

## **2018 Top Issues with Committees of Jurisdiction**

### **Motor Fuels Committee**

- **UST Final Rule Delay** *Committees: House Energy and Commerce; Senate Environment and Public Works; All lawmakers*

In 2015, the Environmental Protection Agency (EPA) updated the 1988 regulations for the operation and maintenance of underground storage tanks (UST's). UST integrity is critical to preventing fuel releases into the environment. However, portions of the 2015 regulations, particularly those relating to testing and inspection of spill buckets, containment sumps and overfill equipment require excessive labor and infrastructure investments for small business petroleum marketers over a very short time period.

#### **Request for Action:**

**PMAA urges Senators to sign onto a letter led by Senator Moran (R-KS) to the EPA requesting a delay in the 2015 underground storage tank amendments for containment sump, spill bucket and overfill prevention equipment operability testing until October 13, 2024. To do so, please contact Jordan Ebert in Senator Moran's office at [Jordan\\_Ebert@moran.senate.gov](mailto:Jordan_Ebert@moran.senate.gov). Deadline to sign the letter is Thursday, May 24th.**

- **RFS Reform** *Committees: House Energy and Commerce; Senate Environment and Public Works; All lawmakers*  
PMAA continues to oppose volumetric ethanol blending mandates for gasoline that would require the introduction of E15 until all practical and legal UST compatibility issues are settled for petroleum marketers. The demonstration that a UST system is compatible with greater than E10 plus blends is difficult, if not impossible, for most retailers and is a major impediment to dispensing and storage of E15. A UST system is made up of approximately 60 components, all of which need to be either UL listed, or manufacturer certified as compatible with the product to be stored and delivered. Federal, state, and local laws and regulations, national and international fire codes, as well as all commercial insurance policies, require the use of UL certified storage and dispensing equipment or a specific demonstration that the UST and dispenser system is compatible, such as a manufacturer acknowledgement. Dispensing ethanol blends higher than 10 percent with non-certified equipment exposes retailers to legal liability for non-compliance with federal and state UST regulations and state fire codes and will subject them to significant civil penalties and possible closures.

Meanwhile, the Trump Administration continues to hash out an RFS reform deal between refining and ethanol industry interests. Recently, the Trump Administration has used its waiver authority under the RFS to exempt several small refiners from their renewable volume obligations (RVOs) which has dampened ethanol renewable identification numbers (RINs) values. The EPA has the authority to grant exemptions from the program to refineries with a capacity under 75,000 barrels per day if the company can demonstrate financial hardship. Over twenty exemptions have already been granted this year. According to the ethanol industry, this has effectively reduced the corn ethanol mandate from 15 billion to 13.8 billion gallons.

Additionally, reports have surfaced that President Trump has agreed to allow the sale of E15 year-round in exchange for allowing biofuel exports to qualify for RINs generation. The ethanol industry has already pushed back against any effort to cap RIN values and/or allow ethanol exports to qualify for RINs generation since any reduction in RINs will likely hurt E15 sales. In other words, for E15 to become a viable "new fuel" in the marketplace, the ethanol industry needs the 15-billion-gallon ethanol mandate to stay intact which maintains RIN values. It is unlikely that a cap on the price of RINs will be issued by the Trump Administration given that the current refinery exemptions and the possibility that biofuel exports could fulfill RIN obligations will likely do the same thing by reducing the value of RINs.

Furthermore, the upcoming CAFE standards will likely drive auto manufacturers to make more fuel-efficient vehicles. One means that has gained traction to achieving this is through new high compression engines. These high compression

engines will require the introduction of a 95-Research Octane Number (RON) which is similar to a 91-92 minimum octane rating. Transitioning to a high-octane baseline fuel would likely take nearly 20 years to happen and come with potentially significant costs. Refiners, the ethanol industry and auto manufacturers have argued that transitioning to 95-RON fuel would lower emissions and help meet the new CAFE standards but differ on how to achieve them. PMAA is concerned that implementing a higher-octane fuel may be used as an excuse to mandate E15 or higher ethanol blends which would place small business petroleum marketers in a precarious situation because of the potential economic impacts including the costs associated with existing UST system incompatibility.

**Request for Action:**

**1. Continue to remind lawmakers on E10+ compatibility issues that marketers face.**

**2. Additionally, urge Congress to press EPA not to exceed 9.7 percent ethanol in the gasoline supply for 2019 which will recognize the real-world lack of demand for E85, and will allow marketers to continue to sell E0. This is particularly important to bring up in your meetings with members who serve on the House Energy & Commerce or Senate Environment & Public Works Committees.**

- **Transportation** *Committees: House Transportation and Infrastructure; Senate Commerce, Science & Transportation*  
President Trump's infrastructure proposal essentially shifts the responsibility for financing infrastructure projects from the federal government to the states and the private sector and calls for rest area commercialization. PMAA strongly opposes rest area commercialization and has been meeting with lawmakers to ensure it will not be included in the final package because it would be harmful to petroleum marketers. Commercializing rest areas could jeopardize private businesses that have operated under the current law for the past 50 years at 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. The ban on the commercialization of rest areas has resulted in a strong, competitive economic environment with over 60,000 businesses developing along U.S. interstate highways. Prohibiting publicly-run rest areas from competing with private sector businesses has been an undeniable success, resulting in industries that provide valuable services such as gas stations, travel plazas, truck stops, restaurants, and hotels.

**Request for Action: Urge lawmakers to oppose commercialization of rest stops.**

**Convenience Store Committee**

- **Menu Labeling** *Committee: Senate Health, Education, Labor and Pensions; All Senators*  
The menu labeling requirements will be enforced by the FDA beginning May 7, 2018. Congress must act to fix the menu labeling regulation.

In February, the House passed H.R. 772, known as the "Common Sense Nutrition Disclosure Act." Introduced by Reps. Cathy McMorris Rogers (R-WA) and Tony Cardenas (D-CA), the legislation modifies the Menu Labeling language in Obamacare to allow 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.

This legislation is important because it gives retailers the flexibility needed to comply with the menu labeling regulations which will be enforced by the FDA beginning May 7, 2018. Since the bill's passage in the House, PMAA has been supporting NACS' efforts to encourage Congress attach the bill to a must pass bill. In the meantime, it is important to encourage Senators to cosponsor companion legislation (S. 261) that was introduced by Senators Roy Blunt (R-MO) and Angus King (I-ME).

**Request for Action: Urge all Senators to support the "Common Sense Nutrition Disclosure Act" (S. 261).**

- **Americans with Disabilities Act Reform** *Committee: Senate Judiciary; All Senators*  
In February the House approved H.R. 620, the "ADA Education and Reform Act" by a vote of 225 to 192. The bill aims to put teeth back into the rules to deter harmful litigation. The strain of litigation on the parties involved has created an opportunity for those who wish to make a quick buck, particularly in the small business sphere. The mere threat of a

lawsuit, even one unsupported by the facts, can force a small business owner to quickly settle a claim. In 2015, **60 Minutes** highlighted the rise of "drive by" litigation under the Americans with Disabilities Act (ADA). In some cases, lawyers simply drive down the street, or use Google Maps, to look for any technical violation of the ADA by local businesses. This is quickly followed up by a demand letter to the business.

Business owners should have the confidence to challenge a bogus claim, knowing that they will be compensated for their time and resources spent fighting back. Unfortunately, current litigation rules don't provide much help. Under current law, even if a lawsuit is found to be frivolous, a judge can decide against sanctioning the offending party.

PMAA strongly supports the "ADA Education and Reform Act" to put a stop to these outrageous lawsuits. H.R. 620 now faces an uphill battle in the Senate where Democrats are firmly opposed to the bill.

**Request for Action: Urge all Senators to support the "ADA Education and Reform Act."**

### **Heating Fuels Committee**

- **NORA Reauthorization** *Committees: House Energy and Commerce; Senate Energy & Natural Resources; House/Senate Agriculture; All lawmakers*

Reauthorizing the National Oilheat Research Alliance (NORA) is critical for the heating fuel industry. NORA expires in February 2019, so it will be important to move NORA reauthorization legislation forward before the expiration date. PMAA is meeting with members of Congress to educate them on NORA's benefits and looking for possible legislative vehicles to attach reauthorization language.

**Request for Action: Educate House and Senate lawmakers regarding the benefits of NORA and why reauthorization is needed.**

- **Biodiesel Blender's Tax Credit** *Committees: House Ways and Means; Senate Finance Committee*  
In February 2018, the \$1 per gallon biodiesel blenders' tax credit was reinstated by Congress retroactively for calendar year 2017 under the Bipartisan Budget Act of 2018. While the biodiesel blender credit was not reauthorized for 2018, PMAA continues to push for reauthorization for calendar year 2018 and beyond. PMAA opposes moving the blender's credit to the production level because it would effectively kill any below the rack biodiesel blending and subsequent savings to consumers. PMAA member companies have made significant investments to blend biodiesel which has produced growth for biodiesel production and denying the credit to blenders cannot be justified.

The policy of limiting the credit to producers is contrary to the original intent of offering a biodiesel tax credit to make the fuel competitive with conventional diesel, and thus, encourage domestic consumption of biodiesel by U.S. consumers. Blenders and marketers have legitimate concerns that much of the tax credit will be pocketed by producers and not passed on to marketers and consumers. In the current environment where biodiesel is not competitive with conventional diesel without the tax credit, it is essential that the \$1-per-gallon tax credit be passed on to the consumer.

**Request for Action:**

**Urge Congress to pass a multiyear extension of the biodiesel blender's tax credit and phase the credit out over the next five years.**

### **General Topics**

**Truck Driver Shortage** *Committees: House Transportation & Infrastructure Committee and the Senate Commerce, Science & Transportation Committee*

The trucking industry has struggled with a shortage of drivers for nearly a decade and the problem is becoming more severe. A bill that was introduced in the House in March would allow drivers under 21 years old to operate interstate. Federal law currently restricts interstate trucking to CDL holders 21 years and older. However, most states allow drivers 18 or 19 and older to operate intrastate.

The DRIVE-safe Act, introduced by Reps. Duncan Hunter (R-CA) and Trey Hollingsworth (R-IN) would allow drivers 18 and older to operate across state lines, if they meet rigorous training requirements — at least 400 hours of on-duty time

with 240 hours of driving time, with an experienced driver training them. Training would also be restricted to trucks equipped with active braking systems, video monitoring systems and speed limiters set to 65 mph or slower.

The “Developing Responsible Individuals for a Vibrant Economy Act,” H.R.5358, has received significant support from the industry, including the United Parcel Service (UPS), the American Trucking Associations (ATA), the International Foodservice Distributors Association (IFDA) and the National Council of Chain Restaurants, a division of the National Retail Federation.

**Request for Action: PMAA supports efforts to curtail the shortage of truck drivers.**