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VIA HAND DELIVERY

Mr. Donald C. Clark
Secretary
U.S. Federal Trade Commission
Room H-135 (Annex M)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Fuel Rating Rule Review, Matter No. R811005

Dear Mr. Secretary:

Please find below the comments of SIGMA and the National Association of Convenience Stores (“NACS”) with respect to the Federal Trade Commission’s (“FTC’s”) request for public comments (the “Request”) on its Automotive Fuel Ratings, Certification and Posting regulations (the “Fuel Rating Rule”).

SIGMA is a leading national trade association representing approximately 270 independent chain retailers and marketers of motor fuels. SIGMA members represent significant diversity within the industry. Over 90% of our members are involved in gasoline retailing.

NACS is an international trade association representing the convenience and petroleum retailing industry. The industry as a whole includes about 145,000 stores in the United States, generated \$577.4 billion in sales in 2007, sells nearly 80 percent of the gasoline in the nation, and employs about 1.7 million workers.

Together, SIGMA and NACS members sell the overwhelming majority of motor fuels at retail in the United States. As a result, they have considerable interest in the Request and any changes to the Fuel Rating Rule.

Background

In considering any changes to the existing Fuel Rating Rule, the Commission needs to be sharply cognizant of the dynamic nature of the motor fuels industry today. In 2005, under the Energy Policy Act (“EPAAct”), and again in 2007, under the Energy

Independence and Security Act (“EISA”), Congress mandated dramatic changes to the composition of motor fuels offered for sale. For the record, please find below the applicable volumes required:

Calendar Year	Applicable Volume of Renewable Fuel (billions of gallons)
2006	4.0
2007	4.7
2008	9.0
2009	11.1
2010	12.95
2011	13.95
2012	15.2
2013	16.55
2014	18.15
2015	20.5
2016	22.25
2017	24.0
2018	26.0
2019	28.0
2020	30.0
2021	33.0
2022	36.0

Calendar Year	Applicable Volume of Advanced Biofuel (billions of gallons)
2009	0.6
2010	0.95
2011	1.35
2012	2.0
2013	2.75
2014	3.75
2015	5.5
2016	7.25
2017	9.0
2018	11.0
2019	13.0
2020	15.0
2021	18.0
2022	21.0

Calendar Year	Applicable Volume of Cellulosic Biofuel (billions of gallons)
2010	0.1
2011	0.25
2012	0.5
2013	1.0
2014	1.75
2015	3.0
2016	4.25
2017	5.5
2018	7.0
2019	8.5
2020	10.5
2021	13.5
2022	16.0

Calendar Year	Applicable Volume of Biomass-based Diesel (billions of gallons)
2009	0.5
2010	0.65
2011	0.80
2012	1.0

Obviously, these mandates represent an enormous shift up and down the entire motor fuels marketplace.

Comments

SIGMA and NACS appreciate the Request's thorough list of questions about the Fuel Rating Rule. Rather than respond to each, SIGMA and NACS offer the following comments:

1. The FTC should appreciate the dynamics of the marketplace.

As illustrated above, the motor fuels marketplace is now, and will continue to be subjected to, dramatic, government-mandated changes. In addition, it is impossible to imagine that the industry will not continue to be subject to volatility because of world markets and the fundamental laws of supply and demand.

SIGMA and NACS urge the Commission to recognize these factors in pursuing any amendments to the Fuel Rating Rule. The duties of retailers under the provisions of 16 C.F.R. 306 *et seq.* need to be consistent with the burdens imposed upon them by EISA. Retailers should not be caught between any conflicting regulatory regimes – the

requirements that the Environmental Protection Agency (“EPA”) may impose in terms of motor fuel blending and the FTC requirements under the Fuel Marketing Rule.

For instance, EISA’s mandates will clearly require retailers to increase their sales of biofuels (whether biodiesel or biomass) in the future. Unfortunately, any given retailer may not know precisely what he will need to sell on a day-to-day basis. As a result, the Fuel Rating Rule needs to provide a similar or even heightened degree of flexibility in terms of labeling at the dispenser.

Retailers have no desire to violate any of the terms of the existing or any amended Fuel Rating Rule, particularly upon potential penalties of \$10,000 or more for any violation. At the same time, the average retailer is neither practically nor financially able to change labels on a day-to-day basis.

Accordingly, SIGMA and NACS request that the Commission consider EISA requirements in moving forward on any changes to the Fuel Rating Rule.

2. The need for consistent labeling requirements.

Notwithstanding 16 C.F.R 306.4 (preemption), SIGMA and NACS members report that states may require different or additional dispenser labeling requirements than are currently required under Fuel Marketing Rule. Such requirements are a burden on retailers and may result in considerable consumer confusion. Accordingly, we recommend that the Commission consider the various state dispenser labeling requirements in making adjustments to the Fuel Marketing Rule. We offer assistance to the FTC in doing so.

3. Scrutiny of wholesale sales.

Many SIGMA and NACS members purchase motor fuels at wholesale and then blend those with biofuels for distribution at retail. With respect to diesel fuel purchases, currently, there are no requirements with respect to the precise “bio” contents of such transactions if they contain no more than 5% bio. As a result, for example, one of our members may unknowingly purchase fuel that contains 5% of biofuel, but then blend it to be a 20% biofuel – meaning that it may unintentionally exceed a 20% rating. In doing so, they may become subject to penalties under the FTC Act.

For this reason, and because of the changing dynamics of the biofuels marketplace discussed above, the FTC should consider evaluating 16 C.F.R. 306.8 (certification of automotive fuel rating) to determine whether “suppliers” should be required to certify the content of the fuels they are selling. SIGMA and NACS offer their assistance also in working on an appropriate solution to this issue.

SIGMA and NACS appreciate the opportunity to comment on the Commission's Request. Please do not hesitate to contact me if we can offer any additional information or otherwise be of assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "James D. Barnette", with a horizontal line extending to the right.

James D. Barnette
Counsel to SIGMA and NACS