

FEDERAL TRADE COMMISSION

16 CFR Part 309

RIN 3084-AB15

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Request For Comment.

SUMMARY: As part of the Commission’s systematic review of all FTC rules and guides, the Federal Trade Commission (“FTC” or “Commission”) seeks public comment on the overall costs, benefits, necessity, and regulatory and economic impact of its Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (“Alternative Fuels Rule” or “Rule”).

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

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, Matter No. R311002” on your comment, and file your comment online at

<https://www.regulations.gov/>, by following the instructions on the web-based form. If

you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex F), Washington, DC 20580.

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

I. Background

The Energy Policy Act of 1992 (“EPAct 92” or “Act”) established federal programs to encourage the development of alternative fuels and alternative fueled vehicles (“AFVs”). Section 406(a) of the Act directs 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.” The required labels must be “simple and, where appropriate, consolidated with other labels providing information to the consumer.”¹

In response, the Commission published the Alternative Fuels Rule in 1995.² The Rule requires labels on fuel dispensers for non-liquid alternative fuels, such as electricity, compressed natural gas, and hydrogen. The labels for electricity provide the charging 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). The Rule also has labeling requirements for new alternative fueled vehicles. However, the Rule does not contain separate label requirements for

¹ 42 U.S.C. 13232(a). The law also states: “In formulating the rule, the Federal Trade 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.”

² 60 FR 26926 (May 19, 1995).

vehicles and, instead, incorporates the Environmental Protection Agency's ("EPA") fuel economy label rules (40 CFR part 600).

II. Regulatory Review of the Alternative Fuels Rule

The Commission systematically reviews all of its rules and guides to: (1) examine their efficacy, costs, and benefits; and (2) determine whether to retain, modify, or rescind them. The Commission completed its most recent Rule review a decade ago (78 FR 23832 (April 23, 2013)). During that review, the Commission consolidated the Rule's AFV requirements with fuel economy labels required by EPA and eliminated labeling requirements for used AFVs. With this Request For Comment, the Commission commences a new review.

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. Additionally, the Commission seeks comment on specific issues related to electric vehicle charging stations (Section III.) and responses to other questions about the Rule (Section IV.).

III. Specific Questions About Labeling For Electric Vehicle Charging Stations

Given the proliferation of electric vehicles ("EVs") in the marketplace, the Commission specifically seeks comment on the Rule's labeling requirements for electric vehicle dispensing systems (*i.e.*, EV charging stations) operated by retailers for consumers. The current Rule requires a label on all such public EV charging stations that discloses: (1) the commonly used name of the fuel (*e.g.*, electricity); (2) the system's

kilowatt (“kW”) capacity; (3) voltage; (4) whether the voltage is alternating current (“ac”) or direct current (“dc”); amperage; and (5) whether the system is conductive or inductive (e.g., “9.6 kW; 240 vac/40 amps; CONDUCTIVE”). Under the current requirements, retailers must place the label conspicuously on the face of each dispenser “so as to be in full view of consumers and as near as reasonably practical to the price per unit of the non-liquid alternative vehicle fuel.”³ The Commission seeks comment on the following questions about the current label for public EV charging stations and any other issue related to the current label. Commenters should provide specific information to support their responses, including examples, where appropriate.

- (1) Does the Rule’s current label for EV charging stations help consumers make choices and comparisons when they are seeking to charge their vehicles? Can the label be “consolidated with other labels providing information to the consumer?” If so, which labels?
- (2) Is there any research about how consumers understand or interpret information at EV charging stations, including the FTC label? Is there evidence of consumer confusion related to the use of charging stations in the market now, including the use of the FTC label?
- (3) Should the Commission make any changes to the content of the current EV charging station label? If so, what changes should the Commission make? Is there any information on the label that is unnecessary? For example, should the Rule continue to require a disclosure indicating whether the station is conductive or

³ Section 309.15(b)(1).

inductive? Is there any other information not covered by the current label that would be useful to communicate to consumers?

- (4) Should the Rule require the disclosure of kilowatt capacity in a different way on the label (*e.g.*, charging level)?
- (5) Should the label include information about the station's connectors (*i.e.*, plugs)?
- (6) Should the Commission consider a different format for the label? For instance, should the Commission adopt a labeling format consistent with the FTC's Lighting Facts label for light bulbs (16 CFR Part 305) or the Food and Drug Administration's "Nutrition Facts" label (21 CFR Part 101) (*e.g.*, "Charger Facts")? Should the label be simpler? For example, should the Rule require conspicuous disclosures limited to kilowatt capacity (or charging level) and connector without a specific label size or format?
- (7) Should the Rule specifically allow the label to appear on the charging station's screen? If so, what requirements should the Rule include to ensure the label is visible to consumers using the station?

IV. Other Issues for Comment

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?

(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 the last review concerning consumer perception of 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 the last review concerning consumer interest in alternative fuel. 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?

(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 rating, certifying, and posting the rating of non-liquid alternative fuels? If so, please provide that evidence.

(17) Are there foreign or international laws, regulations, or standards with respect to rating, certifying, and posting the rating of non-liquid alternative fuels 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?

(18) Are there any specific changes that should be made to the hydrogen label?

(19) Should the Commission revisit its 2013 decision to consolidate FTC labels for AFVs with the fuel economy labels required by EPA? If so, what Rule changes should the Commission consider?

V. Instructions for Submitting Comments

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Regulatory Review for Alternative Fuels Rule, Matter No. R311002” on your comment.

Because of the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. As a result, we strongly encourage you to submit your comments online through www.regulations.gov. To ensure the Commission considers your online comment, please follow the instructions on the web-based form. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the www.regulations.gov website. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the [regulations.gov](http://www.regulations.gov) site.

If you file your comment on paper, write “Regulatory Review for Alternative Fuels Rule, Matter No. R311002” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex F), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’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, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by 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)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, clearly labeled “Confidential,” and comply with FTC Rule 4.9(c), 16 CFR § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and identify the specific portions of the comment to be withheld from the public record. *See id.* Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment

unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Secretary.