RSGDA

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Inside This Issue

Supreme Court Blocks Federal Vaccine Mandate for Businesses

The U.S. Supreme Court has ruled against the federal vaccine mandate.

In a decision announced Thursday afternoon, the court stopped the Biden Administration from enforcing the Occupational Safety and Health Administration's (OSHA) rule that states all businesses with 100 or more employees require proof of vaccination. Unvaccinated employees would be required to be tested for COVID-19 once a week and wear a mask.

According to The Associated Press, the Supreme Court's conservative majority concluded the administration overstepped its authority with OSHA's emergency temporary standard. The mandate would have affected more than 80 million.

"OSHA has never before imposed such a mandate. Nor has Congress. Indeed, although Congress has enacted significant legislation addressing the COVID-19 pandemic, it has declined to enact any measure similar to what OSHA has promulgated here," the conservatives wrote in an unsigned opinion.

In dissent, the court's three liberals argued that it was the court that was overreaching by substituting its judgment for that of health experts. "Acting outside of its competence and without legal basis, the court displaces the judgments of the government officials given the responsibility to respond to workplace health emergencies," Justices Stephen Breyer, Elena Kagan and Sonia Sotomayor wrote in a joint dissent.

The U.S. Supreme Court took up the issue of the federal vaccine mandate on Friday, Jan. 7. The court slated the oral arguments on the mandate for a special session just days before OHSA began enforcement of the rule on Jan. 10.

Despite its ruling on the federal vaccine mandate for large business, the court is allowing the administration to proceed with a vaccine mandate for most health care workers in the United States, the AP reported.

OSHA Withdraws COVID-19 Vaccine-or-Test Rule

The Occupational Safety and Health Administration this morning announced that it is withdrawing its November 5, 2021, COVID-19 vaccine-or-test emergency temporary standard for large employers, following the U.S. Supreme Court's January 13 decision blocking enforcement of the rule while legal challenges play out in a lower court.

The OSHA rule directed private employers with 100 or more workers to either require their employees to be fully vaccinated against COVID-19 or pass a COVID-19 test at least weekly.

Multiple groups filed legal challenges to the OSHA rule in every circuit court in the United States. The first court to act was the 5th Circuit Court of Appeals, which issued a nationwide stay of the ETS, deciding that those challenging the rule were likely to prevail on the merits of the overall challenge.

Then in December 2021, the various challenges were consolidated into the 6th Circuit Court of Appeals. A three-judge panel from the 6th Circuit in December voted to dissolve the existing stay of the rule. NACS and other applicants successfully appealed that decision at the Supreme Court, which was likely to take up the case again if the 6th Circuit decided to back the OSHA rule.

In a notice today, OSHA said, "After evaluating the Court's decision, OSHA is withdrawing the Vaccination and Testing ETS as an enforceable emergency temporary standard." The agency added that it is still in favor of vaccines for workers. "Notwithstanding the withdrawal of the Vaccination and Testing ETS, OSHA continues to strongly encourage the vaccination of workers against the continuing dangers posed by COVID-19 in the workplace."

New York Retailers Call on State to Increase Lottery Commissions

A group of 14 trade organizations, including the New York State Association of Service Stations and Repair Shops, sent a letter to New York Gov. Kathy Hochul in an effort to increase lottery commissions by 1 percentage point over a four-year period in the state for its 14,600 licensed agents.

The letter alleges that under the New York Lottery system, sales agents are compensated in the form of a commission set by the Lottery Division, which was fixed at a rate of 6 percent of all ticket sales in 1967 and was never adjusted. Lottery sales volume has steadily risen since 1967, the letter states, but additional commission income to lottery sales agents has been far outstripped by sharp growth in their operating expenses.

"For example, a national survey of convenience stores shows that from 2010 to 2020 alone, core operating expenses rose 43 percent," the letter noted. "The upward pressure is worse than the national average in New York, where the minimum wage increased more than 80 percent from 2010 to 2020."

When costs rise in other segments, retailers can either absorb it, raise their retail prices, or cut expenses. But in the case of lottery sales, agents are forbidden from selling lottery tickets for more than face value, the associations wrote. The letter proposes a modest, gradual adjustment.

"Elevate their commission from 6 percent to 7 percent, phasing in the increase over a four-year period. That would equate to less than a 0.02 percent annual rate of increase over the 50-plus years since the rate was originally set," they said. "With the recent introduction of new digital forms of gaming over the next few years, the state can afford to increase commissions for traditional lottery sales agents while still generating higher revenue for education and other vital programs and services.

"Without new revenue, that will force retailers to cut expenses, the largest segment of which is labor. The typical U.S. convenience store employs 16 people full and part-time. Given New York's convenience store count of 8,000, this financial dilemma could impact the income of as many as 128,000 New Yorkers employed in convenience stores, not to mention those employed by other lottery sales agents," the letter continued. "An adjustment in lottery compensation, however, will preserve these jobs and enable our members to keep delivering the nation's leading lottery sales performance New York's education system deserves."

Lottery sales have increased from $53 million in 1967 to $8 billion today, with $3 billion being earmarked for education in 2020, according to the Lottery Division's fiscal year 2020 financial report.

In 2017, New York State Sen. Tony Avella (D-Queens) proposed a measure to increase New York lottery commissions from its current 6 percent to 8 percent. However, the measure was not adopted.

It's Off to the Races for US Crude, Products With Strong Upsurge

The deuces are wild on 2/22/2022 and petroleum markets are behaving as though even more wildcards can be introduced to a market where the ceiling keeps rising. The incredible tensions tied to Russian intrusions in Ukraine regions, and the eventual response from the West, have pushed sellers beyond the sidelines.

WTI is up over $3/bbl this morning, hitting $94.08/bbl for the expiring March contract and reaching $93.20/bbl, a gain of $2.99/bbl for April timing. April Brent hit $97.75/bbl earlier this morning and at one point moved within 50cts/bbl of the $100/bbl number.

While there is no talk about impeding Russian oil flows or exports, the events of this winter hint that anything is possible and uncertainty reigns.

Refined products are up with rising crude, but also with the temporary loss of production from the 578,000-b/d Garyville, Louisiana, refinery that Marathon operates. Traders believe that the explosion and fire was in a large hydrotreater that removes sulfur from vacuum gasoil. There are still no estimates of downtime or how the loss of that unit might impact other product output across the vast refinery complex.

Product futures are much higher on the double-barreled news, however. Gains of 10cts/gal were seen earlier, but just past 9 a.m. ET, ULSD futures were up 8.31cts/gal at $2.6646/gal in March with April rising 8cts/gal, to $2.8293/gal.

RBOB was once again white hot, with March contracts ahead 9.13cts/gal, to $2.7609/gal and April up 9cts/gal, to $2.9019/gal.

It's not just the hydrocarbons that have moved higher. Soybean oil was up about a penny per pound, putting the

approximate cost per gallon at an all-time high of more than $5.14/gal. Corn futures were up 8cts per bushel, and that will likely put some upward pressure on ethanol.
--Reporting by Tom Kloza

SSDA-AT Signs onto Letter Opposing Tax Hikes

The undersigned business trade groups call on Congress and the Administration to end efforts to pass the multi-trillion-dollar tax increase included in the Build Back Better (BBB) bill and focus instead on the challenges confronting American families and businesses today – rising prices, labor shortages, and ongoing supply chain constraints.

Last month's Consumer Price Index report showing inflation rising at the fastest rate in forty years has our members understandably alarmed. Rapidly rising prices are a serious challenge to businesses of all sizes as they make purchasing inventory, supplies, and inputs such as heat and electricity more expensive. In many cases, our members are unable to pass these higher costs on to their customers. Some customers are unable to pay higher prices, while others are locked into long-term contracts that preclude price changes.

These challenges are amplified by today's constrained labor markets. NFIB's member surveys rank the ongoing worker shortage as the number one challenge employers face. When businesses do find suitable workers, they often need to offer them higher wages to entice them to come to work. In ordinary times, this would be good for the workers, but as we have seen in recent months, inflation eats away at these nominal pay increases and real wages are actually down this year.

The Administration argues that the Build Back Better bill will help to reduce prices, but those arguments are simply not credible. Our members believe the primary causes of the reemergence of inflation are the Federal Reserve's continued easy money policies, massive amounts of deficit spending by Congress, and continued supply constraints, some tied to the Administration's economic and Covid policies.

Raising taxes on America's family businesses in this environment moves us in the wrong direction. Recent estimates show that more than $500 billion of the Build Back Better's cost will be shouldered by family businesses and the bill would impose top rates on these businesses exceeding 50 percent. As with increased spending, voters believe these tax increases will be inflationary.

The Federal Reserve has recognized the challenge inflation poses to families and businesses and announced it will begin tapering its quantitative easing purchases in the coming months. Congress needs to make a similar adjustment, beginning by ending efforts to sharply increase federal spending while raising taxes on America's employers.

Sincerely,
SSDA-AT and other trade associations

U.S. Senators Introduce Bill to Suspend Federal Gas Tax

U.S. Senators Maggie Hassan (D-NH) and Mark Kelly (D-AZ) seek to give drivers relief from high fuel prices by introducing legislation to temporarily suspend the federal gas tax. The Gas Prices Relief Act would lower high gas prices by suspending the 18.4-cents-per-gallon federal gas tax through Jan. 1, 2023.

Co-sponsors of the bill include Sens. Debbie Stabenow (D-MI), Catherine Cortez Masto (D-NV), Raphael Warnock (D-GA) and Jackie Rosen (D-NV).

"This legislation is about making sure that we get Granite Staters relief at the gas pump. People are feeling a real pinch on everyday goods, and we must do more to help address rising costs, particularly the price of gas," said Sen. Hassan. "We need to continue to think creatively about how we can find new ways to bring down costs, and this bill would do exactly that, making a tangible difference for workers and families."

The act requires the Secretary of the Treasury to monitor the program in order to ensure that oil and gas companies pass along the savings to consumers. It also encourages the Secretary to take appropriate enforcement actions to ensure consumers see these savings.

The act also maintains the integrity of the Highway Trust Fund by requiring the Department of the Treasury to make general fund transfers to keep the Highway Trust Fund solvent.

"Arizonans are paying some of the highest prices for gas we have seen in years and it's putting a strain on families who need to fill up the tank to get to work and school," added Sen. Kelly. "This bill will lower gas prices by suspending the federal gas tax through the end of the year to help Arizona families struggling with high costs for everything from gas to groceries."

November 2021 US Vehicle Miles Surpass 2019 Levels: Dept. of Transportation

Total vehicle miles traveled in November 2021 exceeded levels during the same month in 2019, bucking a trend after the two-year deficit widened in October, according to data compiled by the U.S. Department of Transportation's Federal Highway Administration.

In the latest Traffic Volume Trends report, total vehicle miles, which measure travel on all U.S. public roads and streets, were at 267.5 billion for November 2021, around 2% higher than the 261.7 billion for November 2019, according to the latest data released Monday.

The two-year comparison shows the level of mobility among U.S. motorists prior to the news about the highly transmissive omicron variant of COVID-19, which was behind a surge in new coronavirus infections in December and January in the U.S.

On a year-on-year comparison, November vehicle miles were 12.3% higher than the 238.3 billion for the same month in 2020, before the rollout of COVID-19 vaccines.

On a seasonally adjusted basis, the sequential, month-to-month comparison shows November vehicle miles were

1.6% higher than the level of October 2021,according to the Federal Highway Administration's data.

According to OPIS DemandPro data, which surveys nearly 30,000 gas stations across the U.S., average gas station gasoline volumes on a same-store basis in November 2021 were down 12.2% versus two years ago, which is smaller than the 12.8% two-year deficit in October 2021.

For December 2021, OPIS data show the deficit once again narrowed to 11.9% versus the same month in 2019.

--Reporting by Frank Tang

DOT Data Show December 2021 US Vehicle Miles Fall vs 2019; Virus to Blame

Not surprisingly, total vehicle miles traveled in December 2021 fell short of levels compared to the same month in 2019, according to the data compiled by the U.S. Department of Transportation's Federal Highway Administration. The weakened trend was most likely due to the highly contagious omicron variant of COVID-19.

In the latest Traffic Volume Trends report, total vehicle miles, which measure travel on all U.S. public roads and streets, were at 268.4 billion for December 2021, nearly 1.5% lower than the 272.2 billion for December 2019, according to the Federal Highway Administration data released Friday.

After vehicle miles in November 2021 rose above their levels two years ago, the reversal in the positive trend in December can be attributed to omicron, which sent new coronavirus infections to record highs in early 2022.

On a seasonally adjusted basis that smoothed out seasonal factors, December vehicle miles were 10.7% higher on a year-on-year comparison versus December 2020, when it marked the start of the COVID-19 vaccine rollout in the U.S.

The sequential, month-to-month comparison shows December vehicle miles were 0.4% lower than the level of November 2021.

According to OPIS DemandPro data, which surveys nearly 35,000 gas stations across the U.S., average gas station gasoline volumes on a same-store basis in December 2021 were down 11.9% versus two years ago, which is slightly better than the 12.2% two-year deficit in November 2021.

--Reporting by Frank Tang

US Bank Extends Fuel Rewards to Credit Cardholders Charging EVs

U.S. Bank said today in an announcement that it has expanded its rewards cards that apply to gas station purchases to include equal rewards for electric vehicle charging transactions.

The U.S. Department of Energy says at least 80% of EV charging is done at home. However, EV owners may use a public charging station on longer trips, the bank said. Cardholders can now earn up to 4x points or 4% cash back for their EV charging transactions, depending on the terms of the rewards program for gas station purchases.

"We have expanded our card rewards to put EV charging transactions on par with gas," Steve Mattics, head of U.S. Bank Retail Payment Solutions, said in the announcement. "As options for fueling vehicles expand from gas to a mix of gas and electric charging, we are making sure that our cards follow our customers'needs and preferences."

For example, the U.S. Bank Altitude Connect Visa Signature Card provides cardholders with 4x points for purchases at gas stations. So, using this card, motorists can earn the same point value for EV charges, the bank said.

In the U.S., there currently are 46,286 public EV charging stations, according to the U.S. Department of Energy's Alternative Fuels Data Center.

Public charging stations can be free, pay-as-you-go or subscription based, with prices set by networks or property owners, according to the California Air Resources Board's DriveClean car buying guide.

"The industry is moving toward a fee structure based on kWh used, rather than by the time it takes to charge the car," the DriveClean website says. "Drivers in California may expect to pay 30cts/kWh to charge on Level 2, and 40cts/kWh for CC fast charging. At these rates, the same Nissan LEAF with a 150-mile range and 40-kWh battery would cost about $12 to fully charge from empty to full using Level 2, and $16 with DC fast charging."

--Reporting by Donna Harris

Working From Home Shifts Traffic Patterns

Traffic patterns have shifted dramatically due to the COVID-19 pandemic, and though traffic and congestion are slowly moving back to pre-pandemic patterns and volume, the work-from-home culture may permanently change when and how often the world drives.

A TomTom traffic study shows that congestion levels in the U.S. were up slightly last year over 2020, but congestion in 2021 was down 14% in the U.S. compared with 2019. The top three congested cities in 2021 were New York, Los Angeles and Miami, and congestion was up 9%, 6% and 5% last year compared with 2020, respectively.

Worldwide, congestion is 10% lower versus 2019, with a decrease of 19% specifically at peak hours. Out of the 404 global cities included in the study, 283 experienced lower average congestion than in 2019. However, many cities have shown extreme fluctuations in traffic across the year, going from extreme lows during travel restrictions to extreme highs when restrictions were lifted.

Due to a dramatic change in working habits across the world, peak hours have shifted in almost 40% of the cities worldwide, the study found. During the pandemic, new mobility usages have gained popularity, with e-scooter and bicycle use increasing, supported by cycle lanes in many cities. However, public transportation has lost its attractiveness to commuters, and the increased use of private cars led to a sharp increase in traffic congestion in many cities whenever pandemic restrictions were lifted, reaching and sometimes exceeding the 2019 thresholds, the study indicates. In Paris, traffic was 10% higher in September 2021 versus September 2019.

According to TomTom, U.S. cities have seen traffic spread throughout the daytime, as traffic at peak hours decreased. "This can partly be explained by the boom of e-commerce," said Ralf Peter Schäfer, vice president of product management traffic and routing at TomTom. "The COVID-19 crisis has acted as a catalyst that increased the speed of change in our way to consume. The last-mile sector is experiencing a massive transformation driven by increasing customer requirements who demand more immediate or same-day deliveries and return options."

In the U.S. and U.K., traffic congestion during the morning and evening rush hours decreased in 2021 compared with 2019, but the traffic during midday and nighttime hours remained similar to 2019 levels. In the U.S., morning traffic was down by 9%, and evening traffic was down by 6%. Over a third of cities worldwide have seen a shift in peak traffic hours, TomTom found.

During the COVID-19 lockdown in 2020, c-store visits declined by just over 19% versus 2019, and visits during the profitable weekday morning rush fell 26%, PDI data indicate. However, according to the NACS Magazine article, "Reawakening the Morning Daypart," business is on the upswing.

"Morning rush trips are up 6% versus 2020, which is not surprising given the drop in March to May 2020," said Dafna Gabel, vice president, insights, at PDI Software. "Morning rush is recovering faster than other key weekday dayparts—lunch, afternoon and evening. However, morning rush trips aren't yet back to pre-pandemic levels. That daypart lost the most and still has the most to gain."

But one good thing about today's c-store shoppers is that they're spending more per trip, and Gabel doesn't see that waning.

Merchants Call to Bring Swipe Fees Under Control as Card Use Increases

Sixty-four percent of small businesses surveyed expect to go cashless over the next decade, while 41% plan to not accept cash within the next two years, according to a new study by Visa. Eighteen percent of small businesses are already cashless. The Merchants Payments Coalition (MPC) says these findings by Visa show the importance of bringing swipe fees under control, as Americans move to more digital forms of currency.

"As more purchases are made with cards, costs for merchants go up dramatically," said Doug Kantor, MPC executive committee member and NACS general counsel.

The MPC also says that swipe fees exacerbate the record inflation in consumer prices.

"Card companies are dangerously trying to privatize U.S. currency and convince the public that cards are the same as cash, but that simply isn't true," said Kantor. "Merchants receive less than 98 cents on the dollar when consumers pay with a credit card, and the amount siphoned off by swipe fees has skyrocketed in the past decade. In fact, these fees create a multiplier effect that drives inflation even higher and costs merchants and consumers even more. We need competition and transparency as the card industry uses its monopoly power to control a larger share of the U.S. economy."

Visa's study found that 16% of consumers said they no they longer use cash. Twenty-five percent expect to be digital-only in two years, and 53% will do so in 10 years.

The study said 41% of consumers surveyed had abandoned a purchase in a physical store because they could not pay digitally, with numbers higher among millennials (55%) and Generation Z (59%).

"How consumers pay for their purchases has been changing for years, and the move from cash to digital payments—ranging from regular cards, contactless cards and mobile devices in-store to card payments online—has accelerated during the pandemic," Kantor said. "These fees are most merchants' highest cost after labor and increase prices for the average family by hundreds of dollars a year. They desperately need to be brought under control. Small merchants don't have any magic pot of money to absorb exorbitant fees charged by the nation's largest banks and card giants, and neither do their customers."

In the U.S., credit card swipe fees remain one of the highest operating costs for convenience store retailers after labor, according to NACS State of the Industry data. Consumer preferences for more touch-free transactions and the coin circulation challenge in summer 2020 led to record debit and credit card usage at convenience stores. In 2020, 74.6% of all transactions were paid by plastic, and overall card fees paid by the convenience store industry were $10.7 billion, NACS SOI data indicate.

The Visa study follows Federal Reserve studies that show cash accounted for only 23% of purchases in 2020, down from 32% just two years earlier in 2018, while credit and debit cards grew to 65% from 59% in the same period.

Lawmakers and federal regulators have been taking a close look at the fees. Visa and Mastercard last year postponed $1.2 billion in fee increases following concern from Congress but said the increases would take effect this April.

The Federal Reserve has proposed regulations clarifying that banks must enable all debit card transactions to be processed over at least two unaffiliated networks—including at least one competing network such as NYCE, Star or Shazam—rather than just Visa or Mastercard's networks. And both the Department of Justice and Federal Trade Commission are investigating practices that often block merchants' right to choose which network processes online debit transactions.

On Monday, the Federal Reserve released a white paper on the potential creation of a central bank digital currency, a welcome step according to the MPC. Last week, MPC sent a letter to U.S. antitrust regulators to examine swipe fees charged by major credit card companies in the U.S. after

Amazon threated to ban U.K.-issued Visa cards in the United Kingdom and subsequently reversed the decision.

Be on Notice: $4 a Gallon Gas Is a Likely Occurrence This Year

Convenience store operators could see the price of regular fuel topping $4 per gallon in many states if the omicron COVID-19 variant doesn't result in another round of widespread lockdowns, Tom Kloza, global head of energy analysis for Oil Price Information Service (OPIS), wrote in an opinion piece posted on CNN's website.

If gas prices continue to rise, Kloza expects consumers to change their spending habits. "We could see consumers scaling back even further on gas purchases if crude prices hit $100 a barrel or more, which is completely plausible. Even if they hit $85 to $90 a barrel, it's likely we'll see $4 per gallon-plus prices this spring," he wrote.

Discussing why gas prices have risen significantly during the past year, reaching their highest prices in seven years, Kloza noted crude oil prices that provide much of the raw cost for gasoline trended higher for virtually all of 2021. In October, Brent Crude, the global benchmark for oil, hit a high of $85.76 per barrel and the U.S. benchmark West Texas Intermediate (WTI) reached $85.64 per barrel.

"One of the real drivers behind surging crude — and subsequently gas prices — was that OPEC and other countries, most notably Russia, only gradually increased oil production," he said. "These countries kept millions of barrels off markets with well-crafted quotas. Meanwhile, in the United States, bankers have kept their investments in oil exploration companies on a tight leash, not wanting to create a third boom-and-bust cycle. As a result, less capital for U.S. crude has kept production well below record levels."

But what will take gas prices even higher, perhaps enough to reach the $4 gallon mark? Kloza named two main factors: new blends and fewer U.S. refineries.

"Each spring, the U.S. gasoline industry must flush out winter gasoline and replace it on the fly with summer blends," he stated. "That's because some of the cheaper ingredients that can be used in colder weather wreak environmental havoc in warm weather months. This 'rinse-and-replace' cycle takes place against the backdrop of refinery maintenance and daily consumption of more than 300 million gallons. The U.S. distribution system has to see its volatile winter gasoline sold in March through May and replace it with the less volatile and more expensive summer gas."

New blends will be combined with refineries across the U.S., Canada and the Caribbean that have been scaling down capacity, being repurposed or closing completely.

"Some unprofitable Gulf Coast plants were shut down last year after Hurricane Ida. Other refineries are being converted to manufacture biofuels from vegetable and animal oils. And others have closed down in California, Wyoming and Newfoundland to make way for new state-of-the-art plants coming onstream in the Middle East, Southeast Asia and Nigeria," relayed Kloza.

Supreme Court Refuses to Hear Appeal for Year-Round E15 Sales

The U.S. Supreme Court refuses to hear an appeal to offer year-round E15 — defined as containing between 10.5 percent to 15 percent ethanol — therefore restricting sale of the fuel blend to the summer period of June 1 to Sept. 15.

The move followed a decision in July, when the U.S. Circuit Court of Appeals for the District of Columbia reversed a 2019 move by the U.S. Environmental Protection Agency (EPA) to allow year-round E15 sales.

Last year, the U.S. Circuit Court of Appeals ruled the EPA exceeded its authority when it implemented the year-round E15 policy in 2019. When implementing the action in 2019, EPA Administrator Andrew Wheeler issued the following statement: "Following President Trump's directive, today's action expands the market for biofuels and improves the [Renewable Fuel Standard] program by increasing transparency and reducing price manipulation. As President Trump promised, EPA is approving the year-round sale of E15 in time for summer driving season, giving drivers more choices at the pump."

Today, the U.S. Congress allows a blend of 10-percent ethanol to be sold year-round. Provisions of the Clean Air Act have prohibited the sale of certain fuels with a higher volatility from June 1 through Sept. 15 to limit smog.

Growth Energy, a biofuels industry group, filed a petition asking the justices to review the lower court's ruling regarding E15. "Growth Energy will continue to explore all potential avenues to make unfettered access to E15 a reality," CEO Emily Skor said in a statement.

The Iowa Renewable Fuels Association (IRFA) also expressed its discontent with the Supreme Court decision.

"Coupled with inaction by Congress to pursue a legislative fix, today's decision by the Supreme Court to not review the E15 decision, while disappointing, underlines the need for states like Iowa to act to ensure E15 can be sold all year," said IRFA Executive Director Monte Shaw. "It is now clear that no timely federal solution is coming. Therefore, it is time for a Midwest solution for year-round E15. We appreciated that eight Midwest governors, led by Iowa Gov. Kim Reynolds, have already reached out to EPA to inquire about taking action at the state level. IRFA will do all we can to support the governors in taking the next steps to implement a Midwest solution so that consumers continue to have access to cleaner-burning E15 all year."

FTC Warns Against Log4j Vulnerabilities

The Federal Trade Commission (FTC) has warned companies to protect their software against a popular Java logging package Logj4, which is a widespread security vulnerability. Log4j is a ubiquitous piece of software used to record activities in a wide range of systems found in consumer-facing products and services.

"When vulnerabilities are discovered and exploited, it risks a loss or breach of personal information, financial loss, and other irreversible harms. ... It is critical that companies and their vendors relying on Log4j act now, in order to reduce the likelihood of harm to consumers, and to avoid FTC legal action," wrote the FTC in a blog post.

The FTC used the example of the Equifax security breach, where the company failed to patch a known vulnerability which irreversibly exposed the personal information of 147 million consumers. Equifax was forced to pay $700 million to settle actions by the FTC, the Consumer Financial Protection Bureau and all 50 states.

"The FTC intends to use its full legal authority to pursue companies that fail to take reasonable steps to protect consumer data from exposure as a result of Log4j, or similar known vulnerabilities in the future," wrote the FTC.

Analysis: OPIS Data Suggest First Year-On-Year Gas Demand Slide Since March

News item: Energy Information Administration (EIA) data released this morning for the last week of 2021 suggested a drop of 1.552 million b/d in gasoline "product supplied."

The report does not purport to measure actual sales or the amount of gasoline pumped but is widely viewed as a proxy for motor fuel demand nationwide. The 8.172-million-b/d number reflected a decline of nearly 16% from an unusually robust and somewhat suspicious report issued for the week ending Dec. 24.

But here's the thing: OPIS regularly surveys scores of marketers and tens of thousands of stations and measures actual volumes pumped during a traditional week. Most of the retail chains reported same-store gasoline sales for the last week of 2021 below the last week of 2020.

EIA's last demand reading of 2020 was just 7.441 million b/d. If indeed gasoline sales merely matched that number, today's EIA measurement might be an overstatement of 731,000 b/d of demand. Numerous multistate retailers told OPIS that last week represented the first time since March when contemporary demand was below 2020.

OPIS notes that a lot of factors are at work in this decline, which does not live up to epic proportions when history is researched. Among those factors:--The Christmas week EIA report of 9.724 million b/d clearly overstated actual consumption. There was indeed a surge in holiday driving, but virtually no traders accept that EIA's publication of the highest weekly December demand level on record was accurate.

--The last week of 2021 brought inclement weather to large population centers on the West Coast and East Coast and in various pockets of the Midwest and Southeast.

--The American public has increasingly gravitated toward "cocooning" once Christmas passes. Minimal daylight, cold temperatures and the hangover that comes with overspending for the holidays contribute to dramatically less social travel.

--Omicron case counts may not foreshadow further U.S. lockdowns, but the numbers clearly limit mobility. Witness a large oil and gas investor conference for Goldman Sachs that until last week had an in-person setting. It and other meetings have been moved to the virtual space.

Previously, the softest week since the regular 2020 COVID-inspired demand crashes was recorded in early September. OPIS Volume surveys measured a tiny 0.9% increase in the week ending Sept. 4, 2021 when compared to the same period in 2020. For perspective, there were some weeks in April 2021 when demand was 60% above the depressed levels of the previous year.

There's every reason to believe that January 2022 will continue to see disappointing domestic demand levels for gasoline. But OPIS warned customers and clients last week that January could be a historical "head fake" for gasoline prices and consumer behavior. Gasoline demand has become increasingly "lumpy" in the 21st century. Demand assessments of around 8 million b/d do not preclude spring and driving season levels of 9.5 million b/d or higher.

Reaction to today's EIA report may point to bullish optimism that is suspended but not ended. A weekly inventory increase of over 10 million bbl was not enough to push RBOB futures into the red. Rallies often end when futures prices fail to rise on bullish "news" and the reluctance to sell after revelation of a 10-million-bbl stock build may reflect patience for prices beyond the first month of the year.

Within the EIA report, one can also look at data and conclude that refiners are well aware of the upcoming January low. Total finished gasoline output dropped by about 1.5 million b/d and 2022 turnarounds are just around the corner.

Note: More information on OPIS volume and market share assessments can be garnered at:
www.opisnet.com/product/pricing/retail/demandpro/

--Reporting by Tom Kloza

Hyundai Will Stop Designing Gasoline-Powered Engines

Add South Korea-based automobile manufacturers Hyundai and Kia to the list of car companies deserting fossil fuels for EVs. Korea Economic Daily reported yesterday that research and development head Park Chung-kook told employees that no more gasoline-powered engines will be designed, with research redirected to electric cars.

Gasoline-powered engines may be tweaked for 2023 and 2024 models, and there is no formal date for when those vehicles' production cycles will cease. Hyundai may roll out as many as two dozen electric vehicles by 2025, and some of the cars or SUVs hit dealerships in December. Hyundai and Kia accounted for nearly1.5 million vehicle sales in 2021.

Several other international automakers have set goals for the end-dates of internal combustion engines. Audi has hinted that its cars might all have electric powertrains by 2026, while Mercedes Benz is looking at a few ICE cars by 2030 with Volvo going all electric by decade's end as well. General Motors has said that it will skew most vehicles toward electric power by 2035.

--Reporting by Tom Kloza

FDA to Move on Menthol Cigarette and Flavored Cigar Bans

The U.S. Food and Drug Administration announced that it plans to issue proposed rules on two tobacco product standards—one prohibiting menthol as a characterizing flavor in cigarettes and another prohibiting all characterizing flavors (including menthol) in cigars—by spring.

In April 2021, the FDA announced its commitment to advancing these two tobacco product standards. Then in November, attorneys for the FDA appeared in court as anti-tobacco groups accused the agency of failing to implement a ban on menthol cigarettes. This week's announcement follows that case.

Mitch Zeller, director, Center for Tobacco Products, said in a statement, that the FDA's actions "are an important opportunity to achieve significant, meaningful public health gains and advance health equity. For far too long, specific populations have been targeted and disproportionately impacted by tobacco use, especially when it comes to characterizing flavors that entice them to start and keep smoking," Zeller wrote.

In the convenience retailing channel, cigarettes contributed 27.79% of in-store sales in 2020, according to the NACS State of the Industry Report of 2020 Data. Other tobacco products, a category which includes cigars, accounted for 6.90% of in-store sales in 2020, NACS SOI data indicate. (Read more about the tobacco category in "Smokin' Sales" and "Up, Up and Away" in NACS Magazine.)

NACS and other industry groups argue that banning menthol tobacco products will push them into the black market.

"Menthol makes up more than 37% of the tobacco market," said Lyle Beckwith, NACS senior vice president of government relations. "That demand will not go away due to a ban. NACS is on record opposing menthol bans as we believe illicit vendors will quickly source and begin selling foreign and counterfeit menthol cigarettes. Illicit vendors do not verify age, do not collect and remit taxes, and they sell other illegal products beyond just menthol cigarettes."

Two menthol cigarette brands, Newports and Kool, are widely sold across the convenience landscape and count among the top 10 best-selling cigarette brands (read "The Hot Sellers" in the July 2021 issue of NACS Magazine.)

Anna Ready Blom, NACS director of government relations, notes that there will be an opportunity for retailers to make their voices heard. "As part of the notice and comment rulemaking process, FDA will publish a proposal to ban these items, and then the public will have a time period to file comments before the agency finalizes the rule," she said.

After reviewing and considering comments, the FDA could then proceed to issue final product standards, which would become enforceable once in effect. If implemented, the FDA's enforcement of any prohibition on menthol cigarettes and flavored cigars would address manufacturers, distributors, wholesalers, importers and retailers.

Last summer, Washington, D.C., banned the sale of flavored tobacco products, including those with menthol. D.C. officials believe the ban will cost the city at least $13.9 million in lost tax revenue over the next four years.

Massachusetts banned the sale of flavored tobacco products in 2019. Jon Shaer, executive director of the New England Convenience Store & Energy Marketers Association, said the state's attempt at reining in menthols "has failed in whatever goals it had intended for the products." The ban on flavored tobacco and menthol has pushed consumers to cross state lines into New Hampshire and Rhode Island, which sold a large quantity of tobacco products, including traditional cigarettes and flavored vapes in the 12 months after the Bay State's prohibition.

Carmakers Supporting to Delay Massachusetts Right-to-Repair Law to 2025

Major car manufacturers have launched a new attempt to delay Massachusetts' right to repair legislation. In 2020, residents in the state voted in favor of updated right to repair laws that would let independent auto repair shops receive telematics data from vehicles. Now, groups representing auto manufacturers are introducing their own new proposals that would delay the law's implementation.

If passed, the two new proposals, first viewed by Motherboard, would push back the starting date of Massachusetts' right to repair law to 2025, three years later than the original 2022 start date. Supporters of the proposal argue the extra years would give automakers more time to comply with the laws.

Massachusetts' 2020 law was intended to make it easier for small auto shops to access diagnostic data about vehicles without the need for proprietary tools available only to manufacturers. When the law goes into effect, it would require any automaker doing business in the state to allow this telematics data to be accessible through a smartphone app.

SSDA-AT strongly supports the implementation of Massachusetts' right to repair law and we are opposed to any delays.

Cigarette Warning Requirement Date Moved Again

The final rule now will take effect on April 9, 2023.

The U.S. District Court for the Eastern District of Texas again has issued an order to postpone the effective date of required warnings on cigarettes until April 9, 2023, according to the U.S. Food and Drug Administration (FDA). The order was the result of the case of R.J. Reynolds Tobacco Co. et al. v. United States Food and Drug Administration et al.

Any obligation to comply with a deadline tied to the effective date is similarly postponed, according to the FDA, but the FDA encourages entities to submit cigarette plans as soon as possible but no later than June 10, 2022.

In March 2020, the FDA issued a final rule requiring cigarette health warnings on cigarette packaging and advertisements. In October 2019, NACS filed a letter on the proposed rule on graphic warning labels on cigarette packages.

The final rule requires cigarette manufacturers to include graphic health warnings on cigarette packaging and advertisements. According to the final rule, “new cigarette health warnings must appear prominently on packages and in advertisements, occupying the top 50 percent of the area of the front and rear panels of cigarette packages and at least 20 percent of the area at the top of cigarette advertisements.”

In addition, retailers of cigarettes are responsible for ensuring those health warnings are visible to the public and unobscured. In terms of packaging requirements, retailers of cigarettes will not be in violation of the final rule if the cigarette packaging: (1) contains a warning; (2) is supplied to the retailer by a licensed manufacturer or distributor; and (3) is not altered by the retailer. However, retailers are responsible for ensuring that the health warnings are visible on packages and unobscured by stickers, sleeves or other materials.

Retailers will not be in violation of the advertisement requirements if that retailer receives the advertisements from a cigarette manufacturer or distributor. However, if retailers are creating the advertisements, then they must ensure the health warnings meet the new requirements. In all cases, however, the retailer is liable if the retailer publicly displays an advertisement that does not contain a warning or if that warning has been altered by the retailer in a material way or is obscured from view.

In the proposed rule, FDA would have required retailers to submit plans for the random and equal display of the required warnings for cigarette packages and required retailers to rotate the warnings in advertisements quarterly. In its letter to the agency, NACS raised concerns with this proposal given that retailers have no control over how manufacturers display and distribute the health warnings, nor do retailers create the advertisements. In response, the FDA explains in the final rule that retailers selling cigarettes would not be required to submit a plan for packaging, as long as the cigarette packaging: (1) contains a warning; (2) is supplied to the retailer by a tobacco manufacturer or distributor; and (3) is not altered by the retailer in a way material way.

This is the fourth time the agency has delayed the rule’s effective date. In May 2020, the U.S. District Court for the Eastern District of Texas agreed to a postponement until Oct. 16, 2021, because of the COVID-19 pandemic. In January 2021, the order was postponed to January 14, 2022, and in August 2021, order was postponed to Oct. 11, 2022.

The new requirement for graphic warning labels on cigarette packs was initially slated to take effect June 18, 2021.

Record Retrieval

DMV record retrieval is available to association members and affiliates at a cost of $12 per record. Additionally, you may order DMV certified paper abstracts of driver’s license, vehicle registration, and vehicle title records for an additional fee of $2 per abstract. Please call 585-924-4233 or 716-656-1035

NYVIP2 MESSAGE No. 273

DATE: 1/19/2022

TO: ALL INSPECTION STATIONS

FROM: NYS DMV

SUBJECT: RETURNING 2022 INSPECTION CERTIFICATES

****PRINT THIS MESSAGE AND DELIVER IT TO THE PERSON WHO MAINTAINS THE INSPECTION CERTIFICATE INVENTORY****

Per Commissioner's Regulation Part 79.10 (c), "every inspection station owner must return to the department all unused inspection certificates from the previous year" and that "refunds or credits will be allowed for such unused or defective certificates of inspection upon receipt..."

As such, if you have any inspection stickers with a 2022 expiration date, regulation requires that you **return them by March 1st 2022**.

No credit or refunds for 2022 stickers will be given after December 31, 2022.

Please return the unused stickers in a secure and durable shipping container (e.g., a cardboard box or reinforced envelope).

Do not place a new sticker order or requisition in the shipping container with your sticker returns. This will delay your new sticker order.

Include a completed **"Inspection Certificate Return Form"** provided with this message. You may use more than one form if necessary. This form also provides the mailing address options for your returns. Completed Inspection Certificate Return Forms must be included with your sticker returns to DMV.

Once the returns are logged into our system, a Credit Letter will be sent to the Facility. Upon receipt of your credit letter, verify the return sticker numbers indicated and the amount. If any discrepancies are found, please contact us immediately.

Questions regarding this procedure can be directed to DMV at 518-474-2398.

Questions regarding sticker credits should be directed to DMV Accounting at 518-474-5913

NEW YORK STATE | Department of Motor Vehicles

VEHICLE SAFETY & CLEAN AIR

6 EMPIRE STATE PLAZA – ALBANY, NY 12228

INSPECTION CERTIFICATE RETURN FORM

Please place this form and any unused stickers in a secure and durable shipping container (e.g., a cardboard box or reinforced envelope) and include the following information with your shipment:

Seven Digit DMV Facility Number: __ __ __ __ __ __ __

Inspection Station Name: ____________________

Inspection Station Address: ____________________

____

Name of Contact Person: ____________________

Contact Phone Number: ____________________

Reason for Return: ____________________

STICKER TYPE	YEAR	BEGINNING NUMBER	ENDING NUMBER	TOTAL STICKERS

United States Postal Service
Bureau of Consumer & Facility Services
Accounting Unit
PO Box 2700
Albany, NY 12220-0700

All Other Carriers
Vehicle Safety, Accounting Unit
6 Empire State Plaza, Room 220
Albany, NY 12228

Important: *If you are returning stickers for multiple facilities, please use a separate form and place the stickers in separate shipping containers.* ***Do not place a new sticker order or requisition in the shipping container with your sticker returns.*** *This will delay your new sticker order. Once the returns are logged into our system, a Credit Letter will be sent to the Facility. Upon receipt of your credit letter, verify the return sticker numbers indicated and the amount. If any discrepancies are found, please contact us immediately*.