Appendix C
NIST Handbook 130

Uniform Regulation for the Method of Sale

Items:

232-6: 2.30. ~~**E85 Fuel**~~ Ethanol Flex Fuel Blends and
237-9: Section 1. Definitions, Section 2. Standard Fuel Specifications, and Section 3. Classification and Method of Sale of Petroleum Items

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National Conference on Weights and Measures
"That Equity May Prevail"

June 13, 2014

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

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

Dear Sir or Madam;

Comments to this notice of proposed rulemaking are being provided on behalf of the Fuels and Lubricants Subcommittee (FALS) within the Laws and Regulations Committee (L&R) as part of the National Conference on Weights and Measures (NCWM). We would like to start by thanking the FTC for the opportunity to provide comments on these important proposed rules. As we will elaborate in the following paragraphs, FALS encourages the FTC to adopt by reference the labeling language in the National Institute of Standards and Technology (NIST) Handbook 130, Uniform Regulation for the Method of Sale of Commodities, Section 2.30, and Uniform Engine Fuels and Automotive Lubricants Regulations, Section 3.8. If adoption by reference is not possible under FTC guidelines, FALS then encourages the FTC to adopt the aforementioned sections of NIST Handbook 130, specifying the 2015 Edition, which will be published in January 2015. Additionally, FALS requests the FTC to extend the comment period until July 31, 2014, in order to allow the 2014 Annual Meeting of the National Conference on Weights and Measures to conclude and determine the final language that will be adopted in the 2015 Edition of NIST Handbook 130 as it may change from the current proposed language. Should it not be possible to extend the comment period until after the NCWM's Annual Meeting in July, FALS would still be happy to provide the final language that will be adopted in NIST Handbook 130 to the FTC after the conclusion of the meeting.

Introduction

FALS was formed within the NCWM to provide a specialized and focused body dedicated to fuel related issues that aids the L&R Committee when discussing, evaluating and recommending next steps for fuel related agenda items. The membership consists of a broad base of stakeholders comprised of subject matter experts from state regulatory agencies; oil, automotive, and ethanol companies; and fuel wholesalers, distributors, and retailers. It should be noted that FALS position presented in this letter does not represent the position of the automakers represented on FALS. They intend to submit a separate statement detailing their position. A complete list of current FALS members may be found on the NCWM website at the link below.

http://www.ncwm.net/committees/laws-regulations/subcommittee/fals

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FALS members routinely deliberate and discuss fuel related topics on local, regional and national platforms and specifically, have spent many hours deliberating and discussing the issues contained in this FTC proposal. Further, FALS has spent a considerable amount of time developing analogous proposed modifications to NIST Handbook 130, Uniform Regulation for the Method of Sale of Commodities and Uniform Engine Fuels and Automotive Lubricants Regulations. These proposals can be found in the 2014 Edition of NCWM Publication 16, L&R agenda items 232-6 and 237. A copy of the proposed language is attached to this letter and printed copies of the final language will be available later this summer after the conclusion of the July meeting.

Background

There has been considerable recent interest in expanding the market for Flex-Fuel Vehicles (FFVs) and the fuels suitable for use in these vehicles. Several technical and regulatory issues were identified within the NCWM and ASTM International (ASTM) as impediments or necessary improvements needed for the evolution and expansion of these fuels. Two major actions were recently taken at ASTM in this regard and analogous steps are also in progress at the NCWM, through FALS.

ASTM International

During recent ASTM meetings, two technical issues with regard to the formerly known product 'E85' were identified.

1. The hydrocarbons necessary to blend ASTM D5798, "Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines" compliant fuels, were not readily available.
2. The version of ASTM D5798 that had been in effect for many years recognized three volatility classes for these fuels and applied them throughout the entire country. By contrast the specifications for conventional spark-ignition engine fuels as detailed in ASTM D4814 have six different volatility classes, thus better acknowledging the affects of climate on volatility. As a result, ASTM D5798 was in need of a revision to better address this issue. Investigations began with a test project conducted under the guidance of the Coordinating Research Council (CRC) within ASTM to evaluate the volatility needs of modern FFVs. These studies evaluated the concentration(s) of ethanol required when blending with more readily available hydrocarbon sources to meet the volatility requirements necessary for proper vehicle operation. Stakeholder consensus was reached and ASTM D5798 was modified, thus increasing the number of volatility classes from three to four and expanding the range of permissible ethanol concentration from a minimum 68 volume percent down to a new minimum of 51 volume percent. The maximum concentration of 83 volume percent remained unchanged. The lower ethanol limit allows gasoline and gasoline blendstocks readily available at fuel terminals to be used when blending ASTM D5798 compliant fuels.

It should be noted that similar fuels can also be blended on-site at retail dispensers (through blender pumps) at some locations, but this technique is not addressed in the two aforementioned ASTM Designations. However, a broad stakeholder group began working to develop an ASTM standard for this blending technique. Out of that work was borne ASTM D7794, "Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines", which addresses fuels with ethanol concentrations restricted to FFVs, but less than 51 volume percent.

Both standards were developed and revised over several years with input from a very broad base of specialized stakeholders and subject matter experts and consensus was achieved within the ASTM process.

NCWM

The National Conference on Weights and Measures is a professional nonprofit association of state and local weights and measures officials, federal agencies, manufacturers, retailers and consumers dedicated to developing weights and measures standards since 1905. The National Institute of Standards and Technology (NIST) publishes the uniform laws, regulations and standards developed by the NCWM and incorporates them in NIST Handbook 130, which is used and adopted by numerous states. The NCWM focuses on creating new standards to accommodate innovation and to promote uniformity in the marketplace.

At the NCWM Annual Meeting in July 2010 a task force was formed under FALS to review the wording in NIST Handbook 130 and recommend modifications to FALS that were necessary to address the full range of ethanol concentrations allowed in FFV fuels. It was acknowledged at that time that the full range of ethanol concentrations available in these fuels was not currently addressed in the Uniform Engine Fuels and Automotive Lubricants Regulation or Uniform Regulation for the Method of Sale of Commodities Sections in NIST Handbook 130. The task group immediately sought input not only from the member fuel experts, but also from stakeholder fuel experts outside of FALS and even outside of the NCWM. All input received was discussed within the task force and the task force proceeded to develop initial proposed modifications to NIST Handbook 130 presenting its recommendations to FALS for review and approval. FALS continued to review the proposed modifications within the subcommittee and made several modifications, ultimately reaching consensus of the subcommittee. The final proposed modifications were presented at the NCWM regional meetings and then again to the L&R Committee at the NCWM Interim Meeting in January 2014. The L&R Committee then recommended designating two agenda items on this topic as 'voting' for the NCWM Annual Meeting in July 2014. These are L&R agenda items 232-6 and 237-9, as referenced above. Should these items carry consensus in July 2014, they will become part of the 2015 Edition of NIST Handbook 130 and become part of the regulations adopted by numerous states.

Summary

Both the ASTM and NCWM processes invite and involve a broad base of diverse stakeholders working to develop consensus positions for the market and industry. These subject matter expert stakeholders have openly discussed the multitude of technical and regulatory issues related to these topics. However, a number of the positions which gained consensus through the extensive ASTM and NCWM processes are not in concert with the current proposed regulations contained in the 2014 FTC NPRM. Key differences between the 2014 NPRM and the current proposals to update NIST Handbook 130 are listed below.

1. FALS supports the FTC's intent to prevent vehicle misfueling. However, FALS does not believe the proposed FTC language adequately provides consumers with sufficient information to prevent misfueling to the greatest extent possible. Specifically, the term "Flex Fuel" applies to higher concentration ethanol blended products (e.g. greater than 15 percent ethanol, by volume), but does not include other alcohol blends such as M85 and butanol-blended fuels (both of which are viable fuels and have specifications detailed in different ASTM Designations). Without the use of "Ethanol" in conjunction with "Flex-Fuel" consumers may incorrectly assume that M85 and/or butanol-blended fuels are also suitable for use in their FFVs.
    a. FALS recommends the FTC adopt the labeling requirements as proposed in L&R agenda items 232-6 and 237-9, requiring the word "Ethanol" to be used in conjunction with the term "Flex-Fuel", thus introducing the term "Ethanol Flex-Fuel Blend." Please see the attachment for the recommended language in full.

2. FALS supports the FTC's intent to identify the level of ethanol in blended fuels. However, FALS does not believe the proposed FTC language allows for all viable options. This issue received much discussion at ASTM meetings and particularly the NCWM meetings, both with the intent to minimize required labeling changes while at the same time providing the public with sufficient information regarding the composition of the fuel being purchased. Specifically, FALS recommends the FTC adopt the labeling requirements as proposed in L&R agenda items 232-6 and 237-9, and described below. Please see the attachment for the recommended language in full.
    a. Ethanol blends containing 51 percent ethanol, by volume, or more (up to 83 percent ethanol, by volume) should be labeled as "Ethanol Flex Fuel, minimum 51% ethanol."
    b. Ethanol blends containing less than or equal to 50 percent, by volume, shall be labeled as "EXX Flex Fuel, minimum YY% ethanol", where the XX is the target ethanol concentration in volume percent and YY is XX minus 5. The actual ethanol concentration of the blend shall be XX volume percent plus or minus 5 volume percent.
    c. Existing requirements in NIST Handbook 130 require such fuel labels to also contain the wording "For Use in Flexible Fuel Vehicles (FFV) Only" and L&R Agenda items 232-6 and 237-9 also propose to add "CHECK OWNER'S MANUAL" to this language as proper guidance for consumers to ensure they have verified this fuel is suitable for use in their vehicle.
3. FALS and its members feel it is extremely important to rely on broad based consensus standards as much as possible, which is the goal of ASTM International and the National Conference on Weights and Measures. FALS also believes this is equally as important to the FTC. The NCWM proposals rely on the most recent versions of the referenced ASTM Designations, thus automatically incorporating changes in the NIST Handbooks. Specifying discrete versions impedes the ability of industry to advance in accordance with changes to its own marketplace.
    a. FALS recommends the FTC not adopt specific versions of ASTM Designations rather adopt language analogous to "the most recent version of DXXXX", where applicable. However, recognizing not all regulatory entities are permitted to use this approach, in the least FALS recommends the FTC include the most recent version number published at the last possible date during rule promulgation.

Conclusion

To summarize, FALS encourages the FTC to adopt by reference the labeling language in the National Institute of Standards and Technology (NIST) Handbook 130, Uniform Regulation for the Method of Sale of Commodities, Section 2.30, and Uniform Engine Fuels and Automotive Lubricants Regulations, Section 3.8. If adoption by reference is not possible under FTC guidelines, FALS then encourages the FTC to adopt the aforementioned sections of NIST Handbook 130, specifying the 2015 Edition, which will be published in January 2015. Additionally, FALS requests the FTC to extend the comment period until July 31, 2014, in order to allow the 2014 Annual Meeting of the National Conference on Weights and Measures to conclude and determine the final language that will be adopted in the 2015 Edition of NIST Handbook 130 as it may change from the current proposed language. Should it not be possible to extend the comment period until after the NCWM's Annual Meeting in July, FALS would still be happy to provide the final language that will be adopted in NIST Handbook 130 to the FTC after the conclusion of the meeting.

FALS again thanks the FTC for this opportunity to provide comments regarding these important proposed rules and is ready and willing to discuss further, if desired. We may be reached at (850) 921-1570 or at Matthew.Curran@FreshFromFlorida.com.

Regards,

Dr. Matthew D. Curran, Chairman
NCWM Fuels and Lubricants Subcommittee

Mr. Ronald Hayes, Vice-Chairman
NCWM Fuels and Lubricants Subcommittee

Mr. Randy Jennings, Vice-Chairman
NCWM Fuels and Lubricants Subcommittee

Attachment

Proposed language for the National Institute of Standards and Technology (NIST) Handbook 130, Uniform Regulation for the Method of Sale of Commodities, Section 2.30, and Uniform Engine Fuels and Automotive Lubricants Regulations, Section 3.8, L&R agenda items 232-6 and 237-9, respectively.

Ethanol Flex Fuel Blends.

1.How to Identify Ethanol Flex Fuel Blends. – Ethanol flex fuel blends shall be identified as ethanol flex fuel or EXX flex fuel.

2.Labeling Requiremnets

(a) Fuel ethanol flex fuel blends with an ethanol concentration no less than 51 and no greater than 83 volume percent shall be labeled "Ethanol Flex Fuel, minimum 51 % ethanol".

(b) Ethanol Flex Fuel blends with an ethanol concentration less than or equal to 50 volume percent shall be labeled "EXX Flex Fuel, minimum YY % ethanol", where the XX is the target ethanol concentration in volume percent and YY is XX minus 5. The actual ethanol concentration of the blend shall be XX volume percent plus or minus 5 volume percent.

(c) A label shall be posted which states "For Use in Flexible Fuel Vehicles (FFV) Only." This information shall be clearly and conspicuously posed 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). A label shall be posted which states, "CHECK OWNER'S MANUAL," and 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.