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Julius Johnson
Commissioner

Bill Haslam
Governor

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

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

Dear Sir/Madam:

This letter is to provide comments on the Federal Trade Commission's (FTC) Fuel Rating Rule Review, 16 CFR Part 306, Project No. R811005.

The Tennessee Department of Agriculture (TDA), Division of Consumer & Industry Services, is responsible for executing the Kerosene and Motor Fuels Quality Inspection Act of 1989, T.C.A. 47-18-1301 et seq. It is the intent of this legislation to promote and protect the public health, safety and welfare by ensuring that kerosene and motor fuels: (1) Are adequately labeled and posted; and (2) Meet or exceed certain minimum standards of quality. Additionally, T.C.A. 4-3-203 provides the Commissioner of Agriculture with the authority to promulgate rules and regulations necessary to effectuate the purposes, duties and responsibilities of the department.

Current Tennessee rules pursuant to kerosene and motor fuels recognize the FTC Automotive Fuel Rating, Certification, and Posting Rule (the Rule). Therefore, we have a vested interest in any proposed changes to the Rule.

TDA supports the Commission's decision to amend the Rule. We recognize that the proposed rule takes into account many of the comments that Tennessee submitted during the Commission's 2010 NPRM. However, since 2010 there have been numerous changes that have resulted in the current TDA position. The ASTM International D5798 Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines has undergone major revisions that were supported by stakeholders through the consensus process. As noted in the NPRM, the specification now supports a wider range of ethanol concentrations, 51 % - 83 %. This change was not arbitrary – it was data driven and supported by Coordinating Research Council Report No. 654. Stakeholders also recognized the need to add a new volatility class to ASTM D5798 that better represented the needs of the various monthly climates in the United States. Finally, ASTM D5798 recognized the term

“Ethanol Flex-Fuel” as the most standardized term for higher level ethanol blends. In addition to the work at ASTM International, the National Conference on Weights and Measures (NCWM) has proposed amended language to the NIST Handbook 130 “Uniform Engine Fuels, Petroleum Products, and Automotive Lubrications Regulation”. Tennessee supports the wording as published in the 2014 edition of NCWM Publication 16 (Agenda Items 232-6 and 237-9), which was crafted after much discussion and review from a broad base of stakeholders and through extensive efforts of the NCWM.

We have reviewed the proposed rule changes and would like the Federal Trade Commission to consider the following comments:

1. Exempting EPA approved E15 from the FTC labeling requirements: Tennessee does not support this proposal. The EPA label is meant to be a declaration of the ethanol content and to provide information on vehicle classes that can legitimately utilize E15. As E15 expands, marketers will need to compete by providing Regular, Mid-Grade, and Premium E-15 blends. The Antiknock Index will be the distinction between these grades. We believe that it is imperative to retain the Antiknock Index as the applicable Automotive Fuel Rating for E-15 gasoline. Much work had been done at the ASTM International to update the official test methods for determining the Antiknock Index of higher level ethanol blended fuels. Requiring the Antiknock Index as the legal Automotive Fuel Rating for E15 will benefit the consumer and both the ethanol and petroleum industries by maintaining a level playing field for marketing the various grades of gasoline and gasoline-ethanol blends.
2. Definition of Standards applicable to determining Antiknock Index: The TDA suggests recognizing the most recent versions of D2699 and D2700 – D2699-13b, ASTM D3700-13b and D2885-13.
3. Use of Infrared Spectrophotometers for compliance with determining the Antiknock Index: The NPRM states that in 2010 “the National Conference on Weights and Measures (“NCWM”) provided a survey showing that 17 of 24 regulatory agencies surveyed use the Infrared Method to determine if fuel dispensed at a pump has the same octane rating as posted on the label.” As the state agency that was directly involved in this survey, clarification is needed. All 50 states were surveyed. Of the 50 states surveyed, 24 responded and 17 of the 24 indicated that they use an Infrared Method at the pump. This should be clarified as the survey in no way indicated that a majority of states rely on Infrared devices at retail for enforcement. Most, if not all, states recognize that the Infrared devices used at retail facilities are not as reliable as the D2699 and D2700 engine tests, and any disputed failures are eventually tested on the standardized engines. Therefore, the department urges the Commission to exercise caution and thoroughly consider the potential consequences of this proposed change. If the Commission does proceed with accepting these devices, we urge the Commission to (1) make D2699 and D2700 the clear referee test methods for Antiknock Index and (2) recognizing the most recent edition of ASTM D6122 as D6122-13.
4. The Term and Definition for “Ethanol Blends” – The TDA urges the Commission to recognize the term “Ethanol Flex Fuel” as the description for higher ethanol blended fuels. This is consistent with both ASTM International and the NCWM recommendations. The TDA also

urges the Commission to amend the proposed definition to read “Ethanol Flex Fuel means a mixture of gasoline and ethanol containing more than 15 percent ethanol”.

5. Ethanol Flex Fuels that meet the requirements of ASTM D5798 – The TDA urges the commission to amend the proposal so that the label for Ethanol Flex Fuels containing 51 % to 83 % ethanol reads: “Ethanol Flex Fuel, minimum 51 % Ethanol”. Providing industry with the flexibility to market high level ethanol blends without continually changing labels is very important. This is also consistent with current Rule that rightly permits a relatively broad range for posting the content of Biomass Based Diesel. As noted previously, the ASTM D5798 specification revisions related to ethanol content and volatility classes were data driven. It is not possible for marketers to offer a higher level ethanol blend in climates where ambient temperatures are very low in the winter. The proposed rule will force fuel marketers to (1) change labels throughout the year as they adjust the ethanol content to be compatible with the climate or (2) blend the lower amount of ethanol throughout the year in order to ensure that the fuel will always meet minimum volatility requirements. Option (1) will be a burden to industry and many will not opt for this alternative. Option (2) will force the market to move in a direction that is counter to that of the Energy Independence and Security Act of 2007. The Commission is aware that, under this act, obligated parties are required to blend increasing amounts of renewable fuels. The proposal as currently written will pose a burden on those that must blend the maximum amount of renewable fuels to meet their mandated obligations. Concerning the consumer, we believe that the consumers will generally be receiving a comparable concentration of ethanol at the competing fueling sites in a given market during the various seasons – meeting the requirements of D5798 will directly influence the ethanol concentration and provide a level playing field for both consumers and marketers.
6. Ethanol Flex Fuels greater than 15 % ethanol and less than 51 % ethanol – The TDA supports the proposal from the Commission for this range of fuels.

The Tennessee Department of Agriculture values the close working relationship that we have developed over the years with the Federal Trade Commission Staff, and we look forward to continuing such as we strive to develop rules that protect both the consumers and the industry sectors that are regulated. Thank you for consideration of these comments.

Sincerely,

Julius Johnson
Commissioner, Tennessee Department of Agriculture