

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

(1) Necessity for Collecting the Information

The Fuel Rating Rule establishes standard procedures for determining, certifying, and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels, as required by the Petroleum Marketing Practices Act. 15 U.S.C. § 2822(a)-(c). The Rule also requires refiners, producers, importers, distributors, and retailers to retain records showing how the ratings were determined, including delivery tickets or letters of certification.

The Rule further requires producers, importers, distributors, and retailers of alternative fuels to keep for one year records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certified or posted. These records must be available for inspection by Commission and Environmental Protection Agency ("EPA") staff members or by persons authorized by the Commission or EPA.

(2) Use of the Information

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.

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, P.L. 105-277, Title XVII, 112 Stat. 2681-749 (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. 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 disclosure required by the Rule involves posting the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuels at retail sale. This requires accurate rating and certification of these fuels. To do less 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

On March 12, 2014, the FTC sought public comment on the disclosure and recordkeeping requirements associated with the Rule. One comment was received.

The comment noted favorably that fuel-related rules are “imperative” and that they “need to be reviewed every two years to make sure entities, etc.[,] are in full compliance.” Although the Rule’s review is not necessarily subject to such frequency, the Commission reviews this Rule and all current FTC rules (and guides) periodically. These reviews seek information about the costs and benefits of the Commission’s rules and guides as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules (and guides) that warrant modification. Moreover, the Commission may propose amendments to its rules outside of its periodic review of them. Thus, for example, recently the Commission published for public comment proposed ethanol-related amendments to the Fuel Ratings Rule. *See* 79 FR 18850 (April 4, 2014).

Pursuant to the OMB regulations, 5 C.F.R. Part 1320, that implement the PRA, 44 U.S.C. § 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

(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:¹ 33,700 total burden hours (13,750 recordkeeping hours + 19,950 disclosure hours).

¹ Under the Fuel Rating Rule, refiners, producers, importers, distributors, and retailers of automotive fuel must 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. *See* the Fuel Rating Rule’s recordkeeping requirements, 16 C.F.R. §§ 306.7; 306.9; and 306.11. The term automotive fuel includes gasoline and alternative liquid automotive fuels. 16 C.F.R. § 306.0 (i). Therefore, staff derived the number of fuel industry members by adding up the number of refiners, producers, importers, distributors, and retailers of these types of fuel. Staff consulted government agencies and industry sources in estimating a population of approximately 165,000 fuel industry members, including 159,597 retailers of automotive fuel. Some of the government websites reviewed to update these numbers include: http://www.eia.gov/dnav/pet/pet_pnp_cap1_dcu_nus_a.htm (Gasoline

Recordkeeping: Based on industry sources, staff estimates that 165,000 fuel industry members each incur an average annual burden of approximately five minutes to ensure retention of relevant business records for the period required by the Rule,² resulting in a total of 13,750 hours.

Disclosure: Staff estimates that affected industry members incur an average burden of approximately one hour to produce, distribute, and post octane rating labels. Because the labels are durable, only about one of every eight industry member retailers (19,950 of 159,597 industry member retailers) incur this burden each year, resulting in a total annual burden of 19,950 hours.

Estimated annual labor costs: \$ 364,207

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Here, the average hourly wages of producers, distributors, and importers is \$30.56.³ The average hourly wages of retailers is \$10.54.⁴ The recordkeeping component is approximately 450 hours for producers, distributors, and importers and 13,300 hours for retailers. Thus, the total recordkeeping component has a combined annual labor cost of \$153,934 ((450 hours x \$30.56) + (13,300 hours x \$10.54)). The disclosure component is approximately 19,950 hours for retailers, therefore, the total disclosure component has an annual labor cost of \$210,273.

Producers); <http://www.eia.gov/petroleum/ethanolcapacity/> (Ethanol Producers); <http://www.eia.gov/biofuels/biodiesel/production/> (Biodiesel Producers); <http://www.afdc.energy.gov/fuels/> (Alternative Fuel Stations); http://www.nacsonline.com/YourBusiness/FuelsReports/GasPrices_2014/Documents/2014NACSFuelsReport_full.pdf (Petroleum Stations).

² Under the Fuel Rating Rule, refiners, producers, importers, distributors, and retailers of automotive fuel must 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. See the Fuel Rating Rule's recordkeeping requirements, 16 C.F.R. §§ 306.7; 306.9; and 306.11. The term automotive fuel includes gasoline and alternative liquid automotive fuels. 16 C.F.R. § 306.0 (i). Staff derived the number of fuel industry members by adding the number of refiners, producers, importers, distributors, and retailers of these types of fuel. Staff consulted government agencies and industry sources in estimating a population of approximately 165,000 fuel industry members, including 159,597 retailers of automotive fuel. Some of the government websites reviewed to update these numbers include: http://www.eia.gov/dnav/pet/pet_pnp_cap1_dc_u_nus_a.htm (Gasoline Producers); <http://www.eia.gov/petroleum/ethanolcapacity/> (Ethanol Producers); <http://www.eia.gov/biofuels/biodiesel/production/> (Biodiesel Producers); <http://www.afdc.energy.gov/fuels/> (Alternative Fuel Stations); http://www.nacsonline.com/YourBusiness/FuelsReports/GasPrices_2014/Documents/2014NACSFuelsReport_full.pdf (Petroleum Stations) .

³ 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).

⁴ See <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).

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

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 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.⁵ In addition, staff has previously estimated the useful life of dispenser labels to range from 6 to 10 years. Applying 8 years, the mean of that range, and distributing the costs on a per-year basis, staff estimates the total annual replacement labeling cost to be \$39,899 (159,597 retailers x 1/8 x \$2.00).

(14) Estimate of Cost to Federal Government

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

There are no changes in estimated burden per affected entity. Staff has obtained updated estimates for the number of affected entities.

(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.

⁵ 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).