

Veolia North America - Industrial Business Regulatory Update - December 2019

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MISCELLANEOUS UPDATES

There are no Miscellaneous Updates for December 2019.

A. **Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations: Final Rule**

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 12/09/2019

Effective Date: 02/07/2020

Summary

The Environmental Protection Agency (EPA) believes that the management of hazardous waste aerosol cans can be best implemented through a universal waste approach where handlers operate within a streamlined management system with regulatory oversight. On December 9, 2019, the EPA finalized the rule to add Aerosol Cans to the federal list of Universal Wastes. This final rule will impact the labeling and marking, accumulation time limits, employee training, responses to releases, export requirements, and, for large quantity handlers of universal waste, notification and tracking.

Definition of Aerosol Can

- In the final rule, aerosol can is defined 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.
- Using language from the DOT regulation will help ensure consistency across federal regulatory programs, avoid unnecessarily narrowing the scope of the rule to aerosol cans that aerate their product, and will not inadvertently include compressed gas cylinders in the definition of aerosol can. Because compressed gas cylinders, unlike aerosol cans, require special procedures to safely depressurize, it would not be appropriate to include them in the final rule.
- Finally, because the DOT language is more inclusive than the proposed language, it better matches the intent of the proposal to apply to all types of aerosol cans, including cans that dispense product in the form of paste or powder, and would not require states that have already added aerosol cans to their universal waste program to change their regulations.

Background

On March 16, 2018 the Environmental Protection Agency (EPA) proposed adding aerosol cans to the federal universal waste list. This proposal recognized that the inclusion of this waste stream as a universal waste could better ensure that aerosol cans are managed appropriately from cradle to grave. Aerosol cans are widely used for dispensing a broad range of products including paints, solvents, pesticides, food and personal care products. The Consumer Specialty Products Association (CSPA) estimates that 3.8 billion aerosol cans were filled in the United States in 2015 for use by commercial and industrial facilities along with households. Aerosol cans may be dangerous if mismanaged, particularly when exposed to excessive heat, which may result in increased internal pressure and eventually could cause the container to burst and release its contents. If the propellant or product is ignitable, this could result in a rapidly burning vapor "fireball." Even if the propellant is not ignitable there are dangers from a bursting aerosol can as parts of the aerosol can could become a projectile.

After the proposed rulemaking was announced the EPA took public comment on the proposed standards. The docket number for this rulemaking is EPA-HQ-QLEM-2017-0463.

Summary

The Environmental Protection Agency (EPA) is adding hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. The aim of this rule is to benefit the establishments generating and managing hazardous waste aerosol cans. These establishments include retail stores and others that discard hazardous waste aerosol cans. The rule will ease the regulatory burdens on these establishments and promote the collection and recycling of these cans and encourage the development of municipal and commercial programs to reduce the amount of aerosol cans from going to municipal solid waste landfills or combustors.

This final ruling will impact the following areas for all handlers:

Generator Status	Universal Waste Aerosols do not count towards Generator Status.
Labeling and marking	The final rule requires aerosol cans to be labeled as “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s).”
Accumulation time limits	The final rule allows for generators to store aerosol cans for up to one-year.
Employee training	Employees must be trained on handling and how to safely puncture and drain universal waste aerosol cans - if applicable to facility.
Responses to releases	Written procedures must be in place in the event of a spill. Also, spill clean up kit must be available, and spills must be cleaned up promptly.
Export requirements	Aerosol cans will now be exported as Universal Waste
Notification and Tracking	This will only impact large quantity universal waste handlers. Handlers must make a notification before beginning to puncture the aerosol cans.

Sending Universal Waste to another Handler

- Under the universal waste rule, a handler of universal waste can send the universal waste to another handler, where it can be consolidated into a larger shipment for transport to a destination facility.
- Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA permit for such activities.
- This will make it more economical to send hazardous waste aerosol cans for recycling for recovery of metal materials. This final action is estimated to result in an annual cost savings of \$5.3 million to \$47.8 million.

States with Existing Universal Waste Programs

- Five states - California, Colorado, New Mexico, Ohio and Utah - already have universal waste aerosol programs in place.
- These programs include streamlined management standards similar to 40 CFR part 273 for small and large quantity handlers of universal waste and a one-year accumulation time limit for aerosol cans.

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Puncturing and Draining of Aerosol Cans

- The current state universal waste programs set standards for puncturing and draining of aerosol cans by universal waste handlers. These programs allow the puncturing and draining of aerosol cans as long as specific management standards and waste characterizations are met. Once the aerosol can is punctured it may be recycled as scrap metal.

Leaking or Damaged Aerosol Cans

- The EPA is requiring leaking or damaged aerosol cans that show evidence of leakage to be packaged in a separate closed container, overpacked with absorbents or immediately punctured and drained in accordance with the aerosol can universal waste requirements.
- The EPA used the existing state programs to develop the proposed ruling. The EPA proposed that an “aerosol can” be defined as an “intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.” This definition is the same as the definition of aerosol can in California, Colorado, New Mexico and Utah universal waste programs.
- This definition excludes compressed gas cylinders from the definition of universal waste aerosol can because they pose an increased hazard. Additionally, the definition excludes any container that is larger than 24 ounces.

Materials excluded from the definition and therefore this Final Rule:

- Compressed gas cylinders
- Any container larger than 24 ounces

Label and Marking

- The EPA is finalizing in 40CFR 273.14 and 273.34 that either each aerosol can, or a container in which the aerosol cans are contained must be labeled or marked clearly with any of the following phrases: “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s).”

Storage

- It is recommended for handlers to sort aerosol cans by type and consolidate intact aerosol cans in larger containers, remove actuators and valve stems to reduce the risk of accidental release.
- Aerosol cans are required to be stored in a container that is protected from sources of heat, including, but not limited to, open flames, lighting, smoking, cutting and welding, hot surfaces, frictional heat, static, electrical and mechanical sparks, and heat producing chemical reactions.

What remains unchanged?

This final rule does not change any of the existing requirements applicable to universal waste transporters or universal waste destination facilities. Additionally, this rule does not impose any requirements on households or Very Small Quantity Generators (VSQGs) for managing these cans. Under the Universal Waste Rule provisions, VSQGs may choose to manage their hazardous waste aerosol cans in accordance with either the VSQG regulations under 40 CFR 262.14 or as a universal waste under part 273 (40 CFR 273.8(a)(2)). This final rule does not change the applicability of land disposal restriction (LDR) requirements to universal waste. Under the existing regulations (40 CFR 268.1(f)), universal waste handlers and transporters are exempt from the LDR requirements regarding testing, tracking, and recordkeeping in 40 CFR 268.7, and the storage prohibition in 40 CFR 268.50. EPA is amending 40 CFR 268.1(f) to add aerosol can universal waste for consistency. This final rule also does not change the regulatory status of destination facilities; they remain subject to the full LDR requirements.

State by State adoption

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. This final rule will be less stringent than the current federal program. Because states are not required to adopt less stringent regulations, they will not have to adopt the universal waste regulations for aerosol cans, although EPA encourages them to do so. The only states that will immediately adopt the new regulation are Iowa and Alaska, as they do not have an environmental department of their own.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-12-09/pdf/2019-25674.pdf>

B. Elemental Mercury Management and Storage Fees

Agency

Office of Environmental Management (EM), U.S. Department of Energy (DOE)

Dates

Published Date: 12/23/2019

Effective Date: 01/22/2020

Summary

The Department of Energy published a final rule to establish a fee for long-term management and storage of elemental mercury in accordance with the Mercury Export Ban Act. This was done in order to comply with the the Mercury Export Ban Act. The fee is based upon a plan to store elemental mercury for 15 years so that treatment and disposal technology and capacity will be in place for the disposal of high-concentration elemental mercury waste. The fee per metric ton is the sum of the net present value of elemental mercury storage for fifteen years using the 15-year real interest rate from Office of Management and Budget Circular A-94, the pro-rated cost of materials required for storage of elemental mercury, the present value of the cost of transporting elemental mercury from the storage facility to a treatment facility in the sixteenth year, and the present value of the cost of treatment and disposal in the sixteenth year.

The fee is due to the DOE at the time of delivery. This fee may be adjusted annually. Fees are payable upon delivery of elemental mercury to the DOE facility. All fee payments are to be made payable to the U.S. Department of Energy. The payments are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using E.D.I. (Electronic Data Interchange), check, draft, money order, or credit card.

The breakdown of the storage cost per metric ton is given by the following table:

Year	Receipt	Management	Lease	Oversight	State Tax	Removal	Total
1	\$570.00	\$300.84	\$300.84	\$117.17	.....	.....	\$1,288.85
2-15	.....	\$300.84	\$300.84	\$60.17	\$120.34	.....	\$782.18
16	.....	.....	.....	.....	\$120.34	\$9570.00	\$690.34

The cost of storage from the table is \$12,900. The net present value of this total, using the 15-year real interest rate from the OMB Circular A-94 is \$11,500.

The resulting fee per metric ton is given by the following table:

Storage cost	\$11,700
Transportation cost	\$800
Treatment and Disposal Cost	\$24,500
Total	\$37,000

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-12-23/pdf/2019-27672.pdf>

C. Record of Decision for the Long-Term Management and Storage of Elemental Mercury

Agency

Office of Environmental Management (EM), U.S. Department of Energy (DOE)

Dates

Published Date: 12/06/2019

Effective Date: 12/03/2019

Summary

This record of decision is being issued by the U.S. Department of Energy (DOE) to inform the public that a decision has been made revolving around the long-term management and storage of elemental mercury to meet the federal government's statutory responsibility for long-term storage of elemental mercury generated within the United States. The DOE has decided that they will store up to 6,800 metric tons (7,480 tons) of elemental mercury in existing buildings at Waste Control Specialists near Andrews, Texas.

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This record of decision is based upon a plan to store elemental mercury for 15 years so that treatment and disposal technology and capacity will be in place for the disposal of high-concentration elemental mercury waste. The DOE evaluated seven government and commercial sites as the range of reasonable alternatives in the Draft Elemental Mercury Storage Environmental Impact Statement before deciding that the Waste Control Specialists (WCS) was the preferred alternative. This is the result of the Mercury Export Ban Act as of October 14, 2008. The DOE states that "All practicable means to avoid or minimize environmental harm from the alternative selected have been adopted."

Reference/Link

The link below will allow you to view/print this record of decision.

<https://www.govinfo.gov/content/pkg/FR-2019-12-06/pdf/2019-26344.pdf>

D. **Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act**

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: December 19, 2019

Effective Date: December 19, 2019

Summary

The Environmental Protection Agency (EPA) has reconsidered several parts of the 2017 Risk Management Program (RMP) which the Agency established under the authority in the Clean Air Act. The EPA has concluded a better approach is to improve the performance of a subset of facilities by achieving greater compliance with RMP regulations instead of imposing additional regulatory requirements on the larger population of facilities. The EPA has chosen to rescind certain amendments to these regulations, as they are no longer considered reasonable or practicable. This rule applies to the facilities that are subject to the chemical accident prevention requirements at 40 CFR part 68.

The Environmental Protection Agency (EPA) has made changes to the Risk Management Program (RMP) Amendments in order to promote better emergency planning and public information revolving around accidents. The changes to the RMP amendments final rule aim to maintain consistency of RMP accident prevention requirements with the OSHA Process Safety Management (PSM) standard, address security concerns, reduce unnecessary regulations and regulatory costs and revise some compliance dates to provide necessary time for program changes.

The Following are the requirements that were removed from the RMP Amendments:

- It is no longer necessary to hire a third-party to conduct the compliance audit after an RMP reportable accident. EPA retains the ability to require third party audits under appropriate circumstances.
- This rule will change the local emergency response coordination amendments by changing the language so that it reads that only information necessary for developing

and implementing the local emergency response plan is required to be shared with local organizations.

- It is no longer a requirement to assess theoretically safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards.
- It is no longer necessary to conduct and document a root cause analysis after an RMP reportable accident or near miss. This was rescinded to maintain consistency with OSHA PSM standard.
- It is no longer necessary for the hazard review to include findings from incident investigations.
- It is no longer a requirement to give the public facility chemical hazard information and access to community emergency preparedness information upon request.

The Following are the modifications to the RMP Amendments:

- The requirement that facilities must coordinate annually with local response organizations and document coordination activities has been retained.
- The provision to reduce potential security risks associated with avoiding the unnecessary and open-ended information disclosure provision has been modified to enable emergency response planners to obtain necessary information.
- The annual notification drills have been retained.
- The requirement to perform field and tabletop exercises has been retained. Tabletop exercises must occur at least once every three years. They have also modified the frequency of field exercises by removing the minimum frequency requirement and mandating owner/operators to consult with local emergency response officials to establish appropriate frequency.
- The requirement that a facility must hold a public meeting following any accident with an offsite impact has been modified. Public meetings are now only required following the occurrence of a risk management plan reportable accident with offsite impacts specified in § 68.42(a) (i.e., known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage). These meetings still must be held 90 days after the qualifying accident.

This action has made delays to the rule's compliances dates in §68.10 and §68.96 as follows:

	New Date
Owners and operators will be required to have exercise plans and schedules meeting the requirements of §§ 68.93 and 68.96 in place by	December 19, 2023
Perform first notification exercise by	December 19, 2024
Perform first tabletop exercise by	December 21, 2026
Perform first field exercise	<i>Determine with local response agencies</i>
Reporting under § 68.160(b)(21) after December 19, 2024, whether a public meeting required by § 68.210(b) occurred	December 19, 2024
Reporting after December 19, 2024, emergency response program information specified in § 68.180 as revised by the January 13, 2017 final Amendments rule and this final rule.	December 19, 2024

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-12-19/pdf/2019-25974.pdf>

E. The Basel Convention Ban Amendment

Agency

Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA)

Dates

Published Date: 12/17/2019

Effective Date: 12/05/2019

Summary

The Basel Convention recently added certain plastic wastes as “other wastes” under Annex II. The Basel Convention is a global agreement that governs the movement of hazardous and other wastes between countries. This agreement is the primary international legal framework governing the circular economy. The Ban Amendment to the Basel Convention will prohibit the shipment of hazardous waste from Organisation for Economic Co-operation and Development (OECD) countries to non-OECD countries for disposal, recycling or recovery. This Ban Amendment was originally adopted in 1994 but has been pending due to the need for sufficient ratifications to meet its entry into force threshold. This Ban does not impact wastes that are hazardous due to the laws of the exporting or importing country but are not hazardous according to Article 1(1)(a) of the Convention. This Ban Amendment does not affect shipments of “other wastes” under the Convention.

This is significant because the Convention recently added certain plastic wastes as “other wastes” under Annex II. Therefore, these certain plastics will no longer be affected by the Ban Amendment.

The United States is a non-party to the Basel Convention. Therefore shipments of wastes covered under the Basel Convention (both “hazardous” and “other” wastes) are already prohibited under the Convention’s ban on trade with non-parties, unless the shipment is covered in a separate “Article 11” agreement that allows the movement. The Ban will not affect trade between Annex VII countries, between non-Annex VII countries, or shipments of hazardous waste from a non-Annex VII country to an Annex VII country.

Reference/Link

The link below will provide more information on this topic.

<http://www.basel.int/Implementation/LegalMatters/BanAmendment/Overview/tabid/1484/Default.aspx>

F. Modernizing the Administrative Exhaustion Requirement for Permitting Decisions and Streamlining Procedures for Permit Appeals

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 12/03/2019

Comments Due: 01/02/2020

Summary

This is a proposed rule intended to streamline and modernize part of the Agency's permitting process by creating a new, time-limited alternative dispute resolution process (ADR process) as a precondition to judicial review. The parties in the ADR process may agree unanimously to either extend the ADR process or proceed with an appeal before the Environmental Appeals Board (EAB). Otherwise, the permit would become final and could be challenged in federal court.

The EPA proposes to amend the current appeal process in order to clarify the scope and standard of EAB review, remove a provision authorizing participation in appeals by *amicus curiae*, and eliminate the EAB's authority to review Regional permit decisions on its own initiative, even absent of an appeal. In order to increase efficiency, the agency proposes to establish a 60-day deadline for the EAB to issue a final decision once an appeal has been fully briefed and argued and to limit the length of EAB opinions to only as long as necessary to address the issue raised in an appeal. The availability of extensions to file briefs will be limited under the proposed rule.

This proposed rule will apply to permits issued by or on behalf of the EPA under the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and the Resources Conservation and Recovery Act. In addition to these permit appeal reforms, the EPA proposes other additional reforms in order to provide tools to better allow the Administrator to exercise his or her statutory authority together with appropriate checks and balances on how the Board exercises its delegated authority. EAB Judges will have twelve-year terms for EAB Judges, which the Administrator may renew at the end of that twelve-year period or reassign the Judge to another position within EPA.

Lastly, a new mechanism where the Administrator and the General Counsel can issue a dispositive legal interpretation in any matter pending before the EAB is being proposed. This proposal may be of interest to persons and entities that challenge EPA permitting decisions under the National Pollutant Discharge Elimination System (NPDES) program and Clean Air Act (CAA).

Reference/Link

The link below will allow you to view/print this safety advisory notice.

<https://www.govinfo.gov/content/pkg/FR-2019-12-03/pdf/2019-24940.pdf>

G. Community Right-to-Know; Corrections to Toxics Release Inventory (TRI) Reporting Requirements

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 11/28/2019

Comments Due: 01/28/2020

Summary

This is a proposed rule to correct the language in the existing Toxic Release Inventory (TRI) Program. These corrections will update identifiers, formulas, and names for certain TRI-listed chemicals and updates to the text that identifies which chemicals the 0.1 percent *de minimis* concentration applies. This will fix the regulation because it was cross-referencing a no-longer accurate OSHA regulatory citation. This action will not change the regulatory requirements of the TRI program.

Specifically, the EPA is proposing to:

- remove Ammonium nitrate (solution), Ammonium sulfate (solution), Flumetralin, and Methylenebis (phenylisocyanate) (MDI).
- incorporate the following chemicals into 40CFR 372.65(b): Toluene-2, 4-diisocyanate (2,4-TDI) and Vinyl bromide.
- correct the following CASRNs: Phosphorus (yellow or white) and d-trans-Allethrin.
- correct the following chemical definitions: Cyanide compounds category and Polychlorinated alkanes category.
- correct errors surrounding the following chemical lists: 2,2-Dibromo-3-nitrilopropionamide (DBNPA), Methyl mercaptan, Polybrominated biphenyls (PBBs) category,
- remove leading zeros from CASRNs,
- correct errors in the list of lower thresholds for chemicals of special concern, and revision of chemical names.
- make changes to the text of the *de minimis* definition. This change entails if a toxic chemical is present in a mixture of chemicals at a covered facility and the toxic chemical is in a concentration in the mixture below 1 percent of the mixture, or 0.1 percent of the mixture in the case of a toxic chemical which is a carcinogen as defined in 29CFR 1910.1200(d)(4). The addition of this language will result in no changes to the way that carcinogens are defined for purposes of EPCRA section 313 *de minimis* determinations.

Comments for this proposed rule are due by January 28, 2020. Stakeholders include those that manufacture, process, or otherwise use any TRI listed chemicals.

Reference/Link

The link below will allow you to view/print this safety advisory notice.

<https://www.govinfo.gov/content/pkg/FR-2019-11-29/pdf/2019-25356.pdf>

H. EPA Releases PFAS Groundwater Guidance for Federal Cleanup Programs, Fulfilling PFAS Action Plan Commitment

Agency

Environmental Protection Agency (EPA)

Dates

Published Date: 12/20/2019

Effective Date: 12/20/2020

Summary

The EPA issued Interim Recommendations for addressing groundwater contaminated with Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonate (PFOS) under federal cleanup programs. This is an active and ongoing effort for the agency. The EPA acknowledges that the scientific information on these compounds continues to evolve, therefore the EPA will continue to develop and assess toxicity information, test methods, laboratory methods, analytical methods, exposure models, and treatment methods.

The guidance recommends using a screening level of 40 parts per trillion (ppt) to determine if PFOA and/or PFOS is present at a site and may warrant further action. Additionally, the guidance recommends using EPA's PFOA and PFOS Lifetime Drinking Water Health Advisory level of 70 ppt as the preliminary remediation goal (PRG) for contaminated groundwater that is a current or potential source of drinking water, where no state or tribal MCL or other applicable or relevant and appropriate requirements (ARARs) are available or sufficiently protective.

Reference/Link

The link below will allow you to view/print this announcement of Interim Guidance..

<https://www.epa.gov/newsreleases/epa-releases-pfas-groundwater-guidance-federal-cleanup-programs-fulfilling-pfas-action>

I. Annual Random Controlled Substances Testing Percentage Rate for Calendar Year 2020

Agency

Department of Transportation (DOT)

Dates

Published Date: 12/27/2019

Effective Date: 01/01/2020

Summary

The FMCSA announces that it is increasing the minimum annual percentage rate for random controlled substances testing for drivers of commercial motor vehicles (CMVs) requiring a commercial driver's license (CDL) from the current rate of 25 percent of the average number of driver positions to 50 percent of the average number of driver positions, effective in calendar year 2020.

The FMCSA Administrator must increase the minimum annual random testing percentage rate when the data received under the reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent. Based on the results of the 2018 FMCSA Drug and Alcohol Testing Survey, the positive rate for controlled substances random testing increased to 1.0 percent. Therefore, the Agency will increase the controlled substances minimum annual percentage rate for random controlled substances testing to 50 percent of the average number of driver positions.

The minimum annual percentage rate for random alcohol testing will remain at 10 percent.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-12-27/pdf/2019-28164.pdf>

J. Extension of Compliance Date for States' Query of the Drug and Alcohol Clearinghouse

Agency

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

Dates

Published Date: 12/13/2019

Effective Date: 01/06/2020

Summary

The Clearinghouse is a database created by the Federal Motor Carrier Safety Administration (FMCSA) that contains DOT drug and alcohol test result information for CDL drivers. The purpose of the Clearinghouse is to maintain records of all drug and alcohol program violations in a central repository and require that employers query the system to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from driving commercial motor vehicles.

FMCSA extends the compliance date for the requirement established by the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) final rule that States request information from the Clearinghouse before completing certain commercial driver's license (CDL) transactions. The States' compliance with this requirement, currently due to begin on January 6, 2020 is delayed until January 6, 2023. This rule will, however, allow States the option to voluntarily request Clearinghouse information beginning on January 6, 2020.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-12-13/pdf/2019-26943.pdf>

K. **Walking-Working Surfaces, Personal Protective Equipment (Fall Protection Systems), and Special Industries (Electric Power Generation, Transmission, and Distribution); Corrections**

Agency

Occupational Safety and Health Administration (OSHA)

Dates

Published Date: 12/17/2019

Effective Date: 12/17/2023

Summary

OSHA issued several corrections to its Walking-Working Surfaces Personal Protective Equipment (Fall Protection Systems), and Special Industries (Electric Power Generation, Transmission, and Distribution) rule that was published.

They include:

Ladders (§ 1910.23) (correction 42" is minimum, not exact measurement)

Current § 1910.23(d)(4) requires employers to ensure that the side rails of through or side-step ladders extend 42 inches above the top of the access level or landing platform served by the ladder. As stated in the preamble to the final rule, the agency intended workers to have sufficient handholds "at least 42 inches" above the highest level on which they will step when reaching the access level ([81 FR 82494](#), 82542). OSHA is correcting this error by revising § 1910.23(d)(4) to state that 42 inches is the minimum—not the exact—measurement for fixed ladder side rail extensions.

Stairways (§ 1910.25) (All articulating stairs are excluded from coverage)(Figure Table D-1 missing title)

Current § 1910.25(a) sets forth the types of stairways covered under this section. These include all stairways except for stairs serving floating roof tanks, stairs on scaffolds, stairs designed into machines or equipment, and stairs on self-propelled motorized equipment.

In this correction, OSHA is clarifying that articulated stairs, which were excluded from coverage by the rule adopted in 1971 ([36 FR 10474](#)), as well as by the rule proposed in 1990 ([55 FR 13360](#), 13363), are not covered by the current standard. In the 2010 proposed rule and the 2016 final rule, OSHA referred to these stairs as "stairs serving floating roof tanks" but did not call them "articulated stairs." ([75 FR 28862](#), 28882; 81 FR at 82555).

OSHA is now clarifying that all articulated stairs used in the general industry, not just those serving floating roof tanks, remain excluded from coverage by § 1910.25. By not including this exception, the standard would require all articulated stairs that do not serve floating roof

tanks, including those that were previously excluded, to meet the requirements set forth in § 1910.25. OSHA did not intend for any types of articulated stairs to be covered by the standard.

The figure at [29 CFR 1910.25\(c\)](#) immediately after Table D-1 does not have a title even though it is referred to as Figure D-8 in § 1910.25(c)(4). The title of the figure was included in the proposed rule (75 FR at 29137) but mistakenly left out of the final rule (81 FR at 82989). This document adds the missing title to the figure: “Figure D-8—Dimensions of Standard Stairs”.

Scaffolds and Rope Descent Systems (§ 1910.27) (Unit of measure typo 2,268kg)

In paragraph (b)(1)(i) of § 1910.27, OSHA is correcting a typographical error in the metric parenthetical for 5,000 pounds. The parenthetical currently states the metric equivalent to 5,000 pounds is 268 kg. The correct metric equivalent is 2,268 kg.

Fall Protection Systems and Falling Object Protection—Criteria and Practices (§ 1910.29) (Table D-11 missing wording top rail & end post)

OSHA is correcting Figure D-11 to include labels identifying the top rail and end post in the top diagram of the figure. The words “top rail” and “end post” were mistakenly omitted when the final rule was published in the Federal Register (81 FR at 82995).

Personal Fall Protection Systems (§ 1910.140) (gate testing snap hooks & carabiners requirement)

Current § 1910.140(c)(8) requires D-rings, snap hooks, and carabiners to be proof tested to a minimum tensile load of 3,600 pounds without cracking, breaking, or incurring permanent deformation. The provision also requires the gate strength of snap hooks and carabiners to be proof tested to 3,600 pounds in all directions. In the November 18, 2016, final rule (81 FR at 82653), OSHA intended to be consistent with the ANSI/ASSE Z359.12-2009 consensus standard, Connecting Start Printed Page 68795 Components for Personal Fall Arrest Systems. That consensus standard requires snap hooks, carabiners, and D-rings (and other hardware) to be proof tested to 3,600 pounds (ANSI/ASSE Z359.12-2009, section 3.1.1.6) and requires the gate of snap hooks and carabiners to be capable of withstanding a minimum load of 3,600 pounds without the gate separating from the nose of the snap hook or carabiner body by more than 0.125 inches (ANSI/ASSE Z359.12-2009, section 3.1.1.3).

OSHA correctly added the first requirement to the 2016 final rule—namely the requirement that snap hooks, carabiners, and D-rings be proof tested to 3,600 pounds. When it came to the gate strength requirement, OSHA mistakenly added the requirement that the gate strength of snap hooks and carabiners be proof tested to 3,600 pounds in all directions instead of adding the intended requirement that the gate of snap hooks and carabiners be capable of withstanding a minimum load of 3,600 pounds without the gate separating from the nose of the snap hook or carabiner body by more than 0.125 inches. It should also be noted that proof testing of the gates of snap hooks and carabiners could be destructive to the equipment, rendering them unsafe for workers in the field.

In this document, OSHA is correcting the gate strength provision to be consistent with the national consensus standard, as originally intended, and as stated in letters of interpretation to the National Association of Tower Erectors (NATE) (see response to question 5 here:

<https://www.osha.gov/laws-regs/standardinterpretations/2017-08-18>) and the International Safety Equipment Association (ISEA) (see response to question 1 here: <https://www.osha.gov/laws-regs/standardinterpretations/2017-08-31>).

Electric Power Generation, Transmission, and Distribution (§ 1910.269) (incorrect references)

Section 1910.269(h)(2) contains references to ladder standards (§§ 1910.25(d)(2)(i) and (iii) and 1910.26(c)(3)(iii)) that are not the correct references. OSHA is revising § 1910.269(h)(2) by replacing the incorrect references with the correct references, which are § 1910.23(c)(4) and (9).

The corrections are effective immediately.

Reference/Link

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

<https://www.govinfo.gov/content/pkg/FR-2019-12-17/pdf/2019-27114.pdf>