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CONGRESS PASSES BIPARTISAN INFRASTRUCTURE BILL

Last Friday, the House passed the \$1.2 trillion bipartisan infrastructure bill, the Infrastructure Investment and Jobs Act (IIJA), by a vote of 228-208, sending the bill to the President's desk. President Biden plans to hold a signing ceremony next week. Meanwhile, Congressional Democrats and President Biden continue to navigate an uncertain future for the partisan Build Back Better (BBB) reconciliation bill.

Thirteen Republicans voted in favor of IIJA passage: Reps. Don Young of Alaska; Adam Kinzinger of Illinois; Fred Upton of Michigan; Don Bacon of Nebraska; Jeff Van Drew and Chris Smith of New Jersey; Andrew Garbarino, John Katko, Nicole Malliotakis and Tom Reed of New York; Anthony Gonzalez of Ohio; Brian Fitzpatrick of Pennsylvania; and David McKinley of West Virginia. Notably, six progressive Democrats voted against: Reps. Ayanna Pressley of Massachusetts; Rashida Tlaib of Michigan; Ilhan Omar of Minnesota; Cori Bush of Missouri and Jamaal Bowman and Alexandria Ocasio-Cortez of New York. IIJA passage came after months of negotiations, with many progressives agreeing to vote for the bill and moderate House Democrats agreeing to move forward with the separate \$1.75 trillion BBB.

Over the summer, the Senate passed the IIJA with bipartisan support (69-30), including several senior Republican Senators voting in favor - notably Senate Minority Leader Mitch McConnell (R-KY). The \$1.2 trillion bill is a product of bipartisan negotiations, and includes historic spending on roads, bridges, rail, and airports, along with electric vehicle and other clean energy investments. President Biden is scheduled to sign the bill into law Monday.

The IIJA provides \$7.5 billion in grant funding for states to partner with the private sector to build out EV charging, of which \$2.5 billion is set aside for alternative fuel corridors for EV charging, hydrogen, natural gas and propane infrastructure. The bill also provides \$7.5 billion for clean energy transportation. This \$15 billion for clean transportation is significantly less than the \$174 billion President Biden requested specifically for EV charging.

The IIJA **does not** include a gas tax increase nor does it allow EV charging at rest areas. It also **does not** include EV user fees or additional tax credits to purchase EVs. Furthermore, the IIJA **does not** include retrofit requirements to install automatic emergency braking systems or require rear underride protection. The bill **does** include \$3.5 billion for the Weatherization Assistance Program. Most of the bill is paid for through repurposing unspent pandemic relief funds and unspent unemployment benefits.

The House will now turn its attention to passing the partisan BBB legislation by the end of this year. Speaker Pelosi gave assurances to House moderates that a vote on the BBB will occur once the Congressional Budget Office (CBO) releases a "score" identifying the total cost of the legislation. Even if the House passes the BBB, Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) continue to raise concerns at the overall price tag of the bill.

EMA is working with its state associations and Congressional supporters to oppose a provision that would allow Americans who make over \$100,000 and purchase an EV over \$40,000 from claiming the EV credit. [CLICK HERE](#) to read the letter. EMA is also working to reduce electrification programs that would impact small business heating fuel dealers as well as opposing onerous tax increases in the bill. Stay tuned.

APPEALS COURT STAYS OSHA COVID-19 ETS

The U.S. Court of Appeals for the Fifth Circuit has granted a stay of OSHA's Emergency Temporary Standard (ETS), which was announced last Thursday, temporarily halting the requirement that employers with 100 or more employees implement policies mandating that workers be vaccinated against the coronavirus or provide documentation of a negative COVID-19 test at least every seven days.

In issuing its stay, the Fifth Circuit wrote that the lawsuit, brought by a group of employers (including a trucking company) and GOP-controlled state governments, raised "cause to believe that there are grave statutory and constitutional issues" with OSHA's ETS. The three-judge panel (all Republican nominees) appear to believe that there is a serious problem with OSHA's employer mandate. The Fifth Circuit stayed the ETS pending expedited review, and it ordered the parties to submit further briefing by the end of Tuesday about the validity of the ETS.

Even if the Fifth Circuit ultimately rules against OSHA and the Biden Administration, the legal battle over the ETS will continue. The Fifth Circuit could issue a narrow ruling, allowing OSHA to adjust its ETS. There are additional lawsuits

already filed against the ETS in other circuit courts of appeal, so it is possible that a patchwork of legal rulings could result. Eventually, the Supreme Court may have to decide the issue of whether the ETS meets the statutory “grave danger” test or whether it is an example of executive outreach.

While the results of these pending legal challenges may take weeks or even months to become final, employers subject to OSHA’s ETS may want to continue planning for the ETS as if it is going to take effect. OSHA is likely to have little enforcement patience if the stay is lifted and the ETS is allowed to take effect. A first step is for employers to become familiar with the ETS’ requirements and to begin developing compliance materials. EMA has prepared [FAQs](#) to provide members with the most up-to-date information to navigate the ETS while awaiting the final judicial outcome.

Please note that truck drivers who work primarily alone and outdoors are exempt from the vaccine and testing mandates. Truck drivers may enter the workplace for bathroom breaks and still remain exempt but are required to wear masks when indoors. Although truck drivers are exempt from vaccine and testing requirements, employers must still count them as employees when determining whether they meet the 100 employee or more threshold. The ETS also preempts state and local laws that prohibit mandatory indoor mask use, employer inquiry of vaccination status and prohibitions against firing employees who refuse to test for COVID-19.

U.S. STATES CHALLENGE FEDERAL VACCINE MANDATES

At least seven states with State Plans are considering whether to challenge the Administration’s ETS in court, despite the Biden Administration warning that State Plans that fail to comply could be revoked. This includes Alaska, Arizona, Indiana, Kentucky, South Carolina, Utah, and Wyoming. Separately, numerous Republican state Attorneys General have filed lawsuits against the Biden Administration’s vaccine mandates.

On November 10, NACS [announced plans](#) to join a lawsuit to stop President Biden’s vaccine mandate. EMA is likely to file an amicus brief in support of the lawsuit.

On November 5, Attorney General Mark Brnovich (R-AZ), who is co-leading a multistate coalition of 11 states, [filed a lawsuit](#) challenging the Biden Administration and federal officials to stop the ETS, citing the mandate is “unconstitutional, unlawful, and unwise.” A [separate petition](#) filed by the attorneys general of seven other states also seeks to block the mandate. Notably, Kansas Governor Laura Kelly (Democrat), who is preparing for re-election in a predominantly red state, issued a [statement](#) opposing President Biden’s workplace vaccine mandate on last week. Meanwhile, Texas Attorney General Paxton (Republican) filed the State of Texas’s [Petition for Review](#) directly with the U.S. Court of Appeals for the Fifth Circuit. This petition includes some companies and the states of Louisiana, Mississippi, South Carolina and Utah. Governor Ron DeSantis (Republican) [announced](#) on Thursday that Florida would also sue the Biden Administration on Friday.

On October 29, Iowa Governor Kim Reynolds (Republican) signed House File 902 into law, a measure that requires Iowa employers with mandatory COVID-19 vaccine policies to waive their requirements for employees who seek vaccination exemptions for medical or religious reasons. The law also allows individuals to qualify for unemployment insurance benefits if terminated for refusing COVID-19 vaccines. Nebraska Governor Pete Ricketts (Republican) signed an [executive order](#) last Friday that would prevent state agencies from enforcing coronavirus vaccine mandates on state employees.

Separately, Iowa joined nine others states in suing the Biden Administration last Friday for its Federal contractor vaccine mandate. [The suit](#) challenges the Administration’s “use of federal procurement statutes to create sweeping new power to issue decrees over large swaths of the U.S. economy and take over areas of traditional state power.” On Thursday, three other states – Tennessee, Kentucky and Ohio – filed a separate [lawsuit](#) against the Federal Government to stop the vaccine mandate for Federal contractors from taking effect.

MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaption of such contributions to accommodate the magazine’s space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at janr@wpma.com, or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Winter edition of WPMA News magazine are due before November 1st. Later submissions will be considered for the Spring issue.

STEEL TANK INSTITUTE OFFERS COURSES IN ALBUQUERQUE, NM

(Click on the date for course details and future trainings)

Upcoming Cathodic Protection Courses

- [November 17-18 - Albuquerque, NM](#)

Registration is open for Steel Tank Institute's Cathodic Protection Training class in Albuquerque NM. This class is a certification program offering a practical approach for those wanting to become Underground Storage Tank CP testers and for those who simply want to understand readings and test reports.

Class Dates:

November 17-18, 2021

Class Location:

Brewer Oil Co. (Edith Training Facility)
501 Candelaria Rd, NE
Albuquerque, NM 87107

The STI Cathodic Protection Training will enable you to:

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Find more information including class description, policies and fees on the [Cathodic Protection Training \(steeltank.com\)](#)



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MARK YOUR CALENDARS FOR UPCOMING EVENTS

- December 2, 2021** – Washington (WIED) Holiday Party – Little Creek Resort & Casino – Shelton, WA
- December 14, 2021** – Oregon (OFA) Holiday Event – Portland Golf Club – Portland, OR
- February 22-24, 2022** – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV
- April 25, 2022** – Hawaii (HPMA) 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
- 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: *"Before you open your mouth to speak, make sure it's an improvement upon the silence."*

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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. Thanks.