WPMA
News and Information for the Petroleum Marketers Industry
weekly update

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CONGRESS PASSES ANOTHER HIGHWAY BILL EXTENSION

This week, Congress approved another highway bill extension through November 20. The full House is expected to consider the House Transportation and Infrastructure Committee's bill next week. Click here (http://www.pmaa.org/weeklyreview/attachments/House%20Highway%20Bill103015.pdf) to see the details on how the House bill impacts petroleum marketers and click here (http://www.pmaa.org/weeklyreview/attachments/Senate%20Highway%20Bill%20103015.pdf) for the Senate breakdown.

NEW OZONE RULE PUBLISHED IN FEDERAL REGISTER

Lawsuits Filed Against Final Rule

The new ozone standard of 70 ppb was published in Monday's Federal Register, a significant reduction from the 75ppb level set in 2008. However, the 70 ppm standard is not as low as many feared and is considered a compromise between industry and environmental interests.

Not everyone is pleased with the final rule as some industry and environmental groups are now suing the EPA including Murray Energy, an energy company, and Earthjustice, an environmentalist group Additionally, Arizona, Arkansas, North Dakota and Oklahoma are suing the EPA and more states are expected to join the lawsuit.

SENATOR BLUNT INTRODUCES MENU LABELING LEGISLATION

Obamacare requires a national calorie menu-labeling standard for chain restaurants and similar retail food establishments, and in April 2011, the FDA published its proposed rule to implement it. During the rulemaking process, comments were provided to the FDA for the many different ways that foods are prepared and sold to customers, particularly to demonstrate that not everything could fit neatly into a "one-size-fits-all" standardized menu.

Final rules were issued in November 2014 and it became clear that the FDA did not fully address the concerns of small businesses and the concerns highlighted by Congressional members. In the final rule, the FDA (i) required establishments to create multiple menus throughout a store; (ii) defined most advertising and marketing materials as menus requiring labels; (iii) rejected alternative, effective approaches to labeling customizable, variable menu items; (iv) did not accommodate requests of restaurants that specialize in food delivery; and, (v) established arbitrary, excessive penalties, including potential criminal penalties and the possibility of jail time for small business owners.

Lawmakers reached out to the FDA to urge for a delay in the regulation's compliance date, which the FDA has granted until December 1, 2016. However, legislation is still needed to address the rigidity of the Final Rule and lessen confusion for consumers and small businesses.

Legislation introduced this week by Senators Blunt (R-MO) and Angus King (I-ME) maintains FDA's objective to provide customers with information they can use to make smart food choices, but it will protect small businesses from unnecessary costs and risks. Specifically, "The Common Sense Nutrition Disclosure Act": Requires restaurants, supermarkets, convenience stores, and other foodservice vendors to designate a "primary" menu where most customers make decisions; Clarifies that advertisements such as a coupon for a Facebook post are not menus; Clarifies that menu labeling regulations only apply to food items sold throughout a chain to preserve local and fresh food items that may only be sold at one or two locations; Permits businesses that offer variable made-to-order items that are tailored by the customer (i.e. pizza and sandwiches) to select one of various methods of providing useful calorie information most helpful to the customer; Permits businesses that mainly receive food orders remotely to provide calorie information on a remote access menu, such as one on the Internet, instead of an in-store menu board customers never see; Protects businesses from being penalized excessively for inadvertent human error; Places responsibility for compliance on corporate officials that design compliance programs and methods rather than local managers only implementing; Prohibits frivolous class-action suits; and, Extends the effective date of menu-labeling requirements to provide covered businesses the time to prepare and comply.

The Missouri Petroleum Marketers and Convenience Store Association (MPCA) played a crucial role in getting this legislation introduced. PMAA supports this legislation and thanks MPCA as well as Senators Blunt and King.

RESOLUTIONS INTRODUCED UNDER THE CONGRESSIONAL REVIEW ACT

On Monday, Energy and Power Subcommittee Chairman Ed Whitfield (R-KY) announced his plans to introduce resolutions under the Congressional Review Act (CRA) to disapprove of two final rules issued by the EPA for new and existing power plants. Under the Congressional Review Act, a rule disapproved by Congress shall have no force and effect and an agency may not issue the same or a substantially similar rule unless authorized by subsequent legislation.

"Now we've got EPA's cap and trade rules, a blueprint for economic disaster, right there in black and white in the Federal

Register," said Whitfield. "Nothing in the Clean Air Act suggests EPA has such sweeping authority to implement this complicated and far-reaching scheme to commandeer each state's electricity system. Monday will mark an important milestone in our fight to keep the lights on and protect jobs and affordable energy as I will introduce two resolutions under the Congressional Review Act disapproving of these rules."

Additionally, Senate Majority Leader Mitch McConnell (R-KY) and Senator Shelley Moore Capito (R-WV) introduced similar resolutions disapproving EPA's climate regulations for power plants under the CRA. Additionally, McConnell and Senator Joe Manchin (D-WV) introduced a resolution with 46 other co-sponsors to get rid of EPA's final climate regulation for new and modified power plants. Similarly, Capito and Senator Heidi Heitkamp (D-ND) introduced a resolution with 47 other co-sponsors to overturn the EPA's ruling on existing power plants.

CRA resolutions only require a simple majority vote for passage so they will certainly pass Congress. However, the resolutions will be vetoed by the President which will force the Senate to come up with an impossible 67 votes and the House, 290 votes, to override him.

USDA AWARDS $210 MILLION TO 21 STATES FOR E15 PUMPS

On Wednesday, the Department of Agriculture released the list of recipient states of the $210 million Biofuel Infrastructure Partnership (BIP). BIP will provide funding to 21 states for E15 infrastructure for 5,000 blender pumps at 1,400 gasoline retail stations. The states receiving these funds are: Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Virginia, West Virginia and Wisconsin.

Unfortunately, this is not enough funding to incentivize many petroleum marketers to make the needed investments to upgrade their existing underground storage tank (UST) system infrastructure to handle higher ethanol blends. This is simply a drop in the bucket. While most of the funding is focused on blender pumps, funding is actually most critical for upgrading the piping, glues, seals and gaskets which require breaking concrete and costs upwards of $200,000 or more.

Moreover, there is no way UST owners can legally certify UST Systems as E15 compatible without an independent testing organization actually conducting tests. The traditional method for certifying compatibility is the Underwriters Laboratories' (UL) stamp of approval. Manufacturers submit their equipment to UL and pay UL for testing and certification. Most UST components currently in the ground went through the UL testing and certification process before being installed. The vast majority of the current dispensing systems in use are all certified by UL for E10 service. Unfortunately, UL has refused to recertify equipment already in the ground for E15 use. Equipment manufacturers have no incentive to pay UL to conduct further testing on equipment that they have already sold especially on components that they may know were never manufactured for exposure to higher blends of ethanol.

FDA SUBMITS TOBACCO DEEMING REGULATIONS TO OMB FOR FINAL REVIEW

By: Thomas Briant - Executive Director, NATO

Recently, the FDA's Center for Tobacco Products submitted to the White House Office of Management and Budget (OMB) the final deeming regulations on cigars, pipe tobacco, e-cigarettes, hookah tobacco, nicotine gels, and dissolvable products. The submission of the final regulations by the FDA to the OMB is the eighth step in the federal government's nine step regulatory process. As shown on the accompanying chart (http://www.pmaa.org/weeklyreview/attachments/NATO%20Rulemaking%20Timeline%20Chart%20103015.pdf), Step Eight involves the OMB reviewing final regulations. If the OMB approves the final deeming regulations, then Step Nine requires that the final regulations be published in the Federal Register. Generally, the deeming regulations would be effective thirty days after the date of publication in the Federal Register.

The deeming regulations were first proposed by the FDA in April of 2014. As proposed, the regulations contained two options. Option 1 would regulate all cigars, pipe tobacco, electronic cigarettes, nicotine gels, hookah tobacco and dissolvables, except accessories of a tobacco product. Option 2 would also regulate these six categories of tobacco products, but exempt premium cigars and tobacco product accessories from regulations. Exempt accessories would include such items as lighters, cigar cutters, humidors, cases, and hookah accessories.

Nine Regulations: Under the deeming regulations, the FDA proposed that nine kinds of regulations already applicable to cigarettes, roll-your-own tobacco and smokeless tobacco products be extended to the six additional product categories, except premium cigars and accessories under Option 2.

The nine regulations include the following:

1. Manufacturers would be required to register each of their tobacco manufacturing facilities with the FDA, and report any harmful and potentially harmful constituents.
2. Manufacturers would be required to submit a list of the tobacco products they produce and a list of ingredients in each product.

3. Modified risk descriptors such as “light,” “low,” and “mild” could not be used to describe a regulated tobacco product.
4. Free samples of the deemed tobacco products would not be allowed.
5. For electronic cigarettes and other newer novel tobacco products that were not on the market as of February 15, 2007, manufacturers of these products would need to submit a premarket tobacco application (PMTA) to the FDA within 24 months following the effective date of the final deeming regulations. If a PMTA application is filed with the FDA during this 24-month period, then the manufacturer can continue to market its products unless and until the FDA responds to the application. The PMTA process allows the FDA to authorize the introduction of products into the market where appropriate for the protection of the public health and prevent introduction of products that are detrimental to the public health.
6. FDA enforcement actions can be taken against manufacturers whose tobacco products are determined to be adulterated or misbranded.
7. The minimum age to purchase deemed tobacco products would be 18 years old and retailers would be required to verify through photographic identification the legal minimum age of a customer who is younger than 27 years old.
8. A new health warning would be required on all deemed tobacco products, plus all cigarette tobacco and roll-your-own tobacco, and in all advertisements for these tobacco products. This warning would read: “WARNING: This product contains nicotine derived from tobacco. Nicotine is an addictive chemical.” This new health warning would not be required for cigarettes or smokeless tobacco products because federal law already requires health warnings on these two products. However, this new health warning would be required on advertisements created by retailers for deemed tobacco products, cigarette tobacco and RYO tobacco.
9. A prohibition on the sale of the deemed tobacco products through vending machines, unless the machine is located in an adult only facility.

DISTRACTED DRIVING CONTINUES TO BE MUCH MORE THAN JUST “A PROBLEM”

Not only is distracted driving still a serious problem, it is an epidemic. With each new mobile device introduced, the potential for behind-the-wheel distractions increase and so does a business’s exposure to risk.

Federated Insurance is very concerned about the persistence of this issue and how it can adversely affect your business. Worse yet is what you might stand to lose as a result of distracted driving.

Federated Insurance has rejuvenated efforts to help owners address distracted driving. Our new risk management program asks “What Is Important to You?” It provides a sample mobile device policy, reminder posters, and employee training materials including a thought-provoking video and educational handout. It also presents information on technology solutions which can aid in restricting mobile device use in vehicles.

Federated Insurance is ready to help you and your business reduce distracted driving. Federated’s marketing representatives will introduce clients to these resources, which they can use to create a driving policy or refine their company’s distracted driving risk management program.

It’s up to each of us to make it a priority to end distracted driving. The lives of everyone important to us may depend on it. We want you to make it home safely every day.

For more information on this and Federated Insurance’s other risk management programs, or to locate your local representative, please contact your Federated regional representative or PMAA’s National Account Executive Jerry Leemkuil at 800.533.0472 or visit http://www.federatedinsurance.com.

2016 WPMAEXPO - LAS VEGAS, NEVADA

Mark your calendars for February 16-18, 2016. Make plans now to attend the 2016 WPMAEXPO. It will be held once again at the Mirage in Las Vegas, Nevada.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

February 16 – 18, 2016 - WPMA Convention & Expo – Mirage Hotel, Las Vegas, Nevada
May 19-20, 2016 – Nevada (NPM&CSA) Big Dogs Shootout – Red Rock Resort & Casino – Las Vegas, Nevada
June 7-9, 2016 – Montana (MPMCSA) Convention – Fairmont Hot Springs Resort – Butte, Montana
June 20-23, 2016 - Washington (WOMA) Convention - Suncadia Resort - Cle Elum, Washington
August 3 – 5, 2016 - Idaho (IPM&CSA) Convention - Coeur d’Alene Resort - Coeur d’Alene, Idaho
August 22-24, 2016 – New Mexico (NMPMA) Convention – Sandia Resort & Casino – Albuquerque, New Mexico
September 14-16, 2016 - Utah (UPMRA) Convention - DoubleTree Hotel by Hilton - Park City, Utah
June 18-22, 2017 – Washington (WOMA) Convention – Suncadia Resort – Cle Elum, Washington
June 17-21, 2018 – Washington (WOMA) Convention – Suncadia Resort – Cle Elum, Washington

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Petro Pete: ***"Every dog has it's day. Which is 3.4 hours in people time."***

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