



<sup>3</sup> ASTM International was formerly known as, and is referred to in the Fuel Rating Rule as, the American Society for Testing and Materials.

<sup>4</sup> ASTM D6751 is titled: "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels." EISA defines "biomass-based diesel" by referencing the definition of the term "biodiesel" provided in Section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)). The definition reads: "a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under [42 U.S.C. 7545] Environmen6gistrat9Aa

<sup>1</sup> In 1993, the Commission explained that "[t]he Fuel Rating Rule . . . applies to all present and future alternative liquid automotive fuels." 58 FR 41355, 41358 (Aug. 3, 1993).

<sup>2</sup> The EPA has issued registration requirements for fuels and fuel additives (40 CFR Part 79 "Registration of Fuels and Fuel Additives") pursuant to 42 U.S.C. 7545. Those requirements constitute EPA's regulatory program for the registration of motor vehicle diesel fuel (including biomass-based diesel and biodiesel), motor vehicle gasoline, and their additives.





biodiesel or biomass-based diesel in fuels, their concentrations should be counted separately. Thus, the final amendments define the term “biodiesel blend” as a blend containing more than five percent biodiesel, and it defines a new term, “biomass-based diesel blend,” as a blend containing more than five percent biomass-based diesel. The final amendments also explicitly do not cover 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.” These changes are consistent with EISA’s provision that retailers need not disclose biodiesel and biomass-based diesel in concentrations of five percent or less.

Furthermore, the Commission is incorporating these new terms into the rating and certification requirements. Therefore, covered entities must rate and certify the percentage of biodiesel and/or biomass-based diesel in a fuel blend independently. As noted above, because biodiesel and biomass-based diesel must be separately rated and disclosed on separate labels, it is theoretically possible that a single fuel blend could contain more than five percent of each and, therefore, would require two separate labels. However, the Commission has no evidence that there is any substantial market for such dual blends at this time. If this requirement becomes unwieldy at some future date, any affected party may petition for revisions to the Rule.

Although the final amendments require separate labeling of biodiesel and biomass-based diesel fuels, they do not change the text below the label’s black band for either biodiesel or biomass-based diesel blends, notwithstanding several commenters’ views that the text could confuse consumers. As explained above, EISA requires that this specific language appear on the label. Section 205(b) explicitly states that blends at concentrations of more than five percent and no more than twenty percent “*shall be labeled ‘contains biomass-based diesel or biodiesel in quantities between 5 and 20 percent’*” and that blends at concentrations above twenty percent “*shall be labeled ‘contains more than 20 percent biomass-based diesel or biodiesel.’*” EISA, Sec. 205(b) (emphasis added). The Commission, therefore, does not have discretion to allow different language.

*Examples*

To illustrate the application of the revised labeling requirements, the Commission provides the following examples:

1) A fuel blend containing five percent biomass-based diesel and five percent biodiesel does not require any additional labeling because the Rule only applies to diesel blends containing more than five percent biodiesel and/or more than five percent biomass-based diesel.

2) A blend containing six percent biodiesel and five percent biomass-based diesel requires a blue label with either “Lt

<sup>16</sup> Some commenters suggested green as an appropriate background color for biodiesel. However, as noted by API, the color green is associated with diesel fuel, and biodiesel labels should present a significant contrast to 100 percent petroleum-based diesel to avoid the risk of confusion.

require that the labels display the maximum volume of biodiesel and/or biomass-based diesel in a blend. Finally, the Engine Manufacturers Association ("EMA") proposed requiring the label for neat biodiesel to state whether the fuel meets the standards of ASTM D6751.

The final amendments do not incorporate these suggestions. Requiring a "consult manufacturer fuel recommendations" warning is inconsistent with the Fuel Rating Rule's treatment of other alternative fuels. The Commission notes, however, that nothing in the regulations prohibits a retailer from disclosing the warnings proposed by AMA and ATA. In addition, the Commission does not agree with API's and BP's suggestion that the term "maximum" appear on biodiesel fuel labels. The final amendments already require ratings and posting of a specific percentage designation for biodiesel fuels at concentrations of over twenty percent and, therefore, such a designation would be confusing. Finally, the Commission declines to adopt EMA's proposed language for neat biodiesel. In light of the final amendments, which now require different labels for neat biodiesel and neat biomass-based diesel, retailers may only label a fuel as "Biodiesel" if it meets the definition of "biodiesel" in Part 306.0, which specifically incorporates ASTM D6751 by reference.

*E. A i g N s e c i f i c P e c e a g e  
D e s i g n a t i o n s ("B i d i e s e l") f  
B e d s a C e a i s f l  
T e P e c e a d R e i i g s e c i f i c  
D e s i g n a t i o n s ("B X X") f  
C e a i s E c e e d i g T e  
P e c e*

In the NPRM, the Commission sought comment on whether it should revise the Fuel Rating Rule to require a specific designation (e.g., "B-15") of the percentage of biodiesel and/or biomass-based diesel in a blend. As proposed in the NPRM, the amendments would have required specific designations for concentrations in excess of twenty percent, and allowed, but not required, the designations for concentrations up to twenty percent.

*C e a i s f T e P e c e  
L e s s*

All commenters agreed that the final amendments should not require a specific percentage disclosure at concentrations of twenty percent or less. Several noted that compliance with

such a requirement would be impractical. ATA, for example, asserted that retailers often mix different biodiesel fuels with concentration levels ranging from five to twenty percent at the point of sale, making it extremely difficult to know the exact concentration of a biodiesel fuel blend sold from a given dispenser. Similarly, the Petroleum Marketers Association of America ("PMAA") noted that "[a] label with a generic range would give retailers the flexibility to increase or decrease biodiesel blends to meet supply without changing the label." In addition, EMA explained that "many manufacturers approve the use of biodiesel blends up to 20%. Consequently, there is no quality reason or rationale to make a specific delineation among blends less than 20%. A single designation is sufficient to assure the quality of a blended fuel."

However, while not advocating for an exact percentage designation, ATA and individual commenter Johnas Carson suggested requiring disclosure of the percentage of biodiesel and biomass-based diesel in a fuel using blend increments of five percentage points (e.g., "contains biodiesel in amounts between B-10 and B-15").

*C e a i s f M e h a T e  
P e c e*

Commenters generally supported the Commission's proposal to require a specific designation when disclosing the presence of more than twenty percent biodiesel and/or biomass-based diesel in

<sup>17</sup> See note 23, *i f a*, and accompanying text.

<sup>18</sup> Commenters raised two additional topics that went beyond the scope of EISA or the Fuel Rating Rule. First, API asserted that biodiesel may not be compatible with "the existing retail-diesel infrastructure" and states that "[t]his is an area that we believe should be addressed." Second, individual commenter Jeff Cohan inquired about accuracy of media reports concerning the interaction of biodiesel fuels and fuel efficiency requirements. As these comments involve matters beyond the scope of this rulemaking, the Commission does not address them.







industry members already engage in their normal course of business.<sup>28</sup>

Because the procedures for distributing and selling biodiesel fuels are no different from those for other automotive fuels, the Commission expects that, consistent with practices in the fuel industry generally, the covered parties in the biodiesel fuel industry will record the fuel rating certification on documents (*e.g.*, shipping receipts) already in use, or will employ a one-time letter of certification. Furthermore, the Commission expects that labeling of biodiesel fuel pumps will be consistent with practices in the fuel industry generally. The information collection burden, therefore, will be the same as for other automotive fuels: five minutes per year for recordkeeping and 1/8th hour per year for disclosure.

Based on statistics provided by NBB, the Commission estimates that there are approximately 200 producers, 1500 retailers, and 2000 distributors of biodiesel.<sup>29</sup> Conservatively assuming that each producer, distributor, and retailer of biodiesel is a distinct entity, and that each seller of biodiesel will spend five minutes (or 1/12th hour) per year complying with the recordkeeping requirements, and assuming that each retailer will spend 1/8th hour per year complying with the disclosure requirements, the Commission estimates an incremental annual burden of 308 hours for recordkeeping (1/12th hour per year x 3700 entities) and 188 hours for disclosure (1/8th hour per year x 1,500 retailers).

*D. Agency a b OMB*

Pursuant to the PRA, 44 U.S.C. 3501–3521, the FTC submitted to OMB for review and approval the collections of information contained in the Rule. On May 23, 2008, under OMB Control No. 3084–0068, OMB granted approval through May 31, 2011.

<sup>28</sup> For OMB purposes, “burden” does not include efforts to comply with a collection of information that a covered party would expend in any event. 5 CFR 1320.3(b)(2).

<sup>29</sup> Because the biodiesel industry is young, estimates of its size may not be as accurate as estimates of the size of more mature industries. Therefore, we have conservatively rounded up from the actual statistics provided by the NBB. In a document dated January 25, 2008, the NBB estimated a total of 171 producers of biodiesel and biodiesel blends. See (*h* :// .*bi diese* . *g/ df\_ fi es/ f e fac shee s/ P d c i \_C a ci* ; *df*.) In addition, the NBB’s website lists all known distributors (*h* :// .*bi diese* . *g/ b i gbi diese /dis ib s/sh a .a* ) and retailers (*h* :// .*bi diese* . *g/b i gbi diese / e ai f e i gsi es/sh a .a* ) of biodiesel. As of February 4, 2008, the site listed approximately 1250 retailers and 1775 distributors of biodiesel and biodiesel blends.

The Regulatory Flexibility Act (“RFA”) 5 U.S.C. 601-612, 633-638, 640-644, 646-647, 650-652, 654-655, 657-658, 660-661, 663-664, 666-669, 671-673, 675-676, 678-679, 681-682, 684-685, 687-688, 690-691, 693-694, 696-697, 699-700, 702-703, 705-706, 708-709, 711-712, 714-715, 717-718, 720-721, 723-724, 726-727, 729-730, 732-733, 735-736, 738-739, 741-742, 744-745, 747-748, 750-751, 753-754, 756-757, 759-760, 762-763, 765-766, 768-769, 771-772, 774-775, 777-778, 780-781, 783-784, 786-787, 789-790, 792-793, 795-796, 798-799, 801-802, 804-805, 807-808, 810-811, 813-814, 816-817, 819-820, 822-823, 825-826, 828-829, 831-832, 834-835, 837-838, 840-841, 843-844, 846-847, 849-850, 852-853, 855-856, 858-859, 861-862, 864-865, 867-868, 870-871, 873-874, 876-877, 879-880, 882-883, 885-886, 888-889, 891-892, 894-895, 897-898, 899-900, 902-903, 905-906, 908-909, 911-912, 914-915, 917-918, 920-921, 923-924, 926-927, 929-930, 932-933, 935-936, 938-939, 941-942, 944-945, 947-948, 950-951, 953-954, 956-957, 959-960, 962-963, 965-966, 968-969, 971-972, 974-975, 977-978, 980-981, 983-984, 986-987, 989-990, 992-993, 995-996, 998-999, 1001-1002, 1004-1005, 1007-1008, 1010-1011, 1013-1014, 1016-1017, 1019-1020, 1022-1023, 1025-1026, 1028-1029, 1031-1032, 1034-1035, 1037-1038, 1040-1041, 1043-1044, 1046-1047, 1049-1050, 1052-1053, 1055-1056, 1058-1059, 1061-1062, 1064-1065, 1067-1068, 1070-1071, 1073-1074, 1076-1077, 1079-1080, 1082-1083, 1085-1086, 1088-1089, 1091-1092, 1094-1095, 1097-1098, 1099-1100, 1102-1103, 1105-1106, 1108-1109, 1111-1112, 1114-1115, 1117-1118, 1120-1121, 1123-1124, 1126-1127, 1129-1130, 1132-1133, 1135-1136, 1138-1139, 1141-1142, 1144-1145, 1147-1148, 1150-1151, 1153-1154, 1156-1157, 1159-1160, 1162-1163, 1165-1166, 1168-1169, 1171-1172, 1174-1175, 1177-1178, 1180-1181, 1183-1184, 1186-1187, 1189-1190, 1192-1193, 1195-1196, 1198-1199, 1201-1202, 1204-1205, 1207-1208, 1210-1211, 1213-1214, 1216-1217, 1219-1220, 1222-1223, 1225-1226, 1228-1229, 1231-1232, 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3679-3680, 3682-3683, 3685-3686, 3688-3689, 3691-3692, 3694-3695, 3697-3698, 3699-3700, 3702-3703, 3705-3706, 3708-3709, 3711-3712, 3714-3715, 3717-3718, 3720-3721, 3723-3724, 3726-3727, 3729-3730, 3732-3733, 3735-3736, 3738-3739, 3741-3742, 3744-3745, 3747-3748, 3750-375

employed by industry members, namely, administrative.

*E. A e a i es C side ed*

Section 205 of EISA requires that “[e]ach retail diesel fuel pump 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 or biodiesel blend that is offered for sale, as determined by the Federal Trade Commission.” The Commission, therefore, must require covered entities to accurately rate, certify, and label biodiesel fuels.

The Commission has amended the Fuel Rating Rule in a manner that minimizes the economic impact, if any, from Section 205’s labeling requirements. As explained above, the Commission has designed the rating, certification, and labeling requirements so that industry members may use documents already in use to certify a biodiesel fuel’s rating. Furthermore, the Commission is promulgating labeling provisions requiring only language specifically provided by Section 205 or necessary to inform consumers of the percentage of biodiesel or biomass-based diesel contained in a fuel. Moreover, the commenters have not identified any alternative requirements that would reduce this burden. Accordingly, the Commission concludes that there are no alternative requirements that would reduce the burden on industry members and satisfy EISA’s mandate.

*Energy conservation, Gasoline,*

*Incorporation by reference, Labeling,*

*Reporting and recordkeeping requirements.*

■ For the reasons set out above, the Commission amends 16 CFR Part 306 as follows:

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

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

16 U.S.C. 15 U.S.C. 2801 *e se .*; Pub. L. 110-140.

■ 2. Section 306.0 is amended as follows:

- a. Paragraph (i)(2) is revised.
- b. Paragraph (i)(3) is added.
- c. Paragraph (j)(2) is revised.
- d. Paragraph (j)(3) is added.

■

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

§ 306.6 Certification.

\* \* \* \* \*

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

\* \* \* \* \*

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

§ 306.10 Automotive fuel rating posting.

\* \* \* \* \*

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

- (1) "Methanol/Minimum \_\_\_% Methanol"
- (2) "Ethanol/Minimum \_\_\_% Ethanol"
- (3) "M—85/Minimum \_\_\_% Methanol"
- (4) "E—85/Minimum \_\_\_% Ethanol"
- (5) "LPG/Minimum \_\_\_% Propane" or "LPG/Minimum \_\_\_% Propane and \_\_\_% Butane"

- (6) "LNG/Minimum \_\_\_% Methane"
- (7) "B—20 Biodiesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"
- (8) "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. Section 306.12 is amended as follows:

■

“B” followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (*e.g.*, “B-70”) and then the term “Biodiesel Blend.”

