

Veolia North America - Industrial Business Regulatory Update - September 2019

ENVIRONMENTAL UPDATES

- A. [EPA Clean Water Act Hazardous Substances Spill Prevention; Final Rule](#)
- B. [EPA Stationary Source Audit Program; Notification of Availability and Request for Comments](#)

TRANSPORTATION UPDATES

- C. [DOT/FMCSA Hours of Service of Drivers - Restart Provisions; Final Rule](#)
- D. [DOT/PHMSA Hazardous Materials: Oregon Hazardous Waste Management Regulation; Notice of Rejection of Application for an Administrative Determination of Preemption](#)
- E. [DOT/FMCSA General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations; Final Rule](#)
- F. [DOT/FMCSA Extension of Compliance Date for States' Query of the Drug and Alcohol Clearinghouse; Notice of Proposed Rulemaking; Extension of Comment Period](#)

HEALTH & SAFETY UPDATES

- G. [OSHA Additional Ambient Aerosol CNC Quantitative Fit Testing Protocols: Respiratory Protection Standard; Final Rule](#)
- H. [OSHA Stakeholder Meeting on Using Leading Indicators to Improve Safety and Health Outcomes; Notice of Stakeholder Meeting](#)

MISCELLANEOUS UPDATES

- I. [DOJ/DEA New Single-Sheet Format for U.S. Official Order Form for Schedule I and II Controlled Substances \(DEA Form 222\); Final Rule](#)

A. EPA Clean Water Act Hazardous Substances Spill Prevention; Final Rule

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: September 3, 2019

Effective Date: October 3, 2019

Summary

After seeking public comment, the Environmental Protection Agency is taking final action to not establish new regulatory requirements under the CWA section 311(j)(1)(C) authority for CWA hazardous substance (HS) discharge prevention. Based on a review of the existing EPA programs in conjunction with the frequency and impacts of reported CWA HS discharges, the Agency believes the existing regulatory framework meets the requirements of CWA section 311(j)(1)(C) and is serving to prevent, contain and mitigate CWA HS discharges.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-09-03/pdf/2019-18706.pdf>

B. EPA Stationary Source Audit Program; Notification of Availability and Request for Comments

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: September 11, 2019

Comments Due: December 10, 2019

Summary

The Environmental Protection Agency is providing notification that one of the two accredited providers of audit samples for the stationary source audit program has ceased manufacturing samples. The general provisions require that the owner or operator of an affected facility conduct performance testing and obtain audit samples if audit samples are “commercially available.” In this case, “commercially available” is defined as two or more independent accredited audit sample providers having blind audit samples available for purchase. Since there are no longer two providers, the requirement to obtain these audit samples is no longer in effect until another independent accredited audit sample provider has audit samples available for purchase. The EPA is providing a 90-day comment period during which interested persons may provide comments on the suspension of the stationary source audit

program and the effectiveness of the program prior to its suspension. Comments must be received on or before December 10, 2019.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-09-11/pdf/2019-19573.pdf>

C. DOT/FMCSA Hours of Service of Drivers - Restart Provisions; Final Rule

Agency

Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: September 12, 2019

Effective Date: September 12, 2019

Summary

FMCSA amends its hours-of-service (HOS) requirements applicable to drivers of property-carrying commercial motor vehicles (CMVs) to remove provisions requiring that a 34-hour restart include two periods between 1 a.m. and 5 a.m. and limiting the use of a restart to once every 168 hours—provisions that were put into effect in December 2011. In a series of Appropriations Acts, Congress suspended these provisions, pending completion of a naturalistic study comparing the effects of the restart provisions in effect under the 2011 rule versus provisions in effect prior to the 2011 rule's compliance date. The 2017 naturalistic study found no statistically significant benefits from the restart rule. Pursuant to a 2017 Appropriations Act, the 2011 restart rules are therefore void by operation of law. Although not in effect, the provisions remain in the Code of Federal Regulations (CFR), which could cause confusion for some stakeholders.

As a result, 49 CFR §395.3(d) is being removed and is being revised to read as follows:

§395.3 Maximum driving time for property-carrying vehicles.

(c)(1) Any period of 7 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours.

(2) Any period of 8 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours.

Reference/Link

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

<https://www.federalregister.gov/documents/2019/09/12/2019-19648/hours-of-service-of-drivers-restart-provisions>

D. DOT/PHMSA Hazardous Materials: Oregon Hazardous Waste Management Regulation; Notice of Rejection of Application for an Administrative Determination of Preemption

Agency

Department of Transportation (DOT), The Pipeline and Hazardous Materials Safety Administration (PHMSA)

Dates

Published Date: September 26, 2019

Summary

An Association of Responsible Recyclers, NORA, petitioned for an administrative determination that the federal Hazardous Materials Transportation Act (HMTA) preempts an Oregon hazardous waste regulation because it imposes a strict liability standard on transporters of hazardous waste. Specifically, NORA presents three arguments.

1. NORA contends that it is not possible to comply with both the Oregon rule and the federal regulation because the “HMTA regulation requires the transporter to exercise reasonable care” while Oregon’s strict liability interpretation puts more responsibility on the transporter.
2. NORA argues that Oregon’s strict liability standard creates an obstacle to carrying out the federal regulation, since it discourages the exercise of reasonable care. The State’s inconsistent strict liability standard will encourage the misclassification of hazardous materials.
3. NORA states that “a strict liability standard is not ‘substantively the same’ as a reasonable care liability standard.” NORA notes that “under Oregon’s interpretation, a transporter who satisfies the reasonable care standard in section 171.2(f) would nonetheless be strictly liable for the generator’s waste mischaracterization.”

The petition was rejected because the Pipeline and Hazardous Materials Safety Administration (PHMSA) lacks the authority to act on NORA’s petition.

This is a good example that the Environmental Protection Agency (EPA) holds firm to the idea that the generator is the actor responsible for their waste.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-09-26/pdf/2019-20880.pdf>

E. DOT/FMCSA General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations; Final Rule

Agency

Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: September 30, 2019

Effective Date: September 30, 2019

Summary

FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations. The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that are statutorily mandated.

Reference/Link

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

<https://www.federalregister.gov/documents/2019/09/30/2019-20591/general-technical-organizational-conforming-and-correcting-amendments-to-the-federal-motor-carrier>

F. DOT/FMCSA Extension of Compliance Date for States' Query of the Drug and Alcohol Clearinghouse; Notice of Proposed Rulemaking; Extension of Comment Period

Agency

Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: September 6, 2019

Comments Due: October 7, 2019

Summary

FMCSA proposes to extend the compliance date for the requirement established by the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) final rule that States request information from the Clearinghouse ("query") before completing certain commercial driver's license (CDL) transactions. The States' compliance with this requirement, currently due to begin on January 6, 2020, would be delayed until January 6, 2023. This proposal would, however, allow States the option to voluntarily request Clearinghouse information beginning on January 6, 2020. The compliance date of January 6, 2020 would remain in place for all other requirements set forth in the Clearinghouse final rule. Extending the compliance date provides sufficient notice to the States that the query requirement will not

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, Director, Environment at kevin.mcgrath@veolia.com.

take effect on January 6, 2020, thereby permitting them to allocate their information technology (IT), training, and other resources accordingly.

Reference/Link

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

<https://www.federalregister.gov/documents/2019/09/06/2019-18986/extension-of-compliance-date-for-states-query-of-the-drug-and-alcohol-clearinghouse>

G. OSHA Additional Ambient Aerosol CNC Quantitative Fit Testing Protocols: Respiratory Protection Standard; Final Rule

Agency

Occupational Safety and Health Administration (OSHA)

Dates

Published Date: September 26, 2019

Effective Date: September 26, 2019

Summary

OSHA recently issued a final rule that provides employers with two new fit testing protocols for ensuring that employees' respirators fit properly. The new protocols are the modified ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators, and the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. Both protocols are variations of the original OSHA-approved ambient aerosol CNC protocol, but have fewer test exercises, shorter exercise duration, and a more streamlined sampling sequence.

The new quantitative fit testing protocols will provide employers with additional options to fit test their employees for respirator use. OSHA issued the rule with the expectation that it will increase employers' flexibility in choosing fit testing methods for employees. The rule does not require an employer to update or replace its current fit testing method(s) if the fit testing method(s) currently in use meets existing standards.

These two quantitative methods add to the four existing in Appendix A of OSHA's Respiratory Protection Standard, which contains mandatory respirator fit-testing protocols that employers must choose from to protect employees from hazardous airborne contaminants. The rule does not require employers in general industry, shipyard employment, and construction to update or replace their current fit testing methods, and does not impose additional costs.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-09-26/pdf/2019-20686.pdf>

H. OSHA Stakeholder Meeting on Using Leading Indicators to Improve Safety and Health Outcomes; Notice of Stakeholder Meeting

Agency

Occupational Safety and Health Administration (OSHA)

Dates

Published Date: September 30, 2019

Meeting Date: November 7, 2019

Summary

OSHA is inviting interested parties to participate in a stakeholder meeting to share information on their use of leading indicators to improve safety and health outcomes in the workplace. OSHA plans to use the information to create additional tools that may help employers with developing and using leading indicators. Participants are invited to provide responses to the questions included in this notice and share examples of leading indicators that they use to improve safety or health performance in their workplaces. This information can also be submitted to OSHA in writing.

Date and Location of the Stakeholder Meeting

November 7, 2019 from 1:00 PM - 4:00 PM
U.S. Department of Labor - Conference Room N-4437
200 Constitution Avenue NW
Washington, DC 20210.

Comments Due

Comments must be submitted to OSHA on or before February 7, 2020.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-09-30/pdf/2019-21111.pdf>

I. DOJ/DEA New Single-Sheet Format for U.S. Official Order Form for Schedule I and II Controlled Substances (DEA Form 222); Final Rule

Agency

Department of Justice (DOJ), Drug Enforcement Agency

Dates

Published Date: September 30, 2019

Effective Date: October 30, 2019

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, Director, Environment at kevin.mcgrath@veolia.com.

Summary

DEA is amending its regulations to implement a new single-sheet format for order forms (DEA Form 222). These order forms are issued by DEA to DEA registrants to allow them to order schedule I and/or II controlled substances and for the reverse distribution of Schedule I and/or II controlled substances.

This final rule provides for a two-year transition period, during which the existing triplicate version of the forms may continue to be used. The rule also includes several minor procedural changes.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-09-30/pdf/2019-21021.pdf>