

tank, except that the franchisee's franchisor may restrict the installation of a tank on leased marketing premises of such franchisor;

(B) converting an existing tank or pump on the marketing premises of the franchisee for renewable fuel use, so long as such tank or pump and the piping connecting them are either warranted by the manufacturer or certified by a recognized standards setting organization to be suitable for use with such renewable fuel;

(C) advertising (including through the use of signage) the sale of any renewable fuel;

(D) selling renewable fuel in any specified area on the marketing premises of the franchisee (including any area in which a name or logo of a franchisor or any other entity appears);

(E) purchasing renewable fuel from sources other than the franchisor if the franchisor does not offer its own renewable fuel for sale by the franchisee;

(F) listing renewable fuel availability or prices, including on service station signs, fuel dispensers, or light poles; or

(G) allowing for payment of renewable fuel with a credit card,

so long as such activities described in subparagraphs (A) through (G) do not constitute mislabeling, misbranding, willful adulteration, or other trademark violations by the franchisee.

(2) Effect of provision

Nothing in this section shall be construed to preclude a franchisor from requiring the franchisee to obtain reasonable indemnification and insurance policies.

(c) Exception to 3-grade requirement

No franchise-related document that requires that 3 grades of gasoline be sold by the applicable franchisee shall prevent the franchisee from selling a renewable fuel in lieu of 1, and only 1, grade of gasoline.

(Pub. L. 95-297, title I, §107, as added Pub. L. 110-140, title II, §241(a), Dec. 19, 2007, 121 Stat. 1538.)

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1801 of Pub. L. 110-140, set out as a note under section 1824 of Title 2, The Congress.

SUBCHAPTER II—OCTANE DISCLOSURE

§ 2821. Definitions

As used in this subchapter:

(1) The term "octane rating" means the rating of the antiknock characteristics of a grade or type of automotive fuel as determined by dividing by 2 the sum of the research octane number plus the motor octane number, unless another procedure is prescribed under section 2823(c)(3) of this title, in which case such term means the rating of such characteristics as determined under the procedure so prescribed.

(2) The terms "research octane number" and "motor octane number" 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 (as in effect on June 19, 1978) and, with respect to any grade or type of automotive gasoline, are determined in accordance with test methods set forth in ASTM standard test methods designated D 2699 and D 2700 (as in effect on such date).

(3) The term "knock" means the combustion of a fuel spontaneously in localized areas of a cylinder of a spark-ignition engine, instead of the combustion of such fuel progressing from the spark.

(4) The term "automotive fuel retailer" means any person who markets automotive fuel to the general public for ultimate consumption.

(5) The term "refiner" means any person engaged in the production or importation of automotive fuel.

(6) The term "automotive fuel" means liquid fuel of a type distributed for use as a fuel in any motor vehicle.

(7) The term "motor vehicle" means any self-propelled four-wheeled vehicle, of less than 6,000 pounds gross vehicle weight, which is designed primarily for use on public streets, roads, and highways.

(8) The term "new motor vehicle" means any motor vehicle the equitable or legal title to which has not previously been transferred to an ultimate purchaser.

(9) The term "ultimate purchaser" means, with respect to any item, the first person who purchases such item for purposes other than resale.

(10) The term "manufacturer" means any person who imports, manufactures, or assembles motor vehicles for sale.

(11) The term "automotive fuel requirement" means, with respect to automotive fuel for use in a motor vehicle or a class thereof, imported, manufactured, or assembled by a manufacturer, the minimum automotive fuel rating of such automotive fuel which such manufacturer recommends for the efficient operation of such motor vehicle, or a substantial portion of such class, without knocking.

(12) The term "model year" means a manufacturer's annual production period (as determined by the Federal Trade Commission) for motor vehicles or a class of motor vehicles. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(13) The term "commerce" means any trade, traffic, transportation, exchange, or other commerce—

(A) between any State and any place outside of such State; or

(B) which affects any trade, transportation, exchange, or other commerce described in subparagraph (A).

(14) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(15) the term "person", for purposes of applying any provision of the Federal Trade

Commission Act [15 U.S.C. 41 et seq.] with respect to any provision of the subchapter, includes a partnership and a corporation.

(16) The term "distributor" means any person who receives automotive fuel and distributes such automotive fuel to another person other than the ultimate purchaser.

(17) The term "automotive fuel rating" means—

(A) the octane rating of an automotive spark-ignition engine fuel; and

(B) if provided for by the Federal Trade Commission by rule, the cetane rating of diesel fuel oils; or

(C) another form of rating determined by the Federal Trade Commission, after consultation with the American Society for Testing and Materials, to be more appropriate to carry out the purposes of this subchapter with respect to the automotive fuel concerned.

(18)(A) The term "cetane rating" means a measure, as indicated by a cetane index or cetane number, of the ignition quality of diesel fuel oil and of the influence of the diesel fuel oil on combustion roughness.

(B) The term "cetane index" and the term "cetane number" have the meanings determined in accordance with the test methods set forth in the American Society for Testing and Materials standard test methods—

(i) designated D976 or D4737 in the case of cetane index; and

(ii) designated D613 in the case of cetane number,

(as in effect on October 24, 1992) and shall apply to any grade or type of diesel fuel oils defined in the specification of the American Society for Testing and Materials entitled "Standard Specification for Diesel Fuel Oils," designated D975 (as in effect on October 24, 1992).

(Pub. L. 95-297, title II, §201, June 19, 1978, 92 Stat. 333; Pub. L. 102-486, title XV, §1501(a)-(c)(1), Oct. 24, 1992, 106 Stat. 2996.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in par. (15), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

October 24, 1992, referred to in par. (18)(B), was in the original "the date of the enactment of this Act" and "such date", which were translated as meaning the date of enactment of Pub. L. 102-486, which enacted par. (18), to reflect the probable intent of Congress.

AMENDMENTS

1992—Par. (1). Pub. L. 102-486, §1501(c)(1)(A), substituted "fuel" for "gasoline".

Par. (2). Pub. L. 102-486, §1501(c)(1)(B), substituted "Standard Specification for Automotive Spark-Ignition Engine Fuel" for "Standard Specifications for Automotive Gasoline" and "D4814 for "D 439".

Par. (4). Pub. L. 102-486, §1501(c)(1)(C), substituted "automotive fuel" for first reference to "gasoline" and "fuel" for second reference to "gasoline".

Par. (5). Pub. L. 102-486, §1501(c)(1)(D), added par. (5) and struck out former par. (5) which read as follows: "The term 'refiner' means any person engaged in—

"(A) the refining of crude oil to produce automotive gasoline; or

"(B) the importation of automotive gasoline."

Par. (6). Pub. L. 102-486, §1501(a), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "The term 'automotive gasoline' means gasoline of a type distributed for use as a fuel in any motor vehicle."

Par. (11). Pub. L. 102-486, §1501(c)(1)(E), substituted "automotive fuel" for "octane" before "requirement" and before "rating", and "fuel" for "gasoline" before "for use" and before "which such".

Par. (16). Pub. L. 102-486, §1501(c)(1)(F), substituted "automotive fuel" for "gasoline" in two places.

Pars. (17), (18). Pub. L. 102-486, §1501(b), added pars. (17) and (18).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1501(d)(1) of Pub. L. 102-486 provided that: "The amendments made by this section [amending this section and sections 2822 and 2823 of this title] shall become effective at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 24, 1992]."

REGULATIONS

Section 1501(d)(2) of Pub. L. 102-486 provided that: "The Federal Trade Commission shall, within 270 days after the date of the enactment of this Act [Oct. 24, 1992], prescribe rules for the purpose of implementing the amendments made in this section [amending this section and sections 2822 and 2823 of this title]."

§ 2822. Automotive fuel rating testing and disclosure requirements

(a) Determination and certification of automotive fuel rating by refiner distributing automotive fuel

Each refiner who distributes automotive fuel in commerce shall—

(1) determine the automotive fuel rating of any such fuel; and

(2) if such refiner distributes such fuel to any person other than the ultimate purchaser, certify, consistent with the determination made under paragraph (1), the automotive fuel rating of such fuel.

(b) Certification of automotive fuel rating by distributor receiving and distributing automotive fuel with certified automotive fuel rating; use of automotive fuel rating for certification by distributor

Each distributor who receives automotive fuel, the automotive fuel rating of which is certified to him under this section, and distributes such fuel in commerce to another person other than the ultimate purchaser shall certify to such other person the automotive fuel rating of such fuel consistent with—

(1) the automotive fuel rating of such fuel certified to such distributor; or

(2) if such distributor elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the automotive fuel rating of such fuel determined by such distributor.

(c) Display of automotive fuel rating by automotive fuel retailer; use of automotive fuel rating for display

Each automotive fuel retailer shall display in a clear and conspicuous manner, at the point of sale to ultimate purchasers of automotive fuel, the automotive fuel rating of such automotive

fuel, which automotive fuel rating shall be consistent with—

(1) the automotive fuel rating of such automotive fuel certified to such retailer under subsection (a)(2) or (b) of this section;

(2) if such automotive fuel retailer elects (at such time and in such manner as the Federal Trade Commission may, by rule, prescribe), the automotive fuel rating of such automotive fuel determined by such retailer for such automotive fuel; or

(3) if such automotive fuel retailer is a refiner, the automotive fuel rating of such automotive fuel determined under subsection (a)(1) of this section.

(d) Display or representation of automotive fuel requirements for new motor vehicles by manufacturer of such vehicles; promulgation of rules by Federal Trade Commission

The Federal Trade Commission shall, by rule, prescribe requirements, applicable to any manufacturer of new motor vehicles, with respect to the display on each such motor vehicle (or representation in connection with the sale of each such motor vehicle) of the automotive fuel requirement of such motor vehicle.

(e) Representation of antiknock characteristics of automotive fuel by person distributing automotive fuel; use of automotive fuel rating in representation

No person who distributes automotive fuel in commerce may make any representation respecting the antiknock characteristics of such fuel unless such representation fairly discloses the automotive fuel rating of such fuel consistent with such fuel's automotive fuel rating as certified to or determined by such person under the foregoing provisions of this section.

(f) Additional statutory considerations respecting certification, display, or representation of automotive fuel rating of automotive fuel

For purposes of this section, the automotive fuel rating of any automotive fuel shall be considered to be certified, displayed, or represented by any person consistent with the rating certified to, or determined by, such person—

(1) in the case of automotive fuel which consists of a blend of two or more quantities of automotive fuel of differing automotive fuel ratings, only if the rating certified, displayed, or represented by such person is the average of the automotive fuel ratings of such quantities, weighted by volume; or

(2) in the case of fuel which does not consist of such a blend, only if the automotive fuel rating such person certifies, displays, or represents is the same as the automotive fuel rating of such fuel certified to, or determined by, such person.

(g) Nonapplicability of statutory requirements

The foregoing provisions of this section shall not apply—

(1) to any representation (by display at the point of sale or by other means) of any characteristics of any automotive fuel other than its automotive fuel rating; or

(2) to the identification of automotive fuel at the point of sale (or elsewhere) by the

trademark, trade name, or other identifying symbol or mark used in connection with the sale of such fuel.

(h) Display or representation of automotive fuel requirement of motor vehicle not to create express or implied warranty under State or Federal law respecting knocking characteristics of automotive fuel

Any display or representation, with respect to the automotive fuel requirement of any motor vehicle, required to be made under any rule prescribed under subsection (d) of this section shall not create an express or implied warranty under State or Federal law that any automotive fuel the automotive fuel rating of which equals or exceeds such automotive fuel requirement—

(1) may be used as a fuel in all motor vehicles of the same class as that motor vehicle without knocking; or

(2) may be used as a fuel in such motor vehicle under all operating conditions without knocking.

(Pub. L. 95-297, title II, §202, June 19, 1978, 92 Stat. 334; Pub. L. 102-486, title XV, §1501(c)(2), Oct. 24, 1992, 106 Stat. 2997.)

AMENDMENTS

1992—Pub. L. 102-486 amended section as follows: substituted “Automotive fuel rating” for “Octane” in section catchline; substituted “automotive fuel rating” and “automotive fuel ratings” for “octane rating” and “octane ratings”, respectively, wherever appearing; in subsecs. (a) and (b), substituted “fuel” for “gasoline” wherever appearing; in subsec. (c), substituted “automotive fuel” for “gasoline” wherever appearing except that “fuel” substituted for second reference to “gasoline”; in subsec. (d), substituted “automotive fuel” for “octane”; in subsec. (e), substituted “fuel” for “gasoline” wherever appearing and substituted “fuel’s” for “gasoline’s”; in subsecs. (f), (g), and (h), substituted “fuel” for “gasoline” wherever appearing; and in subsec. (h), substituted “automotive fuel requirement” for “octane requirement” wherever appearing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 effective at end of one-year period beginning Oct. 24, 1992, see section 1501(d)(1) of Pub. L. 102-486, set out as a note under section 2821 of this title.

EFFECTIVE DATE

Section 205 of Pub. L. 95-297 provided that:

“(a) Sections 202(a)(1) [subsec. (a)(1) of this section] and 203(b) [section 2823(b) of this title] shall take effect on the first day of the first calendar month beginning more than 6 months after the date of the enactment of this Act [June 19, 1978].

“(b) Subsections (a)(2), (b), (c), and (e) of section 202 [subsecs. (a)(2), (b), (c), and (e) of this section] shall take effect on the first day of the first calendar month beginning more than 9 months after such date of enactment [June 19, 1978].

“(c) Rules under section 202(d) [subsec. (d) of this section] may not take effect earlier than the beginning of the first motor vehicle model year which begins more than 9 months after such date of enactment [June 19, 1978].”

STUDIES

Section 1503 of Pub. L. 102-486 directed Administrator of Environmental Protection Agency to carry out a study to determine whether the anti-knock characteristics of nonliquid fuels usable as a fuel for motor vehicles could be determined and further directed Federal

Trade Commission to carry out a study to determine the need for a uniform national label on devices used to dispense automotive fuel to consumers that would consolidate all information required by Federal law to be posted on such devices, with reports of the results of the studies to be submitted to Congress within one year of Oct. 24, 1992, together with recommendations and a description of the administrative and legislative actions needed to implement the recommendations.

§ 2823. Administration and enforcement provisions

(a) Procedural, investigative, and enforcement powers of Federal Trade Commission

The Federal Trade Commission shall have procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements of this subchapter and rules prescribed pursuant to the requirements of this subchapter, to further define terms used in this subchapter, and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were part of this subchapter.

(b) Testing, certification, and notice requirements of Environmental Protection Agency; interagency enforcement agreements between Federal Trade Commission and Environmental Protection Agency and other Federal agencies

(1) The Environmental Protection Agency—

(A) may conduct field testing of the automotive fuel rating of automotive fuel, comparing the tested automotive fuel rating of fuel at retail outlets with the automotive fuel rating posted at those outlets;

(B) shall certify the results of such tests and comparisons to the Federal Trade Commission; and

(C) shall notify the Federal Trade Commission of any failure to post the automotive fuel rating.

(2) The Federal Trade Commission may enter into interagency agreements with the Environmental Protection Agency and such other agencies of the United States as the Commission determines appropriate for the purpose of assuring enforcement of the provisions of this subchapter in a manner which is consistent with—

(A) minimizing the cost of field inspection and related compliance activities; and

(B) reducing duplication of similar or related field compliance activities performed by agencies of the United States.

(c) Promulgation of rules by Federal Trade Commission; contents; requirements for compliance with rules

(1) Not later than 6 months after June 19, 1978, the Federal Trade Commission shall, by rule, prescribe and make effective—

(A) a uniform method by which a person may certify to another the automotive fuel rating of automotive fuel; and

(B) a uniform method of displaying the automotive fuel rating of automotive fuel at the point of sale to ultimate purchasers.

(2) Effective on and after the effective date of the rule prescribed under paragraph (1), any person—

(A) shall be considered to satisfy the requirements of subsection (a) or (b) of section 2822 of this title, as the case may be, only if such person complies with the requirements established pursuant to paragraph (1)(A); and

(B) shall be considered to satisfy the requirements of section 2822(c) of this title only if such person complies with the requirements established pursuant to paragraph (1)(B).

(3) The Federal Trade Commission may, by rule, prescribe procedures for determination of the automotive fuel rating of automotive fuel which varies from that prescribed in section 2821 of this title. In prescribing such rule, the Commission—

(A) shall consider—

(i) ease of administration and enforcement, and

(ii) industry practices in the distribution and marketing of automotive fuel; and

(B) may permit adjustments in such automotive fuel rating to take into account the effects of altitude, temperature, and humidity.

(4) The Federal Trade Commission may, by rule, prescribe and make effective a method of determining the automotive fuel rating of automotive fuel which consists of a blend of two or more quantities of automotive fuel of different automotive fuel ratings if the Federal Trade Commission finds that the method prescribed more accurately reflects the automotive fuel rating of such blend than the weighted-average method set forth in section 2822(f)(1) of this title. Effective on and after the effective date of such rule, any person shall be considered to satisfy the requirements of section 2822(f)(1) of this title only if such person utilizes the method prescribed in such rule (in lieu of the method set forth in section 2822(f)(1) of this title).

(d) Statutory provisions applicable for promulgation of rules

(1) Except as provided in paragraph (2), rules under this subchapter shall be prescribed in accordance with section 553 of title 5, except that interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

(2) Rules prescribed under subsection (c)(3) of this section and section 2822(d) of this title shall be prescribed on the record after opportunity for an agency hearing.

(3) Section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) shall not apply with respect to any rule prescribed under this subchapter.

(e) Acts or practices constituting violations

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C. 45(a)(1)]) for any person to violate subsection (a), (b), (c), or (e) of section 2822 of this title, or a rule prescribed under subsection (d) of section 2822 of this title. For purposes of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] (including any remedy or penalty applicable to any violation thereof) such a violation shall be treated as a violation of a rule

under such Act respecting unfair or deceptive acts or practices.

(Pub. L. 95-297, title II, § 203, June 19, 1978, 92 Stat. 335; Pub. L. 102-486, title XV, §§ 1501(c)(3), 1502(b), (c), Oct. 24, 1992, 106 Stat. 2997, 2998.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (e), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-486, § 1502(c), struck out “shall” after “Agency” in introductory provisions, inserted “may” before “conduct” in subparagraph (A), inserted “shall” before “certify” in subparagraph (B), and in subparagraph (C) inserted “shall” before “notify” and struck out before period at end “discovered in the course of such field testing”.

Pub. L. 102-486, § 1501(c)(3)(A), (B), substituted “automotive fuel rating” for “octane rating” and “fuel” for “gasoline” wherever appearing.

Subsec. (c). Pub. L. 102-486, § 1501(c)(3), substituted “automotive fuel rating” for “octane rating” and “fuel” for “gasoline” wherever appearing, “section 2821” for “section 2821(1)” in par. (3), and “automotive fuel ratings” for “octane ratings” in par. (4).

Subsec. (e). Pub. L. 102-586, § 1502(b), struck out before end of second sentence “; except that for purposes of section 5(m)(1)(A) of such Act, the term ‘or knowledge fairly implied on the basis of objective circumstances’ shall not apply to any violation by any gasoline retailer of the requirements of section 2822(c) or (e) of this title”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1501(c)(3) of Pub. L. 102-486 effective at the end of the one-year period beginning Oct. 24, 1992, see section 1501(d)(1) of Pub. L. 102-486, set out as a note under section 2821 of this title.

EFFECTIVE DATE

Subsec. (b) of this section effective on first day of first calendar month beginning more than 6 months after June 19, 1978, see section 205(a) of Pub. L. 95-297, set out as a note under section 2822 of this title.

§ 2824. Relationship of statutory provisions to State and local laws

(a) To the extent that any provision of this subchapter applies to any act or omission, no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b) of this section, any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this subchapter.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a) of this section.

(Pub. L. 95-297, title II, § 204, June 19, 1978, 92 Stat. 337; Pub. L. 102-486, title XV, § 1502(a), Oct. 24, 1992, 106 Stat. 2997.)

AMENDMENTS

1992—Pub. L. 102-486 amended section generally. Prior to amendment, section read as follows: “To the extent

that any provision of this subchapter applies to any act or omission, no State or any political subdivision thereof may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this subchapter.”

SUBCHAPTER III—SUBSIDIZATION OF MOTOR FUEL MARKETING

§ 2841. Study by Secretary of Energy

(a) Consultation with Chairman of Federal Trade Commission, Attorney General, and other agencies deemed appropriate by Secretary

The Secretary of Energy, in consultation with the Chairman of the Federal Trade Commission and the Attorney General and other agencies as the Secretary deems appropriate, shall conduct a study of the extent to which producers, refiners, and other suppliers of motor fuel subsidize the sale of such motor fuel at retail or wholesale with profits obtained from other operations.

(b) Scope

Such study shall examine—

(1) the role of vertically integrated operations in facilitating subsidization of sales of motor fuel at wholesale or retail;

(2) the extent to which such subsidization is predatory and presents a threat to competition;

(3) the profitability of various segments of the petroleum industry;

(4) the impact of prohibiting such subsidization on the competitive viability of various segments of the petroleum industry, on prices of motor fuel to consumers and on the health and structure of the petroleum industry as a whole; and

(5) such other matters as the Secretary considers appropriate.

(c) Notice to interested parties and opportunity to present written and oral data, views and arguments

In conducting the study required by this section, the Secretary shall give appropriate notice and afford interested persons an opportunity to present written and oral data, views and arguments concerning such study.

(d) Report to Congress; contents and time for submission; Presidential promulgation of rules establishing interim measures; submission date and duration of interim measures; Congressional approval of interim measures

(1) The Secretary shall report the results of the study required by this section, together with such recommendations for legislative action and such statistical evidence as he deems appropriate to the Congress on or before the expiration of the eighteenth month after June 19, 1978.

(2) If the President determines that interim measures are necessary and appropriate to maintain the competitive viability of the marketing sector of the petroleum industry during Congressional consideration of the recommendations contained in the report submitted under paragraph (1), he shall prescribe, by rule, in accordance with the procedures set forth in section 6393(a) of title 42 such interim measures.