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EMA-Energy Marketers of America

EMA Regulatory Alert: The Impact of a Government Shutdown on Federal Regulatory Agencies

Each year, Congress must pass 12 spending bills before October 1, the start of a new fiscal year for the federal government. As Congress failed to act by September 30, the federal government has officially entered into a "shutdown," meaning it faces a lapse in funding, and all nonessential functions ceased at 12:01 a,m. on October 1.

Lawmakers can pass a short-term funding extension (Continuing Resolution-CR) to temporarily fund the affected agencies and services at the previous year's level until a full-year appropriation can be worked out.

Agencies may continue to operate temporarily beyond the October 1 deadline by using any unexpended funds leftover from the previous fiscal year or other sources of appropriations, like the Inflation Reduction Act (IRA). Most agencies have only a few days of unexpended funds to continue operations.

The following is an overview of how key federal agencies are affected by the current shutdown.

Internal Revenue Service

- Potential delays and long wait times for taxpayers, including motor fuel excise tax refund claims, if the IRS exhausts contingency funds set aside under the IRA, originally intended for system modernization.
- The contingency plan covers the first five business days following a lapse in appropriations.
- Capacity constraints from prior workforce reductions mean that shutdowns exceeding five days could significantly delay tax-related processes, affecting energy marketers and other taxpayers. For context, after the 34-day government shutdown at the end of 2018, it took over a year to clear claims backlogs. During the COVID-19 shutdown, energy marketers faced long delays processing motor fuel excise tax claims, tying up millions in refunds for tax-exempt sales of clear diesel fuel. Similar delays are possible.
- The IRS pays interest on delayed refunds: for paper claims, after 45 days of receipt; for electronic claims, after 20 days.

Environmental Protection Agency

- All rulemaking, guidance, policy development, civil enforcement inspections, permit issuance, and approvals of pending state requests (i.e., authorized/delegated state-issued EPA permits and State Implementation Plans) are suspended.

- Superfund site activities will continue only where a failure to maintain operations poses an imminent threat to human life.
- Timely payments to contractor and grantees will continue if available funds are obligated and the employees necessary to make the payments are excepted or exempted.
- The EPA may exempt activities depending on available funds.
- EPA regional offices are similarly affected by a lapse in appropriation.
- Approximately 89% of EPA workforce will be furloughed.

Department of Health and Human Services
- Already facing uncertainty with appropriations separately from the shutdown, the Low-Income Home Energy Assistance Program (LIHEAP) may be impacted.
- State grantees with leftover funding may continue distributing leftover funds until exhausted.

Transportation Security Administration
- The Transportation Worker Identification Credential (TWIC) and the Hazardous Materials Endorsement (HME) background-check programs are self-funded and fee-based and therefore not impacted by government appropriations.
- Driver background checks will continue as usual.
- TWIC and HME enrollment centers remain open during normal hours of operation.
- The Coast Guard will continue to enforce the TWIC program and secure ports without interruption.

Federal Motor Carrier Safety Administration
- All FMCSA operations continue, funded by the Highway Trust Fund and fees.
- Portals, including the Drug and Alcohol Clearing House, will remain operational.
- No employees will be furloughed.

Pipeline and Hazardous Materials Safety Administration
- Investigations of hazardous materials accidents, inspections of shippers/carriers, testing facilities, and cylinder reconditioning facilities continue.
- Hazardous materials enforcement actions proceed, but rulemaking is suspended.
- Registration programs and fee collections pause.
- Approximately 190 of 579 employees will be furloughed.

Department of Homeland Security
- The E-Verify portal will cease operation. Employers must still complete Form I-9 but will not be penalized for delayed entry into E-Verify.

Small Business Administration
- Paycheck Protection Program (PPP) loan forgiveness processing continues.
- No new small business loans or support under CDC 504 or 7(a) Loan Programs.

U.S. Department of Agriculture
- The Higher Blends Infrastructure Incentive Program (HBIIP) continues, fully funded under the IRA and not subject to annual appropriations.
- Biofuel feedstock rulemaking and contract management activities related to energy and environmental markets continue using IRA funds.
- SNAP benefits continue via multiyear carry-over funds. Limited staff are exempted from furlough to maintain operations, including program policy, financial management, and stakeholder communications.

Federal Government Supply Agreements
- Fuel sales to federal government facilities may continue though payment can be delayed.

As we went to press on this article, President Trump continues to vow to use the government shutdown to make further cuts and lasting changes to Executive branch agencies. The White House also has taken steps to halt billions of dollars of federal funding to Democrat-led states to increase political pressure on the Democrats over the shutdown.

EMA Regulatory Alert: California's Vehicle Emissions Standards and Federal Pushback

The Trump Administration is actively challenging California regulators' efforts to reinstate previous vehicle emissions standards following Congress' recent revocation of the State's Clean Air Act waiver that would have imposed electric vehicle (EV) mandates. This development has implications for liquid fuel demand, vehicle market dynamics, and escalating state-federal regulatory tensions.

California Makes Another Move

The California Air Resources Board (CARB) initially adopted the Advanced Clean Cars (ACC I) regulation in 2012, targeting 8% EV and plug-in hybrid sales by model year 2025. In 2022, ACC II replaced it with a mandate of 100% EV and plug-in hybrid sales by 2035. Following Congress' revocation of EPA waivers for model years 2026 and beyond (ACC II), CARB is now seeking to revert to its 2012 (ACC I) regime. The agency asserts that reverting to ACC I clarifies its authority to certify vehicles in the State amid ongoing federal uncertainty. CARB has scheduled a board vote on November 20 to decide whether to implement this rollback.

This move comes as California and several other states, which had intended to follow California's lead (allowed under the Clean Air Act), filed a lawsuit challenging the revocation mechanism under the Congressional Review Act. Additionally, litigation is pending regarding EPA's ACC I Clean Air Act waiver following the recent Supreme Court ruling affirming that fuel stakeholders, including EMA, have legal standing to challenge the ACC I waiver.

CARB is proposing to scale back standards as a backstop to continue promoting EV penetration. In response, EPA issued a public statement and letter asserting that it retains authority to approve CARB's proposed scaled-back standards, while signaling that approval is unlikely.

Another Source of Dispute and Uncertainty
The dispute is part of broader federal efforts to roll back California's EV mandates, originally implemented under the Biden Administration. After Congress revoked the Clean Air Act waivers, EPA proposed repealing all greenhouse gas standards applicable to light-, medium-, and heavy-duty vehicles and engines, emphasizing that such actions would not compromise federal preemption.

For fuel wholesalers and retailers, this regulatory uncertainty may impact gasoline and diesel demand. While EV and plug-in hybrid sales have grown—albeit at a slower pace in Q2 2025—the outcomes of legal challenges and federal-federal disputes will be critical in shaping market dynamics.

EMA has submitted comment letters to EPA and DOT, urging regulators to adopt uniform federal policies that preserve consumer choice and support long-term fuel consumption. EMA members should monitor developments closely, particularly EPA's responses and potential impacts on vehicle fleet composition and fuel demand.

FDA Commissioner Encourages Retailers to Stop Selling Illicit Vapor Products
On Tuesday, FDA Commissioner Dr. Marty Makary announced an initiative to increase voluntary compliance from tobacco and nicotine retailers. As part of this effort, FDA will be mailing materials to more than 300,000 retailers nationwide containing:

- A list of the PMTA Marketing Granted Orders which include 39 vapor products and 20 nicotine pouch products;
- Information on accessing FDA's Searchable Tobacco Product Database, a database of over 17,000 tobacco products—covering all categories, such as cigarettes, cigars, and vapor products—that may be legally marketed in the United States; and
- New tobacco retailer education materials, including a wall calendar of reminders focused on retailer requirements such as only selling tobacco products to those 21 and older and requiring a photo ID check of anyone under 30.

Over the past month, the FDA has increased its enforcement efforts including announcing the seizure of 4.7 million units of unauthorized vapor products with an estimated retail value of $86.5 million – the largest-ever seizure of this kind. This was part of a joint federal operation that uncovered shipments of various illegal vapor products, almost all of which originated in China and were intended for shipment to various destinations in the United States.

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