

FMCSA PROPOSES TO INCLUDE NEWS “UNPREVENTABLE” CRASH CATEGORY WHEN CALCULATING MOTOR CARRIER AND DRIVER SAFETY RATINGS

The Federal Motor Carrier Safety Administration (FMCSA) is proposing to make permanent a commercial motor vehicle (CMV) crash pilot program that, for the first time, includes an “unpreventable” accident category on driver and motor carrier safety records. The FMCSA is making the proposal after an internal agency review of 5,600 reported truck crashes revealed that 94% were unpreventable but were not counted as such when calculating motor carrier safety ratings. The rule is important to petroleum marketers because motor carrier safety ratings determine insurance rates, carrier safety compliance oversight levels, inspection frequency and ultimately, authority to operate a CMV. The inclusion of an “unpreventable” crash category provides a more accurate picture of both motor carrier’s and driver’s safety performance record. The unpreventable category would also be added to carrier’s and driver’s posted safety performance records which are both available for public inspection.

In order for a crash to be classified as unpreventable, motor carriers would be required to request a review by the FMCSA and provide sufficient evidence that the accident could not have been “averted by an act, or failure to act by the motor carrier or driver.” The evidence to prove unpreventability must be “compelling,” according to the FMCSA, but could be demonstrated by something as simple as a police report. The FMCSA would have 60 days under the proposal to review the evidence and make a final determination of whether the accident was unpreventable, preventable or undecided. The FMCSA has identified 8 types of crashes that can be reviewed for unpreventability. They are crashes involving a commercial motor vehicle (CMV) that is:

- Struck by a motorist operating under the influence;
- Struck by a vehicle travelling in the wrong direction;
- Struck in the rear by a vehicle;
- Struck by a vehicle when the CMV is legally stopped or parked;
- Struck when an individual attempts suicide by stepping in front of a moving CMV;
- Struck after a vehicle hits an animal in the roadway;
- Struck by falling rocks or trees; and
- Struck by cargo or equipment from another vehicle.

The FMCSA also plans to review seven more types of crashes that would fall into the unpreventable category. These include when a CMV is:

- Struck when a vehicle fails to slow or stop in traffic;
- Struck when a vehicle fails to stop at a traffic control device;
- Struck by a vehicle making a U-turn or illegal turn;
- Struck by a motorist experiencing a medical emergency;
- Struck by a motorist who admits to falling asleep;
- Struck by a motorist who admits to being distracted; and
- When a crash involves a vehicle travelling in the wrong direction or a driver operating under the influence that causes another vehicle to strike the CMV.

The FMCSA is seeking public comment for 60 days after the proposal is published in the Federal Register. PMAA will submit public comments accordingly.

TRUMP ADMINISTRATION PLANS TO BAN FLAVORED E-CIGARETTES

FDA Sends Warning Letter to Juul Labs

On Wednesday, the Trump Administration announced that the U.S. Food and Drug Administration (FDA) plans “to finalize a compliance policy in the coming weeks that would prioritize the agency’s enforcement of the premarket authorization requirements” for flavored e-cigarettes other than tobacco-flavored e-cigarettes. In the FDA news release, the agency also indicated that it intends to share more on the specific details soon.

While the news release does not specifically state that today’s announcement refers to the proposed draft Guidance titled “Modifications to Compliance Policy for Certain Deemed Tobacco Products” that was issued by the FDA in March of this year, it appears that the action announced on Wednesday refers to the finalizing of the March 2019 draft Guidance. A guidance document explains how a federal agency intends to administer and enforce current law and how those being

regulated can comply with current regulations.

The March 2019 draft Guidance would apply to certain flavored electronic nicotine delivery systems (ENDS), but not tobacco-flavored, mint-flavored or menthol-flavored electronic products. The FDA explained in the March 2019 Guidance that its prioritized enforcement will focus on flavored ENDS products (other than tobacco-flavored, mint-flavored, and menthol-flavored ENDS products) “that are offered for sale in ways that pose a greater risk for minors to access such products.”

However, Wednesday’s announcement seems to indicate that the FDA will prioritize its enforcement on all flavored e-cigarettes except tobacco-flavored electronic nicotine delivery systems. This enforcement prioritization would likely include mint-flavored and menthol-flavored e-cigarettes because the announcement references preliminary results from the National Youth Tobacco Survey that “the overwhelming majority of youth e-cigarette users cited the use of popular fruit and menthol or mint flavors.” The announcement goes on to state that if the FDA sees “a migration to tobacco-flavored products by kids, we will take additional steps to address youth use of these products.”

A representative from R.J. Reynolds stated, “In relation to today’s announcement, we share President Trump’s concern that some flavors, such as those resembling ‘kid friendly’ food products, may play a role in increasing youth appeal and that marketing activities should not be directed to youth. Of note, we do not market such vapor flavors and in fact, we have supported measures to remove vapor products intended to mimic children’s food products or otherwise designed to target youth, and have procedures in place to ensure our products are only marketed to adult tobacco consumers. We will continue working with the Administration regarding proposed changes moving forward over the coming months and feel confident in our planned PMTA submissions to the FDA.” Altria also responded, saying that it agrees “that urgent action is needed, and we look forward to reviewing the guidance. Reducing youth use of e-vapor products is a top priority for Altria.”

It is important to understand that the final compliance policy that will be issued by the FDA in the coming weeks will need to be reviewed and analyzed to determine exactly what enforcement actions the agency intends to take and to which electronic nicotine products the policy will apply. PMAA will update members once the FDA issues the final compliance policy.

In other news, on Monday, the FDA sent a letter to Juul Labs accusing the company of illegally marketing its products as being a safer alternative to combustible cigarettes and warned the company that the agency would be taking action if the company does not halt all marketing techniques that claim their products are a less harmful alternative to cigarettes.

PMAA FILES COMMENTS ON RFS PROPOSED RULE

PMAA submitted written comments last week on the U.S. EPA’s proposed calendar year 2020 volumetric blending mandates for cellulosic biofuels, advanced biofuel, and total renewable fuels as well as biomass-based diesel fuel blending mandates for 2021. The EPA is proposing the following volumetric blending mandates:

- Conventional renewable fuel volumes, primarily met by corn ethanol – 15 billion-gallon target set by Congress.
- Advanced biofuel- 5.04 billion gallons, 0.12 billion gallons higher than the advanced biofuel volume requirement for 2019.
- Cellulosic biofuel - 0.54 billion ethanol-equivalent gallons for 2020, 0.12 billion ethanol-equivalent gallons higher than the cellulosic biofuel volume finalized for 2019.
- Biomass-based diesel (BBD) volume for 2021 at 2.43 billion gallons.

Citing UST system compatibility concerns, PMAA urged the EPA to be set the blending mandate for corn ethanol at no more than 9.7 percent of projected gasoline demand as determined by the Energy Information Administration (EIA). PMAA said adopting arbitrary volumetric blending mandates chosen by Congress over 10 years ago produces more ethanol blended gasoline than the marketplace demands, and which RIN credits can no longer offset. PMAA warned that if the EPA continues to set blending mandates in this arbitrary manner, the E10 blend wall would be breached and E15 forced onto the marketplace, setting off a UST system compatibility crisis that threatens to disrupt the petroleum distribution chain. PMAA also stated that adopting blending volumes that surpass actual demand will result in a market where too many obligated blenders are chasing too few RIN credits. As a result, gasoline prices will rise at the pump. PMAA concluded that an ethanol blending mandate set at 9.7% of actual gasoline demand is the only feasible way to move forward, given E15 equipment compatibility issues and the current disruption of the RINS market.

WHAT TO EXPECT FROM CONGRESS FOR THE REMAINDER OF THE YEAR

Congress returned from August recess this week with less than nine legislative days to go until the government shuts down at the end of the fiscal year on Sept. 30. Therefore, both chambers must work on a funding bill that would fund the government beyond Sept. 30. House appropriators have drafted a bill to extend funding past Oct. 1 and plan to file the bill as early as today. House and Senate Democratic leaders have said they want Congress to pass a funding bill that would fund the government at least through Nov. 21 in order to allow appropriators enough time to work on the fiscal year (FY)

2020 spending bills. The spending bill is likely to serve as a vehicle to attach the tax extenders package which will likely include a 2-year retroactive renewal of the biodiesel blender's tax credit along with a prospective renewal of the oil spill liability tax (OSLT).

Additionally, the Senate is focused on how to fund a five-year surface transportation bill known as the "America's Transportation Infrastructure Act (ATIA) of 2019" that was passed last month through the Senate Environment and Public Works Committee. This week, Sen. Chuck Grassley (R-IA) stated that Senate Majority Leader Mitch McConnell will soon meet with lawmakers to discuss how to finance the bill, but also stated that he won't move a finance title for the highway bill this fall unless McConnell shows his support for a plan to raise more revenue for transportation programs. Grassley told reporters that he isn't "anxious to bring up a tax bill that the leader is not going to take up on the floor, so I say if you can set up a meeting with me, you, and the leader, then we'll find out what he can do and I'm going to act accordingly."

Grassley said that he is not eager to raise the gas tax but wants to look at options proposed by EPW Chairman John Barrasso (R-WY), such as a tax on electric vehicles (EVs). Grassley said that he wants people to pay for "every mile they use the highway, regardless of whether you have an electric car or whether you have a gas car." Earlier this week, Sen. Tom Carper, ranking member of the EPW Committee, stated that all options are on the table for funding the highway bill. Sen. Carper has said that he has met and will continue to meet with Sen. Grassley on ways to finance the highway bill.

Of particular concern for PMAA, Section 1401 of the highway bill would create a \$1 billion grant program for states to deploy electric vehicle, hydrogen and natural gas vehicle charging stations along designated alternative fuel corridors. PMAA is concerned that the grant program does not provide for the equitable distribution of funds or account for other investment required for infrastructure changes that may be needed to accommodate EV and alternative fueling equipment such as upgrades to site utilities, adding land, and expanding paved areas and operating costs. In addition, the focus on alternative fuel corridors will result in a preference for grants to companies that have multiple sites distributed along major transportation routes. As with other grants for alternative fuels, small to medium c-stores will be placed at a competitive disadvantage.

HOW TO REGISTER TO PROVIDE FUEL TO FEMA

PMAA offers marketers who want to deliver fuel to disaster areas a program that can be used by businesses and governments to locate marketers during a disaster.

For marketers who are also interested in providing fuel to FEMA, information on FEMA's contracting process is located on the Industry Liaison Program webpage, and the Industry Liaison Program trifold outlines the established process for businesses interested in working with FEMA.

If you are interested in being either a provider or a purchaser of fuel during disasters, contact Sherri Stone at ststone@pmaa.org.

DOE SALES 9.88 MILLION BARRELS OF SPR CRUDE

In order to fulfill FY 2020 SPR sale requirements in the Bipartisan Budget Act of 2015 and the Consolidated Appropriations Act, 2018, the DOE has awarded contracts to Marathon Petroleum, Motiva Enterprises, Phillips 66 and Shell Trading (US) for 9.88 million barrels of Strategic Petroleum Reserve (SPR) crude, paying an average of \$58.99/b.

GLOBAL EV SALES HAVE DECLINED

VW Announces Release of Affordable EVs

For the first time, global electric vehicle (EV) car sales fell in July. This followed after the Chinese government scaled back subsidies of EVs beginning on June 26. China is the world's largest user and producer of electric vehicles. Sales fell in China, India, and North America, while sales rose in Europe. Overall monthly sales worldwide fell 14% to about 128,000 plug-in passenger EVs. Meanwhile, at the Frankfurt Motor Show this week, Volkswagen, Inc. (VW) showed the first production version of its ID. based concept cars, specifically the ID.3 hatchback which starts at \$33,000. The ID.3 is one of four models in the VW brand's battery-powered ID series, the other three models are still in the concept phase and represent a \$33 billion push to make electric vehicles affordable for the masses.

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

October 14, 2019 - Hawaii (HPMA) - Golf Tournament - Oahu Country Club, Honolulu, HI

February 18-20, 2020 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

May 7-8, 2020 – Nevada NPM&CSA – Big Dogs - Las Vegas, NV

June 22-25, 2020 – Washington (WOMA) – Convention – Suncadia Resort – Cle Elum, Washington

August 5-7, 2020 – Idaho (IPM&CSA) – Convention – Coeur d' Alene Resort – Coeur d' Alene, Idaho

September 9-10, 2020 – Utah (UPMRA) – Convention – Park City Marriott – Park City, Utah

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Petro Pete: “Your time is limited, so don’t waste it living someone else’s life. –Steve Jobs”

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2001 Kenworth T800 fuel truck and trailer with 2001 Onnen tanks. 12,800 gallons total capacity. \$79,000. Please call Guy or Justin at 208-765-2266 if interested.

