RFS REFORM: Ethanol Mandate

BACKGROUND

In May 2016 the EPA issued a proposed rulemaking that would increase 2017 volumetric blending mandates of ethanol and biodiesel under the Renewable Fuel Standard (RFS). The RFS is important to petroleum marketers because it ultimately determines whether E15 gasoline is required to meet annual refiner blending mandates. The proposed rule would require refiners to blend 18.8 billion gallons of biofuel into the U.S. gasoline and diesel supply in 2017, including 14.8 billion gallons of conventional corn-based ethanol. The proposed 2017 total renewable fuels volumes are far below the 24 billion gallon target that lawmakers established in a 2007 statute creating the RFS program, however, the proposed mandates would be higher than the 18.11 billion gallons required for 2016.

This is troubling because the existing RFS ethanol blending mandates have already pushed E10, a blend of 10 percent ethanol and 90 percent gasoline, into virtually every gasoline market in the country and fuel consumption predictions for 2017 vary between increasing or decreasing numbers. Any significant increase in the ethanol blending standard will force refiners to move to E15 blends unless gasoline demand rises to offset new blending mandates.

PMAA OPPOSES E15 UNTIL ALL LEGAL UST COMPATIBILITY ISSUES ARE SETTLED

Currently, gasoline retail infrastructure is certified by Underwriters Laboratories (UL) to dispense and store up to only 10 percent ethanol. The inability to recertify existing equipment is a major impediment to dispensing and storage of E15 because federal, state, and local laws and regulations, national and international fire codes, as well as all commercial insurance policies, require the use of UL certified storage and dispensing equipment. Dispensing ethanol blends higher than 10 percent with non-certified equipment exposes retailers to legal liability for non-compliance with state fire codes and will subject them to significant civil penalties and possible closures. Moreover, E10 plus blends may lead to a significant increase in equipment failure. As a result, releases from UST systems may increase exponentially.

Retailers are not the only ones worried about compatibility of existing equipment with E10 plus blends. According to the Larry Gregory Consulting LLC March 2012 report, A Comprehensive Analysis of Current Research on E15 Dispensing Component Compatibility, “There may be increased risk from using existing dispensers; OSHA requires that dispensing systems be UL listed. Without this listing, retailers may expose themselves to lawsuits for negligence and invalidate important business agreements, such as tank insurance policies, state tank fund policies and business loan agreements.”

Meanwhile, the National Renewable Energy Laboratory and UL tested the compatibility of new and used service station equipment. They found 70 percent of equipment currently in use as well as 40 percent of new equipment failed E15 compatibility tests. A brand new location built today would only be compatible if the equipment installed was specifically designed for E10 plus blends.

The Department of Energy (DOE) also has concerns with incompatible UST infrastructure. In a September 2013 report entitled, Handbook for Handling, Storing and Dispensing E85 and Other Ethanol-Gasoline Blends, the DOE notes that it is important for a service station to first determine what type of UST system it has before dispensing E10 plus gasoline.


June 2016
blends. Unfortunately, nearly all retailers are unable to identify the type of adhesives, gaskets and connectors used in their UST systems in order to make a reliable determination of higher ethanol level compatibility.

Another report by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), states that compatibility of existing UST facilities is one of the biggest challenges and concerns with biofuel blend storage – “Many UST inspectors have seen the impact ethanol blended fuels starting with E10 can have on the corrosion of equipment with STP sumps, and an increased prevalence of leaks from equipment inside dispenser cabinets. Gaskets, adhesives, glues, and sealants (including the standard ‘pipe dope’ commonly used on older systems) have not always demonstrated compatibility even with E10 fuels. Compatibility issues have also been observed in some of the early generation flexible piping systems manufactured in the early to mid-1990s.”

**RETRO-FIT COSTS FOR COMPATIBLE EQUIPMENT**

The cost to small business petroleum retailers for UST system retrofit would be enormous. We estimate that the average cost to retrofit a retail gasoline station to sell E10 plus blends to be $200,000 per site. Replacement of piping alone would cost a minimum $100,000. Such compliance costs would be staggering for small business retailers and would undoubtedly force many, particularly in those in rural areas, to close down.

**AUTO MANUFACTURERS AND E15 MISFUELING**

Auto manufacturers extend warranties on existing vehicle fleets up to 10 percent ethanol. Most have not been willing to amend their warranties to use blends above 10 percent because tests have shown E15 can damage engines, fuel pumps, emission systems and other components. The auto manufacturers’ position on compatibility did not change after EPA approved E15 for 2001 and newer vehicles. We are also concerned that if an owner of a pre-2001 vehicle fills up with E15 gasoline (in spite of appropriate warning labels on the pump), that the retailer could be held liable for the resulting vehicle damage. The EPA’s remedy for misfueling is to require labels on dispensers warning consumers not to use E15 in non-compatible vehicles. Every retailer knows that this will not prevent misfueling. Studies show that consumers generally do not read dispenser labels and impulsively reach for the nozzle dispensing the product with the lowest price. Even a penny per gallon difference in price will drive consumer choice of fuel. Retailers should not be held liable for motorists who fail to read the labels on dispensers.

**DEMAND FOR HIGHER ETHANOL BLENDS NOT MEETING EXPECTATIONS**

It is unlikely E85 would satisfy RFS corn-based ethanol blending requirements. E85 is still considered a niche market and many of our member companies have yet to offer E85 since there are not enough E85 compatible vehicles on the road to make even a modest return on investment. In some cases, FFV motorists might not even know that their vehicle can run on E85. Furthermore, in order to be at a competitive price, E85 must be priced at least 30 percent lower than conventional gasoline for motorists to receive similar energy content since ethanol has a lower BTU energy content than conventional gasoline.

In recent years, the ethanol industry has offered a few select retailers lucrative deals to install compatible UST system equipment to facilitate the sale of higher ethanol blends. The objective is to have a few retailers offer higher ethanol blends which would entice more retailers to sell similar blends to remain competitive in the marketplace. The problem for retailers is there is not enough money to go around for all retailers to upgrade their UST equipment. Ethanol proponents also believe lucrative RIN values will lure retailers into compatible infrastructure investments. Unfortunately, small retailers do not have the luxury to participate in the RINs market and for the most part must buy pre-blended ethanol fuel at the rack.

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3 Source: *Handbook for Handling, Storing and Dispensing E85 and Other Ethanol-Gasoline Blends*  

4 Source: *Compatibility of UST Systems with Biofuels*  

June 2016
Meaningful growth in E85 will not happen without significant government subsidies provided to retailers to upgrade underground and aboveground infrastructure. The needed subsidies will be in the billions of dollars and we do not believe those subsidies are politically viable.

“THE ASK”
PMAA supports legislation introduced by Reps. Bill Flores (R-TX), Peter Welch (D-VT), Bob Goodlatte (R-VA) and Jim Costa (D-CA) known as “The Food and Fuel Consumer Protection Act,” (H.R. 5180) which directs the EPA to consider current market realities and cap the maximum volume of ethanol blended into the nation’s fuel supply at 9.7 percent of projected gasoline demand as determined by the Energy Information Administration (EIA). It also requires EPA to meet its statutory deadlines in setting annual RFS volumes. If the EPA fails to meet a deadline, the previous RFS volumes under the blend wall would apply.

PMAA also urges lawmakers to oppose legislation (H.R. 1736 and S. 1239) that would amend the Clean Air Act to extend the 1 psi waiver to gasoline blends higher than E10 during the summer ozone season. Approving this legislation would expedite the use of E15 without addressing the infrastructure and liability issues that are associated with its use.

Finally, PMAA supports the EPA biodiesel proposal of 2.1 billion for 2018.

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