

SD OIL & LP GAS CHRONICLE NEWS

April 2012 Newsletter

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UST Owner/Operator Training Register at www.denr.sd.gov

May 8	Sioux Falls PM	Ramkota Hotel	Jefferson Room
May 9	Sioux Falls AM	Ramkota Hotel	Harvest Room
May 10	Yankton AM	Kelly Inn	Room D
June 19	Aberdeen AM	Ramada Hotel	Room D & H
June 20	Watertown AM	Ramkota Hotel	Whitewood Room
June 21	Sioux Falls AM	Ramkota Hotel	Jefferson Room
July 10	Rapid City AM	Ramkota Hotel	Sylvan I & II
July 10	Rapid City PM	Ramkota Hotel	Sylvan I & II
July 11	Rapid City AM	Ramkota Hotel	Sylvan I & II
July 24	Sioux Falls PM	Ramkota Hotel	Harvest Room
July 25	Sioux Falls AM	Ramkota Hotel	Harvest Room
July 25	Sioux Falls PM	Ramkota Hotel	Harvest Room
August 2	Rapid City AM	Ramkota Hotel	Washington Room
August 3	Sioux Falls AM	Ramkota Hotel	Jefferson Room

am = 8 am to 12 noon

pm = 1 - 5 pm

PMAA News

Update from Washington, DC

HOUSE PASSES ANOTHER HIGHWAY BILL

Although Congress recently passed a Highway bill extension, HR 4348, which was introduced this week and subsequently passed the House on Wednesday by a vote of 293 to 127, mirrors the extension passed in March but extends the authorizations further until September 30 and includes a provision to fast track the Keystone XL pipeline.

The purpose in moving the Surface Transportation Extension Act Part II is to move a straight extension bill to conference where some compromises with the Senate can be achieved. PMAA is encouraging policy makers to include the PMAA supported language from the House authorization bill (that has not passed) which would bar the Department of Transportation from moving forward with its proposed wetlines rule until a thorough cost-benefit analysis was completed.

Conferees from both the House and Senate are expected to be announced next week. Transportation Secretary LaHood said that he does not anticipate an actual Highway policy authorization to pass until after the elections this Fall.

SUBCOMMITTEE HEARING ON FUELS LIABILITY BILL

Chairman John Shimkus (R-IL) of the House Subcommittee on Environment and the Economy held a hearing on the "Domestic Fuels Act of 2012" (H.R. 4345), which would provide a legal and regulatory pathway for retailers to sell EPA-approved fuels including E15. Witnesses were: Charles Drevna, American Fuels and Petrochemical Manufacturers; John Eichberger, National Association of Convenience Stores; Bob Dinneen, Renewable Fuels Association; K. Allen Brooks, State of New Hampshire's

Environmental Protection Bureau and Shannon Baker-Branstetter Policy Counsel, Energy and Environment.

The legislation would give the EPA Administrator the authority to issue guidelines to determine whether new and existing underground storage tanks and dispensing equipment are compatible with EPA-approved fuels. It also provides misfueling protection for retailers who abide by EPA's E15 labeling requirements. For instance, if a motorist ignores the labels and fuels a 2000 model year or older vehicle with E15, the retailer should not be held liable if he/she correctly has the E15 label in place. The legislation satisfies this concern, so that retailers can offer E15 with confidence. Secondly, if a retailer stores and dispenses E15 in equipment that satisfies EPA's compatibility requirements then that retailer won't be held liable.

During the hearing, Eichberger, Dinneen and Dreva agreed that if EPA approves a new fuel for use then retailers, jobbers, ethanol producers and refiners shouldn't be held liable in the future for a fuel that the government says is okay to market. Mr. Dinneen said that while the EPA moved forward with caution because they didn't have enough data to support pre-2001 vehicles for using E15, most higher blends of ethanol pose no problems with older vehicles. Meanwhile, Ranking member of the House Energy and Commerce

..... Continued on page 3

The advertisement features the REGO PRODUCTS logo at the top, with a red star and the word "REGO" in large, bold letters, and "PRODUCTS" in smaller letters below it. To the left of the logo is an American flag and the text "Made in the USA". In the center, there are two pieces of red propane equipment: a red propane valve and a red propane regulator. Below the equipment is the text "Call Fairbank For All Your Propane Needs" and the Fairbank logo, which includes the word "Fairbank" in a stylized font and the tagline "Whatever It Takes". At the bottom left, the website "www.fairbankequipment.com" is listed, and at the bottom center, the phone number "Yankton, SD 1-800-843-7913" is provided.

flawed because it could potentially exempt oil companies from MTBE litigation and all 9,000 fuels and fuel additives from liability and remove the incentive for responsible corporate responsibility.” While the bill doesn’t exempt retailers from Occupational Safety and Health Administration (OSHA) requirements since OSHA requires UL certified equipment to market E10 plus blends, the legislation would provide another avenue to market E15.

E15 faces multiple legal, regulatory and marketplace challenges. H.R. 4345 will help ease many of the legal and regulatory barriers to E15 and other renewable fuels.

HOUSE SUBCOMMITTEE APPROVES BILL TARGETING BOUTIQUE FUEL REQUIREMENTS

On Tuesday, the House Energy and Commerce Subcommittee on Energy and Power approved a bill along party lines known as the “Gasoline Regulations Act of 2012” which would delay EPA’s 2008 ozone requirements and it’s new Tier 3 gasoline proposed rule until an interagency study is completed to see how those rules will impact prices at the pump. If EPA were to finalize a rule requiring Tier 3 gasoline and new ozone standards, these rules would force much of the country into nonattainment status which would require refineries to make a lower RVP fuel and, in many cases, reformulated gasoline. PMAA opposes Tier 3 gasoline and the new ozone requirements because they would dramatically increase prices at the pump.

EPA has publicly announced plans to have a final rule on Tier 3 gasoline completed by the end of the year which would lower the sulfur content in gasoline from 30 parts per million (ppm) to 10 ppm. Secondly, EPA intends to make determinations as to which areas in the U.S. are in attainment or nonattainment. The determinations are slated to be released by May 31, 2012. EPA, in 2008, set the primary national ambient air quality standard for ozone at 0.075 part per million. The agency put the 2008 standard on hold while it reconsidered the rule with the goal of setting a more

stringent standard. The Obama Administration stopped the reconsideration process in September 2011, and the agency now is implementing the 2008 standard.

PMAA supports the “Gasoline Regulations Act of 2012,” and urges members of Congress to cosponsor the legislation.

OIL SPECULATOR SPOT LIGHTS THE WEEK

While the President addressed the nation this week that he would have his administration target oil speculators, the Commodity Futures Trading Commission (CFTC) voted 4 -1 to approve an interim final rule to define a swap dealer and major swap participant (MSP) in commodity futures markets. This is a critical step in the right direction to reign in excessive oil speculators in the market.

The Dodd-Frank Act gave the CFTC the authority to oversee the \$700 trillion over-the-counter (OTC) market and to ensure that market participants such as airlines, farmers, oil and trucking companies that hedge price risk shouldn’t be forced to post additional margin and be subject to position limits. Dodd-Frank targets the investment banks, hedge funds, and index funds that never intend to take delivery of the product, thus it will subject them to additional reporting, margin/capital requirements and aggregate position limits to ensure that too much speculation doesn’t impact physical prices. While speculators do provide liquidity in the market to facilitate trades, too much liquidity can bring extreme volatility to physical commodities which ultimately is shown at the rack.

The interim final rule targets investment banks that speculate in the oil futures market, but it comes with a “de minimis” exemption of eight billion dollars. If an investment bank is under this threshold, they will not be subject to margin/capital requirements. PMAA believes that the exemption is too high given that the CFTC

..... **Continued on page 8**

NPGA News Washington Update

ICC Code Change Hearings

Beginning April 29, 2012 and running through May 8, 2012, proposed changes to the Group "A" I-Codes will be heard in Dallas. Since the ICC process has always drawn such a huge number of proposed code changes, the administration has decided it is best to change the process by dividing it into two 10-day code change hearings rather than one two-week long meeting. As a result, the proposed changes to the International Fuel Gas Code (IFGC) will be heard on April 29 and the proposed changes to the International Fire Code (IFC) will be heard about one year from now in 2013.

There are several proposals of interest to the IFGC that will be discussed. NPGA will be represented at the meeting by staff and a member of the Technology, Standards and Safety Committee (TSS). Here is a short summary of some of the issues that will be addressed.

- A proposal (FG1-12) to prohibit the installation of gas-fired appliances beneath stairways used as a means of egress. NPGA plans to oppose this change.
- A proposal (FG8-12) to modify Section 401.9, which addresses the identification of pipe, tubing and fittings. NPGA hopes to propose a modification to this section that would

exempt fittings from having to be marked with the manufacturer's identification. NPGA will also oppose FG10-12, which would require pipe, tubing and fittings to be marked with the identification of a testing agency. Only one product, corrugated stainless steel tubing currently can comply with this proposal if it became a requirement.

- A proposal (FG13-12) to reinstate the text that was stricken that permits piping to be installed in a protective sleeve as it penetrates a foundation wall underground.
- A proposal (FG36-12) that would prohibit the installation of unvented room heaters in dwelling units.

There are a total of 39 proposals to the IFGC and they can **be downloaded here**. The meeting is open to the public and the results will be published and made available in June 2012. Public comments will be accepted until August 1, 2012. For more information, contact **Bruce Swiecicki**.

NPGA Files Opening Brief Challenging DOE

NPGA, in conjunction with the Hearth Patio Barbeque Association (HPBA), filed their joint opening brief Monday, April 23, 2012. The petition challenges the Department of Energy's (DOE) 2011 Final Rule that includes decorative vented hearth products as direct heating equipment (DHE). As previously

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Dennis Gamble
General Manager of Lubricants

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South Dakota News 85 and 87 Octane

The following is the position of the Board of Directors of the Association:

The South Dakota Petroleum and Propane Marketer Association takes a firm position to continue the historical octane standards, which have been utilized in excess of two decades in their respective geographies. Following the aforementioned position minimizes and reduces the likely disruption of supply that ultimately will cause outages and increased prices for the consumers across the state of SD.

Marketers in western SD pull the majority of their product from the Rocky Mountain refiners located in Montana, Wyoming, Colorado, and Utah. These refiners supply the Rapid City pipeline. The Rocky Mountain refiners produce **85 octane** gasoline which meets major car manufactures specifications for this elevation.

Marketers in Central and Eastern SD pull the majority of their product from Kansas, Oklahoma, Texas, Minnesota, Illinois, and Missouri. These refiners supply Yankton, Sioux Falls, Wolsey, Mitchell, Aberdeen and Watertown. These refiners produce **87 octane** gasoline meets major car manufactures specifications for this elevation.

Currently these refiners supplying Western South Dakota experience fuel shortages in the summer time. Removing this supply source will jeopardize gasoline availability for tourism and normal consumer activity.

There are many experts here today from all sectors of the industry who can further explain the challenges of the supply chain.

Scholarship Winners

Congratulations to Zachary Noem of Clear Lake and Kaitlyn Stern of Freeman. They have been selected as the 2012 recipients of the Association's Employee or Employee Family Member's annual scholarship award. Each will receive \$500 for their freshman year in college.

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first proposed the exemption at \$100 million. The investment banks argued that the \$100 million exemption was too low and could limit liquidity in the futures market. However, the interim final rule provides for the eight billion dollars amount to fall to three billion dollars in five years or even sooner. The CFTC says that it will conduct a study of the OTC market and, if after 30 months a change is needed, then the amount will be lowered. PMAA will continue to pursue oversight and prudent regulations on swaps dealers and MSPs to ensure that jobbers and retailers are paying a fair price that reflects supply and demand fundamentals.

Meanwhile, PMAA and NEFI submitted comments regarding the “Volker rule” which would limit investment banks’ ability to use its customer funds to speculate in commodities markets. To read the joint PMAA-NEFI letter, [click here](#).

As mentioned, the President addressed the nation earlier in the week to have his administration target speculation in the oil futures market. PMAA supports some of the President’s proposal that seeks to bring oil prices down in the short-term. Primarily, the proposal would provide \$52 million for CFTC to crack down on excess speculation. However, the President’s proposal will not be enacted. In fact, the House attempted to pass legislation this week to implement the proposal but was shot down by pro Wall Street lawmakers. Furthermore, much more needs to be done including the expeditious approval of the Keystone XL pipeline.

Republican Presidential front-runner, Mitt Romney, dismissed the President’s statement and said that speculators don’t cause higher oil prices. It’s unfortunate that excessive oil speculation has become so partisan in recent months. In 2008, 214 Democrats and 69 Republicans voted overwhelming to pass the “Commodity Markets Transparency and Accountability Act of 2008” (H.R. 6604) to bring position limits and transparency to the OTC market.

JOINT INDUSTRY COMMUNICATION ON LUST FUND

In addition to the strong grassroots communications PMAA initiated late February, on Wednesday PMAA, NACS, and SIGMA sent a joint letter to the House and Senate leadership in opposition to the Senate Highway bill language that would not only rob the LUST Trust Fund of three billion dollars and move it to the Highway Trust Fund, it would also change the allocation of the .001 of a penny LUST tax. The change would permanently dedicate one third of the existing \$.001 LUST tax to the Highway Trust Fund and two thirds to the LUST Trust Fund.

PMAA opposes this change and believes this is bad public policy. If the money is not being used for the LUST program, the LUST tax should be reduced or eliminated.

Randy Glanzer
VP Marketing & Sales




P.O. Box 8245
Rapid City, SD 57709
rglanzer@wyref.com

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800-658-4776
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reported, DOE's definitional change of DHE requires manufacturers of vented decorative hearth products to comply with energy efficiency standards originally intended for room, floor, and wall heaters as listed in the Energy Policy Conservation Act (EPCA).

The brief attacks inclusion of decorative products as DHE on various grounds, including lack of statutory authority; lack of metrics; and lack of cogent explanation for including them as DHE.

The standards for vented hearth fireplaces are specifically attacked on a number of bases, including lack of economic and technological justification; lack of test procedure; lack of notice for comment; unlawful design standard for standing pilot lights; and unlawful compliance criteria.

NPGA/HPBA's brief also challenges the 2011 rule's expansion of DHE to include gas log sets on various grounds, including that the inclusion of gas log sets places log sets into an unlawful definition; that DOE's inclusion of log sets is a reversal, not a clarification, of their previous position as supported by their own Frequently Asked Questions (FAQ), and that non-compliance with exclusion criteria could put gas log sets under unjustified standards in the future if exclusion criteria applicable at that time were not met. DOE's decision to define gas log sets as DHE is argued that it further facilitates an unlawful regulatory approach.

DOE's opening brief is due May 23, 2012. For additional information, contact NPGA's **Robert Elliott**.

Additional Information on FERC Order on TEPPCO Tariff Filing

In last week's *NPGA Reports*, we reported that the Federal Energy Regulatory Commission (FERC) issued an order on Friday, April 13, 2012 on the protest filed by NPGA and 84 other companies and state associations against the TEPPCO rate increase. The FERC order suspended the proposed rate increases for the entire maximum 7 month period allowed by law, or until November 16, 2012.

The FERC order also stated that TEPPCO's tariffs "are accepted for filing and suspended, to become effective November 16, 2012, subject to refund, hearing procedures, and to further order of the Commission." **This means that the higher rates will begin to be collected by TEPPCO effective November 16.** These monies will be held by the pipeline in a special account where it will accrue interest pending the outcome of the proceeding.



Contact Dave Hankins or Steve Risewick

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2012 Class Schedule

Basic Principles (1.0)

May 2-3	Mitchell
July 11-12	Aberdeen
September 24-25	Sioux Falls
November 7-8	Watertown

Propane Delivery (2.2/2.4)

June 5-7	Mitchell
August 7-9	Aberdeen
October 2-4	Sioux Falls
December 4-6	Watertown

4.1 Distribution Systems	April 24-25	Mitchell		
4.2 Distribution Systems	May 8-10	Mitchell		
3.0 Plant Operations	June 19-21	Mitchell		
6.0 Appliance Installation	August 14-15	Mitchell		
Cylinder Fill	May 14	Rapid City,	May 15	Yankton,
	May 16	Sioux Falls	May 17	Aberdeen

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News from NACS

EPA Seeks to Downplay RFS Concerns

WASHINGTON – Inside EPA reports that the Environmental Protection Agency (EPA) is trying to downplay fears that its pending vehicle greenhouse gas (GHG) and fuel economy rule conflicts with compliance of the renewable fuels standard (RFS).

The issue arises as fuel economy rules dictate reducing overall fuel use, which could potentially lead to the need for higher ethanol blends. However, an infrastructure does not exist to accommodate the higher blends.

Margo Oge, director of the EPA Office of Transportation & Air Quality, said the agency will not be forced to sanction higher ethanol blends – from E15 up to E40 or E50 – though she did not say whether and by how much concentration levels would need to rise.

"We have done the analysis, and it is not E40" that is needed to meet the RFS when the 2017-2025 fuel economy rule is in effect, she said. However, she conceded that the E10 "blend wall" would be reached in 2013, after which "a little bit more ethanol" will be needed.

Oge was responding to concerns from representatives of the biofuels industry and NACS that the upcoming vehicle GHG rule for model years 2017-2025 will sharply reduce fuel use, which will make it difficult for refiners to meet the current RFS supply mandates, as there will be a smaller volume of gasoline in which to blend renewable fuels.

NACS told EPA in written comments on the proposed vehicle GHG rule that the RFS was designed to represent up to 25% of the gasoline market based on 2007 consumption levels and factoring in a 1% annual increase in demand.

However, the proposed new fuel economy rule could "dramatically" reduce the amount of fuel consumed in 2022 and beyond, "creating a situation in which renewable fuels will be required to represent a significantly greater share of the market than originally anticipated," NACS wrote.

As E10 and E85 are already finding it difficult to meet the RFS mandates, NACS warned the vehicle rule would only heighten the problem, projecting the need for a blend rate of 37.51% in 2022 and a fuel blend of up to E50 by 2035, in order to comply with the RFS.

The problem with that scenario, NACS said, is "every fuel retailer will be required to replace all of their fueling equipment," at an estimated cost in excess of \$20 billion.

The Renewable Fuels Association (RFA) said EPA conducted some analyses of the issue, concluding that a significant amount of high-level ethanol blends (primarily E85) will need to be sold to achieve the [second-phase RFS rule] goals" but that the agency overestimated the amount of E85 that could be sold due to infrastructure limitations.

NACS Responds to U.S. House Raiding LUST Trust Fund

ALEXANDRIA, VA – The National Association of Convenience Stores (NACS) responded today to final language included in the U.S. House of Representatives' version of highway reauthorization legislation that raids \$3 billion from the federal Leaking Underground Storage Tank (LUST) Trust Fund and diverts future revenues collected for that program to offset the Highway Trust Fund.

"Congress is turning its back on the environment by raiding the LUST Trust Fund – a program that they created to protect and clean our water systems from underground



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storage tank contamination,” said NACS Director of Government Relations Carin Nersesian. “Stealing \$3 billion away from LUST sends a clear message that members of Congress are abandoning a critical and necessary program that protects the health and water security of their constituents.”

The diversion of LUST tax revenues to non-tank related purposes denies communities access to funds that could be used to prevent tank releases and to remediate contaminated sites in which no responsible party can be identified. The highway bill also diverts one-third of new revenues from the LUST Trust Fund, further compromising the integrity of the program.

Congress has repeatedly failed to appropriate sufficient funds to the program. Since 1986, the LUST Trust Fund has accumulated roughly \$3.2 billion, collects approximately \$194 million in fees and earns \$127 million in interest. However, Congress only appropriates around \$112 million per year.

There are 120,954 convenience stores selling fuel in the United States, and these retailers sell an estimated 80% of all the fuel purchased in the country. Overall, more than 58% of the convenience stores selling fuel are single-store operators – more than 70,000 stores across the country.

NACS Testifies on Domestic Fuels Protection Act

WASHINGTON – Yesterday the U.S. House Committee on Energy and Commerce Subcommittee on Environment and the Economy held a hearing on NACS-supported legislation that would provide fuel retailers with the opportunity to sell new fuels in a responsible and legal manner.

H.R. 4345, the Domestic Fuels Protection Act, was introduced in the House on March 30; a similar Senate version, S. 2264, the Domestic Fuels Act, was introduced on March 29. The “fuel neutral” bills would ensure that equipment that meets the Environmental Protection Agency’s (EPA) equipment

compatibility guidelines satisfy all applicable compatibility requirements, protect retailers from misfueling liability and prevent retroactive liability if a fuel sold today is later declared defective.

“[T]he legislation we are discussing today is not about these or any one fuel option at all. H.R. 4345 would apply to any new fuel or fuel additive approved and registered by the PA,” said Subcommittee Chairman John Shimkus. “H.R. 4345 is needed because EPA approved up to 15% ethanol blends only in vehicles whose model year is 2001 or newer. The practical result of EPA’s action has been that a morass of pending legal liability and uncertainty have frightened the market and complicated the supply chains ability to provide a means of delivery for new fuels.”

John Eichberger, NACS vice president of government relations, explained to subcommittee members that convenience and fuel retailers want to be able to bring new fuels to market, but that certain challenges remain.

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“As we look into the future of the motor fuels market, we know new fuels will be developed. The Renewable Fuels Standard makes this an absolute certainty,” he said, adding that as these fuels become available and consumer demand increases, retailers need to be ready to act. H.R. 4345 addresses current roadblocks by addressing “some of the legal issues that are preventing retailers from even considering whether to sell new fuels like E15.”

Specifically, H.R. 4345 would:

- Help retailers overcome the challenges of selling new fuels if the goals of the Renewable Fuels Standard (RFS) are to be realized.
- Provide a way for existing retail equipment that is technically compatible with new fuels to be legally recognized as such, thereby eliminating some of the costs associated with unnecessary equipment replacement.
- Protect retailers from retroactive liability should today’s laws governing fuel sales change in the future.
- Remove key legal impediments that make it difficult and impractical, or even impossible, to bring new fuels to market.

Eichberger also noted that retailers take very seriously their role in protecting the environment and led the effort in support of legislation in 2005 that enhanced enforcement of underground storage tank regulations. “Our commitment to ensuring the integrity of our tank systems has not changed,” he said, stressing that convenience store operators are a part of their communities and put a high emphasis on ensuring that their tank systems are effective and safe.

He added that NACS members support H.R. 4345 because it provides a clear set of rules that they must comply with that also includes legal protections.

“First, if EPA approves a fuel for only a subset of engines, this bill requires EPA to issue rules to prevent misfueling. The bill does not dictate what rules will be established,” Eichberger

said, adding that once the EPA issues its final rules on labeling new fuels at the pump, retailers will comply.

“And when they do comply, they want to know that if someone else circumvents the EPA misfueling regulations the retailer will not be held responsible for that person’s actions — they should not be held accountable for actions which are beyond their control and H.R. 4345 provides them that protection.”

Second, once a new fuel is approved and regulations for selling that fuel are established, or if the regulations change and a new fuel is removed from the market, retailers will adapt and comply. However, Eichberger added that NACS members “do not believe it is reasonable to hold them responsible for complying with rules” that don’t exist yet.

“Basically, our members say, ‘Tell us what we have to do and we will do it. But don’t turn around and punish us for someone else’s behavior or hold us responsible if you later change the rules on us,’” he said.

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South Dakota Legislature News Update from Pierre

From SD Department of Revenue Newsletter

Senate Bill 16 creates a final stage manufacturer dealer license to address those entities that complete new motor vehicle cab chassis with special mounted equipment. This specific license designation will allow these licensees currently registered as “used vehicle dealers” to change their license type to a license type that correctly identifies their motor vehicle dealer operation.

A new option of specialty plates was added to the current plates available with the passage of Senate Bill 113. This bill provides for special motor vehicle license plates for recipients of the Silver Star Medal, Distinguished Service Cross, Navy Cross, Air Force Cross, Distinguished Flying Cross, Bronze Star Medal With Valor Device or the Bronze Star Medal. Applicants will pay an initial charge of \$10 for the special plate and the yearly license renewal fee.

Legislation passed in 2012 will require certain fuel tax returns and reports be filed electronically and certain fuel taxes be remitted by electronic transfer. The requirements set forth in Senate Bill 17 will be accomplished through a new process that allows the licensee to record their information and automatically populate their tax return. Returns shall be filed on or before the twenty-third day of the month following each tax return period and the tax shall be remitted on or before the second to the last day of the month following each tax return period.



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