Top Issues

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Secondary Issues

- Reducing UST Compliance Costs/UST Rule Delay/LUST Fund
  Lawmakers who requested the EPA to extend the compliance deadline for the testing of sumps, spill buckets and overfill prevention devices until October 2024 received word from the EPA Office of Land and Emergency Management (OLEM) that their request was respectfully denied. PMAA Regulatory Counsel has drafted a regulatory report on what that means for the states with program approval and the states without program approval. While the EPA won’t extend the compliance deadline, they have agreed to delay its enforcement in the event there is a shortage of contractors or equipment. The EPA said enforcement discretion would be given to those tank owners showing a “good faith effort” to comply by the deadline but are unable due to equipment or contractor shortage. Evidence of a good faith effort would be having a contract for compliance work in place by the October 13, 2018 deadline. It is important to understand that the October 13, 2018 deadline only applies in some states. Most states adopted a compliance deadline after October 13, 2018. The EPA’s UST regulations allow states to adopt the October 13, 2018 federal compliance deadline or establish their own deadline any time thereafter, but no later than October 13, 2021. PMAA will continue to work with the EPA and industry standard groups to develop guidance that offers additional compliance flexibility to states that choose to adopt them. Click here to read the House letter and here to read the Senate letter.
  
Finally, 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.”

- RFS Reform, RVP Waiver for E10+ Blends, E15 Labeling
  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 an RFS reform deal.
President Trump indicated recently that his Administration is close to granting E15 the green light to be sold during the summer months. 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. Earlier this year, reports surfaced that President Trump agreed to allow the sale of E15 year-round in exchange for allowing biofuel exports to qualify for RINs generation. The ethanol industry immediately 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. Meanwhile, RIN values have dropped significantly in recent months as the Trump Administration has granted many small refinery exemptions saving them millions of dollars in compliance costs. Biofuel groups have said the waivers have reduced the ethanol mandate which has driven down RIN values. Midwest lawmakers, including Sen. Chuck Grassley (R-IA), have been demanding that larger refiners take on more volume obligations to compensate for the biofuel volumes exempted under the program, but his efforts have failed to date.

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 is also concerned with current E15 labeling. Specifically, a few retailers have taken a variety of approaches with labeling E15 on fuels dispensers as well as price signs using labels such as “unleaded plus,” “unleaded 88,” and “eblend,” which can be confusing to consumers purchasing fuel. E15 needs to be properly labeled to prevent confusion.

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.
- Before the Senate Environment and Public Works (EPW) Committee held a hearing on S. 517 (a bill that would extend the 1 psi waiver for E15) 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 an 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.

Meanwhile, in late June, the EPA issued a proposed rulemaking setting obligated blending volumes for the RFS for 2019 and the biodiesel standard for 2020. The proposal calls for a three percent increase in the overall blending volumes which has sparked criticism from both the oil and ethanol industries.

Overall, the proposed 2019 renewable fuel volumes are a mixed bag for petroleum marketers. The good news is that the rule did not propose to force large refiners to make up for the lost 1.5 billion gallons of obligated blending volume lost in 2018 due to blending waivers issued by the EPA to small refineries based on financial hardship. Carrying those gallons over to large refiner obligated blending volumes for 2019 would have caused an unlevel playing field in the marketplace.

- **NORA Reauthorization/Benefits of Oilheat**

  PMAA played a critical role in reauthorizing the National Oilheat Research Alliance (NORA) in 2014. In late June, the Senate passed its five-year farm bill, H.R. 2, by a vote of 86-11. Importantly for heating fuels industry, the bill includes language that would permanently reauthorize the National Oilheat Research Alliance (NORA). Senator Jeanne Shaheen (D-NH) offered the NORA amendment to the farm bill. Other Senators who played a key role in the process included Senate Majority Leader Mitch McConnell (R-KY), Senator Richard Burr (R-NC), Senator Patrick Leahy (D-NH), Senator Susan Collins (R-ME) and Senator Jack Reed (D-RI). A week earlier, the House passed its version of the farm bill. The House bill is less bipartisan than the Senate bill and includes tougher eligibility requirements for Supplemental Nutrition Assistance Program (SNAP) recipients. The bill now goes to a conference committee to hash out the details and achieve
a bipartisan conference report following Labor Day weekend. PMAA is currently meeting with conferee members to ensure that NORA isn’t pulled from the Farm bill. Key members on the conference committee include Reps. Cramer (R-ND), Shimkus (R-IL) and Tonko (D-NY). The Senate is expected to announce their conferees very soon.

• **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.

• **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 supports both bills as well as other possible solutions to increase the number of CDL truck drivers in the U.S.

In June, the Federal Motor Carrier Safety Administration (FMCSA) stated that they were launching a pilot program that would allow some qualified drivers from 18 to 20-years-old to operate commercial trucks across state lines. Current federal law requires drivers operating commercial trucks across state lines to be at least 21-years-old. The program comes in response to the truck driver shortage that the American Trucking Associations (ATA) says could reach 63,000 this year.
• 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 were 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 (FAAAAA) 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. The House and Senate FAA reauthorization bills also include language to fix the meal and rest break issue.

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 and/or FAA reauthorization bill is necessary because it will bring nationwide uniformity to the issue.

• 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. 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.

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA), who is retiring at the end of this year, released draft legislation which calls for phasing in a 15-cent gasoline and 20-cent diesel tax increase over three years to ensure that the Highway Trust Fund (HTF) stays solvent over the next decade. After three years, the taxes would be indexed to inflation. The draft bill would begin taxing infrastructure users that can currently avoid taxation such as a 10 percent user fee on electric batteries and adult bicycle tires. It would also eliminate full and partial fuel tax exemptions for public transit and intercity buses. Keep in mind that this legislation is dead on arrival in the House this year but will likely serve as a placeholder for legislation in a future Congress.

The draft legislation would also create a voluntary pilot program to test the feasibility of a vehicle miles traveled (VMT) to replace the federal motor fuels excise tax. Ways to track mileage would possibly include: phone apps, in-car diagnostic systems, etc. By having a VMT and/or the provision included in the draft bill that would tax electric vehicles (EVs), the legislation is a conversion starter to ensure that all highway users pay their fair share. Currently, EVs are exempted from paying any type of highway tax.

Finally, the draft legislation does not include language that would commercialize rest areas or allow existing highways to be tolled. The Trump Administration called for ending the federal prohibition on tolling existing highways and commercializing rest areas. 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.

Meanwhile, Rep. Carlos Curbelo (R-FL) recently introduced the “Market Choice Act,” (H.R. 6463) which would replace the federal motor fuels tax with a $23 per ton economy-wide carbon tax on emissions from oil refineries, gas processing plants and coal mines beginning in 2020. The bill would direct 70 percent of revenues to the Highway Trust Fund and includes a border adjustment tax (BAT) meaning fees could be assessed on imported products from countries without a carbon tax and outlines various points of taxation, among other provisions, that would have far reaching economic
impacts across numerous sectors. Along with other groups, the Americans for Tax Reform (ATR) have already come out strongly against the bill. PMAA has serious concerns with the legislation because the cost will not be readily visible to the public and it would likely put the EPA in charge of who pays into the Highway Trust Fund.

- **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 and DOT officials have said they agree with PMAA and are prepared to rescind the 2015 interpretative letter and revert 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.

- **CAFE Standards -- Rolling Back Obama-era Fuel Efficiency Rules**
  The Department of Transportation (DOT) and the EPA are expected to release a proposal soon that would roll back stringent fuel economy and emissions standards for automobiles that were enacted during the Obama Administration. The EPA’s proposal, called the "Safer and Affordable Fuel Efficient (SAFE) Vehicles Rule," argues that less efficient cars are safer for drivers and passengers. The proposal will recommend freezing vehicle emissions requirements at 2020 levels through 2026. Regulators have said this proposal could increase U.S. fuel consumption by about 500,000 barrels of oil per day.

In April, the EPA announced that it would not be renewing Obama-era Corporate Average Fuel Economy (CAFE) standards for cars and light trucks when the program is scheduled to end in 2025. The Obama Administration initially set 50 miles per gallon (mpg) as an across the board fleet-wide target by 2025. However, the target is unlikely to be met because the EPA announced that there will be a reduction in CAFE standards already in place for 2022 through 2025. The Trump Administration says the new rules will cut the prices of new vehicles and could lead to a total of one million additional new vehicle sales through 2029 versus if the Obama rules remained in place.

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.
Additionally, the Trump Administration is expected to propose revoking California's ability to set state vehicle emissions rules and mandate electric vehicles in the next few days. The proposal comes two months after California and 17 other states filed a lawsuit against the EPA in the U.S. Court of Appeals for the District of Columbia Circuit over the EPA’s push to ease fuel efficiency standards.

- **Biodiesel Tax Credit**
  Earlier this year, 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.

In June, PMAA joined the Advanced Biofuels Association (ABA), American Trucking Associations (ATA), National Association of Convenience Stores (NACS), National Biodiesel Board (NBB), National Renderers Association (NRA), National Association of Truck Stop Operators (NATSO), the New England Fuel Institute (NEFI) and the Society of Independent Gasoline Marketers of America (SIGMA) in sending a letter to Senate and House leadership. The letter urges Congress to extend the $1 per gallon blenders tax credit for 2018 and 2019. Click here to view the letter.

**Secondary Issues**

- **LIHEAP Funding/Leveraging Requirement**
  The Senate Appropriations Committee passed their Labor-HHS-Education FY19 funding bill, which includes $3.7 billion, a $50 million increase, for home heating and cooling assistance for the Low-Income Home Energy Assistance Program (LIHEAP). Meanwhile, the House Appropriations Subcommittee on Labor-HHS-Education passed its FY 2019 bill which includes $3.64 billion for LIHEAP, consistent with current funding. Congress aims to pass an appropriations package which would include Labor-HHS-Education FY 2019 funding by Sept. 30th. 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.

  Meanwhile, PMAA and NEFI have formed a joint task-force to investigate LIHEAP issues experienced by some states and pursue possible reforms. The group plans to meet with the Trump Administration on the matter about the reimbursement process which became clear this past winter when over $200,000 in payments were not made to heating fuel dealers who were participating in Connecticut’s program. Although those dealers have since been paid, the delay created enormous financial problems for the businesses who participated in the program and absorbed countless hours of those businesses and CEMA’s time to acquire the payments. The plan is for groups to bring up the reimbursement issues and long-standing concerns with state margin-over-rack (MOR) and discount-off-retail (DOR) low-income pricing mandates with top leadership staff at HHS’s Office of Community Services (OCS), which oversees the LIHEAP program. Federal law offers additional LIHEAP funds to states that “leverage” additional resources from energy vendors such as heating oil retailers. While the leveraging law was written by Congress, the specifics are determined by HHS, including what kinds of programs are eligible. There might be an opportunity to make some changes given the political leanings of the new administration.

- **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 enforcement by the FDA began on 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 went 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.

- **Unfair Electric Vehicle Charging Infrastructure Initiatives**

PMAA members are very concerned with utilities using their rate base to pay for EV infrastructure expansion. We believe this allows utilities an unfair competitive advantage over marketers and others who must economically justify at risk investments in new equipment such as EV charging stations. Further, the folks who get the short end of the stick are the poor and middle class who are subsidizing the utilities ability to generate income from EV charging stations without at risk investment and the wealthy’s ability to buy more EVs.

But are EVs that clean? According to data from the Department of Energy and EPA, the CO2 emitted from generating and providing the electricity needed to power an EV is equivalent to as much as two-thirds of the CO2 coming from a gasoline-fueled vehicle. Keep in mind that high compression engines (HCE) coupled with a higher-octane fuel (HOF called 95 RON (up to an E10 blend) is possibly a gamechanger in the marketplace which could significantly reduce emissions and comport to motorists’ preferences. Please note that PMAA is still vetting the HCE/HOF proposal.

The bottom line is that PMAA opposes granting a de facto monopoly to utilities unfairly competing in the marketplace which could ultimately put small business petroleum marketers out of business.

- **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 and is now working with the Merchants Payments Coalition to go on the offensive to full credit card interchange fee reform.

- **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 date 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.

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. *** Unfortunately, an error occurred when the final text was drafted that makes retailers ineligible for the benefit of 100 percent bonus depreciation for qualified improvement property acquired and placed into service after September 27, 2017. PMAA, along with several associations through the Qualified Improvement Property (QIP) coalition, have made this a top priority and is working with other businesses to press for the correction as quickly as possible. Section 168 of the old tax law had three individual categories of qualified improvement property: leasehold improvement property, retail improvement property, and restaurant improvement property. Each category had a 15-year Modified Accelerated Cost Recovery System (MACRS) recovery period, meaning property could depreciate over the course of 15 years.

To simplify the tax code, tax writers combined the three above categories into one category called “qualified improvement property” in the new bill and meant to designate it with a 15-year recovery period. The intent to designate this 15-year recovery period was explicitly stated in the conference agreement. However, when the final bill was written, the 15-year recovery period was accidently omitted from the text by tax writers, and the recovery period then defaulted to 39 years. This omission is a serious mistake because to benefit from 100% bonus depreciation, there must be a MACRS recovery period of 20 years or less.

Without the inclusion of the 15-year recovery period:

- Recovery period increases from 15 years to 39 years
- Retailers no longer qualify for bonus depreciation
- In the old law, retailers qualified for 50 percent bonus depreciation.

• 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.

• 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 the 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.

On May 23, a bill was filed by Reps. Collin Peterson (D-MN) and Greg Gianforte (R-MT) that would permanently exempt trucking companies with 10 trucks or less from compliance with the Department of Transportation’s (DOT) electronic logging device (ELD) mandate. “The Small Carrier Electronic Logging Device Exemption Act” would allow carriers with 10 or fewer trucks to use paper logs to record duty status, instead of electronic logging devices (ELD). Peterson and Gianforte also introduced a bill to exempt those hauling agricultural commodities from the ELD mandate.

- **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.

Meanwhile, both the House and Senate have passed their Farm bill reauthorization bills. Unlike the House bill, the Senate bill had broad bipartisan support and did not include additional work requirements for SNAP recipients. SNAP and other food assistance programs in the Senate bill are mostly unchanged. Existing SNAP work requirements are somewhat revised and some additional funding for education and training was added. Additionally, there are not any controversial revisions that would reduce benefits to participating households or reduce participation.

Although the Senate bill does not seek new work requirements or significant changes to eligibility standards, it is focused instead on making administrative changes aimed toward combating fraud. Additionally, the legislation would prohibit processing fees, interchange fees and routing fees from all EBT transactions which would expire in 2022. Finally, the legislation would task the USDA to establish a retailer incentives program for retailers seeking to offer incentives for SNAP purchases of foods that are within the dietary guidelines.
• 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 the National Fire Protection Association (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 Federal Motor Carrier Safety Administration (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 aid 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.

• **FDA Regulation of Tobacco**

The Food and Drug Administration (FDA) is considering two potential new rules that could affect retailers of tobacco products. The first rule would severely restrict or even ban all menthol cigarettes and flavored tobacco and e-vapor products. The second rule would essentially ban all cigarettes on the market today by mandating that the levels of nicotine be nearly 98 percent lower than they are currently, before allowing for a new market of less harmful tobacco products to be established. If enacted, these potential rules would hurt retailers like convenience stores and gas stations. PMAA submitted comments on both potential rules.