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(<https://secure.commentsworks.com/ftc-biodiesel>)

Notice of Proposed Rulemaking Biodiesel Labeling; Matter No. R811005

The National Biodiesel Board (NBB) appreciates the opportunity to offer comments on the Notice of Proposed Rulemaking on ***“Biodiesel Labeling” (Matter No. R811005)***.

Overall, we agree with the FTC’s determination that biodiesel blends require unique labeling and compliment you on preparing a timely rule for public consideration.

It is important to note that ‘biomass-based diesel’ is not a ‘type’ of fuel, and it should therefore not have its own label. Biomass-based diesel is a broad definition contained within the Energy Independence and Security Act of 2007 (EISA). By definition, “it means a renewable fuel that is biodiesel as defined in section 312(f) of the Energy Policy Act of 1992 ... and that has lifecycle greenhouse gas emissions as determined by the Administrator ... that are at least 50 percent less than the baseline lifecycle greenhouse gas emissions. Notwithstanding the preceding sentence, renewable fuel derived from co-processing biomass with a petroleum feedstock shall be advanced biofuel if it meets the requirements of subparagraph (B), but is not biomass-based diesel.”

Biomass-based diesel is a “renewable class” of fuels that can be used in the “diesel pool,” and many “types” of fuels can qualify for the biomass-based diesel pool.

Fuel labels traditionally pertain to “types of fuel.” Types of fuels include, but are not limited to the following: gasoline, diesel, ethanol, biodiesel, renewable diesel, and biobutanol.

Therefore, we request that a separate designation be required for a “biodiesel blend.” We urge you to create a system that allows each type of fuel within the biomass-based diesel pool to have its own label.

Today, there are a number of distinct and unique products and classifications of fuels in the biomass-based diesel class, for example:

- Biodiesel, which means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements of the Environmental Protection Agency, and the requirements of ASTM standard D 6751;

- Renewable Diesel;
- E-Diesel;
- Green Diesel;
- Emulsified Diesel; and
- Many others/

Each fuel is different and has its own definition. All of the fuels listed are created by using different processes and different types of feedstocks including, but not limited to: pyrolysis oils (that have higher aromatic content and therefore higher toxicity than petrodiesel), turkey offals, vegetable oil, animal fats, restaurant grease and many others.

We urge you to create a label that allows for the identity of the fuel type, in a way that will provide information to the consumer.

NBB Background

NBB is the national trade association representing the biodiesel industry as the coordinating body for research and development in the United States. It was founded in 1992 by state soybean commodity groups who were funding biodiesel research and development programs. Since that time, the NBB has evolved into a comprehensive industry trade association which interacts with a broad range of cooperators, including industry, government and academia. NBB's membership is comprised of state, national and international feedstock and feedstock processor organizations, biodiesel suppliers, fuel marketers and distributors and technology providers.

What Costs or Burdens Do The Proposed Requirements Impose?

While the addition of specific biodiesel labels on pumps will impose minor additional costs for biodiesel retailers, we believe that this expense is necessary to ensure that consumers are fully aware of the fuel content they are buying. This is ultimately in the best interests of fuel retailers.

What Modifications Should Be Made to Increase Benefits to Consumers?

As stated above, NBB agrees with many of the provisions included in this proposed rule. However, we do not agree the intention of the statute is met by including biomass-based diesel blends and biodiesel blends on the same label. A single label will cause confusion for consumers, which contradicts the desired result for instituting the label. The words biodiesel or biodiesel blends should never be included on the same label as any other product, unless that product is actually contained in the fuel mixture.

The American Society of Testing and Materials (ASTM) is the international body for fuel specifications and it has approved a standard for pure biodiesel when used in blends at 20% by volume (B20) or lower: *ASTM-D6751 Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels*. This is a consensus standard developed in cooperation with vehicle, engine, and fuel injection equipment companies; petrodiesel and biodiesel producers and distributors; and state and federal regulators and third parties through the ASTM standard development process. Some engine companies have already specified that the biodiesel must meet ASTM D-6751 as a condition of meeting the warranty requirement (please see attached document, *Automakers and Engine Manufacturers' Positions of Support for Biodiesel Blends*).

ASTM D 6751 has been accepted as the legal definition for biodiesel by the US EPA for fuel and fuel additive registration, by the US Department of Energy, by the Engine Manufacturers Association, and by the many biodiesel and petroleum diesel companies who are members of ASTM.

“BXX” is the currently approved designation for biodiesel and should be reserved for biodiesel blends. It describes a biodiesel blend and it should not be used to label “biomass-based diesel.” “BXX” has already been designated by ASTM for exclusive use with biodiesel. Biomass-based diesel is not a fuel type, will never be approved as a fuel by EPA, nor will it ever receive an ASTM specification.

To change the designation now would cause confusion. Additionally, allowing biomass based diesel to be labeled as BXX could have a serious impact on engine performance, warranties, and consumer acceptance. To date, engine companies have not researched or approved other ‘types’ of biomass-based diesels for use in engines, therefore we should not create a label that allows for usage in the marketplace.

Labels are important to consumers. When purchasing biodiesel, consumers expect certain beneficial characteristics when they buy a ‘BXX’ blend, including reduced emissions of particulate matter, carbon monoxide and un-burned hydrocarbons, and increased lubricity and cetane number.

For these very practical reasons, the designation ‘BXX’ should be reserved for biodiesel, and biomass-based diesel should never have a label. A program should be created that allows other ‘types’ of fuels to be categorized with another letter. For example, “renewable diesel” is a ‘type’ of fuel; it could be labeled as RXX, where the “R” would stand for the word renewable.

In addition, this modification would assist federal, state and local fuel quality initiatives conducted by Weights and Measures officials tasked with enforcing ASTM quality specifications. ASTM has not yet determined whether any ‘types’ of biomass based diesel fuels can be considered ‘already covered’ by the existing diesel fuel specification (ASTM D975). In some cases, this determination has been made with biodiesel. All biodiesel must meet D6751 prior to blending and ASTM is in the process of approving official blended fuel specs for biodiesel blends up to 20% biodiesel. Blends up to B5 will fall under the conventional petrodiesel specifications (D975 for on/off road fuel, D396 for heating oil) and B6 to B20 blends will have its own unique specification number as different parameters are needed with those blends to ensure they are ‘fit for purpose’.

If the label does not differentiate between blends containing biodiesel, and those containing other biomass based diesel fuel, how will an enforcement agency know whether to apply the biodiesel blended specifications or some other biomass based diesel specification? For example, ASTM D6751 contains specification parameters specific to biodiesel that control very minor amounts of contaminants in biodiesel that are not controlled within ASTM D975. By comparison, one can blend 5% raw vegetable oil into a D975 compliant fuel and that blend will still meet all the parameters of Table 1 of ASTM D975—even though it is well known that 5% raw vegetable oil will harm diesel engines over time. There are simply no parameters in D975 that control for minor compounds, contained within ‘types’ of fuels, which can be extremely important from a performance perspective (see references from EMA and NREL).

We do not believe that having a separate designation for biodiesel and biomass-based diesel would impose additional expenses on consumers. However, the benefits are important because there would be no confusion among consumers about the quality and type of fuel they are purchasing.

What Modifications Should Be Made to Decrease Their Burdens on Businesses?

At least one state association (Illinois) has already spent hundreds of thousands of dollars developing logos, billboards, truck wraps, and other infrastructure in anticipation of that state's labeling requirements, which go into effect this summer. We urge you to use a similar label at the Federal level, to encourage consistency in the marketplace. If the federal label is substantially different from the label that is going into effect in Illinois, the largest biodiesel market, then unnecessary expense will be incurred by the private sector. If the federal government requires a new purple label, as described in this proposal, rather than use the one already designed then it will result in companies having to spend additional monies to reconfigure the labels.

Therefore, we would propose that the labeling requirements be more general when referring to a specific color that would allow for accommodation of the new Illinois State label. For example, the rules could require a blue or green base with black letters. This would provide companies with more flexibility, as well as allow them to add state branding icons (attached is an example of a label already developed by Illinois which has been approved by Weights and Measures).

Should the Rule Allow a Non-Specific Percentage Designation for Blends Over Five and Under Twenty Percent?

NBB agrees biodiesel blends containing up to and including 20% of biodiesel do not necessitate a specific percentage designation on the label. This is confirmed by the ASTM and NCWM deliberations on biodiesel standards that have transpired thus far. As mentioned earlier, ASTM is in the process of formally approving finished blended fuel standards for biodiesel blends of 20% and lower. While the traditional means of insuring a B20 and lower blend is 'fit for purpose' (i.e. biodiesel meets D6751, petrodiesel meets D975, and blending up to 20% is allowed) has been highly successful. Regulators, engine interests, and fuel procurement agencies wanted a set of separate properties for the blended fuels that could be measured and controlled in case the identity of the parent fuels is either no longer available or very difficult to determine in our fungible US fuel system.

With that in mind, ASTM sets specifications based on performance in the diesel engine—not on the exact proportions of the various components which make up the fuel. This allows for maximum flexibility—and thus lowest costs—to make a fuel that meets the performance needs of the engines and its users. Within ASTM, the specifications are being set for B6 to B20 (B5.50 to B20.49 with rounding) so that as the fuel is 'fit for purpose' for diesel engine regardless of whether the fuel contains 6% or 20% biodiesel. If the blend is made with D6751 grade biodiesel, and meets the proposed ASTM B6 to B20 specification, then the blend will work in a diesel engine as intended regardless of the exact percent.

We would request that the label include the following language: "Contains 6% - 20% Biodiesel." It is our understanding that the intent of this label is to provide the consumer with information as it relates to engine performance. Blending levels between 6% and 20% perform at the same level and therefore this range should be clearly stated on the label. Additionally, most major engine companies have stated formally that the use of blends up to B20 will not void their parts and workmanship warranties. This includes blends up to and including 20% biodiesel. Biodiesel that meets the ASTM D6751 specification has been used in over 45 million miles of successful, problem-free, real-world operation in a wide variety of engines, climates and applications. It has proven to be a practical fuel that can be used in any diesel engine with few precautions or changes compared to the use of petrodiesel.

Should the Rule Require a Specific Designation for Biodiesel Blends Over Twenty Percent?

NBB again agrees with language in this proposed rule that biodiesel blends over 20% should have a specific percentage designation. At the higher blends, performance varies based on climate, raw materials, and equipment, which means consumers need to be more aware of the specific blend level they are purchasing.

Further, the impact on equipment of higher blends has not been thoroughly tested and there is a higher likelihood of known problems or issues with high blends that are not present or are of lesser importance when using blends of B20 or lower. Blends higher than 20% can not be considered a direct replacement for petroleum diesel fuel and may require significant additional precautions, handling and maintenance considerations as well as potential fuel system and engine modification.

What Percentage of Biodiesel Sold in the U.S. Is Under Five Percent Biodiesel?

Unfortunately we do not know what percentage of biodiesel sold in the U.S. is B20, B5, or other levels. There is no current method of tracking that data.

Is Purple an Appropriate Label Color?

As mentioned above, we believe that label color should be more neutral – a green or blue base.

Would the Label Cause Confusion?

If the label is reconfigured in a manner consistent with NBB recommendations for biodiesel and other ‘types’ of biomass-based diesel, then we do not believe that the proposed label will result in consumer confusion.

Conclusion

Again, we appreciate this opportunity to comment on this proposed rule. While we agree with most of the provisions, ***we need to emphasize our firm belief that other ‘types’ biomass-based diesel fuels need to be designated separately from biodiesel to avoid confusion among consumers, fuel distributors and fuel officials testing the product.***

Sincerely,

Joe Jobe, Chief Executive Officer
National Biodiesel Board

Attachments