

October 1, 2010

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53RD ANNUAL WESTERN WEIGHTS AND MEASURES ASSOCIATION CONFERENCE

Gene Inglesby, WPMA Executive Director, attended the 53rd Annual Western Weights and Measures Association Conference in Olympia, Washington. There were several committee meetings. In the Laws and Regulations Committee they discussed Engine Fuels and Automotive Lubricants Inspections Law and Unit Pricing Regulation. In this section Inglesby gave testimony and opposed the labeling exemption for Bio-diesel containing 1-5%, stating "if marketers do not know what type of product they have purchased and need to blend to a higher level of Bio-diesel they could not do so without testing the diesel to see how much bio diesel was contained in the load received." He further stated that "all amounts of Bio-diesel should be listed on the Bill of Ladings, invoices and shipping papers of the product, not simply say 'may contain up to 5% Biodiesel'."

Inglesby also opposed Gasoline-Oxygenated Blends of the maximum proportion of ethanol authorized by the EPA stating that "marketers will not be liable for products not approved for motor vehicles or petroleum equipment not certified to handle anything above an E10 blend."

There was also a new proposal by NIST to the Specifications and Tolerances Committee to add a Thermometer to the well, for Temperature Determination on retail dispensers with a flow rate above 20 gpm. This would apply to high speed diesel fuel dispensers, particularly Truck Stops. Inglesby opposed this stating it is just another way for Weights and Measures to try to implement Automated Temperature Correction (ATC) which was voted down by the National Weights and Measures Association last year. Again WPMA will be monitoring these issues and will fight to kill this regulation which is nothing more than a back door for a problem that does not exist.

BILL TO EXTEND AND IMPROVE EXISTING TAX CREDIT ON RENEWABLE FUEL INFRASTRUCTURE

This week Senator Ron Wyden (D-OR) and Orrin Hatch (R-UT) introduced their alternative fuel infrastructure tax credit extension and modification bill, S. 3876. PMAA worked with Wyden's staff prior to introduction of the bill and will continue to do so in order to address the IRS ruling on dual blend pumps.

The legislation extends the existing tax credit to help defray the cost of installing new alternative refueling equipment. The bill extends the current credit which expires at the end of 2010 through the end of 2014. It is extended for all types of alternative fuels and does not favor any one type over another.

Most significantly, the bill will increase the base credit from \$50,000 to \$100,000. It will promote renewable fuel diversity by removing the cap on how much each refueling location can receive. Instead, it offers the tax credit for each type of alternative fuel, allowing a refueling station to install equipment to sell more than one type of alternative fuel. In order to help address petroleum marketer concerns with future IRS interpretations of qualification of the credit, blending is included in the definition of alternative fuel vehicle refueling property. The bill also allows for multiple owners of buildings to share the credit.

NORA PRESIDENT JOHN HUBER TESTIFIES BEFORE THE SENATE SUBCOMMITTEE ON ENERGY

On Wednesday, the Senate Subcommittee on Energy held a hearing to examine the National Oilheat Research Alliance (NORA). NORA President John Huber offered insight into NORA's activities which provides research, training, and education programs to millions of home heating fuel consumers. Senate Energy Committee Chairman Jeff Bingaman (D-NM) and committee member Jeanne Shaheen (D-NH) asked questions regarding the Government Accountability Office's (GAO) report on NORA's activities which Huber addressed. Huber noted that NORA had taken significant steps to introduce BioHeat® and highly efficient oilheat equipment into commerce to reduce carbon emissions and lessen dependence on foreign oil. Additionally, Huber noted that NORA had also supported efforts within states to move aggressively to lower the amount of sulfur content in heating oil and, that prior to NORA, there was no method for coordinating various training entities and ensuring training materials for industry technicians are high quality and updated on a regular basis.

TRUCKING COMPANIES CREATE ALLIANCE TO SUPPORT ON-BOARD RECORDERS

This week five trucking companies joined together as the Alliance for Driver Safety and Security to support passage of S. 3884, the Commercial Driver Compliance Improvement Act. The bipartisan legislation introduced by Senators Mark Pryor (D-AR) and Lamar Alexander (R-TN) would require the use of electronic on-board recording (EOBR) devices for commercial carriers. The Department of Transportation (DOT) would have 18 months from enactment to issue rules mandating their use.

The legislation was referred to the Senate Commerce, Science and Transportation Committee. The bill would need to be passed by the Senate and the House and signed by the President to become law. That is unlikely to happen this year considering the short schedule Congress has planned between now and the end of the year. Senate Majority Leader Harry

Reid (D-NV) has scheduled votes for three bills so far. The bill dies if it does not become law this year and the Senators must introduce it again in the next Congress.

Support for mandated use of EOBRs from the larger trucking companies has grown since DOT began implementing tougher driver safety standards. PMAA will report as developments occur.

EPA LIKELY TO DECIDE ON E15 BY OCTOBER 15

EPA Administrator Lisa Jackson indicated Monday that the agency should decide by October 15 whether it will approve E15 for use for 2007 and newer vehicles. The Department of Energy will be finished with its E15 study by the end of this month; therefore, allowing EPA to make a determination that E15 is safe for limited use in our nation's fuel supply. While PMAA has been supportive of expanded use of ethanol, E15 use will be minimal until Congress passes legislation giving legal and regulatory certainty to marketers to safely sell the fuel. Also, limiting the fuel to the 2007 and up pool of vehicles drastically limits the incentives for retailers to make investments. Other unanswered questions include whether E15 could jeopardize the coverage of automobile manufacturer warranties.

PMAA is also awaiting results from DOE and API's study on E15 and whether existing storage and dispensing infrastructure can handle mid-level ethanol blends. Even if the study doesn't find significant infrastructure problems with E15, the lack of UL certification for existing equipment will likely impede E15 use.

EPA is expected to make a decision on whether to allow E15 for vehicles manufactured between 2001 and 2006 later this year. If EPA approves E15 for use, there will still be legal and regulatory hurdles to overcome including: changes to EPA reformulated gasoline regulations, EPA gasoline detergent additive regulations, RVP allowance, federal fuel rating and labeling requirements, and state-by-state fuel requirement changes.

EPA RESPONDS TO LAWMAKERS QUESTIONS ON MID-LEVEL ETHANOL BLENDS

Recently, EPA responded to a rare bipartisan letter from House Energy and Commerce Committee Chairman Henry Waxman (D-CA) and Ranking Member Joe Barton (R-TX) questioning the effects 15 percent ethanol would have on gasoline refueling infrastructure, vehicles, boats, outdoor powered equipment, and air quality.

While PMAA supports expanded ethanol use and is not opposed to E15, PMAA supported the Waxman/Barton letter. Petroleum marketers need legal and regulatory certainty concerning E-15 before offering it to retailers and consumers.

Here were some of the questions raised in the Waxman/Barton letter with the EPA responses italicized:

- **What changes in mileage should a consumer expect for any particular vehicle operated on E15 instead of 100 percent gasoline? Instead of E10?**

"EPA stated that DOE's first report from February 2009 showed E0 to E10 decreased fuel economy by 3.68 percent and E0 to E15 decreased fuel economy by 5.34 percent."

- **Is EPA developing a plan to avoid (or minimize) misfueling of E15 if EPA were to grant partial approval of E15?**

"EPA is developing a proposed rule (with the opportunity for public notice and comment) to require actions to mitigate the potential for misfueling. EPA is also asking comment on a range of other options. For example, some stakeholders have put forth the idea of different fuel nozzles for different blends or the use of full-service stations to help ensure customers are using the appropriate fuel. The question of whether to allow the fuel manufacturer to introduce E15 into commerce prior to the effective date of the final rulemaking is being reviewed and will be addressed as part of the waiver decision. The practical effect of the rule provisions and timing of it and other local, state and federal actions related to bringing E15 to market is that we believe it is highly unlikely that E15 will be introduced before the labeling rule's effective date."

- **Please describe the extent to which EPA is working with private stakeholders (including gasoline station owners) to develop a plan to avoid misfueling of E15 in the event that EPA grants a partial waiver.**

"We have had a number of discussions with all stakeholders (including petroleum marketers and retailers) to discuss the technical issues associated with our pending waiver decision and associated labeling rulemaking. Moreover, some stakeholders have direct involvement in the test programs being conducted to evaluate the effects of E15 on vehicles and engines."

- **What kind and how many existing gas pumps and tanks can be used for E15 without increasing the risks of leaks or other equipment failure? What are the consequences for gas stations owners if they use E15 in a tank or pump that is not certified for E15?**

"EPA regulates UST systems which contain petroleum or hazardous substances. USTs storing E15 would therefore be subject to EPA's UST requirements. Under a partial waiver, tank owners would not be required to store E15. However, if a tank owner chose to store blends of ethanol above 10 percent (up to and including E15), the retailer would need to comply with EPA's UST requirements. EPA does not have data on how many UST systems would be fully compatible with E15. However, we are currently drafting guidance to help tank owners determine whether their UST system equipment would be compatible with ethanol blends greater than 10 percent, and intend to solicit public comment on it. Our UST requirements pertain to storage tanks, piping, and ancillary equipment that are below ground. Dispensers are not considered part of an UST system and are outside of EPA's authority."

PMAA's regulatory counsel is currently working with EPA's Office of Underground Storage Tanks to ensure retailers' USTs are given regulatory certainty through EPA's future rulemaking to store mid-level ethanol blends. PMAA's newly formed Motor Fuels Committee and Alternative Fuels Task Force will meet together in Atlanta, GA to discuss EPA's upcoming decision to allow E15 for 2007 and newer vehicles.

EPA'S PROPOSED "BOILER MACT" RULE RAISES CONCERNS TO CONGRESS

Earlier this year, EPA proposed its "Boiler MACT" rule which would require boiler operators to install maximum achievable control technology (MACT) to reduce toxic air pollutants. If the proposed rule goes forward, it would force costly and unnecessary upgrades to roughly 200,000 boilers servicing thousands of commercial and industrial sites such as universities, hospitals, and retail facilities. In a bipartisan letter to the EPA circulated by Senators Mary Landrieu (D-LA) and Susan Collins (R-ME), which was signed by 21 Republicans and 17 Democrats, Senators argued that EPA should set emission standards that are based on what real world best performing units can actually achieve. The letter noted, "It is our [Congress] understanding that EPA's emissions database does not truly reflect the practical capabilities of controls or the variability in operations, fuels and testing performance across the many regulated sectors or boilers, especially in light of the proposal's reliance on surrogates, such as carbon monoxide – a pollutant with wide variability in actual boiler operation especially from biomass-fired boilers." PMAA will continue to monitor the issue.

PAYCHECK FAIRNESS ACT ON LAMEDUCK SENATE AGENDA – PASSAGE NOT LIKELY

On Wednesday, Senate Majority Leader Harry Reid (D-NV) filed a cloture motion to consider the Paycheck Fairness Act (S. 3772), but it was withdrawn due to Senate objections. Before the Senate adjourned to campaign for the November elections, Reid filed cloture again on the measure so it can be considered during the lame duck session. S. 3772 would strengthen the Equal Pay Act of 1963 which would allow workers who claim they are victims of gender-based wage discrimination to sue for unlimited compensatory and punitive damages. While PMAA philosophically agrees with S. 3772, PMAA opposes the legislation because it would create more litigation which would allow trial lawyers to sue retailers if employee wage differentials exist because of market rates, revenue production, profitability and prior salary history. Passage of S. 3772 is unlikely given minority objections. The bill has 32 Democratic Senators as sponsors.

REGISTER ONLINE FOR THE 2011 WPMA CONVENTION & CONVENIENCE STORE EXPO

Start planning now to attend the 2011 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada, **February 22-24, 2011**.

You may now register online for the 2011 WPMA Convention & Convenience Store Expo.

Go to: <http://www.wpma.com/national-convention>

MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2010

October 14, 2010 – WOMA PAC Golf Tournament – Glendale Country Club – Bellevue, Washington

Petro Pete: "If making money were all there was to business, it'd hardly be worthwhile going to the office. Money is a by-product. –Humphrey Bogart (Linus Larrabee) *Sabrina*"

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If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.

PMAA Regulatory Report - September 27, 2010

Subject: Regulatory Compliance Deadlines

Issue: Compliance Deadlines for October 1, 2010

Date: September 27, 2010

PMAA Contact: Mark S. Morgan, Regulatory Counsel - mmorgan@pmaa.org

EXECUTIVE SUMMARY – An array of important federal regulatory deadlines will become effective on October 1, 2010. Petroleum marketers should already be aware of these changes that were reported in previous PMAA publications. The regulatory changes are discussed in brief below with links to more detailed information for each on PMAA's website.

New Product Transfer Document Language and Placards for Ethanol Blends Over 10 percent:

The U.S.DOT is requiring new product transfer document (PTD) language and placards for ethanol blends that exceed 10 percent (E-10) beginning October 1, 2010. The reason for this change is to alert first responders to use the appropriate emergency response techniques that are unique to ethanol blends that exceed 10 percent. The following PTD language must be used for all ethanol blends **that exceed 10 percent:**

“Ethanol and Gasoline Mixture, 3, UN3475, PG II”

The following placard must be used on cargo tank motor vehicle compartments containing ethanol blends **that exceed 10 percent:**



Petroleum transporters may still display a single placard for the fuel with the lowest flashpoint in a multiple compartment vehicle (gasoline and diesel fuel) if the gasoline blend being transported is 10 percent ethanol or less. In addition, marketers may still use the 1203 placard for the remaining compartments with blends of under 10 percent as long as the 3475 placard is used on the compartment with the ethanol blend that exceeds E-10. More information is available [here](#).

New Diesel Fuel Sulfur Content PTD Language and Dispenser Labels for Off Road Fuel:

New PTD sulfur content language must be implemented for diesel fuel, kerosene and heating oil products by October 1, 2010. The new PTD language that must be implemented applies to both highway and non-road distillate fuels. In addition, new sulfur content dispenser labels for **non-road fuels** are required by October 1, 2010. New dispenser labels for **highway fuels** are not required until December 1, 2010. The new dispenser label requirements for non-road fuels apply to all storage tanks over 550 gallons. These changes are discussed in detail in the ULSD Compliance Kit available [here](#).

U.S. DOT Emergency Response Telephone Numbers:

The U.S. DOT's hazardous material regulations 49 CFR Sec. 172.604 requires HAZMAT shippers to include a 24-hour emergency telephone number on all shipping papers for use by first responders in the event of an emergency involving the material. Typically an offeror (shipper or transporter) of a HAZMAT shipment contracts with a 24-hour emergency response information (ERI) service to meet this requirement. Beginning October 1, 2010, the name of the **original or subsequent** offeror or its contract number with the ERI provider must be included on the shipping paper. If the original or subsequent offeror is not continuing as the registrant with the ERI provider, the person preparing subsequent shipping papers must insert and identify by name its own valid emergency response telephone number. In other words, the name of the company (or contract number) who registered with the ERI for emergency response information services must be on the shipping paper. The final rule implementing this change can be viewed at <http://edocket.access.gpo.gov/2009/E9-24799.htm>.

U.S. DOT HAZMAT Security Plans:

The U.S. DOT released a final rule that narrows the type of hazardous materials subject to written transportation security plans and clarifies certain requirements to security planning, training and documentation. DOT transportation security plans were first required in 2003 and originally applied to any company that transports placarded loads of hazardous materials including gasoline, distillates, or propane. The final rule narrowed security planning requirements to “high consequence” hazardous materials if stolen or used for terrorist purposes. Beginning October 1, 2010 the transportation security plan and training requirements no longer apply to distillates that are shipped as a flammable or combustible under the “Packing Group III” designation in the U.S. DOT hazardous material table at 49 CFR 172.101 (available at <http://www.phmsa.dot.gov/hazmat/library>.) In other words, if your company transports distillates such as fuel oil, kerosene or diesel fuel but NOT gasoline or propane, then the U.S. DOT security plan and training requirements no longer apply. If your company transports gasoline or propane, the security plan and training requirements continue to apply. Additional information is available [here](#).

GOT QUESTIONS? CONTACT Mark S. Morgan, PMAA Regulatory Counsel
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