

Veolia North America - Industrial Business

February, 2022

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HEALTH & SAFETY UPDATES

No Health & Safety Updates for February 2022

MISCELLANEOUS UPDATES

No Miscellaneous Updates for February 2022

A. Texas Adopts Federal RCRA Revisions and Implements State-Initiated Revisions; State Adoption of Regulations

Agency

Texas Commission on Environmental Quality (TCEQ)

Dates

Published Date: 12/22/2021

Effective Date: 02/03/2022

Summary

On December 22, 2021 an interoffice memorandum was distributed to announce the adoption of certain federal regulations. These regulations include: the addition of hazardous waste aerosol cans to the universal waste program, the hazardous waste generator improvements rule, hazardous waste export-import revisions, and the management standards for hazardous waste pharmaceuticals rule. This federal hazardous waste aerosol cans regulation was made effective in February, 2020 and was an optional adoption as it eases regulatory burdens on how to handle hazardous waste aerosols.

The revisions will update Chapter 335 of the Texas Administrative Code to include federal rule changes that are both optional and non-optional. The revisions described in the Interoffice Memorandum include the following:

- RCRA Cluster XXIV - Checklist 233 - implements vacatur of parts of the federal definition of solid waste (DSW) ordered by the United States Court of Appeals.
- RCRA Cluster XXV - Checklist 237 - revises the existing hazardous waste generator regulatory program by reorganizing the regulations to improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. The checklist is not optional; however, some provisions are equivalent or less stringent.
- RCRA Cluster XXVI - Checklists 238 and 239 - revise existing regulations regarding the export and import of hazardous wastes from and into the United States.
- RCRA Cluster XXVII - Checklist 241 - establishes cost-savings and streamlined standards for handling hazardous waste pharmaceuticals to better fit the operations of the healthcare sector while maintaining protection of human health and the environment.
- RCRA Cluster XXVIII - Checklist 242 - adds hazardous waste aerosol cans to the universal waste program.

Please click the link below to see the Universal Waste Rule in the Texas Administrative Code: [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=335&rl=261](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=335&rl=261)

Reference/Link

The link below will allow you to view/print this Interoffice Memorandum which describes the State Adoption of Regulations.

https://www.tceq.texas.gov/assets/public/legal/rules/rule_lib/adoptions/19086335_aex.pdf

B. EPA; EPA Announces Appointment of David Cash as Regional Administrator for EPA Region 1; News Release

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 02/24/2022

Effective Date: 02/07/2022

Summary

The Environmental Protection Agency (EPA) announced on February 24, 2022 that Dr. David Cash has been appointed by President Biden to EPA's Regional Administrator for Region 1. Region 1 includes Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut and 10 Tribal Nations. Dr. Cash's appointment began on February 7, 2022.

Dr. David Cash was the Dean of the John W. McCormack Graduate School of Policy and Global Studies at the University of Massachusetts Boston. Dr. Cash spent a decade in the Massachusetts state government where he held a range of senior positions. As Assistant Secretary of Policy in the Executive Office of Energy and Environmental Affairs in Governor Deval Patrick's Administration, he was an architect of nation-leading climate, clean energy and environmental justice policies.

Reference/Link

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

<https://www.epa.gov/newsreleases/epa-announces-appointment-david-cash-regional-administrator-epa-region-1-0>

C. Commercial Driver's License Standards: Regulatory Guidance Concerning Third Party Testers Conducting the Knowledge Test; Regulatory Guidance

Agency

Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: 02/03/2022

Effective Date: 02/03/2022

Summary

FMCSA amends its regulatory guidance to explain that FMCSA's current statutory authorities and regulations do not prohibit third-party testers from administering the commercial driver's license knowledge tests for all classes and endorsements. State driver license agencies (SDLAs) may accept the results of knowledge tests administered by third party testers in accordance with existing knowledge test standards and requirements set forth in 49 CFR part 383, subparts G and H.

FMCSA issues the following updated guidance:

Regulatory Guidance to 49 CFR part 383—Commercial Driver's License Standards Section 383.75 Third Party Testing, Guidance ID No. FMCSA-CDL-383.75-Q1-M

Question 1: May States allow third party testers to administer CDL knowledge tests for all classes and endorsements, without any State examiner being present?

Guidance: Yes. FMCSA's current statutory authorities and regulations do not prohibit States from permitting third party testers to administer CDL knowledge tests. While FMCSA encourages States relying on third party knowledge testers to follow the training and record check standards currently applicable to State CDL knowledge examiners, as set forth in 49 CFR 384.228, this is not a regulatory requirement. If an employee of the State who is authorized to supervise knowledge testing is present during the testing, then FMCSA regards it as being administered by the State and not by a third party.

FMCSA notes that this guidance is intended only to provide clarity to the public regarding existing requirements under the law. The guidance does not have the force and effect of law and is not meant to bind the public in any way.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2022-02-03/pdf/2022-02165.pdf>

D. Qualifications of Drivers; Vision Standard; Final Rule

Agency

Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: 01/21/2022

Effective Date: 03/22/2022

Summary

FMCSA is amending its regulations to permit individuals who do not satisfy, with the worse eye, either the existing distant visual acuity standard with corrective lenses or the field of vision standard or both, to be physically qualified to operate a commercial motor vehicle (CMV) in interstate commerce under specified conditions. Currently, such individuals are prohibited from driving CMVs in interstate commerce unless they obtain an exemption from FMCSA. The new alternative vision standard replaces the current vision exemption program as the basis for determining the physical qualification of these individuals.

Alternate Vision Standard Process

The alternative vision standard will involve a two-step process for physical qualification:

- First, an individual seeking physical qualification would obtain a vision evaluation from a licensed ophthalmologist or optometrist who would record the findings and provide specific medical opinions on the Vision Evaluation Report, Form MCSA-5871.
- Next, within 45 days of the successful evaluation by a licensed ophthalmologist or optometrist, a medical examiner (ME) must receive the completed MCSA-5871 form and should perform an examination and determine whether the individual meets the alternate vision standard, as well as FMCSA's other physical qualification standards in 49 CFR 391.41. If the ME determines that the individual meets the physical qualification standards, the ME can issue a Medical Examiner's Certificate (MEC), Form MCSA-5876, for a maximum of 12 months.

In making that determination, the medical examiner must consider the information in the Vision Evaluation Report, Form MCSA-5871, signed by an ophthalmologist or optometrist and, utilizing independent medical judgment, apply the following standards in determining whether the individual may be certified as physically qualified to operate a commercial motor vehicle.

(i) The individual is not physically qualified to operate a commercial motor vehicle if, in the better eye, the distant visual acuity is not at least 20/40 (Snellen), with or without corrective lenses, and the field of vision is not at least 70° in the horizontal meridian.

(ii) The individual is not physically qualified to operate a commercial motor vehicle if the individual is not able to recognize the colors of traffic signals and devices showing standard red, green, and amber.

(iii) The individual is not physically qualified to operate a commercial motor vehicle if the individual's vision deficiency is not stable; and

(iv) The individual is not physically qualified to operate a commercial motor vehicle if sufficient time has not passed since the vision deficiency became stable to allow the individual to adapt to and compensate for the change in vision.

Road Test Requirement

An individual physically qualified under the alternative vision standard for the first time shall not drive a commercial motor vehicle until the individual has successfully completed a road test subsequent to physical qualification and has been issued a certificate of driver's road test in accordance with 49 CFR 391.31 by the motor carrier. The driver who is physically qualified under this standard for the first time must inform the motor carrier responsible for completing the road test under 49 CFR 391.31(b) that they are required to have a road test.

The motor carrier must conduct the road test in accordance with 49 CFR 391.31(b) through (g).

An individual physically qualified under the alternative vision standard for the first time is not required to complete a road test in accordance with 49 CFR 391.31 if:

1) The motor carrier responsible for completing the road test under 49 CFR 391.31(b) determines the individual possessed a valid commercial driver's license or noncommercial driver's license to operate, and did operate, a commercial motor vehicle in either intrastate commerce or in interstate commerce exempted by 49 CFR 390.3T(f) or 49 CFR 391.2 from the requirements of this subpart with the vision deficiency for the 3-year period immediately preceding the date of physical qualification under this section for the first time; or

2) An individual physically qualified under the alternative vision standard for the first time held on March 22, 2022, a valid exemption from the vision standard in 49 CFR 391.41(b)(10)(i) issued by FMCSA under 49 CFR part 381. Such an individual is not required to inform the motor carrier that the individual is excepted from the requirement in paragraph (d)(1) of this section to have a road test; or

3) An individual physically qualified under this section for the first time is not required to complete a road test in accordance with 49 CFR 391.31 if the individual was medically certified on March 22, 2022, under the provisions of 49 CFR 391.64(b) for drivers who participated in a previous vision waiver study program. Such an individual is not required to inform the motor carrier that the individual is excepted from the requirement to have a road test.

Record Retention Requirements

The certificate of driver's road test issued to the driver pursuant to 49 CFR 391.31(e), a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to §391.33, or the original of the written statement providing that the motor carrier determined the driver is not required by 49 CFR 391.44(d) to complete a road test pursuant to 49 CFR 391.44(d)(3)(ii)(A) and the original, or a copy, of the driver's certification required by 49 CFR 391.44(d)(3)(i) must be retained in the driver's qualification file (DQF).

The information contained herein is provided by Veolia North America for general informational purposes only. This information should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you should have any questions, please contact Kevin McGrath, Director, Environment at kevin.mcgrath@veolia.com.

Grandfather Provisions

Individuals physically qualified under the grandfather provisions in 49 CFR 391.64(b) or vision exemption holders will have 1 year after the effective date of the final rule to comply with the rule.

Veolia drivers with a vision impairment will now have an easier process to follow when being evaluated under the new alternative vision standard to obtain the medical clearance needed in order to operate a commercial motor vehicle. Drivers who obtain their DOT medical clearance in accordance with the alternative vision standard will be required to successfully pass a road test issued by Veolia and the road test certificate must be retained in the DQF.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2022-01-21/pdf/2022-01021.pdf>

E. Accident Reporting: Change to Regulatory Guidance Concerning the Use of the Term “Medical Treatment”; Notice of Revised Regulatory Guidance

Agency

Federal Motor Carrier Safety Administration (FMCSA)

Dates

Published Date: 2/25/2022

Summary

FMCSA announces a revision to its regulatory guidance concerning the use of the term “medical treatment” for the purpose of accident reporting. The revised guidance explains that an x-ray examination is a diagnostic procedure and should no longer be considered “medical treatment” in determining whether a crash should be included on a motor carrier's accident register.

The Federal Motor Carrier Safety Regulations define an Accident as an occurrence involving a commercial motor vehicle (CMV) operating on a highway in interstate or intrastate commerce which results in:

- (1) A fatality,
- (2) bodily injury to a person who, as a result of the injury, receives medical treatment away from the scene of the accident, or
- (3) one or more motor vehicles being towed from the scene (49 CFR 390.5T).

Regulatory guidance in Question 27 for 49 CFR 390.5 and 390.5T currently considers an x-ray examination and other imaging, such as computed tomography, as medical treatment and reads as follows:

Question 27:

A person is transported to a hospital from the scene of a commercial motor vehicle traffic accident.

In one situation, the person undergoes observation or a “checkup.[”] Is this considered “medical treatment,” making the CMV occurrence an “accident” for purposes of the Federal Motor Carrier Safety Regulations?

In another situation, the person undergoes x-ray examination or is given a prescription, but is released from the facility without being admitted as an inpatient. Is the x-ray or prescription considered “medical treatment,” making the CMV occurrence [an] “accident” for purposes of the Federal Motor Carrier Safety Regulations?

Guidance:

In the first situation, no. A person who does not receive treatment for diagnosed injuries or other medical intervention directly related to the accident, has not received “medical treatment” as that term is used in §390.5T.

In the second situation, yes. A person who undergoes x-ray examination (or other imaging, such as computed tomography or CT), or is given prescription medication (or the prescription itself), has received “medical treatment.”

In accordance with 49 CFR 390.15(b), motor carriers are required to maintain an accident register for 3 years after the date of each “accident.” A motor carrier's Crash Indicator Behavior Analysis and Safety Improvement Category (BASIC) score illustrate a historical pattern of crash involvement, including frequency and severity. The Crash Indicator BASIC score is based on information from state-reported crashes that meet reportable crash standards.

A petition was submitted to FMCSA requesting a revision to Question 27, stating that an x-ray is a diagnostic test that may find no injury and should not be considered a form of medical treatment. The petitioner suggested that the Agency mirror the Occupational Safety and Health Administration's definition of medical treatment that excludes diagnostic procedures, such as x-rays and blood tests. FMCSA agrees with the revision.

Revised Guidance

FMCSA clarifies when a person is considered to have received medical treatment after an accident.

Question 27:

A person is transported to a hospital from the scene of a commercial motor vehicle traffic accident.

In one situation, the person undergoes observation or a checkup. Is this considered “medical treatment,” making the CMV occurrence an “accident” for purposes of the Federal Motor Carrier Safety Regulations?

In another situation, the person undergoes x-ray examination or is given a prescription but is released from the facility without being admitted as an inpatient. Is the x-ray or prescription considered “medical treatment,” making the CMV occurrence an “accident” for purposes of the FMCSRs?

Guidance: In the first situation, no. A person who does not receive treatment for diagnosed injuries or other medical intervention directly related to the accident, has not received “medical treatment” as that term is used in 49 CFR 390.5 or 390.5T.

In the second situation, a person who undergoes an x-ray examination (or other imaging, such as computed tomography or CT) has not received “medical treatment.” The x-ray examination is a diagnostic procedure but is not considered “medical treatment.” However, a person who is given prescription medication (or the prescription itself) has received “medical treatment.”

Reference/Link

The link below will allow you to view/print this Notice of Revised Regulatory Guidance.

<https://www.govinfo.gov/content/pkg/FR-2022-02-25/pdf/2022-03997.pdf>