

Appendix E

Item 237-3: Handbook 130, Engine Fuels and Automotive Lubricants Regulation

Section 3.15. Biodiesel and Biodiesel Blends

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September 7, 2010

Fuels and Lubricants Subcommittee
c/o Ronald G. Hayes, Chairman
National Conference on Weights and
Measures PO Box 630
1616 Missouri Boulevard
Jefferson City, MO 65102

**Re: Publication 16: 237-3 — Engine Fuels and Automotive Lubricants Regulation, Section 3.15
Biodiesel and Biodiesel Blends**

Dear Fuels and Lubricants Subcommittee:

I write today to clarify and expand on comments made in a January 20, 2010 email to the FLS regarding changes to Handbook 130 Section 3.15 Biodiesel and Biodiesel Blends. The comments also reflect and expand upon API positions that were orally presented during the July 2010 NCWM Annual Meeting.

API Position

API agrees with NCWM that consumers must be protected from unknowingly purchasing diesel fuel containing greater than 5 percent biodiesel by volume. However, API opposes requirements on fuel suppliers to determine and convey the exact percentage of biodiesel in ASTM D975 diesel fuel. API supports with caveat the amended proposal included on L&R 24 in Publication 16 and opposes the draft substitute on L&R 25 in Publication 16. API would like to see the amended proposal on L&R 24 in Publication 16 further amended to say,

3.15.3. Documentation Required on Transfer Documents. 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. It is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

3.15.4. Exemption.

(c) Diesel fuel containing not more than 5% by volume biodiesel fuel is exempt from disclosing the actual percent by volume of biodiesel as required in Section 3.15.3. However, the term "May contain up to 5% biodiesel" shall be used.

API offers the following arguments in support of our request that NCWM not require fuel producers and suppliers to provide the percent biodiesel by volume in D975 diesel fuel to retailers:

percent biodiesel by volume and up to 20 percent biodiesel by volume, then the fuel is to comply with ASTM D7467, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20).

- Blenders of biodiesel should be responsible for confirming the biodiesel content of the finished fuel and that the fuel complies with the appropriate ASTM specification.
- 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting - explicitly states that "biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet American Society for Testing and Materials ('ASTM') standard D975 ('Standard Specification of Diesel Fuel Oils') are not automotive fuels covered by the requirements of [16 CFR 306]."
- If a party desires tax and/or RIN credits for blending biodiesel, then they should be responsible for determining the biodiesel content of the fuel that they are blending.
- Due to the nature of how fuels are delivered to terminals, it is unrealistic to expect terminal operators to provide exact biodiesel content of each transport of fuel being transferred.
- The requirement to disclose the exact biodiesel content on all transfer documents places an undue burden on the distribution system and does not allow for the flexibility needed by the operators of these systems.

Quality Assurance

Product integrity and quality assurance are essential for API member companies to ensure customer satisfaction. API members assure consumers that branded diesel containing up to 5 percent biodiesel by volume sold from their retail stations meets the ASTM D975 specification as required by law. If a party, who is authorized to do so, chooses to materially change the properties of the fuel offered by suppliers by adding biodiesel downstream of their fuel receipt from their supplier, it is the responsibility of that party to ensure that every gallon of the biodiesel blend offered to consumers meets the ASTM D975 specification and/or is in compliance with federal, state and local laws and regulations.

Requiring suppliers to determine the specific volume percentage of biodiesel in the fuel they offer to marketers who wish to then alter the fuel places an unreasonable burden on suppliers. If marketers wish to blend biodiesel into fuel, they should be the responsible party for determining the biodiesel content of the fuel.

Federal Trade Commission Regulation

16 CFR 306 - Automotive Fuel Ratings, Certification and Posting - explicitly states that "biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet American Society for Testing and Materials ('ASTM') standard D975 ('Standard Specification of Diesel Fuel Oils') are not automotive fuels covered by the requirements of [16 CFR 306]."

Therefore, refiners, importers and producers are not required to "determine" automotive fuel ratings for D975 diesel fuel before they transfer it. Additionally, refiners, importers and producers are not required to "certify" the automotive fuel rating for D975 diesel fuel for each transfer. The automotive fuel rating for diesel fuel containing over 5 volume percent is the biodiesel content.

Additionally, 16 CFR 306.4 states that, "no State or any political subdivision thereof may adopt or continue in effect...any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title." In other words, the FTC regulation preempts state laws that are not the "same" as FTC rules. Thus, any NCWM efforts to require the determination and/or certification of the automotive fuel ratings for D975 diesel fuel would be advancing efforts that would be in violation of 16 CFR 306.4.

Tax Benefits

Some supporters of requiring that the percent biodiesel by volume in D975 diesel fuel be included on transfer documents cite tax benefits that are allowed to blenders based on the amount of biodiesel per gallon of diesel. These same supporters also cite the Renewable Identification Number (RIN) credit retailers can receive for blending biodiesel downstream of the supplier. These benefits that encourage biodiesel blending reward the party performing the blending, which API supports. However, it should not be the responsibility of a third party, namely fuel suppliers, to aid a downstream blender's assessment of their tax benefit without compensation; nor should it be that third party's responsibility to assure the quality of the final product made in the interests of receiving that credit. This is an undue burden and by no means equitable treatment.

Implementation Concerns

Adequate timing to test and determine the percent biodiesel by volume is an issue that may hinder implementation of a requirement to certify exact biodiesel content for D975 diesel fuel. Some terminals do not necessarily know that their D975 diesel fuel receipt contains up to 5 percent biodiesel because all D975 diesel fuel containing up to 5 percent biodiesel by volume is fungible product and thus may be mixed with other D975 diesel fuel without the need to retest for quality. In some terminals, fungible D975 diesel fuel containing up to 5 percent biodiesel by volume can enter a terminal without the terminal operator's knowledge because it warrants no attention.

D975 diesel fuel, with up to 5 percent biodiesel by volume, may be placed in the same storage tanks as other D975 diesel fuel shipments potentially creating an amalgamation of D975 diesel fuel with differing amounts of biodiesel concentrations. To be clear, this would never result in a D975 diesel fuel surpassing 5 percent by volume in the storage tank. Should the terminal operator be aware of the biodiesel content, the shipment would still be placed in storage with other fungible D975 diesel fuel for efficient use of available storage tank capacity, rather than devoting an existing tank to the D975 diesel fuel with known biodiesel content or constructing a new tank for this purpose. Terminal tank space is currently at a premium, and any efforts to require additional tank space will be opposed by API members. Terminal operators do not have spare capacity to devote to different blends of fungible product nor the acreage to build new tanks. In short, because they optimize their use of existing storage tanks consistent with ASTM standards and Federal code, terminal operators, with the exception of those in jurisdictions with regulations requiring a specific biodiesel volume percentage in the diesel fuel offered, do not know the precise biodiesel content of D975 diesel fuel offered.

There are two ways a terminal operator could determine the biodiesel content of D975 diesel fuel before sale; both of which are costly and time-consuming. The method of greatest burden and cost involves testing the D975 diesel fuel in storage after each delivery to obtain an up-to-date accounting of the biodiesel content. The density of D975 diesel will vary between different fuel deliveries and will often leave different strata of D975 diesel fuel blends within the tank. A stratified tank means that a

terminal operator would not be able to determine the biodiesel content of a tank by performing a simple weighted average calculation. Physical testing would be required to determine the specific biodiesel concentration at substantial burden and cost to the terminal operator. Further, the frequency with which some terminals receive deliveries of diesel fuel could require testing more than once daily.

Some tanks have stirring capabilities which would alleviate the potential stratification of D975 diesel fuel, but these capabilities are rarely installed on tanks holding fungible grade fuels. Tank stirrers are very expensive and, once installed, require a time consuming process to operate.

The second method requires the terminal operator to test each load delivered to the tank truck. This method requires the time and expense to complete the test, both of which result in no benefit to the fuel supplier.

It is for all of the reasons above that API supports the disclosure of ranges of biodiesel content consistent with the FTC pump labeling rules: (1) up to 5 percent biodiesel by volume, (2) greater than 5 percent and up to 20 percent biodiesel by volume, and (3) greater than 20 percent biodiesel by volume. However, until FTC amends the Automotive Fuel Ratings, Certification and Posting rule (16 CFR 306) to allow for certification of automotive fuel ratings for biodiesel in these ranges, the NCWM cannot enact a similar change consistent with the requirements of FTC's preemption authority (16 CFR 306.4). Should FTC amend their regulation to reflect API's preferences for disclosure of biodiesel content in accordance with the ranges above, API would urge the NCWM to amend Publication 16 to mirror the FTC regulation consistent with the requirements of 16 CFR 306.4.

Documentation Flexibility

Regarding Section 3.15.3, API opposes efforts to mandate the disclosure of biodiesel content on *all* transfer documents. Fuel providers need the flexibility to determine on which document this information will be included given that the recipient of the order knows which document contains the information. Requiring disclosure on all transfer documents is entirely too inclusive and would be burdensome to fuel providers with no identified benefit.

Conclusion

There are many issues associated with requiring fuel suppliers to determine and label the amount of biodiesel in D975 diesel fuel. In summary, API supports NCWM efforts to inform retailers that D975 diesel fuel may contain up to 5 percent biodiesel by volume, but API opposes requirements to convey the exact percentage under or equal to 5 percent. Additionally, API supports the original wording of 3.15.3 which allows the fuel supplier flexibility in determining on which document to disclose biodiesel content.

Thank you very much for your consideration of our comments. I'd be happy to answer any questions the Fuels and Lubricants Subcommittee may have.

Sincerely,

Brian Knapp

JANICE K BREWER
GOVERNOR



KEVIN TYNE
INTERIM DIRECTOR

ARIZONA DEPARTMENT OF WEIGHTS AND MEASURES

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January 21, 2011

John Gaccione
Committee Chair
Law & Regulation Committee

Ronald Hayes
Committee
Chair Fuels
and Lubricant
Subcommittee

Re: L&R Committee 2011 Interim Agenda Appendix — Item 237-3: Engine Fuels and Automotive Lubricants

Dear Committee Chairs:

I am writing you today to put forth Arizona's position on the Engine Fuels and Automotive Lubricants issue (item 237-3) being considered by your committee. This agenda item specifically deals with the requirements for Product Transfer Documents, ("PTDs") and biodiesel blending. The State of Arizona Department of Weights and Measures strongly supports this requirement as critically necessary information for customers who receive the product. Without the biodiesel amount information customers will be subjected to unnecessary new costs to determine the levels and be required to conduct laboratory analysis which are currently avoided by capturing levels on the PTDs. Arizona Revised Statutes ("ARS") states that:

ARS 41-2083(M)

"M. For biodiesel blends that contain more than five percent by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of the percent by volume of biodiesel in the product. For diesel fuel that contains five per cent or less by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of any volume percent of biodiesel intentionally added to or known by the transferor to be in the product."

be nothing to hide. This information can be important to the person receiving the product especially if they are going to blend additional biodiesel into it.

I understand that the Fuels and Lubricant subcommittee of the L&R committee is in the process of addressing this issue.

The State of Arizona Department of Weights and Measures has reviewed the American Petroleum Institute's, ("API") comments. It appears that API's position is that the FTC regulation also covers so called "labeling" on PTDs. We do not agree that the labeling in the FTC regulations applies to PTDs. Clearly the FTC regulations do apply to dispensers at which biodiesel is dispensed. The Department has adopted the FTC regulations relating to dispenser labeling. They are found in ARS 41-2083 which states the following:

ARS 41-2083(L)

"L. A person shall label dispensers at which biodiesel or biodiesel blends are dispensed in conformance with 16 code of federal regulations part 306 and 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574. This section does not preclude a person from labeling a dispenser that dispenses diesel fuel that contains up to five per cent biodiesel, with a label that states "may contain up to five per cent biodiesel"."

The Department also agrees the diesel fuel is not regulated under the fuels rating rules, however, the Department believes that PTDs and language requirements are clearly regulated by The Environmental Protection Agency, ("EPA"). EPA in 40CFR 80.1453 entitled **'What are the product transfer document (PTD) requirement for the RFS program?'** fully lays out the PTD requirements for the Renewable Fuels Standard, ("RFS") in this section it states:

"The number of gallon-RINs being transferred"

We also would point out regarding 16CFR (306), nowhere in the regulations do they talk about the PTDs and the required language. They talk about certification. Certification can be done through the use of documents used for PTDs.

It is the Department's position in the interest of transparency and full disclosure to the consumer that this information, if known, should be disclosed on the PTD. To do otherwise adds significant costs and burdens to the process. Thank you for taking the time and allowing us to present our position. We apologize for not being there in person but as you are aware state budgets will not allow for travel.

Sincerely,



Kevin Tyne
Interim Director
Arizona Department of Weights and Measures



Arizona Petroleum Marketers Association

January 23, 2011

Mr. John Gaccione
Chairman, Laws and Regulations Committee
National Conference on Weights and Measures
Director, Westchester County Department of Consumer Protection
112 East Post Road, 4th floor
White Plains, NY 10601

Dear Chairman Gaccione:

On behalf of the Arizona Petroleum Marketers Association, I would like to thank the committee for this opportunity to share our concerns related to two items from the Laws & Regulations Committee 2011 Interim Agenda.

ITEM 237-3: Engine Fuels and Automotive Lubricants Regulation, Section 3.15. Biodiesel and Biodiesel Blends

APMA concurs with PMAA and other state petroleum marketing associations that terminal documents should disclose the exact volume percentage of biodiesel on the product transfer document (PTD). Simply stating "may contain up to 5% biodiesel" on documents does not prevent downstream blending problems. Information must be accurate and disclosed at the terminal to ensure that customers are receiving the right mixture of biodiesel product downstream. Requiring this level of disclosure does not preclude compliance with the current FTC retail labeling requirements.

APMA would like to recommend that the L&R Committee consider an amendment to remove the initial proposed language for Item 237-3 in the agenda and rather add a new section to read:

3.15.5 Documentation for Product Transfer Document Disclosure – For biodiesel blends that contain more than five percent by volume of biodiesel, a person shall prepare the product transfer documents in a manner that notifies the transferee of the percent by volume of biodiesel in the product. For diesel fuel containing five percent or less by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of any volume percent of biodiesel intentionally added to or known by the transferor to be in the product.

This language will protect the petroleum marketer wishing to produce additional biodiesel blends downstream and the petroleum marketer who may have contractual agreements with customers to provide a biodiesel-free product. Most importantly, the language allows for transparency and disclosure for the consumer.

APMA would encourage the NCWM FALS Subcommittee and the L&R Committee to carefully review the analysis provided in comments from PMAA and the Arizona Department of Weights & Measures challenging concerns that some members of the Fuels and Lubricants Subcommittee have raised that requiring PTD disclosure of biodiesel content is somehow in violation of 16CFR (306) and/or the current FTC retail labeling requirements for biodiesel and biodiesel blends.

ITEM 237-4: Engine Fuels and Automotive Lubricants Regulation, Section 2.1.2. Gasoline-Oxygenated Blends and 2.1.3. Gasoline-Ethanol Blends

APMA would recommend that Item 237-4 remain an informational item this year so that the myriad of questions surrounding the introduction of E-15 into the marketplace can be addressed holistically in Handbook 130.

Specifically, APMA is concerned about existing fuel equipment and the impact E-15 may have on effectiveness and longevity. There are still studies being conducted on drive-ability issues related to the E-15 which inevitably lead to questions of liability and where these responsibilities will fall within the chain of product distribution. What will NCWM require in terms of consumer notification especially since there will potentially be significant price differentials between unblended gasoline, E10 and E15? There also remain distillation issues which need to be addressed in the Handbook as well.

Again, we appreciate the chance to share our concerns and look forward to continued participation with NCWM on these important issues affecting the petroleum industry.

Sincerely,



Andrea M.G. Martincic
Executive Director

Cc: Ron Hayes, Chair, NCWM Fuels and Lubricants Subcommittee

From: Gaccione, John [jpg4@westchestergov.com]
Sent: Wednesday, January 19, 2011 9:55 AM
To: Sefcik, David; Joe Benavides; Jonelle Brent; Lance Robertson; Warfield, Lisa; Ray Johnson; Rob Underwood; Ron Hayes; Tim Lloyd
Subject: FW: Biodiesel Terminal Documents & E-15

Hi Folks,

Received this yesterday.

Speak with you shortly.

John

John P. Gaccione
Acting Director of Consumer Protection
Director of Weights and Measures
Westchester County Consumer Protection
(914)995-2164

From: Ronald J. Leone [<mailto:ron@mpca.org>]
Sent: Tuesday, January 18, 2011 10:28 AM
To: 'Ron"Hayes'; 'Albert, John'; 'Upschulte, Kevin'; Gaccione, John; joe.benavides@texasagriculture.gov
Cc: 'Rob Underwood'; 'tom palace'; 'Ann Hines'; tkeigher@npcainc.com; kmadaras@fmanj.org; john@pmcofiowa.com; 'Gene Inglesby'; 'Andrea Martincic'; 'Michael Fields'; 'Emily LeRoy'; 'Brad Stotler'; 'Holly Alfano'; 'Sam Bell'; 'Columbus, R. Timothy'; 'John Eichberger'; 'Lyle Beckwith'
Subject: Biodiesel Terminal Documents & E-15

Dear L&R Committee Chair John Gaccione (NY) & FALS Chair Ron Hayes (MO):

The Missouri Petroleum Marketers & Convenience Store Association (MPCA) is a 350+ member statewide trade association located in Jefferson City, Missouri, which represents the majority of the convenience stores, gas stations and petroleum marketers located in and around Missouri.

Unfortunately, I am unable to attend the 2011 NCWM Interim Meeting being held in Dallas, TX, on 1/23 – 1/26. ***As a result, please accept this email as MPCA's formal comments on the biodiesel terminal document and E-15 issues. Please include this email as part of the formal record and please forward this email to all members of the L&R Committee & the FALS.***

1. Biodiesel Terminal Documents. As you know, many fuel marketers across the U.S. blend ethanol &

file:///S:/L&R%20Committee/NCWM%20Interim/2011%20...20Biodiesel%20Terminal%20Documents%20%20E-15.htm (1 of 3) [1/19/2011 10:08:08 AM]

biodiesel into their transport loads of fuel at locations away from the terminal and thereafter sell the blended fuel at retail. This “away from the terminal blending” is critical because it:

- a. Supports U.S. agriculture & increases the use of renewable fuels. This is a key goal of most state Departments of Agriculture & thus W&M divisions.
- b. Reduces over-blending by marketers & thus misfueling by consumers.
- c. Is good for the environment because more renewable fuel will be blended.
- d. Supports small businesses, a key component of our collective economic recovery.
- e. Decreases our dependence on fossil fuels from countries that are often hostile to the U.S. and our way & quality of life.

Formal Position. For the reasons detailed above & more, MPCA, PMAA & many other state & national associations strongly believe that the L&R Committee, FALS and the entire NCWM should require that terminal documents, including bills of lading, shipping papers and/or invoices, specify the exact percentage of biodiesel (& ethanol) contained in each and every load of fuel to maximize “away from the terminal blending”.

2. E-15. There are many unanswered questions regarding E-15 including:

- a. Fuel Equipment.** Can existing equipment – tanks, pumps & piping - handle E-15? What about the impact E-15 will have on the equipment warranties?
- b. Automobiles.** Will car manufacturers warrant their engines for E-15? What model years can handle E-15?
- c. Liability.** Who is liable for the inevitable increase in misfueling – e.g., putting E-15 in a 1998 Honda Accord?
- d. Consumer Notice.** What consumer notices will be required on street signage as well as on the pumps?
- e. Competition.** The competitive impact of E-15 given the potential price differential between unblended, E-10 & E-15?
- f. RVP.** Handling the 1 pound RVP issue.
- g. Tank Insurance.** How does E-15 impact tank insurance like PSTIF?

Formal Position. For the reasons detailed above & more, MPCA, PMAA & many other state & national associations strongly believe that the L&R Committee, FALS and the entire NCWM should continue to

study E-15 but take no formal position(s) and make no formal policy until all of the above issues have been adequately addressed.

Sincerely, Ron

Ronald J. Leone, Esq.

Executive Director

Missouri Petroleum Marketers & Convenience Store Association (MPCA)

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January 20, 2011

Mr. John Gaccione
Chairman, Laws and Regulations Committee
National Conference on Weights and Measures
Director, Westchester County Department of Consumer
Protection 112 East Post Road, 4th floor
White Plains, NY 10601

Dear Chairman Gaccione:

On behalf of the NATSO, which represents America's travel plazas and truck stops, I would like to thank you for addressing important issues relevant to the petroleum marketing and fuel retailing industry during the National Conference on Weights and Measures (NCWM) interim and annual meetings.

NATSO is a national trade association that represents highway travel plazas and truck stop owners and operators. The association represents 235 corporate entities that have over 1,200 locations across the nation. It's estimated that the highway travel plaza and truck stop industry sells more than ninety percent of all diesel fuel sold at retail in the United States.

I am writing today to highlight the need to modify language in Item 237-3, Engine Fuels and Automotive Lubricants Regulation, Section 3.15 Biodiesel and Biodiesel Blends (Publication 16). NATSO is concerned that Item 237-3 in Publication 16 may have unintended consequences affecting fuel retailers and consumers if the current language is approved without modification. It is imperative to require the disclosure of the exact volume percent amount of biodiesel blends, even if such blends are believed to contain less than five percent biodiesel. **NATSO urges the Committee to modify the language to require the disclosure of the exact volume percentage of biodiesel below five percent on product transfer documents (PTDS).**

There are two ways biodiesel can get into the diesel stream. One option is to inject biodiesel into diesel at the downstream terminal. In this case, the terminal knows blending is occurring and should be required to disclose it. The biodiesel content should be indicated on the bill of lading (BOL) because a conscious decision to blend is being made at the local level. The other option is to inject biodiesel into diesel at the refinery before it goes into the pipeline. It's our belief that pipelines already test refinery inputs into their pipeline. Disclosing the amount of biodiesel injected into their system would be the first step in tracking the product from the refinery.

It is optional that suppliers put biodiesel into diesel fuel being shipped, but financially attractive to them due to the \$1-per-gallon biodiesel blender's tax credit and Renewable Identification Number (RINs), which are currently traded among producers, oil companies, marketers, and banks.

NATSO believes the refiner should know what they are selling and the components therein. Information must be accurate and disclosed at the terminal to ensure that customers are receiving the right mixture of biodiesel product. If refiners choose to blend, there should be a requirement to disclose the amount biodiesel in the fuel as the product is transferred along the distribution chain.

NATSO urges you to take these comments into consideration when the L&R Committee meets in Dallas, Texas in January 2011.

Sincerely,

A handwritten signature in cursive script, appearing to read "Holly Alfano".

Holly Alfano
Vice President, Government Affairs
NATSO



Jan 21, 2011

Mr. John Gaccione
Chairman, Laws and Regulations Committee
National Conference on Weights and Measures
Director, Westchester County Department of Consumer Protection
112 East Post Road, 4th floor
White Plains, NY 10601

Dear Chairman Gaccione:

On behalf of the Petroleum Marketers Association of America (PMAA), I would like to thank you for your efforts to address important issues relevant to the petroleum marketing industry during the National Conference on Weights and Measures (NCWM) interim and annual meetings. PMAA is a national trade association in the petroleum industry representing 8,000 independent petroleum marketing companies who own 60,000 retail fuel outlets such as gas stations, convenience stores and truck stops. Additionally, these companies supply motor fuels to 40,000 independently owned retail outlets and heating oil to seven million households and businesses.

I am writing you today to highlight the need to modify language in Item 237-3, Engine Fuels and Automotive Lubricants Regulation, Section 3.15 Biodiesel and Biodiesel Blends (Publication 16). PMAA is concerned that Item 237-3 in Publication 16 may have unintended consequences on petroleum marketers and consumers if the current language is approved without modifications. PMAA urges the Committee to modify the language in item 237-3 to require the disclosure of the exact volume percentage of biodiesel content in blends below five percent on product transfer documents (PTDS).

Currently, biodiesel producers, oil companies and terminals are not required to disclose the exact volume percentage of biodiesel blends below five percent on PTDs. As a result, petroleum marketers could unknowingly purchase a two percent biodiesel blend and then immediately blend an additional five percent biodiesel creating an unintended B7 blend. This is a very serious concern to marketers due to limitations in equipment specifications that often limit biodiesel blends to five percent or less. Such limits exist for motor vehicle engines, petroleum storage infrastructure equipment, emergency generators and heating equipment. For example, John Deere and Caterpillar offer engine warranties that allow small percentage blends of biodiesel (B2 or B5). However, those warranties are void if biodiesel blends are used that exceed manufacture specifications. Consequently, petroleum marketers face a greater risk of liability from consumers with voided warranties.

Moreover, consumers need to rely on accurate statements of biodiesel content from their supplier not only for equipment compatibility and warranty purposes but to ensure maximum engine performance and mileage expectations. Power output is decreased, energy content reduced and mpg rates lowered as biodiesel content in blends increase. Petroleum marketers must be able to ascertain the accurate biodiesel content of the fuel they purchase in order to enter into fuel supply contracts with their wholesale customers. The precise biodiesel content of the fuel is a legally binding term of the supply contract and is relied upon by the wholesaler in order to ensure the blend is compatible with its intended use.

PMAA believes that all parties along the distribution chain have a responsibility to disclose accurate biodiesel content information for the fuel they supply. It is only logical that this responsibility start at the top of the supply chain where the fuel originates and a baseline for biodiesel content is most easily established. Refiners, biodiesel producers and terminal operators are uniquely positioned in this respect and have the necessary resources to manage product in order to accurately disclose the biodiesel content of the fuel they supply. The task of establishing baseline biodiesel content should not be left to small business petroleum marketers who blend downstream and lack the resources and logistics to undertake a comprehensive fuel testing program. Downstream marketer-blenders are fully capable of including accurate biodiesel

content on PTDs to their customers provided their upstream suppliers do the same for them. PMAA does not believe that downstream marketers should bear all the liability and costs associated with accurately establishing the biodiesel content of fuel produced upstream.

Some companies contend that the Federal Trade Commission's (FTC) regulation under 16 CFR 306 – Automotive Fuel Ratings, Certification and Posting preempts state laws including NCWM rules and regulations that are not the "same" as FTC rules and would violate 16 CFR 306.4.¹

However, you should note that:

1. Section 205 of the Energy Independence and Security Act of 2007 (EISA) (Public Law 110-140) mandates the FTC to promulgate regulations for the labeling of: "*Each retail diesel fuel pump...*" No language in Section 205 of EISA gives the FTC authority over PTDs – only retail diesel fuel pump labeling.²
2. In comments to the FTC regarding the rating of all biodiesel blends, a supplier trade group argued that not requiring the exact disclosure of biodiesel blends below five percent on transfer documents could lead to inaccurate pump labels. To limit the risk of violating pump labels, the supplier trade group recommended that producers and distributors disclose any amount of biodiesel in the fuel they supply.³ The trade group's statement seems to not be consistent with the letter sent to the Fuels and Lubricants Subcommittee dated Sept. 7, 2010.⁴

If NCWM Laws and Regulations Committee approves Item 237-3 in its current form, it will likely limit the ability for petroleum marketing companies from blending biodiesel below the rack. No petroleum marketing company will want to be in violation of FTC labeling requirements. Is this what NCWM officials are willing to accept regarding the blending of biodiesel below the rack? For instance, many private and public fleets in the state of Tennessee have converted to B20 contracts with petroleum marketing companies. PMAA member companies will not take the risk to blend additional biodiesel into a tank which may contain B2 or B5 for fear that they may create a B22 or B25 blend which would violate their supply contract as well as FTC labeling regulations. It has been posited by some that the underlying reason for API's position is to eliminate all below the rack blending in order for their member companies to control the blending process which includes the \$1-per-gallon biodiesel blender's credit and Renewable Identification Number (RINs) which are currently traded among producers, oil companies, marketers, and banks.

Conclusion

PMAA believes terminal documents should disclose the exact volume percentage of biodiesel on the invoice, bill of lading (BOL), and shipping paper, (not simply say "may contain up to 5% biodiesel") to ensure no over-blending off-site. Information must be accurate and disclosed at the terminal to ensure that customers are receiving the right mixture of biodiesel product downstream. In regard to retail dispensers, PMAA believes blends up to five percent biodiesel should be permitted without additional labeling or notices. Therefore, PMAA urges the FALS and L&R Committee to add a new section to the original version of Item 237-3 proposed by the Southern Weights and Measures Association (SWMA). The new section shall say:

¹ See API's comments to the Fuels and Lubricants Subcommittee regarding Publication 16: 237-3 – Engine Fuels and Automotive Lubricants Regulation, Section 3.15 Biodiesel and Biodiesel Blends; Page 3 and 4 – Federal Trade Commission Regulation (Sept. 7, 2010)

² Section 205 of EISA 42, U.S.C. 17021, BIOMASS-BASED DIESEL AND BIODIESEL LABELING states: (a) IN GENERAL.—**Each retail diesel fuel pump shall be labeled** in a manner that informs consumers of the percent of biomass based diesel or biodiesel that is contained in the biomass-based diesel blend or biodiesel blend that is offered for sale, as determined by the Federal Trade Commission.

³ See FTC's 16 CFR Part 306, Automotive Fuel Ratings, Certification and Posting. Notice of proposed rulemaking, request for comments. Pages 12 - 13 API Comment; ConocoPhillips Comment; NPRA Comment

⁴ *Id* page 2 API Comments to Fuels and Lubricants Subcommittee

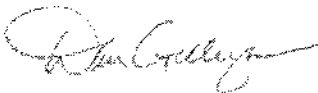
3.15.5 Documentation for Product Transfer Document Disclosure — For biodiesel blends that contain more than five percent by volume of biodiesel, a person shall prepare the product transfer documents in a manner that notifies the transferee of the percent by volume of biodiesel in the product. For diesel fuel containing five percent or less by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of any volume percent of biodiesel intentionally added to or known by the transferor to be in the product.

Finally, requiring suppliers to disclose on product transfer documents (PTDs) the exact volume percentage of biodiesel should be at the discretion of the NCWM not the FTC. PMAA does not believe PTD disclosure is in conflict with current

C retail labeling requirements for biodiesel. NCWMs' Fuels and Lubricants Subcommittee continues to refer to FTC's authority to preempt any NCWM or state action on PTDs. However, given Section 205 of EISA, PMAA urges NCWM Laws and Regulations Committee to reconsider requiring the exact biodiesel disclosure on PTDs.

PMAA urges you to take these comments into consideration when the L&R Committee meets in Dallas, Texas in January 2011.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dan Gilligan", with a stylized flourish at the end.

Dan Gilligan
PMAA President