



VEOLIA NORTH AMERICA - INDUSTRIAL BUSINESS REGULATORY UPDATE - November 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 Electronic-Manifest System: Update

In November 2018, the Environmental Protection Agency (EPA) made e-Manifest data available to the public on the RCRAInfo webpage and published a new Fact Sheet titled “e-Manifest Emergency Response and Cleanup Fact Sheet.”

Summary

On November 1, 2018, EPA began making e-Manifest data available to the public on RCRAInfo. This information is updated once per week by EPA and includes the manifest number, EPA ID Number and name of all sites reported on the manifest, number and type of containers, waste codes, management method codes, and quantity. This information is published 90 days after receipt by EPA.

On November 6, 2018, EPA announced the availability of the “e-Manifest Emergency Response and Cleanup Fact Sheet.”

Links

The link below provides access to EPA’s e-Manifest Monthly Update Webpage.

<https://www.epa.gov/e-manifest/monthly-webinars-about-hazardous-waste-electronic-manifest-e-manifest>

The link below will allow you to view EPA’s e-Manifest Frequently Asked Questions webpage.

<https://www.epa.gov/e-manifest/frequent-questions-about-e-manifest>

The link below will allow you to view/print the e-Manifest Emergency Response and Cleanup Fact Sheet.

https://www.epa.gov/sites/production/files/2018-11/documents/e-manifestfactsheet_emergencyresponsecleanup.pdf

B. EPA Safe Management of Recalled Airbags; Interim Final Rule

On November 30, 2018, EPA published an interim final rule (83 FR 61552-61563) exempting the collection of airbag modules and airbag inflators (airbag wastes) from the Resource Conservation and Recovery Act (RCRA) requirements provided that certain conditions are met. This exemption applies to the storage and transport of airbag waste during collection. The final disposition of the hazardous airbag wastes will continue to be regulated under applicable RCRA Subtitle C hazardous waste regulations.

Background

In May 2015, the Department of Transportation (DOT) announced a national recall of airbag inflators manufactured by Takata due to a defect in their phase-stabilized ammonium nitrate (PSAN) propellant, which has resulted in fifteen deaths and at least 250 injuries in the United States as of August 2018. The PSAN propellant used in the recalled Takata airbag inflators degrades over time when moist propellant is exposed to long-term daily temperature cycling. In November 2015, the National Highway Traffic Safety Administration (NHTSA) issued a Coordinated Remedy Order that included a statement from NHTSA that it is imperative to accelerate the rate of the recalls because “[e]ach airbag inflator with the capacity to rupture, as the recalled Takata inflators do, presents an unreasonable risk of serious injury or death...” EPA has determined, based on the nature of the waste and the damage cases that have occurred an exemption for the collection of airbag wastes is warranted.

Summary

40 CFR 261.4(j) applies to ALL airbag waste collected from auto dealers or other airbag waste handlers. Companies that generate airbag waste under this exemption are referred to as "airbag waste handlers" and are typically automobile dealers, repair facilities, salvage yards, etc.

Under this exemption, the airbag wastes collected by the airbag waste handlers are not subject to regulation under 40 CFR 262 through 268, 270, or 124 during the collection or transport to an airbag waste collection facility.

Requirements (Conditions) of the Exemption

1. Airbag waste handlers can accumulate up to 250 airbag modules or airbag inflators or for up to 180 days, whichever comes first.
2. Packaging
 - a. Airbag waste must be packaged in a container designed to address the risk posed by the airbag. In most cases, EPA believes that this would be the same container that the replacement airbag part was shipped in. Any container that meets the DOT requirements for transporting the airbag wastes meets this requirement
 - b. Each container must be labeled with the words "Airbag Waste - Do Not Reuse."
3. The airbag waste must be shipped directly to:
 - a. A designated facility as defined in 40 CFR 260.10, or
 - b. An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party running a remedy program in response to a recall under NHTSA.
4. Airbag waste collection facilities may include part supply centers/parts distribution centers or vehicle manufacturers to collect airbag waste and hold it for more than 10 days.
5. Airbag wastes in transport may be held at a transfer facility for less than 10 days.
6. The designated facility or the airbag waste collection facility that receives the airbag waste from the airbag was handler is considered the hazardous waste generator for the purposes of 40 CFR 262 as the person whose act first causes the hazardous waste to become subject to the generator regulations.

Tracking and Recordkeeping Requirements for Airbag Waste Handlers

1. Records documenting off-site shipments must be maintained for 3 years. These records must include:
 - a. The date of each shipment
 - b. The name of each transporter
 - c. The type and quantity of airbag waste (i.e., airbag modules or airbag inflators); and
 - d. The name and address of the destination facility or airbag waste collection facility
 - e. Confirmation of receipt from the designated facility or airbag waste collection facility.

EPA is not specifying the types of records or format for complying with the above requirements. EPA believes that ordinary business records (financial records, bills of lading, copies of DOT shipping papers, electronic confirmation of receipt, etc.) will contain the appropriate information.

The reuse of defective airbag modules and airbag inflators is not allowed and would be considered sham recycling under 40 CFR 161.2(g).

Effective Date

This interim final rule became effective on the date of publication, November 30, 2018.

State Authorization

This interim final rule was NOT promulgated under HSWA. Therefore, the standards will be applicable on the effective date only in those states that do NOT have final authorization of their base RCRA programs. These changes are LESS stringent than the federal RCRA program and States are NOT required to adopt them.

HOWEVER, in the federal register EPA includes the following statement, "if a state were, through implementation of state waiver authorities or other state laws, to allow compliance with the provisions of the conditional exemption in advance of adoption or authorization, EPA would not generally consider such implementation a concern of enforcement or state authorization" as long as the state did not implement the requirements in a manner that was less stringent than the federal requirements in the Interim Final Rule.

Links

Below is a link to the interim final rule.

<https://www.gpo.gov/fdsys/pkg/FR-2018-11-30/pdf/2018-25892.pdf>

Below is a link to EPA's recalled airbag website.

<https://www.epa.gov/hw/interim-final-rule-safe-management-recalled-airbags>

C. EPA Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds – Exclusion of *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z); Final Rule

On November 28, 2018, EPA published a final rule (83 FR 61127-61134) revising the regulatory definition of volatile organic compounds (VOC) to exempt *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz-Z) from the definition of VOC.

Summary

Tropospheric O₃, commonly known as smog, is formed when VOC and nitrogen oxides (NO_x) react in the atmosphere in the presence of sunlight. VOCs form O₃ through atmospheric photochemical reactions, and different VOCs have different levels of reactivity. The EPA lists compounds that it has determined to be negligibly reactive in the regulations as being excluded from the regulatory definition of VOC (40 CFR 51.100(s)).

On February 14, 2014, DuPont Chemicals and Fluoroproducts (DuPont) submitted a petition to EPA requesting that HFO-1336mzz-Z be exempted from the regulatory definition of VOC because it is less reactive than ethane and therefore considered negligibly reactive. On May 1, 2018, EPA published a proposed rulemaking (83 FR 19026) seeking comments in response to DuPont's petition.

After consideration of the information provided by DuPont and peer-reviewed journal documents, EPA is taking final action to exempt HFO-1336mzz-Z from the regulatory definition of VOC based on the compound's low contribution to tropospheric O₃ and the low likelihood of risk to human health or the environment, including stratospheric O₃ depletion, toxicity, and climate change.

Effective Date

This final rule will become effective on January 28, 2018.

State Authorization

States are not obligated to exclude HFO-1336mzz-Z from control as a VOC, but the State may not take credit for controlling this compound in its O₃ control strategy.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2018-11-28/pdf/2018-25891.pdf>

D. DOT/PHMSA Hazardous Materials: Response to Petitions from Industry to Modify, Clarify, or Eliminate Regulations; Final Rule

On November 7, 2018, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (83 FR 55792-55811) amending the hazardous materials regulations (HMR) in response to 19 petitions for rulemaking submitted by the regulated community to update, clarify, streamline, or provide relief from miscellaneous regulatory requirements.

Summary

Following are the changes that could potentially impact Veolia operations. Please refer the Federal Register publication for complete details regarding all amendments adopted in this final rule.

1. Use of Electronic Manifest and Electronic Signatures

This final rule revises 49 CFR 172.205 to add paragraph (j) to permit the use of electronic signatures when completing an EPA form 8700-22 and 8700-22A and is also allowing the electronic manifest to be used to meet the 3-year record retention requirement

2. Cargo Tank Specifications

The Walker Group submitted a petition requesting revisions to the table in 49 CFR 180.407(g)(1)(iv) to make this section consistent with the applicable packaging specifications found in 49 CFR 178. A cargo tank manufactured to the requirements of the applicable DOT specification has to be tested in accordance with the HMR. Currently the design specification for cargo tanks in 49 CFR 178.320 contain general requirements applicable to all cargo tanks. In this final rule, PHMSA is revising the table in 49 CFR 180.407(g)(1)(iv) and is adding to each entry the phrase, "The test pressure on the name plate or specification plate, or 1.5 times the MAWP, whichever is greater.

3. International Label and Placard Consistency

In this final rule, PHMSA is revising 49 CFR 172.519(f) and 172.407(f) of the HMR to allow for the use of labels and placards conforming to the specification in the UN Recommendations, ICAO Technical Instructions, the IMDG Code, or the Transport Canada TDG Regulations. Placards and labels for a poisonous by inhalation material must be in conformance with the USDOT Hazardous Materials regulations.

4. Use of Combination Packages Tested with a Liquid

PHMSA is amending 49 CFR 173.24a(b)(3) to allow that non-bulk packages tested and marked for liquid hazardous materials may be filled with a solid hazardous material. This applies to all single, combination and composite non-bulk packagings not exceeding 400 kg only.

5. Limited Quantity Pallets

49 CFR 156(b)(2)(iii) is revised to allow the use of metal, plastic, or composite pallets used to ship limited quantities of hazardous materials, provided the hazardous materials will not react with the pallet material.

6. Emergency Response Telephone Number for Excepted Quantities

PHMSA is revising 49 CFR 172.604(d)(1) to no longer require an emergency response telephone number on a shipping paper for excepted quantities of hazardous materials.

7. Cylinder Valves and Protective Caps

In this final rule, PHMSA is revising the HMR to ensure that cylinder valves follow uniform construction and performance standards for improved transportation safety of cylinders containing hazardous materials. PHMSA is also implementing a revision to the requirements for chemicals under pressure in 49 CFR 173.335(a) to provide an exception to conform to the new standards for cylinder valves and caps in the new requirements in 49 CFR 173.301(a)(11) and (12). PHMSA is extending the compliance date to give a grace period of one year after the rulemaking becomes effective to comply with the new valve cap requirements.

8. Recordkeeping Requirements for Portable Tanks

49 CFR 180.605(l) is revised to allow the owner of a portable tank to contact the National Board for a copy of the manufacturer's data report, if the portable tank was registered with the National Board, or copy the information contained on the portable tank specification plate and ASME data plates.

9. Service Pressure Marking on DOT 8 and DOT 8L Cylinders

It was never PHMSA's intention to require the marking of the service pressure on the DOT 8 and DOT 8L cylinders and therefore this final rule revises this section of the HMR removing the marking requirements.

Effective Date

Effective Date: December 7, 2018

Voluntary Compliance Date: November 7, 2018

Delayed Compliance Date: Unless otherwise specified, compliance with these amendments is required beginning on November 7, 2019.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2018-11-07/pdf/2018-23965.pdf>

E. DOT/PHMSA Hazardous Materials: Harmonization with International Standards; Notice of Proposed Rulemaking

On November 27, 2018, the Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking (83 FR 60970-61070) to amend the Hazardous Materials Regulations (HMR) to maintain alignment with international regulations and standards.

Summary

The revisions in the notice of proposed rulemaking (NPRM) include changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel storage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods – Model Regulations. Additionally, PHMSA proposes several amendments to the HMR that would allow for increasing alignment with the Transport Canada, Transportation of Dangerous Goods (TDG) regulations.

If adopted in a final rule, the amendments proposed in this NPRM will result in minimal burdens on the regulated community. The benefits achieved from their adoption include enhanced transportation safety resulting from the consistency of domestic and international hazard communication and continued access to foreign markets by U.S. manufacturers of hazardous materials. PHMSA anticipates that most of the amendments in this NPRM will result in cost savings and will ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Comments Due

Comments on this notice of proposed rulemaking must be received by PHMSA on or before January 28, 2019.

Link

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

<https://www.gpo.gov/fdsys/pkg/FR-2018-11-27/pdf/2018-24620.pdf>

F. DOJ/DEA Schedules of Controlled Substances: Placement of Furanyl Fentanyl, 4-Fluoroisobutyryl Fentanyl, Acryl Fentanyl, Tetrahydrofuranyl Fentanyl, and Ocfentanil in Schedule I; Final Order

On November 29, 2018, the Department of Justice, Drug Enforcement Administration (DEA) published a final order (83 FR 61320-61323) finalizing the placement of the substances furanyl fentanyl [*N*-(1-phenylfuran-2-carboxamide)], 4-fluoroisobutyryl fentanyl or *para*-fluoroisobutyryl fentanyl [*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide], acryl fentanyl or acryloylfentanyl [*N*-phenethylpiperidin-4-yl)-*N*-phenylacrylamide], tetrahydrofuranyl fentanyl [*N*-(1-phenethylpiperiden-4-yl)-*N*-phenyltetrahydrofuran-2-carboxamide], and ocfentanil [*N*-(2-fluorophenyl)-2-methoxy-*N*-(1-

phenethylpiperidin-4-yl)acetamide, including their isomers, esters, ethers, salts, and salts fo isomers, esters and ethers into Schedule I of the Controlled Substances Act (CSA).

Summary

During the 61st session of the United Nations Commission on Narcotic Drugs these substances were added to Schedule I of the Single Convention on Narcotic Drugs. As a signatory Member State to the Single Convention on Narcotic Drugs, the United States is obligated to control these substances under the CSA in the same schedule deemed most appropriate to carry out its international obligations. In order to carry out these obligations the DEA has published this final order controlling these substances under Schedule I of the CSA.

Effective Date

This final order became effective on the date of publication, November 29, 2018.

Link

The link below will allow you to view/pring this final order.

<https://www.gpo.gov/fdsys/pkg/FR-2018-11-29/pdf/2018-26045.pdf>