

WPMA MARKETER MEMBERS - WE NEED YOUR VOTE!

WPMA NEEDS THE VOTE OF EVERY MARKETER MEMBER!

If you have not voted, thinking your vote does not matter - Your VOTE is needed now! At the June 13, 2014 WPMA Board Meeting, the Board of Directors voted to revise the WPMA Articles of Incorporation and Bylaws. The Articles revisions will clean up some grammatical issues and clarify the different classes of Membership. The Bylaws revisions will clean up grammatical issues, change the title of the Executive Director to Chief Executive Officer, define committees, add Section 12 (Operational Agreements between WPMA and the state associations), and revise the amendment process requiring 2/3 vote of the entire membership, to requiring 2/3 vote of the WPMA Board of Directors.



Each member has been sent an e-mail with instructions on where and how to vote. If you have not received this e-mail please contact the WPMA offices. (Associate members are not voting members of WPMA.)

FEDERAL ETHANOL MANDATE INCREASE LIKELY

On Tuesday, EPA Administrator Gina McCarthy said that the long-delayed 2014 RFS blending volume requirements final rule will be higher than what was proposed in late 2013. McCarthy was attending a Barclays CEO Energy-Power Conference luncheon in New York City in which she indicated the ethanol numbers will go up to reflect the increase in gasoline sales volume. "Since gasoline sales have been more robust than the agency previously expected, that will be reflected in the rule," she said. However, she did not indicate the exact amount.

The proposed rule has been sent to the Office of Management and Budget (OMB) for final review.

U.S. EPA FINES FOUR GAS STATION OWNERS \$287,100 IN PENALTIES FOR UST VIOLATIONS

The U.S. EPA has fined four gas station owners in upstate New York a total of \$287,100 in penalties for violations of federal underground storage tank regulations. The August 2012 complaint against the four companies alleged that one or more of them failed to:

- Meet corrosion protection or other new standards for two tanks and seven fuel lines.
- Conduct release detection every thirty days on eleven tanks.
- Perform annual tests of automatic line leak detector systems for nineteen underground storage tanks.
- Provide adequate equipment to protect against tank overfills for thirteen underground storage tanks.
- Conduct an annual line tightness test or conduct monthly monitoring of underground pressurized piping for seventeen fuel lines.
- Properly cap off two temporarily closed underground storage tanks.
- Keep adequate records of release detection monitoring for three facilities.
- Respond to a request for information for one facility.

"Gas station owners will be held accountable if they fail to follow environmental rules that protect our water," the EPA said. "When ground water is not protected from improperly maintained petroleum storage tanks, people and the environment are put at risk. All gas station owners must regularly monitor their underground storage tanks to prevent petroleum leaks." For more information on proper maintenance of underground storage tanks, click [here](http://www.epa.gov/oust/) (<http://www.epa.gov/oust/>).

COMMERCIAL VEHICLE GROUPS PETITION DOT ON SAFETY DATA POSTINGS

In February, the Government Accountability Office (GAO), a nonpartisan federal watchdog agency that works for Congress, issued a critical report on the quality of the safety data used by the DOT to determine motor carrier safety. The GAO report found that the safety data collected by the Federal Motor Carrier Safety Administration (FMCSA) through its Compliance, Safety Accountability (CSA) program is not a reliable predictor of motor carrier safety. The CSA program uses data from enforcement activity, roadside inspections and accidents involving commercial motor vehicles to set individual motor carrier safety scores, which in turn are used to establish a predictive crash risk. Motor carriers with a predictive crash risk over a certain threshold are targeted for FMCSA intervention. Intervention begins with an initial warning letter followed by closer FMCSA oversight including targeted roadside enforcement and investigative safety audits. Carriers with the poorest safety ratings can be ordered out of service by FMCSA. The GAO report criticized the

CSA data saying that of the 800 violations included in the motor carrier risk model, only two - speeding and failure to wear a seat belt, were reliable predictors of crashes. In addition, the CSA model was criticized for not including a sufficient amount of data on all carriers to establish a baseline risk for crashes. As a result, many motor carriers with no history of crashes have received a high predictive crash rate. The FMCSA said it would consider the findings in the GAO report but strongly defended the integrity of its data collection methodology and analysis. The FMCSA said that motor carriers identified for CSA intervention have a 79% higher crash rate than motor carriers not subject to intervention.

In June, FMCSA issued an Interpretative Rule and Statement of Policy that makes it possible for motor carriers to remove negative information from a key federal database used to determine motor carrier safety ratings. As a result, motor carriers may have some control over the information used to determine their FMCSA safety rating score.

The policy changed the federal Motor Carrier Management Information System (MCMIS) by giving state agencies the ability to update motor carrier safety information to reflect adjudicated citations related to roadside inspection violations. Prior to the policy change, motor carrier violations resulting from roadside inspections were sent to the MCMIS database without any ability to update the information after a court had a chance to review and rule on the underlying citation. Consequently, the motor carrier's MCMIS safety record would continue to list a "violation" even after a court dismissed the citation or found the carrier innocent.

The new FMCSA policy will be applied only to citations issued at roadside inspections beginning August 23, 2014. There is no retroactive applicability to existing citations. In addition, updates to reflect adjudicated results will not occur automatically. Instead, motor carriers will be required to electronically submit proof of adjudication through the FMCSA's DataQ's data portal. The documents will be reviewed by the applicable state motor carrier agency for authenticity and posted on MCMIS.

Recently, ten commercial vehicle trade associations petitioned Transportation Secretary Anthony Foxx to remove the public postings of the Safety Management Systems data and to address the GAO issues with the CSA program. Signers of the petition are: the American Trucking Associations, Owner Operator Independent Drivers Association, American Moving and Storage Association, the National Private Truck Council, the National Tank Truck Carriers, the Specialized Carriers and Rigging Association, Truckload Carriers Association, American Bus Association, National School Transportation Association and the United Motor Coach Association.

U.S. DOT TO ISSUE OUT-OF-SERVICE ORDERS FOR NONPAYMENT OF CIVIL PENALTIES

The U.S. DOT has issued a new rule that requires a person who is delinquent in paying civil penalties relating to the violation of the HMR or the FMCSR to cease transportation operations until payment has been made. This rule affects both *intra* and *interstate* petroleum marketers who transport fuel in a commercial motor vehicle. The rule is important to petroleum marketers because for the first time it punishes late or unmet payments with out-of-service orders. Important highlights of the rule are as follows:

1. Types of Violations Subject to the New Rule

- FMCSA - Violations of the FMCSR set forth in a Notice of Claim (NOC) issued by the Federal Motor Carrier Safety Administration (FMCSA) parts 390 through 397 (49 CFR 390 -397).
- PHMSA - Violations of the HMR set forth in a Notice of Probable Violation (NOPV) issued by Pipeline and Hazardous Materials Safety Administration (PHMSA) parts 100 through 187 (49 CFR 100 – 187).
- Violations issued in the form of a ticket *are not covered* under the rule. Tickets are issued for violations that do not "*substantially impact safety*".

2. Types of Enforcement Procedures Subject to the New Rule

- FMCSA - Federal Motor Carrier Safety Administration - FMCSA begins the process of assessing civil penalties by issuing a notice of claim (NOC). Each NOC sets forth the facts alleged; the provisions of the regulations violated; a proposed civil penalty; the time, form, and instructions for payment, contesting violation, or otherwise seek resolution of the claim. Once the NOC is fully adjudicated or a settlement reached, the FMCSA issues a final agency order. The order sets the payment terms and final penalty amount. This final rule affects only those respondents who violate the payment terms of an order.
- PHMSA – Violations that do not substantially impact safety are handled through the ticket process and are not covered under the new rule. For all other hazardous materials violations, PHMSA begins the process of assessing civil penalties by serving a notice of probable violation (NOPV) on a person alleging the violation of hazardous materials operations. The NOPV must include: citation of the provision(s) of the HMR that PHMSA believes the respondent has violated; a statement of the factual allegations; a statement of the right to present written or oral explanations, information, and arguments; a statement of the respondent's right to request a hearing; and the proposed civil penalty and payment information. Once the matter is fully adjudicated or a settlement is reached, PHMSA issues an order. Orders outline the terms and outcome of the enforcement action, including the final

penalty amount due, and they describe any payment arrangements made between the agency and the respondent. This final rule affects only those respondents who violate the payment terms of an order.

3. Out of Services Orders for Failure to Pay

- Under the final rule, the agency that issued the final order outlining the terms and outcome of an enforcement action will send the respondent a Cessation of Operations Order (COO) if payment has not been received within 45 calendar days after the payment due date or a payment plan installment date as specified in the final order. The COO would notify the respondent that it must cease hazardous materials operations on the 91st calendar day after failing to make payment in accordance with the agency's final order or payment plan arrangement, unless payment is made. A respondent will be allowed to appeal the COO within 20 days of receipt of the order according to the procedures set forth by the agency issuing the COO.

4. Effective Date

- The FMCSA and PHMSA will order a COO only for violations which occur on or after September 8, 2014. All existing violations before September 8, 2014 are not subject to the final rule.

For more information or questions contact Mark S. Morgan at mmorgan@pmaa.org or click [here](http://www.gpo.gov/fdsys/pkg/FR-2014-08-07/html/2014-18617.htm) (<http://www.gpo.gov/fdsys/pkg/FR-2014-08-07/html/2014-18617.htm>).

MARK YOUR CALENDARS FOR UPCOMING EVENTS

Coming Soon! September 10-12, 2014 – UPMRA Convention – Park City Marriott – Park City, Utah
2015:

May 14 – 15, 2015- Nevada (NPM&CSA) **BIG DOGS4** – Red Rock Hotel & Casino, Nevada

June 2 – 4, 2015 - Montana (MPMCSA) Convention – Northern Hotel, Billings, Montana

June 22 – 25, 2015 - Washington (WOMA) Convention – Suncadia Resort, Cle Elum, Washington

August 5 – 7, 2015 - Idaho (IPM&CSA) Convention - Sun Valley Lodge - Sun Valley, Idaho

2016:

August 3 – 5, 2016 - Idaho (IPM&CSA) Convention - Coeur d'Alene Resort - Coeur d'Alene, Idaho

2015 WPMA CONVENTION & CONVENIENCE STORE EXPO – LAS VEGAS, NEVADA

Don't Miss **Frank Caliendo**, comedian/actor/impressionist as Wednesday Keynote during the WPMA Convention. Mark your calendars for February 17-19, 2015. Make plans now to attend the 2015 WPMA Convention and Convenience Store Expo. It will be held once again at the Mirage in Las Vegas, Nevada.

Win - four US Open Tickets to June 18 – 21, 2015 – Chambers Bay, University Place, Washington – Contact your state executive director for the Scholarship Raffle Tickets

NPP A NEW WPMA MEMBER SERVICE

WPMA has partnered with NPP to provide members discounts on many products and services. NPP negotiates the rates, and makes them available to WPMA members. Membership with NPP is free, and there is no obligation to purchase. Discounts through Verizon, Expedia, Fastenal, Cradlepoint, and more.

Register Now: <https://associations.mynpp.com/myNPP/memberSavings.xhtml?guid=RB3WUOFG>

WPMA MEMBER SERVICES



Petro Pete: “If you don't step forward you are always in the same place.”

© 2014 Western Petroleum Marketers Association - All rights reserved. No part of this work may be reproduced or copied in any form or by any means - graphic, electronic, or mechanical, including photocopying, recording, or otherwise. The information herein is also intended for the sole purpose of members of the Western Petroleum Marketers Association (WPMA). Any other use is strictly prohibited without the express written consent of the WPMA. If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.

