Alliance OF AUTOMOBILE MANUFACTURERS

May 21, 2010

Filed electronically: https://public.commentworks.com/ftc/fuelratingreview

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

RE: Proposed Rule: Amendments, Automotive Fuel Ratings, Certification and Posting,

75 Fed. Reg. 12470, March 16, 2010

Attached please find comments on behalf of the Alliance of Automobile Manufacturers (the "Alliance") in response to the FTC Proposed Rule on Automotive Fuel Ratings, Certification, and Posting. The Alliance is an association of 11 vehicle manufacturers including BMW Group, Chrysler LLC, Ford Motor Company, General Motors, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota and Volkswagen. Formed in 1999, the Alliance serves as a leading advocacy group for the automobile industry on a range of public policy issues. This association is especially committed to improving the environment and motor vehicle safety. For more information, visit the Alliance website at www.autoalliance.org.

The Alliance appreciates this opportunity to comment on proposed updates to the Fuel Rating Rule. We support the stated purpose of the pump labeling provisions, to help consumers identify the correct fuel for their vehicles. Given the variety of fuels becoming available to consumers, regular reviews are appropriate. Sufficient specificity in content will be critical to the effectiveness of the label.

The Alliance encourages focused coordination with the U. S. Environmental Protection Agency ("EPA") prior to promulgating a final rule regarding pump labels for ethanol blends, given that, as the FTC is aware, EPA is currently considering a request to approve use of E15 (15% ethanol) automotive fuel, and also related steps to avoid mis-fueling, including pump label requirements. The Alliance remains very concerned that EPA will decide on the request *prior* to the completion of important studies on durability effects.

We would be glad to discuss these recommendations with FTC staff.

Sincerely yours,

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Alliance of Automobile Manufacturers
Comments on FTC Proposed Rule,
Amendments to Automotive Fuel Ratings, Certification, and Posting
75 Fed. Reg. 12470 (March 16, 2010)

1. **The FTC should explicitly discuss its proposed retail fuel pump labeling for ethanol blends with EPA before promulgating a final rule. Likewise, EPA should coordinate with the FTC before promulgating a fuel pump labeling requirement.**

   Coordination among federal agencies regarding retail fuel pump labeling is essential. As the FTC is aware[1], EPA is currently considering a request for a waiver from Growth Energy, which, if granted, would allow use of E15 automotive fuel (15% ethanol). EPA is also considering measures to avoid mis-fueling, which will likely include pump label requirements. At a minimum, the FTC and EPA should specifically coordinate to develop consolidated and coherent fuel pump label content and format prior to either agency finalizing requirements.

2. **In addition to coordinating with EPA, the two Agencies should work with warning label experts on design, format, color, and content, and also with consumer focus groups, to be sure the communications have the desired impact. [2] The Agencies should work together, and also with States and stakeholders, to ensure that labeling requirements are implemented and enforced uniformly across the country. There should also be an effective national program for educational outreach to consumers.**

3. **Labels for mid-level ethanol blends cannot be effective or protective if they merely display a wide "range" of per cent (%) ethanol content. We disagree that a broad "E10-E70" label [See 75 Fed. Reg. at 12482] can be adequate or effective in informing the consumer, either for dedicated or for blender pumps.**

4. **In the future, consumers will continue to have vehicles with a large and increasing variety of ages and technologies within the fleet. Consumers will need very specific information on fuel content in order to protect their vehicles and related warranties when selecting fuel. This will also be relevant when auto fuel is used in other types of equipment.**

   For these fuels, the Alliance strongly recommends that the FTC mandate inclusion on the pump label of the specific concentration, <u>also</u> noting the acceptable blend range for the nominal fuel, e.g., + or – 10% of the nominal %, such as "E20 (E18-E22)" or "E40 (E36-

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[1] 74 Fed. Reg. 18228 (April 21, 2009), see reference in the FTC proposal, 75 Fed. Reg. 12470, at 12473 footnote 53.

[2] Consistent color, design, and format should be used, and adding a non-color "signal" should be considered. Labels should be in a form that can be is easily replaced to accommodate updates, for example, to reflect the pending change in the ASTM specification for E-85. Mid-level blend color should be the same as for E85 as these fuels are for use in the same flexible fuel equipment. As an information item, SAE J2785 (issued November 2006) uses Yellow Pantone #10 in conjunction with E85.

44)". ***It is particularly important that the ratings and label display the maximum concentration, along with the minimum.***

In any case, contrary to the proposed FTC CFR language and examples[3], **the ratings postings and pump labels should avoid any "overlap" of per cent (%) content**, *i.e.*, one should use 11% vs. 10% for those over 10%; 69% vs. 70% for those less than 70%, etc., to clearly distinguish one blend from another. In the alternative, at a minimum, the label should include the terms "Contains More Than (>) x% and Less Than (<) y%. This will avoid users misconstruing that a 10% low end of the range is compliant with use of "up to 10% ethanol". The same principle applies to biodiesel and biomass as well (B6 vs. >B5%, etc.).

In addition, pump labels for >10% ethanol blends should clearly state "Contains More Than 10% Ethanol" as a separate line in the "lower band", above the statements about harm and consulting the vehicle owner's manual, but below the more specific content amounts in the "upper band" caption. This will emphasize the point for users.

As noted in previous May 14, 2009 Alliance comments regarding review of this FTC Rule, referring to the OEM owner's manual as part of the pump label communication is appropriate and important.

We defer to other product manufacturers on the need to include warnings with regard to fuel use in non-automotive applications.

5. **Risks of >E10 (aka E10+) use in conventional vehicles [non-FFV (Flexible Fuel Vehicle)]**

At present, there is **insufficient data** for U. S. EPA to make a decision on the requested waiver from Growth Energy that, if granted, would allow use of E15. The Alliance is unable to support or oppose E15 until more information becomes available.

The Alliance and other stakeholders are continuing to work with partners in government to conduct a suite of studies to get data needed to evaluate the potential impact of increasing ethanol content from E10 to E15. With EPA and DOE's continued support, **these planned studies are expected to be completed by mid-2011**. The Alliance, the Association of International Automobile Manufacturers, the American Petroleum Institute, the Outdoor Product Equipment Institute, and others, including several state agencies, have urged EPA to wait to make a final decision until this data becomes available, and also to take comment on this new data. (For additional details see Alliance July 20, 2009 comments, EPA Docket EPA_HQ-OAR-2009-0211, Entry #2551.1).

6. **Methanol and methanol blends should apply the same cautionary language as ethanol and ethanol blends concerning potential harm and referencing the vehicle owner's manual.**

7. **>B5 Biodiesel containing Fatty Acid Methyl Esters (FAME) or Fatty Acid Ethyl Esters (FAEE) require the cautionary language.**

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[3] See for example proposed Section 306.10(f) on minimum and range percent content for ratings; proposed Section 306.12 (a)(4)(A)-(C) and 306.12(a)(5) re numeric values in labels.

8. **Diesel fuel containing biomass-based diesel or renewable diesel that does not contain fatty acid esters does not require the cautionary language.**

9. **A blend of bio-mass-based diesel that also contains >B5 biodiesel does require the cautionary language.**

   >B5 (greater than 5%) Biodiesel, and blends with biomass-based diesel that contain >B5, should both contain the same cautionary language as on the other labels regarding harm and referencing the owner's manual.

10. The definition of "Automotive Fuel" for "Biodiesel Blends" in Proposed CFR Sec. 306.0 (i(1)(ii)(I) should read "Biodiesel blends containing >5% biodiesel by volume **(including >5% biodiesel blended in biomass-based diesel).** The proposed FTC rule/definitions do not appear to anticipate [e.g., in sub-definitions (I) and (J)] that there could be a blend of both biodiesel and bio-mass-based diesel. In addition, for the same reason, the definition in 306.0 j(3) for "Automotive Fuel Rating" [last sentence] should read "...a disclosure of the biomass-based diesel **and/or** biodiesel components expressed as the percentage by volume" 75 Fed.Reg. at 12478.

11. Proposed CFR Section 306.0(j)(4) says: "For mixtures of gasoline and more than 10 percent ethanol, including mid-level ethanol blends, a disclosure of the ethanol component, expressed as **a** percentage by volume." This differs from the language used immediately above in 306.0(j)(3) [for biodiesel and biomass-based diesel] ...expressed as **the** percentage by volume." For consistency, both should use the phrase "**the** percentage by volume".

12. Proposed CFR Section 306.12 (a)(2) should be clarified. The Caption says "*For alternative liquid automotive fuel labels (**one principal component**")*... but further down in the text refers to a "***single component***" label. Consistent terminology would be useful. Also, the Caption should be edited to read as follows: "*For alternative liquid automotive fuel labels (one principal component), other than: biodiesel, biomass-based diesel, biodiesel blends, biomass-based diesel blends, and mixtures of gasoline and more than 10% ethanol*".

13. In the final rule, the quoted RFA description "flex fuel engines designed to use alternative fuels such as E85 [fn] and Mid-Level Ethanol Blends [fn]...." [75 Fed. Reg. at 12472 top left column] should be replaced to clarify that "**Flexible Fuel Vehicles [FFV] and engines are designed to use unleaded gasoline, fuel ethanol (E70-85] or any mixture of the two.**"

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