

Supporting Statement
Proposed Amendments to the Alternative Fuels Rule
16 C.F.R. Part 309
(OMB No. #3084-0094)

(1) Necessity for Collecting the Information

The Federal Trade Commission (“FTC” or “Commission”) seeks public comment on two amendments to its “Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles” (“Alternative Fuels Rule” or “Rule”). Specifically, the proposed amendments consolidate the FTC’s alternative fueled vehicle (“AFV”) labels with new fuel economy labels required by the Environmental Protection Agency (“EPA”) and the National Highway Traffic Safety Administration (“NHTSA”) and eliminate FTC requirements for used AFV labels. The proposed amendments follow an Advance Notice of Proposed Rulemaking (“ANPR”),¹ which initiated the Commission’s regulatory review of the Rule to ensure that FTC-required vehicle labels and EPA fuel economy labeling requirements are consistent.

The Energy Policy Act of 1992 (“EPA 92” or “Act”)² established federal programs that encourage the development of alternative fuels and alternative fueled vehicles (“AFVs”). Section 406(a) of the Act directed the Commission to establish uniform labeling requirements for alternative fuels and AFVs. Under the Act, such labels must provide “appropriate information with respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons.” In addition, the required labels must be “simple and, where appropriate, consolidated with other labels providing information to the consumer.”³

In response to EPA 92, the Commission published the Alternative Fuels Rule.⁴ The Rule requires labels on fuel dispensers for *non-liquid* alternative fuels, such as electricity, compressed natural gas, and hydrogen.⁵ The labels for electricity provide the dispensing system’s kilowatt capacity, voltage, and other related information. The labels for other non-liquid fuels disclose the fuel’s commonly used name and principal component (expressed as a percentage).⁶

¹ 76 Fed. Reg. 31,513 (June 1, 2011).

² Pub. L. 102-486, 106 Stat. 2776 (1992).

³ 42 U.S.C. 13232(a).

⁴ 60 Fed. Reg. 26,926 (May 19, 1995).

⁵ The Commission’s Fuel Labeling Rule, 16 C.F.R. Part 306, addresses labeling for *liquid* alternative fuels, such as ethanol and liquefied natural gas.

⁶ The Rule requires fuel importers, producers, and distributors to have a reasonable basis for the information disclosed on the label, maintain records, and provide certifications when transferring fuel. 16 C.F.R. 309.11-14.

The Rule also requires labels on new and used AFVs that run on liquid and non-liquid fuels, such as ethanol and other alcohols including E85 ethanol-gasoline mixtures, natural gas, liquefied petroleum gas, hydrogen, coal-derived liquid fuels, fuels derived from biological materials (*e.g.*, 100% biodiesel), and electricity. The labels for new AFVs disclose the vehicle's estimated cruising range (*i.e.*, the travel distance on a single charge or tank of fuel), general factors consumers should consider before buying an AFV, and toll free telephone numbers and websites for additional information from the Department of Energy (DOE) and NHTSA.⁷ Labels for used AFVs contain only the general buying factors and DOE/NHTSA contact information.⁸

(2) Use of the Information

The primary purpose of the Rule is to help consumers use the proper fuel for their vehicles and to encourage them to comparison shop for alternative fuel vehicles.

(3) Consideration of Using Improved Technology to Reduce Burden

The proposed amendments permit the use of any technologies that covered firms may wish to employ and that may reduce the burden of information collection. Disclosing energy usage information to consumers, however, entails labeling on products or their packaging; as such, electronic disclosure pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, is impracticable.

(4) Efforts to Identify Duplication

The Commission staff has identified EPA fuel labeling requirements that duplicate existing requirements. Thus, the Commission is proposing to consolidate its requirements with those of EPA.

(5) Efforts to Minimize Burden on Small Organizations

The proposals should reduce the burdens for all affected entities. Nevertheless, the Commission is seeking comment about minimizing impact on small businesses.

(6) Consequences of Conducting the Collection Less Frequently

Not applicable; there is no flexibility to “collect” less frequently. The rules involve labeling requirements. The proposed consolidation to a single label, however, would reduce the burden of the current labeling requirements.

⁷ The Rule requires manufacturers to have a reasonable basis for the vehicle cruising range, and, for certain AFVs, specifies the test method for calculating that range. 16 C.F.R. 309.22.

⁸ The general factors listed on the current label include fuel type, operating costs, fuel availability, performance, convenience, energy security, energy renewability, and emissions. *See* 16 C.F.R. Part 309, Appendix A.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The proposed amendments' information collection requirements are consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

In developing the proposed requirements, the Commission staff has consulted with staff at the Environmental Protection Agency, Department of Transportation, and the Department of Energy, in addition to having sought public comment previously through the ANPR mentioned above. Finally, in conjunction with the instant clearance request, the Commission is seeking public comment on its proposal.

(9) Payments and Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

The information to be disclosed is of a routine business nature. It is collected and disseminated by the industry among its membership and made available to the public. No personal or sensitive information is involved nor is any commercially confidential information included.

(12) Estimated Annual Hours Burden and Associated Labor Cost

In past PRA analyses, FTC staff has estimated the Rule applies to 1,121,153 AFVs,⁹ which mostly include flex-fuel vehicles. The staff estimated a two-minute average time to comply with the posting requirements for each of the approximately 1,121,153 new and used AFVs manufactured each year, for a total of 37,371 hours.¹⁰ Additionally, staff projected that an estimated 8 manufacturers would require 30 minutes each for recordkeeping (cumulatively, 4 hours) and that five new AFV models introduced industry-wide each year would require approximately 2.5 hours per manufacturer to produce associated labels (cumulatively, 12.5 hours)¹¹ for a combined total of 37,389 burden hours that would be eliminated through the proposed labeling consolidation. The staff also estimated that the Rule's vehicle labeling requirements would cost 38 cents (per industry sources) for each label, with the annual AFV labeling cost estimated to be \$426,038 ($\$0.38 \times 1,121,153$). The Commission believes that the

⁹ 75 Fed. Reg. 366, 367 (Jan. 5, 2010); 75 Fed. Reg. 12,750, 12,751 (Mar. 17, 2010).

¹⁰ *Id.* Although the published estimate was 37,371 hours, the amount appearing in ROCIS, OMB's tracking system, was due to rounding differences, 37,372 hours, and that will be the precise amount of the associated burden reduction for the posting requirements regarding AFV manufacturers.

¹¹ Rounded to 13 hours in ROCIS.

proposed rule would eliminate the Rule's burden for all these vehicles. Accordingly, FTC staff is submitting a related clearance request to OMB to reduce the associated prior burden totals.

(13) Estimated Annual Capital or Other Non-labor Costs

The proposed rule should impose no additional capital or other non-labor costs; rather, it should reduce them, as noted above.

(14) Estimated Cost to Federal Government

Staff believes that the cost to the FTC for administering the proposed Rule changes will be minimal.

(15) Program Changes/Adjustments

The proposed consolidation of labeling disclosures will reduce the estimated burden hours by 37,389 hours and \$426,038 in estimated label costs.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.