PMAA WEEKLY REVIEW

November 15, 2019 **WR-19-44**

Court Dismisses Lawsuit Challenging EPA's Small Refinery Renewable Fuel Blending Waivers
The U.S. Court of Appeals for the District of Columbia Circuit this week dismissed a lawsuit by the Advanced Biofuels Association (ABFA) challenging the U.S. EPA's small refinery exemption (SRE) waivers issued under the RFS program. SRE waivers are available to refiners processing up to 75,000 barrels of oil per day if they can demonstrate RFS blending mandates cause "disproportionate economic hardship" to their refining operation. Once the economic hardship is demonstrated, the EPA waives all or part of the small refinery annual renewable fuel volumetric blending mandate.

Renewable fuel groups, alarmed at the increase in SRE waivers over the past three years, claims the EPA is using the SRE waivers to reduce statutory volumetric blending mandates for gasoline set forth in the Clean Air Act. The ABFA contends that EPA secretly changed its policy to grant waivers more liberally without transparency, or a rational decision-making basis for doing so. The Court dismissed the lawsuit because it failed to challenge any notice and comment rulemaking or other agency final action announcing the adoption of a new decision-making policy for SRE waivers. The Court reasoned that "*while the petition's identification of a pattern across myriad circumstances may be evidence of a final agency action, it is not itself a final agency action that, without more, can support a petition for review.*"

However, the court signaled sympathy for the ABFA by criticizing the EPA for intentionally keeping the waiver decision-making policy shrouded in secrecy in order to prevent legal challenge. The Court's criticism could bolster a pending lawsuit filed by the Renewable Fuels Association over a specific EPA waiver policy memo that has come to light and spells out the rationale for SRE waivers and the Agency's preference for full rather than partial waivers for small refineries.

Tobacco and E-Cig Bill Advances in Key House Subcommittee
This week, the House Energy and Commerce Health Subcommittee approved, H.R. 2339, the "Reversing the Youth Tobacco Epidemic Act of 2019," by voice vote which will now be send to the full House Energy and Commerce for consideration.

Recently, the PMAA Convenience Store Committee held a call to discuss provisions of H.R. 2339 which is sponsored by Rep. Frank Pallone (D-NJ). The PMAA Cstore Committee decided to oppose the provision in H.R. 2339 that seeks to ban menthol cigarettes. NACS, SIGMA and PMAA are concerned that a ban on menthol cigarettes will promote a black market. Unfortunately, bill sponsors approved the bill as is.

The bill proposes several things including:

- Raising the minimum age of purchase to 21 (PMAA is neutral on this issue and has left it up to each state to decide their position)
- Banning all non-face-to-face sales of all tobacco products including delivery sales
- Prohibiting flavoring of tobacco products (includes menthol cigarettes, flavored cigars, and flavored chewing tobacco)
- Make it unlawful to market, advertise or promote any e-cigarette product to individuals under the age of 21. This would include requiring manufacturers of all tobacco products, including e-cigarettes, to be held to the same advertising and sales requirements currently applied to the sale, distribution, and use of traditional cigarettes.
- Increasing user fees (FDA will have the authority to collect user fees from all tobacco products, including e-cigarettes. It also increases the total amount of user fees collected each year by $100 million)

The bill has a good chance to pass the House but faces an uphill battle in the Senate which is not likely to consider the bill this Congress.

Meanwhile, as previously reported by PMAA, the House passed H.R. 3942, known as the "Preventing Online Sales of E-Cigarettes to Children Act." The bipartisan bill 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 now goes to the Senate where its companion legislation, S. 1253, will be voted on. The Senate companion bill was introduced earlier this year by Sens. Dianne Feinstein (D-CA), John Cornyn (R-TX), and Chris Van Hollen (D-MD).

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. PMAA asks that you remind your Senators to cosponsor this important legislation. Click here to do so.

IRS Issues Hefty Fines for Failure to Display Dyed Fuel Dispenser Labels

PMAA is continuing to receive calls about ongoing IRS enforcement of dispenser labeling requirements.

The IRS requires all dyed diesel and dyed kerosene dispensers to have a specific label indicating that the fuel is for nontaxable use only. The labeling requirement has been in place for diesel and dyed diesel dispensers since 1993 and for dyed and clear kerosene dispensers since 1998. The IRS has recently stepped up enforcement of the dispenser label requirements. Some petroleum marketers are under the mistaken belief that the EPA's LSD and ULSD dispenser labels - which also provide notice on nontaxable uses of these fuels – are a replacement for the IRS labels. This is incorrect. Both the IRS and EPA labels are required despite their apparent redundancy.

The following IRS labels must be posted on any retail dispenser or other delivery facility (skid tank, consumer dispensers at bulk plants or card locks) where dyed diesel fuel and/or dyed kerosene are dispensed for use by a purchaser/consumer:

"DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" or,

"DYED KEROSENE, NONTAXABLE USE ONLY, PENA+LTY FOR TAXABLE USE".

In addition, the following label must be posted on all blocked pumps that sell clear, untaxed kerosene:

"UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY".

The labels must be affixed to the dispenser in a conspicuous place within easy sight of the person dispensing the fuel either on the face of the dispenser (on both sides) or on the side of the dispenser just above the nozzle housing.

Carbon Taxes Take Center Stage

Carbon tax proponents were on Capitol Hill this week urging Congress to pass the "Energy Innovation and Carbon Dividend Act (H.R. 763) which was introduced earlier this year by Rep. Ted Deutch (D-FL) and cosponsored by 72 democrats and one Republican who is retiring. H.R. 763 would impose a tax on the carbon content of fuels, including crude oil, natural gas, coal, or any other product derived from those fuels that will be used to emit greenhouse gases into the atmosphere. The bill has zero chance of passing this Congress, however, if the democrats win the White House, the Senate, and maintain their majority in the House next year, the bill could become a reality.

Specifically, the carbon tax would be imposed on the producers or importers of the fuels and is equal to the greenhouse gas content of the fuel multiplied by the carbon fee rate. The rate begins at $15 in 2019, increases by $10 each year, and is subject to further adjustments based on the progress in meeting specified emissions reduction targets. The taxes would be deposited into a "Carbon Dividend Trust Fund" for payments to U.S. citizens.

Meanwhile, a carbon tax campaign being pushed by a coalition of strange bedfellows that include major oil companies (ExxonMobil, Shell, BP Total), environmental groups, big corporations and former GOP lawmakers and economists is gaining traction. ConocoPhillips announced this week that it is joining the group known the Climate Leadership Council which advocates for an escalating carbon tax on CO2 emissions starting at $40 a ton and increasing every year at 5 percent above inflation. The carbon tax would then be returned to American consumers through quarterly checks. The carbon tax would replace all current and future federal stationary source carbon regulations. The group argues that if it is implemented by 2021, the carbon tax will cut U.S. CO2 emissions in half by 2035 (as compared to 2005). Click here for more information.

Fuels Institute Releases Guide on Biofuels Regulations

This week, the Fuels Institute released a guide to reading regulations applicable to biofuels titled "Retailing Biofuels." The document states its purpose as providing a reading guide and an informational resource to those interested in offering liquid fuels. It is essentially a compendium of federal regulations affecting the storage and sale of biofuels with a focus on regulations pertaining to those fuels which contain greater than 10 percent ethanol or greater than 20 percent biodiesel (biofuels). Third-party performance standards that can be used to comply with federal regulations and liability and non-compliance penalties are also identified. The document, however, does not explain how to comply nor does it provide interpretation of the regulations, but rather provides the reference and text for applicable federal regulations. Its intent is to show how these regulations are organized and where they can be found in the federal regulatory codes. While the document recognizes that state and local regulations, national codes such as the International Fire Code and the National Fire Protection Association codes are also applicable to biofuels, discussions of the applicability of these regulations and codes are not addressed in any detail.

Federal regulations addressed in this document are EPA underground storage tank (UST) and fuels and additive regulations; OSHA regulations related to hazardous materials, fire protection and prevention and flammable liquids; and Federal Trade Commission (FTC) regulations on automotive fuel ratings, certification, and posting. The document identifies the location within the various federal regulations where industry standards are referenced as a source of compliance with the regulations followed by a list of organizations (e.g., API, PEI) and applicable standards that meet the industry standard requirement. This discussion is broken down by equipment categories (USTs, dispensers, piping, valves, and fittings, general compatibility requirements, and corrosion protection) and regulatory agency (OSHA and EPA). The document concludes with a discussion of the liability and penalties in EPA UST regulations and FTC and EPA labeling requirements. The review can be downloaded from the Fuels Institute website by clicking here.

Fuels Institute Releases Report on Electric Vehicles

The Fuels Institute recently released a literature review of the environmental impact of electric vehicles as compared to an internal combustion engine titled "Supercharged: The Environment Impact of Electric Vehicles" in the context of the life-cycle of electric vehicles (EVs) including manufacture, distribution, use, longevity, and disposal. It summarizes results of studies on emissions reduction by EVs over internal combustion engines (ICEs). The report notes that while an EV does not have tailpipe emissions, its production and operation still produce significant global climate change emissions due to such factors as the source of electricity charging the battery, energy usage and the efficiency of the vehicle, and manufacturing and production. Overall the report concludes that there are numerous variables that drive the environmental impacts and that "there is no consensus break-even set of conditions that need to occur in order to realize the environmental benefits that the public attributes to the adoption of EVs."

According to the Institute's literature review, EVs offer 51% to 53% less lifetime greenhouse gas emissions than ICEs while producing two times higher GHG emissions during manufacturing and production. The studies reviewed suggest that increased transition to renewable energy such as wind or solar, as well as continued improvement in battery technology and battery recycling will increase the benefits of EVs. Further, while higher fuel economy requirements are resulting in decreasing emissions from ICEs, technological advances in EV efficiency are keeping pace with reductions in global climate change potential of ICEs. The report also states that government policy can stimulate further reduction in environmental impacts from EVs by providing funding and incentives to increase renewables in energy production, investment in battery technology and improve accessibility to EVs.

Other studies reviewed point to several uncertainties in assessing the environmental benefits and impacts of EVs beyond the lifecycle of EVs including the size, lifetime mileage, electricity generation mix, and the type of ICE (gasoline vs diesel). Geography plays a critical role in assessing the environmental impact of EVs, since the operation of EVs tends to shift the emissions from the road in densely populated urban areas to electricity generation stations typically in rural areas. With 70 percent of electric generation from natural gas and coal, one study concludes that the use of EVs in areas where electricity is generated is "counterproductive." Other estimates suggest that 91% of the resulting pollution would shift to states other than where the EV operates. Studies also indicate that there are potential health effects associated with the supply chain for EVs, that in part, relate to the extraction of metals and mine tailings associated with the production of batteries. In addition, one study suggests that government subsidies could be discriminatory benefiting the rich at the expense of the poor.

In general, the report concludes that determining the benefits of EVs is complex. The environmental benefits of EVs are predicated on widespread build-out of infrastructure, electricity generated by renewables, and other variables that can impact carbon emissions. The review can be downloaded from the Fuels Institute website by clicking here.

Congress Expected to Approve Another Short-Term Government Spending Bill Through December 20th

House Appropriations Chairwoman Nita Lowey (D-NY) confirmed this week that the House is likely to take up a short-term government spending bill next week which will punt the funding deadline to December 20th. The Trump Administration indicated that it would be supportive. The announcement could be good news for an end of the year spending deal which could include a retroactive extension of tax credits including the biodiesel blenders tax credit as well as retirement fixes and technical fixes to the GOP's Tax Cuts and Jobs Act. Currently, government funding expires on November 21.

PMAA continues to urge you to reach out to lawmakers in support of the $1 per gallon biodiesel blender's tax credit by clicking here.

Federated Insurance: Risk Management Corner
Protecting Your Business: You Hold the Keys
Auto crashes continue to wreak havoc on our nation's roads — and as a result on businesses that rely on vehicles to move people or goods. The devastation is apparent in employees and their families, who must cope with tragic consequences, and in courtrooms, where businesses are held responsible for the behavior of employees driving for company purposes.

Court decisions designed to punish businesses are becoming more and more common. Your best chance to avoid a ruling that could reach into the tens of millions is to proactively address the common issues that arise in auto crash claims. Do your driving policies address the right factors, such as substance use and mobile device distraction? Are you doing your homework on your drivers? Can you demonstrate that you did everything you could to help prevent a crash?

To read the article, please click here. For additional information or to discuss further, please contact your Federated regional representative or PMAA's ***newly assigned*** National Account Executive Jon Medo at 800.533.0472. **Federated is a PMAA Corporate Platinum Partner.**

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