



Petroleum Transportation & Storage Association

Weekly Update

Regulatory News and Compliance Information for the Petroleum Transportation and Storage Industry

Washington, D.C. Friday, April 22, 2005.

1. U.S. HOUSE PASSES COMPREHENSIVE ENERGY LEGISLATION, SENATE TO ACT NEXT:

For the fifth time in four years, The U.S. House of Representatives approved a comprehensive energy bill this week by a vote of 249-183 that provides billions in tax breaks to oil producers but imposes new regulatory burdens on UST owners. The bill, (H.R. 6) would open the Arctic National Wildlife Refuge up to drilling, ban the use of MTBE by 2014, shield MTBE manufacturers from product liability suits, impose a national ethanol fuel mandate for all gasolines, eliminate the 2% oxygenate requirement for reformulated gasoline and reduce the number of boutique fuels that currently limit fuel fungibility. The Low-Income Energy Assistance Program (LIHEAP) would receive \$5.1 billion per year through 2007 and the National Oil Heat Research Alliance would be reauthorized through 2009. Appropriations from the Leaking Underground Storage Tank (LUST) fund would increase from approximately \$70 million annually to \$555 million per year through 2009. The bill would allow states for the first time to use LUST money for UST enforcement and MTBE clean-up, but prohibits use for financial assistance to tank owners. States would have more power to seek reimbursement from tank owners for MTBE clean-up under the bill. In addition, significant new requirements on UST owners are imposed including; secondary containment for all new tanks and piping, under dispenser spill containment and state inspection of all USTs within 2 years of enactment with re-inspection every 3 years thereafter. The bill would prohibit delivery of fuel to a tank that is not in compliance with state and federal regulations and establish new training standards for on-site UST operators (C-store clerks). The Senate will consider the bill next month. Democrats are planning a filibuster to block the measure. Republicans do not yet have the 60 votes to force a vote.

2. DOT DELAYS PROPOSED RULE ON NEW TRUCK STOPPING DISTANCE STANDARDS:

The U.S. DOT this week has postponed a proposed rule that could require petroleum marketers to retrofit trucks with new braking systems. The rule will impose new stopping distance standards for heavy-duty trucks, including cargo tank and transport vehicles. The proposal is expected to require a 30 percent improvement in stopping distances, which could lead to a retro-fit of existing drum brakes to disc brake systems on trucks, truck tractors and trailers. The new braking standards would require an on-highway truck traveling 60 miles per hour to come to a complete stop within 248.5 feet. The current braking standard for 60 miles per hour is 355 feet. The DOT came up with the 248.5 feet distance after conducting tests on bobtail cargo tanks and tractor/trailer combinations. The choices for improving the stopping distance of trucks include new air disc brakes, electronic braking systems and in some cases, larger diameter drum brakes. DOT officials delayed the proposed rule due to an ongoing study of the compliance costs the new braking standard would impose on truck operators. The DOT has not said when the proposed rule will be ready for publication.

3. TURMOIL AT TSA THREATENS EFFICIENCY OF DRIVER BACKGROUND CHECK PROGRAM:

The ongoing turmoil at the Department of Homeland (DHA) Security's Transportation Security Administration (TSA) could significantly slow processing of driver background checks. Already, states are reporting TSA backlogs in background check processing for new drivers which began on January 31st. Much of the delay is due to organizational chaos that the TSA has experienced since its creation shortly after 9/11. The disorganization was highlighted this week when the TSA announced that David Stone, its third director in three years would be stepping down in June. The news came on the heels of an announcement by DHS that a major reorganization planned for the TSA could strip the agency of most of its authority save the hiring and training of airport security screeners. The continuing disorganization at the agency is not likely to promote speedy processing of driver background checks, the second phase of which (for existing drivers) begins May 31st. The disorganization at the agency also raises places in doubt an expected proposal to require TSA photo ID's for all hazardous material drivers. Many of the TSA trucking security programs are expected to be reorganized under a new DHS agency yet to be created.

4. SENATE COMMITTEE TO MARK-UP HIGHWAY BILL EXTENDING FUEL TAXES:

The Senate Finance Committee this week began marking-up the highway bill which contains several important provisions effecting petroleum marketers. The Highway Reauthorization and Excise Tax Simplification Act of 2005 would extend federal motor fuel taxes at their current rates through 9/30/11, but eliminate by 2008 the annual \$250 per store special occupational tax on retailers of alcoholic beverages. Under the bill, aerial applicators would no longer need a certificate from a farmer to claim a tax exemption for aviation gasoline. In addition, the bill would expand the aviation gasoline tax exemption for aerial applicators to include fuels consumed when flying between farms where chemicals are applied and the airport where the airplane takes off and lands. The bill also extends the transfer of gasoline taxes used in non-business small-engine marine outdoor power equipment from the Highway Trust Fund to an aquatic and sport fishing resource fund through September 2011. Finally, the proposal would establish a Motor Fuel Tax Enforcement Advisory Commission to review gas tax collections and enforcement efforts and make recommendations on their effectiveness.

NEWS BRIEFS:

MTBE liability - A federal court ruled this week that claims filed by municipalities and drinking water systems in 15 states against oil companies for clean-up costs associated with groundwater contamination from MTBE will be allowed to proceed. The ruling by U.S. District Court for the Southern District of New York is significant because it allows collective liability claims against major refiners for MTBE contamination that can not be attributed to a single source. The defendants in the lawsuit, which include ExxonMobil, BP Amoco Corp., Texaco, 7-Eleven Inc., and others, said the cases should be dismissed because the localities are not able to prove which defendant's MTBE-containing gasoline caused the harm. The court rejected this argument and allowed all claims filed in FL, KS, MA, NY, PA, VT, VA, and WV to proceed. Some claims in CT, IL IN, IA, LA, NH and NJ will proceed, while others were dismissed.

Renewable Fuel Mandate - A bipartisan bill was introduced in the House this week that would mandate the production and use of ethanol and biodiesel to at least 8 billion gallons annually by 2012. The Fuels Security Act of 2005 is identical to a bill introduced last month in the Senate. The bill would more than double the production and use of ethanol and biodiesel from the 5.1 billion gallons in the House Energy bill.



