PTSA

Petroleum Transportation & Storage Association

Weekly Update

Regulatory News and Compliance Information for the Petroleum Transportation and Storage Industry
Washington, D.C. Friday, May 27, 2005.

1. CONGRESS FAILS TO ENDORSE DOT NEW DRIVER HOURS OF SERVICE RULE:

Efforts by the U.S. DOT's Federal Motor Carrier Safety Administration (FMCSA) to make its controversial changes to driver's hours of service (HOS) regulations "litigation proof" ended this week as Congress failed to include them in pending highway legislation. The FMCSA failure is important to petroleum marketers because it allows several legal challenges seeking to overturn the HOS revisions to move forward. The HOS revisions effective 01/01/04 reduce the time a driver can be on-duty from 15 hours per shift to 14 hours and increases mandatory rest periods from 8 hours per day to 10 hours. Drivers are also required to have one 36-hour consecutive rest period each week. The revisions significantly reduce the ability of petroleum marketers to schedule drivers to meet changing delivery demands, longer wait times at loading racks and delays due to traffic or inclement weather. The FMCSA attempted to include the HOS revisions in the highway bill, different versions of which have passed both the House and Senate, to insulate it from ongoing litigation. The FMCSA is currently under court order to complete a thorough analysis of the revision's impact on driver health by 9/30/05 and to adjust the HOS accordingly. Lawsuits seeking to overturn the revisions and return to the original, more flexible HOS regulations are expected once the FMCSA completes its court ordered review.

2. DOT CLARIFIES 24-HOUR EMERGENCY RESPONSE TELEPHONE NUMBER REQUIREMENT:

The U.S. DOT last week issued a clarification of its 24-hour emergency response telephone number requirement for shipping papers. The clarification is important to petroleum marketers who transport product and use supplier bills of lading as shipping papers. The U.S. DOT's hazardous material regulations 49 CFR Sec. 172.604 require HAZMAT shippers to include a 24-hour emergency telephone number on all shipping papers for use by first responders in the event of an emergency involving the material. The emergency telephone number must be that of a person who has comprehensive knowledge of emergency response and incident mitigation information about the material being shipped or has *"immediate access"* to another person who possesses the requisite knowledge. Often, a 24-hour number that connects to an emergency response subscription service is included on supplier bills of lading. According to the DOT clarification, the supplier provided number ***may not*** be used by the transporter to comply with the 24-hour telephone number requirement ***unless*** the transporter has a separate contract with the same emergency service. Transporters must either contract separately with an emergency response vendor or provide the service in-house. Petroleum transporters using supplier provided emergency response telephone numbers should check with the service to determine whether they are authorized to use it.

3. SENATE ENERGY BILL CALLS FOR BROAD ETHANOL MANDATE:

The Senate Energy and Natural Resources Committee sent a bipartisan energy bill to the floor this week that adopts a nationwide federal ethanol mandate of 8 billion gallons in 2012. The mandate, which applies to both reformulated and conventional gasoline, would double current ethanol production levels. The ethanol mandate would coincide with the planned phase-out of the oxygenate MTBE. The bill is important because a nationwide ethanol mandate would impose significant distribution challenges on downstream petroleum marketers. Since ethanol evaporates easily, it cannot be transported by pipeline and must be blended at the terminal rack. The American Petroleum Institute (API) called on Congress to stay with the 5 billion gallon ethanol standard that was part of the energy legislation passed by both the House and Senate last year. API said that doubling the amount of ethanol now in the marketplace would overtax refineries, transportation systems and increase prices at the pump. A recent study by the Energy Information Administration concludes an 8 billion gallon ethanol mandate would increase the price of gasoline by 2.4 cents per gallon. The ethanol provision in the bill permits the volume of ethanol to fluctuate in the summer and winter months but sets a 35 percent floor for each season. The 35 percent floor is needed because the ethanol industry has limited storage capacity and needs to maintain U.S. demand as evenly as possible throughout the year. The final Senate version will have to be reconciled with the House-passed energy bill (H.R. 6), which retains a 5 billion gallon target from the last Congress.

4. DOT TO PROPOSE CARGO TANK SECURITY RULE MANDATING EQUIPMENT RETROFIT:

The Pipeline and Hazardous Materials Safety Administration (PHMSA) said this week that it would issue a proposed rule by mid-summer addressing new security equipment requirements for trucks, hauling hazardous materials. The proposed rulemaking is important because it could require petroleum transporters to retrofit cargo tank vehicles with expensive security equipment. The rulemaking will be based on a recent study conducted by the Federal Motor Carrier safety Administration (FMCSA) that tested an array of security equipment designed to thwart terrorist hijacking of hazardous material shipments, including petroleum products. The FMCSA study *Hazmat Safety & Security Field Operational Test*, assessed the costs and benefits of installing various security equipment on cargo tanks such as global positioning systems to track shipments, remote engine shutdown devices and wireless communications. The report concluded that the benefits of added security to HAZMAT shipments outweighed the costs to install the equipment, which could run as high as $4,800 per vehicle. The Homeland Security Act of 2002 provided PHMSA with enhanced authority to regulate hazardous materials transportation security. The proposed rule is expected by July, 1.

NEWS BRIEFS:

Unfair Competition - After a "thorough and exhaustive" 12-month nonpublic investigation, the Federal Trade Commission (FTC) concluded that the decision to close a petroleum refinery in Bakersfield, Ca. does not constitute an unfair method of competition that violates federal anti-trust law. Shell Oil Products US (Shell) announced plans to close the refinery in October 2004. Concern arose that the closing was engineered to reduce capacity in refined petroleum products and result in higher gasoline prices. Critics saw the proposed closure as the first of several that could effect gasoline prices nationwide.

Oil Prices - Federal Reserve Chairman Alan Greenspan said this week the surges in oil prices of the past two years are unlikely to abate on the near horizon, but he predicted less costly alternatives will displace oil long before reserves begin to run dry. Speaking to the Economic Club of New York, Greenspan said higher energy prices in the past few months are causing a modest softening in demand, and noted that rising U.S. crude oil inventories are serving as a buffer to dampen the "price frenzy." "If history is any guide, oil will eventually be overtaken by less-costly alternatives well before conventional oil reserves run out," the chairman said. "Aside from uncertain demand, the resolution of current major geopolitical uncertainties will materially affect oil prices in the years ahead," he noted.

Workplace Fatalities - Workplace homicide costs the American economy over $600 million each year, according to a study published in the June issue of the *American Journal of Industrial Medicine*.
The study, "Societal Cost of Workplace Homicides in the United States, 1992-2001," looked at 7,925 workplace homicides that occurred in the U.S. between 1992 and 2001. Examining age groups, the study found that the largest number of workplace homicides occurred among workers aged 35 to 44, accounting for 2,061 fatalities. The highest age-based rate of workplace homicides--1.3 per 100,000 workers--occurred among workers aged 65 years and older, twice the rate of the 35 to 44 age group. the retail trade industry had the highest number of deaths (3,637), the highest rate (1.7 per 100,000 workers), and the highest total cost ($2.6 billion).

U.S. Gasoline and Diesel Fuel Prices, 05/23/05