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July 2, 2014

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**

**FILED VIA U.S. MAIL**

**INTRODUCTION:**

The Petroleum Marketers Association of America is grateful for the opportunity to present the following comments on the Federal Trade Commission's regulatory review of the automotive fuel rating regulations.

The Petroleum Marketers Association of America (PMAA) is a federation of 45 state and regional trade associations representing approximately 8,000 independent *small business* petroleum marketers nationwide. A majority of PMAA members own or operate 95% of the retail petroleum refueling sites nationwide.

**COMMENTS:**

The Fuel Rating Rule establishes standard procedures for determining, certifying, and posting, by means of a dispenser label, the automotive fuel rating of liquid automotive fuels and liquid alternative fuels in accordance with the Petroleum Marketing Practices Act ("PMPA") (15 U.S.C. 2821 et seq.) and the Energy Independence and Security Act of 2007 (42 U.S.C. 17021). (73 FR 40154 (July 11, 2008)).

The Federal Trade Commission (FTC) is proposing amendments to the fuel rating regulations to accommodate the approval by the U.S. EPA of Growth Energy's waiver petition to permit the use of E-15 in conventional fueled vehicles.

PMAA agrees with the Commission's proposed changes to 16 CFR 306.5(b) requiring entities to rate mid-level ethanol blends by the percentage of ethanol contained in the fuel, not by the percentage of the principal component of the fuel. Consumers need to know the ethanol percentage in the blend in order to determine if the fuel is compatible with the equipment for which it will be used. This is particularly true now, with the increasing use of retail ethanol blending pumps that give consumers greater blend choice and the current prohibition under the Clean Air Act that prevents using blends greater than E-10 in conventional fueled vehicles. Without clear notice of ethanol content, misfueling would increase which could void automobile warranties, damage catalytic converters, increase tailpipe emissions and expose petroleum retailers to increased risk of liability.

### **Dispenser Label Language**

PMAA does not support the Commission's proposed dispenser label language for midlevel ethanol blends. The Commission's proposed language "USE ONLY IN FLEX FUEL VEHICLES/MAY HARM OTHER ENGINES" is inconsistent with the E-15 label adopted by the EPA. The EPA E-15 label uses the word "damage" rather than "harm". While the word "damage" and "harm" are synonyms with virtually the same meaning, PMAA believes that consistency and clarity are better achieved when the same language is used on all ethanol dispenser labels across the board. A consumer reading both labels side by side on a dispenser may draw improper conclusions about the seriousness of the consequences from improper use of a midlevel ethanol blend – or simply be confused. PMAA believes there is no reason to add to consumers already significant degree of confusion and misperception regarding midlevel ethanol blends by adopting language that is inconsistent with the dispenser label already approved for E-15. For this reason, PMAA urges the Commission to change the word "harm" in the proposed dispenser label for midlevel ethanol blends to "damage".

PMAA also supports adding language to the Commission's proposed label describing in more detail the type of engines that may be damaged by using midlevel ethanol blends. The Commission's proposed label only refers to "OTHER ENGINES" that may be harmed from improper use. However, there is significant concern among consumers about the potential damage to additional types of engines from midlevel ethanol use beyond only non flex fuel vehicles. Use of midlevel ethanol blends may also damage conventional fueled vehicles, motorcycles boats and other gas powered engines used in garden equipment and emergency generators. Even though it is true, as the Commission correctly points out, that the Clean Air Act prohibits the distribution of midlevel ethanol blends for use in a non flex fuel vehicles and retailers face liability for improper distribution, neither adequately prevents or deters consumers from misfueling at the pump.

The fact remains that most retail gasoline dispensers are operated exclusively by consumers. It is also an established that consumers most often select fuel at the pump based on the lowest price. Mid level ethanol blends in most cases will frequently be cheaper than E-10 or unblended gasoline. Therefore, the risk of consumer misfueling is high. Unless consumers are provided with clear and concise warning statements at the point of sale about the potential damage that may result from improper use of midlevel blends, their initial impulse to select the cheapest product will remain unchecked. This is bad result for the both the consumer and retailer. The only defense retailers have against liability for damages from misfueling is adequate warning to the consumer about the consequences of improper use. The dispenser label is the only practical and effective way to convey such information to the consumer. The consumer must be made fully aware of the consequences from misfueling before the nozzle is picked up.

PMAA urges the Commission to adopt the following warning language for midlevel ethanol blend labels; "DON'T USE IN OTHER VEHICLES, BOATS, OR GASOLINE POWERED ENGINES. IT MAY CAUSE DAMAGE AND IS PROHIBITED BY FEDERAL LAW". This language is consistent with the EPA E-15 label and warns against potential damage when used in other vehicles, boats and gasoline powered engines. PMAA believes the addition of this language would provide the consumer with adequate warning of potential damage to non flex fuel powered engines and equipment while offering a basis for retailers to assert a defense against liability from misfueling. This is precisely why the EPA chose the warning language on the current E-15 dispenser label. PMAA is asking the Commission to do the same.

### **Ethanol Concentration Disclosures**

PMAA does not object on principal to the Commission's proposed amendment to round ethanol percentage disclosures to the nearest factor of 10. PMAA believes this provision affords flexibility to retailers using ethanol blender pumps while providing sufficient notice to consumers concerning the

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percent of ethanol content of the fuel they are purchasing. However, PMAA is concerned that the rounding provision will remove an important protection that allows retailers to sell midlevel ethanol brands under the Petroleum Marketing Practices Act (PMPA) (*15 U.S.C. Chapter 55, Subchapter 2807*). The Petroleum Marketing Practices Act (PMPA) sets certain requirements for the contracts between gasoline refiners or distributors and their retailers. It prohibits franchisors from terminating a franchise, or failing to renew one, except in accordance with its provisions. It is intended to protect distributors and retailers. Subchapter 2807 of PMPA states:

No franchise-related document entered into or renewed on or after December 19, 2007, shall contain any provision allowing a franchisor to restrict the franchisee or any affiliate of the franchisee from—

- (A) installing on the marketing premises of the franchisee a renewable fuel pump or tank, except that the franchisee's franchisor may restrict the installation of a tank on leased marketing premises of such franchisor;
  - (B) converting an existing tank or pump on the marketing premises of the franchisee for renewable fuel use, so long as such tank or pump and the piping connecting them are either warranted by the manufacturer or certified by a recognized standards setting organization to be suitable for use with such renewable fuel;
  - (C) advertising (including through the use of signage) the sale of any renewable fuel;
  - (D) selling renewable fuel in any specified area on the marketing premises of the franchisee (including any area in which a name or logo of a franchisor or any other entity appears);
  - (E) purchasing renewable fuel from sources other than the franchisor if the franchisor does not offer its own renewable fuel for sale by the franchisee;
  - (F) listing renewable fuel availability or prices, including on service station signs, fuel dispensers, or light poles; or
  - (G) allowing for payment of renewable fuel with a credit card,
- so long as such activities described in subparagraphs (A) through (G) do not constitute mislabeling, misbranding, willful adulteration, or other trademark violations by the franchisee.

In addition, PMPA Subchapter 2807(1) defines *renewable fuel* as containing:

- (A) at least 85 percent of the volume of which consists of ethanol; or
- (B) any mixture of biodiesel and diesel or renewable diesel (as defined in regulations adopted pursuant to section 7545(o) of title 42 (40 CFR, part 80)), determined without regard to any use of kerosene and containing at least 20 percent biodiesel or renewable diesel

Since the protection against prohibiting the sale of renewable fuels under the PMPA is dependent on the blend containing at least 85% ethanol, the rounding provision to the nearest factor of 10 in the proposed rule would effectively render this valuable protection for retailers moot. The rounding provision as proposed by the Commission leaves no opportunity for retailers to sell a product labeled "E-85". The E-85 label allows retailers to not only sell product with an 85% ethanol content without interference from

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suppliers but also allows provides an opportunity to sell lower level ethanol blends from the same blending dispenser. The rounding provision if adopted would require "E-85" blends to be labeled "E-80". While E-80 is considered a renewable fuel under ASTM D5798, it does not meet the statutory definition of renewable fuel under the PMPA. Once the opportunity to label blended product "E-85" is lost, as proposed in the Commission's rule, the protection against prohibiting sales of renewable fuel under PMPA will be lost as well. Congress amended the PMPA in 2007 to promote renewable fuel while at the same time protecting retailers from those who sought to limit its sale through supply agreements. PMAA does not believe it is the intention of the Commission to upend the will of Congress or limit the availability of renewable fuel through this rulemaking. However that is precisely what will happen if the rule is adopted with a rounding provision to the nearest factor of 10.

Consequently, PMAA is asking the Commission to make an exception to the proposed rounding provision that allows the continued use of the "E-85" label. This exception would uphold the will of Congress while at the same time prevent suppliers from once again prohibiting retailers from marketing renewable fuels.

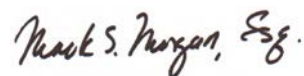
**Conclusion**

PMAA urges the FTC to adopt midlevel ethanol dispenser label language that is consistent with the current E-15 label in order to prevent consumer confusion and limit potential damage to engines and equipment not clearly inferred from the label language in the proposed rule.

PMAA supports the proposal to allow ethanol content disclosure as a percentage rounded to the nearest factor of 10 provided the Commission adopts an exception that would allow the continued use of the E-85 label in order to maintain protection for retailers and renewable fuel provided under the PMPA..

PMAA appreciates the opportunity to comment of this proposed rulemaking.

Sincerely,



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