



Tennessee Department of Agriculture

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Ken Givens
Commissioner

Phil Bredesen
Governor

May 21, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue
N.W., Washington, D.C. 20580

Re: Fuel Rating Rule Review, R811005

Dear Sir/Madam:

This letter is to provide comments on the Federal Trade Commission's (FTC) Fuel Rating Rule Review, R811005.

The Tennessee Department of Agriculture (TDA), Division of Regulatory Services, is responsible enforcement of the Kerosene and Motor Fuels Quality Inspection Act of 1989, TCA 47-18-1304 et seq. The purpose for this law is to ensure that all engine fuels conveyed for consumption in the State of Tennessee meet all applicable quality standards and methods of sale.

As a part of our responsibility for enforcing the Kerosene and Motor Fuel Quality Inspection Act, the Commissioner of Agriculture is granted rulemaking authority. Tennessee rules pursuant to this act recognize the FTC Automotive Fuel Rating, Certification, and Posting Rule (the Rule). Therefore, we have a vested interest in any proposed changes to the Rule.

TDA supports the Commission's decision to retain the Rule. However, we have reviewed the proposed rule changes and would like the Federal Trade Commission to consider the following comments:

1. TDA supports the FTC's intent to adopt Automotive Fuel Labeling requirements for Mid-Level Ethanol Blends; however, we believe that the FTC must consider alternatives to certain sections being presented.
 - a. We agree that when a fuel contains a percentage level of denatured ethanol which has not been deemed appropriate for conventional vehicles, the product's rating should be based on the percentage of ethanol. We urge the Commission to be aware that fuels containing up to 15% by volume denatured ethanol may be

approved for use in conventional vehicles in the not too distant future. This should be considered in the final rule, and we believe that an E15 fuel, if approved for conventional vehicles, should be rated consistent with gasoline, i.e., the octane rating of the fuel

The Commission noted in the Supplementary Information section of the notice of proposed rulemaking that the rule amendments being proposed will aid consumers by identifying gasoline containing ethanol. The National Conference on Weights and Measures Uniform Engine Fuel, Petroleum Products and Automotive Lubricants Regulation includes ethanol labeling requirements for gasoline intended for conventional vehicles. The Uniform Regulation is either directly adopted or used as a model for rulemaking by the majority of states. Therefore, in the event that E15 is approved for use in conventional vehicles, labeling regulations adopted by states will ensure that consumers are aware that the fuel contains ethanol.

- b. Definition for Mid-Level Ethanol blends - The Commission should develop a definition with the consideration that if E15 is approved for use in conventional vehicles, the proposed definition would not be appropriate. In order to eliminate the potential need to update this rule to recognize E15 as a fuel for conventional vehicles, the definition should reflect Mid-Level Ethanol Blends as, “a gasoline-ethanol blend containing a greater volume percent denatured ethanol than allowed for use in conventional vehicles but less than 70 percent denatured ethanol”.
- c. Labeling - We do not support the proposal to disclose the blend’s concentration in a range between 10 and 70 percent denatured ethanol. We feel that this does not provide the information needed for consumers to compare available fuel choices and make informed purchase decisions. Flexible-fuel vehicles will vary in their fuel economy and may vary in vehicle performance based on the volume percent denatured ethanol. For these reasons, the Rule should not provide this wide range labeling flexibility. We suggest that as an alternative, the rule provide for labeling with whole number factors of 10, with a ± 5 percent allowance. This provides reasonable flexibility, and also provides sufficient information for the consumer to make an informed choice. We understand that there would be a blend concentration where a fuel could crossover between units of 10, but accept this fact as a part of the compromise for reasonable labeling flexibility. We feel that this proposal will not impose a significant burden on the marketer.

We also disagree with the proposed labeling language “MAY HARM SOME VEHICLES”. We feel that this label will be misinterpreted by owners of flexible fuel vehicles. We suggest that the label read “FOR FLEXIBLE FUEL VEHICLES ONLY”. We agree with the wording “CHECK OWNERS MANUAL”. The suggestions are applicable to both E85 and Mid-Level Ethanol blends.

2. Miscellaneous Comments – (1) We support updating all references to ASTM standards to the most recent edition available from ASTM International. We further suggest that the Commission consider wording that would automatically adopt the most recent version of the applicable ASTM International (ASTM) standard, rather than adopting a specific version. The FTC has the prerogative to participate in the ASTM process and have direct input into any future changes. The FTC must recognize that users of these standards refer to the most recent and technically correct standards. (2) We urge the FTC to consider the percentage of denatured fuel ethanol when determining compliance with the rule. The percentage of pure ethanol varies with production lots; therefore, marketers must blend based upon denatured fuel ethanol content. The recognition of denatured fuel ethanol should be made throughout the Rule.

Thank you for consideration of these comments.

Sincerely,


Ken Givens

cc: Randy Jennings, Executive Assistant