

January 8, 2021

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## 2021 WPMAEXPO CANCELLED

WPMA regrets to inform you that the 2021 WPMAEXPO has been cancelled. This decision was not an easy one. Due to the latest mandated restrictions in Nevada limiting gatherings as well as concern for the safety of our participants, we are unable to go forward with the convention. We know this is very disappointing for our attendees, exhibitors, sponsors and industry partners.

No other interaction is as effective as face-to-face meetings to create relationships, share ideas, build loyalty, and communicate. Due to the limitations created by virtual interactions we have chosen to focus on bringing you an exceptional face-to-face show in 2022, and not hold the event virtually.

We will be reaching out to those participants already registered for the event to begin the refund process. If you booked your room through the WPMA room block at The Mirage, your room will automatically be cancelled and refunded.

Thank you for your patience and continued participation with WPMA. You are what makes us successful.

## NEWS ABOUT THE WPMA SCHOLARSHIP PROGRAM!

In 2021, WPMA welcomes the Oregon Fuels Association as it joins the state associations of Hawaii, Idaho, Montana, Nevada, New Mexico, Utah and Washington to participate in the WPMA scholarship program. Annually in May, one scholarship with a benefit up to \$4,000 is awarded in each state to a child of a WPMA marketer member company employee. One scholarship is also available to children of Associate members.

An applicant for the WPMA scholarship must be a graduating high school senior, and the child of a full-time, permanent employee of a WPMA marketer member company, whose primary residence is located within the WPMA state where the membership resides. A graduating high school senior who is the son or daughter of an associate member or of a full-time, permanent employee may apply for the Associate-at-Large scholarship. High school seniors who currently work part-time for a WPMA member company may also apply for the WPMA Scholarship if they have worked for the company for at least three months.

A fillable copy of the WPMA Scholarship Application is available online at

<https://www.wpma.com/pdf/scholarship/Scholarship-Application-eForm06-2020.pdf>

Applications may be mailed or emailed to WPMA Scholarship Coordinator Kathy Michaelis at the WPMA office.

**Applications must be emailed or postmarked on or before March 1, 2021.** In recent years, WPMA has received less than 50 applications for the eight available scholarships. Occasionally, no applications have been submitted from a WPMA state, so no scholarship was awarded. **PLEASE** encourage your employees to have their children apply for the WPMA Scholarship!!

## EMA SADDENED BY UNFORTUNATE EVENTS THAT TOOK PLACE THIS WEEK

The Energy Marketers of America (EMA) is saddened by the unfortunate events that took place at our nation's capital on Wednesday. Acts of violence and threats to our democracy is completely unacceptable and should not be tolerated. EMA hopes for a peaceful transfer of power pursuant to the Constitution on January 20th. We look forward to working with the new Administration on issues important to energy marketers.

## VOLUNTARY PAID LEAVE PAYROLL TAX CREDIT AVAILABLE THROUGH MARCH 31, 2021

Beginning April 1, 2020, the Families First Coronavirus Relief Act (FFCRA) required employers to pay sick leave and expanded medical and family leave to employees affected by the coronavirus. The mandate applied to companies with fewer than 500 employees and included partial exemptions for small companies with fewer than 50 employees. The FFCRA paid leave mandate ended on December 31, 2020. Employers are no longer **required** to provide paid sick leave and expanded family and medical leave. However, Section 286 of the Relief Bill ("Extension of Credits for Paid Sick and Family Leave") allows employers to take a payroll tax credit for providing FFCRA leave into the first quarter of 2021 for two purposes:

- **To recover costs for providing mandatory FFCRA leave in 2020** - If an employee took FFCRA-required leave in 2020, then the employer can take the appropriate tax credits in 2021; and

- **To recover costs providing voluntarily FFCRA Leave in Q1 of 2021** - If an employer elects, voluntarily, to provide paid leave to an employee for an FFCRA-qualifying reason in Q1 of 2021, then it can take payroll tax credits for providing such leave.

Employers who choose to voluntarily provide FFCRA leave between January 1, 2021, and March 31, 2021, and seek the tax credits, must keep accurate records and comply with limits on paid leave imposed under the original FFCRA. Those paid leave limitations (80 hours of emergency paid sick leave and twelve weeks of paid emergency family and medical leave) roll over to the period from January 1, 2021 through March 31, 2021 during which voluntary payments of FFCRA leave qualify for the tax credit. In other words, there is no new “bank” of FFCRA paid leave available to an employee during the voluntary extension period ending March 31, 2020. The payroll tax credit only applies to payments made for FFCRA benefits that the employee has **left over** after December 31, 2020. Employers will not receive tax credits for benefits provided in excess of statutory limits.

The amount of employee FFCRA leave eligibility subject to the tax credit also depends on which 12-month period an employer uses for the purpose of measuring availability of leave (calendar year, fiscal year, a 12-month period measured forward from use of FFCRA leave, or a rolling 12-month period measured backward from use of FFCRA leave).

EMA will provide additional information once the IRS publishes guidance on the tax credit. In the meantime, employers who choose to provide voluntary FFCRA payments should consult their accountant or tax preparation professional.

EMA Staff Contact: Mark S. Morgan Regulatory Counsel [mmorgan@emamerica.org](mailto:mmorgan@emamerica.org) (703) 281-6600.

### **REMINDER: FMCSA DRUG AND ALCOHOL CLEARINGHOUSE REGISTRATION PORTAL EXPERIENCING TECHNICAL DIFFICULTIES**

The Federal Motor Carrier Safety Administration (FMCSA) requires employers with CDL drivers to register with and use the agency’s Drug and Alcohol Clearinghouse to report, search and manage driver drug and alcohol records.

**The deadline to sign up for the Clearinghouse:** That means motor carriers or consortia/third party administrators must register with and check the Clearinghouse no later than January 5, 2021 to conduct the mandatory annual drug and alcohol record check for drivers employed as of January 6, 2020.

A number of marketers attempting to register online with the Clearinghouse over the past several weeks have been unsuccessful. In addition, the Clearinghouse hotline is not taking any calls. EMA brought the registration difficulties to the attention of the FMCSA and is seeking guidance on potential liability for noncompliance for those who have been unable to register thus far.

EMA is awaiting feedback from the FMCSA on these issues and will report further when new information is available. In the meantime, continue efforts to register as the backlog of registrations are dealt with and the site is back up and running.

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### **COMPLIANCE BULLETIN: MANDATORY ANNUAL OSHA WORKPLACE INJURY AND ILLNESS POSTING BEGINS FEBRUARY 1ST**

The 2020 posting cycle for OSHA’s workplace injury and illness reporting rule begins on February 1, 2021 and runs through April 30, 2021. The OSHA injury and illness recording and posting requirements apply to most establishments (workplaces) with more than 10 employees. OSHA requires employers to record and post all work-related injuries occurring during the previous calendar year.

Please click [here](#) to see the following list which identifies petroleum marketing establishments that must comply with OSHA injury and illness reporting and recordkeeping.

### **DOL RELEASES FINAL RULE TO CLARIFY WORKER STATUS UNDER THE FLSA**

On Wednesday, the Department of Labor (DOL) announced a final rule clarifying the standard for employee versus independent contractor under the Fair Labor Standards Act (FLSA). The effective date of the final rule is March 8, 2021.

Independent contractors are not entitled to the federal minimum wage and overtime pay that covered employees receive under the FLSA.

According to the DOL Wage and Hour Division, the final rule:

- Reaffirms an “economic reality” test to determine whether an individual is in business for him or herself (independent contractor) or is economically dependent on a potential employer for work (FLSA employee).
- Identifies and explains two “core factors” that are most probative to the question of whether a worker is economically dependent on someone else’s business or is in business for him or herself:
  - The nature and degree of control over the work.
  - The worker’s opportunity for profit or loss based on initiative and/or investment.
- Identifies three other factors that may serve as additional guideposts in the analysis, particularly when the two core factors do not point to the same classification. The factors are:
  - The amount of skill required for the work.
  - The degree of permanence of the working relationship between the worker and the potential employer.
  - Whether the work is part of an integrated unit of production.
- The actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.
- Provides six fact-specific examples applying the factors.

This “midnight” rule could be frozen from taking effect in a memo on Inauguration Day by the incoming Administration. If so, the DOL could allow the rule to take effect, at least temporarily, or rely on an outside party to challenge it in court. The Department could also reopen the rulemaking.

The Small Business Legislative Council (SBLC), of which the Energy Marketers of America (EMA) is a contributing board member, plans to release a more detailed outline of the rule next week, and EMA will include the SBLC report in next weeks’ Weekly Review.

### **NEW EPA RULE LIMITS SCIENTIFIC DATA USED TO JUSTIFY MORE STRINGENT REGULATIONS**

The Environmental Protection Agency (EPA) has finalized a rule to limit what research it can use to craft public health protections. The “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information” rule would require researchers to disclose the raw data involved in their public health studies before the agency could rely upon their conclusions. It will apply this new set of standards to “dose-response studies,” which evaluate how much a person’s exposure to a substance increases the risk of harm.

The final rule will make it more difficult for the EPA to use dubious science to justify more stringent pollution control regulations. However, researchers and academic organizations argue that the criteria will actually restrict the EPA from using some of the most consequential research on human subjects because it often includes confidential medical records and other proprietary data that cannot be released because of privacy concerns.

### **CONGRESSIONAL UPDATE**

The 117th Congress began on January 3, followed by Democratic victories in the January 5 Georgia Senate runoffs. Democrats will control the White House, Senate, and House for the first time since 2011. The 50-50 Senate makeup, with Vice President-elect Kamala Harris casting tie-breaking votes, means that neither party will be able to afford defections. Moderates such as Sens. Joe Manchin (D-WV), Lisa Murkowski (R-AK), Susan Collins (R-ME), and Mitt Romney (R-UT) could be determinative on key issues, including the filibuster and all legislation requiring bipartisan support. Congress will be largely dormant through inauguration, with the Senate not expected to begin introducing bills until January 21. The Senate has yet to finalize Committee makeup, but Committee leadership has been agreed: Sen. Joe Manchin (D-WV) will chair the Energy and Natural Resources Committee, and Sen. Tom Carper (D-DE) will chair the Environment and Public Works Committee.

Meanwhile, the House of Representatives passed the Rules package (H.R. 8), which establishes House rules and procedures for the 117th Congress earlier this week. Included in the package are amendments to the standing rules of the 116th Congress, as well as “separate orders,” which are procedural rules specific to the 117th Congress. While many of the separate orders address Congressional logistic issues created by the ongoing pandemic, a new provision creates an exemption from deficit controls for legislation related to the coronavirus pandemic or climate change. In other words, the Budget Committee chair can declare legislation related to the pandemic and climate change as without cost, meaning those bills would not be in violation of the PAYGO rule – the rule that prevents new legislation from adding to the federal deficit or detracting from the surplus, unless the cost is offset elsewhere in some manner. The new exemptions are so broad that it is possible they could decrease the overall budget impacts of a future infrastructure package, specifically related to new spending and tax incentives for clean energy programs and financing, water and wastewater infrastructure, and more.

### **WPMA COVID-19 - CRITICAL REFERENCES FOR MEMBERS**

Please visit our web site for up-to-date information related to your business and the COVID-19 pandemic. You will find the link on our home page at [www.wpma.com](http://www.wpma.com).

## **MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!**

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaptation of such contributions to accommodate the magazine's space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at [janr@wpma.com](mailto:janr@wpma.com), or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Winter edition of WPMA News magazine are due before November 1<sup>st</sup>. Later submissions will be considered for the Spring issue.

## **MARK YOUR CALENDARS FOR UPCOMING EVENTS**

**CANCELLED February 16-18, 2021** – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV  
**March 15, 2021** – Hawaii (HPMA) Golf Tournament – Oahu Country Club – Honolulu, HI  
**May 6-7, 2021** - Nevada (NPM&CSA) Big Dogs - Red Rock Hotel & Casino - Las Vegas, NV  
**June 1-2, 2021** - Montana (MPMCSA) Convention -Fairmont Hot Springs Resort - Fairmont, MT  
**June 21-24, 2021** - Washington (WOMA) Convention - Suncadia Resort - Cle Elum, WA  
**June 24, 2021** - Utah (UPMRA) Summer Golf Classic - Bountiful Ridge GC - Bountiful, UT  
**July 17-19, 2021** - Oregon (OFA) Annual Conference - Sunriver Resort - Sunriver, OR  
**August 4-6, 2021** - Idaho (IPM&CSA) Convention - Sun Valley Resort - Sun Valley, ID  
**August 23-25, 2021** - New Mexico (NMPMA) Convention - Sandia Resort & Casino - Albuquerque, NM  
**September 15-17, 2021** - Utah (UPMRA) Convention - Sheraton Park City Hotel - Park City, UT

**Be sure to subscribe to all of our social channels for great tips, industry trends, and insider information about association activities and upcoming events!**



**Petro Pete: “Are people born with photographic memories, or does it take time to develop?”**

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