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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: Automotive Fuel Ratings, Certification and Posting

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INTRODUCTION:

The Petroleum Marketers Association of America is grateful for the opportunity to present the following comments on the Federal Trade Commission's regulatory review of the automotive fuel rating regulations.

The Petroleum Marketers Association of America (PMAA) is a federation of 45 state and regional trade associations representing approximately 8,000 independent *small business* petroleum marketers nationwide. A majority of PMAA members own or operate 95% of the retail petroleum refueling sites nationwide.

COMMENTS:

The Fuel Rating Rule establishes standard procedures for determining, certifying, and posting, by means of a dispenser label, the automotive fuel rating of liquid automotive fuels and liquid alternative fuels in accordance with the Petroleum Marketing Practices Act (``PMPA") (15 U.S.C. 2821 et seq.) and the Energy Independence and Security Act of 2007 (42 U.S.C. 17021). (73 FR 40154 (July 11, 2008)).

The Federal Trade Commission (FTC) is proposing amendments to the fuel rating regulations to accommodate the probable approval by the U.S. EPA of Growth Energy's waiver petition to permit the use of E-15 in conventional fueled vehicles.

First PMAA agrees with the Commission's proposed changes to 16 CFR 306.5(b) requiring entities to rate mid-level ethanol blends by the percentage of ethanol contained in the fuel, not by the percentage of the principal component of the fuel. Consumers need to know the precise ethanol percentage in the blend in order to determine if the fuel is compatible with the equipment for which it will be used. This is particularly true now, with the increasing use of retail ethanol blending pumps that give consumers greater blend choice and the current prohibition under the Clean Air Act that prevents using blends greater than E-10 in conventional fueled vehicles. Without clear notice of ethanol content, misfueling would increase which could void automobile warranties, damage catalytic converters, increase tailpipe emissions and expose petroleum retailers to increased risk of liability. Moreover, consumer notice of ethanol content will be vitally important should the EPA approves Growth Energy's waiver petition and allows E-15 for use in conventional fueled vehicles. The EPA is expected to decide on the E-15 waiver petition by August 2010.

The Commission should be aware that the EPA is not likely to approve a blanket waiver that would allow use of E-15 blends in *all c*onventional fueled vehicles. Instead, the agency has made it clear in recent months that it favors a two tier approach that would limit E-15 to 2001 model year and newer vehicles and require E-10 in vehicles manufactured before 2001. This course of action is reflected in ongoing E-15 compatibility studies by both the EPA and automobile manufacturers that are thus far limited to model year 2001 and newer vehicles.

PMAA believes that the FTC ethanol dispenser labels must reflect this two tier approach should it be approved. PMAA urges the FTC to adopt dispenser label language that provides clear notification to consumers regarding the appropriate ethanol blend that must be used in conventional fueled vehicles based on their date of manufacture as set forth in the EPA's upcoming waiver decision. The FTC's proposal to include dispenser label language for E-10 plus blends that includes "MAY HARM SOME VEHICLES" "CHECK OWNER'S MANUAL" is not sufficient. It will confuse consumers and raise an unwarranted suspicion that the E-15 blend could harm their particular vehicle regardless of the date of manufacture. In turn, consumers will be more apt to blame any vehicle performance problem with the ethanol blend in the fuel, whether justified or not. When this happens retail petroleum marketers will ultimately bear the blame. Without stronger notification language based on the date of manufacture of the vehicle, the incidence of consumer misfueling will rise dramatically, leading to potential engine and emission system damage that in turn would expose retail petroleum marketers to an unacceptable risk of liability from consumer lawsuits and wider class action suits.

Consequently, PMAA urges the FTC to delay the final rulemaking until after the EPA waiver decision is made in August 2010 so it is able to craft dispenser label language that provides sufficient notice for consumers and reduce legal liability for retail petroleum marketers.

Second, PMAA strongly opposes the Commission's decision not to amend the rule for automotive fuel rating to require rating of biodiesel fuels at concentrations of 5% or less. Currently, distributors and retailers are receiving biodiesel blends from suppliers in which they have no idea of the actual biodiesel content. Therefore, it is impossible for these downstream parties to accurately notify consumers on the biodiesel content of the fuel they are offering for sale other than providing a possible blend range. This situation is even more complicated by the fact that states are increasingly imposing biodiesel blending mandates of 2% or more. Downstream parties subject to the mandate may not be given accurate information on the biodiesel content of the fuel they receive from upstream producers and distributors. In many cases, they must "guestimate" existing biodiesel blend content when blending downstream to meet a state mandate or filling a customer order. As a result of this uncertainty, consumers are not accurately notified of the biodiesel content of the product they are purchasing or whether the blend specification they ordered from a supplier is met. Consumers need to know accurate biodiesel fuel rating to obtain optimal performance for their equipment, especially in cold weather climates where biodiesel at concentrations above 2% gel and clog fuel systems.

The fundamental argument for fuel rating notifications for biodiesel blends on product transfer documents and retail dispensers is as persuasive as the justification for such notifications for ethanol blends. As previous comments to the Commission show, every party along the petroleum distribution chain supports fuel rating for biodiesel blends of 5% or less (though there is a difference of opinion between these stakeholders with regard to biomass based biodiesel blends). The Commission states in the NPRM that "amending the rule as proposed would require producers and distributors to rate blends of 5% or less biodiesel regardless of whether those fuels would eventually require a label after blending. Thus the proposed amendment might relieve a burden on some retailers while increasing the burden on many producers and distributors". What the Commission fails to recognize in its analysis is that 97% of all retail gasoline stations are owned by petroleum marketers who are classified as small businesses under the U.S. Small Business Administration's size standards. Refiners, producers and distributors above the terminal rack are large businesses. All retailers are burdened by the failure to require accurate fuel rating notifications on product transfer documents and dispenser labels. It would be entirely appropriate to shift this compliance burden to the large businesses who are not only more able to bear the burden but also in a better position to track and notify the amount of biodiesel they are adding to product upstream of the terminal rack.

PMAA urges the FTC to reconsider its decision on fuel rating for biodiesel blends less than 5%. Equipment operability varies with the percentage of biodiesel in the blend. Subsequently, consumers ought to be properly notified of the biodiesel content of the fuel they are purchasing. Producers and distributors above the terminal rack must share that information with downstream parties.

PMAA appreciates the opportunity to comment of this proposed rulemaking.

Sincerely,

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