



December 21, 2021

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### **Skill Machines Face Uncertain Future**

Video skill machines across the state are back up and running in light of a court decision which put on hold legislation passed earlier this year banning them. While the decision to re-start the machines is scheduled to last until May 2022, the attorney general may request a re-hearing of the case before the Virginia Supreme Court. It remains to be seen if Mark Herring, who has just three weeks left in office, will take this step before he leaves January 15. If so, the timeframe for appeal is undetermined.

We are concerned that the current situation precludes the collection of taxes or fees on skill games. During the COVID compromise of 2020, a \$1,200/month fee was imposed with the funds going to pandemic relief. This fee addressed the concerns of many that no revenue was accruing to state or local government with some even asking “name one other thing you sell that you don’t pay taxes on.” The current situation will likely increase pushback from senators and delegates who have previously expressed concern relative to taxes on skill games.

Adding to the confusion are players from the rough and tumble world of Chicago politics who envision putting a casino on every corner thru Video Lottery Terminals (VLT) also known as games of chance. Supporters and lobbyists of these interests have flown legislators to Illinois to see their games in operation and it is very likely that there will be legislation in 2022 to legalize VLT. Whether they receive any traction remains to be seen.

Virginia legislators and governors have already signed off and approved expansion of lottery, sports betting, historical horse racing and casinos. Each of these forms of gaming bring their own constituency and lobbyists focused on ensuring that the limited amount of disposable income for gaming is not further diluted. This debate will be an important issue for the 2022 General Assembly.

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### **Federal Highway Administration Prohibits Fee Paid EV Chargers at Rest Areas**

*From EMA*

The Federal Highway Administration (FHWA) has issued guidance clarifying that fee paid EV charging stations cannot be located within the interstate right of way (ROW), including rest areas. This is good news for energy marketers who have long fought against

commercialization of rest areas. Commercialized rest areas siphon customers away from local gas stations and other businesses typically located at interstate entrance and exit ramps. Specifically, the FHWA guidance clarifies that fee paid EV charging stations do not fit into any of the limited commercial activities allowed at rest areas. Those activities include lottery machines, travel information, commercial advertising, tourism promotion and tickets for state historical or tourism related event. However, according to the same guidance, fee paid EV charging stations may be placed at rest areas on interstate segments where federal-aid highway funds or other funds administered under Title 23 have never been used, which are typically older toll roads. The guidance also clarified that fee paid EV charging stations may be located at Park and Ride lots adjacent to highway entrance and exit ramps.

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## **2022 Federal Motor Fuel Excise Tax Rates and Credits**

*From EMA*

Federal motor fuel excise tax rates below include the 1/10th cpg non-refundable LUST tax imposed on both dyed and clear liquid fuel. There is no refund of the LUST tax. Tax exempt parties are required to pay the .001 cpg.

Biodiesel Blender's Credit	\$1.00	100.0 cpg
Heating Oil	\$ .001	1/10th cpg
Diesel (clear)	\$ .244	24.4 cpg
Diesel (dyed)	\$ .001	1/10th cpg
Diesel (dyed used in trains)*	\$ .001	1/10th cpg
Diesel (removed for blending with biodiesel)	\$ .244	24.4 cpg
Diesel (used in certain intercity and local buses)	\$0.17	17.0 cpg
Biodiesel (removed for blending with diesel)	\$ .244	24.4 cpg
Kerosene (clear)	\$ .244	24.4 cpg
Kerosene (dyed)	\$ .001	1/10th cpg
Kerosene (clear - non-commercial aviation)**	\$ .219	21.9 cpg
Kerosene (clear - for use in non-taxable aviation)	\$ .001	1/10th cpg
Kerosene (clear - for use in commercial aviation)	\$ .044	4.4 cpg
<b>Alternative Fuels - On Highway Use in a Motor</b>		
Propane (liquefied propane gas) (gasoline gallon)	\$ .183	18.3 cpg
Compressed Natural Gas (CNG) (gasoline gallon)	\$ .183	18.3 cpg
Liquefied Natural Gas (diesel fuel gallon equivalent)	\$ .243	24.3 cpg
"P" Series Fuels	\$ .184	18.4 cpg
Liquefied Fuel (derived from biomass)	\$ .244	24.4 cpg

**IMPORTANT!** The 50 cent per gallon alternative fuel credit and alternative fuel mixture credit expire on December 31, 2021. However, the Build Back Better reconciliation bill that Democrats aim to pass before the end of the year does include an extension of both credits through 2026.

#### Oil Spill Liability Tax

The oil spill liability tax (OSLT) is \$0.09 cents per barrel of crude. The OSLT expressed in cents per gallon (CPG) on finished product is as follows:

Finished Product	Oil Spill Liability Tax Expressed in CPG
Diesel Fuel	\$0.002143 cpg
Biodiesel 5%	\$0.002036 cpg
Biodiesel 20%	\$0.001714 cpg
Gasoline 100%	\$0.002143 cpg
Gasoline E10	\$0.001929 cpg

**IMPORTANT!** The OSLT is paid by refiners and passed downstream as a cost, not a tax. Some terminal operators break out the OSLT on product transfer documents for their own accounting purposes even though there is no requirement to do so. When downstream marketers break out the OSLT as a separate line item on customer invoices and/or contract bids, it looks like a tax. Tax exempt customers get confused when the OSLT is broken out as a separate line item and may mistakenly demand a refund or refuse to pay it.

#### Notes

\*This tax is paid by the railroads, NOT by the ultimate vendor.

\*\* Marketers pay \$.244 cpg at the rack, user's rate is \$.219. Ultimate vendor claim is 2.5 cpg. The ultimate vendor is the only party that can make the claim for 2.5 cpg. Ultimate vendor must have a certificate from the ultimate purchaser verifying the fuel is used for non-commercial aviation. Ultimate vendor must have an IRS 637 UA registration to file claim.

\*\*\*For taxation purposes, one gasoline gallon equivalent (GGE) is equal to 5.75 pounds (lbs.) of propane and 5.66 lbs. of CNG. One diesel gallon equivalence (DGE) is equal to 6.06 lbs. of LNG. (Reference 26 U.S. Code 4041 and 4081).

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## **FMCSA Extends National Waiver for HOS, Medical Exams, Medical Certificates & Renewal of CDL Licenses**

*From EMA*

The Federal Motor Carrier Safety Administration (FMCSA) is extending a number of expiring nationwide regulatory waivers authorized under the March 13, 2020 presidential declaration of national emergency and the January 31, 2020 public health emergency issued in response to the ongoing COVID-19 pandemic. Several of the extended regulatory waivers are beneficial to energy marketers and the drivers they employ. The FMCSA is extending waivers for hours of service (HOS), Commercial Driver License (CDL) renewal, Commercial Learners Permit (CLP) renewal, driver medical exams, medical certificates and medical variances through February 28, 2022.

### **Hours of Service Waiver**

The FMCSA's Emergency Declaration 2020-002 supporting the nationwide HOS waiver became effective in March of 2020 and has been extended with modifications throughout the COVID-19 crisis. EMA worked closely to the FMCSA to ensure that petroleum products remained a covered product deemed essential for COVID-19 emergency relief.

### **Gasoline, Diesel Fuel and Jet Fuel**

- Drivers hauling gasoline, diesel fuel, jet fuel and ethyl alcohol qualify for the HOS waiver until the current waiver expires on February 28, 2022 or is modified or terminated by the FMCSA.

### **Heating Oil and Propane**

- The waiver extension does not include heating oil or propane, despite EMA's efforts to have those products deemed essential. FMCSA said it did not include propane and heating oil in the latest extension at the request of Northeast governors because these products are not in short supply. Instead, the governors assured FMCSA they would issue HOS waivers based upon the individual needs of their respective states.
- Although not named specifically, heating oil and propane are covered under the waiver if they are used for *direct assistance* to COVID-19 related facilities such as for power-generation or space heating for temporary vaccine and testing sites, nursing homes, medical laboratories, hospitals, temporary treatment centers, etc. Preventing these facilities from running out of heating oil or propane is considered one example of providing direct assistance to COVID-19 relief efforts, according to the FMCSA. The agency said it will continue to monitor heating oil and propane supplies for shortages and issue separate HOS waivers, as necessary.

### **Emergency Declaration Restrictions & Conditions**

Motor carriers and drivers providing direct assistance to the national emergency are granted emergency relief from 49 CFR § 395.3, maximum driving time for property-carrying vehicles (HOS), subject to the following restrictions and conditions:

- FMCSA Emergency Declaration 2020-002 only waives the hours-of-service regulations under 40 CFR 395.3.
- Motor carriers operating under the waiver must report to the FMCSA within 5 days after the end of each month. To report, motor carriers must access their portal account at <https://portal.fmcsa.dot.gov/login>, log-in with their FMCSA portal credentials, and access the Emergency Declaration Reporting under the Available FMCSA Systems section of the page.
- Motor carriers or drivers currently subject to an out-of-service order are not eligible for HOS relief under the waiver.

- When direct assistance emergency relief efforts related to COVID-19 is terminated, both motor carriers and drivers are subject to the HOS requirements. However, a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with HOS regulations.
- When a driver is moving from emergency relief efforts to normal operations, a 10-hour break is required when the total time a driver operates conducting emergency relief efforts or a combination of emergency relief and normal operations equals 14 hours.

### **CDL License & Permit Renewal, Driver Medical Exams & Medical Certificate Waiver**

The FMCSA is extending through February 28, 2022 the regulatory waiver that **permits**, but **not requires** States to:

- Extend the validity of CDLs (due for renewal on or after March 1, 2020) beyond the eight-year maximum period of validity under the Federal Motor Carrier Safety Regulations (MCSRs).
- Extend the validity of CLPs (due for renewal on or after March 1, 2020) beyond the one-year maximum period of validity required under the FMCSRs without requiring CLP holders to retake the general and endorsement knowledge tests.
- Allow CLP holders to take the CDL skills test without waiting 14 days after issuance of the CLP.

The FMCSA is extending through February 28, 2022 the requirement that CDL holders, CLP holders, have a medical exam and medical certificate, provided they have a valid medical certificate or medical variance issued for a period of 90 days or longer and expired on or after September 1, 2021.

### **Additional Information**

[HOS Waiver](#)

[HOS Waiver FMCSA Enforcement Discretion](#)

[CDL License, CLP, Medical Exam and Medical Certificate Waiver](#)



Merry Christmas and best wishes for a safe and happy holiday to you and yours!

Mike O'Connor & Elizabeth Zyglocke