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PMAA Priorities Report April 2017

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[Motor Fuels Committee](#)

• **RFS Reform**

Reducing the Renewable Fuel Standard's (RFS) 15-billion-gallon ethanol mandate (which was increased in the last few months of the Obama Administration) continues to be a PMAA top priority. Annual increases in the volumetric ethanol mandate have raised the value of renewable identification numbers (RINs) significantly. Retail marketers who hold RINs or negotiate with their suppliers for a percentage of the value have a decisive competitive price advantage over the majority of marketers who are not similarly positioned. Related to this issue has been the petition to the EPA to move the point of obligation from the refiner level to the position holder at the rack as a way to reduce the value of RINs and level the competitive playing field at the pump. The comment period deadline for that petition was February 22, 2017. PMAA submitted comments taking a neutral position on whether the point of obligation should be moved. PMAA continues to believe that the best path forward to reduce RIN values, create a level playing field at the pump and prevent UST

compatibility issues with higher ethanol blends is to immediately reduce the volumetric ethanol mandate below the E10 blendwall (9.7%). For more information on the RFS, see below.

Click [here](#) for a video explaining why moving the point of obligation to the position holder will benefit petroleum marketers.

Click [here](#) for arguments in support of keeping the point of obligation at the refiner/importer level.

- **Regulatory Reform Bills**

Recently, PMAA joined other associations in a [letter](#) to the House and a [letter](#) to the Senate. The letters strongly support H.R. 33, the Small Business Regulatory Flexibility Improvements Act, which would reform the regulatory process to ensure that all federal agencies appropriately consider the impact of their rules on small businesses across America. As a result, federal agencies would issue smarter regulations that minimize inefficiencies and unnecessary burdens while still protecting public health, worker safety and the environment. PMAA supported efforts to pass similar legislation last Congress.

Additionally, the House passed several regulatory reform bills that are important for petroleum marketers. H.R. 998, the “Searching for and Cutting Regulations that are Unnecessarily Burdensome Act of 2017” passed by a vote of 240-185. The SCRUB Act would create a five-year commission to repeal federal regulations to offset the cost of new rules. The bill now awaits Senate action. H.R.1009, the Office of Information and Regulatory Affairs (OIRA) Insight, Reform, and Accountability Act passed by a vote of 241-184. Under H.R. 1009, the authority of the OIRA to review regulations would be codified and rules with significant economic effects could not be finalized without OIRA’s determination that the agency considered the costs and benefits, alternatives, and minimized the burden on businesses. Finally, H.R. 1430, the “Honest and Open New EPA Science Treatment Act of 2017” (HONEST Act), passed the House. H.R. 1431 would require the EPA to make all data for regulatory actions public (with exceptions for personal data, trade secrets and financial information). Also, the bill would tackle the EPA Science Advisory Board Reform Act, which would bar anyone with EPA grants from serving on the agency’s independent scientific review panel and would expand industry access to information.

- **Reducing UST Compliance Costs/UST Funding**

PMAA has worked relentlessly to reduce the compliance cost burdens imposed by the EPA Office of Underground Storage Tanks (OUST) 2015 UST testing and inspection amendments. The final rule is written as a performance standard for testing and inspection of UST system components. It does not set out a specific test procedures for UST equipment but defers to established industry standards for compliance requirements. PEI RP-1200 is the only industry standard that sets forth testing and inspection requirements for UST and under dispenser sumps used for secondary containment. RP-1200 test procedures require liquid testing to the top of the sump above the penetration points to check for tightness. Filling the sumps to the top with water to test for tightness is problematic because it requires the installation of new fittings and grommets at the penetration points prior to testing to ensure they are liquid tight. To prepare the sump for tightness testing and the proper disposal of the waste water generated by the test is expected to cost as much as \$6,200 per site in some cases.

In an effort to build on the significant cost reductions won in the final rulemaking, the PMAA UST Task Force developed an alternative sump tightness test method that would cut compliance cost for testing to a few hundred dollars. The PMAA alternative method only requires liquid testing of sumps to the level just below the penetration points where a liquid sensor alarm will automatically shut down the system turbine. This test method is more protective of the environment than the liquid test method in RP-1200, and far less burdensome on tank owners.

PMAA joined the PEI RP1200 committee last year and proposed language that would incorporate the alternative test method for sumps into new and existing industry standards for tank inspection and testing. The RP1200 committee, staffed largely by equipment manufacturers rejected PMAA’s proposal. PMAA has since returned to meet with OUST and has been engaged in discussions that would establish the alternative sump testing method, and an additional inspection method for overfill equipment as EPA guidance that state program directors can follow. PMAA’s proposed the alternative test and inspection methods in a letter to OUST last month. Click [here](#) for the letter. PMAA has also provided regulatory guidance to association executives on methods to make implementation of the UST rule more flexible and less costly on

the state level. That guidance included the alternative test and inspection methods for sumps and overfill equipment. Click [here](#) for more information.

Meanwhile, President Trump has proposed to cut EPA UST funding from approx. \$90 million to \$25 million and limit its authority to regulating UST systems in Indian Country only. This could be problematic because it would cut off annual LUST grants to the states who rely on the federal funds to pay staff salary and administer their state tank programs. If states do not receive LUST funding, then they will find other ways to cover their costs including increasing tank fees and third party inspection fees that will be paid by tank owners. Petroleum marketers have always supported the LUST fund as a way to fund state UST programs and prevent increased tank, user and private inspection fees being imposed on tank owners. PMAA's Regulatory Counsel has drafted a memo that explains the current situation on the LUST final rule and LUST funding.

- **ULSD Corrosion**

The PMAA ULSD Corrosion Task Force is working closely with the EPA and other industry groups to address the issue of accelerated corrosion through further study, including research into potential fuel quality issues above the terminal rack that may lead to accelerated corrosion downstream. Recently, PMAA asked a series of questions to the Coordinated Research Council (CRC) for additional information regarding an upcoming study. Click [here](#) for the letter. PMAA requested the CRC study to research possible causes that may occur above the terminal rack. PMAA is concerned that the EPA and the CRC past studies did not conduct research into possible causes for accelerated corrosion in diesel fuel UST systems. There is no definitive research that has identified what causes accelerated corrosion although microbial growth is a leading factor.

In July 2016, the EPA released its study on accelerated corrosion of UST system components storing and dispensing ultra-low sulfur diesel fuel (ULSD). The EPA found that 83 percent of the 42 UST systems studied had moderate to severe corrosion on metal components including; submersible turbine pump shafts, automatic tank gauge probe shafts, flapper valves, ball valves, inner walls of tanks and fuel suction tubes. While the EPA said accelerated corrosion "could be a very common occurrence" in UST systems storing diesel fuel, it acknowledged the sampling was small and cannot be used to predict whether the incidence of moderate to severe corrosion on metal components is higher or lower in retail UST systems nationwide. The EPA is recommending that owners check their diesel fuel UST systems for similar corrosion.

- **Placarding**

PMAA recently filed comments asking the Pipeline Hazardous Material and Safety Administration (PHMSA) to restore a cargo tank placarding provision important to petroleum marketers. Specifically, the provision allowed marketers to permanently attach a UN 1203 placard to cargo tanks for alternating loads of diesel fuel and gasoline rather than having to continually change placards between runs. The 1203 placarding provision stood for 35 years until PHMSA issued an interpretive letter in 2015 that limited permanent 1203 placards to straight loads of gasoline or split loads of gasoline and diesel fuel stored in separate compartments of the same load. In November 2015, PMAA petitioned the agency to undertake a rulemaking to restore the ability to placard to 1203 provision.

Unfortunately, PHMSA failed to act on the petition for over a year until PMAA successfully lobbied Congress for legislation requiring the agency to initiate a rulemaking within 90 days. PHMSA expressed concerns in its 2015 interpretive letter for the safety of emergency responders because gasoline with ethanol blends over 10 percent required a different placard and emergency response procedures than E10 blends. PMAA told PHMSA in written comments that placarding alternating straight loads of diesel fuel and gasoline with the UN 1203 placard does not pose any danger to public safety because emergency response methods for both are identical under Emergency Response Guide 128. PMAA also explained that mid-level ethanol grades are blended at the pump and not typically transported in cargo tank trucks so there was no need to remove the 1203 placarding provision based on concerns over alcohol content. PMAA told PHMSA it supports limiting the 1203 placarding provision to a maximum E10 blend to neutralize concerns over mid-level ethanol blends. PMAA plans to meet with PHMSA on this issue in the near future.

- **Swipe Fees**

Although Republicans are eager to repeal Dodd-Frank, the financial legislation mega-package that was passed in 2010, many would prefer to avoid touching the Durbin Amendment which lowered debit card interchange fees. Why? As a financial regulation analyst said, it's "like choosing between two children."

The issue splits the 4.7 million stores and restaurants across the country that accept debit cards and the 5,000 commercial banks that issue them. Rep. Jim Himes (D-CT), who is also a former Goldman Sachs banker, said that he is "being forced to choose between the competing interests of two big industries." Banks like JPMorgan Chase and Company say they use the revenue from the interchange fees to increase cybersecurity and offer rewards programs, while retailers like Wal-Mart argue that the limit on interchange fees has led to lower prices for consumers.

House Financial Services Committee Chairman Jeb Hensarling (R-TX) plans to reintroduce a bill soon known as the Financial CHOICE Act, which would repeal the Durbin Amendment. Repealing the Durbin Amendment would be extremely harmful to retailers because it ultimately lowered debit card interchange fees which are the second highest expense to a retailer only behind labor.

PMAA has been working with the Merchants Payments Coalition (MPC) and meeting with House Financial Services Committee members for the past year to encourage them to strip the provision in the bill that would repeal the Durbin Amendment.

- **Menu Labeling**

The "Common Sense Nutrition Disclosure Act" (H.R. 772) was reintroduced by Reps. Cathy McMorris Rodgers (R-WA) and Tony Cardenas (D-CA) and Senators Roy Blunt (R-MO) and Angus King (I-ME) companion legislation in the Senate, (S. 261). It would give retailers the flexibility they need to comply with the menu labeling regulations. Currently, the effective date is May 5, 2017; one year after FDA finalized its guidance document.

The legislation would modify the menu-labeling regulation by permitting retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Furthermore, the bill clarifies that advertisements and posters do not need to be labeled and provides flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals. Lastly, the bill ensures that retailers acting in good faith are not penalized for inadvertent errors in complying with the rule and stipulates that individual store locations are not required to have an employee "certify" that the establishment has taken reasonable steps to comply with the requirements.

PMAA urges Congress to act on the "Common Sense Nutrition Disclosure Act" as quickly as possible.

[Heating Fuels Committee](#)

- **LIHEAP Funding**

Recently, President Trump released his proposed \$1.1 trillion FY 2018 budget blueprint, which eliminates LIHEAP. Additionally, the President is requesting that the remaining FY 2017 LIHEAP as well as the Weatherization Assistance Program funds should not be used for those programs. Both programs are vital in serving low income consumers of home heating fuel and PMAA needs your help to send a message to the Administration and Congress to maintain LIHEAP funding. Much of Trump's blueprint is strongly criticized, even by members of his same party. Like all presidential budgets, ultimate passage of the blueprint is not likely, especially provisions such as the elimination of LIHEAP which will not be supported by a majority in the Senate. In both chambers, most domestic programs have bipartisan advocates. And in the Senate, bipartisan support will be imperative because it takes 60 votes to move spending bills past delaying tactics.

PMAA is a member of the National Energy and Utility Affordability Coalition (NEUAC) which is circulating an "all organizations" letter to save LIHEAP. Please sign your organization on this letter by clicking [here](#) as the deadline is April 25. Individuals can send letters via the same site by clicking [here](#). Also, click [here](#) to view state by state information.

- **NORA Reauthorization/Benefits of Oilheat**

PMAA played a critical role in reauthorizing the National Oilheat Research Alliance in 2014. NORA expires in February 2019, so it'll be important to move NORA reauthorization legislation forward within the next two years. PMAA will be on the lookout for possible legislative vehicles to attach NORA reauthorization language.

Meanwhile, NORA issued a landmark industry report on the utilization rate and analysis of the use of biofuels in heating oil equipment. The report, *Developing a Renewable Biofuel Option for the Home Heating Sector*, is important to heating oil dealers because it demonstrates the significant economic and environmental benefits of biofuels along with important information regarding its efficiency as a home heating fuel, compatibility with existing heating oil equipment and data on market penetration and acceptance.

Key findings of the report include: The transition to ultra-low sulfur heating oil (ULSHO) lowers maintenance, improves efficiency and reduces pollution from heating systems; B20 blends using ULSHO as a blend stock are lower in greenhouse gas emissions (GHG) than natural gas when measured over 100 years; Blends of two percent (B2) or more are lower in GHG than natural gas when evaluated over 20 years; and Performance studies of B20 blends on basic burner operation are equal to that of unblended heating oil. The report concluded that biodiesel fuel and the move to renewable fuels present new opportunities for the heating oil industry and consumers. The transition can be made with minimal costs by consumers and heating oil dealers, removing a significant barrier to the widespread introduction of use of renewable home heating fuel.

Meanwhile, EPA requires 2 billion gallons of biodiesel for 2017 and 2.1 billion for 2018 under the RFS final rule released on December 1, 2016.

- **Biodiesel Tax Credit**

In December 2015, Congress passed a tax extenders package that extended over 50 expired tax incentives through 2016 which includes the \$1 per-gallon biodiesel blender's tax credit and a 30 percent investment tax credit for alternative fuel pumps. This was a huge victory for petroleum marketers because there was a legislative push to move the biodiesel blender's credit to the production level. PMAA was concerned with limited access to supply, blending logistics in the tax and dyed system and concerns that the credit would be passed on to marketers if moved to a production credit. PMAA actively lobbied Congress on this, particularly on behalf of heating oil dealers and their consumers who almost certainly would have experienced an increase in the price of heating oil. However, Congress failed to address around three dozen expiring tax breaks, including the \$1 per gallon biodiesel blenders' tax credit that expired on December 31, 2016. The next opportunity for the biodiesel blenders' tax credit to be extended will be in the tax reform package that Congress is expected to take up before the end of the year.

Other Priorities

- **Obamacare Repeal/Replace**

House Republican moderates known as the Tuesday Group and hardline conservative Freedom Caucus members were unable to come to an agreement before the two-week recess that started in early April. Negotiations are still ongoing.

House Freedom Caucus members were expecting more changes to the legislation that the White House proposed. Conversely, Tuesday Group members complained that the Administration's compromises already went too far.

With the Trump Administration urging that a deal be reached very soon, the two sides are under intense pressure to put their differences aside and come to an agreement. However, if these discussions are any indication as for what is to come, it may well be a while before a deal is made.

- **Tax Reform: LIFO, Estate Tax, Step Up Basis, Border Adjustment, Bonus Depreciation/Treatment of Tangible/Intangible Assets**

Regardless of what happens with the filibuster and health care reform, there is still a good chance for at least some tax reform. Tax reform is a major priority for President Trump and most of the Republicans in the Congress. Unfortunately, the problem with major tax reform still remains – Congress must either be willing to eliminate a number of well-liked deductions and credits (often referred to as tax expenditures) in order to simplify the tax code and most importantly reduce tax rates low enough that the public feels like they've come out ahead or it has to find new sources of tax revenue that can

be stomached by the majority of businesses and Americans that actually pay federal income tax (currently only roughly 50% of all Americans pay any federal income tax). Remember, in their respective tax reform plans both the House Republicans and Trump also want to eliminate the AMT which brings in more and more revenue as it continues to hit more and more middle income taxpayers which was never its intent (originally it was enacted to make approximately 13 of the highest income taxpayers in the country pay some tax).

Eliminating special interest “loopholes” like giving tax breaks to NASCAR and the production of films will not generate enough revenue to be able to significantly reduce tax rates. To meaningfully cut rates, Congress is going to have to reduce some of the big ticket and most popular items like the mortgage interest deduction (the House plan does not), the deduction for employer provided health insurance (looks like the amount of the deduction would be capped under the House proposal), the charitable contribution deduction (does not look like this will be touched under the House plan), and the deduction for retirement plan contributions (the House plan seems to leave an opening here to cut back on this deduction). The only other way to accomplish this onerous task is to come up with new tax revenue. The House plan does this by the proposed border adjustment tax which is a fancy name for saying that imports would be subject to tax and exports would be free of tax. As we have all seen, this proposal which would be a major generator of new tax revenue is not being embraced with open arms. PMAA has initial concerns with the border adjustment tax. Refiners who rely heavily on imported crude oil, especially from Canada, could result in higher prices at the pump and higher heating fuel prices in the Northeast and Pacific Northwest. If this proposal doesn’t work, then the Republican leadership will have to go back to the drawing board. If this happens, we anticipate seeing a VAT (value-added tax) being considered at some point since America is one of the few developed countries that does not have one. In fact 140 countries around the world have a VAT.

In short, it seems improbable, though not impossible, that a Republican controlled Congress with a Republican President would not take advantage of this opportunity to reform the tax code.

Throughout the tax reform debate, PMAA will continue to weigh in on provisions that are particularly important to petroleum marketers such as the estate tax, LIFO, step up in basis and the treatment of tangible and intangible assets. PMAA is still reviewing the border adjustment tax and the GOP tax proposal and will have additional information on how it will impact petroleum marketers.

- **Speed Limiters/Sleep Apnea**

Last year, PMAA submitted written comments to the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) calling on the agencies to withdraw the controversial proposed rule to mandate speed limiters in heavy duty trucks weighing over 26,000 pounds. The proposed rule would require all newly manufactured heavy duty trucks to be equipped with speed limiters set to a maximum speed that will be included in the final rule. NHTSA is proposing to set the maximum speed at either, 60 mph, 65 mph or 68 mph based on written comments received from interested parties.

A major concern for petroleum marketers is the possibility that the speed limiter mandate would be made retroactive to trucks manufactured after 1990. PMAA opposed any retrofit requirement in its written comments. PMAA told the agencies that there is insufficient data to move forward with the rule. PMAA pointed out that the proposed rule does not adequately weigh the cost on how the rule would impact small business motor carriers.

President Trump’s executive order which basically says that for every new regulation submitted, two existing regulations need to be eliminated has likely ended the conversation on any future speed limiter mandate. Trump’s move essentially prevents any new onerous regulations from being issued during his time in office.

Meanwhile, the DOT’s Federal Motor Carrier Safety Administration’s (FMCSA) effort to possibly issue a rule to require screening, evaluation and treatment of CDL drivers for obstructive sleep apnea (OSA) is also on hold at this time. The rule is important to petroleum marketers because if promulgated, it could disqualify CDL even moderately overweight drivers with a body mass index greater than 33 bmi and a neck circumference over 17 inches.

The controversial proposal has been floating around the FMCSA for the past 15 years but was recently given a boost by a study by the National Transportation Safety Bureau (NTSB) pointing to a recent series of truck and train accidents that are

linked to OSA, a respiratory disorder characterized by a reduction or cessation of breathing during sleep. The FMCSA said undiagnosed or inadequately treated moderate to severe OSA can cause unintended sleep episodes and deficits in attention, concentration, situational awareness, memory, and the capacity to safely respond to hazards when driving commercial motor vehicle.

- **SNAP Program**

In March, 2016, the USDA released a proposed Supplemental Nutrition Assistance Program (SNAP) rule that went further than the requirements of the 2014 Farm Bill. Following final input from the PMAA Convenience Store Committee, PMAA submitted comments on “Enhancing Retailer Standards in the SNAP.”

On December 8, USDA released the final SNAP rule. While there are improvements from what was originally proposed, the final rule still presents challenges and additional costs for retailers to participate in the program, especially for small business convenience store owners. Click [here](#) for more details.

Regarding the SNAP program, House Agriculture Committee Chairman Mike Conaway (R-TX) recently released a committee report based on 16 hearings he's called to review the performance of the SNAP. Based on report findings, clear program goals and more flexibility for states is needed, however, the program does not need to be completely gutted. Still, House Republicans are laying the groundwork for a fresh effort to overhaul the program which could occur in the next farm bill which is due in 2018.

- **Fuel Neutral Policies**

Unfair policies that favor one fuel over another, “fuel switching,” are threatening thousands of home heating oil businesses. Policy makers fail to acknowledge recent technological advances in heating oil efficiency. New high efficient oilheat equipment combined with the near elimination of sulfur content and BioHeat® makes heating oil cheaper, more efficient, safer and cleaner than natural gas. Unlike electric and natural gas utilities, oilheat infrastructure was developed without taxpayer or ratepayer money and none is needed to maintain it. Incentivizing oilheat customers to make costly conversions to natural gas and other fuels is not fair and is unlikely to result in lower heating costs or emissions. Additionally, Congress should be treating both oil and natural gas pipelines fairly, but expected legislation would favor natural gas over oil. Rather than deregulate the natural gas pipeline permitting process, Congress should require that regulators and gas companies increase system efficiency by requiring that the thousands of miles of existing natural gas pipelines that are aging or obsolete be repaired or replaced.

If a broader infrastructure bill moves forward, PMAA will be on the lookout for natural gas pipeline streamlining language which both PMAA and NEFI oppose. Last year, the House passed-energy bill included language that was not fuel neutral since it would expedite interstate natural gas pipeline approvals and did nothing to expedite oil pipelines. Specifically, the House bill would expand the federal land eligible for natural gas pipeline siting, including designation as National Energy Security Corridors, to include land in the National Park System.

It is unclear how quickly this Congress will act on energy/infrastructure legislation.

- **On-Demand Fueling**

According to the NFPA 30A Technical Committee, On-Demand Mobile Fueling is defined as the retail practice of fueling motor vehicles of the general public while the owner's vehicle is parked and might be unattended. This practice is already occurring in California and Texas, and state and local fire officials are looking for direction on how to regulate this practice.

The committee is proposing a new chapter be added to NFPA 30A on On-Demand Mobile Fueling. The proposed language is based on language developed by the California State Fire Marshall's Mobile Fueling Task Force which was submitted in a public comment to NFPA. Similar language has also been proposed to be added to the International Fire Code (IFC).

The proposed language is designed to regulate on-demand mobile fueling by providing specific requirements related to the operations, vehicles, and equipment and requiring approval by the authority having jurisdiction (AHJ) including the operations, location, safety and emergency response plan, and vehicle operator training. In addition, fueling must be from

an approved vehicle or metal safety can and is prohibited on roads, public right-of-ways, in buildings, or covered parking areas and within 25 feet of buildings, property lines, or combustible storage.

In general, the draft language provides a good basis for regulating this activity. PMAA and other groups were able to incorporate appropriate requirements that require mobile fueling activities to comply with fire and safety procedures and equipment requirements similar to a retail fueling facility and that limit the locations where this type of refueling can occur. It is important to note that there are other issues not related to NFPA 30A that may need to be addressed including weights and measures and DOT requirements for transporting hazardous materials. These are outside the purview of NFPA so they are not addressed in the proposed language. The proposed language will be included in the second draft revision and subject to a formal ballot of the Technical Committee. The ballot requires a 2/3 majority to pass and be incorporated into the next version of NFPA 30A.

- **Disaster Planning and Response**

During an emergency, federal, state and local government entities generally want both priority for fuel as if by branded contract and lowest price as if by spot unbranded. If the government entity has the ability to receive fuel in bulk they will generally get to receive fuel first. The supply that may be available unbranded is going to be used by all that can access it, and marketers also prioritize government for first access to their unbranded supply. In some cases, marketers use their “branded contract” volume to supply some of the critical infrastructure customers. During an emergency there tends to be a “rolling” affect the regional market will experience, not just in the immediate impact zone but potentially hundreds of miles away.

Following the explosion on Colonial Pipeline's Line 1 in Shelby County, Alabama, PMAA worked with the federal government, PMAA State Association Executives, and industry representatives to ease the many barriers to continuing gasoline supply in the southeast region that is affected by the disruption.

PMAA represents marketers on the Oil and Gas (ONG) Sector Coordinating Committee (SCC) which recently met with federal members of the ONG Government Coordinating Committee to discuss ongoing security, disaster prevention and emergency response. During these meetings PMAA again brought up the problem of not having enough drivers who can pick up fuel at a port. PMAA argues that during an emergency the Transportation Workers Identification Card (TWIC) requirement should be waived to allow drivers with hazardous materials certification to pick up fuel for delivery to states that are experiencing supply disruptions. At a minimum, escorts should be available at the terminals 24/7 during an emergency in order to minimize delays in moving fuel where it is needed. We are also in discussions regarding problems drivers face at weigh stations and with state police while driving thru non state of emergency states in order to assist with fuel delivery in states where waivers are in place, and ways that region wide HOS and weight waivers can be issued when appropriate rather than waiting on the piece meal state waivers. These are but a few of the ways processes can be modified, and PMAA welcomes all member feedback on inefficiencies that should be addressed.

PMAA also served on the National Petroleum Councils' Emergency Preparedness Coordinating Subcommittee in order to ensure that petroleum marketers were fairly and broadly considered in formulating the “Enhancing Emergency Preparedness For Natural Disasters, Government and Oil & Natural Gas Industry Actions to Prepare, Respond and Recover” handbook. For a copy of the handbook contact PMAA at [703-351-8000](tel:703-351-8000).

- **Keystone XL/ Dakota Access Pipelines**

The Trump Administration approved the Keystone XL Pipeline which finally will allow construction of the pipeline to move forward. The 1,200-mile pipeline would ship crude oil from Canada to refineries along the Gulf Coast. PMAA strongly supported development of the KXL Pipeline which has already had more than eight years of debate and multiple environmental impact studies that have shown the pipeline would have no effect on climate change. Even former Obama Administration EPA Chief Gina McCarthy said that the pipeline, if approved, would not be a disaster for the climate as some environmentalists have argued.

Meanwhile, at any moment, oil could start moving through the Dakota Access Pipeline, which would bring crude oil through the Midwest and into the U.S. Gulf Coast. Last month, the Army Corps of Engineers announced that it had completed the review of the Dakota Access Pipeline oil project that had triggered months of protests from Native

American tribes and environmentalists. Oil entering the pipeline will be a significant milestone in the saga surrounding Dakota Access, a 1,172-mile project stretching from North Dakota to Illinois with a daily capacity of 570,000 barrels of oil.

The approvals of the Dakota Access Pipeline and the Keystone XL Pipeline are indicative of how the new Administration will take a much needed and drastically different approach to energy issues.

- **Jones Act Reform**

Last Congress, Sen. John McCain (R-AZ) reintroduced language that would repeal the nearly 40-year-old Jones Act, which restricts shipping between U.S. ports to ships built and owned by Americans and manned by U.S. workers. PMAA supports efforts to reform the Jones Act to alleviate the Gulf Coast supply glut which will bring cheaper motor fuels and heating oil prices to consumers and we are encouraging the Senator to reintroduce his bill again this year.

- **85 Octane**

Several states allow the use of 85 octane and repealing it would ultimately harm petroleum marketers and consumers by restricting supply which would lead to higher prices at the pump. There is limited evidence regarding harm to engines or complaints from consumers regarding engine damage - or any other problems - due to 85 octane gasoline. Furthermore, there is simply not enough information to determine whether the overall environmental impact of an 87 octane standard will be positive or negative. Early in 2016, an ASTM ballot initiative to repeal 85 octane was defeated. Several PMAA members voted to maintain 85 octane at retail, and ultimately, the auto manufacturers didn't have enough votes to repeal it.

- **E-Vapor Regulation and Predicate Date**

In May, 2016, the FDA released its long awaited final rules for e-cigarettes, cigars, pipe tobacco and other tobacco products it had not previously regulated. Under the rules, the newly regulated tobacco products will be subject to the same general requirements to which cigarettes and smokeless tobacco are already subject, including those related to: adulterated and misbranded products; ingredients listing; health documents submission; reporting of harmful and potentially harmful constituents; and registration and product listing. The rules became effective on August 8, 2016.

As part of the final rules, the FDA maintained the February 15, 2007 predicate date. This date is important as it determines which pathways a product can take to stay in and/or enter the marketplace. Products that were not in the market on February 15, 2007, nor have a comparable product that was in the market on this date, must submit a Pre-Market Tobacco Application (PMTA). The PMTA requires a product to meet a regulatory hurdle that is very complex and costly. Some have estimated that a single PMTA could cost up to several million dollars. As such, the regulatory hurdle to enter the marketplace will be much higher for e-cigarettes than for traditional cigarettes. Because of the speed at which innovation has occurred with e-vapor products since 2007, essentially all products currently being sold to consumers fall into this regulatory trap.

As of August 8, 2016, retailers: Must not sell e-cigarettes, hookah or pipe tobacco, or cigars to people under 18 years of age; they must check photo ID of everyone under age 27 who is attempting to purchase such products; they must not sell tobacco products covered under the rule in a vending machine (except in a facility where people under age 18 are not allowed on the premises); and must not give away free samples of any newly regulated tobacco products (this provision also applies to manufacturers, importers, and distributors).

PMAA advocated against portions of this FDA rule and supports legislation to change the rule to be less burdensome for manufacturers, retailers and consumers.

- **Americans with Disabilities Act Reform**

Representative Ted Poe (R-TX) has reintroduced the bipartisan ADA Education and Reform Act of 2017, H.R. 620, which aims to put an end to "drive-by" lawsuits where attorneys look for minor, easily correctable Americans with Disabilities Act (ADA) infractions so they can file a lawsuit and make some cash. This bill would prohibit sending demand letters or other pre-suit notifications alleging a violation of ADA public accommodation requirements if the notification does not specify the circumstances under which an individual was actually denied access. The notification

must specify: the property address, the specific ADA sections alleged to have been violated, whether a request for assistance in removing an architectural barrier was made, and whether the barrier was permanent or temporary.

The bill would also prohibit commencement of civil action based on the failure to remove an architectural barrier to access an existing public accommodation unless: the aggrieved person has provided to the owners or operators a written notice specific enough to identify the barrier, and the owners or operators fail to provide the person with a written description outlining improvements that will be made to improve the barrier or they fail to remove the barrier or make substantial progress after providing such a description.

In recent years, convenience store owners have fallen victim to predatory lawsuits that serve the interests of trial lawyers while doing little to help the individuals that the ADA was designed to protect.

The vast majority of retail station owners strive to serve their customers to the best of their ability and rely on the ADA to help ensure that customers with disabilities can use their services. Many small to medium sized businesses cannot afford a court case and are forced to settle and pay fees for a violation that they did not commit.

PMAA supports this legislation that would minimize the ability of predatory attorneys to harm petroleum marketers.

- **Manager Overtime**

Recently, President Trump's Secretary of Labor nominee Alexander Acosta testified before the Senate Health, Education, Labor and Pensions (HELP) Committee. Senate Democrats grilled Acosta on numerous Department of Labor (DOL) regulations including the final overtime rule which was blocked by a Texas federal judge just days before it was to go into effect on December 1, 2016. The Obama Administration did appeal Judge Mazzant's order, but it is unlikely that the Trump Administration will continue the appeal.

Acosta noted that the overtime rule has not been updated since 2004, and many in the room seemed to believe that the DOL would rescind the final Labor Department rule and issue a new rule that would gradually increase the salary threshold. Acosta stated that the DOL overtime final rule, which would have raised the salary threshold for receiving mandatory overtime from \$23,660 to \$47,476 a year, went well beyond a cost of living adjustment. Acosta later suggested an inflation adjusted threshold of \$33,000.

PMAA will continue to monitor the latest with the overtime rule.

- **Transportation Issues**

Governors from 46 states, including National Governor's Association (NGA) Chairman Gov. Terry McAuliffe (D-VA), met with President Trump and many Governors expressed support for the use of public-private partnerships to help fund infrastructure projects across the country. President Trump has said that he plans on implementing a \$1 trillion infrastructure plan that would build/repair roads, bridges, airports and other infrastructure projects. Furthermore, he plans for these projects to be partially financed through tax credits to investors and construction companies.

Speaker of the House Paul Ryan (R-WI) and other Republicans have expressed support for using tax credits to spur private infrastructure work. However, Speaker Ryan has indicated that infrastructure decisions will need to wait until this summer, due to the complex agenda currently in front of Congress, which includes a plan to repeal and replace Obamacare and comprehensive tax reform.

The gas tax is something politicians on Capitol Hill, especially Republicans, have tried to avoid at all costs. Many are hesitant to even talk about it. The 18.4 cent-per-gallon federal gas tax has been the main source of transportation funding for decades, but it has not been increased since 1993.

Congress has been grappling since 2005 with a transportation funding shortfall that is estimated to be about \$16 billion per year, and it has not passed a transportation bill that lasts longer than two years in that span. Transportation advocates are pushing for a gas tax increase to pay for a long-term transportation bill, but Republican leaders in Congress have ruled out a tax hike. If the gas tax were to have been indexed to inflation since it was enacted in 1993, drivers would be paying

about 30 cents per gallon on their gasoline purchases now. PMAA continues to monitor the issue and will report on any new developments.

Meanwhile, commercializing rest areas could jeopardize private businesses that have operated under the current law for the past 50 years and established locations at highway exits. Due to their convenient locations for motorists, state-owned commercial rest areas have established virtual monopolies on the sale of services to highway travelers. Allowing corporate logo advertising would not only hurt petroleum marketers and small businesses, but would also create a safety hazard.

Finally, interstate tolling is a hot topic right now. Recently, the American Trucking Associations and the Owner-Operator Independent Drivers Association and other members of the Alliance for Toll-Free Interstates sent a letter to the House Transportation Committee urging the panel not to use tolling of existing interstates as a financing method in the infrastructure package policymakers will develop later this year. Also, House Transportation Chairman Bill Shuster (R-PA) reported that the committee will not toll existing interstates in order to fund infrastructure development.