Veolia North America - Industrial Business

August, 2021

ENVIRONMENTAL UPDATES

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HEALTH & SAFETY UPDATES

There are no Health & Safety Updates for August 2021

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A. EPA; TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances; Extension of Comment Period

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 08/03/2021
Comments Due: 09/27/2021

Summary

The Environmental Protection Agency (EPA) has extended the comment period for 31 days, from August 27, 2021 to September 27, 2021 for the proposed rule "TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances." This rule was proposed in the federal register on June 28, 2021.

A summary of the proposed rule is included in the June 2021 Regulatory Update.

Reference/Link

The link below will allow you to view/print this Extension of the Comment Period.

https://www.govinfo.gov/content/pkg/FR-2021-08-03/pdf/2021-16490.pdf

B. Regulatory Options for Addressing the Temporary Backlog of Containerized Hazardous Waste Needing Incineration; Memorandum

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 08/10/2021

Summary

The Environmental Protection Agency (EPA) has published a memorandum to inform hazardous waste generators and RCRA permitted treatment, storage, and disposal facilities (TSDFs) of their options for staying in compliance despite a temporary national backlog of containerized hazardous waste requiring incineration at RCRA permitted hazardous waste incinerators.

The memorandum explains that the EPA became aware that some hazardous waste incinerators were informing their customers that they would no longer accept containerized hazardous waste designated for incineration due to a backlog at their facilities. This problem at the incinerators has caused an issue at TSDFs, which may have a harder time finding an incinerator to send containerized hazardous waste to. The EPA explains that they have determined that the backlog is temporary and due to labor shortages affecting both transportation and the incinerators due to the COVID-19 pandemic; winter storms that caused shutdowns in the southern United States; shutdowns for both scheduled and unscheduled maintenance; and increased manufacturing (and resulting increase in waste generation) as the economy recovers from the pandemic.

The memorandum presented the following options for Hazardous Waste Generators:

- Small Quantity Generators (SQGs) that need to transport their hazardous waste 200 miles or more for off-site treatment, storage or disposal, can use the self-implementing provision found in the regulations at 40 CFR 262.16(c) to accumulate hazardous waste up to 270 days.
- Additionally, the generator regulations at 40 CFR 262.16(d) and 40 CFR 262.17(b), allow SQGs and LQGs to submit a request to the authorized implementing agency for accumulation time limit extensions. Individual extension requests may be granted for a 30-day period. EPA believes the authorized implementing agencies are in the best position to determine on a case-by-case basis whether consecutive extensions are appropriate, and in some states, this is an established practice. Although federal regulations do not limit the number of extensions, each extension request must meet the criteria in the regulations and be approved by the authorized agency.

The memorandum presented the following options for RCRA Permitted Treatment, Storage, and Disposal Facilities (TSDFs):

- TSDFs may store backlogged containerized hazardous waste that is generated by the RCRA permitted TSDF for greater than 90 days as long as their existing RCRA permit allows such storage activities. These facilities may be capable of storing this backlogged containerized waste absent permit modifications if:
    - their RCRA permit allows storage of those types of containerized wastes and waste codes; and
    - their RCRA permitted container storage capacity will not be exceeded.
- TSDFs that have reached their RCRA permitted container storage capacity and would like to request an increase in permitted storage capacity can use relevant permit modification and temporary authorization procedures in 40 CFR 270.42.
- TSDFs may also request to implement changes to their allowable container storage practices pursuant to expedited procedures referred to as temporary authorizations. Under regulations at 40 CFR 270.42(e), EPA or State Agencies may temporarily authorize a permittee for certain activities that would be subject to a Class 2 or Class 3 permit modification. Temporary authorizations are limited to 180 days.

The EPA has noted that any extension does not preclude compliance with any other environmental requirement beyond RCRA that might be triggered by additional waste being stored temporarily.

If you have any questions on the applicability of the hazardous waste generator regulations and permitting requirements for these backlogged containerized wastes, contact Mary Beth Sheridan at sheridan.marybeth@epa.gov or Jeff Gaines at gaines.jeff@epa.gov.

Reference/Link

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

https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14939

C. Open for Public Comment: Draft Memorandum "Applicability of Resource Conservation and Recovery Act (RCRA) Organic Air Emission Standards to Equipment and/or Closure Devices"; Draft Memorandum

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 08/04/2021
Comments Due: 10/03/2021

Summary

The Environmental Protection Agency (EPA) has made available a Draft Memorandum to provide guidance to EPA and state permit writers and inspectors for determining whether certain equipment and/or closure devices located on covers of hazardous waste tanks, containers, and surface impoundments are regulated as equipment (subject to Title 40 of the Code of Federal Regulations (CFR), parts 264/265 subpart BB) or as a closure device (subject to 40 CFR parts 264/265 subpart CC). This memorandum is a response to the questions received about what equipment and/or closure devices are subject to Subpart BB or Subpart CC of the RCRA Air Emission Standards following the national compliance initiative titled "Reducing Hazardous Air Toxic Emissions at Hazardous Waste Facilities" in 2017.

The comment period will be open for 60 days, from August 4, 2021 to October 3, 2021.

The memorandum is linked below:
Applicability of Resource Conservation and Recovery Act (RCRA) Organic Air Emission Standards to Equipment and/or Closure Devices Draft Guidance Memorandum (pdf)

Reference/Link

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

https://www.epa.gov/hwpermitting/open-public-comment-draft-memorandum-applicability-resource-conservation-and-recovery

D. EPA; WIETS System Transition and Blackout Periods Oct 2021 – Jan 2022; Announcement

Agency

Environmental Protection Agency (EPA)

Dates

US Exporter and Importer Deadline: 10/01/2021
US Exporter and Importer to and from Canada Deadline: 10/30/2021

Summary

The Environmental Protection Agency (EPA) will be migrating its current Waste Import Export Tracking System (WIETS) to a new electronic system (RCRAInfo WIETS) for managing its hazardous waste import and export notification process during January 2022. RCRAInfo WIETS will be an integrated application in RCRAInfo.

This transition will affect your submittal of export and import notices in WIETS because any notice that does not complete the Prior Informed Consent process (e.g., result in issued consent letter) by December 31, 2021 will have to be re-entered and submitted into RCRAInfo WIETS starting on January 18, 2022 for processing.

To minimize the number of notices that will need to be re-entered and submitted in RCRAInfo WIETS in January 2022, EPA has established a series of notice submittal deadlines for October 1 through October 30.

U.S. Exporter Deadlines:

- October 1, 2021 - last day EPA will accept export notices proposing export to countries other than Canada
- October 30, 2021 - last day EPA will accept export notices proposing export to Canada

U.S. Importer Deadlines:

- October 1, 2021 - last day EPA will accept U.S. importer notices proposing import from countries other than Canada
- October 30, 2021 - last day EPA will accept U.S. importer notices proposing import from Canada

These deadlines reflect how long both EPA and the other countries take to complete notice reviews (it takes more time to complete import/export approvals for countries other than Canada). EPA recognizes that this will be disruptive, but believes these deadlines are needed

to ensure a successful transition to RCRAInfo WIETS and to minimize companies having to resubmit their notice in the new system in January 2022.

Reference/Link

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

https://www.epa.gov/hwgenerators/frequent-questions-about-hazardous-waste-export-import-revisions-final-rule

E. Hazardous Materials: Harmonization With International Standards; Notice of Proposed Rulemaking

Agency

Pipeline and Hazardous Materials Safety Administration (PHMSA)

Dates

Published Date: 08/10/2021
Comments Due: 10/12/2021

Summary

PHMSA proposes to amend the Hazardous Materials Regulations to maintain alignment with international regulations and standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. Additionally, PHMSA proposes an amendment to the Hazardous Materials Regulations that would allow for better alignment with Transport Canada's Transportation of Dangerous Goods Regulations. This summary lists only those proposed changes that if adopted could impact the operations of Veolia. Please refer to the federal register publication for complete details on all of the changes proposed in the NPRM.

Definitions

49 CFR 171.8 defines terms used throughout the HMR that have broad or multi-modal applicability. Currently, the definitions provided in 49 CFR 171.8 for SADT, i.e., "self-accelerating decomposition temperature" and SAPT, i.e., "self-accelerating polymerization temperature" only spell out the abbreviations and direct users to 49 CFR 173.21—Forbidden materials and packages—for the actual defining criteria. PHMSA proposes to make editorial changes to improve the utility of the definitions of SADT and SAPT by providing a clear explanation of these terms in the context of packaging within the HMR.

SADT means self-accelerated decomposition temperature and is the lowest temperature at which self-accelerating decomposition may occur in a substance in the packaging, IBC, or portable tank offered for transport. See also 49 CFR 173.21(f) of this subchapter.

SAPT means self-accelerated polymerization temperature and is the lowest temperature at which self-accelerating polymerization may occur with a substance in the packaging, IBC, or portable tank as offered for transport. See also 49 CFR 173.21(f) of this subchapter. This definition will be effective until January 2, 2023.

Transport Canada Temporary Certificates

49 CFR 171.12(a) prescribes requirements for the use of the TDG Regulations for hazardous materials transported from Canada to the United States, from the United States to Canada, or through the United States to Canada or a foreign destination. PHMSA proposes to amend 49 CFR 171.12(a)(1) to authorize the use of a temporary certificate issued by Transport Canada for motor carrier or rail transportation of a hazardous material.

In a 2017 rulemaking, HM-215N, PHMSA authorized hazardous materials to be offered for transportation or transported by motor carrier and rail in accordance with an equivalency certificate issued by Transport Canada, as an alternative to transportation of these items under the TDG Regulations as provided in 49 CFR 171.22. The HMR amendment resulted from negotiations by the U.S.-Canada Regulatory Cooperation Council (RCC) to identify and resolve impediments to cross-border transportation of hazardous materials. Among the initiatives agreed upon by PHMSA and Transport Canada within the RCC was a modification of their respective regulations to ensure reciprocal recognition of special permits (PHMSA) and certificates (Transport Canada) specifying the terms and conditions authorizing deviations from their respective regulatory requirements governing the transportation of hazardous materials.

Subsequently, Transport Canada recognized PHMSA's special permits, which are issued based on either being in the public interest or on the basis that the permit provides a demonstrable equivalent level of safety. In HM-215N, PHMSA revised the HMR to recognize equivalency certificates by Transport Canada on the basis of a finding of safety equivalence with the TDG Regulations. That rulemaking did not, however, reflect the fact that Transport Canada also issues temporary certificates authorizing deviation from the TDG Regulations on a finding that transportation of certain hazardous materials is in the public interest. Transport Canada issues temporary certificates after a technical review by its subject matter experts of an applicant's supporting documentation demonstrating that shipment of the hazardous material is in the public interest. Temporary certificates are of limited duration and specify terms and conditions—often extensive—to mitigate risks to public safety and the environment. Transport Canada posts all temporary certificates to its publicly available website (https://wwwapps.tc.gc.ca/Saf-Sec-Sur/3/approvals-approbations/SearchCertificates.aspx).

PHMSA has evaluated Transport Canada's practices in reviewing and issuing temporary certificates and expects that PHMSA's recognition of those certificates for motor carrier or rail transportation of hazardous materials will not adversely affect safety. PHMSA further notes that, consistent with the HMR's existing authorization in 49 CFR 171.12 for reliance on the TDG Regulations to authorize certain shipments in the United States, the proposed new authorization to use a temporary certificate applies only for the duration of a shipment. In other words, once a shipment offered in accordance with a temporary certificate reaches its destination, any subsequent offering of packages imported under a Transport Canada temporary certificate would have to be completed in full compliance with the HMR. PHMSA's

proposed revisions to 49 CFR 171.12 would further mitigate risk to public safety and the environment by applying only to motor carriers and rail.

Proposed Changes to the 49 CFR 172.101 Hazardous Materials Table

New HMT Entries

- UN3549 Medical Waste, Category A, Affecting Humans, solid or Medical Waste, Category A, Affecting Animals only, solid

  The UN Model Regulations contain a new entry to its Dangerous Goods List for regulated medical waste in Category A. PHMSA proposes to add this new entry for this proper shipping name and UN number, and assigning Special Provision 131 to inform offerors that an approval is required when shipping this material. PHMSA also proposes to assign a new special provision, Special Provision 430, to specify the appropriate use of this proper shipping name. The addition of a proper shipping name that more specifically describes the material in transportation is expected to reduce regulatory burdens in shipping this material internationally and domestically. And by limiting the scope of transport by way of special provision approval requirements for each shipment, PHMSA can exercise greater oversight of the transport of these materials to, from, or within the United States.

- UN0511 Detonators, electronic programmable for blasting
- UN0512 Detonators, electronic programmable for blasting
- UN0513 Detonators, electronic programmable for blasting

  PHMSA proposes to add three new entries for the proper shipping name "Detonators, electronic programmable for blasting" with the following new UN numbers: UN0511, UN0512, and UN0513. These entries were added in the 21st revised edition of UN Model Regulations. The HMT currently has nine entries for detonators (not used for ammunition) which include: "Detonators, non-electric for blasting," "Detonators, electric for blasting," and "Detonator assemblies, non-electric for blasting," which may fall into one of three hazard classes (1.1B, 1.4B, 1.4S). Under the hazardous materials classification scheme, based on the existing available entries, electronic detonators are required to be transported as "Detonators, electric for blasting" which is not the most accurate description. While using this name does not pose inherent risks during transportation, it creates the potential for risks in downstream storage, use, and handling operations. Because electronic detonators are significantly different from other electric and non-electric detonators, PHMSA proposes new entries for these devices rather than including them within the existing entries for electric detonator types. As with other explosives, the proper classification of these devices would depend on packaging and testing, hence new entries must include all possible hazard classifications (1.1B, 1.4G, and 1.4S). PHMSA expects that this change would provide clarity and enhance safety by adding more specific proper shipping names to describe electric detonators.

Hazardous Materials Descriptions

- UN3363, Dangerous Goods in Machinery

  The UN Model Regulations contain the entry "UN3363, Dangerous Goods in Articles or Dangerous Goods in Machinery or Dangerous Goods in Apparatus," in its Dangerous Goods List; however, the HMT entry UN3363 does not include "Dangerous Goods in Articles or," in the proper shipping name. PHMSA proposes to add "Dangerous Goods in Articles or," to the proper shipping name. This change provides flexibility for shippers selecting the most appropriate proper shipping name by adding a third option in the proper shipping name associated with this UN Number. Additionally, for the proper shipping name "Fuel system components (including fuel control units (FCU), carburetors, fuel lines, fuel pumps)" which currently directs HMT users to "see Dangerous Goods in Apparatus or Dangerous Goods in Machinery", PHMSA proposes to amend the directions to include a reference to "Dangerous Goods in Articles." PHMSA expects that these changes will improve hazard communication by including a more specific description for articles containing hazardous materials.

- UN2522, 2-Dimethylaminoethyl methacrylate

  PHMSA proposes to add the word "stabilized" to this proper shipping name to identify this material as a polymerizing substance. Discussions held by the UNSCOE identified "UN2522, 2-Dimethylaminoethyl-methacrylate" as having a similar molecular structure and polymerization behaviors to "UN 3302, 2-Dimethylaminoethyl acrylate, stabilized." Under the HMR and international regulations, polymerizing substances require verification that a sufficient level of stabilization is provided prior to transportation. This requirement for stabilization is also indicated by assignment of Special Provision 387 in the HMT, which PHMSA proposes to add for UN2522.

- UN3171, Battery-powered vehicle or Battery-powered equipment

  PHMSA proposes to make an editorial change to italicize the "or" in the hazardous material description. Currently, the "or" is in roman type and not italicized. §172.101(c) introductory text instructs that proper shipping names are limited to those in roman type. Moreover, the current form of entry is such that a person may confuse the proper shipping name with the whole description and not the option of "Battery-powered vehicle" or "Battery-powered equipment." Therefore, PHMSA proposes revising the entry to read "Battery-powered vehicle or Battery-powered equipment."

Packing Groups

For consistency with the UN Model Regulations, PHMSA proposes to remove the assignment of PG II as indicated in column (5) for the entry "UN3291, Regulated medical waste, n.o.s. or Clinical waste, unspecified, n.o.s. or (BIO) Medical waste, n.o.s. or Biomedical waste, n.o.s., or Medical Waste n.o.s." This entry is the only entry with a Division 6.2 classification that has PG II assigned in column (5). Amending this entry not to include PG II would align with international regulations and 49 CFR 172.101(f), which specifically states that Division 6.2 materials are not assigned packing groups in the HMR. For packing purposes, any requirement for a specific packaging performance level is set out in the applicable packing authorizations of 49 CFR part 173. Instead of having PG II indicated in Column (5), packing provisions for these materials would continue to be outlined in 49 CFR 173.197. PHMSA expects this editorial change will maintain the current level of safety as no packing provisions are changing.

Label Codes

49 CFR 172.101(g) describes column (6) of the HMT, which contains label codes representing the hazard warning labels required for specific hazardous materials in the HMT. In the HM-215O final rule, PHMSA added twelve HMT entries as part of a classification scheme for articles containing hazardous materials not otherwise specified by name in the HMR. The entries were inadvertently added without label codes in column (6). PHMSA proposes to correct the entries here by adding the appropriate label codes to the following:

- UN3537 Articles containing flammable gas, n.o.s.
- UN3538 Articles containing non-flammable, non-toxic gas, n.o.s.
- UN3539 Articles containing toxic gas, n.o.s.
- UN3540 Articles containing flammable liquid, n.o.s.
- UN3541 Articles containing flammable solid, n.o.s.
- UN3542 Articles containing a substance liable to spontaneous combustion, n.o.s.
- UN3543 Articles containing a substance which in contact with water emits flammable gases, n.o.s.
- UN3544 Articles containing oxidizing substance, n.o.s.
- UN3545 Articles containing organic peroxide, n.o.s.
- UN3546 Articles containing toxic substance, n.o.s.
- UN3547 Articles containing corrosive substance, n.o.s.
- UN3548 Articles containing miscellaneous dangerous goods, n.o.s.

Special Provisions

Special Provision 47:

Special Provision 47 allows mixtures of solids that are not subject to the HMR and Class 3 flammable liquids to be transported as flammable solid material described as "UN3175, Solids containing flammable liquid, n.o.s., 4.1," without applying the Division 4.1 classification criteria. This classification is permitted provided that there is no free liquid visible at the time the material is loaded or at the time the packaging is closed. In addition to providing classification testing relief for these items, this special provision provides further relief from the HMR for packets and articles, generally referred to as small inner packagings, if they contain less than 10 mL of a Class 3 liquid (in Packing Group II or III) and if the liquid is absorbed (i.e., no free liquid in the packet or article) onto a solid material. This special provision is widely used for articles such as alcohol wipes, and due to the ongoing COVID-19 public health emergency, these items are being transported in increasing numbers to meet demand. While many of these wipes, depending on how they are packed, meet the conditions of this special provision and qualify for an exception from regulation, confusion around the wording of the packaging conditions to qualify for the exception has led to an editorial amendment in the ICAO Technical Instructions.

On December 31, 2020, in an addendum to the 2021-2022 edition of the ICAO Technical Instructions, Special Provision A46 was amended to remove a reference to "small inner packaging" related to the sealed packets and articles. Prior to this amendment, and as currently provided in the HMR in Special Provision 47, it reads that to be excepted from the HMR, "small inner packagings consisting of sealed packets and articles containing less than 10 mL of a Class 3 liquid in Packing Group II or III absorbed onto a solid material are not subject to this subchapter provided there is no free liquid in the packet or article." The phrasing is ambiguous enough that shippers may misinterpret the language as instructing them to pack small inner packagings with the sealed packets or articles. Instead, the intent of "small inner packagings" was to describe sealed packets and articles. PHMSA agrees with the amendment made in the ICAO Technical Instructions removing the reference to "small inner packagings" to avoid confusion and proposes to make the same revision in Special Provision 47 to clarify the exception within the HMR. PHMSA expects this clarification of its regulations will facilitate the transport of hygienic products intended to prevent the spread of COVID-19.

Special Provision 134:

Special Provision 134 provides instruction on the use of the HMT entry "UN3171, Battery-powered vehicle or Battery-powered equipment," stipulating that it applies only to vehicles or equipment powered by wet batteries, sodium batteries, lithium metal batteries, or lithium-ion batteries that are transported with these batteries installed. PHMSA proposes to amend language in Special Provision 134 to clarify its use in connection with lithium batteries installed in cargo transport units. Under the proposed amendment, these items would be described by a separate entry in the HMT, specifically, "UN3536, Lithium batteries installed in cargo transport unit" for which there are unique transportation requirements that do not apply to transport of battery-powered vehicles or equipment. PHMSA is also amending the language in this special provision to replace the phrase "consigned under"

with the phrase “described using” to provide a more easily accessible, plain language understanding of the requirement.

Special Provision 136:

Special Provision 136 provides instructions regarding the use of the HMT entry “UN3363, Dangerous Goods in Apparatus or Dangerous Goods in Machinery” and indicates that this UN number and the associated proper shipping names are only applicable to machinery and apparatus containing hazardous materials as an integral element of the machinery or apparatus. In light of the proposed addition of “Dangerous Goods in Articles” to the list of acceptable proper shipping names for UN3363. PHMSA proposes to revise this special provision to add the words “articles” where machinery and apparatus are mentioned. PHMSA expects this proposed change to improve consistency across HMR provisions where UN3363 is discussed.

Special Provision 196:

PHMSA proposes to add new Special Provision 196 to the following HMT entries to outline thermal stability testing requirements for their transportation:

- UN0340, Nitrocellulose, dry or wetted with less than 25 percent water (or alcohol), by mass
- UN0341, Nitrocellulose, unmodified or plasticized with less than 18 percent plasticizing substance, by mass
- UN0342, Nitrocellulose, wetted with not less than 25 percent alcohol, by mass
- UN0343, Nitrocellulose, plasticized with not less than 18 percent plasticizing substance, by mass.

Special Provision 197:

PHMSA proposes to assign new Special Provision 197 to the following entries in the HMT to outline thermal stability testing requirements for their transportation:

- UN2555, Nitrocellulose with water with not less than 25 percent water, by mass
- UN2556, Nitrocellulose with alcohol with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass
- UN2557, Nitrocellulose, with not more than 12.6 percent nitrogen, by dry mass mixture with or without plasticizer, with or without pigment UN3380, Desensitized explosives, solid, n.o.s.

Special Provision 360:

PHMSA proposes to assign Special Provision 360 to the following HMT entries:

- UN3481, Lithium-ion batteries, contained in equipment or packed with equipment including lithium-ion polymer batteries
- UN3091, Lithium metal batteries, contained in equipment or packed with equipment including lithium alloy batteries

Special Provision 360 instructs that vehicles only powered by lithium batteries must be assigned the identification number UN3171.
Special Provision 387:

PHMSA proposes to assign Special Provision 387 to the HMT entry for "UN2522, 2-Dimethylaminoethyl methacrylate." Special Provision 387 provides additional instructions for hazardous materials stabilized by chemical or temperature controls to ensure a level of stabilization prior to transportation sufficient to prevent the material from dangerous polymerization.

Special Provision 430:

PHMSA proposes to add Special Provision 430 and assign it to the new HMT entry "UN3549, Medical Waste, Category A, Affecting Humans, solid or Medical Waste, Category A, Affecting Animals only, solid" discussed above. As with other special provisions that provide instruction pertaining to the appropriate use of proper shipping names, PHMSA proposes to add Special Provision 430 to stipulate that only solid medical waste of Category A, which is being transported for disposal, may be described using this entry. The intent of this added language is to simplify the regulations and ensure proper classification of medical wastes to ensure safe transportation.

Special Provision 441

The UN Model Regulations and the IMDG Code contain an exception in their Special Provision 274 pertaining to "UN3077, Environmentally hazardous substance, solid, n.o.s." and "UN3082, Environmentally hazardous substance, liquid, n.o.s." Special Provision 274 requires a proper shipping name to be supplemented with a technical name, in the same manner as the letter "G" is assigned in the HMT. When a "G" is listed in Column (1) of the HMT in association with a particular entry, the proper shipping name must be supplemented with a technical name.

The new exception in Special Provision 274 modifies the requirement to supplement the proper shipping name with a technical name. The revision, which is specifically for materials shipping under UN3077 or UN3082, allows the use of a proper shipping name found on the Dangerous Goods List (the IMDG Code and UN Model Regulations' equivalent of the HMT) to be used in place of a technical name, provided that it does not: (1) Include “n.o.s.” as part of the proper shipping name and; (2) is not an entry assigned Special Provision 274. In practice, this means that items, such as paint, that might be shipped as “UN3082, Environmentally hazardous substance n.o.s.,” are no longer required to include a supplemental technical name, and instead are permitted to include the more readily recognizable name of the commodity (paint) on markings and shipping papers. For common commodities such as paint with various chemical components, emergency responders rely less on determining the specific chemical for performance of emergency response and respond to the known hazards of the commodity. PHMSA expects streamlining the hazardous material description requirements in this manner will help facilitate appropriate emergency response without a reduction in safety.

While the UN Model regulations broadly provided this relief for UN3077 and UN3082, environmentally hazardous materials classified under these UN numbers are applicable to a narrower scope of materials under the IMDG Code. Under the IMDG Code, “environmentally hazardous substances” are those that are pollutants specifically for aquatic environments (which is equivalent to marine pollutants under the HMR) whereas the UN model regulations are broadly applicable to aquatic and other environments.

PHMSA proposes to mirror expansion by the UN Model Regulations and IMDG Code's Special Provision 274 of acceptable technical names for marine pollutants transported under UN3077 and UN3082 by adding a new Special Provision 441 to the HMR. This special provision would provide the same shipping description flexibility specifically for marine pollutants by removing the requirement to supplement the proper shipping name associated with UN3077 and UN3082 with a technical name. PHMSA also proposes modifying 49 CFR 172.203(l) and 172.322 to maintain alignment with the IMDG Code with regard to the documentation and marking requirements when marine pollutant components are present in hazardous materials. In addition to providing logistical benefits for shippers, PHMSA expects that the use of readily recognizable common commodity names instead of technical names will facilitate emergency response by making the hazardous material more quickly and easily identifiable.

Shipping Papers

49 CFR 172.203 prescribes additional description requirements for shipping papers. PHMSA proposes to revise paragraphs (i)(2) and (l)(1), and add new paragraphs (i)(4) and (q).

Indication of the Flash Point for Flammable Liquids Transported by Vessel

In paragraph (i), which provides requirements specific to vessel transportation, PHMSA proposes to clarify that the documentation of the flashpoint on shipping papers, as required in paragraph (i)(2), is only required for liquid hazardous materials that have a primary or subsidiary hazard of Class 3 and a flashpoint of 60°C or below (in °C closed-cup (c.c.)). This change aims to prevent the shipping delays resulting from confusion on how this documentation requirement applied to items for which flashpoint is not an appropriate classification criterion (e.g., aerosols and flammable solids). Furthermore, limiting the flashpoint information to a narrower subset of hazardous materials ensures identifying information of the materials in transport better aligns with the material properties of those materials because flashpoint is a safety-relevant criterion only for dangerous goods that are liquids with a main or subsidiary hazard of Class 3. PHMSA does not expect any reduction in safety as a result of this editorial change given that this change ensures that information regarding the flashpoint is only provided for items in which flashpoint is a safety-relevant criterion; avoidance of the delays in transportation experienced in the past also reduces the risks associated with that transportation.

New Shipping Paper Requirement for Lithium Batteries Offered For Disposal or Recycling and Transported by Cargo Vessel

PHMSA proposes adding a new paragraph (i)(4), that would require shipments of lithium batteries that are offered into transportation for purposes of disposal or recycling, or offered under the damaged or defective provisions in 49 CFR 173.185(f), to indicate on shipping papers one of the following disclaimers, as appropriate: “DAMAGED/DEFECTIVE,” “LITHIUM BATTERIES FOR DISPOSAL,” or “LITHIUM BATTERIES FOR RECYCLING.” This proposed change is consistent with changes adopted in the IMDG Code and associated with an additional proposed revision to 49 CFR 176.84 of the HMR to require lithium batteries that are damaged or defective, or those that are being transported for disposal or recycling, to be stowed in accordance with stowage category C requirements authorizing “on deck only” stowage instead of the currently-authorized “on deck” or “under deck” options. This additional shipping paper requirement would help communicate information about the batteries to individuals making stowage plans for the vessel, provide a mechanism for ensuring the “on deck” stowage of these materials, and allow for more easily identifiable and effective response actions in the event of a fire involving lithium batteries onboard a vessel. PHMSA expects that these revised shipping requirements will contribute to the safe transportation of increased volumes of damaged/defective/exhausted lithium batteries anticipated as a result of the increased use of lithium batteries in the transportation and other economic sectors.

Marine Pollutants

In paragraph (l)(1), PHMSA proposes to revise the scope of hazardous materials for which a specific marine polluting component must be identified in association with the basic description (i.e., the combination of the UN number, proper shipping name, hazard class, and packing group) on a shipping paper. Currently, 49 CFR 172.203(l) specifies that when the proper shipping name for a hazardous material which is a marine pollutant does not identify the component that makes the hazardous material a marine pollutant, the name of the marine pollutant constituent must appear in parentheses within the basic description. PHMSA proposes to revise paragraph (l)(1) to limit the scope of this requirement to make it applicable only to generic HMT entries (as indicated by the G in Column 1 on the HMT) as well as those that have "n.o.s." as part of the proper shipping name. The intent of this proposed amendment is to extend the documentation and marking flexibility provided by Special Provision 441 (which currently applies only to environmentally hazardous substances (UN3077 and UN 3082)) and to other hazardous materials that may contain components(s) that are marine pollutants. For example, under the current HMR, if "UN1263, Paint" contains marine pollutants, the basic description required on shipping papers and markings would have to include the specific marine polluting component(s) that are present in the paint, in addition to the words "marine pollutant" (e.g., "UN1263, Paint, 3 (propyl acetate, di-n-butyltin di-2-ethylhexanoate) MARINE POLLUTANT"). But under this proposed amendment, the basic description for "UN1263, Paint" would no longer require the addition of the "marine pollutant" language. Given that emergency responders do not depend on the specific technical name provided in association with the shipping description to effectively respond to emergencies, PHMSA expects streamlining the description to provide more readily recognizable and usable information that reflects the hazardous materials involved which may facilitate emergency response.

Marking

Reduced Size Marking Requirements

49 CFR 172.301 prescribes general marking requirements for non-bulk packagings. PHMSA proposes to amend paragraph (a)(1) to clarify that the exception permitting reduced size marking requirements are applicable to packages with either 5L or less capacity, or those with a 5 kilograms (kg) or less net mass. The current HMR text states that the exception is applicable to packages with a maximum capacity of 5 kg or 5 L or less, rather than the maximum net mass, which is the more appropriate measure for packages containing solids. A person shipping a solid material may unnecessarily apply the volume limitation when a net mass limit is intended. This proposal clarifies that packages for solid material may have a maximum net mass of 5 kg or less. This editorial change is intended to reduce confusion over the application of the exception at 49 CFR 172.301(a)(1) in that for solid materials, the quantity limit is based on the net amount of solid material and not the capacity of the packaging the material is placed in. This clarification is consistent with similar provisions for solids (net mass) and liquids (capacity) throughout the HMR. Ensuring the appropriate application of the reduced size marking allowance provides consistency across persons using the reduced-size marking and therefore, is expected to improve the safety of transport.

Limited Quantity Marking for Shipments By Air

49 CFR 172.315 prescribes the marking requirements for packages of limited quantities. Currently, the HMR requires that the limited quantity mark be applied on at least one side or one end of the outer packaging. The 2021-2022 ICAO Technical Instructions clarified that marks, in particular those that are applied in a similar manner to self-adhesive labels, must be applied on one side of a package (i.e., not folded over an edge). Prior to these amendments, only hazard communication labels were required to be applied to a single side of a package and prohibited from being folded around the edge of a package. This requirement was extended to markings to ensure visibility and to communicate hazard(s) to the greatest extent possible. Consistent with the ICAO Technical Instructions, PHMSA proposes adding a new paragraph (b)(3) to require, for air transport, that the entire limited quantity mark must appear on one side of the package.

Labels

Affixing Labels To Packages That Are Transported by Air

49 CFR 172.406 specifies the requirements for the placement of labels on a package. The 2021-2022 ICAO Technical Instructions clarified that marks, in particular those that are applied in a similar manner to self-adhesive labels, must be applied on one side of a package. The ICAO Technical Instructions have long required that all hazard communication labels not be folded (around the edge of a package) and be applied to a single side. This requirement was introduced to ensure visibility and communicate hazard(s) to the greatest extent possible. In a working group session, the ICAO Dangerous Goods Panel agreed that extending this labeling requirement to marks was appropriate as marks, like labels, provide hazard communication. While PHMSA has not specifically prohibited extending labels onto other sides of packaging and allows the use of smaller labels to accommodate smaller packagings, PHMSA appreciates the need for readily visible hazard communication by air. Therefore, for the sake of harmonizing with the ICAO Technical Instructions, and to ensure visibility to communicate hazards to the greatest extent possible, PHMSA proposes to add specific restrictions on wrapping marks and labels for shipments that are transported by air.

During a review of the specific marking requirements that were added in the 2021-2022 ICAO Technical Instructions, PHMSA found that the HMR do not contain the same express limitation on “folding” of a part of a label around the edges of a package such that the entirety of a label would have to be on a single side. PHMSA expects that adopting both the pre-existing ICAO single side requirement for labels, and the recent requirement that marks must be on a single side of a package will provide increased visibility of hazard communication on the smaller package types that are frequently used in air transport. These measures would also reduce ambiguity for air operator employees conducting acceptance checks as to whether the package appropriately indicates the hazards without having to make a subjective determination.

Therefore, PHMSA proposes to require in a new paragraph 49 CFR 172.406(a)(1)(iii), that for air transport, the entirety of a required label must be displayed on one side of a package. For cylindrical packages not containing a traditional side, the labels and/or package must be of such dimensions that a label would not overlap itself. In the case of cylindrical packages containing radioactive materials, which require two identical labels, these labels must be centered on opposite points of the circumference and must not overlap each other. If the dimensions of the package are such that two identical labels cannot be affixed without overlapping each other, one label is acceptable provided it does not overlap itself.

In addition, PHMSA proposes to add requirements that marks must not be folded for: the limited quantity mark in 49 CFR 172.315(b); the excepted quantity mark in 49 CFR 173.4a(g); and the UN3373 Category B infectious substance mark in 49 CFR 173.199(a). The ICAO Technical Instructions were also amended to require that the lithium battery handling mark be applied on a single side of a package; however, this is already prescribed in 49 CFR 173.185(c)(3)(i), applicable to all modes of transport. Regarding the Category B infectious substance mark, the proposal would help ensure that any packages containing COVID-19 materials have appropriate visibility and thus, ensure the safe transport of such materials.

Packaging

New Section 49 CFR 173.14 - Hazardous materials in equipment in use or intended for use during transport.

PHMSA proposes to add a new section, 49 CFR 173.14, to provide exceptions from the HMR for certain devices or equipment containing hazardous materials that are in actual use or which are intended for use during transport. Examples of such devices include cargo tracking devices and data loggers attached to, or placed in, packages, overpacks, containers, or load compartments. These items often contain component hazardous materials, such as lithium batteries or fuel cells, necessary to power the device or equipment. The proposed exception would provide clarity for these types of devices which are not offered into transportation as part of the consignment but instead accompany it to collect or disseminate information during transport. Eligibility for the exceptions would be limited to equipment that meets conditional safety requirements. These include requirements that the component hazardous material (e.g., lithium batteries) meet the applicable construction and test requirements specified in the HMR, and that the equipment can withstand the shocks and vibrations normally encountered during transport. The equipment must also be safe for use in different environmental conditions that it may be exposed to during transport such as temperature variations, inclement weather, and conditions in which explosive atmospheres caused by gases, vapors, mists, or air/dust mixtures may occur. The proposed text also clarifies that the exceptions are not applicable when this type of equipment is itself offered as cargo such that normal HMR requirements pertaining to packaging, shipping papers, marking and labeling would apply.

This proposed new section is consistent with provisions adopted in the UN Model Regulations and the IMDG Code. Additionally, in response to the ongoing global COVID-19 public health emergency, on December 31, 2020 and February 23, 2021, ICAO published addenda to the 2021-2022 Edition of the ICAO Technical Instructions to provide a limited exception for lithium battery-powered data loggers and cargo tracking devices to facilitate the transport and distribution of COVID-19 pharmaceuticals, including vaccines. Specifically, the 2021-2022 ICAO Technical Instructions except these devices from lithium battery marking and documentation requirements when transported by aircraft. Consequently, PHMSA proposes exceptions in this section of the HMR to cover all modes of transportation for certain devices or equipment containing hazardous materials that are in actual use or which are intended for use during transport. However, the exceptions associated with aircraft transportation are limited to marking and documentation for lithium-ion and lithium metal battery-powered devices or equipment that accompany shipments of COVID-19 pharmaceuticals, including vaccines. PHMSA requests comments on whether this exception for air transport should be expanded to additional medical supplies not related to COVID-19 (e.g., other vaccines or more general medicines).

Revised Description of the Term "Detonators"

49 CFR 173.59 provides informational descriptions of terms for explosives. PHMSA proposes to amend the description of the term "detonators" to include a reference to electronic programmable detonators. Additionally, PHMSA proposes to add a separate term and description for "Detonators, electronic programmable for blasting." These changes correspond to the proposed addition of the UN0511, UN0512, and UN0513 (Detonators, electronic programmable for blasting) to the HMT. PHMSA intends to distinguish between "electronic detonators" and "electric detonators," as each has different design characteristics, by adding these new entries in the HMT and the editorial amendments in 49 CFR 173.59. PHMSA expects this additional precision in shipping descriptions will provide a safety benefit.

Revisions To Division 6.2 Infectious Substances

49 CFR 173.134 provides classification criteria and exceptions for Division 6.2 infectious substances. PHMSA proposes to revise paragraph (a) to include references to "UN3549, Medical Waste, Category A, Affecting Humans, solid or Medical Waste, Category A, Affecting Animals only, solid." Specifically, paragraphs (a)(1), (a)(1)(i), and (a)(5) would be revised by including UN3549 among the list of UN numbers to use for the description of an infectious substance. These proposed changes are consistent with the proposed addition of this new hazardous materials description to the HMT.

Additionally, PHMSA proposes to remove the term rickettsiae from the list of types of microorganisms in paragraph (a)(1). Rickettsiae are a specific group of bacteria, and this specific type of bacteria is redundant because bacteria are already listed as a type of potential pathogenic microorganism.

Closures on Inner Packagings Containing Liquid Pyrophoric Materials

49 CFR 173.181 prescribes packaging requirements for liquid pyrophoric materials. Specifically, 49 CFR 173.181 provides the requirements on closures for metal or glass receptacles when used as inner packagings (i.e., receptacles) in combination packagings. The UN Model Regulations contains Packing Instruction P404 which includes provisions for resealing inner receptacles with threaded closures. Currently, 49 CFR 173.181 does not include provisions for resealing of inner receptacles with threaded closure. The safety concern when resealing inner receptacles that contain liquid pyrophoric materials is that small amounts of residue may adhere to the threads and present a hazard upon closing of the inner packaging and that friction generated from screwing the cap back onto the receptacle may cause the residue to react critically (e.g., self-heating or spontaneous combustion). Based on this concern, the UN Model Regulations now permit closures of inner receptacles to be either threaded or physically held in place by any means capable of preventing back-off or loosening of the closure under conditions normally incident to transportation (e.g., vibration during transport). PHMSA is also concerned about this potential hazard and proposes to authorize an alternative method of closure to prevent this potential hazard. Therefore, PHMSA proposes to revise the requirements of 49 CFR 173.181 for closures of inner packagings for liquid pyrophoric materials to specify that they may have closures that are physically held in place by any means capable of preventing back-off or loosening during transportation.

Revision to the Minimum Size of the Lithium Battery Mark

49 CFR 173.185 prescribes requirements for the transportation of lithium cells and batteries. Paragraph (c) prescribes requirements for smaller cells or batteries and paragraph (c)(3) specifies hazard communication requirements including the use of the lithium battery mark. PHMSA proposes to revise the minimum size of the lithium battery mark from 120 millimeters (mm) wide by 110 mm high to 100 mm by 100 mm. This reduction in size requirements for this mark would be consistent with the existing minimum size requirements for the limited quantity and excepted quantity marks in the HMR and does not diminish the ability to read or recognize the marking. The reference to the shape of the mark would be amended to include “square” to account for the new minimum dimensions while also maintaining the existing shape of a “rectangle” to continue authorized use of the lithium battery mark with 120 mm by 110 mm dimensions. In addition, the minimum size of the lithium battery mark for packages too small to display the revised 100 mm by 100 mm dimensions, would be revised from 105 mm wide by 74 mm high to 100 mm wide by 70 mm high. This proposed minimum size would not invalidate the use of larger marks meeting the currently authorized minimum size requirements.

Closures on Inner Packagings Containing Solid Pyrophoric Material

49 CFR 173.187 prescribes packaging requirements and other provisions for "pyrophoric solids, metals, or alloys, n.o.s." The 21st revised edition of the UN Model Regulations includes an amendment to Packing Instruction P404 to address concerns with threaded closures when resealing inner receptacles after partial removal of product. The amendment addresses small amounts of residue of pyrophoric materials that may adhere to the threads and present a hazard upon closing of an inner receptacle. As with liquid pyrophoric materials, there is concern that friction generated from screwing the cap back onto the inner receptacle may cause the residue to react critically (e.g., self-heating or spontaneous combustion). Based on this concern, the UN Model Regulations now allow closures of inner receptacles to be either threaded or physically held in place by a means capable of preventing back-off or loosening of the closure under conditions normally incident to transportation (e.g., impact or vibration during transport).

After reviewing this issue, PHMSA is also concerned about this potential hazard and proposes to amend 49 CFR 173.187 to authorize an alternate method of closure to prevent this potential hazard. Specifically, PHMSA proposes to revise the requirements for closures of inner receptacles for solid pyrophoric materials to specify that they may have threaded closures or other closures that are physically held in place by a means capable of preventing back-off or loosening.

Non-Bulk Packaging for Dangerous Goods in Machinery or Apparatus

49 CFR 173.222 specifies the non-bulk packaging requirements for "UN3363, Dangerous goods in machinery or apparatus." In this NPRM, PHMSA proposes to modify the proper shipping name associated with UN3363 to include "dangerous goods in articles," in addition to "dangerous goods in machinery or apparatus." In the HM-215O final rule, PHMSA added new entries for articles containing hazardous materials that are not otherwise specified by name in the HMT (e.g., "UN3547, Articles containing corrosive substance, n.o.s."). These new entries addressed transportation scenarios where various hazardous materials or residues are present in articles above the quantities currently authorized for machinery or apparatus transported as "UN3363, Dangerous goods in machinery or Dangerous goods in apparatus." In addition to adding these new entries to the HMT, PHMSA added packaging provisions in 49 CFR 173.232, as well as a definition for articles. The definition states that "article means machinery, apparatus, or other devices containing one or more hazardous materials (or residues thereof) that are an integral element of the article, necessary for its functioning, and that cannot be removed for the purpose of transport." This addition created regulatory discrepancies between articles that cannot be defined as machinery or apparatus but also do not qualify as "Articles containing hazardous materials, n.o.s." even as there is no safety basis to exclude such articles from the scope of 49 CFR 173.222 provisions. Therefore, PHMSA proposes to revise the provisions in 49 CFR 173.222 to reflect the addition of dangerous goods in articles to the current HMT entry for "UN3363, Dangerous Goods in Machinery or Dangerous Goods in Apparatus". These proposed changes are intended to provide flexibility in the choice of the most appropriate modifier to be selected as a proper shipping name (e.g., article, machinery, or apparatus). This flexibility in selecting the most appropriate

description of the hazardous material would help ensure appropriate packaging selection and hazard communication, thus enhancing safety.

Updates to the Organic Peroxide Table

49 CFR 173.225 prescribes packaging requirements and other provisions for organic peroxides. As a result of new peroxide formulations becoming commercially available, the 21st revised edition of the UN Model Regulations includes updates to the list of identified organic peroxides and new packing instructions for these materials. To maintain consistency with the UN Model Regulations, PHMSA proposes to update the Organic Peroxide Table in §173.225(c) to revise the entry "Di-(4-tert-butylcyclohexyl) peroxydicarbonate [as a paste]," by (1) changing the classification of the material as "UN3116, Organic peroxide type D, solid, temperature controlled" to "UN3118, Organic peroxide type E, solid, temperature controlled"; and (2) changing the packing method from OP7 to OP8.

An organic peroxide Type E is an organic peroxide which neither detonates nor deflagrates and shows low or no effect when heated under confinement. Di-(4-tert-butylcyclohexyl) peroxydicarbonate was identified as a Type E organic peroxide based on evaluation of new test data within the classification scheme for self-reactives and organic peroxide in Figure 20.1 of the UN Model Regulations. PHMSA also proposes to revise the packing method from OP7 to OP8 consistent with the revised classification of Di-(4-tert-butylcyclohexyl) peroxydicarbonate to a lesser hazard Type E organic peroxide. The packaging method indicates the largest size authorized for packaging of a particular organic peroxide. Specifically, for Di-(4-tert-butylcyclohexyl) peroxydicarbonate, assignment of OP8 would allow up to 400 kg for solids and combination packagings, and up to 225 L for liquids.

PHMSA also proposes to revise the Organic Peroxide IBC Table in paragraph (e) to maintain alignment with the 21st revised edition of UN Model Regulations by adding new entries for "tert-Amyl peroxypivalate, not more than 42% as a stable dispersion in water" and "tert-Butyl peroxypivalate, not more than 42% in a diluent type A" and identifying it as "UN3119, Organic peroxide type F, liquid, temperature controlled." PHMSA expects that adding provisions for the transport of these newly available peroxide formulations will allow better oversight for safe and consistent shipment of these hazardous materials.

Limited Quantities of Compressed Gases

49 CFR 173.306 provides exceptions from HMR requirements for transportation of limited quantities of compressed gases. PHMSA proposes to add a new paragraph (n) to include provisions for the transport of "UN2037, Receptacles, small, containing gas or gas cartridges" for recycling or disposal. These proposed provisions include packaging requirements, conditions for exception, and maximum gross weight limits, applicable to small receptacles or cartridges containing gas not exceeding 1.0 L (0.3 gallons) capacity. PHMSA expects that codifying these provisions will create a regulatory framework for transporting these materials for recycling or disposal and reduce the administrative burden that would otherwise apply to fully regulated gas receptacles. Further, reducing this administrative burden may lead to other environmental benefits by facilitating shipments destined for

recycling or disposal. PHMSA solicits comments on the need to expand these provisions to other types of authorized packagings mentioned in this section.

Reference/Link

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

https://www.govinfo.gov/content/pkg/FR-2021-08-10/pdf/2021-15425.pdf

F. DOT Chart 17: Markings, Labeling, and Placarding Guide; Notice of Update

Agency

Department of Transportation (DOT)

Dates

Published Date: 08/05/2021

Summary

The United States Department of Transportation (DOT) has released a new, revised version of the DOT Hazmat Guidance Chart (DOT Chart 17). Please check your current stock of hazardous materials labels and placards to make sure they are the most current versions. If the version you are currently using does not match those shown on the chart they are not in compliance with the DOT regulations. Please discard them and order the most updated version.

Revisions to the chart include:

- The removal of the obsolete hazmat markings and labels.
- The "old" lithium battery handling marking or "handling label" for *excepted* lithium batteries was removed from the Chart. It was replaced by a new lithium battery marking effective as of January 1, 2019.
- DOT removed the ORM-D marking for hazmat consumer commodities, which was phased out of use in ground transportation as of January 1, 2021.
- An outdated version of the DOT Class 9 (Miscellaneous) hazard label that featured a dividing line was removed from the Chart.
- The symbols indicating an IBC is designed for stacking or not designed for stacking (See 49 CFR 178.703(b)(7)) were removed from the chart but remain applicable.
- DOT Chart 17 also illustrates three options for displaying UN identification numbers on bulk packagings or vehicles: On an orange panel, in the middle of a placard, or in the middle of a white placard-like device.

A downloadable pdf version of DOT Chart 17 can be accessed here:

https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2021-06/WEB-Ver-USDOT-CHART-17-0187-0621.pdf

Reference/Link

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

https://www.phmsa.dot.gov/training/hazmat/dot-chart-17-markings-labeling-and-placarding-guide

G. Notice of Adoption of Final Rule on Traffic and Vehicle Safety in the Trade Waste Industry; Final Rule

Agency

New York City Business Integrity Commission (The Commission)

Dates

Published Date: 08/06/2021
Effective Date: 08/06/2021

Summary

The New York City Business Integrity Commission adopts the following rule regarding traffic and vehicle safety in the trade waste industry. These rule amendments are designed to improve street safety for all street users by improving trade waste vehicle safety, holding licensees and registrants accountable for their drivers' repeated traffic safety violations, and requiring driver and helper training. Specifically, the new amendments will require licensees and registrants to ensure that vehicles are in safe operating condition by passing inspections conducted by qualified inspectors and undergoing daily inspections by vehicle operators. Moreover, certain types of vehicles will be required to comply with vehicle specifications, including being equipped with a convex mirror positioned on the front of such vehicles. The amendments will also require licensees and registrants to provide annual safety training to all vehicle operators, laborers and helpers who are directly assigned to trade waste duties, including educating workers on workplace safety requirements, operational instructions for equipment, safety hazards, state and local traffic laws, and best practices for safety. Vehicle operators will be required to complete a defensive driving course every three years. The amendments will also require licensees and registrants to maintain various records, including accurate time records for vehicle operators and workers who handle trade waste, inspection and certification of repair forms, daily inspection reports, and records demonstrating compliance with training requirements. The amendments will also require licensees and registrants to comply with hours of service requirements set forth in 49 CFR Part 395.3, as well as various traffic safety rules set forth in the New York State Vehicle and Traffic Law and New York City traffic rules and regulations.

The Commission and the New York City Department of Sanitation ("DSNY") are jointly promulgating rules to address industry-wide safety issues and to ensure a uniform baseline between the two agencies' overlapping regulatory authority. The requirements in the Commission's rules apply immediately to all licensees and registrants in the trade waste industry, and continue to apply to all licensees and registrants until the transition of the commercial waste zones program occurs in each zone, in accordance with the schedule and further details to be provided in an upcoming DSNY rule. Further details on the transition to commercial waste zones will be provided in a forthcoming rulemaking regarding the transition start and end dates. After the transition to commercial waste zones occurs, the Commission's requirements regarding the topics contained in these rules will not apply to commercial waste carriers but will continue to apply to licensees and registrants that are hauling forms of trade waste other than commercial waste, such as construction and demolition debris. Once the commercial waste zones program is implemented, commercial waste zone carters will be required to follow DSNY's applicable rules. Please note that the majority of the Commission's safety requirements are replicated in DSNY's proposed rules for commercial waste zone carters. More details regarding the applicability of the Commission's rules to the commercial waste zones program will be provided in future rulemakings.

New Definition

Qualified Inspector - means an individual who meets the qualifications set forth in 49 CFR 396.19.

Accurate Time Records

Rules of the City of New York, Title 17, Chapter 1, Subchapter E, Section 5-03, Subdivision (l)

A licensee must maintain accurate time records for each vehicle operator and worker who handles trade waste. Such time records must identify the worker by name and job title, and for each day reflect the time the worker reported to work; the route, truck number or other information used to identify the worker's daily work assignment; any off-duty breaks; the time the worker was released from duty; and the total number of hours worked per week.

Inspection and Repair Records

Rules of the City of New York, Title 17, Chapter 1, Subchapter E, Section 5-03, Subdivision (m)

A licensee must maintain copies of all inspection and certification of repair forms required by Section 5-10(e) for at least five (5) years, and copies of such forms (paper or electronic) must be available in the corresponding vehicles at all times for six (6) months.

Daily Inspection Reports

Rules of the City of New York, Title 17, Chapter 1, Subchapter E, Section 5-03, Subdivision (n)

A licensee must maintain copies of all daily inspection reports required by Section 5-10(f) for at least five (5) years, and copies of such reports (paper or electronic) must be available in the corresponding vehicles at all times for fourteen (14) days.

Employee Training

Rules of the City of New York, Title 17, Chapter 1, Subchapter E, Section 5-03, Subdivision (o)

A licensee must maintain records demonstrating compliance with Section 5-14 that include, at a minimum, the date training was provided, the names of each employee that received the training, and each employee's job duties.

Compliance with Applicable Laws and Regulations

Rules of the City of New York, Title 17, Section 5-04

All licensees shall at all times comply with all the laws, rules and regulations of Federal, State and local governmental authorities having jurisdiction over any of the licensees' activities, including, but not limited to, rules and regulations of the Department of Environmental Protection, the Department of Health, the Department of Sanitation and the Department of Transportation concerning [the] environmental, safety and health standards, including but not limited to traffic safety, or relating to the collection, removal, transportation or disposal of trade waste in a safe manner, vehicle specifications, sanitary requirements, or the handling, transport, receipt, transfer or disposal of trade waste, regulated medical waste or waste containing asbestos or other hazardous, toxic or dangerous material. Failure to comply with these laws, rules or regulations shall be grounds for suspension and/or revocation of the license pursuant to Section 16-513 of the Code or refusal to issue a license pursuant to Section 16-509 of the Code and, in addition to any other penalty provided by law, the imposition of penalties pursuant to 17 RCNY § 1-04.

Hours of Service

Rules of the City of New York, Title 17, Section 5-08, Subdivision (u)

A licensee must not permit or require any vehicle operator to drive the licensee's vehicles unless the vehicle operator complies with the hours of service requirements set forth in 49 CFR 395.3.

Unsafe Practices Prohibited

Rules of the City of New York, Title 17, Section 5-08, Subdivision (v)

A licensee must ensure that the trade waste vehicles operated on behalf of the licensee are not engaging in a pattern of unsafe practices. Each such pattern of unsafe practices is a violation of this subdivision. For purposes of this subdivision, "a pattern of unsafe practices" means four instances of prohibited conduct set forth in paragraphs (1) through (6) of this subdivision within a six-month period by the licensee's vehicle operators and helpers, in the aggregate:

(1) A trade waste vehicle must not back up unless such movement can be made safely and without interfering with traffic for the minimum distance to allow for the safe collection of trade waste.

(2) A trade waste vehicle must not make a U turn, except where legally permitted at marked center lines and from designated lanes.

(3) A trade waste vehicle must stop at all steady red lights until such light turns green. A trade waste vehicle must stop at all flashing red lights and stop signs before entering an intersection.

(4) A trade waste vehicle must be driven only in the direction designated for the roadway.

(5) A trade waste vehicle must not obstruct a bike lane, bus stop, sidewalk, crosswalk, or intersection.

(6) Under no circumstances shall an individual ride on or cling to the outside of a trade waste vehicle while the vehicle is operating on a roadway.

Vehicle Specifications and Inspections

Rules of the City of New York, Title 17, Section 5-10

(c) Each vehicle having a gross vehicle weight rating of twenty-six thousand pounds or more and a conventional cab configuration in which the engine is mounted in front of the operator must be equipped with a convex mirror positioned on the front of such vehicle. When such vehicle is being operated, such mirror shall be adjusted so as to enable the operator thereof to see all points on an imaginary horizontal line which is three feet above the road, is one foot directly forward from the midpoint of the front of such motor vehicle, and extends the full width of the front of such vehicle or combination of vehicles.

(d) Nothing may be placed or suspended in or on the vehicle or windshield so as to obstruct the operator's vision through the windshield or other windows. Nothing in this subdivision shall be construed to prohibit the placement or suspension of an object in or on the vehicle or windshield in order to comply with or as expressly permitted by federal, state or local law.

(e) A trade waste vehicle must not be operated unless such vehicle is in safe operating condition and has passed an inspection conducted by a qualified inspector demonstrating compliance with the terms of this section at least once during the preceding six months.

(1) Each such inspection must be recorded on an inspection report form prescribed by the Commission. Such inspection report must identify any safety defects discovered during the inspection and cover at a minimum, the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment.

(2) Following an inspection, such vehicle may not be operated unless a qualified inspector certifies on the inspection report that all necessary repairs have been made and that such vehicle has passed the inspection.

(3) Copies of such inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision (m) of Section 5-03.

(f) A trade waste vehicle must not be operated unless the operator of such vehicle is satisfied such vehicle is in safe operating condition. A licensee must require the operator of such vehicle to inspect such vehicle following each day's work and to prepare a daily inspection

report that identifies such vehicle and any defect that would affect the safety of operation of such vehicle. Such daily inspection report must cover at a minimum the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment. Copies of such daily inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision (n) of Section 5-03. The operator of such vehicle must review the most recent daily inspection report and determine whether required repairs have been made when evaluating the condition of such vehicle.

(g) The Commission or a person designated by the Commission may inspect trade waste vehicles, equipment, licenses, registrations, inspection reports, and fleet records of each licensee at any time at its own discretion.

(1) The Commission or a person designated by the Commission may order the licensee to immediately remove any trade waste vehicle or equipment from service and, where appropriate, to take corrective action within a prescribed period of time if the Commission or such person designated by the Commission determines the vehicle or equipment presents an imminent threat to public health or safety or to the environment due to an issue that may include, but need not be limited to, defective brakes, tires or lighting devices, or leaking or spilling of fluids and escaping of trade waste. The licensee shall comply with the order within the time prescribed in the order and shall notify the Commission when compliance has been achieved.

(2) Within the time specified for compliance in an order issued pursuant to this section or as otherwise specified in such order, the licensee may submit a written statement appealing the order to the Chair in the manner specified in the order.

(3) Submission of an appeal pursuant to paragraph (2) of this subdivision shall relieve the licensee's obligation to take any corrective action within the time prescribed in the order pending a final determination pursuant to paragraph (4) of this subdivision, provided, however, that in the event the Chair determines that failure to take corrective action within the time prescribed in the order poses a significant risk of imminent harm to public health or safety or to the environment, the licensee will be notified and will be required to take such corrective action within the specified time, or within an alternative time specified by the Chair. Notwithstanding the foregoing, submission of such an appeal shall not relieve the licensee's obligation to remove a trade waste vehicle or equipment from service during the pendency of an appeal.

(4) The Chair must review appeals and make a final written determination regarding the appeal within a reasonable period of time. The Commission will serve final determinations on the licensee as provided in 17 RCNY § 1-02.

(5) If the Chair sustains an appeal in whole or in part, then the stated terms of the final determination on appeal will replace the original requirements of the order.

(6) If an appeal is denied, the final determination will specify a reasonable period of time for compliance with the order based on the circumstances, except in the case of an order where taking corrective action is required within an earlier time pursuant to paragraph (3) of this subdivision. The final determination by the Chair is subject to review pursuant to article 78 of the New York Civil Practice Laws and Rules.

Worker Training

Rules of the City of New York, Title 17, Chapter 1, Subchapter E, Section 5-14

(a) Training. A licensee must provide annual safety training to all vehicle operators and laborers or helpers who are directly assigned to the collection, removal, transport or disposal of trade waste on the public right of way. Such training must include, at a minimum,

(1) educating workers on workplace safety requirements;

(2) operational instruction on each specific type of equipment used by the employee; and (3) training to address specific public safety hazards associated with collecting, transporting, removing and disposing of trade waste, including but not limited to, training, as applicable, regarding:

(a) collision avoidance, including defensive driving and best practices to avoid collisions with pedestrians, cyclists and other vulnerable road users;

(b) pre-trip and post-trip vehicle and equipment inspections;

(c) state and local traffic laws, including speed limits, yielding, and bus and bicycle lane restrictions;

(d) preventing distracted driving;

(e) navigating intersections and turns;

(f) backing up a trade waste vehicle;

(g) best practices for safe collection stops;

(h) container management;

(i) hopper operation;

(j) fire prevention and response; and

(k) transporting and disposing of specialized waste or hazardous materials.

Such training must 7 be provided within 90 days after the start of employment or prior to the initial assignment of a worker to a job or task, whichever is earlier.

(b) Additional Driver Training. A licensee must not permit or require any vehicle operator to drive the licensee's vehicles unless, within the past three years, the vehicle operator has completed a defensive driving course approved by the Commission or a state agency that issues driver licenses.

(c) Provided that if a licensee is a designated carter pursuant to an agreement with the Department of Sanitation, compliance with Section 16-1008 satisfies the requirements of subdivisions (a) and (b) of this section.

Compliance With Applicable Law Required

Rules of the City of New York, Title 17, Chapter 1, Subchapter G, Section 7-02

All registrants shall at all times comply with all the laws, rules and regulations of Federal, State and local governmental authorities having jurisdiction over any of the registrants' activities, including, but not limited to, rules and regulations of the Department of Environmental Protection, the Department of Health, the Department of Sanitation and the Department of Transportation concerning environmental, safety and health standards, including but not limited to traffic safety, or relating to the collection, removal, transportation or disposal of trade waste in a safe manner, vehicle specifications, sanitary requirements, or the handling, transport, receipt, transfer or disposal of trade waste, regulated medical waste or waste containing asbestos or other hazardous, toxic or dangerous material. Failure to comply with these laws, rules or regulations shall be grounds for suspension and/or revocation of the registration pursuant to Section 16-513 of the Code or refusal to issue a registration pursuant to Section 16-509 of the Code and, in addition to any other penalty provided by law, the imposition of penalties pursuant to 17 RCNY § [1-05] 1-04.

Vehicle Specifications and Inspections

Rules of the City of New York, Title 17, Chapter 1, Subchapter G, Section 7-03

(c) Each vehicle having a gross vehicle weight rating of twenty-six thousand pounds or more and a conventional cab configuration in which the engine is mounted in front of the operator must be equipped with a convex mirror positioned on the front of such vehicle. When such vehicle is being operated, such mirror shall be adjusted so as to enable the operator thereof to see all points on an imaginary horizontal line which is three feet above the road, is one foot directly forward from the midpoint of the front of such motor vehicle, and extends the full width of the front of such vehicle or combination of vehicles.

(d) Nothing may be placed or suspended in or on the vehicle or windshield so as to obstruct the operator's vision through the windshield or other windows. Nothing in this subdivision shall be construed to prohibit the placement or suspension of an object in or on the vehicle or windshield in order to comply with or as expressly permitted by federal, state or local law.

(e) A trade waste vehicle must not be operated unless such vehicle is in safe operating condition and has passed an inspection conducted by a qualified inspector demonstrating compliance with the terms of this section at least once during the preceding six months.

> (1) Each such inspection must be recorded on an inspection report form prescribed by the Commission. Such inspection report must identify any safety defects discovered during the inspection and cover at a minimum, the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment.

(2) Following an inspection, such vehicle may not be operated unless a qualified inspector certifies on the inspection report that all necessary repairs have been made and that such vehicle has passed the inspection. (3) Copies of the most recent inspection report must be kept in the corresponding vehicle in accordance with the requirements of subdivision (e) of Section 7-06.

(f) A trade waste vehicle must not be operated unless the operator of such vehicle is satisfied such vehicle is in safe operating condition. A registrant must require the operator of such vehicle to inspect such vehicle following each day's work and to prepare a daily inspection report that identifies such vehicle and any defect that would affect the safety of operation of the vehicle. Such daily inspection report must cover at a minimum, the following parts and accessories: service and parking brakes, steering mechanism, tires, wheels and rims, side guards, coupling devices, mirrors, lighting devices and reflectors, horn, windshield wipers, and emergency equipment. Copies of such daily inspection reports must be kept in the corresponding vehicle in accordance with the requirements of subdivision (f) of Section 7-06. The operator of such vehicle must review the most recent daily inspection report and determine whether required repairs have been made when evaluating the condition of such vehicle.

(g) The Commission or a person designated by the Commission may inspect trade waste vehicles, equipment, licenses, registrations, inspection reports, and fleet records of each registrant at any time at its own discretion.

(1) The Commission or a person designated by the Commission may order the registrant to immediately remove any trade waste vehicle or equipment from service and, where appropriate, to take corrective action within a prescribed period of time if the Commission or such person designated by the Commission determines the vehicle or equipment presents an imminent threat to public health or safety or to the environment due to an issue that may include, but need not be limited to, defective brakes, tires or lighting devices, or leaking or spilling of fluids and escaping of trade waste. The registrant shall comply with the order within the time prescribed in the order, and shall notify the Commission when compliance has been achieved.

(2) Within the time specified for compliance in an order issued pursuant to this section or as otherwise specified in such order, the registrant may submit a written statement appealing the order to the Chair in the manner specified in the order.

(3) Submission of an appeal pursuant to paragraph (2) of this subdivision shall relieve the registrant's obligation to take any corrective action within the time prescribed in the order pending a final determination pursuant to paragraph (4) of this subdivision, provided, however, that in the event the Chair determines that failure to take corrective action within the time prescribed in the order poses a significant risk of imminent harm to public health or safety or to the environment, the registrant will be notified and will be required to take such corrective action within the specified time, or within an alternative time specified by the Chair. Notwithstanding the foregoing, submission of such an appeal shall not relieve the registrant's obligation to remove a trade waste vehicle or equipment from service during the pendency of an appeal.

(4) The Chair must review appeals and make a final written determination regarding the appeal within a reasonable period of time. The Commission will serve final determinations on the registrant as provided in 17 RCNY § 1-02

(5) If the Chair sustains an appeal in whole or in part, then the stated terms of the final determination on appeal will replace the original requirements of the order.

(6) If an appeal is denied, the final determination will specify a reasonable period of time for compliance with the order based on the circumstances, except in the case of an order where taking corrective action is required within an earlier time pursuant to paragraph (3) of this subdivision. The final determination by the Chair is subject to review pursuant to article 78 of the New York Civil Practice Laws and Rules.

Operations

Rules of the City of New York, Title 17, Chapter 1, Subchapter G, Section 7-05

A registrant that removes, collects, or disposes of trade waste shall keep the sidewalk, flagging, curbstone, and roadway abutting any area from which waste is removed free from obstruction, garbage, litter, debris and other offensive material resulting from the removal by the registrant of trade waste and shall comply with the requirements for operation contained in 17 RCNY § 5-11 and subdivisions (a) through (q) and (u) through (v) of 17 RCNY § 5-08 [and 17 RCNY § 5-11] of this chapter.

Rules of the City of New York, Title 17, Chapter 1, Subchapter G, Section 7-06

(d) A registrant must maintain accurate time records for each vehicle operator and worker who handles trade waste. Such time records must identify the worker by name and job title, and for each day reflect the time the worker reported to work; the route, truck number or other information used to identify the worker's daily work assignment; any off-duty breaks; the time the worker was released from duty; and the total number of hours worked per week.

(e) A registrant must maintain copies of all inspection and certification of repair forms required by Section 7-03(e) for at least five (5) years, and copies of such forms (paper or electronic) must be available in the corresponding vehicles at all times for six (6) months.

(f) A registrant must maintain copies of all daily inspection reports required by Section 7-03(f) for at least five (5) years, and copies of such reports (paper or electronic) must be available in the corresponding vehicles at all times for fourteen (14) days.

(g) A registrant must maintain records demonstrating compliance with Section 7-08 that include, at a minimum, the date training was provided, the names of each employee that received the training, and each employee's job duties.

(h) All records that must be maintained pursuant to this section must be maintained for five (5) years unless the Commission directs otherwise.

Worker Training

Rules of the City of New York, Title 17, Chapter 1, Subchapter G, Section 7-08

(a) Training. A registrant must provide annual safety training to all vehicle operators and laborers or helpers who are directly assigned to the collection, removal, transport or disposal of trade waste on the public right of way. Such training must include, at a minimum,

(1) educating workers on workplace safety requirements;

(2) operational instruction on each specific type of equipment used by the employee; and

(3) training to address specific public safety hazards associated with collecting, transporting, removing and disposing of trade waste, including but not limited to, training, as applicable, regarding:

(a) collision avoidance, including defensive driving and best practices to avoid collisions with pedestrians, cyclists and other vulnerable road users;

(b) pre-trip and post-trip vehicle and equipment inspections;

(c) state and local traffic laws, including speed limits, yielding, and bus and bicycle lane restrictions;

(d) preventing distracted driving;

(e) navigating intersections and turns;

(f) backing up a trade waste vehicle;

(g) best practices for safe collection stops;

(h) container management;

(i) hopper operation;

(j) fire prevention and response; and

(k) transporting and disposing of specialized waste or hazardous materials. Such training must be provided within 90 days after the start of employment or prior to the initial assignment of a worker to a job or task, whichever is earlier.

(b) Additional Driver Training. A registrant must not permit or require any vehicle operator to drive the registrant's vehicles unless, within the past three years, the vehicle operator has completed a defensive driving course approved by the Commission or a state agency that issues driver licenses.

Reference/Link

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

https://rules.cityofnewyork.us/rule/32933/

H. Pre-Employment Full Query Investigation Requirement for Return of LOA CDL Drivers; Clarification on Regulations

Agency

Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: N/A, Already in effect

Summary

In conversation with the Federal Motor Carrier Safety Administration (FMCSA) it was noted that it is required for any CDL drivers that are out on a leave of absence for a period of 30 days or more, to have a Pre-Employment Full Query Investigation in the FMCSA Drug and Alcohol Clearinghouse performed in addition to a DOT pre-employment drug test prior to allowing the driver to resume driving commercial motor vehicles upon returning to work for Veolia. These requirements are not applicable to non-CDL drivers.

To request a Pre-Employment Full Query Investigation in the FMCSA Drug and Alcohol Clearinghouse, a Request for Pre Employment Full Query Investigation Form will need to be completed and submitted to JJ Keller (Veolia Water) or Fleetworthy (Veolia ESS). The form can be found in the respective DQF packets. JJ Keller/Fleetworthy will submit the request to the Clearinghouse and the driver will need to sign in to the Clearinghouse to provide consent for FMCSA to release the investigation results. It is a relatively quick process and should not delay the driver's return to driving as long as the driver responds to the request in a timely manner.

The driver instructions for how to respond to consent requests can be found at the following link:
https://clearinghouse.fmcsa.dot.gov/Resource/Index/Consent-Requests-Driver

Reference/Link

There is no link available as this is a Clarification on Regulations.

I. Schedules of Controlled Substances: Placement of 4,4′-DMAR in Schedule I; Final Rule

Agency

Drug Enforcement Agency (DEA)

Dates

Published Date: 08/11/2021
Effective Date: 09/13/2021

Summary

The Drug Enforcement Administration has placed 4,4′- dimethylaminorex (common name: 4,4′- DMAR) including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle 4,4′- DMAR.

Reference/Link

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

https://www.govinfo.gov/content/pkg/FR-2021-08-12/pdf/2021-17052.pdf