WPMA
News and Information for the Petroleum Marketers Industry
weekly update

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CONGRESSIONAL UPDATE

Congress continues to wrestle with ways to pass three major legislative items: (1) the bipartisan Senate-passed $1.2 trillion infrastructure bill (Infrastructure Investment and Jobs Act); (2) a partisan reconciliation measure totaling roughly $3.5 trillion; and (3) increasing the debt ceiling before October 18.

This week, the Senate reached a tentative solution to the debt ceiling crisis, with Senate Minority Leader Mitch McConnell (R-KY) agreeing to allow Democrats to pass a debt ceiling increase through mid-December. This gives Democrats more time to negotiate over the reconciliation package and infrastructure package, but all but guarantees that the debt ceiling debate will pick up again in mid-December.

Further, on September 30, Congress passed a short-term continuing resolution to extend fiscal year 2021 funding levels until December 3. Extension of the Highway Trust Fund remained in the balance on October 1 as the House originally planned to pass the bipartisan infrastructure bill (which extends the Highway Trust Fund and other surface transportation measures) but could not secure the needed votes. Therefore, Congress passed a short-term extension for surface transportation until October 30, 2021. Congress now faces a “soft” end of October deadline to pass the bipartisan infrastructure package, which would also provide a multiyear surface transportation authorization.

The legislative challenges facing Congress today do impact the likelihood that a $3.5 trillion reconciliation will fail. Questions remain as to how a reduced topline spending amount for reconciliation will impact the proposed tax increases, and if so, what tax proposals will change and by how much. The reality of a reduced reconciliation package provides opportunity to place pressure on certain tax increase to also be compressed (or eliminated). It is very likely that any passable reconciliation bill will cost far less than $3.5 trillion due to pressure from moderate Senators Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ). Sen. Manchin is broadly in line with most House Democrats on tax policy, however, favoring raising the corporate rate to 25 percent (compared to House Democrats’ goal of 26.5%); agreeing on raising capital gains to 25%; and agreeing on restoring the top marginal income tax rate to 39.5%.

EPA APPROVES TEMPORARY DEF SENSOR BYPASS PATCH DUE TO WORLDWIDE MICROCHIP SHORTAGE

The U.S. EPA together with engine manufacturers have come to an agreement on a software bypass patch that will prevent heavy duty diesel engines from shutting down automatically due to faulty DEF fluid sensors. The software bypass is needed due to the current COVID induced worldwide shortage of microchips needed to manufacture DEF sensor replacements. The sensors are designed to illuminate indicator lamps inside the cab at three intervals to signal when DEF level is; “low”; “empty” and “empty and ignored”. The third warning light reduces power in the engine to a maximum 5 mph until DEF levels are restored or the faulty sensor replaced. The issue is important to energy marketers because DEF sensors, which are currently unavailable in the marketplace must be replaced on a regular maintenance schedule. Without the software bypass patch, cargo tank vehicle engines with a faulty sensor will not operate and must be taken out of service.

EMA worked closely with EPA on this issue since the problem was first reported. The software bypass is a temporary fix until new sensors are made available. The bypass is only available to vehicle owners after the DEF sensor fault light indicator signals the first of three warnings before the engine is shutdown. Software patches will not be made available if no sensor lamp is illuminated. The computer bypass will be made available at heavy duty truck dealers and service centers. Since there are many different types of heavy-duty diesel engines, manufacturers must create a software bypass

for each one. According to the EPA, engine manufacturers have already released many software bypasses to dealers and service centers and is expected to release the rest before the end of October. Energy marketers should contact their dealer/service center to see if the correct software patch for their vehicles is available. Once the microchip shortage is resolved and DEF sensors are readily available again, the EPA will establish guidelines for removal of DEF bypass patches. Contact Mark Morgan, EMA Regulatory Counsel with questions or concerns at markmorgan@verizon.net.

FMCSA RULE REQUIRES STATE LICENSING AGENCIES TO IDENTIFY AND SUSPEND THE DRIVING PRIVILEGES OF CDL DRIVERS WITH OUTSTANDING DRUG AND ALCOHOL VIOLATIONS

The Federal Motor Carrier Safety Administration (FMCSA) issued a final rule this week that will make it easier for CDL drivers to be pulled out of service by state traffic enforcement officers and lose driving privileges. The rule is important to energy marketers because it means employers must be diligent about regularly checking driver drug and alcohol violations and ensuring they complete their return to duty requirements before driving again. Under FMCSA regulations, CDL drivers who violate federal drug and alcohol requirements are prohibited from driving a commercial motor vehicle (CMV) until the driver satisfies all return to duty requirements (counseling, testing, etc.). The FMCSA requires employers to use the agency's electronic online Drug and Alcohol Clearinghouse (Clearinghouse) to identify if a driver is prohibited from driving due to outstanding drug and alcohol violations before hiring and each year after employment begins.

SDLAs are only required to access and use the Clearinghouse to check for drug and alcohol violations when issuing or renewing CDL licenses. However, they are not required to do so any other time. The new rule now requires SDLAs to check the Clearinghouse information to identify current CDL drivers with drug and alcohol violations who have not complied with FMCSA return to duty requirements but still operating a CMV. Moreover, the new rule requires SDLAs to remove CDL privileges from a driver's license within 60 days of learning of an outstanding drug and alcohol violation. This means that CDL drivers with outstanding violations (including refusal to test) who are stopped by state traffic enforcement officers or at roadside inspections, will now be identified and removed from service by a simple license check. The FMCSA is allowing states to voluntarily comply with the new rule beginning November 8, 2021. However, all states must comply no later than November 18, 2024.

ETHANOL GROUP ASKS SUPREME COURT TO OVERTURN LOWER COURT RULING AND ALLOW YEAR-ROUND SALE OF E15

Growth Energy has filed an appeal to the United States Supreme Court, asking the Court to review a D.C. Circuit opinion (American Fuel & Petrochemical Manufacturers, et al. vs. EPA) in which the D.C. Circuit overturned a 2019 Trump era rule allowing year-round sales of E15. The Clean Air Act prohibits the summertime sale of gasoline whose volatility, measured in Reid Vapor Pressure, exceeds 9 pounds per square inch. Blending ethanol into gasoline increases volatility. In order to allow the sale of E10 year-round, the Clean Air Act includes an ethanol waiver that increases the summertime volatility limit by 1 pound per square inch for fuel blends containing gasoline blended with 10% ethanol. However, the statutory language clearly limits the one-pound waiver to E10 maximum blends, as lower courts have previously ruled.

Growth Energy is asking the Court to determine whether EPA may interpret the RVP waiver provisions to apply to E10. The D.C. Circuit decision overturned EPA's interpretation of a provision of the Clean Air Act that extended a waiver of limits on RVP, a measure of fuel volatility, to E15. Growth Energy argues that the decision did not give proper deference to EPA, contradicted Congressional intent in promoting renewable fuels, and would suppress the expansion of higher-blend renewable fuels in the future. The Supreme Court has yet to decide whether they will hear the case.

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 Winter edition of WPMA News magazine are due before November 1st. Later submissions will be considered for the Spring issue.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

December 2, 2021 – Washington (WIED) Holiday Party – Little Creek Resort & Casino – Shelton, WA
December 14, 2021 – Oregon (OFA) Holiday Event – Portland Golf Club – Portland, OR
February 22-24, 2022 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV
April 25, 2022 – Hawaii (HPMA) 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 (WIED) Convention – Suncadia Resort – Cle Elum, WA
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

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Petro Pete: ***"Before you criticize someone, walk a mile in their shoes. That way, when you do criticize them, you're a mile away and you have their shoes."***

If you do not wish to receive information via fax or e-mail, please contact WPMA at: (801) 263-9762, Fax: (801) 262-9413, or e-mail: janr@wpma.com. Thanks.