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WPMAEXPO 2022 – THANKS FOR MAKING IT A SUCCESS!

Thank You to all our WPMA members, associates and friends who attended the WPMAEXPO 2022 in Las Vegas last week. It was an outstanding convention – full of informative Educational Sessions with timely topics, Keynote Trey Gowdy, and an outstanding Trade Show highlighting the newest and greatest in goods and services.

This year the Scholarship Foundation golf tournament was played at Rio Secco Golf Club! It was a wonderful, sunny, but cool, day on the course; thank you to all who participated.

And a big Thank You to all our convention sponsors. Through your generous support the WPMAEXPO 2022 was a big success.

We'll see you February 21-23, 2023 in Las Vegas!

THANK YOU **WPMAEXPO 2022** TOP SPONSORS

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EMA CHALLENGES EPA RULE THAT WOULD HURT ENERGY MARKETERS

On Monday, the Energy Marketers of America (EMA) asked the federal appeals court in Washington, D.C. to review the Environmental Protection Agency's (EPA) December 2021 final rule that increases the stringency of greenhouse gas emissions for model year 2023-2026 cars and light-duty vehicles by significant percentages. The Biden EPA is ostensibly using EPA's tailpipe emissions standards to phase out internal-combustion engine vehicles in exchange for electric vehicles. EPA estimates that its rule for the four model years will reduce fuel demand by 361 billion gallons.

EMA joins the American Fuel & Petrochemical Manufacturers, 15 States (Alabama, Alaska, Arkansas, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, and Utah), and other groups in opposing the EPA rule.

A key issue in the challenges is the "major questions doctrine," which holds that courts should not defer to agencies on questions of "vast economic or political significance" unless Congress has provided explicit authority to the agencies. The Supreme Court recently used this doctrine to block the Biden administration's emergency rule requiring employees of large companies either to be vaccinated or masked and tested weekly.

Another key issue in EMA and the other groups' challenges is EPA's failure in its final rule to consider the emissions that are emitted in the making and disposing of batteries and other components required by electric vehicles, as well as emissions from generating electricity for charging them. By using "tailpipe only" emissions, EPA assigns 0 g/mile emissions to electric vehicles in its final rule.

The bottom line is that a vehicle's total emissions should account for its entire life cycle: production and resourcing, lifetime usage, and end-of-life disposal after use. The EV market remains small as most consumers still opt for gasoline powered vehicles when given a choice.

DOT PROPOSES NEW RULE TO ADD ORAL FLUID TEST AS ALTERNATIVE TO URINE TESTING FOR CDL DRIVERS

The U.S. Department of Transportation (DOT) published [a notice of proposed rulemaking](#) allowing oral fluid drug testing for CDL drivers and other HAZMAT employees. According to the DOT, the addition of oral fluid drug testing will help combat employee cheating on urine drug tests and provide a more economical, less intrusive means of achieving the safety goals of the drug testing program. Research has found that oral fluid testing provides the same scientific and forensic accuracy of drug test results as urine testing. The DOT is not proposing to eliminate urine testing. Instead, oral fluid testing will be an alternative option to urine testing. Each specimen type offers different benefits to assist employers in detecting and deterring illegal drug use. **Most significantly, the oral fluid testing window of detection for marijuana use is up to 24 hours, whereas urine testing's window of detection for marijuana is 3 to 67 days.**

Oral fluid testing will provide employers with a more flexible method for detecting recent use of marijuana. That flexibility will provide several benefits, according to the proposal. For example, when an employer determines that a DOT post-accident or a reasonable cause/ suspicion test is needed, oral fluid collections could be done at the scene of the accident or the incident. The collection could be done by any DOT qualified oral fluid collector—either an external contractor or a DOT-regulated company employee. Another advantage is that oral-fluid testing is generally less expensive than urine testing. Oral fluids test can cost \$10 to \$20 less than a urine testing (e.g., about \$50 for a typical urine testing process, vs. about \$35 for an oral fluid testing process. Hair-testing for drug use is not included in the proposed rulemaking. A 2020 proposed rule to set up standards for the use of [hair testing](#) for drugs was criticized by hair-testing advocates in the trucking industry including EMA because it would have required another sample, such as urine or oral, as a backup. EMA plans to submit comments on the proposed rule for oral fluid drug testing by March 30, 2022.

EMA SUBMITS DETAILED COMMENTS TO NFPA ON EV CHARGING AT GAS STATIONS

This week, EMA submitted more detailed comments in opposition to the National Fire Protection Association's (NFPA) Tentative Interim Amendment (TIA) regulating the placement of EV charging stations at gas stations. The setback requirements in the proposed standard are so restrictive that it could prevent the installation of EV chargers at most existing retail gas 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.

[CLICK HERE](#) to read the attached EPA letter to NFPA.

EMA URGES PRESIDENT BIDEN TO RECONSIDER KEYSTONE XL AND TO GRANT JONES ACT WAIVER

In response to the Russia's invasion of Ukraine, EMA sent a [letter](#) to President Biden seeking greater energy independence. The letter urges the President to reconsider his position regarding the cancellation of the Keystone XL Pipeline (KXL). KXL is important for American fuel independence, and even more so now with Russia's invasion of Ukraine. KXL provides a permanent solution towards American energy independence as it would transport up to 830,000 barrels of energy products per day, while also generating \$2 billion in earnings for American workers and millions of dollars in property and income taxes through every year of operation.

EMA also encouraged the President to consider temporarily waiving the Jones Act to accelerate domestic energy product shipments from the Gulf Coast to terminals on the East Coast using foreign-flagged ships. The Jones Act requires that all goods transported between U.S. ports be carried in U.S. owned ships, built and registered in the U.S., and staffed by U.S. citizens. The Jones Act has been temporarily waived in the past to alleviate supply issues.

STATE OF THE UNION AND CAPITOL HILL UPDATE

This week, President Joe Biden delivered his first State of the Union address. He spent the first twelve minutes pledging America's support for Ukraine, which received strong bipartisan applause. In addressing energy prices, which have spiked due to Russia's invasion, President Biden announced that the U.S. and allies would release a combined 60 million barrels of oil from strategic reserves. Meanwhile, key lawmakers, ranging from Senator Lindsay Graham (R-SC) to Speaker Nancy Pelosi (D-CA), said they would support banning Russian oil imports to the U.S. While President Biden made clear that everything is on the table in terms of sanctioning Russia, the White House (so far) has expressed little interest in targeting Russian oil due to effects on U.S. and European consumers. Senators Joe Manchin (D-WV), Lisa Murkowski (R-AK) and Jon Tester (D-MT) as well as Congressmen Josh Gottheimer (D-NJ) and Brian Fitzpatrick (R-PA) are pushing legislation that would effectuate the ban on Russian energy imports.

During his address, President Biden also pledged support for bold climate legislation, praising clean energy tax credits and investment while not mentioning the Build Back Better Act (BBB) by name. Later this week, Senator Joe Manchin (D-WV), who effectively killed the previous iteration of BBB, provided a rough outline of a package he could support. The "pay-fors" would be prescription drug savings and tax increases, and the spending would be on clean energy tax credits and investment. Congressional progressives said that this is a framework in which they could work, though no serious discussions have begun. Any substantive efforts to restart a reconciliation framework would likely wait until May, given current Congressional attention on Ukraine, government funding, confirming a Supreme Court justice, and finalizing the

research and development bill to compete with China.

In Congress this week, Secretary of Transportation Pete Buttigieg testified before the Senate Environment and Public Works Committee on implementation of the Infrastructure Investment and Jobs Act (IIJA). He highlighted the network of 500,000 EV charging stations that will be deployed (as a reminder, roughly \$5 billion is allocated for states, and \$2 billion is allocated for competitive grants). Sec. Buttigieg discussed EVs with several Senators:

- Ranking Member Senator Shelley Moore Capito (R-WV) asked about ownership of EV charging stations. Sec. Buttigieg said the charging stations would not be federally owned and emphasized public-private partnerships.
- Senator Ed Markey (D-MA) asked about equity in the roll out of an EV charging network. Sec. Buttigieg said that lower-income Americans would benefit from the charging network.
- Senator Joni Ernst (R-IA) expressed concern for prioritizing EVs over biofuels, which she stated could increase American dependence on foreign supply chains. Sec. Buttigieg expressed interest in opportunities surrounding sustainable aviation fuels.

Sec. Buttigieg also called on Congress to pass an FY 22 government funding package so that portions of IIJA can be completely funded. Negotiations over a government funding package continued this week, with the White House requesting a supplemental package that would provide aid for Ukraine. Lawmakers may need to pass another Continuing Resolution if an agreement is not reached by the deadline, March 11.

Also this week, Speaker Nancy Pelosi (D-CA) criticized a federal gas tax suspension, arguing that there is no guarantee that energy companies would pass along savings to consumers.

Next week, the House Energy and Commerce Committee will hold a hearing on EV charging featuring non-government witnesses, including Ford Motor Company. EMA has been in touch with the Committee about the hearing and issues of importance to marketers, including questions for witnesses.

AXIOS REPORT: THE COLD HARD TRUTH ABOUT EVS IN WINTER

More Americans are opting to purchase an electric vehicle, but some EV owners are surprised to find out how much their car's driving range is compromised by winter weather. [Click here](#) for the story.

FMCSA EXTENDS NATIONAL HOURS OF SERVICE WAIVER THROUGH MAY 31, 2022

The FMCSA is extending the nationwide CDL driver hour of service (HOS) waiver (49 CFR 395.3) authorized under the March 13, 2020 presidential declaration of national emergency. The current waiver was set to expire on February 28, 2022. However, due to the ongoing COVID 19 pandemic and resulting supply chain disruptions, the FMCSA is extending HOS waivers through May 31, 2022.

Please [CLICK HERE](#) to read full Compliance Bulletin.

ENDING FORCE ARBITRATION OF SEXUAL ASSAULT AND SEXUAL HARASSMENT ACT OF 2021

Recently, the Senate passed the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (H.R. 4445). The legislation was introduced by Senators Lindsey Graham (R-SC), Kirsten Gillibrand (D-NY) and by Reps. Morgan Griffith (R-VA) and Cheri Bustos (D-IL). The bill passed the House last month and the President is expected to sign it into law.

When enacted, the legislation will amend the Federal Arbitration Act to prohibit the enforcement of any agreement that would require a worker to submit a claim of workplace sexual harassment or assault to arbitration. While a worker can still choose to pursue a claim through arbitration, this new law will prevent agreements under which employees are asked to prospectively waive their right to pursue a claim of sexual harassment or assault through in the courts.

What remains to be seen here is how courts will interpret and apply the law. In particular, the legislation prohibits the enforcement of an arbitration agreement "with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." The open question is what will happen with cases that involve both claims of sexual harassment or assault and other claims, such as discrimination or retaliation. A narrow reading of the statute would mean that a case could be split with the non-sexual harassment or assault portions being sent to arbitration while the sexual harassment or assault allegations remain in litigation. On the other hand, a broad reading of the statute would mean that, as long as a case included a claim of sexual harassment or assault, no part of the case could be compelled to arbitration under an otherwise enforceable arbitration provision. The legislative history and comments made by the bill's sponsors suggest that Congress intended the former narrower approach. However, the Supreme Court has expressly held that legislative history should not be used in evaluating the Federal Arbitration Act, meaning that courts interpreting the law may find themselves restricted in what they can look to interpret the meaning of the new law.

The big take-away here is that any business that has historically used arbitration agreements or clauses with its workers

should carve out claims of sexual harassment or assault from its mandatory arbitration provisions and should consider the potential implications of having a case split between arbitration and the courts.

MPC ADVERTISING CAMPAIGN ON HIGH SWIPE FEES

This week, the Merchants Payments Coalition (MPC), of which EMA is a member, announced an advertising campaign to educate Congress and other policymakers on high “swipe” fees credit card networks and big banks charge merchants to process transactions and the impact the fees have on consumers, small businesses and the U.S. economy. The campaign comes as Visa and Mastercard – which control nearly 80 percent of the U.S. credit card market – prepare to implement a \$1.2 billion increase in swipe fees in April. The increase was delayed from a year ago after members of Congress said it would “undermine efforts to help the economy recover.”

The six-figure campaign includes ads that will be featured in both social media and traditional media across Washington targeting members of the House and Senate and their staffs, and policymakers at agencies such as the Federal Reserve, Consumer Financial Protection Bureau, the Federal Trade Commission and the Department of Justice. The ads, which will run through this spring, direct readers and listeners to the MPC website at www.merchantspaymentscoalition.com for more information.

As prices rise with inflation, swipe fees go up proportionately because the percentage is based on a larger amount, giving even more to the card industry. The fees have been a growing concern as consumers have shifted from cash to plastic during the pandemic, with the Fed saying cash accounted for only 23 percent of purchases in 2020, down from 32 percent just two years earlier in 2018, while credit and debit cards grew to 65 percent from 59 percent in the same period. A recent Visa study found 53 percent of consumers expect to stop using cash within the next 10 years.

Several federal agencies have expressed concern over the fees in the past year. The Fed has proposed regulations clarifying that banks must enable all debit card transactions to be processed over at least one competing network such as NYCE, Star or Shazam in addition to Visa or Mastercard’s networks. Both the DOJ and FTC are investigating practices that often block retailers’ right to choose which network processes online debit transactions.



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Look for winners to be featured in the WPMA News Summer Magazine

MARK YOUR CALENDARS FOR UPCOMING EVENTS

April 19, 2022 - Idaho (IPM&CSA) PAC Golf Event – Ridgecrest Golf Course, Nampa Idaho
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 (WI/ED) 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
February 21-23, 2023 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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: “Sometimes I wonder if all that is happening is because I didn’t forward that email to 10 people.”

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