Veolia North America - Industrial Business Regulatory Update - April 2019

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A. Environmental Protection Agency: Modernizing Ignitable Liquids Determinations; Proposed Rule

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: April 2, 2019
Comments Due Date: June 3, 2019

Summary

On April 2, 2019, the Environmental Protection Agency (EPA) published a Proposed Rule (84 FR 11539-11552) to update the regulations for the identification of ignitable hazardous waste under the Resource Conservation and Recovery Act (RCRA), to modernize RCRA test methods that currently require the use of mercury thermometers, and codifying previous guidance for the sampling and analysis of multiphase wastes.

The rulemaking includes the following proposed revisions:

1. Modernize RCRA test methods referenced in 40 CFR 261.21 that are used to determine ignitability to allow non-mercury thermometers.
    a. Update SW-846 method 1010A (Pensky-Martens) to 1010B (ASTM D 8175-18)
    b. Update SW-846 method 1020B (Setaflash) to 1020C (ASTM D 8174-18)
    c. This revision would also allow the continued use of the existing methods (ASTM D 93-79, D93-80, D 3278-78) which require the use of mercury thermometers.

2. Revise the wording of the aqueous alcohol exclusion in 40 CFR 261.21(a)(1) to "other than a solution containing less than 24 percent of any alcohol or combination of alcohols (except if the alcohol has been used for its solvent properties and is one of the alcohols specified in EOA Hazardous Waste No. F003 or F005) by volume and at least 50 percent water by weight." This revision codifies existing EPA guidance on both the definition of aqueous and what alcohols are included in the exclusion.

3. Codifies existing EPA guidance for the sampling and analysis of multiphase wastes. This guidance states in part to separate the sample into all of its different solid and/or liquid phases and analyze each one individually to determine whether that phase exhibits the characteristic of ignitability. Within this section EPA also states that it may re-propose codifying the use of the pressure filtration method as the definitive method for determining if a waste contains a liquid.

4. Corrections to the ignitable compressed gas definitions in 40 CFR 261.21(a)(3)(ii) to current Department of Transportation (DOT) regulations and removes obsolete information. These include:
    a. Updates 261.21(a)(3)(ii)(A) to replace outdated references to the Bureau of Explosives and DOT.
    b. Specifies ASTM standard E681-85 as the approved test for determining whether any waste that is an ignitable compressed gas exhibits the RCRA ignitability characteristic .
    c. Updates the definition of ignitable compressed gas to mirror the definition and testing that DOT now requires. A waste that meets the definition of a Division 2.1 flammable gas or a flammable aerosol (per 49 CFR 173.115(a) and (l)) will also meet EPA's definition of an ignitable compressed gas.

5. Updates 40 CFR 261.21(a)(4)(i)(A) to read "The material meets the definition of a Division 1.1, 1.2, or 1.3 explosive, as defined in 261.23(a)(8), in which case it must be classed as an explosive." This removes obsolete reference to Class A and Class B explosives which are no longer used by DOT.

6. Deletes four notes at the end of 40 CFR 262.21, which are outdated or unnecessary to understanding the regulation.

7. Updates the SW-846 air sampling and stack emissions methods that require the use of mercury thermometers to provide the flexibility to use alternative temperature measuring devices instead of mercury thermometers. This would affect methods 0010, 0011, 0020, 0023A, and 0051.

The proposed rules would allow for the use of modern equipment and techniques for making ignitability determinations for waste. The proposed revisions would also provide greater clarity to hazardous waste identification and additionally reduce the overall use of mercury-containing thermometers

Reference/Link

Docket No. EPA-HQ-OLEM-2018-0830; FR Vol. 84, No. 63, 4/2/19, 12539-12552

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

https://www.govinfo.gov/content/pkg/FR-2019-01-29/pdf/2019-00254.pdf

B. **EPA Draft Interim Recommendation to Address Groundwater Contaminated with Perfluoroocantoic Acid and Perfluorooctane Sulfonate**

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: April 25, 2019
Comments Due Date: June 10, 2019

Summary

EPA is seeking public comment on a draft set of recommendations for cleaning up groundwater contaminated with Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonate (PFOS). The recommendations will provide a starting point for making site-specific cleanup decisions. The guidance is based on EPA's current scientific understanding of per- and polyfluoroalkyl substances (PFAS) toxicity and is intended to provide clear and consistent guidance for federal cleanup programs, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The guidance provides recommendations on 1) screening levels, which are used to determine if levels of contamination may warrant further investigation; and 2) Preliminary remediation goals (PRGs) to inform site-specific cleanup levels for PDOA and PFOS contamination of groundwater that is a current or potential source of drinking water. PRGs are initial targets for cleanup, which may be adjusted on a site-specific basis as more information becomes available.

Comments

Comments are welcome on any part of the guidance, including the use of EPA's Lifetime Drinking Water Health Advisory level of 70 ng/L or parts per trillion as the recommended PRD for groundwater, or whether higher or lower values would be

Reference/Link

Docket No. EPA-HQ-OLEM-2019-0229; EPA Guidance Document, 4/25/19, 5 pages.

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

https://www.epa.gov/sites/production/files/2019-04/documents/draft_interim_recommendations_for_addressing_groundwater_contaminated_with_pfoa_and_pfos_public_comment_draft_4-24-19.508post.pdf

C. EPA: Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Applicants Requesting to Treat/Dispose of PCBs using Incineration or an Alternative Method; Notice

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: April 16, 2019
Comments Due Date: June 17, 2019

Summary

Guidance documents were developed in 1986 for persons applying to EPA for approval to dispose of PCBs using incineration or an alternative method. The guidances are split into documents (thermal and non-thermal) and they present and discuss the format, content, and suggested level of detail for approval applications, test plans, and test reports.

EPA is currently updating these guidance documents and will combine them into a single document.

Therefore, EPA is submitting a new Information Collection Request (ICR) that addresses reporting and recordkeeping requirements that are included in the updated guidance document. The use of the updated guidance document will be voluntary, but the PRA still requires the reporting and recordkeeping of this guidance to be determined.

Reference/Link

Docket No. EPA-HQ-OLEM-2018-0305; EPA Notice, 4/16/19, 2 pages.

The link below will allow you to view/print this information collection request.

D. PHMSA: Conforming Amendments and Technical Corrections to Department Rules Implementing the Transportation Industry Drug Testing Program; Final Rule

Agency

Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Office of the Secretary of Transportation (OST)

Dates

Effective Date: April 23, 2019

Summary

This final rule makes minor technical corrections to the OST, FAA, FTA, and PHMSA regulations governing drug testing for safety-sensitive employees to ensure consistency with the recent amendments made to the Department of Transportation's regulation, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to DOT-regulated drug testing programs. The changes to the Department's regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6-acetylmorphine, and codeine, by the more inclusive term "opioids," rather than "opiates." This rule amends the term in the FAA, FTA, and PHMSA regulations to ensure that all DOT drug testing rules are consistent with one another and with the Mandatory Guidelines for Federal Workplace Drug Testing Programs. In addition, this rule makes a conforming amendment to include the term "opioids" in the wording of the Department's annual information collection requirement and clarifications to section 40.26 and Appendix H regarding the requirement for employers to follow the Department's instructions for the annual information collection.

Background

On January 23, 2017, the Department of Health and Human Services (HHS) published its final version of its Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (HHS Mandatory Guidelines) (82 FR 7920). In that final rule, HHS added four semi-synthetic opioid substances (hydrocodone, hydromorphone, oxycodone, and oxymorphone) to the drugs for which laboratories test under the HHS Mandatory Guidelines. That rule became effective October 1, 2017.

By statute, the Department of Transportation is required to follow the HHS Mandatory Guidelines for the drugs for which it tests in the transportation industry drug testing program. Consequently, the Department issued a notice of proposed rulemaking (NPRM) on January 23, 2017 (82 FR 7771). In that NPRM, the Department proposed to revise 49 CFR part 40 (part 40) to harmonize with certain parts of the revised HHS Mandatory Guidelines.

The Department's final rule, published on November 13, 2017 among other things, added the four semi-synthetic opioid substances (hydrocodone, hydromorphone, oxycodone, and oxymorphone) to the Department's drug testing program (82 FR 52229). The Department's final rule became effective on January 1, 2018. These testing requirements are now codified at 49 CFR 40.85(d) and 40.87.

Before the 2017 HHS and DOT rulemakings, laboratories under the HHS Mandatory Guidelines and Part 40 tested for codeine, 6-acetylmorphine, and morphine, properly referred to as "opiates." The four substances added in the DOT 2017 final rule are semi-synthetic substances, closely related to opiates but are chemically distinct. For this reason, it is more accurate to refer to all six substances under the more inclusive term "opioids."

DOT Management Information System Form

The 2017 DOT final rule changed the terminology from "opiates" to "opioids" throughout part 40, with one minor exception in the DOT's Management Information System (MIS) Form. Specifically, DOT did not change the term "opiates" to "opioids" within the MIS Form in order to avoid any confusion on what employers were to report for the 2017 calendar year MIS reporting period. Since testing for the semi-synthetic opioids began in calendar year 2018, employers would not need to report that data until after January 1, 2019. Therefore, DOT is now updating the MIS Form to be consistent with the rest of part 40.

In addition, in DOT's November 13, 2017, final rule (82 FR 52243), the instructions to the MIS data collection form were moved from Appendix H to the DOT website. DOT did so to provide greater flexibility to make changes and/or updates to the MIS instructions and did not intend for this to suggest that employers were no longer required to use the MIS instructions as they have been required to do by part 40 and the respective DOT Agency regulations since 2003. Therefore, DOT is making a technical amendment to §40.26 and Appendix H to part 40 to clarify the requirement for employers to use the MIS instructions.

Discussion

The Department's 2017 final rule was promulgated under the authority of the Omnibus Transportation Employee Testing Act (OTETA) of 1991. The OTETA sets the requirements for DOT's reliance on the HHS Mandatory Guidelines for scientific testing issues. Section 503 of the Supplemental Appropriations

Act, 1987 and Executive Order 12564 establish HHS as the agency that directs scientific and technical guidelines for Federal workplace drug-testing programs and standards for certification of laboratories' regulated programs. While the Department has discretion concerning many aspects of the regulations governing testing in the transportation industries' regulated programs, the HHS Mandatory Guidelines for the drugs for which DOT requires testing must be followed.

The final rule follows that same mandate with respect to 49 CFR part 40 (OST), 14 CFR part 120 (FAA), and 49 CFR part 655 (FTA), all of which are directly subject to the OTETA mandate to conform to the HHS Mandatory Guidelines. Although PHMSA is not one of the agencies mentioned in OTETA, PHMSA's drug testing rule (49 CFR part 199) has always incorporated part 40 procedures, and it is important for all DOT drug testing regulations, and their terminology, to remain consistent. For this reason, DOT is changing the definition of "prohibited drug" in part 199 to directly reference part 40 and not the Controlled Substances Act.

In the OST rule, in Appendix H, the MIS form, in Section III, "Drug Testing Data," the word "opiates" in Column 7 is being changed to "opioids."

Reference/Link

FR Vol. 84, No. 78, 4/23/19, 16770-16775

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

https://www.federalregister.gov/documents/2019/04/23/2019-06986/conforming-amendments-and-technical-corrections-to-department-rules-implementing-the-transportation

E. OSHA: Amends Process Safety Management of Highly Hazardous Chemicals and Slings Standards, Final Rule - Technical Amendments

Agency

Occupational Safety and Health Administration (OSHA)

Dates

Published Date: April 15, 2019
Effective Date : April 15, 2019

Summary

On April 15, 2019, the Occupational Safety and Health Administration (OSHA) published technical amendments to two standards.

Appendix A of the Process Safety Management (PSM) standard, 29 CFR 1910.119, contains the "List of Highly Hazardous Chemicals, Toxics and Reactives." The Chemical Abstract Service (CAS) number for the chemical "Methyl Vinyl Ketone" was amended to the correct CAS number as "78-94-4". The CAS number "79-84-4" was incorrectly listed previously which does not represent a different chemical.

OSHA is also correcting the standard for Slings, 29 CFR 1910.184, to restore two figures, Figure N-184-4 and Figure N-184-5, that were inadvertently removed by previous amendments. Figure N-184-4 shows the basic sling configurations with vertical legs. Figure N-184-5 shows the basic sling configurations with angled legs.

Reference/Link

Docket No. OSHA-2019-07286; 29 CFR Part 1910.119 and Part 1910.184; FR Vol. 84, No. 72, 4/15/19, 15102-15107

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

https://www.govinfo.gov/content/pkg/FR-2019-04-15/pdf/2019-07286.pdf

F. DOJ/DEA: Extension of Temporary Placement of 5F-ADB, 5F-AMB, 5F APINACA, ADB-FUBINACA, MDMB-CHIMACA and MDMB-FUBINACA in Schedule I of the Controlled Substances Act; Temporary Scheduling Order and Notice of Proposed Rulemaking

Agency

Department of Justice (DOJ) and Drug Enforcement Agency (DEA)

Dates

Published Date: April 8, 2019
Effective Date of Temporary Scheduling Order: April 10, 2019
Comments Due for Notice of Proposed Rulemaking: May 8, 2019

Summary

On April 8, 2019,, the Department of Justice, Drug Enforcement Administration (DEA) published a temporary scheduling order and a notice of proposed rulemaking to extend the temporary schedule I status of six synthetic cannabinoids. The substances are: methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate [5F-ADB; 5F-MDMB-PINACA]; methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate [5F-AMB]; N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-)4-fluorobenzyl)-1H-indazole-3-carboxamide [ADB-FUBINACA]; methyl2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-CHMICA, MMB-CHMINACA] and methyl 2-(1-(4-flurorbenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-FUBINACA] and their optical, positional, and geometric isomers, salts, and salts of isomers.

Available data and information indicate that these synthetic cannabinoids have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Therefore, the Administrator finds it necessary to extend the temporary scheduling of 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA for one year or until the permanent scheduling action for these six substances is completed, whichever comes first.

This temporary order will extend the temporary . This temporary scheduling order, which extends the order (82 FR 17119, April 10, 2017), is effective April 10, 2019 and expires on April 10, 2020.

If finalized, the notice of proposed rulemaking would make the existing regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances permanent for 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA.

Reference/Link

Temporary Scheduling Order Docket No. DEA-446; 21 CFR Part 1308; FR Vol. 84, No. 67, 4/8/19, 13796-13798

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

https://www.govinfo.gov/content/pkg/FR-2019-04-08/pdf/2019-06851.pdf

Notice of Proposed Rulemaking Docket No. DEA-446; 21 CFR Part 1308; FR Vol. 84, No. 67, 4/8/19, 13848-13853

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

https://www.govinfo.gov/content/pkg/FR-2019-04-08/pdf/2019-06853.pdf

G. DOJ/DEA: Temporary Placement of 5F-EDMB-PINACA, 5F-MDMB-PICA, FUB-AKB48, 5F-CUMYL-PINACA, and FUB-144 into Schedule I of the Controlled Substances Act; Temporary Scheduling Order

Agency

Department of Justice (DOJ) and Drug Enforcement Agency (DEA)

Dates

Published Date: April 16, 2019

Summary

On April 16, 2019,, the Department of Justice, Drug Enforcement Administration (DEA) published a temporary scheduling order to place five synthetic cannabinoids into schedule I. The substances are: ethyle 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-EDMB-PINACA); methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (trivial name: 5F-MDMB-PICA); *N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (trivial names: FUB-AKB48; FUB-APINACA; AKB48 N-(4-FLORORBENZYL)); 1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (trivial names: 5F-CUMYL-PINACA; SGT-25); and (1-(4-fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone (trivial name: FUB-144), and their optical, positional, and geometric isomers, salts, and salts of isomers.

Available data and information indicate that these synthetic cannabinoids have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Therefore, the Administrator finds it necessary to temporarily place these five synthetic cannabinoids into schedule I of the Controlled Substances Act.

This temporary scheduling order is effective April 16, 2019 and expires on April 16, 2021.

Reference/Link

Docket No. DEA-491; 21 CFR Part 1308; FR Vol. 84, No. 73, 4/16/19, 15505-15511

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

https://www.govinfo.gov/content/pkg/FR-2019-04-16/pdf/2019-07460.pdf