



August 29, 2022

Associate Director Kevin Allen
Weights and Measures Services Division
Arizona Department of Agriculture
1802 W. Jackson St. #78
Phoenix, AZ 85007

VIA EMAIL AND HAND DELIVERY

Dear Mr. Allen,

On behalf of the Arizona Petroleum Marketers Association (APMA), please accept the following comments on the rule package for the Arizona Administrative Code Title 3, Chapter 7.

We appreciate the Weights and Measures Services Division (“WMSD” or “Division”) efforts on proposed rule changes and the detailed explanations staff gave underlying the initial draft during the workshops on April 12 and 14, 2022. APMA knows that the drafts and stakeholder workshops have required a tremendous amount of work by Department of Agriculture and WMSD staff.

There was discussion during the workshop on the WMSD’s plans to inspect electric vehicle charging stations as commercial devices and to ensure their compliance with HB2586’s requirements. We agree with your approach.

We applaud the adjustments in Article 6, section 602(B)(2) to facilitate the Division’s ability to combat emerging pulsar tampering technologies used to steal fuel at retail locations. This shows both awareness and proactivity given expansion of these devices in Arizona.

With respect to the Enhanced Vapor Recovery Stage II issue, APMA does not think the definition changes proposed by Maricopa County Air Quality Division adequately address the issue. As discussed in the subgroup meeting on April 27, a statutory change would likely be needed to allow voluntary Enhanced Vapor Recovery Stage II in a nonattainment area.

APMA raised concerns during the workshop regarding the changes to Article 1, section 104. The proposed removal of sections 104 (B – N [March 17, 2022 draft lines 188-493]) would eliminate the rule-based protections of licensees, registered service representatives and weighmasters to consistent enforcement action. We support current enforcement approaches by the Department and Division leadership. We are not seeking to avoid consequences when a violation has occurred and been appropriately documented.

Language in the current rule provides assurance to the regulated community that penalties will be fair and not overly punitive or targeted toward a specific sector or company. We were glad to participate in a subgroup meeting on April 27 to discuss these concerns. We do not agree with the proposed changes to the enforcement action section of the rule and suggest that the provisions proposed to be deleted should remain in the rule.

In addition as raised throughout the workshops, APMA continues to have concerns regarding the proposed rule changes to allow the sale of E15 in the Cleaner Burning Gasoline (“CBG”) covered area. Out of state ethanol interests are backing this component of the proposal, while Arizona-based companies fear that allowing E15 on a voluntary basis is the first step in a broader attempt to mandate E15 at the state or federal level. An E15 mandate would be hugely problematic for gas stations and convenience stores because many underground storage tank systems, pipes, sumps and dispensers currently in use are not compatible with more than an E10 blend.

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WMSD facilitated stakeholder meetings from 2017 – 2020 related to potential changes to the CBG program and modifications to current fuel formulations. During that period, there was meticulous modeling to analyze, evaluate and understand the air quality impacts to potential CBG fuel formulation replacements.

Using the EPA's streamlining process to allow E15 in the CBG-covered area without adequately understanding air quality impacts raises serious concerns for the association. Phoenix is currently in marginal nonattainment of the 2015 National Ambient Air Quality Standard for ozone of 70 parts per billion and will likely reach serious nonattainment by 2025. Reformulated fuel is a key control in the EPA-approved State Implementation Plan to achieve ozone standards set forth in the Clean Air Act.

The CBG program was developed to address the Arizona-specific air quality concerns in both the summer and winter seasons. It is a unique blend. If there is even a small air quality disbenefit from E15, that should be understood at the outset. At present, the California Air Resources Board does not allow the sale of E15 in the state because of air quality concerns.

Additionally, the California Air Resources Board regulations referenced in ARS §3-3493(A)(2) specifically cap the oxygen content maximum at 10 percent by volume.

The political undercurrents of the E15 debate should appear in the record. On April 12 from an ethanol plant in Iowa, President Biden announced that he would help reduce gasoline prices during the summer driving season via an EPA-issued emergency order to allow sales of E15 during the summer. E15 is typically banned during the summer under Clean Air Act provisions because of air pollution increases. The President's announcement demonstrates that gaining political points for lowering gas prices is the administration's motivating force, not air protection.

At the very minimum, the E15 proposal should be conditional upon EPA's approval of the necessary amendments to the State Implementation Plan. Fuel wholesalers and retailers will be in a very compromised position if they make investments to store, market and sell E15 and then the EPA disapproves it. If E15 is allowed, it is critical that the rules require adequate labeling to ensure that customers understand what they are purchasing. E15 may have a lower cost per gallon (depending on the cost of ethanol and the value of RINs), but it also has a reduced energy content compared to E10 gasoline.

APMA represents over 100 member companies, including suppliers, owners and operators of over 1,200 fueling facilities in the state. APMA dates back to 1967; it was founded to serve the common regulatory, legislative and educational needs of businesses engaged in the distribution of wholesale fuel, retail fuel and lube oils. APMA proudly serves members who are family-owned and Arizona-grown businesses in their second and third generations.

If you have any questions or concerns, please do not hesitate to contact me at 602-330-6762.

Best Regards,



Amanda Gray
APMA Executive Director