

**Supporting Statement for
Information Collection Provisions of the Rule
Concerning Labeling Requirements for Alternative Fuels
And Alternative Fueled Vehicles
16 C.F.R. Part 309
(OMB Control #3084-0094)**

(1) Necessity for Collecting the Information

The Energy Policy Act of 1992 (“EPA 92” or “Act”), Pub. L. 102-486, establishes a comprehensive national energy policy to increase gradually and steadily U.S. energy security in cost-effective and environmentally beneficial ways. The Act seeks to reduce U.S. dependence on oil imports, encourage conservation and more efficient energy use, reduce the use of oil-based fuels in the motor vehicle sector, and provide new energy options. The Act provides for programs that encourage the development of alternative fuels and Alternative Fueled Vehicles (AFVs).

EPA 92 directed the Federal Trade Commission (“FTC” or “Commission”) to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and AFVs. In accordance with the statutory directive, on May 9, 1995, the Commission issued the Alternative Fuel Rule (“Rule”), 16 CFR Part 309, which implements the Energy Policy Act of 1992, Pub. L. 102-486, and requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels, effective August 21, 1995, and on labels on AFVs, effective November 20, 1995. To ensure the accuracy of the labeling disclosures, the Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

EPA 92 did not specify what information should be displayed on these labels. Instead, it provided generally that the Commission's rule must require disclosure of “appropriate,” “useful,” and “timely” cost and benefit information on “simple” labels. The purpose of the labeling requirements is to enable consumers to make informed choices and comparisons among competing non-liquid alternative vehicle fuels and AFVs. In formulating the Rule, the Commission considered the problems associated with developing and publishing the required information, taking into account lead time, costs, frequency of changes in costs and benefits that may occur, and other relevant factors.

Non-Liquid Alternative Fuel Industry:

In general, the Rule establishes standard procedures for determining, certifying and posting, by means of a label on the fuel dispenser (i.e., fuel pump), the fuel rating of: (1) a nonliquid alternative vehicle fuel (other than electricity) intended for sale to consumers; and (2) an electric vehicle fuel dispensing system. For a non-liquid alternative fuel, such as compressed natural gas or hydrogen, the fuel rating is the commonly used name of the fuel along with a disclosure of the amount, expressed as a minimum molecular percentage, of the principal component of the fuel. A disclosure of other components, expressed as a minimum molecular

percentage, may be included on the dispenser label, if desired. For electric vehicle fuel dispensing systems, the fuel rating consists of a common fuel identifier, along with a disclosure of the system's kilowatt capacity, voltage (including whether the voltage is alternating current or direct current), amperage, and whether the system is conductive or inductive.

Fuel Rating Determination

The Rule requires that importers, producers, or refiners of non-liquid alternative vehicle fuels (other than electricity) determine the fuel rating of the alternative fuel they distribute. To determine fuel ratings for non-liquid alternative vehicle fuels, industry members must possess a reasonable basis, consisting of competent and reliable evidence, for the molecular percentage of the principal component of the alternative fuel that they must disclose. They also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum molecular percentages of other components that they choose to disclose.

Fuel ratings for compressed natural gas and hydrogen must be determined in accordance with Rule-prescribed test methods developed by the American Society for Testing and Materials, a voluntary standards-setting organization. Manufacturers of electric vehicle fuel dispensing systems must determine the fuel rating of the system before they transfer it. To determine the fuel rating of the system, manufacturers must possess a reasonable basis, consisting of competent and reliable evidence, for the system output information they must disclose.

Certification

The Rule also requires that refiners, producers, importers, manufacturers, and distributors certify the fuel rating of the fuel or electric vehicle fuel dispensing system that they transfer. For non-liquid alternative vehicle fuels (other than electricity) this certification can be accomplished in either of two ways: on a delivery ticket with each transfer, or by a one-time letter or other written statement. For electric vehicle fuel dispensing systems, certification also can be accomplished in either of two ways: on a delivery ticket with each transfer, or by placing a permanent mark or label on the electric vehicle fuel dispensing system.

Posting (Labeling)

Retailers are required to post the fuel rating of the electric vehicle fuel dispensing system or of the alternative fuel they sell to consumers. They must post at least one label on each face of each fuel dispenser, and if more than one kind of fuel is sold from a single dispenser, separate disclosures for each kind of fuel must be put on each face of the dispenser.

Recordkeeping

The Rule also requires refiners, producers, importers, manufacturers, distributors, and retailers to keep for one year records of any delivery tickets, letters of certification, or tests upon which they based the fuel ratings that they certified or posted. These records must be open for

inspection by Commission staff members or by persons authorized by the Commission. Thus, the certification or representation of a fuel rating begins with the importer or refiner or manufacturer and travels through the chain of distribution to the retailer, where the fuel rating is posted on the dispenser. The certification is usually noted on delivery tickets already in use, or is accomplished with a one-time letter of certification or permanent mark, so the recordkeeping burden is minimal.

Regarding alternative fuels (other than electricity), for purposes of certification, posting or recordkeeping, if distributors and retailers blend alternative fuels, they must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating they use.

AFV manufacturers:

The Rule requires that before offering a new covered vehicle for sale to consumers, manufacturers must affix, and new vehicle dealers must maintain, a new vehicle label on a visible surface of each such vehicle. If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer before a consumer acquires the vehicle, the Rule requires the manufacturer to provide that person with the vehicle's estimated cruising range and emission certification standard and to ensure that new vehicle labels are affixed to such vehicles. Labels for new AFVs must disclose and identify the vehicle's estimated cruising range, determined in accordance with § 309.22 of the Rule, any Environmental Protection Agency ("EPA") emission standard to which a covered vehicle has been certified pursuant to 40 C.F.R. Parts 86 and 88, and additional general information pertinent to all consumers considering an AFV acquisition. This general information, which is provided by the Commission, consists of a list of factors consumers should consider in purchasing an AFV (and identifies the Departments of Energy and Transportation, with appropriate telephone numbers, as additional sources of information about AFVs).

The Rule also requires that sellers of used AFVs place a label on a visible surface of each vehicle. Labels for used AFVs must simply disclose the general information pertinent to all consumers considering an AFV acquisition.

Manufacturers of AFVs also are required to maintain records for three years that substantiate the required product-specific disclosures. These records must be available for inspection by Commission staff members or by persons authorized by the Commission.

(2) Use of the Information

The generic fuel rating approach for the non-liquid alternative vehicle fuels (i.e., the common name of the fuel and the minimum molecular percentage of the fuel's principal component) provides consumers with information necessary to make informed fuel-purchasing decisions. This approach also provides fuel producers and marketers with the flexibility to

develop and blend fuels appropriate for location and climate, and is consistent with EPA and original equipment manufacturer requirements.

The fuel rating determination, certification, and labeling requirements of the Rule, as well as the Rule's AFV labeling requirements, establish a framework that provides consumers with reliable, comparable and readily available information about the fuel ratings of similar types of fuels, and the characteristics of competing AFVs. Using this information, consumers can buy vehicle fuels and AFVs appropriate for their needs.

The information that must be kept under the Rule's recordkeeping requirements is used by FTC staff, or by persons authorized by the FTC. Authorized persons check the records for enforcement purposes, to ensure the accuracy of representations of fuel ratings for non-liquid alternative fuels and of estimated cruising ranges and emission certification standards for AFVs. The information is examined on a case-by-case or spot check basis.

The primary purpose of the recordkeeping requirements is to preserve evidence of the fuel rating certification from importers, producers, and refiners through the chain of distribution and of each AFV's estimated cruising range and emission certification standard. Without records of how the fuel rating of the non-liquid alternative fuel was represented when the transfer was made and of how the vehicle's estimated cruising range and emission certification standard were determined for AFVs, it would be impossible to ensure that the required labeling disclosures are accurate and substantiated.

(3) Consideration of the Use of Improved Information Technology to Reduce Burden

Although nothing in the Rule requires that certifications under the Rule contain any signature (see § 309.11), to the extent such a certification may typically involve a signature, the Rule leaves certifying parties free to use whatever technology they deem appropriate to identify and authenticate such signatures, consistent with the Government Paperwork Elimination Act, P.L. 105-277, Title XVII, 112 Stat. 2681-749 (GPEA). Likewise, the Rule complies with GPEA by permitting certain disclosures to be made (see §§ 309.10, 309.20, and 309.21) and necessary records to be kept (see §§ 309.12, 309.14, 309.16, and 309.23) without regard to format, so that a regulated entity, if it chooses, may conduct these activities electronically.

Under GPEA, however, it would be impracticable and incompatible with the Rule's purpose to permit the use of electronic mail or other electronic option to substitute for the automotive fuel rating labels (see § 309.17) that retailers must post on the face of each fuel dispenser and the vehicle labels (see §§ 309.20 and 309.21) that manufacturers and dealers must affix to new and used covered vehicles. This is because these disclosures must be made to the consumer at the pump or the vehicle dealership, although nothing in these labeling requirements expressly prohibits the labels themselves from being electronically displayed if they otherwise satisfy the typeface, color, size, and durability requirements of the Rule.

(4) Efforts to Identify Duplication/Availability of Similar Information

There is no other information available relating to fuel rating posting and certification requirements for non-liquid alternative fuels or the estimated cruising range for AFVs. The Commission conducted the rulemaking proceedings in accordance with 5 U.S.C. § 553. In addition, interested persons were afforded an opportunity to present oral testimony at a public workshop. The only evidence presented by any participant during the rulemaking proceeding to suggest that the Rule's requirements might duplicate other information collection requirements was a reference to EPA regulations (40 C.F.R. §§ 86 and 88) that require disclosure in a vehicle's engine compartment of information regarding environmental performance. However, such information is not disclosed in a comparative fashion and is not readily accessible to consumers.

(5) Efforts to Minimize Burden on Small Businesses

The Rule was designed to impose the minimum possible burden on members of the affected industries. Under the Rule, the fuel ratings of non-liquid alternative fuels must be determined by refiners, importers and producers, and they must retain for one year records they produced during the rating determination process. The certification of a fuel rating by a refiner to a distributor, or by a distributor to a retailer, may be made on any document that is used as written proof of transfer. These fuel transfer documents are already retained by refiners, distributors, and retailers during the ordinary course of business.

To further minimize the certification and recordkeeping burdens, the Rule permits a fuel rating certification to be provided by means of a one-time letter of certification, or a permanent mark or label on an electric vehicle fuel dispensing system, thereby obviating the need for individual certifications on each delivery ticket. This one-time letter or permanent mark can remain effective for a number of years, and its retention would constitute compliance with the recordkeeping requirements in the Rule.

In addition, the Rule is designed to make the compliance burden on manufacturers and used vehicle dealers as light as possible. Prototype labels for new AFVs are provided by the Rule as figures 4 through 6 of Appendix A. The content (headlines and text) are standard; the manufacturer need only supply the estimated cruising range and the emission certification standard. Labels for used AFVs are provided fully by the Rule in Appendix A, as figures 7 & 8. This information, i.e., "information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public," is excluded from the definition of "collection of information," as defined by section 1320.3(c)(2) of the OMB regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501-3520.

(6) Consequences of Conducting Collection Less Frequently

To require less than the aforementioned labeling and recordkeeping requirements for sellers of non-liquid alternative vehicle fuels and for sellers of AFVs would frustrate the statutory objective of providing purchasers with “uniform” and “useful” information to enable them to make informed choices and comparisons among alternative vehicle fuels and AFVs.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The collections of information in the Rule are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

The Commission conducted the rulemaking proceedings in accordance with 5 U.S.C. § 553. Interested persons were afforded an opportunity to talk about the proposed rule at a public workshop held on July 20, 1994. Members of the affected industries have advised Commission staff that the paperwork burdens imposed by the Rule are minimal. In the years since, in connection with its periodic PRA clearance requests for the Rule, FTC staff has sought public comment on the Rule’s information collection requirements and on staff’s estimates of paperwork burden associated with it. No comments were received in that regard. As a prelude to this request, the Commission again sought such public comment. Again, no comments were received.¹ Pursuant to the OMB’s implementing regulations, the FTC is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rule.

(9) Payments or Gifts to Respondents

Not applicable.

(10) Assurances of Confidentiality

To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, it would be subject to the confidentiality provisions of Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f), 57b-2, as applicable.

¹See 75 Fed. Reg. 366 (January 5, 2010).

(11) **Matters of a Sensitive Nature**

Not applicable.

(12) **Annual Hours Burden/Associated Labor Costs**

It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal course of their business activities. This is because industry members must know and determine the fuel ratings of their products in order to monitor quality and to decide how to market them. “Burden” for PRA purposes is defined to exclude effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.2(b)(2). Moreover, as originally anticipated when the Rule was promulgated in 1995, many of the information collection requirements and the originally-estimated hours were associated with one-time start up tasks of implementing standard systems and processes.

Other factors also limit the burden associated with the Rule. Certification may be a one-time event or require only infrequent revision. Disclosures on electric vehicle fuel dispensing systems may be useable for several years. Nonetheless, there is still some burden associated with posting labels. There is also some minimal burden associated with new or revised certification of fuel ratings and recordkeeping. The burden on vehicle manufacturers is limited because only newly-manufactured vehicles require label posting and manufacturers produce very few new models each year.

(a) Estimated total annual hours burden: 38,000 total burden hours, rounded to nearest thousand (includes Non-liquid Alternative Fuels and Alternative Fuel Vehicle Manufacturers).

Non-liquid Alternative Fuels:

Certification: Staff estimates that the Rule’s fuel rating certification requirements affect approximately 550 industry members (compressed natural gas producers and distributors and manufacturers of electric vehicle fuel dispensing systems) and consume approximately one hour each per year for a total of 550 hours.

Recordkeeping: Staff estimates that all 1,900 industry members (non-liquid fuel producers, distributors, and retailers) are subject to the Rule’s recordkeeping requirements (associated with fuel rating certification) and that compliance requires approximately one-tenth hour each per year for a total of 190 hours.

Labeling: Staff estimates that labeling requirements affect approximately nine of every ten industry members (or roughly 1,700 members), but that the number of annually affected members is only 340 because labels may remain effective for several years (staff assumes that in any given year approximately 20% of 1,700 industry members will need to replace their labels).

March 2010

Staff estimates that industry members require approximately one hour each per year for labeling their fuel dispensers for a total of 340 hours.

Sub-total (Non-liquid Alternative Fuels): 1,080 hours (550 + 190 +340).

AFV Manufacturers:

Recordkeeping: Staff estimates that a total of 8 manufacturers require 30 minutes to comply with the Rule's recordkeeping requirements for a total of 4 hours.

Producing labels: Staff estimates 2.5 hours as the average time required of manufacturers to produce labels for each of the five new AFV models introduced industry-wide each year for a total of 12.5 hours.

Posting labels: Staff estimates 2 minutes as the average time to comply with the posting requirements for each of the approximately 1,121,153 new AFVs manufactured each year for a total of 37,371 hours.

Sub-total (AFV Manufacturers): 37,388 hours (4 + 12.5 + 37,371).

Thus, the total burden for these industries combined is approximately 38,000 hours (1,080 + 37,388), rounded to nearest thousand.

(b) Estimated labor costs: \$1,155,017 per year rounded (includes both Non-liquid Alternative Fuels and AFV Manufacturers).

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to Bureau of Labor Statistics data for 2008 (most recent available whole-year information), the average compensation for producers and distributors in the fuel industry is \$27.28 per hour and \$9.46 per hour for service station employees; the average compensation for workers in the vehicle industry is \$30.18 per hour.

Non-liquid Alternative Fuels:

Certification and labeling: Generally, all of the estimated hours except for recordkeeping will be performed by producers and distributors of fuels. Thus, the associated labor costs would be \$24,279. [(550 certification hours + 340 labeling hours) × \$27.28]

Recordkeeping: Only 1/6 of the total recordkeeping hours will be performed by the producers and distributors of fuels (1/6 of 190 hours = approximately 32 hours; 32 hours × \$27.28 = \$872.96); the other 5/6 is attributable to service station employees (5/6 of 190 hours = approximately 158 hours; 158 hours × \$9.46 = \$1,494.68). Thus, the labor cost due to recordkeeping for the entire industry is approximately \$2,368 (\$872.96 for producers and distributors of fuels + \$1,494.68 for service station employees).

March 2010

The total paperwork related labor cost for the entire industry (Non-liquid alternative fuels) is approximately \$26,647 (\$24,279 for certification and labeling costs + \$2,368 for recordkeeping costs).

AFV manufacturers:

The maximum labor cost for the entire industry (AFV manufacturers) is approximately \$1,128,370 per year for recordkeeping and producing and posting labels (37,388 hours × \$30.18/hour).

Thus, the estimated total labor cost for both industries for all paperwork requirements is \$1,155,017 (\$26,647 + \$1,128,370) per year, rounded.

(13) Estimated Capital and Other Non-Labor Cost Burden

Estimated annual non-labor cost burden: \$426,251 rounded (includes both Non-liquid Alternative Fuels and AFV Manufacturers).

Non-liquid Alternative Fuels:

Staff believes that there are no current start-up costs associated with the Rule, inasmuch as the Rule has been effective since 1995. Industry members, therefore, have in place the capital equipment and means necessary to determine automotive fuel ratings and comply with the Rule. Industry members, however, incur the cost of procuring fuel dispenser and AFV labels to comply with the Rule. The estimated annual fuel labeling cost, based on estimates of 560 fuel dispensers (assumptions: an estimated 20% of 1,400 total fuel retailers need to replace labels in any given year given an approximate five-year life for labels—i.e., 280 retailers—multiplied by an average of two dispensers per retailer) at thirty-eight cents for each label (per industry sources), is \$212.8 ($\0.38×560).

AFV Manufacturers:

Here, too, staff believes that there are no current start-up costs associated with the Rule, for the same reasons as stated immediately above regarding the non-liquid alternative fuel industry. However, based on the labeling of an estimated 1,121,153 new and used AFVs each year at thirty-eight cents for each label (per industry sources), the annual AFV labeling cost is estimated to be \$426,038.14 ($\$0.38 \times 1,121,153$).

Thus, the estimated total annual non-labor cost burden associated with the Rule is \$426,251 ($\$212.8 + \$426,038.14$), rounded.

(14) Estimated Cost to Federal Government

Staff estimates that a representative year's cost of administering the Rule's requirements during the 3-year clearance period sought will be approximately \$19,000. This represents 0.15 of an attorney/economist work year, and includes employee benefits.

(15) Changes in Burden

Staff's increased estimate of burden hours (with a corollary rise in associated labor costs) is due to a rise in the estimated number of AFVs on the market [approximately 680,000 new AFVs manufactured per year 2007 and 1,121,153 new AFVs manufactured per year in 2010] and in the number of affected entities, and not a function of increased burden per entity. Similarly, its increased estimate of non-labor cost burden is attributable to an increase in the number of AFVs since staff's prior PRA submission three years ago.

(16) Statistical Use of Information

There are no plans to publish for statistical use any information the Rule requires.

(17) Requested Permission Not to Display of the Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to the "Certification for Paperwork Reduction Act Submissions"

None.