RSGDA

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Absorbing the Impact of Inflation

While gas prices have dropped in recent months, the prices of food and beverages continue to rise.

"Consumers are responding to rising prices by shopping promotions, prioritizing value options, and trading down to avoid going without," said Krishnakumar Davey, president of thought leadership for CPG and retail at Information Resources Inc. (IRI). "Retailers must have the tools to quickly adjust to changes in consumer preferences to ensure they are offering the right assortment at price points that appeal to price-sensitive shoppers, as well as their most valuable customers."

While there may be no official designation of a recession yet, new analysis from NielsenIQ shows that U.S. consumers increasingly feel like they're in one. Although consumers are finally finding relief at the gas pump, necessities like food are still forcing shoppers to make difficult spending decisions, fueling a growing sense of unease.

NielsenIQ analysts refer to this as a "consumer recession" — when the core habits of traditional consumption have shifted, forcing shoppers to behave as though a recession is already here. They consume less, shift their spend to value retailers and brands, and buy more items on promotion. Of those NielsenIQ surveyed, 53 percent said they feel they are in a recession right now.

Nearly half of Americans (45 percent) feel like they cannot afford their previous lifestyle, according to a consumer sentiment survey on inflation commissioned by NCSolutions (NCS), which helps companies improve their advertising effectiveness. The online survey was fielded among 2,141 respondents in June.

Additionally, 85 percent of respondents indicated they are very concerned or extremely concerned about inflation, and 93 percent said we're in an inflationary time. One in four Americans believes a recession will occur in 2023.

Other notable findings from the survey include:

- 76 percent say their family has changed how they buy food;
- 46 percent say they're buying fewer non-essentials;
- 45 percent are seeking out less expensive brands;
- 43 percent are seeking out sales and promotions to afford their favorite brands; and
- 24 percent are shopping closer to home.

"For the second time in a little over two years, consumers are pivoting to new purchasing behaviors at the grocery store," commented Alan Miles, CEO of New York-based NCS. "Since the start of the pandemic, they've been swapping their favorite brands for what's available. Today, though, value is the centerpiece more often than availability; consumers are selecting brands and products to stretch their budgets as far as possible."

Leaders Renew Talks For Tax Law Provisions On Government Funding Bill

If Senate and House leaders can overcome severe obstacles these final days to pass a Fiscal Year Omnibus Appropriations Act by December 16th , tax writers will have virtually unlimited scope to write both new tax law and changes, and see it all pass on the Omnibus.

There are a number of tax provisions due to expire between 2021-2025. The Work Opportunity Tax Credit expires at the end of 2025. There will be another election in 2024, and if our goal is to enact permanent WOTC, or another 5-year extension of WOTC, by the end of 2024, then our campaign must start on January 3rd, 2023!

As Democrats are still in control of the Senate, Finance Committee Chairman Wyden and Ways and Means Chairman Neal (both Democrats) have begun talks for agreement on tax provisions they're now exploring. Time is short, but they say they'll communicate speedily till consensus is reached on a tax law package to be enacted on the Omnibus.

In the Senate, appropriations to fund the government haven't been brought to the floor yet, but House appropriations bills for the twelve appropriations blocks have been completed, and some sent to the Senate.

Senator Schumer is in position to bring to the floor a budget reconciliation bill from last September, which is an appropriations measure. But reconciliation means Democrats going it alone, and the GOP can use the rules to delay as time runs out on the 117th Congress.

Passing an Omnibus at this late date could require Leader Schumer (D-NY) and Leader McConnell (R-KY) to cooperate. Failing that, the outcome might ditch the Omnibus and fund the government via continuing resolution lasting to around March 1.

Senators and congressmen remain the same as before until the 117th Congress gavels the end in December. The 118th Congress begins January 3rd.

30 Individuals, 21 Businesses Charged in Pennsylvania Title Washing Scheme

Criminal charges were announced Dec. 9 in Pennsylvania against 30 individuals and 21 businesses for "title washing" and for re-titling stolen vehicles in Lebanon, Lehigh and Philadelphia counties.

The title washing fraud was designed to bypass rigid requirements for reconstructed titles in states such as New Jersey and New York. The re-titling of these stolen vehicles was intended to make those vehicles look legitimate for resale or export.

The participants in these criminal networks are alleged to have purchased totaled vehicles they then falsified inspection information for and submitted fraudulent title applications to PennDOT as well as removing and changing the Vehicle Identification Numbers (VINs) attached to each vehicle to bypass police detection of stolen vehicles.

These arrests are following sweeping arrests earlier this year as tied to related criminal rings in northeastern Pennsylvania.

The charges were announced by Pennsylvania Attorney General Josh Shapiro.

"The defendants used their positions and knowledge of PennDOT requirements to defraud state and federal authorities and put unsuspecting drivers at risk," said Shapiro. "Vehicles that have been totaled must not only be repaired but also undergo an enhanced safety inspection to ensure they are safe. The defendants instead allowed hundreds of heavily-damaged vehicles onto the roadways in Pennsylvania, and around the country without even looking at them. They gamed the system and put consumers at risk to rack up millions of dollars in illegal profits. This was widespread criminal conduct and today we brought a halt to it."

As part of this scheme, the enhanced vehicle safety inspectors listed did not complete the necessary inspections that were required in order to make a totaled vehicle road worthy again and instead only completed the paperwork required. Many vehicles they claimed to have been inspected at their shops never actually entered Pennsylvania. Under further investigation, it was found several of the vehicles had been stolen from other states.

The 30 individual defendants were charged, in varying degrees, with: corrupt organizations; forgery; washing vehicle titles; deceptive business practices; tampering with public records; false application for certificate of title; altered, forged or counterfeit documents; and insurance fraud, among other charges.

Charges against the 21 businesses include, in varying degrees: washing vehicle titles; deceptive business practices; tampering with public records; altered, forged or counterfeit documents; and false application for certificate of title.

Ram Tailgate Recall Involves 1.4 Million Trucks

A Ram tailgate recall involves more than 1.4 million Ram trucks equipped with tailgates that may not latch correctly because the tailgate strikers may be misaligned.

This can cause a tailgate to suddenly open while driving and allow unsecured cargo to fall out.

Stellantis (Fiat Chrysler) advises Ram customers to follow the owner's manuals and make sure items in the truck beds are secured.

The Ram tailgate recall involves 2019-2022 Ram 1500, Ram 2500 and Ram 3500 trucks, but Ram 1500 Classic pickups are not affected by the tailgate recall. Additionally, Ram trucks equipped with sensors that alert drivers to insecure tailgates are also not included in the tailgate recall.

Chrysler opened an investigation in July due to tailgates that opened while driving 2019-2021 Ram 1500 trucks. As of Nov. 22, FCA was aware of 736 warranty claims, 101 field reports and 15 customer assistance records regarding tailgates that dropped open.

However, the automaker is not aware of any crashes or injuries related to the tailgate problem.

Along with the 1.2 million recalled Ram trucks in the U.S., the tailgate recall involves about 121,000 Ram trucks in Canada, more than 26,000 in Mexico and more than 27,000 Ram trucks outside North America.

FCA expects to mail Ram tailgate recall notices Jan. 27, 2023, and dealerships will inspect the tailgate striker alignments to the box latches and adjust them if necessary.

Owners who have questions about the Ram truck tailgate recall may call 800-853-1403. Chrysler's Ram tailgate recall reference number is ZB8.

How To Respond To A Customer Complaining About Price

Auto_Service_World

CARS_Magazine

A common scenario for shops: The service advisor breaks down the cost of the job to the customer. They say the labour will cost a certain amount per hour and the part is X number of dollars.

The customer is incredulous at the price of the part. Of course, they looked online to do some price comparisons. They see that they can get it from another retailer for much less. They express their frustration.

This is where the old ‘bring your own steak to the restaurant’ story is often told. But Bryan Stasch, vice president of product and content development at the Automotive Training Institute, doesn’t want you to go down that road.

“I’m sure that butcher couldn’t care less what Ruth’s Chris sells their steaks for,” he told an audience at NAPA Expo 2022.

It starts by removing the challenge in front of you, Stasch explained during his session, Finding Money by Understanding your Financial Numbers.

He advised starting by telling the customer that you understand where they’re coming from and that you’ve also seen those prices online. “We’ve all seen the catalogues — Rock Auto, all of that stuff.”

There’s a key difference, however.

“But what that [price] doesn’t tell you is, and what they don’t tell you is, that’s a do-it-yourself price,” Stasch continued. “And a do-it-yourself price assumes you have the time, the knowledge and skill and desire to do that service — and the willingness to do it again if it fails.”

Furthermore, that’s the parts side of the business. What you as shops do is the service business, he added.

“And with the service business comes highly skilled technicians [who require more skills] every day. It requires the right tools and equipment to make sure the right parts are replaced and the right parts are working together,” Stasch said.

He further emphasized the importance of differentiating the DIY part and the service side. What the customer is paying for is the service of doing the job correctly.

Then, he would close it out like this: “And I’m going to back it with one of the best warranties in the business. And if you count on me the way that you’re going to, this will be a win for both of us.”

And that’s the truth of it all, Stasch emphasized. The customer isn’t being fooled or persuaded wrongly. And the shop is keeping its bottom line strong.

Maybe there’s something like an air filter that a handy customer can do themselves and there’s some wiggle room there. “But everything else? I’m holding my profit margins,” he said.

US Retailer Casey's Says It Sees More Retailers Interested in Selling

Casey's General Stores Inc. has seen an increase in the number of convenience store operators willing to sell their business and anticipates that valuations will start to "creep down" because of high interest rates and challenging operating conditions, executives told analysts Wednesday during the company's second-quarter earnings call for fiscal 2023.

Casey's has several prospective acquisitions underway in various stages of negotiation, executives said during the call.

The company, which has been actively acquiring and building stores, had its head of business development speak during an M&A seminar at the NACS Show in October.

"Rising interest rates will have an impact on valuations at some point," said Darren Rebelez, Casey's president and CEO. "It will depend on who the buyers are and their access to capital and strength of their balance sheet."

The company, which has a network of more than 2,400 stores across 16 states, expects to add 80 units in fiscal 2023 -- about half of them new-to-industry stores. The retailer also expects to meet its stated three-year commitment to increase its network by 345 new units.

When questioned, Rebelez told analysts he is "confident" that Casey's can hit the 80-unit target, despite supply chain and permitting challenges this year. "Most of those issues have been resolved and we have stores under construction right now," he said.

"On the acquisitions side, we have a number of deals under agreement, and we have to get those to close. A couple of others are in advanced stages [of negotiation], and we are not prepared to talk about them," Rebelez added. "Our business development team is evaluating strong deal flow and will remain disciplined with respect to valuations."

Same-store fuel gallons during the quarter ending Oct. 31 rose 0.3% year over year, while total fuel volume rose 5% to about 702 million gal because of store acquisitions. Casey's fuel margin averaged 40.5cts/gal, up 5.8cts from 34.7cts/gal during the same period a year ago. The retailer's fuel profits benefited from the sale of $11 million in RINs, translating to about 1.5cts/gal. Its fuel gross profit increased 22.7% to $284.4 million year over year.

Inside the store, same-store sales rose 7.9% year over year, and 14.4% on a two-year stack basis, with an inside margin of 39.8%. Total inside sales rose 11.4% for the quarter, thanks to strong sales of prepared food. But profit margins were lower, especially on food service items because of inflation, especially the cost of cheese. Total inside gross profit increased 8.9% to $504.5 million from the prior year.

The company's net income increased 42% year over year to $137.5 million, partially offset by higher operating costs from additional stores and and increase in credit card fees because of higher gas prices.

--Reporting by Donna Harris

US Retail Gasoline Prices Hit New Year Low

The median price of gasoline in the U.S. Monday was under $3/gal, OPIS data show, just as millions of Americans are forecast to take to the roads this holiday season.

The median price of gasoline fell to $2.999/gal Monday, which could indicate a national average gasoline price of below $3/gal as the holiday driving season begins. May 11, 2021, was the last time the national average dipped below $3/gal.

The national average retail price for gasoline fell to $3.1422/gal Monday, hitting a low for 2022. Prices have not seen an increase since June 14, when prices hit a record average of $5.0165/gal. The national average has not been this low since July 8, 2021, when prices were $3.1411/gal.

The falling prices come as AAA forecasts the number of Americans hitting the roads for the holidays will reach a post-pandemic high.

Approximately 102 million Americans will travel by car to get to their destination for the holidays, according to AAA's year-end forecast. About 90.4% of travelers will use a car to get to their destination between Dec. 23 and Jan. 2.

AAA also predicts an extra 2 million drivers will be on the road compared to 2021. This year's 102 million Americans driving is on par with 2018's number of drivers, but it is below the record-high number of 108 million drivers seen in 2019.

While the vast majority of Americans will be driving, other modes of transportation are expected to rally during this year's holiday season. Travel by bus, rail and even cruise ship is predicted to be up to 3.66 million, a 23% increase year to year.

About 7.17 million Americans are projected to fly, surpassing last year's 6.29 million air travelers. This year is still not projected to surpass 2019's 7.33 million air travelers.

More than half of gasoline sold in the U.S. Monday was sold below $3/gal. About 44% of retail gasoline sold for more than $3/gal, while about 76% of gasoline prices were $2.75/gal or greater.

The highest 1% of gasoline prices were $5.193/gal, with outliers pushing the national average up.

Retailers also appear headed toward a profitable holiday season. National average retail gasoline margins have been steadily climbing since the week ending Nov. 28, according to OPIS Retail Fuel Watch data.

Gross rack-to-retail gasoline margins in the U.S. on Monday averaged 51.7cts/gal, down 3.4cts day to day and 14.5cts week to week.

The West Coast - which has consistently had margins above $1/gal for most of the region's states - only had Washington and Oregon with margins above $1/gal for Monday. California margins fell to 93.6cts/gal, and prices at the pump fell to $4.3766/gal in the state.

Margins are likely to remain strong, as gasoline futures prices continue to struggle amid concerns about the possibility of an economic slowdown that will impact demand in 2023. On the New York Mercantile Exchange, front-month RBOB futures contracts have settled between $2.30-2.05/gal throughout December. Futures hit year lows the week ending Dec. 9, which also played a role in declining retail prices.

Equity markets fell on Monday, with the Dow Jones Industrial Average dipping about 150 points during midday trading. Falling markets can indicate a slowdown for the economy.

The Federal Reserve continues to attempt to curb inflation by raising interest rates, with likely plans to continue to do so into 2023. A rise in interest rates can weaken demand for goods and services, quieting inflation. However, a rise in interest rates does not always correlate to deflation.

--Reporting by Christie Citranglo

Analysis: Gasoline by the Numbers:
US Refiners Dread Likely Jan. Buildup

The U.S. began December with about 219 million bbl of gasoline in inventory.

That's a number that might not evoke concern under normal circumstances. However, it is clearly worrisome for refiners against the background of serious and continuous 2022 demand destruction.

U.S. gasoline demand as measured by the Energy Information Administration is now running about 7.1% below 2021 numbers over the last four weeks. OPIS Volume Report, which measures actual motor fuel sales at the pump, has detailed similar declines.

Four-week gasoline demand barely above 8.4 million b/d means that 219 million bbl of inventory reflects over 26 days of supply, a level that by historical standards is more than ample.

But if that 7% cut in demand continues into 2023, refiners nationwide could find themselves in the situation currently haunting Northern California refiners. They might find gasoline to be an undesirable byproduct of high production tied to strong returns for diesel and heating oil.

Here are five troublesome sets of numbers that spell daunting challenges for the otherwise prosperous refining business this winter:

- Save for the COVID-19 year of 2020, every year in the 21st century has found January to bring the nadir for U.S. gasoline demand.
- The gasoline demand decline over the last five years has averaged 427,000 b/d. The variations are substantial -- January saw a huge decline of 897,000 b/d while 2021 featured a small drop of 132,000 b/d.
- Gasoline inventories always increase in January. In 2018, the stock build was a manageable 8.8 million bbl. Each of the more recent years has brought January inventory accumulations of 15.6 million bbl to 18.7 million bbl.
- If demand next month continues to trail the year-ago level by 7%, one might expect a January demand number of less than 7.5 million b/d (January 2022 demand was measured at 7.982 million b/d). If that happens, the U.S. would move through the lowest January demand since 1997.
- The last four weeks have seen more gasoline departing the U.S. for foreign destinations with net exports of 441,000 b/d. In January 2022 net exports measured 432,000 b/d. The U.S. may need to export much more gasoline to avoid huge builds in domestic supply.

Exactly how "sloppy" midwinter gasoline becomes may depend on how hard U.S. refiners run their equipment next month. Total input of crude and feedstocks totaled 17.162 million b/d last week, representing the highest level since mid-January 2020.

Run cuts, thought to be an unthinkable outcome just a few weeks ago, could occur now that distillate cracks have descended from above $50/bbl to $30-$38/bbl. Jet fuel profits have also crested, although most refiners are plenty motivated to move that product for $30-$45/bbl above crude.

Even if gasoline demand rallies to match that of January 2022, that would result in consumption next month of just 7.9 million b/d. If net gasoline exports remain at 441,000 b/d, there is a home for only about 8.341 million b/d of U.S.-produced motor fuel.

In traditional confusing fashion, EIA uses two numbers to track gasoline production. The top line number includes a weekly adjustment that accounts for blending of ethanol and motor gasoline components. That number in the last four weeks averaged 9.344 million b/d. The second reading (which excludes such adjustments) was a hefty 9.568 million b/d.

The calculus is complicated, but any way you look at it, there is clearly plenty of gasoline for U.S. and foreign coffers.

Refiners this month are making about 1 million b/d more gasoline than what the market can absorb for immediate use. They face two choices: Cut runs and risk having less winter fuel than the market demand or keep operations high and splay gasoline sales with red ink.

--Reporting by Tom Kloza

US Vehicle Miles Traveled in September Up 1% From 2021 Levels

U.S. motorists drove 2.8 billion miles more in September than they did during the same month a year earlier, with drivers in Southern states adding the most to the increase, according to the Department of Transportation.

Drivers covered a total of 280.8 billion miles during the month, a 1% increase from September 2021, according to DOT data. That brought the total vehicle miles traveled so far during 2022 to 2.44 trillion miles, a 1.6% increase over the number of miles traveled during the first nine months of 2021. That total, however, is still below the 2.45 trillion miles U.S. drivers traveled during the same period before the COVID-19 pandemic in 2019.

Total travel in September was below the 289,35 billion miles traveled during August, according to DOT.

Of the miles traveled in September, 87.9 billion were on rural roads while 192.9 billion were on urban roads and streets, according to DOT.

A look at regional travel trends shows the number of miles traveled rose 2% year to year in Southeastern states and 1.9% in Southern states along the Gulf Coast. Travel in Western states was 1% higher from levels seen in September 2021. Travel saw a 0.2% year-to-year decline in the North-Central states, while vehicle miles traveled remained unchanged from September 2021 levels in the Northeast.

DOT also seasonally adjusts its vehicle miles traveled data, with the adjustment showing a 0.4% increase over September 2021 levels.

DOT bases its vehicle miles traveled estimates on hourly traffic count data collected at 5,000 locations nationwide.

OPIS does not compile data on miles traveled. But OPIS DemandPro data -- compiled by weekly surveys of more than 30,000 retailers nationwide – showed nationwide gasoline demand in September was 4.6% below levels seen during September 2021, with year-to-date sales running a similar amount behind those seen during the first nine months of 2021.

--Reporting by Steve Cronin

US Study Finds EV Fleets May Triple Truck Cost; Worsen Parking Shortage

Electrifying commercial trucking could as much as triple vehicle cost, and the heavy battery required to power the trucks would reduce carrying capacity and require more trips to haul the same amount of freight. The reduced capacity would aggravate the nation's truck parking shortage, a new study finds.

The findings were part of a report the American Transportation Research Institute (ATRI) released Tuesday assessing the infrastructure needs if the U.S.'s commercial fleets were replaced by battery electric vehicles (BEVs). The report focused on electricity supply and demand, EV production and truck-charging requirements.

The electricity that the U.S. trucking fleet would require is "significant," at about 553.5 billion annual kWh, or 14% of all electricity consumed in the U.S. in 2019, the report said. Long-haul trucks would make up 10.6% of all U.S. consumption in 2019. "With full electrification of today's light-, medium- and heavy-duty vehicles in the U.S., an additional 1,593.8 billion kWh of electricity would be needed. This represents an increase in annual U.S. electricity consumption of 40.3%," the report said.

ATRI noted that the aging electrical grid, severe weather and the limitations of renewable energy sources that depend on wind or sun already have increased the length and frequency of power outages. The average annual time U.S. customers spent without electricity in 2020 was about eight hours, up 4.5 hours from 2013, according to government data.

The battery pack for a Class 8 battery electric vehicle truck represents about 55% of the cost of the truck, the report said. A typical new Class 8 diesel truck tractor costs $135,000-$150,000. A comparable Class 8 BEV truck may be priced at $400,000-$500,000.

The production cost would only increase as demand rises for minerals used to make batteries. "For years, lithium-ion batteries have been a key component of devices such as rechargeable batteries and smartphones, which require very small amounts of raw material compared to a vehicle," the report said. "To power vehicles, production of batteries had to scale up, with quantities of raw materials such as lithium and cobalt moving from just ounces in a smartphone to hundreds or even thousands of pounds in a vehicle."

Battery weight may "substantially" limit the long-haul capability of battery electric vehicles, ATRI said. A long-haul internal combustion engine (ICE) truck tractor weight is 18,216 pounds, versus the BEV's 32,016-pound weight including the battery. While heavier batteries can store more energy and increase driving range, the batteries cost more, and the extra cost and weight could decrease the amount of cargo weight the BEV can carry.

Recharging takes much longer than refueling an ICE vehicle. "A long-haul truck that holds 300 gallons of diesel could drive more than 1,800 miles cross three days between brief refueling events," the report said. "A truck with a very large 1,500 kWh battery would have to spend at least four to five consecutive hours recharging each day to do a similar task across three to four days."

The cost of initial charging equipment and installation to power the nation's trucks is estimated to top more than $35 billion. Truck charging needs at one rural rest area might require the daily electricity to power more than 5,000 U.S. households, the report said.

--Reporting by Donna Harris

Tobacco Companies Ordered to Display Cigarette Corrective Statements at Retail

Convenience stores will soon be posting new signs aimed at the adult cigarette consumer.

On Dec. 6, Federal Judge Paul Friedman signed an order approving a settlement agreement entered into by the U.S. Department of Justice (DOJ), Altria Group Inc., Philip Morris USA Inc. (PM USA), R.J. Reynolds Tobacco Co. (RJRT) and ITG Brands LLC regarding certain corrective statement signage to be displayed in retail stores that have manufacturer cigarette programs in place, reported the National Association of Tobacco Outlets.

Under the order, defendants are now required to display signs in retail stores featuring corrective statements about the health effects and addictiveness of smoking.

The order will go into effect on July 1, 2023 and gives defendants three months to post the required corrective statements. Retailers will display the signs, which will be in English and Spanish, for 21 months.

The order brings to a close a 1999 civil racketeering lawsuit against the largest U.S. cigarette companies, which was filed in the U.S. District Court for the District of Columbia. Following a 2004-2005 trial, the court found that the cigarette companies had defrauded consumers about the health dangers associated with cigarette smoking, according to the DOJ.

"Justice Department attorneys have worked diligently for over 20 years to hold accountable the tobacco companies that defrauded consumers about the health risks of smoking," said Associate Attorney General Vanita Gupta. "Today's resolution implements the last remedy of this litigation to ensure that consumers know the true dangers of the smoking products they may consider purchasing."

According to the DOJ, there are roughly 300,000 retail locations in the United States that sell cigarettes. About 200,000 of those retailers have retail merchandising agreements with PM USA, RJRT and ITG that allow the companies to control how their cigarettes are displayed at those retailers' stores. The order entered by the court this week requires these companies to amend their agreements with retailers to require the placement of corrective statements in retail stores.

"We know that tobacco product marketing in retail stores influences young people to start using tobacco, increases tobacco product consumption and makes it harder for people to quit," said Director Deirdre Lawrence Kittner of the Centers for Disease Control and Prevention, Office on Smoking and Health. "These statements will be an important complement to evidence-based strategies that prevent and reduce commercial tobacco use — the leading preventable cause of disease and death in the United States."

The point-of-sale corrective statements remedy is the last one issued by the trial court to be implemented. Starting in 2017, the corrective statements also appeared as ads on TV and in newspapers, on cigarette packages, and on the companies' websites and cigarette-brand social media pages.

In May 2022, the parties, along with representatives of several groups of retailers that sell cigarettes, negotiated an agreement that corrective statements would be displayed in retail stores for two years, the DOJ added.

Federal Judge Blocks FDA's Graphic Cigarette Warnings

The Food and Drug Administration's (FDA) rule requiring tobacco companies to display graphic cigarette warnings on packaging and in advertisements is now on hold.

On Dec. 7, the U.S. District Court for the Eastern District of Texas blocked the agency's regulations because citing free speech protections under the First Amendment to the U.S. Constitution. By vacating the regulations, the graphic cigarette health warnings are nullified and devoid of any legal effect, according to the National Association of Tobacco Outlets (NATO).

"This is a significant legal decision for both cigarette manufacturers and retailers that sell cigarettes because the FDA graphic cigarette health warnings would have applied to not only cigarette manufacturers, but also to retailers, as would have criminal and civil penalties if the regulations were violated by either a manufacturer or a retailer," the association stated.

The decision by U.S. District Judge J. Campbell Barker came in a lawsuit filed by R.J. Reynolds Tobacco Co. ITG Brands LLC, Liggett Group LLC and several other companies.

In the decision, the court determined that the set of graphic cigarette health warnings would have compelled manufacturers and retailers to speak by displaying cigarette packages on store shelves and advertising cigarettes when, if given the choice, manufacturers and retailers would choose not to do so, according to NATO.

The court also found that the graphic cigarette health warnings were not purely factual, but rather open to interpretation by consumers. In addition, the warnings were not narrowly tailored, but rather more extensive than necessary, the association added.

The issue dates back to 2011 when the FDA issued its first rule requiring nine text and graphic picture health warnings on the top half of the main front and back panels of cigarette packages and 20 percent of the top of cigarette advertisements made or produced by manufacturers or retailers.

That rule came two years after the Family Smoking Prevention and Tobacco Control Act granted the agency regulatory authority over tobacco.

The rule was immediately met with legal challenges from the tobacco industry, and after winding its way through the courts, the FDA issued its final rule on the warnings, which feature a combination of text and images depicting some of the health risks of cigarette smoking, in March 2020. The warnings were required to appear on the top 50 percent of the front and back of cigarette packages and at least 20 percent of the top of ads. In addition, the warnings had to be randomly and equally displayed and distributed on cigarette packages and rotated quarterly in cigarette advertisements.

However, implementation has been postponed multiple times after several tobacco companies asked for the date to be moved back.

The latest postponement came a month ago when the U.S. District Court for the Eastern District of Texas pushed the implementation date from Oct. 6, 2023 to Nov. 6, 2023, as Convenience Store News reported.

High Court Flavored-Tobacco Ruling Will 'Harm' Calif. Economy: Trade Group

The trade group representing California's fuel and convenience marketers said the state's ban on flavored tobacco products will hurt the economy, costing the state millions of dollars in tax revenue and potentially leading to an increase in illegal tobacco sales.

The U.S. Supreme Court on Monday rejected R.J. Reynolds' request to stop the ban from taking effect on Dec. 21, according to court documents.

"It's going to have a negative impact on the economy as we head into a recession," Alessandra Magnasco told OPIS in an interview Tuesday. Magnasco is policy manager for the California Fuels and Convenience Alliance.

In its petition, Reynolds argued that the high court should stop the ban because the tobacco industry would "face imminent, irreparable harm" being "shut out of one of the nation's largest markets for flavored tobacco products."

Reynolds argued that California's ban preempts the federal Tobacco Control Act.

"States and localities have broad authority to regulate the sale of tobacco products," the company's petition said. "But one thing they cannot do is completely prohibit the sale of those products for failing to meet the state's or locality's preferred tobacco product standards."

--Reporting by Donna Harris

FDA Sends Warning Letters for Youth-Appealing Vapor Products

The Food and Drug Administration (FDA) issued warning letters to five firms for the unauthorized marketing of 15 different electronic cigarette products.

According to the agency, each vapor product is packaged to look like toys, food or cartoon characters, and is likely to promote use by youth. None of the manufacturers submitted a premarket tobacco product application for any of the unauthorized products.

The unauthorized products described in the warning letters include e-cigarettes that:

- Are designed to look like toys and youth-appealing electronics like glow sticks, Nintendo Game Boy and walkie-talkies;
- Feature youth-appealing characters from TV shows, movies, and video game characters, including "The

Simpsons," "Family Guy," "Squid Game," "Rick and Morty," "Minions," and "Baby Bus"; or

- Imitate foods like popsicles.

"The designs of these products are an utterly flagrant attempt to target kids," said Brian King, director of FDA's Center for Tobacco Products. "It's a hard sell to suggest that adults using e-cigarettes with the goal of quitting smoking need a cartoon character emblazoned across the front of the product in order to do so successfully."

The FDA issued warning letters to Wizman Limited doing business as Wizvapor, Shenzhen Fumot Technology Co. Ltd. doing business as R and M Vapes, Shenzhen Quawins Technology Co. Ltd., Ruthless Vapor and Moti Global.

In the warning letters, the agency notifies the recipients that e-cigarettes without a marketing authorization order are adulterated and misbranded, and that selling or distributing these products to consumers in the United States is prohibited under the Federal Food, Drug and Cosmetic Act.

Failure to correct the violations can result in additional FDA actions such as an injunction, seizure and/or civil money penalties.

"The FDA is committed to keeping tobacco products out of the hands of our nation's youth," King said. "The agency will continue to hold companies accountable for illegally selling e-cigarettes, particularly those that shamelessly target youth."

The warning letters are just the latest step in the FDA's efforts to remove illegally marketed tobacco products from the market. Through Oct. 28, the agency has issued more than 440 warning letters to firms marketing illegal e-cigarettes containing tobacco-derived nicotine, and more than 60 warning letters to firms marketing illegal products containing non-tobacco nicotine.

On Oct. 18, the U.S. Department of Justice, on behalf of the FDA, filed complaints for permanent injunctions in federal district courts against six e-cigarette manufacturers who failed to submit premarket applications for their e-cigarette products and continued to illegally manufacture, sell and distribute their products, despite previous warnings from the FDA that they were in violation of the law.

Juul Settlement Resolves Thousands of Lawsuits

Juul Labs has reached a settlement to bring to a close thousands of lawsuits filed against the vapor company.

As of Dec. 6, the company settled with plaintiffs in federal multidistrict litigation (MDL) and related Juul Labs Product Cases (JCCP) that have been consolidated in the United States District Court for the Northern District of California.

According to Juul, "these settlements represent a major step toward strengthening Juul Labs' operations and securing the company's path forward to fulfill its mission to transition adult smokers away from combustible cigarettes while combating underage use."

The resolution covers more than 5,000 cases brought by roughly 10,000 plaintiffs against Juul Labs and its officers and directors. These cases in the MDL and JCCP, and subject to the resolution, come from the following groups: personal injury, consumer class action, government entity and Native American tribes. As part of the settlement and court process, Juul Labs cannot disclose the settlement amount at this time, but has secured an equity investment to fund the resolution, the company added.

Citing people familiar with the issue, Bloomberg puts the amount at $1.2 billion.

This follows the company's $438.5 million agreement to settle with 37 states and territories to settle a two-year investigation into the vapor company's marketing and sales practices three months ago, as Convenience Store News reported.

The company said it is in ongoing discussions with other key stakeholders to resolve the remaining litigation. Additionally, Juul Labs has taken a series of steps to stabilize its business operations and address past legal issues.

Government Data Suggest US Gas Station Wage May Have Peaked

The average hourly wage for nonsupervisory workers at U.S. gas stations may have peaked in October after rising steadily throughout this year, according to the latest data released from the U.S. Bureau of Labor Statistics in December. The average wage in October was estimated at $16.24 per hour, down from the peak of $16.26 per hour reported in September. Like prior monthly figures, the October number could be adjusted up or down in the next report.

Though down slightly from the prior month, that October average is up 10.9% year over year from $14.64 per hour in October 2021 and up 4.2% from the start of the summer driving season in May at $15.58, government figures show.

After breaching $15 per hour in February, the average nonmanagerial gas station wage increased steadily, topping $16 in July. From $16.02 per hour in July, the average wage in August rose to $16.04 per hour, the bureau statistics show.
--Reporting by Donna Harris

Circle K Settles US Allegations of Discrimination

Circle K Stores Inc., which is owned by Canada-based Alimentation Couche-Tard Inc., has agreed to pay $8 million and update its policies to resolve allegations of discrimination and retaliation, the U.S. Equal Employment Opportunity Commission announced Tuesday.

The agreement addresses multiple charges alleging Circle K and affiliate Mac's Convenience Stores LLC failed to make "reasonable" accommodations for pregnant or disabled employees. The EEOC alleged the affiliates required these employees to take unpaid leave and to be 100% healed before returning to work. The agency said the companies retaliated against the workers and terminated some of them. Circle K and Mac's did not admit to wrongdoing as part of the out-of-court settlement and voluntarily cooperated with the EEOC, according to information from a government website providing legal information on the case.

The EEOC alleged the companies violated the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act.

The $8 million settlement is in effect for four years and includes a class fund to compensate affected workers employed from July 10, 2009, to Sept. 26, 2022. The companies agreed to update their policies as needed. They must appoint a coordinator to oversee pregnancy-related disability policies, requests for reasonable accommodations and record maintenance. Circle K and Mac's also must conduct surveys and exit interviews concerning those accommodations, provide anti-discrimination training to all employees, and incorporate compliance with equal opportunity laws in managers' performance evaluations.

"When employers have rigid maximum leave policies with no flexibility to give additional leave for a disability or pregnancy-related reason, they are in serious danger of running afoul of the law," Mary Jo O'Neill, regional attorney for the EEOC's Phoenix District Office, said in the news release Tuesday. "Employers who don't give current employees a reassignment to an open position after the employer decides there is no reasonable accommodation available in the current position are also in danger of violating the law."

Circle K said in the news release that the EEOC's investigation stemmed from charges filed from 2010-2015. "Circle K expanded our operations and integrated thousands of stores and tens of thousands of employees during this period," said Mark Novak, Circle K's vice president of human resources. "Throughout the past decade, we have made a focused effort on centralizing and strengthening our ADA compliance efforts."

--Reporting by Donna Harris

Zero-Emission Vehicles (ZEV)

New York and seven other states joined together in an initiative to put 3.3 million ZEVs on the road by 2025. A Memorandum of Understanding outlines the steps these states will take to expand consumer awareness and demand for ZEVs. A Multi-State Zero-Emission Vehicle Action Plan for 2018-2021 outlines the next steps these states will take to grow consumer awareness and demand for ZEVs

Your Inspection License May be Worth Money

Depending on where you are located, it may be possible to sell your license. Before merely turning it in, contact the association for further information.

DMV 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 585-423-9924 or 726-656-1035.

Catalytic Converters

On December 14, 2022, DEC held a stakeholder outreach meeting to discuss the prohibition of federal aftermarket catalytic converters, effective January 1, 2023. View the slide presentation (PDF).

A catalytic converter is an exhaust emission control device that reduces toxic gases and pollutants in exhaust gas from motor vehicle engines into less-toxic pollutants by catalyzing a redox reaction (an oxidation and a reduction reaction). Catalytic converters are used with gasoline and diesel-powered engines.

A repair shop may identify the need to replace the catalytic converter on your vehicle due to an inspection and maintenance (I/M) inspection failure or a non-I/M program-related reason, such as damage resulting from a vehicle accident, cracked or melted substrate, exhaust leak, or converter malfunction. Depending on your vehicle, the replacement could be an aftermarket catalytic converter (AMCC) or an OEM replacement part.

Part 218 (leaves DEC website) **prohibits selling, offering for sale, advertising or installing used, recycled, or salvaged catalytic converters**. Part 218 also **requires a new California Air Resources Board** (CARB) AMCC (leaves DEC website) or **OEM replacement part be installed in a CARB or 50-state emissions certified vehicle of model year 1993, 1994, 1996 or newer**. Additional guidance is available (PDF) for determining the appropriate CARB AMCC to use on vehicles for which a CARB-approved AMCC does not exist. New York State vehicle owners cannot take their vehicles to a neighboring state to have a non-compliant AMCC installed. This practice is not allowed by Part 218 and is subject to enforcement. Non-compliant AMCCs may be less expensive, but they are not required to provide the warranty coverage of AMCCs certified by CARB. Vehicle owners may also encounter problems in being able to pass the annual New York State motor vehicle emissions inspection (leaves DEC website).

Vehicle Emissions Certification

The vehicle emission control information (VECI) label, located in the vehicle's engine compartment, includes emissions certification, engine family or test group, engine displacement, on-board diagnostics, model year, fuel type, and catalyst information. Sample VECI labels are available for download (PDF). If the VECI cannot be located, an OEM dealer may be contacted to obtain a replacement VECI label containing the correct test group or engine family information.

Emission Warranties

Most vehicles purchased in New York State prior to 2016 are covered under the federal emissions warranty of 8 years or 80,000 miles. Partial zero emissions vehicles are covered under federal emissions warranty for up to 15 years or 150,000 miles. You can verify your vehicle's warranty by checking the owner's manual or by contacting an original equipment manufacturer (OEM) dealership and providing your vehicle identification number (VIN). Warranty coverage begins on the date the vehicle was first registered.

New CARB certified AMCCs, required for CARB and 50-state certified vehicles, will be covered by a warranty for a period of 5 years or 50,000 miles of use, whichever comes first. The warranty will cover defects and failures related to emissions performance and converter construction. The warranty covers loss of conversion efficiency, onboard diagnostic (OBD) system malfunctions, converter shell and pipe corrosion, and faulty welds that may occur during normal usage. The warranty does not provide coverage for defects due to overfueling, engine misfire, or physical damage caused by road debris or accidents.

Costs

The cost of new CARB AMCCs is higher, compared to a federal or non-compliant AMCC, primarily due to the increased catalyst loading required. This increased purchase price is partially offset by more robust warranty coverage.

Information for Businesses and Repair Shops

DEC has adopted California's AMCC requirements that include the prohibition of installing used catalytic converters and standards for new AMCCs. The requirements of subdivision 218-7.2(c) (leaves DEC website) apply to all:

- model year 1993 and newer on-road motor vehicles, with the exception of 1995 model year vehicles,
- vehicles certified by CARB or with 50-state emissions certification.

An Installer's Checklist (PDF) is available for repair and muffler shop employees.

Subletting AMCC Repair and Installation

A repair shop can sublet AMCC replacement to another business, such as a muffler shop. The sublet business is required to establish and document the need for replacement even if the replacement was done by the original repair shop. If a repair shop sublets work out to another shop, the repair shop makes a fourth copy of the warranty card to keep in its records.

Non-Compliant AMCCs

It is illegal to install non-compliant AMCCs in New York State. Part 218 states "It is unlawful for any person to install, sell, offer for sale, or advertise … " which enables DEC to pursue enforcement against any person responsible for the sale or installation of a non-compliant AMCC.

The penalty structure for violations of the AMCC standards incorporated in Part 218 are set forth in New York State Environmental Conservation Law §71-2103 and §71-2105 (leaves DEC website). Violations are subject to minimum penalty of $500 for a first violation and up to $26,000 for each subsequent violation. This penalty structure is identical to the one which is used to enforce new vehicle sales under Part 218. A violation would be for each non-compliant converter sold and/or installed. Failure to maintain complete records or submit reports may also result in a violation. DEC periodically conducts audits at facilities to ensure compliance with the requirements of Part 218.

Enforcement

DEC's enforcement of the AMCC standards for the period January 1, 2019, to December 31, 2020, has resulted in:

- 201 AMCC audits conducted
- 124 violations of the AMCC standards discovered
- 13 Notices of Violation issued
- Fines ranging from $500 to $5,000
- $13,500 in penalties collected

Since enforcement of the AMCC standards began January 1, 2014, there have been:

- 1,028 AMCC audits conducted
- 458 violations of the AMCC standards discovered
- 150 Notices of Violation issued
- Fines ranging from $500 to $5,000
- $100,500 in penalties collected

NYVIP MESSAGE No. 280

DATE: 12/20/2022
TO: ALL INSPECTION STATIONS
FROM: NEW YORK STATE DMV

SUBJECT: Inspection Station Altered Vehicle (Stretch Limo) Reminder

PLEASE BRING THIS MESSAGE TO THE ATTENTION OF THE STATION OWNER AND/OR MANAGER

This is an important reminder of updates to NYS law for licensed inspection stations as it relates to altered vehicles (stretch limousines). You must report all altered vehicles (stretch limousines) that are presented for inspection at your facility to DMV, regardless of whether an inspection is conducted (Vehicle and Traffic Law 308-a). Inspection stations can report using NYVIP2, or by submitting form VS-1074SL.

A vehicle is "altered" if it has been stretched or widened to increase seating capacity.

Transportation Law now requires registrants to obtain a DOT exemption letter for altered vehicles with a seating capacity of 9 or more persons (including driver) as of February 3, 2021, in order for such vehicles to be inspected at a DMV licensed inspection station. If an altered vehicle does not have an exemption letter from DOT, Transportation Law requires vehicles to be inspected by NYSDOT semi-annually (Transportation Law 151). Without an exemption letter, the vehicle cannot be inspected by a DMV licensed facility.

Reject Inspection:

I. An altered vehicle that DOES NOT have a Federal Alterer's Safety Certificate affixed to the vehicle (normally found on the door jamb) must be **REJECTED and must be reported to DMV.**

II. An altered vehicle that seats **9** or more persons (including driver) and whose operator does not possess a NYS Department of Transportation (NYSDOT) exemption letter must be **REJECTED and must be reported to DMV**.

Inspection Allowed:

I. An altered vehicle that seats less than **9** persons (including driver) and has a Federal Alterer's Safety Certificate affixed to the vehicle can be inspected.

II. An altered vehicle that seats **9** or more persons (including driver) and has a Federal Alterer's Safety Certificate affixed to the vehicle can be inspected only if a NYSDOT exemption letter is presented.

If you have any questions regarding this reporting requirement, please call the DMV Office of Clean Air at (518) 473-0597 and select option #4.

Important Note: Inspection Stations not using a NYVIP2 CVIS will need to use the attached VS-1074SL form for all altered vehicles (stretch limousines) and submit to DMV. The VS-1074SL form can also be downloaded from the WWW.NYVIP.ORG website under the "Forms and Downloads" tab.

NEW YORK STATE OF OPPORTUNITY. | Department of Motor Vehicles

ALTERED VEHICLE REPORT

DATE

An inspection station must complete this form and notify the DMV within 24 hours any time an altered vehicle is presented for inspection, whether or not an inspection is conducted.

An altered vehicle is defined as a vehicle that has been stretched or widened to increase passenger capacity.

INSTRUCTIONS

1. Complete sections 1-6. Do not leave any fields blank.
2. Email a copy of the completed form or send an email with all required information to limoreport@dmv.ny.gov or fax the completed form to (518) 474-2739.

SECTION 1 — VEHICLE PLATE INFORMATION

PLATE NUMBER	STATE

SECTION 2 — VEHICLE INFORMATION

VEHICLE IDENTIFICATION NUMBER

SECTION 3 — SEATING CAPACITY

From the observations of the inspector, how many passengers will this vehicle hold (including the driver)? ________

SECTION 4 — DOT EXEMPTION

If the vehicle seats **9** passengers (including the driver) or more, were you given a DOT exemption letter?

☐ No ☐ Yes If “Yes”, you must email or fax a copy of the exemption letter with this form.

SECTION 5 — ALTERER INFORMATION

Is there a Federal Alterer’s Safety Certificate affixed to the vehicle (normally found on the door jamb)?

☐ No ☐ Yes

SECTION 6 — FACILITY INFORMATION

FACILITY NAME	FACILITY NUMBER

NAME OF FACILITY REPRESENTATIVE/INSPECTOR

If you have questions about this process, contact DMV at (518) 473-0597.

SSDA-AT Right to Repair Resolution

WHEREAS, current law is inadequate to address growing competitive concerns created by new vehicle technology that monitors or controls virtually every function of the vehicle including brakes, steering, air bags, fuel delivery, ignition, lubrication, theft protection, emission controls, and tire pressure; and

WHEREAS, vehicles continue to become more advanced, vehicle repair and maintenance requires access to data software, sophisticated replacement components, repairs to telematics systems, training, and diagnostic tools; and

WHEREAS, independent repair facilities that repair these vehicles need full access to the information, parts, and tools to accurately diagnose, repair, or re-program their systems; and

WHEREAS, SSDA-AT believes consumers should have the choice of who is able to access data needed to maintain and repair their vehicles; and

WHEREAS, SSDA-AT urges Congress to adopt a national statute (H.R. 6570, the "REPAIR Act") to reflect the recently passed Massachusetts referendum in the 117th Congress; and

WHEREAS, the "REPAIR Act" would preserve consumer access to high quality and affordable vehicle repair by ensuring that vehicle owners and their repairers of choice have access to necessary repair and maintenance tools and data as vehicles continue to become more advanced; and

WHEREAS, the "REPAIR Act" would ensure access to critical repair tools and information. All tools and equipment, wireless transmission of repair and diagnostic data, and access to on-board diagnostic and telematic systems needed to repair a vehicle must be made available to the independent repair industry; and

WHEREAS, the "REPAIR Act" would ensure cybersecurity by allowing vehicle manufacturers to secure vehicle-generated data and requiring the National Highway Traffic Safety Administration (NHTSA) to develop standards for how vehicle generated data necessary for repair can be accessed securely; and

WHEREAS, the "REPAIR Act" would provide transparency for consumers by requiring vehicle owners be informed that they can choose where and how to get their vehicle repaired; and

WHEREAS, the "REPAIR Act" would create a stakeholder advisory committee and provide them with the statutory authority to provide recommendations to the Federal Trade Commission (FTC) on how to address emerging barriers to vehicle repair and maintenance; and

WHEREAS, the "REPAIR Act" would provide ongoing enforcement by establishing a process for consumers and independent repair facilities to file complaints with the FTC regarding alleged violations of the requirements in the bill and a requirement that the FTC act within five months of a claim; and

WHEREAS, President Biden issued an Executive Order supporting Right to Repair and directed the Federal Trade Commission to support independent automotive repair shops by policing anti-competitive barriers, and ensuring that consumers have access to the repair shop of their choice; and

WHEREAS, FTC officials met with SSDA-AT representatives two days after the Executive Order was released to clarify that the FTC is an independent agency that needs Congressional authorization to satisfy the Executive Order directives, and they asked SSDA-AT and other industry associations to work with the FTC for legislative language.

NOW THEREFORE BE IT RESOLVED by SSDA-AT that the association will support passage of federal legislation to preserve consumer access to high quality and affordable vehicle repair by ensuring that as vehicles continue to modernize, vehicle owners and their repairer of choice have equal access to repair

- Require vehicle manufacturers to provide the same service information and tools capabilities to independent shops that they offer to their authorized dealer network to repair and maintain late model computer-controlled vehicle systems;
- Restore the right of vehicle owners to have their vehicle serviced and maintained at the repair facility of their choice; and,
- Authorize the Federal Trade Commission (FTC) to enforce requirements in order to protect consumers and to promote competition in auto maintenance and repair.

AND BE IT FURTHER RESOLVED that SSDA-AT will encourage Congress to pass H.R. 6570 in the 117th Congress and work with the FTC in the 118th Congress to draft legislative language to propose to Congress and work for passage.