PMAA WEEKLY REVIEW

PMAA's weekly update on important national industry news

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Articles for October 20, 2017

Regulatory Compliance Bulletin - Reminder: IRS Requirements For Tax Free Retail Sale Of Undyed Kerosene From Blocked Pumps

ISSUE: The IRS regulations allow for the tax free sale of undyed kerosene at retail dispensers. Such sales are allowed so long as the undyed kerosene is sold from a "blocked pump".

COMPLIANCE:

I. Petroleum marketers may apply for a credit or refund of the federal tax on undyed kerosene provided the following conditions are met:

- The undyed kerosene is sold for a non-taxable use.
- The undyed kerosene is dispensed from a "blocked pump".
- For purchases of five gallons or more, the vendor must record the date of sale, name and address of the buyer, and the number of gallons of kerosene sold to the buyer.

II. A blocked pump is a fuel dispenser that meets all of the following requirements:

- The dispenser is used to make retail sales of undyed kerosene for use by the buyer in any non-taxable use.
- The dispenser it is in a fixed location.
- The dispenser is identified with a legible and conspicuous notice stating:

"UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY"

- It meets either of the following conditions:
  - It cannot reasonably be used to dispense fuel directly into the tank of a diesel-powered highway vehicle or train. This can be achieved by using a short hose that cannot reach the tank of a diesel powered highway vehicle or the use of barriers that prevent the vehicle from reaching the hose, OR
  - It is locked by the vendor after each sale and unlocked by the vendor only in response to a buyer's request for undyed kerosene for use as fuel other than in a diesel powered highway vehicle.

III. Credit or Refunds for the Sale of Undyed Kerosene from a Blocked Pump:

- ***Who may file the claim?*** The retail vendor selling the undyed kerosene from a blocked pump is the only party allowed to file a claim for a credit or refund on federally imposed excise tax. Before filing a claim for credit or refund, the retailer must first obtain an IRS ultimate vendor registration number.
- ***How do I obtain an IRS registered ultimate vendor number?*** The retail vendor may obtain an ultimate registered vendor number (637 UP) by filing IRS Form 637 available at www.irs.gov..

- ***When should I file a claim?*** A credit or refund may be submitted every seven days for claims exceeding $100.
- ***Which forms should be used to file the claim?*** IRS forms 8849 or 4136 must be used to file the claim for sales of undyed kerosene from a blocked pump. The claimant must write the word “KEROSENE” at the top of the form submitted to the IRS.

Got Questions? Contact PMAA Regulatory Counsel Mark S. Morgan at mmorgan@pmaa.org

Trump Pressured by Midwestern Senators to Maintain RFS Levels

As the EPA is considering reducing biofuel quotas for the RFS and requesting public comment on the issue, Midwestern lawmakers are pressuring President Trump not to make any reductions and instead boost the biofuel quotas under the RFS. Specifically, the Midwestern Senators urged the Trump Administration to drop two changes that were under consideration: a possible reduction in biodiesel requirements and a proposal to allow exported renewable fuel to count toward domestic quotas. Apparently, the President reassured the Midwestern Senators that the RFS program will stay intact.

The RFS is important to petroleum marketers because it ultimately determines whether E15 gasoline is mandated to meet annual refiner blending mandates. The existing RFS ethanol blending mandates have already pushed E10 blends into virtually every gasoline market in the country. Any significant increase in the ethanol blending standard will force refiners to move to E15 blends unless gasoline demand rises to offset new blending mandates. The vast majority of the nation’s retail outlets, 95 percent of which are owned by independent petroleum marketing businesses, cannot legally store and dispense blends of gasoline over 10 percent ethanol. Existing equipment is certified for a maximum E10 blend. Currently, there is no viable way for UST system operators to demonstrate that existing equipment is compatible with gasoline blends over E10.

PMAA believes the best path forward to fix the E10+ compatibility issue and inflated RIN problem is to immediately set the ethanol mandate at 9.7 percent of projected gasoline demand as determined by the Energy Information Administration (EIA). Reducing the ethanol mandate may prevent obligated parties from turning to large scale introduction of E15 blends nationwide to shore up sagging margins. This would amount to a de facto E15 mandate and set off a chain of events, resulting in a significant disruption of the nation’s gasoline distribution and supply chain and skyrocketing prices at the pump.

Hot Foods Provision of SNAP Implemented

This week, on October 16, 2017, the Food and Nutrition Service (FNS) began implementing the restaurant (hot foods) provision of the final rule for all stores. Authorized stores that are considered restaurants will be withdrawn from SNAP, and applicant stores that are considered restaurants will be denied authorization.

Retailers will be disqualified from the program if 50 percent or more of the store's total gross retail sales (including fuel and tobacco sales) come from items that are cooked or heated on site before or after purchase. The stocking provision of the final rule will be implemented on January 17, 2018 for all stores. Authorized stores that don't meet these requirements will be withdrawn from SNAP, and applicant stores that don't meet the requirements will be denied authorization.

The final rule, titled "Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)," was published on December 15, 2016. PMAA submitted comments on "Enhancing Retailer Standards in the SNAP." While there were improvements from what was originally proposed, the final rule still presents challenges and additional costs for retailers to participate in the program, especially for small business convenience store owners.

Directive to End EPA "Sue and Settle" Practice

Earlier this week, EPA Administrator Scott Pruitt issued an agency-wide directive designed to end the "sue and settle" practice where advocacy groups sue federal agencies seeking to compel them to specific actions, such as issuing new regulations. The directive ends the practice where, in the past, EPA would settle outside the court, and agree to implement some or all of the proposed changes, thereby "regulating thru litigation."

Legislation that was supported by PMAA, known as the "Sunshine for Regulatory Decrees and Settlements Act," passed the House in 2016 by a vote of 244-173 but with a veto threat by President Obama, the bill was not taken up in the Senate. PMAA strongly supports the EPA directive to end this practice that is harmful for petroleum marketers.

Senate Moves Provision to Allow Drilling in Arctic

Last night, the Senate voted to move forward with a provision in the budget resolution and vote against an amendment that would have blocked oil and gas drilling in part of the Arctic National Wildlife Reserve (ANWR). The amendment failed with a vote of 48-52, mostly along party lines, with Sen. Susan Collins (R-ME) voting for the amendment and Sen. Joe Manchin (D-WV) voting against the amendment.

Conservatives in Congress have been pushing for years to allow energy exploration in a 1.5 million-acre section of the ANWR, where billions of barrels of oil lie beneath its coastal plain. Senate Energy and Natural Resources Committee Chairwoman Lisa Murkowski (R-AK) and Sen. Dan Sullivan (R-AK) pressed to get this provision in the budget and have previously backed legislation that would allow oil and gas development in ANWR. President Trump is also in favor of opening up parts of the refuge for oil and gas development.

Senators Introduce Bipartisan Healthcare Proposal

Sen. Lamar Alexander (R-TN), chairman of the Senate Health, Education, Labor & Pensions

Committee, and Sen. Patty Murray (D-WA), ranking member on the committee, have reached a deal to fix Obamacare's cost-sharing reduction (CSR) payments. The bill is already backed by 12 Republicans and 12 Democrats.

The short-term deal would extend CSR payments for the next two years and would eliminate the question about whether paying them is legal. The agreement would permanently amend Obamacare to give new flexibility for states to create insurance policies that have a larger variety and lower costs and it also would continue CSRs during 2018 and 2019. Sen. Alexander noted that the subsidies pay for co-pays and deductibles for low-income Americans and he added that every Republican in the House who voted to repeal and replace Obamacare earlier this year voted for a provision in their measure that would continue CSR payments for the next two years.

The deal to continue the payments for two years and allow states greater flexibility under Obamacare comes after President Trump announced last week that he would end cost-sharing subsidies paid to insurers under Obamacare. It remains to be seen when the Senate will hold a vote on the measure.

Supreme Court to Consider AX Antitrust Case

An important case for retailers and consumers, Ohio v. American Express (AXP), was resuscitated by the U.S. Supreme Court on Monday.

This winter, the Court will consider the lawsuit by 11 states charging that American Express is being anticompetitive when it prohibits merchants from steering customers to credit cards that have lower fees. In addition to Ohio, the other states active in the appeal are Connecticut, Idaho, Illinois, Iowa, Maryland, Michigan, Montana, Rhode Island, Utah and Vermont. The case is also supported by companies such as Southwest Airlines Co., Kroger Co. and Walgreens. AXP’s stock price dropped 0.97% following the announcement on Monday.

PMAA Corporate Platinum Partner Spotlight Featuring: Renewable Energy Group, Inc.

How Biodiesel Was the Game-Changer for Sapp Bros., Inc.

When margins are measured in pennies, every fuel decision can dramatically impact the bottom line. *So, are your members leaving money on the table?*

This month, we’d like you to meet fuel wholesaler and retailer Sapp Bros., Inc. The company has a fuel wholesale business and 17 travel centers stretching from Salt Lake City to Pennsylvania — most of them along the very competitive Interstate 80 corridor.

With the state of Illinois sales tax exemption on blends of B11 and above, Sapp Bros. is often able to offer B11 at a lower price than No. 2 ULSD at its Illinois location. The result? New customers are flocking to the pump.

Read this case study about the fuel marketer's experience adding biodiesel to its fuel lineup, including:

- The substantial economic benefits
- Infrastructure conversion
- Cold-weather performance of the fuel
- Blending tips
- What customers are saying about their fuel mileage

For additional information about Renewable Energy Group, Inc., please visit or contact Jon Scharingson. **Renewable Energy Group is a PMAA Corporate Platinum Partner.**

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