

FEDERAL TRADE COMMISSION

[File No. R811005]

16 CFR Part 306

Proposed Partial Rule Exemption for Gilbarco, Inc.

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed exemption; request for comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) has received a petition from Gilbarco, Inc. (“Gilbarco”) seeking a partial exemption from the coverage of a rule and published that petition online at <https://www.regulations.gov>. The petition requests permission to post fuel rating labels that deviate from label size, shape, font size, and letterspace specifications contained in the Fuel Rating Rule. The Commission proposes granting the partial exemption and invites comment on this proposal.

DATES: Comments must be filed by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Gilbarco Exemption; Matter No. R811005” on your comment, and file your comment online at <https://www.regulations.gov/>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, Org 0825, Mail Stop H-144, 600 Pennsylvania Avenue NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission seeks comment on a “Petition for Partial Exemption” from Gilbarco, Inc. (“Gilbarco”).¹ As discussed below, the Petition requests that the Commission issue a partial exemption allowing Gilbarco to reduce the footprint and type size of fuel labels required under 16 CFR Part 306.

I. Background

The Commission promulgated the Fuel Rating Rule (16 CFR Part 306) (“the Rule”) in accordance with the Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C. 2821 *et seq.*, which requires the Commission to establish uniform automotive fuel rating and labeling standards.² The ratings and labels provide consumers information they need to choose the correct type or grade of fuel for their vehicles. As originally published in 1979, the Rule only required an octane rating for automotive gasoline.³ Subsequently, the Commission added labeling requirements for liquid alternative fuels, biodiesel, and ethanol flex fuel.⁴ Section 306.12 of the Rule details the label color scheme, shape, size, textual content, and font type/point size. For example, the octane label must display the fuel’s octane number in 96-point font. In addition, ethanol labels must state “Use Only In Flex-Fuel Vehicles/May Harm Other Engines” in capital letters and black font, with the phrase “Flex-Fuel Vehicles” in 16-point font.

¹ The petition is available online at <https://www.regulations.gov>.

² See 15 U.S.C. 2823(c)(1).

³ See Octane Posting and Certification Rule, 44 FR 19160 (1979).

⁴ See 58 FR 41356 (Aug. 3, 1993) (alternative fuels); 73 FR 40154 (July 11, 2008); and 81 FR 2054 (Jan. 14, 2016).

In the past, the Commission granted partial exemptions to allow Gilbarco, one of the largest manufacturers of fuel dispensers in the U.S., to (1) post octane button labels with smaller label dimensions than allowed by the Rule (these dimension changes did not alter font size), and (2) add the word “Press” on the label. In addition, in the 1995 exemption, the Commission allowed Gilbarco to make the font size “slightly smaller” for the prominent octane (96-point font) number on the octane label.⁵

II. Gilbarco’s Requested Partial Exemption

In its new petition, Gilbarco requests a partial exemption to permit retailers to post narrower label dimensions for button labels, as well as allow the use of smaller font size for certain text to accommodate such narrower labels.⁶ These changes would allow Gilbarco to fit a larger number of fuel labels on a single dispenser. Gilbarco explains the exemption is needed “so that retailers may adapt to the needs of consumers while continuing to ensure the clear and conspicuous disclosure of all information required by the Rule.” Given increases in fuel choices at retail pumps, Gilbarco has developed and now proposes button label specifications that would allow its dispensers to accommodate one additional fuel grade button, for a total of six buttons for selecting fuel on dispensers.

To help achieve this goal, Gilbarco specifically requests the following changes to

⁵ See Gilbarco exemptions at 60 FR 57584 (Nov. 16, 1995); 53 FR 29277 (Aug. 3, 1988); 81 FR 86914 (Dec. 2, 2016). See also similar exemptions granted to other companies including Sunoco, 44 FR 33740 (June 12, 1979) and 55 FR 1871 (Jan. 19, 1990); Dresser Industries, Inc., 56 FR 26821 (June 11, 1991); Exxon Corp., 54 FR 14072 (Apr. 7, 1989).

⁶ In its petition, Gilbarco asked the Commission to consider granting the proposed exemptions without a notice and comment period. The Commission, however, has determined that the petition may raise issues appropriate for public comment, and is therefore publishing this Notice to seek comment before reaching a final decision on the petition. Under section 1.31 of the Commission’s rules, 16 CFR 1.31(f), the FTC invites public comment on petitions for rulemaking including petitions for exemptions from Commission rules. This Notice satisfies the requirements of that section.

the fuel rating labels:

1. Permission to post fuel rating labels that deviate from the Rule's requirements concerning the external dimensions of labels for gasoline, alternative liquid automotive fuels, ethanol flex fuels, biodiesel, biodiesel blends, and biomass-based diesel to allow for labels that are 2.20 inch wide (and the same length as previously permitted by the Commission in previous exemption requests).⁷

2. Permission for fuel retailers to post fuel rating labels that deviate from font size and letterspace specifications contained in the Rule in the following manner:

a. 22-point font size for "XX% ETHANOL" instead of 24-point font as currently required on the ethanol label;

b. 10-point font size and 10.5-point letterspace for "MINIMUM OCTANE RATING" instead of 12-point font and 12 ½ point spacing as currently required on the octane label; and

c. 14-point font size for "FLEX-FUEL VEHICLES" instead of 16-point currently required on the ethanol label.

Under the proposed partial exemption, the overall length of the labels will remain as previously approved by the Commission, and their background and text insertions will otherwise comply with the Rule's color scheme, content, and font type and point size requirements.

III. Discussion

The Commission preliminarily concludes that Gilbarco's proposed label modifications meet the Rule's labeling requirements because they provide clear and

⁷ The Rule (16 CFR 306.12) requires 3 inches wide by 2.5 inches long.

conspicuous notice of the required information and are consistent with the Rule's other requirements relating to color scheme, content, and font. In addition, the Commission's experience with similar exemptions suggests the proposed slight reductions in font size to several label disclosures are unlikely to materially affect consumers' understanding of the labels at the pump. Accordingly, the Commission proposes granting the requested exemption. The Commission requests comment on this proposal and whether the requested changes would materially affect the legibility of required fuel labels.

IV. Request for Comment

The Commission seeks comment on the proposed exemption in this Notice. You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write "Gilbarco Exemption; Matter No. R811005" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the website <https://www.regulations.gov>.

Because of the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write "Gilbarco Exemption; Matter No. R811005" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, Org 0825, Mail

Stop H-144, 600 Pennsylvania Avenue NW, Washington, DC 20580.

Because your comment will be placed on the public record, you are solely responsible for making sure your comment does not include any sensitive or confidential information. Your comment should not contain sensitive personal information, such as your or anyone else'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. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential"—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

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), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov—as legally required by FTC Rule 4.9(b), 16 CFR 4.9(b)—we cannot redact or remove your

comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this document and the news release describing it. The 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 it receives on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/siteinformation/privacypolicy>.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an opportunity for presentation of oral comments regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the Federal Register stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a request, on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN *FEDERAL REGISTER*], in the form of a written comment that describes the issues on which the party wishes to speak. If no oral presentations are scheduled, the Commission will base its decision on the written rulemaking record.

V. Paperwork Reduction Act

The Fuel Rating Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR

1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through September 30, 2023 (OMB Control No. 3084-0068). The proposed partial exemption would not amend the Rule or change the substance or frequency of the Rule's disclosure requirements and, therefore, does not require OMB clearance.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed partial exemption on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis ("IRFA") with a rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. The proposed exemption does not amend the Rule or alter the substance or frequency of the Rule's disclosure requirements. Thus, the Commission has concluded that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed exemption will not have a significant economic impact on a substantial number of small entities.

By direction of the Commission.

April J. Tabor,

Secretary.