

# P M A A W E E K L Y REVIEW

November 8, 2019

WR-19-43

## **EPA Staff Policy Assessment Recommends Retaining Current Ozone Standards**

Last week, staffers at the Environmental Protection Agency (EPA) submitted a written draft policy assessment recommending that the current National Ambient Air Quality Standards (“NAAQS”) of 70 parts per billion (ppb) be retained. Click [here](#) to view the policy assessment.

The ozone standards are important for petroleum marketers because if their business is in a nonattainment area, that means that the air quality in the region does not meet the standards of the National Ambient Air Quality Standards (NAAQS) and could, therefore, be subject to less federal funding. Additionally, it causes extra hurdles for counties including infrastructure development problems and regulations on emissions of existing businesses within the region, forcing them to pay for costly emission reducing equipment to try and reach attainment status. In many cases, this would likely require reformulated gasoline and/or lower Reid vapor pressure (RVP) fuels.

The policy assessment, which recommends that the ozone standard continue to remain at the current level of 70 ppb, is used as guidance for EPA Administrator Andrew Wheeler to make a final decision regarding the ozone standard.

The policy assessment will be subject to public comment through December 16. Once the policy assessment is finalized, EPA will propose a rule to either retain or tighten the NAAQS standards. By statute, EPA must evaluate the NAAQS every five years. EPA must finalize the ozone NAAQS update by October 1, 2020. However, the agency is not likely to meet the deadline.

## **Tax Extenders including Biodiesel Tax Credit Still in Limbo**

Congress is still debating on what to do with a government spending bill, tax extenders, a retirement bill and technical fixes to the GOP’s “Tax Cuts and Jobs Act.” Currently, government funding expires on November 21 and it is likely that Congress will pass a short-term extension into December. If this occurs, Congress could approve the remaining full year appropriations bills for the Fiscal Year and attach a tax extenders, retirement fixes and technical fixes to the GOP’s Tax Cuts and Jobs Act before Christmas, which will likely include a retroactive extension of the biodiesel blender’s tax credit, at least through 2019, as well as a prospective renewal of the oil spill liability tax (OSLT). The good news is that the biodiesel blenders tax credit enjoys bipartisan support as this remains a top priority for Senate Finance Committee Chair Chuck Grassley (R-IA).

Additionally, 40 House democrats gave their stamp of approval on renewing the biodiesel tax credit this week. Click [here](#) to urge your members of Congress to renew the \$1 per gallon biodiesel blender's tax credit.

### **60 Groups Urge Trump to Restore Volumes Lost to SREs**

In the ongoing battle for the reallocation of lost blend volumes exempted under small refinery waivers to large refiners, 60 agriculture and biofuel groups sent a letter to President Trump urging him to "fix" the Administrations' EPA's proposed rulemaking for reallocating future small refinery exemptions (SREs).

The coalition stresses that the primary problem with the proposed rulemaking is that it proposes to recover only the gallons previously recommended for exemption by the Department of Energy, rather than the volume of actual waived gallons. "This one modification converts a commitment to fully account for SREs into a bureaucratically uncertain path that recovers only one fraction of those gallons lost to SREs and could results in the RFS backsliding in 2020."

Since 2017, small refinery waivers have removed billions of gallons from annual biofuels blending mandates under the RFS program. The waivers play a large role in preventing a de facto E15 mandate by keeping volumetric blending requirements more closely aligned with actual consumer demand.

### **HHS Releases \$3.32 Billion for States' LIHEAP Grantees**

The Department of Health and Human Services (HHS) announced this week the release of \$3.32 billion of Federal Fiscal Year 2020 regular block grant funding to LIHEAP grantees. State grantees will receive 90 percent of the funds available. The announcement comes at a critical time as winter heating season is set to start.

A table detailing the allocations to state and territory grantees can be found [here](#).

### **Obamacare Ruling Expected Soon**

The latest significant challenge to the Affordable Care Act (ACA or "Obamacare") is making its way through the federal court system. Last December, in the case of *Texas v. Azar*, a federal district court in Texas held, in short, that when the Tax Cuts and Jobs Act reduced the penalty for violating the ACA's individual mandate, it rendered the mandate and, in turn, the entire ACA unconstitutional.

This case is on appeal to the Fifth Circuit and the Fifth Circuit's ruling is expected any day. While there are few guarantees in Washington, it is as close to certain as things can get that any decision by the Fifth Circuit will be appealed to the Supreme Court.

While the ACA will remain in full force and effect until all the appeals are concluded, particularly if the Fifth Circuit sides with the district court in finding the ACA unconstitutional, there will be significant pressure for lawmakers to start planning ahead and considering what would replace the ACA if the Supreme Court in turn declares it unconstitutional.

### **SALT Efforts Continue**

Led by Democrats from high tax states, the efforts to chip away at one of the most unpopular provisions of the 2017 Tax Cuts and Jobs Act – the \$10,000 cap on deductions for state and local property, income and sales taxes (commonly referred to as “SALT”) – have continued.

Last week the Senate, voting almost exclusively along party lines, failed to pass a bill which would have overturned a rule enacted by the IRS prohibiting high tax states from creating a workaround for taxpayers by allowing them to donate to state established charity funds in exchange for state tax credits (to allow the taxpayers to reduce how much they owe in state and local taxes and avoid hitting the cap, while still bringing revenue to the state). The White House is now said to be reviewing a proposed rule that would formalize a safe harbor to allow C corporations and pass through entities that meet certain criteria to receive state and local tax credits for charitable donations notwithstanding the IRS’s rule.

On the other side of the Hill, the Democrats on the House Ways and Means Committee have been meeting recently to discuss a potential bill to either temporarily repeal or increase the cap. As has been the case from the beginning, the biggest challenge is finding a “pay for” as the Joint Committee on Taxation has estimated that it would cost \$668 billion to fully repeal the cap. The Ways and Means Democrats are said to be considering a proposed increase to the top individual tax rate – however, any bill containing such an increase would likely be dead on arrival in the Republican controlled Senate. Even though the Tax Cuts and Jobs Act was not revenue neutral, the House of Representatives under Democratic control has decided that all bills need to be revenue neutral and hence the need to find a revenue raiser to offset the loss of tax revenue.

### **Please Urge Senators to Cosponsor the “Preventing Online Sales of E-Cigarettes to Children Act”**

The bipartisan bill (S. 1253) is sponsored by Sens. Dianne Feinstein (D-CA), John Cornyn (R-TX), and Chris Van Hollen (D-MD) which would prohibit online sales of e-cigarettes to minors by applying the same safeguards already in place for regular cigarettes and smokeless tobacco products.

The bill amends the “Prevent All Cigarette Trafficking Act (PACT Act)” to also include e-cigarettes in the definition that already includes cigarettes. Specifically, the bill would require online retailers of e-cigarettes to:

- Verify the age of customers for all purchases.
- Require an adult with ID to be present for delivery.

- Label shipping packages to show they contain tobacco products.
- Comply with all state and local tobacco tax requirements.

PMAA fully supports this bill. Click [here](#) to urge your Senators to vote for S. 1253.

### **Department of Labor's Newest Proposal Would Expand Access to Bonuses for Fluctuating Workweeks**

On Monday, the Department of Labor's Wage & Hour Division issued a Notice of Proposed Rulemaking (NPRM) on the fluctuating workweek method of pay. The department's proposal attempts to end a saga that started in 2008, by clarifying that payments in addition to the fixed salary are compatible with the fluctuating workweek method of compensation, and, in most cases, must be included in the regular rate of pay.

The proposal would revise the regulation for computing overtime compensation for salaried, non-exempt employees who work hours that vary each week under the Fair Labor Standards Act (FLSA). The change would apply to employees on a fixed salary who work fluctuating hours week to week. Under the fluctuating workweek method of pay, such employees are entitled to overtime of one half their base-rate pay for every extra hour worked beyond 40 hours. The proposal also clarifies that bonus and premium payments on top of fixed salaries are compatible with the fluctuating workweek method of compensation, and that supplemental payments must be included when calculating the regular rate of pay as appropriate under the FLSA. The proposal includes examples and minor revisions to make the rule easier to understand.

Contrary to the view of the Obama Administration that believed allowing employers to give bonuses to employees on a fluctuating schedule could shift the bulk of pay to a bonus-based structure, allowing employers to bypass overtime requirements, the Trump Administration states in its Federal Register Notice, "The department is no longer concerned that employers would shift large portions of pay into bonus and premium payments and is not aware of any evidence of problematic pay shifting," DOL said in a Federal Register notice published Monday. "To the contrary, the Bureau of Labor Statistics finds that in situations where employers are permitted to pay bonuses and premiums, such supplemental pay constitutes a relatively small portion of employees' overall compensation — no more than 5 percent for any occupation." Furthermore, "The department now believes the proposal would encourage employers to pay these bonuses, premiums, and additional pay to salaried nonexempt employees who work fluctuating hours, and the department does not believe that employers will shift large portions of salaries into such supplemental payments."

### **October 2019 PMAA Small Business Committee (SBC) PAC Contributions**

PAC Co-Chairs Brad Bell and Tim Keigher are grateful for the PMAA Small Business Committee (SBC) PAC contributions from the following individuals during the October 1-31, 2019 time frame:

**Arizona:** Jason Davis, Walter Mink

**Arkansas:** Steve Turner

**California:** David Atwater, Nathan Crum, Kenneth Dewar, Bhagdeep Dhaliwal, Brian Hill, Tom Jamieson, Sanjiv Patel, Robert Rinehart, Michael Tooley

**Georgia:** Rob Underwood

**Illinois:** Bill Fleischli

**Indiana:** Scot Imus

**Mississippi:** Stanley Roberts, William Sumrall, Clifton Van Cleave

**Nebraska:** Jennifer Assmann, Daniel O'Neill, Mark Whitehead, Chad Wollan

**NEFI:** Roberta Fagan

**New Jersey:** Clinton Crane, Peter Crane, Gary Hough, Scott Majka, Frank Olivo, James Pierson, J.D. Stem II, Richard Stem, William Ward, Norman Woolley

**New Mexico:** Thomas Hennessy

**North Carolina:** Scott Aman, James Barnwell Jr., Brian Campbell, Charles Cox, Louis Cox, Harry Foy Jr., William Holt, Michael Royster, Ricky Thomas, John Waddell

**North Dakota:** Mike Rud

**South Carolina:** Sam Bell, Seema Shrivastava

**Texas:** Paul Hardin

**Wisconsin:** John Baltus

### **Federated Insurance Risk Management Academy Webinar**

***Winter Driving Safety: Tuesday, November 19, 2019, 1:00 p.m. CT***

With the changing of the seasons, our driving risk also changes. Winter brings shorter days and treacherous weather. We'll discuss the risks of driving in rain, sleet, snow, ice, fog and wind. In addition, we'll discuss how the lack of daylight can contribute to increased fatigue and other risks.

#### **What you will learn:**

- Analyze winter-driving risks
- Analyze seasonal fatigue risks
- Discuss risk management practices

[Advanced registration](#) is required for this 30-minute webinar.

For additional information or to discuss this in further detail, please contact your [Federated](#) regional representative or PMAA's **newly assigned** National Account Executive [Jon Medo](#) at 800.533.0472. **Federated is a PMAA Corporate Platinum Partner.**

### **October 2019 PMAA MDF Contributors**

PMAA's Marketer Defense Fund wants to thank the following individuals for their contributions during the October 1- 31 timeframe:

**Arizona:** Arizona Petroleum Marketers Association  
**Colorado:** Rollie Leyh  
**Kansas:** Mark Augustine  
**Louisiana:** Grady Gaubert  
**Maine:** Jamie Py  
**Mississippi:** Dan Ellzey  
**Missouri:** Missouri Petroleum Marketers and Convenience Store Association  
**Nebraska:** Mark Whitehead  
**New Mexico:** New Mexico Petroleum Marketers Association  
**North Carolina:** Daniel Erwin  
**North Dakota:** North Dakota Petroleum Marketers Association, Mike Rud  
**Oklahoma:** Oklahoma Petroleum Marketers & Convenience Store Association  
**Oregon:** Lila Leathers, Oregon Fuels Association  
**Pennsylvania:** Robert Aerni  
**South Carolina:** Sam Bell, Richard Mixson Jr.  
**Virginia:** Al Alfano, Bradley Norman, Mike O'Connor  
**Washington:** Washington Oil Marketers Association  
**Wisconsin:** Matt Hauser

Corporate donations are acceptable. MDF funds have been used for various studies, litigation and disaster relief dedicated to strengthening our lobbying efforts on Capitol Hill. Click [here](#) to donate to the PMAA MDF.

**PMAA Platinum Partner Spotlight Featuring: Meridian Associates, Inc.**  
***Employees That Build Great Companies***

If you want to catapult your company to its next level of success, it will take more than your own two hands. Jack Stack, President and CEO of SRC Holdings and author of the popular business books *The Great Game of Business* and *A Stake in the Outcome*, identified four critical employees you need on your team.

To read about the four employee types, please click [here](#). To learn more about **PMAA's Corporate Platinum Partner, Meridian Associates**, please [visit](#) or contact them at 800.728.9005.

**Federated Insurance Employment Practices Network HR Question of the Month**

Federated Insurance's HR Question of the Month focuses on employment-related practices liability issues. This month's question is: **Preferred Personal Pronouns Required?** As part of an effort to be inclusive of everyone, it was suggested that we ask all employees to put their preferred pronouns in their email signature. Are there any legal issues in requiring employees to do so? If they are uncomfortable with it, can we ask them to do it anyway? Related to that - can we ask them what their preferred pronoun is once we have hired them? What about while they are in the middle of the hiring process? What happens if the pronoun they give us is

different from what their sex/gender is in terms of what we send over to our medical insurance carriers? Please click [here](#) to read the entire question and the response.

For additional information or to discuss this in further detail, please contact your [Federated](#) regional representative or PMAA's National Account Executive [Jon Medo](#) at 800.533.0472.

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