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May 21, 2010

Filed Electronically

Matthew Wilshire
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission

Subject: Comments on FTC's proposed changes to the Automotive Fuel Ratings, Certification and Posting Rule (R811005)

Dear Mr. Wilshire:

NPRA, the National Petrochemical and Refiners Association, is pleased to provide comments on the Federal Trade Commission's proposed changes to the Automotive Fuel Ratings, Certification and Posting Rule (75 FR 12470; 3/16/10). NPRA's members comprise more than 450 companies, including virtually all U.S. refiners and petrochemical manufacturers. Our members supply consumers with a wide variety of products and services that are used daily in homes and businesses. These products include gasoline, diesel fuel, home heating oil, jet fuel, asphalt products, and the chemicals that serve as "building blocks" in making plastics, clothing, medicine and computers.

Ethanol Blend Pump Labels

NPRA supports the prudent development and use of biofuels, including ethanol, to diversify our nation's transportation and nonroad fuels portfolio. The federal government has an important responsibility to ensure public safety and to minimize damages to gasoline-powered vehicles and equipment from misfueling.

The FTC proposed to alert consumers with new pump labels when there is more than 10 percent ethanol by volume to avoid harm to vehicles or placing warranties at risk. Besides conventional vehicles (that are not flex-fueled) with engine systems determined not to be compatible with ethanol blends higher than 10 percent, NPRA is also concerned about potential consumer misfueling of, and consumer confusion with respect to, mid-level ethanol blends or E85 in small gasoline-powered engines, including chain saws, lawnmowers, boats and motorcycles with concerns for potential consumer safety and legal liability exposure for engine and fuel manufacturers.

EPA will initiate a pump label rulemaking this year with its upcoming potential "partial" approval of E15 for some gasoline vehicles. The FTC is aware of this process and has committed to reconsider requiring the proposed Mid-Level Ethanol blend pump label if EPA grants the E15 petition (see footnote 53 at 75 FR 12473). NPRA is concerned about consumer and retail station confusion if there are different EPA and FTC pump label rules because FTC's reconsideration may result in a requirement that is different than EPA's. Therefore, these rulemakings should be harmonized to minimize consumer and retail station confusion.

Renewable Diesel

NPRA agrees with comments submitted by the American Petroleum Institute that, while it is necessary to disclose the presence of FAME ASTM D6751 biodiesel, it is not necessary to disclose the presence of renewable diesel. Renewable and petroleum diesel cannot be distinguished from each other. There is no ASTM method to identify the volume of renewable diesel in a batch of diesel.

NPRA is aware of the relevant provision in the Energy Independence and Security Act of 2007 which explicitly requires that consumers be informed of the percent of biomass-based diesel that is contained in a blend with petroleum diesel. However, by EPA rule (see definition for biomass-based diesel at 40 CFR 80.1401), some renewable diesel qualifies as biomass-based diesel (if it is not co-processed with petroleum diesel) and some does not (if it is co-processed with petroleum diesel). Pipelines and terminals do not currently segregate petroleum diesel containing no renewable diesel from petroleum diesel that contains renewable diesel that qualifies as biomass-based diesel from petroleum diesel that contains renewable diesel that does not qualify as biomass-based diesel. It would be disruptive to the distribution industry to require this segregation to accommodate compliance with a FTC pump label rule. It would frustrate compliance with EPA's Renewable Fuel Standard program if the use of renewable diesel was limited by FTC's pump label rule.

Since there is no ASTM method for renewable diesel and some renewable diesel qualifies as biomass-based diesel and some does not, renewable diesel should be exempted from the biomass-based diesel pump label rule. As a result, the pump label should inform consumers of the concentration of FAME biodiesel only.

Octane Rating

The Commission proposed to amend the Fuel Rating Rule to allow the On-Line Method, ASTM D2885, to determine gasoline octane rating. NPRA supports this proposal.

FTC should not specify a year, such as ASTM D2885-08 (see proposed 16 CFR 306.5), because the FTC will need to update the Fuel Rating Rule annually as ASTM issues revisions. The FTC should require that the latest version of an ASTM standard should be used and avoid a regulation that specifies an outdated version of an ASTM standard. NPRA understands that FTC cannot refer to the latest version and must specify a version, but this will be outdated as soon as ASTM issues a revision.

In addition, NPRA believes that the Commission should also add infrared measurement techniques to the approved methodologies for measuring octane. Infrared octane analyzers have been in existence for over 20 years and are widely used by refiners, states regulators, and pipeline companies. Infrared octane analyzers provide increased accuracy and precision over the approved octane engine methods, ASTM D2699 and ASTM D2700. Since infrared analyzers provide more reliable results due to reduced variability in test measurements, use of these methods results in enhanced quality control and better consumer protection.

NPRA believes that permitting infrared methods to be utilized to certify the octane rating of gasoline and gasoline-ethanol blends would provide additional flexibility to refiners and importers in complying with FTC octane certification requirements without diminishing Agency oversight or enforcement of same. Furthermore, approval of infrared methods would not impose any additional enforcement burden on the Commission, since ASTM D2699 and ASTM D2700 would continue to be the referee method.

For these reasons, NPRA urges the Commission to allow infrared octane measurement methods to determine research and motor octane number, provided that:
1) These methods are correlated with ASTM D2699 and ASTM D2700,
2) Conforms with ASTM D6122-10, "Standard Practice for Validation of the Performance of Multivariate Infrared Spectrophotometers", and
3) ASTM standard test methods D2699 and D2700 would be the referee test methods for purposes of enforcement of §306.5.

NPRA recommends the following regulatory language:

PART 306_AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

§306.5 Automotive fuel rating. If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by **ASTM International** (ASTM) in ASTM D4814–09b, entitled ‘‘Standard Specifications for Automotive Spark-Ignition Engine Fuel.’’ To determine the research octane and motor octane numbers you may either:

(1) Use ASTM standard test method D2699-**09 [not version 08]** to determine the research octane number, and ASTM standard test method D2700-**09 [not version 08]** to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885-**10 [not version 08]**, ‘‘Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique”; **or**

(3) Use infrared methods to determine research and motor octane number, provided that these methods are correlated with ASTM D2699-09 and ASTM D2700-09 and conform with ASTM D6122-10 “Standard Practice for Validation of the Performance of Multivariate Infrared Spectrophotometers”. ASTM standard test methods D2699-09 and D2700-09 shall be the referee test methods.

Please contact me if you have any questions. NPRA appreciates the opportunity to provide input.

Sincerely,

Tim Hogan
Director, Motor Fuels