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Fuels Issues, Downstream

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

Submitted via: <http://www.regulations.gov/search/index.jsp>

Re: Fuel Rating Review, Matter No. R811005

To Whom It May Concern:

The American Petroleum Institute (API) respectfully submits the following comments on the proposed amendments to the Federal Trade Commission's (FTC) Fuel Rating Rule. API represents approximately 400 companies involved in all aspects of the oil and natural gas industry. API member companies may also be submitting comments containing additional information.

API member companies agree with the FTC that it is unnecessary to label dispensers of diesel fuel containing 5% or less of biodiesel or biomass-based diesel. However, there is concern that a company may receive diesel fuel containing 5% or less biodiesel and believe that the diesel fuel received contains no biodiesel. The company then may add additional biodiesel to achieve what they believe to be a blend of 5% or less, resulting in a fuel with over 5% biodiesel, but because the company was not made aware of the existing biodiesel concentration, they do not appropriately label the dispenser. To ensure appropriate labeling of dispensing pumps, it is necessary for distributors to know the biodiesel concentration even if it is not necessary at retail.

Gasoline and diesel distributors are accustomed to handling and passing Product Transfer Documents through the distribution system with an accompanying fuel as required by the U.S. Environmental Protection Agency (EPA) in 40 CFR §80.590. These documents provide a general classification of the fuel to deter the unpermitted changing of a fuel's use designation. API recommends that FTC coordinate with EPA to require the general disclosure of the biodiesel concentration on Product Transfer Documents to facilitate compliance with the Fuel Rating Rule. The document should identify if a fuel has a biodiesel concentration of 5% or less, greater than 5% but not more than 20%, or greater than 20%. This disclosure would ensure that all parties in the distribution system are made aware of the presence of biodiesel (FAME) and label the dispensers appropriately. Due to the complexities inherent in a fungible distribution system,



requiring the biodiesel concentration to the nearest percentage, or identifying the biodiesel feedstock is unworkable.

API believes that it is not necessary to disclose the presence of renewable or biomass-based diesel; however it is necessary to disclose the presence of FAME ASTM D6751 biodiesel. Therefore, API recommends no additional labels be required for renewable diesel because:

- 1) Renewable diesel is indistinguishable in terms of its hydrocarbon structure from conventional petroleum diesel. The EPA describes renewable diesel as follows: “The term renewable diesel covers fuels made by hydrotreating plant or animal fats in processes similar to those used in refining petroleum. Renewable diesel is chemically analogous to blendstocks already used in petroleum diesel, thus its use can be transparent and its blend level essentially unlimited.”¹ Currently, no standard test method referenced by ASTM D975 will reveal renewable diesel content. Unlike biodiesel which is a methyl ester, renewable diesel, like petroleum diesel, consists of hydrocarbon structures. Furthermore, renewable diesel is manufactured through conventional refining processes.
- 2) The current FTC requirement forces fuel suppliers to mislead consumers. The FTC requirement mandates that labels for renewable diesel blends contain the word “biodiesel,” which is misleading. Consumers may mistake renewable diesel for biodiesel and the warranty restrictions and quality issues associated with biodiesel. Unlike FAME biodiesel, original equipment manufacturers (OEM) have not placed any restrictions on renewable diesel blend levels and there is no reason to do so.
- 3) The current FTC requirement increases the supplied cost of fuel. Labeling renewable diesel at specific levels eliminates the supplier’s ability to vary blend levels to minimize cost and reduces inventory alternatives.
- 4) Current labeling requirements create enforcement challenges. Since there are no standard tests to determine renewable diesel blend levels, label requirements cannot be enforced.

Therefore, the current FTC labeling requirements for renewable diesel offer no benefits to the consumer. Since consumers are not required by OEM’s to take any actions based on renewable diesel blend levels, this is an arbitrary labeling requirement that provides no actionable information to the consumer.

¹ See Section V.B.4 page 221, EPA Notice of Proposed Rulemaking, 40CFR Part 80, Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, May 5, 2009.



The labeling requirements for renewable diesel should be no different than that of ASTM D975 alternative source diesel fuels, for example, gas-to-liquids (GTL) diesel manufactured via the Fischer-Tropsch process and subsequently refined and upgraded to meet ASTM D975 specification requirements. GTL diesel, manufactured or blended to meet ASTM D975, is virtually indistinguishable from conventional petroleum diesel, satisfies OEM vehicle warranties, and does not require additional labels.

API member companies are also concerned about the reference to ASTM methods used to certify the octane number in gasoline. In the definitions section of 16 CFR § 306.0, ASTM test methods D2699 and D2700 should be identified as the “most recent version of ASTM D2699, “Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel” and the “most recent version of ASTM D2700, “Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel.” In addition, the “most recent version of ASTM D4814” should be identified as the Standard Specification for Automotive Spark-Ignition Engine Fuel. Another common method for determining octane number, ASTM D2885 “Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique” is not listed. This reliable test method not referenced in the FTC Fuel Rating Rule should be included.

In addition, the reference in the Fuel Rating Rule to ASTM and its address needs to be updated. ASTM has changed its name from American Society for Testing and Materials to ASTM International. The current address is 100 Barr Harbor Drive, West Conshohocken, PA 19428,

API and our member companies appreciate the opportunity to comment on this proposal. If you have any questions or concerns, please contact me at 202-682-8192.

Sincerely,

Patrick Kelly
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