

Concurring Statement of Commissioner Christine S. Wilson  
*Exemption to the Fuel Rating Rule*

October 14, 2022

The Commission has approved an exemption to the Fuel Rating Rule.<sup>1</sup> As I explained in my statement when the Commission sought comment on this proposed exemption,<sup>2</sup> the Commission promulgated this Rule pursuant to the Petroleum Marketing Practices Act (“PMPA”), which requires the Commission to establish “a uniform method of displaying the automotive fuel rating of automotive fuel at the point of sale to ultimate purchasers.”<sup>3</sup> The Commission’s Rule details the label color scheme, shape, size, textual content, and font type/point size.<sup>4</sup> Gilbarco, Inc., a manufacturer of fuel dispensers, requested a partial exemption to the Rule to permit retailers to post narrower label dimensions for button labels, as well as to allow the use of smaller font size for certain text to accommodate the narrower labels.

The Notice indicated that the Commission has granted at least seven other exemptions to the Rule since 1979.<sup>5</sup> I support the Commission’s flexibility in granting exemptions that allow manufacturers to adapt the labels and, in several instances, to provide additional information to consumers. I also support the granting of this exemption. I continue to question, however, whether the highly prescriptive requirements in this Rule are needed to satisfy the PMPA’s mandate to establish a uniform method of displaying fuel ratings. As I noted in my prior Concurring Statement, relaxation of the prescriptive requirements in the Commission’s Rule potentially could obviate the need for repeated exemption petitions, which call to mind the familiar children’s game of “Mother May I.” Much has been said about permissionless innovation in the context of high-tech companies,<sup>6</sup> but its benefits apply in this context, as well. For example, companies may have additional ideas about how to make labels more user-friendly but may choose to forgo acting on those initiatives due to the time and expense required to seek government approval, chilling beneficial innovation.

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<sup>1</sup> 16 CFR Part 306.

<sup>2</sup> Christine S. Wilson, Concurring Statement of Commissioner Christine S. Wilson, Notice of Proposed Exemption to the Fuel Rating Rule (June 14, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/R811005FuelRatingWilsonConcurringStatement.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/R811005FuelRatingWilsonConcurringStatement.pdf).

<sup>3</sup> 15 U.S.C 2823(c)(1)(B).

<sup>4</sup> See 16 CFR Section 306.12. As explained in the Notice, 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.

<sup>5</sup> See Notice at n.5. Notably the companies seeking these exemptions have been large companies, including Exxon and Sunoco. The Notice states that Gilbarco is one of the largest manufacturers of fuel dispensers in the U.S.

<sup>6</sup> See e.g., Adam D. Thierer, “Embracing a Culture of Permissionless Innovation” CATO Institute (Nov. 17, 2012) (explaining that “permissionless innovation refers to the notion that experimentation with new technologies and business models should generally be permitted by default” and that [p]ermissionless innovation is not an absolutist position that rejects any role for government. Rather, it is an aspirational goal that stresses the benefit of ‘innovation allowed’ as the default position to begin policy debates.”).

I again encourage the Commission to consider ways to streamline the Rule's prescriptive requirements, facilitating the conveyance of information to consumers uniformly while giving greater flexibility to manufacturers.<sup>7</sup>

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<sup>7</sup> I have repeatedly suggested a similar review of the Energy Labeling Rule's even more highly prescriptive requirements. *See* Dissenting Statement of Commissioner Christine S. Wilson, Notice of Proposed Rulemaking to Energy Labeling Rule (May 11, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Commission%20Wilson%20Dissenting%20Statement%20Energy%20Labeling%20Rule%205.11.22%20FINAL.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Commission%20Wilson%20Dissenting%20Statement%20Energy%20Labeling%20Rule%205.11.22%20FINAL.pdf).