

**FEDERAL TRADE COMMISSION
16 CFR Part 306**

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Request for public comments.

SUMMARY: As part of the Commission’s systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s rule for “Automotive Fuel Ratings, Certification and Posting” (“Fuel Rating Rule” or “Rule”).

DATES: Written comments must be received by May 15, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Fuel Rating Rule Review, Matter No. R811005” to facilitate the organization of comments. Please note that your comment -- including your name and your state -- will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at <http://www.ftc.gov/os/publiccomments.shtm>.

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential.

. . .,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c).¹

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink:

<https://secure.commentworks.com/ftc-fuelratingrulereview> (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink <https://secure.commentworks.com/ftc-fuelratingrulereview>. If this Notice appears at <http://www.regulations.gov/search/index.jsp>, you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice and the news release describing it.

A comment filed in paper form should include the “Fuel Rating Rule Review, Matter No. R811005” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S.

¹ FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (“FTC Act”) and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at

<http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326-2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Fuel Rating Rule establishes standard procedures for determining, certifying, and posting, by means of a label on the fuel dispenser, the automotive fuel rating of liquid automotive fuels, including liquid alternative fuels. The Commission first promulgated the Rule (then titled the “Octane Certification and Posting Rule”) in 1979 in accordance with the Petroleum Marketing Practices Act (“PMPA”) (15 U.S.C. 2821 *et seq.*). (44 FR 19160 (Mar. 30, 1979)). The Rule originally only applied to gasoline. In 1993, in response to amendments to the

PMPA, the Commission expanded the scope of the Rule to cover liquid alternative fuels, including, but not limited to, methanol, denatured ethanol, liquefied natural gas, and coal-derived liquid fuels. (58 FR 41356 (Aug. 3, 1993)). In 2008, the Commission again amended the Rule to incorporate the specific labeling requirements for biodiesel, biomass-based diesel, and blends thereof (collectively, “biodiesel fuels”) required by Section 205 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17021). (73 FR 40154 (July 11, 2008)).

The Fuel Rating Rule designates methods for rating, certifying, and posting the rating of automotive fuels at the point of sale. The Rule requires that refiners, importers, and producers of any liquid automotive fuel determine that fuel’s “automotive fuel rating” before transferring it to a distributor or retailer. For gasoline, the fuel rating is the octane rating. For alternative fuels other than biodiesel fuels, the rating is the minimum percentage of the principal component of the fuel. For biodiesel fuels, it is the percentage of biodiesel or biomass-based diesel in the fuel. In addition, any covered entity, including a distributor, that transfers a fuel must provide a certification of the fuel’s rating to the transferee either by including it in papers accompanying the transfer or by letter. Finally, the Rule requires retailers to post the fuel rating by adhering a label to the retail fuel pump. The Rule sets forth precise specifications regarding the content, size, color, and font of the labels.

II. Regulatory Review Program

The Commission reviews all current Commission 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 or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of, and the

continuing need for, the Fuel Rating Rule; the benefits of the Rule to purchasers of automotive fuels; and the burdens the Rule places on firms subject to its requirements.

III. Request for Comment

The Commission solicits comments on the following specific questions related to the Fuel Rating Rule:

- (1) Is there a continuing need for the Rule as currently promulgated? Why or why not?
- (2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?
- (4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?
- (5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?
- (6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

- (7) Please provide any evidence that has become available since 1993 concerning consumer perception of fuel rating labels. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (8) Please provide any evidence that has become available since 1993 concerning consumer interest in particular fuel rating issues. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (9) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?
- (10) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and particularly to small businesses?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Rule for businesses?
- (11) What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?
- (12) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, and particularly on small businesses?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Rule for businesses?
- (13) What evidence is available concerning the degree of industry compliance with the Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (14) Are any of the Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.

- (15) What potentially unfair or deceptive practices concerning the rating, certifying, and posting of the rating of automotive fuels, if any, are not covered by the Rule?
- (a) What evidence demonstrates the existence of such practices?
 - (b) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?
- (16) What modifications, if any, should be made to the Rule to account for changes in relevant technology, including development of new liquid alternative fuels, or economic conditions?
- (a) What evidence supports the proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?
- (17) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?
- (a) What evidence supports the asserted conflicts?
 - (b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?
 - (c) Is there evidence concerning whether the Rule has assisted in promoting national consistency with respect to the rating, certifying, and posting the rating of automotive fuels? If so, please provide that evidence.
- (18) Are there foreign or international laws, regulations, or standards with respect to the rating, certifying, and posting the rating of automotive fuels that the Commission should consider as it reviews the Rule? If so, what are they?
- (a) Should the Rule be modified in order to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?
 - (b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

List of Subjects in 16 CFR Part 306

Fuel ratings, Trade practices.

Authority: 15 U.S.C. 2801 *et seq*; 42 U.S.C. 17021

By direction of the Commission.

Donald S. Clark
Secretary