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

DRAFT Comments on the Fuel Rating Rule Review, R811005

Dear Docket Administrator:

The New York State Department of Agriculture and Markets (Department) thanks the Federal Trade Commission (FTC or Commission) for the opportunity to comment on its proposed rulemaking, "Automotive Fuel Ratings, Certification and Posting" published March 16, 2010 (75 Federal Register pp 12470-12483). The Department presently adopts in State Regulations several components of the FTC rules for fuel ratings as part of our Petroleum Quality program. We believe it is vital that consumers purchasing fuel have clear information on which they can base their choices as the options of different types of fuels proliferate. It is also vital that environmental and consumer protection issues be harmonized in a coherent system of certification and labeling.

The Department offers the following comments on the proposed rule.

1. The proposed rule appears to have the potential for conflict in some ways with rules being considered by the US EPA relating to the definition of gasoline and mid-level ethanol blends. We encourage the two agencies to cooperate to avoid any potential conflict. One result of an inconsistent policy is increased cost for regulated parties to respond to one regulation only to have to quickly change because of another regulation.
2. Under the rule, the distinction between "gasoline" and "alternative fuels" is not sufficiently clear. In particular, we believe that the proposed rule may result in owners of traditional gasoline powered vehicles mistakenly purchasing alternative fuels at concentrations for which their vehicles are not EPA certified.
3. The proposed labeling of mid-level ethanol blends provides for far too wide a range of products. The proposed label declaring between 10% and 70% ethanol results in a roughly 20% difference in energy content and fails to provide consumers with information to make valid value comparisons between fuel offerings.

The flex-fuel gasoline/ethanol powered vehicle is creating new marketing strategies that offer some consumers a very wide range of choices in fuel purchases. With new dispensing equipment the actual ethanol content in spark ignition fuels can be varied anywhere between 0 and 80%. However, this flexibility also provides the opportunity for traditional gasoline powered vehicle owners to make bad choices by putting alternative fuels in vehicles at concentrations for which they are not designed. A

primary focus of the FTC Rule in the future must be to ensure that clear information is provided to assist all consumers with meaningful names and ratings to get the right fuel for their particular engine type as

well as providing some base for pricing comparisons between the various options. For traditional gasoline powered vehicles this remains those fuels designated as gasoline and substantially similar fuels as defined by EPA. For the flex-fuel vehicle there is a much wider choice as they can use gasoline or the ethanol blends up to 80%.

We note that the Environmental Protection Agency (EPA) is considering actions regarding some mid-level ethanol blends (likely up to 15 volume percent ethanol) to be used as gasoline for some (but not all) existing gasoline powered vehicles and engines. Thus we believe it will be vital to have uniform and meaningful ways to address the certification and labeling of these fuels. Indeed, we understand that EPA is planning its own, separate, mid-level ethanol blend labeling proposal. One primary goal we should all share is the desire to have one set of standards. In our regulatory role we see the greatest difficulty at the border between gasoline and alternative fuels. This today is at the 10% ethanol level. However it may soon be at 15% ethanol, if EPA makes the changes it is considering. It may also be muddied by a split by model year of the vehicles in the fleet, with newer cars being able to use gasoline with up to 15% ethanol and the older cars gasoline with up to 10% ethanol. If this happens, gasoline with 15% ethanol becomes an alternative fuel for some vehicles but not others.

We also believe that consumers are still largely unaware of the significant difference in energy content between ethanol based alternative fuels and gasoline. We do not believe the minor color difference from yellow to orange in the FTC labels conveys a real distinction for those consumers. We note here that there gasoline octane label is the only FTC required label that does not specifically name the fuel.

Further, the proposed 10%-70% labels would allow fuels with an energy content difference of roughly 20% to appear to be of equal value in competition. We believe that value comparisons between the various options would be virtually impossible with such a large range. With one dealer offering 70% ethanol and another offering 10%, consumers would have no way to select the best value. This is even more critical when comparing gasoline with varying ethanol content. This is why the states, through the work of the National Conference on Weights and Measures, have created certification and retail labeling requirements for ethanol content in gasoline.

Any rule should try to provide information to help consumers make choices. We would support narrow ranges of ethanol content similar to one of the options in the FTC proposal. By limiting to a 20% range, the range of energy content would be limited to about 5% between competing fuels. Another alternative that might be considered is to require both a minimum and a maximum for ethanol on alternative fuels with a maximum range between the two of 20%. The minimum helps define the alternative fuel but the maximum helps define the energy content.

This also leads us to think that it may be time to combine octane rating and ethanol content for gasoline, whatever ethanol cap is chosen by EPA. Thus, it might be best to label gasoline with a new label that includes both the traditional octane rating and the maximum ethanol content.

We believe that there are ways to reach the goals of providing valuable and clear information to consumers on fuel labels that serve both consumer protection and environmental needs. We recommend:


The FTC should work closely with the EPA on any proposal to harmonize to the extent possible the concerns of both agencies on a single label. This might avoid major costs to regulated parties to create the infrastructure for one type of labeling and then have to recreate another infrastructure to support an alternative set of labels that largely overlap in their objectives.

Any FTC rule should clearly distinguish between gasoline for traditional engines and alternative fuels for flex-fuel engines. This may require that the term “gasoline” appear clearly on conventional gasoline fuels. It may require that some terms such as EXX, MXX, HXX etc appear on alternative fuel labels to clearly identify the fuel being offered for sale. This will help ensure that the consumer has information to select the right fuel for which his/her vehicle is certified under EPA rules, ensure the quality of the fuel is clearly expressed, and provide information on which value comparisons can be made.

Any FTC rule covering a range of energy content should try to avoid grouping fuels into wide ranges of energy content. We believe it is vital to foster informed consumer choices when comparing prices and ratings of fuels. The proliferation of choices is making this ever more difficult.

Should you have questions, please contact me at (518) 457-3146.

Sincerely,


Ross J Andersen, Director of Weights and Measures