

PMAA Priorities Report March 2019

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*** **Bold** means the issue has been updated.

Top Issues

• **Unfair EV Charging Infrastructure Initiatives/EV Tax Credit/Heat Pumps/Green New Deal/Regional Greenhouse Gas Initiatives**

PMAA members are very concerned with utilities using their rate base to pay for EV infrastructure expansion. We believe this allows utilities an unfair competitive advantage over marketers and others who must economically justify at risk investments in new equipment such as EV charging stations. Further, the individuals who get the short end of the stick are the poor and middle class who are subsidizing the utilities ability to generate income from EV charging stations without at risk investment and the wealthy's ability to buy more EVs.

A common misconception is that EVs are environmentally cleaner than conventionally powered automobiles. However, questions still remain whether widespread adoption of EVs could actually reduce America's CO2 footprint compared

with new high efficiency, cleaner burning internal combustion engines. EVs rely on electricity generated from coal and natural gas which are both major sources of greenhouse gas emissions. Furthermore, EVs must be transported to and from locations by different methods of transportation that produce emissions. Lastly, there are serious safety concerns surrounding the batteries that power electric vehicles. EV batteries can catch fire and produce toxic gases not normally encountered with internal combustion vehicle fires. These toxic gases require unfamiliar fire suppression methods that are not in widespread use which can present problems for first responders and create recycling issues.

EV Tax Credit

In November 2018, PMAA joined AFPM, NACS, SIGMA, and API in a [letter](#) to Congress to oppose including an extension of the lucrative \$7,500 electric vehicle (EV) tax credit in the tax extenders package that Congress may address before the end of this year. The EV Drive Coalition, which includes General Motors, Nissan, Tesla and other automakers, is pushing Congress to extend the credit and lift the cap which phases out on a per manufacturer basis once that company has sold 200,000 EVs total for use in the United States. Tesla and GM have indicated that they have reached the cap. If the cap isn't lifted for these companies, their competitors may be able to capture additional market share while the credit won't be available for Tesla and GM customers.

The bottom line is that PMAA opposes granting a de facto monopoly to utilities unfairly competing in the marketplace which could ultimately put small business petroleum marketers out of business.

Meanwhile, Sen. John Barrasso (R-WY), chairman of the Senate Environment and Public Works (EPW) Committee, and Rep. Jason Smith (R-MO), reintroduced the "Fairness for Every Driver Act."

Specifically, the legislation would:

- Terminate and repeal the federal electric vehicle tax credit up to \$7,500 per new electric vehicle purchased for use in the U.S.;
- Impose a federal highway user fee on alternative fuel vehicles;
- Require that all user fees be collected with the user's tax return; and
- Ensure the transfer of federal highway user fees into the Highway Trust Fund (HTF)

Green New Deal

In other news, Rep. Alexandria Ocasio-Cortez (D-NY) and Sen. Ed Markey (D-MA) released the Green New Deal which calls for a "10-year plan to mobilize every aspect of American society at a scale not seen since World War 2 to achieve 100 percent net-zero greenhouse gas emissions and create economic prosperity for all." The Green New Deal backers offer hardly any details on how to achieve these goals other than investment of public money. Click [here](#) to view the text of the Green New Deal. Democrats seem split on the issue and no Republicans have backed the GND.

Regional Greenhouse Gas Initiatives

Finally, a coalition of nine Northeast and Mid-Atlantic states, as well as the District of Columbia, announced plans to work on a new program to limit greenhouse gas emissions from burning transportation fuels. The states (Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, Vermont, and Virginia – along with DC) agreed to create a system within a year that caps the region's transportation emissions and invest proceeds from the program into "low-carbon and more resilient transportation infrastructure." PMAA is taking the initiative very seriously. Click [here](#) for PMAA's response.

- **RVP Waiver for E10+ Blends, RFS Reform, RFS Reset, E15 Description/Labeling**

RFS Reform/RVP Waiver for E10+ Blends

EPA sent the final draft of its proposed RFS reform rule to the White House Office of Management and Budget (OMB) for review. OMB review marks the final step before the proposal is released for public comment. The proposed rule is important to petroleum marketers because it would allow the year-round sale of E15 blended gasoline. Currently, E15 may only be sold during the winter driving season because it can't meet federal summertime Reid Vapor Pressure

(RVP) requirements for evaporative emissions. The proposed rule would change all that by extending the existing one-pound waiver allowed exclusively for E10 to E15 blends. If this happens, E15 will meet summertime RVP standards and can be sold year-round, UST and automobile compatibility concerns notwithstanding.

However, extending the one-pound RVP waiver to E15 through the rulemaking process is controversial because the statutory language of the Clean Air Act specifically limits the waiver to E10 blends. Consequently, opponents of E15 argue that any such change can only be made by Congress through the legislative process, specifically by amending the Clean Air Act. Despite this hurdle, the Trump Administration is directing the EPA to make the change through a rulemaking to be finalized by the end of the summer. In the meantime, E15 opponents will likely sue to prevent the rule from taking effect. While PMAA supports all forms of motor fuel, serious compatibility issues with UST systems and automobiles must be resolved before E15 can be safely sold year-round. The rulemaking also proposes regulatory changes to modify the RIN compliance under the RFS in an effort to stabilize the RIN market by limiting speculation.

In a [letter](#) to President Trump, PMAA expressed significant procedural and policy concerns with respect to changing the RFS in a way that benefits only one of the many stakeholders affected by the decision to sell E15 year-round. On the procedural front, PMAA said that section 211 (h)(4) of the Clean Air Act specifically limits the one-pound summertime RVP waiver to gasoline blends containing between 9-10 percent volume ethanol. Therefore, any change to expand the RVP waiver to E15 blends can only be made by Congress and not the EPA who lacks the statutory authority to do so. PMAA added that from a policy perspective the year-round sale of E15 raises serious concerns regarding E15 compatibility with motor vehicles, motorcycles, marine engines and small gasoline powered equipment. On top of that, existing UST system components especially pipe dope are not compatible with E15. Click [here](#) for a regulatory report from PMAA Counsel.

RFS Reform Legislation

Late last year, Reps. John Shimkus (R-IL) and Bill Flores (R-TX) introduced draft legislation to revamp the RFS by moving towards a fuel performance standard to reduce emissions and preserve the liquid fuels industry. The draft bill known as the "21st Century Transportation Fuels Act," would nix the 15-billion-gallon corn ethanol mandate in 2022 and transition to a national octane standard. In other words, the legislation would swap out a government mandate for a performance standard that autos, refiners and petroleum marketers would need to meet.

The good news is that the discussion draft does provide legal liability protection for retailers and automakers from higher ethanol blends. However, the bill would also extend the one-pound waiver for E10 plus blends and would prevent states from prohibiting or requiring any particular blend/concentration of ethanol in fuel. For 2023 through 2032, the EPA would be required to set RFS renewable volume obligations (RVOs) for advanced biofuel, cellulosic biofuels and biomass diesel at levels equal to the volume of fuels produced during the previous calendar year. The mandate for these specific fuels would be repealed in 2033.

RFS Reset

Given that EPA missed specific requirements for biofuel blending by 20 percent or more for two years in a row, the agency can set requirements without reference to the law this year which is known as the reset provision. Under the statutory provisions governing the RFS program, EPA is required to modify, or "reset" the applicable annual volume targets specified in the statute for future years if waivers of those volumes in past years met certain specified thresholds. As a result, EPA is likely to propose a rulemaking that will modify the applicable volumes targets for cellulosic biofuel, advanced biofuel, and total renewable fuel for the years 2020 - 2022. This may serve as an opening to reduce RVO corn ethanol requirements for future years.

The Renewable Fuels Association (RFA) urged the EPA to account for the biofuel gallons lost due to small refinery waivers by increasing the ethanol mandate as part of the upcoming reset of the RFS. Biofuel groups have argued that the 48 refinery waivers from 2016-2017 have indirectly reduced the ethanol mandate which have driven down RIN values and, therefore, weakened the market for E15.

The EPA finalized a rule last year that would increase total renewable fuel volume by 630 million gallons from 2018 to 2019 but does not force large refiners to make up for the gallons of obligated blending volume lost in 2018 due to these small refinery waivers. PMAA believes carrying those gallons over to large refiner obligated blending volumes for 2019 would cause an unlevel playing field in the marketplace.

Last year, Acting Administrator Wheeler addressed some lawmakers' concerns with the granting of small refinery RFS waivers to large oil companies by the Trump Administration. Wheeler defended the exemptions saying, "Often times these refineries are located in the Rocky Mountains and other regions where they are the only supplier in their region. We have to issue these regulations on the refiner itself." Although many ethanol producers believe that larger refineries should blend more ethanol to make up for the gallons lost due to the exemptions, Wheeler said that doing so could have "a rolling impact on other refiners" and could lead to more RFS waivers.

E15 Branding/Labeling

PMAA is concerned with current E15 branding and labeling. Specifically, a few retailers have taken a variety of approaches with branding E15 on fuels dispensers as well as price signs using brands such as "unleaded plus," "unleaded 88," and "eblend," which can be confusing to consumers purchasing fuel. Further the ethanol industry has recently begun an effort to use "unleaded 88" as a unified brand for E15. In support of this campaign Growth Energy recently launched a [website](#) devoted to Unleaded 88. While E15 needs to be properly branded to prevent confusion. PMAA's concern is that while EPA requires an E15 warning label on the dispenser these labels are not always obvious to the consumer and only available once the consumer is at the dispenser. Brand names such as "unleaded 88" do not provide any indication as to the ethanol content or the presence of ethanol in the fuel. PMAA's proposal simply asks the ethanol industry to be transparent about the fuel being advertised and sold and not let price alone drive a consumer's decision by adding the term E15 to any brand name such as "unleaded 88 E15". Unfortunately, the National Conference on Weights and Measures rejected PMAA's proposal. PMAA plans to further explore this issue with like-minded associations.

- **CAFE Standards -- Rolling Back Obama-era Fuel Efficiency Rules**

Citing a lack of productive discussions with the California Air Resources Board (CARB), the Trump Administration announced recently that it was ending talks with CARB and moving forward with its rule that would freeze Corporate Average Fuel Economy (CAFE) standards and corresponding greenhouse gas standards at 2020 levels and revoke the rights of individual states to adopt more stringent emissions standards. Both the Trump Administration and CARB, California's top air regulator, were unable to come to an agreement on key points. The Trump Administration said that "Despite the Administration's best efforts to reach a common-sense solution, it is time to acknowledge that CARB has failed to put forward a productive alternative since the SAFE Vehicles Rule was proposed. Accordingly, the Administration is moving forward to finalize a rule later this year with the goal of promoting safer, cleaner, and more affordable vehicles."

The decision to end negotiations over the rule will undoubtedly lead to a meeting in court between the Trump Administration and California. California and other states that have adopted its rules already sued EPA over its decision last year to roll back the standards. That lawsuit is still pending.

Last October, PMAA submitted comments in support of the Trump Administration's proposed rule. PMAA highlighted numerous reasons why current CAFE standards could impact petroleum marketers and how important the Trump Administration's proposed rule is needed. Click [here](#) to read the comments.

- **Reducing UST Compliance Costs/UST Rule Delay**

PMAA member states are advised that October 13, 2018 deadline is in effect for complying with the remaining underground storage tank (UST) requirements in the 2015 revised UST regulation *for non-SPA states*.

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. Click [here](#) 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. Click [here](#) for more information on EPA's state UST program webpage. The EPA's UST regulations allow states with UST program authority to adopt the October 13, 2018 federal compliance deadline or establish their own deadline any time thereafter, but no later than October 13, 2021. The remaining states must enforce the October 13, 2018 deadline.

PMAA continues to work with the EPA and industry standard groups to develop guidance that offers additional compliance flexibility to states that choose to adopt them. PMAA is currently working on development of a new less expensive and more effective sump testing method that requires visual inspection only. The visual inspection would be carried out annually by a third-party certified inspector and would not require liquid or vacuum pressure testing. Meanwhile, EPA's Office of Underground Storage Tanks (OUST) issued guidance for PMAA's alternative low-level liquid hydrostatic testing for UST containment sumps used as secondary containment. The new guidance puts EPA's stamp of approval on the PMAA low liquid level alternative testing method that will encourage states to adopt it as well. 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.

- Click [here](#) for EPA Low Liquid Level Containment Sump Test Procedures.
- Click [here](#) for EPA Low Liquid Level Containment Sump Test Compliance Form.

- **Diesel Fuel Quality**

PMAA's ULSD Corrosion Task Force and Motor Fuels Committee has been participating in diesel fuel quality surveys spearheaded by the Fuels Institute's Fuel Quality Council which is studying the relationship between diesel fuel quality and modern high-pressure common rail diesel engines, identifying possible issues with that relationship, and evaluating the viability of potential solutions.

Diesel engine manufacturers are under significant pressure to provide engines that meet increasingly more stringent emission standards resulting in greater demands on the quality of diesel fuel supplied and used in modern high-pressure diesel engines. This has been a topic of discussion at ASTM related to ASTM D975 and other fuel specifications that resulted in proposals to place the point of compliance for demonstrating diesel fuel quality at marketing facilities.

PMAA has argued that the responsibility for diesel fuel quality needs to occur throughout the supply and distribution chain from the refinery to the terminal to ensure that quality diesel fuel is delivered to a marketer's site or an end user. The Fuel Quality Council recently held a workshop on diesel fuel quality. The workshop brought together representatives from the primary segments of the diesel fuel supply and distribution chain, as well as engine manufacturers and users to discuss their perspectives on diesel fuel quality, the challenges and opportunities facing each segment and management practices currently in place to ensure diesel fuel quality.

PMAA Environmental and Technical consultant, Jim Rocco, provided the marketer's perspective on diesel fuel quality noting that marketers are limited by the quality of the diesel fuel that is provided by their supplier and that they expect the diesel fuel provided to meet all applicable specifications. He also provided an overview of practices used at marketing facilities to monitor diesel fuel quality. It was clear from the presentations that each segment has its concerns and issues with diesel fuel quality as it moves through the supply chain. It was also recognized that there is no simple solution or one segment of the supply chain that is solely responsible for diesel fuel quality.

The overall outcome of the discussions was a consensus that diesel fuel quality needs to be simultaneously addressed at each segment of the distribution chain and a quality product passed on to the next segment. Any approach to addressing diesel fuel quality needs to account for the practicality of the approach and the economic impacts on the supply chain segment. Action items coming out of the workshop discussed during the Fuel Quality Council meeting following the workshop included developing a compendium of best management practices for each supply segment; continuing a collaborative discussion among the supply segments; engine manufacturers and users; and collecting and evaluating data to better understand the fuel quality issues and support changes to the ASTM D975 specification to reflect the needs of the modern high pressure engines.

- **CDL Driver Shortage: Focus on Expanding the HOS Short Haul Exemption**

Last January, the FMCSA invited industry stakeholders, including PMAA to offer suggestions on regulatory changes to the CDL driver hours of service rule that would reduce compliance cost burdens on the regulated community. PMAA met directly with FMCSA Administrator Ray Martinez to promote changes that would benefit petroleum marketers operating cargo tank vehicles. Many of PMAA's requests were included in the FMCSA's proposed regulatory reform rule released in August.

PMAA's requests included changing the 100 air-mile short haul exception for drivers in two ways: increase the number of daily on-duty hours from 12 to 14 for driver's operating under the exception; and expand the 100-mile air radius to 150 miles in order to capture all drivers employed by petroleum marketers, including those travelling to terminals outside the current 100-mile limit. The changes would expand the class of drivers qualifying for the short haul exception, increase the number of hours drivers can be on-duty each day, and broaden the exception form using electronic recording devices to record hours of service to include all drivers.

The FMCSA proposal also included PMAA's request to allow drivers to count the time waiting at terminals to load product as off-duty time; extend the current 14 hour on-duty limitation to allow for a three consecutive hour break (to allow for loading and unloading); extend the current 14 hour on-duty limitation by up to two hours when a truck driver encounters adverse driving conditions; and elimination of the 30-minute rest break for drivers not qualifying for the 100 air-mile short-haul exception but who return to the worksite at the end of each daily shift. PMAA submitted written comments on all these issues and will continue to advocate for their approval as the FMCSA rulemaking process moves forward.

Meanwhile, a bill was recently introduced in the House which would allow drivers under 21 years old to operate interstate. Federal law currently restricts interstate trucking to CDL holders 21 years and older. However, most states allow drivers 18 or 19 and older to operate intrastate.

The DRIVE-safe Act, reintroduced by Rep. Trey Hollingsworth (R-IN) as well as Sens. John Tester (D-MT) and Todd Young (R-IN), would allow drivers 18 and older to operate across state lines, if they meet rigorous training requirements — at least 400 hours of on-duty time with 240 hours of driving time, with an experienced driver training them. Training would also be restricted to trucks equipped with active braking systems, video monitoring systems and speed limiters set to 65 mph or slower.

- **Swipe Fees and Litigation**

Recently, the US District Court for the Eastern District of New York issued an 80-page Opinion and Order granting preliminary approval to the pending \$6.24 billion settlement in the consolidated payment card interchange fee class action case (In Re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL-1720). The settlement class is comprised of all merchants that accepted Visa and Mastercard payment cards from Jan. 1, 2004 to Jan. 25, 2019. The settlement fund is designed to compensate class members for the interchange fees they paid, which were allegedly inflated as a result of certain violations of the antitrust laws by Visa and Mastercard and their participating banks.

Last December, PMAA filed objections to the settlement over concerns that branded marketers would not receive notice or payment because their major oil company suppliers are the only entity known to credit card processors. Although Judge Brodie of the US District Court for the Eastern District of New York addressed this issue by saying, "Class Counsel assured the court that Branded operators would in fact receive notice," PMAA does not count on Visa and MasterCard sending settlement notices to branded jobbers even though jobbers ultimately paid the excessive interchange fees that will fund the settlement. Notice of the settlement should go out shortly and opt-outs may be filed until July. Finally, a Court hearing will be held on Nov. 7, 2019 to decide whether to approve the settlement.

Given that branded petroleum marketers ultimately paid the fees, PMAA General Counsel, Bassman, Mitchell, Alfano & Leiter, Chartered, **have drafted this template for marketers to send to their supplier(s) requesting that any settlement monies they receive be paid on a *pro rata* basis to their branded marketers from the Visa/MasterCard interchange fee settlement case.** If you have any questions, please contact PMAA General Counsel Al Alfano at aalfano@bmalaw.net or Bob Bassman at bbassman@bmalaw.net.

Upon receiving the Court-approved Notice, branded and unbranded marketers will have three options. They are:

1) **Opt out of the Settlement Class.** Marketers who would like to continue to pursue the litigation against Visa and MasterCard, in lieu of settling their claims, will have an opportunity to opt out of the settlement class by providing the court with an opt out notice. The notice you receive from the Court will advise you how to opt out and provide you with a deadline for opting out and the address to which the opt -out notice should be sent. If you opt out, you will not be able to file objections to the settlement, and you will not be eligible to file a claim against the settlement fund when and if the settlement receives "final" approval from the Court. In other words, you will receive no compensation from the settlement fund if you opt out. If you continue to pursue litigation against Visa and MasterCard by opting out, you must retain counsel at your own expense. The current class counsel will no longer represent you.

2) **Object to The Settlement.** You may file objections to the settlement without waiving your right to file a claim against the settlement fund after final approval is given. You may not object to the settlement if you opt out. The deadline to file your objections is July 23, 2019. Click [here](#) and go to page 12 to learn how to object or call 1-800-625-6440. If you have any questions concerning the objection process, you can also reach out to PMAA General Counsel Al Alfano or Bob Bassman.

3. **Do Nothing.** If you neither opt out of the settlement class nor file an objection, you will be eligible to file a claim against the settlement fund at the appropriate time after final approval of the settlement is given by the Court. After final approval is given, either in November of 2019 or later, you will receive a claim form from the Court with instructions on how to fill it out and the address to which it should be sent by regular mail or electronically. When you receive the Court-approved Notice, read it carefully to decide whether to opt out, to file objections, or to simply do nothing. As long as you do not opt out of the settlement class, you will be eligible to file a claim against the settlement fund at the appropriate time, provided you are a retailer who accepted Visa or MasterCard.

If you accepted the cards during the settlement period and do not receive the Court approved notice by March 15th, please contact the Class Administrator: Call the toll-free number: 1-800-625-6440; Visit www.PaymentCardSettlement.com; Write to: Payment Card Interchange Fee Settlement, P.O. Box 2530, Portland, OR 97208-2530; Email: info@PaymentCardSettlement.com.

- **Infrastructure and Funding Issues**

Recently, the House Ways and Means Committee and the Senate Environment and Public Works (EPW) Committee continued the debate over how to fund the future of our nation's roads and bridges. The one thing that was clear from the hearings was the lack of consensus among lawmakers on how to find a long-term funding solution to maintain the Highway Trust Fund's (HTF) solvency.

Congress is expected to consider an infrastructure package this year, however, it remains to be seen whether lawmakers have the appetite to pass it. Some lawmakers have floated raising the gas tax, but the idea has not gained much traction on Capitol Hill. New House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) supports a short-term gas tax increase as a bridge to solve the nation's infrastructure funding woes given that a national shift to a vehicle miles traveled (VMT) is unlikely to be feasible for another decade. A VMT is a user fee based on miles traveled that can possibly be tracked by phone apps, in-car diagnostic systems or by other means. To sweeten the deal, DeFazio has proposed lifting the ban on earmarks which have been banned since 2011.

During both hearings, fiscal conservatives continued to discuss devolution which would push the majority of maintaining the nation's road and bridges to states instead of the federal government. Meanwhile, House Ways and Means Committee Ranking Member Kevin Brady said this week that he doesn't see a consensus among the GOP for higher motor fuel taxes or a VMT. Brady laid out a three-step process for improving infrastructure — streamlining permitting, attracting private investment and implementing private activity bonds — none of which involve raising revenues. Even House Ways and Means Committee Chairman Richard Neal (D-MA) dodged the question of whether he'd personally support a motor fuels tax increase. Rep. Lloyd Doggett (D-TX) said that a highway spending bill will be difficult to pass this year unless the President uses the full weight of the White House to get it done. However, Doggett is one of the leading democrats demanding Trump's tax returns so this could thwart any effort to get a highway bill done this Congress.

Meanwhile, members of the Senate EPW Committee also expressed skepticism on whether Congress will increase the motor fuels excise tax this year. Most Republicans focused on streamlining the federal government permitting process including Senator John Barrasso (R-WY) who doesn't favor a motor fuels excise tax increase. Senator Shelley Moore Capito (D-WV) seemed skeptical that Congress will be able to pass a major infrastructure package before the 2020 elections. "It's either added pressure to get something done, depending on your perspective, or it's added pressure to make sure nothing gets done," she said. To make matters more difficult to pass a highway funding bill, Senate Minority Leader Chuck Schumer (D-NY) has continued his opposition to a gas tax increase.

The HTF's highway account that is responsible for providing funding for the construction of highways and highway safety programs could run out of funding by 2022, if proper funding policies are not put into place. Furthermore, the report says the HTF's transit account, which provides funding for mass transit programs, could run out of money even sooner, by 2021. The current 18.4 cent-per-gallon federal gas tax has been the main source of transportation funding for decades and it has not been increased since 1993. If the gas tax were to have been indexed to inflation, drivers would be paying over 30 cpg for gasoline.

The American Trucking Associations (ATA), which testified recently before the House Ways and Means Committee, still favors a 20 cpg gasoline tax increase while the Chamber of Commerce, which also testified at the same House hearing, is advocating for a 25 cpg increase. President Donald Trump has reportedly said that he supports a 25 cpg increase. According to Politico, since 2011, 33 states have raised their state gas taxes, and 91 percent of state legislators who supported the increases won reelection. Finally, Green New Deal advocates urge carbon taxes to fund infrastructure but that would be a non-starter in the GOP-controlled Senate. The other question remains on how to deal with taxing electric vehicles which also use the road and currently do not pay into the system. Rep. Earl Blumenauer (D-OR) said that House leadership has reserved floor time for an infrastructure bill with a target of late spring. Stay tuned.

- **Tax Extenders/Biodiesel Tax Credit**

Recently, Senate Finance Committee Chairman Chuck Grassley (R-IA) introduced legislation to retroactively extend through 2019 the \$1 per gallon biodiesel tax credit that expired at the end of 2017. Additionally, the Oil Spill Liability Tax (OSLT) would be extended through 2019 and the good news for petroleum marketers is that it would not be applied retroactively. For instance, if the bill is signed into law in March, then the OSLT would be effective the first day of the first month following passage, which would mean April 1, 2019. Again, the prospects of passage depend on whether Congress can find a legislative vehicle to attach the tax extenders bill. At this time, it remains to be seen when that would happen, although, several House members have expressed their support for addressing tax

extenders. The House plans to hold hearings on tax extenders in March.

Early this month, PMAA, NEFI and several other groups sent a letter to House and Senate leadership in support of a 2018 retroactive renewal of the \$1 per gallon biodiesel blender's tax credit, which expired on December 31, 2017. Further, the letter urges Congress to include a multi-year extension of the credit. Click [here](#) to view the letter and to urge your representatives to support the biodiesel blender's tax credit, click [here](#).

Additionally, PMAA and other groups sent a letter to Congressional tax writing committees to oppose the retroactive renewal of the OSLT and to renew only on a prospective basis after the date of enactment. Applying an excise tax to 2019 transactions that have already been processed and the associated products sold multiple times would create significant transactional concerns and potential legal implications within the entire fuel supply chain. Click [here](#) to view the OSLT letter.

Other credits that would likely have been part of the tax extenders package include: installation of qualified alternative fuel vehicle refueling property in a home or business; the Alternative Fuels Excise Tax Credit for the use of propane as a transportation fuel, known as the "propane autogas tax credit;" and the Section 25C tax credit for the installation of qualified high-efficiency residential HVAC systems and certain energy-saving home retrofits.

- **Proposed Legislation Would Require Retrofit of Cargo Tanks with Side Underride Protection**

A new bill was just dropped in the Senate, S. 665, sponsored by Sen. Gillibrand (D-NY), that would require new side underride protection for trailers and straight trucks with a gross vehicle weight over 10,000 pounds.

The proposed legislation is important to petroleum marketers because it would require a costly retrofit of transport cargo tank trailers and single unit cargo tank trucks. Specifically, the bill would require the DOT to adopt regulations that would require: the installation of side underride rails on new and existing commercial motor vehicles (CMV) cargo tank trucks and trailers; and new performance standards, inspection and maintenance requirements for front, rear and side underride protection equipment. The bill is problematic for marketers because it would require virtually all CMVs and CMV trailers to be removed from service, brought to a certified cargo tank inspection and maintenance facility, cleaned and purged of residue and vapors and installation of new side underride rails and possibly replacement of existing rear underride rails that do not meet new equipment performance standards. The bill is particularly troubling because there is no practical or safe way to install side rail underride protection on bottom loading cargo tank vehicles and transport trailers.

The bill would impose huge compliance costs on all petroleum marketers operating cargo tank vehicles and trailers. The DOT attempted to impose similar requirements specifically targeting bottom loading vehicles and trailers back in 1998, but eventually withdrew the proposed rule after fierce opposition by PMAA and other trucking interests. That rulemaking was withdrawn in part because of the findings in a study partially funded by PMAA which found that more people would die during retrofit installation of side rails than those killed in cargo tank underride traffic accidents. PMAA opposes efforts to mandate costly underride equipment retrofits.

PMAA will meet with members of Congress to highlight our concerns with the bill.

Secondary Issues

- **NORA Reauthorization**

In December, Congress passed the Farm Bill which includes a 10-year reauthorization of the National Oilheat Research Alliance (NORA) in which 25% of the funding will be escrowed each year that can be accessed on year 11. Passage of the bill is a huge victory for heating fuels dealers. PMAA would like to thank all of our state/regional associations that reached out to their lawmakers to get us to this point, but most especially, NEFI, all of the Northeast state associations, Wisconsin, Kansas, Ohio, Michigan, North Carolina, South Carolina, Kentucky, Illinois, Washington state and Oregon.

Senators who played a key role in the process included Senator Jeanne Shaheen (D-NH), Senator Patrick Leahy (D-NH), Senator Susan Collins (R-ME), Senate Majority Leader Mitch McConnell (R-KY), Senator Richard Burr (R-NC), Senator Rob Portman (R-OH) and Senator Jack Reed (D-RI). In the House, key lawmakers included: Paul Tonko (D-NY), Jeff Duncan (R-SC), Frank Pallone (D-NJ), Peter Welch (D-VT), John Faso (R-NY), Ann Kuster (D-NH), Cathy McMorris Rodgers (R-WA), and David Rouzer (R-NC).

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.

- **FDA Regulation of Tobacco**

Recently, the Food and Drug Administration (FDA) presented a plan to the White House to ban the sales of certain e-cigarette products at convenience stores. FDA Commissioner Dr. 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 announced that it is also considering a rulemaking banning traditional menthol-flavored cigarettes, a move that would be fiercely opposed by the tobacco industry and would likely take the issue to court. In addition to banning traditional menthol cigarettes, the FDA is looking to ban flavored cigars because the FDA believes that flavors in cigars appeal to the youth.

These policy changes will take time to fully implement, but outgoing Commissioner Gottlieb hopes that retailers and vaping companies will pick up the pace themselves.

Please reach out to your lawmakers and urge them to tell the White House not to ban sales of flavored e-cigarette products at convenience stores.

Click [here](#) to do so.

- **Placarding**

PMAA filed comments asking the Pipeline Hazardous Material and Safety Administration (PHMSA) to restore a cargo tank placarding provision important to petroleum marketers. Specifically, the provision allowed marketers to permanently attach a UN 1203 placard to cargo tanks for alternating loads of diesel fuel and gasoline rather than having to continually change placards between runs. The 1203 placarding provision stood for 35 years until PHMSA issued an interpretive letter in 2015 that limited permanent 1203 placards to straight loads of gasoline or split loads of gasoline and diesel fuel stored in separate compartments of the same load. In November 2015, PMAA petitioned the agency to undertake a rulemaking to restore the ability to placard to the 1203 provision.

Unfortunately, PHMSA failed to act on the petition for over a year until PMAA successfully lobbied Congress for legislation requiring the agency to initiate a rulemaking within 90 days. PHMSA expressed concerns in its 2015 interpretive letter for the safety of emergency responders because gasoline with ethanol blends over 10 percent required a different placard and emergency response procedures than E10 blends. PMAA told PHMSA in written comments that placarding alternating straight loads of diesel fuel and gasoline with the UN 1203 placard does not pose any danger to public safety because emergency response methods for both are identical under Emergency Response Guide 128. PMAA also explained that mid-level ethanol grades are blended at the pump and not typically transported in cargo tank trucks so there was no need to remove the 1203 placarding provision based on concerns over alcohol content. PMAA told PHMSA it supports limiting the 1203 placarding provision to a maximum E10 blend to neutralize concerns over mid-level ethanol blends. PMAA met with DOT officials on this issue and **DOT officials have said they agree with PMAA and are prepared to rescind the 2015 interpretative letter and revert to the previous rule for placarding to the lowest flashpoint. PMAA is waiting for DOT officials to make the necessary changes and will send**

out a compliance bulletin to inform petroleum marketers as soon as possible. PMAA is weighing additional Congressional action on this issue if PHMSA is not responsive to marketer concerns.

- **Meal and Rest Breaks for Motor Carriers**

Late last year, the Pipeline and Hazardous Materials Safety Administration ("PHMSA") released its determination in response to a preemption application by the National Tank Truck Carriers, Inc. (NTTC) that California's meal and rest break requirements are preempted with respect to all drivers of motor vehicles transporting hazardous materials (whether interstate or intrastate). This means the state meal and rest break provisions no longer apply to interstate and intrastate hazardous materials motor carriers in California.

In its determination, PHMSA found that California's meal and rest break laws create unnecessary delay in the transportation of hazardous materials in conflict with provisions of the federal Hazardous Materials Transportation Act. PHMSA also found the California's laws preempted on additional grounds as to specific subsets of hazmat drivers. The determination recognizes the impact meal and rest break laws have on delaying motor carrier service. Standing alone, the decision should be beneficial in mitigating the explosion of class action claims centered on violations of California's meal and rest break laws in particular and likely similar laws in other states. The determination was published in the Federal Register and has gone into effect.

PMAA still is pushing for the inclusion of the preemption provision in an upcoming government funding bill which is necessary to bring nationwide uniformity to the issue to prevent a future administration from overturning the PHMSA ruling.

- **LIHEAP Funding/Leveraging Requirement**

In September, Congress approved, and the President signed into law a spending bill through Sept. 30, 2019 which included 3.65 billion for LIHEAP. Unlike previous years' initial appropriations, this act appropriated LIHEAP funds for the entire FY 2019. PMAA has urged Congress not to eliminate LIHEAP because it is vital in serving low income consumers of home heating fuel. PMAA is a participant in the National Energy and Utility Affordability Coalition (NEUAC) which sent an "all organizations" letter to save LIHEAP. Click [here](#) to view the letter.

Meanwhile, the President just released his FY 2020 budget and it requests \$87.1 billion for the U.S. Department of Health and Human Services, representing an 11.9% decrease from the 2019 estimated level of funding and potentially impacting the Low-Income Home Energy Assistance Program (LIHEAP). This 2020 budget proposal lacks detail, but the 2019 budget proposal indicated that LIHEAP would be eliminated in 2020 and all subsequent years. PMAA will continue to monitor the latest.

- **Overtime Rule**

Recently, the Department of Labor issued a proposed rule to expand overtime eligibility, setting the threshold at \$35,308 (\$679 per week), compared to the current \$23,660 (\$455 per week). The proposed rule does not include automatic inflation adjustments as the Obama Administration rule required. The \$35,308 threshold is close to Labor Secretary Alexander Acosta's suggested overtime salary during his confirmation hearings, but well below the \$47,500 that the Obama Administration would have imposed.

Late in December 2016, a U.S. District Court Judge for the Eastern District of Texas blocked the Obama Administration's final overtime rule just days before it was to go into effect. PMAA welcomed this news because if the overtime rule were to be implemented, many employers would be faced with the possibility of reducing hours worked to 40 or less per work week. Management would also need to be diligent in watching hours worked for those employees who do not meet the salary requirements or would be legally obligated to pay overtime pay at a rate of 1-1/2 times their normal rate of pay for all hours worked over 40. Lastly, by increasing the threshold for overtime-eligible employees, companies could be forced to cut bonuses and benefits to boost the managers' base salaries and lower hourly rates to compensate for the expense of paying salaried managers more.

The Small Business Legislative Council (SBLC), in which PMAA is a member, will be commenting on the proposed rule.

- **SNAP Program**

Because of the prior partial government shutdown and subsequent issuance of USDA's Food and Nutrition Service (FNS) February Supplemental Nutrition Assistance Program (SNAP) benefits earlier than usual, at least 35 states and territories will accelerate March SNAP benefits.

When USDA's funding expired on December 21, 2018, SNAP benefits for January were fully funded and FNS found a work around for February benefits but they had to be dispensed by January 20. Now most states are moving up their March payment schedules to lessen the gap between payments for low-income households and to help retailers keep shelves stocked at the right times.

SNAP retailers are urged to prepare for early transactions and to staff and stock stores appropriately. To view your state's SNAP distribution schedule for March, click [here](#).

Meanwhile the Food and Nutrition Service (FNS) began implementing the restaurant (hot foods) provision of the final rule for all stores in October 2017.

Retailers will be disqualified from the program if 50 percent or more of the store's total gross retail sales (including fuel and tobacco sales) come from items that are cooked or heated on site before or after purchase. Implementation of the stocking provision of the final rule began on January 17, 2018 for all stores. Click [here](#) for a summary of the stocking provision requirements.

The Farm Bill reauthorizes SNAP thru 2023. The measure would largely maintain existing SNAP work requirements. The agreement requires the creation of a clearinghouse to prevent individuals from receiving SNAP benefits in more than one state simultaneously, and the USDA must review group facilities to ensure they aren't receiving nutrition benefits from multiple programs.

Most significantly for retailers, the bill prohibits electronic benefit transfer (EBT) processing fees through fiscal 2023. Specifically, it prohibits fees assessed by State benefit issuers related to the switching or routing of electronic benefit transfer transactions; requires a GAO study to examine EBT fees, outages and intermediaries providing services in-between redemption at retail food store and state-contracted EBT processors; requires USDA to review state EBT contract service agreements and compatibility of such systems with USDA fraud monitoring systems, and the use of third-party applications that access EBT systems; directs the Secretary to issue guidance and regulations as appropriate based on the findings of the GAO study and USDA review; requires the Secretary to issue guidance to retail food stores on selecting EBT equipment and service providers that are able to provide sufficient transaction information to minimize the risk of fraudulent transactions; it also allows the Secretary to require applicant retailers to provide certain EBT-related information to the Secretary during the retail authorization process.

- **Method 27 -- Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure Vacuum Test**

The U.S. DOT regulations 49 CFR 180.407(h) allow for two methods to conduct a leak test on cargo tanks. The "K test" described under 190.407(h)(1) covers all cargo tanks and all products, including cargo tanks with vapor recovery and those hauling gasoline. The EPA Method 27 test (pneumatic not hydrostatic) included under 180.407(h)(2) can only be used for cargo tanks with vapor recovery systems dedicated to gasoline and E85 service only. Any cargo tank tested using EPA Method 27 is restricted to gasoline and E85 service (gasoline with an RVP of 7.8 to 9 RVP and E85 with an RVP of 7-12 RVP). Cargo tanks tested using the DOT K test may transport all petroleum products including diesel fuel.

Some marketers, cargo tank testers and roadside enforcement authorities have been under the mistaken impression that testing with EPA Method 27 would also certify cargo tanks to transport all petroleum products. As a result, marketers have been issued fines at roadside inspections for EPA Method 27 tested cargo tanks hauling diesel fuel. The confusion was likely due to the wording of EPA Method 27 which defines the phrase "petroleum distillate fuels" to

include only gasoline and E85 with the RVP noted above. In the industry, petroleum distillates are used to describe diesel fuel, kerosene and heating oil – not gasoline. PMAA met with EPA and DOT regulators to seek clarification. The U.S. DOT recently issued a compliance bulletin indicating that a K test is required to certify a cargo tank to transport all fuels while the Method 27 test restricts the cargo tank to gasoline and ethanol blends. PMAA is preparing a petition for rulemaking to expand the use of EPA Method 27 for all petroleum fuels.

- **On-Demand Fueling**

Provisions for On-Demand Mobile Fueling were added to both the 2018 International Fire Code (IFC) Chapter 57 (Flammable and Combustible Liquids) and the 2018 NFPA 30A (Code for Motor Fuel Dispensing Facilities and Repair Garages). On-Demand Motor Fueling is the retail practice of fueling motor vehicles of the general public while the owner's vehicle is parked and might be unattended. This practice is already occurring in many states as state and local fire officials are looking for direction on how to regulate this practice. The language in both codes is based on language developed by the California State Fire Marshall's Mobile Fueling Task Force.

The On-Demand Motor Fueling provisions in both the IFC and NFPA 30A are very similar. In general, the code provisions address the type of vehicle and associated tank or container capacity, locations where fueling can and cannot occur, vehicle/dispensing equipment, spill control and containment, operator requirements, and permitting requirements. They also have provisions for approval by the authority having jurisdiction (AHJ) for the operation, location, safety and emergency response, and vehicle operator training. In addition, fueling must be from an approved vehicle or metal safety can and is prohibited on roads, public right-of-way, in buildings, or covered parking areas and within 25 feet of buildings, property lines, or combustible storage.

PMAA and other groups have been able to incorporate appropriate requirements that require mobile fueling activities to comply with fire and safety procedures and equipment requirements similar to a retail fueling facility and that limit the locations where this type of refueling can occur. It is important to note that there are other issues not related to NFPA 30A or the IFC that may need to be addressed including weights and measures and DOT requirements for transporting hazardous materials. These are outside the purview of NFPA and the IFC, so they are not addressed in the proposed language. NFPA and IFC provides free access to view standards. The 2018 Edition of NFPA 30A can be accessed [here](#) and the 2018 Edition of the IFC can be accessed [here](#).

Both codes are currently in the next edition revision cycle. In comments submitted to both organizations, on-demand model fueling companies are proposing revisions to the limitations on mobile fueling locations to allow mobile fueling on public streets and parking garages. These provisions are currently under consideration by the code committees.

PMAA has developed on-demand fueling state model legislation which includes two versions: one to ban the practice and one to allow it in a limited way. Click [here](#) for the template.

- **Disaster Planning/PMAA Disaster Fuel Response Program**

Industry and government involvement in reforming disaster response, coordinating efforts and in providing far better service to anyone touched by a disaster began receiving far more attention following Hurricane Katrina in 2005. Then efforts catapulted following Super Storm Sandy. Since then, the federal government has taken numerous steps in streamlining the way it responds to a disaster. Now the Department of Energy (DOE) oversees coordinating all communication regarding the National Response Framework's Emergency Support Function 12 (Energy) particularly with regards to fuel delivery. Meanwhile, at PMAA we determined that big changes were coming in disaster planning and response and we needed to be at the table while the changes were being made. The enormity of the government entities that are involved ensured that many changes could occur and those could be positive if decisions were made based on full understanding of the industry. Storm response is a multi-pronged approach for fuel marketers – getting fuel to regular customers in the disaster zone, getting fuel to generator owners who have contracted it ahead of time in case of damage to the power grid, getting fuel to first responders and companies that must send crews into the disaster area. Before, during and after a disaster, petroleum marketers work to get fuel where it is needed, and as quickly as

possible. PMAA began meeting with government and congressional officials and participating in industry groups such as the Oil and Natural Gas (ONG) Sector Coordinating Council (SCC) where we also meet with the Energy Government Coordinating Council (EGCC). Representatives with the EGCC include people from DOE, EPA, DOT/FMCSA, DHS, FEMA, DOD, Coast Guard, FBI, CIA, DIA, FERC, IRS, Agriculture Department, and the White House.

Weak points in the past had to do with government to industry communication and coordination. That is where PMAA has seen a great deal of improvement, especially during the 2017 Hurricanes Harvey, Irma and Maria, and more so during the 2018 NE Winter Storm, and Hurricanes Florence and Michael. Communication and efficiencies across the government have improved tremendously, and the Trump Administration has taken these efficiencies even further with a willingness to establish waivers in advance, so the waivers are in place to fully supply tanks before the storm hits, and to re-supply as quickly as is safely possible.

PMAA continues to educate and make certain that our industry is understood. Further, PMAA works with federal agencies to clear regulatory hurdles in order to minimize delays, and government to speed implementation of waivers and particularly the use of regional waivers when appropriate. We are also active participants in developing the primary industry and government disaster response guidebooks, including serving on a subcommittee of the National Petroleum Council for development of their handbook. This helped to prevent new government requirements and problems, while eliminating some barriers and enhancing efficiencies. Furthermore, PMAA is engaged in the government and industry planning exercises which are vital tools for determining where there are barriers and what can be changed to eliminate the barriers.

We've made enormous headway in stopping delays at weigh stations and by police when drivers are passing through non-emergency states to deliver to a disaster area. Following our explanation of the cause for some delays in getting product where it is needed during and after disasters, Federal Motor Carrier Safety Administration (FMCSA) Administrator Ray Martinez decided to communicate with all state and local FMCSA directors on the necessity to communicate to the weigh stations and police so drivers will not be ticketed or delayed when passing through non-emergency states to get to an emergency area. This change will go a long way in increasing the response of distributors so that they can get fuel where it is needed as quickly as is safely possible. Furthermore, it will prevent drivers from being fined although they have appropriate waiver(s) from the receiving state.

Importantly, some drivers need to load their tanker trucks at water borne terminals and there are delays due to the need for Transportation Worker Identification Cards (TWIC) escorts for non-TWIC drivers. Drivers who are from areas of the country where they never load at water borne terminals but are delivering fuel to an emergency area and must load at water borne terminals do not have TWIC, so they are required to have a TWIC escort at the terminal. For planning purposes, however, it is often not clear which ports will have escorts available and during which hours. PMAA continues to work to establish systems so that drivers will know when TWIC escorts will be available. Furthermore, while meeting with DOE last year, policy staff realized that fuel terminals at the ports need to be on their list of priorities for electricity so that the terminals can remain open. This change has already resulted in far more efficient movement of fuel and elimination of long lines at the ports during emergencies.

Finally, PMAA established the PMAA Disaster Fuel Response Program, a critically necessary link between marketers available to provide fuel to disaster areas and those in need of such fuel.

- **Tax Reform**

In December 2017, Congressional Republicans finally passed their comprehensive tax reform bill. Some key details are a 21 percent corporate rate, a 37 percent top individual rate, a repeal of the corporate alternative minimum tax, a 20 percent deduction on pass-through income (trusts and estates are now entitled to use the pass-through deduction), a State and Local tax deduction expansion beyond just property taxes that will include income tax and will be capped at \$10,000, and a doubling of the estate tax exemption, although it will not be fully repealed. Most of the rates will sunset in 2025 except for the corporate rate. The bill preserves the step-up in basis on property transferred during an estate settlement which is good news for petroleum marketers. Under current law, family members who inherit a business

take the business at its value as of the date of the original owner's death. However, if the step-up in basis were eliminated, the family members would be required to pay capital gains taxes on the original owners' gains in the business. Due to the detrimental effects it would have on businesses, PMAA opposed any attempt to repeal the step-up in basis.

The Small Business Legislative Council (SBLC) released a summary chart of the final tax bill which goes into detail on the new pass through rate and other tax provisions. Click [here](#) to view it. PMAA sits on the SBLC Board of Directors and provides input on tax related issues facing petroleum marketers. *** Unfortunately, an error occurred when the final text was drafted that makes retailers ineligible for the benefit of 100 percent bonus depreciation for qualified improvement property acquired and placed into service after September 27, 2017. PMAA, along with several associations through the Qualified Improvement Property (QIP) coalition, have made this a top priority and is working with other businesses to press for the correction as quickly as possible. Section 168 of the old tax law had three individual categories of qualified improvement property: leasehold improvement property; retail improvement property; and restaurant improvement property. Each category had a 15-year Modified Accelerated Cost Recovery System (MACRS) recovery period, meaning property could depreciate over the course of 15 years.

To simplify the tax code, tax writers combined the three above categories into one category called "qualified improvement property" in the new bill and meant to designate it with a 15-year recovery period. The intent to designate this 15-year recovery period was explicitly stated in the conference agreement. However, when the final bill was written, the 15-year recovery period was accidentally omitted from the text by tax writers, and the recovery period then defaulted to 39 years. This omission is a serious mistake because to benefit from 100 percent bonus depreciation, there must be a MACRS recovery period of 20 years or less.

Without the inclusion of the 15-year recovery period:

- Recovery period increases from 15 years to 39 years
- Retailers no longer qualify for bonus depreciation
- In the old law, retailers qualified for 50 percent bonus depreciation.

Congress is expected to fix the tax issue sometime this year.

- **Consumer Data Privacy Principles**

Recently, in advance of hearings before the House Energy and Commerce Committee, the Senate Commerce Committee, and the Senate Judiciary Committee, PMAA and other members of the Main Street Associations Coalition sent letters to the House and Senate outlining our required key principles for federal data privacy legislation.

Any federal data privacy legislation should apply to all industry sectors and not contain loopholes that leave consumers unprotected when their personal data is handled by a business. All of the companies involved in handling that chain of data should have legal obligations to properly guard it under privacy law and the law should not solely rely on private contracts to create those legal obligations. Protection of consumer data privacy is a priority issue for Congress and our associations collectively support federal privacy legislation that would establish a uniform, nationwide and consumer-centric data privacy law that does not pick regulatory winners and losers among differing business sectors. Click [here](#) to view the letter to the House and [here](#) to view the letter to the Senate.