

Reguletter

New RMP*eSubmit Beta Test Underway

U.S. EPA is ramping up to launch a new and improved web-based portal for the submission of Risk Management Plans (RMP) in time for the next round of five-year updates. MCPR's affiliate Asmark Institute has been participating in the Beta test of the new web-based software. U.S. EPA has made several improvements in how the submission process works. The new system eliminates the need for hard copy certifications, diskettes and Certified Mail. The RMP document has undergone a new look with an improved and simplified format that separates/moves the data to a column on the right side of the paper. As part of the new system, U.S. EPA has adopted a certification system that is very similar to that used by the Department of Homeland Security (DHS). The entire process is expected to be web-based. They utilize new digital signature technology that may be a bit cumbersome at the beginning, but will prove to be beneficial in the long run. **In June 2009, EPA estimates that approximately 8,000 RMP facilities are due for the five-year update of their Risk Management Plans.** Asmark Institute will provide guidance to coincide with the launch and announcement of the new RMP*eSubmit and MCPR will pass along this information to our members. (Asmark Institute)

OSHA Allows Electronic Written Programs

OSHA recently announced that it would allow a written program to be in either paper or electronic format in a letter of interpretation issued September 16, 2008. Electronic versions of the program must meet all other requirements of the standard in question, and employers must make sure that there are no barriers to employee access, especially where the standard requires that a written program must be made available to employees. OSHA allows for paper copies, electronic (computer) access, microfiche and other alternatives as long as no barriers to immediate employee access are created. For instance, if a computer is used, all employees must know how to operate and obtain the written program from the system. The September announcement is consistent with past interpretations by OSHA concerning access to documents such as Material Safety Data Sheets (MSDS). (Asmark Institute)

OSHA Expressly Clarifies "Each Employee"

OSHA is amending its standards to make it clear that employers have a duty to provide personal protective equipment (PPE) and training to each employee covered by the standard. Regardless of whether a provision expressly states that PPE or training must be provided to "each employee" this is the expectation, according to OSHA. To accompany OSHA's longstanding position on this subject, the agency is clear that separate violations will occur for each employee who is not provided the required PPE or training, and that a separate citation item and proposed penalty may be issued for each. The agency notes that these amendments do not add any new compliance obligations. The amendments further clarify that training and personal protective equipment (including eye, hand, face, head, foot, and hearing protection, as well as respirators and other forms of PPE) standards apply to each employee. This final rule became effective on January 12, 2009 and affects most of the agency's PPE standards including 29 CFR 1910 General Industry. (Asmark Institute)

New Enforcement Policies for OSHA Inspectors

OSHA revised its enforcement policies and procedures in the Field Operations Manual, the 329-page reference document used by field officers when conducting inspections, issuing citations, and proposing penalties. The revision includes significant changes. More detailed information on the health inspection enforcement policy, violations, industry sectors and inspection procedures can be found, as well as a variety of other procedures that OSHA compliance officers must follow. Type http://www.osha.gov/OS-hDoc/Directive_pdf/CPL_02-00-148.pdf into your web browser to access a copy of the new Field Operations Manual. (Asmark Institute)

MCPR Members in Flood Zones

MCPR is very concerned about the welfare of our members and dealers in the flood areas of the Red River Valley and other areas of Minnesota. Call Jessi and Bill right away with questions, for assistance and to let others know of special concerns or problems you may encounter. In addition, the MN Department of Agriculture staff who visited with MCPR leaders last week during our Board meeting asked MCPR to remind our members of the obvious. Please get your facilities ready for possible flooding this spring. Take the correct precautions to protect your product from being affected by the potential flooding. Please be careful out there!!!



Please Define “Immediate Notification”

EPA rules require the owner or operator of a facility to immediately notify the appropriate agencies when a hazardous substance is released. The rules also require that a follow-up written notice be sent as soon as practicable. If you haven’t looked into the meaning of “immediate” and “as soon as practicable,” you may not realize how quickly a violation can occur. Immediate notification of a release is required under two regulations:

- The rules in 40 CFR 302.6 require the person in charge of a facility or vessel from which a hazardous substance has been released in an amount that meets or exceeds its reportable quantity to immediately notify the National Response Center as soon as he/she has knowledge of the release.
- Under 40 CFR 355.40, the owner or operator of a facility must immediately notify the appropriate governmental entities for any hazardous substance release that requires notification under 302.6, and releases of extremely hazardous substances.

The notification must be given to state emergency response commissions (SERCs) and community emergency coordinators for the local emergency planning committees (LEPCs) to be affected by the release. The regulations do not define “immediate notification.” However, the Legislative History of the Superfund Amendments and Reauthorization Act of 1986 says that “delays in making the required notifications should not exceed 15 minutes after the person in charge has knowledge of the release. Immediate notification requires shorter delays whenever practicable.” Enforcement documents instruct EPA staff to begin assessing penalties when notification exceeds 15 minutes. (Asmark Institute)

Recent Court Decision Puts NPDES Permits In-Play

A three-judge panel of the 6th Circuit Court of Appeals earlier this month vacated an EPA rule that allowed pesticides to be applied to U.S. waters without a Clean Water Act permit. On November 27, 2007, EPA issued the final rule, which states that pesticides applied in accordance with the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are exempt from the Clean Water Act’s National Pollutant Discharge Elimination System (NPDES) permitting requirements. The recent court ruling held that all biological pesticides are pollutants requiring NPDES permits if they reach waters of the U.S. Similarly, any residue or excess from chemical pesticide applications that reach waters of the U.S. would be considered pollutants. MCPR is waiting for an analysis on the effects this will have on retailers and will pass along this information to our members once available. (Asmark Institute)

Proposed Legislation Would Require Responsibility for Contractors

New proposed Legislation would require “site-controlling” employers to keep an injury log for temporary employees and contractors. Representative Gene Green (D-Houston) has introduced legislation, H.R. 242, which would require site-controlling employers to keep a site log for all recordable injuries and illnesses occurring among all employees on their worksite. The site-controlling employer would have to keep the log for direct employees, as well as workers employed by contractors or temporary help or leasing services. The bill defines “site-controlling employer” as the employer that has primary control over the work on a particular work site and supervises the employees on a day-to-day basis on a particular work site. (Asmark Institute)

FMCSA Names 16 Deadly Sins for New Motor Carriers

New motor carriers face losing their authority if they commit any one of the newly identified 16 deadly sins that the Federal Motor Carrier Safety Administration (FMCSA) outlines in a new final rule according to the Owner-Operator Independent Drivers Association (OOIDA). The final rule was published in the Federal Register Tuesday, December 16, 2008 and goes into effect February 17, 2009, with a compliance deadline of December 16, 2009. Once the regulation is in effect, truckers and trucking companies will have their authority yanked if they are found to have violated one of 16 different safety regulations during the new entrant safety audit. If one of the violations is found during a roadside inspection, that can trigger an “expedited action,” which is a safety audit or compliance review. The key safety regulations, quickly dubbed the “16 deadly sins” by industry insiders, are:

- Failing to implement an alcohol and/or controlled substances testing program.
- Using a driver known to have an alcohol content of 0.04 or greater to perform a safety-sensitive function.
- Using a driver who has refused to submit to an alcohol or controlled substances test required under part 382.
- Using a driver known to have tested positive for a controlled substance.
- Failing to implement a random controlled substances and/or alcohol testing program.
- Knowingly using a driver who does not possess a valid CDL.
- Knowingly allowing, requiring, permitting, or authorizing an employee with a commercial driver’s license which is suspended, revoked or canceled by a state, or who is disqualified to operate a commercial motor vehicle.
- Knowingly allowing, requiring, permitting, or authorizing a driver to drive who is disqualified to drive a commercial motor vehicle.
- Operating a motor vehicle without having in effect the required minimum levels of financial responsibility coverage.
- Operating a passenger-carrying vehicle without having in effect the required minimum levels of financial responsibility.
- Knowingly using a disqualified driver.
- Knowingly using a physically unqualified driver.
- Failing to require a driver to make a record of duty status.
- Requiring or permitting the operation of a commercial motor vehicle declared “out-of-service” before repairs are made.
- Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again.
- Using a commercial motor vehicle not periodically inspected.

Most of the violations are a “one strike and you’re out” scenario. Any motor carrier found to fail the new entrant safety audit must be notified within 45 days of the review. Once notified that they failed the audit, the motor carrier has 60 days to correct the problems or lose their operating authority. Passenger-carrying operations and hazmat haulers are singled out by being given only 45 days to correct any violations in their safety audits. (Asmark Institute)

This information is believed to be reliable by MCPR. However, because of constantly changing government regulations, interpretations and applicability or the possibility of human, mechanical or computer error, MCPR does not guarantee the information as suitable for any particular purpose.