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NEW FEDERAL LEGISLATION SIGNED INTO LAW EFFECTIVELY CLOSING THE SO-CALLED “SYNTHETIC NICOTINE LOOPHOLE”

Did You Hear?

New Federal legislation signed into law by President Biden on 3/15/21 has given FDA regulatory authority over synthetic nicotine products, effectively closing the so-called “synthetic nicotine loophole.” The law becomes effective on April 15, 2022, and manufacturers will have until May 14, 2022 to either submit a PMTA or stop marketing their products.

Manufacturers that submit a PMTA by the deadline can continue marketing their products until July 13, 2022, after which time the products must be removed from retail unless the FDA has issued a marketing granted order.

To avoid liability, retailers and distributors should act now to understand whether their manufacturers plan to submit a PMTA, and to be prepared to remove from their shelves any synthetic nicotine products that have not been the subject of a PMTA submitted by the May 14, 2022 deadline.

“INSIDE THE BELTWAY” UPDATE

On March 31, President Biden announced several actions to improve energy security. To increase oil supply and seek to reduce the price at the pump, President Biden announced that the Strategic Petroleum Reserve (SPR) will release 1 million gallons of oil per day for six months. Experts have pointed out that the SPR action would lower prices in the short term but is not a long-term solution. There is also the possibility of Russia counteracting the benefits of the release by simply curtailing its own production. President Biden also announced the U.S. would invoke a Cold War era law to incentivize domestic production of critical minerals needed for electric vehicle batteries.

Proposing additional solutions to reduce oil prices, a bipartisan group of lawmakers led by Reps. Angie Craig (D-MN) and Don Bacon (R-NE) encouraged the Biden Administration to ease two biofuel regulations, specifically allowing a fuel blend that is 15 percent ethanol (E15) to be available year-round. The lawmakers are also requesting the Environmental Protection Agency reverse a plan to retroactively lower the blending requirement for U.S. oil refiners. Congressional members said these actions would “significantly increase U.S. energy independence, lower prices at the pump, and ensure the continued success of our sanctions on the Russian economy.” This comes as the Biden Administration is reportedly looking at lifting the summer E15 ban. Speaker Nancy Pelosi (D-CA), some Republicans, and some Democrats have still cautioned against a federal gas tax holiday, arguing that it would deplete the Highway Trust Fund and would not address the energy supply issue. Speaker Pelosi did indicate that House Democrats would consider legislation including gas “rebates” or direct payments.

Earlier this week, the Biden Administration released its \$5.8 trillion budget proposal for Fiscal Year (FY) 2023. In the proposal, the Administration focused on increases to defense spending considering the Russian-Ukraine War, proposed tax hikes on the wealthy to reduce the nation’s deficit, included a deficit-neutral reserve fund as a placeholder for Build Back Better funding requests, and proposed an historic antitrust funding bump to help assist the Department of Justice’s (DOJ) Antitrust Division and the Federal Trade Commission (FTC) with ongoing and future litigation. The budget is viewed in Congress as “dead on arrival” but serves as an indicator of what areas President Biden will prioritize.

More broadly, Congress has one more week in its current work session before a two-week recess beginning April 8. Next week, the Senate will focus on confirming Ketanji Brown Jackson to the Supreme Court and negotiating an agreement on additional COVID-19 funding for testing and vaccines.

AUTOMAKERS SUPPORT EPA’S STRICT NEW TAILPIPE EMISSIONS STANDARD THAT EMA IS CHALLENGING IN COURT

A trade group representing the major domestic and foreign automobile manufacturers filed a motion supporting the EPA in a lawsuit currently before the District of Columbia Circuit Court of Appeals challenging the agency’s strict new limits on greenhouse gas emissions from automobiles. The proposed standard applies to cars and light trucks and requires automakers to achieve a fleet wide average of 52 miles per gallon by 2026, up from the current 38 mpg standard. EPA estimates the new standards will reduce fuel demand by 361 billion gallons leading to a 15 percent annual reduction in the nation’s gasoline consumption.

The lawsuit challenging the EPA’s new tailpipe emission rule was brought by the Energy Marketers of America, American Fuel & Petrochemical Manufacturers, 15 States (Alabama, Alaska, Arkansas, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, Texas, and Utah), and other groups.

Since tailpipe emissions rules pertain to the average mileage per gallon of all vehicles sold by an automaker, stringent standards are designed to force auto companies to sell more electric cars to offset the sales of conventional pickup trucks, sports utility vehicles and other models that get low mileage. The new tailpipe rule is a first step in President Biden’s push

to rapidly shift American drivers to “so called” zero-emission electric vehicles that still need power from natural gas and coal. The administration has set a goal for electric vehicles to make up 50 percent of all new car sales by 2030. That will be difficult to meet considering that electric cars made up just 4 percent of U.S. sales in 2021. However, a significant step towards that goal was taken last month, when Congress passed a \$1 trillion infrastructure bill that included \$7.5 billion to install 500,000 electric charging stations nationwide. The president also signed an executive order requiring the federal government to purchase only zero-emission cars and trucks by 2035.

Meanwhile, the EPA is working on a future tailpipe emission standard for vehicles built in model year 2027 and beyond that would compel automakers to significantly ramp up sales of electric vehicles. The EPA hopes to publish a draft in 2022 and to complete it before the end of 2024.

BIPARTISAN GROUP OF LAWMAKERS CALL ON FTC TO ADDRESS ECONOMIC DISCRIMINATION

Forty-three lawmakers from both parties sent a letter on Wednesday to the Federal Trade Commission (FTC) requesting the agency investigate, and when appropriate, bring enforcement actions against economic discriminatory action that violates antitrust laws, including the FTC Act and the Robinson-Patman Act.

“The antitrust laws were designed to protect against anticompetitive economic discrimination and excessive concentration,” the letter wrote. “For example, the Robinson-Patman Act reflects Congress’ determination that discriminatory treatment among competitors is pernicious and should be prohibited. But current enforcement efforts have failed to address these anticompetitive harms, and judges have inappropriately limited the scope of the law despite clear statutory language. Despite Congress’ broad goals in 1936, the FTC has not brought a case under the Robinson-Patman Act in more than 20 years. ...We urge the Commission to make enforcement against economic discrimination targeting small and medium-sized businesses a top priority.”

EMA’s convenience store retailers are concerned about the discrimination practices of food and beverage suppliers in their sales to convenience stores. This discrimination favors, among others, super stores and big box retailers who are regarded by suppliers as being in a different class of trade from their smaller to medium-sized competitors. In other words, convenience stores are at a competitive disadvantage when compared to other channels, be it big box, grocery or dollar stores, which often offer less expensive food and beverage products at retail than convenience retailers can obtain from the wholesale level. Additionally, convenience store retailers are often unable to receive similar packaging sizes from suppliers that are made available to other channels, often regardless of price. Some convenience store retailers have tried to purchase items at big box retailers since it can be cheaper than the wholesale price. Unfortunately, convenience store retailers receive retaliatory action from food and beverage suppliers and producers.

“Small business motor fuel marketers continue to get the short end of the stick compared to their big box/dollar store competitors. It is time Congress and the FTC revive the Robinson-Patman Act to help these small businesses compete on a level playing field or else non-enforcement will likely lead to more consolidation and higher prices for consumers,” said Energy Marketers of America (EMA) President Rob Underwood.

While the RPA authorizes private enforcement by retailers, the obstacles to successful enforcement (many of which were fashioned by the federal courts) make private enforcement too difficult and time-consuming, and ultimately too risky from a success standpoint to justify the enormous costs of such litigation. The only viable means of enforcing the law, therefore, is to encourage enforcement of the RPA by the Federal Trade Commission (FTC). The RPA prohibits price discrimination when the effect of the discrimination is to lessen or destroy competition. The objective of MSCC is to breathe life back into the RPA law. For more information, click [here](#).

NATIONWIDE COMMERCIAL MOTOR VEHICLE ROADSIDE ENFORCEMENT AND INSPECTION BLITZ SET FOR JULY 10-16

The Commercial Vehicle Safety Alliance’s (CVSA), an alliance of state and federal motor carrier enforcement authorities, holds its annual Operation Safe Driver Week during July 10-16. The Operation Safe Driving Program was created to improve the driving behaviors of CDL drivers and reduce the number of crashes involving commercial motor vehicles through educational and traffic enforcement strategies. Law enforcement personnel in the U.S. will be on roadways throughout that week issuing warnings and citations to commercial motor vehicle drivers engaging in unsafe driving behaviors, such as speeding, distracted driving, following too closely, improper lane change, drunk or drugged driving, etc., and can result in an out of service order for drivers found in violation.

Earlier this month, the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) released its latest annual traffic crash report showing that 38,824 lives were lost in traffic crashes nationwide in 2020. This represents the highest number of fatalities since 2007. While the number of crashes and traffic injuries declined overall, fatal crashes increased by 6.8 percent. Among the statistics in NHTSA’s report was the key finding that speed-related fatalities increased by 17 percent. Consequently, speeding, in particular, will be a dangerous driving behavior that officers will identify and target during Operation Safe Driver Week.

DOE ANNOUNCES A TEN-FOLD INCREASE IN FUNDING FOR RESIDENTIAL WEATHERIZATION ASSISTANCE AND CONVERSION TO ELECTRIC HEAT PUMPS

The Biden administration on Wednesday announced plans to spend roughly \$3.2 billion to retrofit hundreds of thousands of homes in low-income communities in order to slash residential energy bills and greenhouse gas emissions. The unprecedented 10-fold increase in annual funding for the Department of Energy's (DOE) Weatherization Assistance Program (WAP) is the largest since the program began in the 1970s, as a way to lower residential heating costs. The funding increase means WAP will be able to serve 450,000 households this year, up from the 38,000 homes served under average annual funding formulas. The \$3.2 billion in WAP funding was authorized under the \$1.2 trillion infrastructure bill signed into law last year. WAP is a federal program providing grants to states for to modernize eligible homes with energy cost-effective upgrades such as attic insulation, swap out of old appliances for more energy efficient models, and the replacement of drafty windows and doors.

A substantial portion of the \$3.2 billion in weatherization funding is earmarked for helping homeowners switch from traditional gas or oil-burning furnaces to electric heat pumps. According to the DOE, energy efficient electric heat pumps can heat and cool homes at a much lower cost to the environment and slash the use of fossil fuels for home heating and electricity generation. However, installing air conditioning in homes throughout the country may actually increase summer loads as more people use air conditioning. Also, when heat pumps are installed, the existing combustion appliances are often left in place. In that situation, homeowners may continue to use their fossil fueled appliance in the winter as it provides better heat, and depending on electric prices versus oil and gas, it may actually be cheaper and usually the heat is preferred by customers. This program may benefit many service companies as it will spur the installation of heat pumps and provide work in the summer for these companies. Whether and how much demand will be suppressed for heating oil is an open question. And more importantly, depending on the source of the electricity (hydro, gas, oil, nuclear), overall emissions of greenhouse gases may increase. EMA on its DC Conference and "Day on Hill" will explain that heat pumps are not a one size fits all solution, and that there are better ways to reduce emissions, that are much more efficient.

EMA URGES FEDERAL HIGHWAY ADMINISTRATION TO ENFORCE REST AREA COMMERCIALIZATION BAN

Yesterday, EMA joined a coalition letter in urging the Federal Highway Administration (FHWA) to lift its April 2020 non-enforcement directive that allowed food trucks to operate at Interstate rest areas. Click [here](#) to read the letter.

RENEWABLE DIESEL SUPPLY TO SURPASS BIODIESEL SOON

According to the Energy Information Administration's (EIA) Annual Energy Outlook 2022 (AEO2022), it projects that renewable diesel supply will exceed biodiesel supply in the near term. EIA projects that renewable diesel supply will increase to 130,000 barrels per day (b/d) in 2022 and 145,000 b/d in 2050, reflecting a significant increase in renewable diesel production capacity in the near term.

Biomass-based diesel fuels include biodiesel and renewable diesel, both of which are refined from the same types of fat, oil, and grease feedstocks. Renewable diesel is chemically indistinguishable from petroleum diesel (known as a drop-in diesel fuel), meaning that it meets specifications for use in existing infrastructure and diesel engines and is not subject to any blending limitations. Biodiesel is a mixture of chemical compounds known as alkyl esters and is often combined with petroleum diesel in blends of 5 percent to 20 percent, known as B5 to B20, respectively.

EIA projects that production of renewable diesel supply will grow because of its compatibility with existing distribution infrastructure and engines, higher state and federal targets for renewable fuel production, incentives from tax credits, and the conversion of existing petroleum refineries into renewable diesel refineries.

MERCHANTS PAYMENTS COALITION CALLS ON CONGRESS TO ADD SWIPE FEES TO THEIR EXAMINATION OF BANK FEES

As the House Financial Services Committee reviews overdraft fees that impact consumers, the Merchants Payments Coalition (MPC) sent a letter to the Committee requesting that it review outrageous credit card swipe fees. EMA is a member of the Merchants Payments Coalition (MPC).

MPC asked the committee to investigate "the broken and uncompetitive market in which swipe fees are set," noting that the interchange market (swipe fees) is broken, and competition must be restored to the credit card fee setting structure. Credit card swipe fees have more than doubled over the past decade despite technological improvements that have driven down processing costs. The rates charged to U.S. retailers are among the highest in the world, seven times the maximum allowed in Europe. In 2019, card processing fees totaled \$116.4 billion, according to the Nilson Report. That was up 88 percent over the previous decade. Additionally, swipe fees are the second highest operating cost for convenience store retailers. In 2019, the industry's pre-tax profit was \$11.9 billion and card fees paid by the industry were \$11.8 billion. For small business energy marketers, swipe fees are the highest expense other than payroll.

When it comes to how American's credit card transactions are processed or routed, there is minimal competition. There is nearly a dozen of independent networks that are equipped to route transactions, but a handful of dominant networks have prevented them from competing in the credit space. Nearly ten years ago, Congress acted to open the debit card market to competition, and businesses and consumers have all benefited. But today, retailers have limited choice of network when it comes to credit card transactions. Credit cards only have one network enabled on a card and lack any back up

options if there is an outage. This results in higher costs for the consumer, less security, and less innovation.

Routing competition would allow consumers to continue to use their credit cards, even if one network goes down or is hacked, because there is a backup network through which their transaction can be routed. By allowing businesses to have a choice of network, they can reduce costs and pass those savings onto the consumer. Introducing routing competition could save businesses and consumers upwards of \$11 billion annually.

At EMA's upcoming DC Conference and Day on the Hill, it plans to urge Congress to introduce credit card routing competition legislation to give small business energy marketers at least two choices to route transactions, similar to today's debit cards, which will ultimately reduce costs for consumers.

PETROLEUM MARKETERS RISK MANAGEMENT ACADEMY OFFERED BY FEDERATED INSURANCE ON APRIL 19-21, 2022

Federated Insurance is offering complimentary risk management training for petroleum marketers on April 19-21, 2022. Through this valuable session, you will discover methods you can use immediately to help protect profits by reducing risk at your business.

Companies that are the most successful at controlling losses and protecting profits have integrated risk management into their overall company culture. Many have designated a key person as their risk manager. This person is supported by your company's top management and is both responsible and accountable for identifying loss exposures and implementing risk management solutions.

This seminar's objective is to help your risk manager learn the exposures specific to the petroleum industry, connect with peers from across the country and apply these best practices within your business.

You can learn more by viewing a brief [video](#) about the Risk Management Academy. To [reserve your spot](#) in the upcoming session or for more information, please contact drm@fedins.com or call 800.533.0472 Extension 455.5958.

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PASSING OF CHUCK BELL, NEVADA

WPMA and the Nevada Petroleum Marketers and C-Store Association are saddened to report that retired Carson City Shell Jobber and NPM&CSA member Charles E. (Chuck) Bell, Jr., 82, passed away March 17th in Carson City. Chuck started with Shell Oil Company in the San Francisco Bay area. A few years later he and his wife Sandy moved to Carson City where he went to work for BC Bath as a Shell Jobber. In 1979, Chuck joined forces with Bill Ramos, Ramos Oil Company, Sacramento to purchase Carson Valley Oil in Minden, Nevada. Chuck and Bill soon bought out DC Bath's Shell Jobbership in Carson City. Chuck managed Carson Valley Oil until his retirement in 1995. Upon Chuck's retirement, Carson Valley Oil continued as a Shell jobber under the leadership of Kent and Kyle Ramos of Ramos Oil. Funeral arrangements for Chuck have not yet been announced.



NO FOOLING ...

Hawaii, Idaho, Montana, New Mexico, Oregon,
Utah, Washington, Member-at-Large and
Associate scholarship winner announcements
will be coming in **MAY!**



MARK YOUR CALENDARS FOR UPCOMING EVENTS

April 19, 2022 - Idaho (IPM&CSA) PAC Golf Event – Ridgecrest Golf Course, Nampa Idaho

April 25, 2022 – Hawaii (HEMA) Golf Tournament – Ko Olina Golf Club – Kapolei, HI

May 5-6, 2022 – Nevada (NPM&CSA) Big Dogs – Las Vegas, NV

June 7-8, 2022 – Montana (MPMCSA) Convention – Fairmont Hot Springs Resort – Fairmont, MT

June 20-22, 2022 – Washington (WI/ED) Convention – Suncadia Resort – Cle Elum, WA

June 23, 2022 - Utah (UPMRA) Summer Golf Classic - Stonebridge GC - West Valley City, UT

July 17-19, 2022 – Oregon (OFA) Annual Convention – Sunriver Resort – Sunriver, OR

August 3-5, 2022 – Idaho (IPM&CSA) Convention – Coeur d'Alene Resort – Coeur d'Alene, ID

August 22-24, 2022 – New Mexico (NMPMA) Convention – Sandia Resort & Casino – Albuquerque, NM
September 14-16, 2022 – Utah (UPMRA) Convention – Sheraton Park City Hotel – Park City, UT
February 21-23, 2023 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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Petro Pete: “I have been told I have two faults. The first is I don’t listen and the second is...something else.”

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