

PMAA CONCERNED WITH INFRASTRUCTURE REPORT ON E15

Last week, an E15 infrastructure report, produced under direction of the Renewable Fuels Association by the National Renewable Energy Laboratory (NREL), asserts that most existing fuel dispensing components are compatible with E15 and irresponsibly dismisses valid concerns of petroleum marketers regarding existing fuel infrastructure compatibility. PMAA believes the RFA-sponsored infrastructure report is misleading and could lead a reader to incorrectly conclude that E15 can be legally stored and dispensed using existing UST components already in the ground. The decision to market a new product, such as E15, can be a significant investment for petroleum marketers and it is important that they have a comprehensive understanding of the requirements and the potential risks presented by the storage, handling and distribution of the product. There are a number of issues associated with the information and conclusions presented in this report, many of which are discussed in an Energy Tomorrow Blog by Bob Greco, group director of downstream and industry operations at the American Petroleum Institute.

HOUSE HOLDS HEARING ON MENU-LABELING RULE MODIFICATION AND DELAY

On Thursday, the House Energy and Commerce Health Subcommittee held a hearing on the "Common Sense Nutrition Disclosure Act of 2015" (H.R. 2017). Witnesses were: Sonja Yates Hubbard, Chief Executive Officer, E-Z Mart Stores, Inc. on behalf of the National Association of Convenience Stores; Israel O'Quinn, Director of Strategic Initiatives, Food City on behalf of the Food Marketing Institute and the National Grocer's Association; Lynn Liddle, Executive Vice President, Communications, Legislative Affairs and Investor Relations, Domino's on behalf of American Pizza Community; Karen Raskopf, Chief Communications Officer, Dunkin' Brands, Inc; and, Margo Wootan, Director, Nutrition Policy, Center for Science in the Public Interest.

In November 2014, the FDA finalized regulations required by Section 4205 (Menu Labeling) of Obamacare. Unfortunately, under the final rule, convenience store owners with 20 or more locations doing business under the same name and offering for sale substantially the same menu items, are required to list calorie information for standard menu items, such as posting calorie information on menus and menu-boards. Specifically, the number of establishments owned and operated by a particular company/individual is not what matters under the rule. What matters is whether there are multiple locations doing business under the same name (and offering for sale substantially the same menu items). For example, if you own three businesses and there are no other businesses with that name, you are not covered. If you own three stores all with a branded name then you do meet this criteria. The menu labeling final rule also requires covered establishments to provide, upon consumer request and as noted on menus and menu boards, written nutrition information about total calories, total fat, calories from fat, saturated fat, trans fat, cholesterol, sodium, total carbohydrates, fiber, sugars and protein.

While all witnesses and Health Subcommittee members agreed on the need for delay of the final rule's implementation, the National Restaurant Association (NRA) continues to oppose H.R. 2017 and wants grocery and convenience stores be held to the same standard. H.R. 2017, which is sponsored by Rep. Cathy McMorris Rodgers (R-WA), would amend Section 4205 (Menu Labeling) of Obamacare, to establishments that derive 50 percent or more of their revenue from food for immediate consumption and/or prepared and processed on-site. H.R. 2017 would also permit retailers to identify a single primary menu while not having to include nutrition labeling in other areas of the store. Under the existing regulations, every area where food is on display must each include calorie information for every item sold there. Furthermore, the bill would clarify that advertisements and posters do not need to be labeled and would provide flexibility in disclosing the caloric content for variable menu items that come in different flavors or varieties, and for combination meals. H.R. 2017 would also ensure that retailers acting in good faith are not penalized for inadvertent errors in complying with the rule and stipulate that individual store locations are not required to have an employee "certify" that the establishment has taken reasonable steps to comply with the requirements. Stores would have 90 days to correct any alleged violation without facing enforcement action. Finally, the bill would also delay regulatory implementation for two years.

During the hearing it was announced that in order to make the bill more palatable to those who oppose it, language that would exempt retailers who derive 50 percent or less of their revenue from food for immediate consumption and/or prepared and processed on-site would be removed from H.R. 2017. While PMAA opposes removing the exemption language, the remaining portion of the bill is still solid and would give retailers the flexibility they need to comply with the menu-labeling regulations.

The Senate has yet to move forward on menu labeling reform legislation. However, 32 Republican and Democratic Senators including Senate Health Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) requested last month that FDA delay for one year implementation of the menu-labeling regulations which retailers are expected to comply by December 1, 2015.

HOUSE ADDRESSES INSURANCE MINIMUMS AND SUSPENSION OF 34 HOUR RESTART

This week, PMAA joined members of the Hours of Service (HOS) Coalition in a letter to all members of the House of Representatives in support of language to keep the current suspension of the 34-hour restart provisions of the HOS rule in effect until FMCSA completes its required study of the rule change. The language was included in the House Transportation-Housing spending bill that is expected to pass next Tuesday. Specifically, the language would only revoke the rule's suspension if FMCSA's impact report shows that "drivers who operated under the restart provisions demonstrated statistically significant improvement in all outcomes related to safety, operator fatigue, driver health and longevity, and work schedules, in comparison to commercial motor vehicle drivers who operated under the restart provisions in effect on June 30, 2013."

Also included in the Transportation-Housing spending bill is PMAA supported language which prohibits the Federal Motor Carrier Safety Administration (FMCSA) from using funds to issue and implement new Motor Carrier Financial responsibility requirements. Last year, FMCSA published an Advanced Notice of Proposed Rulemaking (ANPRM) that PMAA believes is the basis for a planned increase in financial responsibility (FR) requirements (insurance) for commercial motor vehicles. FMCSA has publicly entertained the idea of increasing requirements to as much as \$4.5 million per truck for general freight, and a hike to as high as \$10 million for petroleum marketers from the current \$750,000 in liability insurance for general freight, \$1 million for home heating oil and \$5 million for gasoline and other hazardous materials. Under this scenario, premiums would be increased approximately 500 percent. PMAA joined other groups in a letter sent earlier this week in support of the language.

Petroleum marketers in town recently for PMAA's Washington Conference "Day on the Hill" educated Congress on why there is no need to increase insurance minimums. Current FR requirements have been more than sufficient in ensuring over 99 percent of claims filed in motor vehicle crashes are fully covered since they were implemented subsequent to the passage of the Motor Carrier Act of 1980. In the rare instance that coverage is inadequate, claimants can pursue compensation in court for damages not covered by the carrier's insurance (assuming the motor carrier is at fault). FMCSA's ANPRM also ignores current market forces in the insurance industry that increase financial responsibility minimums when necessary to provide full coverage for damages based on risk. Ultimately, companies that cannot afford the increase would go out of business, resulting in less competition and increased prices. Furthermore, some insurance companies may not even be able to underwrite this level of exposure.

SENATE EPW COMMITTEE HOLDS HEARING ON PROPOSED OZONE STANDARD

On Wednesday, the Senate Environment and Public Works (EPW) Committee held a hearing on EPA's Proposed National Ambient Air Quality Standard for Ground-Level Ozone and the legislation that addresses the proposed rule.

Witnesses before the hearing were Kanathur Srikanth, Director, National Capital Region Transportation Planning Board, Metropolitan Washington Council of Governments; The Honorable Gary Moore, Judge/Executive, President, National Association of Regional Councils; Dr. Gregory Diette, Professor of Medicine, Epidemiology & Environmental Health Science, Johns Hopkins University; Michael McKee, Chairman, Uintah County Commission; Larry Greene, Executive Director, Sacramento Metropolitan Air Quality Management District.

Highlighting the importance of rolling back EPA's proposal was the surprise appearance at the hearing by Senate Majority Leader Mitch McConnell. The Majority Leader said that the proposed rule would be the costliest regulation in U.S. history and would have a serious detrimental effect on jobs. McConnell is a cosponsor of the Clean Air Strong Economies Act (S. 751), a bill championed by Sen. John Thune (R-S.D.). CASE would require 85 percent of the counties that haven't met ozone standards set in 2008 to achieve them before EPA can lower the standard further. CASE is one of several Republican measures introduced to roll back or eliminate EPA rulemakings.

Republican Senators focused their comments on the potential economic effects of the EPA's proposed revisions while Democratic Senators focused on health risks of exposure to ozone. Some witnesses called for additional resources to aid agencies in implementation of the new standards and that rural counties in particular would be in need of assistance. Questions were raised concerning the economic analysis commissioned by the National Association of Manufacturers (NAM) that projected the costs of a 65 ppb ozone standard would be far higher than estimated by the EPA. Following the hearing, NAM reported that it is a common misconception that costs would only be incurred with states that have nonattainment areas because the cost of complying would reverberate through the economy, affecting all states.

EPA plans to issue a final rule on a new national ozone standard by the court-ordered deadline of October 1, 2015. Last year, EPA issued a proposed rule on ozone to tighten the standard to 65 to 70 parts per billion (ppb), down from the 75 ppb set by a George W. Bush-era rule. EPA is also seeking comment on possibly setting it as low as 60 parts per billion or maintaining it at its current standard.

If EPA succeeds in adopting this new standard, it will have a significant negative consequence for gasoline refiners and retailers. The United States could see over 200 new counties impose RFG and/or lower RVP requirements for gasoline which would increase the cost of gasoline and stifle economic growth. PMAA is opposing this controversial rule.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

February 16 – 18, 2016 - WPMA Convention & Expo – Mirage Hotel, Las Vegas, Nevada

June 22 – 25, 2015 - Washington (WOMA) Convention – Suncadia Resort, Cle Elum, Washington

August 5 – 7, 2015 - Idaho (IPM&CSA) Convention - Sun Valley Lodge - Sun Valley, Idaho

August 17-19, 2015 – New Mexico (NMPMA) - Marriott Pyramid North – Albuquerque, New Mexico

September 15-17, 2015 - Utah (UPMRA) Convention - Park City Marriott - Park City, Utah

August 3 – 5, 2016 - Idaho (IPM&CSA) Convention - Coeur d'Alene Resort - Coeur d'Alene, Idaho

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Petro Pete: "It's called summer "break" because that is what your kids will do to everything in the house until school starts again."

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Contact Juan @ 208.724.3390 or ipejuan3@gmail.com