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PMCI  
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To: Federal Trade Commission

From: Petroleum Marketers and Convenience Stores of Iowa

Re: **The Fuel Rating Rule Review, Matter No. R811005**

Date: May 14, 2009

The Petroleum Marketers and Convenience Stores of Iowa (PMCI) is a non-profit state trade association serving the needs of independent petroleum distributors, petroleum retailers and convenience store owners throughout the state of Iowa. While many of our members may display the logo of one of the major oil companies, they are independently owned and operated from the major oil company. Since 1937, PMCI has viewed as one of its major goals the maintenance of a competitive business climate that will encourage growth of the independent petroleum marketing industry within the state. On behalf of our membership, PMCI would like to thank the Commission for the opportunity to comment on **“The Fuel Rating Rule Review, Matter No. R811005.”**

The Commission is soliciting comments on a number of questions relative to the Fuel Rating Rule in 16 CFR Part 306. For purpose of clarity, the following comments will address questions 3, 4, 9, 10, 15, 16 and 17 as requested by the Commission.

Section 205 of the Energy Independence and Security Act (EISA) of 2007 required the Federal Trade Commission to promulgate biodiesel labeling requirements. The FTC published their amendments to the rule for “Automotive Fuel Ratings, Certification and Posting” (“FUEL RATING RULE” “FRR”). The following is a summary of the requirements and their impacts:

The Petroleum Marketing Practices Act gives the FTC authority to designate methods for fuel rating, fuel certification, and posting for fuels at the point of sale. The broad authority granted to the FTC under the PMPA allows the Commission to include biodiesel fuels under the rating, certification, and posting requirements of the FRR. Congress’s directive under EISA 2007 led to the Commission’s inclusion of biodiesel fuels under the requirements of the FRR. Petroleum-based diesel is not included in the scope of the FRR and no such requirements have been proposed.

The 2007 EISA addresses three categories of biodiesel fuel blends, requiring labels with specific wording on biodiesel fuel for two of them. For fuel blends containing 5% or less biodiesel fuel that meet ASTM D975, no label is required. Presumably, this is based on the belief that biodiesel fuel blends containing less than 5% by volume biodiesel or bio-mass based diesel have the same properties as diesel fuel. Diesel fuel is not considered an automotive fuel under the Commission’s Fuel Rating Rule and therefore is not subject to the fuel rating, certification, and recordkeeping requirements found under 16 CFR Part 306.5, 306.6, and 306.7 respectively.

The Commission, citing the provisions in the EISA, made the following changes to the Fuel Rating Rule: 1) incorporate the definitions for the terms “biomass-based diesel,” “biodiesel,” and “biomass-based diesel and biodiesel blends”; 2) amend the definition of “automotive fuel” to make clear that biodiesel fuels are subject to the rating and certification requirements of the Fuel Rating Rule; and 3) require the labeling of biodiesel fuels containing more than 5% biomass-based diesel or biodiesel.

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Consistent with the language in EISA, the amendments to Section 306.0(i)(2) of the rule currently list examples of alternative fuels which fall under the scope of the FRR. The Commission's amendments to the Rule add biomass-based diesel and biodiesel, as well as diesel fuel blends containing more than 5% biomass-based diesel or biodiesel to this list. Consistent with EISA, the Commission's amendments to the FRR indicate that biodiesel blends that contain less than or equal to 5% biomass-based diesel or biodiesel by volume, and that meet ASTM D975, are not "automotive fuels" or "alternative fuels" covered by the requirements in the FRR.

#### FUEL RATING RULE- Automotive Fuel Rating, Certification, Recordkeeping

Although the FTC amendments to the Fuel Rating Rule were drafted with the intent to regulate the labeling of biodiesel fuel blends at retail, the exclusion of biodiesel blends containing less than or equal to 5% biomass-based diesel or biodiesel from the definition of 'alternative fuels' under the FRR also excludes those fuels from the rating, certification, and recordkeeping requirements of the FRR (Diesel fuel is not an automotive fuel for purposes of the FRR). This exclusion allows biodiesel fuel blends containing less than or equal to 5% biomass-based diesel or biodiesel to be transferred throughout the chain of sale without an indication of the percent blend of renewable fuel contained therein.

The duties of Refiners, Importers, and Producers under the Commission's Fuel Rating Rule include a determination of the automotive fuel rating of all automotive fuel before the fuel is transferred for sale. For alternative liquid automotive fuel, these requirements include the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel to be included on a transfer document. For biodiesel fuels, it is the percentage of biodiesel or biomass-based diesel in the fuel.

Because the Commission's amendments to the Fuel Rating Rule do not include in the definition of alternative fuels, biodiesel blends that contain less than or equal to 5% biomass-based diesel or biodiesel by volume, these biodiesel blends fall outside the scope of the Commission's Fuel Rating Rule and may be labeled on transfer documents as simply diesel fuel or another generic product name. The exclusion of biodiesel blends containing less than or equal to 5% biomass-based diesel or biodiesel would allow those products to be transferred throughout the chain of sale labeled only as diesel fuel, with no indication of the type and/or percent of renewable fuel contained in the product. This creates a number of problems for petroleum marketers.

As the nation's leader in renewable fuels, Iowa petroleum marketers have been blending biodiesel fuels with diesel for a number of years. The most common method of blending a biodiesel fuel with diesel is called 'splash blending'. Splash blending accounts for **90%** of all the biodiesel blending that occurs in Iowa. The splash blending scenario described below is also reflective of how marketers in other states blend biodiesel fuel with diesel fuel. This process is the simple act of mixing a neat (100%) biodiesel product with diesel fuel to achieve a specific blend ratio. Under a splash blending scenario, a petroleum marketer takes title to two separate loads of product (biodiesel and diesel fuels respectively) and blends those products directly in a transport vehicle or at a bulk plant. Very little, if any, splash blending of biodiesel fuel takes place at a terminal location. Common blend examples include 2%, 5%, 10%, and 20%.

In the 2005 Energy Act, the Environmental Protection Agency was directed by Congress to promulgate rules implementing a national Renewable Fuels Standard (RFS) Program. In short, EPA's RFS Program mandates a specific amount of biodiesel fuel to be blended with diesel fuel through the year 2022. Because petroleum marketers are one of the groups regulated by EPA's RFS, petroleum marketers have been, and will continue to, handle and blend increasing volumes of biodiesel product with diesel to comply with the EPA's RFS program.

The rules of EPA's RFS program have placed a renewed emphasis on the incorporation of renewable fuels into the line of products offered by refiners and importers. Because refiners and importers of motor fuel are obligated parties under EPA's RFS program, it is anticipated that those entities will begin pre-blending diesel fuel with biodiesel or biomass based diesel prior to shipping the product to its intended location via pipeline, railcar, transport etc....

The Commission's 2008 amendment to the Fuel Rating Rule incorporating specific labeling requirements for biodiesel and biomass-based diesel while excluding biodiesel and biomass-based diesel in quantities of less than 5% from the Fuel Rating Rule creates a Pandora's box effect for petroleum marketers blending biodiesel fuels with diesel fuel. The exclusion of biodiesel and biomass-based diesel blends of less than or equal to 5% from the requirements of the Fuel Rating Rule excludes refiners, importers, producers, and distributors from including the percentage of biodiesel or biomass based diesel in the fuel that is subject to transfer. Instead, these entities may simply label the product as 'Diesel Fuel' on transfer documents.

The exclusion of biodiesel and biomass-based diesel containing 5% or less biodiesel or biomass-based diesel from the FRR creates enormous problems for a petroleum marketer. Under the FRR, a petroleum marketer requesting a load of diesel fuel may unknowingly receive a load of diesel fuel containing 5% or less biodiesel or biomass-based diesel. This creates two problematic scenarios: 1) the load of diesel is re-sold

as straight diesel fuel although it 'may' contain up to 5% biodiesel or biomass-based diesel to a customer requesting straight diesel fuel or; 2) the marketer uses the load of diesel fuel to blend with neat biodiesel or biomass based diesel to create a specific blend. If the diesel fuel used to blend with the neat biodiesel fuel contains any quantity of biodiesel or biomass-based diesel, the marketer blending the product will have no control over the actual blend percentage of the final product. A blender may also unknowingly blend a biodiesel blend with a biomass-based diesel blend. This could lead to handling issues as well as fuel quality issues. In addition, many biodiesel supply contracts are feedstock specific. The delivery of a product to a customer in violation of a supply agreement places the petroleum marketer in violation of the terms of the agreement and limits the customer's ability to control the fuel they purchase.

The scenarios listed above have the potential to create a number of problems for both marketer and consumer as the product moves through the chain of sale. Because the properties of biodiesel and biomass-based diesel create cold weather handling as well as operability issues it is critical that product transfer documents require the disclosure of the percentage of biodiesel or biomass based diesel in the product being transferred. This type of full disclosure assures proper handling procedures are in place for the fuel and will help to minimize any fuel quality issues as products are blended and passed through the chain of sale. Not requiring this type of disclosure subjects a marketer blending biodiesel or biomass-based diesel to enormous liability and threatens marketplace transparency between distributors and ultimately transparency in fuel transactions between marketers and end-users.

On behalf of the Petroleum Marketers and Convenience Stores of Iowa, we respectfully request that the Commission address our concerns regarding the transfer of biodiesel or biomass-based diesel in quantities of less than 5% through the distribution chain. We ask that these blends be subject to the same rating, certification, and recordkeeping requirements as the other biodiesel and biomass-based diesel blends addressed under the rule.

If you have additional questions please contact me.

Respectfully submitted,



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