



## Priorities Report August 2022

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## **Top Issues**

### ***CDL Driver Shortage (Wholesale)***

#### ***(EMA focused on Streamlining HAZMAT Training and Testing Requirements)***

Recently, in a letter spearheaded by EMA, 67 Congressional Members encouraged the Department of Transportation “to consider modifying the hazardous materials training and testing requirements to focus on HAZMAT specific education.” The letter also encourages the Department to consider streamlining the TSA Security Threat enrollment process that would allow CDL Drivers to enroll in more than one program - Transportation Worker Identification Credential (“TWIC”), HAZMAT, and TSA Pre Check. To read the letter, [CLICK HERE](#). The letter was sent a month after EMA’s DC Conference and “Day on the Hill” where EMA state associations discussed issues plaguing the motor fuels industry and encouraged Congressional Members to join the CDL driver shortage letter. During a recent Congressional hearing, Secretary of Transportation Pete Buttigieg told the letter’s lead signatory – Rep. Troy Balderson (R-OH) – that he was familiar with the issue and committed to working on the issue. EMA is currently working with the Federal Motor Carrier Safety Administration (FMCSA) regarding industry specific training and testing regulations for drivers hauling petroleum products.

Meanwhile, the Transportation Security Administration (TSA) announced it will now accept online renewals for the Transportation Worker Identification Credential (TWIC). CDL drivers with hazardous material endorsements must have TWIC credentials to obtain access to secure areas of the nation’s maritime port facilities and vessels. TWIC holders must renew their card every five years. TSA is adopting the enrollment changes at the urging of EMA in order to make the process more user friendly and faster for CDL drivers with a hazardous materials endorsement. As a result of the new online renewal option, CDL drivers with hazmat endorsements are no longer required to go to a TSA enrollment center to renew their TWIC credentials, saving time spent away from work.

The TWIC program is administered jointly by TSA and the U.S. Coast Guard. The TSA conducts the background checks to determine eligibility and is responsible for issuing the TWIC credential card. The Coast Guard regulates the use of TWIC at select maritime port facilities. The new online enrollment process began August 11, 2022, for current TWIC holders seeking to renew their credentials. According to the TSA, most eligible applicants receive their TWIC card in less than 10 days. Those applicants with more complex cases may require 60 days or longer for processing. Applicants may check their TWIC status online at any time.

EMA also filed comments in support of a proposed rulemaking by the DOT's Office of Drug and Alcohol Policy and Compliance that would introduce an oral fluid drug test as an alternative to the current urine specimen test for CDL drivers. The oral fluid test would not replace the urine specimen test but only provide an alternative test to be used at an employer's discretion. EMA expressed concern that urine specimen drug testing is far too easy to beat since drivers are not under direct observation for privacy reasons except under a few narrow exceptions. As a result, drug test cheating is widespread.

EMA commented it supports oral fluid testing because it is inexpensive and administered by a simple oral swab. Specimens can detect drug use over the preceding 24 hours which is uniquely suited for reasonable suspicion and post-accident testing. Oral fluid specimens can be collected in less than five minutes, anywhere, at any time, including in the workplace or at an accident site. A special collection facility or extensive collection site preparation is not required. Tampering with the specimen is virtually impossible since the oral swab never leaves the custody and control of the tester. EMA said that the introduction of oral fluid testing keeps unsafe drivers off the road, provides employers with flexibility in test method selection, lowers test costs and reduces the ability of employees to subvert testing.

#### ***EPA Proposed Emissions Rules for Cars and Trucks (Both) (EMA Challenges EPA to Maintain the Future of Liquid Fuels)***

Since January 2021, the Biden Administration's EPA has taken aggressive steps to remove the internal combustion engine vehicle (ICEV) from our nation's highways in favor of electric vehicles (EV). Late last year, EPA issued an onerous CO2 emissions final rule for model year 2023-2026 vehicles that the agency estimates will reduce fuel demand by 361 billion gallons and will force automakers to sell more costly EVs that depend on coal and natural gas to produce the electricity to charge them. Unfortunately, EPA failed to consider the emissions and other environmental effects in the making and disposing of batteries and other components required by EVs, as well as the emissions from generating the electricity for all the charging locations.

Most recently, the Biden EPA restored California's preemption waiver under the Clean Air Act that allows the State to set more stringent emission standards than the federal government, including California's greenhouse gas emission standards and zero emission vehicle mandate. The California waiver was withdrawn by the Trump Administration, only to be restored by the Biden Administration in March 2022. Several states (mostly left leaning states) have adopted the "California Car," which impacts how the auto manufacturers produce vehicles for the rest of the country. The Trump Administration's goal was to have "One National Program" instead of a convoluted program followed by 17 states (for fuel efficiency and GHG emission standards) which would maintain clean green liquid fuels and avoid a costly EV mandate.

The good news is that the courts have been asked by interested parties (in this case EMA recently petitioned the federal court of appeals in Washington, DC) to review these two final EPA rules under the "major questions doctrine" that says Congress must specifically delegate authority to the executive branch when it comes to economically or politically significant issues. The Supreme Court of the United States (SCOTUS) used this doctrine to block the Biden Administration OSHA's emergency rule which required employees of large companies either to be vaccinated or masked and tested weekly. SCOTUS most recently used the major questions doctrine to limit EPA's ability to regulate power plants after it invalidated the Obama Administration's Clean Power Plan (CPP) that required sweeping changes in the way the nation's power plants generate electricity, from coal-fired plants to natural gas and renewables, like wind and solar. The CPP represented a major expansion of EPA's regulatory authority, which the Supreme Court described as

“unprecedented” and “unlawful” and now puts the responsibility back on Congress to make major climate change policy decisions, where such efforts have failed over the last decade.

### ***EPA Proposes New Requirements for Specification Cargo Tanks, Bulk Tanks and Loading Racks in Gasoline Service (Wholesale)***

EPA recently issued a proposed rule addressing National Emission Standards for Hazardous Air Pollutants (NESHAP) for Gasoline Distribution facilities that effect gasoline bulk plants, loading racks and cargo tank vehicles. Storing, loading and unloading gasoline at these facilities release hazardous air pollutants (HAPs) regulated under the Clean Air Act according to the Biden Administration. EPA establishes emission standards and control technology to reduce HAPs from gasoline bulk plant equipment.

The proposed rule is important for energy marketers operating gasoline bulk facilities with a maximum daily design capacity of less than 20,000 gallons per day. The proposed rule would impose new compliance requirements for these facilities to reduce VOC emissions from loading racks, cargo tank vehicles, facility equipment and above ground storage tanks in gasoline service. The rule also contains new compliance requirements for bulk facilities with a daily gasoline throughput of 20,000 gallons or more.

#### ***Vapor Balancing Equipment***

Under current EPA regulations, gasoline bulk plants with a maximum daily design capacity of less than 20,000 gallons per day are only required to use submerged filling to capture VOC emissions. Gasoline storage tanks installed on or before November 9, 2006, must have a submerged fill pipe with a height no more than 12 inches from the bottom of the tank. Submerged fill pipes installed after November 9, 2006, must be no more than 6 inches from the bottom of the tank.

EPA’s proposed rule would require vapor balancing equipment both for delivering to a storage tank and loading a cargo tank at all gasoline bulk plants with a maximum design throughput capacity of 4,000 gallons per day or more. Gasoline bulk plants with maximum daily throughput capacity below 4,000 gallons per day would retain the requirement to use submerged fill tubes.

#### ***Cargo Tank Vehicles***

Currently, EPA requires cargo tank vehicles in gasoline service to undergo EPA Method 27 tank tightness tests. The EPA Method 27 standard for cargo tank vapor tightness certification allows no more than three inches of water pressure drop within the tank shell measured over a five-minute period.

EPA’s proposed rule would require a graduated vapor tightness certification standard ranging between 0.5 to 1.25 inches of water pressure drop over a five-minute period depending on the cargo tank compartment size. According to the EPA, model year 2004 and newer specification cargo tanks are designed to certify to the 0.5 to 1.25 inches water pressure drop standard. As a result, retrofits should not be required on these models in order to meet the proposed tank tightness standard.

#### ***AST Equipment Monitoring***

Under current EPA regulations, initial leak detection for gasoline bulk plant equipment must be done using EPA Method 21 followed by monthly audio, visual and olfactory inspections. The EPA requires any detected leaks be repaired no later than 15 calendar days after discovery. Regulated equipment includes all valves, pumps, pressure relief devices, sampling connection systems, open-ended valves or lines, and flanges or other connector in the gasoline liquid transfer and vapor collection systems.

The EPA is proposing to require annual instrument monitoring of all equipment combined with a requirement to repair any leaks identified by audio, visual or olfactory methods during the course of regular business activities.

The EPA is soliciting comments on the proposed changes to NESHAP, including proposals for more stringent requirements. EMA will submit comments on the EPA proposals prior to the September 12, 2022, comment period closure. EMA welcomes input from members on the impact the proposed rule would have on gasoline bulk plants.

### ***Swipe Fees Legislation and Litigation (Retail)***

#### ***(Bipartisan Senate Bill introduced to bring Credit Card Routing Competition)***

Recently, Senate Majority Whip Dick Durbin (D-IL) and Senator Roger Marshall (R-KS) introduced “The Credit Card Competition Act,” (S.4674), bipartisan legislation which would ensure retailer choice in payment routing by requiring at least two unaffiliated processors on credit cards, the same process that is used for debit card transactions. Swipe fees remain the second highest operating cost for convenience stores which costs the industry \$138 billion annually.

There are nearly a dozen of independent networks that are equipped to route transactions, but a handful of dominant networks -- chiefly VISA and Mastercard -- have prevented them from competing in the credit card space, thus limiting the choice of network. Allowing retailers greater choice for transaction handling would reduce costs and pass savings onto the consumer. Introducing routing competition could save businesses and consumers upwards of \$11 billion annually according to payments consulting firm CMSPI.

EMA is a member of the Merchants Payments Coalition (MPC), which represents retailers, supermarkets, restaurants, drug stores, convenience stores, gas stations, online merchants, and other businesses focused on reforming the U.S. payments system to make it more transparent and competitive. EMA and MPC believes in opening up the payments market and introducing competition, which in turn would lower costs and drive innovation.

**[CLICK HERE TO URGE YOUR SENATORS TO COSPONSOR “THE CREDIT CARD COMPETITION ACT!”](#)**

### ***Swipe Fee Settlement***

EMA advised marketers of the Court’s consideration of objections filed by members of the plaintiff class at a hearing in November of 2019. Several objections related to whether franchisors (major branded suppliers) or franchisees (branded wholesalers and retailers) will be entitled to proceeds from the multi-billion-dollar settlement fund with respect to card transactions at stations they operate or supply. The objectors argued that this issue should have been resolved before the July 2019 deadline for opting out of the class; they argued further that it should have been resolved in favor of the branded wholesaler and retailer class members, and that the settlement should not be approved until the matter is resolved.

Judge Brodie of the US District Court for the Eastern District of New York approved the settlement notwithstanding the objections, and she stated her intent to appoint a special master to hear arguments on this issue. This action prompted several appeals to the U.S. Court of Appeals for the Second Circuit, which challenge the approval of the settlement on several grounds. One of those appeals was filed by EMA, along with several individual wholesaler and retailer companies and two other associations, SIGMA and NASM. A brief on behalf of these appellants has been filed with the Court of Appeals.

In its brief, EMA argued that branded wholesalers and retailers should be the recipients of settlement proceeds based on card transactions at their sites. The branded wholesalers and retailers, and not the branded suppliers, are the merchants that “accepted the cards,” and they are the merchants who paid the interchange fees that are the heart of Visa/Mastercard antitrust litigation. It was also argued that the issue should have been decided before the settlement was approved and before the various class members were compelled to decide whether to stay in the class or opt out. By staying in the class, each class member must release Visa and Mastercard from any antitrust liability. The class members should not have been forced to make this decision until they were advised whether they will be recipients of the proceeds attributable to their sites. Other arguments include the conflict of interests that the lawyers representing the class had, which conflict contributed greatly to the delay in resolving the above-stated issue. The class lawyers tried

to represent the branded suppliers (e.g., ExxonMobil, Shell, BP) and the branded wholesalers and retailers, despite the fact that the two groups have adverse interests on the issue of who will get the money.

The Second Circuit Court of Appeals heard oral arguments on EMA's appeal on March 16, 2022. The Court will then render a decision on the appeal some months after oral argument. As of August 2022, this is still pending resolution. EMA will update its members immediately upon a decision by the Court following oral argument.

### ***The Inflation Reduction Act of 2022 (Both)***

#### ***(No new taxes on Small Business, biodiesel blender's tax credit extended for two years, more info below)***

President Biden signed into law the Inflation Reduction Act (IRA) - a climate, health, and tax-focused reconciliation package. The IRS does not impose new taxes on small businesses (such as the proposed 3.8% tax on business income) and does not raise individual, corporate, capital gains rates, or change step up in basis. The main cost of the bill is \$360 billion for clean and traditional energy development.

Provisions regarding electric vehicles (EVs) were not changed during the amendment process. Broadly speaking, the legislation allows for up to \$7,500 for consumer tax credits, but only if the vehicle meets certain domestic content restrictions and is under \$55,000 for sedans and \$80,000 for pickups and SUVs. There are also new income ceilings to access the credit -- \$300,000 for joint filers and \$150,000 for individual filers. Many EV companies have argued that the requirements are too restrictive and would prevent many models from being eligible.

The bill also includes a multiyear extension of the \$1 per gallon biodiesel blender's tax credit through 2024. EMA sent a letter to House and Senate Leadership, urging Congress to act as expeditiously as possible on a multiyear extension of the biodiesel/advanced biofuels blender's tax credit that was set to expire at the end of 2022. Despite insistence from EMA, the Empire State Energy Association, National Energy & Fuels Institute, and the New York State Energy Coalition, the IRA failed to include heating fuels as eligible for the clean fuel production tax credit beginning in 2025. However, at the urging of EMA and other industry groups, Senator Maggie Hassan (D-NH) clarified in the Congressional Record that Section 13704 of IRA – which addresses production tax credits for biofuels – includes residential and commercial heating fuel." Senate Finance Committee Chairman Ron Wyden (D-OR) confirmed Senator Hassan's clarification. The IRA does include favorable tax credit treatment for sustainable aviation fuel (SAF) which EMA argued against (see below).

EMA had four primary concerns with the Inflation Reduction Act of 2022:

- (Section 13401, 13402): Increased EV subsidies that are unnecessary and place other forms of energy at a competitive disadvantage;
- (Section 13704): Creates a new so called "clean fuels" production tax credit for transportation fuels beginning in 2025 which would jeopardize biofuel infrastructure investments and discourage needed imports which will likely increase motor and heating fuel prices;
- (Section 13203): Lack of parity between incentives for sustainable aviation fuel (SAF) and equivalent forms of clean renewable fuels. Favorable tax treatment for SAF could disrupt and eventually eliminate the market for on and off-road biodiesel and renewable diesel by diverting limited feedstocks to SAF and lead to higher prices at the pump as well as in home heating fuel prices; and
- (Section 50122): Subsidization of electric heating technology over traditional high efficiency heating equipment.

### ***Disaster Response (Both)***

EMA's ongoing efforts in this area have significantly improved the efficiency of the federal regulatory waiver process by establishing for the first time, interagency communication and coordination during declared emergencies. EMA initiated these efforts due to chronic delay and confusion among federal regulatory agencies during emergencies that often cause interruptions in the petroleum distribution chain below the terminal rack. As a result of EMA's work in this area, drivers are available to move fuel where it is needed without preventable delay. During a national government-wide call during Hurricane Ida response, a Louisiana EOC representative reported that EMA and LOMCSA did phenomenal work to

provide fuel to Louisiana. Now, EMA is focused on helping to facilitate communication and consistency to, from and between the states.

During EMA's Spring Conference in DC, two FEMA representatives spoke before the meetings and had many one-on-one meetings with marketers as well. A great deal of information was learned and shared between EMA and FEMA during the conference and has continued since that time. Virginia will have EMA staff and FEMA speak before their annual meeting in September.

EMA's Disaster Fuel Response Program, a critically necessary link between marketers available to provide fuel to disaster areas and those in need of fuel or drivers is growing in recognition, especially as EMA explains the merits of the program at the many presentations that FEMA and DOE ask EMA to participate. Please contact EMA VP Sherri Stone for further details at [sstone@emamerica.org](mailto:sstone@emamerica.org).

EMA also worked with the All-Hazards Consortium (AHC), DHS and Idaho Labs and released a Commercial Routing App (CRA) that can be accessed through the AHC/EMA private URL at <http://www.commroute1.org>. This is reportedly the best routing tool available and includes data on weight limits, CDL medical grace periods and drug testing requirements, CDL expiration extensions, HOS and other federal waivers, as well as rest stop closures. Additionally, an extensive real-time PPE directory was made available to all EMA members.

Importantly, CRA may provide an opportunity for resolving inefficiencies when 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.

EMA addressed a problem where some replacement drivers could not receive on-site training to be carded for specific terminal facilities (which is usually allowed during disasters). To obtain terminal on-site training, it is especially important to

- Notify the terminal in advance so the request can be run up the chain for approval.
- Justify why this is needed -- for example, the driver who normally pulls from the terminal is sick.
- Make certain the facility knows the replacement driver is an experienced driver who has loaded fuel at multiple other terminals or xx number of years.

### ***Tobacco Issues (Retail)***

#### ***(Biden Administration Proposes Menthol flavor ban)***

In late July 2022, EMA submitted comments in opposition to the FDA's proposed ruling to ban menthol in cigarettes and characterizing flavors of all kinds in cigars. Not only are these rules not necessary, but by the FDA's own admission, these rules would inflict substantial economic damage on American small businesses.

The proposed rule is likely to lead to an illicit market and to exacerbate inflation. Losing these sales to an illicit market would be a serious blow to businesses who are already devastated by inflation, supply backlogs, labor shortages and the declining real wages of their customers. In addition, the proposed rule would have a cascading effect on EMA member companies who supply fuel to independently owned and operated small business gas stations. Given the magnitude of the proposed rule, EMA believes many small retailers would be forced out of business due to the loss of operating capital necessary to pay for their next load of fuel. This would leave wholesale energy marketers with a substantial account receivables amount, which would likely put both the wholesaler and retailer out of business and lead to higher prices at the gas pump due to consolidation. [CLICK HERE TO READ EMA'S COMMENTS.](#)

After heavy pressure from EMA and other organizations, Senate democrats eliminated a potential tax increase on nicotine products that was included in the House-passed Build Back Better (BBB) Act. EMA used a targeted grassroots approach through its state associations to ensure that a tobacco/nicotine tax increase did not make it into the partisan BBB. EMA President Rob Underwood was quoted in a Politico article stating, "The Energy Marketers of America is opposed to the massive tobacco tax increase in the current House reconciliation bill because the proposed tax increase



will shift tobacco sales into the illicit market and undermine small business retailers who legally offer tobacco products to adult users. Additionally, the proposed increase contradicts President Biden’s promise not to raise taxes on individuals making less than \$400,000 a year.” [Click here](#) to read the article.

Meanwhile, the Consolidated Appropriations Act that went into effect on April 14 clarified the FDA’s authority to regulate tobacco products containing nicotine from any source, including synthetic nicotine. Recently, FDA issued its first two warning letters to manufacturers for unlawfully marketing non-tobacco nicotine e-liquid products without the required authorization. Collectively, these two companies, [AZ Swagg Sauce LLC](#) and [Electric Smoke Vapor House](#), have listed a combined total of approximately 10,000 products with FDA. Neither company submitted a premarket application for its non-tobacco nicotine products by the May 14, 2022, deadline as required by the new law.

In addition, FDA issued [107 warning letters](#) to retailers for illegally selling non-tobacco nicotine products, including certain e-cigarette or e-liquid products, to underage purchasers. The law makes it clear that tobacco products, including non-tobacco derived nicotine products, cannot be sold legally to customers under age 21 following passage of the new law. Any new non-tobacco nicotine product that has not received premarket authorization from FDA cannot be legally marketed. FDA is processing applications for one million non-tobacco nicotine products submitted by more than 200 manufacturers by the May 14, 2022, deadline. FDA is preparing to issue refuse-to-accept (RTA) letters soon for those applications that do not meet the criteria for acceptance.

When companies are found to be illegally marketing non-tobacco nicotine products, the agency will typically first issue warning letters to achieve voluntary compliance and will pursue enforcement actions, as needed, including civil money penalties, no-tobacco sale orders, seizure, or injunction. In addition, any unauthorized non-tobacco nicotine products detected for import into the United States can be detained or refused admission.

### **EV Charging Issues (Retail)**

Recently, the NFPA Standards Council voted against a proposed Tentative Interim Amendment (TIA) which would have added a new section to the 2024 edition of NFPA 30A (Code for Motor Fuel Dispensing Facilities and Repair Garages) regulating the placement of EV charging stations at motor fueling facilities. A TIA generally serves as an emergency recommended amendment to an existing NFPA standard that has not gone through the formal standard revision process. The TIA failed to achieve the necessary support of the Technical Committee on both its technical merit and emergency nature when balloted prior to submission to the Standards Council. As a member of the Technical Committee, EMA submitted a “no” vote on the TIA.

As justification for its vote on the TIA and in public input on the TIA, EMA submitted detailed comments outlining its specific concerns with the proposal including provisions requiring setbacks from excluding property lines, buildings and other areas of a motor fueling facility. These concerns raised the potential for the unintended consequence of excluding motor fueling facilities from the opportunity to be part of the development of an EV charging infrastructure. Instead, EMA urged NFPA to continue to address requirements for the placement of EV charging stations at motor fueling facilities during the current 2024 revision cycle for NFPA 30A rather than through a temporary interim amendment. In this way, marketers would have sufficient time to comment and collaborate with NFPA on the standard so that it does not unduly restrict the placement of EV charging stations at retail gasoline stations.

NFPA 30A is in the midst of the 2024 revision cycle and a first draft of proposed amendments to the 2024 edition of NFPA 30A for the placement of EV charging stations at motor fueling facilities was published for public input earlier this year with comments due by May 30, 2022. EMA submitted comments on the EV charging requirements and other proposals and will continue to work with the Technical Committee to prevent the adoption of overly restrictive requirements for the placement of EV charging stations. The Technical Committee will be addressing comments received this Fall.

Additionally, more than one hundred fuel, retailer, and grocer entities formed the Charge Ahead Partnership to advocate for “commonsense, market-based policies that will accelerate the development of the nation’s electric vehicle

(EV) charging network.” The coalition will call on public utilities to establish rate structures that apply to power companies and private retailers in order to create a wholesale rate for electricity for EV charging. EMA fully supports the Charge Ahead Partnership. [Click here](#) for more information and [click here](#) for EMA’s Issue Brief for state associations to use when securing EV grant money for small business energy marketers.

### ***RFS Reform/E15 Waiver (Both)***

#### ***(EMA Presses Biden Administration to reduce Corn Ethanol Blending Mandate)***

In June, the EPA finalized RFS blending mandates for 2020, 2021 and 2022. The EPA also announced the denial of 69 petitions from small refineries seeking small refinery exemptions (SREs) from the RFS program for one or more of the compliance years between 2016 and 2021. Petition denials are based on a recent federal Appeals Court decision finding small refinery exemptions may only be granted when a hardship is caused by compliance with the RFS program. However, the EPA is allowing small refineries to demonstrate compliance with RFS blending mandates for 2016, 2017 and/or 2018 without purchasing or redeeming additional RIN credits.

Four separate volumetric standards are required under the RFS program, corresponding to the four separate renewable fuel categories.

#### **Final Volume Requirements for 2020-2022 (billion gallons)**

	2020	2021	2022
<b>Cellulosic Biofuel</b>	0.51	0.56	0.63
<b>Biomass-Based Diesel</b>	2.43**	2.43**	2.76
<b>Advanced Biofuel</b>	4.63	5.05	5.63
<b>Total Renewable Fuel</b>	17.13	18.84	20.63
<b>Supplemental Standard</b>	n/a	n/a	0.25

\*All values are ethanol-equivalent on an energy consult basis, except for biomass-based diesel (BBD), which is biodiesel-equivalent.

\*\*The 2020 and 2021 BBD volumes were established in previous RFS annual rulemakings.

EMA has for many years called for lower annual corn ethanol blending volumes that would allow marketers to determine for themselves whether to sell E15 rather than be required to do so through a de facto mandate. EMA sent multiple letters to the EPA and the National Economic Council requesting urgent action to reduce the corn ethanol mandate to address the E15 crisis. Click [here](#) and [here](#) to read EMA’s letters.

Meanwhile, the USDA announced the availability of approximately \$100 million in competitive grants to transportation fueling facilities for the installation and upgrade of equipment compatible higher blend renewable fuels in rural and disadvantaged areas. Under the HBIIP, funds will be awarded to assist transportation fueling and fuel distribution facilities to convert their current facilities through upgrade of existing or installation of new equipment required to ensure compatibility with ethanol blends over 10% and biodiesel blends over 5%. [Click here](#) for the EMA Regulatory Report.

### ***EPA’s E15 Summertime Waiver***

The EPA has issued another 20-day extension of the temporary emergency waiver effective August 9, 2022, that allows the nationwide sale of E15 during the summer driving season. The EPA cites the “extreme and unusual” global fuel supply shortages caused by the war in Ukraine affecting all regions of the nation as a continuing justification for the waiver. The temporary waiver is authorized under Clean Air Act Sections (CAA§ 211(c)(4)(C)(ii)(I), 42 U.S.C. § 7454(c)(4)(C)(ii)(I)) and extends the current waiver to 11:59 PM August 29, 2022.

EMA has repeatedly warned both the EPA and the White House of the limitations involving the sale of E15 for the majority of retail gasoline stations across the nation. Those limitations include compatibility issues with existing UST system components, motorcycles, boats and small gasoline powered equipment and downstream supply chain



disruptions. As a result, only 1.5% of the 150,000 gasoline stations nationwide are equipped to sell E15. While the emergency waiver is only valid for a maximum 20 days, the EPA said it will issue waiver extensions “so long as the current fuel supply emergency continues.”

Under the temporary waiver, gasoline that does not meet the applicable RVP requirements may not be introduced into terminal storage tanks from which gasoline is dispensed into trucks for distribution to retail outlets in the designated states after August 29, 2022, unless EPA extends the waiver. In addition, any gasoline meeting the conditions of the waiver that is stored in terminal storage tanks for distribution to retail outlets and wholesale purchaser-consumers may be distributed and sold in subject areas in the designated states until the supply is depleted. Likewise, retailers and wholesale purchaser consumers in these areas may continue selling or dispensing gasoline that meets the conditions of the waiver after August 29, 2022, until their supplies are depleted. EMA expects the EPA will extend the temporary waiver until the end of the summer driving season on September 15.

In areas of the country where the 1.0 psi increase for E10 is not allowed through state or EPA regulations (e.g., in reformulated gasoline areas) E15 can already be sold in the summer and no action is needed under the temporary waiver to continue to allow the sale.

EMA will report additional waiver related developments as they occur. Please contact Mark S. Morgan, Regulatory Counsel [mmorgan@emamerica.org](mailto:mmorgan@emamerica.org) if you have any questions.

### ***NORA Reauthorization (Wholesale)***

As a government sanctioned “check-off” program, \$0.002 is collected at the wholesale level on every gallon of heating oil sold. EMA is working on changes to the statute that authorizes NORA:

1: Unnecessary escrow requirement is hindering innovation. In the 2018 Farm Bill, the NORA program was reauthorized for an additional 10-year period. However, due to Congressional Budget Office (CBO) scoring methodology, the law requires NORA to place 25 percent of annual fee receipts in an escrow account for 10 years. The actual impact of the unnecessary escrow requirement – NORA funds are sitting in an account during a time of critical importance for climate and the environment. The inability to access these funds limits NORA’s ability to provide heating fuel dealers with professional education, energy efficiency and safety techniques, and further NORA’s highest priority of producing a clean, environmentally friendly, American grown Bioheat® fuel.

2: Congress needs to permanently reauthorize NORA. NORA’s initiatives have helped to reduce oilheat consumption by 30 percent over the last decade, which amounts to nearly \$600 in annual savings per customer. Oilheat is used in more than five million homes, serving more than 16 million Americans across the country. Long-term certainty is needed for NORA to continue its mission - Congress needs to permanently reauthorize NORA (currently authorized through 2028) to ensure the oilheat industry can continue providing efficient and reliable heat and hot water to consumers. EMA requests that congress eliminate the escrow requirement by striking §7083 of The National Oilheat Research Alliance Act of 2000 (42 U.S.C. 6201), and permanently reauthorize NORA, which will allow NORA to utilize available funds for continued education, safety, and environmentally sustainable practices.

### **Secondary Issues**

#### ***Strengthening Enforcement of the Robinson-Patman Act (“RPA”) (Retail)***

EMA, along with the National Grocers Association (NGA), and other business-focused associations, formed the Main Street Competition Coalition (MSCC) to promote competition by strengthening enforcement of the Robinson-Patman Act (“RPA”). The RPA is the only federal price discrimination law to ensure a level playing field for the benefit of both businesses and consumers. Small and medium-sized energy marketers are an essential source of competition in increasingly concentrated markets. These businesses compete on price, quality, service and convenience, and often serve as anchors in local communities. Today, dominant companies wield unprecedented economic power—too often with little or no antitrust oversight or enforcement. As a result of unprecedented levels of concentration, small and

medium-sized businesses are increasingly subject to discriminatory terms and conditions, including less favorable pricing and price terms, less favorable supply, less favorable retail packaging, and sometimes an inability to access products in short supply that are available to their competitors.

Unfortunately, the FTC has not brought a case under the Robinson-Patman Act in more than 20 years. Nor has the FTC brought an enforcement action against economic discrimination using the other antitrust laws. The objective of MSCC is to breathe life back into the RPA law. Please go to [www.mainstreetcompetition.com](http://www.mainstreetcompetition.com) for more information.

***Issue: small business convenience stores harmed by anti-competitive practices***

- EMA's convenience store retailers are concerned about the discriminatory practices of food and beverage suppliers who sell to convenience stores. This discrimination favors super stores and big box retailers who are regarded by suppliers as being a different class of trade from the smaller to medium-sized competitors.

***EMA is encouraging the government and congress to:***

- Pursue rigorous oversight of the antitrust enforcement agencies to ensure that existing laws are being enforced.
- Consider legislative reforms to existing antitrust laws that restrain buyer-side market power, prohibit anti-competitive economic discrimination and reflect a holistic consumer welfare standard.

***Diesel Fuel Quality/Diesel Fuel Best Practices (Both)***

The Fuels Institute's Diesel Fuel Quality Council (DFQC) released its second-best practices document related to the handling of diesel fuel. The "Diesel Fuel Loading and Delivery: Industry Practices to Minimize Degradation and Improve Fuel Quality" is a seventeen-page document that provides recommended practices for the loading of diesel fuel on to a tanker at a terminal and unloading into a diesel fuel storage tank. Information is presented to ensure the delivery of quality diesel fuel and avoid potential fuel contamination problems while loading and unloading diesel fuel. EMA provided extensive comments on this document during its development. However, EMA believes that focusing solely on below the rack handling, delivery and storage practices addresses only one aspect of the diesel fuel quality issue. The manufacturing, transportation, storage and delivery of diesel fuel from the refinery gate down to the terminal rack must also be closely studied for diesel fuel quality issues including quality assurance testing at the refinery, in pipelines and at supply terminals. Thus far, no study has focused on diesel fuel quality above the terminal rack. Until this happens, and the issues are addressed, downstream diesel fuel quality issues that cause accelerated corrosion in UST systems will continue to occur. The lack of upstream diesel fuel quality study limits the effectiveness of the DFQC best management practices. You can download the document for free by clicking [here](#).

***SEC's Climate Disclosure Proposed Rule (Both)  
(EMA Opposes Burdensome Rule)***

In June, the EMA submitted comments on the Securities and Exchange Commission's ("SEC") proposed rule that would mandate extensive climate disclosures by public companies. While most energy marketers represented by EMA are not public companies and, therefore, are not required to report directly to the SEC, EMA is concerned due to the costs and burdens their SEC-regulated suppliers would be required to disclose greenhouse gas emissions from upstream and downstream activities in its value or supply chain under many, if not most, circumstances.

For public companies that sell motor fuels and heating fuels to be compliant with the proposed rule, if finalized, they would need to track and disclose data derived from downstream customers, including energy marketers' individual and day-to-day operations. Unlike the large corporations regulated by the SEC, energy marketers, as small businesses, do not have, and cannot afford, compliance officers or attorneys dedicated solely to SEC compliance activities. This could force energy marketers of all sizes, but especially those with smaller-sized operations, to report data they may be unable to provide, which would result in a costly, additional expense or possibly the loss of business from the inability to report data to their suppliers or customers. EMA also cited privacy and potential liability concerns with the proposed rule.

The good news is that the 6-3 conservative majority of the Supreme Court of the United States (SCOTUS) is likely to weigh in at some point once the rule is finalized and challenged by concerned parties including EMA.

[Click here](#) to read EMA's comments on the proposed rule.

### ***IRS Excise Tax Delays (Wholesale)***

The IRS experienced significant delays processing claims during COVID19, workplace restrictions that left energy marketers waiting sometimes more than a year to receive refund checks for the tax including sales of diesel fuel to state and local government entities. Claims for the biodiesel blender tax credit and alternative fuel mixture credits were similarly delayed. Continuing to float unpaid refund claims created unnecessary financial hardship for many marketers. EMA pressed the IRS to clear up the backlog. As a result, clearing up the claim backlog became a top priority.

To get definitive answers, EMA enlisted the help of the Senate Finance Committee member Pat Toomey (R-PA) as well as Senator Roger Wicker (R-MS) and House Republican Chief Deputy Whip Ferguson (R-GA) to pressure the IRS to address the growing backlog. This resulted with the IRS finally responding with a plan to clear up the processing backlog.

According to the IRS, the backlog was due to a combination of factors; the disruption in normal work hours and loss of personnel caused by COVID-19; and the volume of paper claims filed by marketers. Electronically filed claims were processed quickly while paper claims were delayed due to the labor-intensive processing requirements for such claims and the lack of personnel to handle them. Due to the continual pressure brought to bear on the IRS, the mountain of unpaid paper claims was processed, and refunds sent to marketers just 2 months after EMA got involved. EMA is continuing to pressure the IRS to process interest payments for marketers with claims delayed more than 40 days. EMA is also working on programs to educate marketers on the importance of electronic filing so that future processing delays are avoided.

### ***Placarding (Wholesale)***

#### ***(Special Permit Issued to Marketer to placard to Lowest Flashpoint)***

EMA filed a request with the Pipelines & Hazardous Materials Safety Administration (PHMSA) for a Special Permit that would allow 1203 placarding for straight loads of diesel fuel and gasoline. The special permit would be issued to a single energy marketer but would allow any other marketer to operate under it. PHMSA granted the Special Permit (DOT-SP 21104) allowing the 1203 placard for straight loads of diesel fuel and gasoline so long as the alternating loads were not separated by more than one business day. EMA filed for a modification to the Special Permit expanding the length of time between loads to a maximum 30 days. PHMSA rejected the 30-day modification as well as EMA's recent appeal of that decision. However, the Special Permit remains in effect and may be used by any marketer who applies to operate under its conditions, provided the period between a straight load of diesel fuel and gasoline occur within one business day.

### ***LIHEAP Funding (Wholesale)***

EMA is a member of the National Energy and Utility Affordability Coalition (NEUAC) that is urging Congress to maximize funding for LIHEAP. In addition to the \$3.75 billion in appropriations for FY 2021, the American Rescue Plan Act of 2021 provided \$4.5 billion in additional LIHEAP funds through September 2022, for a total of \$8.25 billion. Senator Jeanne Shaheen (D-NH) sent a letter to the Department of Health and Human Services requesting information and timeline updates regarding implementation and eligibility for low-income families and funding needs for the Department to fulfill its obligations. EMA continues to urge all lawmakers to maximize LIHEAP funding.

On August 1, 2022, The Department of Human Services announced that supplemental LIHEAP payments will be made to eligible households that received LIHEAP benefits during the 2021-22 season. These supplemental payments will be sent to the eligible household in order to pay any current bills to their vendor or utility provider. Any remaining funds are then applied to any past due amounts or will be kept on the account for a future delivery or utility credit.

DHS will issue supplements to two groups of households that received a LIHEAP Cash or Crisis benefit in the 2021-22 LIHEAP season:

- Houses that receive deliverable fuels, such as propane or kerosene, will receive a cash supplement of \$500. This is the traditional summer fill supplement and will be sent to the deliverable fuel vendor that received the most recent LIHEAP benefit in early August.
- Houses that do not receive deliverable fuels and instead receive electricity or natural gas from a utility company will receive a \$250 cash supplement. This supplement will be issued to the utility that received the most recent LIHEAP benefit in mid-August.

All households eligible to receive a supplement will be sent a notice informing them that the supplement is being issued, the amount of the supplement and the name of the vendor that is getting the supplement on the household's behalf. The notice also states that this supplement will not impact eligibility for LIHEAP in the upcoming 2022-2023 LIHEAP season.

### ***Consumer Data Privacy Principles (Retail)***

EMA is part of "The Main Street Privacy Coalition" which is comprised of a broad array of national trade associations representing businesses that line America's Main Streets. 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 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](#) for the latest.