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Fuels Issues, Downstream

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

Submitted via: https://ftcpublic.commentworks.com/ftc/autofuelratingscertnprm

Re: Fuel Rating Review, Project No. R811005

To Whom It May Concern:

The American Petroleum Institute (API) respectfully submits the following comments on the Notice of Proposed Rulemaking to the Federal Trade Commission's (FTC) Fuel Rating Rule. API represents more than 600 companies involved in all aspects of the oil and natural gas industry. API member companies may also be submitting comments containing additional information.

API supports the effort to clearly label ethanol blends that reflect the updated ASTM definitional changes, and are consistent with EPA's E15 label. We have some concerns detailed in this letter that we ask you to carefully consider. As the Renewable Fuel Standard encourages increased consumer use of higher ethanol blends, we remain concerned that clear and effective labeling is essential to help consumers familiarize themselves with the proper use of such higher blends. Subject to the concerns raised herein, we encourage you to finalize this rule in the best interest of consumers.

Applicability of the FTC Rulemaking

EPA issued partial waivers that permit the use of up to 15 volume percent ethanol blends in model year 2001 and newer automobiles. The FTC Proposed Rule indicates that duplicative labeling would not be required, and API supports the need for the efforts of the FTC and EPA to be coordinated in order to avoid duplicate labeling on ethanol blends above 10 volume percent. We remain concerned that the FTC rulemaking could be interpreted as requiring two different E15 labels in the marketplace: one for E15 blends permitted by the EPA waiver, and a distinctly different FTC label that could potentially be used as an alternative to the EPA label.

The FTC proposal states:

> *"… the proposed exemption is narrowly tailored to ensure that only E15 blends that obtain an EPA waiver, and therefore are labeled according to EPA rules, are exempt from the FTC's labeling requirements"*
>
> *"… you do not need to post the automotive fuel rating of a mixture of gasoline and ethanol containing more than 10 but not more than 15 percent ethanol if the Environmental Protection Agency has issued a Clean Air Act waiver for the distribution of the fuel for use in certain conventional vehicles"*

These excerpts suggest that 15 volume percent ethanol blends will not be required to carry the FTC's proposed label. Yet, FTC definitions clearly state that "ethanol blends" are defined as blends above 10 percent ethanol and rating requirements for ethanol blends include labeling.

The EPA issued a Misfueling Mitigation rulemaking that, in addition to labeling, addresses several additional criteria that companies must meet to offer E15 for sale. We are very concerned that the FTC's "narrowly tailored" exemption potentially creates a loophole that may allow a supplier to differentiate "EPA-approved E15" from "non-EPA-approved E15" and, for the latter, avoid the requirements of EPA's misfueling mitigation rule. Equally problematic is the situation in which a supplier might require both the EPA and FTC labels on an E15 dispenser, adding to consumer confusion at the pump. We do not support differentiating between "approved" and "not-approved" E15 blends and, therefore, suggest that FTC make clear in its definitions that the rule applies only to ethanol blends above 15 volume percent.

The National Conference on Weights and Measures (NCWM) has proposed label regulations that will be considered in July. In finalizing this rulemaking, FTC may deem it appropriate to differ from the NCWM label, but companies should be able to comply with the FTC and state regulations (for states that adopt NCWM) with the same pump label. FTC should avoid finalizing labeling requirements that conflict with NCWM.

Label Specifications

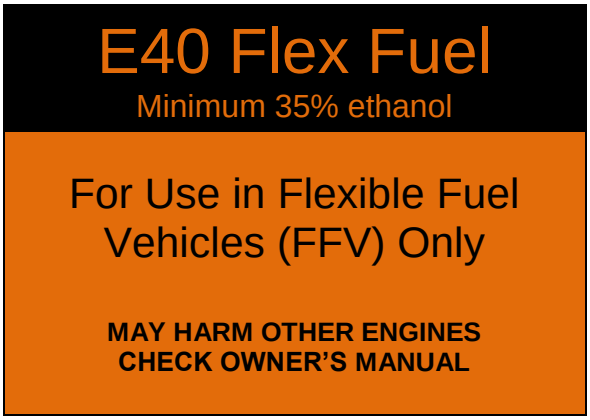
FTC proposes the following language on labels for mid-level ethanol blends:

- XX% ETHANOL
- USE ONLY IN FLEX-FUEL VEHICLES
- MAY HARM OTHER ENGINES

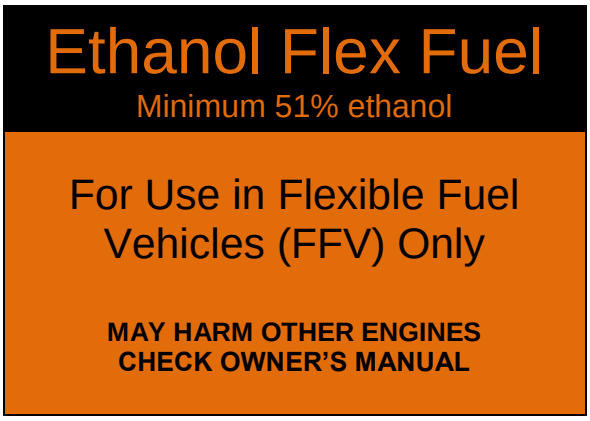
The proposed label adequately informs consumers, though we have some recommendations we ask you to consider. The final FTC label should mirror the format and style of the EPA E15 label, with appropriate differences in the information presented to inform consumers. Consistency with the EPA E15 label is, we believe, important so that consumers can easily

understand that the fuel contains ethanol at higher percentage volumes than "normal" fuels, and therefore is appropriate and approved only for certain specific types of vehicles.

API recommends the following example label for a blend with 16-50 volume percent ethanol (E40 in this example, the same as the example in FTC's proposal):



API recommends the following example label for fuel blends that contain 51 to 83 volume percent ethanol.



API does not support the FTC recommendation to identify ethanol concentration to the nearest 10% for ASTM D5798 compliant fuel. Fuel retailers would likely need to replace labels as the seasonal Reid Vapor Pressure (RVP) requirements change the percentage of ethanol present in ethanol blends above 50%. In practical terms, the seasonal RVP requirements dictate that the concentration of ethanol be varied potentially across the entire allowable range of 51% to 83% to remain compliant with ASTM D5798 throughout the year. Multiple changes in pump labeling throughout the year place a burden on local site operators that adds unnecessary complexity required to maintain regulatory compliance.

Two similar labels are necessary to allow ASTM D5798 compliant fuel to be distributed throughout the year without unnecessary labeling changes, and to allow distribution of ethanol blends with 50% or less volume percent that are not covered by the ASTM D5798 standard. For these blends from 15 to 50 volume percent ethanol, we support the proposal to allow disclosure of the specific blend percentage, or a rounded blended percentage. However, rather than only being permitted to round percentages to the nearest 10%, we believe percentages posted in increments of 5% should also be allowed.

- Size: The EPA E15 label is 3 ⅝ X 3 ⅛ inches. The FTC proposed label is smaller, and to the extent feasible, FTC should match the EPA label in size. Should the language requirements established in this rulemaking necessitate a larger label, we recommend that the width match the EPA label.
- Color: API continues to believe bronze is the most appropriate color to match the color used by the petroleum industry to identify alcohol based fuels as established in API Recommended Practice 1637 *Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals*. However, EPA has established orange as the color for E15 labeling and therefore we recommend orange to ensure consistency across the EPA and FTC labels.
- Fonts: It is not necessary to specify Helvetica font to convey the appropriate message. We support the proposed 24 point font for the wording in the top banner.
- For use in flexible-fuel vehicles only: This wording appropriately warns consumers that only specialty vehicles can use these fuels. This language is consistent with the NCWM proposal.
- May harm other engines: The statement recognizes that unpermitted use of the fuel has the potential to cause engine damage and necessitate repair(s). Given the importance of this disclosure, we recommend that it be given in 16 point font or, if left at 12 point, that the font be bolded or italicized for additional emphasis.

API is concerned about liability in the event of intentional and unintentional misfueling by motorists. The FTC's proposal does not prohibit the act of misfueling, and API would oppose the inclusion of such a provision. EPA already prohibits the act of misfueling and FTC should not duplicate this activity in a final rule. Retailers who appropriately inform consumers and comply with labeling rules should not be held liable for the act of misfueling.

Infrared method as an additional octane rating method:
We support the FTC's proposed amendment to allow the use of octane measurements by infrared analyzers that are correlated with ASTM D2699 (Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel) and D2700 (Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel) and conform to ASTM D6122 (Standard Practice for Validation of the Performance of Multivariate Online, At-Line, and Laboratory Infrared

Spectrophotometers Based Analyzer Systems). ASTM D6122 is correctly cited by the FTC proposal as the relevant industry standard governing the use of infrared instruments suitable for making gasoline measurements.

It is important, however, that engine measurements made according to ASTM D2699 and ASTM D2700 continue to be recognized as referee method results for assessing octane number quality of gasoline. The ASTM D6122 standard relies on correlation (i.e., calibration as per ASTM E1655, Standard Practices for Infrared Multivariate Quantitative Analysis) between the responses of an infrared instrument and the octane measurements obtained by the primary test methods (i.e., ASTM D2699 and ASTM D2700). That is, an infrared device is calibrated on a set of samples where the engine measurements are the primary or referee test method results. Furthermore, both the initial validation and ongoing validation and Statistical Quality Control (SQC) monitoring of an infrared device's accuracy, which are required elements of the ASTM D6122 standard, are assessed by comparison of results between the infrared method and those of the primary test methods. Thus, in all phases of the development, use, and maintenance of an infrared device following this standard, engine measurements as primary test method results are considered the referee method results.

Therefore the FTC should make the following addition to the language after section 306.5(a)(3) of the proposed rule :

> "ASTM D2699 and ASTM D2700 are designated as the referee test methods for dispute resolution."

Additionally, the proposed rule specifically lists the 2010 version years of the various ASTM standards. API recommends these version years be omitted from FTC rules to prevent them from becoming outdated when ASTM publishes updates to its standards. If the FTC believes specific version years must be included in the rule, then the listed 2010 versions should at a minimum be replaced with the already published 2013 versions from ASTM.

API and our member companies appreciate the opportunity to comment on this proposed rule. If you have any questions or concerns, please contact me at 202-682-8192.

Sincerely,

Patrick Kelly
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