

**FEDERAL TRADE COMMISSION****16 CFR Part 306**

RIN #3084-AA45

**Automotive Fuel Ratings, Certification and Posting****AGENCY:** Federal Trade Commission (“FTC” or “Commission”).**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** Section 205 of the Energy Independence and Security Act of 2007 requires the Federal Trade Commission to promulgate biodiesel labeling requirements. In accordance with this directive, the FTC is publishing proposed amendments to its rule for “Automotive Fuel Ratings, Certification, and Posting” (“Fuel Rating Rule” or “Rule”). The Commission is seeking comment on proposed changes to the Rule.

**DATES:** Written comments must be received on or before April 7, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Proposed Rule for Biodiesel Labeling, Matter No. R811005” to facilitate the organization of comments. A comment filed in paper form should include this 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-159 (Annex F), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, and the first page of the document must be clearly labeled “Confidential” and must comply with Commission Rule 4.9(c).<sup>1</sup> The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by clicking on the following: <https://secure.commentworks.com/ftc-biodiesel> 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 <https://secure.commentworks.com/ftc-biodiesel>. You also may visit <http://www.regulations.gov> to read this proposed Rule, and may file an electronic comment through that website. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should also be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (“OMB”), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. postal mail at OMB is subject to delays due to heightened security precautions.

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 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>. As a matter of discretion, the FTC 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.htm>.

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing for these 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, on or before March 24, 2008, a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, or Matthew Wilshire, (202) 326-2976, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal

Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Section 205 of the Energy Independence and Security Act of 2007 (“EISA” or the “Act”) (Pub. L. 110-140) requires the Commission to promulgate biodiesel labeling requirements within 180 days of the law’s passage. The Act addresses three categories of biodiesel blends and sets out prescriptive requirements for labeling two of them. The Act also contains definitions for the terms “biomass-based diesel,” “biodiesel,” and “biomass-based diesel and biodiesel blends” (hereinafter referred to collectively as “biodiesel fuels”). In response to this statutory directive, the Commission is proposing amendments to the Fuel Rating Rule (16 CFR Part 306) to incorporate these Congressionally mandated labeling requirements. Under the amendments, the rating and certification requirements of the existing rule apply to biodiesel fuels. This Notice provides background on the Fuel Rating Rule, a short description of biodiesel, information about the new statutory requirements for biodiesel fuel labeling contained in EISA, and a detailed description of the proposed requirements for the labeling of biodiesel fuels at fuel pumps.

**I. The Fuel Rating Rule**

The Commission first promulgated the Fuel Rating 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.*).<sup>2</sup> In response to amendments to the PMPA, the Commission expanded the scope of the Fuel Rating Rule in 1993 to cover liquid alternative fuels such as ethanol and liquefied natural gas (58 FR 41356 (Aug. 3, 1993)). The PMPA gives the Commission authority to designate methods for fuel rating, fuel certification, and posting for fuels at the point of sale. *See* 15 U.S.C. § 2822. The PMPA defines automotive fuel broadly to include “liquid fuel of a type distributed for use as a fuel in any motor vehicle.” The coverage of the Fuel Rating Rule is consistent with the PMPA and covers any alternative liquid fuel distributed for use in any motor vehicle including, but “not limited to,” methanol, denatured ethanol, liquefied

<sup>1</sup> Any request for confidential treatment, including the factual and legal basis for the request, must accompany the comment 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* Commission Rule 4.9(c), 16 CFR 4.9(c).

<sup>2</sup> In accordance with section 203(d)(1) of the PMPA (15 U.S.C. § 2823(d)(1)), this proceeding is being conducted pursuant to section 553 of the Administrative Procedure Act (5 U.S.C. § 553), except that interested persons are being afforded the opportunity to present oral, as well as written, data, views and arguments.

natural gas, and coal-derived liquid fuels.<sup>3</sup>

## II. Biodiesel Fuels

“Biodiesel,” as defined by EISA, is a diesel fuel produced by using alcohol to transform animal fat or vegetable oil into automotive fuel. Specifically, EISA (Pub. L. 110–140, § 205(c)) defines “biodiesel” to mean “the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: (1) the registration requirements for fuels and fuel additives under this section;<sup>4</sup> and (2) the requirements of ASTM [American Society for Testing and Materials] standard D6751.”<sup>5</sup> Biodiesel serves as a substitute for diesel fuel for some diesel vehicles and is usually blended with diesel for sale at retail pumps. According to the Department of Energy, biodiesel in the U.S. is usually made from soybean oil or recycled restaurant grease. Estimates suggest that biodiesel sales increased from 15 million gallons in 2002 to 250 million gallons in 2006.<sup>6</sup> In addition to biodiesel, EISA contains requirements for “biomass-based diesel,” defined as a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. § 7545.<sup>7</sup> Finally, EISA

(§ 205(c)(4)) defines “biomass-based diesel and biodiesel blends” to mean a “blend of ‘biomass-based diesel’ or ‘biodiesel’ fuel that is blended with petroleum based diesel fuel.”

Though the FTC has never specifically addressed fuel labeling requirements for biodiesel fuels, the broad authority under the PMPA allows the Commission to include those fuels under the rating, certification, and posting requirements of the Fuel Rating Rule. Given Congress’s specific directive in EISA to promulgate biodiesel fuel labeling requirements, we now are proposing to amend the Fuel Rating Rule to include biodiesel fuels in accordance with the directive of EISA.<sup>8</sup>

## III. EISA’s Directive

EISA (Pub. L. 110–140, § 205(a)) states that “[e]ach retail diesel fuel pump shall be labeled in a manner that informs consumers of the percent of biomass-based diesel or biodiesel that is contained in the biomass-based diesel blend or biodiesel blend that is offered for sale, as determined by the Federal Trade Commission.” EISA also addresses three different categories of biodiesel fuel blends, requiring labels with specific wording on biodiesel fuel pumps for two of them. For fuel blends containing five percent or less biodiesel fuel that meet ASTM D975 (“Standard Specification for Diesel Fuel Oils”), no specific label is required.<sup>9</sup> For fuel blends between five and no more than twenty percent, EISA (Pub. L. 110–140, § 205(b)(2)) requires the label to state that the fuel blend “contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent.” For fuel blends that contain more than twenty percent biodiesel or biomass-based diesel, the statute (Pub. L. 110–140, § 205(b)(3)) mandates that the label state that the fuel blend “contains more than 20 percent biomass-based diesel or biodiesel.”

Although Section 205 of EISA furnishes precise, mandatory label language, the Act (Pub. L. 110–140, § 205(a)) does leave the FTC with

discretion to determine the specific size, layout, and color of the required label, as well as to require any additional wording necessary to “inform consumers of the percent of biomass-based diesel or biodiesel that is contained in the biomass-based diesel or biodiesel blend that is offered for sale.”

## IV. Proposed Revisions to the Fuel Rating Rule

Consistent with the provisions of EISA, the Commission is proposing to amend the Fuel Rating Rule. These changes: 1) incorporate the definitions for the terms “biomass-based diesel,” “biodiesel,” and “biomass-based diesel and biodiesel blends” contained in Section 205 of EISA; 2) amend the definition of “automotive fuel” to make clear that biodiesel fuels are subject to the rating and certification requirements of the Fuel Rating Rule; and 3) require labeling of biodiesel fuels containing more than five percent biomass-based diesel or biodiesel that is consistent with the Congressionally mandated language in Section 205 of EISA and with state model rules proposed by the National Conference on Weights and Measures (“NCWM”).

### A. Definitions

As noted above, Section 205 of EISA requires the Commission to promulgate labeling requirements for “biomass-based diesel,” “biodiesel,” and “biomass-based diesel and biodiesel blends,” as those terms are defined in the Section 205(c) of the statute. The Commission, therefore, proposes adding the statutorily required terms to Section 306.0 of the Fuel Rating Rule.

### B. Alternative Fuels, Automotive Fuel Rating, and Certification

Section 306.0(i)(2) of the Rule currently lists examples of alternative fuels, but specifically states that alternative fuels are “not limited to” those listed. The proposed amendments expressly add biomass-based diesel and biodiesel, as well as blends containing more than five percent biodiesel or biomass-based diesel, to this non-exclusive list. By specifically including these terms, the amendments clarify that biodiesel fuels are covered by the rating and certification requirements of Part 306 of the Rule.<sup>10</sup>

Incorporating biodiesel fuels into the Fuel Rating Rule and subjecting them to

<sup>3</sup> In 1993, the Commission explained that “[t]he Fuel Rating Rule . . . applies to all present and future alternative liquid automotive fuels.” 58 FR 41355, 41358 (Aug. 3, 1993).

<sup>4</sup> Though EISA’s definition of “biodiesel” refers to the registration requirements for fuels and fuel additives under “this section,” there are no such registration requirements in section 205 of EISA nor are there any in the FTC’s Fuel Rating Rule (16 CFR Part 306). Accordingly, we assume the phrase “this section” in EISA’s definition of “biodiesel” is intended to refer to the Environmental Protection Agency’s (“EPA’s”) registration requirements for fuels and fuel additives (40 CFR Part 79 “Registration of Fuels and Fuel Additives”) issued pursuant to 42 U.S.C. § 7545. Those requirements constitute EPA’s regulatory program for the registration of motor vehicle diesel fuel (including biodiesel), motor vehicle gasoline, and their additives. Therefore the definition of “biodiesel” in the proposed Rule references the requirements of 40 CFR Part 79.

<sup>5</sup> ASTM D6751 is titled: “Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels.”

<sup>6</sup> See [http://www1.eere.energy.gov/biomass/renewable\\_diesel.html](http://www1.eere.energy.gov/biomass/renewable_diesel.html) (2002 estimate) and [http://www.biodiesel.org/pdf\\_files/fuel/factsheets/Biodiesel\\_Sales\\_Graph.pdf](http://www.biodiesel.org/pdf_files/fuel/factsheets/Biodiesel_Sales_Graph.pdf) (2006 estimate).

<sup>7</sup> EISA defines “biomass-based diesel” by referencing the definition of the term “biodiesel” provided in Section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. § 13220(f)). The definition reads: “a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under [42 U.S.C. § 7545],” and includes fuel derived from “(i) animal wastes, including poultry fats and poultry wastes, and other

waste materials; or (ii) municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.” 42 U.S.C. § 13220(f)(1)(A) and (B).

<sup>8</sup> The Fuel Rating Rule currently does not specify labeling requirements for petroleum-based diesel. See 58 FR 41356, 41368 (Aug. 3, 1993). We are not proposing such requirements for diesel fuel as part of this proceeding.

<sup>9</sup> EISA states that fuel in this category “shall not require any additional labels.” Pub. L. 110–140, § 205(b)(1). This appears to mean that biodiesel and biomass-based diesel blends at five percent or less do not require any specific label identifying the product as biodiesel but that any labels otherwise applicable to such diesel fuel will continue to apply.

<sup>10</sup> Consistent with EISA (Pub. L. 110–140, § 205(b)(1)), the amendments to Section 306.0 would also indicate that biodiesel blends that contain less than or equal to five percent biomass-based diesel or biodiesel by volume, and that meet ASTM D975, are not automotive fuels covered by the requirements of this Rule.

these rating and certification requirements will help ensure the accuracy of the information on biodiesel fuel labels. The current rating requirements in Section 306.5 and the certification procedures in Section 306.6 provide the means to substantiate fuel ratings throughout the chain of sale. Under the current Rule, refiners, importers, producers, and distributors of alternative liquid automotive fuels must have “competent and reliable evidence” supporting their advertised fuel rating (Sec. 306.5(b) and Sec. 306.8(b)). In addition, sellers must certify that percentage when they transfer the fuel to anyone other than a consumer (Sec. 306.6 and Sec. 306.8(c)). The proposed amendments will ensure that these requirements apply to biodiesel fuels sold at retail pumps.<sup>11</sup>

Finally, to comply with EISA’s labeling requirements, the proposed amendments make minor changes to the rating and certification provisions of the Rule for biodiesel fuel blends. First, the amendments would modify certain language in the Rule’s certification provision (Sec. 306.5(b)) to clarify that biodiesel fuel blends should be rated by the percentage of biodiesel or biomass-based diesel in the fuel, not necessarily by the percentage of the principal component of the fuel as is the case with other alternative fuels.<sup>12</sup> Second, the certification requirements in Section 306.6(b) currently allow transferors of alternative automotive fuels to certify fuel ratings with a letter of certification and provide that this letter remains valid so long as the fuel transferred contains the same or a greater rating of the principal component. However, an increase in the concentration of biodiesel or biomass-based diesel in an automotive fuel may trigger different labeling requirements under EISA if the increase moves the fuel into a different blend category (e.g., an increase from B-15 to B-30). Therefore, the proposed amendment to Section 306.6(b) states that if transferors of biodiesel fuels choose to use a letter of certification, that letter will be valid only as long as the fuel transferred contains the same percentage of biodiesel or biomass-based diesel as previous fuel transfers covered by the letter.

<sup>11</sup> It is the responsibility of any entity rating biodiesel blends under Section 306.5 to determine the amount of biodiesel in the fuel it sells. This includes the need to account for biodiesel in any diesel fuel it uses to create such blends (e.g., diesel fuel containing biodiesel at five percent or less).

<sup>12</sup> For example, a twenty-five percent biodiesel blend should be rated as twenty-five percent biodiesel, not seventy-five percent diesel.

### C. Labeling

The labeling or “posting” requirements in the proposed amendments employ the language mandated by Congress in EISA and are consistent with the content and format of existing labels for other alternative fuels such as ethanol and propane. In accordance with Section 205 of EISA and consistent with the FTC’s authority under the PMPA, the proposed Rule addresses three biodiesel blend fuel categories. First, the proposed Rule does not require labels for biodiesel fuels containing no more than five percent biomass-based diesel or biodiesel, provided that they meet the specifications for diesel fuel contained in ASTM D975. Second, for biodiesel fuel blends of more than five percent but not more than twenty percent biomass-based diesel and biodiesel, the proposed label contains the language required by Congress in Section 205(b)(2) of EISA and additional disclosures as discussed below. Third, for biodiesel fuels containing more than twenty percent, the proposed label contains the language required by Congress in Section 205(b)(3) of EISA. In addition, pursuant to our authority under the PMPA and consistent with EISA’s direction, the proposed amendments specify a label for neat biodiesel (i.e., 100 percent biodiesel or “B-100”).

In addition to the specific disclosures required by EISA, the proposed labels contain fuel terms on the top of the label that are consistent with both the draft model rules proposed by the NCWM and the Fuel Rating Rule’s treatment of other alternative fuels. Specifically, the proposed labels for biodiesel fuels containing more than five but no more than twenty percent biomass-based diesel or biodiesel require at the top of the label either: 1) the capital letter “B” followed first by a numeric representation of the percentage of biodiesel or biomass-based diesel and then by the term “biodiesel blend,” such as “B-20 Biodiesel Blend”; or 2) the term “Biodiesel Blend.”<sup>13</sup> For biodiesel fuel blends containing more than twenty percent, the proposed labels require the specific blend designation (e.g., “B-80”) of the fuel followed by the term “biodiesel blend,” such as “B-80 Biodiesel Blend.” For

<sup>13</sup> The choice of designation (e.g., “B-15 Biodiesel Blend” or “Biodiesel Blend”) is at the discretion of the seller. Giving sellers this choice is consistent with the model rules under consideration by the NCWM and with Section 205 of EISA, which require disclosure only that the fuel contains between five and twenty percent biodiesel or biomass-based diesel, rather than a specific amount.

neat biodiesel (i.e., B-100), the label requires the words “B-100 Biodiesel” along with the explanatory text “contains 100 percent biomass-based diesel or biodiesel.” Inclusion of these terms on the proposed label is consistent with draft model rules currently under consideration by the NCWM.<sup>14</sup> It is also consistent with the Fuel Rating Rule’s labels for other alternative fuels, which must disclose the type of alternative fuel at the top of the label (e.g., “E-85” for eighty-five percent ethanol blends).

Consistent with the model rules under consideration by the NCWM, the proposed Rule allows pump labels for biodiesel fuel blends from more than five to twenty percent biomass-based diesel and biodiesel to contain the generic term “biodiesel blend” without specifying the percentage of biodiesel or biomass-based diesel fuel. Under this approach, sellers have the flexibility to provide specific percentages in this blend category but are not required to do so. It is our understanding that the blend categories set by Congress and recommended by the NCWM (i.e., no greater than five percent, greater than five percent but no more than twenty percent, and greater than twenty percent) reflect thresholds that are important with regard to engine compatibility and vehicle warranties. For example, many original equipment manufacturers and customer service departments do not recommend use of biodiesel fuel blends over five percent for many vehicles.<sup>15</sup> For some vehicles, however, consumers can use blends of twenty percent or less biodiesel or biomass-based diesel without triggering engine compatibility or warranty concerns.<sup>16</sup> Accordingly, a precise percentage (e.g., “B-10”) on the label may not be necessary for the more than five to twenty percent category as long as the label clearly indicates that the fuel, in fact, contains more than five but no greater than twenty percent.

With respect to blends above twenty percent, it is our understanding that these fuels are infrequently sold at retail and that customers purchasing such fuels are more likely to be concerned about applicable percentages.<sup>17</sup>

<sup>14</sup> See “National Conference on Weights and Measures Laws and Regulations Committee & Petroleum Subcommittee Interim Meeting for the 93rd NCWM Annual Conference; Supplement to NCWM Publication 15,” (Section 3.15).

<sup>15</sup> See, e.g., “OEM Warranty Statements and Use of Biodiesel Blends over 5% (B5),” National Biodiesel Board, available at: [http://www.biodiesel.org/pdf\\_files/B5\\_warranty\\_statement\\_32206.pdf](http://www.biodiesel.org/pdf_files/B5_warranty_statement_32206.pdf).

<sup>16</sup> *Id.*

<sup>17</sup> See ASTM D6751, Note 2 (“A considerable amount of experience exists in the U.S. with a 20%

Therefore, a requirement for specific percentages appears to be warranted for this category. We seek comments on these issues. In particular, should the Rule allow such a non-specific percentage designation (“biodiesel blend”) for fuel between more than five and twenty percent, or should the Rule require on the label specific percentages for all blends over five percent? Additionally, should blends over twenty percent allow a generic term on the label in lieu of a specific percentage designation on the label?

The proposed rule language sets forth the specific size, font, and format requirements for the draft labels. These requirements are consistent with those in place for other alternative liquid fuels in the Rule (*see* Sec. 306.12). In one departure from existing requirements, we are proposing a purple (PMS<sup>18</sup> 2562 or its equivalent) background for all biodiesel fuel labels. The purple background is designed to allow retail consumers to distinguish biodiesel fuels easily from other fuels sold at retail pumps such as gasoline (yellow octane label) and E-85 (orange label) and helps minimize the likelihood that consumers will use the wrong fuel in their vehicle. The Commission invites comment on whether the proposed color is appropriate. Sample illustrations of biodiesel fuel labels can be found in the proposed amendments at Section 306.12(f).

## V. Questions for Comment

The Commission seeks comments on all aspects of the proposed rule. All comments should be filed as prescribed in the “ADDRESSES” section above, and must be received on or before April 7, 2008. In addition to any questions and requests for comment found throughout this Notice, we ask that commenters address the following questions:

(1) What costs or burdens, or any other impacts, do the proposed requirements impose, and on whom? What evidence supports the asserted costs, burdens, or other impacts?

(2) What modifications, if any, should be made to the proposed requirements to increase their benefits to consumers?

(a) What evidence supports your proposed modifications? Please submit any such evidence.

(b) How would these modifications affect the costs and benefits of the proposed

requirements for consumers?

(c) How would these modifications affect the costs and benefits of the proposed requirements for businesses, and in particular small businesses?

(3) What modifications, if any, should be made to the proposed requirements to decrease their burdens on businesses?

(a) What evidence supports your proposed modifications? Please submit any such evidence.

(b) How would these modifications affect the costs and benefits of the proposed requirements for consumers?

(c) How would these modifications affect the costs and benefits of the proposed requirements for businesses, and in particular small businesses?

(4) Should the Rule allow a non-specific percentage designation (“biodiesel blend”) for biodiesel blends over five and no more than twenty percent? Or should the Rule require specific percentages on the label for all blends over five percent? If so, why and how? If not, why not? What evidence supports your answer(s)? Please submit any such evidence.

(5) Should the Rule require a specific designation (*e.g.* “B-80”) for biodiesel blends over twenty percent? Or, should the Rule allow a generic designation for such blends? If so, why and how? If not, why not? What evidence supports your answer(s)? Please submit any such evidence.

(6) Of fuels containing biodiesel sold in the United States, approximately what percentage contains no more than five percent biodiesel? What percentage contains more than five and no more than twenty percent biodiesel? What percentage contains more than twenty percent biodiesel? What evidence supports your answer(s)? Please submit any such evidence.

(7) Of fuels containing biomass-based diesel sold in the United States, approximately what percentage contains no more than five percent biomass-based diesel? What percentage contains more than five and no more than twenty percent biomass-based diesel? What percentage contains more than twenty percent biomass-based diesel? What evidence supports your answer(s)? Please submit any such evidence.

(8) Is purple (PMS 2562) an appropriate background color for the biodiesel blend and biodiesel label? If not, what color would be appropriate? What evidence supports your answer(s)? Please submit any such evidence. In lieu of a purple label, should the FTC consider a blue label (PMS 277)?

(9) Would the Commission’s proposed biodiesel label cause confusion with regard to any label currently used for diesel (or any other fuel) at retail pumps? If so, how? Are there any changes that the Commission could make to its proposal to eliminate such confusion in a manner that also complies with Congress’s directive? What evidence supports your conclusions?

## VI. Paperwork Reduction Act

The proposed certification and labeling requirements constitute a “collection of information” under the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501–3520) (“PRA”). Consistent with the Fuel Rating Rule’s requirements for other alternative fuels, the proposed amendments require refiners, producers, importers, distributors, and retailers of biodiesel fuels to retain, for one year, records of any delivery tickets, letters of certification, or tests upon which they based the automotive fuel ratings that they certify or post. The covered parties also must make these records available for inspection by Commission and Environmental Protection Agency staff or by persons authorized by the Commission or the Environmental Protection Agency. Finally, retailers must produce, distribute, and post fuel rating labels on fuel pumps. Therefore, the Commission will submit the proposed requirements to OMB for review under the PRA before issuing a final rule.

The Commission has previously estimated the burden associated with the Rule’s recordkeeping requirements for the sale of automotive fuels to be no more than five minutes per year per industry member, and it has previously estimated the burden associated with the Rule’s disclosure requirements to be no more than 1/8th of an hour per year per industry member. The recordkeeping “burden,” for OMB purposes, does not include efforts that a covered party would expend in any event. 5 CFR 1320.3(b)(2). Therefore, the estimated burden for the Fuel Rating Rule does not include recordkeeping in which covered industry members already engage in their normal course of business.

Because the procedures for distributing and selling biodiesel fuels are no different from those for other automotive fuels, the Commission expects that, consistent with practices in the fuel industry generally, the covered parties in the biodiesel fuel industry will record the fuel rating certification on documents (*e.g.*, shipping receipts) already in use, or will

blend of biodiesel . . . . Although biodiesel (B100) can be used, blends of over 20% biodiesel with diesel fuel . . . should be evaluated on a case by case basis until further experience is available.”)

<sup>18</sup> Pantone Matching System. We are also proposing conforming changes to allow the use of non Pantone equivalents for other alternative fuels.

use a one-time letter of certification. Furthermore, the Commission expects that labeling of biodiesel fuel pumps will be consistent with practices in the fuel industry generally. The information collection burden, therefore, will be the same as that for other automotive fuels: five minutes per year for recordkeeping and 1/8th hour per year for disclosure.

Based on statistics provided by the National Biodiesel Board (“NBB”), the Commission estimates that there are approximately 200 producers of biodiesel, 2000 distributors of biodiesel, and 1500 retailers of biodiesel.<sup>19</sup> Conservatively assuming that each producer, distributor, and retailer of biodiesel is a distinct entity, and that each seller of biodiesel will spend five minutes per year complying with the proposed recordkeeping requirements and assuming that each retailer will spend 1/8th of an hour per year complying with the proposed disclosure requirements, the Commission estimates the incremental annual burden to be 309 hours for recordkeeping (1/12th of an hour per year times 3700 entities) and 188 hours (1/8th of an hour per year times 1,500 retailers). To ensure the accuracy of this burden estimate, however, the Commission seeks comment on the paperwork burden that the proposed requirements may impose to ensure that the Commission has not overlooked any additional burden.

## VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. §§ 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule and a Final Regulatory Flexibility Analysis (“FRFA”) with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. §§ 603–605.

The FTC does not expect that the proposed amendments will have a significant economic impact on a substantial number of small entities. As explained in Section VI above, each

<sup>19</sup> Because the biodiesel industry is young, estimates of its size may not be as accurate as estimates of the size of more mature industries. Therefore, we have conservatively rounded up from the actual statistics provided by the NBB. In a document dated January 25, 2008, the NBB estimated a total of 171 producers of biodiesel and biodiesel blends. See [http://biodiesel.org/pdf\\_files/fuelfactsheets/Production\\_Capacity.pdf](http://biodiesel.org/pdf_files/fuelfactsheets/Production_Capacity.pdf). In addition, the NBB’s website lists all known distributors (<http://www.biodiesel.org/buyingbiodiesel/distributors/showall.asp>) and retailers (<http://www.biodiesel.org/buyingbiodiesel/retailfuelingsites/showall.asp>) of biodiesel. As of February 4, 2008, the site listed approximately 1250 retailers and 1775 distributors of biodiesel and biodiesel blends.

entity in the biodiesel industry will spend, at most, five minutes per year complying with the proposed recordkeeping requirements and 1/8th of an hour per year complying with the disclosure requirements. Staff estimates the mean hourly wage for employees of producers, importers, and distributors of biodiesel fuels to be \$21.39,<sup>20</sup> and the mean hourly wage for employees of biodiesel retailers to be \$14.35.<sup>21</sup> Conservatively assuming that all biodiesel producers, distributors, and retailers are small entities, compliance with the recordkeeping requirements will cost producers and distributors \$1.61 per year (\$19.34 times 1/12th of an hour) and retailers \$1.20 (\$14.35 times 1/12th of an hour). In addition, under the same conservative assumptions, compliance with the proposed disclosure requirements will cost retailers \$1.79 (\$14.35 times 1/8th of an hour).

In addition, retailers will incur the cost of procuring and replacing fuel dispenser labels to comply with the disclosure requirements of the Rule. Staff has previously estimated that the price per automotive fuel label is about fifty cents and that the average automotive fuel retailer has 6 dispensers. Applying those estimates to the biodiesel fuel industry results in an initial cost to retailers of \$3.00 (6 pumps times \$0.50). In addition, staff has previously estimated the useful life of dispenser labels to range from 6 to 10 years. Assuming a useful life of 8 years, the mean of that range, and distributing the costs on a per-year basis, staff estimates the total annual replacement labeling cost to be \$0.06 (1/8 x \$0.50).

This document serves as notice to the Small Business Administration of the agency’s certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed amendments on small entities. Therefore, the Commission has prepared the following analysis.

### A. Description of the reasons that action by the agency is being considered.

Section 205 of EISA (Pub. L. 110–140) requires the Commission to promulgate biodiesel labeling requirements.

<sup>20</sup> Bureau of Labor Statistics, 2006 Employment Statistics Survey, Annual Average Hourly Earnings for Oil and Gas Extraction Production workers.

<sup>21</sup> Bureau of Labor Statistics, May 2006 Occupational Employment Statistics Survey, “Correspondence Clerks,” Table 1.

### B. Statement of the objectives of, and legal basis for, the proposed rule.

The Commission is proposing these amendments to implement Congressionally mandated labeling for biodiesel fuels.

### C. Description of and, where feasible, estimate of the number of small entities to which the proposed rule will apply.

We assume that all affected entities (200 producers of biodiesel, 2000 distributors of biodiesel, and 1200 retailers of biodiesel) are small businesses. The Commission invites comment and information on this issue.

### D. Projected reporting, recordkeeping, and other compliance requirements.

The proposed amendments make clear that the recordkeeping and certification requirements of the Fuel Rating Rule apply to biodiesel. Small entities potentially affected are producers, distributors, and retailers of biodiesel fuels. The Commission expects that the recordkeeping and certification tasks are done by industry members in the normal course of their business. Accordingly, we do not expect the proposed amendments to require any professional skills beyond those already employed by industry members.

### E. Other duplicative, overlapping, or conflicting federal rules.

The FTC has identified no other federal statutes, rules, or policies that conflict with the proposed amendments.

### F. Alternatives Considered.

The requirements proposed by the amendments are minimal and, as noted above, do not require creating any separate documents because covered parties may use documents already in use to certify a biodiesel fuel’s rating. The Commission believes that the proposed amendments minimize what, if any, economic impact there is from the labeling requirements mandated by Sec. 205 of EISA.

## VIII. Communications by Outside Parties to Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner’s advisor will be placed on the public record. See 16 CFR 1.26(b)(4).

## IX. Proposed Rule Language

### List of Subjects in 16 CFR Part 306

Energy conservation, Gasoline, Incorporation by reference, Labeling,

Reporting and recordkeeping requirements.

For the reasons set out above, the Commission proposes the following amendments to 16 CFR Part 306:

### PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

1. The authority citation for part 306 continues to read as follows:

**Authority:** 15 U.S.C. 2801 *et seq*; Pub. L. 110–140.

2. Section 306.0(i)(2) is revised to read as follows:

#### 306.0 Definitions.

\* \* \* \* \*

(i) \* \* \*

(2) Alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary of the United States Department of Energy, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(iii) Liquefied natural gas;

(iv) Liquefied petroleum gas;

(v) Coal-derived liquid fuels;

(vi) Biodiesel;

(vii) Biomass-based diesel;

(viii) Biomass-based diesel blends containing more than 5 percent biomass-based diesel by volume; and

(ix) Biodiesel blends containing more than 5 percent biodiesel by volume.

\* \* \* \* \*

3. Section 306.0(i)(3) is added to read as follows:

#### § 306.0 Definitions.

\* \* \* \* \*

(j) \* \* \*

(3) Biodiesel blends that contain less than or equal to 5 percent biomass-based diesel or biodiesel by volume, and that meet American Society for Testing and Materials (ASTM) standard D975 (“Standard Specification for Diesel Fuel Oils”), are not automotive fuels covered by the requirements of this Part. The incorporation of ASTM D975 by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D975 may be obtained from American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room,

Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C., or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

\* \* \* \* \*

4. Section 306.0(j)(3) is added to read as follows:

#### 306.0 Definitions.

\* \* \* \* \*

(j) \* \* \*

(3) For biomass-based diesel, biodiesel, and blends thereof, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

5. Section 306.0 is amended by adding paragraphs (k), (l), and (m) to read as follows:

#### 306.0 Definitions.

\* \* \* \* \*

(k) *Biomass-based diesel* means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. § 7545, and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.

(l) *Biodiesel* means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet:

(1) The registration requirements for fuels and fuel additives under 40 CFR Part 79; and

(2) The requirements of the ASTM standard D6751 (“Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels”). The incorporation of ASTM D6751 by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of ASTM D6751 may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C., or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

(m) *Biodiesel blend* means a blend of biomass-based diesel or biodiesel fuel that is blended with petroleum-based diesel fuel.

6. Section 306.5(b) is revised to read as follows:

#### 306.5 Automotive fuel rating.

\* \* \* \* \*

(b) To determine automotive fuel ratings for alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose, or, in the case of biodiesel blends, the percentage of biodiesel or biomass-based diesel contained in the fuel. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

7. Section 306.6(b) is revised to read as follows:

#### 306.6 Certification.

\* \* \* \* \*

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person’s name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower automotive fuel rating, except that a letter certifying the fuel rating of biomass-based diesel, biodiesel, and biodiesel blends will be good only until you transfer those fuels with a different automotive fuel rating, whether the rating is higher or lower. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

\* \* \* \* \*

8. Section 306.10(f) is revised to read as follows:

#### 306.10 Automotive fuel rating posting.

\* \* \* \* \*

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule’s coverage to only the mentioned fuels:

(1) “Methanol/Minimum \_\_\_% Methanol”

(2) "Ethanol/Minimum \_\_\_% Ethanol"

(3) "M-85/Minimum \_\_\_% Methanol"

(4) "E-85/Minimum \_\_\_% Ethanol"

(5) "LPG/Minimum \_\_\_% Propane" or "LPG/Minimum \_\_\_% Propane and \_\_\_% Butane"

(6) "LNG/Minimum \_\_\_% Methane"

(7) "B-20 Biodiesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"

(8) "B-100 Biodiesel/contains 100 percent biomass-based diesel or biodiesel"

\* \* \* \* \*

9. In § 306.12, paragraph (a)(2) is revised to read as follows:

**306.12 Labels.**

\* \* \* \* \*

(a) \* \* \*

(2) *For alternative liquid automotive fuel labels (one principal component) other than biodiesel blends.* The label is 3 inch (7.62 cm) wide 2 1/2 inch (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1 inch (2.54 cm) deep. Spacing of the fuel name is 1/4 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 1/8 inch (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 3/16 inch (.48 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this single component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission,

Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

\* \* \* \* \*

10. In § 306.12, paragraphs (a)(4), (a)(5), and (a)(6) are added to read as follows:

**306.12 Labels.**

\* \* \* \* \*

(a) \* \* \*

(4) *For biodiesel blends containing more than 5 percent and no greater than 20 percent biomass-based diesel or biodiesel by volume.* The label is 3 inch (7.62 cm) wide 2 1/2 inch (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains either:

(i) The capital letter "B" followed immediately by the numerical value representing the volume percentage of biodiesel or biomass-based diesel in the fuel (e.g., "B-20") and then by the term "Biodiesel Blend"; or

(ii) The term "Biodiesel Blend." The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is 1/4 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read "contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent." The script underneath the black band must be centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 1/4 inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

(5) *For biodiesel blends containing more than 20 percent biomass-based diesel or biodiesel by volume.* The requirements are the same as in Section 306.12(a)(4), except that the black band at the top of the label shall contain the capital letter "B" followed immediately by the numerical value representing the

volume percentage of biodiesel or biomass-based diesel in the fuel (e.g., "B-70") and then the term "Biodiesel Blend." In addition, the words directly underneath the black band shall read "contains more than 20 percent biomass-based diesel or biodiesel."

(6) *For biodiesel (B-100).* The requirements are the same as in § 306.12(a)(4), except that the black band at the top of the label shall contain the phrase "B-100 Biodiesel." In addition, the words directly underneath the black band shall read "contains 100 percent biomass-based diesel or biodiesel."

\* \* \* \* \*

11. In § 306.12, paragraph (c)(2) is revised and paragraph (c)(3) is added to read as follows:

**306.12 Labels.**

\* \* \* \* \*

(c) \* \* \* \*

(2) *For alternative liquid automotive fuel labels other than biodiesel, biomass-based diesel, and biodiesel blends.* The background color on all the labels is Orange: PMS 1495 or its equivalent. The knock-out type within the black band is Orange: PMS 1495 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.

(3) *For biodiesel, biomass-based diesel, and biodiesel blends.* The background color on all the labels is Purple: PMS 2562 or its equivalent. The knock-out type within the black band is Purple: PMS 2562 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.

\* \* \* \* \*

12. In § 306.12(f), the following graphics are added to the end of the section to read as follows:

**306.12 Labels.**

\* \* \* \* \*

(f) \* \* \*

# B-100 Biodiesel

**contains 100 percent  
biomass-based diesel  
or biodiesel**

# B-20 Biodiesel Blend

**contains biomass-based diesel  
or biodiesel in quantities  
between 5 percent and  
20 percent**

By direction of the Commission.

**Donald S. Clark,**  
Secretary

[FR Doc. E8-4699 Filed 3-10-08; 8:45 am]

BILLING CODE 6751-01-S

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA 2008-0007]

RIN 0960-AG70

#### Representative Payment Under Titles II, VIII and XVI of the Social Security Act

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** We propose to amend our rules governing how we investigate representative payee applicants. Under these proposed rules, any payee who has previously satisfied the payee investigation process including a face-to-face interview and is currently serving as a payee, need not appear for another face-to-face interview when making a subsequent application to become a payee, unless we determine, within our discretion, that a new face-to-face interview is necessary. This change would streamline our representative payee application process, thereby allowing payee applicants to become qualified in a shorter timeframe when they have already been investigated. This should expedite the payment of benefits in certain representative payee situations. It will also reduce the burden to the public and reduce traffic in our field offices when a payee applicant has already satisfied the face-to-face interview required by law.

**DATES:** To be sure that we consider your comments, we must receive them no later than *May 12, 2008*.

**ADDRESSES:** You may submit comments by one of four methods—Internet, facsimile, regular mail, or hand-delivery. Please do not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA-2008-0007 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at <http://www.regulations.gov>. (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the *Comment or Submission* section of the webpage, type “SSA-2008-0007”, select “Go”, and then click “Send a Comment or Submission.” The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966-2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235-7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

**Caution:** Our policy for comments we receive from members of the public is to make them available for public viewing in their entirety on the Federal eRulemaking portal at <http://www.regulations.gov>. Therefore, you

should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

**FOR FURTHER INFORMATION CONTACT:** Jerome Albanese, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (404) 562-1024, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

##### Background

Under the authority of sections 205(j), 807 and 1631(a)(2) of the Social Security Act (the Act), we select a representative payee for certain persons eligible for Social Security benefits under title II of Act, special veteran's benefits (SVBs) under title VIII of the Act, or supplemental security income under title XVI of the Act. We select a representative payee if we believe that payment through a payee rather than direct payment of benefits is in the interest of that beneficiary. Subpart U of part 404, subpart F of part 408, and subpart F of part 416 of our regulations explain the procedures that we follow in determining whether to make representative payment and in selecting a representative payee under the title II, VIII and XVI programs.