

August 3, 2018

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WP-08-03-18

EPA TO ROLL BACK STRINGENT OBAMA ERA FUEL ECONOMY STANDARDS

The EPA, along with the National Highway Traffic Safety Administration (NHTSA), issued a proposed rule yesterday that would freeze Obama era Corporate Average Fuel Economy (CAFE) standards for cars and light trucks for six years. The proposed rule lays out several options for setting miles-per-gallon (MPG) standards but recommends freezing them at 43.7 mpg for passenger cars and 31.3 mpg for light trucks and sport utility vehicles. This would result in a 37 mpg fleetwide average for model years 2020 through 2026. The Obama era CAFE standards require a 50 mpg fleetwide standard by 2025.

According to the proposed rule, lowering the CAFE standards would **increase** oil consumption by approximately 182 million barrels of crude each year but would also result in saving nearly 13,000 lives each year. Moreover, the proposed rule could lead to one million additional new vehicle sales through 2029 than if the Obama rules remained in place, the agencies said. On the other hand, if the Obama era standards were left in place, the average cost of a new vehicle would increase by \$2,340 and impose more than \$500 billion in costs to the economy over the next 50 years, according to the NHTSA.

In its regulatory justification for tougher emission rules in 2012, EPA and NHTSA officials pointed to overall savings on buying gas as a key economic benefit for owners of more efficient cars. "While the initial purchase price of those vehicles will increase, the overall cost of owning them — including their operating costs — will decrease, because their fuel consumption will decline significantly," they wrote during the Obama rulemaking.

The proposed rule would also end California's authority to set its own, tougher emissions standards and invalidate the state mandate that automakers sell a specified number of electric vehicles. Thirteen other states and the District of Columbia have adopted the stricter California standards. The administration said that removing California's authority to set mileage and emission standards is necessary to prevent automakers from having to build two classes of cars and light trucks — one to meet the more stringent state standards and the other designed to meet the lower federal standards.

Shortly after the proposed rule was made public, a coalition of 20 state attorney generals announced plans to sue the administration over the rollback and loss of California's authority to set its own standards. The legal challenge could take years before a final decision is handed down by the various federal courts that are likely to hear the case.

PMAA intends to file public comments supporting the proposed rule. Please contact [Mark S. Morgan](mailto:mmmorgan@pmaa.org) (mmmorgan@pmaa.org), PMAA Regulatory Counsel, if you have any questions.

ACTING EPA ADMINISTRATOR ANDREW WHEELER TESTIFIES AT SENATE EPW COMMITTEE HEARING

On Wednesday, Acting EPA Administrator Andrew Wheeler testified before the Senate Environment and Public Works (EPW) Committee in which he discussed the RFS, small refinery hardship waivers, E15 RVP waiver, and commented on the transparency of the EPA. In his opening testimony, Wheeler stated that the EPA "will prioritize certainty in three areas: certainty to the states and local governments, including tribes; certainty within EPA programs, such as permitting and enforcement actions; and certainty in risk communication."

In his opening statement, Senate EPW Committee Chairman John Barrasso (R-WY) stated, "I applaud the Trump administration for rejecting efforts to undermine the ability of small refineries to obtain hardship relief under the Renewable Fuel Standard, or the RFS." When asked by Sen. Joni Ernst (R-IA) if the EPA had the ability to reallocate the gallons of renewable fuels lost from granting small refineries hardship waivers, Wheeler stated, "Part of the original intent of Congress was also to grant the waivers, and there is not a provision for reallocating that. We are taking a look at that issue, but we're trying to be much more clear and transparent as we grant any small refinery waivers." Sen. Ernst also asked Wheeler to state for the record that the EPA has the authority to begin a rulemaking process to grant RVP waivers to ethanol blends of E15 and higher, to which Wheeler responded, the EPA has begun that process but "there are certainly people who believe we don't have that authority. The legislation that this committee considered last year would have been very clear in giving EPA that authority, but we are looking at that issue."

When asked by Sen. Mike Rounds (R-SD) if he could commit to trying to expedite approval of an RVP waiver for E15, Wheeler responded that the waiver "was part of a broader package of a deal trying to address concerns of the oil refining industry along with concerns of ethanol producers." Also, during the hearing, Chairman Barrasso asked Wheeler if he would allow refiners to apply for RVP waivers and receive them within 90 days, to which Wheeler responded, "I'm not sure to the extent we've met the 90-day requirements. We try to meet all the requirements under all our statutes."

When asked by Sen. Tom Carper (D-DE) if he would avoid revoking California's regulatory waiver regarding fuel efficiency

rules if a deal could be struck, Wheeler stated that his “goal in this administration is to come up with a 50-state solution. We want to have a 50-state solution that does not necessitate preempting California.”

EPA DENIES LAWMAKER’S UST COMPLIANCE DEADLINE EXTENSION REQUEST

Lawmakers who requested the EPA to extend the compliance deadline for the testing of sumps, spill buckets and overflow prevention devices until October 2024 received word from the EPA Office of Land and Emergency Management (OLEM) that their request was respectfully denied.

PMAA Regulatory Counsel has drafted a regulatory report on what that means for the states with program approval and the states without program approval. While the EPA won’t extend the compliance deadline, they have agreed to delay its enforcement in the event there is a shortage of contractors or equipment. The EPA said enforcement discretion would be given to those tank owners showing a “good faith effort” to comply by the deadline but are unable due to equipment or contractor shortage. Evidence of a good faith effort would be having a contract for compliance work in place by the October 13, 2018 deadline. It is important to understand that the October 13, 2018 deadline only applies in some states. Most states adopted a compliance deadline after October 13, 2018. The EPA’s UST regulations allow states to adopt the October 13, 2018 federal compliance deadline or establish their own deadline any time thereafter, but no later than October 13, 2021.

PMAA will continue to work with the EPA and industry standard groups to develop guidance that offers additional compliance flexibility to states that choose to adopt them.

Keep in mind that the EPA’s Office of Underground Storage Tanks (OUST) issued guidance for alternative low-level hydrostatic testing for UST containment sumps used as secondary containment for piping that PMAA pushed earlier this year. The guidance helps state UST program regulators implement the EPA’s 2015 underground storage tank regulatory amendments requiring periodic testing and inspection. PMAA developed this test as an inexpensive alternative to the EPA’s hydrostatic test method for containment sumps which requires costly high-level liquid testing. Publication of the EPA guidance is important because it clears the way for PMAA’s alternative test method to be approved for use by state UST program regulators.

Lowered Compliance Costs

The PMAA alternative test method eliminates the need to fill containment sumps with water to within four inches above the highest penetration point in the sump wall to test for integrity, as required under the EPA approved test method. Instead, PMAA’s alternative test method only requires filling the sump to a level sufficient to activate an alarm/shutdown sensor mounted below penetration points in the sump wall. Integrity testing containment sumps in this way saves tank owners thousands of dollars in test preparation and compliance costs necessary to make penetration points liquid tight under the EPA test procedure. The PMAA alternative test method also significantly lowers hazardous waste water disposal costs by reducing the volume of water required for testing by more than two-thirds.

State Approval of PMAA Alternative Test Method

The PMAA alternative test procedure automatically applies to the 11 states without state UST program approval where federal EPA regulations apply instead: New York, New Jersey, Florida, Kentucky, Michigan, Illinois, Wisconsin, Wyoming, Arizona and Alaska. In addition, the PMAA alternative containment sump test will likely qualify as an “alternative test procedure” under provisions in state regulations. These states typically follow EPA UST program guidance which now includes PMAA’s alternative test procedure. Some states of these states have already adopted the alternative test, others are expected to do so soon. Marketers in the 38 states with UST program approval should contact their state UST regulators to determine whether the alternative test method is available yet for use.

PMAA AND COALITION LETTER ON DATA SECURITY PRINCIPLES

Today, PMAA and a coalition of like-minded associations sent a letter to Bob Latta (R-OH), Chairman of the House Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection, regarding data security and data breach notification.

The letter covers our support for a “reasonableness” standard for data security, as well three other principles that should be part of any data security/breach legislation.

These are:

- Ensure Breached Entities Have Notice Obligations. Each business entity in every affected industry sector should have an obligation to notify consumers when they suffer a breach of sensitive personal information that creates a risk of identity theft or financial harm.
- Establish Uniform Nationwide Law. Any bill needs to preempt the current data breach laws in 50 states and 4 federal jurisdictions.

- Maintain Appropriate FTC Enforcement Regime. Enforcement of data breach requirements should not be overly punitive and should give businesses opportunities to cure deficiencies before being fined.

OUTLINE OF TAX REFORM 2.0 RELEASED

Recently, the House Ways and Means Committee released a two-page outline of a new package of tax bills ("Tax Reform 2.0") that Committee Chairman Kevin Brady (R-TX) has stated will be introduced as legislation in September.

The outline makes it clear that Tax Reform 2.0 will be comprised of three core elements. The aim is to get votes on all three in the House before it adjourns for the midterm elections.

SECRETARY OF ENERGY EXPECTS U.S. TO BE NET EXPORTER OF ENERGY SOONER THAN HIS EIA PREDICTS

DOE Study on Modernization of the SPR

On Tuesday, the Secretary of Energy (DOE) Rick Perry predicted that the U.S. will become a net exporter of energy within the next 18 months, which is different from the estimation of DOE's Energy Information Administration (EIA), which predicts that the U.S. will become a net exporter in 2022.

Secretary Perry believes the increase in exportation is happening more quickly due to tax reform and regulatory changes that have occurred since President Trump has been in office as well as advances in production like hydraulic fracturing and directional drilling. Meanwhile, the DOE study on how to modernize the Strategic Petroleum Reserve (SPR) should be released within six months. Modernizing the SPR which was created in 1975, after the Arab Oil Embargo created nationwide shortages, is the point of the study.

DOE Assistant Secretary of Fossil Energy Steven Winberg said during a House Energy and Commerce subcommittee hearing this week that there are pipelines, valves and pumps within the reserve that need to be replaced.

Moreover, there is bipartisan support for a draft bill to authorize the Secretary of Energy to carry out a program to lease underutilized SPR storage capacity to the private sector. DOE is under a congressional mandate to sell enough SPR oil that storage levels will fall to 45 percent of the system's capacity by 2027, so leasing that space would make sense.

KEYSTONE XL PIPELINE SET TO RECEIVE POSITIVE ASSESSMENT

In the Administration's ongoing display of support of the 1,200-mile Keystone XL pipeline, on Monday the U.S. State Department found in its draft environmental assessment that the conduit's approved alternate route would have no significant environmental impacts. The pipeline would carry 830,000 barrels of crude a day from Alberta's oil sands to U.S. Gulf Coast refiners.

Specifically, the alternate route that Nebraska regulators approved for the line was found to have minor to moderate effects regarding noise and vibration, water resources and biological resources. It would have minor effects on soils, air quality and cultural resources, and negligible impacts on land use, recreation and visual resources.

Still ongoing is a case before the Nebraska Supreme Court, which TransCanada expects to be resolved in the next six months as well as legal cases challenging the project's U.S. presidential permit.

The State Department's approval of the pipeline was highly criticized by environmental groups, particularly the Sierra Club.

PMAA strongly supports development of the Keystone XL Pipeline which has already had more than ten years of debate and multiple environmental impact studies that have shown the pipeline would have no effect on climate change.

SENATE PASSES MINIBUS PACKAGE

Meal and Rest Break Issue Likely to be Fixed in FAA Bill

On Wednesday, the Senate passed, by a vote of 92-6, an appropriations package of four bills that contain fiscal year (FY) 2019 funding for the Agriculture, Transportation, Housing and Urban Development (HUD) and Interior Departments, along with funding for financial services and general government. Its passage is great news for lawmakers who are hoping to avoid a government shutdown as the September 30th deadline looms. The Senate chose to produce their own bill and rejected the House's version, where companion bills include several policy riders that take aim at Obama-era regulations but are strongly opposed by Democrats. The Senate has now passed 7 of the 12 bills needed to keep the government open and funded, while the House has passed 6.

The EPA-Interior Department is funded at \$35.9 billion (\$8.1 billion for EPA), which is an increase of \$601 million from both the FY 2018 budget and the spending level passed by the House, and \$7.6 billion over what President Trump had requested for FY 2019. The Transportation-HUD bill provides \$71.4 billion in funding, which is an increase of \$1.1 billion from FY 2018, and is \$383 million less than the spending level passed by the house, and \$23.4 billion more than the amount President Trump requested.

Keep in mind that the T-HUD appropriation bill is unlikely to include a preemption provision meant to ensure nationwide uniformity of meal and rest break standards for motor carriers. The House T-HUD provision, Section 134, would clarify a requirement in the Federal Aviation Administration Authorization Act (FAAAA) of 1994 to block a California law signed in 2011 that requires employers to provide a “duty-free” 30- minute meal break for employees who work more than five hours a day as well as a second “duty-free” 30-minute meal break for people who work more than 10 hours a day.

Meanwhile, Congress is setting its sights on fixing the meal and rest break issue through the FAA reauthorization bill. Both the House and Senate versions include language to fix the issue. When Congress enacted the FAAAA's preemption provision, it noted “the sheer diversity of [state] regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business.” Congress determined that allowing states to impose their individual policy preferences on trucking “causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets.”

PMAA believes the inclusion of the preemption provision in the upcoming FAA reauthorization bill is necessary because it will bring nationwide uniformity to the issue.

PLAN TO ATTEND THE 2019 WPMAEXPO



Mark your calendars for February 19-21, 2019. Make plans now to attend the 2019 WPMAEXPO. It will be held once again at the Mirage in Las Vegas, Nevada.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

August 8-10, 2018 – Idaho (IPM&CSA) Convention – Coeur d’Alene Resort – Coeur d’Alene, Idaho
August 20-22, 2018 – New Mexico (NMPMA) Convention – Sandia Resort & Casino, Albuquerque, NM
September 12-14, 2018 – Utah (UPMRA) Convention – Doubletree by Hilton, Park City, UT

February 19-21, 2019 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, Nevada
May 2-3, 2019 – Nevada (NPM&CSA) – Big Dogs – Las Vegas, Nevada
August 5-7, 2019 – Idaho (IPM&CSA) – Convention – Sun Valley Resort – Sun Valley, Idaho

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Petro Pete: “I believe in a better world where chickens can cross the road without having their motives questioned.”

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