WPMA
News and Information for the Petroleum Marketers Industry
weekly update

November 8, 2019 Visit us online at **www.wpma.com** WP-11-08-19

EPA STAFF POLICY ASSESSMENT RECOMMENDS RETAINING CURRENT OZONE STANDARDS

Last week, staffers at the Environmental Protection Agency (EPA) submitted a written draft policy assessment recommending that the current National Ambient Air Quality Standards ("NAAQS") of 70 parts per billion (ppb) be retained.

The ozone standards are important for petroleum marketers because if their business is in a nonattainment area, that means that the air quality in the region does not meet the standards of the National Ambient Air Quality Standards (NAAQS) and could, therefore, be subject to less federal funding. Additionally, it causes extra hurdles for counties including infrastructure development problems and regulations on emissions of existing businesses within the region, forcing them to pay for costly emission reducing equipment to try and reach attainment status. In many cases, this would likely require reformulated gasoline and/or lower Reid vapor pressure (RVP) fuels.

The policy assessment, which recommends that the ozone standard continue to remain at the current level of 70 ppb, is used as guidance for EPA Administrator Andrew Wheeler to make a final decision regarding the ozone standard.

The policy assessment will be subject to public comment through December 16. Once the policy assessment is finalized, EPA will propose a rule to either retain or tighten the NAAQS standards. By statute, EPA must evaluate the NAAQS every five years. EPA must finalize the ozone NAAQS update by October 1, 2020. However, the agency is not likely to meet the deadline.

TAX EXTENDERS INCLUDING BIODIESEL TAX CREDIT STILL IN LIMBO

Congress is still debating on what to do with a government spending bill, tax extenders, a retirement bill and technical fixes to the GOP's "Tax Cuts and Jobs Act." Currently, government funding expires on November 21 and it is likely that Congress will pass a short-term extension into December. If this occurs, Congress could approve the remaining full year appropriations bills for the Fiscal Year and attach a tax extenders, retirement fixes and technical fixes to the GOP's Tax Cuts and Jobs Act before Christmas, which will likely include a retroactive extension of the biodiesel blender's tax credit, at least through 2019, as well as a prospective renewal of the oil spill liability tax (OSLT). The good news is that the biodiesel blenders tax credit enjoys bipartisan support as this remains a top priority for Senate Finance Committee Chair Chuck Grassley (R-IA).

Additionally, 40 House democrats gave their stamp of approval on renewing the biodiesel tax credit this week. Click here to urge your members of Congress to renew the $1 per gallon biodiesel blender's tax credit.

60 GROUPS URGE TRUMP TO RESTORE VOLUMES LOST TO SRES

In the ongoing battle for the reallocation of lost blend volumes exempted under small refinery waivers to large refiners, 60 agriculture and biofuel groups sent a letter to President Trump urging him to "fix" the Administrations' EPA's proposed rulemaking for reallocating future small refinery exemptions (SREs).

The coalition stresses that the primary problem with the proposed rulemaking is that it proposes to recover only the gallons previously recommended for exemption by the Department of Energy, rather than the volume of actual waived gallons. "This one modification converts a commitment to fully account for SREs into a bureaucratically uncertain path that recovers only one fraction of those gallons lost to SREs and could results in the RFS backsliding in 2020."

Since 2017, small refinery waivers have removed billions of gallons from annual biofuels blending mandates under the RFS program. The waivers play a large role in preventing a de facto E15 mandate by keeping volumetric blending requirements more closely aligned with actual consumer demand.

HHS RELEASES $3.32 BILLION FOR STATES' LIHEAP GRANTEES

The Department of Health and Human Services (HHS) announced this week the release of $3.32 billion of Federal Fiscal Year 2020 regular block grant funding to LIHEAP grantees. State grantees will receive 90 percent of the funds available. The announcement comes at a critical time as winter heating season is set to start.

A table detailing the allocations to state and territory grantees can be found here.

OBAMACARE RULING EXPECTED SOON

The latest significant challenge to the Affordable Care Act (ACA or "Obamacare") is making its way through the federal court system. Last December, in the case of Texas v. Azar, a federal district court in Texas held, in short, that when the Tax Cuts and Jobs Act reduced the penalty for violating the ACA's individual mandate, it rendered the mandate and, in turn, the entire ACA unconstitutional.

This case is on appeal to the Fifth Circuit and the Fifth Circuit's ruling is expected any day. While there are few guarantees in Washington, it is as close to certain as things can get that any decision by the Fifth Circuit will be appealed to the Supreme Court.

While the ACA will remain in full force and effect until all the appeals are concluded, particularly if the Fifth Circuit sides with the district court in finding the ACA unconstitutional, there will be significant pressure for lawmakers to start planning ahead and considering what would replace the ACA if the Supreme Court in turn declares it unconstitutional.

SALT EFFORTS CONTINUE

Led by Democrats from high tax states, the efforts to chip away at one of the most unpopular provisions of the 2017 Tax Cuts and Jobs Act – the $10,000 cap on deductions for state and local property, income and sales taxes (commonly referred to as "SALT") – have continued.

Last week the Senate, voting almost exclusively along party lines, failed to pass a bill which would have overturned a rule enacted by the IRS prohibiting high tax states from creating a workaround for taxpayers by allowing them to donate to state established charity funds in exchange for state tax credits (to allow the taxpayers to reduce how much they owe in state and local taxes and avoid hitting the cap, while still bringing revenue to the state). The White House is now said to be reviewing a proposed rule that would formalize a safe harbor to allow C corporations and pass through entities that meet certain criteria to receive state and local tax credits for charitable donations notwithstanding the IRS's rule.

On the other side of the Hill, the Democrats on the House Ways and Means Committee have been meeting recently to discuss a potential bill to either temporarily repeal or increase the cap. As has been the case from the beginning, the biggest challenge is finding a "pay for" as the Joint Committee on Taxation has estimated that it would cost $668 billion to fully repeal the cap. The Ways and Means Democrats are said to be considering a proposed increase to the top individual tax rate – however, any bill containing such an increase would likely be dead on arrival in the Republican controlled Senate. Even though the Tax Cuts and Jobs Act was not revenue neutral, the House of Representatives under Democratic control has decided that all bills need to be revenue neutral and hence the need to find a revenue raiser to offset the loss of tax revenue.

PLEASE URGE SENATORS TO COSPONSOR THE "PREVENTING ONLINE SALES OF E-CIGARETTES TO CHILDREN ACT"

The bipartisan bill (S. 1253) is sponsored by Sens. Dianne Feinstein (D-CA), John Cornyn (R-TX), and Chris Van Hollen (D-MD) which would prohibit online sales of e-cigarettes to minors by applying the same safeguards already in place for regular cigarettes and smokeless tobacco products.

The bill amends the "Prevent All Cigarette Trafficking Act (PACT Act)" to also include e-cigarettes in the definition that already includes cigarettes. Specifically, the bill would require online retailers of e-cigarettes to:

- Verify the age of customers for all purchases.
- Require an adult with ID to be present for delivery.
- Label shipping packages to show they contain tobacco products.
- Comply with all state and local tobacco tax requirements.

PMAA fully supports this bill. Click here to urge your Senators to vote for S. 1253.

DEPARTMENT OF LABOR'S NEWEST PROPOSAL WOULD EXPAND ACCESS TO BONUSES FOR FLUCTUATING WORKWEEKS

On Monday, the Department of Labor's Wage & Hour Division issued a Notice of Proposed Rulemaking (NPRM) on the fluctuating workweek method of pay. The departments' proposal attempts to end a saga that started in 2008, by clarifying that payments in addition to the fixed salary are compatible with the fluctuating workweek method of compensation, and, in most cases, must be included in the regular rate of pay.

The proposal would revise the regulation for computing overtime compensation for salaried, non-exempt employees who work hours that vary each week under the Fair Labor Standards Act (FLSA). The change would apply to employees on a fixed salary who work fluctuating hours week to week. Under the fluctuating workweek method of pay, such employees are entitled to overtime of one half their base-rate pay for every extra hour worked beyond 40 hours. The proposal also clarifies that bonus and premium payments on top of fixed salaries are compatible with the fluctuating workweek method

of compensation, and that supplemental payments must be included when calculating the regular rate of pay as appropriate under the FLSA. The proposal includes examples and minor revisions to make the rule easier to understand.

Contrary to the view of the Obama Administration that believed allowing employers to give bonuses to employees on a fluctuating schedule could shift the bulk of pay to a bonus-based structure, allowing employers to bypass overtime requirements, the Trump Administration states in its Federal Register Notice, “The department is no longer concerned that employers would shift large portions of pay into bonus and premium payments and is not aware of any evidence of problematic pay shifting,” DOL said in a Federal Register notice published Monday. “To the contrary, the Bureau of Labor Statistics finds that in situations where employers are permitted to pay bonuses and premiums, such supplemental pay constitutes a relatively small portion of employees’ overall compensation — no more than 5 percent for any occupation.” Furthermore, “The department now believes the proposal would encourage employers to pay these bonuses, premiums, and additional pay to salaried nonexempt employees who work fluctuating hours, and the department does not believe that employers will shift large portions of salaries into such supplemental payments.”

PLAN TO ATTEND THE 2020 WPMAEXPO

Mark your calendars for February 18-20, 2020. Make plans now to attend the 2020 WPMAEXPO.
It will be held once again at the Mirage in Las Vegas, Nevada.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

February 18-20, 2020 – WPMA Convention & Expo – Mirage Hotel– Las Vegas, NV
April 21-23, 2020 - Federated Insurance Risk Management Academy
May 7-8, 2020 – Nevada NPM&CSA – Big Dogs - Las Vegas, NV
June 2-3, 2020 – Montana MPMCSA – Convention – Fairmont Hot Springs Resort – Fairmont, MT
June 22-25, 2020 – Washington (WOMA) – Convention – Suncadia Resort – Cle Elum, Washington
August 5-7, 2020 – Idaho (IPM&CSA) Convention – Coeur d’ Alene Resort – Coeur d’ Alene, Idaho
August 17-19, 2020 – New Mexico (NMPMA) Convention – Sandia Resort & Casino – Albuquerque, NM
September 9-10, 2020 – Utah (UPMRA) – Convention – Park City Marriott – Park City, Utah
September 15-17, 2020 - Federated Insurance Risk Management Academy

WPMA MEMBER SERVICES

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: ***“Those who can laugh without cause have either found the true meaning of happiness or have gone stark raving mad.”***

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.