

## **REGISTRATION PERIOD OPENS FOR MANDATORY USE OF FMCSA ONLINE DATABASE FOR CDL DRIVER DRUG AND ALCOHOL VIOLATIONS**

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) has announced that online registration is now open for the Commercial Driver's License Drug and Alcohol Online Clearinghouse Database. The Clearinghouse is a secure online, searchable electronic database where all CDL driver drug and alcohol violations will now be posted. The Clearinghouse will provide employers, CDL drivers, medical review officers (MRO), substance abuse professionals (SAP), state driver licensing agencies (SDLA) and enforcement authorities real-time information about CDL drivers drug and alcohol program violations. The Clearinghouse will contain records of violations of drug and alcohol prohibitions, including positive drug or alcohol test results, test refusals, completion of return-to-duty (RTD) process and follow-up testing plan. CDL drivers, employers, MROs, SAPs and SDLAs must all register to use the database.

The Clearinghouse mandate does not change any existing U.S. DOT drug and alcohol testing regulations or procedures other than to require use of the online database to comply with existing drug and alcohol regulations. Employer use of the Clearinghouse database is required for pre-employment CDL driver record investigation; annual drug and alcohol investigations for all current CDL employees; to upload driver drug and alcohol violations; and return to duty status records. Congress required the FMCSA to create and implement the Clearinghouse under the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141, 126 Stat. 405).

### 1. EMPLOYER RESPONSIBILITIES

The Clearinghouse will offer employers (or their third-party assignees) a centralized location to query driver information and report drug and alcohol program violations incurred by their current and prospective employees holding CDLs and/ commercial driver learners permit. The employer must use the CDL driver drug and alcohol violation Clearinghouse to:

- Register online to access the Clearinghouse database.
- Search the Clearinghouse as part of each pre-employment driver investigation process.
- Conduct limited annual queries for every driver they employ.
- Request electronic consent from the driver for a full query, including pre-employment queries.
- Report drug and alcohol program violations.
- Record the negative return-to-duty (RTD) test results and the date of successful completion of a follow-up testing plan for any driver they employ with unresolved drug and alcohol program violations.

### 2. SEARCHING THE CLEARINGHOUSE DATABASE

Employers can conduct two types of queries on the Clearinghouse database:

- Limited Query - A limited query allows an employer to determine if an individual driver's Clearinghouse record has any information about resolved or unresolved drug and alcohol program violations but does not release any specific violation information contained in the driver's Clearinghouse record. Limited queries require only a general driver consent, which is obtained outside the Clearinghouse. This general consent is not required on an annual basis. It may be effective for more than one year. However, the limited consent request must be in writing, and specify the duration of the consent period.
- The limited query meets the annual drug and alcohol record check requirements all employers must already conduct for CDL drivers.
- Full Query - A full query allows the employer to see detailed information about any drug and alcohol program violations in a driver's Clearinghouse record. An employer must obtain the driver's electronic consent in the Clearinghouse prior to the release of detailed violation information during the full query.
  - The full query meets the federal pre-employment drug and alcohol violations search employers must conduct before hiring a CDL driver.

The Clearinghouse database will only contain new driver drug and alcohol information occurring after January 6, 2020. Manual record investigation must continue to reach back three years for pre-employment or one year for annual employee driver record check already required by the DOT regulations. A fact sheet on Clearinghouse database searches may be found here: [Clearinghouse Queries](https://clearinghouse.fmcsa.dot.gov/Resource/Index/Query-Consent-Factsheet) (<https://clearinghouse.fmcsa.dot.gov/Resource/Index/Query-Consent-Factsheet>).

### 3. USER QUERY FEE

- Query Fee – The FMCSA is charging a flat \$1.25 rate for each query. The FMCSA is charging a flat \$1.25 rate for each query. Query purchase plans may be purchased here: [Query Purchase Plans](https://clearinghouse.fmcsa.dot.gov/Resource/Index/Query-Plan-Unlimited) (<https://clearinghouse.fmcsa.dot.gov/Resource/Index/Query-Plan-Unlimited>).

### 4. CLEARINGHOUSE REGISTRATION

Employers must register with the Clearinghouse database before searching and /or uploading driver information. Employers must follow a two-step registration process:

- Federal “login.gov” Registration - The first registration step requires employers to obtain a secure federal government login account. The secure login account will help ensure that the information in the Clearinghouse remains secure and private. Login accounts may be obtained here: [Secure Login Account](https://secure.login.gov/sign_up/enter_email?request_id=910fa452-7e4e-462a-8abf-2740dd57e13f) ([https://secure.login.gov/sign\\_up/enter\\_email?request\\_id=910fa452-7e4e-462a-8abf-2740dd57e13f](https://secure.login.gov/sign_up/enter_email?request_id=910fa452-7e4e-462a-8abf-2740dd57e13f)).
- Clearinghouse Registration – Once employers obtain a secure login account they must register with the Clearinghouse here: [Clearinghouse Registration](https://secure.login.gov/?request_id=12269c0e-d92d-4142-a278-3f59681daeca) ([https://secure.login.gov/?request\\_id=12269c0e-d92d-4142-a278-3f59681daeca](https://secure.login.gov/?request_id=12269c0e-d92d-4142-a278-3f59681daeca)).

### 5. ASSIGNING THIRD PARTIES TO SEARCH AND UPLOAD DRIVER INFORMATION

Once registered, employers may designate a consortium/third-party administrator (C/TPA) to access the Clearinghouse on your behalf (Drug and Alcohol Testing Vendors)

- Third Party Assignment - Employers, consortia/third-party administrators (C/TPAs), medical review officers (MROs), and substance abuse professionals (SAPs) must identify an individual for their company to serve as a Clearinghouse Administrator. These Clearinghouse Administrators have the option to invite users to serve in an Assistant role, enabling them to use the Clearinghouse on their company’s behalf.

### 6. DRIVER RESPONSIBILITIES

Drivers must register with the Clearinghouse in order to:

- Check Records – Drivers must register with the clearing house to check their drug and alcohol driving record and be able to contest incorrect entries.
- Provide Consent – Drivers must register to provide electronic consent for prospective employers to conduct pre employment drug and alcohol records search.

### 7. COMPLIANCE DEADLINE

- Employers and drivers must register with the FMCSA drug and alcohol Clearinghouse no later than January 6, 2020.
- Employers and drivers may register with the Clearinghouse starting October 11, 2019.
- Employers and/or their third-party designees must begin using the database for pre -employment investigations on January 6, 2020.
- Employers will no longer be required to conduct manual pre-employment driver drug and alcohol investigations once three years of testing and/or violation data is stored in the Clearinghouse. Manual pre-employment investigation will no longer be required after January 6, 2023.
- Employers and/or third-party designees, medical review officers, and substance abuse professionals must begin uploading driver drug and alcohol violations on January 6, 2020.

It is highly recommended that employers, drivers, drug and alcohol testing vendors and substance abuse professionals register now with the Clearinghouse rather than wait for the January 6, 2020 registration deadline.

### 8. ADDITIONAL INFORMATION

- For additional information on the FMCSA Drug and Alcohol Clearinghouse go to <https://clearinghouse.fmcsa.dot.gov>
- Mark. S. Morgan, PMAA Regulatory Counsel at (202) 364-6767 or [mmorgan@pmaa.org](mailto:mmorgan@pmaa.org).

## **PRESIDENTIAL EXECUTIVE ORDER TO LIMIT REGULATORY IMPACT OF AGENCY GUIDANCE DOCUMENTS**

President Trump signed two executive orders this week designed to improve transparency when government agencies issue guidance documents on how to comply with federal laws or regulations. Agency guidance documents are generally made in response to a regulated party's request for regulatory clarification. However, some federal agencies use guidance, in the form of memos, letters, and even blog posts, to assert more authority than is written in their regulations. Moreover, some agencies use guidance documents to justify citations issued to regulated parties for non-compliance. Agency reliance on guidance documents is widespread because they can be used to impose regulatory requirements without submission to the public notice and comment process that all federal rulemakings must follow. These "stealth regulations" are issued more quickly than rulemakings, issued without knowledge of regulated parties and remain largely hidden from public view. As a result, regulated parties often don't learn about the existence of regulatory guidance until they are cited for violating its provisions.

The President's first executive order requires each federal agency to upload guidance documents to their websites on a single repository page that is easily accessed by the public. Any guidance document that is not posted within a required time frame will be deemed null and void. The repository page will make it easier for regulated parties to find guidance on a subject affecting their business. In addition, agencies must provide a 30-day public notice and comment period for new guidance documents 30 days before they are finalized.

The second executive order prevents agencies from conducting "surprise enforcement actions" based on regulatory requirements based on obscure guidance documents and provides regulated parties more opportunity to contest any resulting violation. In January 2018, the House of Representatives Committee on Oversight and Government Reform asked federal agencies to submit reports on the number of guidance documents each issued over the previous ten-year period. The committee received an inventory of more than 13,000 agency guidance documents issued over the time period and speculated substantially more were likely to be found in unknown regions of agency websites.

## **PRESIDENT TRUMP'S BIOFUELS PLAN LIKELY TO INCREASE ETHANOL MANDATE**

### ***Proposed Plan Would Benefit Ethanol Producers at the Expense of Retail Marketers***

This week, President Trump announced that his new biofuels plan will lead to an increase in the amount of ethanol required under the RFS for 2020. According to Trump, the current 15-billion-gallon mandate will increase to 16 billion gallons in 2020.

However, EPA Administrator Andrew Wheeler said that the deal would lead to a net of around 15 billion gallons of ethanol after considering the small refinery exemptions (SREs) granted by the EPA. During the interview, Wheeler stated, "Going forward we're going to estimate how many small refinery exemptions to grant next year, so at the end of the day we're going to net out at the 15 billion gallons."

Last Friday, the Trump administration announced a new biofuels plan designed to make E15 the dominant gasoline blend nationwide. Specifically, the administration proposes to reallocate lost blend volumes exempted under small refinery waivers to large refiners. Since 2017, small refinery waivers have removed billions of gallons from annual biofuels blending mandates under the RFS program. The waivers play a large role in preventing a de facto E15 mandate by keeping volumetric blending requirements more closely aligned with actual consumer demand.

The administration is proposing to retroactively reallocate waived gallons from 2017 forward. Forcing waived volume back into the market is likely to drive up the value of RINs needed to offset unmet blending obligations. In turn, this is likely to provide an incentive for a select group of retailers to blend ethanol and call it "unleaded88" at the pump.

More importantly for petroleum marketers, the new proposal is likely to allow E15 to be sold from UST systems potentially containing components that are not compatible with the higher ethanol blends. Unfortunately, such blanket approval will not eliminate marketer liability for releases due to E15 sold from noncompatible UST systems. Nor will it eliminate UST compatibility demonstration requirements mandated by federal and state underground storage tank programs and state and local fire marshal laws. Further, such an approval threatens marketers' eligibility for corrective action cost recovery from state tank funds and private UST insurance policies. In addition, state tank funds, which are crucial to meet marketer financial assurance requirements, are likely to be pushed into insolvency as claims mount for E15 releases from noncompatible UST systems.

The new policy would only place marketers at a competitive disadvantage due to the potentially significant costs to upgrade or modify the configuration of equipment to sell E15, in addition to increasing liability risk for marketers and expose motorists to confusion and possibly misfuelling at the pump with E15 labeled as "unleaded88." The new RFS policy comes on the heels of a recent rule allowing the year-round sale of E15 nationwide. Both are designed to placate upset corn farmers and ethanol producers for short term political benefit rather than advancing a coherent, long term, market driven energy policy.

## MCDONALD'S CORP RECEIVES FAVORABLE RULING IN JOINT EMPLOYER CASE

A federal appeals court ruled recently that McDonald's Corp. didn't exercise enough control over its franchisee to be held liable for alleged violations under a California wage law. The U.S. Court of Appeals for the Ninth Circuit said that McDonald's Corp did not have direct oversight of its franchisee's workforce's hours, wages and working conditions and concluded that the iconic fast food chain only exerted direct control over its franchisee regarding the quality control of its product. Click [here](https://news.bloomberglaw.com/daily-labor-report/mcdonalds-not-liable-for-franchisees-alleged-wage-violations) (https://news.bloomberglaw.com/daily-labor-report/mcdonalds-not-liable-for-franchisees-alleged-wage-violations) to read the story.

## CALIFORNIA'S LENGTHY PREEMPTIVE WILDFIRE POWER SHUT-OFF

On Wednesday, Pacific Gas & Electric (PG&E) began a huge wildfire preemptive outage to half a million customers in Northern California. In addition to those directly impacted by the shut-off, it is also expected to impact major transportation corridors, amounting to 2.4 million customers who may be affected. Further, the power may not be turned back on until Tuesday, and Southern California Edison may also shut-off power for an additional 173,000 customers. Last year, PG&E did not shut-off power before the Camp Fire that killed 85 people and destroyed the town of Paradise. For the full article, click [here](https://www.cnn.com/2019/10/09/us/pge-power-outage-wednesday/index.html) (https://www.cnn.com/2019/10/09/us/pge-power-outage-wednesday/index.html).

## FEDERATED INSURANCE RISK MANAGEMENT ACADEMY WEBINAR

***Where There's Smoke There's Fire: Fire Prevention Strategies: Tuesday, October 15, 2019 at 1:00 p.m. CT***

A fire could NEVER happen to me! This is a common thought among many businesses today. Unfortunately, they don't realize until after a devastating blaze, that simple strategies could prevent most fires. This presentation focuses on steps a business should take to help prevent disastrous fire losses. This webinar will also include steps a business can take to help expedite recovery and resume serving customers as quickly as possible.

### **What you will learn:**

- Analyze the main causes of fire across all industries
- Address these fire risks through consistent risk management
- Prepare for fire or other disasters to get your business back up and running to serve your customers

Advanced registration is required for this 30-minute webinar.

For additional information or to discuss this in further detail, please contact your [Federated](#) regional representative or PMAA's **newly assigned** National Account Executive [Jon Medo](#) at 800.533.0472.

## PLAN TO ATTEND THE 2020 WPMAEXPO

# 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

**August 17-19, 2020** – New Mexico (NMPMA) Convention – Sandia Resort & Casino – Albuquerque, NM

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

## WPMA MEMBER SERVICES



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**Petro Pete: *“If you think you are too small to make a difference, try sleeping with a mosquito.”***

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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](mailto:janr@wpma.com). Thanks.

## **CLASSIFIED ADS**

### **FOR SALE**

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.

