

July 2, 2014

Miriam Lederer
Federal Trade Commission
Office of the Secretary
Room H-113 (Annex N)
600 Pennsylvania Avenue NW
Washington DC 20580

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

Dear Ms. Lederer,

The Renewable Fuels Association (RFA) is pleased to submit the attached comments in response to the U.S. Federal Trade Commission's (FTC) proposed amendments to the Rule for Automotive Fuel Ratings, Certification and Posting that would provide guidance for ethanol/gasoline blends and would allow an alternative octane rating.

RFA is the leading trade association for America's ethanol industry. Its mission is to advance the development, production, and use of the fuel ethanol by strengthening America's industry and raising awareness about the benefits of renewable fuels. Founded in 1981, RFA serves as the premier meeting ground for industry leaders and supporters. RFA's 300-plus members are working to help America become cleaner, safer, more energy secure and economically vibrant.

As an initial matter, FTC's proposal appears to overlook the fact that industry needs related to specifications, standard practices, regulatory language, and labeling for ethanol/gasoline blends have been addressed through the actions of standards development organizations and regulatory entities. These bodies, which include ASTM and the National Conference on Weights and Measures (NCWM), have adopted numerous changes to ethanol/gasoline blend specifications and other technical provisions since FTC first sought comment on updating automotive fuel ratings in 2009. As currently constructed, the FTC proposed amendments would conflict with a number of these advancements by ASTM, NCWM and other bodies. We believe FTC should recognize and adopt these changes—many of which have already been implemented broadly across the fuels industry—before moving forward with any modifications to the Fuel Rating Rule. Our attached comments provide a detailed review of pertinent updates undertaken by consensus-driven standards setting bodies, including ASTM and NCWM.

Further, FTC's proposal to disclose the percentage ethanol content in ethanol/gasoline blends to the nearest interval of 10 poses important challenges for the marketplace that FTC apparently

has not considered. In many cases (particularly those involving “ethanol flex fuels” meeting ASTM D5798), this element of the proposal could conflict with existing industry marketplace practices and standards.

RFA is also concerned by FTC’s proposal requiring the inclusion of language stating “May Harm Other Engines” on labels for ethanol/gasoline blends intended for use in Flex Fuel Vehicles (FFVs). We believe such a warning is superfluous, speculative, and prejudicial. FFVs and ethanol flex fuels have been in the market for nearly two decades. During this time, labels advising drivers that flex fuels are for use in FFVs only have sufficiently informed consumers and adequately deterred misfueling. We are not aware of any credible evidence showing that misfueling has been a problem at flex fuel dispensers, nor are we aware of any concrete scientific evidence that one-time inadvertent misfueling does in fact cause significant and irreparable “harm” to engines. Still, to the extent FTC proceeds with the proposed language, the Commission should be consistent and require similar language on labels for other fuels.

Finally, we support FTC’s proposal to maintain the current certification scheme used by blenders of ethanol fuel blends for pump labeling; the ethanol content can continue to be declared via letter (or product transfer documents) to ensure ethanol content pump labeling is appropriate. We believe the current certification scheme used by blenders has proven accurate and efficient.

In closing, we encourage FTC to review and integrate the important advancements by ASTM and NCWM before finalizing amendments to the Fuel Rating Rule. We further recommend reconsideration of the proposed labeling language and ethanol content disclosures. RFA’s recommendations for FTC are attached.

Sincerely,

Bob Dinneen
President

The Federal Trade Commission (FTC) published a proposed rule on April 4, 2014, describing proposed amendments to the Rule for Automotive Fuel Ratings, Certification and Posting (“Fuel Rating Rule”). According to FTC, the proposed amendments are intended to “...further the Rule’s goal of helping purchasers identify the correct fuel for their vehicles.” The Renewable Fuels Association (RFA) offers the comments below in response to the FTC proposal.

- 1. Regulatory entities and standards development organizations have adopted numerous changes to ethanol/gasoline blend specifications, standard practices, regulatory guidance, and model language since FTC first proposed to update automotive fuel ratings in 2009. FTC should recognize and adopt these changes before moving forward with any modifications to the Fuel Rating Rule.**

FTC’s proposal appears to ignore the fact that industry needs related to specifications, standard practices, regulatory language, and labeling have been addressed through the actions of standards development organizations and regulatory entities. RFA recommends that FTC recognize and adopt these developments before proceeding with further action on the Fuel Rating Rule.

- a. RFA recommends that FTC adopt the most current version of ASTM fuel specifications and standards to capture important recent modifications and developments.***

It appears that FTC is proposing to adopt the 2010 versions of various ASTM standards regarding ethanol/gasoline blends, despite the fact that there are more recent versions containing important advancements and additional information. The ASTM D02 Petroleum Products, Liquid Fuels and Lubricants committee has made significant changes to motor fuel standards that are pertinent to the Fuel Rating Rule. Specifically, the D5798-13a Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines; D7794-12 Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines; and both standard test methods for determining the octane number (D2699-12a Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel and D2700-12a Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel) contain important information that should be considered by FTC as it contemplates potential changes to the Fuel Rating Rule.

The current version of D5798 lowers the allowable denatured fuel ethanol content in “flex fuels” from 70% to 51% by volume to facilitate blending of ethanol fuel blends that meet seasonal vapor pressure requirements. Achieving the necessary minimum vapor pressure requirements of D5798 had previously been challenging due to the continued lowering of the maximum vapor

pressure for gasoline. For example, due to the required 7 psi vapor pressure of gasoline in California, blending E85 in accordance with D5798 to achieve a minimum of 5.5 psi fuel blend with a minimum 68% ethanol content by volume was impossible. To eliminate this conundrum, restrictions of the minimum ethanol content by seasonality were removed from the specification and a universal minimum ethanol content of 51% was incorporated. To mitigate concerns from flexible-fuel vehicle manufacturers regarding cold weather operability, a fourth volatility class was developed specific to northern geographies. The Task Force also introduced a new term for fuel intended for use in flexible-fuel vehicles of “ethanol flex fuel.” *We recommend that FTC utilize the ASTM specification and terminology for “ethanol flex fuel” when addressing ethanol/gasoline blends containing 51-83% denatured fuel ethanol, rather than the proposed term “ethanol blend.”*

In 2008, ASTM initiated a new task force to develop guidelines for mid-level ethanol fuel blends (containing above 15% and below 51% denatured fuel ethanol); these fuel blends are restricted by EPA for use only in flex-fuel vehicles. Over the next several years, the task force discussed the best path forward for describing the performance needs of mid-level ethanol fuel blends and how best to communicate these requirements to fuel blenders. The task force successfully developed and published the D7794-12 Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines in 2012. The D7794 Standard Practice applies to the blending of ethanol fuel blends spanning the ethanol volume range not covered by either the D4814 Standard Specification for Spark-Ignition Engine Fuel or the D5798 fuel specification. The Task Force intentionally included recommendations for identifying and labeling mid-level ethanol fuel blends at retail in Section 6. Blending Procedures, subsection 6.5 and 6.6¹:

6.5 It is recommended that Mid-Level Ethanol fuel blends be identified as “Mid-Level Ethanol Blend.” It is also recommended that the product description name be followed by the term EXX, where XX represents the nominal percentage of denatured fuel ethanol and that each fuel dispenser offering Mid-Level Ethanol Fuel Blends provide a cautionary statement advising the purchaser that the fuel is “For Flexible-Fuel Vehicles Only.”

6.6 Target ethanol contents for the various mid-level ethanol fuel blends covered by this practice could follow a general practice of EXX +/- 5 volume %.

RFA led the effort to develop an ASTM document to assist the retail industry with mid-level ethanol fuel blends being dispensed from retail blender pumps. A blender pump, also known as a multiple product dispenser, draws two fuels from separate storage tanks and mixes them together in various percentages to form a variety of fuel choices for the station’s customers.² We

¹ ASTM International, D7794-12 Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines

² Blending Fuels magazine, Blend Your Own Ethanol, Fall 2010.

estimate there are approximately 300 blender pumps in service that are primarily dispensing mid-level ethanol fuel blends with 20-85% ethanol content. This ASTM Standard Practice is currently being utilized by state fuel programs as the guideline for regulating mid-level ethanol fuel blends. It is also being considered for formal adoption into state fuel requirements. *RFA recommends FTC recognize the ASTM D7794-12 standard and the terminology “mid-level ethanol blends” when addressing flex fuels with ethanol content above 15% and below 51% by volume.*

Finally, the ASTM octane rating analytical methods, D2699-12a Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel and D2700-12a Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel were updated in 2012 to include precision statements on ethanol gasoline fuel blends containing up to 25% by volume ethanol. RFA encourages FTC to recognize the most current version of these two critical analytical methods that include the expanded precision statements in the automotive fuel rating rule.

b. RFA recommends adoption of the consensus model language for ethanol fuel blends developed by the National Conference on Weights and Measures.

Since 2011, the National Conference on Weights and Measures' (NCWM) Fuels and Lubricants Subcommittee (FALS) has been developing proposed language for the NIST Handbook 130 in the “Uniform Regulation for the Method of Sale of Commodities” and the “Uniform Engine Fuels and Automotive Lubricants Regulation” sections. The proposed language includes text specific to the identification and labeling of ethanol fuel blends that can only be used in flexible fueled vehicles.

NCWM's FALS is a broad cross section of state regulatory officials and industry representatives from auto manufacturing, oil refining, ethanol producing and retail fuel marketing. During the process, there was considerable outreach to stakeholders beyond the FALS members. FALS gained consensus on the proposed wording for ethanol flex fuel blends in the fall of 2013 and recommended full and swift adoption of the comprehensive proposal by the NCWM Laws and Regulations Committee. This language has received no negative comments and is expected to be approved by the National Conference of Weights and Measures at the Annual Meeting being held in July 2014. The updated Regulations would first appear in the 2015 version of the NIST Handbook 130. *RFA recommends that FTC adopt identical wording as published in the NCWM Publication 16 for 2014, L&R Committee 2014 Interim Agenda items 232-6 and 237-9.*

2. FTC's proposal to disclose the percentage ethanol content in ethanol/gasoline blends to the nearest interval of 10 creates important challenges for the marketplace that FTC apparently has not considered.

In many cases, the proposal to disclose the percentage ethanol content in ethanol/gasoline blends to the nearest interval of 10 could conflict with existing industry practices and standards. Further, the proposal could create challenges for the marketplace that were apparently not considered or addressed by FTC.

The proposal poses challenges to current ASTM specifications. As mentioned previously, the D5798 specification prescribes the necessary performance criteria for fuel blends with a minimum of 51% denatured fuel ethanol by volume. Under the FTC proposal, a fuel blended to the D5798 specification at 51-54% denatured fuel ethanol would be labeled as “50% ETHANOL/USE ONLY IN FLEX-FUEL VEHICLES/MAY HARM OTHER ENGINES.” However, a 50% ethanol blend is not supported by the D5798 specification. Thus, the FTC proposal and existing ASTM specification (already adopted by the fuels industry) are in conflict and this would create confusion for both the fuel supply chain and the consumer.

Further, the actual ethanol content of “ethanol flex fuel” (i.e., blends containing 51-83% ethanol) can vary over time at the same retail location. Reasons for the fluctuation in the ethanol content include blending economics, ambient temperature, and other factors. Thus, for example, “ethanol flex fuel” at a particular retail location may contain 83% ethanol in the fall, but just 60% ethanol in the winter. Under the FTC proposal, it is unclear how the retailer would label his “ethanol flex fuel” dispenser in this situation. Would the retailer be required to change the label from “80% ETHANOL...” in the fall to “60% ETHANOL...” in the winter? A requirement to change the label every time the ethanol content fluctuates would be burdensome, costly, and confusing. Or would the retailer be required to simultaneously post multiple labels for every possible variant of ethanol content in the “ethanol flex fuel” offered at the pump? Such a requirement would only confuse consumers about the actual ethanol content of the fuel.

The current version of ASTM D5798 was constructed in a flexible way that allows the ethanol content of “ethanol flex fuel” to vary with market conditions, weather requirements, and other factors. We believe FTC’s proposal should respect this intended flexibility and integrate the specification into any new or modified labeling requirements for “ethanol flex fuels.” This could be easily accomplished by replacing the current FTC label for E85 (stating “E85/Minimum 70% Ethanol”) with a new label stating “ETHANOL FLEX FUEL/ Minimum 51% ETHANOL/ USE ONLY IN FLEX-FUEL VEHICLES.”

RFA is not opposed to the proposal to use 10 percentage point increments on labels for “mid-level ethanol blends.” Under such a labeling scheme blends containing 16-24% ethanol would be labeled “20% ETHANOL”; blends containing 25-34% ethanol would be labeled as “30% ETHANOL”; blends containing 35-44% ethanol would be labeled as “40% ETHANOL”; and blends with 45-50% ethanol would be labeled as “50% ETHANOL.” This would be generally consistent with current voluntary labeling of mid-level ethanol blends at existing blender pumps.

3. RFA opposes the inclusion of the text “MAY HARM OTHER ENGINES” on labels for ethanol/gasoline blends intended for use in Flex Fuel Vehicles (FFVs). The proposed text “USE ONLY IN FLEX-FUEL VEHICLES” alone provides sufficient guidance to consumers about proper use of ethanol/gasoline blends.

In addition to disclosing the percentage ethanol content, FTC proposes to require ethanol/gasoline blend labels to include the text “USE ONLY IN FLEX-FUEL VEHICLES/MAY HARM OTHER ENGINES.” While we support the inclusion of the text “USE ONLY IN FLEX-FUEL VEHICLES,” we believe the proposed language stating “MAY HARM OTHER ENGINES” is superfluous, speculative, and prejudicial.

FFVs and ethanol flex fuels have been in the market for nearly two decades. During this time, labels advising drivers that flex fuels are for use in FFVs only have sufficiently informed consumers and adequately deterred misfueling. We are not aware of any credible evidence showing that misfueling has been a problem at flex fuel dispensers that simply advise the consumer that the fuel is designed for use in FFVs only. The proposed language suggesting that ethanol flex fuels “MAY HARM OTHER ENGINES” does not appear to be based on scientific evidence and would undoubtedly deter some FFV drivers from purchasing the fuel, even if they know their vehicle is designed and warranted for the use of such fuels.

4. If FTC requires inclusion of the text “MAY HARM OTHER ENGINES” on labels for ethanol/gasoline blends intended for FFVs, it should require that the same text be included on labels for other fuels intended for specific applications.

As stated above, RFA believes the language stating “MAY HARM OTHER ENGINES” is unnecessary and prejudicial. Still, to the extent FTC proceeds with the proposed language, the Commission should be consistent and require similar language on labels for other fuels. In this proposal, FTC states that it has a responsibility to “provide sufficient information for many consumers to understand whether the fuel is appropriate for their engines.” However, FTC is apparently proposing the “MAY HARM OTHER ENGINES” language for ethanol flex fuel and mid-level ethanol blend labels *only*. In the interest of consistency, fairness, and protection of all fuel consumers (i.e., not just non- FFV owners), FTC must give universal consideration to requiring the inclusion of the “MAY HARM OTHER ENGINES” language on labels for all fuels.

There are many fuels in the marketplace today that “may harm engines” that were not designed to operate on the particular fuel. For example, gasoline with an octane rating below 87 AKI is available in the marketplace today, despite the fact that automobile manufacturers warn that use of such fuel can void warranties and damage engines. Further, inadvertently dispensing diesel fuel into a spark-ignition engine or vice versa (i.e., gasoline dispensed into a compression ignition engine) can “void engine warranty” and “cause expensive engine damage...” according to a large automaker.³ There is evidence that inadvertently dispensing diesel fuel into gasoline

³ General Motors letter to Wendy Clark, ASTM D02.A0 Subcommittee Chairwoman, June 26, 2012.

engines is far more common than misfueling involving ethanol flex fuels. Yet, FTC does not require—and is not proposing to require—that diesel dispensers or gasoline dispensers display labels advising consumers that the fuel “MAY HARM OTHER ENGINES” that are not intended for its use.

Thus, if FTC opts to proceed with the “MAY HARM OTHER ENGINES” language for ethanol/gasoline blend labels, the Commission must give consideration to universally applying such warning language to all fuels.

5. RFA supports the exemption of E15 from the proposed modifications to the Fuel Rating Rule, given that E15 labeling requirements are already addressed through EPA regulations.

We agree that FTC should exempt “fuel meeting EPA’s E15 waiver from [FTC Fuel Rating Rule] labeling requirements.” As recognized by FTC, E15 is already subject to labeling requirements and other provisions intended to prevent misfueling under exiting EPA regulations.

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RFA appreciates the opportunity to comment on the FTC proposal and we look forward to continued discussions with the Commission and other stakeholders on this matter. If you have questions regarding these comments, please contact Kristy Moore at kmoore@ethanolrfa.org or Geoff Cooper at gcooper@ethanolrfa.org.