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EMA COMPLIANCE BULLETIN REMINDER: RANDOM DRUG AND ALCOHOL TESTING RATES FOR 2022

The Federal Motor Carrier Safety Administration (FMCSA) has released the annual minimum employee random drug and alcohol testing rates for 2022. 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 percent of applicable employees. This is the same rate for random testing as 2021. The random alcohol test rate for 2022 is set at 10 percent, also unchanged from 2021.

Employees Subject to Testing

Hazardous material employee (49 CFR 171.8) means a person who is employed by a hazmat employer and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle which transports hazardous materials in commerce. This term also includes an individual, employed by a hazmat employer who, during the course of employment:

- Loads, unloads, or handles hazardous materials.
- Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise assures containers, drums, or packagings are qualified for use in HAZMAT transportation.
- Prepares hazardous materials for transportation.
- Is responsible for safety of transporting hazardous materials.
- Operates a vehicle to transport hazardous materials.

Intrastate and Interstate Drivers

Employers of both intrastate and interstate drivers requiring a CDL license are responsible for implementing and conducting driver drug and alcohol testing programs. Employers may do this using their own employees or contract services, or by joining together in a drug and alcohol testing consortium that provides services to all member companies. Any individual conducting the drug and alcohol tests must be trained to operate evidential breath testing (EBT) equipment and be proficient in breath testing procedures.

Random Alcohol Testing

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.

Other Drug and Alcohol Testing

Employers are also required to conduct pre-employment drug tests, post-accident, reasonable suspicion, return to duty and follow up drug and alcohol tests on CDL drivers under certain circumstances. The test rates for random testing do not apply to pre-employment, post-accident, reasonable suspicion, return to duty or follow up tests. Instead, these tests are performed on a per occurrence basis.

State Marijuana Legalization Laws

There is no legalized marijuana use recognized under federal law. The federal government does not recognize state legalization laws. In fact, all applicable state laws are preempted under the FMCSA drug and alcohol testing program. Under the Federal Motor Carrier Safety Regulations (FMCSR), a person is not physically qualified to drive a CMV if he or she uses for recreational or medical purposes any Schedule I controlled substance such as marijuana.

CBD Oils

Cannabidiol (CBD) oil is becoming a commonly used natural alternative to pain medicine. However, CDL drivers and other safety sensitive employees should be cautioned that use of CBD oil — even if derived from hemp — may result in a positive DOT drug screen for THC. Use of THC is forbidden for CDL drivers and other safety sensitive employees regardless of the source. As a result, medical and recreational use of CBD oils derived from marijuana and/or hemp are banned under federal law - even where legal under state law. Since THC is an absolute prohibition under DOT drug testing, a medical review officer (MRO) cannot take the medicinal use of a CBD oil into consideration when determining a drug test result.

For more information, [CLICK HERE](#).

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CAPITOL HILL UPDATE

This week, Senator Joe Manchin (D-WV) more clearly articulated his vision of a scaled-back Build Back Better Act (BBB). This bill would not receive Republican support, so it would have to be passed through a process called reconciliation that would require the support of all 50 Senate Democrats. Senator Manchin and fellow moderate Senator Kyrsten Sinema (D-AZ) effectively killed the previous iteration of BBB. Senator Manchin indicated the bill could be paid for by allowing Medicare to directly negotiate the cost of prescription drugs and slightly increase corporate, individual and capital gains taxes in order to provide \$500 billion in clean energy spending, subsidies, and tax incentives (without elimination of traditional forms of energy).

Notably, Senator Manchin's soft proposal may not satisfy many progressive demands, including universal pre-K and extending the childcare tax credit. However, progressives have signaled a desire to get something done. Senator Manchin views the April-May Senate work period as the best time to potentially reach a new agreement.

While the House was out of session this week, the Senate Environment and Public Works Committee held a hearing on climate and energy security. Chairman Tom Carper (D-DE) said that a renewable energy agenda must accelerate the deployment of EVs and biofuels but conceded that the transition will not occur overnight and that a "post liquid fuel world" has not yet arrived. Ranking Member Shelley Moore Capito (R-WV) called on the Biden Administration to reduce regulatory uncertainty to allow for more domestic production of traditional and clean energy. Senators also largely agreed on a bipartisan basis that the U.S. must increase domestic production of critical minerals important to the EV component supply chain.

Also this week, House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) sent letters to the CEOs of four vaping companies over "marketing of synthetic nicotine products to teens." These letters requesting information could lead to formal hearings before the Committee.

At the Executive Branch level, the Securities and Exchange Commission (SEC) proposed a set of rules on Monday that would require publicly traded companies (including privately held companies that they do business with) to disclose their greenhouse gas emissions, information on climate-related risks, and climate-related financial metrics. Congressional Republicans immediately criticized the SEC's announcement, arguing that it has no jurisdiction to impose climate-related disclosure requirements. Legal challenges are expected.

DOT/DOE ANNOUNCE \$5 BILLION TO HELP STATES BUILD EV CHARGING INFRASTRUCTURE

The Biden Administration is providing nearly \$5 billion to help states create a network of electric vehicle (EV) charging stations along designated corridors in the national highway system. Charging stations will not be placed on federal highways but located at entrance ramps. The program is designed as part of the president's goal to build 500,000 charging stations by 2030. The funding was included in the bipartisan Infrastructure Investment and Jobs Act ([Public Law 117-58](#)) and is available under the new National Electric Vehicle Infrastructure ([NEVI](#)) Formula Program managed jointly by the U.S. Department of Transportation (DOT) and the Department of Energy (DOE). The funds will be provided over five years, with \$615 million made available to states in fiscal year 2022. In order to qualify for grant money, states must submit an EV infrastructure deployment plan to the federal Joint Office of Energy and Transportation ([JTOF](#)) no later than 8/1/22. The JTOF will approve eligible plans by September 30, 2022. The grants are awarded directly to state highway authorities with the federal government picking up 80 percent of the cost. Grant recipients must pay the remaining 20 percent of the cost. But the JTOF encourages states to contract out projects to third parties, such as fuel marketers. The new program provides State Association Executives with the opportunity to work directly with state highway authorities to ensure EV deployment plans include fuel marketers. Fuel marketers are uniquely positioned for EV charging ports because they are generally located within a mile of highway exit and entrance ramps.

State corridors will be required to have electric vehicle charging infrastructure installed every 50 miles along portions of the interstate highway system. Those EV ports must be able to simultaneously charge four electric vehicles. These charging stations will be built along designated alternative fuel corridors, which 40 states have designated in recent years, especially along interstate highways. Once the national EV network is complete, funds can be shifted to build electric vehicle charging infrastructure on public roads. The bipartisan infrastructure law included about \$7.5 billion for electric vehicle buildout, \$2.5 billion of which will support a discretionary grant program for alternative fueling infrastructure that will be announced later this year.

PETROLEUM MARKETERS RISK MANAGEMENT ACADEMY OFFERED BY FEDERATED INSURANCE ON APRIL 19-21, 2022

Federated Insurance is offering complimentary risk management training for petroleum marketers on April 19-21, 2022. Through this valuable session, you will discover methods you can use immediately to help protect profits by reducing risk at your business.

Companies that are the most successful at controlling losses and protecting profits have integrated risk management into their overall company culture. Many have designated a key person as their risk manager. This person is supported by

your company's top management and is both responsible and accountable for identifying loss exposures and implementing risk management solutions.

This seminar's objective is to help your risk manager learn the exposures specific to the petroleum industry, connect with peers from across the country and apply these best practices within your business.

You can learn more by viewing a brief [video](#) about the Risk Management Academy. To [reserve your spot](#) in the upcoming session or for more information, please contact drm@fedins.com or call 800.533.0472 Extension 455.5958.

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2022 SCHOLARSHIP \$4,000 RECIPIENTS! WPMA SCHOLARSHIP FOUNDATION

Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Associate scholarship applications are now in process ...

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

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Petro Pete: "I can handle pain until it hurts."

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