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Minnesota Crop Production Retailers

REGULETTER

Asmark Institute WPS Training Program Update

Training requiring the new additional elements and use of EPA-approved training materials is required starting January 2, 2018. Asmark Institute has reported that they are working with officials to review their scripts in preparation for being approved. Asmark's video team recently received approval by EPA for their current WPS training program, based on the 1994 rule, to be used until the new program that will be based on the 2015 rule revisions will be ready. The Asmark Institute video team plans on having the new EPA-approved DVD training program this coming December, just in time for the new requirement. Until then, MCP R members can feel confident in Asmark Institute's current training program to provide WPS training for new employees and those whose training is expiring. MCP R members can order this training (as well as several other topics) by using this link: <https://www.asmark.org/Compass/TrainingKits.cgi>. New users will first need to create a log-in to order training kits. *(Asmark Institute)*

OSHA's New Recordkeeping Rule is Invalidated

On April 5, 2017, President Donald Trump signed the congressional resolution disapproving OSHA's rule, "Clarification of Employers' Continuing Obligation to Make and Maintain Accurate Records of Each Recordable Injury and Illness," generally referred to as the Volks rule. Federal agencies are now prohibited from reissuing similar regulations without congressional approval. The Congressional resolution invalidates the rule, so OSHA may not cite employers for violations outside of the six-month statute of limitations. However, employers must still maintain, and update as needed, their OSHA 300 Logs of workplace injuries and illnesses for five years. *(Asmark Institute)*

DOT Withdraws Proposed Safety Rating Rule

DOT is withdrawing its Notice of Proposed Rulemaking, "Carrier Safety Fitness Determination," published January 21, 2016. The proposal would have eliminated the compliance review model to determine a motor carrier's safety fitness determination, and replaced it with new methodology that incorporated a combination of investigation results and on-road safety data. The decision to withdraw the proposed rule is based on comments received from stakeholders and February 2017 correspondence to Secretary Elaine Chao, according to DOT. The agency is canceling its plans to develop a Supplemental Notice of Proposed Rulemaking that it announced on January 12, 2017. *(Asmark Institute)*

CFATS Update

DHS began a process last fall of requiring those facilities currently subject to the Chemical Facility Anti-Terrorism Standards (CFATS) program and those that previously submitted a Top Screen (but may not have been regulated) to submit new top screens using a new risk assessment methodology under the 2.0 version of the Chemical Security Assessment Tool (CSAT). DHS has now received new top screens from more than 9,000 facilities and will begin sending out the results of the new risk assessment tool and the associated new risk level for affected facilities. The new methodology appears to err on the conservative side, as DHS estimates that there will be a 30% increase in the number of facilities regulated under the CFATS program, going from 2700 to 3900. This is an educated guess based on the top screen submittals received thus far. This information was provided by Andy O'Hare, Vice President of Public Policy for The Fertilizer Institute. *(Asmark Institute)*

PHMSA Issues HM-215N Final Rule

The long-awaited Pipeline and Hazardous Materials Safety Administration (PHMSA) final rule for HM-215N - Harmonization with International Standards was published on March 30, 2017. The amendments to the Hazardous Materials Regulations (HMR) in this final rule will maintain alignment with international standards and became effective on March 30, 2017. Voluntary compliance is authorized beginning January 1, 2017. Unless otherwise specified in the final rule, mandatory compliance is required beginning January 1, 2018. The changes in this rule affect the HMR in Parts 107, 171, 172, 173, 175, 176, 178, and 180. Some of the major changes include:

- Updating references to international regulations.
- Numerous changes to the §172.101 Hazardous Materials Table.
- Adding 5 new entries to the list of Marine Pollutants.
- New defining criteria, authorized packaging's, and safety requirements for Polymerizing Substances.
- New requirements for Engine/Machinery Internal Combustion transported by vessel.
- Revised packaging requirements for Water-Reactive Materials transported by vessel.
- Recognition of Transport Canada cylinders, equivalency certificates and the inspection and repair of cargo tanks.

(Asmark Institute)

New OSHA Ag-30 Course - 2017 New Fall Courses Posted

Understanding OSHA's requirements will save your company money - but more importantly, it will reduce the number of injuries and it

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may even save lives. This highly successful training has been developed specifically for agribusiness and is designed for facility managers or assistant managers, safety and health coordinators, EHS staff and personnel with responsibilities for safety and health at the facility. We encourage at least one person per facility receive this training. Sign up today to reserve the class of your choice. Visit: <https://www.asmark.org/TrainingCourses/oshag-30.cgi> for more information or to register. (Asmark Institute)

DOT Receives Letter Seeking Regulatory Relief from ELDs

Seventeen organizations, including the Owner-Operator Independent Drivers Association, sent a joint letter to DOT Secretary Elaine Chao asking for a delay and repeal of the electronic logging device (ELD) mandate. The group also seeks the withdrawal of a proposed rule requiring speed limiters on commercial motor vehicles. The letter cites President Donald Trump's recent Executive Order, "Reducing Regulation and Controlling Regulatory Costs," as a basis for the requests. The stakeholders assert that both rulemakings would be costly and burdensome on transportation segments. The parties believe the elimination of both rules will help drive economic growth, a key initiative of the Executive Order. The organizations acknowledge the ELD mandate is based on a statute and requires Congressional action in order to be repealed. They encourage DOT to work with lawmakers in this endeavor. (Asmark Institute)

USDOT Proposals Simplifies, Reduces Costs to States and to Individuals in Obtaining Commercial Driver's License

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) recently announced two proposals that would take steps toward responding to a national shortage of qualified truck and bus drivers. These proposed processes would simplify obtaining a commercial driver's license (CDL) for many individuals and reduce administrative expenses to both the driver applicant and state driver licensing agencies.

"Taken together, these two proposals will help ease the entry for thousands of qualified individuals into career opportunities as professional truck and bus drivers – a critical occupation facing an acute labor shortage in our country," said FMCSA Deputy Administrator Daphne Jefferson. "We could eliminate unnecessary burdens to both the applicants and to the states, save time, reduce costs and, most importantly, ensure that states only issue

commercial driver's licenses to well-trained, highly qualified individuals."

FMCSA is seeking public comment on the following two Notices of Proposed Rulemakings (NPRM)

• **Military Licensing and State CDL Reciprocity.** This proposed rule would allow State Driver Licensing Agencies to waive the CDL knowledge test for qualified veterans and active duty personnel, including National Guard and Reserves, seeking to obtain a civilian CDL. This waiver would simplify processing and reduce costs for States and for qualified individuals. Since 2012, FMCSA has allowed States to waive the CDL skill test requirement for qualified veterans and active duty personnel. More than 18,800 individuals have transitioned from their military service into the U.S. civilian jobs as commercial truck and bus drivers under the waiver opportunity. "We owe so much to our men and women who have served in the U.S. Armed Forces," said Jefferson. "This action would be one more way we can express our gratitude and assist those with a military CDL who wish to utilize their extensive training and experience operating heavy trucks and buses into careers as civilians."

• **Commercial Learner's Permit Validity.** This proposed rule would allow States to issue a CDL learner's permit with an expiration date of up to one year, replacing the current six-month limitation. This extra flexibility would eliminate burdensome and costly paperwork requirements by the States. It would also eliminate unnecessary re-testing and additional fees presently incurred by individuals who seek an additional 180-day renewal of their CDL learner's permit.

"At the core of both proposals is safety of the motoring public," said Jefferson. "We will continue to demand that commercial truck and bus drivers, and their employers, adhere to the safety standards that exist to protect all drivers."

The public comment period for both proposals will remain open for 60 days following their formal publication in the Federal Register.

For a copy of the Military Licensing and State CDL Reciprocity NPRM, see: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-12079.pdf>

For a copy of the Commercial Learner's Permit Validity NPRM, see: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-12080.pdf> (FMCSA)

DOT Final Rule Aligns Regulations with FAST Act

DOT recently issued a final rule on July 22, 2016, that put into place eight provisions mandated by the Fixing America's Surface Transportation Act (FAST Act) enacted on December 4, 2015. According to DOT, the regulations were non-discretionary and did not require the rulemaking process, i.e., issuance of a proposed rule and public comments. In total there were eight provisions. Printed here are those believed to affect the agricultural industry.

Section 5206: Applications for exemptions

Section 5206(b)(1) made permanent the following three existing exemptions from the 30-minute rest break requirements in Section 395.3(a)(3)(ii):

- ready-mixed concrete delivery vehicle,
- transportation of bees, and
- transportation of livestock while the livestock are on the vehicle.

Section 5518 – Covered farm vehicles

FMCSA revised Section 390.39(b)(1) to clarify a mandate that addressed exemptions found in state laws for covered farm vehicles. Exemptions include commercial driver's licensing (CDL), DOT drug and alcohol testing, medical qualifications, HOS and vehicle inspections.

Section 7208 – Hazardous materials endorsement exemption

The Act allows a state, at its discretion, to waive the requirement for a holder of a Class A CDL to obtain a hazardous materials endorsement to transport 1,000 gallons or less of diesel fuel. A state may waive the requirement if the license holder is 1) acting within the scope of the license holder's employment as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and 2) is operating a service vehicle that is transporting diesel in a quantity of 3,785 liters (1,000 gallons) or less and that is clearly marked with a "flammable" or a "combustible" placard, as appropriate. FMCSA adds a new paragraph (i) to Section 383.3 to reflect this exemption.

If a state exercises this discretion, a driver may still be required to obtain a hazardous materials endorsement if he or she travels to a state that has not opted to waive the requirement. (Asmark Institute)

