



PMAA Priorities Report July 2019

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*** **Bold** means the issue has been updated.

Top Issues

- **Swipe Fees and Litigation**

PMAA General Counsel advises that all branded marketers and branded c-store operators object to the pending \$6.24 billion settlement in the consolidated payment card interchange fee class action case (In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL-1720) by July 23, 2019. The settlement class is comprised of all merchants that accepted Visa and Mastercard payment cards from January 1, 2004 to January 25, 2019. 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.

Please understand that objecting to the settlement is different from opting out of the settlement. PMAA DOES NOT recommend opting out of the class. If you do so, you will not be able to participate in the settlement. If you do nothing, you will remain in the class (if you are, in fact, a member of the class) and if, and when, the settlement is finally approved in November 2019, you will be sent a claim form to fill out. If you object to the settlement (which is what we recommend), you will remain in the settlement class and receive a claim form if and when the settlement is finally approved. There are no adverse consequences associated with objecting. Enclosed is a [template](#) (WORD DOC) that PMAA General Counsel prepared for PMAA members who wish to object to the proposed settlement. If you read the template PMAA prepared as well as the [class notice](#) (page 12), you will be advised of the basis for objecting. Please note: Any Valero marketer who received a notice of ineligibility to participate in the settlement, please contact PMAA General Counsel at aalfano@bmalaw.net. Finally, PMAA has no reason to recommend that unbranded motor fuel marketers, heating fuels marketers, or unbranded c-store operators object to the proposed settlement.

Last December, PMAA filed objections to the settlement over concerns that branded marketers would not receive notice or payment because their major oil company suppliers are the only entity known to credit card processors. Although Judge Brodie of the US District Court for the Eastern District of New York addressed this issue by saying, "Class Counsel assured the court that Branded operators would in fact receive notice," PMAA does not count on Visa and MasterCard sending settlement notices to branded jobbers even though jobbers ultimately paid the excessive interchange fees that will fund the settlement. A Court hearing will be held on November 7, 2019 to decide whether to approve the settlement.

PMAA plans to file another objection to the settlement before the July 23rd deadline.

- **CDL Driver Shortage: Focus on Expanding the HOS Short Haul Exemption**

In May, Rep. Crawford (R-AR), along with several other GOP lawmakers, sent a letter to the Federal Motor Carrier Safety Administration (FMCSA) to consider additional changes to hours of service modifications designed to increase driver availability and scheduling efficiency for petroleum marketers. Specifically, Crawford's letter urged FMCSA to extend the 100-mile radius short haul driver exception to 150 miles to reflect the maximum distance most CDL drivers in the petroleum industry travel to load supply. Extending the short haul exception would also exempt CDL drivers from the electronic logging device (ELD) mandate if they stay within 150 air miles. PMAA fully supported Rep. Crawford's letter and made this an important issue during PMAA's DC Conference and "Day on the Hill." Click [here](#) to read the letter.

Last year, FMCSA issued an advanced notice of proposed rulemaking which included several proposals to reduce compliance cost burdens on the regulated community and could alleviate the driver shortage. A proposed rule is expected sometime before the end of summer.

Specifically, PMAA strongly supported FMCSA's considerations to:

- Increase the number of daily on-duty hours from 12 to 14 for drivers operating under the exemption;
- 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;
- Eliminate the 30-minute rest break for drivers not qualified for the 100 air-mile short-haul exception but who return to the worksite at the end of each daily shift.

Meanwhile, a bill was introduced earlier this year in the House which 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, reintroduced by Rep. Trey Hollingsworth (R-IN) as well as Sens. John Tester (D-MT) and Todd Young (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.

- **Unfair EV Charging Infrastructure Initiatives/EV Tax Credit/Heat Pumps/Green New Deal/Regional Greenhouse Gas Initiatives**

In April, Sens. Debbie Stabenow (D-MI), Lamar Alexander (R-TN), Gary Peters (D-MI), and Susan Collins (R-ME) along with Congressman Dan Kildee (D-MI) introduced the “Driving America Forward Act,” (S. 1094) which would expand the electric vehicle (EV) and hydrogen fuel cell tax credits. Specifically, the legislation would reduce the \$7,500 credit to \$7,000 and would lift the tax credit cap from 200,000 to 600,000. According to a recent study, the bill would cost taxpayers as much as \$15.7 billion.

The EV tax credit legislation now competes with Senate Environment and Public Works (EPW) Committee Chairman’s John Barrasso (R-WY) bill known as the “Fairness for Every Driver Act” (S. 343). Barrasso’s bill would repeal the \$7,500 EV tax credit and impose a federal highway user fee on alternative fuel vehicles. President Donald Trump has also called for ending the credit. PMAA fully supports S. 343 which would ensure that all vehicle owners and operators, no matter what fuel type they choose, pay their fair share for road maintenance and repair.

In June, PMAA joined AFPM and API in sending a letter to Senate tax writing Committee leadership opposing any extension or expansion of the EV tax credit. PMAA is concerned that expanding the EV tax credit places the burden on the poor and middle-class ratepayers who are subsidizing the wealthy’s luxury buying power to purchase expensive EVs. Click [here](#) to view the letter.

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 electric vehicle (EV) charging stations. Further, the individuals 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, questions remain whether widespread adoption of EVs could reduce America’s CO2 footprint 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. 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.

- **RVP Waiver for E10+ Blends, RFS Reform, RFS Reset, E15 Description/Labeling**

RVP Waiver for E10+ Blends

- **On May 30, 2019, EPA finalized regulatory changes to allow gasoline blended with up to 15 percent ethanol (E15) to take advantage of the 1-psi Reid Vapor Pressure (RVP) waiver that currently applies to E10 during the summer months.**

- Previously, E15 could only be sold during the winter driving season. With the EPA's latest rule, E15 may now be sold year-round beginning June 5, 2019, subject to certain regulatory requirements. Petroleum marketers who wish to sell E15 to retail or wholesale purchaser consumers must comply with the following requirements. Click [here](#) to read the compliance requirements.
- Prior to EPA approving the year-round sale of E15, PMAA filed comments in opposition to the proposal while supporting reforms to RFS RIN trading practices aimed at reducing volatility in the RIN market. However, due to pressure from the ethanol industry, the EPA decided to scrap its ethanol RINs market reform proposal and instead focus on issuing a waiver to allow E15 to be sold during the summer months. Specifically, PMAA expressed opposition to the agency's proposal to extend the one-pound RVP waiver for E15 because it could potentially lead to an E15 mandate, which would harm the petroleum marketing industry. PMAA explained that most existing UST system components are only certified to E10 maximum blends. Typically, components other than the tank itself (piping, joints, connectors, gaskets, dispensers) are not compatible with E10 plus blends. Click [here](#) to read EPA's concerns with UST system compatibility. PMAA also expressed the opinion that only Congress through the legislative process can extend the waiver to E15 and not the EPA through rulemaking. Click [here](#) to read PMAA's comments.
- The American Fuel & Petrochemical Manufacturers Association (AFPM) filed a petition in the U.S. Court of Appeals for the District of Columbia Circuit asking the court to review the EPA's final rule lifting the ban on summertime sale of E15 gasoline blends.

RFS Reform Legislation

- In May, Reps. Bill Flores (R-TX) and Peter Welch (D-VT) introduced bipartisan legislation known as "The Food and Fuel Consumer Protection Act," (H.R. 2540) which would cap the ethanol mandate at 9.7 percent of projected gasoline demand. PMAA highlighted its support for this important legislation at its annual DC Conference and "Day on the Hill." The EPA is required by law to issue its annual 2020 renewable volume obligations (RVOs) for the following year by November 30th. It is expected that a final 2020 RFS rule will be in place before the November 30th deadline.

2020 RFS Proposed Rule

- On July 5, the EPA released its proposed RFS obligated blending volumes for 2020. The proposal increases the volume of renewable fuels to 20.04 billion gallons in 2020, up from 19.92 billion gallons in 2019. The corn ethanol mandate was not reduced but will remain at the 15 billion-gallon statutory maximum set by Congress under the RFS. On the biodiesel front, the rulemaking also proposes to set the 2021 renewable fuel volume for biomass-based diesel at 2.43 billion gallons, level with the 2020 blending requirement.
- Overall, the proposed 2020 renewable fuel volumes are a mixed bag for petroleum marketers. The good news is that the rule did not propose to force large refiners to make up for the lost gallons of obligated blending volume lost in 2019 due to blending waivers issued by the EPA to small refineries based on financial hardship. Carrying those gallons over to large refiner obligated blending volumes for 2020 likely could have caused the value of corn RIN blending credits to increase.
- Under the RFS, refiners must blend certain volumes of biofuels into their fuel each year or purchase credits from those that do. Small refineries with a capacity of less than 75,000 barrels per day can receive waivers if they prove that compliance with RFS would cause them significant economic harm. The EPA has granted over 40 SREs for 2016 and 2017 compliance years and has indicated that it has received 40 petitions for SREs for 2018. Midwestern Senators have criticized the Trump Administration for granting the refinery waivers and not reallocating them to other obligated parties to make up for the lost gallons. Additionally, biofuel groups have argued that the numerous refinery waivers from 2016-2017 have indirectly reduced the ethanol mandate which have driven down RIN values and, therefore, weakened the market for E15.

RFS Reset

- In late May, the EPA sent its proposed RFS reset rule for 2020-2022 renewable volume obligations (RVOs) for cellulosic, advanced and total renewable fuels to the Office of Management and Budget (OMB) for review. Once OMB completes its review, it will be sent back to the EPA and then released for public comment. Given

that EPA missed specific requirements for biofuel blending by 20 percent or more for two years in a row, the agency can set requirements without reference to the law next year which is known as the reset provision. Under the statutory provisions governing the RFS program, EPA is required to modify, or “reset” the applicable annual volume targets specified in the statute for future years if waivers of those volumes in past years met certain specified thresholds. As a result, EPA is likely to propose a rulemaking that will modify the applicable volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel for the years 2020 - 2022.

- Corn ethanol proponents have urged the EPA to account for the biofuel gallons lost due to small refinery waivers by increasing the ethanol mandate as part of the upcoming reset of the RFS. Biofuel groups have argued that the numerous refinery waivers from 2016-2017 have indirectly reduced the ethanol mandate which have driven down RIN values and, therefore, weakened the market for E15. Senator Tammy Duckworth (D-IL) recently asked the EPA’s Office of Inspector General to investigate why the agency vastly expanded its use of waivers to exempt small refineries from the nation’s biofuel law.
- Meanwhile, 15 GOP Senators have urged the EPA to use its reset authority to reduce the corn ethanol mandate to 14.2 billion gallons to reflect current market realities. When the RFS was signed into law in 2007, EIA projected that gasoline consumption would rise to over 170 billion gallons in 2020. However, gasoline consumption has remained around 140 billion gallons which has led to an unlevel playing field in the motor fuels marketplace.
- The RFS reset proposed rule serves as an opening to reduce RVO corn ethanol requirements for future years and PMAA will be submitting comments to that regard. The EPA aims to have the RFS reset rule finalized by the end of the year.

E15 Branding/Labeling

- PMAA is concerned with current E15 branding and labeling. Specifically, a few retailers have taken a variety of approaches with branding E15 on fuels dispensers as well as price signs using brands such as “unleaded plus,” “unleaded 88,” and “eblend,” which can be confusing to consumers purchasing fuel. Further the ethanol industry has recently begun an effort to use “unleaded 88” as a unified brand for E15. In support of this campaign Growth Energy recently launched a [website](#) devoted to Unleaded 88. While E15 needs to be properly branded to prevent confusion, PMAA’s concern is that while EPA requires an E15 warning label on the dispenser these labels are not always obvious to the consumer and only available once the consumer is at the dispenser. Brand names such as “unleaded 88” do 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 by adding the term E15 to any brand name such as “unleaded 88 E15”. Unfortunately, the National Conference on Weights and Measures (NCWM) rejected PMAA’s proposal with substantial opposition from central and western region states. PMAA plans to further explore solutions to this issue with like-minded associations; however, we will need to develop support in the states in order to be successful at NCWM.

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

As a background, last August, the EPA and National Highway and Transportation Safety Administration (NHTSA) issued a proposed rule, known as “The 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. The Trump Administration and the California Air Resources Board (CARB) had been in discussions to come to a mutual agreement on California’s fuel economy standards, however, citing a lack of productive discussions with CARB, the Trump Administration announced recently that it was ending talks with them and moving forward with its rule. Both the Trump Administration and CARB, California’s top air regulator, were unable to come to an agreement on key points. The decision to end negotiations over the rule will undoubtedly lead to a meeting in court between the Trump Administration and California. California and other states that have adopted its rules already sued EPA over its decision last year to roll back the standards. That lawsuit is still pending.

Auto manufacturers recently warned President Trump that he should tone-down the final rule to avoid a battle with California, calling the plan “untenable.” In a letter, the automakers said, “For our companies, a broadly supported final rule would provide regulatory certainty and enhance our ability to invest and innovate by avoiding an extended period of litigation and instability, which could prove as untenable as the current program.” Further, they stated, “We strongly believe the best path to preserve good auto jobs and keep new vehicles affordable for more Americans is a final rule supported by all parties — including California.”

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Last October, PMAA submitted comments in support of the Trump Administration’s proposed rule. PMAA highlighted numerous reasons why current CAFE standards could harm petroleum marketers and how important the Trump Administration’s proposed rule is needed. Click [here](#) to read the comments.

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

PMAA member states are advised that the 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 with UST program authority to adopt the October 13, 2018 federal compliance deadline or establish their own deadline any time thereafter, but no later than October 13, 2021. The remaining states must enforce the October 13, 2018 deadline.

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’s UST Task Force is working on the development of a new ASTM industry standard with the Petroleum Marketers and Convenience Stores of Iowa (PMCI) that relies solely on visual inspection of sumps. The visual test method is less expensive and more effective than existing hydrostatic and pneumatic sump test methods. The Visual Inspections would be carried out annually by third-party certified inspectors. Once the visual sump test standard is approved by ASTM, it would qualify as an approved test method under the EPA’s 2015 UST amendments.

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.

PEI is also in the process of revising their recommended practice 1200 Testing of UST Spill, Overfill, Leak Detection and Secondary Containment to include alternative methods for testing containment sumps. The PMAA alternative test is

included in this revision; however, PEI made significant modifications to the procedure. PMAA submitted comments on this revision.

- **Diesel Fuel Quality**

PMAA's ULSD Corrosion Task Force and Motor Fuels Committee has been participating in diesel fuel quality surveys spearheaded by the Fuels Institute's Fuel Quality Council 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.

Diesel engine manufacturers are under significant pressure to provide engines that meet increasingly more stringent emission standards resulting in greater demands on the quality of diesel fuel supplied and used in modern high-pressure diesel engines. This has been a topic of discussion at ASTM related to ASTM D975 and other fuel specifications that resulted in proposals to place the point of compliance for demonstrating diesel fuel quality at marketing facilities.

PMAA has argued that the responsibility for diesel fuel quality needs to occur throughout the supply and distribution chain from the refinery to the terminal to ensure that quality diesel fuel is delivered to a marketer's site or an end user. The Fuel Quality Council recently held a workshop on diesel fuel quality. The workshop brought together representatives from the primary segments of the diesel fuel supply and distribution chain, as well as engine manufacturers and users to discuss their perspectives on diesel fuel quality, the challenges and opportunities facing each segment and management practices currently in place to ensure diesel fuel quality.

PMAA Environmental and Technical consultant, Jim Rocco, provided the marketer's perspective on diesel fuel quality noting that marketers are limited by the quality of the diesel fuel that is provided by their supplier and that they expect the diesel fuel provided to meet all applicable specifications. He also provided an overview of practices used at marketing facilities to monitor diesel fuel quality. It was clear from the presentations that each segment has its concerns and issues with diesel fuel quality as it moves through the supply chain. It was also recognized that there is no simple solution or one segment of the supply chain that is solely responsible for diesel fuel quality.

The overall outcome of the discussions was a consensus that diesel fuel quality needs to be simultaneously addressed at each segment of the distribution chain and a quality product passed on to the next segment. Any approach to addressing diesel fuel quality needs to account for the practicality of the approach and the economic impacts on the supply chain segment. Action items coming out of the workshop discussed during the Fuel Quality Council meeting following the workshop included developing a compendium of best management practices for each supply segment; continuing a collaborative discussion among the supply segments; engine manufacturers and users; and collecting and evaluating data to better understand the fuel quality issues and support changes to the ASTM D975 specification to reflect the needs of the modern high pressure engines.

- **Infrastructure and Funding Issues**

In May, all 31 Democratic members of the Energy and Commerce Committee introduced a broad infrastructure package that would cost tens of billions of dollars. The "Leading Infrastructure for Tomorrow's America Act," or LIFT America Act, includes boosting "clean energy" and strengthening the power grid, as well as expanding broadband access and building healthcare infrastructure. Click [here](#) to view what is included in the LIFT Act that is of relevance for petroleum marketers.

Although this version of infrastructure legislation is unlikely to move, elements of this package are likely to be included in a final infrastructure bill. PMAA is particularly alarmed by the sentiment shared by many policymakers that electricity is the solution to lowering carbon emissions. The electrification of transportation is the latest trend among state and federal policymakers, and it lacks hard data and sound logic.

Congress is expected to consider an infrastructure package this year, however, it remains to be seen whether lawmakers have the appetite to pass it. Some lawmakers have floated raising the gas tax, but the idea has not gained much traction on Capitol Hill. New House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) supports a short-term gas tax increase as a bridge to solve the nation's infrastructure funding woes given that a national shift to a vehicle miles traveled (VMT) is unlikely to be feasible for another decade. A VMT is a user fee based on miles traveled that can possibly be tracked by phone apps, in-car diagnostic systems or by other means. To sweeten the deal, DeFazio has proposed lifting the ban on earmarks which have been banned since 2011.

During both hearings, fiscal conservatives continued to discuss devolution which would push the majority of maintaining the nation's road and bridges to states instead of the federal government. Meanwhile, House Ways and Means Committee Ranking Member Kevin Brady said that he doesn't see a consensus among the GOP for higher motor fuel taxes or a VMT. Brady laid out a three-step process for improving infrastructure — streamlining permitting, attracting private investment and implementing private activity bonds — none of which involve raising revenues. Even House Ways and Means Committee Chairman Richard Neal (D-MA) dodged the question of whether he'd personally support a motor fuels tax increase. Rep. Lloyd Doggett (D-TX) said that a highway spending bill will be difficult to pass this year unless the President uses the full weight of the White House to get it done. However, Doggett is one of the leading democrats demanding Trump's tax returns so this could thwart any effort to get a highway bill done this Congress.

The HTF's highway account that is responsible for providing funding for the construction of highways and highway safety programs could run out of funding by 2022, if proper funding policies are not put into place. Furthermore, the report says the HTF's transit account, which provides funding for mass transit programs, could run out of money even sooner, by 2021. The current 18.4 cent-per-gallon federal gas tax has been the main source of transportation funding for decades and it has not been increased since 1993. If the gas tax were to have been indexed to inflation, drivers would be paying over 30 cpg for gasoline.

The American Trucking Associations (ATA), which testified before the House Ways and Means Committee, still favors a 20 cpg gasoline tax increase while the Chamber of Commerce, which also testified at the same House hearing, is advocating for a 25 cpg increase. President Donald Trump has reportedly said that he supports a 25 cpg increase. According to Politico, since 2011, 33 states have raised their state gas taxes, and 91 percent of state legislators who supported the increases won reelection. Finally, Green New Deal advocates urge carbon taxes to fund infrastructure but that would be a non-starter in the GOP-controlled Senate. The other question remains on how to deal with taxing electric vehicles which also use the road and currently do not pay into the system.

The one thing that was clear from the hearings was the lack of consensus among lawmakers on how to find a long-term funding solution to maintain the Highway Trust Fund's (HTF) solvency.

- **Tax Extenders/Biodiesel Tax Credit**

In late June, a tax extenders package as well as a bill to expand low to middle income worker tax credits was approved at a lengthy House Ways and Means Committee markup. Committee Chairman Richard Neal (D-MA) introduced the bills prior to the markup to extend the series of expired business tax credits including the \$1 per gallon biodiesel tax credit that expired on December 31, 2017.

The biodiesel credit would be revived retroactively for 2018 and continued through 2019 and 2020. The Oil Spill Liability Tax (OSLT) would be extended through 2020 and would not be applied retroactively, which is welcome news for petroleum marketers. Additionally, fueling equipment for natural gas, propane, liquefied hydrogen, electricity, E85, or diesel fuel blends containing a minimum of 20 percent biodiesel installed through December 31, 2020, would also be eligible for a tax credit of 30 percent of the cost, not to exceed \$30,000. Finally, the residential energy efficiency tax credit for water heaters, furnaces, boilers, heat pumps, building insulation, windows and roofs would be renewed through 2020. For more information, click [here](#).

The extenders package is estimated to cost \$33.2 billion and the total package is scored at about \$106.6 billion.

However, the measure faces opposition in the Senate in part because Neal has proposed paying for these extensions by ending higher exemption levels for the estate tax at the end of 2022, instead of 2025 as currently scheduled.

The good news is that the Senate tax extenders bill may have a better chance of passing. In March, Senate Finance Committee Chairman Chuck Grassley (R-IA) introduced legislation to retroactively extend through 2019 the \$1 per gallon biodiesel tax credit that expired at the end of 2017. Additionally, the Oil Spill Liability Tax (OSLT) would be extended through 2019 and the good news for petroleum marketers is that it would not be applied retroactively. In June, PMAA sent a [letter](#) to the Senate Finance Committee to reiterate its support for the biodiesel blender's tax credit and to oppose a retroactive extension of the OSLT.

- **Proposed Legislation Would Require Retrofit of Cargo Tanks with Side Underride Protection**

A new bill, S. 665, sponsored by Sen. Gillibrand (D-NY), that would require new side underride protection for trailers and straight trucks with a gross vehicle weight over 10,000 pounds is important to petroleum marketers because it would require a costly retrofit of transport cargo tank trailers and single unit cargo tank trucks. Specifically, the bill would require the DOT to adopt regulations that would require: the installation of side underride rails on new and existing commercial motor vehicles (CMV) cargo tank trucks and trailers; and new performance standards, inspection and maintenance requirements for front, rear and side underride protection equipment. The bill is problematic for marketers because it would require virtually all CMVs and CMV trailers to be removed from service, brought to a certified cargo tank inspection and maintenance facility, cleaned and purged of residue and vapors and installation of new side underride rails and possibly replacement of existing rear underride rails that do not meet new equipment performance standards. The bill is particularly troubling because there is no practical or safe way to install side rail underride protection on bottom loading cargo tank vehicles and transport trailers.

The bill would impose huge compliance costs on all petroleum marketers operating cargo tank vehicles and trailers. The DOT attempted to impose similar requirements specifically targeting bottom loading vehicles and trailers back in 1998, but eventually withdrew the proposed rule after fierce opposition by PMAA and other trucking interests. That rulemaking was withdrawn in part because of the findings in a study partially funded by PMAA which found that more people would die during retrofit installation of side rails than those killed in cargo tank underride traffic accidents. PMAA opposes efforts to mandate costly underride equipment retrofits.

PMAA has been meeting with members of Congress to highlight our concerns with the bill.

- **PACT ACT, Tobacco21, FDA Regulation of Tobacco**

Sens. John Cornyn (R-TX), Diane Feinstein (D-CA) and Chris Van Hollen (D-MD) introduced the "Preventing Online Sales of E-Cigarettes to Children Act" (S. 1253) that would prohibit online sales of e-cigarettes to minors by applying the same safeguards already in place for regular cigarettes and smokeless tobacco products. The bill amends the "Prevent All Cigarette Trafficking Act (PACT Act)" to also include e-cigarettes in the definition that already includes cigarettes.

Specifically, the bill would require online retailers of e-cigarettes to:

- Verify the age of customers for all purchases.
- Require an adult with ID to be present for delivery.
- Label shipping packages to show they contain tobacco products.
- Comply with all state and local tobacco tax requirements.

PMAA asks that you remind your Senators to cosponsor this important legislation. Click [here](#) to do so.

Meanwhile, Rep. Robert Aderholt (R-AL) introduced legislation, known as the "Stopping Consumption of Tobacco by Teens (SCOTT Act)", that would raise the age to purchase tobacco products from 18 to 21 across all states and territories. The bill would also tighten the age verification of online sales of tobacco products. The bill was introduced amid FDA's e-cigarette crackdown on the sale of e-cigarettes and other tobacco products by retailers. Aderholt cited

data from the Food and Drug Administration (FDA) that shows 15 to 17-year-olds are getting access to tobacco products from older friends who are legally allowed to purchase them.

Additionally, in May, Senate Majority Leader Mitch McConnell (R-KY) and Sen. Tim Kaine (D-VA) introduced bipartisan legislation that would raise the federal minimum age to buy tobacco products from 18 to 21. The bill, known as the “Tobacco-Free Youth Act,” includes cigarettes, smokeless tobacco, e-cigarettes and vaping devices. The bill would also allow states to enact stricter laws if they would like. Altria and RJ Reynolds recently announced their support for raising the tobacco age to 21. Currently, 16 states and at least 450 localities have raised the legal age to purchase tobacco and e-cigarette products to 21. The PMAA Board of Directors voted not to take a position on raising the federal tobacco buying age to 21 and will defer to each state association to develop its own position.

Finally, PMAA submitted comments in response to the Food and Drug Administration’s (FDA) draft guidance issued in March that would effectively ban flavored e-cigarette sales in convenience stores. Under the draft guidance, stores would continue to be able to sell tobacco, mint and menthol flavored e-cigarette products but would not be able sell other flavored products unless minors are prohibited from entering the stores or those products are sold in a separate section of the store that minors are prohibited from accessing. At the same time, however, vape shops and online retailers would continue to be allowed to sell these products. Additionally, the draft guidance would ban sales of many flavored cigars. PMAA strongly opposes the draft guidance and has asked the FDA to withdraw it. Click [here](#) to read the comments.

The FDA is reviewing all the comments and will determine whether to proceed with finalizing the guidance. This review process could take several months for the agency to complete and issue any final decision on the guidance.

Secondary Issues

- **NORA Reauthorization**

In December 2018, 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.

- **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.

Since PMAA filed comments, PHMSA has been largely silent on the issue and refusing to return numerous calls and emails. PMAA is now seeking Congressional assistance to pressure PHMSA to be responsive to PMAA's inquiries and to address the guidance letter that changed the rules for placarding alternate straight loads of gasoline and diesel fuel to the lowest flashpoint.

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

Late last year, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") released its determination 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 and likely similar laws in other states. The determination was published in the Federal Register and has gone into effect.

- **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, the President released his FY 2020 budget in March. While the budget did not mention LIHEAP, there is confirmation in one of the supplemental documents that were released saying that it would once again eliminate the Low-Income Home Energy Assistance Program (LIHEAP) and the Weatherization Assistance and State Energy Program. Fortunately, the President's budget was dead on arrival in Congress.

In recent years, the LIHEAP program has provided more than three billion dollars annually to states in support of their fuel assistance programs. WAP works to ensure the health and safety of low-income and middle-class households by

increasing the energy efficiency of their homes and reducing energy costs. Through weatherization improvements and upgrades, households save on average \$283 every year.

- **Overtime Rule**

In March, the Department of Labor issued a proposed rule to expand overtime eligibility, setting the threshold at \$35,308 (\$679 per week), compared to the current \$23,660 (\$455 per week). The proposed rule does not include automatic inflation adjustments as the Obama Administration rule required. The \$35,308 threshold is close to Labor Secretary Alexander Acosta's suggested overtime salary during his confirmation hearings, but well below the \$47,500 that the Obama Administration would have imposed. The Proposed Rule focuses on two general types of FLSA exemptions – the “white collar” exemption and the “highly-compensated worker” exemption. Click [here](#) for more details.

The PMAA Board of Directors voted recently to support the Trump Administration's proposed white-collar exemption salary threshold of \$35,308 per year (\$679 per week). PMAA also supported the proposed rule's intent to permit employers to satisfy the salary requirements through non-discretionary bonuses and incentive pay. PMAA opposed the proposed increase to the highly compensated exemption salary threshold and opposed any further efforts to add automatic future increases to the final rule.

In May, the Small Business Legislative Council (SBLC), in which PMAA is a contributing board member, submitted comments on the proposed rule. Click [here](#) to read the comments.

Additionally, in June, Reps. Bobby Scott (D-VA) and Mark Takano (D-CA), as well as Senators Patty Murray (D-WA) and Sherrod Brown (D-OH) introduced the “Restoring Overtime Pay Act of 2019.” The bill would reinstate an Obama-era rule on overtime pay which would more than double the salary level under which workers qualify for overtime pay when they work more than 40 hours a week. That ceiling, now \$23,660, would rise to \$51,000 under the bill, extending overtime coverage to more than 4 million workers. The bill language would set the ceiling at a level that is slightly higher than the \$47,476 salary level enacted by the Labor Department in 2016, and well above the Trump Administration's proposed \$35,308. Under the Democrats' bill, the salary ceiling would rise every three years based on cost-of-living increases, pegged to the 40th percentile of wages in the lowest-wage Census region.

Late in December 2016, a U.S. District Court Judge for the Eastern District of Texas blocked the Obama Administration's final overtime rule just days before it was to go into effect. PMAA welcomed this news because if the overtime rule were to be implemented, many employers would be faced with the possibility of reducing hours worked to 40 or less per work week. Management would also need to be diligent in watching hours worked for those employees who do not meet the salary requirements or would be legally obligated to pay overtime pay at a rate of 1-1/2 times their normal rate of pay for all hours worked over 40. Lastly, by increasing the threshold for overtime-eligible employees, companies could be forced to cut bonuses and benefits to boost the managers' base salaries and lower hourly rates to compensate for the expense of paying salaried managers more.

- **SNAP Program**

The Food and Nutrition Service (FNS) began implementing the restaurant (hot foods) provision of the final rule for all stores in October 2017.

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.

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.

In April, FNS released a [proposal](#) to expand what will qualify as variety as it relates to eligibility requirements for retailers participating in the SNAP Program. These proposed changes would provide retailers with more flexibility in meeting the enhanced stocking requirements under the 2016 final rule "Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)."

The Department is proposing a change with the "variety" rule that would allow any species of meat, poultry, or fish to be counted once as a discrete variety, if perishable, and once as a discrete variety, if shelf stable. It would also allow a store to stock four discrete varieties of cow milk-based cheese (fresh cheese, soft cheese, hard cheese, and cheese product). This change to the definition of "variety" would provide an additional two cheese varieties for each type of animal milk-based cheese in the dairy product's staple food category. Finally, the Department is proposing a change with this rule that would provide three additional staple food varieties in the bread or cereals products staple food category for each type of grain-based bread.

- **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 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. 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 expand the areas where on-demand mobile fueling can be conducted including on public streets and parking garages. Based on hearings addressing revisions to the IFC, these proposed revisions have been disapproved by the Committee. Similar proposed revisions are currently before the NFPA 30A Committee.

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. In June 2019, PMAA participated in a national operational exercise hosted by DOE, DHS and DOD. PMAA was honored to be one of only a few non-government participants serving on the master cell of the multi-day “Shaken Fury” exercise.

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.

- **Consumer Data Privacy Principles**

On July 11th, PMAA joined a diverse group of businesses across the economy in sending [a letter](#) to the Chairs of the House Energy and Commerce Committee and the Senate Commerce, Science, and Transportation Committee to urge support for a comprehensive federal privacy law that "establishes a single technology and industry-neutral framework" for the economy.

Any federal data privacy legislation should apply to all industry sectors and not contain loopholes that leave consumers unprotected when their personal data is handled by a business. All the companies involved in handling that chain of data should have legal obligations to properly guard it under privacy law and the law should not solely rely on private contracts to create those legal obligations. Protection of consumer data privacy is a priority issue for Congress and our associations collectively support federal privacy legislation that would establish a uniform, nationwide and consumer-centric data privacy law that does not pick regulatory winners and losers among differing business sectors.