



1901 N. FORT MYER DRIVE • SUITE 500 • ARLINGTON, VA 22209-1604 • 703-351-8000 • FAX 703-351-9160

May 15, 2009

Federal Trade Commission
Office of the Secretary,
Room H-135 (Annex M),
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Automotive Fuel Ratings, Certification and Posting

RE: Fuel Rating Rule Review, Matter No. R811005'

FILED ELECTRONICALLY

INTRODUCTION:

The Petroleum Marketers Association of America is grateful for the opportunity to present the following comments on the Federal Trade Commission's regulatory review of the automotive fuel rating regulations.

The Petroleum Marketers Association of America (PMAA) is a federation of 45 state and regional trade associations representing approximately 8,000 independent small business petroleum marketers nationwide. A majority of PMAA members own or operate 95% of the retail petroleum refueling sites nationwide.

COMMENTS:

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 in accordance with the Petroleum Marketing Practices Act ("PMPA") (15 U.S.C. 2821 et seq.) and the Energy Independence and Security Act of 2007 (42 U.S.C. 17021). (73 FR 40154 (July 11, 2008)).

The Federal Trade Commission (FTC) is seeking information about the costs and benefits of the automotive fuel rating rule as well as its regulatory and economic impact in order to determine whether modification or rescission of some or all of its provisions is warranted. PMAA wishes to file the following comments in response to the FTC's request.

What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

Small business petroleum marketers derive a benefit from the automotive fuel rating dispenser labeling requirements. The labeling requirements provide notice to consumers about the fuel rating of the product they are purchasing. The labels direct consumers to the octane rating and/or alternative fuel blends that are best suited for their vehicle according to manufacturer specifications. As a result, an informed consumer is able to select fuel that will provide optimal engine and exhaust system performance. The labels help to prevent misfueling. Fewer misfuelings reduce the potential liability of small business retailers for damages to engines and exhaust systems.

Small business retailers also derive a nominal marketing benefit from the alternative fuel rating dispenser labels. Consumer demand for alternative fuels such as ethanol and biodiesel is growing. To the extent that dispenser labels notify consumers of these "green" fuels, the small business marketer benefits. However, this benefit can be outweighed by those consumers who wish to avoid alternative fuels due to their lower mile per gallon ratings.

Overall, it is likely that small business retailers would provide the dispenser labels based on good business practices regardless of whether or not they were required to do so by the FTC.

What modifications, if any, should be made to the Rule to increase its benefits to businesses, and particularly to small businesses?

Additional flexibility in the label dimension and font size would be beneficial to small business retailers. Available space to affix labels on dispenser housings is extremely limited. This is due to larger electronic display screens and point of sale equipment (card reader and key pad) installed on new dispensers, the presence of additional labels required by the U.S. EPA, the IRS, OSHA, DOL, local weights and measures authorities, fire marshal offices as well as general consumer safety warnings and dispenser operation instructions. Given this extraordinary array of labels required on dispenser housings, flexibility in the size and shape of the automotive fuel rating labels is warranted so long as they remain conspicuous and provide adequate notice to consumers.

What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

The cost of dispenser labels vary based on the number of colors used and size. However, this cost is minimal ranging from \$1.00 to \$1.99 per label. However, for those small businesses that operate multiple outlets the cost of purchasing and replacing dispensers labels can be more substantive. Labor costs associated with affixing, inspecting and replacing fuel rating dispenser labels adds still greater costs depending on the number of retail sites, their location and number of dispensers at each outlet. These costs are difficult to quantify given the variables cited but are generally thought to be significant.

What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, and particularly on small businesses?

Many states are poised to adopt alternative fuel mandates as part of their U.S. EPA State Implementation Plans for air pollution control as required under the Clean Air Act (42 U.S.C. 7401 et seq.). Several states including Minnesota have already adopted alternative fuel mandates. Along with these mandates, states implement their own dispenser labeling requirements. In addition, other states with no mandate require dispenser labels based on the federal ethanol and biodiesel standards. These requirements are often duplicative and sometimes contradictory to FTC fuel rating requirements to the labels required by the FTC. This is particularly true with respect to biodiesel and ethanol motor fuel blends. The FTC should coordinate with state air authorities to ensure that duplicative and contradictory labels are not permitted.

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?

PMAA has no empirical data relating to compliance with fuel rating requirements. However, as noted above, sound business practices dictate that all consumer products be adequately labeled. PMAA assumes that the regulatory requirement along with the need to follow sound business practices and the desire to avoid liability for misfueling result in a very high level of compliance with the FTC fuel rating rule.

Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

Yes. As noted above a number of states are poised to mandate the use of ethanol and biodiesel blends. States are also requiring dispenser labels based on the federal ethanol and biodiesel standards. To the extent that these labels differ from the FTC fuel rating requirements they should be prohibited. There is no need for the automotive fuel rating rule to be modified to resolve this situation. However, outreach by the FTC to state officials informing them of the federal requirements would go a long way towards ending this duplicative practice.

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?

No, harmonization with international standards would not only confuse consumers who rely on script rather than symbols to determine product choice, it would require a full, nationwide retrofit of existing dispenser labels which would be costly and time consuming to small business retailers. The only harmonization that is needed to date is with state and local authorities who seek to impose their own label requirements.

CONCLUSION:

PMAA believes that the dispenser labeling requirements under the automotive fuel rating rule are generally beneficial to small business petroleum retailers. While there are cost burdens imposed from purchasing, affixing, inspecting and removing labels, these are generally offset by the benefits associated with an informed consumer, reduction in misfueling liability and alternative fuel marketing opportunities. The FTC should provide more flexibility in the size and shape of the labels to account for the diminishing space available on dispenser housings. In addition, the FTC should work closely with state authorities to ensure that they do not mandate duplicative and contradictory labels. Finally, PMAA is opposed to international harmonization of fuel rating labels in order to prevent consumer confusion, an increased risk of liability for misfueling and the costs associated with label replacement on the roughly 650,000 dispensers located nationwide.

Sincerely,

Mark S. Morgan, Esq.
Regulatory Counsel

(202) 364-6767
mmorganpsa@cox.net