

**Federal Trade Commission Supporting Statement  
for the Automotive Fuel Ratings, Certification and Posting Rule  
("Fuel Ratings Rule")  
16 C.F.R. Part 306  
OMB Control No. 3084-0068**

The Federal Trade Commission ("FTC" or "Commission") proposes amendments to its Automotive Fuel Ratings, Certification and Posting Rule ("Fuel Rating Rule" or "Rule"), 16 C.F.R. Part 306, to provide: (1) revised rating, certification, and labeling requirements for blends of gasoline and more than 10 percent ethanol ("ethanol blends"); and (2) an additional octane rating method for gasoline. The Commission previously proposed amendments governing ethanol blends in a 2010 Notice of Proposed Rulemaking ("2010 NPRM"). *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Notice of Proposed Rulemaking*, 75 Fed. Reg. 12470 (Mar. 16, 2010). After reviewing the comments on the 2010 NPRM, the Commission deferred consideration of ethanol blend labeling to consider an Environmental Protection Agency ("EPA") decision permitting the use of ethanol blends between 10 to 15 percent concentration ("E15") in 2001 and newer conventional vehicles. The Commission now proposes ethanol labeling amendments and an additional octane rating method for gasoline in response to comments received on the 2010 NPRM proposals, EPA's action, and changes in an ASTM International specification regarding ethanol. 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 the proposed Rule amendments.

**(1) Necessity for Collecting the Information**

The Commission first promulgated the Fuel Rating Rule, pursuant to section 2821 of the Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. §§ 2801-2841. This Rule became effective on June 1, 1979, and initially applied only to gasoline. The Energy Policy Act of 1992, Pub. L. 102-486, amended the PMPA and required the Commission to amend the Rule to establish automotive fuel rating determination, certification, and posting requirements for all liquid automotive fuels, including alternative liquid fuels. On July 21, 1993, the Commission amended the Rule to include alternative liquid fuels accordingly.

As amended in 1993, the Rule provides specific rating, certification, and labeling requirements for ethanol fuels of at least 70 percent concentration, including E85, a fuel that generally contains 85 percent ethanol mixed with 15 percent gasoline. 16 C.F.R. § 306.0(i)(2)(ii).<sup>1</sup> In addition, the Rule defines ethanol-gasoline blends containing up to 10 percent ethanol as gasoline. 16 C.F.R. § 306.0(i)(1). The Rule does not provide specific rating, certification, and posting requirements for ethanol blends containing between 10 and 70 percent ethanol.<sup>2</sup>

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<sup>1</sup> The U.S. Department of Energy, however, allows retailers to reduce the ethanol component to allow for proper starting and performance in colder climates.

<sup>2</sup> Ethanol blends, however, still qualify as alternative fuels generally subject to the Rule. See 16 C.F.R. § 306.0(i)(2) (providing that alternative fuels are "not limited to" those explicitly listed in the Rule).

In response to the Commission's request for comments on the 2010 NPRM, several commenters noted the increasing availability of ethanol blends at all concentrations, and recommended that the Rule provide specific requirements for all blends. Specifically, several commenters noted that, though generally not available when the Commission first promulgated alternative fuel requirements in 1993, ethanol blends containing between 10 and 70 percent ethanol have subsequently entered the marketplace. For example, one commenter noted that retailers now blend ethanol into gasoline at retail fuel pumps, allowing them to create blends such as E20, E30, and E40. The commenter submitted a list of more than 100 retail establishments with the capacity to sell ethanol blends at various concentrations. Moreover, several commenters stated that the market for ethanol blends of all types will grow as part of a general move toward renewable fuels.

Commenters cautioned, however, that ethanol blends above 10 percent concentration are not appropriate for conventional vehicles. The Alliance of Automobile Manufacturers noted that conventional vehicles are validated for gasoline containing only up to 10 percent ethanol. Consistent with that comment, the United States Department of Energy has explained that although nearly all gasoline-fueled passenger cars and light-duty trucks sold in the last 20 years have been designed to operate on E10, and EPA has approved the use of E15 in conventional vehicles model year 2001 and newer, only flexible fuel vehicles ("FFVs") feature modifications that "allow them to safely and effectively operate on higher-level ethanol blends."<sup>3</sup> Given the misfueling risk, commenters suggested providing specific labeling requirements for all ethanol blends.

Given these comments, the Commission proposes specific requirements for rating, certifying, and labeling all ethanol blends. Specifically, the proposed amendments would require refiners, producers, importers, and distributors of ethanol blends to rate the fuel by the percentage of ethanol contained in the blend and to certify that rating to any transferee. The proposed amendments would further require retailers to post a label on the fuel pump consistent with the fuel's rating. The new proposed amendments also exempt EPA-approved E15 from the Commission's labeling requirements.

The proposed amendments would also require, consistent with the recordkeeping requirements for other liquid automotive fuels,<sup>4</sup> that covered entities producing or selling ethanol blends retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify or post. These records would have to be made available for inspection by Commission and EPA staff members or by persons authorized by the Commission or EPA.

Finally, the Commission proposes an additional octane rating method that uses infrared sensor technology (the "infrared method") to measure gasoline octane levels. Although the Commission did not propose this rating method in the 2010 NPRM, several commenters, including state regulatory agencies, supported its use.

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<sup>3</sup> See Department of Energy, "Handbook for Handling, Storing, and Dispensing E85," at 18 (Sept. 2013), available at <http://www.afdc.energy.gov/afdc/pdfs/41853.pdf>.

<sup>4</sup> See 16 C.F.R. §§ 306.7; 306.9; and 306.11.

## **(2) Use of the Information**

The Fuel Rating Rule's certification and disclosure requirements provide consumers with information necessary to make informed fuel-purchasing decisions based on, among other things, the suitability of a fuel for use in their vehicle. By knowing as accurately as possible both the octane or fuel rating requirements of their cars and the associated rating of what they buy at the pump, consumers simultaneously can save money, conserve energy, reduce air pollution, and protect their cars against possible engine damage. This approach also allows fuel producers and marketers the flexibility to develop and blend fuels appropriate for location and climate, and it is consistent with EPA and original equipment manufacturer requirements.

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 check the records for enforcement purposes to ensure the accuracy of automotive fuel rating representations. The information is sought on a case-by-case or spot check basis.

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 a rating overstatement 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**

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**

Consistent with the Fuel Rating Rule's requirements for other alternative fuels, the proposed amendments require refiners, producers, importers, distributors, and retailers of ethanol blends to retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify or post. The Commission believes this requirement presents minimal burden.

**(6) Consequences of Conducting Collection Less Frequently**

The fundamental element of information collection the Rule requires consists of placing a label on the face of each ethanol blend dispenser. 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**

Pursuant to section 3506(c)(2)(B), the Commission seeks public comment on the proposed Rule amendments. In addition, as noted above, the Commission sought comment on its 2010 NPRM. Moreover, the Commission sought public comment on the Fuel Rating Rule as part of its periodic review of its rules and guides. *See* 874 Fed. Reg. 9,054 (Mar. 2, 2009). Finally, Commission staff consulted with EPA staff, state regulators, and industry members about the status of alternative liquid fuels generally, and ethanol fuels in particular.

**(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) Hours Burden and Associated Labor Costs

**Estimated annual hours burden:** 571 total burden hours (238 recordkeeping hours + 333 disclosure hours)

The U.S. Department of Energy indicates 2,667 ethanol retailers nationwide, and the U.S. Energy Information Administration indicates 193 ethanol fuel production plants.<sup>5</sup> Because the procedures for distributing and selling ethanol blends are no different from those for other automotive fuels, the Commission expects that, consistent with practices in the fuel industry generally, the covered parties will record the fuel rating certification on documents (e.g., shipping receipts) already in use, or will use a letter of certification. Furthermore, the Commission expects that labeling of ethanol blend pumps will be consistent, generally, with practices in the fuel industry.

Recordkeeping: Commission staff has previously estimated the burden of complying with the recordkeeping burden of the Fuel Rating Rule to be five minutes per industry member. Applying that burden to the approximately 2,667 ethanol retailers and 193 ethanol fuel producers results in a total annual burden of 238 hours, rounded, for recordkeeping (1/12th of an hour x 2,860 entities).

Disclosure: Commission staff estimates that affected industry members incur an average burden of approximately one hour to produce, distribute, and post the proposed ethanol blend labels. Because the labels are durable, only about one of every eight industry member retailers (333 of 2,667 ethanol retailers) incur this burden each year, resulting in a total annual burden of 333 hours.

**Estimated annual labor costs:** \$6,339

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Applying an average hourly wage for producers of \$30.56, and an average hourly wage for retailers of \$10.54 to the estimated affected population, labor costs total \$6,338.66 (( $\$30.56 \times 16$  hours) + ( $\$10.54 \times 555$  hours)) for the recordkeeping and disclosure burden.<sup>6</sup>

## (13) Estimated Annual Capital and/or Other Non-labor Related Costs

Commission staff believes that the Rule does not impose any capital costs for producers, importers, or distributors of fuels. Retailers, however, incur the cost of procuring and replacing

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<sup>5</sup> See [http://www.afdc.energy.gov/fuels/ethanol\\_locations.html](http://www.afdc.energy.gov/fuels/ethanol_locations.html) (last visited Feb. 26, 2014); <http://www.eia.gov/petroleum/ethanolcapacity/> (last visited Feb. 26, 2014).

<sup>6</sup> See <http://www.bls.gov/iag/tgs/iag211.htm#earnings> (Bureau of Labor Statistics, December 2013 Current Employment Statistics, Average Hourly Earnings for Oil and Gas Extraction Production and Nonsupervisory Employees); <http://www.bls.gov/iag/tgs/iag447.htm> (Bureau of Labor Statistics, December 2013 Current Employment Statistics, Average Hourly Earnings for Gasoline Station Production and Nonsupervisory Employees).

fuel dispenser labels to comply with the Rule. Staff conservatively estimates that the price per automotive fuel label is two dollars and that the average automotive fuel retailer has six dispensers, resulting in an initial cost to retailers of \$12 (6 pumps x \$2).<sup>7</sup> Regarding label replacement, staff has previously estimated a dispenser useful life range of 6 to 10 years. Assuming a useful life of 8 years, the mean of that range, replacement labeling will not be necessary for well beyond the relevant time frame, i.e., the immediate 3-year PRA clearance sought. Accordingly, averaging solely the \$12 labeling cost at inception per retailer over that period, annualized labeling cost per retailer will be \$4. Cumulative labeling cost would thus be \$10,668 (2,667 retailers x \$4 each, annualized).<sup>8</sup>

**(14) Estimate of Cost to Federal Government**

Commission staff estimates that a representative year's cost of administering the Rule's requirements during the 3-year clearance period sought will be approximately \$25,000. This represents .15 of an attorney/economist work year, and includes employee benefits.

**(15) Adjustments/Changes in Burden**

The incremental burden for the proposed amendments is an estimated 238 hours, cumulatively, for recordkeeping, 333 hours for labeling disclosures, an associated \$6,339 in labor costs, and \$10,668 in non-labor costs (labeling replacements).

**(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.

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<sup>7</sup> See 75 Fed. Reg. 12,470, 12,477 (Mar. 16, 2010) (proposed rulemaking) (estimating the price range per pump to be one to two dollars).

<sup>8</sup> This reflects strictly the incremental (and annualized) PRA costs of the ethanol amendments. Cumulative capital/non-labor costs for the current Rule under existing OMB clearance (Control No. 3084-0068) is \$88,600.