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### SCHOLARSHIP APPLICATION MAILING DEADLINE IS MONDAY, MARCH 1ST!!

The time is fast approaching when the WPMA scholarship recipients for 2022 will be selected. **MARCH 1, 2022 IS THE CUT-OFF DATE** for applications to be **E-MAILED IN OR POSTMARKED AND MAILED** to the WPMA office. Usually, there are less than 10 applicants for each WPMA state scholarship and the associate member scholarship, which makes the chances of receiving a scholarship very good. Applicants must be graduating high school seniors, and the son or daughter of a full-time employee of a WPMA member or associate member company. **High School seniors who are currently working part-time for a WPMA member company, and have been employed for at least 90 days, may also apply for the scholarship.**

Applicant qualification information and submission options are listed on the updated scholarship application, available at <https://www.wpma.com/pdf/scholarship/Scholarship-Application-eForm06-2020.pdf>. Scholarship applications are also available from the WPMA office by e-mailing [kathym@wpma.com](mailto:kathym@wpma.com) and requesting an application.

The WPMA scholarships pay \$500 per semester for up to eight semesters, for a maximum award of \$4,000. **Employers, please remind all of your full-time employees or part-time senior student employees to request or download an application right away, and give our students a chance for some extra financial help with college or vocational training!**

### FMCSA ENTRY LEVEL DRIVING TRAINING REQUIREMENTS

Compliance with the Federal Motor Carrier Safety Administration's (FMCSA) new Entry Level Driver Program (ELDT) begins February 7, 2022. The ELDT was mandated by Congress under the MAP-21 highway bill enacted in 2012. The ELDT applies **only** to applicants seeking a CDL for the first time or upgrading to a Class "B", a Class "A", an "H"

endorsement (HAZMAT), “S” school bus endorsement and “P” passenger endorsement. Individuals with a CDL or “H” endorsement prior to February 7, 2022 *are not required* to complete ELDT.

Click [here](#) to read the full EMA Compliance Bulletin.

### **LEGISLATIVE UPDATE**

This week, the Food and Drug Administration (FDA) announced it would soon issue regulations codifying its plan announced in 2021 to ban menthol cigarettes and flavored cigars.

In Congress, the House focused on passing the US COMPETES Act, legislation to support US research and development and supply chain security to compete with China. The other most pressing priority is government funding, which expires February 18. Congress will likely pass a short-term Continuing Resolution to give them more time to negotiate a spending agreement.

The Build Back Better Act remains stalled indefinitely. Senator Joe Manchin (D-WV) has not engaged in any negotiations with the White House and said “it’s dead” when asked about the status of the bill by a reporter this week. While Senate Majority Leader Chuck Schumer (D-NY) reiterated his commitment to finding a path forward, the Senate’s legislative calendar will soon be filled by a) conferencing the China bill; b) funding the government; and c) confirming a new Supreme Court justice.

### **EMA URGES EPA TO REDUCE CORN ETHANOL MANDATE**

Today, EMA sent comments to the EPA on its proposed ethanol blending mandates for 2020-2022. EMA urged the EPA to fully consider the impact the RFS places on small business energy marketers when setting the upcoming annual RVOs for 2020, 2021 and 2022. EMA said, “If ethanol volumes continue to rise as proposed in 2022, obligated parties will be forced to manufacture E15 blends to meet their annual RVOs. E15 blends made from corn ethanol are not compatible with most existing underground storage tank systems in operation today. Look no further than EPA’s document from January 2020 entitled E15’s Compatibility with UST Systems which states, *Most older and even some newer existing UST systems (which includes but is not limited to tanks, pumps, ancillary equipment, lines, gaskets, and sealants) are not fully compatible with E15 and require modification before storing E15. For example, the actual tank is often compatible with E15, but some of the connectors and pump components may not be. That can lead to leaks. Dispensers are not part of the UST system, by definition, but face the same compatibility concerns and are a critical part of the fueling system for our constituents.*” Click [here](#) to read the full EPA statement.

The EPA issued proposed RFS annual blending mandates in December that significantly lowered renewable fuel (ethanol) volumes for 2021 (13.3 billion), and in an unprecedented move, the agency retroactively reduced the 2020 renewable fuel (ethanol) blending mandate previously set at 15 billion gallons to 12.5 billion gallons. According to the EPA, the retroactive reduction is due to lower demand for transportation fuels during the COVID-19 pandemic. The EPA already set the 2021 biomass-based diesel (biodiesel) blending mandate at 2.43 billion gallons in a previous rulemaking. The EPA delayed decisions on 2021 blending obligations by more than a year and recently missed the November 30th deadline to finalize 2022 blending mandates.

EMA has for many years called for lower annual corn ethanol blending volumes that would allow marketers to determine for themselves whether to sell E15 rather than be required to do so through a de facto mandate. EMA sent multiple letters to the EPA and the National Economic Council last year requesting urgent action to reduce the corn ethanol mandate to address the current E15 crisis. Click [here](#) and [here](#) to read EMA’s letters.

EMA fully believes in renewable fuels and their importance in the liquid fuels market and has urged the Biden Administration to ensure federal grant funds be available for small business energy marketers to upgrade their underground storage tank system equipment to safely and legally sell E10 plus blends.

### **FEDERAL COVID-19 PRICE GOUGING BILL INTRODUCED**

This week, House Democrats introduced the “COVID-19 Price Gouging Prevention Act” (H.R.675) that outlaws “price gouging” during a “public health emergency” declared under federal law. Price gouging is defined as opportunistic behavior by sellers who take advantage of an emergency to raise prices of goods “unreasonably” to “unconscionably excessive” levels. All goods are covered by the expansive definition contained in the Bill, including motor fuels and convenience store items. There is no explicit limit to price increases, such as limits that might be expressed as a percentage of the existing price. There is, however, an explicit set of factors to be considered in determining whether a price increase is unreasonable and whether it rises to the level of unconscionability.

A determination of unconscionable price will depend on whether (i) the price “grossly exceeds the average price” in the 90 day period immediately preceding the price increase, or the average price during certain 45-day periods one year prior to the price increase; (ii) whether the price “grossly exceeds” the average price for the same or similar goods before January 31, 2020; and (iii) whether the increased price reflects certain increased costs of doing business (or “reasonably

anticipated” increases in such costs) that were “not within the control of the seller.”

The factors do not include an assessment of whether the price is consistent with other prices in the market at the time of the alleged illegal sale, or whether consumers who were allegedly overcharged had other choices in the market to purchase the same product at a lower price. Whether consumers had other choices is a factor that the FTC currently considers in determining whether a pricing practice is an unfair or deceptive trade practice, although it is given no mention in the Bill.

The above-stated factors are also broad and loose enough to provide a jury with wide latitude in determining whether a price is “unconscionable.” It lacks a single clear-cut factor that would absolve a seller of liability as a matter of law. The lack of an absolute defense creates uncertainty in pricing, leaving the seller with a number of broadly stated factors to weigh in determining whether a price change is lawful. There could, for example, be a definition of the phrase “grossly exceeds the average price,” such as stating a percentage over the average price that provides the seller with a safe harbor. Or there could be an absolute defense whenever an increase in price is attributable to a corresponding proportionate increase in the cost of goods sold.

There are several ways to provide the seller with more certainty in pricing and less risk of being unjustly accused of “price gouging.” For example, certainty in pricing would be enhanced if the benchmark period for determining an excessive price is streamlined and simplified. An allegedly illegal price, for example, should be compared to the prices charged in a single, well-defined period, such as the 30, 60, or 90 days immediately preceding the declaration of emergency. It would also be helpful if the Bill contained provisions that would eliminate confusion arising from a seller’s need to comply with inconsistent federal and State price gouging standards. Under the Bill, a seller would have to comply simultaneously with the federal and State pricing standards, and sellers could be subject to simultaneous lawsuits brought by the FTC and a State attorney general.

EMA General Counsel will bring these and other issues to the attention of House members, as well as potential improvements to the Bill. The good news is even if the House passes the bill, the Senate is unlikely to approve it.

### **EMA URGES FEDERAL HIGHWAY ADMINISTRATION TO PROTECT SMALL BUSINESS MARKETERS**

Last fall, Congress approved, and the President signed into law, a \$1.2 trillion bipartisan infrastructure bill, the Infrastructure Investment and Jobs Act (IIJA). The IIJA provides \$7.5 billion in funding for states to deploy an Electric Vehicle Formula Program (EV Charging Program) with a \$2.5 billion set aside for a competitive grant program to build out EV charging, hydrogen, natural gas and propane infrastructure along alternative fuel corridors.

The White House and relevant agencies are now turning to implementation of IIJA. Last Friday, EMA submitted comments after seeking input from EMA’s Motor Fuels Committee and Alternative Energy Task Force regarding the Federal Highway Administration’s (FHWA) EV infrastructure related questions, specifically on how the programs should be administered, including criteria for locating EV infrastructure projects.

EMA urged FHWA to establish safeguards to ensure small business marketers can access vital federal funds to advance alternative energy goals. Specifically, EMA urged FHWA to ensure that 50 percent of the grant program funding be dedicated to small, independent fuel marketing businesses with less than 500 employees who can diversify and ensure consumers pay a competitive price for EV charging. EMA stressed to FHWA that it makes more sense to locate new EV charging equipment at existing off-highway fuel retailer sites. These sites are ubiquitous, familiar to consumers and conveniently located at highway entrances and exits nationwide. New EV charging sites are likely to be located further from highway exits and entrance ramps than consumers are ordinarily willing to travel. The convenience of an EV charging station, already situated at highway entrance and exit ramps, along with the availability of restrooms, food, and drink, will prove far more desirable to travelers than EV charging stations located further down the road from the exit, without facilities or refreshments.

Finally, EMA reiterated its concerns that the National Electric Vehicle Formula Program and the Charging and Fueling Infrastructure Grant Program could permit electric utilities to double dip – meaning they could charge their rate paying consumers to pay to expand EV infrastructure, while also taking grant money to subsidize the same projects. An electric utility monopoly using ratepayers to install EV infrastructure hurts consumers by effectively blocking out competition. Competition will ensure consumers pay a competitive price for EV charging and are ultimately serviced by the companies that provide the best customer experience. In other words, utilities and non-utilities, including private businesses, should be on a level playing field when it comes to building out EV charging infrastructure.

### **FMCSA EXTENDS HOS WAIVER FOR PROPANE AND HEATING OIL DELIVERIES TO MARCH 8, 2022**

The FMCSA, at EMA’s request, issued a 30-day extension of the regional hours of service waiver for heating oil and propane deliveries set to expire on February 6, 2022 ([FMCSA Waiver Extension](#)). This most current waiver for heating oil

and propane deliveries is extended through March 8, 2022. The FMCSA regional waiver extension covers 41 states plus the District of Columbia. The waiver extension was also amended to add the state of Mississippi. EMA requested the HOS waiver extension due to the ongoing extreme weather conditions hampering propane and heating oil delivery to millions of customers across the country. It is important to remember that FMCSA regional waivers only apply to interstate motor carriers operating in the region it covers. Each state must decide whether or not to extend the FMCSA waiver to intrastate drivers. EMA expects most states will adopt the waiver extension. Also, state waivers may differ in conditions and length of duration from FMCSA emergency waivers and should be examined carefully.

The FMCSA waiver extension for heating oil and propane is not to be confused with the November 29, 2021 [national HOS waiver for motor fuels](#) set to expire on February 28, 2022.

### **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 location of EV charging stations at motor fuel dispensing stations. Proposed setback requirements from property lines and buildings 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) could require 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, a motor fuel dispensing facility is defined 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 could result in unintentional consequences that present a significant disadvantage for retail and commercial fueling facilities. EMA also objects to the TIA because it, particularly setbacks from property lines and buildings, would only apply to motor fuel dispensing facilities and no other EV charging location. Instead, EMA urged NFPA to continue addressing this issue during the normal 2024 revision cycle for NFPA 30A rather than through a temporary interim standard to allow for consideration of these concerns and other public input on this issue. 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.

### **BILLS INTRODUCED TO MAKE SOME DRIVER WAIVERS PERMANENT**

U.S. Senators Cynthia Lummis (R-WY) and Mark Kelly (D-AZ) introduced a bill to help address supply chain shortages and increase the number of truck drivers transporting goods in the U.S. Their bill, the *Licensing Individual Commercial Exam-takers Now Safely and Efficiently (LICENSE) Act*, would streamline burdensome licensing regulations by making permanent several waivers that the Federal Motor Carrier Safety Administration (FMCSA) implemented in response to the ongoing COVID-19 pandemic last November.

The bill is also sponsored by Reps. Darin LaHood (R-IL), Troy Balderson (R-OH), Henry Cuellar (D-TX), and Josh Harder (D-CA) in the U.S. House of Representatives.

The bill would allow state and third-party examiners previously authorized to administer the commercial driver’s license (CDL) skills test to also administer the CDL knowledge test without having to complete the training course. This will help get additional drivers on the road faster without compromising safety.

The bill would also allow states to administer driving skills tests to applicants from other states. This will streamline the credentialing process and allow future truckers to get tested where they live rather than only where they received their training. To read a one-pager about the bill, [click here](#).

	<p><b>SCHOLARSHIP</b>  <b>\$4,000</b> Application Due March 1st  <b>OPPORTUNITY!</b></p>	<p><b>CLICK HERE</b>  for a WPMA  <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 need six months of vacation twice a year!”**

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