



## PMAA Priorities Report July 2020

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\*\*Please note that the alternative energy grant program, rest area commercialization and EV Tax credit were combined under the Surface Transportation Reauthorization bullet point.

\*\*New top issues include: COVID-19 liability protection.

\*\*Top issues moved to Secondary Issues include: CAFE Standards; Tax Extenders/Biodiesel Tax Credit

\*\*For all COVID-19 updates including PMAA Regulatory Alerts, information on the Paycheck Protection Program and additional Small Business Administration updates, please right click on the image below.

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## Top Issues

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

The Federal Motor Carrier Safety Administration (FMCSA) issued a final rule on hours of service reform regulations in May. The final rule adopts several of PMAA's requests for short-haul driver regulatory relief reform. PMAA initiated the short-haul driver reform effort in 2017 during a meeting with the FMCSA Administrator and his top staff to present regulatory relief proposals important to both motor fuel and heating fuel dealers. Since then, PMAA has worked closely with the FMCSA, the FMCSA Motor Carrier Safety Advisory Committee, the White House Office of Management and Budget as well as key members of Congress providing supporting data, writing comments and arranging meetings in order to win adoption of these important hours of service reforms. The short-haul driver reforms will go into effect on September 29, 2020.

The final rule adopted the following PMAA reforms for short-haul drivers:

- Expands the maximum distance short-haul drivers may travel each day without losing their regulatory exception from keeping daily HOS records from 100 air-miles per shift to 150 air-miles.
- Increases the maximum daily on-duty time for short haul drivers from 12 hours to 14 hours.
- Extends the maximum daily 11 hour driving window for drivers by two hours during adverse weather conditions and allows drivers (in addition to dispatchers) to determine if the weather conditions exist to trigger the extension.

The distance and time extension reforms are important for motor fuel marketers and heating fuel dealers because they provide short-haul drivers two additional hours of daily on-duty time and 50 additional air-miles of operating range without losing the exception from recording daily hours of service. In addition, the reforms will allow many long-haul drivers employed in the industry that currently travel beyond the 100 air-mile radius from their point of origin but no longer than 150 miles to qualify for short-haul driver status. This means those drivers will no longer be required to use electronic on-board recorders mandated by FMCSA to record HOS, saving their employers significant reoccurring compliance costs. Instead, their HOS can now be demonstrated the same as all short-haul drivers - by timecards and/or other business records and only when requested by the DOT. This will reduce the recordkeeping burden on motor fuel marketers and heating fuel dealers and provide them with more flexibility to schedule drivers while adding a significant number of weekly on-duty hours per company across all drivers.

The adverse weather extension of on-duty time is also important because it provides drivers with two additional hours to wait out hazardous driving conditions before resuming to drive. Under previous adverse weather condition regulations, drivers were allowed two additional hours of driving time but no extra on-duty time. As a result, drivers felt pressure to drive in poor conditions to not run out the daily maximum on-duty clock before they returned to their base of operations.

The final rule did not contain a provision that would allow up to three hours of wait time at terminals to be recorded as off-duty time due to opposition by safety groups. However, PMAA is continuing to work for its adoption.

Meanwhile, the FMCSA announced a two-year delay to its Entry Level Driver Training (ELDT) Rule that was scheduled to go into effect February 7, 2020. The ELDT rule is controversial in the fuel marketing industry because it requires rigorous new training requirements for both CDL license applicants and current CDL holders seeking a license upgrade. The new requirements will make it more difficult to obtain and renew a CDL, discourage new applicants from applying for a CDL and, as a result, contribute to the shortage of CDL drivers already occurring nationwide. Click [here](#) to view the full PMAA Regulatory Alert.

- **Surface Transportation Reauthorization/Electrification**

Recently, House Democrats approved a comprehensive infrastructure bill known as "The Moving Forward Act" (H.R.2) totaling \$1.5 trillion which includes the bill passed by the House Transportation Committee, and it adds sections on

water and energy infrastructure, broadband, housing and schools, healthcare and aviation. Click [here](#) for a complete breakdown of provisions important to fuel marketers in H.R. 2 that was passed mainly along party lines.

Although the House passed the bill, the Senate is not expected to bring it up for a vote due to GOP opposition. Senate Majority Leader Mitch McConnell (R-KY) called the bill “a multi-thousand-page cousin of the Green New Deal masquerading as a highway bill” and said the package had no chance in Senate. H.R. 2 currently lacks a full “pay for” meaning it is unlikely that a potential multiyear surface transportation bill is signed into law this year. The 24.4 cents-per-gallon diesel tax and 18.4 cents-per-gallon gas tax have remained unchanged since 1993. Congress is more than likely to pass a short-term reauthorization of surface transportation programs into next year since current law is set to expire on September 30, 2020. The Senate Environment and Public Works Committee has marked up its own surface transportation bill, S. 2302, but it is unclear when the Senate will move forward with their version.

#### *Alternative Energy Grant Programs*

The issue of alternative transportation technologies is being debated on surface transportation reauthorization bills in both chambers of Congress. A provision in both bills could harm fuel marketers is the creation of a grant program for states to deploy electric vehicle (EV) charging and other alternative energy stations along designated alternative fuel corridors. PMAA is concerned that the grant program could permit electric utilities to double dip – meaning they could charge their rate paying consumers to pay to expand EV infrastructure, while also taking grant money to subsidize the same projects. In fact, utility companies have been requesting permission from state public utility commissions (PUCs) and bills are being introduced, to raise rates on all customers in some states. The purpose of these rate increases is, in part, to offset costs for installing EV infrastructure and charging networks that very few people will use.

Hardworking Americans should not pay more in their utility bills just so that a few who can afford EVs are able to charge their vehicles, in some cases for free. Even small utility rate hikes to pay for EV charging can have an outsized impact on households. Nearly 1 in 3 American households reported difficulty paying their energy bill, according to a 2018 Energy Information Administration report. If a PUC permits a rate hike, those unfairly paying for EV charging will include (1) low-income families, (2) the elderly and fixed-income families, (3) those who do not own EVs and will not use EV chargers and (4) small businesses. Furthermore, an electricity monopoly installing EV infrastructure hurts consumers by effectively blocking out competition. Competition will ensure consumers pay a competitive price for EV charging and are ultimately serviced by the companies that provide the best customer experience. In other words, utilities and non-utilities, including private businesses, should be on a level playing field when it comes to building out EV charging infrastructure.

PMAA is also concerned that the grant program could result in a preference for grants to companies that have multiple sites distributed along major transportation routes. As with other grants for alternative fuels, small to medium convenience stores will be placed at a competitive disadvantage. PMAA has urged both Transportation Committees to ensure that 50 percent of the grant program funding be dedicated to small, independent fuel marketing businesses with less than 500 employees who can diversify and ensure consumers pay a competitive price for EV charging.

#### *Interstate Rest Area Commercialization*

Unfortunately, the House democratic surface transportation reauthorization bill (H.R. 2) includes a provision to allow EV charging options at rest areas. This provision is certain to undermine the significant investments fuel marketers have made in communities and real estate directly off the U.S. Interstate System. Allowing EV chargers at rest areas will also discourage fuel marketers located off highway exits from investing in charging infrastructure because they cannot compete with an on-highway option. When Congress created the Interstate Highway System in 1956, Congress and community leaders feared that local businesses, jobs, and tax bases would shrink as motorists and truck drivers bypassed their cities and towns. For this reason, Congress prohibited new Interstate rest areas from offering commercial services, such as food and convenience items that are offered at businesses along the highway exits. The prohibition on rest area commercialization ultimately has led to a thriving and competitive business environment along the Interstate exits as these businesses continue to make investments to provide consumers the best available products.

### *EV Tax Credit*

Included in H.R. 2 is the controversial expansion of the 7,500 federal EV tax credit. The current \$7,500 EV tax credit allows taxpayers to deduct part of the cost of buying an EV and phases out once an automaker hits 200,000 cumulative EV sales which both Tesla and GM have hit. The bill would expand the 200,000 cumulative EV sales to 600,000 and reduce the credit by \$500 to \$7,000.

A coalition of farm and fuel groups including PMAA sent a letter to all 535 members of Congress late Monday addressing concerns in H.R. 2. The letter specifically asks members of Congress to not further expand the federal electric vehicle tax credit, which disproportionately benefits a small group of Americans. Additionally, the letter asks that infrastructure investment dollars be spent on projects that will benefit all Americans, not just EV owners. And finally, it asks that Congress protect utility ratepayers from shouldering the cost burden of increased investment in EV charging infrastructure. Please go to <https://transportationfairness.org/> for the latest updates.

### *Electrification of Heating Fuels*

Similar to the electrification of the motor fuels industry, there are efforts in many states to convert heating fuel consumers to heat pumps. The Democratic infrastructure proposal, H.R. 2, also includes language that favors this approach which will likely be an issue next year if the elections result in a Democratic President, Senate and the House stays in the hands of the democratic party. Essentially, the goal is to eliminate the combustion of fossil fuels, natural gas, propane and heating oil from home and business use. Many states are now pushing huge subsidies to encourage those conversions. This is an existential threat to the heating fuels industry.

The heating fuels sector has been working to develop biofuels as an alternative to electrification. Essentially, replacing one form of liquid energy with another (BioHeat®), thus allowing the industry a pathway to survival. These will be critical and difficult issues to deal with, and PMAA will be relying on its good relationships with members of Congress to reduce the threat of electrification.

- **Liability Protection from COVID-19 Lawsuits**

In March, the Department of Homeland Security's Cybersecurity, and Infrastructure Security Agency (CISA) issued guidance designating certain businesses and industries as essential critical infrastructure. These industries include motor and heating fuels marketers that are committed to staying open during this time of crisis when Americans need them most to provide food, fuel, beverages and other necessities.

While these businesses are committed to serving their communities during these tough times, they have legitimate concerns about unsubstantiated lawsuits that may arise from continuing to stay open during the COVID-19 health crisis. Unfortunately, many of these essential businesses, who are taking every precaution necessary to ensure its employees and customers are protected, could face civil lawsuits from employees or customers claiming they were exposed to COVID-19 at those business locations.

In May, PMAA joined scores of other national associations [in a letter](#) to the Senate Judiciary Committee leaders urging enactment of legislation to protect essential businesses from COVID-19 claims. The aim of the legislation is to protect essential businesses from claims by customers and employees who allegedly contracted the disease at the business location or as a result of its operations.

Fortunately, Senate Majority Leader Mitch McConnell (R-KY) and Sen. John Cornyn (R-TX) are expected to introduce legislation sometime soon to expand liability protections for businesses amid the COVID-19 pandemic. The bill is expected to be retroactive to 2019 and provide protection against COVID-19 lawsuits through 2024, and have new legal protections for businesses, nonprofits, government agencies and raise the liability threshold for medical malpractice lawsuits. Democrats have expressed some willingness to consider liability protections for employers if they meet CDC guidelines, but will not agree to immunity provision for businesses that is crafted too broadly. House Republicans and several Blue Dog Democrats are also expected to support reasonable liability protection. PMAA continues to support the coalition's efforts to lobby and urge Congress to protect essential businesses from COVID-19 claims.

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

Recently, PMAA coordinated with DOE, DHS and FEMA and delivered over 200,000 free reusable masks for our essential marketing, c-store and heating fuel workers. PMAA also worked with the All Hazards Consortium (AHC), DHS and Idaho Labs and released a Commercial Routing App (CRA) that can be accessed through the AHC/PMAA private URL at <http://www.commroutel.org>. This is reported to be the best routing tool available and includes data on weight limits, CDL medical grace periods and drug testing requirements, CDL expiration extensions, HOS and other federal waivers, as well as rest stop closures. PMAA also has asked for a fuel specific section which will include the multitude of fuel specific waivers and declarations is being developed. Additionally, an extensive real-time PPE directory will be available soon.

Importantly, CRA may provide an opportunity for resolving inefficiencies when 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.

Further, PMAA and the National Tank Truck Carriers (NTTC) created a [COVID-19 guidance document](#) for truck drivers, and PMAA worked with the International Liquid Terminals Association (ILTA) and addressed a problem where some replacement drivers had not been allowed to receive on-site training to be carded for specific terminal facilities (which is usually allowed during disasters, but was not initially allowed with the start of the pandemic). PMAA also created a [protocol document template](#) for owners and managers to use.

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 fuel or drivers. Please contact PMAA VP Sherri Stone for further details at [sstone@pmaa.org](mailto:sstone@pmaa.org).

- **RFS Reform, E15 Description/Labeling**

PMAA supports limiting the ethanol mandate under the RFS to a volume no greater than 9.7 percent of projected customer demand as determined by the Energy Information Administration (EIA). Limiting the RFS volumetric mandate to 9.7 percent of consumer demand will maintain the per gallon ethanol content at the current E10 level (10 percent ethanol). A de facto E15 mandate through the RFS annual volumetric blending mandates would cause great harm to small business fuel marketers, the consuming public and ultimately the ability to supply gasoline to retail outlets without interruption nationwide.

Unfortunately, politics gets in the way for full RFS reform. Under pressure from corn state senators, the Trump Administration kept the final 2020 corn ethanol blending mandate at the 15 billion-gallon maximum statutory limit set by Congress. The final rule also included a new provision that requires large refiners to recapture blending volumes lost to small refiner exemptions (SREs) from the RFS. Under the new rule, the Agency will not recapture and reassign actual renewable blending volumes lost to SREs in any given year. Instead, the EPA will project an estimated displaced volume based on the Department of Energy's (DOE) SRE recommendations averaged over the previous three years. The EPA's calculation will include displaced volume from partial waivers recommended by the DOE in the past even though the agency issued only full waivers to small refiners. Renewable fuel producers oppose the EPA formula because it will result in far fewer recaptured gallons than displaced by small refinery exemptions which could result in lower RINs values.

PMAA has two major concerns with the 15-billion-gallon corn ethanol mandate:

*Non-compatibility:* E15 is not compatible with most underground storage tank (UST) system components currently in use today, except for some of the tanks. The components most vulnerable to the corrosive effects of E15 are the glues and sealants that hold the UST system together and prevent leaks. State and federal laws and regulations require retailers to



prove that E15 is compatible with the UST systems. However, it is impossible to prove E15 compatibility without a total UST system retrofit since most equipment in the ground today is only certified to a maximum E10 blend. UST system retrofit is not an option because; the \$100,000 plus per site capital expenditure is out of reach for most retailers; the downtime for retrofitting retail sites would limit gasoline supply and raise prices at the pump; and there are not enough equipment or vendors available to retrofit the majority of retail gasoline stations nationwide.

*E15 Marketing Confusion:* Large, vertically integrated multistate blender/retailers are able to supply E15 at a significant discount to the retail outlets they own and operate. These large retailers can do this by generating credits from blending ethanol which they sell to refiners who need them to meet their annual RFS volumetric blending requirements. Large retailers pass down the money earned from selling blending credits to their retail outlets in the form of a per gallon price reduction that their small business competitors cannot match. Since consumers largely avoid E15 due to engine performance concerns, a few retailers have turned to marketing techniques by using the term “unleaded88” which is E15. As a result, consumers who think they are buying regular unleaded E10 gasoline at a discounted price are actually purchasing E15 with 33 percent lower energy content. The combination of unique price reduction ability and confusing marketing techniques creates an unlevel playing field upon which small business retail fuel marketers cannot compete.

#### *PMAA Related E15 Positions*

*Small Refinery Exemptions:* PMAA took a neutral position on whether small refinery exemptions under the RFS should be limited. However, PMAA opposes rolling over and reallocating the blending volumes exempted to subsequent annual blending mandates if the total volume would go beyond 9.7 percent of projected demand. Recently, the EPA announced it has received 52 petitions from small refiners requesting economic hardship exemptions from compliance with the RFS. The petitions request retroactive exemptions back to 2013 and earlier. Typically, small refinery exemption petitions are filed annually when the EPA sets new RFS blending mandates for the upcoming year. The retroactive filings are meant to bypass a recent federal court order limiting new hardship exemptions to only those small refineries that have been exempted from the RFS every year since 2013. Only a handful of the 52 small refineries currently filing petitions would qualify for hardship exemptions under the new standard set by the court.

Many small refiners disagreed with the court’s decision because exemptions were not necessary in the early years of the RFS when volumetric blending mandates were lower and blending RIN credits were cheap. If the EPA approves the retroactive petitions, the total ethanol gallons lost to hardship exemptions will continue to increase from the 2.63 billion gallons already displaced since 2016. Economic hardship exemptions are particularly important to small refiners right now due to the dramatic drop in demand for gasoline brought on by the COVID-19 emergency. The EPA has yet to act on the petitions and has given no indication when the exemption review process might begin. The bottom line: more SREs lead to reduced RIN values which protects motorists and small business fuel marketers.

*E15 Marketing Practices Confusion:* To help mitigate misleading practices used to market E15, PMAA submitted a proposal to the National Conference on Weights and Measures requiring greater transparency for E15 branding and labeling practices.

- **Swipe Fees and Litigation**

In our last update on this matter, PMAA advised you of the Court’s consideration of objections filed by members of the plaintiff class at a hearing in November of 2019. Several objections related to the issue of most concern to branded wholesalers and retailers of motor fuels. The issue is whether franchisors (major branded suppliers) or franchisees (branded wholesalers and retailers) will be entitled to proceeds from the multi-billion-dollar settlement fund with respect to card transactions at stations they operate or supply. The objectors argued that this issue should have been resolved before the July 2019 deadline for opting out of the class; they argued further that it should have been resolved in favor of the branded wholesaler and retailer class members, and that the settlement should not be approved until the matter is resolved.

PMAA also reported that Judge Brodie approved the settlement notwithstanding the objections, and she stated her intent to appoint a special master to hear arguments on this issue. This action prompted several appeals to the United States Court of Appeals for the Second Circuit, which challenge the approval of the settlement on a number of grounds. One of those appeals was filed by PMAA, along with several individual wholesaler and retailer companies and two other associations, SIGMA and NASM. A brief on behalf of these appellants has been filed with the Court of Appeals.

In its brief, PMAA argued that branded wholesalers and retailers should be the recipients of settlement proceeds based on card transactions at their sites. The branded wholesalers and retailers, and not the branded suppliers, are the merchants that “accepted the cards,” and they are the merchants who paid the interchange fees that are the heart of Visa/Mastercard antitrust litigation. It was also argued that the issue should have been decided before the settlement was approved and before the various class members were compelled to decide whether to stay in the class or opt out. By staying in the class, each class member must release Visa and Mastercard from any antitrust liability. The class members should not have been forced to make this decision until they were advised whether they will be recipients of the proceeds attributable to their sites. Other arguments include the conflict of interests that the lawyers representing the class had, which conflict contributed greatly to the delay in resolving the above-stated issue. The class lawyers tried to represent the branded suppliers (e.g., ExxonMobil, Shell, BP) and the branded wholesalers and retailers, despite the fact that the two groups have adverse interests on the issue of who will get the money.

Visa and Mastercard will file a response to our brief and, thereafter, PMAA and its co-appellants will get a chance to reply. The Court of Appeals will then set the case for argument, likely sometime next year. PMAA will keep you advised of developments in the appeal as they proceed.

- **Reducing UST Compliance Costs**

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 will not 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 is working on the development of a new ASTM industry standard 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. 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 issued their 2019 updated recommended practice RP1200: Testing of UST Spill, Overfill, Leak Detection and Secondary Containment. The updated RP includes the PMAA alternative methods for testing containment sumps; however, PEI made significant modifications to the procedure. PMAA submitted comments on this revision and held a conference call to review and make recommendations in November.

- **Diesel Fuel Quality**

PMAA's ULSD Corrosion Task Force and Motor Fuels Committee has been participating on the Fuels Institute's Diesel Fuel Quality Council (DFQC) which is conducting a diesel fuel quality study to evaluate fuel properties that affect engine performance. The study will collect diesel fuel samples from 190 nozzles and 95 underground storage tanks from a mix of retail and commercial facilities throughout the US.

Samples will be collected based on the share of distillate fuel sales in each PADD. Sample collection is randomized and not tied to information on diesel fuel quality or specific locations. Samples will be collected by Tanknology in conjunction with their annual compliance testing and monthly inspection for their clients with their permission. Information such as the terminal that supplies the diesel fuel, monthly throughput, biodiesel content, biodiesel blending on-site or at terminal, and routine preventative maintenance will be documented for each sample.

Samples will then be shipped to the Iowa Central Laboratory for analysis and analyzed for a variety of parameters considered important to engine performance including flash point, water & sediment, biodiesel content, and metals. All results will be provided to a third party for evaluation and results provided to the DFQC for review.

PMAA Environmental and Technical consultant, Jim Rocco, has 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.

- **Placarding**

PMAA filed comments asking the Pipeline Hazardous Material and Safety Administration (PHMSA) to restore a cargo tank placarding provision important to fuel 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 and the Minnesota Petroleum Marketers Association recently met with PHMSA to urge them to fix the placarding issue and will continue to do so until it is fixed. PHMSA is expected to address the issue later this year.

- **Tobacco Issues**

Recently, the Senate passed by unanimous consent the “Preventing Online Sales of E-Cigarettes to Children Act (S. 1253),” which prohibits online sales of e-cigarettes to minors by applying the same safeguards already in place for regular cigarettes and smokeless tobacco products. The bipartisan bill was introduced by Sens. Dianne Feinstein (D-CA), John Cornyn (R-TX), and Chris Van Hollen (D-MD). The House has passed similar legislation which means that the bill will likely reach the finish line this year once the House takes up the Senate passed version.

Meanwhile, the House passed H.R. 2339, the “Reversing the Youth Tobacco Epidemic Act of 2019,” by a vote of 213-195. The legislation, which is sponsored by House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and Rep. Donna Shalala (D-FL), would wipe out a wide range of popular flavored tobacco products from convenience store shelves which could hurt businesses and threaten the larger economy. The bill is an election year messaging bill for Democrats since Congress raised the minimum tobacco age to 21 late last year on a bipartisan basis.

Specifically, the bill:

- Prohibits flavored tobacco products (includes menthol cigarettes, flavored cigars, and flavored chewing tobacco).
- Increases user fees (FDA will have the authority to collect user fees from all tobacco products, including e-cigarettes. It also increases the total amount of user fees collected each year by \$100 million).
- Bans all non-face-to-face sales of all tobacco products including delivery sales; and
- Makes it unlawful to market, advertise or promote any e-cigarette product to individuals under the age of 21. This includes requiring manufacturers of all tobacco products, including e-cigarettes, to be held to the same advertising and sales requirements currently applied to the sale, distribution, and use of traditional cigarettes.

Meanwhile, the U.S. District Court for the District of Maryland and the U.S. Circuit Court of Appeals for the Fourth Circuit granted the Food and Drug Administration’s (FDA) requests to have the deadline to submit Pre-Market Tobacco Applications (PMTA) pushed back 120 days, from May 12 to September 9, due to the coronavirus pandemic.

Tobacco products that were first introduced into the marketplace or modified after February 15, 2007, also known as the predicate date, must submit PMTA’s for the FDA to review and approve. PMTA’s require a product to meet a regulatory hurdle that can be complex and costly.

### Secondary Issues

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

The EPA and the National Highway Traffic Safety Administration (NHTSA) issued a final rule in March that makes significant reductions in current federal mileage standards for cars, pick-up trucks and SUVs. The [Safer Affordable Fuel Efficient Vehicles](#) rule is important to fuel marketers because federal fuel efficiency standards have a direct impact on consumer demand for transportation fuels. Under the final rule, automakers are now required to improve average fuel efficiency by only 1.5 percent per year between model years 2021 and 2026, far below from the 5 percent annual improvement rate required over the same period under current efficiency standards. The lower improvement rate translates into an average fleetwide mileage standard of 40.4 mpg as opposed to 46.7 mpg under the 5% rate. The 1.5% improvement requirement matches auto manufacturers historic efficiency rate achieved by voluntary technological advancements.

Notably, auto manufacturers are split over support for the new less stringent standards. Those who oppose are concerned that if California wins its lawsuit to maintain authority to impose more stringent efficiency standards, including, zero emission and electric vehicle mandates, auto manufacturers will be forced to build cars according to two

widely different fuel efficiency standards. Opponents also include governors from 23 states who plan to challenge the new rule in court, including 13 governors representing states that have already signed onto California fuel efficiency and zero emission standards. Finally, the rule does not extend extra MPG credits that automakers can earn for selling zero-emission electric vehicles.

PMAA has submitted comments on the issue. Click [here](#) to read the comments.

- **Tax Extenders/Biodiesel Tax Credit**

In December, the President signed a \$1.4 trillion government spending bill along with a tax extender's package which included a retroactive extension of the \$1 per gallon biodiesel blender's tax credit (BBTC) through December 31, 2022. A retroactive multiyear extension of the biodiesel blender's tax credit was a significant win for PMAA.

Also included in the tax package were:

- The Oil Spill Liability Tax (OSLT) was renewed on a prospective basis through December 31, 2020. The nine 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 effective date of the OSLT applies on and after the first day of the first calendar month beginning after the enactment date of the tax extenders package. This represents a victory for PMAA after it urged Congress earlier this year to renew the OSLT on a prospective basis rather than making it retroactive. Congress will need to revisit the issue later this year.
- The Alternative Fuel Infrastructure tax credit was retroactively renewed through December 31, 2020. Specifically, fueling equipment for natural gas, propane, liquefied hydrogen, electricity, E85, or diesel fuel blends containing a minimum of 20% biodiesel installed from December 31, 2017 through December 31, 2020, is eligible for a tax credit of 30% of the cost, not to exceed \$30,000.
- The residential energy efficiency tax credit was retroactively renewed through December 31, 2020 for water heaters, furnaces, boilers, heat pumps, building insulation, windows and roofs.
- The "Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019" is also included which is comprised of several relatively small improvements which taken together should improve the qualified retirement plan system. The Small Business Legislative Council will have a full report later.
- Permanent repeal of Obamacare's "Cadillac tax" on high-cost employer health plans, as well as the health insurance tax and medical device tax which were originally approved as part of the healthcare law to fund its coverage expansion.

Of significance to fuel marketers, the recently introduced House infrastructure bill known as the "Moving Forward Act" (H.R. 2) contains a provision that would add an additional two years to the BBTC through December 31, 2025 but reduce the \$1 per gallon credit each year. It would also extend credits for alternative fuels and alternative fuel mixtures at a rate of 50 cents per gallon through 2022, and subsequently phase them down through 2025.

- **Cougar Den of the Yakama Native American Tribe**

In March 2019, the Supreme Court ruled 5-4 that fuel taxes are not owed by a business owner (Cougar Den) of the Yakama Native American Tribe to Washington state.

The legal case that began in 2013 ended with the determination that the Cougar Den business owner did not owe the state more than three million dollars in fuel taxes. Specifically, an 1855 treaty between the Yakamas and the U.S. exempted the tribe from paying state fuel taxes, even for fuel imported from elsewhere to be sold on the reservation. The case was founded on gas that the Cougar Den brought in from Oregon. The case was based on the interpretation of

a “right to travel” clause in the Yakama Treaty of 1855, and the justices interpreted the clause to mean Cougar Den is free to move its fuel in and out of the reservation.

According to its website (<https://cougardeninc.com/why-us.html>), Cougar Den does not collect or remit from tribal governments any state fuel excise tax which lowers Cougar Den’s fuel costs and puts small business fuel marketers at a competitive disadvantage. They are now delivering fuel without the state tax in Oklahoma.

PMAA General Counsel is reviewing this issue.

- **Retrofit of Cargo Tanks with Side Underride Protection**

The “The Moving Forward Act” (H.R. 2) that was recently approved along party lines mandates Automatic Emergency Braking systems in newly manufactured commercial motor vehicles and mandates rear underride guard standards in newly manufactured trailers and semi-trailers capable of preventing passenger compartment underride at speeds up to 35 mph. The bill would require periodic inspection of rear underride equipment as well as daily pre-trip inspections by drivers. It also calls for a study on installing side underride guards on newly manufactured trailers and semitrailers and creates an Advisory Committee on Underride Protection. Although the bill passed the House, it is dead on arrival in the Senate.

- **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.

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

In February 2020, the Pipeline and Hazardous Materials Safety Administration (PHMSA) dismissed the California Labor Commissioner’s most recent attempt at overturning PHMSA’s previous ruling, which said 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).

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 decision, as noted by PHMSA, will be

subject to reconsideration pending the Ninth Circuit's decision in *Intl Brotherhood of Teamsters, et al. v. FMCSA*, Court of Appeals Docket No.: 18-73488. Notably, briefing in the Ninth Circuit recently closed, also on February 21, 2020, and the Ninth Circuit has indicated that it will schedule oral arguments some time during the summer of 2020.

- **LIHEAP Funding**

On March 27, President Trump signed the "Coronavirus Aid, Relief, and Economic Security (CARES) Act," a \$2.2 trillion spending program to help mitigate the effects of the pandemic. The bill included \$900 million for LIHEAP to help low-income households pay their heating fuel bills during the crisis. Since the CARES Act law, the House approved another COVID-19 relief package known as the "Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act," which includes an additional \$1.5 billion for LIHEAP. The bill is dead on arrival in the Senate, however, PMAA expects another COVID-19 relief package before August which could include additional money for LIHEAP. PMAA fully supports additional LIHEAP funding.

- **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 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.

- **On-Demand Fueling**

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.

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.

In general, the current 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](#).

Several modifications have been made to NFPA 30A that will be reflected in the 2021 version of that code. Of note is a revision to the prohibition on mobile fueling operations on public streets and public ways that allows mobile fueling on public streets and public ways if approved by the AHJ and the operation meets additional criteria. In addition, the AHJ can specify the time of day and day of the week when mobile fueling operations can be conducted on public streets and public ways. Other revisions include requirements for dispensing of fuels other than Class I and Class II liquids and a requirement for an approved vehicle inspection program and vehicle inspections prior to each shift. Modifications to the IFC that will be reflected in the 2021 version of that code focus primarily on vehicle and operational requirements.

- **Consumer Data Privacy Principles**

PMAA is part of “The Main Street Privacy Coalition” which is comprised of a broad array of national trade associations representing businesses that line America’s Main Streets. 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.

Click [here](#) for the latest.