

[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting

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

ACTION: Grant of Partial Exemption from the Commission’s Automotive Fuel Ratings, Certification, and Posting Rule.

SUMMARY: The Commission grants the petition of gasoline dispenser manufacturer Gilbarco, Inc. (“Gilbarco”) requesting permission for ethanol flex fuel retailers to post ethanol flex fuel rating labels that differ from size and shape specifications in the Commission’s Rule for Automotive Fuel Ratings, Certification and Posting (“Rule”). The Commission grants the partial exemption without a notice and comment period because “for good cause” the Commission finds that notice and comment is unnecessary in this case. The Commission previously granted similar requests from Gilbarco and other dispenser manufacturers without notice and comment procedures.

DATES: This partial exemption is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: R. Michael Waller, (202) 326-2902, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. The Fuel Rating Rule

The Rule provides procedures for determining, certifying, and posting, through fuel dispenser labels, a rating for automotive fuels intended for consumer sale. As originally published, the Rule required only an octane rating for automotive gasoline.¹ Pursuant to section 1501 of the Energy Policy Act of 1992, 106 Stat. 2776, the Commission then amended the Rule in 1993 to require a rating disclosure for liquid alternative fuels, including gasoline-ethanol blends above 10 percent ethanol (“Ethanol Flex Fuels”).² On January 14, 2016, the Commission established a new Ethanol Flex Fuel rating and label, effective July 14, 2016.³

Section 306.10 of the Rule requires that retailers post on automotive fuel dispensers a fuel rating label for each kind of automotive fuel sold from the dispenser. Retailers must post labels conspicuously on the dispenser in consumers’ full view and as near as reasonably practical to the fuel price.

Section 306.12 of the Rule details label color scheme, shape, size, textual content, and font type and point size. Ethanol Flex Fuel labels must be orange, rectangular, and 3 inches (7.62 cm) wide x 2 ½ inches (6.35 cm) long. In addition, the percentage of ethanol content must be printed in orange font within a 1 inch (2.54 cm) deep black band across the top of the label. Below the band, the label must state “Use Only in Flex Fuel Vehicles/May Harm Other Engines.”

¹ See Octane Posting and Certification Rule, 44 FR 19160 (Mar. 30, 1979).

² 58 FR 41356, 41372 (Aug. 3, 1993).

³ 81 FR 2054 (Jan. 14, 2016).

II. Gilbarco's Prior Petitions

In 1988 and 1995, the Commission granted Gilbarco partial exemptions to allow retailers to post octane labels smaller than required by the Rule. As here, Gilbarco requested the exemption to allow retailers to display the labels on the buttons consumers press to select a particular automotive fuel on multi-blend fuel dispensers ("button labels").⁴ In those instances, the Commission exempted button labels that measured 3 inches (7.62 cm) wide x 2.3 inches (5.84 cm) long and 2.74 inches (6.96 cm) wide x 1.80 inches (4.57 cm) long. Furthermore, the font point size differed from Rule's requirements, and the exempted labels added the word "Press."

III. Gilbarco's Current Petition

Gilbarco now requests an exemption for smaller label dimensions for Ethanol Flex Fuel button labels and to include the word "Press" in the label's black band. In addition, Gilbarco requests permission to post dome-shaped button labels in lieu of rectangular labels for certain dispenser designs. The proposed rectangular labels are 2.38 inches (6.05 cm) wide x 2.27 inches (5.77 cm) long, and the dome-shaped labels have an outside dimension of 2.378 inches (6.04 cm) wide x 2.717 (6.90 cm) inches long. In addition, the black band across the top of the dome-shaped label is 0.277 inches (0.70 cm) wider than specified in the Rule. The labels' background and text insertions otherwise comply with the Rule's color scheme, content, and font type and point size requirements.

⁴ See 60 FR 57584 (Nov. 16, 1995); 53 FR 29277 (Aug. 3, 1988).

IV. Discussion

The Commission reviewed mock-ups of the proposed rectangular and dome-shaped labels and concludes that the proposed labels adequately meet the Rule's labeling requirements by providing clear and conspicuous disclosure of all the required information and maintaining the Rule's color scheme and font type and point size requirements. Moreover, the Commission's experience with similar exemptions does not indicate that button labels confuse consumers or otherwise impede comprehension of the fuel rating. To the contrary, these labels may increase the likelihood that consumers see the fuel rating because they must choose and press the button before fueling.

Furthermore, pursuant to Rule 1.26, the Commission for good cause finds that notice and comment is unnecessary in this case because the exemption involves a technical and minor deviation from the Rule's labeling requirements and does not impose any new legal obligations on parties subject to the Rule.⁵ Moreover, the Commission has previously granted similar exemptions from the Rule's labeling requirements, and this exemption is consistent with those prior determinations.⁶

⁵ See 16 CFR 1.26. For these reasons, the Commission also finds good cause for making this exemption effective immediately.

⁶ See, e.g., Rule exemptions granted to Gilbarco, 60 FR 57584 (Nov. 16, 1995), 53 FR 29277 (Aug. 3, 1988); Dresser Industries, Inc., 56 FR 26821 (June 11, 1991); and Exxon Corporation, 54 FR 14072 (Apr. 7, 1989).

V. Conclusion

Therefore, the Commission grants Gilbarco and retailers permission to use the proposed rectangular and dome-shaped button labels on Ethanol Flex Fuel dispenser buttons, provided that Gilbarco and retailers comply with the Rule's specifications in all other respects.

By direction of the Commission.

Donald S. Clark
Secretary.