WPMA
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weekly update

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FOUR NEW SYNTHETIC OPIOIDS ADDED TO CDL DRIVER DRUG TESTING REQUIREMENTS

The U.S. Department of Transportation (DOT) is amending its drug testing requirements for CDL drivers by adding four commonly abused opioids, clarifying existing requirements and removing certain urine testing methods. The DOT is making the changes in order to harmonize the agency's drug testing requirements with the Department of Health and Human Services (HHS) Mandatory Guidelines established for Federal drug-testing programs for urine testing. Federal law requires that U.S. DOT drug testing for CDL drivers mirror the HHS standards.

New Drugs Added to Testing Panel

Under the amendments, CDL drivers will be tested for hydrocodone, hydromorphone, oxymorphone, and oxycodone. The drugs are usually taken as pills, both legally and illegally. According to the Centers for Disease Control and Prevention (CDC),, opioid abuse has seen a dramatic increase in the past 10 years across all socio-economic classifications. The DOT also said it is removing methylene dioxyethyl amphetamine (MDEA) from the existing drug testing panel and adding methylene dioxy amphetamine (MDA). Testing for the new drug panels will start on January 1, 2018.

Possible Expansion of Test Methods

The final DOT rule also clarifies that only urine testing is currently allowed for DOT drug tests. Point-of-collection urine testing or instant tests are not allowed. However, the HHS is considering addition of new drug testing methods other than urine collection. The HHS is studying the effectiveness of hair samples and oral swabs to detect drug use. The DOT indicated that it would likely add both methods to its own standards but can't do so until the HHS acts.

Removal of Blind Specimen Testing

Finally, the DOT is removing blind specimen testing requirements from the drug testing program. The blind testing requirement has been part of the program since its inception. The requirement for employers and certified third-party testing consortiums to submit blind samples was intended to help ensure the accuracy of the laboratory testing process. Under the current regulation, an employer will send a blind specimen to an HHS-certified laboratory, accompanied by a Federal Drug Testing Custody and Control Form (CCF) with the name of a fictitious donor, for quality control purposes to see if the laboratory's results match the known contents of that particular blind specimen. The DOT noted that not one false positive was detected from a single blind specimen in more than 25 years of the federal drug testing requirements. The DOT is eliminating the blind sample requirement to reduce the regulatory burden on CDL driver employees.

NEW ELECTRONIC LOG BOOK REQUIREMENT FOR RECORDING DRIVERS HOURS OF SERVICE (HOS)

The Federal Motor Carrier Safety Administration's (FMCSA) deadline for compliance with electronic logging device (ELD) requirements for recording driver's daily hours of service (HOS) is December 16, 2017. The ELD rule was mandated by Congress as part of the 2012 transportation authorization and funding law known as Moving Ahead for Progress in the 21st Century Act (MAP-21). The law directs the FMCSA to require all CDL drivers who currently keeping written hours of service log books to switch to electronic recording devices. The FMCSA promulgated a final rule implementing the ELD mandate back in 2015. Efforts by industry stakeholders to rescind or delay the ELD mandate have failed thus far, including an appeal to the U.S. Supreme Court. PMAA is currently requesting an expansion of the 100-air mile radius exemption from keeping written log books to a 300 air-mile radius. This would expand the exemption from using ELDs to a larger class of short haul drivers. The final rule contains many exemptions to the ELD requirement and provides an extended compliance deadline of December 16, 2019 for those drivers already using automatic onboard recording devices (AOBRDS) to log hours of service.

There is a lot of conflicting information circulating around the industry from a variety of sources that is incomplete, inaccurate, and even misleading. It is important for petroleum marketers to fully understand the requirements of the EDL rule, including the exemptions and the flexibility it provides to make compliance less onerous in terms of both time and money.

HOUSE PASSES COMPREHENSIVE TAX REFORM PLAN

Senate Finance Committee Passes its Version

Yesterday, the House passed the "Tax Cuts and Jobs Act," a tax reform plan which would include the biggest cuts and changes in 30 years, by a vote of 227-205. Thirteen Republicans, mostly those representing high-tax states, joined all House Democrats in opposing the bill. The House bill reduces the number of total individual rates from seven to four (12 percent, 25 percent and 35 percent) and the top rate would remain at 39.6 percent for high-income Americans. The corporate rate would be reduced from 35 to 20 percent while pass-through businesses' tax rate would be reduced to 25 percent for businesses and 9 percent for businesses earning less than $75,000 in annual income. The majority of small businesses are organized as pass-throughs meaning that profits are passed on to the owner and reported on his/her individual tax return.

Some of the highlights of the House GOP Tax Reform Plan important to petroleum marketers include:

- Doubles the estate tax (death tax) exemption to roughly $11 million, from $5.49 million, and eventually repeals the estate tax altogether, phasing it out entirely in six years. PMAA supported repealing the death tax.
- Reduces the Pass-through rate. The House tax plan treats pass through entities by providing a new tax rate of 9 percent for businesses earning less than $75,000 in income. The benefit is phased out as taxable income exceeds $150,000 and fully phased out at $225,000. The bill would still limit access to the new 25 percent tax rate. For business owners, just 30 percent of their income would qualify for that rate; the remaining 70 percent would be treated as wages. Or they could use a formula based on their level of capital investment to determine how much income would get the new rate.
- Preserves the step-up in basis on property transferred during an estate settlement which is good news for petroleum marketers. Under current law, family members who inherit a business take the business at its value as of the date of the original owner's death. However, if the step-up in basis were eliminated, the family members would be required to pay capital gains taxes on the original owners' gains in the business. Due to the detrimental effects, it would have on businesses, PMAA opposed any attempt to repeal the step-up in basis.
- Expands Business Expensing: Companies would be able to immediately write off the full cost of investments in their businesses, starting with assets purchased after September 28, 2017 and before January 1, 2023. Moreover, companies with average gross receipts of $25 million or less will be able to continue to deduct business interest. For those with average gross receipts of greater than $25m, the business interest deduction will be limited to 30% of adjusted gross income.
- Preserves the inventory accounting method, last in, first out (LIFO), which is good news for marketers. LIFO considers the costs of replacing inventory, thereby, giving a more accurate measure of the financial condition of the business and the economic income to which tax should apply. Repealing LIFO would force PMAA member companies currently using this method to report their LIFO reserves as income, resulting in a massive tax increase for small business petroleum marketers across the country.
- Increases Section 179 expensing limitation to $5 million and the phase-out amount would be increased to $20 million while modifying the definition of section 179 property to include qualified energy efficient heating and air-conditioning property would be effective for property acquired and placed in service after November 2, 2017.
- Preserves Section 1031 exchanges of like-kind property which is good news for petroleum marketers. Without the tax-deferral benefit that Section 1031 exchanges provide; small and medium sized businesses would not be as equipped to reinvest in their businesses and real estate values would decline.
- Increases the availability of the cash method of accounting by raising the current $5 million average gross receipts ceiling to $25 million.
- Repeals the Alternative Minimum Tax (ATM).
- Eliminates the electric vehicle tax credit of up to $7,500 that's currently offered to buyers of vehicles such as the Tesla Model 3, Chevrolet Bolt and Nissan Leaf. Currently, this tax credit is available until 200,000 qualified EVs have been sold in the United States by each manufacturer, at which point the credit begins to phase out for that manufacturer. Currently, no manufacturers have been phased out yet.

Meanwhile, the Senate Finance Committee passed its version last night which would keep the seven brackets, but generally with lower or equivalent rates – 10 percent, 12 percent, 22.5 percent, 25 percent, 32.5 percent, 35 percent and 38.5 percent. The standard deduction would be $12,000 for single filers and $24,000 for married couples. The Senate plan would also eliminate taxpayers' ability to deduct both state and local income and property taxes. The corporate rate would be reduced from 35 to 20 percent but would be delayed for one year and provides a 17.4 percent deduction for certain pass-through businesses' which would expire after 2025. Furthermore, whereas the House bill doubles the exclusion and fully repeals the estate tax, the Senate bill doubles the exclusion but does not fully repeal the tax. Lastly, the Senate bill repeals the penalties under the individual mandate in Obamacare, which requires everyone to obtain health insurance, in 2019. PMAA will have a more detailed analysis next week.

The Senate bill is being considered under budget reconciliation, which allows for expedited consideration and requires only a simple majority. However, to pass the tax overhaul under reconciliation rules in the Senate, the legislation can only increase the deficit by $1.5 trillion through fiscal 2027, with no deficit effects beyond the 10-year window. The committee-approved House bill would reduce revenue by $1.44 trillion over fiscal years 2018 through 2027, according to a recent estimate. The plan would continue to lose revenue in its tenth year, suggesting its deficit effects would continue outside the budget window. The Senate plan would reduce revenue by $1.41 trillion over a decade, according to a recent estimate. It would increase revenue by $30 billion in 2027, suggesting it wouldn't affect the deficit outside the budget window.

Senate leadership plans to move the measure to a floor vote the week of November 27. If the Senate can pass its version of the bill, then each chamber will need to reconcile differences. That bill would then need to be approved by both chambers before heading to Trump's desk. Lawmakers are hoping to put a final comprehensive tax bill on President Trump's desk before Christmas.

NATIONAL BRAKE INSPECTION ENFORCEMENT SWEEP RESULTS

The results of a recent nationwide roadside inspection blitz focusing on commercial motor vehicle brake safety have been released. The one-day event was organized by the Commercial Vehicle Safety Alliance (CVSA), a consortium of state and federal motor carrier enforcement officials from across the United States. The goal of Brake Safety Day is to reduce the number of crashes caused by poorly maintained braking systems on commercial motor vehicles (CMVs) by conducting roadside mechanical fitness inspections, and identifying and removing vehicles with critical brake violations from service. Inspectors conducted 6,361 roadside inspections during the enforcement sweep held on September 7, 2017. According to the U.S. Department of Transportation (DOT), brake-related violations are the largest percentage of all out-of-service violations cited during roadside inspections. The annual brake inspection blitz is important to petroleum marketers because it demonstrates what inspectors are looking for in brake performance during roadside inspections. CVSA reports that 14% of the vehicles inspected were placed out of service specifically for brake-related violations. The goal of Brake Safety Day is to conduct roadside inspections, and identify and remove vehicles with critical brake violations from our roadways in an effort to reduce the number of crashes caused by or made more severe by brake system deficiencies on commercial motor vehicles.

CVSA reported that of the 6,361 inspections conducted; 14% (1,064) resulted in a vehicle being placed out of service for brake-related violations; 22% (1,680) of vehicles inspected were placed out of service for vehicle related violations of any kind; and 78% of the vehicles inspected did not have any out-of-service conditions.

Brake Safety Day also captures data on how well antilock braking systems (ABS) are maintained in accordance with federal regulations. ABS help the driver to stop in the shortest possible distance under many conditions and to maintain steering control in situations when tires start to slip. Many participating jurisdictions surveyed ABS compliance. ABS violations were counted when the malfunction lamp did not work or the malfunction lamp stayed on, indicating a fault of some kind. The findings are as follows:

- 5,456 air-braked power units required ABS; 11% (610) had ABS violations.
- 3,749 trailers required ABS; 14% (540) had ABS violations.
- 821 hydraulic-braked trucks required ABS; 5% (45) had ABS violations.

According to CVSA, properly functioning brake systems are important to safe commercial motor vehicle operation. Improperly installed or poorly maintained brake systems can reduce braking efficiency and increase the stopping distance of large trucks and buses, posing serious risks to driver and public safety. ABS, combined with the brake system, provide a platform for stability control and for other safety-enhancing systems to function.

Brake Safety Day is part of CVSA's Operation Airbrake Program in partnership with the U.S. DOT's Federal Motor Carrier Safety Administration (FMCSA). More than 3.4 million brakes have been inspected since the program's inception in 1998.

SENATE COMMITTEE APPROVES ARCTIC REFUGE DEVELOPMENT

On Tuesday, the Senate Energy and Natural Resources Committee approved a bill (13-10) that would allow for oil and gas development of the Arctic National Wildlife Refuge (ANWR). Senator Joe Manchin (D-WV) was the only committee Democrat to vote in support of the bill. The bill would require two lease sales over the next ten years in a 1.5-million-acre coastal area and is expected to generate $1.1 billion in federal revenue over the next decade. This language is expected to be included in the Senate tax reform legislation.

FURTHER DEFINING OF COVERED ESTABLISHMENTS FOR MENU LABELING

This week, PMAA General Counsel Al Alfano released a more detailed explanation of which establishments are required to comply with the menu labeling rule which will go into effect in May 2018.

PMAA, NACS, and other like-minded associations continue to push for passage of the "Common Sense Nutrition Disclosure Act" (H.R. 772) introduced by Reps. McMorris Rodgers (R-WA) and Cardenas (D-CA) and S. 261 by Senators Blunt (R-MO) and King (I-ME) which would give retailers the flexibility they need to comply with the menu labeling regulations. It would allow retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Furthermore, the bill would clarify that advertisements and posters do not need to be labeled, and would provide flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals. Lastly, the bill would ensure that retailers acting in good faith are not penalized for inadvertent errors in complying with the rule and stipulates that individual store locations are not required to have an employee "certify" that the establishment has taken reasonable steps to comply with the requirements.

INFRASTRUCTURE PACKAGE FACES A LONG ROAD AHEAD

Cost Will Be Largest Barrier

Early this week, Senator Shelley Moore Capito (R-W.Va.) announced that she believes the biggest hurdle for the President's infrastructure package will be finding a way to pay for its massive price. Especially since two of the potential funding options — international tax reform and a gas tax increase — are probably no longer viable options. Still, Capito expects that an infrastructure package will ultimately pass and be signed into law.

Following Capito's statement, Republican members of the House Transportation and Infrastructure Committee met on Wednesday to discuss their priorities for an infrastructure package. Chairman Shuster's (R-Pa) informal roundtable reviewed priorities and what might be possible. Primary focus was on how to pay for the estimated $1 trillion package. Members felt that the $200 billion in public-private partnerships may increase, and another pay-for is expected to come from the economic growth created as a result of a tax overhaul. Although Administration officials were not at the meeting, they have been vetting ideas and concerns with the committee leadership.

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- Or call The Mirage directly at 800-627-6667 using WPM18A for the early bird rate.

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WPMA EXPO

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May 3-4, 2018 – NPM&CSA Big Dogs – Red Rock Casino – Las Vegas, Nevada
June 5-7, 2018 – MPMCSA Convention & Expo – Fairmont, MT
June 18-21, 2018 – Washington (WOMA) Convention – Suncadia Resort – Cle Elum, Washington
August 8-10, 2018 – Idaho (IPM&CSA) Convention – Coeur d'Alene Resort – Coeur d'Alene, Idaho
August 20-22, 2018 – New Mexico (NMPMA) Convention – Sandia Resort & Casino, Albuquerque, NM
September 12-14, 2018 – Utah (UPMRA) Convention – Doubletree by Hilton, Park City, UT

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