnesses (29 CFR 1904.35(b)(1)(i)); requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation (29 CFR 1904.35(b)(1)(ii) and (iii)); and incorporates the existing prohibition on retaliating against employees for reporting work-related injuries and illnesses into 29 CFR 1904.35(b)(1)(iv).

## Delay of Enforcement of Employee Involvement Provisions under 29 CFR 1904.35

OSHA initially delayed enforcement of these provisions until November 1, 2016, to allow for additional outreach to the regulated community. On October 14, 2016, the United States District Court, Northern District of Texas, asked OSHA to further delay enforcement through December 1, 2016, to allow additional time to consider a motion challenging the new provisions. OSHA has agreed and will delay enforcement of the employee involvement provisions of the final rule until December 1, 2016.

## Interpretation of 29 CFR 1904.35(b)(1)(i) and (iv)

The May 12, 2016 final rule codifies OSHA's longstanding requirement that employers have a reasonable procedure for employees to report work-related injuries and illnesses (29 CFR 1904.35(b)(1)(i)) and OSHA's prohibition on retaliating against employees for reporting work-related injuries or illnesses under 29 CFR 1904.35(b)(1)(iv).

For OSHA to issue a violation under 29 CFR 1904.35(b)(1)(i) they must show that the employer either lacked a procedure for reporting work-related injuries or illnesses, or that the employer's procedure was unreasonable. An employer must establish a reasonable procedure for employees to report work-related injuries and illnesses.

29 CFR 1904.35(b)(1)(iv) prohibits employers from retaliating against employees for reporting work-related injuries or illnesses. The preamble to the final rule explains that OSHA promulgated this section to address concerns from commenters on three types of policies that could be used to retaliate against workers:

1. Disciplinary Policies
2. Post-Accident Drug Testing Policies
3. Employee Incentive Programs

OSHA does not prohibit these kinds of policies but codifying the rules provides an additional means to address employer's unlawful retaliation against employees for reporting work-related injuries or illnesses. Regardless of whether an adverse action is taken pursuant to a disciplinary policy, post-accident drug testing policy, or employee incentive program, OSHA's burden is to prove that the employer took the adverse action because the employee reported a work-related injury or illness, not for a legitimate business reason.

The memorandum includes examples of reasonable and unreasonable reporting procedures and retaliation policies.

## Links

The link below will allow you to view/print the October 18, 2016, delay of enforcement memorandum.

[https://www.osha.gov/recordkeeping/finalrule/TrackingEnforcementMemo\\_101816.html](https://www.osha.gov/recordkeeping/finalrule/TrackingEnforcementMemo_101816.html)



The link below will allow you to view/print the October 19, 2016, Interpretation of 29 CFR 1904.35(b)(1)(i) and (iv) memorandum.

[https://www.osha.gov/recordkeeping/finalrule/interp\\_recordkeeping\\_101816.html](https://www.osha.gov/recordkeeping/finalrule/interp_recordkeeping_101816.html)

**G. OSHA Standards Improvement Project – Phase IV; Proposed Rule**

On October 4, 2016, the Occupational Safety and Health Administration (OSHA) published a proposed rule (81 FR 68504-68685) that continues the Agency's efforts to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements from the safety and health standards. This is the fourth review and is called the Standards Improvement Project – Phase IV (SIP-IV).

**Summary**

OSHA is proposing 18 revisions to existing standards in recordkeeping, general industry, maritime, and construction standards, with most of the revisions to the construction standards. The proposed rule includes the updating of three standards to align with current medical practice, including a reduction to the number of necessary employee x-rays, updates to requirements for pulmonary function testing, and updates to the table used for the decompression of employees during underground construction. Additional proposed revisions include a revision to the requirements for roll-over protective structures to comply with current consensus standards, a revision to lock-out/tag-out requirements, and the removal of a requirement to include employee social security numbers (SSN) on exposure monitoring, medical surveillance, and other records.

**Comments Due**

Comments on this proposed rule must be submitted to OSHA by December 5, 2016.

**Link**

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-19454.pdf>

**H. OSHA Additional PortaCount® Quantitative Fit-Testing Protocols: Amendment to Respiratory Protection Standard; Notice of Proposed Rulemaking**

On October 7, 2016, the Occupational Safety and Health Administration (OSHA) published a notice of proposed rulemaking (81 FR 69740-69751) that would add two modified PortaCount® quantitative fit-testing protocols to its Respiratory Protection Standard.

**Summary**

Appendix A of OSHA's Respiratory Protection Standard, 29 CFR 1910.134, currently includes four quantitative fit-testing protocols, also known as the standard PortaCount® protocol. In this notice of proposed rulemaking OSHA is proposing to add two new protocols to Appendix A: A modified PortaCount® protocol for full-facepiece and half-mask elastomeric respirators and a modified PortaCount® protocol for filtering-facepiece respirators.

These modified PortaCount® protocols use the same fit-testing requirements and instrumentation specified for the standard PortaCount® protocol in Appendix A of the Respiratory Protection Standards, except for different exercise sets, exercise duration, and sampling sequence. The major difference between the proposed methods and the standard protocol is that they include only 3 of the 7 current test exercises (bending, head side-to-side, and head up-and-down) plus a new exercise (jogging in-

place) and reduce the exercise duration which reduces the total test duration to 2.5 minutes from 7.2 minutes.

**Comments Due**

Comments on this notice of proposed rulemaking must be submitted to OSHA by December 6, 2016.

**Link**

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-10-07/pdf/2016-23928.pdf>