

# Veolia North America - Industrial Business

## May, 2023

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### **HEALTH & SAFETY UPDATES**

*No Health & Safety Updates for May 2023*

### **MISCELLANEOUS UPDATES**

*No Miscellaneous Updates for May 2023*

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## A. Allowing Remote Signers for Electronic Manifests; Memorandum

### Agency

Environmental Protection Agency (EPA)

### Dates

Published Date: 5/5/2023

### Summary

The Environmental Protection Agency (EPA) issued a memorandum to communicate EPA's new policy which allows generators, transporters and receiving facilities to execute electronic signatures through their employees or contractors who are located remotely from the hazardous waste shipment. This policy has been in effect since February 10, 2023.

The primary purpose of this policy is to facilitate the use of the e-Manifest system, as there was feedback from users that registering additional personnel in the system and having them log-in for signing was an obstacle in the adoption of the fully electronic e-Manifest system. In October, 2022 the EPA proposed the new policy to the e-Manifest Advisory Board. The Advisory Board supported the policy stating that it would provide flexibility for generators, receiving facilities and transporters.

Remote Signers can execute electronic signatures in the e-Manifest system through one of the following two methods:

1. electronically signing manifests with remote personnel through the e-Manifest user interface; and
2. electronically signing using system-to-system communication.

These two methods are discussed in further detail in the memorandum.

### Reference/Link

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

[https://content.govdelivery.com/attachments/USEPAORCR/2023/05/05/file\\_attachments/2489551/e-Manifest\\_remote\\_signer\\_policy\\_CH.pdf](https://content.govdelivery.com/attachments/USEPAORCR/2023/05/05/file_attachments/2489551/e-Manifest_remote_signer_policy_CH.pdf)

**B. Notice of Availability of Interim Guidance on Packaging, Transportation, Receipt, Management, Short-Term and Long-Term Storage of Elemental Mercury and Request for Comment; Notice**

## Agency

US Department of Energy (DOE)

## Dates

Published Date: 05/02/2023

Comments Due: 06/01/2023

## Summary

The US Department of Energy (DOE) has provided a Notice of Availability and Request for Comment on a revision to DOE's 2009 U.S. Department of Energy Interim Guidance on Packaging, Receipt, Management, and Long-Term Storage of Elemental Mercury (2009 Long-Term Storage Guidance) and Guidance for Short-Term Storage of Elemental Mercury by Ore Processors (May 2019) (2019 Short-Term Storage Guidance).

The revisions to the Guidance Document include the following:

1. Omission of Example Procedures
  - a. DOE has determined that it is not appropriate to include example procedures in this guidance document, but rather to defer to the Long-Term Elemental Mercury Storage Facility (LTEMSE) Operator(s) implementation of its RCRA permit and approved procedures
2. Waste Container Contents
  - a. The revised guidance does not assume any DOE-specified minimum purity for elemental mercury accepted for management and storage at the DOE designated LTEMSE
3. Generators
  - a. Each generator must be evaluated on a case-by-case basis by the LTEMSE Operator(s), in consultation with appropriate regulators, to determine if they meet one of the three criteria set forth below to determine if the mercury is acceptable for storage.
    - i. U151 coded waste,
    - ii. D009 coded waste generated as a result of Retorting of Mercury (RMERC) treatment technology, and/or
    - iii. mercury that was previously treated to 99.5 vol% elemental mercury
4. Containers and Compatibility
  - a. The guidance explains that the main objective regarding acceptable containers for storage in the DOE-designated LTEMSE is that they are lined with, or made of, materials that will not react with and are compatible with the hazardous waste to be stored and do not pose a risk of accelerated corrosion and container failure over time. LTEMSE will conduct periodic validation via analysis and/or visual examination.

5. Onsite Short-Term Storage by Ore Processors
  - a. If the DOE is unable to accept elemental mercury for reasons beyond control of the generator, ore processors who meet the applicable requirements “may accumulate the mercury produced onsite that is destined for a facility designated by the Secretary [of Energy] under subsection (a) for more than 90 days without a permit issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of that Act (42 U.S.C. 6924(j)).”

The DOE seeks input from potentially affected States (Arkansas, Illinois, Nevada, Pennsylvania, Tennessee, Texas and Utah) and the public, stakeholders, and other States to provide comments on this draft guidance document. The 30-day public comment period ends on June 1, 2023.

## Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2023-05-02/pdf/2023-09301.pdf>

## C. Updates to New Chemicals Regulations Under the Toxic Substances Control Act (TSCA); Proposed Rule

### Agency

Environmental Protection Agency (EPA)

### Dates

Published Date: 05/26/2023

Comments Due: 07/25/2023

### Summary

The Environmental Protection Agency (EPA) has published a proposed rule that intend to align the regulatory text with the amendments to the Toxic Substances Control Act’s (TSCA) new chemical review provisions contained in the Frank R. Lautenberg Chemical Safety for the 21st Century Act. The EPA also believes the proposed rule will improve the efficiency of EPA’s review processes and update the regulations based on existing policies and experience implementing the New Chemicals Program. The proposed rule also reduces the need to redo the risk assessment by improving information initially submitted in new chemical notices.

Comments on this proposed rule must be received on or before July 25, 2023.

## Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2023-05-26/pdf/2023-10735.pdf>

### **D. Lithium Battery Recycling Regulatory Status and Frequently Asked Questions; Memorandum**

#### Agency

Environmental Protection Agency (EPA)

#### Dates

Published Date: 05/24/2023

#### Summary

The Environmental Protection Agency (EPA) has published a memorandum to clarify how the hazardous waste regulations for universal waste and recycling apply to lithium-ion batteries. The memorandum also includes a frequently asked questions attachment that describe how RCRA recycling regulations apply to lithium-ion batteries. With more lithium-ion batteries being used the growth of the circular economy for lithium battery materials is increasingly vital. Through recycling, valuable critical minerals found in lithium-ion batteries can be returned into the market.

The memorandum begins with an explanation of the components of a lithium-ion battery and explains that because the batteries are very energy dense they are being used in many consumer electronics, electric vehicles and stationary storage applications. The EPA also explains that lithium-ion batteries include different types of materials and come in various cell, module and pack sizes. The EPA has determined that “most lithium-ion batteries on the market today are likely to be hazardous waste when they are disposed of due to the ignitability (D001) and reactivity (D003) characteristics.

In certain cases battery packs or modules may be evaluated for repair or reuse. In other cases, the battery is sent for recycling which would commonly include a pre-treatment or shredding step. The batteries are either discharged before being shredded, or shredded in an inert environment or otherwise managed to prevent fires during shredding.

The shredding operation creates a number of different streams, including the following:

- black mass, a filter cake-like material made up of the shredded cathodes and anodes of the batteries, which can be further processed to make new battery cathode and anode powders;
- copper and aluminum foils onto which anodes and cathodes are coated;
- separators;
- plastics;
- steel canisters; and
- electrolytes.

There are many innovations that are being developed in lithium-ion battery recycling. The two main methods to recover the metals out of black mass include the following:

- Pyrometallurgy - “process or technique of refining ores (or recovered material) using heat to melt the metallic and burn the non-metallic content”
- Hydrometallurgy - “process or technique of extracting material at ordinary temperatures by leaching ores (or recovered material) with liquid solvents.”

The Frequently Asked Questions attachment include the following questions with answers from the EPA:

1. Are lithium batteries hazardous waste?
2. Does universal waste cover batteries with lithium chemistries?
3. What are the universal waste requirements for lithium batteries?
4. What are the federal regulations for generators of very small amounts of hazardous waste batteries?
5. How does the household hazardous waste exemption apply to batteries?
6. Are electric vehicle batteries considered household hazardous waste?
7. Can a damaged, defective, or recalled (DDR) battery be managed under universal waste?
8. What are some additional best management practices for safely storing collected end-of-life lithium batteries?
9. What waste management activities are allowed under universal waste for handlers of batteries?
10. What is black mass?
11. Can universal waste handlers process universal waste batteries by shredding them to make black mass?
12. When do the universal waste standards no longer apply to a battery being processed at end of life?
13. Does a battery recycler have to get a RCRA Part B permit for hazardous waste treatment, storage, or disposal?
14. Is a lithium battery a solid waste when it is reused, repurposed, or repaired or when it is sent for evaluation for reuse, repurposing, or repair?
15. Do smelters that process batteries qualify for the smelting, melting, refining exclusion from the RCRA boilers and industrial furnaces requirements in 40 CFR part 266 subpart H?
16. Is black mass a hazardous and/or solid waste when sent or received for further reclamation?
17. Can you recycle lithium batteries using the definition of solid waste transfer-based exclusion at 40 CFR 261.4(a)(24) and (25)?
18. When are materials from lithium batteries that are being recycled sufficiently processed to no longer be considered waste?
19. Can lithium batteries be managed under the scrap metal exclusion?

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## Reference/Link

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

<https://rcrapublic.epa.gov/files/14957.pdf>

### **E. Adding Aerosol Cans & Paint to the Universal Waste Regulations; State Register Revisions**

## Agency

New York State Department of Environmental Conservation (NYSDEC)

## Dates

Published Date: 05/24/2023

Effective Date: 07/08/2023

## Summary

New York State Department of Environmental Conservation (NYSDEC) published revisions to the State Register that include the provisions of EPA's Aerosol Cans Rule (2019) and provisions to support implementation of New York's new paint take back program. The regulations will be effective on July 8, 2023.

The designation of Aerosol Cans and Hazardous waste paint as universal waste will impact the management, transportation and disposal standards. This is being done in order to streamline the collection and recycling of hazardous waste.

NYSDEC expects that the addition of aerosol cans to the Universal Waste rule to:

- Encourage the collection and recycling of aerosol cans
- Reduce the amount of aerosol cans going to landfills
- Alleviate regulatory burdens for generators of this waste
- Decrease regulatory costs for generators of this waste (e.g., retail stores)

On December 16, 2019 the Governor of New York signed the Postconsumer Collection Paint Collection Program Law that requires manufacturers of architectural paint to develop a paint recycling program. This allows the public, and businesses, to recycle paint by bringing it to certain locations or, for some businesses, by scheduling bulk pick ups. Currently, the new State paint take back law only addresses paint waste in 5 gallon or smaller containers. New York State is actively working towards designating hazardous waste paint as a universal waste, this will allow universal waste handlers to receive paint in containers larger than 5 gallons.

The revisions to the state register include the following:

- The definition of Aerosol Cans as a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas. Aerosol can does not include gas cylinders such as propane or acetylene.
- The definition of Architectural coatings as paint used for homes and commercial buildings.
- The definition of Paint as interior and exterior architectural and structural coatings, including, but not limited to, primers, sealers, resin (single component), epoxy-based flooring paint (single-component), lacquers, latex, water-based paint, oil-based paint, and bridge paint. Paint does not include other industrial, original equipment or specialty coatings, paint thinners, or paint contaminated applicators, debris or personal protective equipment.
- The definition of Structural Coating as paint used for protective or decorative purposes on components that support built structures. Such components include, but are not limited to, bridges, trusses, girders, stringers and bents used to support walkways, roadways, railways or subways.

NYSDEC is considering adding the following requirements and clarifications to EPA's Aerosol Can Rule:

- Prohibiting the storage of UW aerosol cans with incompatible contents in the same container prior to puncturing and comingling of incompatible residuals drained from the aerosol cans.
- Limiting small quantity handlers to puncturing only the cans that they've generated themselves, and requiring facilities puncturing cans received from off-site to operate under the large quantity handler standards regardless of the number of cans managed on-site.



DEC is proposing requiring the following for facilities managing paint as a universal waste:

- Protect containers from sources of heat
- Secondary containment requirements, particularly if consolidation is occurring, and at loading and unloading areas.
- Need a part 364 waste transporter permit when transporting more than 500 lb of universal waste paint, similar to existing universal waste transport requirements.
- Labeling containers and storage areas to clearly identify paint being managed as universal waste.
- May accumulate waste for no longer than one year from the date the universal waste is generated, or received from another handler
- Must immediately contain all releases of universal waste and other residues from universal waste
- Must determine whether any material resulting from a release universal waste (including cleanup debris) is hazardous waste, and if so, must manage the hazardous waste in compliance with applicable regulations
- Must train all employees who handle or have responsibility for managing the universal waste paint
- Where handlers can send the paint
- Which activities will be allowed at the different types of handlers (e.g., sorting, consolidating, recycling).
- Require a 50-foot setback storage requirement for ignitable paint at large quantity handler sites.

DEC is NOT including the following coatings as part of the definition of universal waste paint:

- Auto Body coatings
- Two-part epoxy-based flooring paints
- Industrial paints
- Original equipment or specialty coatings
- Paint chips
- Paint thinners
- Paint-related cleaning solvents
- Solvent-contaminated rags
- Paint-contaminated applicators and PPE

## Reference/Link

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

<https://www.dec.ny.gov/regulations/100424.html>

## F. Methylene Chloride; Regulation Under the Toxic Substances Control Act (TSCA); Proposed Rule

### Agency

Environmental Protection Agency (EPA)

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## Dates

Published Date: 05/03/2023

Comments Due: 07/03/2023

## Summary

In June 2020, the Environmental Protection Agency (EPA) conducted a Risk Evaluation for Methylene Chloride then in November 2022 the EPA came out with a revised risk determination for methylene chloride under the Toxic Substances Control Act (TSCA). The EPA has published a proposed rule that would address the risk of injury to human health presented by methylene chloride.

Methylene chloride, also known as dichloromethane, is acutely lethal, a neurotoxicant, a likely human carcinogen, and presents cancer and non-cancer risks following chronic exposures as well as acute risks. Methylene chloride is a widely used solvent in a variety of consumer and commercial applications including adhesives and sealants, automotive products, and paint and coating removers.

The EPA is proposing the following actions:

- Prohibit the manufacture, processing, and distribution of methylene chloride for all consumer use, as outlined in Unit IV.A.3.;
- Prohibit most industrial and commercial use of methylene chloride, as outlined in Unit IV.A.2.;
- Require a WCPP, including inhalation exposure concentration limits and related workplace exposure monitoring and exposure controls, for ten conditions of use of methylene chloride (including manufacture; processing as a reactant; laboratory use; industrial or commercial use in aerospace and military paint and coating removal from safety-critical, corrosion-sensitive components by Federal agencies and their contractors; industrial or commercial use as a bonding agent for acrylic and polycarbonate in mission-critical military and space vehicle applications, including in the production of specialty batteries for such by Federal agencies and their contractors; and disposal), as outlined in Unit IV.A.1.;
- Require recordkeeping and downstream notification requirements for manufacturing, processing, and distribution in commerce of methylene chloride, as outlined in Unit IV.A.4.;
- Provide a 10-year time-limited exemption under TSCA section 6(g) for civilian aviation from the prohibition addressing the use of methylene chloride for paint and coating removal to avoid significant disruptions to critical infrastructure, as outlined in Unit IV.A.5., with conditions for this exemption to include compliance with the WCPP described in Unit IV.A.1.; and
- Provide a 10-year time-limited exemption under TSCA section 6(g) for emergency use of methylene chloride in furtherance of National Aeronautics and Space Administration's mission for specific conditions which are critical or essential and for which no technically and economically feasible safer alternative is available, as outlined in Unit IV.A.5.

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This proposed rule may apply to parties that manufacture, process, distribute in commerce, use or dispose of methylene chloride or products containing methylene chloride. For a more complete list of potentially affected entities, which includes NAICS code, please refer to the Proposed Rule in the Federal Register, which is linked below.

Comments on this proposed rule must be received on or before July 3, 2023.

## Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2023-05-03/pdf/2023-09184.pdf>

### **G. Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule; Supplemental notice of proposed rulemaking**

## Agency

Environmental Protection Agency (EPA)

## Dates

Published Date: 05/22/2023

Comments Due: 07/21/2023

## Summary

The Environmental Protection Agency (EPA) is proposing specific provisions in the Greenhouse Gas Reporting Rule with the goal of improving the quality and consistency of the rule through improved data collection. The proposed rulemaking includes updates to the existing calculation, recordkeeping, and reporting requirements, and has made an information request to understand new source categories in a proposed rule from June 21, 2022.

Additionally, the EPA is proposing amendments to the Greenhouse Gas Reporting Rule including updating the General Provisions to reflect revised global warming potentials (GWPs) as well as requirements for reporting of greenhouse gas data from additional sectors. The EPA is proposing to revise the default GWPs in Table A–1 by adding two new fluorinated GHG groups, modifying an existing group, and updating the existing default values to reflect the chemical-specific GWPs. The two new groups that the EPA is proposing to add are for saturated chlorofluorocarbons (CFCs) and for cyclic forms of unsaturated halogenated compounds. The revised Chemical-Specific GWPs for Compounds in Table A-1 can be seen in Table 2 of the proposed rulemaking.

The additional sectors which would be required to report on GHG data include the following:

- Energy Consumption
- Coke Calcining
- Ceramics Production; Calcium Carbide Production
- Caprolactam, Glyoxal, Glyoxylic Acid Production

The EPA is also proposing the following amendments:

- updates to emissions calculation methodologies;
- revisions to reporting requirements to improve verification of reported data and the accuracy of the data collected;
- and other minor technical amendments, corrections, or clarifications.

The proposed rule includes Table 1 - Examples of Affected Entities By Category that will be useful for companies determining if they will be impacted from the proposed amendments.

Comments for this proposed rule must be received on or before July 21, 2023.

## Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2023-05-22/pdf/2023-10047.pdf>

## H. **Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs; Final Rule**

### Agency

Department of Transportation (DOT)

### Dates

Published Date: 5/2/2023

Effective Date: 06/01/2023

### Summary

This final rule amends the U.S. Department of Transportation's regulated industry drug testing program to include oral fluid testing. This additional methodology for drug testing will give employers a choice that will help combat employee cheating on urine drug tests and provide a less intrusive means of achieving the safety goals of the program. In order for an employer to implement oral fluid testing under the Department's regulation, the U.S. Department of Health and Human Services will need to certify at least two laboratories for oral fluid testing, which has not yet been done. The final rule includes other provisions to update the Department's regulation and to harmonize, as needed, with the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid established by the

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U.S. Department of Health and Human Services. In addition, this rule amends the FAA, FMCSA, FRA and FTA regulations to ensure consistency within the Department of Transportation and by removing or adjusting references to the word “urine” and/or add references to oral fluid, as well as removing or amending some definitions for conformity and to make other miscellaneous technical changes or corrections.

#### Oral Fluid as an Alternate Drug Testing Method for Workplace Testing

DOT has determined oral fluid drug testing, like urine drug testing, is accurate and defensible. With both drug testing methodologies being scientifically accurate and forensically defensible, there is no reason to eliminate either methodology. Similarly, DOT sees no reason to mandate either methodology. However, in reference to problem collection scenarios covered by §40.67 (direct observation collections) and §40.193 (insufficient specimen “shy bladder” cases), DOT strongly suggests employers consider moving to an oral fluid testing methodology. Employers should communicate to their consortium/third party administrator (C/TPA) and to their collection sites whether they want to utilize urine testing, oral fluid testing, or some combination of both. Employers should also provide their service agents with the specific instances that would trigger a different methodology (*e.g.*, an insufficient oral fluid collection should immediately become a urine collection or vice-versa).

It is also important to remember that under §40.209(b)(3) if an unqualified collector were to conduct a collection, it would not cancel the test. As stated in the 2000 preamble to §40.209, “a test is not invalidated because a collector has not fulfilled a training requirement. For example, suppose someone collects a specimen correctly but has not completed required training or retraining. The test would not be canceled because the training requirement was not met.” To reflect this point, DOT has updated §40.209(b)(3) to add a reference to §40.35 for oral fluid collector training in addition to the existing reference to §40.33 for urine collector training. Although it would not cancel the test result if the collector has not been trained in accordance with part 40, the collector, other service agents, and employer involved might be found in noncompliance as the result of the failure to meet training requirements.

Since the inception of DOT-regulated alcohol testing in 1994, DOT allowed screening testing to be conducted using saliva testing devices, and has required all confirmation testing to be conducted on an evidential breath testing (EBT) device. A facility that conducts alcohol saliva screening but does not have an EBT must work expeditiously with the employer to ensure that the confirmation test takes place on an EBT.

Similarly, if a collection site only offers urine collections and an insufficient specimen is presented or if a direct observation collection is triggered, that collection site is expected to work expeditiously with the employer to ensure that the oral fluid collection occurs if the employer wants an oral fluid collection performed for an employee. Collection sites need to make business decisions about whether they will offer urine collections, oral fluid collections or both. Thus, not every collector needs to be trained on both urine and oral fluid collections unless they offer both.

In buffered collections, the employee's oral fluid is collected on a device and then the device is subdivided into Bottles A and B, which contain a buffering solution. The buffering solution draws the oral fluid from the device so that the liquid can be analyzed by the laboratory for the presence of drugs. In its oversight of laboratory testing under the OFMG, DOT sets the standards for the devices and recovery of drugs from the same. These are assessed two

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times: first, by the manufacturer and second, during laboratory validation of the collection device. While DOT does not certify or validate the collection devices or the buffer, the NLCP laboratory inspection process does ensure the accuracy of the results obtained by the laboratories as evidenced by each laboratory's method of validation documentation which must specify the collection device(s) used. DOT will approve each specific HHS-certified oral fluid laboratory to use only one or more specific devices for which the laboratory can ensure the accuracy of the results.

Part 40 currently prohibits the DNA testing of any specimen collected for a DOT-regulated test as found under §§40.13(c) and (f)).

In this final rule, DOT is making oral fluid testing available to employers as an alternate methodology to urine testing and is not eliminating urine testing. Oral fluid testing is included as an option available to employers. Whether an oral fluid or urine test is administered is the employer's choice and not the choice of the employee, for the reasons explained in the preamble to the final rule.

Who will perform the oral fluid collection?

In this final rule, DOT has amended §40.31 to separately specify the requirements for collectors of urine and oral fluid specimens, respectively and wording has been adopted to require oral fluid collectors to be qualified. The final rule clarifies that employees, relatives, and close friends of the employees cannot conduct collections, consistent with existing guidance in the Department's Urine Specimen Collection Guidelines.

### ***Understanding Windows of Detection***

DOT has determined that oral fluid testing, set at the cutoffs established by HHS, meets the requirements for accurate Federal drug testing.

Urine and oral fluid specimen testing each offer different benefits and limitations in assisting employers in detecting and deterring illegal drug use, and no single specimen type is perfect for every situation. In an effort to assist employers in understanding some benefits and limitations to each methodology, DOT reviewed and referenced various scientific sources in compiling a table of the windows of detection that was included in the proposed rule. This table provided information regarding the specific timeframe in which an oral fluid or a urine drug test could identify the presence of the drugs. DOT asked for public comment on the accuracy and completeness of the information in the windows of detection table provided.

Based on the commenter's feedback, DOT agrees to caution against including a window of detection table in the final rule. Any information that is accurate today in a table of windows of detection may not be accurate shortly thereafter, as oral fluid testing is deployed by DOT-regulated employers and related research on the windows of detection continues. As a result, DOT removed the windows of detection table and note that oral fluid windows of detection will likely be shorter than for urine. Employers, working in conjunction with their service agents, should determine whether urine or oral fluid collection is best for their program and in what contexts.

## Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2023-05-02/pdf/2023-08041.pdf>

### I. **Hazardous Materials: Harmonization With International Standards; Notice of Proposed Rulemaking**

#### Agency

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

#### Dates

Published Date: 05/30/2023

Effective Date: 07/31/2023

#### Summary

On May 30, 2023, PHMSA issued a notice of proposed rulemaking (NPRM), entitled, "Hazardous Materials: Harmonization with International Standards" (HM-215Q). In this notice, 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. The proposed amendments are expected to maintain the HMR's high safety standards for the public and the environment.

A few noteworthy amendments include:

##### New Requirement for Wh Rating Marked on Lithium Ion Batteries

PHMSA proposes to add a new paragraph 173.185(a)(5) to require marking the outer casing of lithium-ion batteries with the Watt-hour (Wh) rating. This is consistent with the provisions for smaller cells or batteries in §173.185(c)(1)(i). While the requirement was added to the HMR for smaller cells or batteries (as a condition for use of an exception), no similar provision was added for other lithium-ion cells and batteries (i.e., those not offered in accordance with, or eligible for, the paragraph (c) exceptions).

However, upon review, PHMSA noted that international regulations generally require the marking of the Wh rating on the outside of the casing. PHMSA expects that this amendment will improve safety as the marking of the Wh rating on the outer casing of a lithium-ion cell or battery assists a shipper in better understanding the energy capacity of the cell or battery, and thus, ensures compliance with hazard communication and packing provisions associated with Wh limitations.

## Revisions to the Lithium Battery Mark

PHMSA proposes to remove the telephone number requirement from the lithium battery mark in 173.185(c)(3). It has been determined that the telephone number is ineffective due to differences in time zones and languages between the origin and destination of a shipment or intermediate transport point, and a lack of clarity on the expected capability of the person responding to a telephone call. Since consignor information can be readily obtained through other means such as a bill of lading, shipping labels, or other paperwork thereby rendering the telephone number requirement as a piece of information on the lithium battery mark effectively redundant, it was determined that the telephone number adds little value and removing the telephone number requirement from the mark would not reduce the effectiveness of the mark and therefore, not impact the safety of transportation. Therefore, PHMSA proposes to revise the lithium battery mark by removing the double asterisk from the example figure and the corresponding requirement in paragraph (c)(3)(i)(C) to replace the double asterisk with the telephone number. PHMSA proposes a transition period authorizing the continued use of the current lithium battery mark until December 31, 2026.

## Reference/Link

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

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