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Federal Trade Commission
Office of the Secretary
Room H-113 (Annex N)
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Re: Fuel Rating Rule Review, 16 CFR Part 306, Project No. R811005

To Whom It May Concern:

These comments are submitted on behalf of our clients, the National Association of Convenience Stores (“NACS”)¹ and the Society of Independent Gasoline Marketers of America (“SIGMA”)² in response to the Federal Trade Commission’s (“FTC’s” or the “Commission’s”) proposed rule regarding automotive fuel ratings, certification and posting (“proposed rule” or “Proposal”).³

NACS and SIGMA recognize and appreciate that the Commission intends to provide motor fuel consumers with sufficient information regarding the products that they purchase, while minimizing the burdens on the fuel retailers that serve them. As discussed below, however, the Proposal fails to account for certain fundamental market realities. Further, the proposal is inconsistent with other regulations governing NACS and SIGMA members’ operations.

NACS and SIGMA’s primary concern with the Proposal pertains to labels for fuel pumps dispensing gasoline-ethanol blends between 16 and 85 percent ethanol by volume. Under the proposed rule, such pumps would be required to contain labels that disclose the

¹ NACS is an international trade association composed of more than 2,200 retail member companies and more than 1,600 supplier companies doing business in nearly 50 countries worldwide, with the majority of members based in the United States. While 49 of the top convenience store companies in the United States are members of NACS, the majority of NACS’s members are small, independent operators. More than 70 percent of NACS’s total membership is composed of companies that operate ten stores or less, and more than 60 percent of NACS’s membership operates just a single store.

² SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel. Ninety-two percent of SIGMA’s membership are involved in gasoline retailing, 66 percent are involved in wholesaling, 36 percent transport product, 25 percent have bulk plant operations, and 15 percent operate terminals. Member retail outlets come in many forms, including travel plazas, traditional “gas stations,” convenience stores with gas pumps, cardlocks, and unattended public fueling locations.

³ 79 Fed. Reg. 18850 (April 4, 2014).

ethanol percentage, with the option of rounding such disclosures to the nearest factor of ten. This is both not workable as a practical matter, and inconsistent with ASTM's definition of E85.

The final rule should impose a labeling regime whereby one of three different labels are required for gasoline: One label for gasoline up to and including E10; one label for mid-level gasoline-ethanol blends greater than E15 that do not qualify as "E85" under current ASTM specifications; and one label for gasoline-ethanol blends that do qualify as E85 under such specifications. (NACS and SIGMA support the Proposal's exemption for E15 blends that satisfy the Environmental Protection Agency's ("EPA's") separate, complimentary labeling regime.)

In addition, the final rule should slightly revise the proposed label to better ensure it will attract consumers' attention.

One E85 Label

The final rule should impose a single labeling requirement for all fuels that qualify as "E85" under ASTM specifications. This requirement should not differ from the current requirement for such fuels, *i.e.*, listing the commonly used name of the fuel ("E85") along with disclosure, expressed as the minimum percentage by volume, of the principal component of the fuel. ASTM currently defines "E85" as any gasoline-ethanol blend containing between 51 and 83 volume percent ethanol. Therefore, the final rule should permit a single label for such fuels, noting the fuel name ("E85") and noting that such fuel contains not less than 51% ethanol by volume.

The Proposal would change this requirement, and replace it with a label that includes an ethanol percentage disclosure rounded to the nearest factor of ten. If finalized as proposed, gasoline-ethanol blends that qualify as E85 under ASTM specifications would not be labeled as E85, but instead be labeled E50, E60, E70, or E80. This regime will generate massive consumer confusion, and inject unnecessary uncertainty into an E85 market that is still in its infancy. Market participants and consumers are already accustomed to the current E85 labeling requirements, and there is no reason to disrupt that at the present time.

One Label for Mid-Level Blends Greater than E15 and Less than E51

The final rule should require a single label for all fuel blends greater than E15 that do not qualify as "E85" under current ASTM specifications. The Proposal would require different labels for such blends depending on their precise ethanol content. This is not workable for many retailers, and not in consumers' best interests.

As a preliminary matter, “rack buyers,” *i.e.*, retailers that do not do their own blending, will not necessarily be able to know with certainty how much ethanol is in any specific gallon of fuel – even to the nearest factor of ten. The tanks in which motor fuel is stored do not turn over completely, so new product supply is combined with product that was already in the tank. Mid-level ethanol blends are generally generated through blender pumps which mix ethanol with E10 gasoline to provide a mid-level blend (E20, E30, E40, etc). Many retailers will not be in a position to determine the precise ethanol percentage of these fuels.

Even if retailers *are* in a position to make this determination, requiring them to constantly shift the labels on their blender pumps (E20 one day, E40 another day, etc.) would be exceedingly burdensome and have little offsetting benefit to the consumer. It is important to understand that the market adjusts regularly; fuel retailers often change the blend ratios in their tanks in order to reflect market prices and offer consumers the lowest cost. Many retailers would be reluctant to continue this practice if doing so meant constantly changing the label on dispensers. The result would be a more stagnant blend ratio and an inefficiently high price for the consumer. Permitting a wider range (*e.g.*, E20-E50) better enables retailers to respond to the market and provide consumers the lowest cost product.

What’s more, at the present time any vehicle that may lawfully run on gasoline-ethanol blends greater than E15 is permitted to run on any blend between E15 and E85. Consumers do not need more precise ethanol content information in order to avoid violating the law or their vehicles’ warranties. If, in the future, EPA grants additional waivers for mid-level ethanol blends greater than E15 for a certain segment of the automobile market, the Commission can revisit the fuel rating rules. (Presumably, a similar exemption would be granted at that time for mid-level blends that comply with EPA’s labeling regime, similar to what the Proposal provides for E15.) As it currently stands, however, the Proposal’s stringent regulatory regime will dissuade many retailers from selling mid-level ethanol blends.

One Label for Gasoline Containing Ten Volume Percent Ethanol or Less

The Proposal would not disrupt the current labeling requirements for gasoline-ethanol blends containing less than or equal to ten volume percent ethanol. NACS and SIGMA support this.

Label Content

It is against the law for a consumer to introduce into his or her vehicle a gasoline-ethanol blend that is not approved for use in the vehicle. What’s more, in certain circumstances, retailers could be liable for these violations of the law. It is therefore imperative that the

labels contain an advisory word that will help catch consumers' attention. EPA's mandatory label for pumps dispensing E15 contains the word "ATTENTION" in bold letters on the top of the label. The FTC's labeling regime should contain a similar eye-catching word in order to better attract consumers' attention and minimize instances of misfueling.

Thank you for considering the above comments. I would be happy to discuss them further with you at any time.

Sincerely,

R. Timothy Columbus
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