



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - March 2018

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A. EPA Electronic-Manifest System: Update

On March 19, 2018, the Environmental Protection Agency (EPA) held an electronic manifest (e-Manifest) Application Programming Interface (API) webinar and on March 28, 2018, EPA held a general e-Manifest webinar. The theme for the March 28 webinar was “90 Days to Launch.”

EPA announced the following revisions and updates to the JSON schema in GitHub during the API webinar:

- a. Section 16: Import Functionality
- b. Section 18: Discrepancy/Rejection/Residue
- c. PCB Manifest Upgrade

The General e-Manifest webinar reinforced the basics of the e-Manifest while also focusing on e-Manifest Registration. Some of the topics discussed on registration include:

- a. e-Manifest is being built as a module of EPA’s RCRAInfo system
- b. There are several Permission levels in e-Manifest (Site Manager, viewer, preparer, certifier)
- c. Site Managers can view, prepare, and certify forms in addition to approving other company users in the e-Manifest system
- d. Not all states have opted into EPA’s RCRAInfo system yet. Some of the states that are NOT in the system at this time are: Illinois, New Jersey, Texas, and Wisconsin
- e. All receiving facilities must have an EPA ID Number. This includes facilities that receive State Hazardous Waste and PCB wastes.
- f. Generators must have an EPA ID Number and be registered in the e-Manifest system to create and sign electronic manifests, to view their manifests in the e-Manifest system, or to correct one of their manifests in the e-Manifest system.

EPA continues their e-Manifest programming efforts and announces their progress during the monthly API webinars. EPA continues to state that the e-Manifest system will become effective on June 30, 2018.

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 Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations; Proposed Rule

On March 16, 2018, EPA published a proposed rule (83 FR 11654-11667) that would add hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations.

Background

Aerosol cans are widely used for dispensing a broad range of products including paints, solvents, pesticides, food and personal care products. The Consumer Specialty Products Association (CSPA) estimates that 3.8 billion aerosol cans were filled in the United States in 2015 for use by commercial and industrial facilities along with households.

Aerosol cans frequently contain flammable propellants such as propane or butane which can cause the aerosol can to demonstrate the hazardous characteristic for ignitability. In addition, the aerosol can

may also be a hazardous waste when discarded because the aerosol can may contain materials that exhibit hazardous waste characteristics or contain a commercial chemical product found in the P or U hazardous waste lists.

Summary

EPA believes that the management of hazardous waste aerosol cans can best be implemented through a universal waste approach where handlers operate within a streamlined management system with regulatory oversight. EPA also believes that the universal waste program addresses the environmental concerns regarding the management of hazardous waste containing aerosol cans. Following are some of the requirements in the proposed rule:

1. The proposed definition: “*Aerosol can* means an intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.”
2. A used aerosol can becomes a waste on the date it is discarded and an unused aerosol can becomes a waste on the date the handler decides to discard it.
3. Aerosol cans that have been emptied of their contents (both propellant and product) are excluded from these regulations.
4. Aerosol cans that show evidence of leakage, spillage, or damage that could cause leakage under reasonably expected conditions must be managed under the full RCRA hazardous waste regulations (cannot be managed as universal wastes).
5. The existing universal waste requirements currently applicable to small quantity and large quantity handlers of universal waste would be applicable to handlers of discarded aerosol cans. These requirements include:
 - a. Labeling and marking (Universal Waste Aerosol Can(s), Waste Aerosol Can(s), or Used Aerosol Can(s))
 - b. Management standards (managed in a manner to prevent releases to the environment)
 - c. Accumulation time limits
 - d. Employee training
 - e. Response to releases
 - f. Requirements for off-site shipments
 - g. Export requirements

EPA is also proposing management standards for the puncturing and draining of aerosol cans by universal waste handlers. These standards include:

- a. The puncturing and draining must be conducted by a commercial device specifically designed to safely puncture aerosol cans while containing the residual contents and any emissions.
- b. The handler will be required to follow the manufacturer’s instructions.
- c. The handler must develop written procedures outlining how to safely puncture and drain universal waste aerosol cans.
- d. Operators must be trained.
- e. The puncturing and draining must be conducted in a manner designed to prevent fires and the release of the contents of the aerosol cans to the environment.
- f. A written spill response plan must be in place.
- g. A spill clean-up kit must be on-site.
- h. A hazardous waste determination must be made on the contents removed from the aerosol cans.
- i. The handler becomes a generator of the waste removed from the aerosol cans and these wastes must be managed in accordance with applicable RCRA regulations.
- j. The handler is responsible for ensuring that the puncturing device is properly draining the contents of the aerosol cans and that breakthrough of air emissions is not occurring.

Comments Due

Comments on this proposed rule must be submitted to EPA on or before May 15, 2018.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-16/pdf/2018-05282.pdf>

C. EPA Resource Conservation and Recovery Act Definition of Solid Waste D.C. Circuit Court of Appeals Ruling

On March 6, 2018, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court of Appeals) modified its 2017 ruling regarding EPA's Definition of Solid Waste (DSW) Rule under the Resource Conservation and Recovery Act (RCRA).

Background

On October 30, 2008, EPA published a final rule (73 FR 64668) revising the definition of solid waste to exclude certain hazardous secondary materials (HSM) from regulation as a hazardous waste under RCRA. In order to resolve several legal challenges to the rule the courts required EPA to amend the final rule to address issues arising from both environmental groups as well as industry. On January 13, 2015, EPA published a final rule (80 FR 1693) revising several recycling-related provisions associated with the definition of solid waste used to determine applicable hazardous waste regulations under Subtitle C of RCRA. Both environmental groups and industry again challenged the 2015 final rule. On July 7, 2017, the D.C. Circuit Court of Appeals issued a ruling upholding some aspects of the 2015 rule and vacating others. This included vacating the "Verified Recycler Exclusion" and striking down "Legitimacy Factor 4."

Following the issuance of the D.C. Circuit Court of Appeals 2017 ruling, petitions for a rehearing were filed by the American Petroleum Institute, EPA, environmental groups, and industry.

Summary

After reviewing the petitions, the court has modified its 2017 decision by:

1. Stating that Legitimacy Factor 4 which required that the recycled product contain concentrations of hazardous constituents "comparable to or lower than" levels found in analogous products is NOT mandatory, but must be considered.
2. The Transfer-Based exclusion included in the 2008 final rule was reinstated.
3. Allows petroleum refinery catalysts to be excluded if the containment and emergency response requirements are satisfied.

Effective Date

This ruling became effective on the date of publication, March 6, 2018.

Link

The link below will allow you to view/print the D.C. Circuit Courts modified ruling on EPA's Definition of Solid Waste rule.

[https://www.cadc.uscourts.gov/internet/opinions.nsf/0/3A93250DDBFBD19C852582480055DAEF/\\$file/09-1038.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/0/3A93250DDBFBD19C852582480055DAEF/$file/09-1038.pdf)

D. EPA Issuance of Guidance Memorandum, “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program;” Issuance of Guidance Memorandum

On March 30, 2018, EPA published a Guidance Memorandum (83 FR 13745-13746) titled “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program.”

Summary

This guidance memorandum (memo) addresses the accounting of emissions from a project under Step 1 of the New Source Review (NSR). Step 1 of the NSR applicability process requires a determination of whether a proposed project will, by itself, result in a significant emissions increase. The memo explains that it is EPA’s interpretation that the NSR regulations provide for emissions **decreases** as well as increases are to be considered in Step 1 of the NSR applicability process.

Previous guidance had indicated that the NSR regulations precluded the consideration of emission decreases in Step 1.

Effective Date

This guidance became effective on March 13, 2018.

Link

The link below will allow you to view/print the federal notice of the issuance of the guidance memorandum.

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06430.pdf>

The link below will allow you to view/print the Guidance Memorandum.

<https://www.epa.gov/nsr/project-emissions-accounting>

E. DOT/FMCSA Hours of Service of Drivers: Electronic Logging Devices; Application for Exemption; Truck Renting and Leasing Association, Inc.; Notice of Application for Exemption

On March 13, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of application for exemption (83 FR 10946-10948) for electronic logging devices received from the Truck Renting and Leasing Association Inc. (TRALA).

Summary

In this notice FMCSA is announcing that the TRALA has requested an exemption until December 31, 2018, from the electronic logging device (ELD) requirements for all drivers of property-carrying commercial motor vehicles rented for 30 days or fewer. A waiver for the same purpose and group of drivers was issued to TRALA on January 19, 2018, and expires on April 19, 2018. TRALA states that the waiver period, which is limited to 90 days, is not sufficient to address the ELD problems that they and their short-term lessors are encountering. This request, if granted, would provide rental-vehicle owners, carriers, and drivers with additional time to develop compliance strategies for dealing with the unique issues relating to the use of ELDs in short-term rental vehicles. TRALA believes that the exemption, if granted, would not have any adverse impacts on operational safety, as drivers would continue to remain subject to the hours-of-service regulations as well as the requirement to maintain a paper record of duty status. FMCSA requests public comment on TRALA’s application for exemption.

Request for Exemption

TRALA is requesting an exemption until December 31, 2018, from the ELD requirements in 49 CFR part 395, as applied to drivers of property-carrying CMVs rented for any reason for no longer than 30 days. Lessors of short-term CMV rentals are struggling to meet the current April 19, 2018 waiver expiration deadline. TRALA states that its members continue to work diligently with their customers, developing systems that will allow renters to record and report their hours seamlessly, and partnering with ELD providers to give the most options available to rental customers.

According to TRALA, every customer's needs are unique. An additional period through the end of this year to prepare for this transition would allow their members to continue resolving the issues presented by new technology and the need for individual customer-based compliance strategies. It would also allow lessors to meet seasonal demand for short-term rental vehicles through the holiday season in November and December of this year without disruptions.

TRALA states that allowing short-term CMV rental truck drivers to not comply with ELD requirements until December 31, 2018 will not have any impact on safety nor will it provide a safe harbor for drivers who may try to avoid compliance with the Hours-of-service (HOS) regulations in general. Nearly half of the States now impose daily rental fees which are a significant disincentive to rent solely for the purpose of avoiding the ELD regulations.

TRALA also states that, if the exemption is granted, law enforcement officers would be better able to identify short-term rental vehicles. Under 49 CFR 390.21(e), a commercial motor vehicle (CMV) rented for a period not to exceed 30 days is not required to be marked with the name and USDOT number of the operating motor carrier if the vehicle otherwise is marked with the lessor's name and USDOT number, and a copy of the rental agreement is carried in the vehicle in accordance with that provision.

Enforcement officials inspecting such a vehicle would examine the short-term rental agreement to determine that the ELD requirement does not apply to that vehicle. The official would then check the driver's paper record of duty status for compliance with the HOS regulations.

According to TRALA, their members represent about 25-30% of CMVs on the road and are a key component of the trucking industry. Allowing a further exemption through December 31, 2018 to continue the transition efforts ongoing since the final rule was published will give all businesses that use rental trucks comfort that systems can be deployed to better address the difficulties confronted by the rental truck market.

Comments Due

Comments on this application for exemption must be submitted to FMCSA on or before April 12, 2018.

Link

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-13/pdf/2018-05001.pdf>

F. OSHA Will Begin Enforcing Beryllium Standard on May 11, 2018; Trade Release Memorandum

On March 2, 2018, the Occupational Safety and Health Administration (OSHA) published a Trade Release Memorandum (memo) announcing that the administration would begin enforcing the Occupational Exposure to Beryllium final rule published on January 9, 2017 (82 FR 2470) on May 11, 2018.

Summary

In the final rule OSHA amended the General Industry standards for beryllium by lowering the permissible exposure limit (PEL) for beryllium and beryllium compounds and revising other provisions to protect employees. The revisions in the final rule include:

1. Reducing the PEL for beryllium to 0.2 µg/m³ as an 8-hour time weighted average (TWA) and establishing a new short-term exposure limit (STEL) of 2.0 µg/m³ over a 15-minute period;
2. This final rule applies to work areas containing a process or operation that can release beryllium where employees are, or can reasonably be expected to be exposed to airborne beryllium at any level;
3. Requires the use of engineering and work practice controls such as ventilation or enclosure;
4. Requires the construction and use of change rooms and showers;
5. Provide respirators when controls are inadequate and requires the employer to provide a powered air-purifying respirator (PAPR) instead of a negative pressure respirator where respiratory protection is required and the employee requests a PAPR;
6. Limit worker access to high-exposure areas and requires the use of protective clothing and equipment where employee exposure exceeds, or can reasonably be expected to exceed the PEL or STEL or where there is a reasonable expectation of dermal contact with beryllium;
7. Develop a written exposure control plan;
8. Revised training requirements;
9. Medical examinations must be offered to each employee who is or is reasonably expected to be exposed at or above the action level for more than 30 days per year;
10. Medical examinations must be offered at least every two years; and
11. Exposure monitoring must be repeated within six months where employee exposures are at or above the action level but at or below the PEL, and within three months where employee exposures are above the PEL or STEL.

Enforcement Date

OSHA will start the enforcement of the revised beryllium rules on May 11, 2018.

Compliance with the change rooms and showers is required beginning on March 10, 2019.

Compliance with the obligation for engineering controls is required beginning on March 10, 2020.

Link

The link below will allow you to view/print the Trade Release Memorandum.

<https://www.osha.gov/news/newsreleases/trade/03022018>

G. CPSC Labeling of Certain Household Products Containing Methylene Chloride; Supplemental Guidance

On March 21, 2018, the Consumer Product Safety Commission (CPSC) published guidance in the federal register (83 FR 12254-12259) updating the 1987 policy statement to provide guidance regarding the labeling of paint strippers containing methylene chloride to include warnings of acute inhalation hazards.

Background

On July 7, 2016, the Halogenated Solvents Industry Alliance (HSIA) petitioned the CPSC to amend its 1987 Statement of Interpretation and Enforcement Policy (Statement) regarding the labeling of household products containing methylene chloride to recognize the acute hazards posed by using

household products containing methylene chloride in enclosed spaces with inadequate ventilation. On June 2, 2017, the CPSC voted unanimously (5-0) to grant the petition and directed staff to draft a policy statement that addresses labeling for acute hazards from inhaling methylene chloride vapors from paint strippers.

Summary

This guidance provides the following recommendations for labeling stripping products that contain methylene chloride.

1. Principal Display Panel (PDP)

CPSC recommends replacing the 1987 example of cautionary labeling on the principal display panel with the following statement:

WARNING: INHALATION OF VAPOR VERY HARMFUL VAPOR CAN KILL YOU IN ENCLOSED AREAS EYE AND SKIN IRRITANT. Read All Cautions on Back/Side Panel.

2. Back or Other Panel

CPSC recommends replacing the 1987 back or other panel labeling with the information and format below:

WARNING Contains Methylene Chloride. INHALATION OF VAPOR CAN KILL YOU. DO NOT USE IN ENCLOSED AREAS, such as bathrooms, basements or closets. SYMPTOMS MAY NOT BE NOTICEABLE. • Avoid contact with eyes or skin, as severe irritation can occur. • Methylene Chloride may cause cancer. • The risk to your health depends on the level and duration of exposure. • Keep Out of Reach of Children.

SAFETY DIRECTIONS: • USE OUTDOORS IN AN OPEN AIR AREA. It is dangerous to use this product indoors. • If you must use indoors, cross-ventilate work area by opening all windows and doors and circulating fresh air through the work area to reduce vapor accumulation. • Always wear chemical-splash goggles and chemical-resistant gloves when handling this product. • A dust mask does not provide protection against the vapors.

FIRST-AID:

- INHALATION: First move person to fresh air. If not breathing, give artificial respiration. Call 911, or poison control center, or emergency room.
- EYE EXPOSURE: Immediately flush affected eye(s) with water. Call 911, or poison control center, or emergency room, as soon as possible.
- SKIN EXPOSURE: Immediately wash skin with soap and water. Avoid spreading material on unaffected skin. Remove contaminated clothing and shoes, and thoroughly clean before reuse. Contact medical professional for advice.
- IF SWALLOWED: IMMEDIATELY call 911, or poison control center, or emergency room. Do NOT induce vomiting, unless directed to do so by medical personnel. Never give anything by mouth to an unconscious person.

Applicability Date

This guidance document became applicable on March 21, 2018.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-21/pdf/2018-05580.pdf>