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Gas Tax Isn't in Infrastructure Plan, White House Says

This week, the White House confirmed that raising the federal gasoline tax is not being considered as part of President Biden's infrastructure package, according to TheHill.com.

Rumors of an increase surfaced when the president met with a bipartisan group of policymakers on Monday regarding the package. Representative Donald Payne Jr. (D-NJ) was cited saying that Biden was open to raising the gas tax, while Transportation Secretary Pete Buttigieg said last month that neither a mileage tax nor a gas tax would be part of the conversation.

When asked about reports that a hike was being considered to fund Biden's $2.25 trillion package, White House press secretary Jen Psaki said that a gas tax increase is not being discussed. The president has proposed raising the corporate tax rate to pay for the package.

"I think that was a little bit of a garble, unintentional, but in yesterday's meeting with members of Congress, the president mentioned the gas tax only to make a point that even a significant increase in the gas tax, which some people have proposed would pay for only a fraction of the investment the country needs," she said. "Fundamentally, he does not believe that paying for this historic investment in rebuilding our nation's infrastructure and creating millions of jobs should be on the backs of Americans."

US Final Rule on Independent Contractors Now in Jeopardy

The U.S. Labor Department's final rule defining independent contractor status -- recently developed by the Trump administration -- has been put on hold and under the Biden administration may be rescinded, according to a recent notice from the DOL.

The rule, published in the Federal Register Jan. 7, 2021, was to take effect March 8. It was designed to provide clarity on which workers are independent contractors under the Fair Labor Standards Act.

Clarity on independent contractor status is important to petroleum haulers who hire owner-operators as truckers. Some haulers have faced legal challenges for classifying these workers as independent contractors. Employers can get sued for back wages and various benefits if they misclassify employees as independent contractors, legal sources have told OPIS.

In a notice posted to the DOL website, the department said that a Jan. 20, 2021, memorandum from the assistant to the president and chief of staff froze the regulation pending

review. The DOL said that on March 4 it delayed the rule's effective date until May 7. Then on March 11, the department said it announced a proposed rule to rescind the independent contractor rule (86 FR 14027).

The final rule, now in jeopardy, would:

--Reaffirm an "economic reality" test to determine if an individual is an independent contractor or is an employee economically dependent on a potential employer for work.

--Explain two "core factors" that would help prove independent contractor status: the nature and degree of control over the work and the worker's opportunity for profit or loss based on initiative and/or investment.

--Identify three more factors that provide more guidance in analyzing worker status: the amount of skill required for the work; the degree of permanence of the working relationship between the worker and the potential employer; and whether the work is part of an integrated unit of production.

--Reporting by Donna Harris,

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New Research Shows Only 48% of Fuel Merchants Meet EMV Deadline

The deadline for shifting the EMV liability on the forecourt passed this weekend and new research indicates many fuel retailers were not prepared.

According to ACI Worldwide, a provider of real-time digital payment software and solutions, shows that as of April 17, less than half (48 percent) of fuel merchants were able to meet the EMV automated fuel dispenser (AFD) compliance mandates.

As of the extended deadline, the liability for fraud now shifts from card issuers to fuel merchants.

ACI surveyed fuel merchants that collectively represent 45,000 gas stations nationwide — including major oil companies, convenience stores and grocers.

The data also showed that only 50 percent of fuel merchants who were not fully implemented expect to be EMV compliant by the end of 2021.

"Although previously protected from fraud losses, merchants will now bear the brunt of fraud overnight," said Debbie Guerra, executive vice president, ACI Worldwide. "While EMV compliance is a major undertaking, and one that requires a significant capital investment, there is no doubt that the pandemic also played a big role in some fuel merchants' inability to meet the April deadline. With overall diminished resources due to the pandemic and slow testing and certification, which is typically done in person, merchants have certainly been challenged."

In addition, the ACI research showed fuel merchants' increased interest in implementing important security and fraud prevention measures such as point-to-point encryption (52 percent) and tokenization (39 percent). In ACI's July 2020 survey, 37 percent were considering point-to-point encryption and 26 percent were considering tokenization.

"Fortunately, for fuel merchants and their customers, the upgrades required for EMV at the dispenser will increase point-to-point encryption technology adoption. The additional bandwidth will allow merchants to secure all of their payments upfront," Guerra said.

Key findings around EMV readiness by the April 17 deadline include:

- 48 percent of major fuel and convenience merchants have fully implemented EMV across all their gas stations.
- 26 percent have more than three quarters of their fuel stations fully upgraded.
- 22 percent currently have under half of their fuel stations fully upgraded.
- 4 percent have between half and three quarters of their stations fully upgraded.

In addition, key findings on expected completion of EMV compliance include:

- Of those that are not fully upgraded, 25 percent of major fuel and convenience merchants expect to be fully compliant by the second quarter of 2021.
- An additional 25 percent of major fuel and convenience merchants expect to be fully compliant by the end of 2021.
- 50 percent are unsure of when they will be fully compliant.
- As for digital payments and additional improvements, 91 percent of fuel merchants plan to implement contactless payments in 2021, an increase compared to 85 percent that were planning to do so in 2020; 78 percent are considering implementing mobile payment options in 2021, an increase compared to 70 percent in 2020; and 48 percent are evaluating how to integrate loyalty initiatives at the fuel dispenser, a drop compared to 67 percent that were considering it in 2020.

What to Do If You Missed the EMV Deadline

Despite a request made earlier this month by several industry groups to again push back the deadline for EMV compliance on the forecourt, the major financial companies decided to push forward with the original deadline, meaning the EMV liability shift has now arrived.

As of this past Saturday, April 17, non-compliant stores are liable for any fraud related to the card portion of a transaction at their location, rather than the card issuers taking on this burden — and this can easily become a significant number depending on the amount of fraud that takes place.

"In some locations, they may not see anything in terms of fraud, but as the year goes on, and especially next year, you will see the fraud hotspots shift," said Paul Kern, executive director of product management at NCR Global, a hardware and software provider based in Atlanta. "Those who are now impacted by fraud in Florida or Texas, for example; if they don't convert, they will get destroyed by the amount of fraud, but then as they become compliant, you will see fraud move to the retailers who were not impacted before."

According to newly released data from ACI Worldwide, a global provider of digital payment software and solutions, less than half of fuel merchants (48 percent) met the EMV automated fuel dispenser (AFD) compliance mandates as of April 17. Among those who are not yet fully compliant, just 50 percent expect to be compliant by the end of 2021. ACI surveyed fuel merchants that collectively represent 45,000 gas stations nationwide, including major oil companies, convenience stores and grocers.

The industry will likely continue to increase compliance numbers as time goes on, but there are still challenges with solutions being not yet available, hardware production being backed up, as well as a backlog of technician appointments to get the equipment installed, said Linda Toth, managing director of Conexxus, an Alexandria, Va.-based nonprofit technology organization dedicated to the development of standards, technologies innovation and advocacy for the c-store and petroleum market.

“We have encouraged merchants to look at which sites could potentially have the most fraud and prioritize those sites,” Toth said. “Not to say something with zero [fraud] today will be zero tomorrow, but we know certain geographical locations are more fraud-prone. Attacking it that way seems to be what a lot of merchants are doing.”

In addition to prioritizing high-fraud or fraud-risk locations, there are a few other options c-store and fuel retailers can consider if they weren’t able to meet the deadline — or chose not to try.

One of those is using a fraud monitoring system through Visa or their payment processor to score each transaction at the pump and send the riskiest transactions inside the store to pay, according to Toth.

“Most retailers, especially in high-fraud areas, are probably already doing zip code checking, but they can take drastic steps and force people to prepay or only accept certain types of transactions outdoors,” Kern added. However, he cautioned that “the cure could be worse than the problem because it could reduce revenue.”

Another option would be to turn off pay at the pump at certain locations, forcing customers to go into the store to pay for their transactions. If a store is branded with a major oil company, they would need to check with them first, Toth noted.

“It’s not ideal, but that is one surefire way to have no fraud at the pump,” she said.

The convenience store industry originally had a deadline of October 2015 to get locations EMV compliant on the forecourt. That date was then moved to October 2017 when it became obvious the deadline would not be met. It was pushed again to October 2020, and then the COVID-19 pandemic hit, which added more delays to the process. As a result, the date moved out by another six months to April 2021.

Credit-Card Companies Band Together to Promote Effective Public Policies

The heads of multiple major payment companies are teaming up to form the Payments Leadership Council (PLC). Members include the CEOs of American Express, Discover Financial Services, FIS, Fiserv, Global Payments, Mastercard and Visa.

Raj Date will serve as founding director. He previously served as deputy director of the Consumer Financial Protection Bureau and held multiple roles at companies including Capital One and Deutsche Bank.

The PLC's goal, according to its launch announcement, is to bring the CEOs together to share their unique insights on the innovations that have enabled leadership in global commerce and economic growth in order to promote effective public policies that are responsive to the current and future challenges facing the U.S. economy.

"As America recovers from the impact of COVID-19, it is more important than ever to have an efficient and effective payments system that works for everyone," council members said in a joint statement. "The Payments Leadership Council recognizes the unique and critical role the payments industry will play in the country’s economic recovery. We will work with policymakers to promote inclusive growth, protect consumers, foster inclusion, cultivate innovation, and support a dynamic ecosystem for payments."

The PLC agenda includes the payment industry's public policy response to multiple issues, including a potential $1.1 billion increase in credit card processing fees that was previously delayed due to the COVID-19 pandemic, reported the San Francisco Business Times.

Sen. Dick Durbin (D-Illinois) and Rep. Peter Welch (D-Vermont) recently wrote to the CEOs of Visa and Mastercard urging them not to enact the scheduled fee increase.

"It has now been publicly reported that Visa and Mastercard are again preparing to significantly raise many of the swipe fee rates you charge for card transactions. It is a mistake," the legislators wrote in their letter. "For the sake of consumers and small businesses, we again urge you: don't do it."

In response to the letter, Mastercard noted that the plans it first announced in 2020 include adjusting some interchange fees for the first time in 10 years as part of a plan made prior to the pandemic and delayed by a year. This includes increases and decreases for all small-ticket transactions and decreases for categories such as car rentals, lodging, daycare and certain restaurants.

"We recognize the challenges merchants are facing and will continue to be thoughtful about the timing of implementation," Mastercard stated.

The planned fee hike for credit cards is expected to have an especially notable impact on e-commerce transactions, as online shopping has jumped during the pandemic. According to payment companies, interchange fees for credit card acceptance help to pay for infrastructure and other costs, San Francisco Business Times reported.

New York Legislation

CBD Regulations — The state informed New York retailers that sell CBD products they must apply for a license at a fee of $300 per year, though it has not yet adopted the

regulations expanding the range of CBD products that retailers can sell under such a license. Retailers will continue to be restricted to an extremely limited CBD inventory until regulations are finalized, likely sometime in May.

Extended Producer Responsibility — The chairs of the New York State Senate and Assembly environmental committees introduced legislation to mandate "extended producer responsibility" (EPR) for packaging made from plastic, cardboard or paper (excluding beverage containers). EPR is an emerging concept designed to relieve counties and cities of cost burdens of recycling.

Producers of certain products would be barred from selling them in New York unless they join a state-approved, privately funded "producer responsibility organization" that diverts their packaging away from municipal recycling streams by creating their own systems for recovery, such as curbside collection, depot drop-offs and retailer take backs. According opponents of the legislation, if enacted, it would impose new cost and logistical burdens on c-store suppliers, driving prices higher, and could further clog the back rooms of small stores with additional plastic packaging materials awaiting eventual pickup.

Biden Administration Mulling Nicotine Cutback in All Cigarettes Sold in U.S.

Big changes could be coming to the cigarette category under President Joe Biden's administration.

According to a report by The Wall Street Journal, the administration is exploring the idea of requiring tobacco companies to lower nicotine to levels that are no longer addictive. The move would affect all cigarettes sold in the United States.

Officials are considering the shift in policy as the administration also faces a deadline to say where it stands on menthol cigarettes. As the news outlet reported, the Food and Drug Administration (FDA) must respond in court by April 29 to a citizens' petition to ban menthols by disclosing whether the agency intends to pursue such a policy.

Administration officials and the FDA didn't respond to WSJ, but people familiar with the possible policy changes said the administration is weighing whether to move forward on a menthol ban or a nicotine reduction in all cigarettes. Either action is likely to face legal challenges and could take several years to implement.

A possible menthol ban has been an ongoing issue at the federal level for a decade.

In a March 2011 report, the FDA's Tobacco Product Scientific Advisory Committee (TPSAC), recommended that removing menthol cigarettes from the market would benefit public health. However, after several tobacco companies challenged the make-up of the TPSAC, and three years after U.S. District Court Judge Richard Leon in Washington, D.C., barred the agency from using the report ordered the FDA to reconstitute the tobacco panel, as Convenience Store News previously reported.

The agency has not made any moves on the issue since that July 2014 ruling.

In a letter submitted to the FDA on Jan. 22, Illinois Attorney General Kwame Raoul and Idaho Attorney General Lawrence Wasden led a coalition of 23 attorneys general arguing that a ban on menthol cigarettes would benefit public health overall, decrease youth smoking and help mitigate the harm menthol cigarettes do to minority populations.

The letter urged the agency to complete a rulemaking to prohibit the products and implement a ban immediately.

ExxonMobil Extends Retail Technology Incentive

ExxonMobil has extended the U.S. Retail Site Technology Incentive Program it launched in August last year until June 30, 2021. The program, originally set to expire March 31, 2021, provides volume-based incentives of up to $2,500 per site to be used for eligible technology upgrades.

As previously reported, the program is available to distributors who signed a new ExxonMobil branded wholesaler agreement, signed the technology incentive terms and conditions document, and met certain technology criteria. The amount of the per-site incentive is based on 2019 card volume in gallons: $1,250 per site for less than 500,000 gal; $1,750 per site for 500,000-1 million gal; or $2,500 per site for more than 1 million gal.

To be eligible for the incentive, sites must:

--Be branded Exxon or Mobil as of July 31, 2020.
--Have the current point-of-sale software version, either
Gilbarco v20.01 or
VeriFone v3.10.40.
--Process indoor NFC transactions.
--Have the latest managed network service provider.
--Enable the ExxonMobil Rewards+ loyalty and mobile app.

--Reporting by Donna Harris
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Teamsters Union Goes after Marathon & Elliott Management in Speedway Deal

The Teamsters union and Marathon Petroleum haven't exactly been getting along splendidly in 2021, when more than 200 union refinery workers locked out a Marathon's refinery in St. Paul, Minnesota.

In a somewhat unprecedented move, union leaders have now asked the Federal Trade Commission to pause its review of the massive $21-billion sale of Speedway stations to 7-Eleven, with criticism also of the activist hedge fund -- Elliott Management-that pushed for the spinoff in the first place.

In a letter sent Wednesday to the FTC Acting Chair Rebecca Slaughter, the union requested that the FTC wait for congressional passage of a bill by Minnesota Senator Amy Klobuchar that would make some significant changes in antitrust rules.

The Klobuchar bill would allow the FTC to stop transactions on the possibility of competitive harm, as

opposed to a firm determination that a deal would create harm. The letter also asks that the agency analyze "all competitive effects from the transaction" and determines those have been "fully considered and remedied."

The union is looking to do "away with unrealistic requirements that the agencies prove competitive effects to a near certainty." The missive obliquely refers to the "selected divestitures" of stores in local markets and suggests that is not enough action to justify an anticompetitive deal. As OPIS has reported, about 300 Speedway or 7-Eleven stations that overlap have been shopped in various parts of the country by Nomura Bank.

The letter from Teamsters General President James P. Hoffa further argues that the proposed sale of Speedway to 7 Eleven "has no efficiencies" and is simply an example of "vertical disintegration that could result in a double mark up and therefore higher prices to consumers." It also cites the "unusually long" (15 year) supply agreement between Marathon and 7-Eleven for some 8 billion gal of fuel annually.

The Teamsters argue that the sale was the result of "18 months of intense pressure on Marathon's management from activist shareholder Elliott Management," noting that the hedge fund would be rewarded with special dividends.

The effort is the first real test of the Biden Administration and its view of antitrust and consolidation. The sale of Speedway was expected to close in the first quarter, despite a second round of inquiry from regulators. It is also not clear whether the bill covering antitrust changes from Sen. Klobuchar has broad-based support in Congress, or whether it is on a fast track for consideration.

--Reporting by Tom Kloza

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Ethanol RINs Closing in on All-Time High; Biodiesel RINs Hit $1.50

Ethanol-related D6 Renewable Identification Number (RIN) credits Friday morning were fast approaching their all-time high from July 2013, trading almost a dime over Thursday's early prices by midday, while biomass-based diesel D4 RINs reached the $1.50 mark.

D6 2021 RINs began the day with trades at $1.39 and reached $1.42 by midday, up 9cts from Thursday's open. A week ago, the credits were assessed more than 25cts under the assessment's all-time high of $1.455 from July 18, 2013.Barring a downward turn this afternoon, the credits stand to finish this week less than a nickel away from that high.

Current-year D6 RINs on Thursday were assessed at $1.365, up 4.5cts to the highest level since July 22, 2013, when the assessment was $1.38.

The OPIS Renewable Volume Obligation (RVO) value -- the implied cost of Renewable Fuel Standard compliance for refiners and importers of gasoline or diesel who do not blend biofuels -- on Thursday reached another all-time high,assessed at 16.54cts/gal, up 0.553ct from midweek.

OPIS heard no morning discussions around D6 2020 RINs, which have been reported traded flat with current-year RINs most of this week. Those credits were assessed Thursday at $1.365, up 4.5cts. D6 2019 RINs added the same amount at $1.3625.

Meanwhile, D4 RINs hit a new milestone at midday with trading reported at $1.50. OPIS heard morning trading begin at $1.45, where things left off on Thursday. The credits gained 5.5cts on Thursday at $1.445, coming in 2cts under their July 2013 "RINsanity" high of $1.465 -- a mark the assessment appears likely to beat by the end of the day.

Current-year D4 RINs hit their all-time high of $1.99 on Sep. 14, 2011. OPIS heard no movement around other D4 vintages by midday Friday.

D4 2020 RINs on Thursday were discussed flat to current-year D4s and were assessed 5.5cts higher at $1.445. D4 2019 RINs finished the day at $1.405, also up 5.5cts.

--Reporting by Aaron Alford

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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 516-371-6201.

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