

Supplemental Supporting Statement
Final Amendments to the Automotive Fuel Ratings, Certification and Posting Rule
16 C.F.R. Part 306
OMB Control No. 3084-0068

After considering public comments, the Federal Trade Commission (“FTC” or “Commission”) announces final amendments to its Rule for Automotive Fuel Ratings, Certification and Posting (“Fuel Rating Rule” or “Rule”) by adopting amendments providing an alternative octane rating method for gasoline. These amendments are substantively the same as the octane amendments it proposed in its Notice of Proposed Rulemaking (“NPRM”). The Commission is also making several non-substantive amendments to the Rule. In accordance with the Paperwork Reduction Act (“PRA”), 44 U.S.C. §§ 3501-3521, the FTC seeks approval from the Office of Management and Budget (“OMB”) for these Rule amendments.

The Commission also proposed in its NPRM new requirements for rating and certifying blends of gasoline and ethanol with more than 10 and less than 70 percent ethanol and revising the labeling requirements for fuels with at least 70 percent ethanol. As explained in its Federal Register publication of the final amendments, the Commission declines to issue ethanol amendments at this time. It anticipates announcing final ethanol rating, certification, and labeling requirements at a later date to be determined.

(1) Necessity for Collecting the Information

The Commission first promulgated the Fuel Rating Rule, pursuant to the Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C. § 2821. This Rule became effective on June 1, 1979, and initially applied only to gasoline. In 1993, in response to the Energy Policy Act of 1992, Pub. L. 102-486, the Commission amended the Rule to establish automotive fuel rating determination, certification, and posting requirements for all liquid automotive fuels, including alternative liquid fuels.

As amended, the Rule provides requirements for deriving the octane rating of gasoline. It requires entities to determine the octane rating by deriving research octane and motor octane numbers using ASTM International (“ASTM”) standards D2699 and D2700, respectively, and then averaging the results. The Rule further requires entities to certify the fuel’s rating to any transferee either by including it in papers accompanying the transfer or by letter. Covered entities must retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the octane rating. Retailers must post the rating certified to them on fuel pump labels.

In 2009, as part of its periodic review of its regulations, the Commission sought comment on the Rule generally. Several commenters supported allowing gasoline octane rating using a method specified in ASTM D2885, “Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique” (the “On-Line Method”). The commenters argued that the On-Line Method produced the same results as the currently prescribed method.

In light of these comments, the Commission proposed amendments allowing the On-Line Method. Commenters unanimously supported those amendments, confirming that the method produced the same result as the ASTM D2699 and D2700 method. Accordingly, to carry out the PMPA's mandate to ensure accurate octane rating, certification, and posting, the final amendments will allow entities to determine octane rating through the On-Line Method. Under Rule provisions not substantively amended in this rulemaking, these entities will have to certify the octane rating to any transferee by delivery ticket or letter, and will have to retain tests documenting results obtained through the On-Line Method.

(2) Use of the Information

The Fuel Rating Rule's octane rating, certification, and posting requirements ensure that consumers know the accurate octane rating of gasoline that they are purchasing. The information that must be kept under the Rule's recordkeeping requirements is used by Commission or EPA staff, or by persons authorized by the FTC or EPA. Authorized persons may check the records for enforcement purposes to ensure the accuracy of automotive fuel rating representations.

The primary purpose of the recordkeeping requirement is to preserve evidence of automotive fuel rating certification from refiners through the chain of distribution. Without records of how the rating of the automotive fuel was represented when the transfer was made, it would be impossible to trace cases of inaccurate rating from the point of detection at the retail level back upstream to an offending distributor or refiner.

(3) Consideration of the Use of Improved Information Technology to Reduce Burden

As discussed below, the Commission believes that the final amendments do not impose any additional burden on covered entities. The Commission also notes, however, that the Rule permits the use of any technologies that industry members may wish to employ and that may reduce the burden of information collection. The Rule's certification and posting requirements are tailored to take advantage of existing industry practices in order to minimize the compliance burden. Certifications can be made on computer-generated delivery documents, resulting in savings of considerable time and labor. As noted above, certification can be accomplished in either of two ways: on a delivery ticket with each transfer of fuel or by a certification letter or other written statement, which may be sent and stored electronically.

Although nothing in the Rule requires that these certifications contain any signature (see § 306.6), to the extent such a certification may typically involve a signature, the Rule leaves certifying parties free to use whatever technology they deem appropriate to identify and authenticate such signatures, consistent with the Government Paperwork Elimination Act, 44 U.S.C. 3504 note (GPEA). Likewise, the Rule complies with GPEA by permitting certain disclosures to be made (see § 306.5) and necessary records to be kept (see §§306.7, 306.9, 306.11) without regard to format, so that a regulated entity, if it chooses, may conduct these activities electronically.

Notwithstanding the GPEA, it would be impracticable and incompatible with the purpose of the Rule to permit the use of electronic mail or other electronic option to substitute for the automotive fuel rating labels (see §306.12) that retailers must post on the face of each fuel pump. These disclosures must be made to the consumer at the pump. Nothing in this labeling requirement, however, expressly prohibits the label itself from being electronically displayed if it otherwise satisfies the typeface, color, size, and durability requirements of the Rule.

(4) Efforts to Identify Duplication

Commission staff has not identified any other federal statutes, rules, or policies that would duplicate the Rule.

(5) Efforts to Minimize Burden on Small Organizations

The Rule's rating certification requirements are designed to impose the minimum possible burden on industry members, and, as discussed in (8) and (12)-(13) below, the Commission believes that the final amendments do not increase that burden. The Rule requires refiners, producers, importers, distributors, and retailers to retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the octane ratings that they certify or post. The certification of an automotive fuel rating by a refiner to a distributor or by a distributor to a retailer may be made on any document that is used as written proof of transfer or a letter or any other written statement. These fuel transfer documents were already retained by refiners, distributors, and retailers in the ordinary course of business. To further minimize the certification and recordkeeping requirements, the Rule permits an automotive fuel rating certification to be provided by means of a one-time letter of certification, obviating the need for individual certifications on each delivery ticket. This one-time letter could remain effective for a number of years, and its retention would constitute compliance with the Rule's recordkeeping requirements.

(6) Consequences of Conducting Collection Less Frequently

The fundamental element of information collection the Rule requires consists of posting the octane rating at retail sale, which requires accurate rating and certification of gasoline. To do less than this would fail to fulfill the PMPA's statutory mandate.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The collection of information in this Rule is consistent with the guidelines stated in 5 C.F.R. § 1320.5(d)(2).

(8) Public Comments/Consultation Outside the Agency

The Commission sought public comment on the PRA aspects of the Rule in the NPRM, as required by 5 C.F.R. § 1320.8(d). *See* 75 Fed. Reg. 12470, 12477 (Mar. 16, 2010). The Commission stated in the NPRM its belief that the amendments allowing alternative octane

measurements do not impose new costs on covered entities (because the amendments leave entities with a choice between the currently required octane rating method and the On-Line Method). No comments were received regarding this proposition, and the Commission reiterates this belief in the final rulemaking.

(9) Payments or Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

The Rule requirements for which the Commission seeks OMB approval do not involve collection or disclosure of confidential or otherwise sensitive information.

(12) & (13) Hours Burden and Associated Labor Costs/ Estimated Annual Capital and/or Other Non-labor Related Costs

For the reasons noted above, the Commission believes that the final amendments do not impose any additional burdens. The final amendments would still allow entities to rate octane as they did under the unamended Rule.

(14) Estimate of Cost to Federal Government

Because the incremental cost to the FTC of administering the amendments should be *de minimis*, the Commission retains staff's prior estimate of \$22,000 as the cost per year to implement the Fuel Rating Rule as a whole. This represents .15 of an attorney/economist work year, and includes employee benefits.

(15) Adjustments/Changes in Burden

Because final ethanol amendments are being deferred to a later time, and the remaining amendments, in the Commission's view, do not pose additional incremental burden for PRA purposes, the prior estimates at the proposed rule stage for ethanol recordkeeping and disclosure are eliminated from this submission. Thus, the net effect is that burden hours and costs remain unchanged from the currently cleared burden totals for the existing Rule under Control No. 3084-0068.

(16) Statistical Use of Information

There are no plans to publish for statistical use any information the Rule requires.

(17) Requested Permission Not to Display the Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to the Certification for Paperwork Reduction Act Submissions

Not applicable.