

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 (“EPAAct 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

Pursuant to the Act, the Commission “Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles,” 16 C.F.R. part 309 (hereinafter, “Rule”). The Rule requires disclosure of specific information on labels posted on fuel dispensers for non-liquid alternative fuels and on labels on AFVs.³ 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. In addition, the Rule requires that distributors of non-liquid alternative vehicle fuel provide certifications of the fuel rating in each transfer to anyone who is not a consumer. 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.⁴

(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. Fuel rating certification and recordkeeping requirements for non-liquid alternative

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

² 42 U.S.C. § 13232(a).

³ 60 FR 26926 (May 19, 1995).

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

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.

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). These disclosures must be made to the consumer at the pump, but the Rule does not prohibit the labels themselves from being electronically displayed at the pump 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.⁵

(5) Efforts to Minimize Burden on Small Organizations

The Rule has been 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 further minimize 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 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.

⁵ See *id.*

(6) Consequences of Conducting the Collection Less Frequently

Not applicable; there is no flexibility to collect less frequently. The Rule covers labeling requirements that must be provided at the point of sale.

(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 2013 Rule amendments, FTC staff consulted with EPA, Department of Transportation, and the Department of Energy staff, in addition to seeking public comment previously during the rulemaking process.

In addition, the FTC sought public comment on its request to OMB for a three-year extension of the current PRA clearance for this information collection, as required by 5 CFR § 1320.8(d). *See* 86 Fed. Reg. 55607 (Oct. 6, 2021). No relevant comments were received. The FTC is providing a second opportunity for public comment while seeking OMB approval to extend this PRA clearance.

(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

Annual Hours Burden: 6,000 hours

FTC staff estimates that approximately 20,000 industry participants (non-liquid fuel producers, distributors, and retailers) are subject to the Rule's information collection requirements. The burden estimates for covered entities are detailed below.⁶

⁶ It is common practice for alternative fuel industry members to determine and monitor fuel ratings in the normal

Labeling: Staff estimates that approximately 3,600 covered retailers must revise covered labels annually.⁷ Staff estimates that affected retailers require approximately one hour each per year for labeling their fuel dispensers for a total of 3,600 hours (3,600 respondents × 1 hour per year).

Recordkeeping: FTC staff estimates that approximately 20,000 industry participants are subject to the Rule’s recordkeeping requirements. Staff estimates that covered entities require approximately one-tenth of an hour each per year to comply with these requirements. This yields a burden of 2,000 hours per year (20,000 respondents × 0.1 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). Staff anticipates that covered industry participants will spend approximately one hour per year to comply with this requirement for a total of 400 hours (400 respondents × 1 hour per year).

Accordingly, the estimated annual burden under the Rule is 6,000 hours (3,600 + 2,000 + 400).

Labor Costs: \$175,298

FTC staff derive labor costs by applying appropriate hourly wage figures to the burden hours described above. According to Bureau of Labor Statistics data,⁸ the average compensation for fuel system operators is \$35.49 per hour; and \$12.91 per hour for automotive service attendants. These are factored into the FTC’s estimates and assumptions below.

Labeling: Staff assumes that labeling is performed by fuel system operators. Apply relevant labor cost figures to the estimated burden hours for labeling yields an estimated annual labor cost of \$127,764 (3,600 hours × \$35.49).

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). 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 also will be some minimal burden associated with new or revised certification of fuel ratings and recordkeeping.

⁷ Staff estimates that approximately 18,000 retailers are subject to the Rule’s labeling requirements. Staff estimates that approximately 20% of covered retailers (3,600) will need to replace their labels annually because many labels remain effective for several years.

⁸ The wage estimates in this Notice are based on mean hourly wages found in Table 1. National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2019, at <https://www.bls.gov/news.release/ocwage.t01.htm>. The wage rate for fuel system operators is based on data for “petroleum pump system operators, refinery operators, and gaugers.” The wage rate for automotive attendants is based on data for “Automotive and watercraft service attendants.”

Recordkeeping: Staff estimates that approximately 1/6 of the total recordkeeping hours are performed by fuel system operators (1/6 of 2,000 hours = approximately 333 hours; 333 hours × \$35.49 = \$11,818) and that automotive service attendants account for the remaining 5/6 of recordkeeping hours (5/6 of 2,000 hours = approximately 1,667 hours; 1,667 hours × \$12.91 = \$21,520). Accordingly, staff estimates that the total labor cost for recordkeeping for affected industry is approximately \$33,338 (\$11,818 + \$21,520).

Certification: Staff assumes that certification is performed by fuel system operators. Estimated associated labor costs would be \$14,196 (400 hours × \$35.49).

Accordingly, the estimated annual labor cost under the Rule is \$175,298 (\$127,764 + \$33,338 + \$14,196).

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

Staff believes there are no current start-up costs associated with the Rule, which has been in effect since 1995. Industry members 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 15% of an attorney work year, and includes employee benefits.

(15) Program Changes/Adjustments

There are no program changes. The only changes to the most recently cleared estimates reflect updates to estimated labor costs based on updated Bureau of Labor Statistics data. The remaining estimates are unchanged from the last clearance.

(16) Plans for Tabulation and Publication

Not applicable. There are no plans to publish any information for statistical use.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable. The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exception to these certification requirements.