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### TSA URGES DRIVERS TO APPLY FOR BACKGROUND CHECK 60 DAYS IN ADVANCE OF HME RENEWAL DUE TO PROCESSING DELAYS

EMA has received an increasing number of calls from CDL drivers who are experiencing delays in processing security background checks required for hazardous material endorsements (HME). EMA reached out to TSA to inquire whether the delays are significant enough to warrant a temporary waiver of the Security Threat Assessment (STA) similar to the waiver granted in 2020 at the start of the pandemic. TSA said it is experiencing increased enrollment volumes for all TSA vetted populations in the National Transportation System. Applicants for HMEs have increased from 15,000 per month to 20,000 per month.

The increased volume is caused by several factors, including changes in the labor force, driver shortages or turnover, and supply chain demands resulting from the COVID-19 pandemic, according to the TSA. Most HME applicants are approved within 48 hours after enrolling for their STA. However, those HME applicants with a criminal history require a manual review by a TSA adjudicator; a lengthier process, but one that usually takes no longer than 45 days.

In order to adjust to the increased enrollment volumes, TSA is taking steps to reduce adjudication times for applicants by prioritizing the vetting and adjudication of applicants who require an STA for employment purposes, including HME. TSA is also communicating directly with States on a daily basis to address eligibility concerns for specific applicants. The TSA strongly encourages HME applicants to enroll at least 60 days in advance of when they require an HME on their commercial driver's license, even though many will be approved much sooner.

Drivers who enrolled at a Universal Enrollment Services (UES) enrollment center may check their service status online by visiting <https://universalenroll.dhs.gov> or contact the UES Call Center at 855-DHS-UES1 (855-347-8371). Customers from all states may contact TSA Customer Service at 833-848-4759 or e-mail [HME.question@tsa.dhs.gov](mailto:HME.question@tsa.dhs.gov) for STA status updates.

## **HAVE YOU COMPLETED YOUR ANNUAL CDL DRIVER DRUG AND ALCOHOL VIOLATION CLEARINGHOUSE QUERIES?**

Employers of CDL drivers are required to conduct an annual drug and alcohol violation query in the FMCSA Drug and Alcohol Clearinghouse for each CDL driver they employ. Employers are only required to make a “limited query” to check for drug and alcohol violations for these drivers. Only if a violation is found must the employer make a “full query.” The annual limited query is tracked on a rolling 12-month basis so there is no fixed deadline other than to make the query at least once within 365 days for each driver. This means if you conducted your last annual queries in January 2021, it is time to conduct your next round of annual queries.

[Log in to the Clearinghouse](#) and visit your Query History page to see if your annual queries are due. For instructions on conducting annual queries, download the [How to Conduct a Limited Query job aid](#). Additional Information can be found by [CLICKING HERE](#).

## **OSHA WITHDRAWS COVID-19 TEMPORARY EMERGENCY STANDARD REQUIRING VACCINATION OR WEEKLY TESTING**

OSHA has withdrawn its COVID-19 vaccination and testing emergency temporary standard (ETS) for employers with 100 or more employees. The withdrawal went into effect Wednesday. The agency also has filed a motion with the U.S. Court of Appeals for the Sixth Circuit, asking the appeals court to dismiss the pending, consolidated legal challenges to the ETS as moot because of the withdrawal.

### *Why Did OSHA Withdraw the COVID-19 ETS?*

OSHA’s ETS mandate for employers with 100 or more workers to require employees either to be fully vaccinated or pass a Covid-19 test at least weekly has been in doubt since it was issued on November 5, 2021. OSHA saw the handwriting on the wall when the U.S. Supreme Court, in 6-3 decision on January 13, 2022, reinstated a nationwide stay of the enforcement of the ETS while the Sixth Circuit considered the rule’s legality. The Court’s six conservative justices called the ETS an unauthorized exercise of OSHA’s statutory authority and found that the petitioners were likely to prevail on the merits. The agency understood that, even if the Sixth Circuit upheld the ETS, the Supreme Court likely would again rule that OSHA exceeded its statutory authority to mandate the vaccinate-or-test provisions. By withdrawing the ETS now, OSHA avoids further adverse court precedents.

### *What Happens Next at OSHA?*

There are two “next steps” with OSHA. First, the agency said it will continue to enforce its longstanding respiratory protection, personal protective equipment, and sanitization standards. In addition, OSHA will use its “General Duty Clause” to enforce against recognized workplace hazards, including employers’ responses to the COVID-19 pandemic. OSHA notes that its COVID-19 National Emphasis Program applies CDC recommendations to its enforcement procedure, offering regulated businesses some guidelines for COVID plans.

Second, in its withdrawal announcement, OSHA said it will continue to develop a permanent COVID-19 workplace standard. Because the Supreme Court found that OSHA has the authority to regulate “**occupation-specific**” COVID-19 risks based on a worker’s job or workplace, the agency can promulgate a narrower standard. Any permanent standard likely will be challenged in court, even though OSHA would not need to meet the “grave danger” threshold that applies only to emergency temporary standards.

### *How Does the ETS Withdrawal Affect OSHA State Plans?*

Notwithstanding OSHA’s withdrawal of the ETS, states and localities can regulate or impose COVID-19-related mandates on employers. There are 22-states that have federally approved OSHA plans and adopt their own health and safety plans that are “at least as effective” as the federal standards. OSHA does not have jurisdiction over private employers in these 22 approved-plan states. Because OSHA does not currently have a COVID-19 standard in place, the OSHA plan states are free to adopt standards identical to, or different from, the withdrawn OSHA ETS. Some state OSHA plans have announced their intention to back away from promulgating a vaccinate-or-test mandate.

### *What About Other State Responses to a Vaccinate-or-Test Mandate?*

State and local authorities are split on vaccination mandates. Alabama, Arkansas, Florida, Iowa, Kansas, Montana, North Dakota, Tennessee, Texas, Utah, and West Virginia have enacted laws intended to curtail or limit workplace vaccine mandates. Other states, namely California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, have enacted laws that may not preclude private employers from requiring employee

vaccinations or that require vaccinations for certain categories of workers (e.g., state employees and contractors and health care workers).

### *What If My Workplace is Not Subject to a Mandate?*

Employers not covered by a state or local mandate may choose to implement vaccinate-or-test policies and practices best-suited to the unique needs of their workplaces (remember that OSHA State Plan states may elect to promulgate standards of their own). As employers, energy marketers should communicate clearly with their employees about any changes in their COVID-19 policies and practices, making additional changes, as necessary.

### **EMA VOTES NO ON PROPOSED NFPA CODE THAT WOULD RESTRICT EV CHARGING PLACEMENT AT RETAIL GASOLINE STATIONS**

EMA submitted a “no” vote on a National Fire Protection Association (NFPA) Temporary Interim Standard (TIA) regulating the placement of EV charging stations at motor fuel dispensing stations. The setback requirements in the proposed standard are so restrictive that it could prevent the installation of EV chargers at most existing retail gasoline stations. The proposed Section 15.3.1 in NFPA 30A (Location Adjacent to Buildings or Property Lines) requires a setback of 10 feet from property lines and 10 feet or three feet from buildings, depending on building construction. For example, a retail service station adjacent to a fast-food restaurant would have to install EV chargers 10 feet from the property line or building while the restaurant could install EV chargers on the common property line or next to the building. The 10-foot setback could eliminate a significant portion of a property available for EV charging.

Further, the TIA makes the setbacks even more restrictive by defining a motor fuel dispensing facility as the “portion of a property where motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles...” However, the current code does not define at what point the portion of the property used for fueling extends to a property line. In absence of uniform guidelines for setbacks governing the installation of all EV chargers, this can result in unintentional consequences that present a significant disadvantage for retail and commercial fueling facilities. EMA also objects to the TIA because it would only apply to motor fuel dispensing facilities and no other EV charging location. Instead, EMA is urging NFPA to wait to develop an EV charging installation standard that applies to all sites during the normal 2024 revision cycle for NFPA 30A rather than through a temporary interim standard. In this way, marketers will have sufficient time to comment and collaborate with NFPA on the standard so that it does not unduly restrict installation of EV chargers at retail gasoline stations. EMA has worked closely on NFPA issues for many years and is leading the effort to prevent the adoption of this overly restrictive TIA.

### **BIDEN ADMINISTRATION MOVING FORWARD WITH BAN ON MENTHOL CIGARETTES**

After consideration beginning in April 2021, the Food and Drug Administration (FDA) is moving forward with plans to ban menthol cigarettes. The FDA announced on January 28 that it would issue two proposed rules, one prohibiting menthol as a characterizing flavor in cigarettes and another prohibiting all characterizing flavors (including menthol) in cigars—by spring. The FDA will have a public comment period and will evaluate comments and recommendations from stakeholders. Then, the FDA could “proceed to issue final product standards, which would become enforceable once in effect.”

EMA is concerned that such drastic measures could detrimentally impact small business retail fuel outlets who depend on the sale of tobacco products. Menthol cigarettes make up some 35 percent of overall cigarette sales, and in some regions or parts of communities, much more. Cigarette customers often end up purchasing other products which spurs economic activity, provides much-needed jobs, and supports local communities. Further compounding this economic challenge is the near certainty that menthol cigarette bans would further the already intense competition small businesses face from the illicit marketing of tobacco products. The National Academies of Science, Engineering and Medicine have estimated that illicit marketing already accounts for up to 1 in 5 cigarettes sold in the United States. Research has also found that a substantial percentage and perhaps the bulk of menthol cigarette sales would simply move to this black market in the event of a ban, further increasing competition with legitimate sources. The bottom line is that small business retail fuel retailers undertake significant efforts to train their employees how to not sell tobacco products to underage youth, efforts that contraband sellers will not make.

### **FUELS INSTITUTE EXAMINES ENVIRONMENTAL IMPACT OF EVS VS ICEVS**

The Fuel Institute released a new report titled Life Cycle Analysis Comparison - Electric and Internal Combustion Engine Vehicles. The report provides an evaluation of the life-cycle costs and greenhouse gas (GHG) emissions for internal combustion engine vehicles (ICEV), hybrid electric vehicles (HEV), and battery electric vehicles (BEV). The GHG life cycle includes vehicle manufacturing, fuel production and distribution, operation, and end of life (disposal, remanufacturing and recycling). For each type of vehicle, greenhouse gas emissions and total cost of ownership (including purchase, insurance, fuel, maintenance, and repairs) are estimated.

The greatest amount of GHG emitted by BEVs are associated with electricity generation (72 percent) while the greatest GHG emissions for a ICEV are associated with fuel consumption (73 percent) during vehicle operation. The method of

electricity generation; however, has a significant impact on GHG emissions. BEV in markets with low carbon grid emit 71 percent fewer tons of greenhouse gases than ICEV; however, BEV in markets with extremely high carbon grid emit 16 percent more than ICEV and 59 percent more than HEV. Based on the U.S. average electricity mix from renewable and nonrenewable energy sources, over its lifetime GHG emissions are estimated to be 39 tons for the BEV, 47 tons for the HEV, and 66 tons for the ICEV.

The Total cost of ownership over the vehicle's lifetime is estimated as \$70,457 for the BEV, \$74,618 for the HEV and \$81,581 for the ICEV. The report also notes that biofuels have a lower GHG emissions compared to gasoline and evaluates the impact biofuels can have on the GHG emissions for ICEV. This shows the importance of reducing the carbon intensity of the liquid fuels and the role biofuels can play in the overall reduction of GHG emissions. The full report can be downloaded [HERE](#).

#### **REMINDER: IRS WARNS OF SIGNIFICANT CLAIM PROCESSING DELAYS IN 2022**

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.

**ANALYSIS SHOWS CARBON REDUCTION COST OUT OF REACH**

A new analysis from McKinsey & Co. estimates that the investment, in new infrastructure and systems, needed to meet international climate goals could be \$9.2 trillion a year annually through 2050. That's at least \$3.5 trillion more a year than the world is currently laying out for both low-carbon and fossil-fuel infrastructure and changes in how people use land. Click [here](#) to read the story.

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Class size is limited to 25. For more information or to reserve your spot in the upcoming session, please [view](#) the video and register, contact Royetta Spurgeon at Federated Insurance at 507.455.5604 or send an email to [drm@fedins.com](mailto:drm@fedins.com).



**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: " In the book of life, the answers aren't in the back."***

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