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PMAA Priorities Report December 2018

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Quick Summary of the Mid-term Elections

House

As many expected, Democrats regained the majority in the House, gaining at least 39 seats. Current Minority Leader Nancy Pelosi (D-CA) is expected to become Speaker of the House. Rep. Kevin McCarthy (R-CA) announced he would run for House minority leader. He is currently majority leader and is next in line due to Speaker Ryan's retirement. It is expected that Rep. Jim Jordan (R-OH) will launch a longshot bid for that position. As for House committee leadership of particular importance to petroleum marketers, the House Energy and Commerce Committee will likely be chaired by Rep. Frank Pallone (D-NJ), the House Transportation and Infrastructure Committee will likely be chaired by Rep. Peter DeFazio (D-OR), the House Financial Services Committee will likely be led by Rep. Maxine Waters (D-CA) and the House Ways and Means Committee will likely be chaired by Rep. Richard Neal (D-MA). PMAA and the state associations have good relations with most of these members.

Senate

In the Senate, Republicans retained the majority (53 to 47). Some of the key wins for Republicans included Rep. Kevin Cramer (R-ND) defeating sitting Democratic Sen. Heidi Heitkamp, Indiana businessman Mike Braun defeating sitting Democratic Sen. Joe Donnelly and current Missouri Republican Attorney General Josh Hawley defeating sitting Democratic Sen. Claire McCaskill.

What to Expect the Next Two Years

The change of the gavel in the House is likely to lead to two years of partisan gridlock in Washington. However, it is possible that Trump will develop a triangulation strategy to allow him to succeed by working with the Democrats in the House similar to what Clinton did in the 90s and was reelected with that strategy. Now that Democrats have control of the House, they are determined to investigate the Trump administration, his 2016 Presidential campaign, and his

family's business empire including his tax returns. There is even talk of possible impeachment proceedings. However, most Democrats realize impeachment would be meaningless as it would require over twenty Republican Senators to vote against the President. The bottom line is to expect investigation after investigation, particularly once Special Counsel Mueller releases his final report examining any potential connections between the 2016 Trump presidential campaign and Kremlin-sponsored hackers. While these investigations will not lead to anything final, they will occupy news cycles and distract the Administration.

There are some areas Republicans and Democrats may be able to find common ground as the two parties may work on trade and an infrastructure package. PMAA has been advocating against the commercialization of rest areas and will continue to do so as talks over an infrastructure package accelerate. Tax 2.0 may also still be on the table, and with incoming Chairman Neal (D-MA), movement is possible. Neal has a long history of working across the aisle, however, politics are likely to play out on both sides as the incoming Ways and Means Committee Chairman will likely focus the Committee's attention on obtaining Trump's tax returns and how the last tax bill affected the President.

Top Issues

- **RVP Waiver for E10+ Blends, E15 Labeling, EPA RFS Final Rule, RFS Reform**

RVP Waiver for E10+ Blends

Recently, President Trump ordered the EPA to allow year-round sales of E15. The announcement came as President Trump visited Iowa where he announced the new policy before a group of corn ethanol supporters. Currently, each year, the EPA regulates Reid vapor pressure (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.

The White House also released its E15 waiver [fact sheet](#) which orders EPA to start the rulemaking process for allowing year-round sales of E15 and to "consider reforms to increase transparency and prevent price manipulation in the RIN market." Potential reforms to increase transparency and prevent price manipulation include: prohibiting entities other than obligated parties from purchasing separated RINs; requiring public disclosure when RIN holdings held by an individual actor exceed specified limits; limiting the length of time a non-obligated party can hold RINs; and requiring the retirement of RINs for the purpose of compliance be made in real time.

In a [letter](#) to President Trump, PMAA expressed significant procedural and policy concerns with respect to changing the RFS in a way that benefits only one of the many stakeholders affected by the decision to sell E15 year-round. On the procedural front, PMAA said that section 211 (h)(4) of the Clean Air Act specifically limits the one-pound summertime RVP waiver to gasoline blends containing between 9-10 percent volume ethanol. Therefore, any change to expand the RVP waiver to E15 blends can only be made by Congress and not the EPA who lacks the statutory authority to do so. PMAA added that from a policy perspective the year-round sale of E15 raises serious concerns regarding E15 compatibility with motor vehicles, motorcycles, marine engines and small gasoline powered equipment. On top of that, existing UST system components especially pipe dope are not compatible with E15. Click [here](#) for a regulatory report from PMAA Counsel.

E15 Labeling

PMAA is 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 "blend," which can be confusing to consumers purchasing fuel. E15 needs to be properly labeled to prevent confusion. PMAA's concern is that while there are requirements for dispenser labeling of ethanol blends, branding of the fuel (grade terms) does not provide any indication as to the ethanol content or the presence of ethanol in the fuel. PMAA's proposal simply asks the ethanol industry to be transparent about the fuel being advertised and sold and not let price alone drive a consumer's decision.

EPA RFS Final Rule

In November, the EPA released the 2019 renewable fuel volume obligations (RVOs) required under the Renewable Fuel Standard (RFS) program. The corn ethanol renewable volume remained at 15 billion gallons, the same level set for the past two years and the statutory maximum established by Congress. Moreover, against the wishes of the renewable fuel industry, the final RFS rule did not contain a provision to reallocate the 2.25 billion gallons of corn ethanol waived under the small refinery exemptions (SRE) to the 2019 renewable volumes. The renewable fuel industry argued that the agency should reset the ethanol RVO so that waived gallons would not be “lost.” Instead, the EPA sided with PMAA and other stakeholders who opposed any carry over provisions in the 2019 standard. Renewable fuel volumes for cellulosic biofuel will increase by 130 million gallons from 288 million gallons in 2018 to 418 million gallons in 2019. Advanced biofuels were increased from 4.28 billion gallons in 2018 to 4.92 billion gallons in 2019, an increase of 630 million gallons. The rulemaking also sets the 2020 renewable fuel volume for biomass-based diesel at 2.43 billion gallons, up 330 million gallons when compared with the 2019 numbers. Overall, the new RFS standard is good news for petroleum marketers because it will not require the introduction of E15 to meet the corn ethanol RVO.

RFS Reform

Furthermore, right before the Thanksgiving holiday, Reps. John Shimkus (R-IL) and Bill Flores (R-TX) introduced draft legislation to revamp the RFS by moving towards a fuel performance standard to reduce emissions and preserve the liquid fuels industry. The draft bill known as the “21st Century Transportation Fuels Act,” would nix the 15-billion-gallon corn ethanol mandate in 2022 and transition to a national octane standard. In other words, the legislation would swap out a government mandate for a performance standard that autos, refiners and petroleum marketers would need to meet.

The good news is that the discussion draft does provide legal liability protection for retailers and automakers from higher ethanol blends. However, the bill would also extend the one-pound waiver for E10 plus blends and would prevent states from prohibiting or requiring any particular blend/concentration of ethanol in fuel. For 2023 through 2032, the EPA would be required to set RFS renewable volume obligations (RVOs) for advanced biofuel, cellulosic biofuels and biomass diesel at levels equal to the volume of fuels produced during the previous calendar year. The mandate for these specific fuels would be repealed in 2033.

- **CAFE Standards -- Rolling Back Obama-era Fuel Efficiency Rules**

In October, PMAA submitted comments in support of the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) and the EPA's Proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks that would freeze CAFE standards and corresponding greenhouse gas standards at 2020 levels and revoke the rights of individual states to adopt more stringent emissions standards. Regulators have said this proposal could increase U.S. fuel consumption by about 500,000 barrels of oil per day.

PMAA highlighted numerous reasons why current CAFE standards could impact petroleum marketers and how important the Trump Administration's proposed rule is needed:

- The proposed rule properly reflects the statutory factors that the Agencies must consider, including consumer acceptance, safety, technical feasibility, national security, and economic practicability.
- Current CAFE standards may lead to an increase in electric vehicle (EV) production which does not necessarily guarantee a CO2 footprint reduction given that EV power is likely to derive from traditional energy sources such as coal and natural gas.
- Aggressive CAFE standards set forth by the Obama Administration while maintaining requirements for ethanol volumes under the Renewable Fuel Standard (RFS) could potentially force higher ethanol blends into retail gasoline station underground storage tank systems that are not compatible with E10 plus blends.
- CAFE standards must be reduced to ensure that parties mandated to blend ethanol into gasoline under the Renewable Fuel Standard (RFS) can meet their blending obligations in a way that does not lead to gasoline price spikes at the pump.

- Petroleum marketers are placed at a competitive disadvantage when the utilities can use their rate base to pay for EV infrastructure expansion compared to small businesses petroleum marketers who must economically justify at risk investments in new equipment like EV charging stations.
- EV infrastructure expansion puts a financial burden on poor and middle-class consumers who must subsidize these EV charging stations operated by utilities but cannot afford EVs.
- Click [here](#) to read the comments.

- **Reducing UST Compliance Costs/UST Rule Delay**

PMAA member states are advised that October 13, 2018 deadline is in effect for complying with the remaining underground storage tank (UST) requirements in the 2015 revised UST regulation *for non-SPA states*.

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. Click [here](#) to read EPA's response to lawmakers. 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. Several states also have adopted a compliance deadline after October 13, 2018. Click [here](#) for more information on EPA's state UST program webpage. 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 continues to work with the EPA and industry standard groups to develop guidance that offers additional compliance flexibility to states that choose to adopt them. PMAA is currently working development of a new less expensive and more effective sump testing method that requires visual inspection only. The visual inspection would be carried out annually by a third-party certified inspector and would not require liquid or vacuum pressure testing. Meanwhile, EPA's Office of Underground Storage Tanks (OUST) issued guidance for PMAA's alternative low-level liquid hydrostatic testing for UST containment sumps used as secondary containment. The new guidance puts EPA's stamp of approval on the PMAA low liquid level alternative testing method that will encourage states to adopt it as well. PMAA developed this test as an inexpensive alternative to the EPA's hydrostatic test method for containment sumps which requires costly high-level liquid testing. Publication of the EPA guidance is important because it clears the way for PMAA's alternative test method to be approved for use by state UST program regulators.

- Click [here](#) for EPA Low Liquid Level Containment Sump Test Procedures.
- Click [here](#) for EPA Low Liquid Level Containment Sump Test Compliance Form.

- **NORA Reauthorization**

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. Important 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. A conference committee was formed to hash out the details of a final farm bill. [*In early December, conferees from both sides agreed to include a provision in the final bill that would reauthorize NORA for the next 10 years. The farm bill is expected to be approved by the end of the year.*](#)

- **ULSD Corrosion**

PMAA's ULSD Corrosion Task Force and Motor Fuels Committee has been participating in diesel fuel quality surveys spearheaded by the Fuels Institute's (FI) Fuel Quality Council (FQC) which is studying the relationship between diesel fuel quality and modern high-pressure common rail diesel engines, identifying possible issues with that relationship, and evaluating the viability of potential solutions. PMAA highlights that the focus of accelerated corrosion studies along the

entire petroleum production and distribution chain will likely determine the cause of accelerated corrosion. Studies that focus solely on finding causes below the terminal rack will not be enough.

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.

Presentations at a recent EPA sponsored corrosion forum last month questioned fuel quality above the terminal rack for the first time. Since the corrosion issue was first discovered in 2010, PMAA has consistently called for fuel quality testing above the terminal rack. Finally, due to PMAA’s efforts, the EPA and corrosion engineers are beginning to take notice of potential fuel quality issues above the terminal rack and the role it may play in downstream accelerated corrosion in UST systems.

- **Unfair EV Charging Infrastructure Initiatives/EV Tax Credit**

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.

A common misconception is that EVs are environmentally cleaner than conventionally powered automobiles. However, the truth is that widespread adoption of EVs nationwide will increase air pollution compared with new high efficiency, cleaner burning internal combustion engines. EVs rely on electricity generated from coal and natural gas which are both major sources of greenhouse gas emissions. Furthermore, EVs must be transported to and from locations by different methods of transportation that produce emissions. Lastly, there are serious safety concerns surrounding the batteries that power electric vehicles. EV batteries can catch fire and produce toxic gases not normally encountered with internal combustion vehicle fires. These toxic gases require unfamiliar fire suppression methods that are not in widespread use which can present problems for first responders and create recycling issues.

In November, PMAA joined AFPM, NACS, SIGMA, and API in a [letter](#) to Congress to oppose including an extension of the lucrative \$7,500 electric vehicle (EV) tax credit in the tax extenders package that Congress may address before the end of this year. The EV Drive Coalition, which includes General Motors, Nissan, Tesla and other automakers, is pushing Congress to extend the credit and lift the cap which phases out on a per manufacturer basis once that company has sold 200,000 EVs total for use in the United States. According to Tesla, it reached the 200,000 threshold this summer and GM is expected to meet the number by the end of the year. If the cap isn’t lifted for these companies, their competitors may be able to capture additional market share while the credit won’t be available for Tesla and GM customers.

The Senate GOP seems split on the issue as competing bills have been introduced. Sen. Dean Heller (R-NV) introduced legislation that would lift the 200,000 EV cap and extend the credit through 2022 while Sen. John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works (EPW), introduced the "Fairness for Every Driver Act," which would repeal the EV tax credit. Senate democrats introduced their own bill (S. 3449), the Electric Cars Act of 2018, which would extend the electric vehicle tax credit for 10 years.

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.

- **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. *In November, the FMCSA took the first step towards approving CDL drivers under 21 years old by issuing an information collection request for safety records of younger drivers to determine if youth and operational safety are incompatible. PMAA will respond to the information request in writing.*

- **Swipe Fees and Litigation**

PMAA recently filed a brief in the Visa and Mastercard swipe fee litigation now pending in U.S. District Court in New York. Joining PMAA in the brief included the National Association of Shell Marketers (NASM) and SIGMA. The purpose of the brief is to oppose any settlement of the case that shuts out branded marketers from filing claims against the \$6.24 billion settlement fund. The settlement class is comprised of all merchants that accepted Visa and Mastercard payment cards from 2004 to the present. The settlement fund is designed to compensate class members for the interchange fees they paid, which were allegedly inflated as a result of certain violations of the antitrust laws by Visa and Mastercard and their participating banks.

It appears that the major oil companies are claiming an ownership right to all the transactions they processed on behalf of their branded marketers, and an entitlement to claim against the fund for all fees paid in transactions occurring at marketer locations and the locations of their branded dealers. In short, it is the position of the majors that they paid the interchange fees on all these transactions, and that they are the exclusive parties entitled to payment from the fund. If this position were adopted by the district court, marketers would be class members in name only. They would not be entitled to file claims under the settlement agreement now awaiting preliminary approval by the court.

PMAA’s brief advises the court, among other things, that marketers paid the interchange fees and that their branded suppliers simply processed the transactions. The principal point asserted in the brief is that marketers accepted the cards and paid the fees, thus entitling them to claim against the fund with respect to card transactions that occurred in the branded distributor channel of trade. The court may hold a hearing on whether to approve the settlement on a preliminary basis, taking into account all the objections filed by various class members and others. PMAA’s objective is to have the court clarify the rights of marketers to file claims against the fund as part of the preliminary approval process. Click [here](#) to read the brief.

- **Federal Motor Fuel Excise Tax Increase**

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.

Many lawmakers on the Hill have expressed interest in reaching a bipartisan compromise on a transportation bill at some point next year.

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. However, Rep. Curbelo recently lost his reelection bid but it is certain that the democrat House leadership will be introducing similar legislation next year.

- **Tax Extenders/Biodiesel Tax Credit**

Recently, the House introduced its tax extenders package in which it aims to reconcile the bill with the Senate before the end of the year. One tax provision important to petroleum marketers is a retroactive renewal and gradual phase down of the \$1 per gallon biodiesel blenders tax credit through 2024. Specifically, it would keep the credit at its current rate of \$1 per gallon for 2018 through 2021 but gradually reduce it to 75 cents in 2022, 50 cents in 2023, 33 cents per gallon in 2024 and then allow it to expire. Credits of importance that would be extended retroactively for 2018 only are the tax credit for the installation of qualified alternative fuel vehicle refueling property in a home or business; the Alternative Fuels Excise Tax Credit for the use of propane as a transportation fuel, known as the "propane autogas tax credit;" and the Section 25C tax credit for the installation of qualified high-efficiency residential HVAC systems and certain energy-saving home retrofits.

Additionally, the tax extenders package includes a renewal of the Oil Spill Liability Tax (OSLT) through December 31, 2019. The 9 cents per barrel OSLT tax is imposed on crude oil at the refinery gate. Proceeds from the OSLT go into a trust

fund used by the Coast Guard to pay for clean-up after accidents like oil spills. PMAA is concerned that if Congress fails to act on tax extenders before the end of the year, jobbers may end up in the same situation they faced in early 2018 when some refiners continued to charge the tax even though it expired. This created unnecessary and problematic accounting problems throughout the industry. Congress can prevent the confusion from occurring again by extending the OSLT before December 31st. If Congress does not tackle extenders before December 31st but addresses it next year, PMAA urges Congress not to make the tax retroactive. Click [here](#) for the PMAA letter on biodiesel and OSLT.

Secondary Issues

- **FDA Regulation of Tobacco**

In November, the FDA announced that it would be placing restrictions on flavored tobacco products, including e-cigarettes. FDA Commissioner Scott Gottlieb unveiled a set of changes aimed at forcing the e-cigarette industry to better keep its products out of the hands of teens, including a proposal that would mandate (via compliance guidelines) that the majority of flavored electronic nicotine delivery systems (ENDS) only be sold in age-restricted facilities, including stand-alone tobacco retailers and vape shops, or facilities that have a section of the location that prevents the entry of persons under the age of 18. The FDA did not make proposed changes to unflavored or regular tobacco, or to menthol and mint flavored e-vapor products, so stores can continue to sell those products in the same locations.

The FDA announced that it is also considering a rulemaking banning traditional menthol-flavored cigarettes, a move that would be fiercely opposed by the tobacco industry and would likely take the issue to court. In addition to banning traditional menthol cigarettes, the FDA is looking to ban flavored cigars because the FDA believes that flavors in cigars appeal to the youth.

These policy changes will take time to fully implement, but Commissioner Gottlieb hopes that retailers and vaping companies will pick up the pace themselves. In November, Juul, one of the leading producers of e-cigarette products, announced that it would no longer produce their popular fruit flavored e-cigarette pods, such as cucumber, mango and fruit medley. In a statement, Gottlieb said, “We hope that within the next 90 days, manufacturers will choose to remove flavored ENDS products from stores where kids can access them and from online sites that do not have sufficiently robust age-verification procedures.”

PMAA is sending comments to the FDA in response to the proposed ban.

- **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. PMAA is weighing additional Congressional action on this issue if PHMSA is not responsive to marketer concerns.***

- **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 September 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.

- **Meal and Rest Breaks for Motor Carriers**

The Pipeline and Hazardous Materials Safety Administration ("PHMSA") released its determination recently in response to a preemption application by the National Tank Truck Carriers, Inc. (NTTC) that California's meal and rest break requirements are preempted with respect to all drivers of motor vehicles transporting hazardous materials (whether interstate or intrastate). This means the state meal and rest break provisions no longer apply to interstate and intrastate hazardous materials motor carriers in California.

In its determination, PHMSA found that California's meal and rest break laws create unnecessary delay in the transportation of hazardous materials in conflict with provisions of the federal Hazardous Materials Transportation Act. PHMSA also found the California's laws preempted on additional grounds as to specific subsets of hazmat drivers. The determination recognizes the impact meal and rest break laws have on delaying motor carrier service. Standing alone, the decision should be beneficial in mitigating the explosion of class action claims centered on violations of California's meal and rest break laws in particular and likely similar laws in other states. The determination was published in the Federal Register and has gone into effect.

PMAA still is pushing for the inclusion of the preemption provision in an upcoming government funding bill which is necessary to bring nationwide uniformity to the issue to prevent a future administration to overturning the PHMSA ruling.

- **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.

- **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.

- **Expanding the Hours of Service Short Haul Exemption**

Last January, the FMCSA invited industry stakeholders, including PMAA to offer suggestions on regulatory changes to the CDL driver hours of service rule that would reduce compliance cost burdens on the regulated community. PMAA met directly with FMCSA Administrator Ray Martinez to promote changes that would benefit petroleum marketers operating cargo tank vehicles. Many of PMAA’s requests were included in the FMCSA’s proposed regulatory reform rule released in August. PMAA’s requests included changing the 100 air-mile short haul exception for drivers in two ways: increase the number of daily on-duty hours from 12 to 14 for driver’s operating under the exception; and expand the 100-mile air radius to 150 miles in order to capture all drivers employed by petroleum marketers, including those travelling to terminals outside the current 100-mile limit. The changes would expand the class of drivers qualifying for the short haul exception, increase the number of hours drivers can be on-duty each day, and broaden the exception form using electronic recording devices to record hours of service to include all drivers. The FMCSA proposal also included PMAA’s request to allow drivers to count the time waiting at terminals to load product as off-duty time; extend the current 14 hour on-duty limitation to allow for a three consecutive hour break (to allow for loading and unloading); extend the current 14 hour on-duty limitation by up to two hours when a truck driver encounters adverse driving conditions; and elimination of the 30-minute rest break for drivers not qualifying for the 100 air-mile short-haul exception but who

return to the worksite at the end of each daily shift. PMAA submitted written comments on all these issues and will continue to advocate for their approval as the FMCSA rulemaking process moves forward.

- **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.

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.

Meanwhile, both the House and Senate passed their Farm bill reauthorization bills and the two sides are now hashing out the details in conference negotiations. 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**

Provisions for On-Demand Mobile Fueling were added to both the 2018 International Fire Code (IFC) Chapter 57 (Flammable and Combustible Liquids) and the 2018 NFPA 30A (Code for Motor Fuel Dispensing Facilities and Repair Garages). 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 language in both codes is based on language developed by the California State Fire Marshall's Mobile Fueling Task Force.

The On-Demand Motor Fueling provisions in both the IFC and NFPA 30A are very similar. In general, the code provisions address the type of vehicle and associated tank or container capacity, locations where fueling can and cannot occur, vehicle/dispensing equipment, spill control and containment, operator requirements, and permitting requirements. They also have provisions for 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 or the IFC that may need to be addressed including weights and measures and DOT requirements for transporting hazardous materials. These are outside the purview of NFPA and the IFC, so they are not addressed in the proposed language. NFPA and IFC provides free access to view standards. The 2018 Edition of NFPA 30A can be accessed [here](#) and the 2018 Edition of the IFC can be accessed [here](#).

Both codes are currently in the next edition revision cycle. In comments submitted to both organizations, on-demand model fueling companies are proposing revisions to the limitations on mobile fueling locations to allow mobile fueling on roads. These provisions are currently under consideration by the code committees.

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**

Industry and government involvement in reforming disaster response, coordinating efforts and in providing far better service to anyone touched by a disaster began receiving far more attention following Hurricane Katrina in 2005. Then efforts catapulted following Super Storm Sandy. Since then, the federal government has taken many steps in streamlining the way it responds to a disaster. Now the Department of Energy (DOE) oversees coordinating all communication regarding the National Response Framework's Emergency Support Function 12 (Energy) particularly with regards to fuel delivery. Meanwhile, at PMAA we determined that big changes were coming in disaster planning and response and we needed to be at the table while the changes were being made. The enormity of the government entities that are involved ensured that many changes could occur and those could be positive if decisions were made based on full understanding of the industry. Storm response is a multi-pronged approach for fuel marketers – getting fuel to regular customers in the disaster zone, getting fuel to generator owners who have contracted it ahead of time in case of damage to the power grid, getting fuel to first responders and companies that must send crews into the disaster area. Before, during and after a disaster, petroleum marketers work to get fuel where it is needed, and as quickly as possible. PMAA began meeting with government and congressional officials and participating in industry groups such as the Oil and Natural Gas (ONG) Sector Coordinating Council (SCC) where we also meet with the Energy Government Coordinating Council (EGCC). Representatives with the EGCC include people from DOE, EPA, DOT/FMCSA, DHS, FEMA, DOD, Coast Guard, FBI, CIA, DIA, FERC, IRS, Agriculture Department, and the White House.

Weak points in the past had to do with government to industry communication and coordination. That is where PMAA has seen a great deal of improvement, especially during the 2017 Hurricanes Harvey, Irma and Maria. Communication and efficiencies across the government have improved tremendously, and the Trump Administration has taken these efficiencies even further with a willingness to establish waivers in advance, so the waivers are in place to fully supply tanks before the storm hits, and to re-supply as quickly as is safely possible.

PMAA continues to educate and make certain that our industry is understood. Further, PMAA works with federal agencies to clear regulatory hurdles in order to minimize delays, and government to speed implementation of waivers and particularly the use of regional waivers when appropriate. We are also active participants in developing the primary industry and government disaster response guidebooks, including serving on a subcommittee of the National Petroleum

Council for development of their handbook. This helped to prevent new government requirements and problems, while eliminating some barriers and enhancing efficiencies. Furthermore, PMAA is engaged in the government and industry planning exercises which are vital tools for determining where there are barriers and what can be changed to eliminate the barriers.

We've made enormous headway in stopping delays at weigh stations and by police when drivers are passing through non-emergency states to deliver to a disaster area. Following our explanation of the cause for some delays in getting product where it is needed during and after disasters, Federal Motor Carrier Safety Administration (FMCSA) Administrator Ray Martinez decided to communicate with all state and local FMCSA directors on the necessity to communicate to the weigh stations and police so drivers will not be ticketed or delayed when passing through non-emergency states to get to an emergency area. This change will go a long way in increasing the response of distributors so that they can get fuel where it is needed as quickly as is safely possible. Furthermore, it will prevent drivers from being fined although they have appropriate waiver(s) from the receiving state.

Importantly, some drivers need to load their tanker trucks at water borne terminals and there are delays due to the need for Transportation Worker Identification Cards (TWIC) escorts for non-TWIC drivers. Drivers who are from areas of the country where they never load at water borne terminals but are delivering fuel to an emergency area and must load at water borne terminals do not have TWIC, so they are required to have a TWIC escort at the terminal. For planning purposes, however, it is often not clear which ports will have escorts available and during which hours. PMAA continues to work to establish systems so that drivers will know when TWIC escorts will be available. Furthermore, while meeting with DOE last year, policy staff realized that fuel terminals at the ports need to be on their list of priorities for electricity so that the terminals can remain open. This change has already resulted in far more efficient movement of fuel and elimination of long lines at the ports during emergencies.

Finally, PMAA established the PMAA Disaster Fuel Response Program, a critically necessary link between marketers available to provide fuel to disaster areas and those in need of such fuel.

- **Tax Reform**

In December 2017, Congressional Republicans finally passed their comprehensive tax reform bill. 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 accidentally 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 percent 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.

Fortunately, the House recently introduced its tax extenders package which includes a technical fix to the Section 168 of the “Tax Cuts and Jobs Act” so that businesses can receive the 100 percent bonus depreciation benefit that Congress intended to provide in the law.

Meanwhile, President Trump and House Ways and Means Committee Chairman Kevin Brady (R-TX) recently announced plans for a middle-class tax cut next year that would give an additional 10 percent tax cut to middle-class workers. Since Democrats recently regained the majority in the House, it remains to be seen if the two parties can come together to pass a second round of tax cuts.