

PMAA TO MEET WITH OBAMA ADMINISTRATION OVER RFS CONCERNS

Next Wednesday, PMAA will meet with the Office of Management and Budget (OMB) over marketers' concerns regarding the corn-based ethanol mandate. PMAA will urge EPA to maintain the corn-based ethanol mandate for 2014, 2015 and 2016 at a reasonable level to prevent higher ethanol blends from hitting the marketplace due to UST system infrastructure compatibility and misfueling concerns. While the ethanol lobby continues to tout that lucrative RINs values will lure retailers into compatible infrastructure investments to sell higher level ethanol blends, most independent petroleum marketers do not have the ability to participate in the RINs market and must buy pre-blended ethanol fuel at the rack. This leaves marketers with few viable options to invest in renewable fuels infrastructure. Another concern is that E15 blends do not receive the same 1 psi Reid-vapor pressure volatility waiver that is granted to E10 from June 1-September 15. Bottom line: there are too many hurdles to overcome to sell higher ethanol blends in the near future.

EPA is under court order to publish the proposed 2014 and 2015 RFS standards by June 1 and finalize them no later than November 30, 2015. That order is based on a court approved agreement between the EPA and refiners designed to get the long overdue standards back on schedule. Outside the scope of the court order, EPA has also said it will propose the RFS volume requirements for 2016 by June 1, and finalize them by November 30. EPA is required by statute to set annual RFS standards no later than November 30 of the preceding calendar year to give refiners sufficient notice of their renewable fuel blending obligations for the upcoming year. However, EPA has consistently missed the November 30 deadline for RFS standards since its authority to set annual volumes began in 2008.

The ongoing RFS delays have stoked periodic speculation and volatility on the RINS market where refiners must go to purchase blending credits to meet annual renewable fuel volume obligations. The EPA missed the past two statutory deadlines for 2014 and 2015 largely due to uncertainty over how to address the impending ethanol blend wall. EPA has been under intense political pressure from both the refiners and renewable fuels industry over whether an E15 gasoline mandate is a viable remedy to overcome the RFS blend wall. The EPA's effort to head off or delay arrival of the blend wall has been complicated by a sustained drop in gasoline demand nationwide.

The content of the proposed rule will not be known until its publication in the Federal Register scheduled for June 1, 2015.

SENATORS ASK FOR MENU-LABELING RULE DELAY

Urge Lawmakers to Cosponsor the "Common Sense Nutrition Disclosure Act"

Earlier this week, 32 Republican and Democratic senators including Senate Health Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) requested the FDA delay for one year implementation of the menu-labeling regulations which retailers are expected to comply by December 1, 2015. "While we recognize the benefit of improved access to nutritional information for consumers, we are concerned that the lack of clear and consistent guidance from the agency will make it difficult, confusing, and burdensome for businesses, particularly smaller businesses, to implement the new requirements," the senators wrote, arguing that the FDA has yet to issue guidance for complying with the requirements. [Click here to read the letter.](#)

In November 2014, the FDA finalized regulations required by Section 4205 (Menu Labeling) of the 2010 healthcare law. 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.

Legislation has been introduced to provide relief from the final rule for retailers. Reps. Cathy McMorris Rodgers (R-WA) and Loretta Sanchez (D-CA) reintroduced, the "Common Sense Nutrition Disclosure Act," (H.R. 2017). The Act would limit Menu Labeling language in the Affordable Care Act (ACA) 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.

HOUSE APPROPRIATIONS PANEL ADDRESSES INSURANCE MINIMUMS AND SUSPENSION OF 34 HOUR RESTART

Last week, the House Appropriations Committee approved funding levels for the Department of Transportation (DOT). Included is language which prohibits DOT from using funds to issue and implement new Motor Carrier Financial responsibility requirements. PMAA supports the language. Last year, the Federal Motor Carrier Safety Administration (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.

Petroleum marketers in town last week 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.

Additionally, the Committee included language that would keep the current suspension of the 34-hour restart provisions of the Hours of Service (HOS) rule in effect until FMCSA completes its required study of that rule change. 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.”

HOUSE PASSES TWO-MONTH HIGHWAY POLICY EXTENSION

This week, the House approved a two-month highway policy extension through the end of July. The current highway programs expire at the end of this month. The Senate is expected to pass the bill later today before they leave town for their week long Memorial Day recess. President Obama has said he will sign the legislation.

PMAA Motor Fuels Committee Chairman Tommy Thompson has appointed a Federal Transportation//Leaking Underground Storage Tank (LUST) Fund Task Force consisting of members from all regions of the country. The Task Force will consider options to keep the HTF solvent and consider which position PMAA should take regarding LUST funding.

FDA PROPOSES TOBACCO GUIDANCE

According to the National Association of Tobacco Outlets (NATO), the FDA has issued a guidance document titled “Determination of the Period Covered by a No-Tobacco-Sale Order and Compliance with an Order”.

Under the Family Smoking Prevention and Tobacco Control Act (the federal law that granted the FDA the authority to regulate tobacco products), the FDA was authorized to conduct retail compliance inspections and impose fines for violations culminating in a “no-tobacco-sales” order for repeated violations of the federal tobacco regulations. A no-tobacco-sales order is an order issued by the FDA to a specific retail location prohibiting the sale of tobacco products for a specified period of time or an indefinite period of time.

Prior to the issuance of the new guidance document last week, the FDA had not determined the length of time that a retailer would be prohibited from selling all tobacco products if the same retail location had repeated violations of federal tobacco regulations, such as not requesting identification of a customer that appears to be under the age of 27 or selling tobacco products to a minor. The guidance document explains the FDA’s current thinking with respect to imposing a no-tobacco-sales order and includes the factors that the FDA will consider in determining the length of time an order will be in effect.

In the guidance document, the FDA is proposing to seek the following time periods for issuing no-tobacco-sale orders:

First No-Tobacco-Sales Order: 30 day prohibition on selling tobacco products

Second No-Tobacco Sales Order: 6 month prohibition on selling tobacco products
Third or More No-Tobacco-Sales Orders: Permanent prohibition on selling tobacco products

Before a retailer is faced with a no-tobacco-sales order situation, the FDA uses the following fine schedule for violations of federal tobacco regulations:

First violation, no fine, but a warning letter to the retailer
Second violation within a 12-month period, \$250
Third violation within a 24-month period, \$500
Fourth violation within a 24-month period, \$2,000
Fifth violation within a 36-month period, \$5,000
Sixth violation within a 48-month period, \$11,000

While the guidance document states that the FDA intends to seek the maximum time period for a no-tobacco sales order after a sixth violation, the FDA may reduce the time period that tobacco sales are prohibited by taking into consideration the nature, circumstances, extent and gravity of prior violations and, with respect to the specific retailer, the effect an order would have on the ability of the retailer to continue to do business, any history of similar violations, and the degree of culpability on the part of the retailer.

In addition, in determining whether to reduce the no-tobacco-sale order time period, the FDA will consider whether a retailer has taken effective steps to prevent the sale of tobacco products to underage youth including adopting and enforcing a written policy against sales to minors, informing its employees of all applicable laws, establishing disciplinary sanctions for employee non-compliance, and requiring employees to verify legal age through photo identification or electronic scanning device.

The FDA is allowing a 45-day period for interested parties to submit comments to the draft guidance document.

AMEX DENIED STAY IN ANTITRUST CASE BROUGHT BY RETAILERS

This week, American Express was dealt a blow when a judge denied the company's motion for a stay pending appeal of the case which would prohibit Amex from preventing retailers from offering discounts to customers for using lower-cost credit cards (enforcing Non-Discrimination Provisions in the company's contracts). The judge did grant a 30-day stay just to allow Amex to seek a stay pending appeal from the Second Circuit.

Judge Garaufis of the Eastern District of New York denied the motion for a stay pending appeal of the court-ordered permanent injunction in the case: United States of America et al. v. American Express Company and American Express Travel Related Service Company, Inc. The same judge ruled against Amex in February of this year determining that the company violated antitrust laws by preventing discounts.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

February 16 – 18, 2016 - WPMA Convention & Expo – Mirage Hotel, Las Vegas, Nevada
June 2 – 4, 2015 - Montana (MPMCSA) Convention – Northern Hotel, Billings, Montana
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 never too late to be what you want to be. Unless you want to be younger."

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*12,000 Tank- \$10,000.00 ** 6,000/6,000 Split Tank - \$15,000.00

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