



Priorities Report Year-End 2022

Top Issues (issues distinguished by wholesale, retail and/or both)

- CDL Driver Shortage (Page 1, Wholesale)
- EPA Proposed Rules for Cars and Trucks (Page 2, both)
- EPA Bulk Plant Vapor Recovery (Page 3, Wholesale)
- Swipe Fees Legislation and Litigation (Page 3, Retail)
- Disaster Response (Page 4, Both)
- Tobacco Issues (Page 5, Retail)
- EV Charging Issues (Page 6, Retail)
- RFS Reform/E15 Waiver (Page 6, Both)
- Joint Employer (Page 7, Both)
- NORA Reauthorization (Page 7, Wholesale)

Secondary Issues (Issues Distinguished by Wholesale, retail and/or both)

- Strengthening Enforcement of the Robinson-Patman Act ("RPA") (Page 8, Retail)
- Diesel Fuel Quality (Page 8 Both)
- SEC's Climate Disclosure Proposed Rule (Page 8, Both)
- IRS Excise Tax Delays (Page 9, Wholesale)
- Placarding (Page 9, Wholesale)
- LIHEAP Funding (Page 9, Wholesale)
- Consumer Data Privacy Principles (Page 10, Retail)

Top Issues

CDL Driver Shortage (Wholesale)

(EMA focused on Streamlining HAZMAT Training and Testing Requirements)

EMA is working for regulatory relief on a number of fronts to help ease the current CDL driver shortage. EMA is seeking both federal regulatory changes and waivers to accomplish this goal. Easing requirements for CDL licensure is a difficult policy to influence due to overlapping state and federal authority. Here is what EMA Has achieved thus far:

- **Temporary Waiver of Out-of-State Training and Testing Restrictions:** EMA obtained a temporary waiver that removes the FMCSA's 14-day waiting period between the time an intrastate or interstate driver obtains his or her CDL learners permit and takes the CDL skills test. The waiver also allows drivers to train and test in one state and transfer CDL credentials to another without further testing. Both regulatory waivers are designed to speed the CDL licensing procedure. The waiver is effective through February 28, 2023. However, state CDL licensing agencies are given the discretion on whether or not to follow the waiver. EMA plans to urge FMCSA to extend the waiver.
- **Temporary Extension of Expiring CDL and HME Endorsement:** EMA worked with the TSA to speed up the approval process for driver HME security threat assessments required for licensure. The significant delays processing security threat assessments at TSA has resulted in many drivers being taken out of service due to expiration of their HME despite timely filing of fingerprints and applications for renewal. At EMA's urging, the TSA extended all expiring HME endorsements through December 31, 2022. EMA is currently requesting an extension of the waiver. Once again, however, the waiver is only effective if state licensing agencies adopt it voluntarily given their authority over CDL licensure.
- **Speeding Up Processing and Troubleshooting Security Threat Assessment Issues:** EMA urged the TSA to speed up processing of driver threat assessments and institute procedural changes designed to quickly rectify any

issues holding up approvals. As a result: 1. The TSA created an online link where drivers can check firsthand on the status of their security threat assessment. 2. EMA also established a direct line to TSA application processors to facilitate real time inquiries and troubleshooting to quickly solve individual driver renewal delays. 3. TSA also set up direct communication with state licensing agencies to provide electronic driver approval status and to resolve any driver background check issues on the state level.

- **Adopting Industry Specific HME Renewal Test Questions:** Meanwhile, EMA is working with the DOT's FMCSA and PHMSA to establish industry specific training and testing regulations for petroleum drivers seeking to renew their HME. EMA has learned that drivers are increasingly failing their HME renewal test due to testing on subjects unrelated to the petroleum industry, such as transporting nuclear material, explosives and products poisonous by inhalation. Once again obtaining universal change is complicated by the overlapping authorities of the FMCSA, PHMSA and state licensing agencies in this area.

EMA believes an industry specific testing curricula will induce more CDL drivers to take the exam and reduce the failure rate for HME renewals and keep drivers on the road without interruption. 67 members of Congress have signed a letter drafted by EMA encouraging the DOT "to consider modifying the hazardous materials training and testing requirements to focus on HAZMAT specific education." The letter also encouraged both the Department of Transportation and Department of Homeland Security to streamline the TSA security threat assessments that allows 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](#). Requiring one set of fingerprints and one application for all three programs would cut down on cost, time and paperwork for enrolling CDL drivers.

- **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 supports oral fluid testing because it 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)***

EMA, along with 14 other private petitioners and 17 states, filed their opening briefs with the federal appeals court in Washington, D.C. on their challenges to EPA's reinstatement last March (2022) of the Clean Air Act preemption waiver for California's motor vehicle greenhouse gas emissions standards and zero-emission vehicle mandate to address climate change.

EMA told the court that the waiver provision in the Clean Air Act does not permit California to have its own state standards for national and international problems like climate change. The brief details how the Clean Air Act's text, structure, and history make clear that the "California waiver" is intended to address only unique and extraordinary conditions in the State that result from in-state emissions and local pollution concentrations and that global climate change does not qualify or fit into California's particularized smog conditions.

The brief submitted by EMA and the others points out that California does not "need" its own emission standards to "meet" global climate-change conditions because, as EPA previously concluded in 2019, the State's emission standards will make no meaningful difference in conditions in California related to climate change. In addition, the brief argues that EPA's flip-flop in reinstating the California waiver based on the agency's novel view of its reconsideration authority under the Clean Air Act cannot be legally sustained.

In addition to asking the court to review the Biden Administration's restoration of the Clean Air Act waiver for California, EMA also is seeking review of EPA's tailpipe emissions standards issued in December 2021 that would effectively mandate a percentage of EVs in order for automakers to meet the federal standards.

EMA also filed an amicus brief in December 2022 with the U.S. Court of Appeals in Washington, D.C. challenging NHTSA's fuel-economy standards for passenger cars and light-duty trucks. The standards will require automobile manufacturers to obtain a fleet-wide average of 49 miles per gallon for model-year 2026, a standard that can be met only by converting a significant percentage of their fleets to electric vehicles. 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.

EMA's legal challenges to the Biden Administration's final rules is premised on the rules being a de facto electric-vehicle mandate, which the Administration lacks the power to require. A principal basis for EMA's position is the "major questions doctrine" applied by the Supreme Court to invalidate the Biden Administration's vaccine mandate, its eviction moratorium, and its attempt to eliminate coal-fired generating plants. All of these cases involved broad policy questions having a major impact on the nation's economy. As such, they are outside the purview of federal agencies unless Congress clearly and unequivocally grants an agency the power to decide them.

In the meantime, [CLICK HERE](#) to reach out to your lawmakers and urge them to contact EPA and recommend that California's waiver be denied to protect motorists and small business energy marketing companies!

EPA Bulk Plant Vapor Recovery (Wholesale)

EMA submitted comments regarding EPA's proposed revisions to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Gasoline Distribution facilities, and the Standards of Performance for Bulk Gasoline Terminals. 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 of 4,000 gallons per day or more. The EPA argues the proposed rule would reduce emissions from loading operations at bulk plant facilities. Unfortunately, the EPA significantly underestimated the economic impact of the proposed rule on small business energy marketers and on the availability of gasoline in rural areas.

EMA conducted a survey of its members of operators representing over 650 bulk plants, a significant amount, which would be forced to close or stop selling gasoline if required to install vapor balancing equipment. EMA argued that EPA's maximum daily design throughput is an inaccurate way of defining a compliance threshold and not representative of actual throughput. Lowering the threshold from 20,000 to 4,000 maximum daily design throughput would require most bulk plants to comply with the vapor balancing requirements regardless of their actual daily throughput. Many bulk plants have gasoline storage tanks with capacities greater than 10,000 gallons suggesting throughputs greater than 4,000 gallons per day but with actual daily throughputs of less than 4,000 gallons per day.

In late 2022, EMA worked with Members of Congress submit an inquiry to the EPA regarding the proposed rule. EMA will continue these efforts to showcase Congressional concern with the current version of the proposed rule.

[Click here](#) to read EMA's comments.

Swipe Fees Legislation and Litigation (Retail)

In the Fall 2022, Reps. Peter Welch (D-VT) and Lance Gooden (R-TX) introduced bipartisan legislation known as "The Credit Card Competition Act of 2022" 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. The House bill, H.R. 8874, joins companion Senate legislation, S. 4674, introduced by Majority Whip Dick Durbin (D-IL) and Senator Roger Marshall (R-KS). Unfortunately, "The Credit Card Competition Act" didn't make it into the end of the year FY 2023 Omnibus spending package. The bill is expected to be reintroduced again early in the new Congress.

There are nearly a dozen 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 believe in opening up the payments market and introducing competition, which in turn would lower costs and drive innovation.

Swipe Fee Settlement

The last relevant event in the settlement of the \$5.5 billion dollar Visa/Mastercard Swipe Fee litigation occurred on March 16, 2022, when a federal Court of Appeals in New York heard argument on several appeals from the US District Court's earlier approval of the settlement. One of the appeals was joined by EMA, which challenged the approval of the settlement on the ground that it may provide no settlement funds to branded marketers. EMA argued that the US District Court should have decided whether branded marketers would be entitled to receive any settlement funds before marketers had to choose whether to remain in the settlement class or opt out of the class to challenge the settlement. Many branded marketers chose to remain in the settlement class, thus giving up their right to challenge the settlement, even though their ability to share in the settlement proceeds has not yet been decided. The decision on this issue will be decided by a special master appointed by the court, who will decide whether major oil companies or their branded wholesalers and retailers will be the ones entitled to funds based on sales of gasoline at branded sites. EMA also asked the Court of Appeals to supersede a decision by the court-appointed master by deciding now that branded marketers are eligible to receive the funds. The Court of Appeals has not yet ruled on either of these issues, and EMA will notify its members of the outcome as soon as the Court of Appeals reaches a decision.

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 multiple one-on-one meetings with marketers as well. Virginia also had 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 DHS, FEMA and DOE ask EMA to participate. Please contact EMA VP Sherri Stone for further details at 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.commrout1.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.

EMA sent a letter to the White House urging the Administration to address the negative impact of low heating oil supply that is already being felt by residential consumers and heating oil dealers. EMA requested that the Administration issue an immediate hours of service waiver for heating oil drivers for the duration of the winter heating season.

EMA has been a go-to throughout the year of many state emergency management staff regarding diesel supply issues and has helped to explain the complicated issue. Most significantly, EMA helped the Argonne National Lab to prepare a document that fully explains the fuel chain process at the marketer and retail levels. Once this document is complete it will be a critical document nationwide in understanding the business of marketing and how the country benefits from it.

Tobacco Issues (Retail)

(Biden Administration Proposes Menthol flavor ban)

Recently, the Tax Foundation confirmed in a study that excessive tax rates on cigarettes encourage substantial black and gray market movement of tobacco products into high-tax states from low-tax states or foreign sources. [Click here](#) to read the details.

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. [CLICK HERE TO READ EMA'S COMMENTS.](#)

Meanwhile, the Food and Drug Administration's (FDA) Center for Tobacco Products announced a new webinar to help retailers with tobacco compliance which provides a brief overview of the various resources available to retailers to prevent the sale of tobacco products to individuals under the age of 21. Additionally, the webinar covers recent updates to federal law for tobacco products containing nicotine not derived from tobacco. [Click here](#) for the details.

EV Charging Issues (Retail)

The NFPA 30A Technical Committee met in St Louis in October 2022 to address public comments on the proposed revisions to the code. An entire day was devoted to addressing the proposed Chapter 15 dealing with EV Charging at a gas station. Based on comments received during the public comment period, several revisions were made to the original proposed chapter and a revised draft of the chapter was presented to the committee. Presentations were made to the committee by the National Electrical Manufacturers Association (NEMA) representing NACS, NATSO, and SIGMA; Shell, and Electrify America. A revised draft of the chapter was ultimately approved by the committee after several amendments were proposed and approved, with several open issues deferred to a future meeting. Approval of two-thirds of the full NFPA 30A Technical Committee is still required.

While there were several changes made to address issues raised by EMA and others, the approved chapter retains a definition for the EV Charging Area that includes the EV charger and the EV while charging at the full extent of the output cable, requirements for an emergency shut-off, and requirements for controls to limit the ability of a spill to drain through or pool within the charging area. These issues were extensively debated, and the committee

overwhelmingly defeated two attempts to limit the application of the classified (hazardous) area to the EV charger and related control equipment which would have allowed the EV and the charging cable to be within the classified (hazardous) area while charging. The committee took similar strong positions on the requirements for an emergency shut-off and controlling drainage and pooling in the charging area. While the committee voted to approve the revised chapter as amended, several issues raised with the section dealing with the classified (hazardous) areas (e.g., the setbacks from the dispensers, tanks, and tank vehicles) will be addressed at a subsequent meeting and the proposed chapter amended as approved by the committee. This includes the classified (hazardous) areas associated with the tank vehicle while transferring fuel to USTs. EMA will be considering proposed amendments to further refine this and other provisions of this section. The final revised proposed chapter will be submitted to the full Technical Committee later for ballot.

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)

In December, EMA sent a [letter to Congressional leadership](#) regarding the “Consumer and Fuel Retailer Choice Act of 2022,” (S. 5145) that would allow E15 to be sold throughout the year. The legislation was endorsed by the American Petroleum Institute, NACS, NATSO, SIGMA and several agriculture associations including Growth Energy and the Renewable Fuels Association.

In the letter, EMA said that it is willing to support the legislation provided Congress appropriates sufficient funding for UST system compatibility upgrades made available to small business fuel marketers. Specifically, the grant program should include an “80-20” cost share (similar to the current federal EV infrastructure cost sharing formula), with the federal government covering 80 percent of the capital expenditures associated with UST system upgrades to entice small businesses to make necessary upgrades. UST system retrofits or replacement can cost more than \$100,000 per site in capital expenditures which are far beyond the ability of small business fuel retailers with multiple sites to pay. The EPA confirmed in an E15 UST system compatibility guidance document in January 2020 that stated, “most older and even some newer existing UST systems (which includes but is not limited to tanks, pumps, ancillary equipment, lines, gaskets, and sealants) are not fully compatible with E15 and require modification before storing E15.”

Meanwhile, a House companion was introduced by Reps. Angie Craig (D-MN) and Adrian Smith (R-NE) which has 26 co-sponsors. Additionally, 250 groups and companies [sent a letter](#) to congressional leaders supporting the bill. **Please note that the bill didn’t make it into the end of the year spending deal and will need to be reintroduced in the 118th Congress for consideration.**

In related news, the Biden Administration is reviewing a petition by a group of Midwest governors to permit the year-round sale of E15 in their states. The petition is authorized under a provision in the Clean Air Act allowing an exclusion from the 1 psi waiver for E10 upon notification by a governor that the higher RVP limit will increase air emissions in that state. The Clean Air Act then requires the EPA to grant the petition and promulgate regulations to revert to a 9 psi RVP for that area no later than 90 days after the date of receipt of the notification. However, if the EPA determines the request would result in a shortage of gasoline in the petitioning state, implementation may be delayed up to two years. No such determination has been made yet by the administration. EMA believes the approval of an exclusion from the 1 psi waiver would require the creation of a boutique fuel exclusive to the petitioning states, thus limiting gasoline supply to the region.

Finally, the EPA released a proposed RFS rulemaking that sets volumetric blending mandates for 2023, 2024 and 2025.

Under the new rulemaking, the EPA is proposing to require 20.82 billion gallons of total renewable fuel for 2023, followed by 21.87 billion gallons in 2024 and 22.68 billion gallons in 2025. The proposed blending mandates represent an incremental increase from the 20.63 billion gallons established for 2022. The proposed blending mandates include both conventional biofuels, comprised largely from corn-based ethanol, as well as advanced biofuels, including biodiesel and cellulosic biofuels. The EPA is proposing volume targets for advanced biofuel blending of 5.82 billion gallons in 2023, 6.62 billion gallons in 2024 and 7.43 billion gallons in 2025. The proposed blending targets would require at least 15 billion gallons of ethanol blended into the nation's gasoline supply for the three years.

The EPA is also proposing new regulations governing the generation of qualifying renewable electricity made from renewable biomass used as transportation fuel in electric vehicles. If adopted in the final rule, this new pathway would mark the first time that electricity generation is included in the RFS. The EPA initially approved an electric pathway for biogas in 2014 but is only now proposing to implement it for 2023 and beyond. According to the EPA, the proposed rule would reduce U.S. oil imports by 160,000 to 180,000 barrels of oil per year over the next three years.

Public comments are due February 10, 2023, and EPA will hold a public hearing sometime in January.

Joint Employer Proposed Rule

EMA submitted comments the National Labor Relations Board's (Board) Notice of Proposed Rulemaking (NPRM) regarding the Standard for Determining Joint Employer Status. EMA urged the Board to withdraw its NPRM, because the proposed definition is too broad and too vague to be workable in practice, including for energy marketing companies. EMA argued that a functional joint employer standard must be clearly defined to require direct control to be exercised over a worker's essential terms and conditions of employment. Unfortunately, the open-ended nature of the Board's proposed definition of "essential terms and conditions of employment" is much too vague and unclear to enable companies, including energy marketers, to conduct a proper evaluation of their business practices with an eye towards a possible determination of joint employer status with their contractual partners. EMA urged the NLRB to leave in place its 2020 final rule.

[Click here](#) to read the comments.

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 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 to 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 free document by clicking [here](#).

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

In December 2022, Rep. Bill Huizenga (R-MI) and Rep. Andy Barr (R-KY) introduced **The Mandatory Materiality Requirement Act of 2022**, a companion bill to the one introduced in September by Senator Mike Rounds (R-SD). The bills would block the Securities and Exchange Commission (SEC) from requiring additional disclosures from public companies, including the SEC’s proposed rules that would require publicly traded companies to disclose their environmental, social and corporate governance (ESG) plans.

In June, EMA submitted comments on the SEC’s 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 incur by being 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 asked Senate Finance Committee member Pat Toomey (R-PA), Senator Roger Wicker (R-MS) and House Republican Chief Deputy Whip Ferguson (R-GA) 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)

Recently, EMA sent a letter to the White House urging the Administration to address the negative impact of low heating oil supply that is already being felt by residential consumers and heating oil dealers. EMA requested that the

Administration include an additional \$1 billion emergency supplemental appropriation for the Low-Income Home Energy Assistance Program (LIHEAP) in Fiscal Year 2023 federal appropriations legislation. In total, Congress appropriated \$5 billion for FY 2023 LIHEAP, the largest appropriation on record.

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.