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## PMAA Priorities Report July 2017

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## Motor Fuels Committee

### • **RFS Reform**

In July, the EPA proposed a new rulemaking to implement the federal Renewable Fuel Standards (RFS) that assigns 2018 volumetric blending mandates for ethanol, cellulosic biofuel and biomass-biodiesel mandates for 2019. The proposed volumetric blending mandates call for:

- Maintaining the current 15-billion-gallon ethanol volumetric blending mandate for 2018. This mandate covers ethanol derived from corn and other renewable sources.

- Reducing the current 311-million-gallon cellulosic biofuel volumetric blending mandate to 238 million gallons for 2018. This mandate covers fuel considered the “next generation” ethanol.
- Maintaining the current 2018 biomass-based diesel volumetric blending mandate of 2.1 billion gallons for 2019.
- This mandate covers biodiesel most often made from soybeans, vegetable fats and animal fats.

The RFS is important to petroleum marketers because it ultimately determines whether E15 gasoline is required to meet annual refiner blending mandates. Annual increases in the volumetric ethanol mandate have raised the value of renewable identification numbers (RINs) significantly. Retail marketers who hold RINs or negotiate with their suppliers for a percentage of the value have a decisive competitive price advantage over the majority of marketers who are not similarly positioned. The proposed rule seeks input on possible manipulation of the RINs market and ways to improve the program to ensure credit trading stability.

Related to this issue has been the petition to the EPA to move the point of obligation from the refiner level to the position holder at the rack as a way to reduce the value of RINs and level the competitive playing field at the pump. The EPA stopped short of proposing any change in the proposed rulemaking that would move obligated party status from refiners to blenders. The EPA said it has no plans to change the current obligated party framework in the RFS regulation. However, the EPA could use the information collected on potential manipulation of the RINs market as the basis of a future rulemaking to move obligated party status to blenders. Earlier this year, PMAA submitted comments taking a neutral position on whether the point of obligation should be moved. PMAA continues to believe that the best path forward to reduce RIN values is to immediately reduce the volumetric ethanol mandate below the E10 blend wall (9.7%). For more information on the RFS, see below.

Click [here](#) for a video explaining why moving the point of obligation to the position holder will benefit petroleum marketers.

Click [here](#) for arguments in support of keeping the point of obligation at the refiner/importer level to benefit petroleum marketers.

Click [here](#) for PMAA’s Regulatory Counsel Mark Morgan’s memo on the issue.

- **RVP Waiver for E10+ Blends**

In March, Sen. Deb Fischer (R-NE) introduced S. 517 and Rep. Adrian Smith (R-NE) introduced H.R. 1311, both known as the “Consumer and Fuel Retailer Choice Act,” which would extend the Reid vapor pressure (RVP) waiver to ethanol blends above 10 percent. The bills would allow retailers across the country to sell E15 and other higher-ethanol/gasoline fuel blends year-round. Each year, the EPA regulates RVP for gasoline and gasoline-ethanol blended from June 1 until September 15. During these months, the EPA restricts the retail sale of fuels with ethanol above 10 percent.

Before the Senate Environment and Public Works Committee held a hearing on the “Consumer and Fuel Retailer Choice Act” in June, PMAA submitted a [letter](#) for the record to Chairman Barrasso and Ranking Member Carper highlighting its concerns with the bill. PMAA firmly believes that before Congress proceeds any further on granting a RVP waiver to blends above E10, it must first hold a hearing on the effects of ethanol blends on existing underground storage tank (UST) system infrastructure. The introduction of ethanol blends higher than 10 percent (including E15) present significant economic and legal impediments to many gasoline retailers, as well as, consumer awareness issues that go beyond the price of the fuel. Extending the RVP waiver to E15 at this point further exacerbates these concerns and could force many retailers to invest considerable time and money on an accelerated schedule to switch to an alternative fuel storage and distribution system in order to remain competitive. PMAA’s letter to the EPW Committee also highlighted concerns about different names a few retailers have used to disguise E15 such as “Unleaded Plus” to make it more marketable than just calling it E15.

- **Regulatory Reform Bills**

In April, PMAA joined other associations in a [letter](#) to the House and a [letter](#) to the Senate. The letters strongly support H.R. 33, the Small Business Regulatory Flexibility Improvements Act, which would reform the regulatory process to ensure that all federal agencies appropriately consider the impact of their rules on small businesses across America. As a

result, federal agencies would issue smarter regulations that minimize inefficiencies and unnecessary burdens while still protecting public health, worker safety and the environment. PMAA supported efforts to pass similar legislation last Congress.

Additionally, several other bills have been introduced by the GOP-controlled Congress to reform the regulatory process. Click [here](#) for more details on additional bills which would reduce the regulatory burden for petroleum marketers.

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

The EPA's Office of Underground Storage Tanks (OUST) has approved PMAA's low liquid level integrity test as an alternative method for containment sump testing that is required under the 2015 federal UST regulations. The 2015 regulations require liquid testing every three years of all containment sumps used for interstitial monitoring of piping. However, the test method cited in the rule requires filling sumps with water above the penetration points in the sump wall. This sump test method would be prohibitively expensive for tank owners. Instead, the PMAA UST Task Force developed an alternative test for containment sumps.

The alternative requires filling sumps only to the level of a liquid sensing device equipped with a positive shutdown that is mounted below penetration points in the sump wall. PMAA's alternative test method will significantly reduce reoccurring sump testing compliance costs for tank owners while being equally protective of the environment as filling the sump to the top, according to the OUST. This is an important victory for petroleum marketers that builds on previous cost saving flexibility won by the PMAA UST Task Force during the rulemaking process. Please use [this PMAA memo](#) to communicate the regulatory flexibility that was won by PMAA and has been approved by the EPA as "equally protective of the environment" and "no less stringent than federal regulations."

PMAA is continuing to work with OUST on additional flexibility measures for compliance with the 2015 UST requirements. In June, PMAA submitted [comments](#) to the EPA's Regulatory Reform Task Force requesting a compliance extension of the 2015 underground storage tank regulations.

Meanwhile, President Trump proposed to cut EPA Leaking Underground Storage Tank (LUST) funding from \$90 million to \$47 million in his FY 2018 budget request. In response, PMAA sent a [letter](#) to House Committee on Appropriations Chairman Frelinghuysen (R-NJ) and Ranking Member Lowey (D-NY) urging them to reject President Trump's FY 2018 budget request of \$47 million for the LUST Trust Fund Program because the funding amount is inadequate. In previous years, Congress has appropriated between \$90 - \$100 million each year, an amount PMAA would like Congress to continue to appropriate.

- **ULSD Corrosion**

The PMAA ULSD Corrosion Task Force is working closely with the EPA and with other industry groups to address the issue of accelerated corrosion through further study. However, PMAA believes that the focus of accelerated corrosion studies on retail sites alone is misguided and could result in unfairly shifting responsibility for all corrective action to petroleum marketers. PMAA supports fuel quality studies along the entire petroleum production and distribution chain to determine the cause of accelerated corrosion. Until a broader study is undertaken, PMAA will refrain from funding studies that focus solely on finding causes downstream of the terminal rack.

Earlier this year, PMAA provided a series of questions to the Coordinated Research Council (CRC) for additional information regarding an upcoming study. Click [here](#) for the letter. PMAA requested the CRC study possible causes that may occur above the terminal rack. PMAA is concerned that the EPA and the CRC past studies did not conduct research into possible causes for accelerated corrosion in diesel fuel UST systems. There is no definitive research that has identified what causes accelerated corrosion although microbial growth is a leading factor.

In July 2016, the EPA released its study on accelerated corrosion of UST system components storing and dispensing ultra-low sulfur diesel fuel (ULSD). The EPA found that 83 percent of the 42 UST systems studied had moderate to severe corrosion on metal components including; submersible turbine pump shafts, automatic tank gauge probe shafts, flapper valves, ball valves, inner walls of tanks and fuel suction tubes. While the EPA said accelerated corrosion "could be a very

common occurrence” in UST systems storing diesel fuel, it acknowledged the sampling was small and cannot be used to predict whether the incidence of moderate to severe corrosion on metal components is higher or lower in retail UST systems nationwide. The EPA is recommending that owners check their diesel fuel UST systems for similar corrosion.

- **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 1203 provision.

Unfortunately, PHMSA failed to act on the petition for over a year until PMAA successfully lobbied Congress for legislation requiring the agency to initiate a rulemaking within 90 days. PHMSA expressed concerns in its 2015 interpretive letter for the safety of emergency responders because gasoline with ethanol blends over 10 percent required a different placard and emergency response procedures than E10 blends. PMAA told PHMSA in written comments that placarding alternating straight loads of diesel fuel and gasoline with the UN 1203 placard does not pose any danger to public safety because emergency response methods for both are identical under Emergency Response Guide 128. PMAA also explained that mid-level ethanol grades are blended at the pump and not typically transported in cargo tank trucks so there was no need to remove the 1203 placarding provision based on concerns over alcohol content. PMAA told PHMSA it supports limiting the 1203 placarding provision to a maximum E10 blend to neutralize concerns over mid-level ethanol blends. PMAA met with DOT officials on this issue last month and repeated its concerns. DOT officials said it agreed with PMAA and was prepared to rescind the 2015 interpretative letter and revert back to the previous rule for placarding to the lowest flashpoint. PMAA is waiting for DOT officials to make the necessary changes and will send out a compliance bulletin to inform petroleum marketers as soon as possible.

## Convenience Store Committee

- **Swipe Fees**

Earlier this year, House Financial Services Committee Chairman Jeb Hensarling (R-TX) reintroduced a bill to provide an alternative to the 2010 Dodd-Frank Wall Street Reform Act, known as the “Financial CHOICE Act” (H.R. 10). In June, the House passed the Financial CHOICE Act along party lines by a vote of 233-186. Fortunately, two weeks prior to the vote, PMAA and the Merchants Payments Coalition (MPC) were successful in convincing House leadership to drop the language that would have repealed the Durbin amendment from the CHOICE Act. Additionally, nearly 300 PMAA petroleum marketers educated lawmakers on the benefits of debit card fee reform during PMAA’s “Day on the Hill”, which undoubtedly contributed to this decision to strip the repeal language. Repealing the Durbin amendment would harm petroleum marketers because the Durbin language has brought competition to the debit card fee market.

After its passage in the House, the bill was sent to the Senate where it has yet to be considered for a vote. PMAA continues to work with MPC to ensure language that would repeal the Durbin amendment is not added to the Senate’s bill, although PMAA and MPC are confident there will not be.

- **Menu Labeling**

The “Common Sense Nutrition Disclosure Act” (H.R. 772) was reintroduced by Reps. Cathy McMorris Rodgers (R-WA) and Tony Cardenas (D-CA) and Senators Roy Blunt (R-MO) and Angus King (I-ME) companion legislation in the Senate, (S. 261). It would give retailers the flexibility they need to comply with the menu labeling regulations. Originally, FDA enforcement of the menu labeling rule was expected to begin on May 5, 2017. However, a few days before the enforcement date, the FDA extended compliance and enforcement of the menu labeling rule until May 7, 2018. The delay is good news for convenience store owners as it allows more time for Congress or the Administration to correct the onerous requirements.

The legislation would modify the menu-labeling regulation by permitting retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Furthermore, the bill clarifies that advertisements and posters do not need to be labeled and provides flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals. Lastly, the bill ensures that retailers acting in good faith are not penalized for inadvertent errors in complying with the rule and stipulates that individual store locations are not required to have an employee “certify” that the establishment has taken reasonable steps to comply with the requirements.

PMAA urges Congress to act on the “Common Sense Nutrition Disclosure Act” as quickly as possible.

### [Heating Fuels Committee](#)

- **LIHEAP Funding**

In May, the Trump Administration released its \$4.1 trillion FY 2018 budget proposal, which eliminates the Low-Income Home Energy Assistance Program (LIHEAP). LIHEAP, in addition to the Weatherization Assistance Program, are vital in serving low income consumers of home heating fuel. Much of Trump’s budget proposal is strongly criticized, even by members of his own party. Like all presidential budgets, ultimate passage of the blueprint is not likely, especially provisions such as the elimination of LIHEAP which will not be supported by a majority in the Senate. In both chambers, most domestic programs have bipartisan advocates. And in the Senate, bipartisan support will be imperative because it takes 60 votes to move spending bills past delaying tactics.

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. Also, click [here](#) to view state by state information on LIHEAP. Furthermore, PMAA members discussed the vital role of LIHEAP and of WAP during PMAA’s Day on the Hill.

- **NORA Reauthorization/Benefits of Oilheat**

PMAA played a critical role in reauthorizing the National Oilheat Research Alliance (NORA) in 2014. NORA expires in February 2019, so it will be important to move NORA reauthorization legislation forward within the next two years. PMAA will be on the lookout for possible legislative vehicles to attach NORA reauthorization language.

NORA also recently released the results of a survey on the usage and potentials benefits and issues associated with the blending of traditional heating oil with renewable biodiesel for home heat use. Currently, 5% biodiesel blends (B-5) are being used seamlessly across the oilheat market. Some heating oil fuel marketers are delivering B-20 to all their customers and a few are delivering much higher blends. This blending into the fuel mix in this market leads to concerns about the impact on reliability and service. Click [here](#) to review the report.

Meanwhile, EPA requires 2 billion gallons of biodiesel for 2017 and 2.1 billion for 2018 under the RFS final rule released on December 1, 2016.

- **Biodiesel Tax Credit**

The \$1 per gallon biodiesel blender’s tax credit expired on December 31, 2016.

In May, bills were introduced (S. 944; H.R. 2383) by a group of lawmakers representing states where biodiesel is produced, to convert the \$1-per-gallon biodiesel blender’s tax credit to a new biodiesel production tax credit. PMAA, along with other marketer associations, opposes moving the blender’s credit to the production level because it would effectively kill any below the rack biodiesel blending and subsequent savings to consumers. PMAA member companies have made significant investments to blend biodiesel which has produced growth for biodiesel production and denying the credit to blenders cannot be justified. The policy of limiting the credit to producers is contrary to the original intent of offering a biodiesel tax credit to make the fuel competitive with conventional diesel, and thus, encourage domestic consumption of biodiesel by U.S. consumers. Blenders and marketers have legitimate concerns that much of the tax credit will be pocketed by producers and not passed onto marketers and consumers. In the current environment where biodiesel is not competitive with conventional diesel without the tax credit, it is essential that the \$1-per-gallon tax credit be passed on to the consumer.



PMAA continues to urge lawmakers to extend the biodiesel blenders' tax credit, and oppose any effort to move to a producer's credit. Legislation to renew the biodiesel blender's tax credit is expected to be introduced soon.

## Other Priorities

- **Obamacare Repeal/Replace**

In May, the House narrowly passed a bill that would repeal and replace significant portions of Obamacare by a vote of 217-213. The passage was a huge victory for many House GOP members, many of whom ran campaigns on the promise of repealing and replacing Obamacare. The healthcare bill, known as the "American Health Care Act," had to be pulled in March because of a lack of votes, but a series of deals brought on board the conservative Freedom Caucus and then moderates from the Tuesday Group. The key move to winning over moderates and, ultimately, gaining enough votes for passage was a last-minute addition of \$8 billion more in funding for people with pre-existing conditions. The bill repeals many elements of Obamacare, including subsidies for insurance coverage, expansion of Medicaid, taxes and mandates for people to get coverage including the employer mandate. In its place, the bill provides a new tax credit aimed at helping people buy insurance.

In late June, Senate Republicans released their Obamacare repeal and replace "discussion draft" which was intended to be a compromise between President Obama's Affordable Care Act (ACA) and the healthcare bill that House Republicans passed in May. Like the House bill, the Senate bill would no longer penalize individuals for failing to have health insurance and it would also eliminate the employer mandate. The "Better Care Reconciliation Act of 2017" would subsidize millions of Americans who buy insurance through the ACA marketplaces for two more years and would phase out Obamacare's expansion of Medicaid over three years, starting in 2021. The bill would also delay the "Cadillac tax" on high-cost plans from 2020 to 2026, like the House-passed Obamacare replacement bill, and would also tighten eligibility for health insurance premium subsidies on the basis of immigration status.

Although Senate Majority Leader McConnell (KY) wanted the bill to be fast-tracked and for the Senate to vote on it before the July recess, nine Senate Republicans came out and opposed the bill for various reasons, forcing McConnell to pull the bill. Republican Senators Paul (KY), Lee (UT), Johnson (WI), Cruz (TX), Capito (WV), Collins (ME), Moran (KS), Portman (OH) and Heller (NV) announced their opposition to the bill. Senate leadership can only afford to lose two votes in order to pass the bill. Therefore, there will need to be further negotiations after the recess in order to have a chance to pass the bill.

- **Tax Reform: LIFO, Estate Tax, Step Up Basis, Border Adjustment, Bonus Depreciation/Treatment of Tangible/Intangible Assets**

Tax reform is a major priority for President Trump and most of the Republicans in the Congress. President Trump would like for Congress to focus on overhauling the tax code in September. Trump has pressed for quicker action in Congress, but his administration has also had to deal with the ongoing investigations into Russian interference in last year's election. Furthermore, Republicans already have plenty on their plate outside of taxes, including the looming debt ceiling fight, healthcare reform bill and FY 2018 appropriations bills.

Unfortunately, the problem with major tax reform still remains – Congress must either be willing to eliminate a number of well-liked deductions and credits (often referred to as tax expenditures) in order to simplify the tax code and most importantly reduce tax rates low enough that the public feels like they've come out ahead or it has to find new sources of tax revenue that can be stomachable by the majority of businesses and Americans that actually pay federal income tax (currently only roughly 50% of all Americans pay any federal income tax). Remember, in their respective tax reform plans both the House Republicans and Trump also want to eliminate the AMT which brings in more and more revenue as it continues to hit more and more middle-income taxpayers which was never its intent (originally it was enacted to make approximately 13 of the highest income taxpayers in the country pay some tax).

Eliminating special interest "loopholes" like giving tax breaks to NASCAR and the production of films will not generate enough revenue to be able to significantly reduce tax rates. To meaningfully cut rates, Congress is going to have to reduce some of the big ticket and most popular items like the mortgage interest deduction (the House plan does not), the deduction for employer provided health insurance (looks like the amount of the deduction would be capped under the

House proposal), the charitable contribution deduction (does not look like this will be touched under the House plan), and the deduction for retirement plan contributions (the House plan seems to leave an opening here to cut back on this deduction). The only other way to accomplish this onerous task is to come up with new tax revenue. The House plan does this by the proposed border adjustment tax which is a fancy name for saying that imports would be subject to tax and exports would be free of tax. As we have all seen, this proposal which would be a major generator of new tax revenue is not being embraced with open arms. PMAA has concerns with the border adjustment tax. Refiners who rely heavily on imported crude oil, especially from Canada, could result in higher prices at the pump and higher heating fuel prices in the Northeast and Pacific Northwest. If this proposal doesn't work, then the Republican leadership will have to go back to the drawing board.

Meanwhile, as part of the Trump Administration's "Energy Week," PMAA President Rob Underwood was invited to participate in an energy tax reform discussion at the White House with Director of the National Economic Council (NEC) Gary Cohn. At the meeting, Underwood described PMAA's member companies' critical role in the wholesale and retail distribution of motor and heating fuels and the need to improve the tax system for these businesses.

The big issue the Trump Administration is still wrangling with is the treatment of pass-throughs. The majority of small businesses are organized as pass-throughs meaning that profits are passed on to the owner and reported on his/her individual tax return. PMAA has argued for a competitive tax rate for pass-throughs and the Administration has indicated that these pass-through entities should be taxed at a lower rate. Bipartisan legislation has been introduced in both the House and Senate called the Main Street Fairness Act which would prevent pass-through entities from being taxed at a higher rate than C corporations. PMAA will continue to monitor the latest.

The complicated and busy Congressional agenda, combined with distractions such as the investigations into Russian interference in the election, could threaten Congress's ability to pass comprehensive tax reform legislation before the new year. However, Republican members remain optimistic that they will accomplish everything on the agenda. Throughout the tax reform debate, PMAA will weigh in on provisions that are particularly important to petroleum marketers such as the estate tax, LIFO, step up in basis and the treatment of tangible and intangible assets.

- **Speed Limiters/Sleep Apnea**

Last year, PMAA submitted written comments to the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) calling on the agencies to withdraw the controversial proposed rule to mandate speed limiters in heavy duty trucks weighing over 26,000 pounds. The proposed rule would require all newly manufactured heavy-duty trucks to be equipped with speed limiters set to a maximum speed that will be included in the final rule. NHTSA is proposing to set the maximum speed at either, 60 mph, 65 mph or 68 mph based on written comments received from interested parties.

A major concern for petroleum marketers is the possibility that the speed limiter mandate would be made retroactive to trucks manufactured after 1990. PMAA opposed any retrofit requirement in its written comments. PMAA told the agencies that there is insufficient data to move forward with the rule. PMAA pointed out that the proposed rule does not adequately weigh the cost on how the rule would impact small business motor carriers.

Meanwhile, the DOT's Federal Motor Carrier Safety Administration's (FMCSA) effort to possibly issue a rule to require screening, evaluation and treatment of CDL drivers for obstructive sleep apnea (OSA) is also on hold now. The rule is important to petroleum marketers because if promulgated, it could disqualify a CDL to even moderately overweight drivers with a body mass index greater than 33 bmi and a neck circumference over 17 inches.

The controversial proposal has been floating around the FMCSA for the past 15 years but was recently given a boost by a study by the National Transportation Safety Bureau (NTSB) pointing to a recent series of truck and train accidents that are linked to OSA, a respiratory disorder characterized by a reduction or cessation of breathing during sleep. The FMCSA said undiagnosed or inadequately treated moderate to severe OSA can cause unintended sleep episodes and deficits in attention, concentration, situational awareness, memory, and the capacity to safely respond to hazards when driving commercial motor vehicle. PMAA is working with the DOT's Regulatory Reform Task Force to eliminate short haul drivers from the sleep apnea screening coverage.

- **SNAP Program**

In March, 2016, the USDA released a proposed Supplemental Nutrition Assistance Program (SNAP) rule that went further than the requirements of the 2014 Farm Bill. Following final input from the PMAA Convenience Store Committee, PMAA submitted comments on “Enhancing Retailer Standards in the SNAP.” On December 8, USDA released the final SNAP rule. While there were improvements from what was originally proposed, the final rule still presented challenges and additional costs for retailers to participate in the program, especially for small business convenience store owners.

Then, in May, Congress passed a \$1.1 trillion FY 2017 which included a provision that delayed the new SNAP eligibility regulations until the Food and Nutrition Service (FNS) rewrites its problematic “variety” definition. Under the Obama Administration SNAP eligibility regulations, the variety definition would have required retailers to stock seven varieties of food in the four staple food categories. The Trump Administration will now rewrite the “variety” definition which will likely give retailers more options for which foods can count toward staple food stocking requirements. Until the change is made, retailers can comply with the older requirements that require stocking three varieties of food in the four staple food categories. The change in the definition of variety will correct the new requirement that variations of the same item count as only one item. For example, if a store has rice-based cereal and oat-based cereal, the two only count as one variety under the grain or cereal category. Variety was previously defined by the main ingredient or kind of product but the new rule was changed in this case. Apples are an issue as well as tomatoes; tomatoes, tomato sauce and tomato juice are all considered the same by the new definition.

Meanwhile, President Trump’s FY 2018 budget would cut \$190 billion over 10 years from SNAP, with some of the savings attributed to stricter work requirements for adults who do not have children and are not disabled, and most of the difference would come from making states match 20 percent of the federal outlay. Office of Management and Budget (OMB) Director Mick Mulvaney has proposed a SNAP retailer application fee to pay for his proposed cuts to the SNAP program. The applications would be for each location, rather than per company. Fees could range from \$250 to \$20,000 and would be levied only during the authorization or reauthorization process. Once authorized or reauthorized, store authorization lasts for several years.

In June, FNS announced that the effective compliance date for the SNAP final rule was being delayed for 120 days to October 5, 2017.

House Republicans are laying the groundwork for a fresh effort to overhaul the program which could occur in the next farm bill which is due in 2018.

- **Fuel Neutral Policies**

Unfair policies that favor one fuel over another, “fuel switching,” are threatening thousands of home heating oil businesses. Policy makers fail to acknowledge recent technological advances in heating oil efficiency. New high efficient oilheat equipment combined with the near elimination of sulfur content and BioHeat® makes heating oil cheaper, more efficient, safer and cleaner than natural gas. Unlike electric and natural gas utilities, oilheat infrastructure was developed without taxpayer or ratepayer money and none is needed to maintain it. Incentivizing oilheat customers to make costly conversions to natural gas and other fuels is not fair and is unlikely to result in lower heating costs or emissions.

Recently, the House Energy and Commerce Energy Subcommittee approved H.R. 2910, known as the “Promoting Interagency Coordination for Review of Natural Gas Pipelines Act”, which would boost interagency cooperation when siting interstate natural gas pipelines. Another natural gas pipeline bill, H.R. 2883, known as the “Promoting Cross-Border Energy Infrastructure Act”, would replace the presidential permitting process for pipelines that cross international boundaries. Specifically, the Federal Energy Regulatory Commission (FERC) would be required to approve or deny an application for certificate of crossing for the border-crossing facility consisting of oil or natural gas pipelines within 120 days of an environmental review.

PMAA and NEFI are concerned with the expansion of natural gas pipelines. Rather than deregulate the natural gas pipeline permitting process, Congress should require that regulators and gas companies increase system efficiency by requiring that the thousands of miles of existing natural gas pipelines that are aging or obsolete be repaired or replaced.



The capacity demands of the region's power generators can be more than met through proper utilization, maintenance and upgrading of existing natural gas pipelines and proper planning that includes the use of affordable and abundant fuel oil during periods of peak or unanticipated demand.

- **On-Demand Fueling**

According to the NFPA 30A Technical Committee, On-Demand Mobile Fueling is defined as 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 California and Texas, and state and local fire officials are looking for direction on how to regulate this practice.

The committee is proposing a new chapter be added to NFPA 30A on On-Demand Mobile Fueling. The proposed language is based on language developed by the California State Fire Marshall's Mobile Fueling Task Force which was submitted in a public comment to NFPA. Similar language has also been proposed to be added to the International Fire Code (IFC).

The proposed language is designed to regulate on-demand mobile fueling by providing specific requirements related to the operations, vehicles, and equipment and requiring approval by the authority having jurisdiction (AHJ) including the operations, location, safety and emergency response plan, 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-ways, in buildings, or covered parking areas and within 25 feet of buildings, property lines, or combustible storage.

In general, the draft language provides a good basis for regulating this activity. PMAA and other groups were able to incorporate appropriate requirements that require mobile fueling activities to comply with fire and safety procedures and equipment requirements similar to a retail fueling facility and that limit the locations where this type of refueling can occur. It is important to note that there are other issues not related to NFPA 30A that may need to be addressed including weights and measures and DOT requirements for transporting hazardous materials. These are outside the purview of NFPA so they are not addressed in the proposed language. The proposed language will be included in the second draft revision and subject to a formal ballot of the Technical Committee. The ballot requires a 2/3 majority to pass and be incorporated into the next version of NFPA 30A.

- **Disaster Planning and Response**

During an emergency, federal, state and local government entities generally want both priority for fuel as if by branded contract and lowest price as if by spot unbranded. If the government entity has the ability to receive fuel in bulk they will generally get to receive fuel first. The supply that may be available unbranded is going to be used by all that can access it, and marketers also prioritize government for first access to their unbranded supply. In some cases, marketers use their "branded contract" volume to supply some of the critical infrastructure customers. During an emergency there tends to be a "rolling" affect the regional market will experience, not just in the immediate impact zone but potentially hundreds of miles away.

Following the explosion on Colonial Pipeline's Line 1 in Shelby County, Alabama, PMAA worked with the federal government, PMAA State Association Executives, and industry representatives to ease the many barriers to continuing gasoline supply in the southeast region that is affected by the disruption.

PMAA represents marketers on the Oil and Gas (ONG) Sector Coordinating Committee (SCC), which met with federal members of the ONG Government Coordinating Committee earlier this year to discuss ongoing security, disaster prevention and emergency response. During these meetings PMAA again brought up the problem of not having enough drivers who can pick up fuel at a port. PMAA argues that during an emergency the Transportation Workers Identification Card (TWIC) requirement should be waived to allow drivers with hazardous materials certification to pick up fuel for delivery to states that are experiencing supply disruptions. At a minimum, escorts should be available at the terminals 24/7 during an emergency in order to minimize delays in moving fuel where it is needed. PMAA has also been involved in discussions regarding problems drivers face at weigh stations and with state police while driving thru non-state of emergency states in order to assist with fuel delivery in states where waivers are in place, and ways that region wide HOS and weight waivers can be issued when appropriate rather than waiting on the piece meal state waivers. These are but a

few of the ways processes can be modified, and PMAA welcomes all member feedback on inefficiencies that should be addressed.

PMAA also served on the National Petroleum Councils' Emergency Preparedness Coordinating Subcommittee in order to ensure that petroleum marketers were fairly and broadly considered in formulating the "Enhancing Emergency Preparedness For Natural Disasters, Government and Oil & Natural Gas Industry Actions to Prepare, Respond and Recover" handbook. For a copy of the handbook contact PMAA at [703-351-8000](tel:703-351-8000).

- **Keystone XL/ Dakota Access Pipelines**

The Trump Administration approved the Keystone XL Pipeline which finally will allow construction of the pipeline to move forward. The 1,200-mile pipeline would ship crude oil from Canada to refineries along the Gulf Coast. PMAA strongly supported development of the KXL Pipeline which has already had more than eight years of debate and multiple environmental impact studies that have shown the pipeline would have no effect on climate change. Even former Obama Administration EPA Chief Gina McCarthy said that the pipeline, if approved, would not be a disaster for the climate as some environmentalists have argued.

Recently, the Dakota Access Pipeline began service which is bringing crude oil through the Midwest and into the U.S. Gulf Coast. The Dakota Access Pipeline is a 1,172-mile project stretching from North Dakota to Illinois with a daily capacity of 570,000 barrels of oil.

However, in June, a federal judge in Washington, D.C. ordered the Trump Administration to conduct further environmental reviews of the Dakota Access Pipeline but stopped short of halting oil-pumping operations pending further hearings beginning June 21. The decision is a limited victory to Native American tribes in North Dakota that challenged the administration's effort to speed the project. The court found that while the Army Corps of Engineers "substantially complied" with federal environmental laws, "it did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline's effects are likely to be highly controversial."

Four Sioux tribes in the Dakotas have asked the court to shut down oil-pumping operations. In February, the court rejected a request from the Sioux tribes to halt the pipeline due to potential archaeological damage and desecration of religious sites including the Missouri River and Lake Oahe. The latest court challenge was triggered by one of President Trump's executive orders, directing the corps to expedite approval and drop an Obama era environmental impact study. The tribes and environmental groups said the administration's actions violate administrative procedure and treaty obligations. Tribal leaders say their environmental concerns have grown more urgent now that the pipeline is operational.

The approvals of the Dakota Access Pipeline and the Keystone XL Pipeline are indicative of how the new Administration is taking a much needed and drastically different approach to energy issues.

- **Jones Act Reform**

Last Congress, Sen. John McCain (R-AZ) reintroduced language that would repeal the nearly 40-year-old Jones Act, which restricts shipping between U.S. ports to ships built and owned by Americans and manned by U.S. workers. PMAA supports efforts to reform the Jones Act to alleviate the Gulf Coast supply glut which will bring cheaper motor fuels and heating oil prices to consumers and we are encouraging the Senator to reintroduce his bill again this year.

- **85 Octane**

Several states allow for the use of 85 octane and repealing it would ultimately harm petroleum marketers and consumers by restricting supply which would lead to higher prices at the pump. There is limited evidence regarding harm to engines or complaints from consumers regarding engine damage - or any other problems - due to 85 octane gasoline. Further, there is not enough information to determine whether the overall environmental impact of an 87 octane standard will be positive or negative. Early in 2016, an ASTM ballot initiative to repeal 85 octane was defeated. Several PMAA members voted to maintain 85 octane at retail, and ultimately, the auto manufacturers didn't have enough votes to repeal it.

- **E-Vapor Regulation and Predicate Date**

In May, 2016, the FDA released its long awaited final rules for e-cigarettes, cigars, pipe tobacco and other tobacco products it had not previously regulated. Under the rules, the newly regulated tobacco products will be subject to the same

general requirements to which cigarettes and smokeless tobacco are already subject, including those related to: adulterated and misbranded products; ingredients listing; health documents submission; reporting of harmful and potentially harmful constituents; and registration and product listing. The rules became effective on August 8, 2016.

As part of the final rules, the FDA maintained the February 15, 2007 predicate date. This date is important as it determines which pathways a product can take to stay in and/or enter the marketplace. Products that were not in the market on February 15, 2007, nor have a comparable product that was in the market on this date, must submit a Pre-Market Tobacco Application (PMTA). The PMTA requires a product to meet a regulatory hurdle that is very complex and costly. Some have estimated that a single PMTA could cost up to several million dollars. As such, the regulatory hurdle to enter the marketplace will be much higher for e-cigarettes than for traditional cigarettes. Because of the speed at which innovation has occurred with e-vapor products since 2007, essentially all products currently being sold to consumers fall into this regulatory trap.

However, in May, the FDA moved to delay by three months all regulatory deadlines facing e-cigarette makers. One of the most significant deadlines requires e-cigarette makers to submit an application by August with the FDA to get federal approval of their products. The move, which the Justice Department revealed in court filings in both D.C. and in Alabama, comes as the vaping and tobacco industries are launching a concerted effort to roll back the FDA regulation through both legislation and litigation. The delay is intended to give new leadership personnel at the Health and Human Services (HHS) additional time to more fully consider the rule.

Earlier this year, Reps. Cole (R-OK) and Bishop (D-GA) introduced bipartisan legislation to ensure sensible regulations for newly “deemed” tobacco products by the FDA. H.R. 1136, the “FDA Deeming Authority Clarification Act of 2017,” would amend the Federal Food, Drug and Cosmetic Act to change the predicate date for newly “deemed” tobacco products, impose common-sense licensing and advertising guidelines for vapor products and direct the FDA to establish product standards for vapor product batteries. PMAA urges lawmakers to support and cosponsor the “FDA Deeming Authority Clarification Act of 2017.”

- **Americans with Disabilities Act Reform**

Representative Ted Poe (R-TX) has reintroduced the bipartisan ADA Education and Reform Act of 2017, H.R. 620, which aims to put an end to “drive-by” lawsuits where attorneys look for minor, easily correctable Americans with Disabilities Act (ADA) infractions so they can file a lawsuit and make some cash. This bill would prohibit sending demand letters or other pre-suit notifications alleging a violation of ADA public accommodation requirements if the notification does not specify the circumstances under which an individual was actually denied access. The notification must specify: the property address, the specific ADA sections alleged to have been violated, whether a request for assistance in removing an architectural barrier was made, and whether the barrier was permanent or temporary.

The bill would also prohibit commencement of civil action based on the failure to remove an architectural barrier to access an existing public accommodation unless: the aggrieved person has provided to the owners or operators a written notice specific enough to identify the barrier, and the owners or operators fail to provide the person with a written description outlining improvements that will be made to improve the barrier or they fail to remove the barrier or make substantial progress after providing such a description.

In recent years, convenience store owners have fallen victim to predatory lawsuits that serve the interests of trial lawyers while doing little to help the individuals that the ADA was designed to protect.

The vast majority of retail station owners strive to serve their customers to the best of their ability and rely on the ADA to help ensure that customers with disabilities can use their services. Many small to medium sized businesses cannot afford a court case and are forced to settle and pay fees for a violation that they did not commit.

PMAA supports this legislation that would minimize the ability of predatory attorneys to harm petroleum marketers.

- **Transportation Issues**

President Trump outlined his vision for an infrastructure plan that includes federal grants to rural areas as well as to states and localities to create additional funding for infrastructure projects. He called on Congress to adopt his proposal for

cutting federal funding for U.S. highways and allocating \$200 billion in federal funding in exchange for incentivizing private companies to pour \$800 billion into roads, bridges, waterways and other transportation infrastructure over 10 years.

The gas tax is something politicians on Capitol Hill, especially Republicans, have tried to avoid at all costs. Many are hesitant to even talk about it. The 18.4 cent-per-gallon federal gas tax has been the main source of transportation funding for decades, but it has not been increased since 1993. Congress has been grappling since 2005 with a transportation funding shortfall that is estimated to be about \$16 billion per year, and it has not passed a transportation bill that lasts longer than two years in that span. Transportation advocates are pushing for a gas tax increase to pay for a long-term transportation bill, but Republican leaders in Congress have ruled out a tax hike. If the gas tax were to have been indexed to inflation since it was enacted in 1993, drivers would be paying about 30 cents per gallon on their gasoline purchases now. PMAA continues to monitor the issue and will report on any new developments.

Meanwhile, commercializing rest areas could jeopardize private businesses that have operated under the current law for the past 50 years and established locations at highway exits. Due to their convenient locations for motorists, state-owned commercial rest areas have established virtual monopolies on the sale of services to highway travelers. Allowing corporate logo advertising would not only hurt petroleum marketers and small businesses, but would also create a safety hazard. In June, PMAA joined twelve organizations in sending a [letter](#) to the House and Senate urging them to protect the ban on privatizing and commercializing interstate rest areas and to consider legislation to incentivize investments in America's infrastructure. The ban on the commercialization of rest areas has resulted in a strong, competitive economic environment with over 60,000 businesses developing along U.S. interstate highways. Prohibiting publicly-run rest areas from competing with private sector businesses has been an undeniable success, resulting in industries that provide valuable services such as gas stations, travel plazas, truck stops, restaurants, and hotels.

Finally, interstate tolling has become a significant issue. The American Trucking Associations and the Owner-Operator Independent Drivers Association and other members of the Alliance for Toll-Free Interstates are urging House Transportation Committee members not to use tolling of existing interstates as a financing method in the infrastructure package policymakers will develop later this year. Due to Congress's busy agenda, it is unlikely that an infrastructure package will be passed this year.

- **Ozone Standard**

Under the Obama Administration on October 1, 2015, the EPA set the ozone standard at 70 parts per billion (ppb), a reduction from the 75ppb level set in 2008. The new ozone standard places a burden on hundreds of counties nationwide which could mean costly reformulated gasoline (RFG) and lower Reid vapor pressure (RVP) fuels.

Fortunately, legislation has been introduced to combat issues associated with the 70ppb ozone standard. H.R. 806, known as the "Ozone Standards Implementation Act of 2017," passed by a vote of 29-24. The bill would ask the EPA to update its standards for ozone pollution every 10 years rather than every 5 years, the timeline currently set by federal law. Republicans argued that the bill will make it easier for cities and localities to come into compliance with federal ozone limits. PMAA supports this legislation because it provides a common-sense approach for implementing national ambient air quality standards, recognizes ongoing state efforts to improve air quality through a reasonable implementation schedule for the 2015 ozone standards, streamlines the air permitting process for businesses to expand operations and create jobs, would avert the spread of more RFG and lower RVP motor fuels from hitting the market and includes other reforms that bring more regulatory certainty to federal air quality standards. Last year, PMAA joined over 200 associations, companies and state groups in a letter of support for this legislation. The bill now moves to the House floor for a full vote.

PMAA has argued before the EPA, the White House and Congress that the EPA's 2015 ozone standard is unattainable and will result in more boutique fuels resulting in higher prices at the pump.

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

A pre-emption provision meant to ensure nationwide uniformity of meal and rest break standards for motor carriers was attached to an aviation reauthorization bill the Senate Commerce, Science and Transportation Committee approved June 29. Sen. Deb Fischer (R-NE) sponsored the provision that would ensure "a state, a political subdivision of a state, or a

political authority composed of two or more states may not enact or enforce a law, regulation, or other provision having the force and effect of law relating to meal or rest breaks applicable” to certain employees.

The provision would clarify a requirement in a 1994 aviation law to block a California law signed in 2011 that requires employers to provide a “duty-free” 30-minute meal break for employees who work more than five hours a day as well as a second “duty-free” 30-minute meal break for people who work more than 10 hours a day.

PMAA supports this legislation because it brings nationwide uniformity to the issue.