WPMA
News and Information for the Petroleum Marketers Industry
weekly update

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USDA ANNOUNCES $100 MILLION HIGHER BIOFUELS BLEND INFRASTRUCTURE GRANT PROGRAM

This week, the United States Department of Agriculture (USDA) announced the availability of up to $100 million in competitive grants available to petroleum marketers and heating oil dealers for infrastructure upgrades designed to increase the sales of higher blends of ethanol and biodiesel.

The Higher Blends Infrastructure Incentive Program (HBIIP) awards cost-share grants of up to 50 percent of total eligible project costs. The grants are available in amounts up to $5 million per project for gas stations and other fuel distribution facilities that retrofit storage and dispensing equipment compatible with ethanol blends greater than E10 and biodiesel blends greater than B5. The program will share 50 percent of the costs related to the upgrading of fuel dispensers (gas and diesel pumps) and attached equipment, storage tank system components including tanks, pumps, ancillary equipment, lines, gaskets, and sealants as well as heating and ancillary equipment required for biodiesel storage. Eligible entities include fueling stations, convenience stores, hypermarket retailer fueling stations, fleet facilities as well as fuel/biodiesel terminal operations, midstream partners, and heating oil dealers.

The Agency adopted PMAA's requests made in written comments to earmark funds specifically for small business gas station owners under USDA's Targeted Assistance Goal. Specifically, 40 percent ($40 million) of the HBIIP funds will be available to applicants owning 10 gas stations or fewer and for replacement of E15 compatible pipe dope gaskets and sealants. Furthermore, approximately $14 million will be made available to terminal operators related to biodiesel blends greater than 5 percent biodiesel, such as B20 or higher.

Grant recipients are responsible for securing the remainder of the total eligible project costs not covered by grant funds. Matching funds are comprised of eligible in-kind contributions from third parties and/or cash. The Agency will finalize the application period for enrollment soon. In the meantime, motor and heating fuel dealers can prepare applications for later submission by clicking here. (https://www.rd.usda.gov/hbiip)

PMAA ANNOUNCES NEW, FREE, COMMERCIAL ROUTING APP PROVIDING CUSTOM ROUTING COMBINED WITH REAL TIME INFORMATION ON STATE RESTRICTIONS AND REGULATORY WAIVERS

This week, the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA) and Idaho National Laboratory (INL) launched an exemplary new Commercial Routing Assistance (CRA) app, which DHS funded and INL developed in partnership with PMAA through the All Hazards Consortium's working group, and other industry and government operational professionals.

This free app incorporates vetted data to plot multiple automated or custom routing options while also providing state by state information on regulatory waivers, government closures, prohibitions, restrictions on movement and other orders that affect intrastate and interstate transportation during state and federal emergency declarations. PMAA worked closely with CISA and its government partners on development of the app to give marketers, drivers and state association executives the ability to determine in real time, the full impact of emergency declarations on petroleum marketers and heating oil providers in the states and across the nation.

The App includes a one touch interactive map that allows planners, drivers, and decision-makers to develop strategies necessary to maintain efficient and uninterrupted marketing operations during the COVID-19 environment or other disasters or restrictions. CDL renewal extensions, state driver license agency closures, CDL driver medical renewal grace periods, rest stops and parking closures, and increased size and weight limitations are included for the entire driver route.

There are two URLs for access to the Commercial Routing App (CRA). The CRA tool can be accessed via the DHS public URL at https://cra.inl.gov, or alternatively through the All Hazards Consortium/PMAA private URL at http://www.commroute1.org which includes a short video tutorial on how to use the website.

PMAA members should use www.commroute1.org as far more information (such as training webinars and an extensive PPE directory which includes real time inventory availability) will be available via this URL within the next few weeks.

IRS DISALLOWS DEDUCTIONS FOR PPP LOANS; CONGRESS PUSHES BACK

The IRS issued guidance this week indicating that employer expenses paid from Paycheck Protection Program loan proceeds do not qualify as deductible expenses if the loan is forgiven. This is unwelcome news for petroleum marketers who are set to lose up to 8 weeks of expense deductions for which they would otherwise qualify. Under Section 1106(b) of the CARES Act, PPP loan forgiveness applies to payments of payroll, certain mortgage interest and rent, and utility costs incurred during an eight-week period beginning on the date of the origination of the loan. Ordinarily these expenses are deductible. However, the IRS guidance will disallow the deduction if the expense originated from the proceeds of a forgiven PPP loan. There is no language in the CARES Act that specifically supports the IRS position on non-deductibility. However, Section 1106(i) provides that any amount from PPP loan forgiveness that would ordinarily be includible in a taxpayer's gross income - is excluded. The IRS concluded that this language means expenses paid to qualify for loan forgiveness under a PPP loan are considered tax-exempt income and non-deductible under the Internal Revenue Code (IRC). Generally, the IRC prevents taxpayers from "double dipping" by taking a deduction for expenses incurred to generate tax-exempt income, specifically providing that taxpayers may not deduct amounts that are allocable to tax-exempt income.

Congress is already pushing back against the IRS guidance. Three of Congress's top tax writers; Senate Finance Chairman Chuck Grassley (R-IA), Senate Finance Ranking Member Ron Wyden (D-OR) and House Ways and Means Chairman Richard Neal (D-MA) urged the Treasury department to reconsider the IRS guidance. In a letter to Treasury Secretary Stephen Mnuchin they said if Congress intended PPP loans to be tax-exempt income, a provision that makes the forgiveness tax exempt would not have been included. Grassley, Wyden and other senators have introduced legislation, clarifying that businesses may deduct expenses paid with forgiven PPP loans. Similar legislation is also expected to be introduced in the House on Friday by Representative Lizzie Fletcher (D-TX).

DOL AND IRS ISSUE NEW RULES TOLLING COBRA AND OTHER BENEFITS

On Monday, the DOL and IRS jointly issued a new final rule on the "Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak." In essence, the rule requires that, when calculating certain deadlines or time periods, group health, disability, pension and other ERISA covered benefit plans must disregard the time period from March 1, 2020 until 60 days after the end of the declared COVID-19 National Emergency or another date as the IRS/DOL might later announce (which is defined as the "Outbreak Period").

The intent of the new rule is to address the stated concern that "[a]s a result of the National Emergency, participants and beneficiaries covered by group health plans, disability or other employee welfare benefit plans, and employee pension benefit plans may encounter problems in exercising their health coverage portability and continuation coverage rights, or in filing or perfecting their benefit claims." The Department of Labor has also issued related FAQs for participants and beneficiaries.

Most notably, the new rule impacts the following:

Special Enrollment in Group Health Insurance – Under HIPAA group health plans must permit an otherwise eligible individual to enroll in the group health plan outside the normal enrollment window if the individual or his/her dependent loses his/her other health coverage (for example if a spouse is terminated) or if someone becomes a new dependent through birth, marriage or adoption. Typically, such individuals have 30 days after they lose their other coverage to request special enrollment in the group health plan. Under the new rule, the time for an individual who loses group health coverage to request a special enrollment will not start running until after the end of the Outbreak Period (i.e. until sixty (60) days after the end of the declared emergency or after the date set by DOL/IRS). For example, if an employee had a new baby on April 17, 2020 the employee would typically have had until May 17, 2020 to enroll the new child in the group health plan. Under the new rule, the 30 days won't start until after the end of the Outbreak Period. So if the National Emergency were to end on June 1, 2020 the enrollment window wouldn't start until July 31, 2020 (60 days later) and the employee would therefore have until August 30, 2020 to enroll the new child.

COBRA Elections – Under the Consolidated Omnibus Budget Reconciliation Act (COBRA), covered individuals who experience a qualifying event that causes them to lose eligibility for their group health insurance (for example a termination or divorce) typically have 60 days to elect to continue coverage under the plan for a set period of time. Under the new rule, the 60 days to make a COBRA election will not begin to run until after the end of the Outbreak Period. As with a standard COBRA election, a timely COBRA election under the new rules (i.e. one made 60 days after the end of the Outbreak) will provide coverage that is retroactive to the qualifying event. In addition, the deadlines for individuals to make their COBRA premium payments will also be tolled until the end of the Outbreak Period. While the COBRA election and premium deadlines are tolled, the new rule does not change the timeframe in which plans must notify individuals of their COBRA rights after a qualifying event.

The new rule also tolls the deadlines and timelines associated with ERISA claims procedures and external reviews until after the end of the Outbreak Period.

While this rule may prove a welcome relief for certain individuals who might have otherwise missed their deadlines during the COVID-19 crisis – it will certainly generate additional work for the plan administrators and raise some serious logistical questions with respect to retroactive benefit claims and coverage for individuals whose premium obligations have been tolled.

REMINDER: URGE CONGRESS TO PROVIDE LIABILITY PROTECTION TO ESSENTIAL CRITICAL INFRASTRUCTURE INDUSTRIES

PMAA is urging Congress to protect essential businesses that remain open during the COVID-19 pandemic from lawsuits and other claims by infected persons. The liability protection effort would provide essential businesses, designated as essential critical infrastructure by the Department of Homeland Security, with immunity from lawsuits claiming money damages for persons who allegedly contracted COVID-19 at a business premises or as a result of business operations.

The motor fuels, heating fuels and convenience store industries are at the forefront of COVID-19 response efforts and should not have to worry about future lawsuits for providing needed products and services to American consumers. Please click here to urge your lawmakers for liability protection in a future COVID-19 response bill.

PHMSA ISSUES Q&A REGARDING THE USE OF ELECTRONIC SHIPPING PAPERS

The U.S. DOT’s Pipeline and Hazardous Materials Safety Administration (PHMSA) has issued a guidance document on methods for transferring product transfer documents (shipping papers) while adhering to social distancing requirements. The guidance is important to petroleum marketers and heating fuel dealers because it clarifies that while electronic shipping papers for hazardous materials may be used for all parties along the distribution chain, including for shippers certification signatures, hard copies of shipping papers must still be kept in the cab of the cargo tank transport truck at all times in the event of an accident or investigation. This guidance does not apply to heating fuel delivery tickets left with commercial and residential customers. State law requires delivery tickets to be left with customers at the time the tank is filled and not electronical transferred – unless, otherwise waived by a State for COVID-19 social distancing purposes. Currently, PMAA is not aware of any such state waiver.

AMERICAN EXPRESS DELAYS EMV DEADLINE TO APRIL 16, 2021

Following VISA’s EMV delay announcement from last Friday, American Express announced that it will extend the October 2020 deadline for EMV upgrades to April 16, 2021. PMAA, NACS, SIGMA, NATSO and the Merchant Advisory Group requested the deadline extension in a March 23rd letter because the coronavirus lockdown and social distancing requirements made it impossible in many cases for EMV vendors to install new equipment and software at retail locations.

The deadline extension is good news for petroleum marketers because it ensures that enough EMV vendors will be available to convert retail sites in a timely manner by the new April deadline. Any significant back log or delay in EMV scheduling due to the coronavirus pandemic would likely push installation past the original October deadline subjecting marketers with point of sale magnetic credit card readers to assume the liability for fraudulent card charges. Mastercard and Discover are the last two major card networks who haven’t responded to requests for an EMV delay.

"Given that VISA and American Express have made the prudent decision to delay the EMV deadline, I would assume the other card networks are likely to follow," said PMAA President Rob Underwood. "For example, if the other card networks like MasterCard or Discover adhere to the October 2020 deadline, retailers who aren't EMV compliant by October 2020 may not want to take the risk of accepting those card networks at the pump. The six-month delay is welcome news to our industry which will give us more time to fully comply."

PMAA recently completed its own EMV survey over an 8-day period (April 30-May 7th) in which 253 companies participated in the survey. The results clearly demonstrate that a significant number of retail stations are unable to meet the Oct 2020 EMV deadline. The COVID-19 pandemic only made matters worse. PMAA will continue to monitor the EMV transition process to ensure petroleum marketers will have sufficient time for conversion without risk of exposure to liability.

RFS BATTLE HEATS UP

This week, the RFS battle heated up as several Senators from the corn belt and a few blue states sent a letter urging the EPA to keep the RFS intact. The letter comes as five governors from oil-heavy states have pressured the EPA to grant the nation’s refineries a waiver from biofuel blending requirements under the RFS due to the COVID-19 pandemic. The governors argued that demand for oil has been very low and, on top of that, blending biofuels only adds to refineries’ costs. Furthermore, the governors argued that reaching the biofuel targets under the RFS are not feasible given the current prices for Renewable Identification Numbers (RINs).

However, the pro-RFS Senate letter lead by Senators Joni Ernst (R-IA) and Tina Smith (D-MN) argued, “Waiving the RFS would cause further harm to the U.S. economy, especially our most vulnerable rural communities. It would also exacerbate the effects experienced by the biofuel sector as a result of COVID-19, causing far-reaching detrimental impacts on employment, farmers, food security, fuel prices and the environment.”

Meanwhile, the American Fuel and Petrochemical Manufacturers (AFPM) issued a blog titled, “Correcting the Record on RFS General Waivers and Severe Economic Harm Amid COVID-19,” that defended the Governors’ move to reduce the corn ethanol mandate.

VISA DELAYS INCREASE IN SWIPE FEES BY ONE YEAR

On Tuesday, VISA announced that it is delaying the date it will increase swipe fees from credit cards by one year to April 2021. Furthermore, VISA announced that it would be decreasing swipe fees for in-store purchases at supermarkets starting in July. The decisions come in response to the detrimental effects that COVID-19 has put on businesses including the fuels marketing industry. Originally, VISA had decided to delay the swipe fee increases until this July, however, that date has been pushed back to one full year. The virus has forced many people to shelter at home, leading many retail stores to shut down temporarily or permanently.

Recently, Sen. Dick Durbin (D-IL) and Rep. Peter Welch (D-VT) sent a letter to the CEO of VISA urging the company to refrain from increasing swipe fees. The letter stated, “Now is not the time for further interchange fee increases” and also stated that the companies’ “fee rates are already too high.”

HOUSE DEMOCRATS CHARGING AHEAD WITH ANOTHER STIMULUS PACKAGE DESPITE THE RECESS

House Democratic leadership have made it a priority to quickly put together another COVID-19 stimulus bill that will likely exceed $1 trillion and provide significant funding to state and local governments. The quick speed at which they are coming up with a bill is designed to give House Democrats leverage during eventual negotiations with the GOP-led Senate.

While House Democrats are moving ahead in writing a bill that would provide funding to state and local governments, many Republicans are not anxious to increase government spending again. In fact, President Trump is looking to provide economic relief by making changes to the tax code, which will likely lead to a partisan battle with the House plan. In a tweet earlier this week, President Trump said, “The elimination of Sanctuary Cities, Payroll Taxes, and perhaps Capital Gains Taxes, must be put on the table. Also, lawsuit indemnification & business deductions for restaurants & [entertainment].”

Although the Senate has returned to DC, the House has not been in session for weeks and House Majority Leader Steni Hoyer (D-MD) has said there is currently no return date set, although the House will likely return whenever a deal is reached on the next stimulus bill.

DOE SECRETARY AND FERC CHAIRMAN URGE ALL U.S. GOVERNORS TO SUPPORT FOR ESSENTIAL CRITICAL ENERGY INFRASTRUCTURE WORKERS

This week, DOE Secretary Brouillette and FERC Chairman Neil Chatterjee sent a letter to all U.S. Governors encouraging support for essential critical energy infrastructure workers (ECIW). In addition to calling for freedom of movement within states and across state boundaries, the letter notes that it is equally important that energy ECIW have access to personal protective equipment (PPE), testing services, and cleaning supplies.

Click here for the letter to the Alabama governor which is the same letter sent to all 50 governors.

WPMA COVID-19 - CRITICAL REFERENCES FOR MEMBERS

Please visit our web site for up-to-date information related to your business and the COVID-19 pandemic. You will find the link on our home page at www.wpma.com.

MEMBERS AND ASSOCIATES - YOU CAN CONTRIBUTE!

WPMA welcomes industry-related articles for publication in the WPMA News magazine. All members and associate members of WPMA are eligible to submit items for publication. Articles will be included as space allows, and no self-promoting articles or editorials will be accepted. WPMA reserves the right to edit and make adaption of such contributions to accommodate the magazine’s space and style. Please submit articles or content to Jan Roothoff, WPMA Administration/IT Director at janr@wpma.com, or mail to Jan Roothoff, Western Petroleum Marketers Association, PO Box 571500, Murray, UT 84157-1500. Submissions for the Summer edition of WPMA News magazine are due before April 30th. Later submissions will be considered for the Fall issue.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

June 18, 2020 – Utah (UPMRA) Summer Golf Classic – Bountiful Ridge GC – Bountiful, UT
August 5-7, 2020 – Idaho (IPM&CSA) Convention – Coeur d' Alene Resort – Coeur d' Alene, Idaho
September 2-3, 2020 – Montana (MPMCSA) – Convention – Fairmont Hot Springs Resort – Fairmont, MT
September 9-10, 2020 – Utah (UPMRA) – Convention – Park City Marriott – Park City, Utah
September 15-17, 2020 - Federated Insurance Risk Management Academy
October 1-2, 2020 – Nevada NPM&CSA – Big Dogs **-** Las Vegas, NV
November 2, 2020 – Hawaii (HPMA) Golf Tournament – Oahu Country Club – Honolulu, HI
February 16-18, 2021 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV

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Be sure to subscribe to all of our social channels for great tips, industry trends, and insider information about association activities and upcoming events!

Petro Pete: *"Thanks for explaining the word "many" to me, it means a lot."*