

THE NATIVE CLAIM FIRM

Official Correspondence

BEFORE THE FEDERAL TRADE COMMISSION

COMMENTS OF THE NATIVE CLAIM FIRM

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In re: Agency Information Collection Activities; Proposed Collection; Comment Request; Extension, Fuel Rating Rule, 16 CFR Part 306 (R811005)

I. Introductory Statement

The Native Claim Firm submits this comment in response to the Federal Trade Commission's (FTC or Commission) request for public comment on its proposal to extend for three years the OMB clearance for information collection requirements under the Fuel Rating Rule, 16 CFR part 306. We take no position on whether the underlying collection should be renewed, and we do not dispute the Commission's aggregate, national average burden figures as internally consistent arithmetic. Our comment is limited to a single point squarely within the scope of the Commission's own request for comment: "the accuracy of our burden estimates, including whether the methodology and assumptions used are valid."

We raise this now, during the comment window, because burden estimate errors that go uncorrected at this stage tend to stay uncorrected for the full three year clearance period that follows. The Government Accountability Office reviewed 200 of the largest information collection requests across four federal agencies in 2018 and found that agencies' own independent review processes, the same kind of internal review this renewal presumably underwent, failed to catch significant errors before submission to OMB, including one collection that underestimated burden by as much as \$270 million and another that overestimated burden time by more than 12 million hours. OMB's own review did not catch those errors either. A methodology gap identified now, during public comment, is considerably easier and cheaper for the Commission to correct than one identified after the three year clearance is already in place.

II. The Burden Model Averages Away a Real Disparity Between Large and Small Respondents

The notice's "Likely Respondents" category spans an extremely heterogeneous population, from major refiners, producers, importers, and distributors down to sole proprietor retailers operating a single fuel dispenser. The Commission's burden estimate does not distinguish among them.

Recordkeeping burden is calculated as a single flat average (five minutes per year) applied identically across all 136,727 members of this population, and the disclosure burden is likewise averaged across all 134,146 retailers regardless of how many dispensers, or how much fuel volume, any individual retailer actually operates. Only the label replacement (capital) cost component scales with dispenser count, based on the Commission's assumption that "the average automotive fuel retailer has six dispensers."

This matters because a meaningful share of small format retailers are tribally owned. Independent industry tracking identifies 245 federally recognized tribes now operating approximately 496 tribally owned gas stations and convenience stores nationwide, many of them small footprint operations serving low income, low access rural communities rather than high volume interstate corridors. These are precisely the retailers least likely to match the Commission's six dispenser, industry average throughput assumption.

III. A Burden Estimate Built on a Uniform Per-Retailer Average Necessarily Understates the Relative Burden on Low-Volume Retailers

Using the Commission's own figures, we modeled the burden per gallon of fuel sold for (1) a retailer matching the Commission's six dispenser average, drawn against industry reported average annual throughput of approximately 986,400 gallons (NACS, 2025 State of the Industry data), and (2) a small, single dispenser retailer operating at the documented bottom quartile industry throughput of approximately 480,000 gallons per year, a conservative proxy for a small format tribal retailer in a low access market. We use this industry wide proxy rather than tribe specific fuel volume estimates published by state tax administrators, because those figures are reported at the tribe or multi station level and do not isolate a single retailer's throughput, making them a less reliable basis for a per retailer burden calculation than a documented, retailer level industry benchmark. The results:

Metric	FTC 'Average' Retailer (6 dispensers)	Small/Tribal Single-Dispenser Retailer
Assumed dispensers	6	1
Annual fuel volume (gallons)	986,400	480,000
Capital/label cost (scales with dispensers)	\$2.29	\$0.38
Recordkeeping + disclosure labor cost (flat, non-scaling)	\$3.33	\$3.33
Total annual PRA burden	\$5.62	\$3.71
Burden per gallon of fuel sold	\$0.0000057	\$0.0000077

Even using a conservative, industry documented bottom quartile throughput figure rather than a lower estimate specific to remote reservation retailers, the small single dispenser retailer bears a burden intensity approximately 1.36 times higher per gallon sold than the Commission's six dispenser average retailer. This gap exists entirely because the recordkeeping and disclosure

components of the Commission's burden model do not scale with retailer size or throughput at all, while the retailer's revenue base does. The gap would be larger still for any tribal retailer operating below the documented bottom quartile threshold, which is common among single pump stations in sparsely populated or low access markets.

IV. Request

We respectfully ask that, before requesting OMB's extension of this clearance, the Commission:

1. Supplement the burden estimate with a breakdown by retailer size or dispenser count, so that the burden borne by small format and tribally owned retailers is visible in the record rather than obscured by a single national average; and
2. Confirm whether the Commission considered, and if so how it weighed, the disproportionate per unit burden that a uniform flat rate recordkeeping and disclosure estimate places on low volume retailers, including small tribally owned fuel retailers, relative to the six dispenser average respondent on which the capital cost estimate is based.

Neither request requires new data collection from respondents. Both can be satisfied by re-segmenting secondary-source data the Commission's staff already relies on for this estimate, such as industry throughput and station-count figures from NACS and the Energy Information Administration, by retailer size or dispenser count rather than collapsing that data into a single national average. That makes this a negligible marginal cost addition to the existing burden analysis, not a new collection effort.

GAO's 2018 review offers a useful illustration of what public input, specifically, can catch that internal review sometimes does not. In that review, the Food and Drug Administration had for years estimated that a pharmacist would need only five seconds to hand a patient a medication guide as part of a separate PRA collection. It was a public comment, not an internal review, that flagged the assumption as unrealistic once printing and distribution were accounted for, and FDA revised the estimate to three minutes accordingly. The flaw here is different in substance but similar in kind: an averaging assumption that was reasonable enough to pass internal review but does not hold up once a specific class of respondent is examined against it.

V. Conclusion

We do not ask the Commission to withhold the extension or to alter the underlying Fuel Rating Rule. We ask only that the burden estimate supporting OMB's renewed clearance reflect the actual range of respondents it purports to describe, consistent with the Paperwork Reduction Act's requirement that agencies accurately estimate the burden of information collections, 44 U.S.C. 3506(c)(2)(A). A three year clearance built on a single averaged burden figure leaves the disproportionate impact on small and tribally owned retailers unexamined for the full renewal period. We thank the Commission for the opportunity to comment.

Respectfully authored for agency and public benefit,

THE NATIVE CLAIM FIRM

Date: September 13, 2026