WPMA
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weekly update

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LAWSUIT AGAINST CONFUSING SHIPPER SAFETY GUIDANCE

A lawsuit filed this summer in a U.S federal appeals court by shippers and small carriers argued that the Federal Motor Carrier Safety Administration's (FMCSA)Compliance Safety, Accountability (CSA) program is seriously flawed and needs to be removed from public view. Shippers argue that the shipper guidance under the CSA program is confusing and places the burden of liability on them because FMSCA's guidance tells them to rely on CSA safety data but, at the same time, tells shippers to evaluate other safety factors before choosing a carrier. Small carriers argue that the guidance places them at a disadvantage because the confusing regulatory guidance may unfairly make them look unsafe for business and potentially force shippers to not use them.

According to FMCSA, CSA's data is used by the agency when they need to visit a carrier with a compliance problem rather than issuing an overall safety fitness determination (SFD) which is a more serious violation. FMCSA doesn't use the CSA program to issue a SFD to determine whether carriers are safe to hit the roads. FMCSA issues a SFD when determining what course of action the agency will take against the carrier/driver, based on the carrier/driver's score, when compared to predetermined thresholds. Shippers are concerned that, even though carriers might receive a satisfactory or conditional SFD, it doesn't mean the carrier is safe and could leave shippers liable in accident lawsuits.

CSA uses two years' worth of data to analyze carriers and drivers in several areas including inspection violations and crashes. Small carriers believe CSA program's facts are unreliable, and, in many cases, not factual, which unfairly labels them as unfit to haul goods and services. All parties in the lawsuit agree FMSCA needs to return to the drawing board and submit shipper guidance to the federal rulemaking process to establish a fair and transparent record.

E15 LAWSUIT TOSSED BY FEDERAL APPEALS COURT

Earlier this week a federal appeals court dismissed an E15 lawsuit sought by several big name trade associations including American Petroleum Institute (API), the American Fuel & Petrochemical Manufacturers (AFPM), Alliance of Automobile Manufacturers (AAM), the Outdoor Power Equipment Institute and a host of food industry associations. The petitioners claimed that EPA's E15 approval would harm their members. However, Chief Judge David Sentelle wrote, in his opinion, that the groups lacked legal standing because they didn't prove that E15 would cause injury or immediate harm to their operations. AAM said that E15 would damage engines subjecting them to liability while API and AFPM argued that the Renewable Fuels Standard (RFS) would eventually force their member companies to supply E15 to avoid hitting the "ethanol blend wall."

The appeals court dismissed their arguments on the basis that EPA's E15 approval is not a mandate, but simply permits them to offer the fuel. Additionally, food groups have long argued that E15 would require more corn crop to be diverted to ethanol production which would increase the cost of corn, and, ultimately, the cost of food.

ROLL YOUR OWN TOBACCO SHOPS LOSE APPEAL

This week, the Sixth Circuit Court of Appeals upheld the federal Alcohol, Tobacco, Tax and Trade Bureau's (TTB) September 2010 ruling classifying retailers who commercially operate roll-your-own (RYO) tobacco machines as manufacturers. Although Congress passed and the President signed into law legislative language which mirrors TTB's ruling, the appeals court had to address the preliminary injunction against enforcement of the TTB rule which RYO advocates sought and won nearly two years ago. The appeals court ruled, in part, that the RYO law passed by Congress rendered the underlying legal issue supporting the preliminary injunction moot.

Since the law took effect on July 6, 2012, retailers who invest in RYO machines to take advantage of the tax disparity between packaged cigarettes and RYO pipe tobacco, also called "loose tobacco," would no longer be able to pay the cheaper tax on loose tobacco since they would be classified as a "manufacturer" and have to pay applicable taxes. However, according to TTB's website, the agency wasn't enforcing the recent RYO law because the preliminary injunction was still technically in effect. The appeals court said that the lower court never had legal jurisdiction to hear the case and issue the injunction in the first place. This means that, for legal purposes, the injunction was never in force. The appeals court decision eliminates any legal protection that RYO operations had during the injunction period of December 14, 2010 through August 20, 2012.

EPA SEEKS COMMENTS ON RFS ETHANOL WAIVER

This week, the EPA indicated that it will allow a 30 day public comment period on whether to issue a temporary RFS ethanol waiver to address concerns from the governors of North Carolina and Arkansas as well as livestock groups. Pressure has

been mounting on the EPA to temporarily waive the RFS ethanol mandate because ethanol made from corn and the drought has increased corn prices to levels not seen since summer 2008. Livestock producers who depend on corn for feed have been impacted and believe that a waiver will help ease corn prices in the short-term. EPA is seeking comments on whether the RFS would severely hurt the economies of the affected states if kept at current blending levels. The governors of Arkansas and North Carolina aren't the first to call for a RFS waiver. Earlier this month, the governors of Maryland and Delaware, and a bipartisan group of 156 members of Congress, including 26 Senators, also have called for a temporary RFS waiver.

The RFS requires 13.2 billion gallons of ethanol to be blended with conventional gasoline this year. It's unclear whether a waiver will have any effect on corn prices. A Purdue University study issued last week questioned whether an ethanol waiver would have any impact on corn prices. Ethanol proponents argue that the RFS doesn't need to be waived because obligated parties (refiners) have additional blending credits (RINs) from last year to meet the 2012 mandate.

WPMA MEMBER SERVICES

2013 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2013 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 19-21, 2013.

MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2012

August 27-29, 2012 – New Mexico - NMPMA Convention and Trade Show – Embassy Suites – Albuquerque, New Mexico

Petro Pete: "***You can't divorce yourself from reality if you were never married to it in the first place.***"

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