

In light of the responses to the NPRM, we have determined that it will be in the public interest to significantly modify our proposal to modernize aviation data products. We have also determined that an additional request for public comment based on the current proposal would not provide us with the information we need in order to accomplish our purpose.

We have engaged a contractor with expertise in the industry to identify necessary and useful system features, and to address how data collection can be aligned with modern airline information technology so as to minimize the data-reporting burden on air carriers. Further, the contractor will assist the Department in assessing alternatives to the Department's proposal as stated in the NPRM that will help all stakeholders realize a better value for the investment in the data modernization effort.

Although this rulemaking is being withdrawn, the Department anticipates the issuance at a later date of a new NPRM and will continue to involve the public in its effort to increase efficiency, effectiveness, integrity, quality, and utility of the aviation traffic information available, in a way that is also sensitive to the information collection costs that would be imposed on the carriers.

Issued in Washington, DC on May 25, 2011.

Susan L. Kurland,
Assistant Secretary.

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BILLING CODE 4910-9X-P

FEDERAL TRADE COMMISSION

16 CFR Part 309

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission seeks public comment on its Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles ("Alternative Fuels Rule" or "Rule"). As part of its systematic review of all FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the Alternative Fuels Rule. The Commission also seeks comment on whether to merge its alternative fueled vehicle (AFV) labels with fuel economy labels proposed by the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA); add new definitions for AFVs contained in recent legislation; and change labeling requirements for used AFVs.

DATES: Written comments must be received on or before July 25, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Regulatory Review for Alternative Fuels Rule, (16 CFR part 309, Matter No. R311002, Program Code M04)" on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/altfuelsreviewanpr>, by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2889.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 1992 (EPA Act 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 should 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."² 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 Act 92, the Commission published the Alternative Fuels Rule in 1995, addressing both alternative fuels and AFVs.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 Examples of the fuel labels appear below.

¹ Public Law 102-486, 106 Stat. 2776 (1992).

² 42 U.S.C. 13232(a).

³ *Id.* The provision also states that the Commission "shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors."

⁴ 60 FR 26926 (May 19, 1995).

⁵ The Commission's Fuel Labeling Rule, 16 CFR Part 306, addresses labeling for liquid alternative fuels, such as ethanol and liquefied natural gas.

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

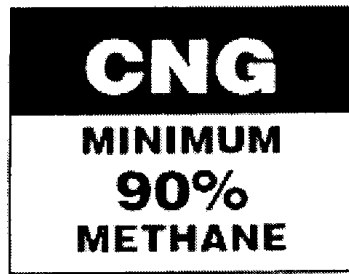


Figure 1

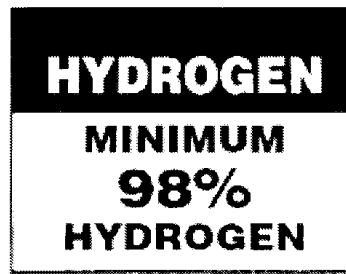


Figure 2

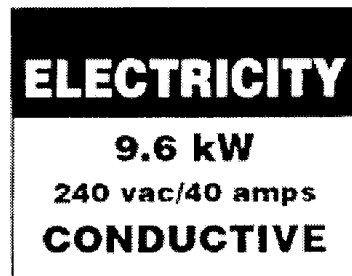


Figure 3

Sample FTC Non-Liquid Alternative Fuel Labels - 16 CFR Part 309, Appendix A

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 Web sites for additional information from the Department of Energy (DOE) and NHTSA.⁷ An example of the label for

⁷The Rule requires manufacturers to have a reasonable basis for the vehicle cruising range, and,

new AFVs appears below. Labels for used AFVs contain only the general buying factors and DOE/NHTSA contact information.⁸

for certain AFVs, specifies the test method for calculating that range. 16 CFR 309.22.

⁸The general factors listed on the current label are information concerning fuel type, operating costs, fuel availability, performance, convenience, energy security, energy renewability, and emissions. See 16 CFR Part 309, Appendix A.

ALTERNATIVE FUELED VEHICLE BUYERS GUIDE	
Compare the Cruising Range of this Vehicle with Other Alternative Fueled Vehicles (AFVs) Before You Buy	
Manufacturer's Estimated Cruising Range	
440-520	
Miles on one tank or charge.	
Actual cruising range will vary with options, driving conditions, driving habits, and vehicle condition.	
Before Selecting An Alternative Fueled Vehicle Consider:	
<input checked="" type="checkbox"/>	FUEL TYPE AND AVAILABILITY: Know which fuel(s) power this vehicle. Determine whether refueling and/or recharging facilities that meet your driving needs are readily available.
<input checked="" type="checkbox"/>	OPERATING COSTS: Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. Visit www.fueleconomy.gov .
<input checked="" type="checkbox"/>	PERFORMANCE/CONVENIENCE: Vehicles powered by different fuels differ in their ability to start a cold engine, how long it takes to refill the vehicle's tank to full capacity, acceleration rates, and refueling methods.
<input checked="" type="checkbox"/>	ENERGY SECURITY/RENEWABILITY: Consider where and how the fuel powering this vehicle is typically produced.
<input checked="" type="checkbox"/>	EMISSIONS: Emissions are an important factor. For more information about how the vehicle you are considering compares to others, visit www.epa.gov/greenvehicle .
Additional Information	
DEPARTMENT OF ENERGY (DOE) For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, or visit DOE's Alternative Fuels Data Center website, www.afdc.doe.gov .	
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA) For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.	
The information on this label is required by the Federal Trade Commission, 16 CFR Part 309. For more information call toll-free (877) FTC-HELP or visit www.ftc.gov .	
Space Reserved for Part Numbers, Bar Codes, and Vehicle Identification Numbers	

← 7 inches →

← 7.5 inches →

Figure 4

Sample FTC New AFV Label - 16 CFR Part 309, Appendix A

II. Regulatory Review

The Commission is accelerating its regularly scheduled review of the Alternative Fuels Rule, previously set for 2014, to ensure that FTC-required vehicle labels and EPA fuel economy labeling requirements are consistent. Regulatory reviews seek information about the costs and benefits of rules and guides as well as their regulatory and economic impact. The information obtained assists in identifying rules and guides that warrant modification or rescission. As part of this review, the Commission seeks comment on the current Alternative Fuels Rule. Among other things, commenters should address the economic impact of, and the continuing need for the Rule; the Rule's benefits to alternative fuel and AFV purchasers; and burdens the Rule places on firms subject to its requirements. In addition, the Commission seeks comment on three specific issues related to the Rule (Section III below) and response to general questions about the Rule (Section IV below).

III. Specific Issues For Comment

In conducting this regulatory review, the Commission seeks comment on the following three specific issues: (1) Whether to consolidate its AFV labels with EPA/NHTSA fuel economy labels; (2) how to address new definitions for AFVs that are contained in recent legislation; and (3) whether to change labeling requirements for used AFVs.

A. EPA and NHTSA Fuel Economy Labels

The Commission requests comment on whether it should consolidate its AFV labels with fuel economy labels recently proposed by EPA and NHTSA to ensure consistency between the two.⁹ The proposed new fuel economy labels apply to both conventional and alternative fuel vehicles, including most AFVs subject to the FTC's labeling requirements.¹⁰ The content of the

⁹ See 75 FR 58078 (Sept. 23, 2010).

¹⁰ Although EPA regulations (40 CFR Part 600) require labeling for all vehicles covered under the Alternative Fuels Rule, EPA did not propose a specific label for several vehicle types not generally available to individual consumers including those

proposed labels differs slightly depending on the type of AFV, as described below.

For various types of electric vehicles (including those operating solely on batteries and those operating on a combination of battery and conventional engine power) as well as compressed natural gas powered vehicles, EPA's proposed labels disclose the vehicle's fuel economy, CO₂ and other emissions, cruising range, and estimated annual fuel cost.¹¹ The proposed labels also reference <http://www.fueleconomy.gov>, which provides comprehensive consumer information about fuel economy and alternative fuels.

For ethanol-fueled vehicles, including flexible fuel vehicles (FFVs) that operate on a combination of gasoline and ethanol, the EPA proposed three label

fueled by liquefied petroleum gas, hydrogen, coal-derived liquid fuels, or fuels (other than alcohol) derived from biological materials. See <http://www.fueleconomy.gov> (availability of vehicle types).

¹¹ EPA has requested comment on three different formats which vary in their presentation of information.

options: (1) Disclosing the fuel economy obtained using gasoline and a statement that alternative fuel use will yield different results;¹² (2) disclosing fuel economy for both gasoline and alternative fuel use (e.g., E85); and (3) disclosing fuel economy for gasoline as well as miles per gallon equivalent information for the alternative fuel.¹³

In light of these proposals, the Commission seeks comment on whether it is appropriate to consolidate its label with EPA's by allowing use of the EPA label in lieu of FTC's. Although there are some differences between the labels (e.g., the EPA label for ethanol FFVs would not disclose cruising range), all of the EPA's proposed labels provide vehicle-specific fuel economy information. The EPA's proposed labels also would not include the general buying tips that appear on the FTC's label, but would refer consumers to a website to obtain more information about fuel economy and alternative fuels. The Commission, therefore, requests comment on whether the EPA label accomplishes the EPA Act 92's goal of providing appropriate information regarding the costs and benefits of AFVs and reasonably enabling consumers to make choices and comparisons. Consolidating the FTC and EPA labels would benefit consumers and industry by eliminating potential confusion caused by duplicative and possibly inconsistent labels,¹⁴ and reducing the burden on manufacturers to create and post two labels.

B. Definition of Alternative Fueled Vehicles

The National Defense Authorization Act for Fiscal Year 2008 extended coverage of the EPA Act 92 to hydrogen fuel cell motor vehicles (as defined in 26 U.S.C. 30B (b)(3)), advanced lean

burn technology motor vehicles (as defined in 26 U.S.C. 30B(c)(3)), and hybrid motor vehicles (as defined in 26 U.S.C. 30B(d)(3)). Specifically, it added these three types of vehicles to the statutory definition of "alternative fuel vehicle."¹⁵ Therefore, the Commission is now considering how the Rule should address these vehicles. Because the Alternative Fuels Rule already covers hydrogen fuel cell vehicles, additional labeling requirements for them appear unnecessary. Similarly, lean burn and hybrid vehicles already bear the EPA fuel economy label because they qualify as conventional vehicles under that program. Thus, it appears unlikely that new FTC labels for those models would provide significant benefit. Accordingly, the Commission seeks comment on whether to issue new labels for lean burn and hybrid vehicles or, instead, to allow the EPA label on these vehicles in lieu of a new FTC label.

C. Used AFV Labels

The Commission seeks comment on whether to change the Rule's labeling requirements for used AFVs.¹⁶ Currently, used AFVs must bear labels with general tips and references to telephone numbers and websites that provide additional information. However, these labels do not contain any vehicle-specific information, such as cruising range. Because these used vehicle labels provide limited information and are likely to impose increasing burdens on used car dealers as the AFV market expands, the Commission seeks comment on whether to retain the requirement and, if so, whether to change the label's current content. Commenters should address whether the used vehicle labels provide "appropriate information"; whether the benefits to consumers justify the burdens imposed on used vehicle dealers; and whether other resources, such as <http://www.fueleconomy.gov>, provide used vehicle shoppers with adequate information. Comments

¹⁵ 42 U.S.C. 13211(3)(B). According to the legislative history, the purpose of these amendments is to "allow additional types of vehicles to be used to meet minimum" requirements for vehicle and fuel use by Federal agencies (i.e., "Federal fleet requirements"). Congressional Record 153:147 (Oct. 1, 2007) p. S12355.

¹⁶ 16 CFR 309.21. The Act contains no specific requirement for used AFV labels nor does it specifically exclude used vehicles from its coverage. See 42 U.S.C. 13211 and 13232(a). In promulgating the original Rule in 1994, the Commission determined that used AFV labeling was "appropriate" because "consumers would likely have the same need for information, and would consider the same factors, whether they were contemplating a new or used AFV acquisition." 60 FR at 26941.

should also address whether vehicle specific information (e.g., cruising range) is appropriate for used AFV labels. For example, will an electric vehicle's original cruising range estimate, as determined by the manufacturer, remain valid when the vehicle is later sold in the used market?

IV. General Questions for Comment

In addition to the specific issues discussed in Section II, the Commission solicits comment on the following questions related to the Rule:

- (1) Is there a continuing need for the Rule as currently promulgated? Why or why not?
- (2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?
 - (4) What impact, if any, has the Rule had on the flow of appropriate information to consumers about alternative fuels and AFVs?
 - (5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?
 - (6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?
 - (a) What evidence supports your proposed modifications?
 - (b) How would these modifications affect the costs and benefits of the Rule for consumers?
 - (c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?
 - (7) Please provide any evidence that has become available since 2005 concerning consumer perception of AFV and non-liquid alternative fuel labeling. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?
 - (8) Please provide any evidence that has become available since 2005 concerning consumer interest in alternative fuel and AFV labeling. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?
 - (9) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

¹² According to the EPA, 99% of FFV owners run their vehicles only on gasoline and never use alternative fuel. 75 FR at 58112.

¹³ According to EPA, miles per gallon of gasoline-equivalent information provides a way to communicate the fact that E85 provides greater miles per unit of energy than gasoline even though E85 provides lower miles per gallon. 75 FR at 58112. Although this information may help some consumers, the Commission is concerned it may mislead many others by implying that E85 will provide better fuel economy (i.e., miles per gallon) than gasoline.

¹⁴ For example, proposed consolidation would eliminate current inconsistencies between cruising range values on FTC and EPA electric vehicle labels. To address new electric vehicles introduced before the completion of this rulemaking, the Commission has issued a policy stating that it will not enforce current FTC labeling requirements for any electric vehicle bearing an EPA-mandated fuel economy label and will encourage vehicle manufacturers to use the EPA label in lieu of the FTC label. See <http://www.ftc.gov/opa/2011/05/afr.shtm>.

(10) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and particularly to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(11) What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(12) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, particularly on small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(13) What evidence is available concerning the degree of industry compliance with the Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(14) Are any of the Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.

(15) What modifications, if any, should be made to the Rule to account for changes in relevant technology, including development of new alternative fuels, or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(16) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national uniformity with respect to the rating, certifying, and posting the rating of non-liquid alternative fuels and AFV labeling? If so, please provide that evidence.

(17) Are there foreign or international laws, regulations, or standards with respect to the rating, certifying, and

posting the rating of non-liquid alternative fuels and AFV labeling that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

V. Instructions for Comment Submissions

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 25, 2011. Write "Regulatory Review for Alternative Fuels Rule, (16 CFR part 309, Matter No. R311002, Program Code M04)" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR

4.9(c).¹⁷ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/altfuelsreviewanpr>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write "Regulatory Review for Alternative Fuels Rule, (16 CFR part 309, Matter No. R311002, Program Code M04)" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex N), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 25, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark,

Secretary.

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¹⁷ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).