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PMAA Priorities Report
December 2018

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Top Issues

- **RVP Waiver for E10+ Blends, E15 Description/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 Description/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 “eblend,” 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**

In December, Congress passed the Farm Bill which includes a 10-year reauthorization of the National Oilheat Research Alliance (NORA) in which 25% of the funding will be escrowed each year that can be accessed on year 11. Passage of the bill is a huge victory for heating fuels dealers. PMAA would like to thank all of our state/regional associations that reached out to their lawmakers to get us to this point, but most especially, NEFI, all of the Northeast state associations, Wisconsin, Kansas, Ohio, Michigan, North Carolina, South Carolina, Kentucky, Illinois, Washington state and Oregon.

Senators who played a key role in the process included Senator Jeanne Shaheen (D-NH), Senator Patrick Leahy (D-NH), Senator Susan Collins (R-ME), Senate Majority Leader Mitch McConnell (R-KY), Senator Richard Burr (R-NC), Senator Rob Portman (R-OH) and Senator Jack Reed (D-RI). In the House, key lawmakers included: Paul Tonko (D-NY), Jeff Duncan (R-SC), Frank Pallone (D-NJ), Peter Welch (D-VT), John Faso (R-NY), Ann Kuster (D-NH), Cathy McMorris Rodgers (R-WA), and David Rouzer (R-NC).

NORA was first authorized in 2000 to provide funding that would allow the oilheat industry to provide more efficient and reliable heat and hot water to American consumers. As a "check-off" program, NORA receives $0.002 at the wholesale level on every gallon of heating oil sold. NORA provides critical training opportunities and supports the necessary research and development for the industry. Oilheat is currently used in 6.3 million homes, serving more than 16 million Americans across the country. The current NORA program is authorized through February 2019.

- **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.

- **Tax Extenders/Biodiesel Tax Credit**

A partial government shutdown went into effect on December 21 as the Trump Administration and democrats could not come up with a solution to pass a clean spending bill to last into February. There was some discussion over the last few weeks to attach a tax extenders package which would include the biodiesel blender's tax credit, the OSLT and a host of additional tax related measures to the spending bill called "tax extenders," but Congress decided to punt the issue into early next year. Senate democrats balked at the idea of tackling tax extenders this year and will wait until democrats take control of the House next year when they will have more leverage in negotiations with Senate republicans and the White House. Other credits normally included in tax extenders legislation include 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. PMAA will continue to push for these credits along with a retroactive renewal and gradual phase down of the $1 per gallon biodiesel blenders tax credit.

Meanwhile, because Congress is unlikely to extend the OSLT through 2019, PMAA will work with Congressional tax writing committees early next year to ensure that the credit isn't applied retroactively. 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. The OSLT has no tax related impact on downstream marketers, it is simply a cost passed through on finished product. The OSLT is paid by the refiner upstream. Unfortunately, some terminals break out the OSLT as a separate line item on bills of lading and invoices. This practice causes confusion downstream because the tax is paid by refiners on crude oil at the refinery gate. The OSLT is not imposed, remitted or refunded downstream. There are no OSLT floor stock taxes or OSLT tax exempt parties downstream. However, breaking out the OSLT as a separate line item gives it a perception of importance downstream. The impact of the OSLT on wholesale petroleum marketers below the terminal rack is a miniscule increase in the rack cost of finished motor fuel and heating oil. Terminal operators break out the OSLT on invoices, not because wholesale petroleum marketers need to know, but for their own accounting purposes and no other reason. There is no OSLT notice requirement for downstream parties. Some downstream wholesale petroleum marketers who break out the OSLT on invoices to their end user customers may need to adjust their accounting practices and software to reflect the expiration. However, there is no regulatory requirement to breakout the OSLT downstream of the terminal rack on invoices in the first place. To prevent this confusion now, PMAA urges jobbers to contact their suppliers to ensure that the OSLT is not listed on BOLs starting January 1, 2019.

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**

In September, Congress approved, and the President signed into law a spending bill through Sept. 30, 2019 which included 3.65 billion for LIHEAP. Unlike previous years' initial appropriations, this act appropriated LIHEAP funds for the entire FY 2019. 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.

- **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, the Farm Bill reauthorizes SNAP thru 2023. The measure would largely maintain existing SNAP work requirements. The agreement requires the creation of a clearinghouse to prevent individuals from receiving SNAP benefits in more than one state simultaneously, and the USDA must review group facilities to ensure they aren't receiving nutrition benefits from multiple programs.

Most significantly for retailers, the bill prohibits electronic benefit transfer processing fees through fiscal 2023. Specifically, it prohibits fees assessed by State benefit issuers related to the switching or routing of electronic benefit transfer transactions; requires a GAO study to examine EBT fees, outages and intermediaries providing services in-between redemption at retail food store and state-contracted EBT processors; requires USDA to review state EBT contract service agreements and compatibility of such systems with USDA fraud monitoring systems, and the use of third-party applications that access EBT systems; directs the Secretary to issue guidance and regulations as appropriate based on the findings of the GAO study and USDA review; requires the Secretary to issue guidance to retail food stores on selecting EBT equipment and service providers that are able to provide sufficient transaction information to minimize the risk of fraudulent transactions; it also allows the Secretary to require applicant retailers to provide certain EBT-related information to the Secretary during the retail authorization process.

- **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 omittance 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.

Congress is expected to fix the tax issue early next year.