

Supporting Statement
Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles
16 C.F.R. Part 309
(OMB No. #3084-0094)

(1) Necessity for Collecting the Information

The Energy Policy Act of 1992 (“EPAct 92” or “Act”)¹ 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.”²

On May 9, 1995, in accordance with the above-noted statutory directive, the Commission issued a Rule titled “Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles,” 16 C.F.R. part 309 (hereinafter, “Rule”). The Rule required 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 (60 FR 26926 (May 19, 1995)). To ensure the accuracy of the labeling disclosures, the Rule also required that sellers maintain records substantiating product-specific disclosures they include on these labels. In 2013, the Commission amended the Rule to 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.³

(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 certification and recordkeeping requirements for sellers of non-liquid alternative fuels are patterned after the requirements in the Commission's Fuel Rating Rule (formerly known as the “Octane Rule”), 16 C.F.R. 306, for sellers of gasoline and liquid alternative fuels. Sellers can accomplish certification under the Fuel Rating Rule in either of two ways: on a delivery ticket with each transfer of gasoline, or by a letter of certification or other written statement.

¹ Pub. L. 102-486, 106 Stat. 2776 (1992).

² 42 U.S.C. § 13232(a).

³ 78 Fed. Reg. 23,832 (April 23, 2013).

Fuel rating certification and recordkeeping requirements for non-liquid alternative fuels are applied in the same way. Certification for electric vehicle fuel dispensing systems can be done by placing a permanent mark or label on the electric vehicle fuel dispensing system.

Although nothing in the Rule requires that these certifications 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, 44 U.S.C. § 3504 note (“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 purpose of the Rule 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 (i.e., fuel pump). This is because these disclosures must be made to the consumer at the pump, 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

Several years ago, the Commission staff identified EPA fuel labeling requirements that duplicate existing requirements. In response, the Commission consolidated its requirements in 2013 with those of EPA.⁴

(5) Efforts to Minimize Burden on Small Organizations

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 records produced by them during the rating determination process must be retained by them. 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. Refiners, distributors, and retailers already retain these fuel transfer documents in the ordinary course of business.

To minimize further certification and recordkeeping burden, 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, and therefore obviates the need for

⁴ See *id.*

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.

(6) Consequences of Conducting the Collection Less Frequently

Not applicable; there is no flexibility to “collect” less frequently. The rules involve labeling requirements.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The Rule’s 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 above-noted Rule amendments, FTC staff consulted with EPA, Department of Transportation, and the Department of Energy staff, in addition to having sought public comment previously during the rulemaking process.

As a prelude to this clearance request, the FTC again sought public comment on the Rule’s information collection requirements and related PRA burden estimates. 83 Fed. Reg. 61,380 (Nov. 29, 2018). One comment was received. The comment opined favorably on the Rule as a whole and, in particular, on the Rule’s required disclosure of specific information on fuel dispenser labels, which the comment stated leads to more informed consumers. Further, it advocated for the FTC receiving renewed OMB clearance to enable the FTC “to properly consider [the Rule] and how it will affect the public” and to “allow the FTC more feedback and to create a more refined and effective rule when they enter the final rule phase.”

To clarify, neither the November 29, 2018 Notice or the instant publication concern a rulemaking. Rather, pursuant to the PRA, the Commission seeks OMB’s continued clearance to impose and enforce the Rule’s recordkeeping and disclosure requirements described above and detailed further in the November 29, 2018 Notice. Nonetheless, pursuant to Section 3506(c)(2)(A) of the PRA, the Commission sought in its preceding Notice public comments on (1) whether the recordkeeping and disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers. No further comment than that noted above was received.

Pursuant to the OMB’s regulations that implement the PRA, the FTC is providing a second opportunity for public comment on this clearance request while seeking OMB approval to extend the existing PRA clearance for the Rule.

(9) Payments and Gifts to Respondents

Not applicable.

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

The information required for disclosure is of a routine business nature. Industry collects and disseminates it among its membership and is disclosed publicly in the form of dispenser labels. No personal or sensitive information is involved nor is any commercially confidential information included.

(12) Estimated Annual Hours Burden and Associated Labor Cost

The estimated total hours burden for non-liquid alternative fuels is 4,190 hours (550 + 1,300 + 2,340) broken down as follows:

Recordkeeping: Staff estimates that all 20,000+ industry members (all non-liquid fuel producers, distributors, and retailers) will be subject to the Rule's recordkeeping requirements (associated with fuel rating certification) and that compliance will require approximately one-tenth hour each per year for a total of 2,000 hours.

Certification: Staff estimates that the Rule's fuel rating certification requirements will affect approximately 400 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 400 hours.

Labeling: Staff estimates that labeling requirements will affect approximately nine of every ten industry members (or roughly 18,000 members out of 20,000 retailers), but that the number of annually affected members is approximately 3,600 because labels may remain effective for several years (staff assumes that in any given year approximately 20% of 18,000 industry members will need to replace their labels). Staff estimates that industry members require approximately one hour each per year for labeling their fuel dispensers for a total of 3,600 hours.

The associated labor cost are \$162,157 (\$31,037 for recordkeeping + \$13,112 for certification + \$118,008 for labeling). Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to Bureau of Labor Statistics data for 2017 (most recent available whole-year information), the average compensation for fuel system operators is \$32.78 per hour; and \$12.07 per hour for automotive service attendants.⁵ These are factored into the FTC's estimates and assumptions below.

⁵ The wage estimates in this Notice are based on mean hourly wages found at <http://www.bls.gov/news.release/ocwage.nr0.htm> ("Occupational Employment and Wages—May 2017," U.S.

Recordkeeping: Only 1/6 of the total recordkeeping hours will be performed by fuel system operators (1/6 of 2,000 hours = approximately 333 hours; 333 hours × \$32.07 = \$10,996); the other 5/6 is attributable to service station employees (5/6 of 2,000 hours = approximately 1,667 hours; 1,667 hours × \$12.07 = \$20,121). Thus, the labor cost due to recordkeeping for affected industry is approximately \$31,037 (\$10,916 for fuel system operators + \$20,121 for service station employees).

Certification: Staff assumes that certification is performed by fuel system operators. Estimated associated labor costs would be \$13,112. [(400 certification hours × \$32.78)]

Labeling: Staff also assumes that labeling is performed by fuel system operators. Estimated labor costs would be \$118,008. [3,600 labeling hours × \$32.78]

Associated labor cost: \$162,157 (\$31,037 for recordkeeping + \$13,112 for certification + \$118,008 for labeling).

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

Staff believes that there are no current start-up costs associated with the Rule, inasmuch as the Rule has been in effect 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 labels to comply with the Rule.

The estimated annual fuel labeling cost, based on estimates of approximately 8,000 fuel dispensers (assumptions: an estimated 20% of 20,000 total fuel retailers need to replace labels in any given year with an approximate five-year life for labels—i.e., 4,000 retailers—multiplied by an average of two dispensers per retailer) at thirty-eight cents for each label (per industry sources), is \$3,040 ($\$0.38 \times 8,000$).

(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 \$29,677. This represents 0.15 of an attorney/economist work year, and includes employee benefits.

Department of Labor, released March 30, 2018, Table 1 (“National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017”). The figure for fuel system operators is drawn from “petroleum pump system operators, refinery operators, and gaugers.” That figure for automotive attendants is drawn from “Automotive and watercraft service attendants.”

(15) Program Changes/Adjustments

Changes in burden associated with the Rule are due to market changes, specifically an increase in population estimates and that of hourly wages.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.