

May 15, 2020

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WP-05-15-20

## **MARK YOUR CALENDARS FOR UPCOMING EVENTS**

**June 18, 2020** – Utah (UPMRA) Summer Golf Classic – Bountiful Ridge GC – Bountiful, UT

**CANCELED July 19-21, 2020** - Oregon (OFA) Conference - Sunriver Resort - Sunriver, OR

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

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

**NEW DATE August 24-26, 2020** – Washington (WOMA) Convention – Suncadia Resort – Cle Elum, WA

**NEW DATE September 2-3, 2020** – Montana (MPMCSA) – Convention – Fairmont Hot Springs Resort – Fairmont, MT

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

**NEW DATE October 1-2, 2020** – Nevada NPM&CSA – Big Dogs - Las Vegas, NV

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

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

## **FMCSA ADOPTS CDL SHORT-HAUL DRIVER HOURS OF SERVICE REFORMS**

The U.S. DOT's Federal Motor Carrier Safety Administration (FMCSA) issued its long awaited CDL driver of hours of service (HOS) final rule this week that adopts a number of PMAA's requests for short-haul driver regulatory relief reform. PMAA initiated the short-haul driver reform effort in 2017 during a meeting with the FMCSA Administrator and his top staff to present regulatory relief proposals important to both motor fuel and heating fuel dealers. Since then, PMAA has worked closely with the FMCSA, the FMCSA Motor Carrier Safety Advisory Committee, the White House Office of Management and Budget as well as key members of Congress providing supporting data, writing comments and arranging meetings in order to win adoption of these important hours of service reforms. The short-haul driver reforms will become effective 120 days after publication of the final rule in the Federal Register which is expected to happen within the next 10 days.

The final rule adopted the following PMAA reforms for short-haul drivers:

- Expands the maximum distance short-haul drivers may travel each day without losing their regulatory exception from keeping daily HOS records from 100 air-miles per shift to 150 air-miles.
- Increases the maximum daily on-duty time for short haul drivers from 12 hours to 14 hours.
- Extends the maximum daily 11 hour driving window for drivers by two hours during adverse weather conditions and allows drivers (in addition to dispatchers) to determine if the weather conditions exist to trigger the extension.

The distance and time extension reforms are important for motor fuel marketers and heating fuel dealers because they provide short-haul drivers two additional hours of daily on-duty time and 50 additional air-miles of operating range without losing the exception from recording daily hours of service. In addition, the reforms will allow many long-haul drivers employed in the industry that currently travel beyond the 100 air-mile radius from their point of origin but no longer than 150 miles to qualify for short-haul driver status. This means those drivers will no longer be required to use electronic on-board recorders mandated by FMCSA to record HOS, saving their employers significant reoccurring compliance costs. Instead, their HOS can now be demonstrated the same as all short-haul drivers - by timecards and/or other business records and only when requested by the DOT. This will reduce the recordkeeping burden on motor fuel marketers and heating fuel dealers and provide them with more flexibility to schedule drivers while adding a significant number of weekly on-duty hours per company across all drivers.

The adverse weather extension of on-duty time is also important because it provides drivers with two additional hours to wait out hazardous driving conditions before resuming to drive. Under previous adverse weather condition regulations, drivers were allowed two additional hours of driving time but no extra on-duty time. As a result, drivers felt pressure to drive in poor conditions to not run out the daily maximum on-duty clock before they returned to their base of operations.

The final rule did not contain a provision that would allow up to three hours of wait time at terminals to be recorded as off-duty time due to opposition by safety groups. However, PMAA will continue to work for its adoption. PMAA will provide additional information in an upcoming compliance bulletin.

## **SBA AND TREASURY DEPARTMENT ISSUES GUIDANCE TO CALM PPP LOAN BORROWERS CONCERNS**

On Wednesday, the SBA updated its [Frequently Asked Questions \(FAQs\)](https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf)

(<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>) in order to extend the repayment date for this safe harbor to May 18, 2020, "to give borrowers an opportunity to review and consider FAQ #46." According to SBA, borrowers do not need to apply for this extension, and the extension "will be promptly

implemented through a revision to the SBA's interim final rule providing the safe harbor.”

Notably, the SBA also updated FAQ #46, confirming that “[a]ny borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.” According to the SBA, this “is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans.” According to some estimates, about half of the approximately 400 PPP loans approved for publicly traded companies were for less than US\$2 million.

## **GROUPS URGE CONGRESS TO ENACT REASONABLE COVID-19 LIABILITY PROTECTIONS FOR ESSENTIAL BUSINESSES**

PMAA joined scores of other national associations including NACS, SIGMA and NATSO in a letter to the Senate Judiciary Committee leaders this week urging enactment of legislation to protect essential businesses from COVID-19 claims. The Senate Judiciary Committee held a hearing on the issue, and it heard from a number of those supporting the effort including NACS Treasurer Kevin Smartt, who is the CEO and president of Kwik Chek Food Stores and member of the Texas Food and Fuel Association. The aim of the legislation is to protect essential businesses from claims by customers and employees who allegedly contracted the disease at the business location or as a result of its operations.

Fuel marketers and other retailers face claims, like the wrongful death claims already asserted against Walmart, that they failed to comply with CDC guidance and other virus mitigation protocols in operating their businesses. They each face millions of dollars in potential liability because they remained open during the pandemic. They fear that despite their unprecedented efforts to require safe practices, like social distancing, wearing masks, and cleaning and disinfecting their business premises, they would face allegations of not going far enough.

PMAA and the other supporters of the legislation noted that businesses that remained open to serve their customers under extremely difficult and challenging circumstances should not be punished for their efforts. Many of these businesses are already facing threats to their survival, they could now face even more exposure from expensive litigation. PMAA will continue to support the coalition's efforts to lobby Congress as the Committee considers the information gathered at the hearing, and it will provide additional updates as developments unfold.

Please [click here](https://www.pmaa.org/advocacy/advocacy/#/30) (https://www.pmaa.org/advocacy/advocacy/#/30) to urge your lawmakers for liability protection in a future COVID-19 response bill.

## **FMCSA EXTENDS NATIONAL DRIVER HOS WAIVER THROUGH JUNE 14, 2020**

On Wednesday, the Federal Motor Carrier Safety Administration (FMCSA) issued an updated national emergency declaration to provide an extension of the hours of service (HOS) waiver for commercial drivers transporting fuel and other emergency relief in response to the coronavirus (COVID-19) outbreak. The FMCSA waiver was slated to expire May 15, 2020 but has now been expanded to June 14, 2020.

[Click here](https://www.pmaa.org/compliancebulletin/archives/2020/cb_04_13_20.html) (https://www.pmaa.org/compliancebulletin/archives/2020/cb\_04\_13\_20.html) to view the full Compliance Bulletin.

## **HOUSE DEMOCRATS RELEASE NEW CORONAVIRUS RELIEF PLAN**

This week, House Democrats introduced a new \$3 trillion stimulus package in response to the coronavirus health pandemic. The bill, H.R. 6800, known as the “Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act,” would provide nearly \$1 trillion in funding for state, local and tribal governments that includes additional funding for virus testing. The plan also calls for: a second round of economic impact stimulus payments of up to \$1,200; and an extension of the \$600 per week federal unemployment benefit payments.

Notably, the HEROES Act does not include liability protection for essential businesses. Senate Majority Leader Mitch McConnell (R-KY) and many other GOP lawmakers have insisted that any new relief package should include certain protections for essential businesses that are open during the pandemic.

Among its Paycheck Protection Program (PPP) proposals, the HEROES Act would: (1) extend the covered period and related loan terms from June 30 to December 31, 2020; (2) extend the 8-week period to 24 weeks for purposes of using PPP loan proceeds for purposes of loan forgiveness; (3) eliminates the 75/25 rule on use of loan proceeds, which requires at least 75-percent of a loan be used for payroll costs; and (4) creates a safe harbor for borrowers who cannot rehire their employees in the prescribed timeframe. Notably, the legislation would also allow all non-profits regardless of size to take advantage of PPP loans. Additionally, the HEROES Act “enhances” the Employee Retention Tax Credit (ERTC) to encourage more employers to keep their employees on payroll and clarifies the interaction between the ERTC and PPP loans “to ensure borrowers can take advantage of both types of assistance.”

While the HEROES Act does not provide additional funding for the PPP (though it does provide \$10 billion for Economic Injury Disaster Loan grants), it would provide certain funding carve outs based on size for the smallest of businesses eligible to receive PPP loans. All in all, the proposed PPP changes seem likely to garner bipartisan support and largely appear to be well-positioned for inclusion in the next COVID-19 package that may ultimately be enacted.

It also includes \$1.5 billion in new LIHEAP funding and \$10 billion in SNAP benefits to states in response to an increased number of applicants and higher costs while increasing the minimum SNAP benefit from \$16 to \$30 per month and waive all work requirements for receiving SNAP benefits for the next two years. Furthermore, it would grant a waiver to allow SNAP beneficiaries to buy hot and prepared foods from authorized retail stores. It would also provide \$.45 cpg ethanol and advanced biofuels tax credit produced between January 1 and May 1, 2020.

Of major concern to PMAA is a proposed addition to the Fair Debt Collection Practices Act (FDCPA) called "Restrictions on collections of consumer debt during a national disaster or emergency." Anyone that is owed or collects on consumer debts would be subject to the FDCPA's emergency restrictions (unless the debt arose post pandemic) and would be barred from collecting on their own debts. Typically, the FDCPA only applies to third-party debt collectors that buy debt or delinquent accounts. This controversial issue is unlikely get any traction but is something that PMAA will continue to monitor.

The HEROES Act is expected to pass along party lines in the House later today and represents the start to negotiations with Senate Republicans, some of whom have called the HEROES Act a "liberal wish list." Many Republicans are not fond of the thought of voting on another relief package and instead would like to focus on properly implementing the relief bills that have already passed Congress over the past couple of months. PMAA expects a fierce and lengthy debate to ensue over the next couple of weeks as the two sides negotiate a deal.

#### **FDA REQUESTS DELAY IN GRAPHIC WARNING LABEL REQUIREMENT FOR CIGARETTE PACKAGING**

Due to the effects of the ongoing health pandemic, the Food and Drug Administration (FDA) and several major cigarette manufacturers have requested a Texas federal judge to delay the enforcement date upon which cigarette manufacturers are required to place graphic warning labels and images on cigarette packaging and advertisements that depict the lesser-known health risks associated with smoking cigarettes. In its request, the FDA and cigarette manufacturers are asking the court to delay the enforcement date by 120 days from June 18, 2021, to October 16, 2021.

In March, the FDA issued a final rule to establish new cigarette health warnings for cigarette packaging and advertisements. The final rule implemented a provision of the federal Family Smoking Prevention and Tobacco Control Act that requires the FDA to issue a regulation mandating new text warning messages along with color graphics to replace the current Surgeon General cigarette warning labels.

Under the final rule, retailers are ultimately responsible for ensuring these graphic warning labels on cigarette packaging and advertisements are visible to customers in their stores.

#### **DISCOVER DELAYS EMV DEADLINE TO APRIL 16, 2021**

Discover is the latest card network to delay the October 2020 deadline for EMV upgrades to April 16, 2021 leaving MasterCard as the only major card network that has not delayed the EMV deadline.

The deadline extension is good news for petroleum marketers because it ensures that enough EMV vendors will be available to convert retail sites in a timely manner by the new April deadline. Any significant back log or delay in EMV scheduling due to the coronavirus pandemic would likely push installation past the original October deadline subjecting marketers with point of sale magnetic credit card readers to assume the liability for fraudulent card charges.

PMAA recently completed its own EMV survey over an 8-day period (April 30-May 7th) in which 253 companies participated in the survey. The results clearly demonstrate that a significant number of retail stations are unable to meet the Oct 2020 EMV deadline. The COVID-19 pandemic only made matters worse. PMAA will continue to monitor the EMV transition process to ensure petroleum marketers will have sufficient time for conversion without risk of exposure to liability.

#### **BIPARTISAN HOUSE BILL INTRODUCED TO PROVIDE TAX RELIEF TO FOOD SUPPLY CHAIN WORKERS**

On Tuesday, Reps. Glenn "GT" Thompson (R-PA) and Dwight Evans (D-PA) introduced a bill titled the "Assistance and Gratitude for Coronavirus Heroes in Agribusiness who are Invaluable to the Nation Act" (AG CHAIN Act). The legislation would provide a federal tax holiday and payroll tax exemption for essential employees in the food and agriculture industries who are working during the COVID-19 health pandemic, including convenience store workers. Certain workers, which will be determined by Department of Homeland Security guidelines, who earn less than \$75,000 annually, would be exempt from paying federal taxes on income earned between February 15 and June 15 of this year.

The AG CHAIN Act would extend the “Giving Retailers and Our Convenience Employees Relief Act (GROCER Act) that recently proposed an identical federal tax holiday for grocery and convenience store employees. Both bills would provide the Department of Treasury the ability to extend the benefit for three months.

### **SENATORS INTRODUCE BILL TO EXPAND AND EXTEND EV CHARGING INFRASTRUCTURE TAX CREDIT**

This week, Senate Environment and Public Works (EPW) Committee Ranking Member Tom Carper (D-DE) joined Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) in introducing legislation that would extend and expand the existing Alternative Fuel Vehicle Refueling Property Investment Tax Credit and is intended to increase private investment in charging infrastructure for alternative fuel vehicles such as electric vehicles (EVs) and hydrogen powered vehicles. The bill, known as the “Securing America's Clean Fuels Infrastructure Act,” would extend the current 30% income tax credit on alternative fuel vehicle infrastructure by 8 years, until December 31, 2028. Furthermore, the bill would expand the maximum amount of business investments made on each refueling infrastructure item from \$30,000 to \$200,000.

### **HOUSE LAWMAKERS INTRODUCE BILL TO INCENTIVIZE EQUIPMENT UPGRADES FOR HIGHER BIOFUEL BLENDS**

Recently, Reps Finkenauer (D-IA), Craig (D-MN), Bacon (R-NE) and Marshall (R-KS) introduced a bipartisan bill that would provide grant funding toward the installation and conversion of fuel pump infrastructure to deliver higher blends of ethanol and biodiesel. The bill, known as the “Clean Fuels Deployment Act of 2020,” would authorize the Department of Transportation (DOT) to provide a \$600 million grant over six years to biofuel retailers that would be aimed at incentivizing the deployment and upgrade of fueling infrastructure for ethanol and biodiesel, with a focus on ethanol blends greater than 10 percent (E10) and biodiesel blends greater than 20 percent (B20). Furthermore, the legislation seeks to expand the area where higher ethanol blends can be sold and is intended to also provide support for the biodiesel, bioheat and aviation fuel markets.

### **PMAA COMMENTS ON CFTC'S NEW POSITION LIMITS PROPOSAL**

Today, PMAA offered comments to the Commodity Futures Trading Commission (CFTC) proposed and long-delayed position limits rule mandated by the “Dodd-Frank Wall Street Reform Act” to curb excessive speculation in energy and other commodities futures contracts.

The new position limits proposal would impose limits at or below 25 percent of “deliverable supply” on 25 “core reference contracts,” instead of every contract. It would also expand the list of CFTC-defined bona fide hedge exemptions and create a new process for bona fide hedges not on the CFTC's list. Those “non-enumerated hedges” would be approved at the exchange level and then be subject to CFTC review. The democratic commissioners have expressed concerns that the new proposal is less sweeping than earlier versions and would impact trading on the soonest-expiring contracts, leaving intact traders' abilities to make big wagers on longer-term contracts. It is also likely to allow for bigger maximum positions than currently allowed in some physically settled futures contracts, and limits will likely be more permissive than those now allowed by exchanges. Exchanges would be free to maintain their current levels.

Unfortunately, the proposed position limits rule does not go far enough to limit excessive oil speculation especially passive investments such as exchange traded funds (ETFs) and index funds. PMAA urged the CFTC to lower the stated spot month limit for energy futures and “economically equivalent” energy futures, options on futures, and swaps to a level that is more consistent with existing federal spot month limits for legacy agriculture contracts to prevent market manipulation as well as impose position limits on non-spot months to the energy futures contracts and “economically equivalent” contracts.

PMAA is also urged the CFTC to impose separate limits on passive traders (i.e., index funds, exchange traded funds, and other similar vehicles that generally buy without regard to price), and require that positions of passive long speculators who follow the same trading strategy be aggregated for purposes of applying spot and non-spot month position limits.

Excessive speculation helped contribute to the oil price run up in the mid-2000s only to see it dramatically plunge within a six-month period from approximately \$147 per barrel in July 2008 to a December 2008 low of \$32 per barrel. It can be argued that excessive speculation helped contribute to the recent dramatic drop in oil prices which sent the West Texas Intermediate (WTI) contract into negative territory for the first time.

### **FDA PROVIDES BEST PRACTICES AND CHECKLIST FOR RE-OPENING RETAIL FOOD ESTABLISHMENTS**

A food safety re-opening checklist as well as best practices for previously closed retail food establishments or those that have been open with limited service related to the COVID-19 pandemic is provided by the Food and Drug Administration (FDA). The checklist entails guidelines on Facility Operations; Water, Plumbing and Ice; Food Contact and Non-food Contact Surfaces (Clean, Disinfect, Sanitize); Food Temperature Control; Product Inspection, Rotation; Ware washing Equipment; Handwashing Stations; Employee Health / Screening; and Social Distancing.

The FDA called on retail food businesses to partner with local regulatory/health authorities to discuss the specific

requirements for their retail food establishment prior to re-opening.

### **FEDERATED INSURANCE: IT'S YOUR LIFE**

#### ***Succession Planning in the Time of Social Distancing***

In this time of social distancing and economic uncertainty, the last things you, as a business owner, may be thinking about are your succession plans. More immediate concerns about just keeping the doors open and the lights on are probably higher on your list of priorities. On the other hand, perhaps the current global circumstances have really made you examine your plan (or lack thereof). What would happen in the event you were not able to work due to your own illness or a required quarantine as a result of contact with a sick family member, employee, or customer? Who would take over the business in the event of a premature death of an owner or key employee? How do you want your family taken care of and are the necessary documents in place to carry out your wishes?

To learn more about the factors to consider, please click [here](https://www.federatedinsurance.com/posts/its-your-life/2020-04-succession-planning-in-the-time-of-social-distancing) (https://www.federatedinsurance.com/posts/its-your-life/2020-04-succession-planning-in-the-time-of-social-distancing). Take advantage of these unique circumstances to consider your options and create or update your succession plans.

Please always feel free to contact your Federated regional representative or PMAA's National Account Executive [Jon Medo](#) at 800.533.0472 for any additional information or risk management questions.

### **WPMA COVID-19 - CRITICAL REFERENCES FOR MEMBERS**

Please visit our web site for up-to-date information related to your business and the COVID-19 pandemic. You will find the link on our home page at [www.wpma.com](http://www.wpma.com).

### **MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!**

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaption of such contributions to accommodate the magazine's space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at [janr@wpma.com](mailto:janr@wpma.com), or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Summer edition of WPMA News magazine are due before April 30th. Later submissions will be considered for the Fall issue.

# **WPMA EXPO**

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

### **WPMA MEMBER SERVICES**



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**Petro Pete: "A positive attitude may not solve all your problems. But it will annoy enough people to make it worth the effort."**

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