

Fuel Line Newsletter

October 2021

Issue 22

Feds tell States to Ban Drivers with Positive Tests

Truck drivers who have a positive drug or alcohol test and find themselves in the Federal Motor Carrier Safety Administration’s (FMCSA) Drug and Alcohol Clearinghouse will begin having their licenses downgraded after a final rule from the agency takes effect.

That rule was published in the Federal Register on Oct. 7th. With it, the FMCSA is amending its regulations to establish requirements for state driver’s licensing agencies (SDLAs) to access and use information in the Clearinghouse.

Under the new rule, which will be effective as of Nov. 8, 2021 – with a state compliance date of Nov. 18, 2024 – states will be barred from issuing, renewing, upgrading or transferring a CDL or commercial learner’s permit for any driver prohibited from driving a commercial vehicle due to one or more drug or alcohol violations.

Additionally, states will be required to remove the CLP or CDL privilege from the license of drivers subject to the CMV driving prohibition, resulting in a downgrade of the license until the driver completes return-to-duty (RTD) requirements.

By removing the commercial driving privilege from licenses, the rule will also allow all enforcement officers to easily identify prohibited drivers by conducting a license check during a traffic stop or other roadside intervention/inspection.

FMCSA said the rule will ensure that drivers with drug and alcohol violations don’t operate commercial vehicles until they complete their return-to-duty process.

Currently, most state agencies don’t receive “drug and alcohol program violation information about CDL or CLP holders licensed in their state,” the agency said in its rule. State agencies are thus “unaware when a CMV operator is subject to the driving prohibition set forth in 49 CFR 382.501(a), and the CMV operator continues to hold a valid CDL or CLP despite the driving prohibition.”

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[Drivers who fail a drug test could go months before getting noticed in FMCSA database](#)

The agency added that the rule “closes that knowledge gap,” giving state agencies the ability “to determine whether CMV drivers licensed in their state are subject to FMCSA’s CMV driving prohibition.”

Trucking's hand-wringing over the Clearinghouse

While the rule will help get more truck drivers with drug and alcohol problems off the road quicker than the current system, which most in the industry agree is a good thing, there has been some hand-wringing in the industry about the number of drivers already sidelined due to the Clearinghouse.

As of Sept. 1, there were 87,438 drivers in the Clearinghouse's RTD process, with 69,937 in prohibited status. Of prohibited drivers, 52,691 (75%) had not started RTD.

At the Truckload Carriers Association's Truckload 2021 annual convention, a question from the audience aimed at a panel of trucking company execs asked about the follow-on effects of FMCSA's Drug and Alcohol Clearinghouse, given more than 100,000 positive tests logged there over its nearly two-year existence. A relative few of those drivers have completed documented return-to-duty procedures, as the questioner noted, adding: “I’m assuming Amazon loves us to keep letting these drivers go.”

The comment suggested drivers lost by truckload operations might be joining the ranks of the lighter-duty package delivery force. The commenter wondered about the need for some kind of reliable roadside testing for impairment in particular, as it relates to growing marijuana use all around the nation. “We’re going to be in a serious situation losing 100,000 drivers every two years.”

Knight Transportation Chairman Kevin Knight said it was a “difficult question” to address overall, given his fleet (among others) engages in hair testing, above and beyond what’s required in urinalysis by the rules. Also, he said, “I think there is a difference between driving an Amazon van and an 80,000-lb. truck on an irregular route,” he said. Overall, though, he and fellow panelist Mark Seymour, Canada-based Kriska Transportation Group’s CEO, were in agreement about one crucial element: “There isn’t any room for drugs on our highways,” Knight said.

The growing [acceptance of marijuana around the United States and in Canada](#) complicates matters, however. “It’s moving to being viewed like alcohol,” Knight said. “It’s sad to think that” in a setting where the drug is legal and on personal time a “driver maybe smokes a joint – am I saying that right? – and then they’re done” in trucking.

[Trucking Law: Can truck drivers use CBD? All you need to know about cannabis, hemp, testing and the clearinghouse](#)

Knight noted he did believe that “slight recreational users” in the testing regime in place today may ultimately get some wiggle room on legal substances, and hoped that “something will develop that allows us to be able to test for [impairment from marijuana use] at roadside.”

He urged carriers to “do a better job of helping these folks who get displaced – we have to help them get another job. They can’t become the problem of the government.”

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At once, Seymour underscored a harder line. “Some things just don’t go together,” he said. “Driving a big truck and ‘banging lefties’ on the weekend don’t mix. ... They don’t go together. Yes, maybe 100,000 people have been lost [to the Clearinghouse]. A campaign to get those people back while continuing with habitual preferences is not what we want” as an industry.

[Rise in marijuana use among truckers expected to continue](#)

The provision in the final rule that prohibits states from issuing, renewing, upgrading or transferring a CDL to a driver in the Clearinghouse requires state agencies to query the database prior to conducting any of those actions. If the query indicates the driver is prohibited from operating a commercial vehicle, the agency must deny the transaction, resulting in non-issuance. Drivers can reapply for the transaction after complying with the return-to-duty (RTD) requirements and getting a negative RTD test result that's reported to the Clearinghouse.

For the downgrade provision, the FMCSA will send notifications to states when a drug or alcohol violation is reported to the Clearinghouse. The rule requires states to complete and record the CDL downgrade on the CDL Information System driver record within 60 days of notification.

“The CDL downgrade requirement rests on the simple, but safety-critical, premise that drivers who cannot lawfully operate a CMV because they engaged in prohibited use of drugs or alcohol or refused a test should not hold a valid CDL or CLP,” the rule states.

The FMCSA will also send a notification to the state agency when the driver complies with RTD requirements and is no longer prohibited to drive by FMCSA’s regulations.

The rule also includes a provision that states if for some reason a driver is falsely identified as prohibited, FMCSA will notify the state that the individual is not prohibited, and the state must “promptly reinstate” the driver’s CDL privileges and expunge his or her driving record.

Other Clearinghouse changes in the rule

The final rule also amends how employers’ reports of “actual knowledge” violations are maintained in the Clearinghouse. Currently, employers who have actual knowledge of a driver’s prohibited use of drugs or alcohol based on a citation or other document charging DUI in a commercial vehicle must report the “actual knowledge” violation to the Clearinghouse.

The new rule clarifies that a CLP or CDL holder who is charged with DUI in a CMV is prohibited from operating a CMV until completing the return-to-duty process, regardless of whether the driver is ultimately convicted of the offense. The rule also amends Clearinghouse regulations by requiring that this type of actual knowledge violation remain in the Clearinghouse for five years, or until he or she has completed RTD, whichever is later, regardless of conviction of the DUI charge.

Drivers will be allowed, however, to provide documentary evidence of non-conviction to their Clearinghouse record for potential future employees to see.

States must achieve “substantial compliance” with the new rule as soon as practicable, the agency said, but by no later than Nov. 18, 2024.

Todd Dills contributed to this report.

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Thompson Elected 2022 Chair

During the Energy Marketers of America's (EMA) Fall meeting in Chicago at the NACS Show, Tommy Thompson, Thompson Energy LLC, Dalton, Georgia, was elected 2022 EMA Chair of the Board. In accepting the position, Tommy thanked the Board of Directors for their confidence in him and outlined some of his goals and objectives for 2022. Additionally, Jason Mirabito, Mirabito Energy Products, Binghamton, New York, was elected as EMA 1st Vice Chair and Brad Bell, Connell Oil, Inc., Pasco, Washington, was elected EMA 2nd Vice Chair by the board.

Five regional leaders were also elected to the EMA Executive Committee. They are: Southeast Association Chair Emily LeRoy, Tennessee Fuel & Convenience Association, Nashville, Tennessee; Northeast Region Chair, Tom Frawley, Summit Distributing LLC, Lyme, New Hampshire; North Central Association Chair Matt Hauser, Wisconsin Petroleum Marketers & Convenience Store Association, Madison, Wisconsin; Northeast Region Chair Kris DeLair; Empire State Energy Association, Troy, New York; and West Region Chair, Mark Lytle, Pro Petroleum, Inc., Las Vegas, Nevada.

Thompson is a first-generation oil marketer since 1967 and owner of Thompson Energy LLC, which he formed in 2006 after selling his convenience stores to Mapco. Tommy and Josh Kenny formed a joint venture to purchase the wholesale fuel dealer business and trucking assets of longtime

Atlanta distributor Perimeter Oil Company. Thompson-Kenny continues to grow and is now one of the largest gasoline distributors in Georgia selling fuel under the flags of Shell, Chevron, Texaco, Valero, Citgo and Marathon. Tommy also owns Spirit Express, one of the largest independent petroleum haulers in the Southeast and hauls fuel throughout Alabama, Tennessee and Georgia.

Tommy has been a loyal and committed supporter of Georgia Oilmen's Association for over 50 years serving in every position. He has been EMA's Georgia Director for the past 14 years and chaired the Motor Fuels Committee for six years. He has been an involved member of his community. Tommy has chaired many Boards including Gwinnett Hospital Authority, Vice Chair of Gwinnett County Housing Authority, Church Board, Gwinnett Commercial Bank and many major oil companies Advisory Boards. Other business interests include commercial real estate and a Ford dealership.

Tommy is a University of Georgia graduate. He and his wife Diann have four children and ten grandchildren ranging in age from a second grader to four in college. He enjoys family time, watching the Georgia Bulldogs and golf and snow skiing (but seldom has time for either). Tommy is looking forward to chairing EMA and visiting many states conventions in 2022.

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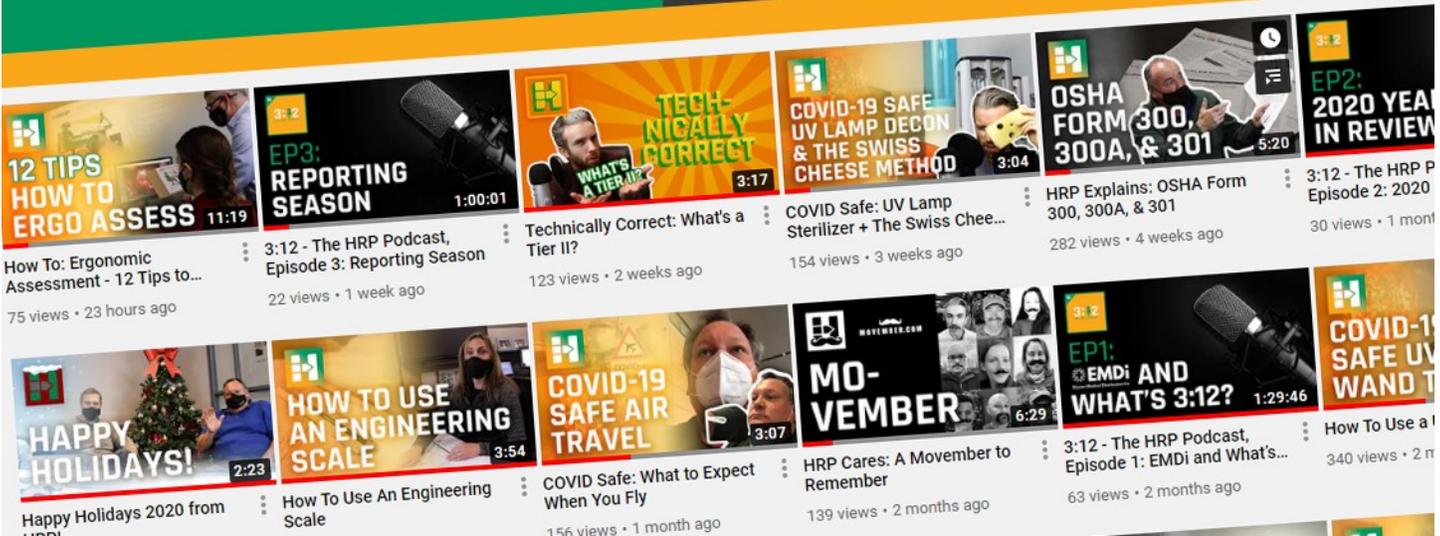
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Matthew Greene, SCCPMA EMA Director did a great job representing SC at his first EMA Meeting in Chicago



Sam Bell, EMA's Disaster Relief Chairman, updates the EMA Board of Directors on a busy year of relief actions.





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