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ATTORNEY'S CORNER

- Recently, one of our members had his inspection license revoked for failing to properly conduct a safety inspection on an under cover DMV vehicle. His mistake was neglecting to check that the seat belts worked correctly and that the license plate was illuminated. Unfortunately, this Inspector had been guilty of these errors in the past for the safety portion of the inspection, and the judge threw the book at him. It's harsh, but you have a very valuable license in being able to do inspections. Don't do anything to endanger it.
- Regarding any repairs you perform on a customer's vehicle, always write any warnings you give to the customer on your invoice. If you believe, for example, that brake or front end work needs to be performed, and if the customer refuses to arrange to have this work done, and a serious accident is the result, or if the faulty condition of the car cause other problems, there is a very good chance that you will be blamed. You'll see the customer look you right in the eyes and claim "He never told me!" It's important to make a record that cannot be refuted should problems arise down the road. Protect yourself and put your warnings on the bill. It just might encourage the customer to think again, too, and have the needed work done. Safer for the customer and profitable for you.
- Protect yourself when you use leased equipment or other services also. For example, CINTAS, the uniform company, has a provision in their service contracts that if any of your complaints have not been resolved in the ordinary course of business, you should send a registered letter to the manager of CINTAS. If the company then fails to resolve any material complaint in a reasonable period of time, then you can terminate the Agreement. However, if you want to take advantage of a provision like this you need either to mail your complaints to the company, email them, fax them, or keep some other regular written business record of your complaints, who you spoke with, when, etc. If any of the machines you lease develop problems that are not being corrected then, again, you need to establish a written record of some sort for these problems. If it ever goes to litigation, and it often does, then even a sympathetic judge will be hard put to help you if you don't give him or her something to work with. I know it's a pain, but you're businesspeople. You need to keep these records. Keeping them may save you many thousands of dollars in future.

The contents of this column are not intended as legal advice. I give no legal advice without an appointment and interview with a client.

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Minimum Wage

After much debate, the Legislature adopted a new minimum wage for New York State that includes different scheduled increases for different parts of the state. The schedule is as follows:

For New York City, large employers (defined as employers of eleven or more):

- \$11.00 per hour on and after December 31, 2016
- \$13.00 per hour on and after December 31, 2017
- \$15.00 per hour on and after December 31, 2018

For New York City, small employers (defined as employers of ten or less):

- \$10.50 per hour on and after December 31, 2016
- \$12.00 per hour on and after December 31, 2017
- \$13.50 per hour on and after December 31, 2018
- \$15.00 per hour on and after December 31, 2019

For the downstate counties of Nassau, Suffolk, and Westchester:

- \$10.00 per hour on and after December 31, 2016
- \$11.00 per hour on and after December 31, 2017
- \$12.00 per hour on and after December 31, 2018
- \$13.00 per hour on and after December 31, 2019
- \$14.00 per hour on and after December 31, 2020
- \$15.00 per hour on and after December 31, 2021

For the remainder of the State (Outside of the city of New York and the counties of Nassau, Suffolk, and Westchester):

- \$9.70 on and after December 31, 2016,
- \$10.40 on and after December 31, 2017
- \$11.10 on and after December 31, 2018
- \$11.80 on and after December 31, 2019
- \$12.50 on and after December 31, 2020

Thereafter, on each following December 31st, a wage will be published by the Commissioner of Labor determined by the Director of the Budget in consultation with the Commissioner, totaling no more than fifteen dollars, where the percentage increase shall be based on a variety of indices selected to determine the state of the economy and the appropriateness of subsequent minimum wage increases.

In addition, the wage for an employee who is a food service worker receiving tips shall be a cash wage of at least two-thirds of the minimum wage rates in effect for each region.

As part of this agreement, the Governor is precluded from using wage board authority to implement a higher minimum wage than provided for in this implementation schedule; the agreement also authorized the Department of Labor to modify the fast food wage order to conform with this minimum wage schedule.

Paid Family Leave

New York State has adopted the most expansive paid family leave policy of any state. Amending Section 200 of the state's worker's compensation/disability law, effective January 2018, employees will be eligible for paid time off to care for the birth or adoption of a child, serious health

condition of a family member, or a qualified military exigency as interpreted under the Family and Medical Leave Act. Key provisions of the act include:

The act applies to all private sector employers of one or more employees;

Leave may be taken to participate in providing care, including physical or psychological care for a family member, to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care; or for a qualified military exigency as defined by the FMLA;

Family member is defined as child, parent, grandparent, grandchild, spouse, or domestic partner;

Employees must be employed for 26 weeks before they are eligible for paid family leave; (175 days for part-time employees);

Employees returning from leave are entitled to return to their same or comparable position without loss of benefits they would have accrued otherwise;

Employers must continue the employees' health insurance during leave as if they were not on leave;

Benefit amounts shall be:

- January 1, 2018; up to 8 weeks of leave at 50% of the employees average weekly wage to a maximum of 50% of the state's average weekly wage;
- January 1, 2019; up to 10 weeks of leave at 55% of the employees average weekly wage to a maximum of 55% of the state's average weekly wage;
- January 1, 2020; up to 10 weeks of leave at 60% of the employees average weekly wage to a maximum of 60% of the state's average weekly wage;
- January 1, 2021 and thereafter; up to 12 weeks of leave at 67% of the employees average weekly wage to a maximum of 67% of the state's average weekly wage.

Income replacement will be paid for by an insurance policy procured by the employer on behalf of the employee, the full cost of which will be paid by payroll contributions of the employee;

When practicable, the employee should provide 30-days' notice of intent to take paid family leave;

An employer may offer an employee who has accrued but unused vacation/personal leave to choose whether to charge all or part of the family leave time to this unused time and receive full salary; or, to not charge benefit time and receive the benefit provided.

Despite promises that there would be no cost to employers, the budget allowed for the transfer of \$10 million from money already paid by employers, specifically assessed for the purpose of running the Workers' Comp Board, to the paid family leave program.

Overtime Changes Coming Soon: Steps To Take Now

The Fair Labor Standards Act (FLSA) requires employers to pay non-exempt employees at least the minimum wage for each hour worked and overtime

whenever they work more than 40 hours in a workweek. However, the FLSA includes exemptions from these minimum wage and overtime requirements for employees who meet certain salary and duties tests.

In July 2015, the Department of Labor (DOL) proposed changes that would increase the minimum salary requirement for the administrative, professional, and executive exemptions from \$455 per week to about \$970 per week in 2016. The minimum salary for the highly compensated employee exemption would also increase. The DOL proposed automatic increases annually.

Final regulations are expected to be issued within the next few months. However, you should assess the potential impact now. Once the rules are published, employers are likely to have 60 days before they take effect. Here are some guidelines to help you prepare:

Consider Your Options:

If the proposed increase becomes final and your exempt employees' salaries fall below the new minimum, you would either have to:

- Raise their salaries to the new requirement; or
- Reclassify the affected employees as non-exempt and pay them overtime whenever they work more than 40 hours in a workweek.

Conduct Time Studies:

Employers should take this opportunity to confirm that each employee who is currently classified as exempt still meets the duties test requirements for exemption. Next, identify which exempt employees' salaries fall below the proposed salary level. Determine how many hours these employees typically work per week and factor in any fluctuations in hours during peak periods. If you don't have this information, ask exempt employees to track their hours, or talk with the employees and their supervisors. Then, compare the costs of raising these employees' salaries versus what it would cost to reclassify them as non-exempt and pay them overtime when they work more than 40 hours in a workweek.

Note: Non-exempt employees must be paid not only for productive time (time actually spent working) but also certain nonproductive time, such as travel time and training time. Make sure that you account for these situations in your calculations.

Considerations for Raising Salaries:

Beyond the costs of raising exempt employees' salaries, consider the impact on internal pay equity. Internal equity means employees are paid fairly when compared with other employees within your company. If you substantially increase some employees' pay, other employees may have questions about why their pay isn't increasing. Also remember that if the automatic annual increases become final, you would need to review and adjust exempt employees' salaries each year.

Considerations for Reclassifying Employees:

If the potentially impacted employees rarely work more than 40 hours in a week, you could reclassify these employees as non-exempt and convert their salary to an hourly wage (divide their weekly salary by 40 hours). You

could also re-classify them and continue to pay them a salary. In either case, they would be entitled to overtime (1.5 times their regular rate of pay) for all hours worked over 40 in a workweek. Note: Some states require overtime in additional circumstances.

If the potentially impacted employees regularly work more than 40 hours per week, simply converting their salary to an hourly wage would result in a significant increase in costs. However, assuming you have an accurate picture of the hours they work, you could keep your costs the same by accounting for the overtime premium in their new hourly wage. Here's an example:

An exempt employee's current salary is \$715 per week, the employee regularly works 50 hours per week, and you want to convert this employee to an hourly employee but keep your costs the same. You would calculate the hourly wage as follows:

This employee would be paid \$13 per hour for the first 40 hours and \$19.50 per hour ($\13×1.5) for each hour of overtime. Note: You must calculate and pay overtime to non-exempt employees on a per-hour basis. You may not pay employees a flat sum (e.g. \$300) for all overtime worked, even if it would be greater than what is owed on a per-hour basis.

Other Considerations:

Some potential concerns associated with reclassifying exempt employees as non-exempt include:

- The employees work more overtime than you anticipated, resulting in higher compensation costs than you budgeted for.
- The employees perform work while off-the-clock (such as checking and responding to email) because they aren't accustomed to recording their time, which can result in fines and back pay due if the time hasn't been recorded and properly compensated.
- If the reclassification results in a significant reduction in pay, this may impact employee morale and retention.

Consider, policies, practices, training, and controls to contain overtime costs and ensure non-exempt employees record all time spent working. For example, many employers require non-exempt employees to obtain approval before working overtime. In addition, ask these employees to confirm, in writing, that their recorded work hours are accurate. You should also establish policies that expressly prohibit off-the-clock work.

Note: You must pay overtime whenever non-exempt employees work more than 40 hours in a workweek, even if the employee violated company policy by performing the work. This means that while you may discipline employees for violating your overtime policies or practices, you may never withhold overtime pay.

Conclusion:

A final rule is expected before the end of July but could come as early as May. Consider taking the steps outlined above now so that you can act quickly once the final rule is released.

Used Tire Law Change

Until December thirty-first, two thousand nineteen, accept from a customer, waste tires of approximately the same size and in a quantity equal to the number of new tires purchased or installed by the customer; and . Until December thirty-first, two thousand nineteen, post written notice in a prominent location, which must be at least eight and one-half inches by fourteen inches in size, and contain the following language:

"New York State law requires us to accept and manage waste tires from vehicles in exchange for an equal number of new tires that we sell or install. Tire retailers are required to charge a separate and distinct waste tire management and recycling fee of \$2.50 for each new tire sold.

The retailers in addition are authorized, at their sole discretion, to pass on waste tire management and recycling costs to tire purchasers. Such costs may be included as part of the advertised price of the new tire, or charged as a separate per-tire charge in an amount not to exceed \$2.50 on each new tire sold."

The written notice shall also contain one of the following statements at the end of the aforementioned language and as part of the notice, which shall accurately indicate the manner in which the tire service charges for waste tire management and recycling costs, and the amount of any charges that are separately invoiced for such costs:

"Our waste tire management and recycling costs are included in the advertised price of each new tire.", or

"We charge a separate per-tire charge of \$ on each new tire sold that will be listed on your invoice to cover our waste tire management and recycling costs."

The law is also amended read as follows:

Until December thirty-first, two thousand nineteen, a waste tire management and recycling fee of two dollars and fifty cents shall be charged on each new tire sold. The fee shall be paid by the purchaser to the tire service at the time the new tire or new motor vehicle is purchased. The waste tire management and recycling fee does not apply to:

- (a) recapped or resold tires;
- (b) mail-order sales; or
- (c) the sale of new motor vehicle tires to a person solely for the purpose of resale provided the subsequent retail sale in this state is subject to such fee.

Until December thirty-first, two thousand nineteen, the tire service will collect the waste tire management and recycling fee from the purchaser at the time of the sale and will remit the fee collected to the department of taxation and finance with the quarterly report

The fee imposed is to be stated as an invoice item separate and distinct from the selling price of the tire. b) The tire service is be entitled to retain an allowance of twenty-five cents per tire from fees collected .

Proposed Changes To The Motor Vehicle Inspection Law

The New York Senate has proposed several provisions that will change the inspection law. It goes as follows

A safety inspection shall be made with respect to the brakes; steering mechanism; wheel alignment; lights, including but not limited to the lights which are designed and placed on a vehicle for the purpose of illuminating the vehicle's license plates; odometer; tire pressure; seat safety belts; shoulder harness safety belts; any window which is composed of, covered by or treated with any material which has a light transmittance of less than seventy percent pursuant to section three hundred seventy-five of this title; and such other mechanisms and equipment which will be determined by the commissioner to be necessary for proper and safe operations. Such inspection shall also be made with respect to vehicle identification number.

The mileage appearing on the odometer is be recorded upon the inspection sticker. In the event of any passenger car manufactured on or after September first, nineteen hundred ninety-seven, a safety inspection shall be made with respect to the inflatable restraint system, by means of the readiness indicator, shall be noted on the invoice supplied to the consumer. The system's lack of readiness shall be considered grounds for the vehicle to fail the safety inspection.

The safety inspection will be made with respect to the antilock brake system (ASS). Any failure of the system is considered grounds for the vehicle to fail the safety inspection.

Added to the inspection will be the test of light transmittance through the drivers and passengers window. This will be done with a light meter the type and make to be determined by the Department of Motor Vehicles.

The bill has passed the Senate and is awaiting action in the Assembly.

California Proposed Regulations

The California Department of Insurance (CA DOI) recently proposed regulations that would clarify and require insurers that conduct auto body labor rate surveys to perform them in a fair, reasonable and accurate manner. These regulations will also clarify and strengthen existing anti-steering laws, according to the CA DOI.

The purpose of these proposed regulations is three-fold-to guarantee that auto body labor rate surveys are fair and equitable; save consumers money who are forced to pay unnecessary out-of-pocket costs and prohibit insurers from making disparaging and discrediting statements against repair shops.

These regulations are good for consumers and auto body shops in California, but CAA Lobbyist/Attorney Jack Molodanof is a little skeptical, based on past experiences.

"Unfortunately, we believe that some insurers may try to circumvent the public regulatory process and introduce legislation that would stop these new regulations from moving forward and taking effect," said Molodanof. "That is why we're urging CAA members to contact (call, write and speak directly) to their legislator (Assembly member and Senator) and request that they oppose any legislative effort that would stop these regulations from moving forward."

Deputy Commissioner Geoff Margolis from CA DOI elaborated on the new proposed regulations.

"California Insurance Commissioner Dave Jones has noticed new regulations that address inconsistent, unreliable, and inaccurate labor rate surveys that are used by insurers to settle insurance claims," he said. "The proposed regulations establish clear guidance and standards when conducting auto body labor rate surveys, including requiring current and reliable data. It is expected that the regulations will result in fairer and more equitable insurance claims.

"The Commissioner has launched this regulatory effort in response to the hundreds of complaints the Department of Insurance has received from consumers and auto body repair shops concerning instances where consumers were forced to pay out-of-pocket costs, or shops were deprived of their reasonably charged rates due to outdated and unreliable surveys," Margolis explained. "Some of these complaints have resulted in enforcement actions which the department has filed against several insurance companies."

The proposed anti-steering regulations are also much-needed, according to Margolis.

"Commissioner Jones has also devised regulations that address the problem of insurance companies who communicate deceptive and untruthful information in order to improperly steer policyholders to an insurer-chosen repair shop after an automobile collision," he said. "These proposed regulations also provide guidelines for reasonable time frames for insurers to inspect damaged vehicles and for what constitutes unreasonable distances in cases where an insurer requires the claimant to travel to obtain a repair estimate or have a vehicle repaired.

The proposed regulations are intended to address the issue of inconsistent, unreliable and inaccurate auto body labor rate surveys used by insurers to settle or adjust claims.

The proposed regulations will clarify the standards that govern the procedures for conducting and reporting labor rate surveys and shall do the following:

- **Standardization:** Standardize auto body labor rate surveys to effectuate fair and equitable claim settlements or adjustments of labor rates
- **Up-to-Date:** Surveys conducted shall contain current labor rates.
- **Sample Size:** Insurers shall be required to send a survey questionnaire to all Bureau of Automotive (BAR) licensed auto body repair shops in the specified geographical area.
- **Auto Body Repair Facilities:** Labor Rate Surveys shall use only labor rates of auto body shops licensed with BAR.
- **Equipment & Insurance:** Only labor rates reported by auto body shops that meet specified equipment, insurance and other specified requirements may be used in the Labor Rate Survey.
- **No DRP's Rates:** Labor Rate Surveys shall not use any discounted rate or DRP rates in survey to determine prevailing auto body rate.

- **Geographical Areas:** Labor Rate Surveys must follow specified geographical areas as outlined in the regulations.
- **Standard Questionnaire:** Insurers must use a specified Standardized Labor Rate Survey Questionnaire as outlined in the regulations.
- **Direct Responses from Shops:** Only direct responses from the shop based on the Standard Questionnaire will be acceptable. Labor rate surveys cannot rely on estimates, third-party estimating software systems or subrogation reimbursements.
- **Surveys Public Information:** The Labor Rate Survey shall be submitted by insurers and reported to the Dept of Insurance. Results made public.

For more information and to access documents concerning these proceedings go to: www.insurance.ca.gov. Click on "Insurers" then "Legal Information" then "Proposed Regulations" then " Search for Proposed Regulations." When "Proposed Regulations" screen appears, you may choose to find documents by conducting a search for "REG-2012-00002" or by browsing for them by name as "Auto Body Repair Labor rate Surveys" and "REG-201500015" or browse by name "Anti-Steering in Auto Body Repairs".

Tire Repair Bill (A39) Memo

The subject bill amends the New York State Vehicle and Traffic law, in relation to tire repair. This proposal adds a new subdivision (d) to paragraph 35 of section 375 of the vehicle and traffic law.

This legislation is intended to prohibit a tire repair from being made to a tire that would not pass the New York State motor vehicle inspection. The sponsor justifies the bill by pointing out that improper tire repairs pose a safety risk to motorists. The bill mandates that a tire may not be repaired a tire if the tire would not pass a New York State motor vehicle inspection.

While the intent of the bill may be good it does not take into consideration that many of the tire repair businesses are not inspection stations and may not know the inspection rules governing tires.

The law states a tire will fail a New York State motor vehicle inspection if the tread is worn to less than 2/32 of an inch, the tire has a fabric break or a cut in excess of one inch in any direction and is deep enough to reach the body cords, the tire has visible bumps, bulges or knobs, the tire has any portion of the ply or cord structure exposed or the tire is marked for specific non-highway uses. In any case, a tire will only fail an inspection if it is a badly damaged tire that should not be driven on for safety reasons. If a person attempts to repair a tire may not be a licensed inspector or inspection station and may not be registered with DMV. This bill if it should become law will be impossible to enforce.

When the vehicle is inspected the inspection include the check of the tires using the above guidelines.

For the above reasons the New York State Association of Service Stations and Repair Shops, Inc., its affiliates and member oppose the legislation and urge it be defeated.

The bill has passed the Assembly and is in Senate Committee.

FBI Issues Warning on Vehicle Cybersecurity

The Federal Bureau of Investigations (FBI) has issued a public service announcement warning drivers about cybersecurity issues associated with advanced vehicle technologies. On the heels of recent vehicle hacking cases, including last year's wireless takeover of a Jeep by WIRED magazine, the FBI has begun warning drivers about the threats.

While the announcement uses only the example of hacking technology embedded by the vehicle manufacturer, they go on to criticize the safety of aftermarket technologies. The concerns they list for aftermarket technologies include making modifications or attaching dongles to the OBDII port. According to the FBI, drivers should make sure all software is updated by a trusted source and receive service at a trusted location. The agency focuses only dealerships as being the best-trusted source for consumers.

The Auto Care Association is concerned that the FBI is addressing the issue of vehicle cybersecurity through a narrow lens, focusing only on vehicle manufacturers' proposed solutions. The association will continue to work with government entities to expand their knowledge about the steps aftermarket providers are taking to ensure their technology solutions are secure.

NHTSA Seeks Comments On Emerging Technology Recall Guidance

The National Highway Traffic Safety Administration (NHTSA) has issued draft guidance to vehicle equipment manufacturers on how to address defects and potential recalls relating to emerging vehicle technologies. NHTSA is using the guidance to clarify its authority over software and motor vehicle equipment while urging vehicle manufacturers and aftermarket companies to adopt a life-cycle approach to evaluating the safety of new technologies.

According to NHTSA, new advanced vehicle technologies, including the software necessary for their operation, are considered motor vehicle equipment for the purposes of regulatory oversight. Therefore, the agency will be evaluating these platforms for defects under the same authority established for traditional motor vehicle equipment.

In order to avoid violating the long-standing National Traffic and Motor Vehicle Safety Act, NHTSA encourages manufacturers and technology providers to adopt a life-cycle analysis approach. The agency describes this approach as including "elements of assessment, design, implementation and operations, as well as an effective testing and certification program." It is important to note that for vehicle

technologies, there are no existing certification programs available through NHTSA.

Anyone with an opinion on NHTSA's proposed defect guidance should submit comments to NHTSA by Monday, May 2.

NHTSA Publishes Guidance On Manufacturer Communication Of Defect Or Noncompliance Notices

The National Highway Traffic Administration (NHTSA) published guidance to manufacturers regarding new requirements for communication to dealers, consumers or purchasers regarding motor vehicle equipment defects or issues of noncompliance. Motor vehicle equipment manufacturers, including aftermarket manufacturers, are now required to post defect or noncompliance information on their websites. Additionally, NHTSA now requires manufacturers to submit all defect or noncompliance information passed to dealers, suppliers or customers. Previously, such notices, typically in the form of a service bulletin to a dealer, were not required to be submitted to the agency.

The expanded communication to NHTSA does not solely include established safety-related service bulletins, but now would require the information be submitted to the agency which would now act as the authority over determining whether something is, in fact, safety related. Furthermore, NHTSA will use the information to determine any regulatory remedies that may be required, including opening a recall.

Submission of technical service bulletins or other required defect communications must be provided to NHTSA within five days of releasing the information to dealers, suppliers or customers. The new requirement was established by the 2012 national transportation bill "Moving Ahead for Progress in the 21st Century" (MAP-21).

Penalties Increase For Safety Violations

Penalties paid by motor vehicle equipment manufacturers for safety violations have increased in accordance with the Fixing America's Surface Transportation Act (FAST Act). The new rates are:

- \$21,000 civil penalty for each safety violation under the Vehicle Safety Act.
- \$105 million maximum collection by NHTSA for a series of penalties.

The new rates went into effect March 17.

FDA Holds Off On Menu Labeling Until 2017

The U.S. Food and Drug Administration (FDA) has pushed off enforcement of its menu-labeling regulations until 2017, according to US News & World Report and the Associated Press. As part of the Affordable Care Act passed in 2010, the rules mandate that restaurants and retailers selling prepared foods in 20 or more U.S. locations must place calorie counts next to menu items or on menu boards.

Enforcement of the rules has been hamstrung by grocery stores, convenience stores and other non-traditional restaurant establishments that have protested the regulations. In 2014, the agency released the final menu-labeling rules, touting them as a balanced approach to retailer concerns. At first, the FDA gave restaurants until the end of 2015 to comply, then that deadline was moved to the end of this year. Now it has been pushed back again to 2017.

Last month, the U.S. House of Representatives passed the Common Sense Menu Disclosure Act. The passage represents another giant step forward in ensuring consumer choice and making it possible for convenience stores and others to comply.

Soda Tax Blocked In California

The Associated Press reports that Democratic lawmakers' eighth attempt in six years to change Californians' sugar habits has hit the wall in the state Legislature.

AB2782 would have imposed a two-cent-per-ounce fee on sugary drinks, writes the news source, noting that the additional money would have been used to benefit clinics that address obesity, diabetes and oral health.

Assemblyman Richard Bloom, author of the proposal, did not have enough support from members of the Health Committee to move the bill forward, and there are no plans to resurrect the measure, according to Bloom's spokesperson, Sean MacNeil.

Opponents of the plan say that soda taxes or warning labels are not likely to change behavior and may adversely affect low-income residents

Streak Of 2,479 Days Is Finally Broken For U.S. Fuels

For the first time since July 2, 2009, the average pump price for diesel fuel is below the average price for gasoline on a nationwide basis.

In the 2016 Outlook projections, OPIS analysts predicted that diesel would fall below gasoline prices, and indeed the first such instance occurred overnight. The average gasoline price as calculated among 130,000 fueling sites was measured at \$2.1103 gal this morning, compared with \$2.1098 gal for diesel. OPIS expects that the trend toward slightly higher gasoline prices and slightly lower diesel numbers will continue and projects that diesel will average less than gasoline for the second calendar quarter.

In the new century, only seven of 65 calendar quarters have seen diesel prices average beneath those of gasoline. The last such instance was the third quarter of 2004, which roughly overlapped with most of the driving season that year. Diesel has higher federal taxes, and many states attach higher road taxes to diesel as well, so the fuel starts at a disadvantage to retail gasoline. On a dollars-per-BTU basis, diesel has been the bargain fuel for many months.

Seventeen states now find diesel at a cheaper price than gasoline. The largest difference shows up in California, where gasoline commands about 33cts gal more than diesel.

Among states with high diesel prices, there is no peer for Hawaii, where the price of diesel averages \$4.06 gal, versus \$2.61 gal for gasoline.

Although consumers and fleets are beneficiaries of the move, the softer diesel numbers are symptomatic of a global market where perhaps too many refiners have concentrated on maximizing diesel yields, just as demand from emerging countries has slowed. Diesel inventories are sky high, and as a global crude glut transitions into extra products, it is the part of the barrel that is most worrisome to refiners.

Example: Today finds ultra-low sulfur diesel at the Gulf Coast trading for \$1.1615 gal, or about \$48.78 bbl, an \$8.70 bbl premium to the price of the WTI benchmark. Two years ago on this day, Gulf Coast diesel fetched a margin of \$20.92 bbl over WTI.

--Tom Kloza, tkloza@opisnet.com

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New UST Requirement Starts Today In Some States

As of today (April 12, 2016), if you own or operate an underground storage tank system in a state whose UST program doesn't have "state program approval" status from the EPA, the tanks and piping you get installed or replaced must have secondary containment with interstitial monitoring, according to the EPA. But if the piping is safe suction piping, that piping doesn't require secondary containment and interstitial monitoring, the EPA states.

In addition, pressurized piping in such states must continue to have an automatic line leak detector, according to the EPA's February 2016 document *Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists*.

The document states that suction piping is considered safe suction piping if it:

- is below-grade piping that operates under atmospheric pressure;
- slopes enough that the product in the pipe can drain back into the tank when suction is released; and
- has only one check valve, which is as close as possible beneath the pump in the dispensing unit.

To find the document, go to the UST section of the EPA's website, <https://www.epa.gov/ust>, look under the "What's New" banner and click on the bulleted item "Operating and Maintaining UST Systems."

States that have state program approval status from the EPA could have different requirements.

--Vincent Taylor, vtaylor@opisnet.com

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Note: New York is one of the few states that do not have state program approval.

Global Skimming Losses Rise Despite EMV

The European ATM Security Team (EAST) has reported that skimming losses related to the use of stolen

European card data outside Europe have risen to the highest level seen since 2008.

In Europe, where the Europay MasterCard Visa (EMV) chip card technology standards are widely adopted, thieves have still managed to access card data for use in other areas.

EAST reported a 19% increase in ATM-related fraud attacks, up from 15,702 to 18,738 in 2015. This increase was mainly driven by a significant rise in Transaction Reversal Fraud (TRF) attacks (up from 160 to 5,104) and a smaller rise in card trapping attacks (up from 5,298 to 6,352).

TRF is possible in the EMV environment and trapped cards can be used if the PIN has also been compromised, the organization said. A total 4,131 card skimming incidents were reported, down 27% from 5,631 in 2014.

Losses due to ATM-related fraud attacks were up 17% when compared with 2014. This rise was largely driven by a 15% rise in international skimming losses. The majority of such losses were reported in the United States and the Asia-Pacific region, EAST said. Domestic skimming losses rose 19% over the same period. "While regional card blocking, often known as geo-blocking, is effective at minimizing international skimming losses when implemented, the continued rise of such losses is of concern to Europe," said EAST Executive Director Lachlan Gunn. "EAST is now working closely with Europol to increase awareness among experts in Asia-Pacific and the Americas about all types of non-cash means of payment, including card skimming, ATM malware, internet fraud and eCommerce fraud."

EAST also is involved with Europol's effort to establish a cross-regional network to assist in international investigations.

ATM-related physical attacks rose by 34% when compared with 2014, up from 1,980 to 2,657 incidents. This is partly due to a 9% increase in reported solid explosive and explosive gas attacks. Nine countries reported these attacks, four of them countries with more than 40,000 ATMs installed.

The number of reported robberies also increased significantly, up from 60 in 2014 to 838 in 2015. However, the rise is partly because more countries are now providing the data.

Losses due to ATM-related physical attacks rose 81% year over year, including ram raids/ATM burglary and explosive or gas attacks. While around 40% of such attacks do not result in cash loss, collateral damage to equipment and buildings can be significant, EAST said.

In 2014 EAST began to collect statistics for ATM Malware after the first incidents were reported in Western Europe. Fifteen incidents were reported in 2015, down from 51 in 2014. These were all "cash out" or "jackpotting" attacks. Related losses also decreased year over year.

--Donna Harris, dharris@opisnet.com

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Is Tesla Starting An Electric Car Revolution?

Smashing all predictions, Tesla's newest all-electric Model 3 sedan has received a record 276,000 reservations in

48 hours. That has auto analysts cautiously predicting the industry is likely to start marketing more electric technology vehicles to a broader base of consumers, the Washington Post reports. "We've never seen anything quite like this in the auto industry," said Jessica Caldwell with Edmunds.com. "It is unprecedented."

While most car makers have fooled around with electric technology and perhaps even placed viable models on the road, the category has long remained a niche one that sold merely thousands of cars. Now it appears that Tesla has accomplished the Holy Grail of electric vehicles—the ability to sell hundreds of thousands of the models.

For some perspective, Tesla has nearly as many reservations for the \$35,000 Model 3s as Mazda sold last year (319,000 U.S. vehicles). Even if some who preordered end up cancelling, the company has proven that customers are hungry for a good, affordable electric car.

"It's a watershed moment for rethinking vehicles all together. Tesla is putting together the idea a vehicle needs to be cutting edge and cool, more like an iPhone than like a Model T," said James McQuivey with Forrester. "It's changing what we mean when we buy a car and what it says about us."

Factors fueling the interest include that these newer electric vehicles have a longer range, more public superchargers are now dotting the country, and car charge networks are expanding. "The Model 3's huge reservation list should serve as a big wake-up call for the rest of the industry," said Tony Lim with Kelley Blue Book. "Tesla just did a lot of heavy lifting to attract attention to the EV segment. Now is the time for competitive manufacturers to begin leveraging this momentum that Tesla created and building awareness to their fully electric vehicles that have comparable performance and appeal."

USDA Extends Comment Deadline For Snap Rule

Today, the U.S. Department of Agriculture's (USDA) Food and Nutrition Service (FNS) announced a 30-day extension to the comment period for its proposed rule to change the requirements that retailers must meet to participate in the Supplemental Nutrition Assistance Program (SNAP). Retailers will now have until May 18 to file comments on the proposal.

This extension follows calls from House Agriculture Committee Chairman Mike Conaway (R-TX) and Representative Jackie Walorski (R-IN) to extend the comment period during the Committee's two-day hearing in March. A similar request was made by Senator Jerry Moran (R-KS) during a Senate Appropriations Subcommittee hearing in early March. It also responds to a formal request by NACS for an extension filed on March 9.

The proposal, as drafted, will implement the provisions included within the 2014 Farm Bill, which require retailers to stock more varieties of products in four "staple food" categories: (1) meat, poultry, or fish; (2) bread or cereal; (3) vegetables or fruits; and (4) dairy. Specifically, retailers must stock at least seven different varieties of food items in

each of the four staple food categories (before the 2014 Farm Bill, retailers had to stock 3 different varieties in each staple food category). Further, retailers will be required to offer at least one perishable food item in three of those categories rather than two.

However, within the proposal, FNS also included several proposed changes that went significantly beyond the statutory requirements in the Farm Bill. Problematically, the proposal would make it so “multiple ingredient” items, such as lasagna or chicken pot-pie would not be counted in any staple food category and would not go towards a retailer’s “depth of stock” requirements. This is a dramatic change from current rules, which permit multiple ingredient items to be counted in one staple food category depending on the main ingredient. The proposal would also add a “stocking requirement” whereby retailers would always have to have six different units of any food item on display at any given time.

The proposal will make it increasingly difficult for convenience retailers to participate in the SNAP program, thereby negatively impacting the many SNAP recipients that use their benefits at convenience stores.

Engine Design Trends Key Driver In Demand Uptick For High-Octane Fuel: EIA

Comparatively lower gasoline prices over the past year or so have been widely attributed to heightened consumer demand for premium-grade fuel, but increasing fuel economy standards have forced engine design modernizations that have likely been far more influential, the U.S. Energy Information Administration (EIA) said late this week.

In a report focused on premium gasoline sales, the EIA noted that the share of high-octane fuel in total motor gasoline sales has steadily increased since 2013, reaching 11.3% in August and September 2015. The share of premium gasoline sold bottomed at 7.8% in June 2008 but has now rebounded to the highest portion of total sales since September 2004, according to the EIA.

However, instead of drawing attention to the effects of the low-price environment in pushing consumers towards high-octane fuel, the agency instead pointed to changes in fuel requirements for light-duty vehicles (LDV).

Under the latest Corporate Average Fuel Economy (CAFE) regulations finalized in October 2012, automakers for model years 2017-2021 are required to ensure LDV meet a fleetwide fuel economy of 40.3-41 miles per gallon (mpg), with standards for model years 2022-2025 increasing to 48.7-49.7 mpg. The EIA noted that automakers have turned to several technical improvements in improving engine efficiency, but one process was singled out: turbocharging.

For those who have seen any installment in the "Mad Max" film series, turbocharging mechanisms -- and their cousins, superchargers -- should appear familiar, as they regularly appear protruding from the hood of the vehicle driven by the titular protagonist. From a technical perspective, the function of a turbocharger is simple -- to

increase engine efficiency by forcing extra air into the combustion chamber.

Turbochargers work by using a turbine driven off of exhaust gas to pressurize intake air, allowing the engine to produce more power. However, the addition of more air into the combustion chamber increases cylinder pressure and increases the risk of engine knock, the premature and incomplete combustion of fuel. Knock can damage the engine, so turbocharged engines require the use of high-octane gasoline, which has the greatest resistance to spontaneous combustion.

Over the last decade or so, the share of turbocharged vehicles in new gasoline- fueled LDV sales has increased rapidly alongside the move toward higher fuel economy standards. In model year 2009, turbocharged vehicles accounted for 3.3% of new LDV sales, but by model year 2014 that share was nearly five times that at 17.6% of the market, according to the EIA.

Moving forward, that trend is expected to continue, and by 2025 turbocharged engines are expected to make up a huge 83.3% of the LDV market, the EIA said.

Of course, not all of those engines require the use of premium-grade gasoline, but as the production of vehicles with turbocharged engines grows, it is likely that manufacturers will increasingly either recommend or require the use of high-octane fuel, according to the EIA.

From model year 2010 to 2013, the percentage of higher-octane gasoline-fueled LDVs increased from 12.5% to 14.2% of the total market, an uptrend the EIA sees as inevitable given the move toward more stringent fuel standards and production shifts towards turbocharged engines.

In terms of prices, even an incremental increase in demand for premium-grade gasoline could prove meaningful, especially during seasonal RVP shifts when regional markets become increasingly reliant upon high-quality blending components like reformate and alkylate. Typically, transitions to low-RVP and VOC-controlled specifications in March and April spur some considerable leaps in premium gasoline prices, which in many cases are made more extreme by production constraints during times of heavier regional refinery maintenance.

At present, such influences are the primary motivators in the Group 3 spot market, where spot prices for premium gasoline have rocketed over 15cts higher in just the last two sessions. Midwest trade sources recently attributed the moves to a growing scarcity of high-octane gasoline components amid spring maintenance work involving a considerable share of overall Midwest catalytic reforming capacity.

In a report focused on spring refinery maintenance, the EIA last week drew attention to planned PADD2 catalytic reformer outages that in April were expected to be near 10-year maximums in terms of overall capacity affected.

--Corey J. Walker, cwalker@opisnet.com

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Automakers Agree To Make Automatic Braking Standard By 2022

By September 2022, automatic emergency braking (AEB) systems will be standard on virtually all vehicles sold in the U.S., according to the National Highway Traffic Safety Administration (NHTSA) and the Insurance Institute for Highway Safety (IIHS). NHTSA and IIHS announced last week an agreement with 20 major automakers to bypass the regulatory process and ensure that this safety technology is incorporated across all passenger models three years sooner than previously anticipated.

Vehicles outfitted with AEB automatically apply the brakes before colliding with another vehicle, pedestrian or other object. A recent study commissioned by IIHS, which is a nonprofit research and testing organization funded by auto insurers, found that vehicles with AEB systems or forward collision warnings experienced 39 percent fewer rear-end crashes, which are responsible for one-third of all police-reported crashes. Only 1% of model year 2015 vehicles had AEB as a standard feature, while 26% had it as an option.

The agreement sets a date of Sept. 1, 2025 for the technology to also be available on new heavy-duty vehicles.

Senate Committee Hears Testimony On The Future Of Driverless Vehicles

The Senate Commerce, Science and Transportation Committee held a hearing last week on the future of driverless cars and heard testimony on the issue from automakers, transportation researchers and companies such as Lyft and Delphi. It was clear from the hearing that legislators have a multitude of concerns that automakers and other stakeholders are not yet ready to address.

Key among those concerns are whether there should be regulations addressing autonomous technology performance, cybersecurity and the mandatory inclusion of the technology on future vehicles. Those concerns were clearly articulated by one witness, Dr. Mary Louise Cummings of Duke University, who contended during her testimony that the National Highway Traffic Safety Administration (NHTSA) continues to lack proper oversight of autonomous technology and the connected car.

Conflicts between vehicle manufacturers and parts suppliers were apparent when Glen DeVos, of Delphi, told the committee that any future regulations need to require retrofitting of aftermarket options in order to expand the adoption of connected technologies. Mike Ableson of General Motors, however, responded to questions from Sen. Cory Gardner, R-Co., by saying that such technologies are not “appropriate” for aftermarket options and should only be incorporated into new vehicles.

Congress continues to focus on monitoring the development of advanced vehicle technologies, particularly in response to the overwhelming spike in vehicle safety recalls since 2014. Additional hearings in both the House and Senate are expected to occur in the future.

OSHA To Drastically Raise Fines Later This Year

At a recent OSHA roundtable, SSDA-AT learned the details of the new OSHA fine structure. Fines will be raised by 80% later this year. In addition, they will be 6 months retroactive. Meaning all current cases left unresolved will be subject to the new fines.

OSHA fines will increase for the first time in a quarter century, under a provision in the recently signed congressional budget deal. The Federal Civil Penalties Inflation Adjustment Act of 1990 exempted OSHA from increasing its penalties to account for inflation. The new budget, signed into law on November 2 by President Barack Obama, contains an amendment that strikes the exemption.

Now, OSHA is directed to issue an interim final rule increasing its penalties to account for current inflation levels, which would raise proposed fines by about 80 percent. This would mean the maximum penalty for a willful violation would rise to about \$127,000 from the current \$70,000. The adjustment must occur before August 1, 2016. In subsequent years, OSHA also will be allowed - for the first time - to adjust its penalties levels based on inflation.

Last year, OSHA conducted over 40,000 inspections and are planning to break that number this year. A large percentage of the inspections were conducted on those in the tire/automotive repair industry and some dealers faced fines of tens of thousands of dollars for inconsequential violations. SSDA-AT recommends signing up for voluntary inspection programs in states where they are offered to avoid potential fines. These voluntary inspections allow for owners to be notified of violations, with a time table to fix them, before they are fined. Last year, 38% of businesses who reported an injury were inspected after. While 62% received a Rapid Report Investigation (RRI).

SSDA-AT remains concerned with overreaching NHTSA fines and increased regulation on the tire industry. We will continue to work with OSHA and NHTSA to protect our dealers.

Chip Card Delay Frustrates Retailers

Avi Kaner, a co-owner of the Morton Williams supermarket chain in New York, has spent about \$700,000 to update the payment terminals at his stores to accept EMV chip cards. However, he can't turn them on, writes *The New York Times*, a bottleneck in offering a more secure payment process that is frustrating retailers—both large and small—across the United States.

Since the EMV liability shift took place on October 1, 2015, retailers have been essentially put on hold to get their payment terminals certified to accept chip cards.

The *Times* reports the cost of waiting is piling up. “It’s been very frustrating,” Kaner told the news source, noting that he purchased most of the upgraded POS equipment before the Oct. 1 deadline, and he’s still waiting for certification. The delay, he says, has cost him thousands of dollars in payments for fraudulent purchases. “There’s no recourse,” he said.

"The long delays are just the latest black eye for the deployment of the new systems," writes the Times, noting that some consumers haven't even received new credit and debit cards with the embedded EMV chip.

First Data, one of the largest payment processors, told the Times that about 20% of the four million American merchants it works with are in the process of being certified, a procedure that can take weeks to months.

Mallory Duncan, general counsel at the National Retail Federation, told the Times that the payments industry was unprepared to handle the flood of certification requests around the Oct. 1 liability shift deadline. "They didn't allow for enough time or people to perform this certification," he said. "Merchants have gotten slammed because they weren't able to get certified, because the networks failed to provide the necessary resources to do that."

Kaner commented that since Oct. 1, customers who have contested charges made with their EMV-enabled cards have been successful in reversing transactions, and he's worried that some customers will use the Oct. 1 liability shift to get out of paying for legitimate purchases. Chargebacks, he said, have increased significantly. "It started out as a trickle, and now it's turning into a flood," he told the Times. "In the first couple months, it might have been a few hundred dollars a month. Now, it's thousands a month."

"The convenience and fuel channel has numerous retailers in the same situation, having invested upwards of \$30,000 per site to be hardware-ready for EMV, only to be put on perpetual hold with approved software," said Gray Taylor, executive director of Conexus. "These retailers are trying to avoid the inevitable manufacturing and installation bottlenecks to do the right thing and get ahead of the curve, only to be on perpetual hold by an over-burdened vendor community trying to navigate late specifications and complex certifications. This is what happens when you simply choose a deadline, like the card brands did, without diligence. The premium retailers will pay for this 'hurry up and wait' situation and it will result in higher consumer prices."

Because You Asked

Question: What are the inspection regulations if a windshield is tinted?

Answer: There is nothing in the inspection regulations regarding windshield tint, at this time. However the sticker must be properly affixed to the windshield, not the tint. So the area for the sticker cannot have tint. Vehicle and traffic section 375 12-a. b. (1) Addresses tint that may be a traffic violation.

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Insurance Corner

By Kelly Hurley

Garage Insurance Options



Most businesses in the auto trade need some form of garage insurance to be protected. Here are the most common types of garage insurance for review to start:

1. General Liability Insurance -- General Liability Insurance or GL, is a fundamental part of any garage insurance strategy. It could provide protection against lawsuits and other financial liabilities that result from things like accidents, building damage or other mishaps.

2. Business Owners Policies -- Many businesses need more than basic liability. A BOP can provide additional protection including property, loss of income, identity theft coverage and many more. Find out if you're eligible to include BOP along with your garage insurance plan.

3. Garagekeepers Legal Liability Insurance -- Towing businesses and service stations might need to carry Garagekeepers Legal Liability insurance to protect customers' vehicles while they're being held or worked on.

4. Commercial Auto Insurance -- Cover the basics like Liability and Physical Damage and explore more specialized choices like Non-Trucking Liability, Non-Owned Vehicle, Drive Other Care and many more. Adjust your policy to reflect seasonal changes to keep your rates low and your coverage steady.

These include Business Autos like cars, light trucks, SUV's, vans and more. Trucks, from light to heavy, in all shapes and sizes, from dump trucks to tractor trailers. Tow Trucks including Garagekeepers Legal Liability insurance, On-Hook Towing and more may be explored. And then Trailers can be covered from small pickup truck utility trailers to large dump body trailers pulled by a tractor.

There are other types of insurance and policies out there, but this is a good place to start for any garage operation!

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- Consultation on legal questions pertaining to your business. (One hour per issue, up to five hours per year.)

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