

December 16, 2022

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WP-12-16-22

### **PLEASE SUPPORT THE 2023 SCHOLARSHIP SILENT AUCTION!**

In May 2023, the WPMA Scholarship Foundation will award \$32,000 in scholarships to graduating high school seniors. The Foundation receives a large portion of its funding from the annual Scholarship Silent Auction held at the WPMAEXPO in February. Please support the Scholarship Foundation by donating an item with a value of \$100 or more to the 2023 Scholarship Silent Auction.

Past Silent Auction donations have included tickets to sporting events, vacation packages, decorator items, electronics, sports equipment, logo clothing, jewelry, tools, and accessories. If you would like to donate an item, please fill out the Silent Auction Donation Form available under the Scholarship tab on the WPMA website

<https://www.wpma.com/pdf/scholarship/SA19Generic-DonationFrm0701w.pdf> or e-mail Kathy Michaelis at [kathym@wpma.com](mailto:kathym@wpma.com).

The value of items donated to the auction is tax-deductible.

The following information provided by: **EMA**  
Energy Marketers of America



### **REMINDER: SUPERFUND TAX ON CRUDE OIL BEGINS JANUARY 1, 2023**

#### **What the 16.4 Cents Per Barrel Tax Means for Downstream Energy Marketers and Tax-Exempt Purchasers**

The Inflation Reduction Act of 2022 reimposes the long-expired Superfund excise tax on crude oil at the rate of 16.4 cents per barrel beginning January 1, 2023. EMA is receiving inquiries about how the Superfund tax will affect downstream energy marketers and tax-exempt purchasers (state and local governments, etc.).

First and foremost, refiners are the only parties liable for payment of the Superfund tax. It is important for energy marketers to understand that once crude is refined, the tax becomes a manufacturing cost refiners include in the price per gallon of finished product. No other party downstream of the refinery gate is liable for the Superfund tax because it is passed down as a cost not a tax.

Some suppliers break out the additional per gallon cost associated with the tax on supply invoices and identify it as the "Superfund Tax." However, this practice is not legally required for downstream parties and often creates confusion for both energy marketers and tax-exempt purchasers. Therefore, to avoid confusion, energy marketers are advised not to break out the Superfund tax as a separate line item on invoices or supply contract bids because tax exempt purchasers will object to any charge identified as a "tax". There are no downstream exemptions from the Superfund tax.

Finally, the Superfund tax is only imposed on the crude portion of blended product. As a result, downstream blenders of ethanol, biodiesel or any other non-crude renewable fuels are not liable for the tax. Finally, the Superfund tax is indexed annually to the rate of inflation and expires on December 31, 2032, unless extended by Congress.

**Got Questions? Contact Mark S. Morgan, EMA Regulatory Counsel [mmorgan@emamerica.org](mailto:mmorgan@emamerica.org)**

### **CONGRESS UPDATE**

On December 12, Senators Susan Collins (R-ME) and Jack Reed (D-RI) and Congressman Jared Golden (D-ME) announced an active push to Congressional leadership to encourage an additional \$500 million in supplemental funds for the Low-Income Home Energy Assistance Program (LIHEAP). The effort comes on the heels of EMA's October 27 letter to President Biden calling for an additional \$1 billion in LIHEAP funding. EMA continues to work with Congressional leadership, including House Appropriations Chair Rosa DeLauro (D-CT), to increase funding for the program that will help lessen the financial impact on energy heating bills during cold months. Efforts in the House and Senate would include a total \$4 billion in LIHEAP funding for the fiscal year 2023 (FY23) spending package.

This week, Congressional leaders broke an impasse to pursue a full-year appropriations deadline. Late Thursday evening, the Senate passed a one-week government extension, which the House passed earlier in the week, to extend funding through December 23, 2022. This provides additional time for appropriations leaders to negotiate a package, though attempts to attach additional non-spending legislation to the year-end spending bill are dwindling.

On Thursday, opportunities to attach any tax provisions to the year-end bill hit a roadblock. "I've not seen positive movement that I had hoped we would see to this point," said Michigan Sen. Debbie Stabenow, a member of the Finance Committee and Democratic leadership. The Senate's No. 2 Republican, Finance member John Thune of South Dakota, shared the same sentiment saying that a large tax title is unlikely.

Aside from government funding, Congress began this week with the need to address other must-do items – notably the National Defense Authorization Act (NDAA). The compromised legislation emerged early in the week and quickly passed the House with over two-thirds voting in favor. Late Thursday, the Senate passed the legislation by a 83-11 vote. In addition to funding the Pentagon, the NDAA also includes policy positions – such as an amendment to the Jones Act, which snuck in at the 11th hour. The amendment could make receiving a Jones Act waiver more challenging and increases the need for reform in the 118th Congress.

#### **REMINDER: URGE LAWMAKERS TO COSPONSOR "THE CREDIT CARD COMPETITION ACT OF 2022"**

Please urge your lawmakers to pass "The Credit Card Competition Act of 2022" which would ensure retailer choice in payment routing by requiring at least two unaffiliated processors on credit cards, the same process that is used for debit card transactions. Swipe fees remain the second highest operating cost for convenience stores which costs the industry \$138 billion annually. The House bill, H.R. 8874, joins companion legislation already introduced in the Senate, S. 4674, by Majority Whip Dick Durbin (D-IL) and Senator Roger Marshall (R-KS).

**[CLICK HERE TO URGE YOUR LAWMAKERS TO COSPONSOR "THE CREDIT CARD COMPETITION ACT!"](#)**

#### **REMINDER! DON'T FORGET TO COMPLETE 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. A "full query" is only required if a violation is found. 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. For example, employers who conducted their last annual queries on January 1, 2021, must conduct the next round of annual queries for each driver no later than January 1, 2023.

Employers must obtain general consent from CDL drivers they employ before conducting limited queries in the Clearinghouse to view these drivers' information ([sample limited query consent form](#)). Employers should [log into the Clearinghouse](#) and visit their "Query History" page (under "My Dashboard") to see when annual queries are due. For instructions on conducting annual queries, download the [FMCSA How to Conduct a Limited Query Job](#) aid. Additional Information can be found in the [EMA Drug and Alcohol Clearinghouse Compliance Bulletin](#).

#### **EMPLOYERS MUST SWITCH TO ALL ELECTRONIC INQUIRIES FOR DRIVER PRE-EMPLOYMENT DRUG AND ALCOHOL VIOLATION INVESTIGATIONS BEGINNING JANUARY 6, 2023**

The Federal Motor Carrier Safety Administration (FMCSA) requires prospective employers of CDL drivers to conduct background investigations before hiring a CDL driver. This process includes determining if the driver has violated U.S. Department of Transportation drug and alcohol regulations within the past three years. Currently, this inquiry requires prospective employers to conduct both **electronic queries** in the [FMCSA Clearinghouse](#) and **manual inquiries** with previous employers to satisfy federal preemployment driver drug and alcohol investigation requirements. Both manual and electronic inquiries are required because the Clearinghouse currently contains less than three years of electronic data on driver drug and alcohol history.

However, beginning **January 6, 2023**, the Clearinghouse will have accumulated three-years of data on driver history. This means prospective employers must begin conducting **electronic pre-employment queries** of the Clearinghouse to comply with the FMCSA drug and alcohol violation investigation. requirement. Manual preemployment inquiries will no longer satisfy FMCSA drug and alcohol inquiry requirements. Please see EMA Drug and Alcohol Compliance Bulletin for additional details. Additional Information can be found in the [EMA Drug and Alcohol Clearinghouse Compliance Bulletin](#).

#### **ENERGY MARKETERS OF AMERICA (EMA) FILES AMICUS BRIEF CHALLENGING NHTSA'S FUEL ECONOMY STANDARDS**

On December 1, 2022, an amicus brief was filed with the U.S. Court of Appeals in Washington, D.C. on behalf of EMA and other associations challenging NHTSA's fuel-economy standards for passenger cars and light-duty trucks. The standards will require automobile manufacturers to obtain a fleet-wide average of 49 miles per gallon for model-year 2026, a standard that can be met only by converting a significant percentage of their fleets to electric vehicles.

EMA's brief is premised on the NHTSA standard being a de facto electric-vehicle mandate, which NHTSA lacks the power to require. A principal basis for EMA's position is the "major questions doctrine" applied by the Supreme Court to invalidate the Biden Administration's vaccine mandate, its eviction moratorium, and its attempt to eliminate coal-fired generating plants. All of these cases involved broad policy questions having a major impact on the nation's economy. As such, they are outside the purview of federal agencies unless Congress clearly and unequivocally grants an agency the power to decide them.

Enforcing an electric-vehicle mandate will also have a major impact on the economy by ultimately eliminating an entire class of internal combustion-powered vehicles. EMA's brief argues that Congress did not provide NHTSA with such sweeping authority, and, in fact, it prohibited NHTSA from considering electric vehicles in promulgating its fuel-economy standards. The Court of Appeals decision in this case is likely to end up in the Supreme Court, which has shown a willingness to apply the "major questions doctrine" in cases like this.

### **NEW \$600 FEDERAL TAX CREDIT FOR B20 COMPATIBLE FURNACES AND BOILERS AVAILABLE TO HOMEOWNERS BEGINNING JANUARY 1, 2023**

The recently passed Inflation Reduction Act (IRA) includes a provision to incentivize the efficiency of heating oil equipment while increasing the amount of biodiesel blended into the fuel. Under the IRA, homeowners are eligible for tax credits of \$600 for installation of new oil/biofuel blend-compatible heating appliances. The credit is available to homeowners on an annual basis and capped at \$600 per year. Beginning January 1, 2023, heating oil dealers should make their customers aware of the new tax credit and explain how to apply for it.

In order to qualify for the \$600 federal tax credit, the following conditions must be met:

Equipment Placed in Service After December 31, 2022

- Equipment must have 2021 Energy Star ratings (87 AFUE for oil boilers and 85 AFUE for furnaces) and be certified by the manufacturer to burn heating oil blended with a 20 percent biodiesel or renewable diesel fuel. This equipment is available now.

Equipment Placed in Service After December 31, 2026

- Equipment must have an AFUE of at least 90 percent and be certified for a 50 percent blend of biodiesel or renewable diesel fuel. This equipment will be made available in 2023.

Many new heating oil boilers and furnaces currently available from manufacturers should be compatible with 20% biodiesel blends and qualify for the \$600 credit on new installations beginning January 1, 2023. Manufacturers are currently providing certification for B20 compatibility on new equipment.

Please check with your supplier to ensure their equipment is compliant and that certifications are available to provide to the homeowner. Homeowners may apply for the credit on IRS Form 5695 and file it with their 1040, 1040-SR or 1040-NR return. However, homeowners must wait for the IRS to issue an updated Form 5695 and guidance before filing for the credit. The IRS expects to publish the updated Form 5695 and guidance sometime in January.

EMA will provide the form and guidance once they become available from the IRS.

EMA Contact: Mark S. Morgan Regulatory Counsel [mmorgan@emamerica.org](mailto:mmorgan@emamerica.org)

### **WEEKEND READS:**

[GOP plans "collusion" probe into climate groups](#)

[US northeast fuel marketers oppose distillates release](#)

[Manchin Spurs US Reversal on Carbon Capture Funding in Win for Big Oil](#)

[Fusion breakthrough is a milestone for climate, clean energy](#)

[Jones Act Leaves New England Vulnerable to Wintertime Calamity](#)

[Inside the search for a better electric vehicle battery](#)

[Electrifying trucking would require a major chunk of the US power grid, transportation institute says](#)

[What Sinema's defection means for the Senate](#)

### **FEDERATED INSURANCE: RISK MANAGEMENT CORNER**

#### **Inclement Weather Driving**

Driving is a dangerous task — it takes focus, awareness, knowledge, and patience to operate a vehicle safely. So when the weather takes a turn, events such as: snow, sleet, ice, rain, fog, wind, and extreme temperature fluctuations can contribute to potential disruptive moments on the road, and extra care is needed to continue driving safely.

For resources and tips on inclement weather driving, please click [here](#). Please always feel free to contact your [Federated](#) regional representative or EMA's National Account Executive [Jon Medo](#) at 800.533.0472 for any additional information or risk management questions.

This article is for general information and risk prevention only and should not be considered legal or other expert advice. The recommendations herein may help reduce, but are not guaranteed to eliminate, any or all risk of loss. The information herein may be subject to, and is not a substitute for, any laws or regulations that may apply. Qualified counsel should be sought with questions specific to your circumstances. © 2022 Federated Mutual Insurance Company.

## THANK YOU **WPMA EXPO 2023** TOP SPONSORS



### PLEASE NOTE UPCOMING DATES FOR WPMA EVENTS

**February 21-23, 2023 - WPMA Convention & EXPO - Mirage Hotel- Las Vegas, NV**

April 27-28, 2023 – Nevada Big Dogs – Red Rock Hotel/Sienna Golf Course – Las Vegas, NV

June 6-7, 2023 – MPMCSA Montana Convention – Fairmont Hot Springs – Fairmont, MT

June 19-21, 2023 – WIED Washington Convention – Suncadia Lodge, Cle Elum, WA

July 16-18, 2023 – OFA Oregon Conference – Sunriver Resort – Sunriver, OR

August 2-4, 2023 – IPM&CSA Idaho Convention – Sun Valley Resort – Sun Valley, ID

My wish list: A WPMA Scholarship!

\$4,000

**SCHOLARSHIP OPPORTUNITY!**

WPMA SCHOLARSHIP FOUNDATION

**CLICK HERE for WPMA SCHOLARSHIP 2023 Information!**

### WPMA SCHOLARSHIP APPLICATION NOW DIGITAL!

For all graduating seniors wanting to apply for one of the nine scholarships awarded through the WPMA Scholarship Foundation, the application process is now completely digital!

Simply click below to access the scholarship portal and create a password to begin. Students have the ability to leave the application and return at their convenience.

Don't miss this opportunity to help the next generation start out on the right foot by sharing this information with any of your co-workers with a graduating senior. Seniors who work part-time for a marketer member company, and have been employed at least 90 days, are also eligible to apply.

[CLICK HERE TO ACCESS SCHOLARSHIP PORTAL](#)



**Petro Pete: If attacked by a mob of clowns, go for the juggler.**

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