

provide the specific data elements required for the Transparency Act reporting of subawards and executive compensation [75 FR 43165].

#### Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, NRCS assessed the affects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of \$100 million or more in any one year (adjusted by inflation) by any State, local, or Tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

#### List of Subjects in 7 CFR Parts 622, 624, 625, 1465 and 1470

Administrative practice and procedures, Cooperative agreements, Farmers, Federal aid programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 622, 624, 625, 1465, and 1470 are amended as follows:

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** Pub. L. 83-566, 68 Stat. 666 as amended (16 U.S.C. 1001, *et seq.*); Pub. L. 78-534, 58 Stat. 889, 33 U.S.C. 701b-1.

■ 2. Section 622.30 is amended by adding a new paragraph (d) to read as follows:

#### § 622.30 General.

\* \* \* \* \*

(d) Sponsors who receive financial assistance awarded after October 1, 2010, must comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

\* \* \* \* \*

■ 3. The authority citation for part 624 continues to read as follows:

**Authority:** Sec. 216, Pub. L. 81-516, 33 U.S.C. 701b-1; Sec. 403, Pub. L. 95-334, as amended, 16 U.S.C. 2203; 5 U.S.C. 301.

■ 4. Section 624.6 is amended by revising paragraph (a)(2) to read as follows:

#### § 624.6 Program administration.

(a) \* \* \*

(2) Sponsors must:

(i) Contribute their share of the project costs, as determined by NRCS, by providing funds or certain services necessary to undertake the activity.

Contributions that may be applied towards the sponsor's applicable cost-share of construction costs include:

(A) Cash;

(B) In-kind services such as labor, equipment, design, surveys, contract administration and construction inspection, and other services as determined by the State Conservationist; or

(C) A combination of cash and in-kind services;

(ii) Obtain any necessary real property rights, water rights, and regulatory permits;

(iii) Agree to provide for any required operation and maintenance of the completed emergency measures; and

(iv) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

\* \* \* \* \*

■ 5. The authority citation for part 625 continues to read as follows:

**Authority:** 16 U.S.C. 6571-6578.

■ 6. Section 625.4 is amended by revising paragraph (b) to read as follows:

#### § 625.4 Program requirements.

\* \* \* \* \*

(b) *Landowner eligibility.* To be eligible to enroll an easement in the HFRP, an individual or entity must:

(1) Be the landowner of eligible land for which enrollment is sought;

(2) Agree to provide such information to NRCS, as the agency deems necessary or desirable, to assist in its determination of eligibility for program benefits and for other program implementation purposes; and

(3) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

\* \* \* \* \*

■ 7. The authority citation for part 1465 continues to read as follows:

**Authority:** 7 U.S.C. 1524(b).

■ 8. Section 1465.5 is amended by revising paragraphs (c)(10) and (c)(11) and adding a new paragraph (c)(12) to read as follows:

#### § 1465.5 Program requirements.

\* \* \* \* \*

(c) \* \* \*

(10) Be in compliance with the terms of all other USDA-administered conservation program agreements to which the participant is a party;

(11) Develop and agree to comply with an APO and O&M agreement, as described in § 1465.3; and

(12) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

\* \* \* \* \*

■ 9. The authority citation for part 1470 continues to read as follows:

**Authority:** 16 U.S.C. 3838d-3838g.

■ 10. Section 1470.6 is amended by revising paragraphs (a)(4) and (a)(5) and adding a new paragraph (a)(6) to read as follows:

#### § 1470.6 Eligibility requirements.

(a) \* \* \*

(4) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors, conservation activity and production system records, information to verify the applicant's status as a historically underserved producer, if applicable, and payment eligibility as established by 7 CFR part 1400;

(5) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity. Where applicable, American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment; and

(6) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170.

\* \* \* \* \*

Signed this 31st day of March 2011, in Washington, DC.

**Dave White,**

*Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.*

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**BILLING CODE 3410-16-P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 306

#### Automotive Fuel Ratings Certification and Posting

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission issues final amendments to its Rule for Automotive Fuel Ratings, Certification and Posting (“Fuel Rating Rule” or “Rule”) by allowing an alternative octane rating method and making other miscellaneous revisions. The Commission declines to issue final ethanol labeling amendments at this time.

**DATES:** The amendments published in this document will become effective May 31, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of May 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Matthew Wilshire, (202) 326–2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

## SUPPLEMENTARY INFORMATION

### I. Introduction

In 2009, the Commission solicited comments on its Fuel Rating Rule as part of a systematic review of its rules and guides.<sup>1</sup> In response to those comments, the Commission published a Notice of Proposed Rulemaking (“NPRM”) <sup>2</sup> on March 16, 2010, proposing: (1) An alternative octane rating method; (2) new rating, certification, and labeling provisions for blends of gasoline with more than 10 percent ethanol (“ethanol fuels”); <sup>3</sup> and (3) miscellaneous minor amendments. In addition, the Commission declined to revise the Rule’s provisions regarding fuels containing biodiesel and biomass-based diesel (collectively, “biodiesel fuels”).<sup>4</sup>

<sup>1</sup> *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Request for Public Comments*, 74 FR 9054 (Mar. 2, 2009) (“RPC”).

<sup>2</sup> *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Notice of Proposed Rulemaking*, 75 FR 12470 (Mar. 16, 2010) (“NPRM”).

<sup>3</sup> The Rule already provides requirements for ethanol fuels with at least 70 percent concentration, E85. That fuel generally contains 85 percent ethanol mixed with 15 percent gasoline. 16 CFR 306.0(i)(2)(ii).

<sup>4</sup> Biodiesel fuels include pure biodiesel and biomass-based diesel, as well as blends of those fuels with conventional diesel. Biodiesel is a diesel fuel produced by transforming animal fat or vegetable oil into automotive fuel. Biodiesel serves as a diesel substitute and is usually blended with diesel for sale at retail pumps. Biomass-based diesel is a larger category of diesel fuel substitutes produced from nonpetroleum renewable resources and that meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency. Biodiesel is a subset of biomass-based diesel. For further background on biodiesel fuels, see the Commission’s announcement of amendments expanding the Rule to cover those fuels. *Federal Trade Commission: Automotive Fuel*

Commenters supported the proposed octane rating method, suggested allowing an additional octane rating method, objected to several aspects of the proposed ethanol labeling requirements, argued for revision of the Rule’s biodiesel fuel provisions, and recommended further miscellaneous changes. Below, the Commission responds to those comments and announces final amendments that allow an alternative octane rating method.

The final amendments do not address ethanol fuel labeling. Instead, the Commission will address this issue at a later date. As discussed below, commenters criticized the proposed labels, supporting different or additional disclosures to prevent misfueling. Moreover, after the comment period closed, the Environmental Protection Agency (“EPA”) issued a waiver pursuant to the Clean Air Act that allows use of ethanol-gasoline blends of up to 15 percent ethanol concentration (“E15”) in certain conventional vehicles, subject to EPA approval. In light of the comments and EPA’s waiver decision, the Commission finds that more time is necessary to address this issue. The Commission, however, will not delay final rulemaking regarding the proposed alternate octane rating method and biodiesel fuels because announcing final decisions regarding both is in the public interest.

This document first provides background on the Fuel Rating Rule, then discusses the comments submitted. Finally, it responds to those comments and describes the final amendments in detail.

### II. Background

#### A. The Fuel Rating Rule

The Commission first promulgated the Fuel Rating Rule, 16 CFR part 306 (then titled the “Octane Certification and Posting Rule”), in 1979 in accordance with the Petroleum Marketing Practices Act (“PMPA”), 15 U.S.C. 2801 *et seq.*<sup>5</sup> The Rule originally applied only to gasoline. In 1993, pursuant to amendments to PMPA, the Commission expanded the Rule to cover liquid alternative fuels.<sup>6</sup> Currently, the Rule defines “alternative liquid automotive fuels,” as including, but not limited to, certain listed fuels. That list does not include ethanol fuels below 70

percent concentration (“Mid-Level Ethanol blends”).<sup>7</sup> In 2008, the Commission again amended the Rule to incorporate specific labeling requirements for biodiesel fuels above 5 percent concentration, as required by Section 205 of the Energy Independence and Security Act of 2007 (“EISA”), 42 U.S.C. 17021.<sup>8</sup>

The Fuel Rating Rule designates methods for rating and certifying fuels, as well as posting the ratings at the point of sale. The Rule also requires refiners, importers, and producers of any liquid automotive fuel to determine that fuel’s “automotive fuel rating” before transferring it to a distributor or retailer. For gasoline, covered entities must determine the octane rating by deriving research octane and motor octane numbers using “ASTM International” (“ASTM”) <sup>9</sup> standards D2699 and D2700, respectively, and then averaging the results. For alternative fuels, except biodiesel fuels, the rating is the minimum percentage of the principal component of the fuel and a brief description of the fuel.<sup>10</sup> In addition, any covered entity, including a distributor, that transfers a fuel must certify the fuel’s rating to the transferee either by including it in papers accompanying the transfer or by letter. Finally, the Rule requires retailers to post the fuel rating by adhering a label to the retail fuel pump and provides precise specifications regarding the content, size, color, and font of the label.

#### B. Procedural History

The Commission received 12 comments in response to its March 2, 2009 **Federal Register** Notice.<sup>11</sup> The comments generally supported the Rule but proposed several amendments, focusing on three key issues. First, commenters requested that the Commission allow gasoline octane rating using a method specified in ASTM D2885, “Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique” (the “On-

<sup>7</sup> 16 CFR 306.0(i)(2).

<sup>8</sup> *Biodiesel Fuel Rulemaking*, 73 FR 40154.

<sup>9</sup> ASTM International, formerly known as the American Society for Testing and Materials, develops international voluntary consensus standards for various products, including automotive fuel. See <http://www.astm.org>.

<sup>10</sup> The Rule requires rating biodiesel fuels by the percentage of biodiesel or biomass-based diesel in the fuel.

<sup>11</sup> The comments in response to the March 2, 2009 **Federal Register** Notice are located at: <http://www.ftc.gov/os/comments/fuelratingreview/index.shtml>.

*Ratings, Certification and Posting: Final Rule on Biodiesel Labeling*, 73 FR 40154 (Jul. 11, 2008) (“*Biodiesel Fuel Rulemaking*”).

<sup>5</sup> *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule*, 44 FR 19160 (Mar. 30, 1979).

<sup>6</sup> *Federal Trade Commission: Automotive Fuel Ratings, Certification and Posting: Final Rule*, 58 FR 41356 (Aug. 3, 1993).

Line Method”).<sup>12</sup> Second, several commenters supported new labeling requirements for Mid-Level Ethanol blends to prevent consumers from using those blends in their conventional cars, which would put their warranties at risk and could harm various vehicle components.<sup>13</sup> Finally, commenters urged the Commission to change its biodiesel fuel provisions in two ways: (1) By requiring producers to rate biodiesel blends at or below 5 percent concentration; and (2) by exempting biomass-based diesel from the Rule.<sup>14</sup>

On March 16, 2010, the Commission published an NPRM responding to the commenters’ suggestions and proposing four substantive Rule amendments. First, to allow Mid-Level Ethanol blend labeling above 10 percent and below 50 percent concentration, the proposed amendments would have required rating ethanol fuels by the amount of ethanol in the blend, rather than by the principal component of the fuel. Second, the proposed amendments would have required retailers to post labels disclosing a Mid-Level Ethanol blend’s ethanol content by displaying a broad range of “10 to 70 percent ethanol,” a narrower range, or a specific percentage. Third, the proposed amendments would have required all ethanol fuel labels, including those for E85,<sup>15</sup> to contain the additional disclosures “may harm some vehicles” and “check owner’s manual.” In the NPRM, the Commission explained that “[t]his additional information should assist consumers in identifying the proper fuel for their vehicles.”<sup>16</sup> Fourth, the proposed amendments would have allowed the On-Line Method. After reviewing ASTM D2885, the Commission agreed that the method yielded the same results as the method the Rule currently allows.<sup>17</sup> Finally, the Commission proposed minor miscellaneous amendments, which included updating certain ASTM standard references, modifying the Rule language for clarification, and addressing some typographical errors.<sup>18</sup>

The Commission did not propose revising the Rule’s biodiesel fuel provisions. The Commission explained that rating blends at or below 5 percent

would unnecessarily burden producers. Furthermore, the Commission noted, retailers that blended biodiesel could either test the resulting blend, or blend in a manner that would ensure that the fuel fell within one of the Rule’s three biodiesel labeling categories, and, therefore, did not need rating information to comply with the Rule.<sup>19</sup> With respect to biomass-based diesel, the Commission explained that, under EISA, it had no discretion to exempt any biomass-based diesel from the Rule’s labeling requirements.<sup>20</sup>

### III. Comments in Response to the NPRM

The Commission received 62 comments in response to the NPRM.<sup>21</sup> As in the prior comment period, commenters focused on octane rating methods, ethanol labeling, and biodiesel fuel rating. They also proposed several minor miscellaneous changes to the Rule.

#### A. Octane Rating

The American Petroleum Institute (“API”), ConocoPhillips, Marathon Petroleum Company, LLC (“Marathon”), and the National Petrochemical & Refiners Association (“NPRA”) addressed the Commission’s proposal to allow octane rating through the On-Line Method. All supported the proposal, though API and Marathon noted that the ASTM standards referenced in the proposed amendments are now outdated.<sup>22</sup> To prevent this problem in the future, Marathon and NPRA suggested adopting ASTM D2885 without reference to a year.<sup>23</sup>

Tesoro, a manufacturer and marketer of petroleum products, suggested expanding the Rule’s provisions to allow octane rating through infrared analyzers (“Infrared Method”), which Tesoro asserted “provide more reliable results.”<sup>24</sup> Tesoro argued that the Infrared Method provides more precise and accurate results, an ability to sample gasoline more efficiently, and

reduced costs to industry.<sup>25</sup> Specifically, Tesoro reported:

A recent interlaboratory study was conducted to demonstrate the accuracy and precision of infrared analyzers for octane. Based on the results of that study involving six laboratories, near infrared analyzers showed significantly better precision over ASTM D2699 and D2700 octane [methods].<sup>26</sup>

Tesoro further reported that, due in part to greater reliability, “[o]ver 25 states use infrared analyzers for screening fuel samples [to test octane levels] in the field as well as in the laboratory.”<sup>27</sup>

Tesoro also specifically addressed the enforcement issues surrounding the Infrared Method:

We also believe that in case of a discrepancy between the posted octane rating and the octane of the sample, ASTM D2699 and ASTM D2700 should continue to be used as the referee method. This approach, which is consistent with the enforcement approach used by State regulatory agencies, should not impose any additional enforcement burden on the Commission—since ASTM D2699 and ASTM D2700 would continue to be the referee method.<sup>28</sup>

As a mechanism for allowing the Infrared Method through an enforceable Rule provision, Tesoro recommended amending the Rule to allow the method only insofar as the method conforms to ASTM D6122, “Standard Practice for Validation of the Performance of Multivariate Infrared Spectrophotometers,” and is specifically correlated with the ASTM D2699 and D2700 methods.<sup>29</sup> In addition, Tesoro submitted specific language to effect its proposed change.<sup>30</sup>

Several State regulators supported Tesoro’s proposal. For example, the Washington State Department of Agriculture reported that it “has used portable infrared octane analyzers successfully in the field to test octane levels on gasoline motor fuels for over 10 years” and that it has “found portable infrared analyzers to be an accurate and low cost tool in determining octane level compliance.”<sup>31</sup> Additionally, the

<sup>25</sup> *Id.* at 1–2.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> *Id.* at 6.

<sup>29</sup> *Id.* at 7.

<sup>30</sup> *Id.* at 8. Petroleum industry members and representatives ConocoPhillips, Flint Hills Resources LP, Marathon, Suncor Energy USA, NPRA, and Valero Energy Corporation (“Valero”) also supported the Infrared Method. ConocoPhillips comment at 2; Flint Hills Resources comment; Marathon comment at 2; Suncor Energy USA comment; NPRA comment at 3; Valero comment at 1.

<sup>31</sup> Washington State Department of Agriculture comment; *see also* Massachusetts Division of Standards comment (supporting the Infrared Method); Nevada Department of Agriculture comment (same); North Carolina Department of

<sup>12</sup> NPRM, 75 FR at 12472.

<sup>13</sup> *Id.* at 12471–72.

<sup>14</sup> *Id.* at 12472–73. Commenters also proposed several minor miscellaneous changes to the Rule.

<sup>15</sup> The Rule currently provides specific requirements for E85, a mix of gasoline and ethanol. Although that fuel generally contains 85 percent ethanol, retailers may reduce the ethanol component to as little as 70 percent to allow proper starting and performance in colder climates.

<sup>16</sup> NPRM, 75 FR at 12474.

<sup>17</sup> *Id.* at 12474–75.

<sup>18</sup> *Id.* at 12475.

<sup>19</sup> *Id.* The three labeling categories are: (1) From above 5 to no more than 20 percent; (2) above 20 percent to less than 100 percent; and (3) 100 percent. 16 CFR 12(a)(4)–(9).

<sup>20</sup> NPRM, 75 FR at 12475.

<sup>21</sup> The comments are located at: <http://www.ftc.gov/os/comments/fuelratingnprm>.

<sup>22</sup> ConocoPhillips comment at 1; API comment at 7; Marathon comment at 2; NPRA comment at 2.

<sup>23</sup> Marathon comment at 2; NPRA comment at 2. The Tennessee Department of Agriculture generally supported adopting ASTM standards without reference to a year of publication. Tennessee Department of Agriculture comment at 3.

<sup>24</sup> Tesoro comment at 1. Tesoro also submitted additional documents to Commission staff during the comment period, which are included in the record.

National Conference on Weights and Measures (“NCWM”) provided a survey showing that 17 of 24 regulatory agencies surveyed use the Infrared Method to determine if fuel dispensed at a pump has the same octane rating as posted on the label.<sup>32</sup>

Significantly, the Center for Auto Safety (“CAS”), a consumer group, also supported Tesoro’s position. CAS explained that allowing the method would ease enforcement and, therefore, benefit consumers:

Many States now use infrared analyzers to determine octane because they are cheaper, more accurate and permit greater number[s] of dispensing pump inspections per day than using octane engines. \* \* \* Approving infrared analyzers calibrated to measure octane would allow greater levels of enforcement and increased quality control by refiners at lower cost.<sup>33</sup>

#### B. Biodiesel Fuels

Six commenters addressed the Rule’s biodiesel fuel provisions. Generally, these commenters disagreed with the Commission’s decision not to propose amendments to those provisions and urged reconsideration. The commenters supported rating biodiesel blends containing 5 percent or less biodiesel, exempting “renewable diesel” that qualifies as biomass-based diesel, and allowing a less precise content disclosure for biodiesel blends above 20 percent concentration.

The Petroleum Marketers Association of America (“PMAA”) explained why it believed rating blends less than 5 percent concentration is necessary:

Currently, distributors and retailers are receiving biodiesel blends from suppliers in which they have no idea of the actual biodiesel content. Therefore, it is impossible for these downstream parties to accurately notify consumers [of] the biodiesel content of the fuel they are offering for sale other than providing a possible blend range. \* \* \* 97% of all retail gasoline stations are owned by petroleum marketers who are classified as small businesses under the U.S. Small Business Administration’s size standards. Refiners, producers and distributors above the terminal rack are large businesses. \* \* \* It would be entirely appropriate to shift this compliance burden to the large businesses who are not only more able to bear the burden but also in a better position to track and notify the amount of biodiesel they are adding to product upstream of the terminal rack.<sup>34</sup>

Fuel producer ConocoPhillips similarly favored such rating, asserting that it

would alert all fuel recipients of the biodiesel content.<sup>35</sup>

Although the comments that addressed the issue favored expanding the Rule’s biodiesel requirements, they favored abolishing the Rule’s requirements to rate, certify, and post renewable diesel, a type of biomass-based diesel.<sup>36</sup> The commenters asserted that disclosing the presence of renewable diesel is unnecessary because, as Marathon stated, it “can not be distinguished from” petroleum diesel and “[t]here is no ASTM method to identify the volume of renewable diesel in a [blend].”<sup>37</sup> In addition, NPRA asserted that because pipelines do not segregate biomass-based diesel blends from conventional diesel, rating requirements “would be disruptive to the distribution industry.”<sup>38</sup> Therefore, the commenters concluded, retailers cannot rate a biomass-based diesel blend, and rating is unnecessary.

In addition, API asserted that it is unclear whether the relevant statute defines renewable diesel as biomass-based diesel. Specifically, it argued that whether a particular batch of renewable diesel met EISA’s definition of biomass-based diesel depended on how a manufacturer processed it. Thus, according to API, the Rule would require different labeling for two different batches of the exact same fuel, an outcome API described as “absurd.”<sup>39</sup>

Finally, API suggested loosening the Rule’s requirements for over 20 percent concentration biodiesel blends. Specifically, it favored amending the Rule, which currently requires disclosure of the precise volume percentage, to allow disclosure of a percentage range similar to that proposed in the NPRM for Mid-Level Ethanol blends.<sup>40</sup> API argued that a range disclosure would “effectively alert[ ] the consumer to the presence of biodiesel” in the fuel.<sup>41</sup>

<sup>35</sup> ConocoPhillips comment at 2. In addition, API favored requiring entities to rate biodiesel blends at 5 percent or less concentration, but suggested rating the fuel as simply containing biodiesel rather than an exact percentage rating. API comment at 7.

<sup>36</sup> Renewable diesel is a diesel fuel derived from organic material. The fuel’s properties satisfy ASTM D975, the standard for conventional diesel fuel. See NPRM, 75 FR at 40155.

<sup>37</sup> Marathon comment at 3; see also Valero comment at 1; API comment at 9.

<sup>38</sup> NPRA comment at 2.

<sup>39</sup> API comment at 9–10.

<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* In addition to the issues discussed in this section, Marathon opined that labeling requirements should not apply to biodiesel blends at or below 5 percent concentration. Marathon comment at 3. The Rule currently exempts such blends from labeling, and, as discussed below, the final amendments do not alter that exemption.

#### C. Ethanol Fuel Labeling

A majority of the commenters submitted views and evidence regarding the proposed ethanol fuel labeling disclosures. Generally, the commenters objected to the proposed labels’ disclosures. Several commenters, including an association of ethanol producers, argued that the labels unfairly conveyed a negative message about the fuel’s quality, with two of those commenters asserting that the proposed disclosures were beyond the Commission’s authority under PMPA. In contrast, other commenters argued that the risks from ethanol misfueling necessitated a stronger and more precise disclosure regarding the amount of ethanol in the fuel and the suitability of such fuel for various vehicles or engines.

As discussed below, the Commission is not announcing ethanol labeling amendments at this time. Therefore, this document will not analyze the ethanol labeling comments in depth.

#### D. Miscellaneous Issues

Several comments raised miscellaneous issues. First, as discussed above, Tesoro and other commenters noted out-of-date ASTM references in the Rule. Second, API argued that the Rule should not require a Helvetica Black font but rather allow any legible block type font because Microsoft Word does not offer Helvetica Black.<sup>42</sup> Third, API also noted its opposition to any provision that would impose liability for misfueling.<sup>43</sup> Finally, the Alliance of Automobile Manufacturers suggested revising the biodiesel fuel definitions to make clear that the Rule covers blends of biodiesel and biomass-based diesel and suggested a series of edits (e.g., changing “a percentage” to “the percentage” in a Rule definition) to ensure consistency.

#### IV. Final Rule Amendments

After considering the record, the Commission now issues final Rule amendments. Specifically, the Commission will issue amendments allowing octane rating through the On-Line Method and adopting several minor, miscellaneous amendments. In addition, the Commission retains the Rule’s biodiesel fuel provisions in their current form.

At this time, the Commission declines to issue ethanol fuel amendments because further consideration of the comments and EPA’s recent waiver decision is necessary. The Commission also declines to issue amendments

<sup>42</sup> API comment at 6.

<sup>43</sup> *Id.* at 7.

Agriculture and Consumer Services comment (same).

<sup>32</sup> NCWM comment at 3–4.

<sup>33</sup> CAS comment at 2.

<sup>34</sup> PMAA comment at 2.

allowing the Infrared Method or addressing ethanol octane rating because the record is not complete regarding those issues.<sup>44</sup>

#### A. On-Line Method for Octane Rating

The NPRM proposed allowing octane rating through the On-Line Method as specified in ASTM D2885. The Rule currently requires use of octane rating methods specified in ASTM D2699 and D2700. PMPA, however, authorizes the Commission to consider other methods. The On-Line Method detailed in ASTM D2885 produces the exact same octane rating as the D2699 and D2700 methods.<sup>45</sup> Moreover, four commenters supported the proposed change, and none objected. Accordingly, the final amendments adopt the NPRM's amendment allowing octane rating through the On-Line Method.

#### B. Miscellaneous Amendments

Commenters raised several miscellaneous issues. First, some commenters noted that the current Rule and the proposed amendments contain outdated ASTM references. Accordingly, the final amendments update all ASTM references, including those proposed in the NPRM. The Commission does not, however, amend the Rule to adopt these standards without reference to a publication year, as suggested by some commenters. Doing so would incorporate those standards as they change over time. If a referenced ASTM standard changed in an unanticipated way, it could change the Rule's meaning without public notice and comment, or consideration by the Commission. Second, one commenter opposed any provision imposing liability for misfueling. Nothing in the Rule or the final amendments imposes such liability. Third, API noted that Helvetica Black font is not universally available. The final amendments, therefore, allow Helvetica Black or equivalent type. Finally, AAM suggested several technical amendments, including revisions to the biodiesel fuel definitions to make clear that the Rule covers blends of biodiesel and biomass-based diesel. Although the Commission does not intend to exclude such blends,

the definitions of those fuels are prescribed by EISA and, therefore, the Commission declines to alter them.<sup>46</sup> The amendments incorporate AAM's other technical suggestions, except those regarding the proposed ethanol amendments.

In addition to the commenters' suggested changes, the Commission amends the Rule's labeling specifications to address an inconsistency. Section 306.12(b)(2) requires all uppercase type for labels for all alternative fuels. Sections 306.12(a)(4) through (9), however, require some lowercase type on biodiesel fuel labels. The Commission, therefore, amends § 306.12(b)(2) to make clear that its all-caps requirement does not apply to labeling requirements for biodiesel fuels.<sup>47</sup>

#### C. Biodiesel

Several commenters urged the Commission to make three changes to the Rule's biodiesel fuel provisions. First, they reiterated an earlier request to require rating and certification of biodiesel blends at or below 5 percent concentration. Second, they asked the Commission to reconsider excluding biomass-based diesel (or at least a certain type of biomass-based diesel) from the Rule. Finally, API supported allowing a biodiesel content disclosure using a broad range.<sup>48</sup> As explained below, the Commission declines to make any of these changes.

##### 1. Rating and Certifying Biodiesel Blends of 5 Percent or Less Concentration

In the NPRM, the Commission declined to propose amendments subjecting biodiesel blends at or below 5 percent concentration to the Rule's rating and certification requirements. The Commission explained that doing so would unnecessarily burden producers and distributors by requiring them to rate fuel that does not require a label under EISA<sup>49</sup> and that retailers blending biodiesel did not need such rating and certifications to comply with the Rule. The comments did not

challenge these conclusions. However, they did note that the Rule currently places the rating burden on blending retailers, which are generally small businesses, and argued that the Commission should shift the burden to producers and refiners that presumably could absorb the burden more easily.

Although the Rule may burden small businesses, adopting the proposed change would increase the *overall* rating burden on industry. Currently, the Rule does not require rating or labeling of blends at or below 5 percent concentration. Under the commenters' proposed change, however, *all* manufacturers would have to rate these blends regardless of whether retailers would eventually use them to create a fuel subject to the Rule. The commenters have not provided evidence showing that the burden on retailers who blend a fraction of this fuel would be greater than the burden they propose putting on manufacturers to rate *all* of it. Therefore, the Commission declines to require such rating.

##### 2. Exempting Biomass-Based or Renewable Diesel From the Rule

In the NPRM, the Commission explained that it cannot exempt biomass-based diesel blends or provide for different labels because Section 205 of EISA specifically requires labels for all biomass-based diesel blends above 5 percent concentration.<sup>50</sup> Thus, the Commission has no discretion to exempt biomass-based diesel from labeling requirements, regardless of the properties of the fuel or its purported suitability for all diesel engines.

In response, API argued that, depending on how they are processed, certain renewable diesel blends would meet the statutory definition of "biomass-based diesel" and other renewable diesel blends with the exact same properties would not. API characterized this result as "absurd." However, API's interpretation of the law appears to rest on a misreading of EISA. Specifically, API relies on a definition of "biomass-based diesel" from Section 201 of EISA, but a different section of EISA defines "biomass-based diesel" for labeling purposes. Specifically, 42 U.S.C. 17021, which is titled "Biomass-

<sup>44</sup> As explained below, however, the Commission will consider publishing a separate notice of proposed rulemaking addressing the Infrared Method and ethanol octane rating.

<sup>45</sup> See ASTM D2885, Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique, available for inspection at the FTC's public reference room. Notably, D2885 provides that the On-Line Method will produce "octane numbers" as that term is defined in D2699 and D2700. See *id.* at § 5.3.

<sup>46</sup> 42 U.S.C. 17021(c)(4) (defining biodiesel and biomass-based diesel blends as blended with "petroleum-based diesel fuel").

<sup>47</sup> The Commission also amends §§ 306.0(b), (i), (j), and (l); 306.5; and 306.12(b) to correct typographical errors, and § 306.0(i) for clarification by eliminating the subsection number (3) and replacing that with "provided, however."

<sup>48</sup> API's comment is unclear regarding how broad a range the Commission should permit. Currently, the Rule requires disclosure of an exact percentage.

<sup>49</sup> See 42 U.S.C. 17021(b)(1) (biomass-based diesels and biodiesel blends of no more than 5 percent concentration "shall not require any additional labels").

<sup>50</sup> Section 205 provides 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," and that all blends over 5 percent "shall be labeled" either "contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent" or "contains more than 20 percent biomass-based diesel or biodiesel." 42 U.S.C. 17021(b); see also *Biodiesel Fuel Rulemaking*, 75 FR at 12475.

based Diesel and Biodiesel Labeling,” defines biomass-based diesel as any “diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency,” without limitation, including limitations regarding co-processing.<sup>51</sup> Thus, all renewable diesel blends discussed in the record are “biomass-based diesel blends” under EISA, and there is no inconsistency in treatment. Therefore, the Commission declines to make the requested change.

### 3. Allowing a Range Disclosure for Biodiesel Blends Above 20 Percent Concentration

The Commission also declines to adopt API’s suggestion to rescind the Rule’s requirement to disclose the precise percentage of biodiesel for fuels over 20 percent concentration. As the Commission explained when it first announced the Rule’s biodiesel provisions, the performance of biodiesel blends containing more than 20 percent biodiesel is uncertain and can vary significantly.<sup>52</sup> The Commission further noted that this requirement provides information of interest to consumers who favor a fuel blend with a high percentage of non-petroleum components.<sup>53</sup> Therefore, the Commission retains the specific percentage designation requirement for biodiesel blends of more than 20 percent.

### D. Ethanol

In the NPRM, the Commission proposed new rating and certification requirements for Mid-Level Ethanol blends and new labeling requirements for all ethanol fuels. Specifically, the proposed amendments would have required rating and certifying Mid-Level Ethanol blends by their ethanol content and labeling all ethanol fuels with the statements:

- MAY HARM SOME VEHICLES
- CHECK OWNER’S MANUAL

The proposed amendments also would have required Mid-Level Ethanol blend labels to contain a content disclosure that the fuel contained between 10 to 70 percent ethanol (*i.e.*, “10%–70% ETHANOL”), a narrower range, or the precise amount of ethanol in the blend.

As noted above, commenters generally criticized the proposed disclosures as unfairly denigrating ethanol or as insufficiently specific to

prevent misfueling. In addition, after the FTC’s Fuel Rating Rule comment period closed, EPA issued a Clean Air Act waiver allowing E15, which the proposed amendments defined as a Mid-Level Ethanol blend, in certain conventional vehicles.<sup>54</sup> Specifically, in November 2010, EPA granted a waiver allowing E15 to be used in light-duty<sup>55</sup> conventional vehicles, model years 2007 and later.<sup>56</sup> EPA extended the waiver in January 2011 to include light-duty conventional vehicles, model years 2001 and later.<sup>57</sup>

However, EPA placed two significant conditions on its waiver. First, the fuel must meet certain fuel quality standards.<sup>58</sup> Second, as part of EPA’s efforts to limit E15 use to only certain conventional vehicles, the waiver requires E15 manufacturers to submit a plan for preventing misfueling. Their plan must include “[r]easonable measures for ensuring that any retail fuel pump dispensers that are dispensing [E15] are clearly labeled for ensuring that consumers do not misfuel.”<sup>59</sup> In a separate **Federal Register** document, EPA proposed the following E15 label disclosure:

CAUTION !  
This fuel contains 15% ethanol maximum  
Use only in:  
2007 and newer gasoline cars  
2007 and newer light-duty trucks  
Flex-fuel vehicles  
This fuel might damage other vehicles.  
Federal law *prohibits* its use in other  
vehicles and engines.<sup>60</sup>

In light of the comments and EPA’s waiver decision, the Commission finds that more time is necessary to address ethanol labeling.

### E. The Infrared Method and E15 Octane Rating, Certification, and Posting

Although the NPRM did not propose octane rating methods other than the

On-Line Method, many commenters, including State regulators and the consumer group CAS, supported allowing the Infrared Method because it is more accurate than currently prescribed methods, less expensive, subject to an ASTM standard, and enables easy enforcement. In addition, commenters urged the Commission to require octane labels for E15 to assist owners of conventional cars that require higher-octane fuel (*e.g.*, 93 octane). However, at this time the Commission declines to amend the Rule to allow the Infrared Method or address E15 octane labeling because the record is incomplete. Specifically, all parties that may have relevant information and views on such amendments have not had the opportunity to comment. Accordingly, the Commission will consider proposing these changes in a separate notice of proposed rulemaking, which will afford opportunity to comment to all interested parties.<sup>61</sup>

### V. Paperwork Reduction Act

The Fuel Rating Rule’s octane rating and certification requirements constitute a “collection of information” under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (“PRA”). Specifically, under the final amendments, refiners, importers, and producers of gasoline must determine the fuel’s octane rating, and then certify that rating to any transferee. Furthermore, they must 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.<sup>62</sup> The covered parties also must make these records available for inspection by staff of the Commission and EPA or by persons authorized by those agencies.

In its NPRM, the Commission estimated that the proposed amendments would impose additional recordkeeping and disclosure burdens. However, the Commission based those estimates on the proposed amendments related to rating, certifying, and labeling ethanol fuels. The Commission believes that the final amendments do not impose any additional burdens or costs as they provide an alternate octane rating method (*i.e.*, the On-Line Method), but do not require it. The final amendments would still allow entities to rate octane as they did under the unamended Rule. Therefore, the Commission concludes that there are no

<sup>51</sup> 42 U.S.C. 17021(c)(2) (incorporating the definition in 42 U.S.C. 13220(f)).

<sup>52</sup> *Biodiesel Fuel Rulemaking*, 73 FR at 40158.

<sup>53</sup> *Id.*

<sup>54</sup> See *Environmental Protection Agency: Partial Grant and Partial Denial of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator*, 75 FR 68094 (Nov. 4, 2010) (“*Waiver Decision*”).

<sup>55</sup> “Light-duty” vehicles include passenger cars, light-duty trucks, and medium-duty passenger vehicles. See *id.* at 68095.

<sup>56</sup> *Id.*

<sup>57</sup> *Environmental Protection Agency, Partial Grant of Clean Air Act Waiver Application Submitted by Growth Energy to Increase the Allowable Ethanol Content of Gasoline to 15 Percent; Decision of the Administrator*, 76 FR 4662 (Jan. 26, 2011).

<sup>58</sup> *Waiver Decision*, 75 FR at 68149–50.

<sup>59</sup> *Id.* at 68150.

<sup>60</sup> *Environmental Protection Agency, Regulation to Mitigate the Misfueling of Vehicles and Engines with Gasoline Containing Greater than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs*, 75 FR 68044, 68051 (Nov. 4, 2010).

<sup>61</sup> A second document is necessary because the Commission cannot propose further amendments in a final rule announcement.

<sup>62</sup> See the Fuel Rating Rule’s recordkeeping requirements, 16 CFR 306.7; 306.9; and 306.11.

incremental hours or cost burden related to these amendments.

Accordingly, the Commission believes that the final octane amendments will not impose any additional recordkeeping or disclosure burden. If the Commission issues final amendments regarding ethanol rating, certification, and labeling, it will re-examine the NPRM's burden estimates of those amendments.

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide a Final Regulatory Flexibility Analysis with the final rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.<sup>63</sup> In the NPRM, the Commission certified that the proposed amendments would have no effect.

The FTC reaffirms its belief that the final amendments will not have a significant economic impact on a substantial number of small entities. As discussed in Section V, above, the amendments allowing alternative octane measurements do not impose any new costs on covered entities because those amendments provide those entities with the option of using the octane rating method currently required by the Rule. Although the NPRM provided an initial analysis of the amendments' impact on small entities, that analysis examined only the ethanol amendments, which provided new requirements.

This document serves as notice to the Small Business Administration of the agency's certification of no effect. If the Commission issues final amendments regarding ethanol rating, certification, and labeling, it will assess the economic impact of the amendments on small entities.

### List of Subjects in 16 CFR Part 306

Fuel ratings, Incorporation by reference, Trade practices.

For the reasons discussed in the preamble, the Federal Trade Commission amends title 16, Chapter I, Subchapter C, of the Code of Federal Regulations, part 306, as follows:

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

■ 1. Revise the authority citation for part 306 to read as follows:

**Authority:** 15 U.S.C. 2801 *et seq.*; 42 U.S.C. 17021.

■ 2. Amend § 306.0 by:

■ a. Revising paragraph (b);

■ b. Adding a note to paragraph (i); and

■ c. Revising paragraphs (j) and (l).

The revisions and addition read as follows:

#### § 306.0 Definitions.

\* \* \* \* \*

(b) *Research octane number* and *motor octane number*. (1) These terms have the meanings given such terms in the specifications of ASTM International ("ASTM") entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel (published November 2010)" designated D4814–10b and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in either:

(i) ASTM D2699–09, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel (published November 2009)" and ASTM D2700–09, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel (published November 2009)"; or

(ii) ASTM D2885–10, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique (published March 2010)."

(2) The incorporations by reference of ASTM D4814–10b, ASTM D2699–09, ASTM D2700–09, and ASTM D2885–10 in paragraph (b)(1) of this Section, and in § 306.5(a), were 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 D4814–10b, ASTM D2699–09, ASTM D2700–09, and ASTM D2885–10, may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, 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/cfr/ibr-locations.html>.

\* \* \* \* \*

(i) \* \* \*

**Note to paragraph (i):** Provided, however, that biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet ASTM standard D975–09b "Standard Specification for Diesel Fuel Oils (published August 2009)," are not automotive fuels covered by the requirements of this Part. The incorporation of ASTM D975–09b 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 D975–09b may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(j) *Automotive fuel rating* means—

(1) For gasoline, the octane rating.

(2) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, or biomass-based diesel blends, the commonly used name of the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as the minimum percentage by volume, may be included, if desired.

(3) For biomass-based diesel, biodiesel, biomass-based diesel blends with more than 5 percent biomass-based diesel, and biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

\* \* \* \* \*

(l) *Biodiesel* means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: The registration requirements for fuels and fuel additives under 40 CFR part 79; and the requirements of ASTM standard D6751–10 "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels (published October 2010)." The incorporation of ASTM D6751–10 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 D6751B10 may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: [http://www.archives.gov/federal-register/cfr/ibr\\_locations.html](http://www.archives.gov/federal-register/cfr/ibr_locations.html).

\* \* \* \* \*

■ 3. Revise § 306.5(a) to read as follows:

#### § 306.5 Automotive fuel rating.

\* \* \* \* \*

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane

<sup>63</sup> See 5 U.S.C. 603–605.



number and divide by two, as explained by ASTM D4814–10b, “Standard Specifications for Automotive Spark-Ignition Engine Fuel,” (incorporated by reference, see § 306.0(b)(2)). To determine the research octane and motor octane numbers you may either:

(1) Use ASTM standard test method ASTM D2699–09, “Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel” (incorporated by reference, see § 306.0(b)(2)), to determine the research octane number, and ASTM standard test method ASTM D2700–09, “Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel” (incorporated by reference, see § 306.0(b)(2)), to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885–10, “Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique” (incorporated by reference, see § 306.0(b)(2)).

\* \* \* \* \*

■ 4. Revise § 306.6(b) 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, a biomass-based diesel blend, or a biodiesel blend 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.

\* \* \* \* \*

■ 5. Amend § 306.12 by revising paragraphs (a)(1) through (a)(5) and (b) to read as follows:

**§ 306.12 Labels.**

\* \* \* \* \*

(a) *Layout*—(1) *For gasoline labels.* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. The illustrations appearing at the end of this

rule are prototype labels that demonstrate the proper layout. “Helvetica Black” or equivalent type is used throughout except for the octane rating number on octane labels, which is in Franklin gothic type. All type is centered. Spacing of the label is ¼ inch (.64 cm) between the top border and the first line of text, ⅛ inch (.32 cm) between the first and second line of text, ¼ inch (.64 cm) between the octane rating and the line of text above it. All text and numerals are centered within the interior borders.

(2) *For alternative liquid automotive fuel labels (one principal component), other than biodiesel, biomass-based diesel, biodiesel blends, or biomass-based diesel blends.* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. “Helvetica Black” or equivalent 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 ¼ inch (.64 cm) from the top of the label and ⅜ 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 ⅛ inch (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ⅜ inch (.48 cm) from the bottom of the label. All type should fall no closer than ⅜ inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this one principal 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.

(3) *For alternative liquid automotive fuel labels (two components).* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. “Helvetica Black” or equivalent 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 ¼ inch (.64 cm) from the top of the label and ⅜ 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 ⅜ inch (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the

bottom of the label. All type should fall no closer than ⅜ inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this two component label to accommodate additional fuel components, 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.

(4) *For biodiesel blends containing more than 5 percent and no greater than 20 percent biodiesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. “Helvetica Black” or equivalent type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The capital letter “B” followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (e.g., “B20”) and then by the term “Biodiesel Blend”; or

(B) The term “Biodiesel Blend.” (ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is ¼ inch (.64 cm) from the top of the label and ⅜ 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 ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than ⅜ inch (.48 cm) from the side edges of the label.

(5) *For biomass-based diesel blends containing more than 5 percent and no greater than 20 percent biomass-based diesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. “Helvetica Black” or equivalent type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (e.g., “20%”) and then by the term “Biomass-Based Diesel Blend”; or

(B) The term “Biomass-Based Diesel Blend.”

(ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is ¼ inch (.64 cm) from the top of the label and ⅜ 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.

\* \* \* \* \*

(b) *Type size and setting*—(1) *For gasoline labels.* The Helvetica series or equivalent type is used for all numbers and letters with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems, by linotype, and in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The line “Minimum Octane Rating” is set in 12 point Helvetica Bold, all capitals, with letterspace set at 12 1/2 points. The line “(R+M)/2 METHOD” is set in 10 point Helvetica Bold, all capitals, with letterspace set at 10 1/2 points. The octane number is set in 96 point Franklin gothic condensed with 1/8 inch (.32 cm) space between the numbers.

(2) *For alternative liquid automotive fuel labels (one principal component).* Except as provided above, labels should conform to the following specifications. All type should be set in upper case (all caps) “Helvetica Black” or equivalent type throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as “normal.” The type for the fuel name is 50 point (1 1/2 inch (1.27 cm) cap height) “Helvetica Black,” knocked out of a 1 inch (2.54 cm) deep band. The type for the words “MINIMUM” and the principal component is 24 point (1/4 inch (.64 cm) cap height). The type for percentage is 36 point (3/8 inch (.96 cm) cap height).

(3) *For alternative liquid automotive fuel labels (two components).* All type should be set in upper case (all caps) “Helvetica Black” or equivalent type throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as “normal.” The type for the fuel name is 50 point (1/2 inch (1.27 cm) cap height) “Helvetica Black,” knocked out of a 1 inch (2.54

cm) deep band. All other type is 24 point (1/4 inch (.64 cm) cap height).

\* \* \* \* \*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011-8097 Filed 4-7-11; 8:45 am]

BILLING CODE 6750-01-P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

[Docket No. SSA-2006-0114]

RIN 0960-AD78

#### Revised Medical Criteria for Evaluating Endocrine Disorders

AGENCY: Social Security Administration.

ACTION: Final Rules.

**SUMMARY:** We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate claims under titles II and XVI of the Social Security Act (Act) involving endocrine disorders in adults and children. The revisions reflect our adjudicative experience, advances in medical knowledge, information from medical experts, and comments we received from the public in response to an advance notice of proposed rulemaking (ANPRM), a notice of proposed rulemaking (NPRM), and at an outreach policy conference.

**DATES:** These rules are effective June 7, 2011.

**FOR FURTHER INFORMATION CONTACT:** Judy Hicks, Social Insurance Specialist, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, (410) 965-1020. 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 Web site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Background

We are making final the rules for evaluating endocrine disorders that we proposed in an NPRM we published in the **Federal Register** on December 14, 2009 (74 FR 66069). The preamble to the NPRM discussed the changes from the current rules and our reasons for proposing those changes. To the extent that we are adopting the proposed rules as published, we are not repeating that

information here. Interested readers may refer to the preamble to the NPRM.<sup>1</sup>

#### What are the listings and how do we use them?

Listings describe medical conditions that are so severe that we presume any person who has a medical condition(s) that satisfies the criteria of a listing is unable to perform any gainful activity and, therefore, is disabled. The inability to work must also have lasted or be expected to last for at least 12 continuous months or be expected to result in death; we call this provision “the duration requirement.”<sup>2</sup> Thus, the listings are special rules that provide us with a mechanism to identify claims that should clearly be allowed. We use listings only to allow claims. We do not deny any claim solely because a person’s medical condition(s) does not satisfy a listing.

#### Why are we revising the listings for endocrine disorders?

We are revising the listings for endocrine disorders because medical science has made significant advances in detecting endocrine disorders at earlier stages and newer treatments have resulted in better management of these conditions since we last published final rules making comprehensive revisions to the endocrine listings in 1985. Consequently, most endocrine disorders do not reach listing-level severity because they do not become sufficiently severe or do not remain at a sufficient level of severity long enough to meet our 12-month duration requirement. Therefore, we have determined that, with the exception of children under age 6 who have diabetes mellitus (DM) and require daily insulin, we should no longer have listings in sections 9.00 and 109.00 based on endocrine disorders alone.

#### When will we use these final rules?

We will use these final rules beginning on their effective date. We will continue to use the current listings until the date these final rules become effective. We will apply the final rules to new applications filed on or after the effective date of the final rules and to claims that are pending on and after the effective date.<sup>3</sup>

<sup>1</sup> The NPRM is available at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a6a145>.

<sup>2</sup> Sections 216(i), 223(d), and 1614(a)(3) of the Act. See also §§ 404.1509, 404.1520, 416.909, and 416.920 of our regulations.

<sup>3</sup> This means that we will use these final rules on and after their effective date in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we