### PMAA Priorities Report April 2018

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### Motor Fuels Committee

- **Reducing UST Compliance Costs/UST Rule Delay/LUST Fund**
  
  In December, PMAA sent a letter to EPA Administrator Scott Pruitt asking the EPA to delay the compliance deadline in the 2015 underground storage tank (UST) amendments for containment sump, spill bucket and overfill prevention equipment operability testing. Specifically, PMAA is asking the Trump Administration to delay the compliance deadline until October 13, 2024 which will allow tank owners and operators time to acquire the capital needed to pay for the compliance costs associated with initial testing. It will also allow tank owners and operators the opportunity to extend the useful life of their existing equipment while preparing for the equipment upgrades needed to comply with the 2015 UST testing and inspection requirements. Click [here](#) to read the letter.

  Meanwhile, PMAA has gained the support from Rep. Tim Walberg (R-MI) and Senator Jerry Moran (R-KS) to lead a letter in each chamber to the EPA to delay the testing of sumps, spill buckets and overfill prevention devices until October 2024. Also, the EPA’s Office of Underground Storage Tanks (OUST) approved PMAA’s low liquid level integrity test as an alternative method for containment sump testing that is required under the 2015 federal UST regulations. Please use [this PMAA memo](#) to communicate the regulatory flexibility that was won by PMAA and has been approved by the EPA as “equally protective of the environment” and “no less stringent than federal regulations.”

  Finally, President Trump released his FY 2019 budget plan. In the plan, funding for the Leaking Underground Storage Tank (LUST) program would be reduced to $47 million. PMAA is concerned that if states do not receive funding, then they will find other ways to cover their costs including increasing tank fees. In previous years, Congress has appropriated $90 - $100 million each year; an amount PMAA urges Congress to continue to appropriate. Fortunately, in March,
Congress approved a $1.3 trillion omnibus spending bill that funds the government through September and provides $92 million for the LUST fund, matching previous funding levels.

- **ULSD Corrosion**
  Last year, PMAA UST Task Force member Bruce Garrett of Volta Oil Company (Plymouth, Massachusetts) represented PMAA before the National Association of State and Territorial Solid Waste Management Officials’ (ASTSWMO) conference regarding PMAA’s concerns with accelerated ULSD corrosion. Mr. Garrett argued that the focus of accelerated corrosion studies on retail sites alone is misguided and could result in unfairly shifting responsibility for all corrective action to petroleum marketers. PMAA supports fuel quality studies along the entire petroleum production and distribution chain to determine the cause of accelerated corrosion. Until a broader look at the issue is undertaken, PMAA will refrain from funding studies that focus solely on finding causes below the terminal rack.

  In 2017, PMAA provided 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 potential causes that may occur above the terminal rack. PMAA is concerned that the EPA and the CRC past studies did not conduct research into potential upstream 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 could not 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.

- **RVP Waiver for E10+ Blends, E15 Labeling**
  Last March, Sen. Deb Fischer (R-NE) introduced S. 517 and Rep. Adrian Smith (R-NE) introduced H.R. 1311, both known as the “Consumer and Fuel Retailer Choice Act,” which would extend the Reid vapor pressure (RVP) waiver to ethanol blends above 10 percent. The bills would allow retailers across the country to sell E15 and other higher-ethanol/gasoline fuel blends year-round. Each year, the EPA regulates RVP for gasoline and gasoline-ethanol blended from June 1 until September 15. During these months, the EPA restricts the retail sale of fuels with ethanol above 10 percent.

  Before the Senate Environment and Public Works (EPW) Committee held a hearing on S. 517 last June, PMAA submitted a [letter](#) for the record to Chairman Barrasso and Ranking Member Carper highlighting its concerns with the bill. PMAA firmly believes that before Congress proceeds any further on granting a RVP waiver to blends above E10, it must first hold a hearing on the effects of ethanol blends on existing underground storage tank (UST) system infrastructure. The introduction of ethanol blends higher than 10 percent (including E15) present significant economic and legal impediments for many gasoline retailers as well as consumer awareness issues that go beyond the price of the fuel. Extending the RVP waiver to E15 at this point further exacerbates these concerns and could force many retailers to invest considerable time and money on an accelerated schedule to switch to an alternative fuel storage and distribution system to remain competitive. **PMAA’s letter to the EPW Committee also highlighted E15 labeling. Specifically, retailers have taken a variety of approaches with labeling E15 on fuels dispensers as well as price signs using labels such as “unleaded plus,” “unleaded15,” “unleaded 88,” and “eblend,” which can be confusing to consumers purchasing fuel.**

- **RFS Reform**
  It’s safe to say that the RFS continues to be the biggest political football in town. The Trump Administration continues to meet with representatives from the refining, petroleum marketing (including PMAA) and ethanol industries to try and hash out a RFS reform deal. Some reports have indicated that the President could support a proposal to cap the value of RINs that refiners must acquire to comply with the RFS in exchange for allowing the sale of E15 year-round. However,
details remain murky as the corn 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, the ethanol industry needs the 15-billion-gallon ethanol mandate to stay intact which maintains RIN values, and therefore, gives E15 a chance to become a viable “new fuel” in the marketplace. Unfortunately, small business petroleum marketers are placed in a precarious situation if E15 starts to take hold because of the potential economic impacts of adding E15 including the costs associated with existing UST system incompatibility with E10 plus blends.

PMAA has been very active in the RFS discussion.

- Click here to read PMAA Executive member Vern Kelley (Kelley Fuels, Shakopee, Minnesota) testimony from an EPA hearing in August 2017.
- In November 2017, PMAA sent a letter to Senators urging them to take PMAA’s UST compatibility concerns into consideration.

Meanwhile, Senator Cornyn (R-TX) has been working to strike a deal between petroleum and ethanol interests on reforming the RFS. Some options on the table include introducing a new type of RIN category, D8 RIN, which some refiners argue would put downward pressure on today’s ethanol RIN blending credits. The D8 RIN would be generated for ethanol blends above E10. According to some refiners, the D8 RIN would cover a smaller portion of the market and sell at a premium, thereby, incentivizing more companies to invest in ethanol blending infrastructure. The existing D6 RIN pool would then cover only up to an E10 blend which represents most of the fuel sold in the country, and therefore, reduce D6 RIN prices.

Other proposals would also lift the ban on E15 in the summer months and would allow the RFS program to expire in 2022. The petroleum and the ethanol sectors have multiple concerns with the legislation, but all options are on the table to mitigate the effects of the RFS. Senate democrats have already released their version of how the future of the RFS should look. The bill reduces the corn ethanol mandate while advancing the next generation of biofuels. The Growing Renewable Energy through Existing and New Environmentally Responsible Fuels Act (GREENER Fuels Act) would: Phase out the corn ethanol mandate and immediately reduce the amount of ethanol in fuel by as much as one billion gallons by capping the amount of ethanol that can be blended into conventional gasoline at 9.7 percent; extend the cellulosic next generation biofuel mandate until two billion gallons of annual production is achieved or 2037, whichever is sooner, and improve the way the mandate is implemented to produce liquid transportation fuels that dramatically reduce GHG emissions; and, help farmers return cornfields to pasture and wildlife habitat through a 10 cents per RIN fee to fund a new Private Land Protection and Restoration Fund in the U.S. Treasury.

• Regulatory Reform Bills
  Last April, 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, other bills have been introduced by the GOP-controlled Congress to reform the regulatory process. Click here for details on additional bills which would reduce the regulatory burden for petroleum marketers.

• Placarding
  PMAA 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 the 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 met with DOT officials on this issue recently and repeated our concerns. DOT officials said they agree with PMAA and are prepared to rescind the 2015 interpretative letter and revert back to the previous rule for placarding to the lowest flashpoint. PMAA is waiting for DOT officials to make the necessary changes and will send out a compliance bulletin to inform petroleum marketers as soon as possible.

Convenience Store Committee

• Menu Labeling

Last year, the Food and Drug Administration (FDA) released draft supplemental guidance on menu labeling. The 36-page document failed to amend the weaknesses that PMAA and like-minded associations raised in comments to the FDA regarding the rule. The new menu labeling requirements will be enforced by the FDA beginning May 7, 2018. The bottom line is that Congress must act to fix the menu labeling regulation. PMAA General Counsel Al Alfano released a detailed explanation of which establishments are required to comply with the menu labeling rule which will go into effect on May 7, 2018.

PMAA, and other like-minded associations continue to push for passage of the “Common Sense Nutrition Disclosure Act” (H.R. 772) introduced by Reps. McMorris Rodgers (R-WA) and Cardenas (D-CA), and S. 261 by Senators Blunt (R-MO) and King (I-ME) which would give retailers the flexibility needed to comply with the menu labeling regulations. It would allow retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Furthermore, the bill would clarify that advertisements and posters do not need to be labeled and would provide flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals. Lastly, the bill would ensure 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.

In February, the House passed H.R. 772. It is unclear if/when the Senate will vote on S. 261.

Heating Fuels Committee

• CDL Driver Shortage

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 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. PMAA is currently vetting this legislation as well as other possible solutions to increase the number of CDL truck drivers in the U.S.

- **NORA Reauthorization/Benefits of Oilheat**
  PMAA played a critical role in reauthorizing the National Oilheat Research Alliance (NORA) in 2014. NORA expires in February 2019, so it will be important to move NORA reauthorization legislation forward within the next year. PMAA is meeting with members of Congress to educate them on NORA’s benefits and looking for possible legislative vehicles to attach NORA reauthorization language.

  Additionally, results of the NORA survey on the usage and potentials benefits and issues associated with the blending of traditional heating oil with renewable biodiesel for home heat use follow: 5% biodiesel blends (B-5) are being used seamlessly across the oilheat market; Some heating oil fuel marketers are delivering B-20 to all their customers and a few are delivering much higher blends; This blending into the fuel mix in this market leads to concerns about the impact on reliability and service. Click [here](#) to review the report.

- **LIHEAP Funding/Leveraging Requirement**
  In March, Congress passed a $1.3 trillion omnibus spending bill which funds the government through the end of the fiscal year on September 30 and provides a $250 million funding increase for the Low-Income Home Energy Assistance Program (LIHEAP) from $3.39 billion to $3.64 billion.

  In February, President Trump released his FY 2019 budget proposal that eliminates the Low-Income Home Energy Assistance Program (LIHEAP) as well as the Weatherization Assistance Program (WAP). In recent years, the LIHEAP program has provided more than $3 billion annually to states in support of their fuel assistance programs, with a current budget of $3.39 billion. Both programs are vital in serving low income consumers of home heating fuel, with LIHEAP helping consumers with fuel funds and the WAP helping with acquiring more efficient equipment.

  In 1990, Congress created a leveraging program to encourage states to leverage better prices for customers participating in LIHEAP. Those states which are able to leverage better energy prices would, in turn, qualify for more federal LIHEAP dollars. This year, PMAA plans to work to encourage the Trump Administration to review the LIHEAP leveraging program and find possible ways to make the program work more efficiently which will benefit heating oil dealers and consumers.

  PMAA has urged Congress not to eliminate LIHEAP because it is vital in serving low income consumers of home heating fuel. PMAA is a participant in the National Energy and Utility Affordability Coalition (NEUAC) which sent an “all organizations” letter to save LIHEAP. Click [here](#) to view the letter. Also, click [here](#) to view state by state information on LIHEAP. Furthermore, PMAA members discussed the vital role of LIHEAP and of WAP during last year’s PMAA’s Day on the Hill and will also do the same this year.

- **Biodiesel Tax Credit**
  The $1 per gallon biodiesel blender’s tax credit expired on December 31, 2016. On December 18, PMAA, along with the National Biodiesel Board, Advanced Biofuels Association, American Trucking Association, National Association of Truckstop Operators, National Association of Convenience Stores, and the Society of Independent Gasoline Marketers of America, submitted a letter to the Senate Finance Committee and the House Ways and Means Committee urging them to include a retroactive, multi-year extension of the $1-per-gallon biodiesel blenders’ credit in upcoming legislation.

  Then, in February, Congress passed a spending bill, known as the “Bipartisan Budget Act of 2018,” that included a tax extenders package. The tax extenders package retroactively extended many tax credits and deductions including the $1 per gallon biodiesel blender’s tax credit, but only for tax year 2017. In March, the IRS issued special one-time claim procedures (IRS Notice 2018-21) for payment of the $1.00 per gallon biodiesel blender credit. Click [here](#) to read a PMAA
Compliance Bulletin on the claim procedures. While the biodiesel blender credit was not reauthorized for 2018, PMAA continues to lobby for reauthorization for calendar year 2018 and beyond.

Meanwhile, the International Trade Commission (ITC) determined that the dumping of biodiesel imports from Argentina and Indonesia harms American producers, thereby, finalizing and locking into place steep anti-dumping (AD) duties set by the Commerce Department for five years. In 2016, imports of biodiesel from Argentina and Indonesia were valued at $1.2 billion and $268 million, respectively. In December, the International Trade Commission found enough evidence of injury to U.S. producers to issue final countervailing duties (CVD) which are 72 percent on imports from Argentina and 35 to 65 percent on imports from Indonesia. Enforcement of U.S. trade law is a prime focus of the Trump Administration. From January 20, 2017 through February 20, 2018, the Commerce Department has initiated 102 antidumping and countervailing duty investigations – a 96 percent increase from same period in 2016-2017.

The AD law provides an internationally accepted mechanism to seek relief from the harmful effects of unfair pricing of imports. Anti-dumping duties are imposed on companies, while countervailing duties are imposed on countries.

Secondary Issues

- **Swipe Fees**
  Last year, House Financial Services Committee Chairman Jeb Hensarling (R-TX) reintroduced a bill to provide an alternative to the 2010 Dodd-Frank Wall Street Reform Act, known as the “Financial CHOICE Act” (H.R. 10). In June, the House passed the Financial CHOICE Act along party lines by a vote of 233-186. Fortunately, two weeks prior to the vote, PMAA and the Merchants Payments Coalition (MPC) were successful in convincing House leadership to drop the language that would have repealed the Durbin amendment from the CHOICE Act. Nearly 300 PMAA petroleum marketers educated lawmakers on the benefits of debit card fee reform during PMAA’s “Day on the Hill”, which undoubtedly contributed to this decision to strip the repeal language. Repealing the Durbin amendment would harm petroleum marketers because the Durbin language has brought competition to the debit card fee market.

Bottom line: PMAA is confident that the Durbin amendment is safe for the foreseeable future.

- **Tax Reform**
  In December 2017, Congressional Republicans finally passed their comprehensive tax reform bill. The bill represented the biggest rewrite of the tax code in three decades marking a huge legislative victory for President Trump, Senate Majority Leader Mitch McConnell (R-KY) and Speaker Paul Ryan (R-WI). Some key details are a 21 percent corporate rate, a 37 percent top individual rate, a repeal of the corporate alternative minimum tax, a 20 percent deduction on pass-through income (trusts and estates are now entitled to use the pass-through deduction), a State and Local tax deduction expansion beyond just property taxes that will include income tax and will be capped at $10,000, and a doubling of the estate tax exemption, although it will not be fully repealed. Most of the rates will sunset in 2025 except for the corporate rate. The bill preserves the step-up in basis on property transferred during an estate settlement which is good news for petroleum marketers. Under current law, family members who inherit a business take the business at its value as of the original owner’s death. However, if the step-up in basis were eliminated, the family members would be required to pay capital gains taxes on the original owners’ gains in the business. Due to the detrimental effects it would have on businesses, PMAA opposed any attempt to repeal the step-up in basis.

Additionally, the bill preserves the inventory accounting method, last in, first out (LIFO), which is good news for marketers. LIFO considers the costs of replacing inventory, thereby, giving a more accurate measure of the financial condition of the business and the economic income to which tax should apply. Repealing LIFO would force PMAA member companies currently using this method to report their LIFO reserves as income, resulting in a massive tax increase for small business Petroleum marketers across the country. The bill also preserves Section 1031 exchanges of like-kind property. Without the tax-deferral benefit that Section 1031 exchanges provide; small and medium sized businesses would not be as equipped to reinvest in their businesses and real estate values would decline. Finally, the bill also opens the Arctic National Wildlife Refuge (ANWR) to oil and gas drilling and directs the Energy Department to sell as
much as 7 million barrels of crude oil from the Strategic Petroleum Reserve.

The Small Business Legislative Council (SBLC) released a summary chart of the final tax bill which goes into detail on the new pass through rate and other tax provisions. Click here to view it. PMAA sits on the SBLC Board of Directors and provides input on tax related issues facing petroleum marketers.

The new tax law also contains a provision in Section 168 that provides retailers with the benefit of 100 percent bonus depreciation for qualified improvement property acquired and placed into service after September 27, 2017. Unfortunately, an error occurred when the final text was drafted that makes retailers ineligible for this benefit. Click here for more details.

- **Speed Limiters**
  In July, the Department of Transportation (DOT) removed from active consideration a proposed rule that would have mandated installation of speed limiters in all heavy-duty trucks weighing over 26,000 pounds. The DOT’s Federal Motor Carrier Safety Administration (FMCSA) stopped short of formally withdrawing the speed limiter proposal altogether, but instead assigned it to “inactive” status, effectively removing the controversial rulemaking from further consideration. This was a significant victory for PMAA.

  In 2016, PMAA submitted written comments to the FMCSA calling on the agency to withdraw the controversial proposal. The proposed rule would have required all newly manufactured heavy-duty trucks to be equipped with speed limiters set to a maximum speed that would be determined in the final rule. A major concern for PMAA was language in the proposed rule that could have extended the speed limiter mandate to existing heavy-duty trucks manufactured after 1990, including petroleum cargo tank vehicles.

  PMAA opposed any retrofit requirement in its written comments. PMAA told the FMCSA that safety and crash data used in the agency’s analysis was insufficient to move forward with the rule because it did not show that reduced speed would increase safety. PMAA also commented that the proposal did not adequately weigh the cost of how the rule would impact small business transporters and pointed out that reducing speed to a point between 60 and 68 mph as proposed, would create dangerous driving conditions for heavy duty commercial vehicles.

  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.

- **Sleep Apnea**
  In July, the DOT’s FMCSA withdrew a proposed rule that would have required CDL drivers to be screened for obstructive sleep apnea (OSA) as part of their biennial CDL medical exam. OSA is a respiratory disorder characterized by a reduction or cessation of breathing during sleep that is generally attributed to obesity. Withdrawal of the OSA screening proposal is very good news for petroleum marketers because it could have disqualified even moderately overweight drivers with a body mass index greater than 33 and a neck circumference over 17 inches from operating a commercial motor vehicle.

  PMAA vigorously opposed the FMCSA proposal after it was announced in March of 2016. PMAA submitted written comments to the FMCSA arguing that short-haul drivers should be exempt from OSA screening due to lack of sufficient information establishing a causal link between OSA and short-haul truck crashes. PMAA also met with the U.S. DOT’s Regulatory Reform Task Force in May urging that the proposed rule be withdrawn altogether.

  OSA screening has been under consideration off and on at the FMCSA over the past 15 years without much movement, but gained new momentum after the National Transportation Safety Bureau (NTSB) directly linked a series of truck and train accidents to OSA. The study found 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 vehicles. The FMCSA said it was withdrawing the proposed rule due to inadequate information. Unfortunately, OSA screening is still included in FMCSA’s voluntary medical guidelines for certified medical professionals conducting driver medical qualification exams. As a result, many drivers still face the threat of OSA screening at the discretion of the examining medical professional. PMAA met with the FMCSA Administrator in April and asked that OSA screening be dropped from the agency’s medical guidelines. PMAA is continuing to work with the Administrator and his staff to resolve this issue.

- **Overtime Rule**
  
  In July 2017, the Department of Labor (DOL) issued a request for information on the Obama Administration’s overtime rule, meaning it was seeking public comments for the next 60 days. In the request for information, DOL acknowledged complaints from business groups that the Obama Administration’s salary threshold was too high.

  The request solicited opinion on whether DOL should adjust the 2004 salary threshold of $23,660 to inflation; whether there should be "multiple standard salary levels" based on the size of the employer, census region or other factors; whether there should be "different standard salary levels for the executive, administrative and professional exemptions"; whether the 2016 rule supplanted the duties test; whether the salary threshold should update automatically; and whether employers should rely only on a duties test "without regard to the amount of salary paid by the employer."

  The Small Business Legislative Council submitted comments to DOL in response to its request for information regarding the overtime exemptions to the federal Fair Labor Standards Act. In its comments, the SBLC discussed its thoughts on DOL’s 2016 final overtime rules and provided feedback to the DOL on what it should do with the overtime rules going forward. Click [here](#) to view the comments.

- **Electronic Logging Device Mandate (300 air mile exemption)**
  
  The Federal Motor Carrier Safety Administration’s (FMCSA) deadline for compliance with electronic logging device (ELD) requirements for recording driver’s daily hours of service (HOS) was December 18, 2017. The ELD rule was mandated by Congress as part of the 2012 transportation authorization and funding law known as Moving Ahead for Progress in the 21st Century Act (MAP-21). The law directs the FMCSA to require all CDL drivers who are currently keeping written hours of service log books to switch to electronic recording devices. However, drivers who qualify for the short haul exemption under the hours of service regulations are not required to maintain driver logs or use ELDs if they stay within 100 air miles of their initial reporting location and go off duty after 12 hours instead of the standard maximum 14 hours on duty for all other drivers. While most drivers in the petroleum marketing industry qualify for the short haul exemption, some transport drivers must travel more than 100 miles to the nearest terminal. PMAA is asking the FMCSA to increase the air mile radius limitation for short haul drivers from 100-300 miles and extend the on maximum on duty time from 12 to 14 hours per shift. PMAA believes these changes will bring virtually all drivers in the petroleum marketing industry under the short haul exemption and thus forgo the need for keeping ELDs and driver logs while gaining 2 extra hours of on duty time per shift. PMAA is working with the FMCSA to make these changes.

- **SNAP Program**
  
  On October 16, 2017, the Food and Nutrition Service (FNS) began implementing the restaurant (hot foods) provision of the final rule for all stores. Authorized stores that are considered restaurants will be withdrawn from SNAP, and applicant stores that are considered restaurants will be denied authorization.

  Retailers will be disqualified from the program if 50 percent or more of the store’s total gross retail sales (including fuel and tobacco sales) come from items that are cooked or heated on site before or after purchase. Implementation of the stocking provision of the final rule began on January 17, 2018 for all stores. Click [here](#) for a summary of the stocking provision requirements. Authorized stores that don’t meet these requirements will be withdrawn from SNAP, and applicant stores that don’t meet the requirements will be denied authorization.

  The final rule, titled “Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP),” was
published on December 15, 2016. PMAA submitted comments on “Enhancing Retailer Standards in the SNAP.” While there were 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.

Unfortunately, in March, Congress passed a $1.3 trillion omnibus spending bill that included a $4.5 billion funding decrease for SNAP from $78.5 billion to $74 billion. Meanwhile, the House Agriculture Committee released the text of its draft farm bill that will reauthorize farm and nutrition programs, including the Supplemental Nutrition Assistance Program (SNAP). One supposed provision being pushed by some Republicans in the farm bill would raise the work requirement for SNAP recipients from age 60 to 65. Although many Democrats believe this change would be unreasonable, some Republicans feel that it does not go far enough. Of interest to PMAA, the draft bill would require, after completion of a study, that all SNAP transactions be routed through a national gateway to validate transactions. The cost of the national gateway would be paid through fees by benefit issuers and third-party processors to the gateway operator. The draft bill also includes language to halt actions by certain EBT processors which have tried to impose processing fees on EBT transactions in recent months.

• Method 27 -- Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure Vacuum Test

The U.S. DOT regulations 49 CFR 180.407(h) allow for two methods to conduct a leak test on cargo tanks. The “K test” described under 190.407(h)(1) covers all cargo tanks and all products, including cargo tanks with vapor recovery and those hauling gasoline. The EPA Method 27 test (pneumatic not hydrostatic) included under 180.407(h)(2) can only be used for cargo tanks with vapor recovery systems dedicated to gasoline and E85 service only. Any cargo tank tested using EPA Method 27 is restricted to gasoline and E85 service (gasoline with an RVP of 7.8 to 9 RVP and E85 with an RVP of 7-12 RVP). Cargo tanks tested using the DOT K test may transport all petroleum products including diesel fuel.

Some marketers, cargo tank testers and roadside enforcement authorities have been under the mistaken impression that testing with EPA Method 27 would also certify cargo tanks to transport all petroleum products. As a result, marketers have been issued fines at roadside inspections for EPA Method 27 tested cargo tanks hauling diesel fuel. The confusion was likely due to the wording of EPA Method 27 which defines the phrase “petroleum distillate fuels” to include only gasoline and E85 with the RVP noted above. In the industry, petroleum distillates are used to describe diesel fuel, kerosene and heating oil – not gasoline. PMAA met with EPA and DOT regulators to seek clarification. The U.S. DOT recently issued a compliance bulletin indicating that a K test is required to certify a cargo tank to transport all fuels while the Method 27 test restricts the cargo tank to gasoline and ethanol blends. PMAA is preparing a petition for rulemaking to expand the use of EPA Method 27 for all petroleum fuels.

• On-Demand Fueling

A new chapter on On-Demand Mobile Fueling has been added to the 2018 edition of NFPA 30A. On-Demand Motor Fueling is 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 many states as state and local fire officials are looking for direction on how to regulate this practice. The chapter 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 chapter on On-Demand Motor Fueling is designed to provide specific requirements related to the operations, vehicles, and equipment for On-Demand Motor Fueling and to require approval by the authority having jurisdiction (AHJ) for the operation, location, safety and emergency response, 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-way, in buildings, or covered parking areas and within 25 feet of buildings, property lines, or combustible storage.

PMAA and other groups have been 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. NFPA provides free access to view standards. The 2018 Edition of NFPA 30A can be accessed here.

While the 2018 edition of NFPA 30A has been issued, a proposed tentative interim amendment was submitted proposing to reduce the distance from buildings and property lines from 25 feet to 10 feet and to permit mobile fueling on public streets and public ways if the public was not present and the mobile fueling vehicle did not block or interfere with traffic. **PMAA opposed the amendment and it was officially rejected.**

PMAA has developed on-demand fueling state model legislation which includes two versions; one to ban the practice and one to allow it in a limited way. Click here for the template.

**• Disaster Planning/Establish Emergency Response Program**

PMAA represents marketers on the Oil and Gas (ONG) Sector Coordinating Committee (SCC), which meets regularly with federal members of the ONG Government Coordinating Committee regarding ongoing security, disaster prevention and emergency response. PMAA continues to argue that the problem of not having enough drivers who can pick up fuel at a port during an emergency can be resolved by having escort drivers who are Transportation Workers Identification Card (TWIC) certified at the terminals 24/7 during an emergency to minimize delays in moving fuel where it is needed. PMAA has also discussed with the FMCSA Administrator problems drivers face at weigh stations and with state police while driving thru non-state of emergency states to assist with fuel delivery to areas in crisis. We've also come a long way in efficiencies of regional waivers, but there is still room for improvement. 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 worked around the clock during the 2017 Hurricanes Harvey, Irma and Marie and during the heating fuel shortage this winter to assist the states and marketers who were impacted by the disasters and to facilitate obtaining the appropriate regional waivers (RVP, RFG and HOS).

The National Association of State Energy Officials (NASEO) and the DOE recently released Guidance for States on Petroleum Shortage Response Planning to provide assistance to states in updating their energy assurance plans to improve planning, mitigation, and response efforts in the petroleum sector. The Guide and supporting technical assistance resources are now available on NASEO’s website. DOE anticipates that the Guidance will prove to be a very important resource that will help states be better prepared for the next fuel-related shortage.

PMAA was able to review the Guide before it was finalized, and we made many suggestions for changes throughout the entire document and suggestions for removal of a few sections. NASEO accepted about 50% of our recommendations so it is far from how we would like it to be, but much better than it would have been had we not been provided the opportunity to make recommendations. There is a great deal of helpful information about executive orders, waivers, model planning language, and best practices for coordination during a response in the Guide.

PMAA served on the National Petroleum Councils’ Emergency Preparedness Coordinating Subcommittee 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. We recommend that all states and marketers have a copy of the handbook. To obtain a copy, contact PMAA at 703-351-8000.

**• Transportation Issues**

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.

Meanwhile, commercialization of interstate rest stops may be included in infrastructure legislation later this year or next year, particularly since President Trump includes commercialization as one funding method for his $1.5 trillion infrastructure vision. 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. In June, PMAA joined twelve organizations in sending a letter to the House and Senate urging them to protect the ban on privatizing and commercializing interstate rest areas and to consider legislation to incentivize investments in America’s infrastructure.

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.

Finally, interstate tolling has become a significant issue. The American Trucking Associations and the Owner-Operator Independent Drivers Association and other members of the Alliance for Toll-Free Interstates are urging House Transportation Committee members not to use tolling of existing interstates as a financing method in the infrastructure package policymakers will develop in 2018. Due to Congress’s busy agenda, it is unlikely that an infrastructure package will be passed in 2018.

**Responsible & Effective Standards for Truckers (REST) Act (H.R. 5417)**

Today, petroleum marketers are permitted to drive a maximum of 11 hours after 10 consecutive hours off-duty. However, they may not drive beyond the 14th consecutive hour after coming on-duty. This is known as ‘the 14-hour clock’. Also, a trucker must take at least a 30-minute rest break within 8 hours of their last rest break. This is known as ‘the 30-minute break rule’.

The current requirements are overly complex, provide virtually no flexibility, and in no way reflect the physical capabilities or limitations of individual drivers. They often compel truckers to be on the road when they are tired or fatigued, in the midst of rush hour traffic or other periods of highway congestion, during adverse weather conditions, or when they are simply not feeling well. Additionally, the current HOS requirements have not resulted in improvements to highway safety.

H.R. 5417 would allow truckers to pause the 14-hour clock for a single period of up to 3 hours, provided the driver is off-duty. This would give truckers greater flexibility to rest when fatigued, as well as avoid congestion, adverse weather conditions or other factors that make driving unsafe. While truckers could essentially pause the 14-hour clock, they would still need to log 10 consecutive hours off-duty before the start of their next work shift.

H.R. 5417 would also eliminate the 30-minute break rule. More importantly, the REST Act would not increase maximum drive time, increase maximum on-duty time or decrease minimum off-duty rest periods between shifts.

**Meal and Rest Breaks for Motor Carriers**

In 2017, a preemption provision meant to ensure nationwide uniformity of meal and rest break standards for motor carriers was included in a House Transportation, Housing & Urban Development (T-HUD) appropriations bill. The provision, Section 134, would clarify a requirement in the Federal Aviation Administration Authorization Act (FAAAA) of 1994 to block a California law signed in 2011 that requires employers to provide a “duty-free” 30-minute meal break for employees who work more than five hours a day as well as a second “duty-free” 30-minute meal break for people who work more than 10 hours a day.
When Congress enacted the FAAAA’s preemption provision, it noted “the sheer diversity of [state] regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business.” Congress determined that allowing states to impose their individual policy preferences on trucking “causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets.”

PMAA believes the inclusion of the preemption provision in an upcoming spending bill is necessary because it will bring nationwide uniformity to the issue.