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VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - December 2018

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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, Veolia Environmental Director at kevin.mcgrath@veolia.com.

A. EPA Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Final Rule; Announcement of Effective Date

On December 3, 2018, the Environmental Protection Agency (EPA) published a final rule (83 FR 62268-62269) announcing that the amendments to the Risk Management Program under the Clean Air Act (CAA) published in a final rule on January 13, 2017 are in effect.

Background

EPA's Risk Management Program (RPM) regulations (40 CFR Part 68) apply to stationary sources (facilities) that manage specific "regulated substances" in excess of threshold quantities. These facilities are required to assess their potential release impacts, undertake steps to prevent releases, plan for emergency response to releases, and summarize this information in a Risk Management Plan that must be submitted to EPA. The release prevention requirements vary depending on the type of process and increased risk (i.e., Program 1, Program 2, and Program 3).

On January 13, 2017, EPA published a final rule (82 FR 4594) amending the RMPs under the CAA. On January 26, 2017 EPA published an action to delay the effective date of the final rule because EPA was planning on proposing to revise and repeal significant portions of the final rule. Additional EPA actions further delayed the effective date. On August 17, 2018, the U.S. Court of Appeals for the District of Columbia Circuit (the Court) issued a decision vacating the June14, 2017 rule that had delayed the effective date of the RMP amendments. Then, on September 21, 2018 the Court issued a mandate making the RMP Amendments Rule effective and this final rule implements the decision of the Court.

Summary

Following are some of the RMP amendments that have current compliance requirements:

1. Emergency Coordination Requirements (Applies to sources with Program 2 and 3 processes)

    a. The facility owner or operator must coordinate response needs at least annually with local emergency planning and response organizations and document these activities.
    b. The facility owner or operator must provide to the local emergency planning and response organizations:
        i. The stationary source's emergency response plan, if one exists,
        ii. The emergency action plan,
        iii. Updated emergency contact information, and
        iv. Other information that the local emergency planning and response organizations deem relevant to emergency response planning.

2. Emergency Response Program Provisions

    a. Review and update the emergency response plan based on changes or new information obtained from:
        i. Coordination activities
        ii. Emergency response activities
        iii. Incident investigations

    b. Ensure that employees have been trained/informed of the changes to the emergency response plan.

3. Incident Investigation

    a. An incident investigation is required when an incident resulting in a catastrophic release also results in the process being decommissioned or destroyed.
    b. Incident investigation reports must be completed within 12 months of the incident.

c. Incident investigation reports must contain the following information (new information):
   i. Time and location of incident
   ii. All relevant facts in chronological order
   iii. The name and amount of the substance involved in the release
   iv. Consequences of the incident, including but not limited to (injuries, fatalities, number of people evacuated, number of people sheltered in place, impact on the environment)
   i. Emergency response actions taken
   ii. Contributing factors to the incident, including (initiating event, direct and indirect factors, and root causes)
   iii. A schedule for addressing recommendations from the investigation

d. The findings from the incident investigations must be included in the hazard review and PHA.

Effective Date

Compliance with the 2017 final rule once again became effective on December 3, 2018.

Link

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

https://www.govinfo.gov/content/pkg/FR-2018-12-03/pdf/2018-26224.pdf

B. EPA Guidance for Applicants Requesting to Treat/Dispose of PCBs using Incineration or an Alternative Method; Draft

On December 12, 2018, EPA published a memorandum announcing the availability of a draft guidance document titled, "Guidance for Applicants Requesting to Treat/Dispose of PCBs Using Incineration or an Alternative Method." EPA states that this guidance document is intended to assist people applying to EPA for approval to dispose of Polychlorinated Biphenyls (PCBs) using thermal and non-thermal alternative methods or incineration.

Summary

This guidance document does not create any new requirements or interpretations of the law or the regulations. It is an updated version of the 1986 guidance document that includes current practices, policies, and regulatory changes that have occurred since 1986.

Link

The link below will provide access to EPA's Policy and Guidance for Polychlorinated Biphenyls (PCBs) webpage.

https://www.epa.gov/pcbs/policy-and-guidance-polychlorinated-biphenyl-pcbs

C. California Final Disposition Options for Universal Waste Cathode Ray Tubes and CRT Glass; Amendments

On October 22, 2018, the California Department of Toxic Substances Control (DTSC) adopted final regulations on the disposition options for universal waste cathode ray tubes (CRTs) and CRT glass.

Background

CRT devices are "covered electronic devices" under California's Electronic Waste Recycling Act of 2003. The CRT devices (bare CRTs and CRT glass) are hazardous wastes that may be managed under the universal waste management standards. Due to technological advances and a decreased demand for the manufacturing of new CRT devices, the recycling options allowed under the DTSC's universal waste regulations for the management of CRTs was determined to be inadequate.

In 2012, DTSC adopted an emergency regulation (Disposition Options for Universal Waste CRTs and CRT Glass) to address the management of these wastes. In July 2018, DTSC proposed to adopt most of the emergency regulations provisions, made changes to some of the provisions, and retired some of the regulations that were not successfully implemented.

Summary

The following requirements were included in the final regulations:

1. Universal waste handlers may accept waste CRT devices and CRTs as universal waste and dispose of the CRTs and CRT glass treatment residuals. The universal waste handlers who chose this option become the generator of a hazardous waste and can no longer manage the CRTs and CRT glass treatment residuals under the universal waste standards.
2. CRT panel glass that meets specified conditions may be disposed in a "CRT panel glass approved landfill."
3. Universal waste handlers must have contractual arrangements with any intermediate facilities.
4. An exclusion from the California hazardous waste regulations for CRT panel glass which exceeds the Total Threshold Limit Concentration (TTLC) only for barium.

Below are the disposal options for waste CRT devices and CRT glass once collected by universal waste handlers.

1. Recycle CRTs and CRT Glass

   Universal waste handlers may send CRTs and CRT glass for recycling using CRT glass manufacturing or primary/secondary lead smelting facilities.

2. Send CRTs and CRT Glass to an Intermediate Facility

   Universal waste handlers may send CRTs or CRT glass to an intermediate facility (e.g., out-of-state recycler) for further processing prior to subsequent CRT glass manufacturing or lead smelting.

3. Dispose of Tested CRT Panel Glass in Specific Landfills

   Universal waste handlers who treat CRTs by separating the CRT panel glass from the CRT funnel glass may dispose of the CRT panel glass in a CRT panel glass approved landfill as long as the following requirements are met:

   i. No commingling of CRT funnel glass and CRT panel glass occurs.
   ii. The CRT panel glass must meet the following criteria:
       a. It does not exhibit a RCRA hazardous waste characteristic for toxicity.
       b. Does not exceed the Soluble Threshold Limit Concentration (STLC).
       c. Is a hazardous waste solely because it exceeds the TTLC thresholds.
       d. Does not exceed TTLC of 30,000 mg/kg for lead.
       e. Meets the land disposal restrictions treatment standards in 62273.81(a)(5).
   iii. Additional requirements on testing, training, and documentation.

4. Recycle Tested CRT Panel Glass that is no Longer a Waste

   If the CRT panel glass exceeds the TTLC for barium only, then the CRT panel glass is no longer a waste if it is recycled.

5. Dispose of CRTs at a Permitted Hazardous Waste Disposal Facility

   Universal waste handlers may dispose of waste CRT devices and CRTs that they receive, but they become the generator of a hazardous waste and must manage the CRTs and CRT glass as a hazardous waste.

Effective Date

These final regulations became effective on October 22, 2018.

Link

The link below will allow you to view the DTSC Final Regulations on CRT and CRT Glass Disposition Options.

https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/Proposed-rulemaking-CRT-and-CRT-Glass-Disposition-Options.cfm

D. DOT/FMCSA Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement; Interim Rules and Re-Opening of the Comment Period

On December 4, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published an interim final rule (83 FR 62503-62505) reopening the comment period for interim rules regarding the limitations on the issuance of commercial driver's licenses with a hazardous materials endorsement that were published in May 2003 and April 2005.

Summary

The comment period for the May 2003 interim final rule closed on July 7, 2003 and there was no comment period for the April 2005 interim final rule. FMCSA plans to adopt the provisions of these interim final rules that have not previously been finalized and to ensure that interested parties have the opportunity to provide comments the comment period has been re-opened for fifteen days.

MAY 2003 INTERIM FINAL RULE

On May 5, 2003, FMCSA published an interim final rule titled "Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement" (68 FR 23844). It revised its regulations to require State licensing agencies to issue or renew a hazardous materials endorsement for a CDL only if the Transportation Security Administration (TSA) has determined that the applicant does not pose a security risk warranting denial of such endorsement. To determine applicability, a CDL renewal, transfer, or upgrade was also considered a new issuance and fell within the scope of these requirements if it involved a hazardous materials endorsement. The interim final rule implemented FMCSA's part of the requirements of section 1012 of the USA PATRIOT Act, which limited the issuance of hazardous materials licenses.

APRIL 2005 INTERIM FINAL RULE

On April 29, 2005, FMCSA published an interim final rule titled, "Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement" (70 FR 22268). In the preamble, FMCSA wrote that the 2005 interim final rule would be subsumed into the 2003 interim final

rule when that rulemaking was finalized. The 2003 interim final rule provided a specific date on which States became subject to the new requirement. The 2005 interim final rule amended the cross-reference to TSA's compliance date when FMCSA's companion requirements also became applicable. Consistent with the TSA regulations, FMCSA also reduced the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement.

DECEMBER 4, 2018 INTERIM FINAL RULE

On October 5, 2018, Congress enacted the FAA Reauthorization Act of 2018 (Pub. L. 115-254). Under Sec. 1977, a commercial motor vehicle (CMV) driver who wants to obtain a hazardous materials endorsement on a commercial driver's license is an "applicable individual who is subject to credentialing or background investigation." Section 1978 exempted individuals who hold a valid transportation security card (TSC, or TWIC as implemented by TSA) issued under section 70105 of Title 56. FMCSA intends to incorporate this exemption when finalizing the interim final rules.

COMMENTS REQUESTED

Considering the passage of time since the publication of the interim final rules, and because some items may not have been touched on during the initial notice and comment period, FMCSA will consider all issues under its authority and may change the interim final rule based on the comments.

Comments Due

Comments on this interim final rule must be submitted to FMCSA by December 19, 2018.

Link

The link below will allow you to view/print this interim final rule re-opening the comment period.

https://www.govinfo.gov/content/pkg/FR-2018-12-04/pdf/2018-26250.pdf

E. DOT/FMCSA Commercial Learner's Permit Validity; Final Rule

On December 21, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (83 FR 65564-65571) that allows States the option of issuing a commercial learner's permit (CLP) with an expiration date of up to one year from the date of initial issuance.

Summary

The CLP must be valid for no more than one year from the initial date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided that the CLP is not valid for more than one year from the date of initial issuance. If the applicant does not obtain a CDL within one year from the date the CLP was first issued, he/she must reapply for a CLP and retake the knowledge and endorsement tests. This proposed amendment replaces the current regulations, which require States to issue CLPs initially for no more than 180 days, with the possibility of an additional 180 day renewal at the State's discretion.

State Adoption

This final rule does not require States to revise their current CLP issuance practices, unless they choose to.

Effective Date

This final rule will become effective on February 22, 2019.

Link

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

https://www.govinfo.gov/content/pkg/FR-2018-12-21/pdf/2018-27779.pdf

F. DOT/FMCSA California's Meal and Rest Break Rules for Commercial Motor Vehicle Drivers; Petition for Determination of Preemption; Order; Grant of Petition for Determination of Preemption

On December 28, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published an order (83 FR 67470-67480) granting petitions submitted by the American Trucking Associations and the Specialized Carriers and Rigging Association to preempt the State of California's Meal and Rest Break Rules.

Summary

On December 28, 2018, FMCSA announced a determination that California's Meal and Rest Break Rules are:

1. Laws on commercial motor vehicle (CMV) safety to the extent that they apply to drivers of property-carrying CMVs subject to the FMCSA's hours of service;
2. That the Meal and Rest Break Rules are additional to or more stringent than the FMCSA's hours of service rules;
3. They have no additional safety benefit
4. The rules are incompatible with the FMCSA's hours of service rules; and
5. Enforcement of California's Meal and Rest Break Rules would cause an unreasonable burden on interstate commerce.

Therefore, the California Meal and Rest Break Rules for commercial motor vehicle drivers are preempted under 49 U.S.C. 31141(c). California may no longer enforce the Meal and Rest Break Rules with respect to drivers of property-carrying CMVs subject to FMCSA's hours of service rules.

However, drivers operating in **intrastate** commerce in California who would otherwise be subject to the California Meal and Rest Break Rules remain subject to those rules.

This preemption is in addition to the PHMSA's preemption determination on September 21, 2018.

Effective Date

This preemption determination became effective on the date of publication, December 28, 2018.

Link

The link below will allow you to view/print the order granting the preemption determination.

https://www.govinfo.gov/content/pkg/FR-2018-12-28/pdf/2018-28325.pdf

G. DOT/FMCSA Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits; Notice of Proposed Rulemaking

On December 31, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a notice of proposed rulemaking (83 FR 67705-67711) that would amend the Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Motor Vehicle Safety Alliance (CVSA) handbook.

Summary

The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA's State partners. Currently, the regulations (49 CFR 385.4 and 385.415(b)) reference the April 1, 2016 edition of the handbook. With this notice of proposed rulemaking, FMCSA is proposing to incorporate by reference the April 1, 2018 edition which also captures changes adopted in the April 1, 2017 edition of the handbook. The April 1, 2018 edition of the handbook contains 15 updates from the 2016 and 2017 editions. No new regulatory requirements are included in this notice of proposed rulemaking.

Comments Due

Comments on this notice of proposed rulemaking must be submitted to FMCSA on or before January 30, 2019.

Link

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

https://www.govinfo.gov/content/pkg/FR-2018-12-31/pdf/2018-28169.pdf

H. DOT/FMCSA Fees for the Unified Carrier Registration Plan and Agreement; Final Rule

On December 28, 2018, the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) published a final rule (83 FR 67124-67131) reducing the annual registration fees collected from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the registration years 2019, 2020, and thereafter.

Summary

For the 2019 registration year, the fees will be reduced below the 2017 registration fee level that was in effect by 18.62 percent to ensure that fee revenues collected do not exceed the statutory maximum, and to account for the excess funds held in the depository. The fees beginning with the 2020 registration year will be reduced below the 2017 level by approximately 9.9 percent. The reduction of the current 2019 registration year fees (finalized on January 5, 2018) range from approximately $11 to $10,282 per entity, depending on the number of vehicles owned or operated by entities. The reduction in fees for 2020 and subsequent registration years range from approximately $5 to $3,899 per entity.

International Impacts

Motor carriers and other entities involved in interstate and foreign transportation in the United States that do not have a principal office in the Unites States, are subject to the fees for the UCR Plan. They are required to designate a participating State as a base State and pay the appropriate fees to the State (49 U.S.C. 14504a(a)(2)(B)(ii) and (f)(4)).

49 CFR 367.50 Fees Under the Unified Carrier Registration Plan and Agreement for Registration Year 2019

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0-2	$62	$62
B2	3-5	$185	
B3	6-20	$368	
B4	21-100	$1,283	
B5	101-1,000	$6,112	
B6	1,001 and above	$59,689	

49 CFR 367.50 Fees Under the Unified Carrier Registration Plan and Agreement for Registration Years Beginning in 2020

Bracket	Number of commercial motor vehicles owned or operated by exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for exempt or non-exempt motor carrier, motor private carrier, or freight forwarder	Fee per entity for broker or leasing company
B1	0-2	$68	$68
B2	305	$204	
B3	6-20	$407	
B4	21-100	$1,420	
B5	101-1,000	$6,766	
B6	1,001 and above	$66,072	

Effective Date

This final rule became effective on December 28, 2018.

Link

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

https://www.govinfo.gov/content/pkg/FR-2018-12-28/pdf/2018-28170.pdf

I. OSHA Revising the Beryllium Standard for General Industry; Proposed Rule

On December 11, 2018, the Occupational Safety and Health Administration (OSHA) published a proposed rule (83 FR 63746-63770) that would modify the Beryllium Standard for General Industry by clarifying certain provisions and simplifying or improving compliance.

Background

On January 9, 2017, OSHA published a final rule amending the standards for occupational exposure to beryllium and beryllium compounds that were originally established in 1971. The final rule lowers the

permissible exposure limits (PELs) for beryllium and beryllium compounds and revises other provisions to protect employees. The final rule became effective on May 20, 2017 and on December 12, 2018 OSHA began enforcing all provisions of the beryllium standard for general industry.

Summary

The proposed amendments are designed to enhance worker protections by ensuring that the rule is well-understood and compliance is more straightforward. Some of the proposed amendments include:

1. OSHA Revised Several Definitions, including:
   a. Beryllium Sensitization – a response in the immune system of a specific individual who has been exposed to beryllium
   b. Beryllium Work Area – any work area where materials that contain at least 0.1 percent beryllium by weight are processed during an operation listed in Appendix A, regardless of exposure level, or where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level.
   c. CBD Diagnostic Center – a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of CBD.
   d. Confirmed Positive – the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results obtained within the 30 day follow-up test period required after a first abnormal or borderline BeLPT test result.

2. Two Wording Changes to the Written Exposure Control Plan

3. Personal Protective Clothing and Equipment Requirements

   A requirement that employers ensure that each employee removes all beryllium-contaminated personal protective equipment (PPE) at the end of the work shift, at the completion of tasks involving beryllium, or when PPE becomes visibly contaminated with beryllium

4. Hygiene Areas and Practices

   Employer would be responsible for providing readily accessible washing facilities to all employees with reasonably expected dermal contact with beryllium.

5. Disposal and Recycling

   Proposing that provisions pertaining to disposal and recycling also address reuse because in some cases workers may be exposed to materials containing or contaminated with beryllium that are directly reused without first being recycled into a different form.

6. Medical Surveillance

   Proposes the removal of the requirement for a medical examination within 30 days of exposure in an emergency and adding a requirement that the employer offer a medical examination at least one year after but not more than two years after the employee is exposed beryllium in an emergency.

Comments Due

Comments on this proposed rule must be submitted to OSHA by February 11, 2019.

Effective Date

While this proposed rule is pending, compliance with the standard as modified in this proposed rule will be accepted as compliance with the standard by OSHA.

Link

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

https://www.govinfo.gov/content/pkg/FR-2018-12-11/pdf/2018-26448.pdf

J. DOJ/ATF Commerce in Explosives; 2018 Annual List of Explosive Materials; Notice

On December 12, 2018, the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) published a notice of the list of explosive materials (83 FR 63906-63908).

Summary

ATF is required to revise and publish, at least annually, in the Federal Register a list of explosive materials including blasting agents and detonators. The only change from the 2017 Annual List of Explosive Materials was correcting the entry for ANFO which is the acronym for ammonium nitrate-fuel oil. The “A” was inadvertently omitted in the 2017 Annual List of Explosive Materials.

Effective Date

The 2018 List of Explosive Materials became effective on the date of publication, December 12, 2018.

Link

The link below will allow you to view/print the 2018 Annual List of Explosives.

https://www.govinfo.gov/content/pkg/FR-2018-12-12/pdf/2018-26856.pdf