

May 21, 2010

Filed Electronically

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

**Re: Fuel Rating Rule Review --FTC File No. R811005
Notice of Proposed Rulemaking – 75 Fed. Reg. 12,470 (March 16, 2010)**

Dear Commission Members:

I am writing on behalf of the National Marine Manufacturers Association (NMMA) to provide comment to the Federal Trade Commission's ("FTC" or "Commission") proposal to amend its Rule for Automotive Fuel Ratings, Certification and Posting ("Fuel Rating Rule"). The proposed rule would adopt rating, certification, and labeling requirements to certain ethanol fuels, revise the labeling requirements for fuels with at least 70 percent ethanol, allow the use of an alternative octane rating method, and make certain other miscellaneous Rule revisions. [75 Fed. Reg. 12,470](#) (March 16, 2010).

By way of background, NMMA is the leading national recreational marine trade association, with nearly 1,500 members involved in every aspect of the boating industry. NMMA members manufacture over 80 percent of recreational boats, engines, trailers, accessories and gear used by boaters and anglers in the United States. The U.S. boating industry is comprised mostly of small-and medium-sized businesses that primarily make its products in America. Recreational boating, even in this economic downturn, contributes significantly to the U.S. economy, generating \$33.6 billion in sales and services during 2008 alone. There are 70.1 million boaters in the U.S. comprising 30.5% of the American adult population.

NMMA appreciates the opportunity to provide comments to the FTC and in addition to these comments supports the comments filed in this rulemaking by the Alliance for a Safe Alternative Fuels Environment (AllSAFE) of which NMMA is a member.

I. MISFUELING RISK IS HIGH EVEN WITH LABELING

As the FTC is aware, the Environmental Protection Agency ("EPA") is considering a petition seeking the approval of fuel blends containing up to 15 percent ethanol for use in conventional vehicles.¹ EPA has indicated that it may approve a "partial waiver in response to this petition."

¹ EPA's Office of Transportation and Air Quality (OTAQ) is currently considering a waiver application from Growth Energy that would allow up to fifteen percent ethanol (E-15) in

NMMA is strongly opposed to the approval of this waiver in any form given that no testing has been conducted on marine engines or equipment as is clearly required by the Clean Air Act. EPA has indicated that a partial waiver, if approved, may be only for newer model year motor vehicles – and not for older motor vehicles or nonroad products. EPA has stated that it has made an engineering judgment that mid-level ethanol blends are not compatible with marine engines and equipment and other nonroad engines and equipment. EPA has indicated that it would commence a separate ethanol misfueling regulation that will include a labeling provision, although it remains unclear if this new regulation would be in effect at the time of an approval of the waiver currently under consideration. If this occurs, the FTC must coordinate closely with EPA in developing a uniform and consistent labeling regime that provides consumers with the critical information they need to protect their engines and fuel systems. Indeed, FTC, as a consumer protection agency, should advise EPA to proceed cautiously as any approval of an E-15 waiver may create significant problems for owners of nonroad engines and equipment.

In any case, it is clear that a label alone is an insufficient remedy to prevent widespread misfueling. As EPA's own empirical data clearly demonstrate, that labeling is not a sufficient or viable safeguard against misfueling. To prevent misfueling, strong misfueling controls beyond labels are required. This is why NMMA is *strongly opposed* to the approval of any ethanol blended fuel over E-10. For additional information on the problems mid-level blended fuel will cause marine engines see NMMA's comments to EPA.²

In EPA's RFS2 proposal, EPA states it expects that mid-level ethanol blends would be marketed as the less expensive regular-grade fuels, while E10 will be available in premium grade gasoline. This guarantees that the mid-level blend will be the less expensive alternative. As EPA has acknowledged, consumers make their fuel decisions primarily based on the price of the fuel, which ensures widespread misfueling should EPA adopt a partial approach. Additionally, many boat manufacturers advise their consumers to use only regular grade fuel, which will exacerbate misfueling further. Thus, with an economic incentive it is extremely likely that consumer will be hurt by a partial waiver approval.

Nonetheless, any labeling initiative on ethanol-blended fuel must include robust and clear language to warn consumers adequately. As currently written in the EPA proposal, EPA's language did not include any reference to compatibility with non-road engines and vehicles, even

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conventional gasoline. 74 Fed. Reg. 18,228 (April 21, 2009). NMMA and AII SAFE submitted extensive comments opposing an approval by EPA of an E-15 waiver.

² NMMA's July 20, 2009 and September 25, 2009 comments are available at:

http://www.nmma.org/lib/docs/nmma/gr/policy/NMMA_Comments_to_EPA_E15_Waiver_Docket_ID_No._EPA-HQ-OAR-2009-0211_v.6_Final_072009.pdf and

http://www.nmma.org/lib/docs/nmma/gr/policy/NMMA_RFS-II_Comments_v_3_092209_Final.pdf.

though nearly all such applications are fueled at regular automotive gas pumps. In addition, FTC's proposal also fails to reference nonroad vehicles and specific harms caused by the fuel. This should be remedied and any label should reference both on-road and non-road vehicles, note that mid-level ethanol is not a compatible fuel, and specifically reference boats and other similar equipment.

II. BOATS ARE FUELED AT GAS STATIONS SO ANY LABELING AND WARNINGS SHOULD ANTICIPATE BOAT OWNER USE

The National Marine Manufacturers Association has a substantial interest in the FTC rulemaking because it is a common practice for boaters to fuel boats at gas stations while also fueling their towing motor vehicle. Ninety-five percent of the 11.8 million registered mechanically propelled boats are less than 26 feet in length and can therefore be towed by a motor vehicle.³ It is critical for the owners of these 11,257,369 vessels to know the nature of the fuel being sold and the potential detrimental impacts the fuel will have on boat engines, fuel systems and warranties. Importantly, the fleet of affected vessels is much older than is typically the case with motor vehicles. For these reason, NMMA strongly urges the FTC to carefully consider the impact of any fuel labeling regime on the consumers who own and fuel boats at gas stations.

III. GOALS OF ANY FUEL LABELING REGULATION

The FTC is commended for recognizing that the sale of ethanol-blended fuels require enhanced disclosures to avoid customer confusion and misfueling. In order to protect the public against potential misfueling, any FTC fuel labeling regulation should achieve two major goals:

- inform consumers of the precise volume percentage of ethanol or the maximum ethanol content being dispensed at a particular pump; and
- effectively warn of the risk of misfueling vehicles, boats and equipment *not* designed to run on ethanol blends above E-10.

Any labeling regime for ethanol containing fuel should adequately inform consumers of the maximum ethanol content and disclose that blends with more than 10 percent ethanol may result in misfueling. Such disclosures should be much more specific than proposed by the FTC. Importantly, any labeling regime must take into account the *full range of products, new and used*, that will be fueled by consumers buying "general purpose" gasoline at the local gas pump. While NMMA is extremely concerned that any labeling regime will prevent misfuelings, if a labeling regime is developed, it must be sufficiently robust to protect fuel consumers. The label proposed by the FTC does not adequately protect fuel consumers.

³ In 2008, 4,989,889 of mechanically propelled registered boats were smaller than 16 feet in length and 6,267,480 were sized 16 to 25 feet in length. National Marine Manufacturers Association, *2009 Recreational Boating Statistical Abstract* at 100.

IV. ETHANOL BLENDS HIGHER THAN E-10 CAN HARM BOAT FUEL SYSTEMS AND ENGINES

The Commission specifically asked for comment on whether ethanol blends above 10 percent concentrations will damage conventional vehicles. Ethanol blends above 10 percent will certainly damage marine engines and fuel systems as discussed further below and in the AllSAFE comments.⁴ For this reason, the Commission should not limit its concern to conventional vehicles, but also consider the impact on other non-road engines that are typically fueled by consumers at the local gas pump. Unfortunately, the EPA and the Department of Energy have not done any testing on the impacts of mid-level ethanol on marine engines, and only cursory testing of other on-road and non-road engines. Thus, it is imperative for the Commission to consider the risk of mid-level ethanol to these products.

Marine and other small gasoline-powered engines are designed and certified to run on *not* more than E10. Higher concentrations of ethanol in fuel pose serious problems, including:

- Performance issues, such as drivability (i.e., starting, stalling, fuel vapor lock);
- Increased water absorption and phase separation of gasoline and water while in tank;
- Fuel tank corrosion, leading to oil/fuel leaks;
- Increased emissions of smog-forming pollutants, such as NOx because the ignition of E15 creates a higher temperature than straight gasoline or E-10;
- Damage to valves, push rods, rubber fuel lines and gaskets.

Marine and other small gasoline-powered engines are not designed, calibrated, or certified to run on more than E10. If in the unfortunate event ethanol blends higher than E-10 are offered for sale, it is critical that the FTC ensure that consumer have information on the ethanol quantity of a fuel and the risks of misfueling.

In addition to protecting against harm to their engines and fuel systems, boat owners need information on ethanol levels higher than E-10 at the pump because their warranties will be void if such fuel is used. Marine warranties provide notice that the owner should not use ethanol blends greater than 10%, especially E85 (85% ethanol). Marine engines are not designed to run on mid- to high-percentages of ethanol. Loss of performance will occur. Engine damage will also occur. Damage caused by fuel with any ethanol blend above 10 percent is not covered by the warranty.

⁴ See also the NMMA comments provided to EPA and referenced in footnote 2 for additional information.

In addition, the use of ethanol-blended fuels requires special care. Because of the high content of alcohol in the blend, users of ethanol-blended fuels must take additional care in the maintenance of their fuel systems. The effects vary depending on the fuel tank material. Most boats have fuel tanks constructed of aluminum, stainless steel, or composites. Since ethanol-blended fuels attract and hold moisture, ethanol content can contribute to corrosion of the tank material in aluminum fuel tanks. Corrosion material can clog fuel filters and damage injectors, carburetors, and other fuel system components.

Ethanol-blended fuel can act as a solvent, loosening and washing old deposits or contaminants into the fuel system. Fuel system or engine damage caused by contamination from water, foreign particles, sludge, or gums entering or forming in the fuel system is typically not covered by warranties. A water-separating fuel filter between the fuel tank and the engine should be used when using ethanol-blended fuels. These filters must be checked frequently for water and contaminants. In addition, a boat owner must be sure to carry spare filters and tools to replace the filters on voyages.

For all ethanol blends, boat owners should be warned at the pump if ethanol is present *and* if the amount exceeds E-10. The more information provided to the consumer about the precise amount of ethanol the better, as the need for additional maintenance and precautionary measures increases with the amount of ethanol in the blend. In addition, consumers should be warned at the pump that the use of any blended-fuel over 10% can void the warranty and damage engine and fuel systems.

FTC needs to require this information at the pump because the U.S. boat fleet is significantly older than that of motor vehicles. Boats in use today were manufactured well before ethanol blended fuels were sold.

V. MORE SPECIFIC AND ROBUST WARNINGS NEEDED

The FTC's proposed labels are not sufficient to adequately warn consumers of the risk associated with mid-level ethanol or to prevent misfueling. The FTC labels must inform consumers of the precise ethanol content in clear language and that the fuel is appropriate only for certain specifically-designed vehicles. Importantly, the Commission's proposed language that mid-level ethanol "*may harm some vehicles*" is totally inadequate to warn consumers and does not mention nonroad equipment, marine engines, and boats. For this reason, NMMA strongly urges FTC to ensure that any labeling regime specifically state that any fuel other than E-10 is not for use in any marine or boat engine. NMMA directs the FTC to the AllSAFE recommended warning label for guidance.

In addition, referring a consumer to merely look at their owner's manual assumes such a manual exists or is still in the possession of the consumer. Such a warning is inadequate and will not provide consumers with information when they need it most – at the pump. Only if a consumer has this critical information will they have any hope of making an informed fuel choice. FTC should ensure that this information is provided to the consumer at the pump.

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Fuel labeling will not be a sufficient or viable safeguard against misfueling and it will not protect consumers, their safety or their products. Should FTC and EPA move forward with a labeling regime it is imperative that it be *robust*, specifically advise against the use of fuel in marine engines and boats, as well as other nonroad engines and equipment, and explicitly communicate to consumers the specific harm mid-level ethanol blended fuels pose to boats, marine engines and nonroad equipment. In addition, a wider set of misfueling controls will be necessary to protect consumers. Even with these steps, NMMA remains *strongly opposed* to the approval of any ethanol blended fuel over E-10.

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NMMA appreciates the opportunity to provide comment to the Federal Trade Commission on its proposal to amend its Rule for Automotive Fuel Ratings, Certification and Posting. Please contact me at 202-737-9766; csquires@nmma.org for any additional information or if you have any questions on this material.

Sincerely,

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Chief Counsel for Public Affairs and Director of Regulatory Affairs