FEDERAL TRADE COMMISSION

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The FTC proposes to amend its Rule for Automotive Fuel Ratings, Certification and Posting ("Fuel Rating Rule" or "Rule") by adopting rating, certification, and labeling requirements for certain ethanol fuels, revising the labeling requirements for fuels with at least 70 percent ethanol, allowing the use of an alternative octane rating method, and making certain other miscellaneous Rule revisions, based on comments received as part of its periodic regulatory review of the Rule. The proposed amendments are intended to further the Rule's goal of helping purchasers identify the correct fuel for their vehicles.

DATES: Comments on the proposed information requests must be received on or before May 21, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/fuelratingreview*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326-2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

In March 2009, as part of a systematic review of the FTC's rules and guides, the Commission solicited comment on the Fuel Rating Rule, including comments on the economic impact of, and continuing need for, the Rule; the benefits of the Rule to purchasers of automotive fuels; the burdens the Rule places on firms subject to its requirements; and any modifications to increase the Rule's benefits or reduce its burdens. Commenters generally supported the Rule but recommended various amendments. Specifically, many comments supported amending the Rule to provide specific rating, certification, and labeling requirements for fuels with more than 10 percent and less than 70 percent ethanol,[1] and to allow octane rating through the On-Line Direct Comparison Technique ("On-Line Method") specified in ASTM International ("ASTM") Standard D2885. In addition, some commenters recommended altering the Rule's requirements for biodiesel, biomass-based diesel, and blends thereof (collectively, "biodiesel fuels").[2]

As explained below, the Commission agrees that the Rule should provide explicit requirements for ethanol fuels that contain more than 10 percent ethanol and less than 70 percent ethanol (hereinafter, "Mid-Level Ethanol blends"). Furthermore, the Commission proposes amending the Rule to require that fuels with at least 70 percent ethanol have labels with disclosures more consistent with those in the proposed Mid-Level Ethanol blend labels. In addition, the Commission proposes allowing the On-Line Method because it produces the same fuel rating as methods currently prescribed in the Rule. However, the Commission does not propose amending the Rule's biodiesel fuel provisions because they already appropriately carry out the biodiesel labeling mandate of the Energy Independence and Security Act of 2007 ("EISA") while minimizing the burden to covered entities.

This notice of proposed rulemaking responds to comments and announces proposed amendments to the Rule. Specifically, it provides background on the Fuel Rating Rule, a discussion of the comments submitted, and the Commission's response to those comments with a detailed description of the proposed amendments.

II. Background

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.*[3] The Rule originally only applied to gasoline. In 1993, in response to amendments to PMPA, the Commission expanded the Rule to cover liquid alternative fuels.[4] In 2008, the Commission again amended the Rule to incorporate the specific labeling requirements for biodiesel fuels required by Section 205 of EISA, 42 U.S.C. 17021.[5] Currently, the Rule's definition of "alternative fuels" does not specifically include either biodiesel fuels at concentrations of 5 percent or less or Mid-Level Ethanol blends.

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, the fuel rating is the octane rating, which covered entities must determine by deriving research octane and motor octane numbers using the procedures in ASTM D2699 and D2700, respectively, and then averaging them. For alternative fuels, the rating is the minimum percentage of the principal component of the fuel, with the exception of biodiesel fuels, for which the rating is the percentage of biodiesel or biomass-based diesel in the fuel. In addition, any covered entity, including a distributor, that transfers a fuel must provide a certification of 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 sets forth precise specifications regarding the content, size, color, and font of the labels.

On March, 2, 2009, the Commission solicited comment on the Fuel Rating Rule as part of its periodic review of its rules and guides.[6] The Commission sought comments on: the economic impact of, and the continuing need for,

[1] The Fuel Rating Rule already provides requirements for ethanol fuels of at least 70 percent concentration, including E85. That fuel generally contains 85 percent ethanol mixed with 15 percent gasoline. 16 CFR 306.0(i)(2)(ii). The U.S. Department of Energy ("DOE"), however, allows retailers to reduce the ethanol component of E85 to as little as 70 percent by volume to allow proper starting and performance in colder climates. *See* (*http://www.afdc.energy.gov/afdc/ethanol/e85_specs.html*). Other ethanol blends currently qualify as alternative fuels under the Rule. *See* 16 CFR 306.0(i)(2) (providing that alternative fuels are "not limited to" those explicitly listed in the Rule). The Rule does not provide any specific requirements for those fuel blends. However, covered entities must generally rate alternative fuels by "the commonly used name of the fuel . . . [and the] minimum percentage . . . of the principal component of the fuel." 16 CFR 306.0(j)(2). In addition, retailers must label these fuels "consistent with" that rating. 16 CFR 306.10(d).

[2] For further background on biodiesel fuels, *see* the Commission's announcement of amendments expanding the Fuel Rating Rule to cover those fuels. 73 FR 40154 (Jul. 11, 2008).

[3] 44 FR 19160 (Mar. 30, 1979).

[4] 58 FR 41356 (Aug. 3, 1993).

[5] 73 FR 40154 (Jul. 11, 2008).

[6] 74 FR 9054 (Mar. 2, 2009).

the Rule; the benefits of the Rule to purchasers of automotive fuels; the burdens the Rule places on firms subject to its requirements; and the need for any modification to increase the Rule's benefits or reduce its burdens.

III. The Record

The Commission received twelve comments. Commenters explained that there is a continuing need for the Rule and that it benefits consumers and businesses. However, they supported three significant changes: providing rating, certification, and labeling requirements for Mid-Level Ethanol blends; allowing octane rating through the On-Line Method; and altering the Rule's requirements for biodiesel fuels. In addition, comments supported miscellaneous changes to the Rule.

A. Continuing Need for Rule and Benefits to Consumers and Business

Commenters agreed that there is a continuing need for the Fuel Rating Rule and that it benefits consumers and businesses. The Alliance of Automobile Manufacturers ("AAM") stated that "there is definitely a need to maintain the Rule" and explained that consumers could suffer significant harm in the absence of the Rule's labeling requirements:

> The [rating] information is critical because the vehicle warranty is dependent on use of the proper fuel. Fuel dispenser labeling that conveys information about octane rating, ethanol content, biodiesel content and other fuel quality properties and limits is the only mechanism available to consumers to link fuel requirements in the owner's manual to what is actually being put into the vehicle.[7]

In addition, AAM reported results from compliance surveys of retail gasoline pumps showing "very good compliance" with the Rule's octane provisions, and noted that "pump labeling of E85 dispensers appears to have been successful as well, given that reports about unintentional misfueling of conventional vehicles have been virtually nonexistent to date."[8] The National Automobile Dealers Association seconded AAM's support of the Rule, explaining that consumers need accurate fuel rating information to comply with manufacturer recommendations and warranty requirements.[9]

In addition to benefitting consumers, commenters noted that the Rule benefits businesses. The Petroleum Marketers Association of America ("PMAA"), a fuel retailer industry group, stated that "labeling requirements under the automotive fuel rating rule are generally beneficial to small business petroleum retailers."[10] PMAA further explained:

> The labels [required by the Rule] direct consumers to the octane rating and/or alternative fuel blends that are best suited for their vehicle according to manufacturer specifications. . . . The labels help to prevent misfueling. Fewer misfuelings reduce the potential liability of small business retailers for damages to engines and exhaust systems.[11]

Similarly, the Renewable Fuels Association ("RFA") stated that the Fuel Rating Rule "provides producers, distributors, and retailers the needed . . . [information] to meet regulatory requirements and support marketplace needs and expectations."[12]

B. Labels for Mid-Level Ethanol Blends

Although generally supportive, many commenters suggested altering the Fuel Rating Rule to provide specific requirements for rating, certifying, and labeling Mid-Level Ethanol blends. Currently, the Rule provides requirements for mixtures of gasoline with 10 percent or less ethanol, defined as gasoline, and fuels with at least 70 percent ethanol, but does not specifically address blends with more than 10 but less than 70 percent ethanol. Significantly, no commenters opposed providing requirements for Mid-Level Ethanol blends.

Several commenters noted that, though generally not available when the Commission first promulgated alternative fuel requirements, Mid-Level Ethanol blends have subsequently entered the marketplace. For example, commenter Downstream Alternatives, Inc. ("Downstream"), a renewable fuel business, stated that:

> [When the Commission expanded the Rule to cover alternative fuels], it was envisioned that ethanol blends would be either El0 (gasohol) covered by the octane rating rule or E85 containing a minimum of 70% ethanol (to allow for denaturant and volatility adjustments) for use in the Flex Fuel Vehicles (FFV). . . . Today . . . some marketers are selling blends like E20, and E30 (20% and 30% ethanol respectively) for use in FFV's [sic]. These fuels . . . are typically blended on site through a blend pump . . . . Several organizations are promoting using blender pumps to sell alternate blend levels such as E20, E30, E40.[13]

Downstream's comment included a list of more than 100 retail establishments with the capacity to sell Mid-Level Ethanol blends. RFA also noted that mid-level blends "are being developed and marketed to provide consumers with more fuel choices at the retail level."[14] Similarly, the Iowa Renewable Fuels Association ("IRFA") reported that "retailers are offering more fuel options for flex-fuel vehicle owners in the form of mid-level [ethanol] blends" and that "Iowa retailers are installing blend dispensers that offer blends such as E20, E30 or E50 and E85."[15]

Moreover, commenters agreed that the market for ethanol blends of all types will grow as part of a general move toward renewable fuels. RFA noted that EISA's provisions included a mandate for increasing use of renewable fuels, which "systematically advances the production and use of renewable fuels and ensures that ample amounts of renewable biofuels, like ethanol, will be required as an alternative to petroleum fuels."[16] In addition, a joint comment from SIGMA, a fuel-retailer association, and the National Association of Convenience Stores ("NACS") included EISA's specific fuel mandates, showing an increase in minimum renewables from 11.1 billion gallons in 2009 to 36 billion in 2022.[17] The comment concluded that "EISA's mandates will clearly require retailers to increase their sales of biofuels (whether biodiesel or biomass) in the future."[18]

However, commenters cautioned that ethanol blends above 10 percent concentration are not appropriate for conventional vehicles. AAM stated that "virtually all conventional vehicles built to date have been validated for gasoline containing only up to 10% ethanol (E10)."[19] AAM, therefore, warned that "unlabeled dispensers [of ethanol blends] would cause consumers to unwittingly put their vehicle warranties

[7] AAM Comment at 1. The comments are located at: (*http://www.ftc.gov/os/comments/fuelratingreview/index.shtm*).

[8] *Id.* at 1-2. AAM also referenced a study showing some mislabeling of biodiesel blends. *Id.* at 2. However, that study tested fuel offered for sale no later than summer 2008, prior to the December 16, 2008 effective date for the Commission's biodiesel labeling requirements. *See* 73 FR 40154 (Jul. 11, 2008).

[9] *See* National Automobile Dealers Association Comment at 1.

[10] PMAA Comment at 3.

[11] *Id.* at 1.

[12] RFA Comment at 3.

[13] Downstream Comment at 2-3.

[14] RFA Comment at 2.

[15] IRFA Comment at 1.

[16] RFA Comment at 1.

[17] SIGMA and NACS Comment at 2.

[18] *Id.* at 4.

[19] AAM Comment at 2.

at risk."[20] RFA stated that "[f]rom an automotive vehicle perspective, there are two spark ignition engine types available to U.S. consumers: [1] conventional engines designed to use E10 and unleaded gasoline and [2] flex-fuel engines designed to use alternative fuels such as E85"[21] and Mid-Level Ethanol blends.[22] Indeed, DOE has explained that "[a]lthough nearly all gasoline-fueled passenger cars and light-duty trucks sold in the last 20 years have been designed to operate on E10, substantial modifications are made to [flex-fuel vehicles] so they can use higher concentrations of ethanol . . . without adverse effects on fuel system materials, components, on-board diagnostics (OBD) systems, or driveability."[23]

In light of the emergence of Mid-Level Ethanol blends as retail fuels and the risk of harm to consumers' vehicles from a failure to disclose ethanol content, commenters urged the Commission to amend the Fuel Rating Rule to provide specific labeling, rating, and certification requirements for those blends. IRFA urged amending the rule to provide "uniformity in pump labeling, consistent consumer information and consumer protection" and supported a rating regime that, like that for biodiesel fuels, rates ethanol blends according to the percentage of ethanol in the blend, regardless of whether ethanol is the principal component in the fuel.[24] Downstream concurred, recommending that, for Mid-Level Ethanol blends,

> [T]he Commission should adopt a similar approach to that for labeling biodiesel. That is, a blend containing 30% denatured ethanol would be E30, 40% denatured ethanol, E40 etc. This would enable marketers [with] the ability to properly identify the fuel while providing consumers guidance on the approximate ethanol level of the blend.[25]

RFA also supported providing "posting requirements . . . for all ethanol blended fuels . . . ."[26]

C. On-Line Direct Method for Determining Octane Rating

PMPA defines "octane rating" as the average of gasoline's research octane number and motor octane number, as determined using ASTM D2699 and D2700, respectively.[27] However, PMPA further provides that the Commission may prescribe alternate gasoline rating methods.[28] Comments from gasoline refiners and distributors urged amending the Fuel Rating Rule to allow the On-Line Method.

ConocoPhillips, a petroleum refiner, explained the development of the On-Line Method:

> ASTM D 2885 Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-line Comparison Technique was adopted by ASTM after the promulgation of the Automotive Fuel Rating Rule in 1979. It uses the same [test] engines but in an updated methodology that provides acquisition efficiencies and accuracies for the industry.[29]

Therefore, ConocoPhillips argued, the "test method (suitable for determining Motor and Research Octane values) should be allowed to be used for octane determination."[30] Two industry groups also recommended allowing the On-Line Method. The American Petroleum Institute ("API") described the method as "reliable" and, therefore, stated that it "should be included" as a rating method prescribed by the Rule.[31] The National Petrochemical & Refiners Association ("NPRA") agreed with ConocoPhillips that the industry has "extensive experience" with the On-Line Method and stated that it "should be allowed in addition to ASTM D2699 and D2700."[32] No comments opposed allowing octane determination through the On-Line Method.

D. Biodiesel and Biomass-Based Diesel

Commenters raised two areas of concern with respect to the Rule's biodiesel fuel provisions, which currently require certifying, rating, and labeling those fuels if they contain more than 5 percent biodiesel or biomass-based diesel. Some commenters argued for expansion of the Rule to include biodiesel fuels at or below 5 percent concentration, and one argued for exemption from the Rule for biomass-based diesel blends at any concentration.

1. Rating All Biodiesel Fuel Blends

Commenters noted that because the Rule does not require rating of biodiesel fuels at concentrations of 5 percent or less, a distributor may transfer those fuels without disclosing the presence of biodiesel or biomass-based diesel. API noted that such a transfer places a potential burden on retailers and could lead to inaccurate labels:

> [A] company may receive diesel fuel containing 5% or less biodiesel and believe that the diesel fuel received contains no biodiesel. The company then may add additional biodiesel to achieve what they believe to be a blend of 5% or less, resulting in a fuel with over 5% biodiesel, but because the company was not made aware of the existing biodiesel concentration, they do not appropriately label the dispenser.[33] ConocoPhillips,[34] NPRA,[35] PMCI,[36] and SIGMA/NACS[37] also argued that the current lack of rating requirements for certain biodiesel blends could lead to retailers failing to post required labels and, as SIGMA noted, "subject [retailers] to penalties under the FTC Act."[38]

To obviate this risk, API,[39] ConocoPhillips,[40] and NPRA[41] recommended subjecting 5 percent and less biodiesel blends – but not biomass-based diesel blends – to the Fuel Rating Rule's rating and certification requirements, thereby requiring producers and distributors to disclose the presence of any biodiesel in fuel they distribute. PMCI[42] and SIGMA/NACS[43] agreed that the Rule should require rating and certification of all biodiesel blends, but argued that those requirements should apply to biomass-based diesel blends as well.

2. Applicability of Fuel Rating Rule to Biomass-Based Diesel

In contrast, API argued that the Rule should not apply to biomass-based diesel blends of any concentration. API gave four reasons in support of its argument. First, citing an Environmental Protection Agency ("EPA") description

[20] *Id.*

[21] RFA Comment at 2.

[22] *See* RFA Comment at 2-3. Downstream further noted that Mid-Level Ethanol blends "are legal fuels for use in [Flex-Fuel Vehicles] only." Downstream Comment at 2.

[23] *See* DOE's "Handbook for Handling, Storing, and Dispensing E85," p.17, available at: (*http://www.afdc.energy.gov/afdc/pdfs/41853.pdf*).

[24] IRFA Comment at 1.

[25] Downstream Comment at 5.

[26] RFA Comment at 3.

[27] 15 U.S.C. 2821(1) and (2).

[28] 15 U.S.C. 2821(1).

[29] ConocoPhillips Comment at 1.

[30] *Id.*

[31] API Comment at 3.

[32] NPRA Comment at 1.

[33] API Comment at 1.

[34] ConocoPhillips Comment at 2.

[35] NPRA Comment at 2.

[36] PMCI Comment at 2-3.

[37] SIGMA and NACS Comment at 4.

[38] Id.

[39] API Comment at 1.

[40] ConocoPhillips Comment at 2.

[41] NPRA Comment at 2.

[42] PMCI Comment at 3.

[43] SIGMA and NACS Comment at 4.

of a type of biomass-based diesel, API stated that the fuel "is indistinguishable in terms of its hydrocarbon structure from conventional petroleum diesel" and, therefore, "no standard test method referenced by ASTM D975 will reveal renewable diesel content."[44] Second, the Rule's prescribed use of the term "biodiesel" on biomass-based diesel labels may confuse consumers.[45] Third, the costs of rating and labeling the fuel increases its cost.[46] Finally, because no standard tests exist for concentration levels of biomass-based diesel blends, enforcement of the Rule with respect to those fuels will be difficult.[47]

E. Miscellaneous Comments

Commenters also raised several miscellaneous issues. Many explained that the Fuel Rating Rule references old versions of ASTM Standards and a no longer valid ASTM address.[48] Downstream noted that ASTM may change its E85 standard to provide that the fuel may contain as little as 68 percent ethanol. To accommodate that potential change, it recommended that the Commission consider amending the Rule, which limits E85 to blends of at least 70 percent.[49] Finally, PMAA urged allowing greater flexibility in terms of the size and shape of labels and stated that the Rule's provisions conflicted with unspecified state labeling requirements, while SIGMA/NACS similarly argued for a "heightened degree of flexibility" in labeling to assist retailers blending alternative fuels and changing concentration levels on a daily basis.[50]

IV. Analysis

In light of the comments discussed above, the Commission proposes retaining most of the Fuel Rating Rule while amending it to include explicit rating, certification, and labeling provisions for Mid-Level Ethanol blends and to provide labeling requirements for ethanol fuels above 70 percent concentration consistent with those proposed for Mid-Level Ethanol blends. Furthermore, the Commission proposes allowing octane rating using the On-Line Method. Finally, the Commission proposes minor amendments in response to miscellaneous comments. The Commission declines to propose amendments to the Rule's biodiesel provisions.

A. Retaining the Rule

The Commission promulgated its Fuel Rating Rule pursuant to PMPA,[51] which requires the FTC to provide rules for rating, certifying, and labeling liquid automotive fuels. Commenters noted that the Rule benefits consumers and businesses. As AAM reported, the Rule appears to successfully carry out PMPA's goal of alerting consumers to the type and grade of liquid fuel sold at retail fuel pumps. The Commission, therefore, retains the Rule.

B. Ethanol Fuel Labeling

As discussed above, several commenters noted a risk of misfueling conventional vehicles with ethanol blends and, therefore, urged the Commission to include specific requirements for rating, certifying, and labeling Mid-Level Ethanol blends.[52] As explained below, to address this misfueling risk, the Commission proposes including such requirements. The Commission further proposes altering its labeling requirements for all ethanol fuels to disclose that blends with more than 10 percent ethanol may harm some conventional vehicles.

As reflected in the comments, retailers currently offer Mid-Level Ethanol blends and E85 at fuel pumps, and EISA's renewable fuel standard will likely lead to increased availability of both. Furthermore, commenters noted that consumers who use those fuels in conventional vehicles place their warranties at risk. Similarly, DOE confirmed that fuels containing more than 10 percent ethanol are only proper for flex-fuel vehicles.[53] Therefore, providing specific labeling requirements for Mid-Level Ethanol blends will further PMPA's purpose of "assisting purchasers in identifying the specific type(s) of fuel required for their vehicles."[54]

The Commission also agrees that covered entities should rate Mid-Level Ethanol blends according to their percentage of ethanol, regardless of whether ethanol is the predominant fuel in the blend. Currently, the Rule requires covered entities to rate blends of less than 50 percent ethanol according to their gasoline percentage;[55] therefore, the labels for such blends would not reflect the presence of ethanol in all circumstances. However, as noted above, the significant information to the consumer is whether the blend contains more than 10 percent ethanol because use of ethanol blends at such concentrations in conventional vehicles places warranties at risk. Therefore, as explained in detail below, the Commission proposes requiring covered entities to rate and certify Mid-Level Ethanol blends according to their ethanol content and to label them accordingly.[56]

1. Definitions

In order to provide requirements for rating, certifying, and labeling Mid-Level Ethanol blends, the Commission proposes adding "Mid-Level Ethanol blend" as a new defined term in the Fuel Rating Rule. Specifically, the proposed new definition defines the term as "a mixture of gasoline and ethanol containing more than 10 but less than 70 percent ethanol."

2. Rating and Certification

Section 306.0(i)(2) of the Fuel Rating Rule currently lists examples of alternative fuels, but specifically states that alternative fuels are "not limited to" those listed. The proposed amendments expressly add Mid-Level Ethanol blends to this non-exhaustive list, thereby making clear that the rating and certification requirements of § 306 of the Rule apply to Mid-Level Ethanol blends. Subjecting such blends to those requirements should ensure the accuracy of information on Mid-Level Ethanol blend labels.

In addition, to ensure that Mid-Level Ethanol blend labels provide consumers with useful information, the proposed amendments include rating and certification provisions similar to those for biodiesel fuels. The proposed amendments modify language in the Rule's rating provision (§ 306.5(b)) to clarify that covered entities must rate Mid-Level Ethanol blends by "the percentage of ethanol contained in the

[44] API Comment at 2.

[45] Id.

[46] Id.

[47] Id.

[48] *See, e.g.*, ConocoPhillips Comment at 1.

[49] Downstream Comment at 5.

[50] PMAA Comment at 2; SIGMA/NACS Comment at 4.

[51] The Commission promulgated the Rule's biodiesel fuel provisions pursuant to EISA.

[52] PMPA authorizes the Commission to designate methods for fuel rating, fuel certification, and labeling any alternative liquid fuel. *See* 15 U.S.C. 2823(c).

[53] AAM noted a petition to the EPA seeking approval of blends containing up to 15 percent ethanol for use in conventional vehicles. AAM Comment at 2; *see also* 74 FR 18228 (Apr. 21, 2009). If EPA grants this petition, the Commission will reconsider requiring the proposed Mid-Level Ethanol blend label for such fuels.

[54] 58 FR 41356, 41360 (Aug. 3, 1993).

[55] Although the Rule currently does not provide specific requirements for Mid-Level Ethanol blends, that fuel qualifies as an alternative fuel under the Rule. 16 CFR 306.0(i)(2) (providing that alternative fuels are "not limited to" those explicitly listed in the Rule). Therefore, covered entities must rate the fuel according to its "principal component." 16 CFR 306.5(b).

[56] The Rule already requires rating and certifying E85 according to the percentage of ethanol in the blend.

fuel," not by the percentage of the principal component of the fuel.[57]

The Commission also proposes amending § 306.6(b), which allows transferors of alternative automotive fuels to certify fuel ratings with a letter of certification. That section provides that, generally, a certification by letter remains valid so long as the fuel transferred contains the same or greater rating of the principal component. The letter remains valid because an increase in concentration for most alternative fuels will not trigger different labeling requirements. An increase or decrease in concentration for ethanol blends or biodiesel fuels, however, may trigger different labeling requirements.[58] Therefore, the proposed amendment to § 306.6(b) states that if transferors of ethanol blends choose to use a letter of certification, that letter remains valid only as long as the fuel transferred contains the same percentage of ethanol as previous fuel transfers covered by the letter.

3. Labeling

The proposed amendments provide labeling requirements for Mid-Level Ethanol blends and amend the labeling requirements for E85.[59] The proposed requirements provide retailers flexibility to comply with the law while giving consumers critical information to avoid placing their warranties at risk. Specifically, the proposed Mid-Level Ethanol blend requirements provide that retailers must post either: 1) the precise concentration of ethanol (*e.g.*, "20% ETHANOL"); or 2) a disclosure that the blend's concentration is between 10 and 70 percent ("10% - 70% ETHANOL"), or within a narrower range (*e.g.*, "30% - 40% ETHANOL"). These content disclosures will alert consumers to the presence of more than 10 percent ethanol, thereby helping them avoid placing their warranties at risk.

The proposed amendments allow some flexibility by permitting Mid-Level Ethanol blend sellers to provide a specific ethanol percentage or a range narrower than 10 - 70 percent, as long as the label is accurate. This increased flexibility will allow sellers to compete within the Mid-Level Ethanol blend market by disclosing a more specific ethanol content to consumers who value that information, while ensuring all consumers have the information necessary to avoid harming their vehicles or placing their warranties at risk. The proposed amendment does not, however, require labels to disclose an exact blend percentage or a range narrower than 10 - 70 percent. Requiring retailers to post such a disclosure would likely impose a significant burden because, as Downstream and IRFA noted, retailers currently create Mid-Level Ethanol blends through blender pumps. These pumps allow retailers to adjust the blend concentration frequently to account for relative changes in the prices of gasoline and ethanol. Requiring a specific disclosure, therefore, likely would force some sellers to either change pump labels frequently or alter their blend concentrations less frequently, potentially raising their costs.

In addition, labels for all ethanol blends above 10 percent would state:

- MAY HARM SOME VEHICLES
- CHECK OWNER'S MANUAL

This additional information should assist consumers in identifying the proper fuel for their vehicles.[60] As noted above, AAM reported that consumers place their warranties at risk if they use Mid-Level Ethanol blends and E85 in conventional cars because "virtually all conventional vehicles built to date have been validated for gasoline containing only up to 10% ethanol."[61] This comment raises a question concerning whether ethanol blends above 10 percent concentration will damage conventional vehicles, and the Commission invites comment on that question.

Although the record contains no evidence regarding the incidence of ethanol misfueling, the increasing risk of such misfueling necessitates this additional disclosure. As discussed above, EISA's fuel mandate will require significant expansion of the alternative fuel market. Thus, in the coming years more retailers will likely offer Mid-Level Ethanol blends and E85, and consumers will encounter more fuel pumps dispensing those fuels near pumps dispensing conventional gasoline. Moreover, consumers' familiarity with gasoline containing up to 10 percent ethanol may lead them to assume wrongly that their conventional vehicle can tolerate fuels with more than 10 percent ethanol. The proposed amendments require the additional disclosure for both E85 and Mid-Level Ethanol blends because requiring that disclosure for only one of those fuels could confuse consumers. For example, if the "may harm some vehicles" disclosure appeared on a Mid-Level Ethanol blend pump but not on an adjacent E85 pump, consumers might conclude wrongly that E85 cannot harm conventional vehicles.

The proposed amendments specify the size, font, and format requirements for the new Mid-Level Ethanol blend labels and the revised labels for ethanol blends of at least 70 percent concentration.[62] These requirements are similar to those in place for most other alternative liquid fuels in the Rule (*see* § 306.12). The proposed labels for both fuels require an orange background (PMS 1495 or its equivalent),[63] which is the typical color for alternative fuel labels and will allow retail consumers to distinguish Mid-Level Ethanol blends from gasoline. In addition, consistent with labeling for other alternative fuels, the proposed amendments require the text to be in Helvetica black type and centered on the label. The Commission proposes amending § 306.12(f) to provide sample illustrations of Mid-Level Ethanol blend and E85 labels, which are included at the end of this notice of proposed rulemaking.[64]

C. Octane Rating Using the On-Line Method

The Commission also agrees with the commenters that the Fuel Rating Rule should allow octane rating through the On-Line Method, as specified in ASTM D2885. As noted above, PMPA authorizes the Commission to prescribe octane rating methods beyond those specified in ASTM D2699 and D2700. The On-Line Method detailed in ASTM D2885 produces the exact same octane rating as the D2699 and D2700

[57] For example, a 30 percent ethanol blend should be rated as 30 percent ethanol, not 70 percent gasoline. However, as explained below, a retailer selling a 30 percent blend need only disclose that the fuel contains 10% - 70% ethanol.

[58] *E.g.*, an increase from 60 percent ethanol to 85 percent ethanol would qualify the fuel as E85.

[59] The proposed amendments at the end of this notice of proposed rulemaking include sample Mid-Level Ethanol blend and E85 labels.

[60] PMPA authorizes the Commission to require labels displaying fuel "ratings," which the statute defines as including information the Commission deems "appropriate to carry out the [statute's] purposes . . . ." 15 U.S.C. 2821(17)(C). The Commission has explained that, under this definition, a fuel's rating encompasses not only a numerical value but also text necessary to assure consumers that "they are purchasing a product that satisfies automobile engine minimum content requirements, which may be specified in their owner's manuals." 58 FR 41356, 41364-65 (Aug. 3, 1993). Thus, because the proposed additional language will assist consumers in determining whether they can use ethanol fuels, the language is part of the fuel's rating and the Commission may require it under PMPA.

[61] AAM Comment at 2.

[62] The proposed amendments also delete the Rule's sample label for "E-100" (*i.e.*, ethanol not mixed with gasoline) because the record does not show any retail sales of such fuels.

[63] 16 CFR 306.12(c)(2).

[64] The Rule's recordkeeping provisions (16 CFR 306.7, 306.9, and 306.11) without amendment will require covered entities to maintain records supporting the rating of any Mid-Level Ethanol blend they produce, transfer, or sell.

methods.[65] Accordingly, the Commission proposes amending the Rule to allow the On-Line Method.[66]

D. Miscellaneous Comments

Commenters raised three miscellaneous issues. First, several noted outdated ASTM references. Therefore, the Commission proposes updating those references.[67] Second, Downstream argued that the Commission consider allowing E85 to contain 68 percent ethanol in light of a potential change to the relevant ASTM standard. The Commission declines to make this change because there is no current ASTM or DOE standard allowing E85 to contain 68 percent ethanol.[68] Third, some retail fuel industry commenters requested more flexibility in labeling specifications and noted possible state and FTC labeling conflicts. However, none of the comments demonstrated that the labeling specifications impose a substantial burden or identified a specific conflict. Therefore, the Commission does not propose any amendments in response to those comments.

Finally, in addition to the commenters' suggested changes, the Commission on its own initiative proposes amending 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, proposes amending § 306.12(b)(2) to make clear that its all-caps requirement does not apply to labeling requirements for biodiesel fuels.[69]

E. Biodiesel Fuel Provisions

1. Rating Biodiesel Fuel Blends of 5 Percent or Less

As discussed above, several commenters argued that, unless the Commission expanded the Fuel Rating Rule to require rating of biodiesel fuel blends at or below 5 percent in concentration, retailers who blend biodiesel might not know the blend's concentration and, therefore, fail to label the fuel appropriately. As an initial matter, the record does not show that retailers who blend cannot properly label their fuel in the absence of the suggested change. Indeed, none of the commenters presented evidence of such mislabeling.

Retailers can comply with the Rule in one of two ways. First, they can test their blends and label them accordingly. Alternatively, they can add enough pure biodiesel to uncertified diesel stock to ensure that the resulting blend will contain more than 5, but not more than 20, percent biodiesel. For example, if a retailer receives uncertified diesel from a refiner, the retailer knows that the fuel contains up to 5 percent biodiesel. The retailer can then add at least six, but not more than fifteen, percent pure biodiesel into this uncertified stock. The final product would thus contain more than 5, but less than 20, percent biodiesel. Therefore, the retailer could comply with the Rule by labeling the fuel as a "Biodiesel Blend" without a specific blend percentage.[70]

Although the Rule's biodiesel provisions require retailers who blend such fuels to take some affirmative steps, the Commission believes that this burden is reasonable. Indeed, the Commission knew of this burden when it first promulgated biodiesel fuel requirements, and in announcing those requirements stated:

> [A]n entity blending biodiesel fuels is responsible for determining the amount of biodiesel and/or biomass-based diesel in the fuel it sells. This includes the need to account for biodiesel and/or biomass-based diesel in any diesel fuel (*e.g.*, diesel fuel containing biodiesel at five percent or less) it uses to create blends that must be rated, certified, or labeled under the Rule.[71]

Moreover, there is no evidence that requiring producers and distributors of biodiesel fuels to rate blends of 5 percent or less would decrease the Rule's overall burden on businesses. Amending the Rule as proposed would require producers and distributors to rate 5 percent or less biodiesel blends regardless of whether those fuels would eventually require a label after blending. Thus, the proposed amendment might reduce a burden on some retailers while increasing the burden on many producers and distributors. The Commission, therefore, declines to adopt the change.

2. Exempting Biomass-Based Diesel from the Rule

Commenter API argued that the Commission should not require rating, certification, or labeling of biomass-based diesel blends because those blends are indistinguishable from conventional diesel. It also argued that the required label is confusing because it contains both the terms "biodiesel" and "biomass-based diesel." Even assuming that API is correct, however, the Commission cannot exempt biomass-based diesel blends or provide for different labels because Section 205 of EISA specifically 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" (emphasis added) and that all blends over 5 percent "shall be labeled,"[72] depending on concentration levels, 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*."[73] (Emphasis added.) Thus, the Commission has no discretion to exempt biomass-based diesel or exclude the term "biodiesel" from biomass-based diesel blend labels.

V. Request for Comment

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Fuel Rating Rule Review, R811005" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on

[65] *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 Sec. 5.3.

[66] NPRA and ConocoPhillips recommended further loosening the Rule's octane rating provisions to allow non-ASTM approved procedures so long as they are "correlated" with ASTM D2699 and D2700. However, without specific rating procedures, the Commission would have difficulty determining whether a supposedly "correlated" procedure accurately rates octane, and the commenters did not provide any criteria for showing correlation. Thus, allowing any "correlated" procedure would impede Rule enforcement and, therefore, the Commission declines to allow such procedures. *See* 15 U.S.C. 2823(c)(3)(A)(i) (Commission must consider "ease of administration and enforcement" before approving alternative octane rating procedures).

[67] *E.g.*, the Commission proposes amending § 306.0(b) to provide ASTM's current street address.

[68] *See* 1 CFR Part 51.

[69] The Commission also proposes amending §§ 306.0(b), 306.0(j)(1), 306.0(j)(2), and 306.0(j)(3) to correct typographical errors, and proposes amending § 306.0(i) for clarification by eliminating the subsection number (3) and replacing that with "provided, however."

[70] The Rule does not require a specific percentage disclosure for biodiesel blends with more than 5 and no more than 20 percent biodiesel. Thus, sellers may label the fuel: "Biodiesel Blend." 16 CFR 306.12(a)(4).

[71] 73 FR 40154, 40159 n.20 (Jul. 11, 2008).

[72] 42 U.S.C. 17021(a) and (b).

[73] 42 U.S.C. 17021(b).

the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[74]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/ftc/fuelratingreview*) (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 the weblink (*https://public.commentworks.com/ftc/fuelratingreview*). If this notice of proposed rulemaking appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the notice of proposed rulemaking and the news release describing it.

A comment filed in paper form should include the "Fuel Rating Rule Review, R811005" 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-135 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. 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 on any proposed filing, recordkeeping, or disclosure requirements that are subject to the paperwork burden review under the Paperwork Reduction Act should additionally 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) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws that 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/os/publiccomments.shtm*). 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 proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before April 5, 2010, in the form of 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.

VI. Paperwork Reduction Act

The proposed certification and labeling requirements for Mid-Level Ethanol blends constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) ("PRA"). The additional required disclosures for fuels containing at least 70 percent ethanol, however, do not invoke the PRA because they comprise a disclosure supplied by the Federal Government.[75]

Consistent with the Fuel Rating Rule's requirements for other alternative fuels, under the proposed amendments refiners, producers, importers, distributors, and retailers of Mid-Level Ethanol blends 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 or post.[76] The covered parties also must make these records available for inspection by staff of the Commission and Environmental Protection Agency or by persons authorized by those agencies. 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 5 minutes per year (or 1/12th of an hour) per industry member, and no more than 1/8th of an hour per year per industry member for the Rule's disclosure requirements.[77] Consistent with OMB regulations that implement the PRA, these estimates reflect solely the burden incremental to the usual and customary recordkeeping and disclosure activities performed by affected entities in the ordinary course of business. *See* 5 CFR 1320.3(b)(2).

Because the procedures for distributing and selling Mid-Level Ethanol blends are no different from those for other automotive fuels, the

[74] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, 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* FTC Rule 4.9(c), 16 CFR 4.9(c).

[75] According to OMB, "[t]he public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included" within in the definition of a PRA "collection of information." 5 CFR 1320.3(c)(2).

[76] See the Fuel Rating Rule's recordkeeping requirements, 16 CFR 306.7; 306.9; and 306.11.

[77] *See, e.g.*, 73 FR 12916, 12920 (Mar. 11, 2008); 73 FR 40154, 40160-40161 (Jul. 11, 2008). Staff has previously estimated that retailers of automotive fuels incur an average burden of approximately one hour to produce, distribute, and post fuel rating labels. Because the labels are durable, staff has concluded that only about one of every eight retailers incur this burden each year, hence, 1/8th of an hour, on average, per retailer.

Commission expects that, consistent with practices in the fuel industry generally, the covered parties will record the fuel rating certification on documents (*e.g.*, shipping receipts) already in use, or will use a letter of certification. Furthermore, the Commission expects that labeling of Mid-Level Ethanol blend pumps will be consistent, generally, with practices in the fuel industry. Accordingly, the PRA burden will be the same as that for other automotive fuels: 1/12th of an hour per year for recordkeeping and 1/8th of an hour per year for disclosure.

Based on information submitted by commenter Downstream, the Commission estimates that there are approximately 130 retailers of Mid-Level Ethanol blends. Furthermore, the Commission understands from the comments that Mid-Level Ethanol blends are created through blender pumps and, therefore, there are no producers or distributors of such blends. Thus, assuming that each retailer of Mid-Level Ethanol blends will spend 1/12th of an hour per year complying with the proposed recordkeeping requirements and 1/8th of an hour per year complying with the proposed disclosure requirements, the Commission estimates the incremental annual burden for Mid-Level Ethanol blend retailers to be 10.83 hours for recordkeeping (1/12th of an hour per year x 130 entities) and 16.25 hours for disclosure (1/8th of an hour per year x 130), combined, 27.08 hours.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff estimates the mean hourly wage for retailer employees to be $15.04.[78] Applied to the estimated affected population, this would total $407.28 ($15.04 x 27.08) for recordkeeping and disclosure, industry-wide.

The Commission invites comment on the above burden analysis and estimates to help ensure its accuracy and completeness.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule and a Final Regulatory Flexibility Analysis 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. The amendment allowing alternative octane measurements does not impose any new costs on covered entities because, under the amendment, those entities would have the option of using the octane rating method currently required by the Rule. As explained in Section V above, the Commission expects that Mid-Level Ethanol blend retailers will spend, at most, 5 minutes per year complying with the proposed recordkeeping requirements and 1/8th of an hour per year complying with the disclosure requirements. As also explained in Section V, staff estimates the mean hourly wage for employees of ethanol retailers to be $15.04. Even assuming that all ethanol retailers are small entities, compliance with the recordkeeping requirements will cost retailers $1.25 ($15.04 x 1/12th of an hour). In addition, under the same conservative assumptions, compliance with the proposed disclosure requirements will cost retailers $1.88 ($15.04 x 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 approximately fifty cents and that the average automotive fuel retailer has six dispensers. However, commenter PMAA stated that the cost of labels ranges from one to two dollars. Conservatively applying the upper range from PMAA's estimate results in an initial cost to retailers of $12.00 (6 pumps x $2). 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 $0.25 (1/8 x $2).

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 Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed ethanol 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.

The emergence of Mid-Level Ethanol blends as a retail fuel and the likely increased availability of both Mid-Level Ethanol blends and E85 as retail fuels.

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

The Commission proposes these amendments to provide requirements for rating and certifying Mid-Level Ethanol blends and to amend its requirements for labeling blends of gasoline and more than 10 percent ethanol pursuant to PMPA, 15 U.S.C. 2801 *et seq.*

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

Retailers of fuels containing more than 10 percent ethanol will be classified as small businesses if they satisfy the Small Business Administration's relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System ("NAICS"). The closest NAICS size standard relevant to this rulemaking is for "Gas Stations with Convenience Stores." That standard classifies retailers with a maximum $27 million in annual receipts as small businesses.[79] As discussed above, the only evidence in the comments regarding ethanol retailers is a list of Mid-Level Ethanol blend retailers provided by Downstream. DOE reports 1,944 E85 fueling stations.[80] Neither list contains any information on these retailers' revenue. Therefore, the Commission is unable to determine how many of these retailers qualify as small businesses. The Commission invites comments providing revenue data for retailers selling ethanol blends containing more than 10 percent ethanol.

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

The proposed amendments make clear that the Fuel Rating Rule's recordkeeping, certification, and labeling requirements apply to Mid-Level Ethanol blends. Small entities potentially affected are producers, distributors, and retailers of those blends. The Commission expects that the recordkeeping, certification, and labeling 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.

[78] Bureau of Labor Statistics, May 2008 Occupational Employment Statistics Survey, "Correspondence Clerks," Table 1, at (*http://www.bls.gov/news.release/pdf/ocwage.pdf*).

[79] *See* (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*).

[80] *See* (*http://www.afdc.energy.gov/afdc/fuels/stations_counts.html*).

The Commission invites comments on this issue.

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

The FTC has identified no other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment on this issue.

F. Alternatives considered.

As explained above, PMPA requires retailers of liquid automotive fuels to post labels at the point of sale displaying those fuels' ratings. The posting requirements in the proposed 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 fuel's rating. Furthermore, the amendments minimize what, if any, economic impact there is from the labeling requirements. Therefore, the Commission concludes that there are no alternative measures that would accomplish the purposes of PMPA and lessen the burden on small entities. The Commission invites comment on this issue.

VIII. Public Hearings

Persons desiring a public hearing should notify the Commission no later than April 5, 2010. If there is interest in a public hearing, it will take place at a time and date to be announced in a subsequent notice. If a hearing is held, persons desiring an appointment to testify must submit to the Commission a complete statement in advance, which will be entered into the record in full. As a general rule, oral statements should not exceed 10 minutes. The Commission will provide further instructions in the notice announcing the hearing.

IX. Communications by Outside Parties to the 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)(5).

List of Subjects in 16 CFR Part 306

Fuel ratings, Trade practices.

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

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 revising paragraphs (b), (i), and (j), and adding new paragraph (o), to 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 the American Society for Testing and Materials ("ASTM") entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel" designated D4814–09b and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in either:

(i) ASTM D2699-08, "Standard Test Method for Knock Characteristics of Motor Fuels by the Research Method" and ASTM D2700-08, "Standard Test Method for Knock Characteristics of Motor and Aviation Fuels by the Motor Method"; or

(ii) ASTM D2885-08, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique."

(2)These incorporations by reference 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 D4814–09b, ASTM D2699-08, ASTM D2700-08, and ASTM 2885-08, 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, 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/cfr/ibr-locations.html*).

* * * * *

(i) *Automotive fuel.* (1) This term means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to:

(i) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90% unleaded gasoline and 10% denatured ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 *et seq.*, such as reformulated gasoline and oxygenated gasoline; and

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

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

(B) 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;

(C) Mid-level ethanol blends;

(D) Liquefied natural gas;

(E) Liquefied petroleum gas;

(F) Coal-derived liquid fuels;

(G) Biodiesel;

(H) Biomass-based diesel;

(I) Biodiesel blends containing more than 5 percent biodiesel by volume; and

(J) Biomass-based diesel blends containing more than 5 percent biomass-based diesel by volume.

(2) 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 American Society for Testing and Materials ("ASTM") standard D975-09b ("Standard Specification for Diesel Fuel Oils"), 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, N.W., Washington, D.C., 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, biomass-based diesel blends, and mixtures of gasoline and more than 10 percent ethanol, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as a 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, biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

(4) For mixtures of gasoline and more than 10 percent ethanol, including mid-level ethanol blends, a disclosure of the ethanol component, expressed as a percentage by volume.

* * * * *

(o) *Mid-level ethanol blend* means a mixture of gasoline and ethanol containing more than 10 but less than 70 percent ethanol.

3. Revise § 306.5 to read as follows:

§ 306.5 Automotive fuel rating.

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by the American Society for Testing and Materials ("ASTM") in ASTM D4814–09b, entitled "Standard Specifications for Automotive Spark-Ignition Engine Fuel." To determine the research octane and motor octane numbers you may either:

(1) Use ASTM standard test method D2699-08 to determine the research octane number, and ASTM standard test method D2700-08 to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885-08, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique."

(b) To determine automotive fuel ratings for alternative liquid automotive fuels other than mid-level ethanol blends, biodiesel blends and biomass-based diesel blends, 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. In the case of biodiesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biodiesel contained in the fuel. In the case of biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biomass-based diesel contained in the fuel. In the case of mid-level ethanol blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of ethanol 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.

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, biomass-based diesel blend, biodiesel blend, or mid-level ethanol 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. Revise § 306.10(f) 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) "20% Ethanol/May harm some vehicles. Check owner's manual"

(3) "M-85/Minimum ___% Methanol"

(4) "E-85/Minimum ___% Ethanol/May harm some vehicles. Check owner's manual"

(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) "20% Biomass-Based Diesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"

(9) "B-100 Biodiesel/contains 100 percent biodiesel"

(10) "100% Biomass-Based Diesel/contains 100 percent biomass-based diesel"

* * * * *

6. Amend § 306.12 by revising paragraph (a)(2), by redesignating existing paragraphs (a)(4) through (a)(9) as paragraphs (a)(6) through (a)(11), respectively, by adding new paragraphs (a)(4) and (a)(5), by revising paragraph (b)(2), by removing the fifth illustration in paragraph (f), and by adding new illustrations after the existing illustrations in paragraph (f), to read as follows:

§ 306.12 Labels.

(a) *Layout* -

* * * * *

(2) *For alternative liquid automotive fuel labels (one principal component) other than, biodiesel, biomass-based diesel, biodiesel blends, and biomass-based diesel blends, and mixtures of gasoline and more than 10 percent ethanol.* The label is 3 inches (7.62 cm) wide × 2 1/2 inches (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, D.C. 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 mid-level ethanol blends.* (i) The label is 3 inches (7.62 cm) wide × 2 1/2 inches (6.35 cm) long. "Helvetica black" type is used throughout. The type in the band is centered both horizontally and vertically. The band at the top of the label contains one of the following:

(A) The numerical value representing the volume percentage of ethanol in the

fuel followed by the percentage sign and then by the term "ETHANOL";

(B) "X% - Y%," where X represents the numerical value of the minimum, at least 10, and Y represents the numerical value of the maximum, no more than 70, amount of ethanol in the fuel, followed by a line break and then the term "ETHANOL"; or

(C) "10% - 70%" followed by a line break and then the term "ETHANOL."

(ii) The band should measure 1 inch (2.54 cm) deep. The word "ETHANOL" is in 24 point font. The exact percentage disclosure in subsection (i) is in 24 point font. The range disclosures in subsections (ii) and (iii) are in 18 point font. The type below the black band is centered vertically and inset 3/16 inch (.48 cm) from the left edge of the box. The first line begins with a round bullet point in 16 point font and is followed by the text "MAY HARM SOME VEHICLES" in 20 point font. Below that text, a new line begins with a bullet point in 16 point font and is followed by the text "CHECK OWNER'S MANUAL" in 20 point font.

(5) *For mixtures of gasoline and at least 70 percent ethanol.* (i) The label is 3 inches (7.62 cm) wide × 2 1/2 inches (6.35 cm) long. "Helvetica black" type is used throughout. The band should measure 1 inch (2.54 cm) deep. The type in the band is in 50 point font and is centered both horizontally and vertically.

(A) If the fuel is E85, the type in the band reads "E-85."

(B) If the common name of the fuel is something other than E85, the type in the black band should be the common name of the fuel.

(ii) The type below the black band is centered vertically. The first line of text below the band, in 20 point font and centered horizontally, is the text: "MINIMUM X% ETHANOL," where X represents the numerical value of the minimum percentage of ethanol in the fuel. Below that text, a new line is left justified and inset 1/4 inch (.64 cm) from the left border of the label. The line begins with a round bullet point and is followed by the text "MAY HARM SOME VEHICLES" in 11 point font. Below that text, a new line is left justified and inset 1/4 inch (.64 cm) from the left border of the label. The line begins with a bullet point and is followed by the text "CHECK OWNER'S MANUAL" in 11 point font.

* * * * *

(b) * * *

(2) *For alternative liquid automotive fuel labels (one principal component).* Except as provided above, all type should be set in upper case (all caps) "Helvetica Black" 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. The type for the words "MINIMUM" and the principal component is 24 pt. (1/4 inch; (.64 cm) cap height.) The type for percentage is 36 pt. (3/8 inch; (.96 cm) cap height).

* * * * *

(f) *Illustrations of labels.*

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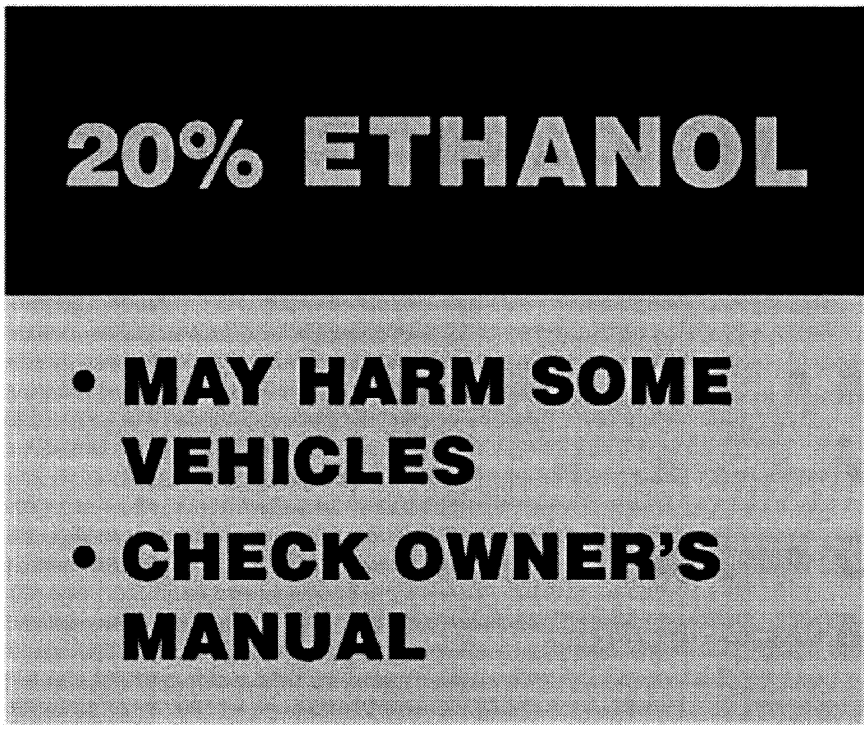
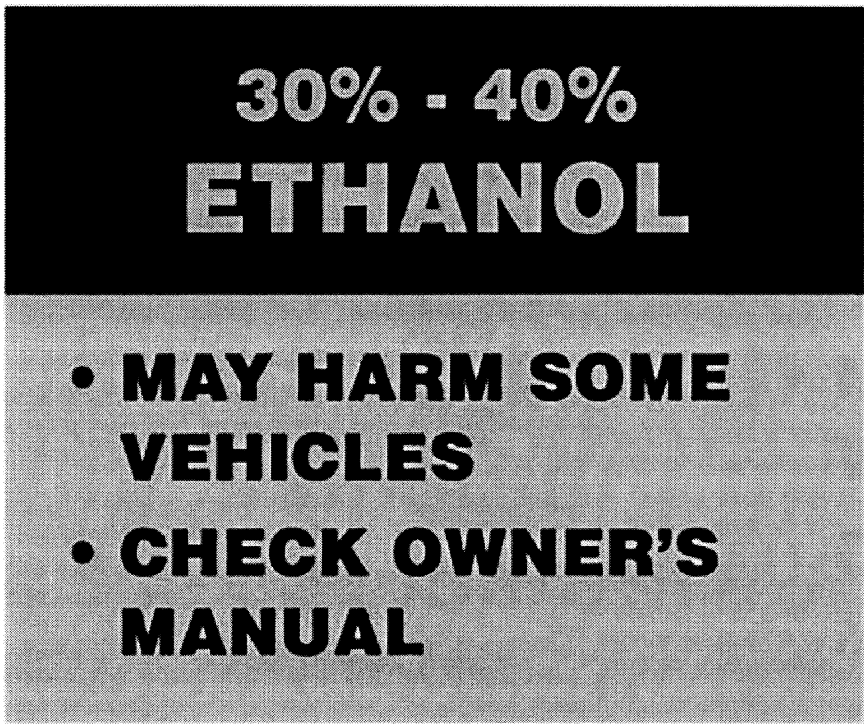
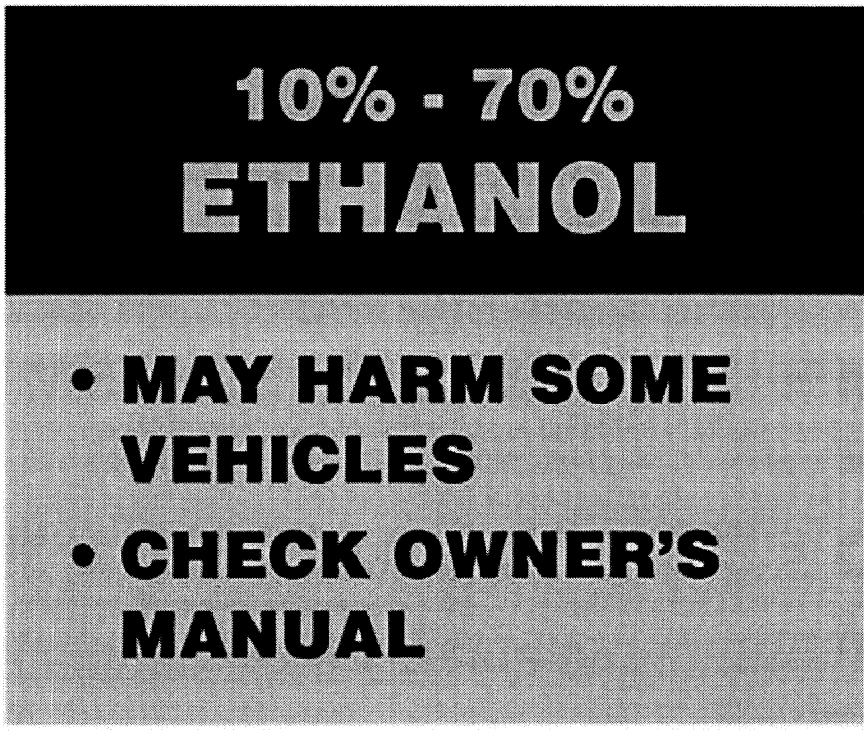
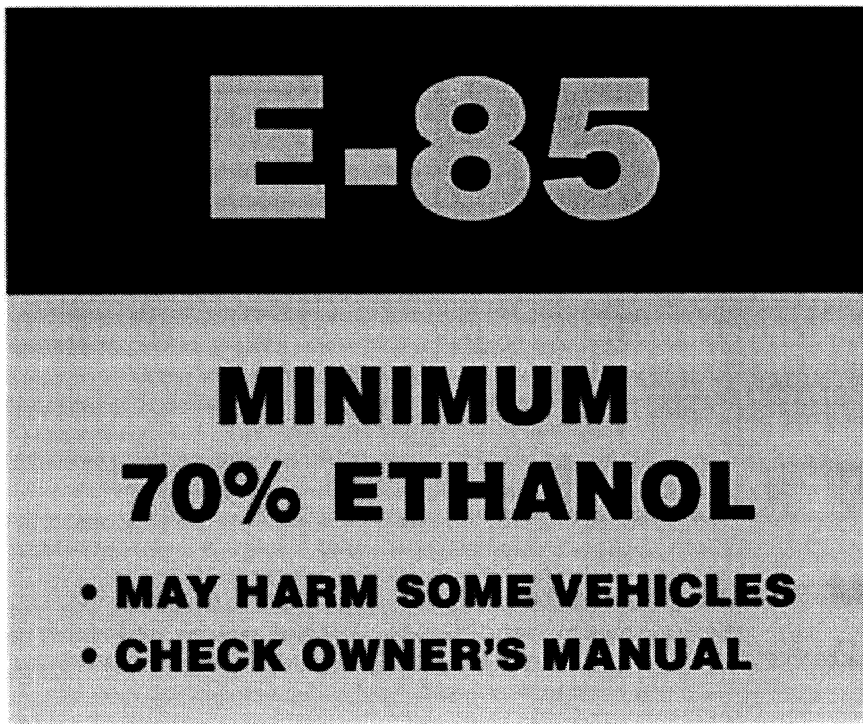
BILLING CODE 6750–01–S


20% ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL


30% - 40%
ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL


10% - 70%
ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL


E-85
MINIMUM
70% ETHANOL
• MAY HARM SOME VEHICLES
• CHECK OWNER'S MANUAL

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–5647 Filed 3–15–10: 8:45 am]

Billing Code: 6750–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 159

[USCBP–2010–0008]

RIN 1505–AC21

Courtesy Notice of Liquidation

AGENCY: Customes and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend title 19 of the Code of Federal Regulations (CFR) pertaining to the method by which CBP issues courtesy notices of liquidation. Courtesy notices of liquidation provide informal, advanced notice of the liquidation date and are not required by statute. Currently, CBP provides an electronic and a paper courtesy notice for importers of record whose entry summaries are electronically filed in the Automated Broker Interface (ABI). In an effort to streamline the notification process and reduce printing and mailing costs, CBP proposes to discontinue mailing paper courtesy notices of liquidation to importers of record whose entry summaries are filed in ABI.

DATE: Comments must be received on or before May 17, 2010.

ADDRESSES: You may submit comments, identified by *USCBP docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2010–0008.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW. (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and USCBP docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC.

Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Laurie Dempsey, Trade Policy and Programs, Office of International Trade, Customs and Border Protection, 202–863–6509.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. If appropriate to a specific comment, the commenter should reference the specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

Section 1500(e) of title 19 of the United States Code (19 U.S.C. 1500(e)) requires CBP to provide notice of liquidation to the importer or his agent and authorizes CBP to determine the form and manner by which to issue the notice. Section 159.1 of the CBP regulations (19 CFR 159.1) defines "liquidation" as the final calculation of duties (not including vessel repair duties) or drawback accruing on an entry. "Duties" is defined in 19 CFR 101.1 as "[c]ustoms duties and any internal revenue taxes which attach upon importation." Accordingly, in the customhouse at each port of entry, CBP posts the official bulletin notice of liquidation indicating the date of liquidation for the entries listed therein. 19 CFR 159.9(c). The posting of the bulletin notice of liquidation is "legal evidence of liquidation." 19 CFR 159.9(c).

CBP also has the discretion to provide advance notice of the liquidation date to the importer or his agent by issuing informal, courtesy notices of liquidation (hereinafter "courtesy notice" or "courtesy notices"). 19 CFR 159.9(d). The courtesy notice is not required by 19 U.S.C. 1500(e) and does not trigger the date upon which an importer may file a protest under 19 U.S.C. 1514 challenging certain aspects of the liquidation.

CBP intends to make certain changes to the distribution of courtesy notices of liquidation. Courtesy notices are mailed and/or issued electronically to two parties who use the Automated Broker Interface (ABI) to file their entry summaries: Importers of record and customs brokers who are duly authorized agents of the Importers.

Currently, CBP's Technology Center transmits, on a weekly basis, electronic courtesy notices to all ABI filers and mails paper courtesy notices, on CBP Form 4333–A, to all importers of record whose entry summaries are set to liquidate by each port of entry. As a result, two courtesy notices are issued for importers of record whose electronic entry summaries are filed in ABI: the ABI filer receives an electronic courtesy notice on behalf of the importer of record; and, the importer of record receives a paper courtesy notice. If the importer of record is the ABI filer, then the importer of record receives both an electronic and a paper courtesy notice. *See* 19 CFR part 143. If an importer files a paper formal entry with CBP, that importer receives a mailed courtesy notice. *See* 19 CFR parts 141 and 142.

In an effort to streamline the notification process and reduce printing and mailing costs, CBP is proposing to discontinue mailing the paper courtesy notice to importers of record whose entry summaries are filed in ABI. The ABI filer, who is either the importer of record or a customs broker, already receives an electronic courtesy notice thereby rendering the paper courtesy notice duplicative. If the proposal is adopted, ABI filers would only receive electronic courtesy notices. Below is an analysis of the cost savings that will result if CBP discontinues paper courtesy notices to these recipients.

Cost Savings

The following analysis details the cost savings that would be realized by the agency as a result of eliminating paper courtesy notices to importers of record who personally receive an electronic courtesy notice or whose broker receives