PTSA
Petroleum Transportation & Storage Association

Weekly Update

News and Information for the Petroleum Transportation and Storage Industry
Washington, D.C., Friday October 28, 2005

1. SENATE REJECTS LEGISLATION TO SPEED REFINERY CONSTRUCTION:

The Senate Environment and Public Works Committee this week rejected legislation (S. 1772) to encourage construction of new refineries. Senator. Lincoln Chafee (R-RI) joined the seven committee Democrats and one Independent to vote against the bill. The proposed legislation, sponsored by Committee chairman James Inhofe (R-OK) would have streamlined state and federal permitting requirements in order to encourage new refinery construction and expansion of existing facilities. The bill would set deadlines of 360 days for final decision making on a permit application for a new refinery and 120 days for approving or rejecting a permit application for expanding an existing refinery. It also would gradually reduce the number of fuel blends required in some areas to maintain air quality. A similar but more expansive refinery bill passed the House last month. In a related matter, the committee defeated an amendment offered by James Jeffords (I-VT) to establish a national strategic refinery reserve operated by EPA and the Department of Energy to provide petroleum products to the federal government, state governments, and the public during emergencies, such as severe energy supply shortages. The Jeffords amendment would have authorized EPA and DOE to construct and operate new refineries and to acquire and reopen closed refineries.

2. HOUSE PANEL APPROVES ARCTIC DRILLING PROVISION IN BUDGET BILL:

The House Resources Committee approved language this week that will open the Arctic National Wildlife Refuge (ANWR) to oil and gas drilling and permit states to opt out of offshore drilling moratoriums. The ANWR provision was included in a House budget reconciliation bill. The committee voted 24-16 to open ANWR to oil exploration and thereby meet the panel's goal of raising $2.4 billion over five years as part of the budget reconciliation process. The bill will now go to the House Budget Committee, with a floor vote expected in November. The House has passed ANWR legislation on at least five occasions in the past but this time decided to use the budget reconciliation process as a way to skirt opposition in the Senate which has steadfastly refused to open the refuge for drilling. Both chambers passed a budget reconciliation bill in 1998 that contained similar ANWR provisions. However, President Clinton, vetoed the bill. Another provision in the House reconciliation bill would make it easier for states to open up off-shore waters to drilling by obtaining a waiver of federal moratoriums that have barred coastal exploration for years. The reconciliation bill including the ANWR provision is expected to pass the House easily.

3. NON EXTENSION FOR EXPIRED IRS DYED DIESEL PENALTY WAIVER:

The Internal Revenue Service said this week that it would not extend its nationwide waiver of penalties for the use of dyed diesel fuel sold to non-exempt on-road users. The waiver was initially offered in response to a nationwide diesel fuel shortage caused by Hurricanes Katrina and Rita. The IRS said it would not extend the October 26, 2005 waiver expiration date because clear diesel fuel is readily available in most areas of the country now, with the exception of Florida. The IRS is extending the waiver through November 10 in Florida where clear diesel fuel is in short supply due to Hurricane Wilma. Any dyed diesel held by retailers as of October 26, may be sold for on-road use until supplies are exhausted provided the tax of 24.4 cpg is paid. The EPA is permitting the use of high sulfur dyed diesel fuel in the following areas:

- On 10/20, EPA issued a third emergency waiver through 10/31, of the requirements for low

RVP in gasoline sold in California.

- On 10/24, EPA issued an emergency waiver of the low-sulfur diesel fuel requirement for Florida. This waiver takes effect on 10/26, upon expiration of an 10/4 diesel fuel waiver that applies in a number of East and Gulf Coast states, including the State of Florida.
- On 10/24, EPA issued an emergency waiver of the low-sulfur highway diesel fuel requirement, through 11/13, for Iowa and Nebraska.
- On 10/25, EPA issued an emergency waiver of the low-sulfur highway diesel fuel requirement, through 11/14, for Kentucky. The waiver takes effect on 10/26, when the previous highway diesel waiver expires in Kentucky.
- On 10/25, EPA issued an emergency waiver of the low-sulfur highway diesel fuel requirement, through 11/14, for Mississippi. The waiver takes effect on 10/26, when the previous highway diesel waiver expires in Mississippi.

The IRS will not issue penalties for the use of high sulfur diesel fuel in these areas during the duration of the EPA waivers

NEWS BRIEFS:

Majors Report Record Third Quarter Earnings - The major oil companies reported the following record breaking third quarter earnings this week. ExxonMobil $9.9 billion, up 75%; Royal Dutch Shell at $9 billion, up 68%; ConocoPhillips $3.8 billion, up 44%; Amerada Hess $272 million, up 53%; BP $ 6.5 billion, up 34%. Republican leaders urged refiners yesterday to fold earnings back into exploration and production, particularly construction of new refineries to ease supply concerns. Democrats called for a “windfall” profits tax on the majors, while both parties renewed calls to investigate allegations of price gouging.

LIHEAP Increase Defeated in Senate - The Senate failed to muster the necessary votes to increase 2006 funding for the Low Income Home Energy Assistance Program (LIHEAP) this week. Northern senators pushed for an increase in LIHEAP funding from $2.2 billion for fiscal year 2006 to $5.1 billion. However, supporters of the increase fell six votes short of a 60 vote majority needed to pass the LIHEAP provision. Another attempt to increase LIHEAP will be launched next week according to supporters in the Senate.

U.S.							
Gasoline	Diesel						
Cents	Change	Cents	Change				
	Price	Week Ago	Year Ago		Price	Week Ago	Year Ago
U.S.	260.3	-12.2	57.1	U.S.	315.7	0.9	94.5
East Coast	263.5	-13.1	61.9	East Coast	305.1	-6.5	83.8
New England	257.4	-11.5	52.5	New England	287.3	-4.0	54.4
Central Atlantic	261.9	-12.6	56.8	Central Atlantic	294.0	-2.6	63.1
Lower Atlantic	266.6	-13.8	68.6	Lower Atlantic	311.5	-8.4	95.4
Midwest	245.1	-14.3	48.3	Midwest	323.5	9.1	105.0
Gulf Coast	259.9	-12.7	68.3	Gulf Coast	314.6	-3.1	100.2
Rocky Mountain	270.5	-8.0	69.8	Rocky Mountain	323.2	5.4	95.4
West Coast	279.7	-7.5	50.6	West Coast	314.2	-3.6	76.2
California	282.7	-7.5	43.3	California	315.2	-5.8	71.5

Retail Prices			
Retail Prices	Change From		
10/24/05	Week	Year	
Gasoline	260.3	-12.2	57.1
Diesel Fuel	315.7	0.9	94.5
Heating Oil	262.3	-2.7	56.3
Propane	195.1	0.2	29.4

U.S. Average Retail Gasoline Prices -

The U.S. average retail price for regular gasoline decreased by 12.2 cents to 260.3 cpg, falling for the third week in a row. This week's price is 57.1 cents higher than this time last year. Prices were down throughout the country, with the Midwest seeing the largest regional decrease of 14.3 cents to 245.1 cpg, the lowest regional price in the country. East Coast prices fell by 13.1 cents to 263.5 cpg. The West Coast averaged 279.7 cpg, the highest regional average price in the country, after falling 7.5 cents; California prices also lost 7.5 cents to 282.7 cpg.

U.S. Average Diesel Fuel Prices - Retail diesel fuel prices rose 0.9 cent to reach 315.7 cpg, the highest price on record. Prices were mixed throughout the country, with the Midwest seeing the largest regional increase of 9.1 cents to 323.5 cpg, the highest regional average price in the country. The average retail diesel price also rose in the Rocky Mountain region, increasing 5.4 cents to average 323.2 cpg. East Coast prices were down 6.5 cents to 305.1 cpg, the lowest regional price in the nation. California prices averaged 315.2 cpg, a decrease of 5.8 cents.

Residential Heating Oil Prices - Residential heating oil prices decreased slightly for the period ending October 24, 2005. The average residential heating oil price fell 2.7 cents from last week to reach 262.3 cpg, an increase of 56.3 cents from this time last year. Wholesale heating oil prices decreased 7.6 cents to reach 202.6 cpg, up 38.7 cents over the same period last year.

Residential Propane Prices - The average residential propane price increased 0.2 cent, to 195.1 cpg. This was an increase of 29.4 cents over the 165.7 cpg average for this same time last year. Wholesale propane prices decreased 3.0 cents per gallon, from 122.4 cents to 119.4 cpg. This was an increase of 13.0 cents from the October 25, 2004 price of 106.4 cpg.

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REGULATORY ALERT

October 28, 2005

IRS ISSUES GUIDANCE ON LUST TAX, CREDIT CARD CLAIM RULE, BIODIESEL & AVIATION KEROSENE

ISSUE: The IRS issued guidance this week relating to the federal excise tax changes contained in recently enacted energy and highway legislation. The guidance explains the new LUST tax on dyed fuels, credit card sales of taxable fuel to tax exempt purchasers, manual dying for bio-diesel mixtures and the tax treatment of kerosene used in aviation.

LUST TAX:

- The 1/10 of a cent per gallon Leaking Underground Storage Tank (LUST) tax is imposed on ***all dyed fuels***, including those purchased by exempt users. The LUST tax applies to gasoline, gasoline blend stocks, clear diesel fuel, dyed diesel fuel, home heating oil, clear kerosene, kerosene used in commercial and military aircraft, dyed kerosene and kerosene blend stocks.

- The LUST tax is no longer refundable beginning 10/01/05 (except for exported fuel).

- The position holder at the terminal rack is responsible for paying the LUST tax for removals of kerosene directly into the fuel supply tank of a military aircraft or aircraft used in foreign trade. For kerosene removed directly into the fuel tank of a commercial aircraft not used in foreign trade, the aircraft operator is liable for payment of the LUST tax.

PTSA Analysis: Petroleum marketers should refrain from breaking out the LUST tax as a separate line item on invoices to tax-exempt customers. The tax is paid by the position holder at the rack and is passed down as a business expense. Instead, roll the LUST tax into the cost of the fuel so tax-exempt customers wont complain that they are paying a tax.

TAXABLE FUEL CLAIMS BY CREDIT CARD ISSUERS:

- For fuel purchased on or after 01/01/06, credit card issuers (not the ultimate vendor) must file a claim for credit or refund for federal motor fuel excise taxes on fuel purchased with a credit card by tax-exempt users.

- The claimant (credit card issuer) must provide a statement with each IRS claim that the claimant has repaid or agreed to repay the amount of the tax to the ultimate vendor; the claimant has obtained the written consent of the ultimate vendor to the allowance of the credit or refund; or has made arrangements which directly or indirectly provide the ultimate vendor with reimbursement of the tax.

- Credit card issuers claimants are responsible for obtaining required certificates from tax-exempt purchasers and statements from ultimate vendors.

- **Gasoline –** The credit card issuer is responsible for filing the IRS claim for credit or refund on credit card purchases of gasoline by a tax-exempt user. For non-credit card purchases by a tax-exempt user, the registered ultimate vendor of the fuel is the party responsible for filing the IRS claim for credit or refund. If the credit card issuer or the ultimate vendor is not registered with the IRS, then the ultimate purchaser must file the claim.

- **Diesel Fuel and Kerosene** – The credit card issuer is responsible for filing an IRS claim for credit or refund on credit card purchases of taxable kerosene and diesel fuel by a tax-exempt state or local government. If the credit card issuer is not registered with the IRS, then the state or local government may file the claim. The ultimate vendor must file all IRS claims for ***non-credit card*** purchases of diesel fuel or kerosene by a state or local government.

PTSA Analysis: The Jobs Creation Act of 2004 mistakenly removed the IRS requirement that the credit card issuer was the party responsible for filing IRS claims for fuel purchased with credit card by a tax exempt user (state or local government and non-profit educational organization). However, the IRS in Notice 2005-4 and 2005-24 kept the credit card issuer claim rule intact until Congress could reinstate it in later legislation. Congress included the reinstatement in highway legislation enacted into law last August. As a result, there has been no gap in the credit card issuer claim rule. Petroleum marketers are not responsible for these claims.

BIODIESEL

- Petroleum marketers may manually dye bio-diesel mixtures to meet IRS dye type and concentration specifications if the following conditions are met:

    1. The mixture contains at least 80% diesel fuel or kerosene and 20% bio-diesel and is blended below the terminal rack;

    2. The diesel fuel or kerosene used to make the bio-diesel mixture is mechanically dyed at the terminal rack;

    3. The mixture meets IRS dye specifications relating to type and concentration when it is removed from the facility where the mixture is combined

PTSA Analysis: IRS regulations generally prohibit manual dying of fuel below the terminal rack. Petroleum marketers have discovered that dye concentrations in diesel fuel or kerosene used to make bio-diesel are diluted and thus thrown off specification with 80-20 mixtures. However, IRS regulations prevented manual dying below the rack. Under the new IRS guidance, petroleum marketers may now manually dye bio-diesel mixtures below the rack, ***but only to bring the dye concentrations up to IRS specifications***. This does not mean that petroleum marketers can manually dye clear diesel fuel or kerosene used to make bio-diesel. Marketers must use product dyed at the terminal and may only splash dye to bring the bio-diesel back up to specification.

KEROSENE USED FOR AVIATION:

- All kerosene used for aviation is taxed at a rate of 24.4 cents per gallon unless one of the following reduced rates apply:

1. Kerosene removed directly from a terminal into the fuel tank of a non-commercial aircraft is taxed at a rate of 21.9 cents per gallon. This rate also applies to kerosene that is removed into any aircraft from a cargo tank motor vehicle that is loaded from a terminal located within the airport (secured or unsecured area) and is not registered for highway use.

2. Kerosene removed directly into the fuel tank of an aircraft used in commercial aviation is taxed at a rate of 4.4 cents per gallon. If the kerosene is removed into an aircraft from a cargo tank motor vehicle, the 4.4 cents per gallon rate only applies if the cargo tank is loaded within the secured area of an airport.

3. Kerosene removed directly into the fuel tank of an aircraft for a tax exempt use (for use in foreign trade or use by a state or local government) the rate of tax is 1/10 of a cent per gallon (This is the LUST Tax)

- **Claims For Kerosene used in Commercial Aviation –** Beginning 10/01/05 ultimate purchasers may only make claims with respect to kerosene used in domestic commercial aviation. Ultimate vendors must file claims for aviation grade kerosene used in foreign trade, for export, for use in helicopters and fixed wing air ambulances, for the use by a non-profit educational organization, for use in an aircraft owned by an aircraft museum, for use in military aircraft or for other non-taxable uses such as use as a heating oil.

- **Claims For Kerosene used in Non-commercial Aviation and Foreign Trade –** Beginning 10/01/05, only the registered ultimate vendor may make a claim for kerosene used in foreign trade or used (other than by a state or local government) in non-commercial aviation. The registered ultimate vendor must have paid the tax, sold the fuel to an ultimate purchaser for use in non-commercial aviation or foreign trade and have a valid waiver certificate from the purchaser. Ultimate vendors must make claims for state and local governments where the kerosene is used in non-commercial aviation and purchased by any means other than a credit card.

CERTIFICATE OF ULTIMATE PURCHASER OF KEROSENE FOR USE IN FOREIGN TRADE OR USE (OTHER THAN BY A STATE OR LOCAL GOVERNMENT) IN NON-COMMERCIAL AVIATION

(To support vendors claim for a credit or payment under Section 6427 (l)(5)(B) of the Internal Revenue Code)

SECTION ONE: Ultimate Vendor Information

____
Ultimate Vendor Name (Business Name)

____
Address City State Zip Code

____ (____)_________________________
Employer Identification Number Telephone

SECTION TWO: Buyer Information (State or local government)

The undersigned ultimate purchaser (buyer) hereby certifies the following under penalty of perjury:

The kerosene to which this certificate relates is purchased: (CHECK ONE)

_____ On a farm for farming purposes

_____ For use in foreign trade (reciprocal benefits required for foreign registered airlines)

_____ For use in certain helicopters and fixed wing ambulance uses

_____ For the exclusive use of a non-profit educational organization

____ For use in an aircraft owned by an aircraft museum

____ For use in military aircraft

____ For non-exempt use in non-commercial aviation

This certificate applies to: (CHECK ONE)

_____ Single Purchase Ticket

1. ____
   Invoice or delivery ticket number

2. ___________________
   Number of gallons

OR:

_____ For all purchases under a specified account or order number for a period of no longer than one year beginning on _____/_____/_____ and expiring on _____/_____/_____.

Buyer will provide a new certificate to the vendor if any information in this certificate changes.

If Buyer uses the kerosene to which this certificate relates for a use other than a non-taxable use stated above, Buyer will be liable for the tax.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

____
Buyer Name (Print)

____
Address   City   State   Zip Code

____   ________________
Signature (Buyer)   Date

Got questions? Contact Mark S. Morgan, Esq. (202) 364-6767 or mmorganptsa@cox.net