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ATTENTION NEVADA TANK OWNERS AND OPERATORS: FREE WEBINAR-FEDERAL UST UPGRADE DEADLINE

Are you ready for the October 13th Federal UST upgrade deadline? The Nevada Petroleum Marketers and Convenience Store Association is sponsoring a free webinar on Wednesday, September 19th from 10:00 a.m. to 11:00 a.m. PST to help prepare you for this.

To register go to: <https://register.gotowebinar.com/register/6515931699235033858>

For questions please call 775-622-9205

FARM BILL CONFERENCE COMMITTEE MEMBERS MEET FOR FIRST TIME**PMAA Pushing for NORA Reauthorization in Final Bill**

Recently, the Farm Bill conference committee met for the first time to discuss reconciling two different House and Senate-passed Farm Bills before the current bill expires on September 30. Lawmakers are looking to finalize and agree to a final bill soon in order to have it passed on time, however, one major issue is causing a roadblock in discussions – SNAP reform.

House Republicans passed their bill that included a requirement that able-bodied adult SNAP recipients meet certain work requirements to receive their benefits and would also limit states' ability to waive the work requirements. The Senate, on the other hand, passed a largely noncontroversial bill that does not include the work requirement for SNAP recipients.

The Senate-passed bill would also permanently reauthorize the National Oilheat Research Alliance (NORA). NORA was first authorized in 2000 to provide funding that would allow the oilheat industry to provide more efficient and reliable heat and hot water to American consumers. As a "check-off" program, NORA receives \$0.002 at the wholesale level on every gallon of heating oil sold. NORA provides critical training opportunities and supports the necessary research and development for the industry. Oilheat is currently used in 6.3 million homes, serving more than 16 million Americans across the country. The current NORA program is authorized through February 2019.

PMAA has been meeting with conferee offices and sent a letter last month, (find it at URL

https://www.pmaa.org/weeklyreview/attachments/PMAA_NBB_ABFA_NORA_Conferees_ltr_August_2018.pdf)

along with the National Biodiesel Board (NBB) and the Advanced Biofuels Association (ABFA), to House and Senate Agriculture Committee leadership urging them to include a permanent reauthorization of NORA in the final Farm Bill. Meanwhile, Senators Burr (R-NC), Collins (R-ME), Portman (ROH), Shaheen (D-NH), Leahy (D-VT) and Reed (D-RI), along with Reps. Jeff Duncan (R-SC), Faso (R-NY), Kuster (D-NH) and Welch (D-VT) sent a letter last month (find it at URL <https://www.pmaa.org/weeklyreview/attachments/2018-08-24NORAFarmBillConferenceLetter.pdf>) to House and Senate Agriculture Committee leadership in support of NORA's permanent reauthorization.

PRESIDENT TRUMP SIGNS EXECUTIVE ORDER ON MULTIPLE EMPLOYER PLANS

On August 31, President Trump signed an Executive Order directing the Secretaries of Labor and Treasury to consider regulations and guidance to expand the availability of Multiple Employer Plans (MEPs). Although not expressly stated in the Order, a key focus of the proposed regulations that arise from this Order will be on eliminating, or significantly scaling back, the nexus requirement, which currently requires companies to have some sort of nexus or preexisting commonality before they can join together and participate in a MEP.

This idea of "open MEPs" that aren't subject to a nexus requirement, is a significant part of the bipartisan Retirement Enhancement Savings Act (RESA) that the Small Business Leadership Council (SBLC), in which PMAA sits on the Board of Directors, has previously reported on and that is still pending in the Senate and may be a part of the House's Tax Reform 2.0. The President is hoping that these agencies will be able to circumvent the need to involve Congress on this issue. However, as it took over a year for the Department of Labor to go through the full process of proposing and finalizing its rules on Association Health Plans (which were similar in that they loosened the restrictions on which associations could band together to sponsor health plans together), it is still possible that Congressional action will come first. Regardless, while the train towards change is in forward motion, whether through legislation or regulation, it will be some time before it reaches its destination.

The Executive Order also directs the Secretaries to take action to reduce the cost to retirement plans of providing required notices and disclosures to participants (which will likely be reflected in a move towards more electronic notice options and perhaps some simplification of the notices themselves) and to update the life expectancy and distribution tables for the purposes of calculating required minimum distributions (RMDs) from IRAs and retirement plans. This latter change would

have the effect of reducing the required minimum distributions an individual would be required to have distributed from an IRA or a retirement plan to take into account the increased life expectancy. This is a welcome change though it still seems absurd that required minimum distributions must be taken when an individual is still working, which is the case with IRAs and with owners who own more than five percent of their company.

FMCSA TO HOLD PUBLIC LISTENING SESSION ON HOURS OF SERVICE RULES

Last Thursday, the Federal Motor Carrier Safety Administration (FMCSA) announced that it would be holding a public listening session concerning potential changes to its hours-of-service (HOS) rules for truck drivers today (September 14) from 1 p.m. (EDT) to 3 p.m. (EDT). However, due to Hurricane Florence, the session has been postponed (new date to be determined).

As reported by PMAA on August 24, FMCSA announced an Advanced Notice of Proposed Rulemaking (ANPRM) (see it at URL <https://www.fmcsa.dot.gov/regulations/hours-service-advanced-notice-proposed-rulemaking>) that proposes to make changes to commercial motor vehicle driver hours of service regulations (HOS), some of which are changes that PMAA has sought over the past years.

The proposed changes include:

- A PMAA-New England Fuel Institute (NEFI) request that would expand the current 100 air-mile “short-haul” exemption from 12 hours on-duty to 14 hours on-duty, in order to be consistent with the rules for long-haul truck drivers.
- Extending the current 14 hour on-duty limitation by up to two hours when a truck driver encounters adverse driving conditions which will help drivers during bad weather events
- before a HOS waiver is issued. PMAA has worked extensively on efforts to help drivers deliver fuel as quickly and as safely as possible during disasters, including quick responses on waiver requests and interim measures.
- Extending the current 14 hour on-duty limitation to allow for up to a three consecutive hour break (to allow for loading and unloading); PMAA and NEFI requested to allow waiting time at terminals to be counted as off-duty time. This would extend the driver on-duty period for up to 17 hours.
- Revising the prohibition against driving after the 14th hour from the time the driver comes on-duty to prohibit driving after the 14th hour of on-duty time: this would allow drivers to count only the hours of their shift while actually on-duty towards the 14 hour daily on-duty limit. In other words, drivers could end their shift after the 14th hour if periods of off-duty time occurred within the 14-hour period.
- Revising the current mandatory 30-minute break for truck drivers after eight hours of continuous driving: this will benefit petroleum marketer drivers who drive beyond the 100 air-mile radius exemption from rest breaks to reach a distant terminal.
- Eliminating the 30-minute rest break requirement for drivers who stay within 100 air miles of their originating location are exempt from the 30-minute rest break requirement. The requirement would only apply to those drivers who drive beyond 100 miles.

PMAA and NEFI have worked closely with FMCSA Administrator Raymond P. Martinez and his team, and we support their efforts to maintain excellence in commercial motor vehicle and driver safety while also seeking logical efficiencies and relief for small businesses. Such changes would minimize the effect of the driver shortage and safely speed fuel where it is needed following disasters.

PMAA will submit comments to FMCSA regarding the ANPRM before the 30-day comment period (which begins when the proposal is published in the Federal Register which has not occurred yet) expires.

REMINDER: EPA UST COMPLIANCE DEADLINE COMING SOON FOR SOME STATES

PMAA member states are advised that October 13, 2018 is the deadline for meeting the remaining underground storage tank (UST) requirements in the 2015 revised UST regulation.

PMAA Regulatory Counsel has drafted a regulatory report (find it at URL <https://www.pmaa.org/pdfs/CB7-26-18.pdf>) 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. Go to URL https://www.pmaa.org/pdfs/House_Response_AL-18-000-8240%20FINAL.PDF to read EPA's response to lawmakers. 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. Several states also have adopted a compliance deadline after October 13, 2018. Go to URL <https://www.epa.gov/ust/state-underground-storage-tank-ust-programs#2015update> for more information on EPA's state UST program webpage. 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 lowlevel 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.

Test Procedure Guidance and Compliance Form:

- Go to URL <https://www.epa.gov/sites/production/files/2018-06/documents/low-level-hydrostatic-sump-testing-procedures.pdf> for EPA Low Liquid Level Containment Sump Test Procedures.
- Go to URL <https://www.epa.gov/ust/low-liquid-level-ust-containment-sump-testing-procedures> for EPA Low Liquid Level Containment Sump Test Compliance Form.
- Got to URL <https://www.epa.gov/ust/underground-storage-tank-ust-contacts#states> for a list of State UST program contacts.

SENATE DEMOCRATS INTRODUCE RESOLUTION OF DISAPPROVAL ON SHORT TERM HEALTH PLAN REGS

On August 29, Senator Tammy Baldwin (D-WI), together with thirty co-sponsors, introduced a Joint Resolution to rescind the Trump Administration's new regulations on limited duration health plans. The regulations, which were finalized and published on August 3, would expand the maximum length that a short-term health plan (also known as "skinny plans") could be offered to an individual from three months to three years. These skinny plans, which were intended to help individuals bridge gaps in employer or other coverage, are not required to meet many of the Affordable Care Act (ACA) coverage requirements – meaning that they typically cover significantly fewer medical services and are cheaper. Proponents of the ACA have viewed these new rules as another effort by the Trump Administration to undermine and attempt to derail the ACA.

Sen. Baldwin's Resolution is being brought forward under the Congressional Review Act (CRA), which gives Congress sixty session days (excluding recess) after receiving final regulations to pass a resolution by a simple majority to revoke the regulations. The Republican controlled Congress used the CRA at the beginning of the Trump Administration to revoke a number of the Obama Administration's final regulations.

Democrats will now be looking to moderates like Sens. Susan Collins (R-ME), Shelley Moore Capito (R-WV) and Lisa Murkowski (R-AK) who have sided with them before on ACA issues to support the resolution and get them their majority vote. However, even if the resolution passes, President Trump is almost guaranteed to veto it and it is very unlikely that there will be enough support to override the veto. Rather, the bigger impact of the Resolution will be to force members to consider and vote on the issue before the election.

FDA CRACKING DOWN ON UNDERAGE SALE OF E-CIGARETTES BY RETAILERS

On Wednesday, Food and Drug Administration (FDA) Commissioner Scott Gottlieb declared teen use of electronic cigarettes an "epidemic" and said the agency would be addressing the issue with "the largest coordinated tobacco

compliance effort in FDA's history." The FDA is considering taking certain actions including forcing an immediate removal of certain flavored ecigarettes from the market as well as possibly changing its compliance policy that extended the dates for manufacturers of some flavored e-cigarettes to submit applications for premarket authorization.

E-cigarettes have become popular with American youth over the past year. Therefore, in an effort to reduce underage use of e-cigarettes, the FDA sent letters to manufacturers of five ecigarette brands often used by youth users, including Juul, Vuse, MarkTen XL, Blu and Logic, requesting that they implement plans to limit youth access to their products within 60 days. Failure to do so or not showing a good-faith effort "could mean requiring these brands to remove some or all of their flavored products that may be contributing to the rise in youth use from the market until they receive premarket authorization and otherwise meet all of their obligations under the law," according to the FDA statement.

In April, the FDA announced a new initiative called the Youth Tobacco Prevention Plan that would curb the underage sale and youth use of e-cigarettes. Furthermore, the FDA sent more than 1,300 warning letters and fines to retailers found to be selling vapor products to minors in an attempt to crack down on the underage sale of e-cigarette products. The FDA also issued forty warning letters to brick-and-mortar retailers in one week alone this summer as a first step toward eliminating underage use of e-cigarettes.

CONGRESS PASSES VETERANS AFFAIRS, ENERGY, AND LEGISLATIVE BRANCH MINIBUS

On Wednesday the Senate approved the House-Senate conference version of a "minibus" package covering Military Construction-VA, Energy and Water and Legislative Branch appropriations and the House followed on Thursday. Now the bill has been sent to President Trump for the final signature. This "minibus" is the first of three packages of spending bills that lawmakers hope to send to President Trump's desk to sign before the September 30 deadline to keep the government funded and represents the first time since 2009 that more than one spending bill has become law before the start of the new fiscal year.

Of significance for marketers, the bill includes:

- \$35.68 billion for the Department of Energy (DOE), a funding increase of \$1.16 billion over fiscal year 2018.
- A \$17 million funding decrease for the Strategic Petroleum Reserve (SPR) from \$252 million to \$235 million.
- A \$6 million funding increase for the Weatherization Assistance Program (WAP) from \$251 million to \$257 million.
- A \$3.5 million funding increase for the Northeast Home Heating Oil Reserve from \$6.5 million to \$10 million.

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

October 25, 2018 – Hawaii (HPMA) Golf Tournament – Hapuna Beach GC, Kamuela, HI

February 19-21, 2019 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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

June 4-6, 2019 – Montana (MPMCSA) Convention – Location - TBA

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

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