WPMA
News and Information for the Petroleum Marketers Industry
weekly update

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It will be held once again at the Mirage in Las Vegas, Nevada.

HOUSE PASSES $1.75 TRILLION RECONCILIATION BILL

Changes to Come in the Senate

Earlier this morning, the House approved the $1.75 trillion Build Back Better Act (BBB), the second piece of President Biden's legislative agenda that focuses on climate change, health care, education, and tax reform. The House had planned to vote Thursday night; however, House Minority Leader Kevin McCarthy (R-CA) prevented a vote, speaking for more than eight hours until 5:00 AM this morning. Final passage from the Senate is uncertain given significant concerns from moderate Democrats that BBB will contribute to inflation and push prices even higher over the coming months and years. Senator Manchin (D-WV) has questioned whether high/rising prices should persuade lawmakers to scale back the BBB agenda. Click here to read an updated summary of provisions with changes from the original proposal highlighted.

Regarding electric vehicles (EVs), Sen. Manchin has expressed opposition to the current provision that allows consumers to get a higher rebate if they purchase an electric vehicle produced by a unionized workforce. EMA is working with its state associations including the West Virginia Oil Marketers and Grocers Association (OMEGA) that would prevent Americans who make over $100,000 a year or who are buying an electric vehicle (EV) that costs more than $40,000 from claiming the EV credit. CLICK HERE to read the letter. EMA is also working to limit the electric heat pump rebate program similar to the EV tax credit efforts.

Looking ahead, the Senate is targeting a Christmas deadline for floor consideration with prospects for passage dropping considerably in the new year as moderate Democrats will be reluctant to take any tough votes increasing taxes ahead of the November 2022 mid-term elections. As such, there is a growing possibility that BBB fails to garner the necessary support to move forward at all.

Separately, Senators Chuck Grassley (R-IA) and Patrick Leahy (D-VT) introduced the No Oil Producing and Exporting Cartels (NOPEC) Act, which would allow the US to sue members of the Organization of Petroleum Exporting Countries (OPEC) for manipulating the energy market and creating price fluctuations. The bill has little chance of ever becoming law.

Looking to the Executive Branch, the Biden Administration continues considering ways to lower the price of gas. Senior

Administration officials, including National Security Adviser Jake Sullivan and National Climate Adviser Gina McCarthy, are considering a variety of recommendations, including releasing oil from the Strategic Petroleum Reserve and softening biofuel blending rules for refineries. In addition, the Environmental Protection Agency (EPA) announced it would extend the 2020 and 2021 biofuel-blending deadlines for all fuel refiners and importers obligated to meet the Renewable Fuel Standard. The EPA is also extending the 2019 compliance year for small refineries.

PRESIDENT ASKS FTC TO INVESTIGATE PRICES AT THE PUMP

On Wednesday, President Biden asked the Federal Trade Commission (FTC) to investigate prices at the pump, suggesting illegal conduct by the oil industry is the cause of the recent price spike. To support his claim of "anti-consumer behavior by oil-and-gas companies," the president said in his letter to FTC Chair Lina Khan that, “Usually, prices at the pump correspond to movements in the price of unfinished gasoline, but in the last month the price of unfinished gasoline is down more than 5 percent while gas prices at the pump are up 3 percent.” Ms. Kahn previously has suggested "concentration and collusion in retail markets" would be examined by the FTC.

Unfortunately, what the market is currently experiencing is the whiplash effect of prices due to COVID-19’s depression of gasoline demand, which caused oil companies to shut down unneeded production. Crude oil is traded in a global market, and prices are ultimately set by worldwide supply and demand and are also influenced by perceptions about future supply and demand. Look no further than the U.S. Energy Information Administration (EIA) Administrator’s own testimony this week before the Senate Energy and Natural Resources Committee in which he said, “Energy price increases are a direct result of the very good news that, globally, economies have begun to recover after the severe economic contraction most of the world experienced in the first months of the COVID-19 pandemic. World consumption of petroleum is recovering faster than production, which has resulted in steady draws on global oil inventories and upward pressure on prices.”

A myriad of factors beyond the cost of crude oil and refining it into gasoline affect prices at the pump, including federal/state motor fuels excise taxes, boutique or unique fuel requirements, and credit card swipe fees which remain the highest expense after labor for small business energy marketers. Gas prices are set by the owner or operator of each retail outlet who must factor the need to pay for the next delivery of gasoline (i.e., replacement costs) into the street price. If supply is seen as dropping relative to demand, this can place upward pressure on price and can be factored into the retailer’s pricing decision.

The costs to transport and deliver motor fuels to retail outlets are often overlooked, but they too have increased. The national truck driver shortage has increased labor costs and impacts the ability of thousands of independent energy marketers to distribute supply to their customers. Earlier this week, EMA sent a letter to the Biden Administration outlining ways to minimize the driver shortage and improve disaster response.

Unfortunately, the latest effort by the Biden Administration, a perennial in every administration since Nixon, arises whenever gasoline prices increase from demand outstripping supply. EMA stands ready to work with the Administration to reign in excessive swipe fees and alleviate the truck driver shortage.

EMA OUTLINES WAYS TO IMPROVE DISASTER RESPONSE TO THE FEDERAL GOVERNMENT

This week, the Energy Marketers of America (EMA) sent a letter to the US Departments of Transportation, Energy, Homeland and Federal Emergency Management Agency outlining ways to minimize the driver shortage and improve disaster response. EMA thanked the Federal Motor Carrier Safety Administration (FMCSA) for issuing regional Hours of Service (HOS) waivers which ease potential CDL driver shortages before, during and after disasters occur. EMA also reiterated its support for the recently adopted hours or service (HOS) amendments particularly as they affect short-haul HAZMAT drivers in the energy transportation industry which helps ease supply chain disruptions and driver shortages. CLICK HERE to read the letter and below is a quick summary.

EMA recommendations include:

- Expand the availability of EB3 Visas or offer short term emergency Visas to qualified foreign drivers.
- Amend the hazardous materials training requirements under 49 CFR 172 to allow for training modules for the packaging and transportation of industry specific hazardous materials. For example, a training module that focuses on the petroleum transportation industry and the specific liquid petroleum hazardous materials drivers in that industry are likely to handle. Many hazardous material endorsement applicants are deterred by the breadth of general awareness training required under 49 CFR 172.704.1. Driver applicants often question why they must study and be tested on general hazardous material curricula that is unrelated to their job hauling petroleum products. EMA believes far more applicants would pass their hazardous material training and be qualified to drive if general awareness training is limited to industry specific hazardous materials. EMA

believes the function specific training required under 49 CFR 172.704.2 is sufficient when industry specific curricula is included.

- Allow for a hazardous materials endorsement (HME) exemption for Bobtail (up to 5,000 gallons) trucks during severe disaster situations which would increase the pool of drivers to deliver fuel into the communities and to hospitals.
- Create a system of communication from the ports to petroleum marketers regarding the availability of TWIC escorts at water borne terminals to lessen wait times at terminals during disasters.
- Support "The Drive Safe Act" which would allow drivers 18 and older to operate across state lines if they meet rigorous training requirements — at least 400 hours of on-duty time with 240 hours of driving time, with an experienced driver training them. Although drivers of petroleum would not be covered under the Drive-Safe Act since drivers must be 21 to qualify for a hazardous materials endorsement (HME), EMA supports the bill because it would expand the number of CDL drivers overall, some of whom may choose to obtain an HME in the future.

COURT ORDERS OSHA TO SUSPEND ENFORCEMENT OF THE AGENCY'S WORKPLACE VACCINATE OR TEST MANDATE

The Department of Labor's Occupational Safety and Health Administration (OSHA) announced this week it is suspending enforcement of its controversial COVID-19 vaccine mandate for private businesses. OSHA made the announcement after the U.S. Court of Appeals for the 5th Circuit upheld an injunction preventing the rule from taking effect. In a written opinion, the court said the OSHA rule was "fatally flawed" and prohibited OSHA from taking any steps to implement or enforce it. Nevertheless, the Biden Administration insists that OSHA has the authority to impose a workplace vaccinate or test mandate and is encouraging employers to move forward voluntarily.

As written, the vaccine mandate would require employers with a hundred or more employees to prepare and implement a program to test or vaccinate all workers they employ company wide. Drivers are exempt from the test or vaccinate mandate but must be counted when determining the 100-employee threshold that triggers compliance. The rule would have required employers to have workplace vaccinate or test programs in place by December 5th and begin implementing their programs by January 4th. The U.S. Court of Appeals for the 6th Circuit will now decide whether to lift the injunction against the rule or let it stand. More than two dozen state attorneys general and other groups are also challenging the mandate in court. Ultimately, the U.S Supreme Court will have the final say.

CONNECTICUT AND MASSACHUSETTS GOVERNORS SCRAP TCI INITIATIVE

Earlier this year, the Governors of Massachusetts, Connecticut and Rhode Island and the Mayor of the District of Columbia announced their intention to join the regional Transportation & Climate Initiative (TCI), a regional compact among Northeastern and Mid-Atlantic states designed to reduce the climate impact of cars and trucks in the region by driving up the cost of gasoline and diesel fuel so high that consumers and businesses will be forced to purchase new, costly electric vehicles. Yet, TCI only promised to reduce greenhouse gas emissions by 6 percent regionwide.

After push back from EMA's Northeast state associations, Governor Lamont (CT) pulled his support this week followed by the Massachusetts Governor Backer who issued this statement yesterday: "The Baker-Polito Administration always maintained the Commonwealth would only move forward with TCI if multiple states committed, and, as that does not exist, the transportation climate initiative is no longer the best solution for the Commonwealth's transportation and environmental needs. At the same time, the new federal infrastructure funding package, American Rescue Plan investments, as well as tax revenue surpluses generated by Massachusetts' strong economic recovery make the Commonwealth better positioned to upgrade its roads, bridges and public transportation systems, while also making investments to reduce transportation on emissions, deliver equitable transportation solutions and benefits and meet the state's ambitious climate goals." Click here for the story.

IRS CLARIFIES TIMING, ALLOCATION OF FORGIVEN PPP LOANS

The IRS released guidance this week clarifying when amounts excluded from gross income in connection with forgiven Paycheck Protection Program (PPP) loans are considered received or accrued for tax purposes and how partnerships should allocate such amounts.

- Rev. Proc. 2021-48 said amounts excluded from gross income in connection with forgiven PPP loans can be treated as received or accrued when the relevant expenses are incurred, when the application for forgiveness is filed or when the loan is forgiven.
- Rev. Proc. 2021-49 described how forgiven PPP loan amounts are allocated among the partners in a partnership as well as the corresponding adjustments made to the partners' bases.
- Rev. Proc. 2021-50 said partnerships could file amended returns to adopt the guidance set forth in the revenue procedures.

DEPARTMENT OF HUMAN SERVICES RELEASES $3.37 BILLION IN LIHEAP GRANTS TO STATES

The U.S. Department of Health and Human Services' (HHS) announced the release of nearly $3.37 billion of Federal Fiscal Year (FY) 2022 regular block grant funding to Low Income Home Energy Assistance Program (LIHEAP) recipients. States may use LIHEAP funds to help low-income households pay for heating and cooling costs, for crisis assistance, weatherization assistance, and services (such as counseling) to reduce the need for energy assistance. The largest share of LIHEAP funding goes to pay for heating assistance. FY 2022 LIHEAP funding is provided under the Extending Government Funding and Delivering Emergency Assistance Act, which the President signed into law on September 30, 2021 and provides funding for LIHEAP until December 3, 2021. This release reflects 90 percent of the total amount of funds available under the legislation to recipients at the beginning of the program year. Please click here for a table detailing the allocations to all state recipients and territory recipients.

MARK YOUR CALENDARS FOR UPCOMING EVENTS

December 2, 2021 – Washington Association 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
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

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: ***"If good things come to those that wait, why is procrastinating bad?"***

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.