

Veolia North America - Industrial Business Regulatory Update - October 2019

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A. Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Veolia ES Technical Solutions, LLC (Veolia) Port Arthur Facility

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: October 24 2019

Effective Date: October 2, 2019

Summary

The No Migration Petition has been approved for Veolia's facility in Port Arthur, Texas. This is a reissuance of an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA.) This exemption is for two Class I hazardous waste injection wells. The exemption was granted because Veolia has demonstrated that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This approval will be in effect until December 31, 2041 unless the EPA moves to terminate the exemption before that date.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-10-24/pdf/2019-23222.pdf>

B. Privacy Act of 1974; Department of Transportation, Federal Motor Carrier Safety Administration; DOT/FMCSA 010 Drug and Alcohol Clearinghouse; Notice of a New System of Records

Agency

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

Dates

Published Date: October 22, 2019

Effective Date: November 21, 2019

Comments Due: November 21, 2019

Summary

In accordance with the Privacy Act of 1974, the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) proposes a new system of records titled "Drug and Alcohol Clearinghouse (Clearinghouse)". This system of records allows FMCSA to collect and maintain records on commercial driver's license (CDL) and commercial learner's permit (CLP) holders who have received a verified positive DOT drug or alcohol test results, refuse

such testing, or otherwise violate FMCSA's drug and alcohol use prohibitions.

As a general routine use, the Clearinghouse will collect and maintain records on the completion of substance abuse programs as part of the return-to-duty process and will collect and maintain drivers' consent to the release of information. In addition, the Clearinghouse will collect and maintain records of queries of the system conducted by employers or service agents acting on their behalf, and State Driver Licensing Agencies (SDLAs).

The information in this system will be used to enhance compliance with drug and alcohol use testing regulations by identifying CDL or CLP holders who have committed drug and alcohol violations that render them ineligible to operate a commercial motor vehicle (CMV). This new system will be included in the DOT inventory of record systems.

In addition to the general routine uses applicable to all DOT systems of records, FMCSA is proposing three new system-specific Routine Uses to support enforcement of drug and alcohol use and testing regulations and to implement statutory requirements pertaining to States and the National Transportation Safety Board.

1. The first proposed Routine Use would allow the sharing of driver eligibility and compliance data with Motor Carrier Safety Assistance Program (MCSAP) partner agencies, for use during investigations, roadside inspections and compliance reviews of motor carriers. The MCSAP is a Federal grant program providing financial assistance to States to reduce the number and severity of crashes involving CMVs. MCSAP personnel act on the Agency's behalf to enforce the FMCSRs. This routine use will strengthen the enforcement of the current prohibition against operating a CMV, or performing other safety-sensitive functions, due to drug and alcohol program violations, as well as other drug and alcohol program requirements.
2. The second proposed Routine Use would allow the sharing of a driver's CMV operating status (prohibited or not prohibited) in response to mandatory queries conducted by a State Driver's Licensing Agency (SDLA) anytime a CDL is issued, renewed, transferred or upgraded. This routine use will allow SDLAs to verify a driver's eligibility to operate a CMV prior to completing licensing transactions (as mandated by 49 U.S.C. 31311(a)(24); 31306a(h)(2)).
3. The third proposed Routine Use would allow the National Transportation Safety Board (NTSB), upon request, to receive information on a driver who is involved in a crash under investigation by the NTSB (as mandated by 49 U.S.C. 31306a(i)).

These proposed Routine Uses allow MCSAP partners, SDLAs, and NTSB to identify CDL or CLP holders who have committed drug and alcohol violations that render them ineligible to operate a commercial motor vehicle (CMV). They are compatible with the purpose for which the information was collected, directly furthering the goals of 49 U.S.C. 31306a, to improve roadway safety and enhance compliance with drug and alcohol use testing regulations.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-10-22/pdf/2019-22915.pdf>

C. Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement; Interim Final Rule Made Final

Agency

Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: October 1, 2019

Effective Date: October 31, 2019

Summary

In this final rule, FMCSA adopts those requirements of the interim final rule (IFR) published on May 5, 2003 (68 FR 23844), and the IFR published on April 29, 2005 (70 FR 22268), which have not previously been finalized, as final without change. The 2003 IFR amended the Federal Motor Carrier Safety Regulations to prohibit States from issuing, renewing, transferring, or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration has first conducted a security threat assessment and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement, as required by the USA PATRIOT Act.

The 2005 IFR amended the FMCSRs to conform to the TSA's compliance date and reduce the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement. In addition, this rule incorporates a provision of Implementing Recommendations of the 9/11 Commission Act of 2007 and two provisions of the FAA Reauthorization Act of 2018, which together authorize a State to issue a license to operate a motor vehicle transporting hazardous material in commerce to an individual who holds a valid transportation security card. In particular, the Agency incorporates TSA's definition of a Transportation Worker Identification Credential (TWIC) as equivalent to a Transportation Security Card (TSC).

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-10-01/pdf/2019-20584.pdf>

D. Washington Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption; Request for Comments

Agency

Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: October 9, 2019

Comments Due: November 8, 2019

Summary

On December 21, 2018, FMCSA granted petitions filed by the American Trucking Associations, Inc. and the Specialized Carriers and Rigging Association, and determined that California's meal and rest break rules, as applied to property-carrying CMV drivers subject to FMCSA's HOS regulations are preempted under 49 U.S.C. 31141. (Docket No. FMCSA-2018-0304; 83 FR 67470 (December 28, 2018)). On April 8, 2019, the WTA submitted a petition to FMCSA seeking a determination that Washington's MRB rules are also preempted under 49 U.S.C. 31141.

The WTA's petition states that Washington law requires employers to provide employees with a meal period of at least 30 minutes for every 5-hour work period and a 10-minute break for every 4-hour work period. In addition, the petition states that while "employees may not waive their right to a rest period at all," employees may waive their right to a meal break. However, the WTA contends that "a missed [meal] break creates the presumption of a violation, with the burden on the employer to prove waiver as an affirmative defense." In its petition, the WTA explains that "Washington's rules contemplate a paid, on-duty 30-minute meal break when the employee is required by the employer to remain on duty on the premises." However, "even if the 30-minute break is paid pursuant to that provision," the WTA argues that employers remain obligated to "make every effort to provide employees with an uninterrupted meal period" and to "continue the meal period until the employee has received 30 minutes total of mealtime."

In its petition, the WTA alleges that similar to California's requirements, the Washington MRB rules are "regulations on commercial motor vehicle safety within the meaning of [49 U.S.C. 31141]" and that they are "additional to or more stringent than FMCSA's rules." Additionally, the petition states that the Washington MRB rules have no safety benefit beyond those provided by FMCSA's rules, are incompatible with the Federal HOS regulations and impose an unreasonable burden on interstate commerce. The petition further states, "Given the similarity between Washington and California meal and rest break rules, the Agency's analysis of California's rules in its recent preemption order applies equally to Washington's."

Section 31141 of title 49, United States Code, prohibits States from enforcing a law or regulation on CMV safety that the Secretary of Transportation (Secretary) has determined to be preempted. To determine whether a State law or regulation is preempted, the Secretary must decide whether a State law or regulation: (1) Has the same effect as a regulation prescribed under 49 U.S.C. 31136, which is the authority for much of the Federal Motor Carrier Safety Regulations; (2) is less stringent than such a regulation; or (3) is additional to or more stringent than such a regulation 49 U.S.C. 31141(c)(1).

If the Secretary decides that a State law or regulation has the same effect as a regulation prescribed under 49 U.S.C. 31136, the State law or regulation may be enforced. 49 U.S.C. 31141(c)(2). If the Secretary decides that a State law or regulation is less stringent than a regulation prescribed under 49 U.S.C. 31136, the State law or regulation may not be enforced. If the Secretary decides that a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under 49 U.S.C. 31136, the State law or regulation may be enforced unless the Secretary decides that the State law or regulation (1) has no safety benefit; (2) is incompatible with the regulations prescribed by the Secretary; or (3) would cause an unreasonable burden on interstate commerce.

In deciding whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the cumulative effect that the State's law or regulation and all similar laws and regulations of other States will have on interstate commerce.

Comments Due

Comments on this Petition for Determination of Preemption must be submitted to FMCSA on or before November 8, 2019.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-10-09/pdf/2019-22061.pdf>

E. OSHA Adds to Enforcement Weighting System

Agency

Occupational Safety and Health Administration (OSHA)

Dates

Published Date: October 28, 2019

Effective Date: October 1, 2019

Summary

As of October 1, 2019, the Occupational Safety and Health Administration (OSHA) began using a new system to weigh and measure their enforcement priorities. This new system adds emphasis depending on the type of hazard inspected and whether the actions were taken in pursuit of agency enforcement initiatives. This means that employers should be prepared for inspections related to high hazards and specific OSHA enforcement initiatives. According to OSHA this weighting system change will “support a management system that focuses enforcement activities on critical and strategic areas where the agency’s efforts can have the most impact.”

Under the new system adopted for 2020, OSHA will continue to weight inspections but will consider factors, divided into five groupings:

- Group A includes criminal cases and significant cases and is assigned seven Enforcement Units (EUs.)
- Group B includes fatalities, catastrophes and process safety management inspections and is assigned five EUs.
- Group C includes programmed inspections involving OSHA’s “focus four” high-priority hazards (such as those involving caught-in, electrical, fall and struck-by hazards) and is assigned three EUs.
- Group D includes programmed inspections under a number of emphasis programs (for example, amputation, combustible dust, workplace violence and heat hazards, Site-Specific Targeting, among others), and is assigned two EUs.
- All other inspections are encompassed by Group E and assigned one EU.

Reference/Link

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

https://www.ehstoday.com/osha/osha-adds-enforcement-weighting-system?NL=OH-05&Issue=OH-05_20191105_OH-05_104&sfvc4enews=42&cl=article_4&utm_rid=CPG03000003317918&utm_campaign=38242&utm_medium=email&elq2=4f7181c4440e4d97bd526da13aaccc16&oly_enc_id=5235H1801612G4Y

F. Elemental Mercury Storage Fees; Notice of Proposed Rulemaking

Agency

Office of Environmental Management, U.S. Department of Energy (DOE)

Dates

Published Date: October 4, 2019

Comments Due: October 25, 2019

Summary

The Department of Energy is proposing to enact a rule to establish a fee for the long-term management and storage of elemental mercury in accordance with the Mercury Export Ban Act. The Department of Energy is required by regulation to designate a facility for the long-term management and storage of elemental mercury generated within the United States. The DOE would collect the proposed fee at the time of delivery and would be used to cover the costs associated with the long-term management and storage. This fee may be adjusted annually and will be set after consultation with persons that are likely to deliver elemental mercury to the designated facilities and other stakeholders.

The proposed rule establishes the fee at the designated DOE storage facility as \$55,100 per metric ton (MT)² plus a \$3,250 fixed fee per shipment. This fee is based on a scenario in which the elemental mercury will be stored for fifteen years and then transported in year sixteen to a treatment and disposal operation for disposal.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to DOE on or before October 25, 2019.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-10-04/pdf/2019-21536.pdf>

G. Schedules of Controlled Substances: Placement of Cyclopropyl Fentanyl, Methoxyacetyl fentanyl, orthoFluorofentanyl, and para-Fluorobutyryl Fentanyl in Schedule I

Agency

Department of Justice, Drug Enforcement Agency (DEA)

Dates

Published Date: October 25, 2019

Comments Due: October 25, 2019

Summary

This is a final order to maintain the substances cyclopropyl fentanyl (N-(1-phenethylpiperidin-4-yl)-Nphenylcyclopropanecarboxamide), methoxyacetyl fentanyl (2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide), ortho-fluorofentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide), and para-fluorobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide), including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, in schedule I of the Controlled Substances Act. This means that anyone who handles these substances must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Additionally the substances must be disposed of in accordance with 21 CFR part 1317 as well as with all other applicable federal, state, local and tribal laws.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-10-25/pdf/2019-23348.pdf>

H. Schedules of Controlled Substances: Extension of Temporary Placement of FUB-AMB in Schedule I of the Controlled Substances Act

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Schedules of Controlled Substances: Placement of FUB-AMB in Schedule I

Agency

Department of Justice, Drug Enforcement Agency (DEA)

Dates

Published Date: October 30, 2019

Effective Date: November 3, 2019

Comments Due: November 29, 2019

Expiration Date to the Extension: November 3, 2020

Summary

This is an extension to the temporary schedule I status of a synthetic cannabinoid, methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate. This synthetic cannabinoid also may be called FUB-AMB, MMB-FUBINACA, or AMB-FUBINACA. Additionally, all optical, positional and geometric isomers, salts and salts of isomers of FUB-AMB are part of this categorization.

The scheduling extends for one year or until the permanent scheduling action for this substance is completed, whichever comes first.

In addition, the DEA published a proposed rulemaking to make the categorization of FUB-AMB as Schedule I permanent. This final rule requires anyone who handles these substances to be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Additionally, the substances must be disposed of in accordance with 21 CFR part 1317 as well as with all other applicable federal, state, local and tribal laws.

Comments Due

Public comments for this proposed rulemaking are due by November 29, 2019.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-23372.pdf>

&

<https://www.govinfo.gov/content/pkg/FR-2019-10-30/pdf/2019-23626.pdf>