

Veolia North America - Industrial Business

October, 2021

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HEALTH & SAFETY UPDATES

There are no Health & Safety Updates for October 2021

MISCELLANEOUS UPDATES

There are no Miscellaneous Updates for October 2021

A. Conforming Changes to Canada Specific Hazardous Waste Import-Export Recovery and Disposal Operation Codes; Final Rule

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 10/01/2021

Effective Date: 10/31/2021

Summary

The Environmental Protection Agency (EPA) is making changes to conform with Canadian import-export recovery and disposal operations that Canada promulgated on March 17, 2021.

The changes to regulations are in relation to twelve hazardous waste import-export recovery and disposal operations used in hazardous waste export and import notices submitted to EPA by U.S. exporters and importers, and in movement documents that accompany export and import shipments. The EPA must revise twelve of its import-export recovery and disposal code numbers and descriptions in 40 CFR 262.81 to reflect the revised Canadian regulatory definitions so that export and import notices and subsequent movement documents exchanged between Canada and the United States on or after October 31, 2021, do not contain conflicting information. There is no opportunity for comment as this is necessary to conform with the Canadian regulatory revisions.

The current and revised regulatory text for the twelve affected disposal and recovery operations are as follows:

Current regulatory definition	Revised regulatory definition
(13) D13 Blending or mixing, prior to any of operations D1 through D12	(13) D13 Interim blending or mixing, before an operation that bears any of the disposal operations D1 to D12.
(14) D14 Repackaging, prior to any of operations D1 through D13	(14) D14 Interim repackaging, before an operation that bears any of the disposal operations D1 to D12.
(15) D15 (or DC17 for transboundary movements with Canada only) Interim Storage, prior to any of operations D1 through D12.	(15) D15 Interim storage, before an operation that bears any of the disposal operations D1 to D12.
(16) DC15 Release, including the venting of compressed or liquified gases, or treatment, other than by any of operations D1 to D12 (for transboundary movements with Canada only).	(16) DC1 Release, including the venting of compressed or liquified gases, or treatment, other than by any of disposal operation codes D1 to D12. (for transboundary movements with Canada only).

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(17) DC16 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).	(17) DC2 Testing of a new technology to dispose of a hazardous waste (for transboundary movements with Canada only).
(11) R11 Uses of residual materials obtained from any of the operations numbered R1 through R10 or RC14 (for transboundary shipments with Canada only).	(11) R11 Use of residual materials obtained from any of the recovery operation codes numbered R1 through R10 or RC1.
(12) R12 Exchange of wastes for submission to any of the operations numbered R1 through R11 or RC14 (for transboundary shipments with Canada only).	(12) R12 Interim exchange of wastes before recycling using any of the recovery operation codes numbered R1 through R11 or RC1.
(13) R13 Accumulation of material intended for any operation numbered R1 through R12 or RC14 (for transboundary shipments with Canada only).	(13) R13 Interim accumulation of wastes before recycling using any of the recovery operation codes numbered R1 through R11 or RC1.
(14) RC14 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).	(14) RC1 Recovery or regeneration of a substance or use or re-use of a recyclable material, other than by any of operations R1 to R10 (for transboundary shipments with Canada only).
(15) RC15 Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).	(15) RC2 Testing of a new technology to recycle a hazardous recyclable material (for transboundary shipments with Canada only).
(16) RC16 Interim storage prior to any of operations R1 to R11 or RC14 (for transboundary shipments with Canada only).	(16) RC3 Interim storage prior to any of operations R1 to R11 or RC1 (for transboundary shipments with Canada only).

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2021-10-01/pdf/2021-21417.pdf>

B. EPA Releases Updated 2020 TRI Data; Data Update

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 10/21/2021

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Summary

The Environmental Protection Agency (EPA) has made available the updated 2020 Toxics Release Inventory (TRI) data. This includes data about chemical releases, chemical waste management and pollution prevention activities that took place during 2020 at more than 21,000 federal and industrial facilities throughout the United States and its territories.

The data released also include the first-ever reporting on the 172 per-and polyfluoroalkyl substances (PFAS) added to TRI by the 2020 National Defense Authorization Act (NDAA).

The link below will allow you to navigate the EPA TRI Data and Tools Page.

<https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-and-tools>

Reference/Link

The link below will allow you to view/print the EPA TRI Program Page.

<https://www.epa.gov/toxics-release-inventory-tri-program/tri-data-and-tools>

C. **Alternate PCB Extraction Methods and Amendments to PCB Cleanup and Disposal Regulations; Proposed Rule**

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 10/22/2021

Comments Due: 12/21/2021

Summary

On October 22, 2021, EPA published a Proposed Rule (86 FR 58730-58762) to expand the list of extraction and determinative methods used to characterize and verify the cleanup of polychlorinated biphenyl (PCB) waste under the federal Toxic Substances Control Act (TSCA) regulations. The goal of these changes is to reduce the amount of solvent used in PCB extraction processes, thereby conserving resources and reducing waste. Additionally, the proposed changes are expected to result in quicker, more efficient, and less costly cleanup, due to greater flexibility in the cleanup and disposal of PCB waste, while still being equally protective of human health and the environment.

Following is a summary of the proposed changes to the PCB regulations.

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Expand Available Extraction Methods for PCBs

Currently, the only extraction methods explicitly allowed in the PCB regulations for solid matrices are Method 3540C (Soxhlet Extraction) and Method 3550B (Ultrasonic Extraction). With this rule, EPA is proposing to add the following extraction methods to the 40 CFR Part 761 regulations: Method 3541 (Automated Soxhlet Extraction), Method 3534A (Pressurized Fluid Extraction), and Method 3546 (Microwave Extraction) for the extraction of PCBs from solid matrices. EPA is proposing to add Method 3510C (Separatory Funnel Liquid-Liquid Extraction), Method 3520C (Continuous Liquid-Liquid Extraction), and Method 3535A (Solid-Phase Extraction) for the extraction of PCBs from aqueous matrices.

Remove Ultrasonic Extraction (Method 3550B)

EPA is proposing to remove EPA Method 3550B (Ultrasonic Extraction) from the PCB regulations.

Add Determinative Methods

EPA is proposing to add three determinative methods to the PCB regulations that include: Method 8082A (PCBs by Gas Chromatography), Method 8275A (Semivolatile Organic Compounds (PAHs and PCBs) in Soils/Sludges and Solid Waste Using Thermal Extraction/Gas Chromatography/Mass Spectrometry (TE/GC/MS)), and Method 1668C (Chlorinated Biphenyl Congeners in Water, Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS).

Below is the Table of Methods Affected in this Proposed Rule

Source	Method ID	Publication Year	Method Type	Method Name	Proposed Change
SW-846	Method 3510C	1996	Extraction	Separatory Funnel Liquid-Liquid Extraction	Propose to Add
SW-846	Method 3520C	1996	Extraction	Continuous Liquid-Liquid Extraction	Propose to Add
SW-846	Method 3535A	2007	Extraction	Solid-Phase Extraction (SPE)	Propose to Add
SW-846	Method 3500B	2007	Extraction	Organic Extraction and Sample Preparation	Propose to Remove Reference to Method
SW-846	Method 3540C	1996	Extraction	Soxhlet Extraction	Remains in regulations
SW-846	Method 3541	1994	Extraction	Automated Soxhlet Extraction	Propose to Add
SW-846	Method 3545A	2007	Extraction	Pressurized Fluid Extraction	Propose to Add

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SW-846	Method 3546	2007	Extraction	Microwave Extraction	Propose to Add
SW-846	Method 3550B	1996	Extraction	Ultrasonic Extraction	Propose to Remove
SW-846	Method 8082	1996	Determinative	PCB by Gas Chromatography	Remains in regulations
SW-846	Method 8082A	2007	Determinative	PCB by Gas Chromatography	Propose to Add
SW-846	Method 8275C	1996	Extraction & Determinative	Semivolatile Organic Compounds in Soil/Sludges and Solid Wastes Using Thermal Extraction/ Gas Chromatography/Mass Spectrometry(TE/GC/MS)	Propose to Add
CWA	Method 1668C	2010	Extraction & Determinative	Chlorinated Biphenyl Congeners in Water Soil, Sediment, Biosolids, and Tissue by HRGC/HRMS	Propose to Add

Revise Performance-Based Disposal Under 40 CFR 761.61(b)

EPA proposes to amend 40 CFR 761.61(b) (performance-based disposal) to add performance-based cleanup standards, while maintaining this option as one which does not require prior EPA approval and thus remains an expedient option for those entities removing PCB remediation waste from the site. Specifically, EPA is proposing to amend 40 CFR 761.61(b) to include explicit conditions for on-site remediation and cleanup of PCB remediation waste.

This specification includes:

1. Establishing cleanup levels for sites remediated under 40 CFR 761.61(b) performance-based cleanup;
2. Limiting applicability of this option to sites that are not near sensitive populations or environments;
3. Verification sampling;
4. Recordkeeping requirements;
5. Post-cleanup notification; and
6. Allowing for the disposal of PCB remediation waste in RCRA Subtitle C permitted landfills.

After fulfilling the conditions of performance-based cleanup and disposal, the site would then be authorized for use under 40 CFR 761.30(u).

Remove Regulatory Provision Allowing Disposal of PCB Bulk Product Waste as Roadbed

EPA proposes to remove the option currently provided for in 40 CFR 761.62(d)(2) to dispose of PCB bulk product waste under asphalt as roadbed because the Agency cannot, at this time, determine that the practice presents no unreasonable risk of injury to health or the environment. EPA further believes that this disposal option is not widely used and thus removing it from the regulations is not likely to present a significant burden to the regulated community

Add Flexible Provisions for Emergency Situations

EPA proposes two independent changes to make the PCB regulatory requirements more practical during emergency situations. First, EPA is proposing that two additional flexibilities for spills caused by emergency situations be added to the PCB Spill Cleanup Policy in Subpart G. The first of this flexibility is that the responsible party may clean up a spill caused by an emergency situation based on the as-found PCB concentration when the source concentration cannot readily be determined. This allows parties to determine if the spill can be managed under §§ 761.125(b) or 761.125(c) for actions taken directly in response to spills caused by emergency situations. The second of this flexibility is to the timeframe for completing notification under the Spill Cleanup Policy. Under EPA's proposed changes, when the Policy is used for cleanup activities undertaken directly in response to spills caused by emergency situations, as would be defined in § 761.123, the policy would extend the timeframe for reporting from 24 hours to seven days after the adverse conditions that prevented communication have ended.

Second, EPA is proposing to create an option to apply for a waiver from various cleanup, storage, and disposal requirements for releases caused by emergency situations, when meeting those requirements as stated in the regulations would be impracticable. Responsible parties would be able to request a waiver from the provisions of §§ 761.60, 761.61, 761.62, and 761.65, which provide requirements for sampling, extraction, analysis, cleanup, storage, and disposal of all types of regulated PCB wastes.

Harmonize General Disposal Requirements for PCB Remediation Waste

EPA proposes to change the language in 40 CFR 761.50(b)(3)(ii) by removing the phrase "at as found concentrations \geq 50 ppm." This proposed change would avoid potential confusion over the meaning of 40 CFR 761.50(b)(3)(ii) and make clear, consistent with the regulatory text and guidance, that all PCB remediation waste is subject to 40 CFR 761.61, and that all qualifying PCB remediation waste can be managed under the Spill Cleanup Policy regardless of its as-found concentration.

Make Changes to Improve Regulatory Implementation

EPA proposes several supplemental amendments to improve the implementation of existing requirements, clarify regulatory ambiguity, and correct technical errors. The amendments include the following:

- Regulate Medium Density Plastics as Non-Porous Surfaces
- All Temporary Storage in Containers at the Site of Generation
- Language Modifications for Financial Assurance Instruments
- Remove Manifest Tracking Numbers From Annual Reports

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- Create Mandatory Form for Annual Reports
- Revise the PCB Waste Categories on the Manifest
- Clarify in 40 CFR 761.61(a) that All Cleanups Must Comply With All Applicable Requirements
- Harmonize PCB Concentration Language Regarding Cap Material
- Clarify the Applicability of Deed Restrictions
- Include Alternate Extraction and Analysis Under 40 CFR 761.61(c)—PCB Remediation Waste
- Include Alternate Extraction and Analysis Under 40 CFR 761.62(c)—PCB Bulk Product Waste
- Include Alternate Extraction and Analysis Under 40 CFR 761.79(h)— Decontaminated Material
- Clarify the Sampling Procedure for NonPorous Surfaces
- Add Unit to Concentration in 40 CFR 761.1(b)(3)
- Update ASTM Methods
- Require a Wipe Sample Under 40 CFR 761.30(i)(4)
- High Efficiency Boilers Approval Application Requirements (editorial correction)
- Update to the Mailing Address for Annual Reports
- Update the Address for Submission of EPA Form 7710–53
- Add a Field for Facility Email Address and EPA PCB Email Address to EPA Form 7710–53
- Sample Site Selection Instructions for Pipelines
- Remove Reference to Method 3500B
- Correct References to SW–846
- Correct References to EPA’s PCB Website (<https://www.epa.gov/pcbs>)
- Correct the Reference to Methods for Standard Wipe Test Samples as Identified at 40 CFR 761.314

Definitions

EPA is proposing to add or amend the following definitions to 40 CFR 761.3:

Annual report means the completed EPA Form 6200–025 submitted each year by each disposer and commercial storer of PCB waste to the Director, Office of Resource Conservation and Recovery. The annual report is a brief summary of the information included in the annual document log.

As-found concentration means the concentration measured in samples collected in-situ (i.e., prior to being moved or disturbed for cleanup and/or disposal) from environmental media or material, unless otherwise specifically provided. For example, media must not be disturbed, nor may they be diluted (e.g., excavated, placed on a pile, and sampled after such placement) before characterization sampling is conducted. Sampling media in piles and existing accumulations would be considered “as-found” if the media were already in piles when the site was first visited by the responsible party, such as during the redevelopment of abandoned properties with historic PCB contamination. The as-found concentration is distinct from the source concentration, which is the concentration of the PCBs in the material that was originally spilled, released, or otherwise disposed of at the site.

Emergency situation means adverse conditions caused by manmade or natural incidents that threaten lives, property, or public health and safety; require prompt responsive action from the local, state, tribal, territorial, or federal government; and result in: (1) A declaration by either the President of the United States or Governor of the affected state of a natural disaster or emergency; or, (2) an incident funded under the Federal Emergency Management Agency (FEMA) via a Stafford Act disaster declaration or emergency declaration. Examples of emergency situations may include civil emergencies or adverse natural conditions, such as hurricanes, earthquakes, or tornados.

Non-porous surface means a smooth, unpainted solid surface that limits penetration of liquid containing PCBs beyond the immediate surface. Examples are: Smooth uncorroded metal; natural gas pipe with a thin porous coating originally applied to inhibit corrosion; smooth glass; smooth glazed ceramics; impermeable polished building stone such as marble or granite; and medium- and high-density plastics, such as polycarbonates and melamines, that do not absorb solvents.

Reference/Link

The link below will allow you to view/print this Notice of Proposed Rulemaking.

<https://www.govinfo.gov/content/pkg/FR-2021-10-22/pdf/2021-19305.pdf>

D. **PFAS Strategic Roadmap: EPA'S Commitments to Action, 2021 - 2024 and the Initiation of Two Rulemaking Efforts under RCRA; Notifications**

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 10/18/2021

Summary

PFAS Strategic Roadmap: EPA's Commitments to Action, 2021-2024

The Environmental Protection Agency has released its "PFAS Strategic Roadmap: EPA's Commitment to Action 2021-2024". The roadmap describes the EPA's approach to addressing PFAS, including the goals and objectives and key actions the Agency plans to take. The EPA presents this in three categories: Research, Restrict and Remediate.

- Research: The EPA will invest in research, development and innovation for information on PFAS exposures and toxicities, human health and ecological effects, and effective interventions.
- Restrict: The EPA will attempt to proactively prevent PFAS from entering air, land, and water at levels that can adversely impact human health and the environment.
- Remediate: The EPA will broaden and accelerate the cleanup of PFAS contamination to protect human health and ecological systems.

The EPA plans to issue a proposed rule that would designate certain PFAS as CERCLA hazardous substances in the Spring of 2022 and the final rule is expected to be published in the Summer of 2023.

Initiation of Two Rulemaking Efforts Under RCRA

Additionally, in October 2021 the EPA published a notification in response to a petition submitted by the governor of New Mexico under which the EPA will initiate the rulemaking process to propose adding PFOA, PFOS, PFBS and GenX as RCRA Hazardous Constituents under 40 CFR Part 261 Appendix VIII by evaluating the existing data for these chemicals and establishing a record to support such a proposed rule. RCRA Hazardous Constituents are subject to corrective action requirements at hazardous waste treatment, storage, and disposal facilities, and such a listing would also be a fundamental part of any subsequent hazardous waste listing determination.

Secondly, EPA will initiate a rulemaking to clarify in their regulations that the RCRA Corrective Action Program has the authority to require investigation and cleanup for wastes that meet the statutory definition of hazardous waste, as defined under RCRA section 1004(5). This modification would clarify that emerging contaminants such as PFAS can be addressed through RCRA corrective action.

Reference/Link

The link below will allow you to view/print the PFAS Strategic Roadmap.

https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf

To view/print the notification regarding EPA's response to NM governor please click the following link:

<https://www.epa.gov/newsreleases/epa-responds-new-mexico-governor-and-acts-address-pfas-under-hazardous-waste-law>

**E. Controlled Substances and Alcohol Testing: State Driver's Licensing Agency
Non-Issuance/Downgrade of Commercial Driver's License; Final Rule**

Agency

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

Dates

Published Date: 10/07/2021

Effective Date: 11/8/2021

Compliance Date: 11/18/2024

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than November 8, 2021.

Summary

Federal Motor Carrier Safety Administration (FMCSA) is amending its regulations to establish requirements for State Driver's Licensing Agencies (SDLAs) to access and use information obtained through the Drug and Alcohol Clearinghouse (DACH or Clearinghouse), an FMCSA-administered database containing driver-specific controlled substance (drug) and alcohol records. SDLAs must not issue, renew, upgrade, or transfer a commercial driver's license (CDL), or commercial learner's permit (CLP), as applicable, for any individual prohibited under FMCSA's regulations from performing safety-sensitive functions, including driving a commercial motor vehicle (CMV), due to one or more drug and alcohol program violations. Further, SDLAs must remove the CLP or CDL privilege from the driver's license of an individual subject to the CMV driving prohibition, which would result in a downgrade of the license until the driver complies with return-to-duty (RTD) requirements. This rule also requires States receiving Motor Carrier Safety Assistance Program (MCSAP) grant funds to adopt a compatible CMV driving prohibition applicable to CLP and CDL holders who violate FMCSA's drug and alcohol program requirements and makes clarifying and conforming changes to current regulations. The final rule will help keep unsafe drivers off the road by increasing compliance with the CMV driving prohibition.

The purpose of this final rule is to improve highway safety by ensuring that CLP or CDL holders with drug and alcohol program violations do not operate a CMV until they complete the return to duty (RTD) process and can lawfully resume driving. Currently, most SDLAs do not receive drug and alcohol program violation information about CDL or CLP holders licensed in their State. Therefore, these SDLAs are unaware when a CMV operator is subject to the driving prohibition set forth in 49 CFR 382.501(a), and the CMV operator continues to hold a valid CDL or CLP despite the driving prohibition. This final rule closes that knowledge gap by ensuring that all SDLAs are able to determine whether CMV drivers licensed in their State are subject to FMCSA's CMV driving prohibition. The rule facilitates enforcement of the driving prohibition by requiring that SDLAs deny certain commercial licensing transactions and remove the commercial driving privileges of individuals who are prohibited from operating a CMV and performing other safety-sensitive functions, due to drug and alcohol program violations. By requiring SDLAs to downgrade the driver's licensing status by

removing the commercial driving privilege, the final rule will also permit all traffic safety enforcement officers to readily identify prohibited drivers by conducting a license check during a traffic stop or other roadside intervention.

Summary of Major Provisions

Non-Issuance

The Clearinghouse regulations require that SDLAs check the driver's status by querying the Clearinghouse prior to issuing, renewing, transferring, or upgrading a CDL. This final rule provides that, if the reply to the query indicates the driver is prohibited from operating a CMV, the SDLA must deny the requested commercial licensing transaction, resulting in non-issuance. Drivers may re-apply to complete the transaction after complying with the return-to-duty (RTD) requirements set forth in 49 CFR part 40, subpart O, and a negative RTD test result has been reported to the Clearinghouse. This final rule extends the SDLAs' query requirement to applicants seeking to obtain, renew, or upgrade a CLP.

Mandatory CDL Downgrade

In addition to the non-issuance requirement, this final rule requires that SDLAs initiate the process to remove the CLP or CDL privilege from the driver's license after receiving notification from FMCSA that, in accordance with 49 CFR 382.501(a), an individual is prohibited from operating a CMV. Pursuant to 49 CFR 383.5, "CDL downgrade" is defined to include removal of the commercial privilege; and requires the State to complete and record the CDL downgrade on the CDLIS driver record within 60 days of notification. The CDL downgrade requirement rests on the simple, but safety-critical, premise that drivers who cannot lawfully operate a CMV because they engaged in prohibited use of drugs or alcohol or refused a test should not hold a valid CDL or CLP.

There are two ways the SDLA will receive notification of the driver's prohibited status: (1) The SDLA "pulls" the information from the Clearinghouse by conducting a required query prior to a specified commercial licensing transaction; and (2) FMCSA "pushes" the information to the SDLA whenever a drug or alcohol program violation is reported to the Clearinghouse for a CLP or CDL holder licensed in that State. FMCSA will also "push" a notification to the SDLA when the driver complies with RTD requirements and is no longer prohibited by FMCSA's regulations from operating a CMV. In addition, if FMCSA determines that a driver was erroneously identified as prohibited, the Agency will notify the SDLA that the individual is not prohibited from operating a CMV; the SDLA must promptly reinstate the commercial driving privilege to the driver's license, and expunge the driving record accordingly.

The final rule does not establish specific downgrade or reinstatement procedures. All States currently have established procedures to downgrade the CDL or CLP of a driver whose medical certification has expired or otherwise been invalidated, as required by 49 CFR 383.73(o)(4). The Agency anticipates that States will adapt their existing processes to remove the CLP or CDL credential from the license of any driver subject to the CMV driving prohibition set forth in 49 CFR 382.501(a), and to reinstate the commercial privilege following receipt of notification from FMCSA that the individual is no longer prohibited from driving a CMV (or was incorrectly identified as prohibited).

Application of the State Query Requirement to CLP Holders

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Pursuant to 49 CFR 383.25, commercial learner permits (CLPs) are deemed a valid CDL for purposes of behind-the-wheel training on public roads and highways. Because CLP holders are authorized to operate a CMV on a public road if accompanied by a CDL holder, they are subject to drug and alcohol testing under 49 CFR part 382, and thus subject to the CMV driving prohibition in 49 CFR 382.501(a). Accordingly, this final rule adds CLP holders to the scope of the States' query requirements set forth in 49 CFR 383.73, requiring SDLAs to conduct a check of the Clearinghouse prior to issuing, renewing, or upgrading a CLP.

Addition of the CMV Driving Prohibition to Part 392

This final rule also amends 49 CFR part 392, subpart B, "Driving of Commercial Motor Vehicles," to add the CMV driving prohibition currently set forth in 49 CFR 382.501(a), thereby requiring States receiving MCSAP funding to adopt and enforce a comparable prohibition. State-based MCSAP personnel authorized to enforce highway safety laws can electronically access the operating status of a CLP or CDL holder through *cdlis.dot.gov* or Query Central. If during a roadside intervention, the MCSAP officer determines the driver is prohibited from operating a CMV due to a drug and alcohol program violation, the driver will be placed out-of-service and subject to citation. The final rule will further facilitate enforcement of the driving prohibition for CMV operators who still hold a valid CLP or CDL—*i.e.*, during the period in which the State is notified of the driver's prohibited status, but before the downgrade has been recorded on the CDLIS driver record—by clarifying the basis for citing the CMV operator during this period.

As explained in the notice of proposed rulemaking (NPRM), some non-MCSAP traffic safety enforcement personnel cannot electronically access the driver's prohibited status at the roadside during this period. The Agency notes, however, that after the SDLA completes the downgrade, thereby changing the driver's license status, non-MCSAP officers will be aware the driver is not lawfully operating a CMV, simply by conducting a routine license check. Operating a CMV without a valid CDL is currently prohibited under 49 CFR 383.23(a)(2) and 49 CFR 391.11(b)(5). The downgrade requirement ensures the CMV driver's license status is available to all traffic safety enforcement personnel, thus closing the loophole that currently permits these drivers to evade detection.

Actual Knowledge Violations Based on Issuance of a Citation for DUI in a CMV

This final rule revises how employers' reports of *actual knowledge*, as currently defined in 49 CFR 382.107, of a driver's prohibited use of drugs or alcohol, based on a citation for Driving Under the Influence (DUI) in a CMV, would be maintained in the Clearinghouse. Currently, employers who have actual knowledge of a driver's prohibited use of drugs or alcohol, based on the issuance of a citation or other document charging DUI in a CMV, must report the "actual knowledge" violation to the Clearinghouse in accordance with 49 CFR 382.705(b)(4). This final rule clarifies that a CLP or CDL holder who is charged with DUI in a CMV has violated part 382, subpart B, regardless of whether the driver is ultimately convicted of the offense. Therefore, the driver is prohibited from operating a CMV until completing the RTD process. This final rule amends the Clearinghouse regulations by requiring that this type of actual knowledge violation remain in the Clearinghouse for 5 years, or until the driver has completed RTD, whichever is later, regardless of whether the driver is convicted of the DUI charge. The rule also permits drivers to add documentary evidence of non-conviction to their Clearinghouse record so that future employers will be aware of that outcome. FMCSA makes this change to fully comply with the MAP-21 requirements that all violations of part 382,

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subpart B, be reported to the Clearinghouse and retained for 5 years (49 U.S.C. 31306a(a)(3), (g)(1)(C), and (g)(6)(A), (B)), and to provide full disclosure to employers while maintaining fairness to drivers.

Compliance Date

States must achieve substantial compliance with the applicable requirements of the final rule as soon as practicable, but no later than November 18, 2024. The requirements set forth in 49 CFR 390.3, 390.3T, and 392.15 amend the Federal Motor Carrier Safety Regulations (FMCSRs). In accordance with the MCSAP eligibility requirements in 49 CFR 350.303(b), the State must amend its laws or regulations to ensure compatibility with any new addition or amendment to the FMCSRs as soon as practicable, but no later than 3 years after the effective date of such changes. The Agency believes a 3-year period also allows States sufficient time to adopt necessary changes in State law and regulation, conduct training for SDLA personnel, and complete information technology (IT) changes that will allow SDLAs to request and receive Clearinghouse information electronically. This time frame also accounts for FMCSA's development of technical specifications that will allow the information to be efficiently and securely transmitted to the SDLAs, via CDLIS or a direct web-based interface with the Clearinghouse. In the meantime, SDLAs may determine whether a CLP or CDL applicant is qualified to operate a CMV by accessing the Clearinghouse as an authorized user, as currently permitted by 49 CFR 382.725(a)(1).

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2021-10-07/pdf/2021-21928.pdf>

F. General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations; Final Rule

Agency

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

Dates

Published Date: 10/14/2021

Summary

In this final rule, FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that merely align regulatory requirements with the underlying statutory authority. Finally, FMCSA adds two new provisions for transparency relating to agency management and to FMCSA's rules of organization, procedures, or practice, and makes corresponding changes to definitions, addresses, and employee titles throughout the FMCSRs.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2021-10-14/pdf/2021-21228.pdf>