WPMA
News and Information for the Petroleum Marketers Industry
weekly update

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TRUMP ADMINISTRATION ISSUES PROPOSED OVERTIME RULE

Yesterday, the Department of Labor issued a proposed rule to expand overtime eligibility, setting the threshold at $35,308 ($679 per week), compared to the current $23,660 ($455 per week). The proposed rule does not include automatic inflation adjustments as the Obama Administration rule required. The $35,308 threshold is close to Labor Secretary Alexander Acosta's suggested overtime salary during his confirmation hearings, but well below the $47,500 that the Obama Administration would have imposed.

Late in December 2016, a U.S. District Court Judge for the Eastern District of Texas blocked the Obama Administration's final overtime rule just days before it was to go into effect. PMAA welcomed this news because if the overtime rule were to be implemented, many employers would be faced with the possibility of reducing hours worked to 40 or less per work week. Management would also need to be diligent in watching hours worked for those employees who do not meet the salary requirements or would be legally obligated to pay overtime pay at a rate of 1-1/2 times their normal rate of pay for all hours worked over 40. Lastly, by increasing the threshold for overtime-eligible employees, companies could be forced to cut bonuses and benefits to boost the managers' base salaries and lower hourly rates to compensate for the expense of paying salaried managers more.

The Small Business Legislative Council (SBLC), in which PMAA is a member, will be commenting on the proposed rule.

PROPOSED LEGISLATION WOULD REQUIRE RETROFIT OF CARGO TANKS WITH SIDE UNDERRIDE PROTECTION

A new bill was just dropped in the Senate, S. 665, sponsored by Sen. Gillibrand (D-NY), that would require new side underride protection for trailers and straight trucks with a gross vehicle weight over 10,000 pounds.

The proposed legislation is important to petroleum marketers because it would require a costly retrofit of transport cargo tank trailers and single unit cargo tank trucks. Specifically, the bill would require the U.S. DOT to adopt regulations that would require: the installation of side underride rails on new and existing commercial motor vehicles (CMV) cargo tank trucks and trailers; and new performance standards, inspection and maintenance requirements for front, rear and side underride protection equipment. The bill is problematic for marketers because it would require virtually all CMVs and CMV trailers to be removed from service, brought to a certified cargo tank inspection and maintenance facility, cleaned and purged of residue and vapors and installation of new side underride rails and possibly replacement of existing rear underride rails that do not meet new equipment performance standards. The bill is particularly troubling because there is no practical or safe way to install side rail underride protection on bottom loading cargo tank vehicles and transport trailers.

The bill would impose huge compliance costs on all petroleum marketers operating cargo tank vehicles and trailers. The U.S. DOT attempted to impose similar requirements specifically targeting bottom loading vehicles and trailers.

The U.S. DOT attempted a similar rulemaking back in 1998 but eventually withdrew the proposed rule after fierce opposition by PMAA and other trucking interests. That rulemaking was eventually withdrawn by a study partially funded by PMAA found that more people would die during retrofit installation of side rails than those killed in cargo tank underride traffic accidents. PMAA opposes efforts to mandate costly underride equipment retrofits.

PMAA will meet with members of Congress to highlight our concerns with the bill.

EPA SENDS PROPOSED RULE ALLOWING YEAR-ROUND SALE OF E15 TO OMB FOR FINAL REVIEW

This week, EPA sent the final draft of its proposed RFS reform rule to the White House Office of Management and Budget (OMB) for review. OMB review marks the final step before the proposal is released for public comment. The proposed rule is important to petroleum marketers because it would allow the year-round sale of E15 blended gasoline. Currently, E15 may only be sold during the winter driving season because it can't meet federal summertime Reid Vapor Pressure (RVP) requirements for evaporative emissions. The proposed rule would change all that by extending the existing one-pound waiver allowed exclusively for E10 to E15 blends. If this happens, E15 will meet summertime RVP standards and can be sold year-round, UST and automobile compatibility concerns notwithstanding.

However, extending the one-pound RVP waiver to E15 through the rulemaking process is controversial because the statutory language of the Clean Air Act specifically limits the waiver to E10 blends. Consequently, opponents of E15 argue that any such change can only be made by Congress through the legislative process, specifically by amending the Clean Air Act. Despite this hurdle, the Trump Administration is directing the EPA to make the change through a rulemaking to be finalized by the end of the summer. In the meantime, E15 opponents will likely sue to prevent the rule from taking effect.

While PMAA supports all forms of motor fuel, serious compatibility issues with UST systems and automobiles must be resolved before E15 can be safely sold year-round. The rulemaking also proposes regulatory changes to modify the RIN compliance under the RFS in an effort to stabilize the RIN market by limiting speculation.

FUTURE OF HIGHWAY TRUST FUND TAKES CENTER STAGE

This week, the House Ways and Means Committee and the Senate Environment and Public Works (EPW) Committee continued the debate over how to fund the future of our nation's roads and bridges. The one thing that was clear from the hearings was the lack of consensus among lawmakers on how to find a long-term funding solution to maintain the Highway Trust Fund's (HFT) solvency.

Congress is expected to consider an infrastructure package this year, however, it remains to be seen whether lawmakers have the appetite to pass it. Some lawmakers have floated raising the gas tax, but the idea has not gained much traction on Capitol Hill. New House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) supports a short-term gas tax increase as a bridge to solve the nation's infrastructure funding woes given that a national shift to a vehicle miles traveled (VMT) is unlikely to be feasible for another decade. A VMT is a user fee based on miles traveled that can possibly be tracked by phone apps, in-car diagnostic systems or by other means. To sweeten the deal, DeFazio has proposed lifting the ban on earmarks which have been banned since 2011.

During both hearings, fiscal conservatives continued to discuss devolution which would push the majority of maintaining the nation's road and bridges to states instead of the federal government. Meanwhile, House Ways and Means Committee Ranking Member Kevin Brady said this week that he doesn't see a consensus among the GOP for higher motor fuel taxes or a VMT. Brady laid out a three-step process for improving infrastructure — streamlining permitting, attracting private investment and implementing private activity bonds — none of which involve raising revenues. Even House Ways and Means Committee Chairman Richard Neal (D-MA) dodged the question of whether he'd personally support a motor fuels tax increase. Rep. Lloyd Doggett (D-TX) said that a highway spending bill will be difficult to pass this year unless the President uses the full weight of the White House to get it done. However, Doggett is one of the leading democrats demanding Trump's tax returns so this could thwart any effort to get a highway bill done this Congress.

Meanwhile, members of the Senate EPW Committee also expressed skepticism on whether Congress will increase the motor fuels excise tax this year. Most Republicans focused on streamlining the federal government permitting process including Senator John Barrasso (R-WY) who doesn't favor a motor fuels excise tax increase. Senator Shelley Moore Capito (D-WV) seemed skeptical that Congress will be able to pass a major infrastructure package before the 2020 elections. "It's either added pressure to get something done, depending on your perspective, or it's added pressure to make sure nothing gets done," she said. To make matters more difficult to pass a highway funding bill, Senate Minority Leader Chuck Schumer (D-NY) has continued his opposition to a gas tax increase.

According to a new report by the Congressional Budget Office (CBO), the HTF could run out of money by 2022 if proper funding policies are not put into place. The HTF's highway account that is responsible for providing funding for the construction of highways and highway safety programs could run out of funding by 2022, according to the report. Furthermore, the report says the HTF's transit account, which provides funding for mass transit programs, could run out of money even sooner, by 2021. The current 18.4 cent-per-gallon federal gas tax has been the main source of transportation funding for decades and it has not been increased since 1993. If the gas tax were to have been indexed to inflation, drivers would be paying over 30 cpg for gasoline.

The American Trucking Associations (ATA), which testified this week before the House Ways and Means Committee, still favors a 20 cpg gasoline tax increase while the Chamber of Commerce, which also testified at the same House hearing, is advocating for a 25 cpg increase. President Donald Trump has reportedly said that he supports a 25 cpg increase. According to Politico, since 2011, 33 states have raised their state gas taxes, and 91 percent of state legislators who supported the increases won reelection. Finally, Green New Deal advocates urge carbon taxes to fund infrastructure but that would be a non-starter in the GOP-controlled Senate. The other question remains on how to deal with taxing electric vehicles which also use the road and currently do not pay into the system. Rep. Earl Blumenauer (D-OR) said that House leadership has reserved floor time for an infrastructure bill with a target of late spring. Stay tuned.

FDA ANNOUNCES FORCEFUL ACTIONS ON E-CIGARETTE RETAIL SALES

FDA Commissioner Resigning

Recently, the Food and Drug Administration (FDA) announced a significant crack down on the sale of e-cigarettes and other tobacco products by retailers. The FDA has identified 15 national retail chains, either corporate-owned or franchised, whose rates of violative inspections exceed 15 percent of their total inspected stores since the inception of the FDA's retailer compliance check inspection program in 2010.

According to FDA Commissioner Scott Gottlieb, M.D., "Last fall, we marked a historic milestone of conducting a total of one million tobacco retailer inspections since the program began in 2010. This work has resulted in more than 81,570 warning letters to retailers for violating the law as well as the issuance of more than 19,800 civil money penalties and about 145 no-tobacco-sale orders for repeated violations."

The National Association of Tobacco Outlets (NATO) countered that the FDA used faulty methodology in calculating the violation rates. Specifically, "The FDA Commissioner's statement lists 15 retail chains that have accumulated an aggregate of 15 percent to 44 percent violation rates by their respective stores at which tobacco products were sold to underage individuals under the FDA retail inspection program since 2010. This statement needs to be put into perspective given that the FDA has been conducting retail store compliance checks for nine years now. According to the Commissioner's statement, 15 store chains had sales to minors violations in 15 percent or more of 'their total inspected stores since the inception of the FDA's retailer compliance check inspection program in 2010. This means that a retailer which accumulated an aggregate 44 percent violation rate over the nine-year period could have, on average, experienced a 95 percent successful passing rate each year with approximately 5 percent of its stores inspected incurring a violation on an annual basis. According to the FDA's method of determining aggregate violation rates, this estimated 5 percent violation rate would be added up for each of the nine consecutive years to obtain an approximate, but cumulative, 45 percent failure rate."

Following the e-cigarette announcement, Commissioner Gottlieb, announced that he planned to resign next month. According to Gottlieb's colleagues, his resignation had been planned for a while, he felt that he'd set in motion many of his goals on e-cigarettes, and he was leaving the administration on good terms. He was said to have been frustrated by the government shutdown and had grown tired from the commute each week back and forth to Connecticut.

It is not clear how his retirement will impact the campaign to curb youth use of e-cigarettes and other tobacco products, but in a sign that some investors see Gottlieb's departure as a possible opening for a more relaxed regulatory regime, tobacco company stocks briefly jumped after Gottlieb's departure was reported. Also, according to Bloomberg Intelligence analyst Kenneth Shea, "The reported departure of FDA Commissioner Scott Gottlieb, could lead to the easing of intensified scrutiny on the marketing and sale of e-cigarettes in the U.S. Gottlieb has been an aggressive crusader in protecting underage users from the potential harm associated with e-cigarettes."

PMAA continues to take the FDA announcement seriously. Please reach out to your lawmakers and urge them to tell the White House not to ban sales of flavored e-cigarette products at convenience stores.

In other tobacco news, on Tuesday a federal judge in Boston ordered the FDA to create graphic health warnings for cigarette packs and related advertising to show what tobacco can do to the body. The order follows a lawsuit by groups that say graphic warnings are most effective at preventing people from smoking. The judge ordered the agency to complete a study of the graphic warnings by April 15, submit a rule mandating the warnings for publication by August 15, and have the warnings ready by March 15, 2020.

MINIMUM WAGE INCREASE PASSES HOUSE COMMITTEE

On Wednesday, the House Education and Labor Committee voted along party lines to pass a Democratic bill, H.R. 582, that would phase in over five years an increase to the hourly federal minimum wage to $15, up from the current $7.25, and would index future hikes to inflation.

The Raise the Wage Act, introduced by committee Chairman Rep. Bobby Scott (D-VA), would also eliminate existing lower minimums for tipped workers, workers with disabilities and workers under the age of 20.

During the mark-up, Committee Ranking Member Virginia Foxx (R-NC) pointed to job growth, a shrinking unemployment rate, and a falling percentage of people making minimum wage as evidence that the bill is not needed.

The bill is expected to be passed by the Democratic-controlled House. Speaker Nancy Pelosi (D-CA) and Education and the Workforce Committee Chairman Bobby Scott list raising the minimum wage as a top House priority for Democrats this congress. The current minimum wage of $7.25 was set by Congress a decade ago, and the last increase (from $5.15 to $7.25 per hour in July 2009) was a tough win for Democrats. It was part of an Iraq supplemental spending bill signed by President George W. Bush.

President Trump endorsed a $10 hourly wage minimum near the end of his presidential campaign, but he has not shown interest since then, and it's doubtful that the Raise the Wage Act would be approved by the Republican Senate.

PMAA along with many Republicans and business advocates have concerns that a high wage hike could cause hardships for some employers and that market or state and local governments should set wages, not the federal government. Twenty-nine states and Washington, D.C. have minimum wages higher than the federal $7.25.

SENATE DEMOCRATS INTRODUCE GND ALTERNATIVE

GOP Republicans Announce Conservation Caucus, Democrats Propose Special Panel

Senate Democrats released a climate resolution that is a dialed-back version of the Green New Deal (GND), 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. 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 GND sometime before August which may put pressure on many Democrats. The Democrat's new resolution, in turn, is to put pressure on Republicans. Schumer said all members of his caucus would vote "present" on the GND, and that he would counter with a detailed policy proposal.

In addition, this week Senate Minority Leader Charles Schumer (D-NY) announced a proposal for a special Senate panel that would examine climate change. Schumer also stated that if Democrats assume control of the presidency and Senate in the 2020 elections, he wants to bring climate legislation to a vote early in 2021. Republicans have started a Roosevelt Conservation Caucus on environmental issues, including the Green New Deal. The Caucus will be chaired by Senators Lindsey Graham (R-SC) and Cory Gardner (R-CO), while Reps. Elise Stefanik (R-NY) and Brian Mast (R-FL) will chair the House Caucus.

JOINT EMPLOYER RULE MOVES TO OBM FOR FINAL REVIEW

A final joint employer proposed rule or interpretative rulemaking should be published within the next three months as the White House Office of Management and Budget (OMB) began review of the Labor Department's (DOL) proposal last week. The DOL proposal will define joint employment under the Fair Labor Standards Act (FLSA) to determine the circumstances under which businesses can be held jointly liable for labor violations committed by their franchisees or contractors.

DOL's rule is expected to establish a "high bar" for joint-employment under the FLSA, which is an important shift away from Obama-era policy.

Still, Congress may have to intervene to set one definition for both the NLRA and FLSA, as the National Labor Relations Board (NLRB) proposed its own joint employer rule under the National Labor Relations Act (NLRA) in September.

Unfortunately, action by Congress is less likely with the new Democratic majority in the House.

FEDERATED INSURANCE EMPLOYMENT PRACTICE NETWORK WEBINAR

Marijuana in the Workplace: Tuesday, March 19, 2019, 1:00 p.m. CT

Employers are increasingly perplexed about how to avoid mistakes in confronting the use of marijuana by employees, on and off the clock. In this 60-minute webinar, we will explain recent changes in state law, and suggest some effective guidelines for establishing workplace safety and productivity in this fast-changing environment. We will talk about medical marijuana, what steps employers can take today — and what steps they should avoid — when confronted with a medical marijuana issue in the workplace. This webinar will be rounded out with some concrete, real-world examples and frequently occurring scenarios, which any employer can learn from.

Advance registration is required.

For additional information or to discuss this in further detail, please contact your Federated regional representative or PMAA's National Account Executive Jerry Leemkuil (jjleemkuil@fedins.com)at 800.533.0472

FEDERATED INSURANCE RISK MANAGEMENT ACADEMY℠ OFFERED APRIL 23-25, 2019

Federated Insurance is offering complimentary risk management training for petroleum marketers on April 23-25, 2019. Through this valuable session, you will discover methods you can use immediately to help protect profits by reducing risk at your business.

Companies that are the most successful at controlling losses and protecting profits have integrated risk management into their overall company culture. Many have designated a key person as their risk manager. This person is supported by top management and is both responsible and accountable for identifying loss exposures and implementing risk management solutions.

This seminar's objective is to help your risk manager learn the exposures specific to the petroleum industry, connect with peers from across the country and apply these best practices within your business.

> *"Attending this training is one of the best investments you can make to help protect your business and its bottom line!" 2018 RMA Attendee*

To reserve your spot in the upcoming session or for more information, please contact Royetta Spurgeon (rlspurgeon@fedins.com) or 800.533.0472 Ext. 455-5604, or visit Federated's website at https://www.federatedinsurance.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: ***"Growing old is inevitable, growing up is optional."***

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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.