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Minnesota Crop Production Retailers

REGULETTER

PSM Lawsuit Update: Yes or No Expected Soon

Did OSHA overstep their authority on July 22, 2015 when they rescinded the letter of interpretation that originally granted the "retail exemption" to our industry? ARA and TFI have petitioned the court asking simply for a "yes" or "no" to this question. We expect to hear back from the court with their decision any day now. Stay tuned! We will pass along the news as soon as possible. (Asmark Institute)

EPA To Target High-Risk RMP Facilities

With about 13,000 active Risk Management Plan (RMP) facilities on record, EPA recently announced it will focus its enforcement efforts on reducing the potential risks of accidental releases starting October 1, 2016. While EPA didn't provide a lot of detail, they expect this new National Enforcement Initiative to target facilities that pose the greatest risks, such as those located closely to dense populations or those with a history of accidental releases. According to EPA, there are approximately 2,000 facilities that fit the criteria of being considered high risk. Additionally, EPA announced a renewed effort to identify facilities that have failed to file an RMP. (Asmark Institute)

FAA Finalizes Rules for Drones DOT's

Federal Aviation Administration (FAA) has finalized the first operational rules for routine commercial use of small unmanned aircraft systems (UAS or "drones"). The new rule, which takes effect in late August, offers safety regulations for unmanned aircraft

drones weighing less than 55 pounds that are conducting non-hobbyist operations. Operators must have a remote pilot certificate with a small UAS rating, or be directly supervised by someone with such a certificate. TSA will conduct a security background check of all remote pilot applications prior to issuance of a certificate. Visit: http://www.faa.gov/uas/media/Part_107_Summary.pdf for more information on what FAA calls Part 107. (Asmark Institute)

Seat Belts Required for Passengers in CMVs

Starting August 8th DOT published a final rule in the Federal Register on June 7th requiring that all passengers traveling in property-carrying commercial motor vehicles wear seat belts. While it already requires that drivers wear seat belts, the agency has been silent on whether passengers riding in large trucks must use seat belts. The rule, effective August 8th, holds motor carriers and drivers responsible for ensuring that passengers riding in property-carrying CMVs are using seat belts. "Occupants would include instructors, evaluators or any other personnel who might be seated in a property-carrying CMV, regardless of their status," the agency said. Since 1990, federal regulations require manufacturers of trucks weighing more than 10,000 pounds to install seat belts or a "complete passenger protection system" at every seating position in a truck, according to the rule. (Asmark Institute)

Loss of Atrazine Will Cost Producers Dearly

EPA has started the process that may lead to the banning of atrazine. Should that happen, it will be a lot harder and more expensive to raise corn and soybeans. Atrazine is currently used on about 80% of the corn. According

to Bill Johnson, weed specialist with Purdue, "Atrazine is easily the most effective broad spectrum herbicide we use that gives us control of grass and broadleaf weeds."

Decades of research have shown atrazine is safe; and, as recently as 4 years ago, the EPA did not show atrazine as a threat to the environment. Yet now their most recent assessment says the technology is a danger to man and animals. Johnson says, if farmers are prevented from using atrazine, the alternative may have more adverse environmental impacts, "The banning of atrazine will not result in the reduction of herbicide use. We will be using a higher level of chemicals in our corn production system." Some of these have the potential to have an even greater impact on the environment than atrazine. (Asmark Institute)

DHS Temporarily Suspends Top-Screen, SVA Requirements

The Department of Homeland Security issued a notice in the Federal Register recently informing the public of the Department's intent to begin the implementation of the improved tiering methodology for chemical facilities of interest regulated under CFATS.

The notice temporarily suspends the requirement to submit Top-Screens and Security Vulnerability Assessments (SVA) in order to allow for a phased roll out of the new Chemical Security Assessment Tool (CSAT) 2.0 surveys.

CSAT 2.0 will consist of an improved and more streamline CSAT Top-Screen, SVA, and an Site Security Plan (SSP), that will allow the collection of the data necessary to process facilities through the new methodology and

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improve the integration between the SVA application and the SSP application. Chemical facilities of interest will be notified to submit their Top-Screen using CSAT 2.0 beginning in September.

DHS is taking a multi-step approach to this implementation.

1. First, the Department is temporarily suspending the Top-Screen and SVA submissions requirements as outlined in the notice.
2. Second, DHS will replace the current CSAT surveys with the revised surveys.
3. Lastly, DHS will reinstate the Top-Screen and SVA submission requirement.

DHS will individually notify facilities of the requirement to resubmit a Top-Screen using the new tool in a phased manner, however, facilities may choose to proactively resubmit a Top-Screen once the new tool is available and prior to the individual notification. A copy of the notice can be found here: <https://federalregister.gov/a/2016-16776>. (ARA)

EPA Too Focused on Enforcement, Not Assistance

EPA got "kicked around" recently in an oversight hearing by the Senate Environment & Public Works Committee where Republican members said the agency cares too much about enforcement and not enough about assisting stakeholders with compliance. Senator Mike Rounds (R, SD), Chair of the subcommittee on Superfund, waste management and regulatory oversight, said the agency at times is simply too aggressive and at times imposes unreasonable penalties using "questionable enforcement methods."

Lawmakers paid special attention to what are called "Section 114" letters, used to enforce the Clean Air Act, which includes the Risk Management Program. The agency, Rounds said, "has increasingly issued Section 114 letters to companies who are not the target of an enforcement action, but merely may have information relevant to a separate investigation." The cost of complying with the letters is "burdensome," Rounds said, and companies not part of an investigation, but in receipt of a Section 114 letter related to a separate action, can be subject to civil and criminal penalties if they don't respond "accurately and in a timely fashion."

The only witness at the hearing was Cynthia Giles, Assistant Administrator of EPA's Office of Enforcement & Compliance Assurance. Giles shot back at the unfriendly Senators, saying her office has "developed many innovative compliance assistance tools" to assist the regulated community to comply with the federal requirements, particularly those affecting small business. Committee ranking member Senator Ed Markey (D, MA) defended the agency and Giles, explaining EPA's enforcement budget has been cut 9% since 2010 and the agency is "strained by diminished resources." (Asmark Institute)

DOT Revises Civil Penalties

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is revising the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law. A previous federal law dealing with inflation requires agencies to update their civil monetary penalties through interim final rulemaking. The maximum civil penalty for a knowing violation is now \$77,114, except for violations that result in death, serious illness or severe injury to any person or substantial destruction of property, for which the maximum civil penalty is \$179,933. In addition, the minimum civil penalty amount for a violation relating to training is now \$463. The effective date is August 1, 2016. (Asmark Institute)

OSHA Penalties to be Adjusted for Inflation After August 1st

Maximum penalties for OSHA violations are set to increase for the first time since 1990 as part of overall federal penalty adjustments mandated by Congress last year. The increases were recently announced by the Department of Labor, which issued two interim rules covering penalty adjustments for several DOL agencies, including OSHA, the Mine Safety and Health Administration and Wage and Hour Division.

OSHA's new penalty levels will take effect after August 1st, when the maximum penalty for serious violations will rise from \$7,000 to over \$12,471. The maximum penalty for willful or repeated violations will increase from \$70,000 to \$124,709. Any citations issued by OSHA after August 1st will be subject to the new penalties if the related violations occurred after November 2, 2015. (Asmark Institute)

OSHA 300 Recordkeeping Changes and Penalty Schedule: Reduce Your Risk of Violation

Under the Bipartisan Budget Act of 2015, OSHA has been authorized to raise fines for recordkeeping violations in order to account for current inflation rates. And, in subsequent years, they may continue increasing fines on an annual basis to adjust for inflation. OSHA has yet to publish the new penalty schedule—which is anticipated to be enforced beginning August 1, 2016, but penalties for a serious violation will likely rise from \$7,000 to \$12,471 and penalties for a repeated or willful violation will likely rise from \$70,000 to \$124,709.

This, coupled with the 2015 overhaul to OSHA's recordkeeping rule, which added requirements for severe injury and fatality events, presents a real threat of increased fines for organizations that fail to comply with OSHA 300 recordkeeping requirements. Potential penalties could be significant especially if OSHA uses its egregious penalty process, each affected employee would trigger a separate penalty of up to \$70,000, or determines that the violation is willful or repeated, in which case the employer could be liable for up to \$70,000.

The best approach for ensuring compliance is evaluating your existing program, taking a close look at the most frequent common OSHA injury and illness recordkeeping mistakes, determining if you have potential issues in these areas, and developing an organization-wide strategy to address them. (Asmark Institute)

It's IRS Form 2290 Time

It's time to think about the federal highway use tax for heavy vehicles. It's that \$550 fee you pay each year when you file an IRS Form 2290. The federal heavy vehicle use tax applies to trucks, truck tractors and buses with a gross taxable weight of 55,000 pounds or more. The tax year begins on July 1st and ends on June 30th. The balance due shown on the Form 2290 must be paid in full by August 31st. State governments are required to receive proof of payment of the federal heavy vehicle use tax as a condition of vehicle registration. Companies with less than 25 vehicles may pay online with the IRS, by mailed check or money order, or online. New this year, you must have an Employer Identification Number to e-file. You can no longer use your Social Security number. (Asmark Institute)

