

FMCSA ONLINE DRIVER DRUG AND ALCOHOL DATABASE REQUIREMENTS SET TO START JANUARY 1, 2020

The Federal Motor Carrier Administration (FMCSA) is establishing the Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse (Clearinghouse). This new database will contain information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances (drug) and alcohol testing program for CDL drivers. Congress required the FMCSA to create the Clearinghouse in Section 32402 of the "Moving Ahead for Progress in the 21st Century Act (MAP-21)."

The Clearinghouse will provide FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before operating a CMV on public roads. Specifically, information maintained in the Clearinghouse will enable employers to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulations). Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later. FMCSA's Clearinghouse is scheduled to be implemented later this Fall.

Driver Requirements

Under the FMCSA program, every CDL driver who applies for a driving job must register in the online Drug & Alcohol Clearinghouse beginning January 1, 2020. FMCSA's Clearinghouse will require every driver who applies for a CDL driving job to:

- Register with the Clearinghouse.
- Log on to the Clearinghouse to provide an electronic "consent" to a prospective employer to search the Clearinghouse for the full details of any prior drug or alcohol program violations.

According to the FMCSA, the Clearinghouse website is the only valid method for drivers to provide consent for employers to access their drug and alcohol history. Drivers who fail to provide timely consent may result in a driver being prohibited from performing safety-sensitive functions (hauling HAZMAT) for that employer.

Employer Requirements

The Clearinghouse will require employers to do the following:

- Employers must query the Clearinghouse for current and prospective employees' drug and alcohol violations before permitting those employees to operate a commercial motor vehicle (CMV) on public roads.
- Employers annually query the Clearinghouse for each driver they currently employ.

State Driver Licensing Agencies will be required to query the Clearinghouse whenever a CDL is issued, renewed, transferred, or upgraded.

PMAA Will send out a more detailed compliance bulletin in June and follow up reminders through December. For more information, please contact Mark S. Morgan (MarkMorgan@verizon.net).

SBLC SUBMITS OVERTIME COMMENTS TO DEPT OF LABOR

Last week, the Small Business Legislative Council (SBLC), in which PMAA is a contributing board member, submitted comments on the Trump Administration's new proposed overtime rules for certain white-collar employees (executive, administrative, professional, and computing positions) and highly compensated employees.

Similar to the Obama-era efforts, the new Proposed Rule presents changes to the regulations that govern how employers can structure their relationship with their employees, which in turn, can impact a business's bottom line. Fortunately, the new proposed rule is less burdensome on small businesses. In general, the Fair Labor Standards Act (FLSA) requires employees be paid one and a half times their regular rate of pay for all hours worked over forty hours in a given workweek. Under the FLSA, there are, however, certain exemptions. Employees who fall under one of these exemptions do not have to be paid overtime.

The PMAA Board of Directors voted recently to support the Trump Administration's proposed white-collar exemption

salary threshold of \$35,308 per year (\$679 per week). PMAA also supported the proposed rule's intent to permit employers to satisfy the salary requirements through non-discretionary bonuses and incentive pay. PMAA opposed the proposed increase to the highly compensated exemption salary threshold and opposed any further efforts to add automatic future increases to the final rule.

EPA EXPECTED TO BACKPEDAL ON ETHANOL RINS MARKET REFORM PROPOSAL

Under pressure from the ethanol industry, the EPA is expected today to scrap its ethanol RINs market reform proposal and instead focus on issuing a waiver to allow E15 to be sold during the summer months. Independent refiners have sought changes to the RINs trading market to reduce ethanol RIN volatility and increase transparency to provide for a level playing field in the marketplace. Unfortunately, EPA said it would be difficult to finalize complex changes to the RINs market given the time crunch to finalize the E15 summer sales rule by June 1st. In an emailed statement, the EPA stressed it was not abandoning market reforms. "EPA is not watering down or 'jettisoning' the reforms considered in its proposal," the agency said. "EPA's final action, which will be signed by the summer driving season, is consistent with the president's direction last year and will help increase transparency and prevent price manipulation in the RIN market."

In March, EPA proposed a RIN market reform/E15 summer sales rule which attempted to find common ground between independent refiners and ethanol producers. The proposed RIN reforms included: prohibiting certain parties from being able to purchase separated RINs; requiring public disclosure when RIN holdings exceed specified thresholds; limiting the length of time non-obligated parties can hold RINs; and increasing the compliance frequency of the program from once annually to quarterly.

PMAA told the EPA that the proposed reforms could provide for a level playing field in the motor fuels marketplace by banning Wall Street commodity brokers from participating in RINs trading. Also, requiring disclosure when a party exceeds specific RINs holding thresholds would bring transparency to RINs trading and expose attempted hoarding. PMAA also argued that limiting the length of time separated RINs can be held and traded would spread RINs trading more evenly throughout the compliance year and prevent hoarding of RINs by traders until times of peak demand. EPA is expected to finalize the transparency requirements that would require public disclosure when RIN holdings exceed specified thresholds.

The EPA is fast tracking the proposed rule and it is expected to be completed today.

Additionally, Senate Agriculture Committee member Amy Klobuchar (D-MN) has recently promised an overhaul of how exemptions to small refiners are granted under the RFS program. She also plans to seek a legislative change to allow year-round sale of 15 percent ethanol fuel, a move that failed to advance out of committee last Congress.

HOUSE PASSES RETIREMENT PLAN LEGISLATION

On May 24, 2019, the House passed H.R. 1994, the "Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019" by a vote of 417 – 3. The bipartisan legislation is being hailed as a landmark retirement bill that will greatly expand retirement savings. In actuality, the bill is comprised of a number of relatively small improvements which taken together should improve the qualified retirement plan system. Meanwhile on the Senate side, the Senate Finance Committee Chairman Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) introduced S. 972, the Retirement Enhancement and Savings Act of 2019 (RESA) on April 1st.

These bills are largely identical and, because of their bipartisan nature and the strong support of members of Congress, appear to be on the fast track to becoming law. Look for a vote in the Senate in the next week or two. The Small Business Legislative Council, in which PMAA is a voting board member, has the full report.

EPA ADMINISTRATOR DIRECTS AGENCY LEADERS TO REFORM HOW COSTS AND BENEFITS ARE CONSIDERED IN RULEMAKING PROCESS

In a re-direction that will significantly alter some EPA rule proposals, EPA Administrator Andrew Wheeler signed a memo on May 13, 2019 directing agency leadership to develop rules for notice and comment that outline how cost-benefit considerations will be applied to future rulemakings.

The memorandum describes how, as part of the EPA efforts to advance its mission of protecting public health and the environment, the agency should also ensure that its regulatory decisions are rooted in sound, transparent and consistent approaches to evaluating benefits and costs. Many EPA statutes contemplate the consideration of benefits and costs as part of regulatory decision-making. However, benefits and costs have historically been treated differently, depending on the media office and the underlying authority. This has resulted in various concepts of benefits, costs and other factors that may be considered. This memo will initiate an effort to rectify these inconsistencies through statute-specific actions. With these improvements, the EPA is "taking another step to provide the public with a more open federal government and more effective environmental and public health protection."

Administrator Wheeler outlined the following principles to be followed in developing regulatory proposals: ensuring the agency balances benefits and costs in regulatory decision-making; increasing consistency in the interpretation of statutory

terminology; providing transparency in the weight assigned to various factors in regulatory decisions; and promoting adherence to best practices in conducting the technical analysis used to inform decisions. The first proposal is due from the air office later this year.

According to the National Association of Manufacturers President and CEO Jay Timmons, "Reforming the way the EPA performs cost-benefit analysis is likely to have a greater positive impact on the future of manufacturing in America than any single EPA regulatory action."

PLAN TO ATTEND THE 2020 WPMAEXPO



Mark your calendars for February 18-20, 2020. Make plans now to attend the 2020 WPMAEXPO. It will be held once again at the Mirage in Las Vegas, Nevada.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

June 4-6, 2019 – Montana (MPMCSA) Convention – Fairmont Hot Springs Resort – Fairmont, MT
June 20, 2019 – Utah (UPMRA) Summer Golf Classic - South Mountain Golf Course, Draper, UT
June 17-20, 2019 – Washington (WOMA) Convention – Suncadia Resort, Cle Elum, WA
August 5-7, 2019 – Idaho (IPM&CSA) Convention – Sun Valley Resort, Sun Valley, ID
August 19-21, 2019 – New Mexico (NMPMA) Convention – Sandia Resort & Casino, Albuquerque, NM
September 11-13, 2019 – Utah (UPMRA) – Convention – Zermatt Resort, Midway, UT
October 14, 2019 - Hawaii (HPMA) - Golf Tournament - Oahu Country Club, Honolulu, HI
February 18-20, 2020 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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Petro Pete: "People say nothing is impossible, but I do nothing every day."

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