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### IRS WARNS OF SIGNIFICANT CLAIM PROCESSING DELAYS IN 2022; MARKETERS URGED TO FILE MOTOR FUEL EXCISE TAX AND BIODIESEL BLENDER CLAIMS ELECTRONICALLY TO MINIMIZE REFUND DELAY

The Internal Revenue Service is warning taxpayers to expect significant delays in the processing of tax returns during 2022 according to a new report to Congress by the IRS's Taxpayer Advocate. The warning applies to all filings including those related to federal motor fuel excise tax (FET) and biodiesel blender claims. Energy marketers have been plagued by processing delays over the past 2 years. The excessive delays have forced marketers to float hundreds of thousands of dollars in refunds owed to them for biodiesel blending and the tax-free sale of clear diesel fuel to state and local governments and non-profit educational organizations. Ordinarily, these claims are paid within 45 days. Many marketers rely on these refunds to pay for daily operational expenses. IRS claim processing delays have extended payment of refunds out 9 months and longer for many marketers. The IRS cites a number of reasons for the processing delays including; funding reductions, promulgating an array of new COVID related tax credits and stimulus payments, employee resignations and absences, and last but not least, the filing of paper claim forms. Many marketers are still submitting their FET and biodiesel blender credit claims on paper forms. Paper claim forms are like "kryptonite" to the IRS according to the report because they must be processed manually, a laborious task made worse due to lack of adequate resources.

Accordingly, the IRS is urging taxpayers to file all claims electronically. Electronic filing is often seamless and results in far fewer processing delays. See the following Q&A on electronic filing.

#### Frequently Asked Questions - Form 8849, Claim for Refund of Excise Taxes

##### **Q. Why is IRS offering electronic filing of Form 8849, Claim for Refund of Excise Taxes?**

A. Offering electronic filing of Form 8849 satisfies the Congressional mandate to provide filers an electronic option for filing Form 8849 with Schedules 2, 3, or 8. Schedules 1, 5, and 6 are also available.

**Q. Who may file motor fuel excise claims electronically?**

A. Any taxpayer who pays the provider's required service fee for online submission will be able to electronically transmit Form 8849.

**Q. How do I choose a transmitter to e-file 8849 returns?**

A. IRS has posted the contact information of all approved [e-file transmitters](#). You will need to select one to your liking. IRS does not endorse any one provider and cannot make recommendations. All listed providers are approved to submit returns to the IRS electronically.

**Q. When can I e-file Form 8849?**

A. IRS is currently accepting electronically-filed Form 8849, Schedules 1, 2, 3, 5, 6 and 8. Check with approved [e-file transmitters](#) for which schedules they offer.

**Q. Where and how do I access the electronic 8849 tax forms?**

A. Taxpayers will be required to submit their electronic Excise Tax forms through an approved [transmitter/software](#) developer.

**Q. Will it cost anything to file Excise Tax forms?**

A. Yes. To electronically file Excise forms, taxpayers will incur the cost of the provider's required service fee for online submission.

**Q. Can all Excise Tax forms be filed electronically?**

A. No. At this point, the only Excise forms available for electronic filing are Form 2290, Heavy Highway Vehicle Use Tax; Form 720, Quarterly Federal Excise Tax; and Form 8849, Claim for Refund of Excise Taxes (Schedules 1, 2, 3, 5, 6 and 8).

**Q. Will IRS continue to accept paper forms once electronic forms are available?**

A. Yes, IRS will continue to accept paper Forms 8849. Electronic filing of the Form 8849 is optional.

**Q. How will Form 8849 e-file improve results?**

A. Refunds for an electronically filed Form 8849, with Schedule 2, 3 or 8, will be processed within 20 days of acceptance by the IRS. All other Form 8849 schedules are processed within 45 days of acceptance.

**HOUSE AGRICULTURE COMMITTEE HOLDS HEARING ON IMPLICATIONS OF EVS ON RURAL AMERICA**

This week, the house agriculture committee held a hearing discussing the implications of electric vehicle (ev) investments for rural america. representatives from the renewable fuels association (rfa), southern company, general motors (gm), sheetz, and others participated. lawmakers broadly argued that consumers – not government – should drive ev market incentives and noted the importance of protecting farmers and rural communities.

Rep. Rick Crawford (r-ar) asked two questions submitted by EMA:

1. Rep. Crawford asked the GM representative how subsidizing EV purchase may impose economic hardships on small business fuel and energy marketers. The GM representative said that those dealing with climate transitions may see future job opportunities in renewable energy given increased consumer demand.
2. Rep. Crawford followed up with the GM representative on the feasibility of an efficient battery exchange model to ensure EVs pay their fair share of the wear and tear done to highways. The GM representative agreed with the importance of working out such a model.

Republican and Democratic representatives questioned the applicability of EVs to rural areas. Rep. Doug LaMalfa (R-CA) asked Southern Company's representative how EV users in rural areas would be able to access already-limited power sources that are constantly disrupted by wildfires and other natural disasters. Southern Company's response that "not all the EVs would be charging at the same time" did not satisfy Rep. LaMalfa, who requested additional substantive information.

During the hearing, the RFA argued that EVs and the increased production and use of renewable fuels like ethanol would be essential to achieving net-zero carbon emissions by 2050. The RFA argued in strong support of the Renewable Fuel Standard (RFS) volume requirements in 2023 and beyond to "ensure low-carbon biofuels have access to a growing market."

### **U.S. SUPREME COURT STRIKES DOWN OSHA VACCINE OR TEST RULE**

In a 6 to 3 decision Thursday, the U.S. Supreme Court struck down the Biden administration from enforcing the Occupational Safety and Health Administration's (OSHA) COVID 19 vaccine or test requirements. The ruling effectively kills the vaccine or test rule for private employers. The OSHA rule required workers at businesses with more than 100 employees to get vaccinated or submit a negative COVID-19 test each week to their employer in order to enter the workplace. It also required unvaccinated workers to wear masks indoors at work. The ruling comes three days after the emergency measure started to take effect.

The Supreme Court decision is a big victory for small business energy marketers who faced implementing the complicated and controversial rule but are no longer required to comply. In an unsigned opinion, the Court said "Although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly". In addition, "Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category," the court wrote.

The mandates were the most expansive use of power by the federal government to protect workers from COVID-19 since the pandemic began. Nothing in the Court's decision prevents a private employer from voluntarily adopting their own vaccine or test program.

### **FMCSA RELEASES RANDOM DRUG AND ALCOHOL TESTING RATES FOR 2022**

The Federal Motor Carrier Safety Administration (FMCSA) this week announced calendar year 2022 minimum random drug and alcohol testing rates for CDL drivers and other hazardous material employees. The test rates are the minimum percentage of employees subject to U.S. DOT drug and alcohol requirements who must undergo a random test during the 2022 calendar year. The number of random **drug** tests conducted by employers for 2022 must equal at least 50% of applicable employees. This is the same random testing rate as 2021. The random **alcohol** testing rate for 2022 is also unchanged and remains at 10%. Random testing applies to both interstate and intrastate drivers. Random alcohol testing must be conducted just before, during, or just after a driver's performance of safety-sensitive duties including the transportation, loading or unloading of hazardous materials. The driver is randomly selected for testing from a "pool" of subject drivers. The random testing dates and times are unannounced and must be reasonably spread throughout the year. The FMCSA is reminding CDL drivers that the use of marijuana is illegal under federal law and will result in a positive test even in states where marijuana is legalized for medical or recreational use. The same is true for CBD oil which contains THC, a prohibited drug under FMCSA regulations. Click [here](#) for full compliance bulletin.

### **EMA JOINS OTHER INDUSTRIES IN COMMENTS CONCERNING THE DRIVE SAFE PILOT PROGRAM**

This week EMA joined other organizations in a [letter](#) strongly supporting the apprenticeship pilot program contained in section 23022 of the Infrastructure Investment and Jobs Act (IIJA), and urging the Federal Motor Carrier Safety Administration's (FMCSA) efforts to implement the program in a timely manner. However, we have concerns with requirements submitted by FMCSA to the Office of Management and Budget (OMB) in its emergency information collection request (ICR) that we believe create unnecessary administrative burdens and may inhibit participation in the program by stakeholders of various sizes.

In order not to discourage robust participation in the pilot program, FMCSA should implement requirements that mirror the statutory provisions, which received broad bipartisan congressional support and the endorsement of the undersigned organizations, and not raise additional barriers. We believe the proposal will be improved significantly by: removing the registered apprenticeship requirement, and reducing the amount of monthly data employers must provide to FMCSA.

### **U.S. SUPREME COURT WON'T HEAR APPEAL OF LOWER COURT DECISION OVERTURNING YEAR-ROUND E15 RULE**

This week the U.S. Supreme Court denied a request to hear an appeal brought by the ethanol industry to allow the year-round sale of E15 gasoline blends. The Court's action effectively ends the long running fight by the ethanol industry to permit year-round sales of E15 absent an amendment to the language of the Clean Air Act by Congress, which is very unlikely. The Court's decision is a victory for energy marketers who oppose the year-round sale of E15 because it is not compatible with many components of existing UST systems and raised insurmountable economic and administrative barriers for its use.

The ethanol industry asked the Supreme Court to reconsider an appellate court decision blocking a Trump era rule extending the one-pound RVP waiver in the Clean Air Act to E15 that would allow its sale year-round. Previously, E15 sales were limited to the winter driving season when evaporative emissions are low due to cooler weather and the one pound waiver is not needed to sell it. The District of Columbia Circuit Court decision the ethanol industry was appealing ruled that the plain language of the Clean Air Act limited the one-pound RVP waiver to ethanol blends between 9 and 10 percent and therefore could not be extended to E15 blends. The Biden administration argued in the lower circuit court hearing that not only was the language of the Clean Air Act limiting use of the one-pound waiver clear, but also that a

“number of economic, logistical and administrative barriers unrelated to the rule independently impede the widespread use of E15.”

The second prong of this argument is the direct result of EMA’s persistent efforts over the past decade to convince a once skeptical EPA that E15 was not compatible with existing UST systems; the cost of system retrofit would be ruinous for small business energy marketers; and administrative barriers required to prove compatibility, including resistance from fuel suppliers, insurance providers, state regulators and state fire marshals were impossible to overcome.

### **FMCSA ISSUES REGIONAL HOS WAIVER FOR HEATING FUEL AND PROPANE DRIVERS**

**EMA Contact: Mark S. Morgan, Regulatory Counsel [mmorgan@emamerica.org](mailto:mmorgan@emamerica.org)**

The Federal Motor Carrier Safety Administration (FMCSA) issued a regional [driver hours of service \(HOS\) waiver](#) for heating oil, propane and natural gas. According to the FMCSA, the emergency is in response to winter storms and high demand resulting in decreased availability of heating fuel, including propane, natural gas, and heating oil, in the affected states and anticipated effects on people and property, including the immediate risk to public health, safety and welfare.

**States Covered by the HOS Waiver:** The states included under the waiver are: **ALABAMA, ARIZONA, ARKANSAS, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, GEORGIA, IDAHO, IOWA, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, VIRGINIA, WEST VIRGINIA, WISCONSIN, AND WYOMING.** According to the FMCSA, the emergency is in response to winter storms and high demand resulting in decreased availability of heating fuel, including propane, natural gas, and heating oil, in the affected States and the current and anticipated effects on people and property, including the immediate risk to public health, safety and welfare.

**Effective Date:** The Emergency Declaration is effective immediately and remains in effect until the end of the emergency or until 11:59 P.M. (ET), **February 6, 2022**, whichever is earlier.

The waiver is the culmination of a 4-month effort by EMA, working closely with the FMCSA, to provide relief to heating oil and propane marketers who are struggling to keep up deliveries due to COVID related absences by drivers. EMA was successful having heating oil and propane added to the national HOS waiver and its extensions three times since March of 2020. However, due to the seasonal nature of heating fuels and objections to regional waivers by Northeast governors, FMCSA dropped both heating oil and propane from the past three national waiver extensions. The Maine Energy Marketers (MEMA) was instrumental in clearing the path for the new waiver. MEMA entered negotiations with their state officials and FMCSA on a heating fuels waiver for the State of Maine. Those negotiations brought to the forefront the difficulty of maintaining delivery schedules with the increasing number of driver absences due to COVID and its variant’s according to the FMCSA. Congratulations to MEMA for their invaluable contributions to this process.

The waiver only applies to driver hours of service regulations. If the Governor or authorized representative of the State also issued an emergency declaration relating to this emergency, that State Declaration may provide **additional regulatory relief**.

**Termination of the Waiver:** Upon termination of direct assistance to emergency relief efforts related to the emergency in the affected states, drivers are subject to the all requirements of the Federal Motor Carrier Safety Regulations (FMCSRs), except that a driver may return empty to the motor carrier’s terminal or the driver’s normal work reporting location without complying with HOS requirements. However, when a driver is moving from emergency relief efforts to normal operations, a 10-hour break is required when the total time a driver is engaged in emergency relief efforts, or in a combination of emergency relief and normal operations, equals 14 hours.

### **EMA TO CONGRESS AND THE WHITE HOUSE: FOCUS ON LABOR SHORTAGES AND SUPPLY CHAIN CONSTRAINTS INSTEAD OF HURTING AMERICANS WITH TAX INCREASES**

EMA joined other business trade groups in a [letter](#) urging Congress and the Administration to end efforts to pass the multi-trillion-dollar tax increase included in the Build Back Better (BBB) bill and focus instead on the challenges confronting American families and businesses today – rising prices, labor shortages, and ongoing supply chain constraints.

\$500 billion of the Build Back Better’s cost would be shouldered by family businesses and the bill would impose top rates on these businesses exceeding 50 percent. As with increased spending, voters believe these tax increases will be inflationary. The Federal Reserve has recognized the challenge inflation poses to families and businesses and announced it will begin tapering its quantitative easing purchases in the coming months. Congress needs to make a similar adjustment, beginning by ending efforts to sharply increase federal spending while raising taxes on America’s employers.

	<p><b>SCHOLARSHIP</b>  <b>\$4,000</b> Application Due March 1st  <b>OPPORTUNITY!</b></p> 	<p><b>CLICK HERE</b>  for a <b>WPMA</b>  <b>SCHOLARSHIP</b>  <b>Application</b>  <b>FORM</b></p>
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**MARK YOUR CALENDARS FOR UPCOMING EVENTS**

- February 22-24, 2022** – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV
- April 25, 2022** – Hawaii (HEMA) Golf Tournament – Ko Olina Golf Club – Kapolei, HI
- May 5-6, 2022** – Nevada (NPM&CSA) Big Dogs – Las Vegas, NV
- June 7-8, 2022** – Montana (MPMCSA) Convention – Fairmont Hot Springs Resort – Fairmont, MT
- June 20-22, 2022** – Washington (WIED) Convention – Suncadia Resort – Cle Elum, WA
- June 23, 2022** - Utah (UPMRA) Summer Golf Classic - Stonebridge GC - West Valley City, UT
- July 17-19, 2022** – Oregon (OFA) Annual Convention – Sunriver Resort – Sunriver, OR
- August 3-5, 2022** – Idaho (IPM&CSA) Convention – Coeur d’Alene Resort – Coeur d’Alene, ID
- August 22-24, 2022** – New Mexico (NMPMA) Convention – Sandia Resort & Casino – Albuquerque, NM
- September 14-16, 2022** – Utah (UPMRA) Convention – Sheraton Park City Hotel – Park City, UT

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***Petro Pete: "I always wanted to be somebody, but now I realize I should have been more specific."***

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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.