

October 15, 2010

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WP-10-15-10

PMAA INITIATES DRAFT COMMENTS ON EPA DISPENSER LABELING PROPOSAL

On Wednesday, EPA issued its much publicized partial waiver decision approving E15 for 2007 and newer vehicles (Tier 2). The announcement comes after the Department of Energy (DOE) completed its study on E15 for cars and light trucks which determined that E15 will not cause or contribute to violations of EPA's emissions standards. EPA is expected to issue another waiver for 2001 through 2006 vehicles (Tier 1) later in the year. 2000 and older vehicles is not scheduled to be addressed because DOE has not studied the effects E15 would have on older vehicles. Under the Clean Air Act Section 211(f)(1), EPA was not required to address underground storage tanks, piping or dispensers but is reviewing DOE and API related research. Until more regulatory and legal certainty is available, PMAA recommends that marketers consult carefully with environmental and equipment experts before introducing E15 into existing infrastructure.

EPA's dispenser labeling proposed rule might help mitigate (but not eliminate) the potential for E15 misfueling. Under EPA's partial waiver, the proposed rule would prohibit the use of E15 in vehicles for 2006 and older vehicles. Second, the proposed rule would require all dispensers to have an E15 label. Third, the proposed rule would require that product transfer documents (PTDs) specify the ethanol content and RVP level to ensure that retail station purchasers know what fuel they are buying in case a defense is needed for retail stations to absolve them from liability and air quality violations.

Proposed EPA E15 Labeling Specifics

Any petroleum marketer or retailer wishing to sell E15 before EPA finalizes its misfueling rulemaking will need to demonstrate to EPA its ability to meet the conditions under the partial waiver for fuel pump dispenser labeling which clearly indicates an information component; a legal approval component; a technical warning component; and a legal warning component.

Retailers must also participate in an EPA approved survey of compliance conducted by an independent surveyor. EPA listed two options that would satisfy the partial waiver decision:

Option 1. A retailer may survey labels and ethanol content at retail stations wherever gasoline or ethanol blends may be distributed if it is blended as E15. EPA must approve this survey plan before it is conducted by the retailer.

Option 2. A retailer may participate in a nationwide program of sampling and testing similar to the survey requirements of ULSD and RFG programs. A survey designed to satisfy the components listed above and approved by EPA will be deemed sufficient for pump labeling and fuel sample condition. Finally, PTDs must include the ethanol content of the fuel to avoid misfueling. For downstream ethanol blending, EPA states that "information on the maximum ethanol concentration is needed to ensure that fuel shipments are delivered into the appropriate storage tanks and dispensers so that they are labeled correctly." EPA intends to set up a PTD program to ensure that marketers satisfy EPA's requirements.

IMPORTANT: Retailers should use extreme caution because significant liability risk remains if a motorist fuels a vehicle not approved for E15. This could leave the retailer liable for damages that occur due to misfueling. PMAA is concerned that labels may not be sufficient to prevent misfueling. In addition, E15 must have a RVP of less than 9.0 PSI during the summer months which could leave marketers in violation of air quality standards. Many problems with E15 are not resolved. Therefore, PMAA urges its members to consult with their local fire marshal, underground storage tank insurance policies, and state UST fund programs.

In the meantime, PMAA will comment on EPA's E15 partial waiver decision which will be vetted through PMAA's Alternative Fuels Task Force and PMAA's Motor Fuels Committee.

MINNESOTA BANK CHALLENGES SWIPE FEE REFORM IN COURT

TCF National Bank, based in Minnesota, filed a lawsuit Tuesday challenging the constitutionality of debit card regulations in the Durbin amendment to the Wall Street Reform law. The bank argued that the requirement that fees be "reasonable and proportional" to the cost of the transaction violates the Takings clause in the Fifth Amendment and that the law only applies to banks with at least \$10 billion in assets violates the Equal Protection clause of the 14th Amendment.

In his response to the lawsuit, Senator Richard Durbin (D-IL) said his amendment passed with broad bipartisan support in Congress and that he is confident the courts will find his provisions constitutional.

In its press release Tuesday, MPC said there is no legal basis for TCF's lawsuit. TCF Chairman and CEO William Cooper made clear in their announcement that TCF would continue to make money on consumer accounts whether or not the Durbin language was implemented.

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