



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - December 2017

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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 Electronic Manifest System; Update

On December 20, 2017, the e-Manifest User Fee Rule was signed by Scott Pruitt, EPA Administrator. This final rule establishes the regulatory framework for collecting user fees to recover EPA's costs of developing and operating the e-Manifest System. The final rule will be published in the Federal Register in January 2018.

Next E-Manifest Webinar

The next e-Manifest webinar will be conducted on Wednesday, January 3, 2018 from 2:00-3:00 PM EST. The webinar will provide an update on the e-Manifest, including the e-Manifest User Fee Rule and a presentation on the e-Manifest Application Programming Interface (API) focusing on the Update Manifest service.

Link

The link below provides access to EPA's e-Manifest Monthly Update webpage.

<https://www.epa.gov/e-manifest/monthly-update-hazardous-waste-electronic-manifest-system-e-manifest>

B. EPA Community Right-To-Know; Adopting 2017 North American Industry Classification System (NAICS) Codes for Toxics Release Inventory (TRI) Reporting; Final Rule

On December 26, 2017, the Environmental Protection Agency (EPA) published a final rule (82 FR 60906-60911) updating the list of North American Industry Classification System (NAICS) codes subject to the Toxics Release Inventory (TRI).

Background

On August 17, 2017, EPA published a direct final rule and a proposed rule to update the list of NAICS codes subject to reporting under the TRI to reflect 2017 NAICS code revisions. EPA stated in the direct final rule that if they received adverse comments, they would withdraw the direct final rule. EPA did receive an adverse comment and withdrew the direct final rule.

This final rule addresses the comment made on EPA's proposed rulemaking and updates the NAICS codes subject to TRI.

Summary

This final rule revises 40 CFR Part 372 to include the relevant 2017 NAICS codes for TRI reporting. This final rule also modifies the list of exceptions and limitations previously included in the CFR for the applicable NAICS codes for TRI reporting purposes.

The TRI reporting requirements remain unchanged, however, due to the NAICS code modifications some facilities will need to modify their reported NAICS codes. In response to the comment received by EPA the agency updated the NAICS code list for natural gas extraction facilities in the final rule also.

Effective Date

This final rule became effective on January 1, 2018.

Links

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

<https://www.gpo.gov/fdsys/pkg/FR-2017-12-26/pdf/2017-27815.pdf>

The link below will allow you to view/print the crosswalk tables between the 2012 and 2017 NAICS codes.

<http://www.census.gov/epcd/www/naics.html>

C. EPA Confidentiality Determinations for Hazardous Waste Export and Import Documents; Final Rule

On December 26, 2017, EPA published a final rule (82 FR 60894-60901) amending existing confidentiality determination regulations for the export and import of hazardous wastes into and from the United States.

Summary

In this final rule, EPA is establishing that no confidentiality business information (CBI) claims may be asserted by any person with respect to the export, import, and transit of hazardous waste and the export of excluded CRTs. The final rule applies to the following documents:

1. Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR 262, Subpart H, including but not limited to the notifications of intent to export, contracts submitted in response to requests for supplemental information from countries of import or transit, RCRA manifests, annual reports, EPA acknowledgements of consent, any subsequent communication withdrawing a prior consent or objection, responses that neither consent nor object, exception reports, transit notifications, and renotifications;
2. Documents related to the import of hazardous waste under 40 CFR 262, Subpart H, including but not limited to contracts and notifications of intent to import hazardous waste into the United States (US) from foreign countries or US importers;
3. Documents related to the confirmation of receipt and confirmation of recovery or disposal of hazardous waste exports and imports under 40 CFR 262, Subpart H.
4. Documents related to the transit of hazardous waste, under 40 CFR 262, Subpart H, including the notifications from US exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the US;
5. Documents related to the export of cathode ray tubes (CRTs), under 40 CFR 261, Subpart E, including but not limited to notifications of intent to export CRTs;
6. Documents related to the export and import of non-crushed spent lead acid batteries (SLABs) with intact casings, under 40 CFR 266, Subpart G, including but not limited to notifications of intent to export SLABs;
7. Submissions from transporters under 40 CFR 263, or from treatment, storage or disposal facilities under 40 CFR 264 and 265, related to exports or imports of hazardous waste, including but not limited to receiving facility notices of the need to arrange alternate management or return of an import shipment under 40 CFR 264.12(a) and 265.12(a);
8. Documents related to the export and import of RCRA universal wastes under 40 CFR 273, Subparts B, C, D, and F.
9. Documents required under 40 CFR 262, Subparts E, F, and H submitted in accordance with consents issued prior to December 31, 2016.

Confirmation of Receipt, Recovery, or Disposal Documents

In this final rule EPA is NOT requiring that facilities post confirmations of receipt, recovery or disposal on the internet. Exporters and receiving facilities of hazardous waste from foreign sources will continue to be required to maintain paper copies of these confirmations and continue to be required to provide this information to EPA or state inspectors upon request.

Effective Date

This final rule will become effective on June 30, 2018.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2017-12-26/pdf/2017-27525.pdf>

D. EPA Mercury; Reporting Requirements for the TSCA Mercury Inventory; Extension of Comment Period

On December 19, 2017, EPA published a notice (82 FR 60168) extending the comment period for the Mercury Reporting Requirements for TSCA Mercury Inventory proposed rule that was published on October 26, 2017.

Background

The proposed rule would require reporting from any person/company who manufactures (including importing) mercury or mercury added products, or intentionally uses mercury in a manufacturing product, and persons/companies recovering mercury from a waste with the intent to use or store the recovered mercury. EPA will utilize the information in the reports to prepare an “inventory of mercury supply, use, and trade, in the United States. Mercury is defined in the proposed rule, as elemental mercury and mercury compounds.

Comments Due

This notice extends the comment period for the proposed rule to January 11, 2018.

Link

The link below will allow you to view/print the notice of extension of the comment period.

<https://www.gpo.gov/fdsys/pkg/FR-2017-12-19/pdf/2017-27217.pdf>

E. DOT/FMCSA Hours of Service of Drivers of Commercial Motor Vehicles: Proposed Regulatory Guidance Concerning the Use of a Commercial Motor Vehicle for Personal Conveyance; Notice of Regulatory Guidance

On December 19, 2017, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of regulatory guidance (82 FR 60269-60271) that would revise the regulatory guidance regarding driving a commercial motor vehicle (CMV) for personal use while off-duty, referred to as “personal conveyance.” This provision is available to all CMV drivers required to record their hours of service (HOS) who are permitted by their employer to use the vehicle for personal use. FMCSA requests public comments on the guidance and its economic impact.

Background

The Federal Motor Carrier Safety Regulations (FMCSRs) currently require drivers to document their HOS on records of duty status (RODS), identifying one of four duty status options: On-duty (non-driving), driving, sleeper berth, and off-duty. As a result, when personal conveyance in a CMV is authorized by the motor carrier, drivers are required to document such use as off-duty on their RODS, irrespective of the method used to record the driver’s HOS (e.g., paper logs, automatic on-board

recording devices, electronic logging devices (ELDs), etc.). The minimum performance and design standards for ELDs include the automatic recording of data related to the off-duty movement of the CMV. The ELD regulations require manufacturers to include a special driving category for personal conveyance. This may be used at the motor carrier's discretion, based on their operations.

Current Guidance

The existing guidance on personal conveyance (49 CFR 395.8, Question 26) was issued by the Federal Highway Administration (FHWA), FMCSA's predecessor agency, in a memorandum dated November 18, 1996, and later published in a compilation of guidance (62 FR 16370). The guidance reiterated the basic principle that a driver in off-duty status must be relieved from work and all responsibility for performing work. It highlighted the use of the CMV as a personal conveyance in traveling to and from the place of employment (e.g., the normal work reporting location). The current guidance includes discussion of CMV's used to travel "short distances" from a driver's enroute lodgings to restaurants in the vicinity of such lodgings. In addition, the current guidance explicitly excludes the use of laden vehicles as personal conveyance and the operation of the CMV as personal conveyance by drivers who have been placed out of service for HOS violations.

Question 26: If a driver is permitted to use a Commercial Motor Vehicle (CMV) for personal reasons, how must the driving time be recorded?

Guidance: When a driver is relieved from work and all responsibility for performing work, time spent traveling from a driver's home to his/her terminal (normal work reporting location), or from a driver's terminal to his/her home, may be considered off-duty time. Similarly, time spent traveling short distances from a driver's enroute lodgings (such as enroute terminals or motels) to restaurants in the vicinity of such lodgings may be considered off-duty time. The type of conveyance used from the terminal to the driver's home, from the driver's home to the terminal, or to restaurants in the vicinity of enroute lodgings would not alter the situation unless the vehicle is laden. A driver may not operate a laden CMV as a personal conveyance. The driver who uses a motor carrier's CMV for transportation home, and is subsequently called by the employing carrier and is then dispatched from home, would be on-duty from the time the driver leaves home. A driver placed out of service for exceeding the requirements of the hours of service regulations may not drive a CMV to any location to obtain rest.

Proposed Guidance

In this proposed revision to the guidance, the FMCSA focuses on the reason the driver is operating a CMV while off duty, **without regard to whether the CMV is or is not laden**. The previous guidance, which required the CMV to be unladen, was written for combination vehicles, where the driver could readily detach the trailer and use the unladen tractor for personal conveyance. This interpretation had the inadvertent effect of not allowing drivers of single-unit work trucks that carry loads, as well as tools of trade and related materials, on the power unit to document this off-duty time on the RODS. In the absence of a trailer, these loads, tools, and other equipment cannot reasonably be offloaded, left unattended, and reloaded after the power unit has been used for personal conveyance. This proposed revision to the guidance eliminates the requirement that the CMV be unladen.

Proposed Guidance Language

Question 26: Under what circumstances may a driver operate a commercial motor vehicle (CMV) as a personal conveyance?

Guidance: A driver may record time operating a CMV for personal conveyance (i.e., for personal use or reasons) as off duty only when the driver is relieved from work and all responsibility for performing work.

1. Examples of appropriate uses of a CMV while off-duty for personal conveyance include, but are not limited to:
 - a. Time spent traveling from a driver's enroute lodging (such as a motel or truck stop) to restaurants and entertainment facilities and back to the lodging.
 - b. Commuting from the last location where on-duty activity occurred to the driver's permanent residence and back to that last on-duty location. This would include commuting between the driver's terminal and his or her residence, between trailer-drop lots and the driver's residence, and between work sites and his or her residence.
2. Examples of uses of a CMV that would not qualify as personal conveyance include, but are not limited to:
 - a. The movement of a CMV to enhance the operational readiness of a motor carrier. For example, moving the CMV closer to its next loading or unloading point or other motor carrier-scheduled destination, regardless of other factors.
 - b. After delivering a towed unit, and the towing unit no longer meets the definition of a CMV, the driver returns to the point of origin under the direction of the motor carrier in order to pick up another towed unit.
 - c. Continuation of a CMV trip in interstate commerce, even after the vehicle is unloaded. In this scenario, on-duty time does not end until the driver reaches a location designated or authorized by the carrier for parking or storage of the CMV, such as a permanent residence, authorized lodging, or home terminal.
 - d. Bobtailing or operating with an empty trailer to retrieve another load.
 - e. Repositioning a CMV and/or trailer at the direction of the motor carrier.
3. The CMV may be used for personal conveyance even if it is laden, since the load is not being transported for the commercial benefit of the carrier at that time.

Expiration Date of the Proposed Regulatory Guidance

The proposed regulatory guidance will be posted on FMCSA's website, www.fmcsa.dog.gov, if it is finalized. If finalized the guidance would be reviewed no later than December 19, 2022.

Request for Comments

In addition to general comments concerning the guidance, FMCSA is seeking information on the following topics:

1. Which carriers or drivers would take advantage of the additional flexibilities proposed in this guidance?
2. Are there particular segments of the industry that would take advantage of this change more than others?
3. Are there some carriers or segments of the industry that would prohibit their drivers from driving laden vehicles for personal conveyance?
4. For what reasons would a carrier prohibit drivers from driving a laden vehicle for personal conveyance?
5. What benefits would the new flexibilities provide to carriers and drivers?

Comments Due

Comments must be submitted to FMCSA by January 18, 2018.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2017-12-19/pdf/2017-27315.pdf>

F. DOJ/ATF Commerce in Explosives; 2017 Annual List of Explosive Materials; Notice

On December 28, 2017, The Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) published a notice of the list of explosive materials (82 FR 61589-61590).

Summary

ATF is required to revise and publish, at least annually, in the Federal Register a list of explosive materials including blasting agents and detonators. There are no changes from the 2016 Annual List of Explosive Materials.

Effective Date

The 2017 List of Explosive Materials became effective on the date of publication, December 28, 2017.

Link

The link below will allow you to view/print the 2017 List of Explosive Materials.

<https://www.gpo.gov/fdsys/pkg/FR-2017-12-28/pdf/2017-28010.pdf>

G. DOJ/DEA Schedules of Controlled Substances: Placement of MT-45 into Schedule I; Final Order

On December 13, 2017, the Department of Justice, Drug Enforcement Administration (DEA) published a final order (82 FR 58557-58559) placing the substance MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine), including its salts, isomers, and salts of isomers into schedule I of the Controlled Substances Act (CSA).

Summary

MT-45 is an opioid analgesic drug with pharmacological effects similar to morphine. Starting in 2013, MT-45 began appearing on the internet for sale as a “legal” opioid. Deaths associated with MT-45 abuse have occurred in the United States and Europe. There are no published studies as to the safety of MT-45 for human use. DEA has concluded that MT-45 has no currently accepted medical use in treatment in the United States and is most appropriately placed into Schedule I of the CSA.

Effective Date

This final order became effective on January 12, 2018.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2017-12-13/pdf/2017-26853.pdf>