VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - January 2018

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

On January 3, 2018, the Environmental Protection Agency (EPA) published a "User Fee" final rule (83 FR 420-462) establishing the methodology EPA will use to determine and revise the user fees applicable to the electronic and paper manifests that are submitted to the national electronic manifest system (e-Manifest System) that EPA is developing under the Hazardous Waste Electronic Manifest Establishment Act. This final rule also revises the hazardous waste manifest regulations to allow changes to transporters designated on a manifest while the shipment is enroute. The revisions address how corrections can be made to existing manifest records in the system, and allows the use of mixed paper and electronic manifest to track a hazardous waste shipment.

Background

EPA is establishing a national system for tracking hazardous waste shipments electronically, known as "e-Manifest." The e-Manifest system is established according to the Hazardous Waste Electronic Manifest Establishment Act, enacted into law on October 5, 2012. The "e-Manifest Act" authorizes the EPA to implement a national electronic manifest system and requires that the costs of developing and operating the new e-Manifest system be recovered from user fees charged to those who use hazardous waste manifests to track off-site shipments of their wastes. By enabling the transition from a paper-intensive process to an electronic system, the EPA estimates e-Manifest will ultimately reduce the burden associated with preparing shipping manifests.

EPA issued its first implementing regulation on electronic manifesting on February 7, 2014. This regulation established the legal and policy framework for the use of electronic manifests, and prescribed the conditions under which electronic manifests are the full legal equivalent of paper manifest forms for all RCRA purposes. While this rule codified key scope and consistency provisions included in the e-Manifest Act it did not address e-Manifest user fees; instead deferring regulatory action on user fees to a separate rulemaking.

Rule Summary

Following is a summary of the final rule:

1. Four (4) Manifest Submission Categories

   In this final rule EPA outlined four methods for manifesting hazardous waste and submitting manifest information to the e-Manifest system. In all cases, the manifest data is required to be submitted to EPA's central e-Manifest database. These four methods are:

   a. Fully Electronic System (including the Hybrid Method)

      The e-Manifest is used from the generator's site through acceptance at the receiving facility. A copy of the electronically prepared manifest must be printed at the generator's location and carried by the transporter to meet DOT requirements.

      The Hybrid method, or mixed manifest approach, is an option to be used when a generator wishes to initially sign a paper manifest but still assure the manifest transaction is performed electronically. This manifest will be created in the e-Manifest system as an electronic manifest. It will be assigned a unique manifest tracking number by the e-Manifest system and all subsequent tracking of the waste shipment and all manifest signatures will be executed electronically by the transporter(s) and receiving facility through the e-Manifest system. A paper manifest copy will be created to accommodate the generator, while all other aspects of the transaction and shipment tracking will be conducted through the e-Manifest and e-Manifest system.

b. Paper Manifests with Electronic Data File Upload

A paper manifest is used for the shipment from the generator through the receiving facility. After receipt of the shipment, the receiving facility will upload the manifest data along with an image of the paper manifest to the e-Manifest system for processing. The electronic transaction is executed as an electronic data file and image file upload to the system, with a Cross-Media Electronic Reporting Rule (CROMERR) compliant certification completed by the receiving facility owner or operator.

c. Paper Manifests with Electronic Image File Upload

A paper manifest is used for the shipment. After receipt of the shipment, the receiving facility will upload an image of the paper manifest to the e-Manifest system for processing.

d. Paper Manifests Mailed to EPA for Upload

A paper manifest is used for the shipment and after receipt by the receiving facility a paper copy of the manifest is mailed to EPA by the receiving facility for processing into the e-Manifest system. Note that this option for submittal of paper manifests expires on June 30, 2021. At that time one of the other previously described options for submitting manifests to EPA must be used.

2. Establishment of the Use Fee Calculation Methodology

This rule established a user fee calculation methodology in 40 CFR 264.1312 and 40 CFR 265.1312. A differential fee formula was used to reflect the differences in labor costs of processing the different manifest types.

3. Estimated Initial User Fee Schedule

The estimated initial user fee schedule was published for the four different manifest submission types.

Form of Manifest	Data Transmittal Method	Fee per Manifest
Paper Manifest	Mailed Paper	$20.00
Paper Manifest	Image Upload	$13.00
Paper Manifest	Data File with Image Upload	$7.00
Electronic Manifest (Including Hybrid)	Electronic	$4.00

EPA will publish a final two-year schedule of user fees on the e-manifest website (www.epa.gov/e-Manifest) at least 90 days prior to the implementation date of the e-manifest. EPA will revise the fee schedules on two-year intervals. The fee schedules will be published to users through the e-Manifest program website by July 1 of each odd numbered calendar year. The second year of each two-year fee schedule the user fees will be adjusted for inflation.

In this final rule EPA has determined that there will not be additional special transaction manifest fees assessed as was originally proposed. EPA will not be assessing additional fees for the

submission of manifest continuation sheets, extraneous documents that are submitted along with manifests, or calls to the user help desks.

4. Who Pays the E-Manifest User Fees

This final rule establishes that ALL e-Manifest User Fees will be paid by the receiving facilities. The billable event is the receipt of a manifest by the receiving facility. Receiving facilities will be billed monthly for the previous months e-Manifest usage. The e-Manifest user fees must be paid within 30 days of receipt using pay.gov.

The receiving facility will also pay the e-Manifest user fees for wastes rejected back to a generator. For wastes that are forwarded to an alternate receiving facility the alternate receiving facility will pay the e-Manifest user fees.

Furthermore, EPA assumes that the receiving facilities assessed these fees may choose to pass these fees through to the generator customers as a part of their service agreement, thus balancing the equities and burdens of the fee system without EPA's further intervention.

5. Expanding E-Manifest to "State-Only" Hazardous Wastes

In this final rule EPA is expanding the scope of the e-Manifest program to ALL wastes subject to manifest tracking under Federal Resource Conservation and Recovery Act (RCRA) regulations or under state law. Some state programs regulate more wastes than EPA under the Subtitle C (hazardous waste) regulations. These wastes are often referred to as state-only regulated wastes. If a waste is required to be transported using a hazardous waste manifest in either the origination state or the destination state, then the designated facility, regardless of location, shall complete the facility portion of the manifest, sign and date, and submit the manifest to the e-Manifest system.

6. Homeland Security Chemicals of Interest (P and U List Wastes)

The e-Manifest system will withhold from public access, data from manifests related to chemical facilities that handle P and U list hazardous wastes that are included in Appendix A of the Chemicals of Interest (COI) list. For these wastes, the e-Manifest system will not disclose the following data on the public access portion of the e-Manifest website: (a) the chemical waste name, (b) the specific P or U listed waste code, (c) the quantity of these wastes included in a shipment, and (d) the date of the shipment. The shipping description in the public access section will read "P-List or U-List waste."

7. Hazardous Waste Exports

Hazardous waste exports are NOT currently included in the e-Manifest system. Paper manifests will continue to be used for the export of hazardous wastes. These manifests are not required to be submitted to EPA. This issue will be addressed in later phases of the e-Manifest system.

8. Corrections to Manifests in the E-Manifest System

The final rule allows any interested person (e.g., a waste handler identified on the manifest) to submit a data correction at any time, by submitting a single record or batch correction electronically to the system. The correction includes a required CROMERR-compliant certification that to the corrector's knowledge and belief, the data records as corrected are true, accurate, and complete. The corrector must also notify all parties identified on the manifest that a correction has been made to the manifest. This can be completed by submitting an email to all parties.

The correction submission must: (a) indicate the record being corrected by Manifest Tracking Number, (b) identify the Item Number of the manifest affected by the correction, and (c) show the previously entered data and the data as corrected.

There is no time limit for the submission of manifest corrections. EPA had originally proposed a 90-day time limit following manifest acceptance for submission of corrections but after considering public comments decided not to set a time limit.

9. Modifications to Paper Manifest Printing Specifications

The final rule modifies the printing specification requirements in 40 CFR 262.21(f)(5) and (f)(6)(i) to align with the new manifest submission requirements. By June 30, 2018, approved printers must make available to users a printed five-copy form that indicates that the top copy of the manifest must be submitted by the receiving facility to EPA's e-Manifest System. In addition, manifest users must begin using the new 5-copy manifest on June 30, 2018. The distribution requirements for the 5-copy manifest are:

Page 1 (top copy): "Designated facility to EPA's e-Manifest system"
Page 2: "Designated facility to generator"
Page 3: "Designated facility copy"
Page 4: "Transporter copy"
Page 5 (bottom copy): "Generator's initial copy"

In the federal register notice, EPA emphasized that the requirement that receiving facility copies of paper manifests be submitted to the e-Manifest system rather than directly to states is promulgated under the authority of the e-Manifest. EPA states that as such, the requirement for facilities to submit manifest copies to e-Manifest in lieu of direct submission of these copies to the states must be implemented consistently in all states starting on the system launch date of June 30, 2018.

10. Transporter Changes on the Manifest While En-Route to the Designated Facility

The final rule adopts as proposed the following modifications to 40 CFR 263.21(a) and (b) stating that changes to shipment routing on the manifest can be made: (i) to address an emergency; or (ii) to accommodate transportation convenience or safety (e.g., to allow more efficient transport from a transfer facility or enable the substitution of a transporter that is the sub-contractor of the designated transporter). The change in transporter designation on the manifest can be made by either a consultation with the generator and the generator granting approval of the change, or through a documented contractual provision authorizing the transporter to make such a change on behalf of the generator.

Furthermore, 40 CFR 262.31(b)(3)(ii) is modified in the final rule requiring transporters or brokers who intend to oversee and control the routing of the shipments on behalf of the generator to enter the following statement in Item 14 of the manifest:

"Contract retained by generator confers agency authority on initial transporter to add or substitute additional transporters on generator's behalf."

11. E-Manifest User Fee Payments

E-Manifest user fees must be paid by receiving facilities within 30 days of receipt of an invoice. E-Manifest user fees must be paid on-line using a credit card or electronic fund transfer using www.pay.gov.

All e-Manifest user accounts that have not paid their user fees within 30 days of receipt of an invoice will be charged a minimal annual rate of interest equal to the average investment rate for Treasury

tax and loan account, rounded to the nearest whole percent. Also, e-Manifest user fees that are more than 90 days past due will be charged an additional penalty of 6% per year, assessed on any part of the debt that is past due more than 90 days, plus any applicable handling charges.

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-2018-01-03/pdf/2017-27788.pdf

B. EPA National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations; Final Rule

On January 29, 2018, EPA published a final rule (83 FR 3986-3992) removing the continuous monitoring requirements for pressure relief devices (PRDs) on containers in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Off-Site Waste and Recovery Operations (OSWRO).

Background

On March 18, 2015, EPA published a final rule (80 FR 14248) amending the OSWRO NESHAP. One of the revisions included in the final rules was for the monitoring of PRDs. The final rule did not distinguish between PRDs on stationary process equipment and those on containers, so the monitoring requirements applied to all PRDs. The final rule required a monitoring system capable of:

1. Identifying a pressure release;
2. Recording the time and duration of each pressure release; and
3. Immediately notifying operators that a pressure release is occurring.

The American Chemical Council (ACC) and Eastman Chemical Company (Eastman) filed a petition for reconsideration regarding the monitoring of PRDs on containers on May 18, 2015. The petition stated that, because containers are frequently moved around a facility and are received from many different off-site locations, it would be difficult, or impossible, to design and implement a monitoring system for containers that would meet the requirements of the final rule.

After a review of information provided by industry, EPA determined that the PRD inspection and monitoring requirements in the Container NESHAP that are already incorporated in the container requirements of the OSWRO NESHAP are effective and sufficient and that there is a low potential for emissions from containers at OSWRO facilities. Therefore, on August 7, 2017, EPA published a proposed rule (82 FR 36713) that would remove the PRD monitoring requirements for containers.

Summary

This rule finalizes the removal of the PRD monitoring requirements for containers in the OSWRO NESHAP as proposed in the August 7, 2017 proposed rule. In addition, the final rule revises the regulatory language in 40 CFR 63.691(c)(3)(ii) to clarify that monitoring data is not required to be used in the calculation of Hazardous Air Pollutants (HAPs) emitted during a pressure release event for containers.

Effective Date

This final rule became effective on the date of publication, January 29, 2018.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2018-01-29/pdf/2018-01512.pdf

C. EPA Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act; Memo to Regional Air Division Directors

On January 25, 2018, EPA Assistant Administrator, William Wehrum, distributed a memorandum to all EPA Regional Air Division Directors addressing when a major source subject to a maximum achievable control technology (MACT) standard under section 112 of the Clean Air Act (CAA) may be reclassified as an area source.

Background

The CAA defines a "major source" to mean "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering the controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous are pollutants." The term "area source" is defined as "any stationary source of hazardous air pollutants that is not a major source." Major source facilities are subject to different standards than sources with HAP emissions below the major source threshold.

In May 1995, the Director of EPA's Office of Air Quality, Planning and Standards, John Sietz, issued a guidance memo that established EPA's position that facilities that are major sources of HAPs on the first compliance date of an applicable major source MACT standard must comply "permanently" with the standard, even if the source has subsequently become an area source by limiting its potential to emit (PTE). This is commonly referred to as the "once in, always in" policy (OIAI policy).

Summary

EPA has determined that the OIAI policy from the May 1995 memorandum is contrary to the plain language of the CAA, and, therefore, must be withdrawn. EPA has now determined that a major source which takes an enforceable limit on its PTE and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its PTE.

Effective Date

This guidance became effective on January 25, 2018.

Link

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

https://www.epa.gov/sites/production/files/2018-01/documents/reclassification_of_major_sources_as_area_sources_under_section_112_of_the_clean_air_act.pdf

D. DOT/FMCSA Hours of Service; Electronic Logging Devices; Limited 90-Day Waiver; Truck Renting and leasing Association, Inc.; Grant of Waiver

On January 19, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a 3-month waiver (83 FR 2868-2869) to the Truck Renting and Leasing Association (TRALA) that provides that all drivers of property-carrying commercial motor vehicles rented for **30 days or less** are not required to use an electronic logging device (ELD) in the vehicle. While this waiver allows for paper logs to be used for the first 30 days, *rental trucks that are used for more than 30 days will require an ELD to be installed*, unless it is operated exclusively by a 100 air mile radius driver.

Summary

This waiver covers the rental of any property-carrying commercial motor vehicle (CMV) for a period of 30 days or less, regardless of the reason for the rental. Evidence that a carrier has replaced one rental CMV with another on 30-day cycles or attempted to renew a rental agreement for the same CMV over a period beyond 30 days will be regarded as a violation of the waiver.

Carriers and drivers operating under this waiver must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations, including the preparation of paper records of duty status (RODS) for operations which are currently considered to be subject to the HOS rules and the record retention requirements associated with those RODS and supporting documents.

Motor carriers must also have a "satisfactory" safety rating from FMCSA.

1. Information to be Carried on the Rental Vehicle

    a. Drivers must have a copy of the Federal Register notice in their possession while operating under the terms of the waiver and it must be presented to law enforcement officials upon request.
    b. Drivers must have a copy of the rental agreement in the CMV, and make it available to law enforcement officers on request. The agreement must clearly identify the parties to the agreement, the vehicle, and the dates of the rental period.
    c. The driver must possess copies of their records of duty status for the current day and the prior 7 days. 100 air mile radius drivers should carry a copy of their completed 100 Air Mile Radius time record form.

2. Crash Notification to FMCSA

    Carriers operating under this waiver must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving any of the motor carrier's drivers operating under the terms of the waiver.

3. Termination of the Exemption

    FMCSA will immediately revoke the waiver for any interstate driver or motor carrier for failure to comply with the terms and conditions of this waiver.

Effective Dates

This waiver is effective from January 19, 2018 through April 19, 2018.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2018-01-19/pdf/2018-00843.pdf

E. DOT/FMCSA Fees for the Unified Carrier Registration Plan and Agreement; Final Rule

On January 5, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (83 FR 605-613) reducing the annual registration fees collected from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the registration years 2018, 2019, and subsequent years.

Summary

The UCR Plan and the 41 States participating in the UCR agreement establish and collect fees from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies. The statute sets a statutory maximum amount that the UCR Plan may collect and if annual revenues exceed the statutory maximum then the UCR Plan fees must be adjusted. The UCR Plan estimates that by December 31, 2017, the fees collected will exceed the statutory maximum by $5.13 million. In response, the UCR board has requested that the fees be reduced in two stages.

For the 2018 registration year, the fees will be reduced below the current level by approximately 9.1% to ensure that the fee revenues to not exceed the statutory maximum, and to account for the excess funds held in the depository. For the 2019 registration year, the fees will be reduced below the current level by approximately 4.55% to ensure the fee revenues in that and future years do not exceed the statutory maximum.

Effective Date

This final rule became effective on January 5, 2018.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2017-28509.pdf

F. DOJ/DEA Schedules of Controlled Substances: Temporary Placement of Cyclopropyl Fentanyl in Schedule I; Temporary Scheduling Order

On January 4, 2018, the Department of Justice, Drug Enforcement Administration (DEA) published a temporary scheduling order (83 FR 469-472) placing the synthetic opioid, *N*-(1-phenethylpiperidin-4-yl)-*N*-

phenylcyclopropanecarboxamide (cyclopropyl fentanyl), and its isomers, esters, and ethers into Schedule I of the Controlled Substances Act (CSA).

Summary

Reports collected by DEA demonstrate that cyclopropyl fentanyl is being abused for its opioid effects. The DEA has collected post-mortem toxicology and medical examiner reports on 115 confirmed fatalities associated with cyclopropyl fentanyl. Because abusers of cyclopropyl fentanyl obtain this substance through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. There are currently no legitimate medical uses for cyclopropyl fentanyl. Therefore, DEA has determined that it is necessary to temporarily place cyclopropyl fentanyl into Schedule I of the CSA to avoid an imminent hazard to public safety.

Effective Date

This temporary scheduling order became effective on January 4, 2018.

Link

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

https://www.gpo.gov/fdsys/pkg/FR-2018-01-04/pdf/2017-28470.pdf