

## **Appendix E**

### **Handbook 130**

#### **Engine Fuels and Automotive Lubricants Regulation**

##### **Section 3.15. Biodiesel and Biodiesel Blends**

###### **Table of Contents**

	<b>Page</b>
Marathon Oil .....	E3
Alliance of Automobile Manufacturers .....	E4
Michigan Department of Agriculture .....	E5
ConocoPhillips .....	E6
National Biodiesel Board (NBB).....	E7
American Petroleum Institute (API).....	E11
New York State Department of Agriculture and Markets Bureau of Weights and Measures .....	E12
E-mails: Manuch Nikanjam – Chevron, Chuck Ulm – State of Maryland, and Ron Leone – State of Missouri.....	E13

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## Marathon Oil

**From:** George, Laurie [mailto:lageorge@marathonoil.com]

**Sent:** Friday, January 22, 2010 11:29 AM

Ron,

After review of the attached proposal, we offer the following comments:

- We support the revised 3.15.3 language as submitted by API. Disclosure should not be required on **all** transfer documents.
- We do not support any of the proposed revisions/additions to 3.15.4.
- 16 CFR 306.6 and 306.8 of the FTC Automotive Fuel Rating regulation require refiners, producers and distributors to certify the automotive fuel rating (i.e., the "alternative liquid automotive fuel" content) to any transferee of the fuel who is not an end user. However, blends containing 5% or less biodiesel or biomass-based biodiesel are excluded from the "alternative liquid automotive fuel" definition, and there is no requirement for the transferor to disclose biodiesel content of 5% or less to the transferee, whether on product transfer documentation or otherwise. We believe that NIST 130 should be consistent with these provisions of federal law.
- The FTC Automotive Fuel Rating regulation contains a federal preemption provision at 16 CFR 306.4. If NIST 130 is amended to impose requirements for blends containing 5 % or less biodiesel or biomass-based diesel when federal law specifically excludes such requirements, we believe that any state adopting such language into its state laws runs the risk of a legal challenge in state or federal court based on the doctrine of federal preemption.
- The proposed language would require unnecessary testing of biodiesel content along the diesel fuel distribution system.

We appreciate the opportunity to provide feedback on the proposal, and encourage the Fuels and Lubricants Subcommittee to have additional dialogue on the subject and allow ample time for review prior to balloting.

I will not be in attendance next week, but feel free to reference my comments in the meeting.

Best Regards,

Laurie George  
Product Quality Manager  
Marathon Petroleum Company LLC

## Alliance of Automobile Manufacturers

**From:** Ellen Shapiro [mailto:ESHAPIRO@autoalliance.org]  
**Sent:** Friday, January 22, 2010 11:56 AM  
**Subject:** RE: Fuels and Lubricants Subcommittee - Biodiesel Labeling

Ron,

The Alliance supports developing language to help prevent biodiesel over-blending, and I think everyone agrees this issue needs to be addressed, but we are unable at this time to accept any of the proposals or to recommend alternative language. Also, I think the email exchanges show the subcommittee lacks consensus and would benefit from further discussion. We hope you will recommend postponing any L&R vote next week or at least indicate the desire to discuss this further within the subcommittee (the Alliance will not be represented next week). Meanwhile, we will continue to review the various proposals and try to offer suggestions in the near future.

The Alliance also has concerns about Section 3.15.2.4 that we would like to add to the subcommittee agenda. This provision requires labeling B20 and higher to advise the consumer to consult the vehicle manufacturer. As you may know, virtually all light duty vehicles currently in the market are warranted for use with biodiesel only up to B5. Some manufacturers are working to increase compatibility with higher blends, such as B20 (Ford recently announced a vehicle that will debut this year that can use B20, and a few years ago, Chrysler began selling a vehicle to captive fleets that was allowed to use mil spec B20), but the existing light duty diesel fleet (which has grown quite a bit the last couple of years) is still only compatible up to B5. It is very important, therefore, to start labeling pumps at B6 and above rather than starting at B20. Also, we are concerned that the prescribed font size is too small to be noticed by the consumer. At the risk of generating email reactions now (I suggest people wait at least until after the meeting next week, if not until the next subcommittee meeting), we propose the following changes (the label details are based on similar provisions elsewhere in the model rule):

**3.15.2.4. Biodiesel Blends.** – When biodiesel blends greater than **20.5** % by volume are offered by sale, each side of the dispenser where fuel can be delivered shall have a label **conspicuously placed** that states “Consult Vehicle Manufacturer Fuel Recommendations.”

**This information shall be clearly and conspicuously posted on the upper 50 % of the dispenser front panel, in a type at least 12.7 mm (½ in) in height, 1.5 mm (1/16 in) stroke (width of type). The lettering of this legend shall not be less than 6 mm (¼ in) in height by 0.8 mm (1/32 in) stroke; using block style letters and the a color shall be that is** in definite contrast to the background color to which it is applied.

Thanks for the opportunity to weigh in.

Regards,  
Ellen Shapiro  
Director, Automotive Fuels  
Alliance of Automobile Manufacturers  
1401 Eye St., NW Suite 900  
Washington, DC 20005  
202-326-5533  
eshapiro@autoalliance.org

## Michigan Department of Agriculture

-----Original Message-----

From: William Spitzley [mailto:spitzleyw@michigan.gov]  
Sent: Thursday, January 21, 2010 2:53 PM  
Subject: Re: Fuels and Lubricants Subcommittee - Biodiesel Labeling

The proposal does not adequately address the need to identify the Biodiesel concentration in blends containing less than 5 % Biodiesel which could result in the creation of a blend greater than 5 % not being properly identified. The section 3.15.4.3 should be eliminated from the proposal. Rob DeRubeis will be present at the meeting to represent Michigan views regarding other proposals.  
Thank You

William Spitzley  
Motor Fuels Quality Specialist  
Michigan Dept. of Agriculture  
Motor Fuels Quality  
(517) 655-8202

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**ConocoPhillips**

From: Schuettenberg, Alex [mailto:Alex.Schuettenberg@conocophillips.com]

Sent: Thursday, January 21, 2010 5:26 PM

Subject: RE: Fuels and Lubricants Subcommittee - Biodiesel Labeling

If you're blending in biodiesel and know the percentage that you've blended in, regardless of how small a percentage you've blended, you should have to tell the buyer what percentage you've blended.

If you don't know the exact percentage you've blended but you know a range, you should have to disclose the range (e.g. "contains up to 3 % biodiesel").

Regards,  
Alex Schuettenberg  
ConocoPhillips

### National Biodiesel Board (NBB)

**From:** Rebecca Richardson [mailto:rebeccar@mchsi.com]

**Sent:** Thursday, January 21, 2010 5:09 PM.

**Subject:** Comments on Biodiesel Labeling on PTD's

Ron and FALS members,

I have reviewed the proposed language Ron sent. NBB has some concerns with the new language.

For blend levels that fall within D975, (i.e. B5% and less) there should be no legal requirement for labeling the exact amount of biodiesel in any documents, labels or other notifications. Biodiesel meeting D6751 is now simply one of a myriad compounds that can make up diesel fuel. There is no requirement to mention the amount of light cycle oil in diesel fuel, or the amount of cat cracker stock, etc. The same should follow here. D975 is based on engine performance, and as long as the fuel and its components are covered in the scope of D975 and the resulting finished blend meets the parameters in Table 1 of D975, then there is no performance need to say whether its zero, 1%, or 5%--it will all meet the performance needs of engines.

NBB certainly understands that some petroleum companies purchasing their diesel fuel may want to know how much biodiesel is already in the fuel, particularly if there may be more biodiesel added downstream (i.e. if you want to make a B20 blend, you will need to know if there is already 5% biodiesel in the blend for instance). But that information should be part of commercial agreements between companies, not specified as part of any state or federal requirement. For those companies that are just buying diesel fuel and not planning to blend in any more biodiesel, the only thing that requiring the exact percent of biodiesel does is make for more paperwork and a more costly product without any corresponding benefit to the user.

The question of requiring the disclosure of the exact blend level was discussed during a past ASTM balloting process. Someone raised a concern that they believed the exact level of biodiesel should be reported. This concern was overwhelmingly put down with the rationale that ASTM D975 was a performance-based specification, and as long as the B100 met D6751 and the finished properties met D975 it was not important or germane whether it has 1% vs. 3% vs. 5%.

If this change is adopted, essentially, every time a diesel fuel is commingled or mixed, it would need to be reanalyzed for blend concentration. That would put a tremendous overall burden on the ENTIRE diesel fuel distribution system and increase costs for everyone—regardless of whether any biodiesel is being added.

Very few are currently adding biodiesel compared to those that are commingling diesel fuel, so the overall costs to the consumer will be much less if you do not require the exact blend of biodiesel on the product transfer document.

If the exact level was required less than B5, it would also negatively affect pipeline shipments of biodiesel blends below B5, which could increase the costs to the general consumer even more.

In summary, the National Biodiesel Board is concerned about the economic and logistical issues the proposed changes will bring to both the diesel and the biodiesel industry. Considering the issue has only very recently been brought forward, and there has been no dialogue at the national level on this issue, NBB hopes NCWM and the Fuels and Lubricants Subcommittee will encourage continued discussion on this topic and keep it informational until all interested parties have had ample opportunity to hear the proposal, consider the potential for the industries involved, and develop an informed decision before the item comes to a vote.

NBB does not believe that biodiesel blends up to and including 5% should require any special labeling or identification beyond the requirements specified in 40 CFR 80.590. With that exception and the actual

volume percentage being a labeling option in 3.15.3.2, 3.15.3.3 and 3.15.3.4, we support the language changes submitted by the American Petroleum Institute's Pat Kelly (see NBB's proposed changes to the API document) as a better alternative to the original.

I will be in attendance at the meeting in Nashville to participate in further discussion on the issue.

Respectfully submitted,  
Rebecca Richardson

**Proposal Continued on Next Page**



**National Biodiesel Board Proposal for Disclosure of Biodiesel Content in Diesel Fuel** (*continued*)

**3.15. Biodiesel and Biodiesel Blends.**

**3.15.1. Identification of Product.** – Biodiesel shall be identified by the term “biodiesel” with the designation “B100.” Biodiesel blends shall be identified by the term “Biodiesel Blend.”

**3.15.2. Labeling of Retail Dispensers.**

**3.15.2.1. Labeling of Grade Required.** – Biodiesel shall be identified by the grades S15 or S500. Biodiesel Blends shall be identified by the grades No. 1-D, No. 2-D, or No. 4-D.

**3.15.2.2. EPA Labeling Requirements Also Apply.** – Retailers and wholesale purchaser-consumers of biodiesel blends shall comply with EPA pump labeling requirements for sulfur under 40 CFR § 80.570.

**3.15.2.3. Automotive Fuel Rating.** – Biodiesel and biodiesel blends shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

**3.15.2.4. Biodiesel Blends.** – When biodiesel blends greater than 20 % by volume are offered by sale, each side of the dispenser where fuel can be delivered shall have a label conspicuously placed that states “Consult Vehicle Manufacturer Fuel Recommendations.”

The lettering of this legend shall not be less than 6 mm (¼ in) in height by 0.8 mm (1/32 in) stroke; block style letters and the color shall be in definite contrast to the background color to which it is applied.

**3.15.3. Documentation for Dispenser Labeling Purposes to Indicate Biodiesel Content in Biodiesel Blends.** – ~~The retailer shall be provided, at the time of delivery of the fuel, a declaration of the volume percent biodiesel on an invoice, bill of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending. Upon custody or title transfer of biodiesel blends, except when such fuel is dispensed to motor vehicles or other end users, the transferor must provide to the transferee a document indicating the percentage by volume of biodiesel in the biodiesel blend.~~

**3.15.3.1. EPA Documentation Requirements also Apply – Transferors of biodiesel blends must comply with EPA Product Transfer Document (PTD) requirements as specified in 40 CFR 80.590.**

**3.15.3.2. Biodiesel Blends Greater than 20 % – The transferor of a biodiesel blend with a biodiesel concentration greater than 20 % by volume shall classify the fuel as such. The actual volume percentage or Language similar to the term “Biodiesel blend greater than 20 %” shall be transmitted to transferee on a Bill of Lading, Invoice, PTD, shipping paper, or other document.**

**3.15.3.3. Biodiesel Blends Greater than 5 % But Not More Than 20 %. – The transferor of a biodiesel blend with a biodiesel concentration greater than 5 % by volume but not more than 20% by volume shall classify the fuel as such. The actual volume percentage or Language similar to the term “Biodiesel blend greater than 5 % but not more than 20 %” shall be transmitted to transferee on a Bill of Lading, Invoice, PTD, shipping paper, or other document.**

**3.15.3.4. Biodiesel Blends 5 % or Less – The transferor of a biodiesel blend with a biodiesel concentration 5 % by volume or less shall classify the fuel as such. The actual volume percentage or Language similar to the term “Contains 5 % or less biodiesel” shall be transmitted to transferee on a Bill of Lading, Invoice, PTD, shipping paper, or other document.**

~~**3.15.4. Exemption.—Biodiesel blends that contain less than or equal to 5 % biodiesel by volume are exempted from the requirements of Sections 3.15.1, 3.15.2, and 3.15.3. when it is sold as “diesel fuel” as required in Section 3.3.**~~

(Added 2005) (Amended 2008)

**American Petroleum Institute (API)**

**From:** Patrick Kelly [mailto:kellyp@api.org]  
**Sent:** Wednesday, January 20, 2010 3:49 PM  
**Subject:** RE: Fuels and Lubricants Subcommittee - Biodiesel Labeling

Ron and the FLS Members,

My biggest concern with the proposed language is the need to indicate an exact biodiesel concentration. This section should be consistent with FTC labeling requirements which segregate biodiesel blended fuels into 3 categories: 5% or less; greater than 5% to 20%; and greater than 20%. Fuels in distribution are commonly mixed within those ranges and the exact volume percentage is not always known after two batches are mixed.

I am also concerned about placing a requirement on ALL transfer documents. This will have a significant impact on computer systems that generate the forms. It is unnecessary and creates confusion as to what documents are considered "Transfer Documents". EPA requires a Product Transfer Document (PTD) which is a logical place to put the information. Depending on individual company practice, the BOL or invoice might make more sense and the shipper should be able to choose which document to disclose the information.

I've not seen a biodiesel blend de minimis percentage level mentioned before, and am unclear if the <1% figure has a precedent. I don't think this section is the place to establish a precedent for a minimum blend level to trigger compliance if federal agencies with biodiesel regulations do not specify the same level.

The attached draft is API's recommended changes to the existing Biodiesel and Biodiesel Blends section that incorporates these concerns, while fulfilling the L&R charge of disclosing biodiesel content that is technically correct and adequate to protect from over blending [and subsequent mislabeling]. Unfortunately, I am unable to attend the meeting next week, but I hope these concerns are taken into consideration.

Kind Regards,  
Patrick Kelly  
API

**New York State Department of Agriculture and Markets  
Bureau of Weights and Measures**

**From:** Ross Andersen [mailto:Ross.Andersen@agmkt.state.ny.us]  
**Sent:** Wednesday, January 20, 2010 2:41 PM  
**To:** Hayes, Ron  
**Subject:** RE: Fuels and Lubricants Subcommittee - Biodiesel Labeling

Ron,

I reviewed your draft but think a broader revision is in order in order to mirror EPA and ASTM changes. We now have 4 products, diesel fuel (<5% bio), 6-20% biodiesel blends, 21-99% biodiesel blends and B100 Biodiesel.

I think we should follow EPA and define both biodiesel and biomass based diesel fuels to clarify the significant differences.

Then we should separately define biodiesel blends and biomass diesel blends as any blend of the bio fuel with petroleum based diesel fuels. That sets the stage for the various labeling and disclosure requirements.

Then we need to decide if we can combine biodiesel and biomass based diesel in the same section 3.15.

I might suggest we fix 3.15.2.1. The present wording appears to indicate that blends do not have to comply with sulfur labeling requirements. Shouldn't it read "Biodiesel blends shall be identified by the grades No. 1-D, No. 2-D or No. 4-D combined with grades S15 or S500 as appropriate."?

I don't support requiring disclosure of biodiesel blends <5% by volume. My concern is that we would be adding a requirement to disclose between 1 and 5 % biodiesel to the retailer that does not exist in any of the federal rules. Why should we be requiring it when they don't. I suggest that 3.15.3. begin with the exemption for less than 5% just as suggested for 3.15.2. so that any blend over 5% is disclosed. The requirement that the blender determine the amount of bio fuel in the base fuel before blending takes care of everything from then on. I understand that biomass based diesel may not be as easy to detect as the esters in biodiesel but won't refiners doing that disclose it for tax purposes anyway. Nothing in the reg prohibits labeling <5% if they want to do it voluntarily.

Finally I find the exemption in 3.15.4. is out of place. I think it belongs at the start of 3.15.2. as in

3.15.2. Labeling of Retail Dispensers -Except for biodiesel blends containing less than 5% by volume of biodiesel or biomass based diesel that are sold as diesel fuel as required in Section 3.3., biodiesel blends shall be labeled as provided in Sections 3.15.2.1 to 3.15.2.4."

Or change title

3.15.2. Labeling of Retail Dispensers, Biodiesel and biodiesel blends containing more than 5% biodiesel or biomass based diesel.

Regards

Ross J Andersen, Director  
New York State Department of Agriculture and Markets  
Bureau of Weights and Measures  
10B Airline Drive  
Albany, NY 12235  
(518) 457-3146 or FAX (518) 457-5693

**E-mails:**

**Manuch Nikanjam – Chevron**  
**Chuck Ulm – State of Maryland**  
**Ron Leone – State of Missouri**

**Sent:** Thursday, January 21, 2010 7:19 PM  
**To:** Hayes, Ron  
**Subject:** RE: Fuels and Lubricants Subcommittee - Biodiesel Labeling

Ron,

I generally support the response that was sent by the API.

Regards,

Manuch

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**From:** CHUCK ULM [mailto:CULM@comp.state.md.us]  
**Sent:** Thursday, January 21, 2010 11:46 AM  
**To:** Hayes, Ron  
**Subject:** Re: Fuels and Lubricants Subcommittee - Biodiesel Labeling

Thanks Ron. This looks good to me.

Chuck

Chuck Ulm  
Assistant Director  
Field Enforcement Division  
Comptroller of Maryland  
(410) 260-7278

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**From:** Ronald J. Leone [mailto:ron@mpca.org]  
**Sent:** Friday, January 22, 2010 10:34 AM  
**To:** 'Rob Underwood'; 'Ann Hines'; 'tom palace'; 'Dan Gilligan'; 'Mark Morgan'; 'Sam Bell'; 'Michael Fields'; 'Tim Keigher'; 'dawn@pmcofiowa.com'; 'John Maynes'  
**Subject:** RE: ADDITIONAL L&R LETTERS on biodiesel content disclosure

Rob:

**1. Consumers:** No notice or pump labels should be required at retail for B5 or less concentrations.

**2. Rack/Terminal:** Papers must be provided at the rack/terminal to indicate the exact amount (not a range but the exact amount) of bio in any load of diesel to ensure no “over-blending” occurs when marketers splash-blend with additional bio away from the terminal.

For example, if the load already contains B2, and my member splash-blends to reach B5, he is now at B6 or B7 which could lead to liability issues and could be a violation of state law including pump labeling.

Ron Leone, Missouri

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