



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - December 2016

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The information contained herein is provided by Veolia North America for general informational purposes only. This information should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you should have any questions, please contact Kevin McGrath, Veolia Environmental Director at kevin.mcgrath@veolia.com.

A. EPA Proposed Settlement Agreement, Clean Air Act Citizen Suit; Proposed Settlement Agreement and Request for Public Comment

On December 19, 2016, the Environmental Protection Agency (EPA) published a notice of proposed settlement agreement (81 FR 91931-91932) to settle a lawsuit filed by the American Chemistry Council (ACC).

Background

On May 18, 2015, the ACC and Eastman Chemical Company (Eastman) filed petitions for the review of an EPA final rule titled “National Emission Standards for Hazardous Air Pollutants for Major Sources: Off-Site Waste Recovery Operations,” published on March 18, 2015 (80 FR 14258). The ACC and Eastman also submitted a Petition for Reconsideration to EPA for two issues in the final rule: (1) equipment leak detection provisions for connectors; and (2) monitoring requirements for pressure relief devices (PRD) on portable containers.

EPA granted the request for reconsideration for the PRD monitoring requirements but denied the request for reconsideration of the equipment leak detection provisions for connectors.

Summary

The proposed settlement agreement would settle the lawsuit. Under the terms of the proposed agreement, EPA will reconsider the Final Rule’s provisions related to PRDs and take an initial action no later than July 20, 2017 and a final action no later than January 18, 2018.

Comments Due

Comments on this proposed settlement agreement must be received by EPA by January 18, 2017.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30058.pdf>

B. EPA Fall 2016 Regulatory Agenda

On December 23, 2016, EPA published the Fall 2016 Semi-Annual Regulatory Agenda as part of the 2016 Fall Unified Agenda and Regulatory Plan.

Summary

EPA publishes a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review including the following waste-related topics:

Office of Land and Emergency Management – Final Rule Stage
1. Modernization of the Accidental Release Prevention Regulations under the Clean Air Act
2. National Contingency Plan Revisions to Align with the National Response Framework
Office of Land and Emergency Management – Proposed Rule Stage
1. Internet Posting Requirements for Hazardous Waste Exports and Imports
2. Non-Hazardous Secondary Materials – Additions to List of Categorical Non-Waste Fuels; Other Treated Railroad Ties and Used Oil

Office of Land and Emergency Management – Long-Term Actions
1. Financial Responsibility Requirements under CERCLA Section 108(b) for Facilities in the Chemical, Petroleum and Electric Power Industries

Link

The link below will allow you to view/print the Fall 2016 Semi-Annual Regulatory Agenda.

<https://www.reginfo.gov/public/do/eAgendaMain>

C. DOT/FMCSA Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators; Final Rule

On December 8, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (81 FR 88732-88803) implementing new entry level driver training (ELDT) requirements for commercial motor vehicle drivers.

Summary

These new minimum training requirements impact individuals applying for their commercial driver's license (CDL) for the first time; an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time. These individuals are subject to the entry-level driver training (ELDT) requirements and must complete a prescribed program of instruction provided by an entity that is listed on FMCSA's Training Provider Registry (TPR). FMCSA will submit training certification information to State driver licensing agencies (SDLAs) who may only administer CDL skills tests to applicants for the Class A and B CDL, and/or the P or S endorsements, or knowledge test for the H endorsement, after verifying the certification information is present in the driver's record.

Applicability

The new ELDT requirements apply to all entry-level drivers and Commercial Learner Permit (CLP) holders who intend to operate CMVs in interstate and/or intrastate commerce.

The new ELDT requirements do not apply to:

1. Drivers who hold a valid Class A or B CDL or a hazardous materials endorsement issued before February 7, 2020; or
2. Individuals who obtain a CLP before February 7, 2020 as long as they obtain a CDL before the CLP or renewed CLP expires.

Overview of Requirements

Drivers must successfully complete a prescribed program of instruction provided by an entity listed on FMCSA's Training Provider Registry. The prescribed training includes both theory (knowledge) and behind the wheel (range and public road) instruction. The theory and behind the wheel instruction components are not required to be administered by the same training provider, however both behind the wheel (range and public road) components must be administered by the same training provider.

1. Theory Instruction

There is no minimum number of hours that driver-trainees must spend on the theory instruction. Training providers must cover the prescribed topics for each of the five theory curricula. Driver-

trainees must demonstrate their understanding of the material by achieving an overall minimum score of 80% on the theory assessment.

2. Behind-the-Wheel (Range and Public Road)

There is no minimum number of hours that driver-trainees must spend on the behind-the-wheel portion of the curriculum. The proficient completion of the behind the wheel portions of the curricula is based solely on the training instructor's assessment of each driver-trainee's individual performance of the required elements of behind-the-wheel training on the range and public road.

3. Communication of Training Results

Once the ELDT has been successfully completed, the Training Provider will upload the training results to FMCSA. FMCSA will then enter the training information into the Commercial Driver's License Information System (CDLIS). State driver license agencies are required to verify the successful completion of the ELDT listed in the CDLIS prior to administering the State required CDL skills and endorsement tests.

NOTE: The requirements adopted in this final rule are *minimum* Federal training requirements. States may choose to implement additional ELDT requirements if they deem necessary to comply with current State-level driving laws that may exceed the Federal Requirements.

Effective Date

The new ELDT requirements will be effective beginning on February 7, 2020 and will replace the current ELDT requirements.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-08/pdf/2016-28012.pdf>

D. DOT/FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse; Final Rule

On December 5, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (81 FR 87686-87731) establishing requirements for the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse).

Summary

Employers and medical review officers (MROs), or their designated representatives, are required to report information about positive drug test results, alcohol test results greater than 0.04 blood alcohol content, refusals to test, and other non-test violations of FMCSA's drug and alcohol regulations. In addition, Substance Abuse Professionals (SAPs) are required to report information regarding drivers undergoing the return-to-duty drug and alcohol rehabilitation process.

The purpose of the Clearinghouse is to maintain records of all drug and alcohol program violations in a central repository and require that employers query the system to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety-sensitive functions covered by the FMCSA and DOT drug and alcohol testing regulations. The Clearinghouse will provide FMCSA and employers with the necessary tools to identify drivers who are prohibited from operating a CMV and ensure that prohibited drivers receive the required evaluation and treatment prior to resuming safety-sensitive functions.

Employers will be required to search the Clearinghouse for information during the pre-employment process for prospective employees and at least once per year for current employees to determine whether any employee has incurred a drug or alcohol violation that would prohibit him or her from performing safety-sensitive functions.

Effective Date

This final rule will become effective on January 6, 2020.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-05/pdf/2016-27398.pdf>

E. DOT/PHMSA Hazardous Materials: Notification of the Pilot-In-Command and Response to Air Related Petitions for Rulemaking (RRR); Notice of Proposed Rulemaking

On December 5, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (81 FR 87510-87529) that would amend the Hazardous Materials Regulations (HMR) to align with current international standards for the air transportation of hazardous materials.

Summary

This notice of proposed rulemaking (NPRM) includes the following four proposed revisions:

1. Transportation by Air – Intermediate Packaging Requirements for Certain Low and Medium Danger Hazardous Materials (P-1637)

PHMSA proposes to:

- a. Amend special provision A3 in 49 CFR 172.102 to authorize rigid and leakproof receptacles for intermediate packaging;
- b. Remove references to special provision A3 from assigned packing group (PG) I entries in the Hazardous Materials Table (HMT); and
- c. Remove references to special provision A6 from assigned liquids in the HMT.

2. Quantity Limits for Portable Electronic Medical Devices Carried by Passengers, Crewmembers, and Air Operators (P-1649)

This NPRM proposes to amend 49 CFR 175.10(a)(18)(i) to authorize passengers and crewmembers to carry on board an aircraft lithium metal battery-powered portable medical electronic devices and two spare batteries for those devices exceeding 2 grams of lithium content per battery, but not exceeding 8 grams of lithium content per battery.

3. NOTOC Harmonization with the ICAO TI (P-1487)

The current HMR requires that a notification prepared in accordance with the ICAO TI must also include any additional elements required to be shown on shipping papers by 49 CFR 171 Subpart C. The additional elements currently required are: An indication of the “EX Number” for Division 1.4G safety devices; an indication of reportable quantity (RQ) and technical names if applicable for hazardous substances; an indication that the hazardous material is a “Waste” for hazardous wastes; and the inclusion of the words “Poison-Inhalation Hazard” or “Toxic-Inhalation Hazard” and

the words “Zone A, B, C, or D” for gases or “Zone A or B” for liquids for Division 2.3 poisonous by inhalation materials.

PHMSA proposes to remove the requirement to include these additional items on a NOTOC because this information is required to be on the shipping papers.

4. Amendments to Package Inspection (P-1671) and Securing Requirements

PHMSA proposes to amend 49 CFR 175.30(c)(1) to remove language prohibiting packages, outside containers, or overpacks containing hazardous materials from being transported on an aircraft simply due to the presence of holes when the holes do not compromise the integrity of the package. In addition, PHMSA is proposing to amend 49 CFR 175.88(c) to require that hazardous materials loaded in an aircraft be protected from damage, including by the movement of baggage or other cargo during loading operations so that accidental damage is not caused by dragging or mishandling.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to PHMSA by February 3, 2017.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-05/pdf/2016-28403.pdf>

F. DOT/PHMSA Hazardous Materials: Use of DOT Specification 39 Cylinders for Liquefied Flammable Compressed Gas; Safety Advisory Notice

On December 13, 2016, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a safety advisory (81 FR 90061-90062) to inform offerors and users of DOT Specification 39 (DOT-39) cylinders that DOT-39 cylinders with an internal volume exceeding 75 cubic inches (in³) (1.23L) should not be filled with liquefied flammable compressed gas.

Safety Concern

The release of a liquefied compressed gas from or rupture of such a cylinder having an internal volume exceeding 75 in³ (1.23L) is a safety concern that could result in extensive property damage, serious personal injury, or even death. A liquefied flammable compressed gas has a stored energy that is several times greater than that of a non-liquefied compressed gas. Further, a DOT-39 cylinder can have a volume of up to 1,526 in³ (25L) at a service pressure of 500 psig or less and, as such, can have up to 22 times the stored energy of a DOT-cylinder limited to 75 in³. Additionally, because of the design specifications that allow for thinner walls when used at lower pressure, the cylinders may be at a greater risk of corrosion or puncture. Given the known risks associated with cylinders that are filled with liquefied flammable compressed gases, PHMSA is issuing this safety advisory notice to inform offerors and users of DOT-39 cylinders that cylinders with an internal volume of 75 in³ or more should not be filled with liquefied flammable compressed gas.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-13/pdf/2016-29813.pdf>

G. DOT/FMCSA/PHMSA Fall 2016 Regulatory Agenda

On December 23, 2016, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) and Pipeline and Hazardous Materials Safety Administration (PHMSA) published the Fall 2016 Semi-Annual Regulatory Agenda as part of the 2016 Fall Unified Agenda and Regulatory Plan.

Summary

FMCSA and PHMSA publish a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review including the following commercial motor vehicle and hazardous materials transportation related topics:

Federal Motor Carrier Safety Administration – Final Rule Stage
1. Commercial Drivers’ License Drug and Alcohol Clearinghouse (MAP-21)
2. Electronic Signatures and Documents (E-Signatures) (RRR)
Federal Motor Carrier Safety Administration – Proposed Rule Stage
1. MAP-21 Enhancements and other Updates to the Unified Registration System
2. Heavy Vehicle Speed Limiters

Pipeline and Hazardous Materials Safety Administration – Final Rule Stage
1. Hazardous Materials: Incorporation of ASME Code Section XII and the National Board Inspection Code
2. Hazardous Materials: Miscellaneous Amendments Pertaining to DOT-Specification Cylinders (RRR)
3. Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains
4. Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)
5. Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft
6. Hazardous Materials: Miscellaneous Amendments; Response to Appeals and Corrections
Pipeline and Hazardous Materials Safety Administration – Proposed Rule Stage
1. Hazardous Materials: Review and Update of Rail Carrier Regulations in Part 174 (RRR)
2. Hazardous Materials: Revision of the Requirements for Carriage by Aircraft (RRR)
3. Hazardous Materials: Harmonization with International Standards (RRR)
4. Hazardous Materials: Revisions to Hazardous Materials Emergency Preparedness Grants Requirements (RRR)
5. Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information

Link

The link below will allow you to view/print the Fall 2016 Semi-Annual Regulatory Agenda.

<https://www.reginfo.gov/public/do/eAgendaMain>

H. Canada: Transport Canada Requests Feedback on Part 6 (Training) of the Transportation of Dangerous Goods Regulations

On December 6, 2016, Transport Canada published a notice that they were reviewing Part 6 (Training) of the Transportation of Dangerous Goods Regulations in an effort to strengthen the training requirements and enhance the safe transport of dangerous goods.

Summary

The Transportation of Dangerous Goods (TDG) Directorate at Transport Canada (TC) is reviewing Part 6 of the Transportation of Dangerous Goods Regulations (TDGR) to determine how to strengthen training requirements and enhance the safe transport of dangerous goods. Options include carefully developed regulations, standards, and guidelines.

At the end of 2014, TC worked with provincial and territorial government officials to suggest potential changes to Part 6 of the TDGR. Officials were asked to identify common training issues and challenges inspectors face in verifying compliance, and to propose solutions that could form the basis for improving Part 6 of the TDGR.

It was identified that the current regulations do not:

1. Allow an inspector to assess if a person (an employee) has sound knowledge of all relevant topics in Part 6 of the TDGR that directly relates to their job functions, and confirm whether or not he or she is adequately trained;
2. Specify how to assess training;
3. Require a specific training curriculum
4. Require training institutions to be accredited by TC;
5. Allow TC to assess trainer's knowledge and teaching methods/materials; and
6. Allow a person to use the same training certificate for multiple employers.

Comments Requested

Comments on the Training Requirements (Part 6) of the TDGR must be submitted to Transport Canada by February 28, 2017.

Links

The link below will allow you to view/print the Training in the Transportation of Dangerous Goods White Paper.

[file:///C:/Users/KDMCGRATH/Downloads/PART_6 - WHITE PAPER - WEB READY - OCT 2016 - EN.pdf](file:///C:/Users/KDMCGRATH/Downloads/PART_6_-_WHITE_PAPER_-_WEB_READY_-_OCT_2016_-_EN.pdf)

The link below will allow you to submit comments to Transport Canada.

<http://www.letstalktransportation.ca/part6>

I. OSHA Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness; Final Rule

On December 19, 2016, the Occupational Safety and Health Administration (OSHA) published a final rule (81 FR 91792-91810) amending the recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation.

Background

The United States Court of Appeals for the District of Columbia (Court) ruled in a majority decision that the Occupational Safety and Health Act does not permit OSHA to impose continuing recordkeeping obligations on employers. One judge filed a concurring opinion disagreeing with this reading of the statute, but finding that the text of OSHA's recordkeeping regulations did not impose continuing recordkeeping duties.

OSHA disagrees with the majority's reading of the law, but agrees that its recordkeeping regulations are not clear with respect to the continuing nature of employers' recordkeeping obligations.

Summary

OSHA has historically treated recordkeeping violations under the OSHA Act as continuing violations, consistent with section 8(c) of the Act, in which congress instructed OSHA to require employers to make and maintain accurate records of workplace injuries and illnesses. OSHA's longstanding position is that an employer's duty to record an injury or illness continues for the full duration of the record-retention-and-access period (i.e., for five years after the end of the calendar year in which the injury or illness became recordable).

This means that if an employer initially fails to record a recordable injury or illness, the employer still has an ongoing duty to record that case; the recording obligation does not expire simply because the employer failed to record the case when it was first required to do so. As long as the employer fails to comply with its ongoing duty to record an injury or illness there is an ongoing violation of OSHA's recordkeeping requirements that continues to occur every day employees work at the site.

Therefore, OSHA can cite employers for these recordkeeping violations for up to six months after the five-year retention period expires.

The purpose of this final rule is to clarify this interpretation of OSHA's recordkeeping regulations.

Effective Date

This final rule will become effective on January 18, 2017.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-30410.pdf>

J. OSHA Fall 2016 Regulatory Agenda

On December 23, 2016, the Occupational Safety and Health Administration (OSHA) published the Fall 2016 Semi-Annual Regulatory Agenda as part of the 2016 Fall Unified Agenda and Regulatory Plan.

Summary

OSHA publishes a semi-annual regulatory agenda twice per year. The semi-annual regulatory agenda describes a broad universe of regulatory activities that are under development or review. The Fall 2016 Semi-Annual Regulatory Agenda includes the following OSHA topics:

Occupational Safety and Health Administration – Final Rule Stage
1. Occupational Exposure to Beryllium
2. Procedures for the Handling of Retaliation Complaints under the Employee Protection Provision of the Moving Ahead for Progress in the 21 st Century Act
Occupational Safety and Health Administration – Proposed Rule Stage
1. Infectious Diseases
2. Standards Improvement Project IV
3. Update to the Hazard Communication Standard
4. Quantitative Fit Testing Protocol: Amendment to the Final Rule on Respiratory Protection
5. Technical Corrections to 16 OSHA Standards

Occupational Safety and Health Administration – Long-Term Actions
1. Bloodborne Pathogens
2. Combustible Dust
3. Preventing Backover Injuries and Fatalities
4. Emergency Response and Preparedness
5. Powered Industrial Trucks
6. Lock-Out/Tag-Out Update
7. Revocation of Obsolete Permissible Exposure Limits (PELs)
8. 1-Bromopropane (1-BP) Standard
9. Occupational Exposure to Styrene
10. Blood Lead Level for Medical Removal
11. Updating Requirements for the Selection, Fit Testing, and Use of Hearing Protection Devices

Link

The link below will allow you to view/print the Fall 2016 Semi-Annual Regulatory Agenda.

<https://www.reginfo.gov/public/do/eAgendaMain>

K. DHS/US Customs Border Protection: Toxic Substance Control Act Chemical Substance Import Certification Process Revisions; Final Rule

On December 27, 2016, the Department of Homeland Security, U.S. Customs and Border Protection (CBP) published a final rule (81 FR 94980-94986) amending regulations regarding the requirement to file a Toxic Substances Control Act (TSCA) certification when importing into the United States chemicals in bulk form or as part of mixtures and articles containing a chemical or mixture.

Summary

This final rule provides an electronic option for filing TSCA certifications, consistent with Executive Order (EO) 13659, *Streamlining the Export/Import Process for America's Businesses*. In order to submit an electronic TSCA certification, importers or their agents are required by the final rule to submit their entry filings to ACE or any other CBP electronic data interchange (EDI) system authorized to accept entries. Information related to the certifying individual, including name, phone number, and e-mail address for TSCA certifications submitted either in writing or electronically must be submitted. The submittal of contact information for the certifying individual will facilitate the resolution of issues related to shipments.

The final rule also eliminated the paper-based blanket certification process.

Effective Date

This final rule will become effective on January 26, 2017.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-27/pdf/2016-31055.pdf>

L. DOJ/DEA Establishment of a New Drug Code for Marihuana Extract; Final Rule

On December 14, 2016, the Department of Justice, Drug Enforcement Administration (DEA) published a final rule (81 FR 90194-90196) creating a new Administration Controlled Substances Code Number for “Marihuana Extract.”

Summary

Under international drug control treaties administered by the United Nations, some differences exist between the regulatory controls pertaining to marihuana extract versus those for marihuana and tetrahydrocannabinols. DEA has previously established separate code numbers for marihuana and tetrahydrocannabinols, but not marihuana extract. To better track these materials and comply with treaty provisions, DEA is creating a separate code number and definition for marihuana extract.

Marihuana Extract – 7530

“Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant.”

Effective Date

This final rule became effective on January 13, 2017.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29941.pdf>