



Petroleum Transportation & Storage Association

Weekly Update

*Regulatory News and Compliance Information for the Petroleum Transportation and Storage Industry
Washington, D.C. Friday, May 13, 2005.*

1. SENATE ENERGY BILL GOES TO MARK-UP WITHOUT CONTROVERSIAL PROVISIONS:

The Senate Energy and Natural Resources Committee released a draft energy bill this week, but with the most controversial issues left for the full Senate and a conference with the House. Senator Pete Domenici (R-NM), chairman of the committee left out those issues from the draft bill that cannot muster the 12-vote majority needed to move the bill to the Senate floor. The two most controversial issues, drilling in the Arctic National Wildlife Refuge and immunity from defective product lawsuits for makers of a gasoline fuel additive, methyl tertiary butyl ether (MTBE), both of which are included in the House passed version of the energy bill are left out of the Senate draft. Legislation permitting drilling in ANWR is moving through the budget process while the MTBE liability waiver will be settled in a joint House-Senate conference committee on energy. Bipartisan opposition is growing in the Senate to the oil industry's insistence for a product liability waiver for MTBE. The industry faces a potential liability of \$29 billion to clean up contaminated water supplies in 29 states. The Senate appears headed on a collision course with House Majority Leader Tom DeLay (R-TX), who vows to oppose an energy bill without a safe-harbor provision for MTBE refiners. The draft also leaves out a renewable fuels provision included in the House bill that would impose a nationwide ethanol mandate. Supporters of the energy bill are concerned the likelihood of a total Senate shutdown over federal judges could create another roadblock for energy legislation. Senate Energy will begin its markup May 17. Republican leaders are aiming to send the bill to the floor in the last two weeks of June, with the hope of passing the bill just before the July 4 recess.

2. HOUSE COMMITTEE CRITICIZES DOT DRIVER BACKGROUND CHECK REQUIREMENTS:

Members of the House Transportation and Infrastructure Subcommittee on Highways offered sharp criticism on the Transportation Security Administration's (TSA) new driver security background check program this week during hearings on the issue. Both Democrats and Republicans on the subcommittee slammed the new regulations, which include fingerprinting of all CDL HAZMAT drivers. Lawmakers expressed anger that implementation of the first phase of the program for new CDL HAZMAT endorsement applicants, has been plagued by processing delays. Many on the subcommittee raised concerns that the delays would not be corrected by the May 31, 2005 deadline after which all current drivers must undergo the background checks and fingerprinting at their next regularly scheduled renewal. Representative Peter DeFazio (D-OR), said the lack of uniform requirements among states for the collection and processing of fingerprints and background data was the causing the backlogs in processing. Federal regulations allow states to conduct the fingerprint and data collection themselves, or contract with a TSA preferred vendor to undertake the task. As a result, states have too few fingerprinting locations, and different methods of transmitting information to the FBI and TSA, causing serious delays and backlog of driver applications. TSA officials told the subcommittee that the program is working well and that new fingerprinting locations will be added to speed up processing. According to the TSA, approximately 400,000 drivers will undergo the security background check and fingerprinting each year. The trucking industry estimates that 20% of those drivers will either fail the security screening or leave the industry due to privacy concerns. The pool of qualified HAZMAT drivers (2.6 million nationwide) is expected to drop to just 2 million as a result of the new requirements.

3. PRESIDENTIAL PANEL ON TAX REFORM SKEPTICAL ABOUT NATIONAL SALES TAX IDEA:

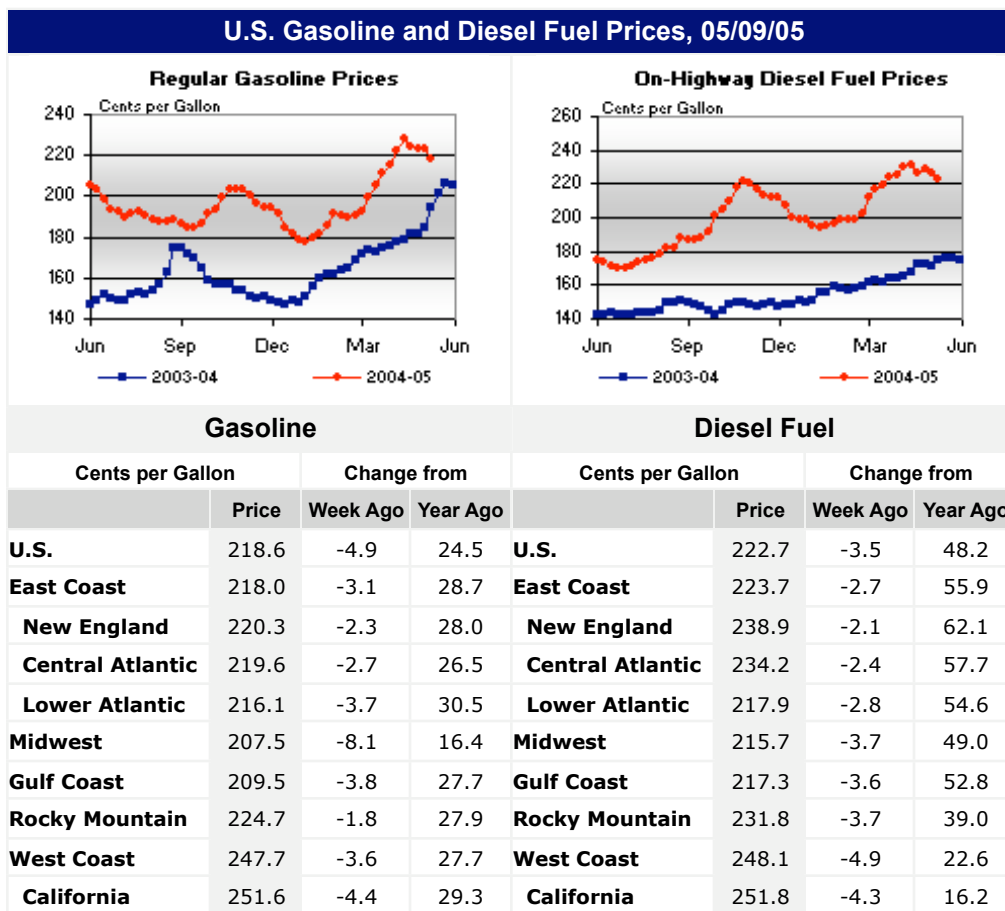
Members of the President's Advisory Panel on Federal Tax Reform expressed skepticism this week concerning proposals to replace the current income tax system with a national retail sales tax. According to the panel, the proposed 23 percent sales tax rate would need to be raised to as much as 30 percent to reach revenue parity with the current federal income tax structure. The panel was convened by President Bush to examine alternatives to the current income tax revenue collection system. While the

notion of a national sales tax is gaining traction in the House, the panel expressed concern that tax evasion would increase under a sales tax system since retail merchants and not a government agency would be collecting the tax. The plan (soon to be introduced in the House) would impose a nationwide retail sales tax and eliminate all withholding taxes, personal and corporate income taxes, including credits and deductions and eliminate tax loopholes and shelters. Supporters of the measure say the sales tax system is the most fair because it treats all taxpayers the equally.

NEWS BRIEFS:

Bogus Gasoline Saving Devices – A U.S. District Court has ordered the International and Research Development Corp of Nevada to stop marketing devices which the company claims can dramatically increase gasoline mileage. The Federal Trade Commission (FTC) brought the lawsuit charging that claims for *FuelMax* and *Super FuelMax* products were deceptive and false. According to the FTC, the magnetic products, marketed largely over the Internet, were claimed to increase gas mileage in cars by 27 percent, reduce emissions by 43 percent and increase horsepower by 10 percent. The defendants asserted that, based on the size of the gas tank, purchasers could save "from \$8 for a typical 15 gallon gas tank" to "up to \$20 per tank" for larger V8 SUVs and trucks. The FTC contended that the magnetic "fuel saver" does not save fuel, does not increase gas mileage, and does not reduce emissions.

NFPA 58 – The propane industry is offering a number changes to the 2007 National Fire Protection Association's (NFPA) *NFPA 58, Standard for Liquefied Petroleum Gases*. Among the changes to the NFPA 58 standard being offered by the National Propane Gas Association include upgrades in the product control requirements for vehicle fuel dispensers and dispensing stations. The proposed changes would require installation of either an internal valve with remote closure hardware and thermal shutoff capability or, a positive shutoff valve in combination with an excess flow valve and emergency shutoff valve with remote closure capability. A remote emergency shutoff device would be located within 100 feet from the liquid transfer point. A requirement that the emergency shutoff activation system be tested annually for proper operation is also being sought by NPGA. The changes are designed to increase safety. The changes would effect only new installations of propane fuel dispensers.





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COMPLIANCE BULLETIN

SECURITY BACKGROUND CHECKS FOR HAZMAT DRIVERS BEGIN 05/31/05

ISSUE: The Transportation Security Administration (TSA) has issued final regulations requiring background checks and fingerprinting for all CDL drivers with hazardous material endorsements (CDL-HM). The background checks will be used to determine if a CDL-HM driver poses a security risk based on criminal convictions, citizenship status and mental deficiencies. Any driver or applicant determined to be a security risk by the TSA is barred from holding a hazardous material endorsement. The rule imposes no new requirements on employers.

BACKGROUND CHECK AND SECURITY RISK ASSESSMENT PROCEDURES: Under the final rule, state licensing authorities (SLA) are required to submit to the FBI the names of all individuals applying for, renewing or transferring a CDL hazardous material endorsement for a background check. The FBI will send the completed background check to the TSA where a security risk assessment is made. The TSA in turn, notifies the SLAs of its final security risk assessment determination. The SLAs must implement the TSA determination.

DISQUALIFYING EVENTS: The following events will trigger a security risk determination and disqualify a driver from holding a hazardous material endorsement:

- **Criminal Offenses –** 1). Conviction within the last 7 years of a serious felony in any jurisdiction, civilian or military court, 2). Release within 5 years from incarceration resulting from conviction of a serious felony and 3). Criminal indictment for any serious felony. Serious felonies include (but not limited to): terrorist attack, murder, assault with intent to commit murder, espionage, sedition, treason, kidnapping, rape or aggravated sexual abuse, unlawful possession, use or sale of an explosive device, gun or other weapon, extortion, robbery, arson, distribution or possession of a controlled substance, fraud or misrepresentation, bribery, smuggling, immigration violations and improper transportation of a hazardous material.
- **Citizenship Status –** Failure to possess valid permanent U.S. residency status or prior renunciation of U.S. citizenship.
- **Mental Status –** Adjudicated a mental defective or committed to a mental institution.

EMPLOYER RESPONSIBILITY: Employers **are not** required to conduct or pay for driver background checks or security assessments under the interim final rule. Employers may continue any voluntary background testing they may already perform as a condition of employment.

DRIVER RESPONSIBILITY: Under the interim final rule, all drivers must provide fingerprints and specific background information as part of the CDL application and renewal process. The driver is responsible for the cost of the fingerprints and background check processing (approx \$100). CDL-HM drivers have a duty to disclose to the SLA disqualifying events within 24 hours of occurrence.

STATE LICENSING AUTHORITY RESPONSIBILITY: SLA's must **revoke** a driver's hazardous material endorsement upon notification from the TSA that the driver is a security risk. The SLA may not issue, renew or transfer a hazardous materials endorsement unless notified by the TSA that the driver **does not** pose a security risk. Also, each SLA must notify drivers in writing that they will be subject to a background check and security assessment as part of any application for renewal of a hazardous material endorsement, at least 60 days prior to the expiration of the endorsement. In addition, SLA's must notify the drivers where to report for fingerprinting.

BACKLOGS IN PROCESSING: The FBI and the TSA must conduct background checks and security risk determinations for 3.5 million existing CDL drivers with hazardous material endorsements. Under the final rule, if the hazardous material endorsement of an existing driver expires before the TSA completes a security assessment, the SLA *may (but is not required to)* extend the expiration date for ninety days. Extensions of hazardous material endorsement expiration dates will prevent driver disqualification due to processing slowdowns or backlogs.

NOTIFICATION OF SECURITY DETERMINATIONS: The TSA notifies both the SLA and the driver if a determination is made that a security threat exists. The TSA will only notify the SLA if the security assessment finds no security risk. Due to privacy concerns, the employer is **never** notified by the TSA or the SLA of security determinations under the interim final rule. Employers should implement CDL monitoring procedures in order to ensure that a driver has not been disqualified.

APPEALS: A driver may appeal the TSA security risk determination within 15 days of notification. The TSA must decide on the appeal within 30 days. During the appeal period, it is left up to individual SLAs to determine whether a driver may continue to operate under the CDL-HM license.

WAIVERS: Upon denial of an appeal, a driver may seek a waiver from the TSA.

COMPLIANCE DATES:

- Beginning 01/31/05 all *new applicants* for a hazardous material endorsement must provide the SLA with a set of fingerprints and additional biographical information as part of the application process.
- Beginning 05/31/05 *existing drivers* with hazardous material endorsements must undergo a background security threat assessment *at their next regularly scheduled renewal date*.

BOTTOM LINE: Expect backlogs in processing. Require drivers to start the background check process at least 60 days prior to expiration. Check driver renewal dates and issue reminders when the sixty-day period begins. Employers are not required to take these steps but should monitor driver's renewal process more closely to avoid procrastination that could lead to temporary disqualification. Urge drivers to press for the 90-day extension should their renewal dates occur before processing is complete.

REMEMBER: EXISTING DRIVERS ARE NOT REQUIRED TO UNDERGO FINGERPRINTING AND BACKGROUND CHECKS UNTIL THEIR FIRST HAZMAT RENEWAL DATE OCCURRING AFTER 05/31/05.

Got Questions? Contact Mark Morgan at mmorganptsa@cox.net or (202) 364-6767