

March 1, 2019

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WP-03-01-19

## **WPMAEXPO 2019 WAS A SUCCESS!**

Thank You to all our WPMA members, associates and friends who attended the 2019 WPMAEXPO in Las Vegas last week. It was an outstanding convention – full of informative Educational Sessions with timely topics, Keynote Steve Bannon, and an outstanding Trade Show highlighting the newest and greatest in goods and services. The new “Get Up and Go” breakfast was a great gathering place for early morning group meetings at a reserved table, without waiting in restaurant lines.

Our two off-road vehicle giveaways were a great hit! Thanks to all who played the “heads and tails” game following the keynote session for a chance to win a 2019 off-road Quad ATV, or who purchased raffle tickets for the Can-Am side-by-side UTV giveaway. Congratulations to Melinda Farias who won the ATV, and to Sami Dabbas, who won the Can-Am side-by-side UTV!

This year the Scholarship Foundation golf tournament was played at Bali Hai, the only championship golf course remaining on the famed Las Vegas Strip! It was a sunny but cool day on the course; thank you to all who participated.

A highlight of the tournament came during the two-shot “Hole-In-One” contest sponsored by **Petro West, Inc.** to benefit the WPMA scholarship Foundation. Mr. Harve Howard of Washington state shot his first hole-in-one in his 50 years of golfing on his first swing on the contest hole, and was the winner of the two Harley-Davidson motorcycles that were stationed at the hole during the tournament. Congratulations to Harve on his great win! Petro West donated the \$720 they raised from the hole-in-one tournament to the WPMA Scholarship Foundation, to help further educational opportunities for students from WPMA member and associate member companies.

## **ANNUAL EPCRA TIER II REPORTS DUE MARCH 1ST**

EPA EPCRA Tier II reports must be filed by March 1, 2019 for the 2018 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.

Click [here](#) to view the compliance bulletin from PMAA Counsel.

## **TAX PACKAGE INTRODUCED TO EXTEND BIODIESEL CREDIT AND OIL SPILL LIABILITY TAX**

Yesterday, Senate Finance Committee Chairman Chuck Grassley (R-IA) introduced legislation to retroactively extend through 2019 the \$1 per gallon biodiesel tax credit that expired at the end of 2017. Additionally, the Oil Spill Liability Tax (OSLT) would be extended through 2019 and the good news for petroleum marketers is that it would not be applied retroactively. For instance, if the bill is signed into law in March, then the OSLT would be effective the first day of the first month following passage, which would mean April 1, 2019. Again, the prospects of passage depend on whether Congress can find a legislative vehicle to attach the tax extenders bill. At this time, it remains to be seen when that would happen, although, several House members have expressed their support for addressing tax extenders. The House plans to hold hearings on tax extenders in March.

Early this month, PMAA, NEFI and several other groups sent a letter to House and Senate leadership in support of a 2018 retroactive renewal of the \$1 per gallon biodiesel blender's tax credit, which expired on December 31, 2017. Further, the letter urges Congress to include a multi-year extension of the credit. Click [here](#) to view the letter and to urge your representatives to support the biodiesel blender's tax credit, click [here](#).

Additionally, PMAA and other groups sent a letter to Congressional tax writing committees to oppose the retroactive renewal of the OSLT and to renew only on a prospective basis after the date of enactment. Applying an excise tax to 2019 transactions that have already been processed and the associated products sold multiple times would create significant transactional concerns and potential legal implications within the entire fuel supply chain. Click [here](#) to view the OSLT letter.

## **USDA AND EPA DISAGREE OVER WHETHER YEAR-ROUND E15 RULE WILL BE FINISHED BY JUNE**

On Wednesday, at a House Agriculture Committee hearing, Department of Agriculture (USDA) Secretary Sonny Perdue spoke to lawmakers about the state of farming and the economy. In response to a question from Rep. Don Baker (R-NE) regarding rules that would allow year-round sales of E15, Secretary Perdue said, "Unfortunately, those rules probably will not be out for the driving season," later adding, "Had the shutdown not occurred I think we'd been able to see the E15 rules before driving season, now it won't happen." However, he said that the USDA is pushing EPA to announce a policy of "discretionary enforcement" for fuel retailers who would like to sell E15 during the summer months.

However, shortly after Perdue made those comments, the EPA responded saying that they are "planning on releasing its RVP/RIN market reform proposal in March and working expeditiously to propose and finalize the rule consistent with the President's direction before the start of the summer driving season." Later in the day, newly confirmed EPA Administrator Andrew Wheeler disputed the comments made earlier in the day by Secretary Perdue, saying, "That is not a fact. We are working hard to get it done before summer driving season."

Publication of the EPA's proposed rule to permit year-round sales of E15 and impose new biofuel credit trading limits is expected soon.

## **ANDREW WHEELER CONFIRMED AS EPA ADMINISTRATOR**

Yesterday, the Senate voted to confirm Andrew Wheeler to lead the EPA. The Senate voted along mostly party lines, 52-47, with Sen. Susan Collins (R-ME) being the only Republican senator to vote against Wheeler's confirmation. While all but one Republican voted in favor of Wheeler, some have raised concerns about some of the decisions he made as Acting EPA Administrator.

Last month, five Republican senators sent a letter to Wheeler warning him that their support for his nomination would depend on whether he will take steps to help oil refiners forced to blend biofuel into gasoline, saying, "Without an adequate proposal to meaningfully lower the regulatory burden, we will have serious concerns with your nomination." The letter, led by Sen. Ted Cruz (R-TX), was also signed by senators from other states with oil refining interests, including Pat Toomey (R-PA), Mike Lee (R-UT), John Kennedy (R-LA) and Bill Cassidy (R-LA).

In the letter, they asked Wheeler if the EPA is looking to adjust biofuel blending targets as part of an upcoming reset of the RFS program and asked him to affirm that under a recent court ruling, EPA is not required to redistribute waived biofuel quotas to non-exempted refineries. They also asked Wheeler if he would continue to grant small refinery exemptions where warranted and if the EPA is considering reforms to the Renewable Identification Number (RIN) market that could prevent market speculation and manipulation.

## **COALITION ADVISES CONGRESS ON DATA PRIVACY LEGISLATION**

This week, in advance of hearings before the House Energy and Commerce Committee and the Senate Commerce Committee, PMAA and other members of the Main Street Associations Coalition sent letters to the House and Senate outlining our required key principles for federal data privacy legislation.

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 of 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](#) to view the letter to the House and [here](#) to view the letter to the Senate.

## **BILLS INTRODUCED TO REVAMP SOCIAL SECURITY**

Recently, Rep. John Larson (D-CT) introduced the Social Security 2100 Act (H.R. 860) which would make major changes to Social Security, including increasing benefits and requiring additional contributions from employees and employers. The bill has 202 cosponsors, all Democrats.

Under this legislation:

- Social Security benefits would be increased for all recipients by an amount equal to two percent of the average benefit;
- The annual cost of living adjustment (COLA) formula would be enhanced to reflect the costs incurred by seniors, particularly health care costs;
- There would be a new minimum benefit which would be set at 25 percent above the poverty line;
- Individuals would only be taxed on Social Security benefits if non-Social Security income exceeded \$50,000 for individuals or \$100,000 for couples (today the income levels for taxing Social Security are \$25,000 and \$32,000).

However, these additional benefits would come at a cost. Today, no payroll taxes are imposed on wages over \$132,900. This legislation would continue to impose payroll taxes on wages up to \$132,900 but would also then start imposing payroll taxes again on all wages above \$400,000. According to the bill's summary, this new imposition of payroll taxes on wages above \$400,000 would only affect the top 0.4 percent of wage earners. The contribution rate for the employee and the employer would gradually increase beginning in 2020 through 2043 from 6.2 percent to 7.4 percent.

Even though the summary of the bill makes it seem as if this change would cost the majority of workers almost nothing (it claims 50 cents a week for the "average worker"), the impact on businesses could be significant because these employers would be paying in at the higher rate for all of their employees. While the summary is looking at the cost from the viewpoint of an "average wage" income earner, the cost to the business is likely to be quite significant. The employer cost is not addressed at all in the summary. The additional contributions that the bill would require from employees and employers are intended to ensure the solvency of the Social Security Trust Fund for the next 75 years, even with the increased benefits.

Meanwhile, Senator Bernie Sanders (I-VT) introduced the Social Security Expansion Act (S. 478) which is similar to H.R. 860. Rather than restarting payroll taxes on wages above \$400,000, this legislation would start imposing payroll taxes on wages above \$250,000. Senator Sanders claims this will not affect 98.2 percent of all wage earners. S. 478 would also increase benefits for low-income workers by about \$1,300 a year and would also establish a new minimum benefit equal to 125 percent of the poverty line. Moreover, it would restore student benefits for children of disabled or deceased workers up to age 22 for full time students enrolled in a college or vocational school (this benefit was eliminated in 1983). Finally, it would make the same change to the COLA as H.R. 860. This bill has four co-sponsors, all Democrats.

It is likely that changing Social Security will be a priority of this Congress, however, the Republican controlled Senate is unlikely to take up this legislation.

## **CONGRESS FOCUSED ON INFRASTRUCTURE AND CLIMATE POLICY**

### ***Democrats Introduce Dialed-Back Climate Resolution***

This week, numerous hearings on climate change took place in several committees in both the House and the Senate. On Tuesday, the House Transportation and Infrastructure Committee held a hearing on "Examining How Federal Infrastructure Policy Could Help Mitigate and Adapt to Climate Change" to discuss infrastructure policies as they relate to climate change.

Although lawmakers from both parties were interested in figuring out bipartisan solutions for new infrastructure projects at the hearing, Democrats wanted to focus on climate change and Republicans wanted to focus on limiting the role that the federal government should play in shaping infrastructure policy. Before the hearing, the committee's Democratic staff passed around a white paper to lawmakers underscoring three things it said should be undertaken swiftly regarding climate change that included: (1) Improving fuel efficiency standards; (2) Shifting from fossil fuels to electricity and other sources; and (3) Reducing the number of vehicle miles traveled.

Transportation and Infrastructure Committee Ranking Member Sam Graves (R-MO) and others stressed that the best federal approach to ensuring cleaner, more resilient transportation and infrastructure is to enact policies that provide flexibility, foster innovation and allow the private sector to continue responding to consumer-driven demand. Two other Republicans on the committee also questioned whether the federal government should take action. "It looks like companies and industry are already being environmentally conscious," said Rep. Rodney Davis (R-IL). Davis also asked the committee, "Why do we need a top-down approach to environmental regulation?" Rep. Scott Perry (R-PA) expressed skepticism and waived around a research paper, saying the science of climate change was "a bit murky."

Professor Lyon from the University of Michigan's School of Business discussed the need to focus on market-based solutions. Lyon stated, "Economists have long advocated market-based solutions to environmental problems" which "minimizes the total cost of achieving a given level of environmental protection and provides dynamic incentives for innovation in pollution control." Further, he warned lawmakers about settling only on one new promising technology as the next great thing, saying that "this has sent confusing signals to make it hard for the U.S. auto industry to make long term investment plans for alternative fuel vehicles."

Electric vehicles (EVs) were also a popular topic at the hearing. Ms. Arroyo suggested focusing on the use of EVs, adding that "Congress might also consider the feasibility and potential benefits and costs of exempting EV charging stations and renewable power installations from federal restrictions on commercial activity in the interstate right-of-way." However, some lawmakers weren't convinced that EVs were the right way to go. Rep. Gary Palmer (R-AL) stated that even though the federal government and state governments have issued significant tax credits for the purchase of EVs, he considers the current market for EVs a "wounded market." Further that over 80 percent of the people who purchase EVs earn over \$100,000 which indicates that EVs are not helping the poor and middle classes. Rep. Lloyd Smucker (R-PA) suggested that EV subsidies will eventually need to end and it may be time for the government to consider placing a user fee on EVs.

Senate Democrats released a climate resolution this week that is a dialed-back version of the Green New Deal essentially stating that climate change exists, that human activity is the main cause of climate change and that Congress should take immediate action to address it. Democrats have urged Republicans to join them in supporting the resolution, but it is not

likely that many of them will. The resolution comes in response to Senate Majority Leader McConnell's (R-KY) recent announcement that he will bring a vote to the Senate floor on the Green New Deal sometime before August which may put pressure on many Democrats. The Democrat's new resolution, in turn, is to put pressure on Republicans.

## **CONGRESS REINTRODUCES BIPARTISAN BILL TO LOWER DRIVING AGE FOR TRUCKERS**

### ***House Transportation Chairman Supports Gas Tax Increase and the Return of Earmarks***

This week, Senators Todd Young (R-IN) and Jon Tester (D-MT) reintroduced the bipartisan "Developing Responsible Individuals for a Vibrant Economy Act," also known as the "DRIVE-Safe Act," and Rep. Trey Hollingsworth (R-IN) reintroduced a companion bill in the House. The bill would allow drivers 18 and older to operate across state lines if they meet rigorous training requirements. The training requirements would include at least 400 hours of on-duty time with 240 hours of driving time with an experienced driver training them. Training would also be restricted to trucks equipped with active braking systems, video monitoring systems and speed limiters set to 65 mph or slower.

Also, this week, House Transportation and Infrastructure Chairman Peter DeFazio (D-OR) and Senator Tom Carper (D-DE), the Ranking Member on the Environment and Public Works Committee announced their support for an increase in the federal motor fuels tax to support the Highway Trust Fund (HTF) in the short-term while Congress determines how to pay for the nation's infrastructure. A new surface transportation authorization bill, which authorizes the HTF fund, must be passed before the current law expires September 30, 2020.

Chairman DeFazio has called on Congress to bring back earmarks, which he refers to as "Article I projects" bringing back congressional ability to request funding for specific projects in their states or districts. "Why shouldn't elected representatives, through a transparent process, be able to spend a small amount of money, bring it home, and show people what they're going to get for a small increase in their gas tax?" Earmarks have been banned since 2011 and will require leadership to allow for them again.

## **UPDATE ON INTERCHANGE FEE SETTLEMENT**

Recently, the US District Court for the Eastern District of New York issued an 80-page Opinion and Order granting preliminary approval to the pending \$6.24 billion settlement in the consolidated payment card interchange fee class action case (In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL-1720). The settlement class is comprised of all merchants that accepted Visa and Mastercard payment cards from Jan. 1, 2004 to Jan. 25, 2019. The settlement fund is designed to compensate class members for the interchange fees they paid, which were allegedly inflated as a result of certain violations of the antitrust laws by Visa and Mastercard and their participating banks.

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

Given that branded petroleum marketers ultimately paid the fees, PMAA General Counsel, Bassman, Mitchell, Alfano & Leiter, Chartered, **have drafted this template (attached) for marketers to send to their supplier(s) requesting that any settlement monies they receive be paid on a pro rata basis to their branded marketers from the Visa/MasterCard interchange fee settlement case.** If you have any questions, please contact PMAA General Counsel Al Alfano at [aalfano@bmalaw.net](mailto:aalfano@bmalaw.net) or Bob Bassman at [bbassman@bmalaw.net](mailto:bbassman@bmalaw.net).

Upon receiving the Court-approved Notice, branded and unbranded marketers will have three options. They are:

1) **Opt out of the Settlement Class.** Marketers who would like to continue to pursue the litigation against Visa and MasterCard, in lieu of settling their claims, will have an opportunity to opt out of the settlement class by providing the court with an opt out notice. The Notice you receive from the Court will advise you how to opt out and provide you with a deadline for opting out and the address to which the opt -out notice should be sent. If you opt out, you will not be able to file objections to the settlement, and you will not be eligible to file a claim against the settlement fund when and if the settlement receives "final" approval from the Court. In other words, you will receive no compensation from the settlement fund if you opt out. If you continue to pursue litigation against Visa and MasterCard by opting out, you must retain counsel at your own expense. The current class counsel will no longer represent you.

2) **Object to The Settlement.** You may file objections to the settlement without waiving your right to file a claim against the settlement fund after final approval is given. You may not object to the settlement if you opt out. The deadline to file your objections is July 23, 2019. Click [here](#) and go to page 12 to learn how to object or call 1-800-625-6440. If you have any questions concerning the objection process, you can also reach out to PMAA General Counsel Al Alfano or Bob Bassman.

3. **Do Nothing.** If you neither opt out of the settlement class nor file an objection, you will be eligible to file a claim against the settlement fund at the appropriate time after final approval of the settlement is given by the Court. After final approval is given, either in November of 2019 or later, you will receive a claim form from the Court with instructions on how to fill it out and the address to which it should be sent by regular mail or electronically. When you receive the Court-approved Notice, read it carefully to decide whether to opt out, to file objections, or to simply do nothing. As long as you do not opt out of the settlement class, you will be eligible to file a claim against the settlement fund at the appropriate time, provided you are a retailer who accepted Visa or MasterCard.

If you accepted the cards during the settlement period and do not receive the Court approved notice by March 15<sup>th</sup>, please contact the Class Administrator: Call the toll-free number: 1-800-625-6440; Visit [www.PaymentCardSettlement.com](http://www.PaymentCardSettlement.com); Write to: Payment Card Interchange Fee Settlement, P.O. Box 2530, Portland, OR 97208-2530; Email: [info@PaymentCardSettlement.com](mailto:info@PaymentCardSettlement.com).

## PLAN TO ATTEND THE 2020 WPMAEXPO

# WPMAEXPO

Mark your calendars for February 18-20, 2020. Make plans now to attend the 2020 WPMAEXPO. It will be held once again at the Mirage in Las Vegas, Nevada.

### MARK YOUR CALENDARS FOR UPCOMING EVENTS

**May 2-3, 2019** – Nevada (NPM&CSA) – Big Dogs – Las Vegas, NV

**June 4-6, 2019** – Montana (MPMCSA) Convention – Fairmont Hot Springs Resort – Fairmont, MT

**June 20, 2019** – Utah (UPMRA) Summer Golf Classic - South Mountain Golf Course, Draper, UT

**June 17-20, 2019** – Washington (WOMA) Convention – Suncadia Resort, Cle Elum, WA

**August 5-7, 2019** – Idaho (IPM&CSA) Convention – Sun Valley Resort, Sun Valley, ID

**August 19-21, 2019** – New Mexico (NMPMA) Convention – Sandia Resort & Casino, Albuquerque, NM

**September 11-13, 2019** – Utah (UPMRA) – Convention – Zermatt Resort, Midway, UT

**February 18-20, 2020** – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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**Petro Pete: “I am thinking the unthinkable. How is that even possible?”**

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## CLASSIFIED ADS

### **FOR SALE**

2001 Kenworth T800 fuel truck and trailer with 2001 Onnen tanks. 12,800 gallons total capacity. \$82,000. Please call Guy or Justin at 208-765-2266 if interested.