

NDPMA Honors Jim O'Day for his Efforts on the Petroleum Industry's Behalf

The NDPMA State Convention and Tradeshow once again was very well attended. It was very gratifying to hear all the positive comments as Mary and I work extremely hard on finding the right business content and entertainment critical to a great networking experience for marketers and vendors.

A big thank you to all our sponsors and vendors for taking the time to network with the petroleum marketers. We can't do it without your support.

On Tuesday night before the Live PAC Auction, NDPMA had the distinct privilege of honoring longtime member and association advocate, Jim O'Day from O'Day Equipment.

It is important to note Jim's recognition was not for being a vendor. It's been his personal efforts over the years that have been extremely impactful in numerous efforts of NDPMA as well as EMA. It's important to point out that he has made these efforts on his own time and his own dime. Often times, his contributions have been contrary to his own self business interests. Below are some highlights of the work Jim O'Day has done on behalf of the entire retail petroleum industry in North Dakota.

Jim O' Day has served on numerous industry standards review committees, such as Steel tank Institutes SP001. Standards such as these are referenced in Federal regulations. His contributions, advocating for reasonable requirements, have significantly decreased the regulatory compliance costs associated with Federal regulations.

Jim has also been a vital participant in the efforts by NDPMA to keep our state tank fund solvent. His technical expertise, participation and sound suggestions have been extremely important in the NDPMA's efforts to keep our tank fund registration fees extremely reasonable while preserving the health of tank fund.



Jim O'Day is presented an award from NDPMA Chairman Deanne Svaleson and NDPMA Director Matt Bjornson

Some marketers may not be aware, but EPA had proposed a vapor recovery requirement for gasoline storage at bulk plants. Jim helped with the fight won by EMA and the state associations by providing technical assistance as well as real world bids to demonstrate the cost of retrofitting if the regulation were to be enacted. That information was used by EMA to prove the EPA's estimate of the cost to industry was vastly understated. In the end EMA achieved significant relief for over 98% of the bulk plants in the country. This work saved every bulk plant owner in ND over \$125,000. The savings in total for just ND, MN, and Iowa surpassed \$100 million dollars.

Jim O'Day's contributions and advocacy on multiple issues that EMA and NDPMA have fought for on your behalf have been significant and impactful, deserving of appreciation by us all.

Thank Jim for the time and talent you've shared in protecting the ND retail petroleum industry.

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PAC Golf Fundraiser



The 25th annual PAC golf fundraiser was held August 1 at Hawktree Golf Club. This event is a fun way to bring members together and raise money.

Political Action Committee:

The Association’s PAC is dedicated to supporting political candidates who embody the ideals championed by the retail and petroleum industries and who advocate a pro-business agenda on Capitol Hill.

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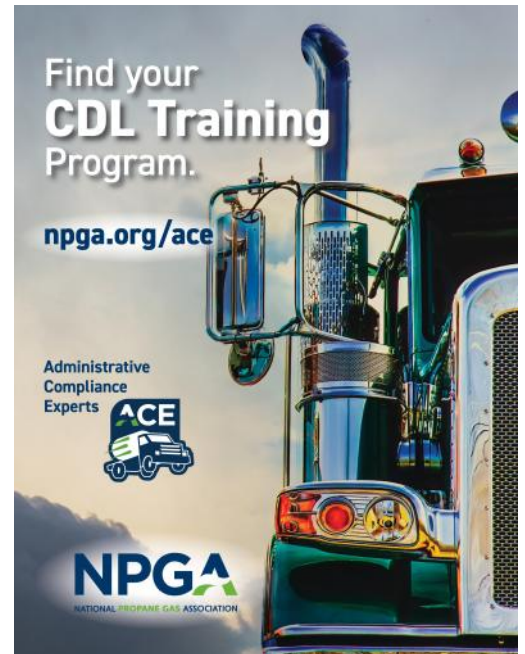
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Record Profits at Giant Card Issuer JPMorgan Chase Show Need to Address Credit Card Swipe Fees



WASHINGTON, January 17, 2025 – As Congress focuses on huge profits in the credit card industry, record annual profits reported by the nation’s largest card issuer show the need for lawmakers to address soaring swipe fees charged to process transactions, the Merchants Payments Coalition said.

“Members of Congress have made it clear that card industry profits are out of control and leave plenty of room to lower credit card swipe fees that drive up costs for small businesses and prices for American consumers,” MPC Executive Committee member and National Association of Convenience Stores Senior Vice President of Government Relations Lyle Beckwith said. “Profits at card-issuing megabanks are huge and profits at Visa and Mastercard are astronomical. It’s time for Wall Street to learn to compete the same as Main Street businesses that struggle just to break even.”

“You’re making over 50% profit margin,” Senator Josh Hawley, R-Mo., told Visa and Mastercard executives at a Senate Judiciary Committee hearing in November. “You have over 80% of the market but you don’t want any more competition. I’m having a hard time finding that position defensible, let alone sympathetic. I mean, it’s unbelievable the amount of money you’re making. It’s unbelievable what you’re charging small businesses and consumers and yet your testimony is please, please, please, please, please we can’t possibly have any competition.”

JPMorgan Chase reported that [2024 profits totaled a record high \\$54 billion](#), a 17.9% increase over 2023. JPMorgan is the largest U.S. issuer of Visa and Mastercard credit cards, with twice the dollar volume as No. 2 Citigroup. [Citigroup](#) reported 2024 net income of \$12.7 billion, up 38% year over year, while [Wells Fargo](#) reported \$19.7 billion, up 3.1%, and [Bank of America](#) reported \$27.1 billion, up 2.3%.

High swipe fees, which have jumped 50% since the pandemic and hit a record \$172 billion in 2023, contribute to enormous profits for the card industry. Based on their earnings reports, JPMorgan Chase had a net profit margin of 31.2% in 2024, Citigroup 15.7%, Wells Fargo 24% and Bank of America 26.6%. The numbers are even higher at [Visa](#), which had profits of 55% as of October, and [Mastercard](#), which had 45%.

The earnings reports come as Congress is considering the **Credit Card Competition Act** to address swipe fees, which are too much for small merchants to absorb and drive up prices by over \$1,100 a year for the average family. The fees are rising largely because Visa and Mastercard each centrally set the swipe fee rates charged by all banks that issue cards under their brands and restrict processing to their own networks.

Under the bill, banks with at least \$100 billion in assets would be required to enable credit cards to be processed over at least one unaffiliated network like Star, NYCE or Shazam in addition to Visa or Mastercard. The measure is expected to result in competition over fees, security and service that would save merchants and their customers over [\\$16 billion a year](#).

About MPC

The [Merchants Payments Coalition](#) represents retailers, supermarkets, convenience stores, gasoline stations, online merchants and others fighting for a more competitive and transparent card system that is fair to consumers and merchants.

www.merchantspaymentscoalition.com



NDPMA / NDRA PAC Golf Fundraiser

August 7, 2025

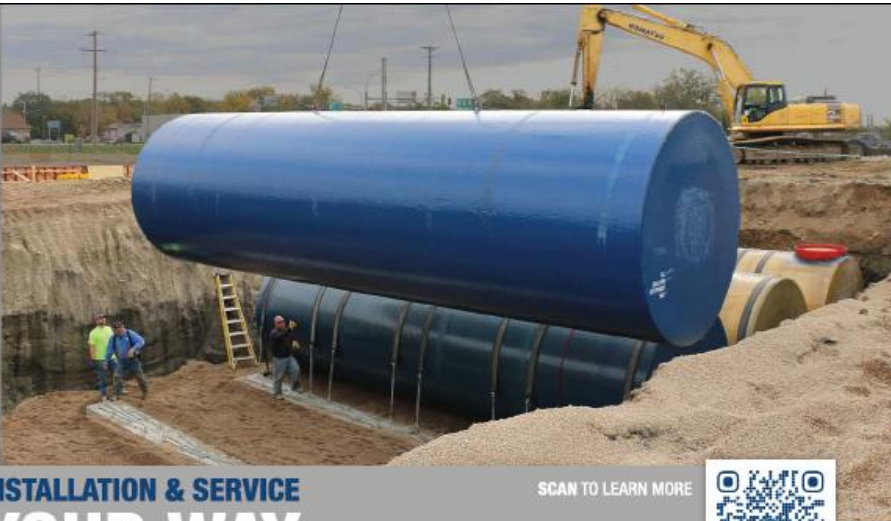
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FTC Reinforces Robinson-Patman to Combat Power Buyers and Protect Main Street Competition

The Federal Trade Commission (FTC) doubled down on the Robinson-Patman Act by taking action to address excessive use of buyer power in the grocery and food retail marketplace. The FTC voted 3-2 to challenge price discrimination demanded by a dominant retail chain that put independent retailers at a disadvantage and harm competition in the food retail sector.

Just one month ago, the FTC filed the first Robinson-Patman enforcement case in decades, accusing the nation's largest alcohol distribution company of illegal price discrimination. Today's case revives prohibitions in the RPA intended to address price discrimination through advertising and promotional allowances. The move by the FTC signals that the agency is serious about any attempt to undermine all of Robinson-Patman's prohibitions against price discrimination. It will give food product suppliers and agriculture producers the ability to say "no" to costly and unjust demands of power buyers and will help food producers run their businesses, not their largest customers.



"America's independent convenience stores are thrilled with today's FTC Action," said Rob Underwood, President of the Energy Marketers of America. "The RPA will level the playing field for retailers across all channels of trade who are forced to purchase products at higher

prices than are offered to the nation's largest retail chains."

"The FTC's lawsuit focuses on the core of the problem, one dominant retailer abusing its market power to coerce suppliers into making unreasonable and costly concessions," said Chris Jones, Chief Government Relations Officer & Counsel at the National Grocers Association. "Suppliers pay dearly for the privilege of doing business with these massive corporations, and the cost gets passed on to everyone else."

The prohibition in Robinson-Patman that curbs buyer power coercion has been all but nullified by the courts in the 90-year legal history of the Act. The sharpest

tools available to the FTC are the supplier prohibitions, which have to be proved in order to bring enforcement action against retail power buyers.



The Main Street Competition Coalition consists of agriculture producer groups who recognize the importance of robust enforcement of seller provisions to realign bargaining asymmetries used to undermine the competitive process.

"While this new suit targets a major beverage company, it's the nation's largest retailers that make unreasonable demands every day to agriculture producers and even demand trade terms that break the law" said Sarah Carden, a farmer and Research and Policy Development Director at Farm Action. "The FTC's two Robinson-Patman enforcement actions will give our agriculture producers more power to reject trade terms by large grocery retailers that harm our growers and our ability to sell our products under fair terms to all of our customers."

The Main Street Competition Coalition, a broad alliance of businesses of all sizes, as well as farmers and ranchers, has fought for years to bring attention to market abuses that make it harder for Americans to get a good deal at the checkout counter. The coalition urges the FTC and Congress to focus on 21st-Century solutions to close the loopholes allowing powerful corporations to ignore the law. National Trade Association members of the MSCC include the National Grocers Association, National Community Pharmacists Association, American Beverage Licensees, Energy Marketers of America and other restaurant and retail groups.



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Entirety of Overtime Rule Has Been Invalidated

The U.S. District Court for the Eastern District of Texas issued its ruling which permanently blocks the Biden Administration rule - invalidating the entirety of the Department of Labor (DOL)'s overtime final rule. In his ruling, Judge Jordan stated that while DOL has the authority to define and delimit the terms of the overtime exemption, "that authority 'is not unbounded,'" that the ruling improperly bases eligibility for overtime pay on workers' wages rather than their job duties.

U.S. District Judge Sean Jordan explained, "the minimum salary level imposed by the 2024 Rule 'effectively eliminates' consideration of whether an employee performs 'bona fide executive, administrative, or professional capacity' duties in favor of what amounts to a salary-only test." He also said that the Department's automatic updates to the minimum salary threshold every three years "violates the notice-and-comment rulemaking requirements of the [Administrative Procedure Act]."

Jordan, who was appointed by Republican President-elect Donald Trump in his first term, struck down the rule after saying in June that it was probably invalid and temporarily blocking it from being applied to Texas state employees.

The rule would have required employers to pay overtime premiums to salaried workers who earn less than \$58,600 per year, when they work more than 40 hours in a week, beginning Jan. 1, 2025, and it had temporarily raised the threshold to about \$44,000 per year on July 1.

The minimum salary threshold which increased in July is once again set to \$35,568, and the threshold for highly compensated employees is set to \$107,432.

Although DOL may appeal the decision to the 5th Circuit, under the new Administration, DOL will almost certainly abandon its defense of the rule. Over the next four years, it may choose to issue its own rulemaking to update the threshold.

CTA Beneficial Ownership Information Requirements No Longer Required

Another unexpected turn of events in the lawsuit regarding the Corporate Transparency Act ("CTA") occurred. The case is Texas Top Cop Shop v. Garland, 5th Cir., No. 24-40792.

On December 26, 2024, the Fifth Circuit merits panel reinstated the preliminary injunction against the enforcement of the CTA. Therefore, **as of 12/26/24, there is no requirement or deadline to file a company BOI report pursuant to the CTA.**

Companies may still voluntarily file their BOI reports with FinCEN. But for the time being, they are not required to comply with the CTA reporting deadlines (neither the original January 1 deadline, nor the revised deadline of January 13). The ruling, however, is still not a final determination of the CTA's constitutionality. Instead, it only temporarily halts deadlines while the case continues to proceed. This could potentially be appealed to the Supreme Court and further action is still required within the lower courts. All of which could once again change the deadlines and requirements in

the future. Businesses should remain cautious and continue to understand that this recent pause may still only be temporary.

For those of you keeping score at home, this has been the head spinning turn of events:

- December 03, 2024: District Court in Texas suspends the deadlines for the CTA BOI reports.
- December 23, 2024: 5th Circuit Court of Appeals reinstates the January 1 deadline.
- December 23, 2024: FinCEN announces a new deadline of January 13 for the CTA BOI reports.
- December 26, 2024: 5th Circuit Court of Appeals, on second thought, decides that the suspension of the deadlines is the best course as the lawsuit continues to be litigated.

We will continue to do our best to update you so that you have the most current information.

Federated Insurance® Launches 2½-Day Risk Management Academy

Federated Insurance® is excited to formally invite business owners and leaders to attend one of our complimentary 2½-Day Risk Management Academy (RMA) offerings beginning in January 2025. These industry-specific sessions are held at the Federated® Home Office in Owatonna, Minnesota, and are led by risk management professionals.

The RMA sessions can help business owners and leaders learn how to prevent losses impacting their bottom line by developing risk management best practices, connecting with industry peers facing similar challenges, working with insurance professionals who are committed to helping owners, and applying what is learned to make meaningful differences. Keep an eye out for the following dates:

Contractors – April 22–24, 2025

Petroleum – May 20–22, 2025

All Industries – June 3–5, 2025

Petroleum – August 26–28, 2025

Dealers – September 16–18, 2025

All Industries – November 4–6, 2025



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Valued NDPMA Members:

Happy New Year. We are off and rolling in Bismarck with the 69th North Dakota Legislative Assembly kicking into full gear.

The Association office will do its best to keep all members up to speed on retail, petroleum and propane related legislation. We are proud to represent over 1,000 retail store fronts in North Dakota.

The Association will send out legislative updates each Friday during the session. If you are not receiving updates and would like to, please email: mary.ndrpm@midconetwork.com and you will be added to the distribution list.

As always, the Association office remains committed to fighting any new business taxes/user fees, limiting federal and state regulations on the business community and upholding the free market and fair/competitive environment for all North Dakota businesses.

The positions taken by NDRA/NDPMA/NDPGA will be based on direction given by the respective board of directors from each association.

Bills already Engaged by the Association during the first weeks of the session:

[SB 2179](#) Motor fuel inspection fees

[SB 2281](#) Tobacco Tax

[SB 2082](#) Hazardous Chemical Fee

[HB 1058](#) Regulation of Aboveground Storage Tanks

[HB 1150](#) Sunday Closing Law

[HB 1332](#) Relating to value-added agricultural facility incentive program. This bill will contain grants for natural gas systems feeding value added ag plants

[HB 1570](#) Tobacco Tax

[HB 1382](#) Electric and plug-in hybrid vehicle road use fee

Please be ready and willing to contact your local legislators. The Association will be front and center doing its best to represent and protect the business interests of all ND retailers. That being said, **YOU NEED TO MAKE YOUR VOICES HEARD!**

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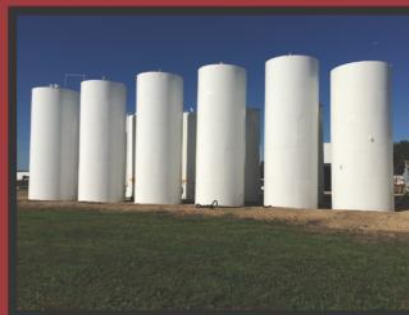
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DOT Compliance Seminar



In October, NDPMA hosted a DOT Compliance seminar. It provided attendees an opportunity to learn how to use the FMCSA manual and focused on learning all applicable federal regulations. The instructor provided a detailed overview of the Compliance, Safety & Accountability (CSA) system, and

training that is critical for carrier or fleet safety management. Attendees also received in-depth training on the Federal Motor Carrier Safety Administration Regulations. NDPMA will offer this class again later in the year.



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Treasury and IRS Outline Regulations to Implement the 45Z Biofuel Production Tax Credit

The U.S. Department of the Treasury and the Internal Revenue Service issued long-awaited guidance regarding the implementation of the Section 45Z Clean Fuel Production Tax Credit pursuant to the Inflation Reduction Act. Effective since January 1, 2025, the 45Z regime provides a credit of up to:

- \$1.00 per gallon for the production of over-the-road biofuels (e.g., biodiesel, renewable diesel)
- \$1.75 for the production of sustainable aviation fuel.

Important for EMA marketers, the new tax regime shifts the incentives from blending to production and calculates the credits based on the carbon reduction attributes of the fuel. The production tax credit is available for each gallon of fuel produced domestically after December 31, 2024, and sold before January 1, 2028.

The guidance delineates forthcoming [implementing regulations](#), including definitions applicable under the framework, the filing process, and general rules to clarify credit calculation, such as how to measure fuel and emission rates. For instance, proposed regulations will specify that the volume of a liquid fuel would be measured based on gallons adjusted to ambient pressure and temperature of 1 atmosphere and 60 degrees Fahrenheit. The guidance also provides the [methodology](#) for calculating the life cycle greenhouse gas emissions of fuels for purposes of obtaining tax credits.

Renewable heating fuels may possibly qualify for the credit, although the proposed regulatory language is ambiguous. In short, heating fuels would have to be “suitable for use” in a highway vehicle or aircraft. While the fuels do not have to be used in such applications, “possible” or “rare” uses, standing alone, are not enough to demonstrate practical and commercial fitness for use as a fuel in a highway vehicle. If another “step” is necessary to make it suitable, such as the type of additization normally found in diesel fuels, it may not qualify. EMA will seek further clarification on this issue and will continue to push for an inclusive framework.

EMA is carefully reviewing the guidance and will continue to monitor developments, as the Trump administration is likely to revise this regulatory matter.

For now, comments on the guidance are due by April 10, 2025.

EMA opposes a “production” as opposed to a “blender” credit because producer credits are unlikely to be passed through to blenders and consumers downstream. EMA continues to advocate on Capitol Hill for an extension of the Biodiesel Blenders’ Tax Credit to prevent supply chain disruptions, sustain carbon reduction benefits, and maintain lower prices at the pump.

“The 45Z tax regime is rife with deficiencies and uncertainty. Ultimately, EMA advocates for a strategic biofuel tax policy that promotes regulatory certainty, energy security, environmental benefits, and affordability at the pump. A long-term Blender framework is the right policy approach. We will continue to make this case to the incoming administration,” said Rob Underwood.

Important: The Section 40A Biodiesel Tax Credit, which accrued to fuel blenders, expired on December 31, 2024.



EMA Journal Online

EMA Fall Journal is the current issue [online](#). You can take the digital edition with you wherever you go. Scroll to select the articles that catch your eye, then share the content with the icons at the top of your screen.

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NDPMA General Membership Meeting



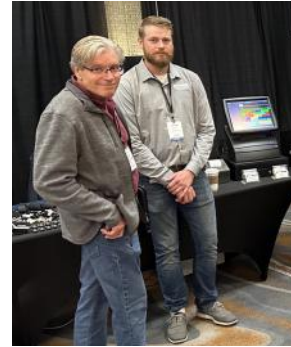
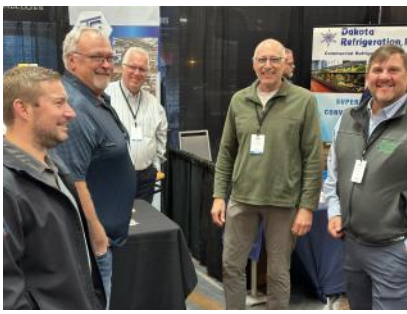
EMA State Director
Chris Fitterer



EMA Chairman
Brad Bell

EMA Chairman - Brad Bell - Co-Energy, Pasco, WA, addresses the NDPMA general membership meeting





FDA Issues PMTA Authorization for Zyn Nicotine Pouches



The FDA issued the first PMTA authorizations for nicotine pouches when it issued Marketing Granted Orders (MGO) for 20 Zyn pouch products. The FDA cited that Zyn's PMTA applications demonstrated substantially lower amounts of harmful constituents than cigarettes and most smokeless tobacco products and provided evidence from a study showing that a substantial proportion of adults who use cigarette and/or smokeless tobacco products completely switched to the newly authorized nicotine pouch products.

The products for which the FDA issued MGOs are the following, each with two nicotine strengths (3 milligram and 6 milligram): ZYN Chill, ZYN Cinnamon, ZYN Citrus, ZYN Coffee, ZYN Cool Mint, ZYN Menthol, ZYN Peppermint, ZYN Smooth, ZYN Spearmint and ZYN Wintergreen (note: these MGOs are specific to these Zyn products only).

Supreme Court Agrees to Hear California Waiver Case



The U.S. Supreme Court announced that it will hear Energy Marketers of America (EMA) and other associations' challenge to EPA's decision to grant a Clean Air Act waiver to the State of California for its 2021-2025 electric vehicle mandate. The groups' petition urged the Court to review and overturn an April ruling by the U.S. Court of Appeals for the D.C. Circuit, which determined that the energy petitioners lacked standing, based on redressability, to challenge EPA's issuance of a federal waiver allowing California to impose its Advanced Clean Cars I (ACCI) EV mandate. It is expected that the Court will focus its review narrowly on the procedural standing issue and not the validity of the waiver itself.

"The SCOTUS decision to review the DC Circuit's opinion is a significant step toward preserving consumer choice and ensuring that all forms of energy are treated equally," said EMA President Rob Underwood. "The Court should clarify that EPA cannot hide behind the redressability issue to empower the EPA to allow one state to regulate vehicle greenhouse gas emissions, impose electric vehicle mandates or limit consumer access to internal combustion engine technology."

The Court will set a schedule for briefing and oral argument in the case. A decision is expected before the end of the Court's term next June.

FDA Enforcement Update: Flavored Disposable Vapor Products Seizures

Recently, the FDA and other federal enforcement announced the seizure of more than 628,000 unauthorized vapor products valued at more than \$7 million from a warehouse in Miami. The seized products include flavored disposable vapor products as well packs, kits and batteries.

NATO continues to track FDA's recent administrative and enforcement actions, and below is a link to the disposable vapor brands cited as unauthorized or illegally sold as they have been cited with FDA civil money penalties, seizures and warning letters:

NATO: FDA - Enforcement Actions
natocentral.org

House Passes the Transportation Security Screening Modernization Act!

The House approved the Senate passed version of the *Transportation Security Screening Modernization Act* that would **eliminate costly background check redundancies** within the Transportation Worker Identification Credential (TWIC), Hazardous Materials Endorsement (HME), and TSA PreCheck programs. **It was signed into law on January 7.**

Thank you to all the energy marketers who reached out to their members of Congress to get this important legislation over the finish line.

This bill directs the TSA Administrator to streamline the credentialing process to allow individuals to enroll in any security threat assessment program based on one background check, permit an individual to undergo a streamlined renewal process, align an individual's credentials expiration dates, and reduce any duplicative costs on individuals seeking credentials.

Nicotine Pouches and Asking for ID

Nicotine pouches are an age-restricted product. Don't assume everyone knows it.

We all know that products like cigarettes, cigars and chewing tobacco cannot be sold to people under the age of 21. And the same is true for vaping products as well. But some store employees may not know that nicotine pouches are an age-restricted product.

That means "carding" everyone **under the age of 30** attempting to purchase these products, and only approving sales of nicotine pouches to those over 21 years of age.

Carding everyone under 30 years old is the federal law requirement that FDA enforces. FDA issued a new rule, effective September 30, 2024, requiring retailers to verify the ages of everyone under age 30 who attempt to purchase FDA-regulated products.

Previously the age was under 27 years old. Some states have a higher age threshold to ask for ID. Make sure to follow your state's requirement (or your store's policy) if it's higher than "under 30."

Nicotine pouches are fairly new, and because of their differences to more traditional tobacco products, it's possible that your employees are not aware they are age-restricted and might not know they should be carding customers who request them.

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