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Legal & Regulatory Group

July 2, 2014

Via FTC website
Federal Trade Commission (FTC)
Office of the Secretary
Room-H-113 (Annex N)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Automotive Fuel Ratings, Certification and
Posting: Fuel Rating Rule Review; 16 CFR Part
306; Project No. R811005

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ over 1,000,000 people nationwide yet most are small businesses as defined by the Small Business Administration.

Earlier this year, the FTC asked for comment on proposed amendments to its fuel rating rule, which requires point-of-sale consumer information disclosures for liquid automotive fuels. 79 Fed. Reg. 18850, *et seq.* (April 4, 2014). The proposed amendments focus on the dispensing of gasoline/ethanol blends. In response, NADA offers the following comments and suggestions.

I. Background

The Petroleum Marketing Practices Act (PMPA) authorizes the FTC to issue fuel rating requirements applicable to all liquid automotive fuels. 15 U.S.C. 2801, *et seq.* A fuel rating rule, first issued in 1979, was later amended in 1993. The FTC solicited comments in 2009 and 2010 on, among other things, the rule's application to ethanol blends. In 2011, the FTC issued an amended the rule but deferred consideration of ethanol blends until after the Environmental Protection Agency (EPA) issued a final rule governing E-15 misfueling.¹

As proposed, the 2014 proposal would:

1. Add a definition of "ethanol-blend" fuels.
2. Require ethanol blend fuel pump labels stating "USE ONLY IN FLEX-FUEL VEHICLES-MAY HARM OTHER ENGINES."
3. Require pump labels for fuels containing more than 10% ethanol (gasohol) to indicate their ethanol content expressed as a percentage. As proposed, these labels would not apply to 15% ethanol blends if covered by EPA's 2011 labeling mandate.
4. Not require an octane rating for ethanol blend fuels.
5. Set specific label size, font, and format requirements.

¹ 76 Fed. Reg. 44406, *et seq.* (July 25, 2011).

NADA strongly supports the goal of providing fuel consumers with the information necessary to make appropriate fuel purchase decisions. The overwhelming majority of new and used motor vehicles sold and serviced by dealerships are designed to accommodate only gasohol. Only a relatively small number of the new and used vehicles sold and serviced by dealerships are “flex-fuel”, that is they are designed to use gasoline/ethanol blends with up to 85% ethanol (E-85). It is important that ethanol blends be marketed only to the engines and vehicles designed to use them, and that fuel consumers be able to easily determine which fuel(s) properly may be used in their vehicles.

As dealership service departments know well, improper fuel blending, distribution, storage, marketing, or dispensing can undermine engine, fuel economy, and/or emissions performance. “Bad” fuel issues often are difficult to diagnose, even with today’s sophisticated onboard diagnostic (OBD) systems and service tools. In fact, “bad” fuels can lead to false positive OBD readings. Potential problems with ethanol blends include excessive corrosion, hotter exhaust temperatures, water-in-fuel and phase-separation (a potential safety problem should stalling occur), material incompatibility, volatility issues (e.g., vapor lock), and off- or on-board fuel storage dirt and sludge solvency issues. At best “bad” or improper fuels lead to consumer dissatisfaction; at worse to permanent engine or emissions-related component damage.

II. Suggestions on the Proposal

NADA urges the FTC to modify its proposal as follows:

A. Pump Label (16 CFR 306.12(a)(4))

The proposed ethanol blend label should be modified to:

1. Include at the top clear wording designed to get the attention of prospective fuel purchasers. Acceptable options include “Warning” (best) or “Caution” (better) or “Attention” (currently used in EPA’s E-15 label).
2. Include at the bottom a phrase designed to let prospective fuel purchasers know where to get further information on fuel compatibility. NADA specifically suggests: “See Owner’s Manual or Fuel Inlet for More Information”. Pump labels are of little use to fuel purchasers that don’t know what fuel(s) can and cannot be used in the vehicles they are fueling. The best sources for such information are vehicle owner’s manuals and fuel inlet labels.
3. Replace “May Harm Other Engines” with “Do Not Use in Other Engines.” Making this change should help reduce the risk of misfueling. NADA suggests that the language in EPA’s E-15 pump label is unnecessarily wordy.²
4. Show the ethanol content percentage in 5% increments.

² “Do not use in other vehicles, boats, or gasoline-powered equipment. It may cause damage and is prohibited by federal law.”

B. Octane Rating

The final rule should require octane ratings for all liquid automotive fuels, including ethanol blends. Consumers often and wisely consider a fuel's octane rating when making appropriate vehicle fueling decisions, whether or not an ethanol blend is involved.

C. Coordination and Harmonization with EPA and the National Highway Traffic Safety Administration (NHTSA)

Since 1979, the FTC has been the premier federal consumer information and protection agency with respect to motor vehicle fuel ratings, pump labeling, new vehicle alternative fuel labels, and fuel economy advertising. As such, it should lead an FTC-EPA-NHTSA harmonization effort. For example, EPA can and should modify its E-15 pump label to conform to the one now being considered by the FTC. It makes no sense to require the fuel buying public to become familiar with two different ethanol blend pump labels.³

D. Fuel Content Letters

Fuel consumers must be able to rely on the fact that they are purchasing fuels with the ethanol blend percentages stated on pump labels. The proposed 16 CFR 306.6 certification requirements should help in this regard. In addition, NADA urges the FTC to coordinate with EPA regarding its product transfer mandate and national compliance/enforcement sampling and testing program. Lastly, both agencies should coordinate with appropriate state agencies to ramp up fuel quality enforcement, especially for biofuel blends involving a significant risk of fuel commingling or contamination.⁴

III. Other Suggestions

The FTC's pump label requirements should help to prevent the potential reliability and performance issues that can result from misfueling. But labels alone won't do the trick. NADA urges the FTC to undertake a targeted outreach and education effort aimed at getting fuel consumers to fully appreciate the value of knowing what fuels are appropriate for which vehicles, of understanding the potential consequences of misfueling, and of doing what they can

³ In the context of EPA's Misfueling Rulemaking, NADA stated that: "EPA must work to harmonize with the Federal Trade Commission's rule and proposal governing Automotive Fuel Ratings, Certification, and Posting. ... NADA supports a requirement that all gasoline and gasohol pumps accurately display the ethanol and RVP content of each grade of fuel dispensed. However, *in no event should more than one Federal label be required*. Accurate labels for E-0, E-10, E-15, and E-85 will both inform the motoring public and enhance the marketing of alternative fuels." NADA, *Comments to EPA-HQ-OAR-2010-0448*, at 3 (2011).

⁴ Motorists also need assurances that the fuels marketed for use in their vehicles meet or exceed manufacturer specifications. To this end, NADA has long advocated for policies aimed at ensuring storage system compatibility, avoiding corrosion and conductivity issues, and keeping sludge, dirt, or water from contaminating ethanol blends.

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to avoid misfueling. Such an effort should involve coordination with the EPA and NHTSA and should focus on:

1. Owner's manual information.
2. On-vehicle information, including fuel inlet and door labels and vehicle badges.
3. Fuel pump label information.
4. Other sources of information, including useful fuel and vehicle websites.

As it has in the past, NADA continues to support other anti-misfueling strategies. For example, since consumer fuel purchases largely are made at publicly accessible self-service facilities, pump initializing smart cards or numeric codes tied to a vehicle's fuel specification should be used, along with different colored dispenser handles for different liquid fuels. These strategies, coupled with adequate consumer awareness, would help to reduce misfueling at little cost to fuel dispensers and consumers alike.

On behalf of NADA, I thank the FTC for the opportunity to comment on this matter.

Respectfully submitted,

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