

February 28, 2020

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WPMAEXPO 2020 – THANKS FOR MAKING IT A SUCCESS!

Thank You to all our WPMA members, associates and friends who attended the WPMAEXPO 2020 in Las Vegas last week. It was an outstanding convention – full of informative Educational Sessions with timely topics, Keynote Paul Ryan, and an outstanding Trade Show highlighting the newest and greatest in goods and services.

Our raffle giveaway was a great hit! Congratulations to Nick Adams who won 2 electric bikes, 2 motorized scooters, a generator and gas tank. Thanks to all who purchased raffle tickets.

This year the Scholarship Foundation golf tournament was played at Reflection Bay Golf Club on the shores of Lake Las Vegas! It was a beautiful, sunny day on the course; thank you to all who participated.

And a big Thank You to all our convention sponsors. Through your generous support the WPMAEXPO 2020 was a big success.

We'll see you February 16-18, 2021 in Las Vegas!

THANK YOU *WPMAEXPO* 2020 TOP SPONSORS

*Presidential**as of January 10, 2020**Premier*

SCHOLARSHIP APPLICATION MAILING DEADLINE IS MONDAY, MARCH 1ST!!

The time is fast approaching when the WPMA scholarship recipients for 2020 will be selected. **MONDAY, MARCH 1ST IS THE CUT-OFF DATE** for applications to be **E-MAILED IN OR POSTMARKED AND MAILED** to the WPMA office. Usually, there are less than 10 applicants for each WPMA state scholarship and the associate member scholarship, which makes the chances of receiving a scholarship very good. Applicants must be graduating high school seniors, and the son or daughter of a full-time employee of a WPMA member or associate member company.

NEW THIS YEAR! High School seniors who are currently working part-time for a WPMA member company, and have been employed for at least 90 days, may also apply for the scholarship.

Newly Updated applicant qualification information and submission options are listed on the updated scholarship application, available at <https://www.wpma.com/pdf/scholarship/Scholarship-Application2020.pdf>. Scholarship applications are also available by e-mailing kathym@wpma.com and requesting an application.

The WPMA scholarships pay \$500 per semester for up to eight semesters, for a maximum award of \$4,000. **Employers, please remind all of your full-time employees or part-time senior student employees to request or download an application right away, and give our students a chance for some extra financial help with college or vocational training!**

USDA ANNOUNCES \$100 MILLION GRANT PROGRAM FOR E15 INFRASTRUCTURE UPGRADES

The United States Department of Agriculture (USDA) announced it will publish a Notice of Funding Availability (NOFA) of up to \$100 million in competitive infrastructure grants to promote the distribution of higher ethanol and biodiesel blends. The grant money will be made through the Higher Blends Infrastructure Incentive Program (HBIP) and is available to assist retail fueling and biodiesel facilities with converting equipment to handle higher biofuel blends such as E15 and B20. Eligible entities for HBIP grants include: retail fueling stations, convenience stores, hypermarket fueling stations, fleet facilities, etc. Consideration for eligibility will also be given to biodiesel terminal operations and home heating oil distribution networks. Grants for retail gasoline stations will be made available for the installation of fuel pumps, related underground storage tank system equipment and other infrastructure.

PMAA submitted written comments to the USDA requesting priority for applicants converting retail infrastructure to E15 compatible equipment. PMAA requested that funding not be limited to dispensers alone, but available for all UST system equipment. The USDA will launch the program in the early spring and will provide information on the application process and evaluation criteria in an upcoming notice. PMAA will report on these requirements as they are made available.

REMINDER: ANNUAL EPCRA TIER II REPORTS DUE MARCH 1ST

PMAA Compliance Bulletin

EPA EPCRA Tier 2 reports must be filed for by March 1, 2020 for the 2019 reporting year. Facilities that store over 10,000 pounds of hazardous chemicals onsite at any point during the previous calendar year must file an EPCRA tier II report. This means any amount of petroleum product stored on site, in bulk plants (above ground and underground), marinas, wholesale fleet fueling facilities, skid tanks and heating oil tanks used to heat facility buildings must be counted towards the 10,000-pound reporting threshold. Also, retail gasoline facilities with 75,000 gallons or less of gasoline storage capacity and 100,000 gallons or less of diesel fuel storage capacity are exempt from EPCRA reporting requirements. Retail gasoline facilities with storage capacities greater than the 75,000/100,000-gallon reporting threshold do not qualify for this exemption. Instead, these facilities must apply the 10,000-pound threshold to determine whether an EPCRA Tier II report must be filed.

HOUSE PASSES LEGISLATION BANNING FLAVORED TOBACCO SALES

Senate Not Likely to Vote on the Bill

Today, the House passed H.R. 2339, the "Reversing the Youth Tobacco Epidemic Act of 2019," by a vote of 213-195. 17 Democrats voted against the bill and 5 Republicans voted for the bill. 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.

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.

Although the House passed the bill, Senate Majority Leader Mitch McConnell (R-KY) is not likely to bring the bill up for a vote in the Senate. PMAA opposes the bill because it is adult prohibition. As with alcohol and marijuana, banning products to dictate adult behavior doesn't work. Instead, it drives consumers to the illegal market, which hurts small businesses.

NLRB ISSUES FINAL JOINT EMPLOYER RULE

States Sue DOL Over Its Recent Joint Employer Final Rule

The National Labor Relations Board (NLRB) released a final rule that determines if companies are classified as joint employers under the law. Under the final rule, a company is considered a joint employer of another company's employees only if the two share or co-control the employees' "essential terms and conditions of employment, which are exclusively defined as wages, benefits, hours of work, hiring, discharge, discipline, supervision, and direction." In a statement, NLRB Chairman John Ring said that the final rule "gives our joint-employer standard the clarity, stability, and predictability that is essential to any successful labor-management relationship and vital to our national economy." The final rule is set to take effect on April 27, 2020.

The announcement comes one month after the Department of Labor (DOL) issued a similar rule to revise and update its regulations interpreting joint employer status under the Fair Labor Standards Act (FLSA). The DOL final rule provides updated guidance for determining joint employer status when an employee performs work for his or her employer that simultaneously benefits another individual or entity, including guidance on factors that are not relevant when determining

joint employer status. The effective date of the rule is March 16, 2020.

As expected, DOL's rule established a "high bar" for joint-employment under the FLSA, which is supported by PMAA and is an important shift away from Obama-era policy.

The final rule:

- Specifies that when an employee performs work for the employer that simultaneously benefits another person, that person will be considered a joint employer when that person is acting directly or indirectly in the interest of the employer in relation to the employee;
- Provides a four-factor test to determine when a person is acting directly or indirectly in the interest of an employer in relation to the employee, by weighing whether the business, with regard to its franchisee or contractor, maintains the power to hire and fire; to supervise schedules and "conditions of employment;" to set pay; and to keep employment records; and
- Clarifies that an employee's "economic dependence" on a potential joint employer does not determine whether it is a joint employer under the FLSA; and specifies that an employer's franchisor, brand and supply, or similar business model and certain contractual agreements or business practices do not make joint employer status under the FLSA more or less likely.

The final rule also provides several examples applying the Department's guidance for determining FLSA joint employer status in a variety of different factual situations

However, this week, seventeen states and the District of Columbia filed a lawsuit to overturn the joint employer final rule issued by the DOL. In the complaint, the state attorneys general argued that the final rule is "arbitrary and capricious."

BRADY SAYS NO GAS TAX ANYTIME SOON

Speaking to Politico yesterday, Rep. Kevin Brady (R-TX) said that he doesn't believe there is a much of an appetite among Republicans to index the federal gas tax, saying, "We have just not had a groundswell of support at all, or even really any major change." Brady did say, however, that he was surprised to hear that some Senate Republicans have expressed interest in a funding package that would index the gas tax.

Although there may not be interest among much of the GOP to adjust the gas tax, there are some Republicans who are open to supporting the idea. Rep. Rodney Davis (R-IL), who is the top Republican on the House Transportation and Infrastructure Subcommittee on Highways and Transit, expressed his support this week for a package that would index the gas tax, in addition to requiring a road use fee for electric vehicles (EVs) and an eventual vehicle miles traveled (VMT) fee. Additionally, House Transportation and Infrastructure Committee Ranking Member Sam Graves (R-MO) is also open to the idea of increasing the gas tax, but only if it is "revenue neutral." However, Graves said that the most important things to focus on now are fees for EVs and other alternative fuel vehicles.

FAR FEWER SMALL REFINERY EXEMPTIONS FOR 2020

Republican Senators Urge Trump to Fight Court Ruling

As PMAA reported last week, the EPA has been seeking guidance from the White House on the future of the biofuel waivers program that issues small refinery exemptions (SREs) from the RFS. According to the reports, for 2020 ethanol blending requirements, EPA will issue far fewer RFS exemptions for small refineries looking to reduce their 2020 obligations. Specifically, EPA is expected to reject 23 petitions for exemptions.

This issue is important to petroleum marketers because high RIN prices leads to an unlevel playing field in the motor fuels market. Following the reports that the Administration would reduce the number of exemptions, RIN prices had increased 24 cents according to OPIS.

The move comes in response to a January court decision in which a U.S. appeals court ruled that the EPA had exceeded its authority and must reconsider the SREs that it had granted to three different oil refineries. That court said only refineries that had exemptions continuously since 2011 could apply for new ones.

Biofuel groups have grown increasingly irritated over the EPA's granting of SREs. Many have argued that the numerous refinery waivers from the past few years have indirectly reduced the ethanol mandate which have driven down RIN values and, therefore, weakened the market for E15 aka "unleaded 88." Furthermore, midwestern Senators have criticized the EPA for granting the refinery waivers and not reallocating them to other obligated parties to make up for the lost gallons.

Meanwhile, Republican oil state senators are urging President Trump to fight the court ruling, raising the possibility that last-minute pressure could spur the White House to alter course. Senators Barrasso and Enzi of Wyoming, as well as Sens Crapo (Idaho), Daines (Montana), Lee (Utah), Cruz (TX), Wicker (MS), Toomey (PA), Lankford (OK), Kennedy (LA), Shelly Moore Capito (W.Va.), Inhofe (OK) and Risch (Idaho) sent a letter yesterday noting that if the ruling is allowed to

stand, dozens of those facilities will be put “under severe financial strain and thousands of jobs would be jeopardized.”

According to Chet Thompson, president of the American Fuel and Petrochemical Manufacturers, “This decision would deprive EPA of a critical tool used to help small refineries disproportionately impacted by the RFS.” He added, “We hope the EPA will appeal this ruling and at the very least limit its impact to the 10th Circuit.”

Also, because of the reduction of exemptions, EPA may revise its blending mandate for this year. Currently, the rule requires refiners to blend an extra 770 million gallons to make up for small refinery exemptions that are now unlikely to be issued.

CDC RECOMMENDATIONS FOR BUSINESSES REGARDING CORONAVIRUS

Trump Administration to Use Portion of LIHEAP Funds to Fight It

As reported on February 14 by PMAA, the Centers for Disease Control and Prevention (CDC) has posted interim guidance for businesses and employers to plan and respond to the 2019 novel coronavirus, now officially renamed COVID-19. Click [here](https://www.cdc.gov/coronavirus/2019-ncov/guidance-business-response.html) (https://www.cdc.gov/coronavirus/2019-ncov/guidance-business-response.html) to view the guidance. CDC will update this interim guidance as needed and as additional information becomes available. For general and other useful information regarding COVID-19, please click [here](https://www.cdc.gov/coronavirus/2019-ncov/index.html) (https://www.cdc.gov/coronavirus/2019-ncov/index.html). CDC print resources to share with employees are also available [here](https://www.cdc.gov/coronavirus/2019-ncov/communication/factsheets.html) (https://www.cdc.gov/coronavirus/2019-ncov/communication/factsheets.html), including, “What you need to know” and “How to stop the spread of germs”

To fund the fight against the coronavirus, the Trump Administration announced this week that it will be shifting up to \$136 million in funding from certain health programs. Unfortunately, however, of that \$136 million, more than \$37 million dollars is expected to be tapped from the Low-Income Home Energy Assistance Program (LIHEAP) that is vital in serving low income consumers of home heating fuel. PMAA is working with the National Energy and Utility Affordability Coalition (NEUAC) to respond appropriately.

WOTUS 2.0 CHALLENGED BY ENVIRONMENTAL GROUPS

In a step to challenge the Administration over the new Waters of the United States (WOTUS) rule, environmental groups filed a Notice of Intent (NOI) on February 18 to sue EPA and the U.S. Army Corps of Engineers. The rule which was finalized on January 23, 2020 is important to marketers because it removed barriers imposed by the Clean Water Act (CWA) to development of areas categorized as “wetlands” that are dry except for occasional severe storm runoff. The Trump Administration's WOTUS 2.0 shrinks the number of creeks, bogs and marshes that fall under federal authority by limiting the definition of “adjacent waterways” that trigger areas for federal protection as wetlands.

For the first time, the agencies are streamlining the definition so that it includes four simple categories of jurisdictional waters, provides clear exclusions for many water features that traditionally have not been regulated, and defines terms in the regulatory text that have never been defined before. Congress, in the CWA, directed the Agencies to protect “navigable waters.” The Navigable Waters Protection Rule regulates these waters and the core tributary systems that provide perennial or intermittent flow into them.

Under the final rule, four clear categories of waters are federally regulated: the territorial seas and traditional navigable waters; perennial and intermittent tributaries to those waters; certain lakes, ponds, and impoundments; and wetlands adjacent to jurisdictional waters. The final rule also details 12 categories of exclusions, features that are not “waters of the United States,” such as features that only contain water in direct response to rainfall (e.g., ephemeral features); groundwater; many ditches; prior converted cropland; and waste treatment systems. The final rule clarifies key elements related to the scope of federal Clean Water Act jurisdiction, including:

- Providing clarity and consistency by removing the proposed separate categories for jurisdictional ditches and impoundments.
- Refining the proposed definition of “typical year,” which provides important regional and temporal flexibility and ensures jurisdiction is being accurately determined in times that are not too wet and not too dry.
- Defining “adjacent wetlands” as wetlands that are meaningfully connected to other jurisdictional waters, for example, by directly abutting or having regular surface water communication with jurisdictional waters.
- The Navigable Waters Protection Rule is the second step in a two-step process to review and revise the definition of “waters of the United States” consistent with the February 2017 Presidential Executive Order entitled “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States.’”

The EPA and the Army held a public webcast to help explain the key elements of the final Navigable Waters Protection Rule earlier this month. The webcast was recorded and the link is available [here](https://www.youtube.com/watch?9=&v=dt_OoxYU0-M) (https://www.youtube.com/watch?9=&v=dt_OoxYU0-M).

The NOI was filed in the U.S. District Court for the District of South Carolina, the groups, collectively known as

Waterkeeper, as well as other groups including the Center for Biological Diversity, Center for Food Safety, Turtle Island Restoration Network, Monterey Coastkeeper, Missouri Confluence Waterkeeper, Rio Grande Waterkeeper, Snake River Waterkeeper, and Sound Rivers.

WPMA EXPO

February 16-18, 2021. The Mirage Las Vegas, Nevada.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

April 21, 2020 – IPM&CSA PAC Golf Tournament – Ridgecrest GC – Nampa, ID

April 21-23, 2020 - Federated Insurance Risk Management Academy

May 7-8, 2020 – Nevada NPM&CSA – Big Dogs - Las Vegas, NV

June 2-3, 2020 – Montana MPMCSA – Convention – Fairmont Hot Springs Resort – Fairmont, MT

June 22-25, 2020 – Washington (WOMA) – Convention – Suncadia Resort – Cle Elum, Washington

August 5-7, 2020 – Idaho (IPM&CSA) Convention – Coeur d’ Alene Resort – Coeur d’ Alene, Idaho

August 17-19, 2020 – New Mexico (NMPMA) Convention – Sandia Resort & Casino – Albuquerque, NM

September 9-10, 2020 – Utah (UPMRA) – Convention – Park City Marriott – Park City, Utah

September 15-17, 2020 - Federated Insurance Risk Management Academy

November 2, 2020 – Hawaii (HPMA) Golf Tournament – Oahu Country Club – Honolulu, HI

February 16-18, 2021 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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Petro Pete: “Americans are incredibly impatient. Someone once said that the shortest period of time in America is the time between when the light turns green and when you hear the first horn honk.”

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