

## FEDERAL TRADE COMMISSION

## 16 CFR Part 309

RIN 3084-AA57

## Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission.

ACTION: Final rule.

**SUMMARY:** Section 406(a) of the Energy Policy Act of 1992 ("EPA 92") directs the Federal Trade Commission ("Commission") to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles. On November 18, 1994, the Commission published a supplemental notice of proposed rulemaking in the **Federal Register** announcing the substance of proposed labeling requirements and sought written comment on its proposal. In this notice the Commission announces its final labeling requirements, and explains why it has modified certain requirements from those proposed.

**EFFECTIVE DATE:** Subpart A and Subpart B of 16 CFR Part 309 are effective on August 21, 1995. Subpart C of 16 CFR Part 309 is effective on November 20, 1995. The incorporation by reference of certain publications listed in subpart B of 16 CFR Part 309 is approved by the Director of the Federal Register as of August 21, 1995. The incorporation by reference of certain publications listed in subpart C of 16 CFR Part 309 is approved by the Director of the Federal Register as of November 20, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey E. Feinstein, Attorney, 202/326-2372, or Neil J. Blickman, Attorney, 202/326-3038, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:****Statement of Basis and Purpose****I. Introduction**

EPA 92<sup>1</sup> establishes a comprehensive national energy strategy designed to increase U.S. energy security and improve the economy in cost effective and environmentally beneficial ways.<sup>2</sup> It seeks to reduce the dependence of the United States on oil imports; promote energy efficiency; reduce the use of petroleum-based fuels in motor vehicles; and provide new energy options. Other programs in titles III, IV, V, and VI of EPA 92 promote the

development of alternative fuels<sup>3</sup> and alternative fueled vehicles ("AFVs").<sup>4</sup>

Two provisions in title IV of EPA 92 require that information on alternative fuels and AFVs be made available to consumers. In one provision, section 406(a) of EPA 92 directs the Commission to issue a rule establishing uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles.<sup>5</sup> The Act does not specify what information should be displayed on these labels. Instead, it provides generally that the rule must require disclosure of "appropriate," "useful," and "timely" cost and benefit information on "simple" labels.<sup>6</sup> The purpose of the labeling requirements is to enable consumers to make reasonable choices and comparisons. In formulating the rule, the Commission must consider the problems associated with developing and publishing the required information, taking into account lead time, costs, frequency of changes in costs and benefits that may occur, and other relevant factors. Where appropriate, the labels required by section 406(a) are to be consolidated with other labels providing information to consumers. EPA 92 requires the Commission to update its labeling requirements "periodically to reflect the most recent available information."<sup>7</sup>

A second and complementary provision directs the Secretary of Energy ("DOE") to develop an information package for consumers.<sup>8</sup> Specifically, section 405 of EPA 92 requires DOE to produce and make available an information package for consumers to

<sup>3</sup> "Alternative fuels" are defined as:

[M]ethanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary [of Energy], by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.]

42 U.S.C. 13211(2) (Supp. IV 1993).

<sup>4</sup> An "alternative fueled vehicle" is "a dedicated vehicle or a dual fueled vehicle[.]" 42 U.S.C. 13211(3). Each term is further defined in 42 U.S.C. 13211 (6) and (8).

<sup>5</sup> Section 406(a) is codified at 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>6</sup> 42 U.S.C. 13232(a).

<sup>7</sup> *Id.*

<sup>8</sup> 42 U.S.C. 13231. DOE is also required to provide technical assistance to the Commission in developing labeling requirements, and coordinate such technical assistance with its development of a consumer information package. 42 U.S.C. 13232(b).

help them choose among alternative fuels and AFVs.<sup>9</sup> DOE's information package must provide "relevant and objective" information addressing "motor vehicle characteristics and fuel characteristics as compared to gasoline" (including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety), information about the conversion of conventional motor vehicles to AFVs, and "such other information as the Secretary [of DOE] determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles."<sup>10</sup>

This is the Commission's second rulemaking concerning labeling requirements for alternative fuels. In a separate proceeding also required by EPA 92,<sup>11</sup> the Commission extended the requirements of its former Octane Rule<sup>12</sup> (renamed the "Fuel Rating Rule") beyond gasoline to include *liquid* alternative fuels.<sup>13</sup> As a result, retailers of such fuels are now required, among other things, to post labels identifying the commonly used name of the fuel and the amount, expressed as a minimum percentage by volume, of the fuel's principal component.<sup>14</sup>

**II. Public Participation**

EPA 92 required the Commission, in formulating its labeling requirements, to "obtain the views of affected industries, consumer organizations, Federal and State agencies, and others."<sup>15</sup> It also required the Commission to issue a Notice of Proposed Rulemaking ("NPR") in consultation with DOE, the Administrator of the Environmental Protection Agency ("EPA"), and the Secretary of Transportation ("DOT")

<sup>9</sup> 42 U.S.C. 13231. The information package required by this section was intended "to enable [consumers] to understand and to help them choose among alternative fuels and AFVs." H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 185, reprinted in 1992 U.S.C.C.A.N. at 1954, 2008.

<sup>10</sup> 42 U.S.C. 13231. EPA 92 also directs the DOE Secretary to create an additional public education program targeted specifically to the Federal government. Under that mandate, the DOE Secretary, "in cooperation with the Administrator of General Services," must "promote programs and educate officials and employees of Federal agencies on the merits of [AFVs]." 42 U.S.C. 13214(a). That section further requires that the DOE Secretary "shall provide and disseminate information to Federal agencies on," *inter alia*, "the range and performance capabilities of [AFVs]." *Id.*

<sup>11</sup> 15 U.S.C. 2821-2823.

<sup>12</sup> Octane Posting and Certification, 16 CFR Part 306.

<sup>13</sup> 16 CFR 306.0(i)(2) (1994). In that proceeding, the Commission had no authority to extend the rule's requirements beyond liquid alternative fuels. 15 U.S.C. 2821 (Supp. IV 1993).

<sup>14</sup> 16 CFR 306.0(j)(2) (1994). The Fuel Rating Rule became effective October 25, 1993. 58 FR 41356, 41356, Aug. 3, 1993.

<sup>15</sup> 42 U.S.C. 13232(a).

<sup>1</sup> Pub. L. 102-486, 106 Stat. 2776 (1992).

<sup>2</sup> H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 132, reprinted in 1992 U.S.C.C.A.N. at 1954, 1955.

within eighteen months after October 24, 1992 (the statute's enactment date).<sup>16</sup> To comply with those requirements, the Commission received information from the public relating to this proceeding from five sources: written comments filed in response to an Advanced Notice of Proposed Rulemaking ("ANPR") published on December 10, 1993,<sup>17</sup> written comments filed in response to an NPR published on May 9, 1994,<sup>18</sup> testimony during a Public Workshop-Conference ("Workshop") held on July 20, 1994, supplemental written comments filed after the Workshop, and written comments filed in response to a Supplemental Notice of Proposed Rulemaking ("SNPR") published on November 18, 1994.<sup>19</sup> All such information (i.e., the written comments and Workshop transcript) was placed on the public record of this proceeding. The discussion below includes information from all five sources, as well as documents placed on the public record by the Commission's staff.<sup>20</sup> The Commission considered all these materials in developing this final labeling rule.

#### A. The Commission's ANPR

In its ANPR, the Commission sought written comment on basic issues raised by section 406(a)'s mandate. Accordingly, it requested comment on issues relating to which fuels and vehicles should be covered by the labeling requirements (i.e., the proposed rule's scope), and what information should be required to be displayed on labels (i.e., the proposed rule's

disclosures).<sup>21</sup> The Commission also sought comment on how the labeling requirements should be updated, and the extent to which the labels should be consolidated with other labels providing information to consumers. In response, the Commission received 28 written comments addressing these issues. The comments were summarized in the Commission's NPR.<sup>22</sup>

#### B. The Commission's NPR

The Commission considered written comments responding to the ANPR in developing its initial labeling proposal, which was published in the **Federal Register** as the Commission's NPR. The NPR announced the substance of proposed labeling requirements and a proposed rule implementing section 406(a)'s mandate. In that NPR, the Commission invited interested persons to submit written comments on any issue of fact, law or policy that might have bearing upon the proposed labeling requirements. In response, the Commission received 37 written comments addressing the Commission's proposal. The comments responding to the NPR were summarized in the Commission's SNPR.

#### C. Public Workshop-Conference

The Commission announced in the NPR that its staff would conduct a Workshop to afford staff and interested parties an opportunity to discuss issues raised in the rulemaking proceeding.<sup>23</sup> The Workshop was not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue. Instead, its purpose was to examine publicly areas of significant controversy or divergent opinions that were raised in the written comments.

Twenty-one interested parties timely submitted written requests to participate in the Workshop.<sup>24</sup> Twenty of those parties filed written comments as required,<sup>25</sup> and all twenty were invited to participate. Two parties (Chrysler and Greenpeace) subsequently elected not to

attend, and, as a result, individuals representing eighteen interested parties participated at the Workshop.<sup>26</sup> The Workshop was held on July 20, 1994, at the Commission's headquarters and was conducted as announced in the NPR.<sup>27</sup>

#### D. Post-Workshop Comments

In its NPR, the Commission announced that Workshop participants would be permitted one week to file supplemental written comments addressing concerns raised during the Workshop.<sup>28</sup> Eight participants elected to file such comments.<sup>29</sup> The Commission also announced that after reviewing written comments received in response to the NPR, the Workshop transcript, and the post-Workshop comments, it would publish an SNPR. The SNPR would propose the text of a labeling rule and allow the public an opportunity to comment on the revised labeling proposal.

#### E. Supplemental Notice of Proposed Rulemaking

The Commission considered written comments on the public record, the Workshop transcript,<sup>30</sup> and staff submissions in developing a revised labeling proposal, which was published in the **Federal Register** as the Commission's SNPR. The SNPR announced modifications to the Commission's initial labeling proposal and the specific language of a proposed labeling rule. The Commission invited interested persons to submit written

<sup>16</sup> *Id.* Commission staff consulted with staff from DOE, EPA, and DOT's National Highway Traffic Safety Administration while developing its initial and supplemental labeling proposals.

<sup>17</sup> 58 FR 64914.

<sup>18</sup> 59 FR 24014.

<sup>19</sup> 59 FR 59666.

<sup>20</sup> Commission's Rulemaking Record No. R311002. Comments submitted in response to the SNPR are coded either "I" (indicating that they were filed by nongovernmental parties) or "J" (indicating that they were filed by governmental agencies). Written comments submitted in response to prior **Federal Register** notices are coded either "D" or "E" (in response to the ANPR) or "G" or "H" (in response to the NPR). Written requests to participate in the Workshop are coded "A." The Workshop transcript is filed in category "L." Information placed on the public record by Commission staff is coded "B."

In this notice, comments are cited by identifying the commenter (by abbreviation), the comment number, and the relevant page number(s), e.g., "RFA, I-3, 1-3." Supplemental comments filed after the Workshop are designated as (Supp.), e.g., "RFA (Supp.), G-5, 1." Discussion in the Workshop is cited by identifying the party, a reference to the transcript, and the relevant page number(s), e.g., "EPA (Tr.), 184." Staff submissions are cited by identifying the document number, relevant page number(s), and document date, e.g., "B-13, 3, Jan. 25, 1994."

<sup>21</sup> 58 FR 64914, 64915.

<sup>22</sup> 59 FR 24015-24017.

<sup>23</sup> 59 FR 24014, 24020.

<sup>24</sup> AAMA, A-2 (on behalf of AAMA, Chrysler, Ford, and GM); AGA/NGVC, A-8; API, A-10; API, A-12; Boston Edison, A-16; CAS, A-14; DOE, A-1; Eckert Seamans Cherin & Mellott, A-17 (on behalf of unidentified clients in the automotive industry); EMA, A-3 (request submitted by Neal Gerber & Eisenberg); ETC, A-11 (request submitted by Van Ness Feldman); EPA, A-9; Flxible, A-6; Greenpeace, A-18; NACAA, A-7; NAFA, A-13 (request submitted by Kent & O'Connor, Inc.); NPGA, A-5 (on behalf of NPGA and Phillips 66); RFA, A-4 (request submitted by Downstream Alternatives, Inc.); UCS, A-15.

<sup>25</sup> The law firm Eckert Seamans Cherin & Mellott did not file a written comment.

<sup>26</sup> Lois E. Bennett, GM; Timothy D. Davis, Columbia Gas (representing AGA/NGVC); Robert Graham and Peter Morman, CAS; Marcel L. Halberstadt, AAMA; Nancy L. Homeister, Ford; Evan W. Johnson, MC-MD (representing NACAA); Martin S. Karl, Boston Edison; Allen R. Larson, Esq., Larson and Curry (representing Boston Edison); Paul McArdle, DOE; Denise McCourt, API; Patrick O'Connor, Kent & O'Connor (representing NAFA); Larry D. Osgood, Phillips 66 Propane Company (representing NPGA); Robert E. Reynolds, Downstream Alternatives, Inc. (representing RFA); Glyn Short, API; Lisa A. Stegink, Esq., Neal Gerber & Eisenberg (representing EMA); Jaime C. Steve, UCS; Lance Watt, Flxible; Ellen S. Young, Esq., Van Ness Feldman (representing ETC); Kenneth L. Zerafa, EPA. Philip J. Harter, Esq., served as the Workshop's moderator.

<sup>27</sup> The NPR announced that the Workshop would take place over two days, but the participants concluded discussing the agenda staff had prepared in one day. As a result, the Workshop's second day was cancelled. (Tr.), 238.

<sup>28</sup> 59 FR 24014, 24023.

<sup>29</sup> AAMA, AGA/NGVC, Boston Edison, CAS, EMA, Flxible, NPGA, and RFA.

<sup>30</sup> Two commenters endorsed the Commission's reliance on the Workshop transcript in its preparation of the SNPR. See API, I-15, cover letter at 3 ("We believe the issues expressed in the July [Workshop] were fairly addressed by the FTC in its [SNPR]."); RFA, I-3, 2 ("We believe that the changes reflected in the revised final rule were justified based on written comments and the information covered at the public workshop.").

comments until December 19, 1994, addressing any issue they believed might bear upon the proposed rule. As described below, the Commission received 24 written comments in response to its SNPR from vehicle manufacturers,<sup>31</sup> fuel producers,<sup>32</sup> governmental entities,<sup>33</sup> a consumer organization,<sup>34</sup> organizations representing affected interests,<sup>35</sup> and other interested individuals.<sup>36</sup>

### III. Labeling Requirements Proposed in the SNPR

#### A. Comment Suggestions Beyond Commission's Authority Under EPA 92

As noted previously, section 406(a) directs the Commission to establish labeling requirements for alternative fuels and AFVs disclosing cost and benefit information. Because this rulemaking proceeding is mandated by statute, the Commission's authority is limited to what is authorized by EPA 92. During this proceeding, however, several commenters suggested regulatory options that are beyond the Commission's statutory authority because they involve matters other than labeling requirements, alternative fuels or AFVs, and cost and benefit information.

For example, several commenters suggested that the Commission require AFV dealers to have copies of the DOE brochure available for consumer inspection and use.<sup>37</sup> These commenters

believed that the Commission could model such a requirement on an existing EPA regulation directing automobile dealers to make available free copies of EPA's Gas Mileage Guide (a booklet comparing the fuel economy of similarly-sized new automobiles).<sup>38</sup> Such a requirement does not appear to be reasonably within section 406(a)'s scope, which is limited to uniform labeling requirements. In any event, the Commission notes that EPA's regulation was promulgated pursuant to a specific Congressional directive that EPA require dealers to provide such information to consumers.<sup>39</sup> In the absence of a similar Congressional directive, the Commission believes that such a requirement may be beyond its authority under EPA 92.<sup>40</sup>

For similar reasons, the Commission has also concluded that requiring any of the following may exceed its authority under EPA 92: (1) labeling for conventional fueled vehicles;<sup>41</sup> (2) that information on AFV labels be provided to consumers (in a non-label format) at the time an AFV is offered for sale;<sup>42</sup> (3) that "all pertinent information" (e.g., fuel hazards, tank capacity, refueling or recharging time, and cruising range) be disclosed in vehicle owners' manuals;<sup>43</sup>

AFV dealers and conversion companies to provide copies of the DOE package to consumers, and that consumers acknowledge receipt by signing a designated sales document. CAS, G-17, 7; (Tr.), 174; (Supp.), G-17, 4. See also CAS, I-12, 1 (FTC should "encourage availability" of DOE brochure at AFV dealerships). CAS also proposed that the AFV label advise consumers that a free copy of the DOE brochure is available from the dealer. CAS (Supp.), G-17, 4. ETC also suggested, however, that dealers would find it in their interest to have the DOE brochures available to consumers. ETC (Tr.), 168.

<sup>38</sup> 40 CFR 600.401-77 to 600.407-77 (1993).

<sup>39</sup> See 15 U.S.C. 2006(b)(2) ("The EPA Administrator \* \* \* shall prescribe rules requiring dealers to make available to prospective purchasers [fuel economy information] compiled by the EPA Administrator under paragraph (1).").

<sup>40</sup> The Commission notes, however, that a DOE official at the Workshop stated that DOE would consider distributing copies of the information package to AFV dealerships. DOE (Tr.), 227-28. In its comment, RFA wrote to "encourage some formal review process" of that brochure by industry. RFA, I-3, 2.

<sup>41</sup> AGA/NGVC, G-6, 11 (requiring disclosures only for AFVs could unnecessarily raise consumer concerns about these products).

<sup>42</sup> NAFA, I-10, 2; G-20, 2 ("For example, when a representative of a conversion company meets with a consumer to offer to convert a vehicle, the representative would provide the consumer with the appropriate information in a format similar to the vehicle label."). NAFA based this suggestion on its concern that consumers would not always be able to inspect labels prior to acquisition. *Id.*

<sup>43</sup> NACAA, H-6, 2. The Commission also believes that one suggestion (that it develop an information bulletin discussing pertinent considerations), while not beyond its authority, may not be necessary because of DOE's mandate to complete the same task. CEC, H-8, 1-2, 6; NAFA, G-20, 3. In any event, the Commission normally issues consumer education materials after new rules are issued, and

and (4) that a "simple card" describing factors consumers should consider before acquiring an AFV be placed within new and used vehicles.<sup>44</sup>

#### B. Labeling Requirements for Alternative Fuels

##### 1. Scope of the Labeling Requirements

In the SNPR, the Commission proposed that the scope of its labeling requirements extend to three non-liquid alternative fuels: compressed natural gas ("CNG"), hydrogen gas ("hydrogen") and electricity.<sup>45</sup> One comment addressed this aspect of the Commission's proposal.<sup>46</sup> For safety reasons, that comment recommended that the Commission limit the scope of the rule to alternative fuels that have been tested and approved for use by EPA.<sup>47</sup> The Commission notes that EPA 92 specifically defines the term "alternative fuel" to include the three fuels at issue;<sup>48</sup> and because they are readily available, DOE identifies them and encourages their use in its literature.<sup>49</sup> Furthermore, other than emission certification procedures, EPA has no procedures for certifying fuels as being safe for use.

The Commission's SNPR proposal was limited to *non-liquid* fuels because the Commission's Fuel Rating Rule contains labeling requirements for *liquid* alternative fuels. Further, the Commission proposed requirements for the non-liquid fuels that are similar to the Fuel Rating Rule's requirements for liquid alternative fuels. Although that rule serves a somewhat different purpose,<sup>50</sup> the Commission believes that harmonizing labeling requirements,

that will be considered when this proceeding is completed.

<sup>44</sup> AAMA, I-16, 6.

<sup>45</sup> These are the only non-liquid fuels defined as "alternative fuels" in EPA 92. 42 U.S.C. 13211(2) (Supp. IV 1993).

<sup>46</sup> Five other comments generally supported all aspects of the Commission's alternative fuels labeling proposal without addressing this specific issue. Boston Edison/EEL, I-14, 4; Chicago, J-2, 2-3; DOE, J-1, 2; EIA/EEU-ISD, J-4, 1; RFA, I-3, 2. In addition, comments on an earlier Commission proposal similarly supported limiting the scope of this proceeding to non-liquid alternative fuels. API, G-25, 1-3; CEC, H-8, 1-6; Mobil, G-2, 1-3; NAFA, G-20, 1; NPGA, G-18, 2-3; Phillips 66, G-15, 1; RFA (Supp.), G-5, 1; SIGMA, G-23, 1; Sun, G-1, 1.

<sup>47</sup> Chicago, J-2, 2-3.

<sup>48</sup> 42 U.S.C. 13211(2) (Supp. IV 1993).

<sup>49</sup> U.S. Dept of Energy, Taking An Alternative Route, B-33.

<sup>50</sup> The purpose of the EPA 92 amendments to Title II of the Petroleum Marketing Practices Act, 15 U.S.C. 2821-2825, was to give purchasers information they need to choose the correct type or grade of fuel for their vehicles. 58 FR 41356. Section 406(a)'s purpose is to provide consumers with appropriate cost and benefit information to enable them to make informed choices among alternative fuels and AFVs. 59 FR 59666.

<sup>31</sup> Ford Motor Company ("Ford"), I-4; Electro Automotive ("Electro Auto"), I-7; Toyota Motor Corporation ("Toyota"), I-11; Chrysler Corporation ("Chrysler"), I-13.

<sup>32</sup> Mobil Oil Corporation ("Mobil"), I-2; Unocal Corporation ("Unocal"), I-5; Commercial Electronics NGV Systems Division ("Comm Elec"), I-8; Boston Edison and Edison Electric Institute (submitted by Larson and Curry) ("Boston Edison/EEI"), I-14.

<sup>33</sup> U.S. Department of Energy ("DOE"), J-1; City of Chicago, Illinois ("Chicago"), J-2; California Air Resources Board ("CARB"), J-3; U.S. Department of Energy, Energy Information Administration, Energy End Use and Integrated Statistics Division ("EIA/EEU-ISD"), J-4; U.S. Department of Transportation, National Highway Traffic Safety Administration ("DOT/NHTSA"), J-5.

<sup>34</sup> Center for Auto Safety ("CAS"), I-12.

<sup>35</sup> Renewable Fuels Association (submitted by Downstream Alternatives, Inc.) ("RFA"), I-3; Engine Manufacturers Association (submitted by Neal Gerber & Eisenberg) ("EMA"), I-6; Electric Transportation Coalition (submitted by Van Ness Feldman) ("ETC"), I-9; National Association of Fleet Administrators, Inc. ("NAFA"), I-10; American Petroleum Institute ("API"), I-15; American Automobile Manufacturers Association ("AAMA"), I-16; American Gas Association and Natural Gas Vehicle Coalition ("AGA/NGVC"), I-18; Natural Gas Vehicle Producers Association ("NGVPA"), I-19.

<sup>36</sup> E. A. Mechtly, Ph.D., Engineering Educator, University of Illinois ("Mechtly"), I-1; Louis F. Sokol, CAMS, Metrification Consultant ("Sokol"), I-17.

<sup>37</sup> ETC, G-24, 6; NAFA, G-20, 3-5; NPGA (Tr.), 188-89. CAS suggested that the Commission require

when practicable, is appropriate. Thus, the Commission's SNPR proposal had the effect of imposing labeling requirements on non-liquid alternative fuels that are similar to those that currently exist for liquid alternative fuels.

After considering the record, the Commission has determined that the scope of the rule shall be limited to the non-liquid alternative fuels CNG, hydrogen and electricity.<sup>51</sup> This will result in equal, uniform, fuel-neutral labeling requirements for all alternative fuels that are currently used or contemplated for use as automotive fuels. Further, in accordance with section 406(a)'s directive to review the rule "periodically to reflect the most recent available information,"<sup>52</sup> the Commission will supplement the list of covered fuels if and when DOE designates new non-liquid fuels as alternative fuels.<sup>53</sup>

## 2. Label Disclosures for Non-liquid Alternative Fuels

a. *SNPR proposals.* In the SNPR, the Commission proposed that retailers selling CNG, hydrogen and electricity to consumers post standard labels identifying the commonly used names of those fuels on public fuel dispensers (including electric dispensers used to recharge batteries in electric vehicles).<sup>54</sup> The labels would be placed conspicuously in full view of consumers (i.e., ultimate purchasers) and as near as reasonably practical to the fuel's unit price disclosure. No comments were submitted regarding this facet of the SNPR proposal. The Commission, therefore, has determined to adopt these requirements in the final rule for the reasons stated in the SNPR.<sup>55</sup>

With respect to CNG and hydrogen, the Commission also proposed requiring disclosure of the fuel's principal component and permitting disclosure of other components,<sup>56</sup> expressed as minimum molecular percentages ("minimum mole percent").<sup>57</sup> These

proposals are analogous to provisions in the Fuel Rating Rule pertaining to liquid alternative fuels.<sup>58</sup> In the SNPR, the Commission tentatively concluded that its proposal to require disclosure of the minimum methane content of CNG would assist consumers in purchasing CNG that satisfies requirements specified by engine manufacturers to meet performance and emissions certification levels.<sup>59</sup> The Commission also concluded that its proposal would be consistent with the Fuel Rating Rule's requirements for liquid alternative fuels,<sup>60</sup> and would assist consumers in identifying the proper fuel for their vehicles. The Commission further noted that because CNG exists with too low a methane content to be used as a transportation fuel,<sup>61</sup> requiring disclosure of the minimum methane content would help ensure that CNG

contains as many elementary entities as there are atoms in 0.012 kilogram of carbon 12. When the mole is used, the elementary entities must be specified and may be atoms, molecules, ions, electrons, other particles, or specified groups of such particles." "The International System of Units (SI)," NIST Special Publication 330 (1991 edition), August 1991, U.S. Department of Commerce, National Institute of Standards and Technology (hereinafter "NIST Publication 330"), B-43, 4-5.

<sup>58</sup> 16 CFR 306.10(b)(1) and 306.10(f) (1994).  
<sup>59</sup> 59 FR 59666, 59671. See AAMA (Tr.), 37, 62 (label should identify the fuel), 81 (at this time a minimum methane content disclosure is appropriate); Flxible (Tr.), 74, (Supp.), G-12, 2 (dispensers for CNG should be labeled with the minimum methane content due to the requirements dictated by some engine manufacturers to meet performance and emissions certification levels); RFA, G-5, 3; Sun, G-1, 1.

<sup>60</sup> 59 FR 59666, 59671. See API, G-25, 1-3 (until a private, voluntary, consensus standards organization develops specifications for alternative fuels, additional disclosure requirements are inappropriate; expand Fuel Rating Rule to cover non-liquid alternative fuels to encourage fuel-neutral regulatory scheme; and labeling of principal component may provide useful information to consumers); EIA/EEU-ISD, H-2, 1 (expressed general support for the proposed rule); Mobil, G-2, 1-3 (the proposed label is consistent with the Fuel Rating Rule, and no other disclosures should be required); NAFA, G-20, 1 (endorses a uniform labeling requirement for alternative fuels); NPGA, G-18, 2-3 (extremely important that all alternative fuels be subject to essentially identical requirements, and the Commission's proposal is sufficient under the statutory requirements), (Tr.) 48-49 (issue is how to get the consumer to the correct pump, and in that respect, the orange labels for liquid alternative fuels do an effective job); Phillips 66, G-15, 1; RFA, G-5, 2-3 (the benefit of providing additional information beyond that proposed is not well established), (Tr.), 28, 31, 38, (Supp.), G-5, 1 (the current labeling requirements for alternative fuels under the Fuel Rating Rule are adequate and the same labeling requirements should be extended to gaseous fuels); SIGMA, G-23, 1 (supports the proposed requirements and urges the Commission to adopt the proposed rule without change); Sun, G-1, 1-2 (agrees with the Commission's proposal to extend the Fuel Rating Rule labeling requirements to non-liquid alternative fuels thereby placing equal regulatory requirements on all alternative fuels).

<sup>61</sup> See Flxible (Tr.), 74-77.

that is not suitable for use as a transportation fuel is not inadvertently sold for that purpose. Although CNG sold as a transportation fuel must always meet minimum vehicle needs, information about minimum methane content could help assure consumers that the CNG they are purchasing will meet their engines' needs.<sup>62</sup>

The Commission also recognized that electricity used for recharging electric vehicle ("EV") batteries might need to be subject to different labeling disclosures.<sup>63</sup> Accordingly, for electricity, the SNPR proposed requiring that labels on public electric vehicle fuel dispensing systems include the commonly used name of the fuel, kilowatt capacity, voltage, current (either AC or DC), amperage and type of charger (either conductive or inductive).<sup>64</sup> In the SNPR, the Commission tentatively concluded that such disclosures were the minimum operating parameters that would be necessary to protect consumers operating the equipment, the vehicles whose batteries would be charged, as well as the charging equipment.<sup>65</sup>

Sixteen comments addressed the issues raised in the SNPR. Five comments generally supported the Commission's proposals in their entirety because if adopted, the proposals would provide appropriate and useful information to consumers attempting to make alternative fuel purchasing decisions.<sup>66</sup> The remaining eleven comments are discussed in the following section and in section III(B)(3) *infra*.

b. *Comments on SNPR concerning CNG.* Two comments questioned whether the Commission's SNPR proposal to require disclosure of the minimum methane content of CNG would be helpful to consumers in the absence of standards requiring a minimum methane content for CNG vehicle fuel.<sup>67</sup> The Commission believes

<sup>62</sup> 59 FR 59666, 59671.

<sup>63</sup> Unlike the other alternative fuels, the electricity used to recharge the batteries that power electric vehicles is not dispensed from a conventional fuel pump. It is dispensed from an electrical dispenser or recharging station and produces different physical effects depending on the type of dispenser or charging equipment through which it is dispensed. Therefore, the Commission recognized that electricity used as a vehicle fuel might have to be rated in accordance with the characteristics of the specific electrical dispenser or recharging station.

<sup>64</sup> See proposed rule §§ 309.1(q)(2) and 309.15, 59 FR 59666, 59704, 59706.

<sup>65</sup> The specific bases for the Commission's SNPR proposal are discussed in more detail at 59 FR 59666, 59671-59672.

<sup>66</sup> Boston Edison/EEL, I-14, 4; Chicago, J-2, 2-3; DOE, J-1, 2; EIA/EEU-ISD, J-4, 1; RFA, I-3, 2.

<sup>67</sup> API, I-15, 2; Mobil, I-2, 3.

<sup>51</sup> See 59 FR 59666, 59669-59670 for a general description of the qualities of the alternative fuels covered by the final rule.

<sup>52</sup> 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>53</sup> The Secretary of the Department of Energy has the responsibility to designate, by rule, new fuels as alternative fuels. 42 U.S.C. 13211(2) (Supp. IV 1993).

<sup>54</sup> See proposed rule §§ 309.1(q) and 309.15, 59 FR 59666, 59704, 59706.

<sup>55</sup> 59 FR 59666, 59671-59672.

<sup>56</sup> CNG vehicle fuel is composed primarily of methane with small percentages of ethane, propane, butane, nitrogen, helium, carbon dioxide and hydrogen sulfide. Hydrogen vehicle fuel is composed primarily of hydrogen, with very small percentages of water, oxygen, and nitrogen.

<sup>57</sup> Under the international system of units, "the mole is the amount of substance of a system which

that consensus standards specifying a minimum methane content for CNG as a vehicle fuel would be helpful, but recognizes that they do not presently exist. The Commission's proposed labeling approach for CNG and hydrogen provides a basic measure of fuel quality and, used in conjunction with the owner's manual containing the vehicle manufacturer's fuel recommendations, it provides consumers with the information necessary to select the fuel on which their vehicle has been designed to perform.<sup>68</sup>

Accordingly, the Commission has determined that the fuel rating for CNG and hydrogen must include the commonly used name of the fuel and the amount, expressed as a minimum molecular percentage, of the principal component of the fuel. The label also may include a disclosure of other components as minimum molecular percentages, if desired.<sup>69</sup> This rating approach will provide consumers with information necessary to make informed fuel purchasing decisions. It also will provide fuel producers and marketers with the flexibility to develop and blend fuels appropriate for location and climate, consistent with United States Environmental Protection Agency and original equipment manufacturer requirements. The Commission's action, therefore, will assist in the development and use of non-liquid alternative fuels and alternative fueled vehicles.

*c. Comments on SNPR concerning electricity.* The Commission proposed in the SNPR that the electric recharging station label disclose the voltage at which electrical power is supplied by the electric charging equipment, the maximum current in amperes that can be delivered, whether the charging equipment supplies alternating or direct current, whether the unit is a conductive charger (a plug on a cord) or an inductive charger (a paddle in a port system), and the kilowatt capacity of the charging equipment to tell consumers how quickly their vehicles can recharge. Three comments specifically related to these proposals. One comment questioned the need for a kilowatt capacity disclosure since consumers could derive it from the proposed voltage/amperage disclosure for electricity dispensers. The comment also recommended that when two charging methods are available from the same electricity dispenser (e.g., 240 vac/

40 amps and 120 vac/15 amps) the Commission should require that both methods be disclosed.<sup>70</sup>

An explicit kilowatt capacity disclosure is an important dispenser parameter that is useful in assisting consumers to determine immediately how quickly their vehicles' batteries will recharge. Although the Commission acknowledges that kilowatt capacity can be calculated from the voltage/amperage disclosure, the kilowatt capacity disclosure obviates the need for engaging in mathematical calculations at the dispenser. The Commission has decided to address the issue of the availability of multiple charging methods from the same dispenser by requiring in the final rule that they both be disclosed, as recommended by the comment, but on separate labels on the dispenser.<sup>71</sup>

Another comment recommended that the Commission's amperage disclosure on the label be expressed as an "A" instead of by the word "amps," as proposed.<sup>72</sup> The Commission has concluded, however, that use of the word "amps" on the label, because it is more descriptive than an "A," may make consumers more familiar with the electricity refueling infrastructure and, therefore, be more useful in assisting consumers to locate the correct electricity dispenser. Finally, one comment suggested that the efficiency of electric vehicle chargers is a parameter that perhaps should eventually appear on charger labels once standardized test procedures are developed to determine efficiency.<sup>73</sup> The Commission notes that electric vehicle chargers are not 100 percent efficient. Some energy is lost to heat in the process of converting the energy that is supplied to the charger to a form that is usable by the vehicle battery. The Commission will monitor the development of standardized test procedures to determine electric vehicle charger efficiency, and consider including this factor when more information becomes available.

Accordingly, after considering the comments on its SNPR proposal, the Commission has determined that labels on public electric vehicle fuel dispensing systems shall include the commonly used name of the fuel (e.g., electricity), kilowatt capacity, voltage, current (either AC or DC), amperage and type of charger (either conductive or

inductive).<sup>74</sup> Such disclosures will assist consumers in locating electric fuel dispensers that are compatible with their vehicles, and in determining how much time it will take for their vehicles' batteries to recharge.

*d. Summary.* In summary, the requirements for CNG, hydrogen and electricity will provide consumers with the most important pieces of information needed when refueling: fuel type and composition (or, for electricity, other relevant parameters). Although in the absence of such requirements sellers could be expected to identify the fuels sold, they may not do so in a standardized format that assists consumers in identifying the proper fuel quickly. Furthermore, it is uncertain absent these requirements whether sellers would provide information regarding the precise composition of the fuels, or relevant parameters of the EV fuel dispenser.

### 3. Label Disclosures Considered but not Adopted in Final Rule

In addition, the Commission concludes that other information on the fuel dispenser concerning alternative fuels is unlikely to be useful in most instances. For consumers with dedicated AFVs (i.e., vehicles capable of operating on only one fuel), the selection process between competing fuels is concluded once an AFV is acquired. Consumers driving dual or flexible fueled vehicles (i.e., vehicles capable of being powered both by a conventional and an alternative fuel) will be limited to purchasing fuels meeting their engines' requirements. Thus, providing consumers with other information designed to permit comparisons among various types of alternative fuels is best done prior to the time the vehicle is acquired.

Further, excluding less important information avoids information overload. In contrast to vehicle purchases, fuel purchases typically occur in a quick transaction. In a report to Congress assessing the need for a uniform national label on fuel pumps, the Commission noted that time constraints may affect how consumers read, understand, and use information.<sup>75</sup> Indeed, "studies show that less accurate information processing occurs under time constraints; test subjects focus on fewer pieces of information and unduly emphasize negative information."<sup>76</sup> Simplicity therefore is an even greater

<sup>68</sup> Although at present CNG vehicles apparently are designed to run on the broad range of methane content in available vehicle CNG, in the future manufacturers may design vehicles favoring specific, higher methane contents.

<sup>69</sup> See final rule §§ 309.1(q)(1) and 309.15 *infra*.

<sup>70</sup> Toyota, I-11, 2.

<sup>71</sup> See proposed rule § 309.15, 59 FR 59666, 59706, and final rule § 309.15 *infra*.

<sup>72</sup> Sokol, I-17, 1.

<sup>73</sup> CARB, J-3, 1.

<sup>74</sup> See final rule §§ 309.1(q)(2) and 309.15 *infra*.

<sup>75</sup> Federal Trade Commission, Study of a Uniform National Label for Devices That Dispense Automotive Fuels to Consumers (1993), at 29.

<sup>76</sup> *Id.*, at 29 n.152.

consideration in the labeling of fuels than in the labeling of AFVs.

In formulating its labeling requirements, the Commission sought to reconcile several competing concerns. As noted previously, EPA 92 directs the Commission to develop uniform labels disclosing appropriate cost and benefit information. However, in determining what information is appropriate, the Commission must consider the problems associated with developing and publishing such information on simple labels. Given this context, and after considering the comments, the Commission considered and rejected in the SNPR several alternative disclosures for dispenser labels suggested by various comments. The SNPR generated additional comments, however, as discussed below. An analysis of these comments has not persuaded the Commission to require any of the previously rejected disclosures.

*a. Octane rating.* In the SNPR, the Commission rejected a proposal that it require the posting of octane ratings for non-liquid alternative fuels. Three comments were submitted in response to that tentative determination in the SNPR. To prevent commercial, heavy-duty vehicle and fleet operators from misfueling and experiencing related problems, EMA recommended that the Commission require the posting of octane ratings for all non-liquid alternative fuels.<sup>77</sup> Due to the variability in the fuel quality of natural gas, Commercial Electronics recommended that the Commission require disclosure of CNG's octane rating.<sup>78</sup> API, however, stated that the non-liquid alternative fuel dispenser labels should not include octane ratings.<sup>79</sup>

After considering the comments submitted, the Commission has determined not to require the posting of octane ratings for CNG and hydrogen. To the extent that commercial fleet operators have their own fueling facilities, they can specify a required octane rating and insist in contracts with their suppliers that they determine such rating by an agreed method for the fuel purchased. Commercial operators might also obtain such information if, for example, it were posted voluntarily on fuel dispensers. Generally, however, as explained in the SNPR, the Commission concludes that octane ratings for alternative fuels are high enough to avoid engine knock problems in vehicles presently designed to use alternative fuels, and such ratings do not provide significant information

relevant to vehicle performance of alternative fueled vehicles.<sup>80</sup> In addition, the octane ratings of a given type of alternative fuel would not vary significantly.<sup>81</sup> Further, there might be practical problems in implementing a reliable octane certification and posting program for alternative liquid automotive fuels, because of the lack of a standardized test method, such as an ASTM-approved test method for determining octane ratings of such fuels.<sup>82</sup>

There also are significant disadvantages to requiring octane posting and certification for alternative fuels. In particular, the Commission is reluctant to require a disclosure that might mislead consumers about the benefits of alternative fuels, the octane ratings of which exceed those of gasoline. Further, it might foster consumer misperceptions that higher octane necessarily signifies higher quality and better performance. Such a disclosure also might cause consumers to believe that gasoline and alternative fuels are interchangeable, or that different alternative fuels are interchangeable with one another.

*b. Comparative information based upon BTUs or gasoline-gallon-equivalents.* In the SNPR, the Commission considered but rejected proposals that the Commission require the use of alternative fuel labels that either: (1) advise consumers of the price of an alternative fuel and the quantity of the alternative fuel dispensed in terms of gasoline-gallon-equivalent ("GGE") units based on the energy contents of the alternative fuels, or (2) identify the heating value or energy content of a fuel expressed in British thermal units ("BTUs"). In response to the SNPR, the two comments addressing this issue supported the Commission's position, recommending that the Commission not adopt a labeling approach that would require disclosure of comparative information based upon BTUs or

<sup>80</sup> 59 FR 59666, 59673. See AGA/NGVC, I-18, Attachment at 8 (The antiknock performance of natural gas is best for pure methane or methane/inert gas mixtures, and declines somewhat with increasing concentrations of non-methane hydrocarbons. This effect is not usually significant for the typical range of pipeline gas composition, but may become important [in the future] in high-compression engines burning unprocessed gas or propane-air mixtures).

<sup>81</sup> AGA/NGVC, G-6, 5-6 (octane levels for natural gas are not likely to vary at different retailers); and Phillips 66/NPGA (Tr.), 49-50.

<sup>82</sup> AGA/NGVC, I-18, Attachment at 8 (no standard octane testing methods exist for natural gas); Phillips 66/NPGA (Tr.), 49-50 (there are no standards for determining the octane ratings of CNG or hydrogen).

gasoline-gallon-equivalents.<sup>83</sup> Accordingly, for the reasons stated in the SNPR, the Commission is not requiring such disclosures on fuel dispenser labels.<sup>84</sup>

*c. Performance effects (cruising range).* In the SNPR, the Commission considered and rejected a proposal that the Commission require fuel dispenser labels to advise consumers that the cruising range of a vehicle when running on an alternative fuel will be less than when the vehicle is running on gasoline, due to the alternative fuel's lower energy content. In response to the SNPR, the one comment addressing this issue supported the Commission's position, opposing a requirement that dispenser labels include performance effects of the non-liquid alternative fuel.<sup>85</sup> Accordingly, for the reasons stated in the SNPR, the Commission is not requiring disclosure of performance effects as an element of fuel dispenser labels.<sup>86</sup>

However, the Commission recognizes that information relating to cruising range would be useful to consumers when choosing a vehicle or deciding whether to convert an existing vehicle to an alternative fuel. Therefore, the Commission has determined that information relating to cruising range would be appropriate on labels it is requiring for covered AFVs, as discussed in section III(C) *infra*.

*d. Compliance with material specifications.* In the SNPR, the Commission rejected a proposal that it require that dispenser labels indicate whether the fuel meets the alternative fuel specifications defined by the California Air Resources Board in

<sup>83</sup> API, I-15, 1; Mobil, I-2, 2 (In summary, comparative type cost data are not conducive to fuel labeling. Labels that provide consumer information already exist today in the form of pricing information that enables consumers to make choices and comparisons as required by section 406 of EPA 92. The National Conference on Weights and Measures is currently in the process of setting the measurement standard for alternative fuels. A uniform unit of measure, such as the gasoline equivalent gallon, will provide consumers additional economic information helpful in making informed purchasing decisions).

<sup>84</sup> 59 FR 59666, 59673-59674 (e.g., GGE disclosures are not conducive to keeping the fuel label simple, as required by EPA 92; this information is more an equipment metering issue that is more properly addressed by weights and measures organizations; the energy content of a fuel, as measured by its BTU rating, does not always accurately reflect actual fuel economy).

<sup>85</sup> API, I-15, 1.

<sup>86</sup> 59 FR 59666, 59674 (e.g., cruising range is not necessarily less when operating on an alternative fuel; a general statement on a fuel dispenser label relating to cruising range would not provide sufficient comparative information to consumers to enable them to make reasonable purchasing choices and comparisons between fuels of the same type).

<sup>77</sup> EMA, I-6, 2-4.

<sup>78</sup> Comm Elec, I-8, 2-7.

<sup>79</sup> API, I-15, 1.

1993.<sup>87</sup> In rejecting the proposal, the Commission stated, in part, that California's specifications were not developed by a consensus process, were developed for California's particular needs and, therefore, may not be practical for the rest of the country.<sup>88</sup> In the SNPR, the Commission also rejected a proposal that CNG dispenser labels indicate whether the fuel meets the Society of Automotive Engineers' ("SAE") "recommended practice" for CNG called J1616. In rejecting that proposal, the Commission stated that recommended practice SAE J1616 was issued as a guide to address the composition of natural gas used as an automotive fuel, not as a standard for CNG. The guide states it anticipates that a CNG standard will evolve, but emphasizes that experience and more technical knowledge are needed.<sup>89</sup>

Three comments responded to those determinations in the SNPR. These comments stated that inasmuch as consistent fuel quality is required to ensure proper vehicle operation, including emissions control, the Commission should require that dispenser labels indicate compliance or non-compliance with fuel quality specifications and refueling equipment standards, with specific references to each, when they are developed for CNG and hydrogen.<sup>90</sup> A disclosure based on accepted and approved fuel specifications and standards could provide meaningful comparative information to consumers relating to the quality of the fuel they are purchasing. However, the aforementioned comments appear to confirm that adequate, generally accepted standards and specifications suitable for nationwide use do not presently exist for most alternative fuels, and specifically do not exist for CNG or hydrogen. Therefore, the Commission has determined not to require that fuel dispenser labels guarantee the delivery of fuels meeting certain specifications.

The Commission, however, continues to favor the development of specifications and standards that define alternative fuels by a consensus standards-setting organization, such as ASTM, or by a government agency with appropriate engineering and technical

expertise to set such specifications and standards for nationwide use. This type of standards development would include participation by affected parties such as alternative fuel producers and providers, engine manufacturers, regulators, consumers, and organizations or government agencies with pertinent technical expertise. It also would provide a mechanism for evaluating proposed test methods and procedures necessary to determine compliance with the standards. The Commission will monitor the development of alternative fuel standards and consider including them as an element of the dispenser labels when more information becomes available.

e. *Environmental benefits (emissions).* In the SNPR, the Commission considered and rejected a proposal that the Commission require fuel dispenser labels to generally advise consumers of the environmental benefits of alternative fuels.<sup>91</sup> In response to the SNPR, the one comment addressing this issue supported the Commission's position.<sup>92</sup> Accordingly, for the reasons stated in the SNPR, the Commission is not requiring that fuel dispenser labels indicate the environmental benefits of alternative fuels.<sup>93</sup>

However, the Commission recognizes that information relating to emissions and the environmental benefits of alternative fuels would be useful to consumers when choosing an alternatively fueled vehicle or deciding whether to convert an existing vehicle to an alternative fuel. Therefore, the Commission has determined that information relating to emissions would be appropriate on the labels it is requiring for covered AFVs, as discussed in section III(C) *infra*.

f. *Pressure.* In the SNPR, the Commission considered and rejected a proposal that the Commission require CNG dispenser labels to display the fueling pressure, either 2,400, 3,000 or 3,600 P.S.I. (pounds per square inch), and the nozzle type to indicate whether dispenser fueling pressure is compatible with CNG vehicle tank storage pressure.<sup>94</sup> The two comments on the Commission's SNPR proposal addressing this issue recommended that

the Commission require that CNG dispenser labels indicate the nozzle type and corresponding fill pressure of the CNG dispenser, to avoid consumer inconvenience at the CNG fueling site.<sup>95</sup>

The Commission agrees that fueling pressure is useful information. The industry, however, already has taken independent steps to address this issue. Specifically, the industry has developed standards for pressure coding dispenser/vehicle CNG connectors so that consumers will not be able to overfuel a low pressure vehicle from a high pressure dispenser.<sup>96</sup> Further, the use of standard CNG vehicle fueling connectors complying with the ANSI/AGA NGV1 specification is required at public dispensing points by National Fire Protection Association safety standard 52 ("NFPA 52"), which is a fire code adopted by most, if not all, states.<sup>97</sup> Accordingly, the Commission has determined that requiring the disclosure of fueling pressure and nozzle type on CNG dispenser labels is unnecessary at this time.

g. *Safety warnings.* In the SNPR, the Commission considered but rejected proposing safety warnings as an element of the alternative fuel labels.<sup>98</sup> The one comment on the Commission's SNPR proposal addressing this issue recommended that the Commission require that non-liquid alternative fuel dispenser labels include information about the fuel's potential hazards and limitations on use.<sup>99</sup>

The Commission notes that safety standards for operation of motor vehicle fuel-dispensing stations are covered by the Uniform Fire Code.<sup>100</sup> Further, to

<sup>85</sup> AAMA, I-16, 8; NGVPA, I-19, 1.

<sup>86</sup> See ANSI/AGA NGV1-1994 American National Standard For Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices, attached to AGA/NGVC's comment, G-6.

<sup>87</sup> ANSI/NFPA 52 Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1992, B-39. See also Stookey, *An Analysis of the 1994 Uniform Fire Code Requirements for CNG Fuel Stations*, Nat. Gas Fuels, June 1994, B-48, 27-30.

<sup>88</sup> 59 FR 59666, 59675.

<sup>89</sup> EMA, I-6, 3.

<sup>90</sup> For example, in July 1993, the voting membership of the Uniform Fire Code ("UFC") and Uniform Fire Code Standards adopted new regulations for the design, construction and operation of CNG motor vehicle fuel-dispensing stations. The UFC voting membership is a democratic code development organization that includes fire and building officials, design professionals, equipment manufacturers and trade organizations. The UFC's minimum requirements are primarily based on the requirements of NFPA 52, "Standard for CNG Vehicular Fueling Systems," 1992 edition. The Uniform Fire Code Standards are a model code that establishes requirements for building and site fire protection, the safe storage and use of hazardous materials, and the fire safety and fire protection designs of the Uniform Building Code. Article 52 of the 1994 UFC addresses the design, construction, commissioning and operation

<sup>87</sup> See Specifications for Compressed Natural Gas, Title 13, California Code of Regulations, section 2292.5 (1993), B-41; Specifications for Hydrogen, Title 13, California Code of Regulations, section 2292.7 (1993), B-42.

<sup>88</sup> 59 FR 59666, 59674.

<sup>89</sup> Society of Automotive Engineers, "Recommended Practice for Compressed Natural Gas Vehicle Fuel," SAE J1616, B-40, 16.

<sup>90</sup> AAMA, I-16, 7-8; EMA, I-6, 2-4; NGVPA, I-19, 1.

<sup>91</sup> AMI, G-3, 2; Phillips 66/NPGA (Tr.), 51.

<sup>92</sup> API, I-15, 1.

<sup>93</sup> 59 FR 59666, 59675 (e.g., a statement on a fuel dispenser label advising consumers of the environmental benefits of alternative fuels would not provide sufficient information to assist consumers in making choices and comparisons between fuels of the same type).

<sup>94</sup> 59 FR 59666, 59675. See Flexible (Supp.), G-12, 2; Thomas BB, G-10, 1; Phillips 66/NPGA (Tr.), 51; AGA/NGVC (Tr.), 103-104.

some extent, the fuel labeling requirements, particularly those for electric vehicle ("EV") public dispenser systems, implicitly consider safety issues for refueling by directing consumers to the proper fuel dispenser. Beyond this (and fire code requirements that are already in place), consumers may find safety information about various fuels more pertinent when purchasing an AFV than when refueling. Thus, the Commission is not persuaded that including a safety warning statement on a fuel dispenser label would help consumers make reasonable fuel choices and comparisons. The Commission has determined that rather than require that safety disclosures appear on fuel dispenser labels, it will require a reference to DOE's consumer information brochure and DOT/NHTSA's Vehicle Safety Hotline on labels for covered AFVs, as discussed in section III(C) *infra*. The DOT/NHTSA Hotline acts as a clearinghouse and can refer consumers to other sources where, for example, information can be obtained about how to safely refuel CNG vehicles. Further, the Commission anticipates that a marketer's refueling instructions, whether appearing in an AFV owner's manual or on the fuel dispenser, will discuss or incorporate relevant safety measures. However, if in the future information demonstrates a need for the Commission to require safety-related disclosures on the dispenser labels, the Commission can revisit this issue.

h. *Refueling instructions.* In the SNPR, the Commission considered but rejected proposing refueling instructions as an element of the fuel dispenser labels. No comments were submitted regarding this tentative determination. Therefore, for the reasons stated in the SNPR, the Commission has determined not to require such disclosures.<sup>101</sup>

i. *Wobbe number.* In the SNPR, the Commission considered but rejected proposing the Wobbe number as an element of the CNG dispenser label. The one comment addressing this issue recommended that the Commission require that CNG fuel dispenser labels include the fuel's Wobbe number, a measure of its air-fuel metering properties.<sup>102</sup> Although AGA/NGVC recommended that the Commission require disclosure of the Wobbe number, it also pointed out that all gas

pipelines and utilities monitor and control closely the Wobbe number of natural gas. For gas distributed in most of the United States, AGA/NGVC stated that the Wobbe number typically is maintained between 1320 and 1360, well within the range recommended for natural gas vehicle fuel by SAE J1616 (1300–1420).<sup>103</sup>

After considering AGA/NGVC's comment, the Commission is not persuaded that the purported benefits to consumers of including the Wobbe number on CNG labels are sufficiently significant to justify requiring its disclosure. Depending on the fuel metering technology, variations in the Wobbe number may slightly affect engine performance and emissions. The effect of variations in the Wobbe number for gaseous-fueled vehicles is similar to the effect of variations in the fuel energy content of gasoline in conventional vehicles. Further, modern spark-ignition engines are able to compensate for reasonable variations in the Wobbe number, just as they compensate for variations in gasoline energy content due to refining differences or use of alcohol blends.<sup>104</sup> Wobbe numbers for natural gas vehicle fuels also appear to be high enough to avoid engine problems in vehicles presently designed to use CNG. While the Wobbe number may be important to engine manufacturers and fuel producers as an important element of a fuel specification, it would not appear to provide consumers with significant additional information relevant to vehicle performance. Accordingly, the Commission has determined not to require disclosure of the Wobbe number on CNG dispenser labels.

#### 4. Additional Requirements of Final Rule

a. *Label size and format.* In the SNPR, the Commission proposed that labels for non-liquid alternative fuels follow the same standardized size and format requirements as those for liquid alternative fuels under the Fuel Rating Rule.<sup>105</sup> Labels required by the Fuel

Rating Rule are 3 inches wide by 2½ inches long, with process black type on an orange background.<sup>106</sup> Although section 406(a) does not specify size and format standards for alternative fuel labels, it directs the Commission "to establish uniform labeling requirements, to the greatest extent practicable." It also specifies that "[r]equired labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer."<sup>107</sup>

Two comments addressed this proposal. Both supported the Commission's proposal because it promoted consistency in the labeling of all alternative fuels.<sup>108</sup> Accordingly, the Commission has determined to require that labels for non-liquid alternative fuels follow the same standardized size and format requirements as those for liquid alternative fuels under the Fuel Rating Rule.<sup>109</sup> Further, to keep the labels uniform and simple, the Commission is not requiring any label consolidation.

b. *Substantiation, certification, and recordkeeping requirements.* In the SNPR, to ensure the accuracy of the required dispenser labels, the Commission proposed substantiation, certification, and recordkeeping requirements for importers, producers, refiners and distributors of gaseous alternative fuels, and manufacturers and distributors of electric vehicle fuel dispensing systems. The Commission also proposed substantiation and recordkeeping requirements for retail sellers of the three non-liquid alternative vehicle fuels.<sup>110</sup> The Commission based its SNPR proposal on its conclusion that the requirements are justified because they are rationally related to the establishment of "uniform labeling requirements" that provide important information to consumers.<sup>111</sup> As described below, several comments addressed two aspects of the Commission's proposal. The comments related to who should bear the burden for substantiating the fuel rating for CNG, and whether a particular ASTM

G-18, 4; RFA, G-5, 4; SIGMA, G-23, 1; Sun, G-1, 2; Thomas BB, G-10, 2).

<sup>106</sup> 16 CFR 306.12 (1994).

<sup>107</sup> In the NPR, the Commission proposed and rejected the idea of consolidating the non-liquid alternative fuel labels with other mandatory labels (59 FR 24014, 24018). The one comment addressing this issue agreed that consolidation would appear to provide no benefit and would only lead to public confusion (TVA, H-5, 1).

<sup>108</sup> API, I-15, 4; Mobil, I-2, 5.

<sup>109</sup> See 59 FR 59666, 59676. See also final rule § 309.17 *infra*.

<sup>110</sup> See proposed rule §§ 309.10–309.16, 59 FR 59666, 59704–59706.

<sup>111</sup> See 59 FR 59666, 59676–59679.

of all motor vehicle fuel-dispensing stations. See Stookey, *An Analysis of the 1994 Uniform Fire Code Requirements for CNG Fuel Stations*, Nat. Gas Fuels, June 1994, B-48, 27.

<sup>101</sup> 59 FR 59666, 59675 (e.g., this information can be expected to be provided voluntarily).

<sup>102</sup> AGA/NGVC, I-18, 8–11.

<sup>103</sup> *Id.* AGA/NGVC had previously opposed a Wobbe number disclosure, stating it would be so difficult to explain that consumers would not find it useful (AGA/NGVC (Tr.), 43).

<sup>104</sup> AGA/NGVC, I-18, Attachment at 5.

<sup>105</sup> See proposed rule § 309.17, 59 FR 59666, 59706–59707. Several comments received during this proceeding had recommended that labels for non-liquid alternative fuels follow the same size and format requirements as those for liquid alternative fuels under the Fuel Rating Rule. The reasons given for keeping the requirements the same were: to promote consistency, fairness and equity, and to keep information simple so that consumers can easily understand the labels (AGA/NGVC, G-6, 8; API, G-25, 4; Mobil, G-2, 4; NPGA,

test method for determining the minimum molecular percent of CNG should be required. Because there were no comments on the other facets of the substantiation, certification and recordkeeping provisions proposed in the SNPR, the Commission has determined to issue them as proposed. These requirements are explained below.

In the SNPR the Commission proposed, in part, that *importers*, *producers* and *refiners* of natural gas comply with the proposed rule's CNG fuel rating determination, certification and recordkeeping requirements, which includes determining and certifying the minimum percentage of methane in natural gas.<sup>112</sup> The Commission based its proposal on its conclusion that it would be impractical, and probably more expensive to the consumer, to require *retail* sellers to test each delivery of a gaseous fuel. In making disclosures to consumers, retail sellers of alternative fuels, therefore, could rely on the accuracy of the information provided to them from gaseous fuel importers, producers, refiners and distributors.

Three comments recommended that the Commission not impose such requirements on importers and producers of natural gas because the requirements would be overly burdensome, and do not reflect current industry practice in the distribution of natural gas.<sup>113</sup> According to the comments, producers of natural gas currently adhere to a heating value specification as required by their customers (i.e., local natural gas distribution companies and/or natural gas utilities). Most producers currently do not test for or certify the methane content of the natural gas they sell. Furthermore, the comments state that this information would be of little value at the retail level because natural gas distributors (i.e., utilities) purchase natural gas from a multitude of producers, blend it together, test it, and distribute it for home and industry use, as well as for retail sale.<sup>114</sup>

Two of the comments recommended that the Commission require natural gas *distributors/utilities* to comply with the fuel rating determination, certification and recordkeeping requirements that the Commission proposed for natural gas importers and producers.<sup>115</sup> On the other hand, AGA/NGVC recommended that the fuel rating determination and

recordkeeping requirements be imposed only on CNG *retailers* since they market the fuel to consumers. AGA/NGVC contended that if a retailer cannot verify the fuel rating, it can insist in contracts with its suppliers that they determine the fuel rating. Thus, companies interested in profiting from selling natural gas to retailers will view the testing as the cost of doing business and will decide whether to perform the test. AGA/NGVC also stated, though, that in some cases local utilities *will* be heavily involved in the marketing and selling of natural gas transportation fuel. In those instances, AGA/NGVC recommends that the Commission require such *distributors* to determine and certify the fuel rating of the natural gas they supply.<sup>116</sup> Unocal commented that the Commission should permit natural gas retailers to rely on their suppliers (*distributors/utilities*) for fuel rating certifications to substantiate the information displayed on the CNG dispenser labels.<sup>117</sup>

In response, the Commission notes that information about the methane content of natural gas would be useful to distributors who blend natural gas and transfer it as natural gas vehicle fuel, because they could use such information in determining and thereafter certifying its fuel rating.<sup>118</sup> The Commission notes further that, in most cases, it is necessary to upgrade natural gas to pipeline specifications in a gas processing plant before injecting it into the transportation and distribution network. In order to assure consistent combustion behavior, major natural gas pipelines generally impose specifications on the composition of the gas they will accept for transport. These specifications typically limit the percentage of propane, butane, and higher hydrocarbons, and stipulate acceptable ranges for the heating value, and the Wobbe number.<sup>119</sup> For example, water and hydrogen sulfide must be removed to prevent corrosion damage to the pipeline network, and excess amounts of higher hydrocarbons must be removed to prevent them from condensing under the high pressures in the gas transmission network. Thus, although natural gas producers may not have to adhere to a specific minimum methane pipeline specification, the methane content of the gas likely would fall within a fairly narrow range.

After considering the comments on its SNPR proposal, the Commission

concludes that substantiation, certification, and recordkeeping requirements for importers, producers, refiners and distributors of gaseous alternative vehicle fuels, and manufacturers and distributors of electric vehicle fuel dispensing systems, and substantiation and recordkeeping requirements for retail sellers of non-liquid alternative vehicle fuels (including electricity) are necessary to ensure that the information posted on labels on retail fuel dispensers is accurate. The Commission is not persuaded that retail sellers of CNG are in a position to be held exclusively responsible for determining the accuracy of the fuel rating to be disclosed on the CNG dispenser labels. The Commission believes that the rule's requirements are consistent with current industry practice of conforming natural gas to minimum specifications for transport. But, the Commission believes that the comments from Unocal, API and AGA/NGVC could be addressed by further clarifying that the Commission's rule does not apply to producers of natural gas for residential, commercial and industrial purposes. Thus, the rule's fuel rating determination, certification and recordkeeping requirements apply to producers of natural gas only when transferred for use as a vehicle fuel. In this regard, the Commission expects that natural gas producers may wish to take reasonably prudent precautions to ensure that their customers understand the limited use for which the gas is being transferred, if they determine that the rule does not apply to them.

(1) Substantiation. The Commission's rule requires labeling disclosures of the type of non-liquid alternative vehicle fuel (including electricity), and of the minimum molecular percent (a more accurate description than volume of the content of a gas) of the principal component of each gaseous alternative vehicle fuel and of specific, limited information about the output of the electric vehicle fuel dispenser system. In accordance with the Commission's advertising substantiation doctrine, which requires sellers to have a reasonable basis to support material, objective claims,<sup>120</sup> the Commission is requiring that importers, producers, and refiners of non-liquid alternative vehicle fuel (other than electricity) have a reasonable basis, consisting of competent and reliable evidence, that substantiates the minimum molecular percent of the principal component that retailers must disclose on fuel dispenser

<sup>112</sup> See proposed rule §§ 309.10, 309.11, 309.12, 59 FR 59666, 59704-59705.

<sup>113</sup> AGA/NGVC, I-18, 3-6; API, I-15, 1-5; Unocal, I-5, 2.

<sup>114</sup> *Id.*

<sup>115</sup> API, I-15, 4; Unocal, I-5, 2.

<sup>116</sup> AGA/NGVC, I-18, 4-6.

<sup>117</sup> Unocal, I-5, 2.

<sup>118</sup> See proposed rule § 309.13, 59 FR 59666, 59705.

<sup>119</sup> AGA/NGVC, I-18, Attachment at 3-4.

<sup>120</sup> See *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984) (Appendix), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

labels. The rule further states that importers and producers may use private facilities for fuel rating determinations. This would be important to producers who do not have testing equipment of their own.<sup>121</sup> These requirements are consistent with the substantiation requirements of the Fuel Rating Rule,<sup>122</sup> which were mandated by the Petroleum Marketing Practices Act.<sup>123</sup>

For the minimum molecular percent content of hydrogen (the principal component) in hydrogen gas, the Commission proposed requiring that the reasonable basis be tests conducted according to ASTM D 1946-90. For the minimum molecular percent content of methane (the principal component) in CNG, the Commission proposed requiring that the reasonable basis be tests conducted according to ASTM D 1945-91. Three comments addressed the CNG testing issue. One comment supported requiring the use of ASTM D 1945-91.<sup>124</sup> AGA/NGVC opposed requiring the use of a specific test method. Instead, that comment suggested that the Commission afford sellers of CNG the flexibility to demonstrate that they possessed a reasonable basis consisting of competent and reliable evidence for their determination of the minimum methane content of CNG.<sup>125</sup> Commercial Electronics commented that other test methods are being developed to measure CNG fuel quality.<sup>126</sup>

After considering the record, the Commission concludes that it is important that sellers base objective disclosures on uniform measurements when recognized and accepted test methods are available. The aforementioned ASTM documents include test procedures, developed through the ASTM consensus process, to determine the chemical composition of hydrogen and CNG, respectively, including the molecular percent of hydrogen in hydrogen gas and methane in CNG. Because ASTM has issued test procedures to measure the minimum molecular percent of the principal components of hydrogen and CNG, the Commission is requiring use of the ASTM test procedures to substantiate those disclosures.<sup>127</sup>

For the minimum molecular percent content of any other component that importers, producers, or refiners wish to certify, the rule does not specify the test procedure that must be used, but only that they have a reasonable basis, consisting of competent and reliable evidence, to substantiate the claim. The Commission's approach to requiring substantiation without specifying a particular test method for components other than the principal component, allows sellers to rely on existing industry test procedures if they are reasonable and yield accurate results. For example, the California specifications list specific ASTM procedures to be used to determine the molecular percent of various components of CNG and hydrogen, in addition to the methane content of CNG and the hydrogen content of hydrogen gas. Because the Commission has not specified additional components that might be disclosed, it has no basis on the record to specify test procedures that must be used to measure them. The Commission, therefore, will accept, but not require, use of the ASTM test procedures cited in the California specifications as the required reasonable basis for voluntary disclosure of additional components of CNG and hydrogen that are included in those specifications.<sup>128</sup>

The rule also does not require that importers, producers, or refiners meet particular material specifications or standards for the common name they use to describe the non-liquid alternative vehicle fuel (other than electricity) they distribute, but that they have a reasonable basis, consisting of competent and reliable evidence, to substantiate the fuel rating they determine and certify to others.

Rule's reasonable basis standard for liquid alternative fuels because existing ASTM test methods were undergoing verification review to determine whether they would be appropriate for use in establishing standards for the liquid alternative fuels. Further, the Commission was informed that other test methods were being developed that might serve equally well as part of a liquid alternative fuel standard. On the other hand, the Commission understands that the ASTM test methods it is requiring as a reasonable basis for determining the minimum molecular percentages of the principal components of CNG and hydrogen have been ASTM test methods for many years and have been recognized as competent and reliable procedures. Further, the Commission understands that no other test methods that could be used to make these determinations have been proposed to the California Air Resources Board or are under development by any standards-setting organizations. If additional test methods are developed in the future, the Commission will consider whether to include them among the required test methods.

<sup>128</sup> See further references to California's specifications in section III(B)(3)(d) *supra*.

Although the Commission has decided not to require that non-liquid alternative vehicle fuels conform to any specific material specification, the Commission's requirement that marketers disclose the principal component of each fuel should encourage the industry to develop uniform material specifications or standards for these fuels in consensus organizations to ensure the uniform quality of the fuels in the marketplace. The development of material specifications or standards for non-liquid (gaseous) alternative vehicle fuels should help facilitate acceptance of these fuels.

Similarly, manufacturers of electric vehicle fuel dispenser systems are required to have a reasonable basis, consisting of competent and reliable evidence, to substantiate the information retail sellers must post on labels on the electric vehicle fuel dispensers. For public electric vehicle fuel dispensing systems, the information the Commission requires to be disclosed can be determined using standard measuring devices or procedures. Therefore, accurate measurements made using standard electric industry procedures that are recognized as competent and reliable are sufficient to serve as the required reasonable basis.

Distributors and retail sellers may be able to rely on the fuel rating certifications they receive, as discussed *infra*, so their substantiation burden will be minimal. Distributors and retailers need not make the actual determinations unless they alter the fuel before selling it.<sup>129</sup>

(2) Certification. The Commission is requiring that importers, producers, refiners, and distributors of non-liquid alternative fuels (other than electricity), and that manufacturers and distributors of electric vehicle fuel dispensing systems certify to others to whom they distribute the information that retailers must post on fuel dispensers.<sup>130</sup> Importers, producers, and refiners of non-liquid alternative fuels (other than electricity) are required to certify to distributors their determination of the minimum molecular percent of the fuel's major component, and of any additional component they wish to disclose. Manufacturers of electric vehicle fuel dispensing systems are required to certify to distributors and/or retailers the information retailers are required to disclose on labels on fuel dispensers. Distributors of non-liquid alternative fuels (other than electricity) and of electric vehicle fuel dispensing

<sup>129</sup> See final rule §§ 309.13(c), 309.15(c) *infra*.

<sup>130</sup> See final rule §§ 309.11, 309.13 *infra*.

<sup>121</sup> See final rule § 309.10 *infra*.

<sup>122</sup> 16 CFR 306.5(b) (1994).

<sup>123</sup> 15 U.S.C. 2822.

<sup>124</sup> API, I-15, 4.

<sup>125</sup> AGA/NGVC, I-18, 7 (affording such flexibility would avoid unnecessary future actions by the Commission to amend its rule each time a new test procedure is developed).

<sup>126</sup> Comm Elec, I-8, 7.

<sup>127</sup> The Fuel Rating Rule did not require that specific ASTM test methods be used to satisfy the

systems are required to certify to retailers consistent with the certification they received.<sup>131</sup>

Importers, producers, and refiners of non-liquid alternative vehicle fuel (other than electricity) may make the certification in either of two ways:

(a) By including with each transfer a delivery ticket or other paper (such as an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket or any other written proof of transfer). The delivery ticket or other paper must contain at least the importer's, producer's, or refiner's name, the name of the person to whom the non-liquid alternative fuel is transferred, the date of the transfer, the common name of the fuel and the minimum molecular percent of the fuel's major component, and of any additional component the importer, producer or refiner wishes to disclose.

(b) By giving the person to whom the fuel is transferred a letter or written statement, including the date, the importer's, producer's or refiner's name, the name of the person to whom the fuel is transferred, the common name of the fuel, and the minimum molecular percent of the fuel's major component, and of any additional component the importer, producer or refiner wishes to disclose. The letter or written statement is effective until the importer, producer, or refiner transfers non-liquid alternative vehicle fuel with a lower percentage of the major component, or of any other component claimed. At that time, the importer, producer, or refiner will have to certify the new information about the fuel with a new notice.<sup>132</sup>

Distributors of non-liquid alternative vehicle fuel (other than electricity) are required to make the certification in each transfer to anyone who is not a consumer. Distributors may make the required certification in either of two ways:

(a) By using a delivery ticket or other paper with each transfer, as outlined for importers, producers and refiners in item (a), above.

(b) By using a letter of certification, as outlined for importers, producers, and refiners in item (b), above.<sup>133</sup>

Manufacturers of electric vehicle fuel dispensing systems are required to make the certification in each transfer of such systems to anyone who is not a

consumer. Manufacturers may do so in either of two ways:

(a) By including a delivery ticket or other paper with each transfer of an EV fuel dispensing system. It may be an invoice, bill of lading, bill of sale, delivery ticket, or any other written proof of transfer. It is required to contain at least the manufacturer's name, the name of the person to whom the EV fuel dispensing system is transferred, the date of the transfer, the model number or other identifier of the EV fuel dispensing system, and the information required to be disclosed on the retail fuel dispenser label.

(b) By placing clearly and conspicuously on the EV fuel dispensing system a permanent legible marking or permanently attached label that discloses the manufacturer's name, the model number or other identifier of the EV fuel dispensing system, and the information required to be disclosed on the retail fuel dispenser label. Such marking or label is required to be located where it can be seen after installation of the EV fuel dispensing system. The marking or label is deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking. This marking or label is required to be in addition to, and not as a substitute for, the label required to be posted on the public EV fuel dispenser at the point of retail sale.<sup>134</sup>

Distributors of electric vehicle fuel dispensing systems are required to make the certification in each transfer to anyone who is not a consumer. Distributors may do so in either of two ways:

(a) By using a delivery ticket or other paper with each transfer, as outlined for manufacturers of electric vehicle fuel dispensing systems in item (a) above.

(b) By using the permanent marking or label permanently attached to the system by the manufacturer, as outlined for manufacturers of electric vehicle fuel dispensing systems in item (b) above.<sup>135</sup>

These requirements are consistent with the certification requirements for sellers of liquid alternative fuels under the Fuel Rating Rule.<sup>136</sup>

(3) Recordkeeping. The Commission is requiring that importers, producers, and refiners of non-liquid alternative fuels (other than electricity) maintain records of the tests performed by or for them, or other data, that they rely upon as their required reasonable basis for their certifications.<sup>137</sup> The Commission

likewise is requiring that manufacturers of electric vehicle fuel dispensing systems maintain records of the tests or measurements performed by or for them, or of other data or records, that they rely upon as their required reasonable basis for their certifications.<sup>138</sup> The Commission also requires that distributors and retailers of non-liquid alternative fuels (other than electricity) maintain records consisting of the certifications they receive from importers, producers, refiners, or distributors of non-liquid alternative fuels (other than electricity), and that distributors of electric vehicle fuel dispensing systems and retailers of electricity maintain records consisting of the certifications they receive from manufacturers or distributors of the systems.<sup>139</sup> The rule requires that these records be kept for one year. These requirements are consistent with those for sellers of liquid alternative fuels under the Fuel Rating Rule.<sup>140</sup>

c. *Effective date.* Section 406(a) of EPA 92 requires the Commission to issue its final labeling rules within one year of the NPR's publication, but does not specify when the rules shall become effective. In the SNPR, the Commission proposed making the non-liquid alternative fuels labeling requirements effective 90 days after publication of a final rule in the **Federal Register**.<sup>141</sup> In developing its SNPR proposal, the Commission considered how best to balance consumers' needs for comparative information with industry's need for a reasonable period of time to come into compliance.<sup>142</sup> The one comment on this issue supported the proposed effective date.<sup>143</sup> The Commission, therefore, has determined to make the non-liquid alternative fuels labeling requirements effective 90 days after publication of a final rule in the **Federal Register**.<sup>144</sup>

d. *Periodic updating of labels.* In the SNPR, the Commission proposed no

<sup>138</sup> *Id.*

<sup>139</sup> See final rule §§ 309.14, 309.16 *infra*.

<sup>140</sup> 16 CFR 306.7, 306.9, 306.11 (1994).

<sup>141</sup> The effective date of the final amendments adding liquid alternative fuels to the Fuel Rating Rule was less than 90 days after publication of the final rules in the **Federal Register**. The final rules were published on August 3, 1993. They became effective on October 25, 1993, as required by EPA 92. 58 FR 41356.

<sup>142</sup> The Commission based the SNPR proposal on an analysis of several comments stating that the proposed 90-day time period gave sufficient time for covered parties to comply with the proposed requirements. One comment contended, however, that at least six months was necessary. 59 FR 59666, 59679.

<sup>143</sup> Mobil, I-2, 6.

<sup>144</sup> See 59 FR 59666, 59679. In contrast, the effective date for the AFV labeling requirements is 180 days after publication in the **Federal Register**. See discussion in section III(C)(5) *infra*.

<sup>131</sup> See final rule § 309.13 *infra*. If distributors blend fuels, § 309.13(c) of the rule requires them to substantiate the minimum percentage of the principal component according to the requirements of § 309.10, and certify that information to their non-consumer customers.

<sup>132</sup> See final rule § 309.11 *infra*.

<sup>133</sup> See final rule § 309.13 *infra*.

<sup>134</sup> See final rule § 309.11 *infra*.

<sup>135</sup> See final rule § 309.13 *infra*.

<sup>136</sup> 16 CFR 306.6, 306.8 (1994).

<sup>137</sup> See final rule § 309.12 *infra*.

specific timetable for future reviews of the final labeling rules, although it recognized that section 406(a) of EPA 92 requires the Commission to update its labeling requirements "periodically." The Commission determined not to specify a timetable after analyzing comments encouraging it to review the rule as consensus specifications are developed for alternative fuels, as new alternative fuels enter the marketplace and as technology develops.<sup>145</sup> The Commission received no comments addressing this aspect of its SNPR proposal.

Based on other comments in this proceeding, and recognizing that it cannot predict when new relevant developments may occur, the Commission has determined not to establish a specific timetable for future reviews of the final rule. As required by section 406(a) of EPA 92, the Commission intends to conduct reviews to update the rule periodically, as needed, to take into consideration relevant developments, such as when DOE designates new non-liquid alternative fuels. The rule, however, will be reviewed at least once every ten years pursuant to the Commission's ongoing regulatory review project.

### C. Labeling Requirements for AFVs

Twenty-one of the 24 comments received in response to the SNPR addressed some aspect of the Commission's proposed labeling requirements for AFVs. These comments addressed either the scope of the proposed labeling requirements (i.e., which vehicles would be covered by the labeling requirements) or the proposed rule's disclosures (i.e., what information would be required to be displayed on labels and how that information would be displayed).<sup>146</sup> Those comments, and the Commission's modifications to the proposed rule in response to those comments, are discussed below.

#### 1. Scope of the AFV Labeling Requirement

In its SNPR, the Commission proposed that the scope of its AFV labeling requirements be based upon, or derived from, existing pertinent federal regulations. Eleven comments addressed this aspect of the AFV labeling requirements. Six other comments indicated general support for the

<sup>145</sup> See discussion of comments of API, CEC, and TVA in the SNPR, 59 FR 59666, 59679.

<sup>146</sup> Two of the three other comments were limited to encouraging metric disclosures on AFV labels. See Mechtly, I-1, Sokol, I-17, discussed *infra* section VI. The third comment was limited to the SNPR's proposal as it related to alternative fuels. Unocal, I-5.

Commission's labeling proposal, but did not address this specific issue.<sup>147</sup> The remaining five addressed one or more issues pertaining to the scope of the AFV labeling requirements, as discussed below.

a. *Covered AFVs.* In the SNPR, the Commission considered whether its labeling requirements should apply to all AFVs, as that term is defined in EPA 92, or whether they should apply to only certain vehicles. As defined by that statute, an AFV is either "a dedicated vehicle or a dual fueled vehicle."<sup>148</sup> As further defined, a "dedicated vehicle" means an automobile (or other self-propelled vehicle), designed for transporting persons or property on a street or highway, that operates solely on alternative fuel.<sup>149</sup> Similarly, a "dual fueled vehicle" is an automobile (or other self-propelled vehicle), designed for transporting persons or property on a street or highway, that is capable of operating on alternative fuel and on gasoline or diesel fuel.<sup>150</sup> As such, the statutory scope of an "AFV" is quite wide and includes tour buses, transit buses, heavy-duty commercial trucks, and large motor homes.

After considering the practicality and appropriateness of including all AFVs within the scope of its labeling requirements, the Commission proposed in the SNPR to exclude AFVs with gross vehicle weight ratings ("GVWR"<sup>151</sup>) over 8,500 lbs. The SNPR included a definition of "covered vehicles" (i.e., in substance, AFVs under 8,500 lbs. GVWR), in the proposed rule.<sup>152</sup> The Commission derived that definition from EPA 92's definition of the term

<sup>147</sup> AGA/NGVC, I-18, 2, 3; Boston Edison/EEI, I-14, 4; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; NAFA, I-10, 1, 2; RFA, I-3, 1-2.

<sup>148</sup> 42 U.S.C. 13211(3) (Supp. IV 1993).

<sup>149</sup> See 42 U.S.C. 13211(6) (Supp. IV 1993) (a "dedicated vehicle" is either a "dedicated automobile," as defined in 15 U.S.C. 2013(h)(1)(C) (Supp. IV 1993), or a "motor vehicle," as defined in 42 U.S.C. 7550(2), other than an automobile, that operates solely on alternative fuel).

<sup>150</sup> See 42 U.S.C. 13211(8) (Supp. IV 1993) (a "dual fueled vehicle" is either a "dual fueled automobile," as defined in 15 U.S.C. 2013(h)(1)(D) (Supp. IV 1993), or a "motor vehicle," as defined in 42 U.S.C. 7550(2), other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel fuel).

<sup>151</sup> EPA defines GVWR as a vehicle's actual weight (including all standard and optional equipment and fuel) plus 300 pounds. See 40 CFR 86.082-2 (1993) (defining "GVWR," "loaded vehicle weight," and "vehicle curb weight").

<sup>152</sup> See proposed rule § 309.1(f) (defining "covered vehicle"), 59 FR 59666, 59703. The term "covered vehicle" was derived from the Energy Policy and Conservation Act's ("EPCA") use of the term "covered product." See 42 U.S.C. 6291(a)(2), 6292(a) (statute's scope defined in terms of enumerated consumer products); 16 CFR 305.2, 305.3 (1994) (same for Commission's Appliance Labeling Rule implementing EPCA).

"light duty motor vehicles," a term given special significance by that statute.<sup>153</sup> EPA 92's definition of that term references two vehicle classifications used by the Clean Air Act (light duty trucks or light duty vehicles) "of less than or equal to 8,500 pounds [GVWR]."<sup>154</sup> The Clean Air Act<sup>155</sup> in turn refers to existing EPA definitions of both vehicle classifications.<sup>156</sup> Thus, the proposed definition of "covered vehicle" basically encompassed the same category of vehicle referenced in EPA 92's fleet acquisition requirements.

Three comments specifically addressed this issue. AAMA<sup>157</sup> and EMA supported excluding AFVs over 8,500 lbs. GVWR from the scope of the AFV labeling requirements.<sup>158</sup> However, these comments also suggested that one element of the SNPR's definition of "covered vehicle" be modified to exclude vehicles configured "with special features enabling off-street or

<sup>153</sup> Three of EPA 92's five "major" alternative-fuel provisions impose minimum vehicle-acquisition requirements on designated entities (i.e., the Federal government; alternative fuel providers; and other non-Federal fleets). H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 137, reprinted in 1992 U.S.C.C.A.N. 1954, 1960. For alternative fuel providers and other non-Federal fleets, the vehicles covered by those mandates are "light duty motor vehicles." See 42 U.S.C. 13251 (Supp. IV 1993) (mandatory acquisition requirement for alternative fuel providers); 42 U.S.C. 13257 (Supp. IV 1993) (contingent acquisition requirement for other non-Federal fleet operators).

The Federal fleet is required to acquire "light duty [AFVs]," a term not defined in EPA 92, instead of "light duty motor vehicles." See 42 U.S.C. 13212 (Supp. IV 1993) (mandatory acquisition requirement for Federal government). Neither the statute nor its legislative history suggests that those terms have different meanings and the discrepancy may have been inadvertent. In any event, it appears that the intent was to tailor the Federal fleet's acquisition requirement to certain AFVs.

<sup>154</sup> 42 U.S.C. 13211(11) (Supp. IV 1993) ("The term 'light duty motor vehicle' means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. 7550(7)), of less than or equal to 8,500 pounds [GVWR].")

<sup>155</sup> 42 U.S.C. 7550(7) (the terms "light duty truck" and "light duty vehicle" "have the meaning provided in regulations promulgated by the [EPA] Administrator and in effect as of the enactment of the Clean Air Act Amendments of 1990").

<sup>156</sup> A light duty truck is defined as "[a]ny motor vehicle rated at 8,500 pounds GVWR or less which as (sic) a vehicle curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons, or (3) Available with special features enabling off-street or off-highway operation and use." 40 CFR 86.082-2 (1993). A light duty vehicle is defined as "a passenger car or passenger car derivative capable of seating 12 passengers or less." *Id.*

<sup>157</sup> Three comments fully supported AAMA's comment. Chrysler, I-13, 1; Ford, I-4, 2; NGVPA, I-19, 1.

<sup>158</sup> AAMA, I-16, cover letter at 1; EMA, I-6, 1-2.

off-highway operation and use.”<sup>159</sup> It appears that this suggestion may have been based upon their belief that consumers considering such vehicles would not likely make choices and comparisons based upon simple labels. The City of Chicago, however, generally supported including all AFVs within the scope of the AFV labeling requirements without specifically addressing the Commission’s proposal.<sup>160</sup>

After considering the record, the Commission has determined to issue its SNPR proposal as to this subject with one modification. As noted previously, the Commission must issue uniform labeling requirements for AFVs only “to the greatest extent practicable.”<sup>161</sup> Labeling requirements for all such vehicles might help educate consumers about the general availability of AFVs of all sizes. However, the Commission has concluded that consumers considering vehicles over 8,500 lbs. GVWR would not likely make choices and comparisons based on the cost-benefit information contained in a simple label.<sup>162</sup> The Commission also considered including all AFVs (regardless of weight) and developing different label formats tailored to the apparently different needs of light and heavy-duty AFV consumers. This did not appear to be practical because heavier vehicles are typically custom ordered. While these evaluations may change in the future, for now at least it seems likely that for consumers

considering such vehicles, disclosures in a labeling format may not be appropriate, useful, or timely. The Commission also notes that EPA’s fuel economy requirements (disclosing fuel economy information in window stickers) do not apply to vehicles over 8,500 lbs. GVWR.<sup>163</sup> As a result, the Commission has determined that, at the present time, AFVs over 8,500 lbs. GVWR will not be included within the scope of its AFV labeling requirements.

For similar reasons, the Commission has also determined that it should modify its definition of “covered vehicle” by excluding from its scope “off-street” or “off-highway” vehicles. Such vehicles would more likely be acquired for specialized commercial uses, instead of general commercial or individual use. The Commission also notes that EPA’s fuel economy requirements (disclosing fuel economy information in window stickers) do not apply to such vehicles.<sup>164</sup> As such, the Commission believes that consumers considering such vehicles would not likely make choices and comparisons based on the cost-benefit information contained in a simple label. Accordingly, such vehicles are excluded from the AFV labeling requirements.

b. *AFV Manufacturers and Conversion Companies.* Another facet of the proposal regarding covered AFVs involved conversions (i.e., existing conventional-fuel vehicles reconfigured to permit operation on alternative fuel) and what entity would be responsible for compliance. In developing the proposed rule, the Commission took particular note of recently-issued EPA regulations addressing this subject. Those regulations implemented a provision of the 1990 Clean Air Act Amendments (“CAAA”) deeming that “person[s] who convert conventional vehicles to clean-fuel vehicles” are “manufacturers,” and thus responsible for complying with some or all of EPA’s certification, production, line testing, in-use testing, warranty, and recall requirements.<sup>165</sup> In the preamble announcing those regulations, EPA noted that two entities could be considered the “person who converts”: the person who *installs* the conversion kit (i.e., the hardware converting the vehicle to alternative fuel), or the person

who *manufactures* the conversion kit.<sup>166</sup> After considering the advantages and disadvantages of assigning liability to either entity, EPA concluded that assigning liability strictly to either entity was not appropriate. Instead, it determined it should assign liability based on which party was in the best position to be familiar with pertinent vehicle-performance characteristics.

Interpreting its own regulations, EPA determined that the entity best suited to comply with these requirements was the entity (kit installer, manufacturer, or other) who had applied for and received a certificate of conformity that the vehicle meets appropriate EPA emission standards.<sup>167</sup> Based on public comment received during that proceeding, EPA anticipated that in most cases the kit manufacturer would be the certifying party because this entity would be in the best position to perform the required certification testing.<sup>168</sup> Accordingly, EPA further expected that its regulations would encourage certifiers to develop oversight programs and enter into indemnification agreements with installers to insure that installations were performed properly.<sup>169</sup>

In considering the issue of AFV conversions, the Commission noted that section 406 does not address the issue of AFV conversions. The Commission’s intent in considering this topic was to address what the Commission understood was a significant segment of the AFV industry. DOE has noted that: “Because of the limited availability and selection of [OEM] vehicles, conversions are providing a transition to the time when automakers produce more [AFVs] for public sale.”<sup>170</sup>

The demand for AFVs is being driven, at least in part, by the acquisition requirements for centrally fueled fleets contained in the 1990 CAAA.<sup>171</sup> Those requirements “may be met through the conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles.”<sup>172</sup> Parties affected by those mandates, as well as others interested in achieving the clean-air benefits of driving AFVs, may have an incentive to

<sup>159</sup> See proposed rule § 309.1(f)(2)(iii), 59 FR 59666, 59703; AAMA, I-16, cover letter at 1; EMA, I-6, 2.

<sup>160</sup> Chicago, J-2, 2. AAMA and Mobil also made the general observation that definitions in the AFV labeling requirements should be consistent with other regulatory plans. AAMA, I-16, 7 (“The definitions used in the regulation must be consistent with those used by other regulatory agencies.”); Mobil, I-2, 8 (“As long as the definition in this rule is coordinated with DOE, then this rulemaking will be consistent with forthcoming EPA rules from DOE.”). AAMA further commented that “common definitions would also be useful.” AAMA, I-16, 7. It did not specify, however, how the FTC should determine where “common definitions,” as opposed to definitions used by other agencies, would be more appropriate.

<sup>161</sup> 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>162</sup> EMA, G-21, 2, 3-4, 7, (Tr.), 123. EMA cited examples where the considerations relevant to ordering a heavy-duty AFV were summarized in an OEM’s 25-page sales brochure and a 400-page truck data book. EMA (Supp.), G-21, 2-3. See also AAMA, G-7, 3-4, (Tr.), 124 (purchasing decision “will already have been made long before [purchaser] walks into the showroom and sees the label”); Flxible (Supp.), G-12, 1-3 (window stickers should be for vehicles purchased for personal use and from dealer lots, i.e., under 8,500 lbs. GVWR), (Tr.), 134 (rule should be limited to passenger-type vehicles). Chrysler and Ford supported AAMA’s position that these vehicles should be excluded from the scope of the Commission’s AFV labeling requirements. Chrysler, G-13, 1; Ford, G-14, 1.

<sup>163</sup> EPA (Tr.), 122; 40 CFR 600.002-85(4)(iii) (1993).

<sup>164</sup> See 40 CFR 600.002-85(4) (defining “automobile”).

<sup>165</sup> 42 U.S.C. 7587(c); Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program (“Fleet Standards Rule”), 59 FR 50042, 50061-50062, Sept. 30, 1994.

<sup>166</sup> Fleet Standards Rule, 59 FR 50042, 50061.

<sup>167</sup> Fleet Standards Rule, 59 FR 50042, 50062.

<sup>168</sup> Fleet Standards Rule, 59 FR 50042, 50061-50062.

<sup>169</sup> Fleet Standards Rule, 59 FR 50042, 50061-50062, 50064. Given the nature of their liability, EPA noted that “[k]it manufacturers would be wholly within their rights to require such indemnification agreements before allowing installers to install their kit.” Fleet Standards Rule, 59 FR 50042, 50062.

<sup>170</sup> B-3, inside front cover.

<sup>171</sup> The CAAA’s acquisition requirements are in addition to similar requirements, described *infra* section III(C)(1)(c), imposed by EPA 92.

<sup>172</sup> 42 U.S.C. 7587(a).

convert existing vehicles to alternative fuel. The Commission therefore believed that it should address this issue in this proceeding to the greatest extent practicable, and thereby help consumers compare different alternative fuels and conversion systems.

Accordingly, in the SNPR, the Commission proposed that the entity responsible for complying with the labeling requirements for new covered vehicles<sup>173</sup> would be the vehicle's "manufacturer." The proposed rule defined "manufacturer" as "the person who obtains a certificate of conformity that the vehicle complies with the standards and requirements of [EPA's emission and clean-fuel vehicle regulations]."<sup>174</sup> Under the proposed rule, manufacturers of new covered vehicles would be required to affix (or cause to be affixed) new vehicle labels on each such vehicle prior to its being offered for acquisition by consumers.<sup>175</sup> If, however, an "aftermarket conversion system" (i.e., a conversion kit)<sup>176</sup> is installed on a vehicle by a person other than the manufacturer prior to being acquired by a consumer, the manufacturer would be responsible for providing that person with the objective information regarding that vehicle required by the proposed rule.<sup>177</sup>

The Commission's intent in formulating these definitions was to distinguish between two different categories of conversions based on whether a vehicle was converted to alternative fuel before or after it is delivered to the first consumer. Conversions performed *before* a vehicle is delivered to a first consumer bear similarities to OEM AFVs because in both circumstances the vehicles are configured to alternative fuel before delivery to the first consumer. In the SNPR, the Commission tentatively determined that consumers considering these converted AFVs would thus have equal need for comparative information as consumers considering other "new" vehicles.<sup>178</sup> It therefore proposed to

include such conversions within the scope of its AFV labeling requirements.

As to the second category, the Commission proposed that companies performing conversions *after* the vehicle is delivered to a consumer (so called "aftermarket conversions") should be excluded from the AFV labeling requirements because those consumers would have already been educated about the costs and benefits of alternative fuels.<sup>179</sup> The Commission based that proposal on its determination that consumers considering conversion of existing vehicles would not benefit from a "labeling" requirement, and that the circumstances surrounding such conversions may make such a requirement impractical or unnecessary.<sup>180</sup> For example, the Commission understood that some consumers convert their vehicles themselves without utilizing the services of a conversion installation company. Further, companies performing conversions, at a consumer's request, would have nothing to label until the consumer had already decided to do a conversion, and labeling the vehicle post-conversion would not be helpful,<sup>181</sup> as consumers presumably already have evaluated alternative fuels in deciding to have their vehicle converted. Finally, requiring conversion companies to disclose objective information as to comparative factors will likely be problematic because such information can vary with the vehicle's condition.<sup>182</sup>

In any event, the Commission noted that DOE has addressed conversions of existing vehicles in its consumer information brochure.<sup>183</sup> Some of the information contained in that brochure is general (e.g., electric vehicle conversions "are available in larger metropolitan areas. Contact OEM dealer for qualified converter and warranty

information"),<sup>184</sup> while some is more specific and objective. For example, the brochure notes that converting an existing conventional-fueled vehicle to CNG "costs about \$2,700 to \$5,000 per vehicle."<sup>185</sup> Given the apparent impracticalities surrounding a requirement for aftermarket alternative-fuel conversions, and the availability of pertinent information in DOE's brochure, the Commission proposed excluding from its AFV labeling requirements situations where conventional fueled vehicles are converted to alternative fuel after being acquired by consumers.<sup>186</sup>

Four comments addressed this issue. AAMA and Mobil generally observed that definitions in the AFV labeling requirements should be consistent with other regulatory plans.<sup>187</sup> Regarding the substance of the Commission's proposal, Electro Auto generally supported exempting aftermarket conversions while the City of Chicago opposed such an exemption because it believed that future buyers of AFVs should have access to the same information as buyers of original equipment.<sup>188</sup> Comments previously filed agreed that all vehicles designed and assembled by OEMs to operate on alternative fuel should be included within the scope of the Commission's AFV labeling requirements.<sup>189</sup>

After considering the record, the Commission has determined to adopt the SNPR proposal regarding which conversions are covered without modification. Because harmonizing regulatory approaches, when practicable, is appropriate and desirable, the Commission has based its approach to determining which entities are responsible for complying with its AFV labeling requirements on EPA's regulations addressing the same issue. The Commission has determined to designate the certifier as being responsible for compliance with these requirements because that entity will be in the best position to know the vehicle's performance attributes. The Commission also expects that certifiers will take steps to insure compliance with this revised labeling proposal by installers, such as developing oversight programs and entering into

<sup>173</sup> AFV labeling requirements for used covered vehicles are discussed *infra* section III(C)(1)(d).

<sup>174</sup> Proposed rule § 309.1(r), 59 FR 59666, 59704.  
<sup>175</sup> Proposed rule § 309.20(a)(1), 59 FR 59666, 59707.

<sup>176</sup> See proposed rule § 309.1(b) (defining "aftermarket conversion system"), 59 FR 59666, 59707. This definition was derived from a recently-issued EPA definition of the same term. See 59 FR 48472, 48490, to be codified at 40 CFR 85.502(c).

<sup>177</sup> See proposed rule § 309.20(a)(2), 59 FR 59666, 59707. Specific data proposed to be disclosed on labels for new covered AFVs is discussed *infra* section III(C)(2)(a).

<sup>178</sup> See AGA/NGVC (Supp.), G-6 ("We agree with the FTC and others that vehicles that are converted prior to being delivered to the first time buyer should be labeled in the same fashion as other 'new' vehicles."); ETC, G-24, 4 ("All vehicles that are

considered 'new' vehicles, regardless of whether they are sold by an original equipment manufacturer or a converter or upfitter, should be subject to the labeling requirement."). Commenters responding to the Commission's SNPR were in similar agreement. See 59 FR 24014, 24016 nn. 53, 54 and accompanying text.

<sup>179</sup> AGA/NGVC (Supp.), G-6, 3-4, (Tr.), 231-232; ETC, G-24, 4.

<sup>180</sup> DOE, E-10, 3-4 ("It would be more difficult, and perhaps unnecessary, for in-use vehicles (already owned and operated) that are converted to use alternative fuels during their vehicle life to meet the AFV labeling requirements.").

<sup>181</sup> Further, as noted, requiring disclosure other than in a labeling format may be beyond the scope of the Commission's authority under EPA 92. See *supra* section III(A).

<sup>182</sup> EPA (Tr.), 220.

<sup>183</sup> EPA 92 requires that DOE's information package "include information with respect to the conversion of conventional motor vehicles to [AFVs]." 42 U.S.C. 13231 (Supp. IV 1993).

<sup>184</sup> B-3, 16.

<sup>185</sup> B-3, 23.

<sup>186</sup> See proposed rule § 309.20(a)(2) (limiting labeling requirements for new covered vehicles to conversion systems installed "prior to such vehicle's being acquired by a consumer"), 59 FR 59666, 59707.

<sup>187</sup> AAMA, I-16, 7; Mobil, I-2, 8.

<sup>188</sup> Chicago, J-2, 1, 2, 3; Electro Auto, I-7, 1.

<sup>189</sup> See, e.g., Boston Edison (Supp.), G-26, 13; ETC, G-24, 4.

indemnification agreements with installers to insure that accurate labels are posted as required.

*c. Acquisitions by consumers.* In the SNPR, the Commission proposed that its labeling requirements apply to covered vehicles offered for "acquisition" to consumers.<sup>190</sup> The intent of this proposal was to include purchases and long-term leasing arrangements within the scope of the AFV labeling requirements. The Commission also proposed to define the term "consumer" to include individuals, corporations, partnerships, associations, States, municipalities, political subdivisions of States, and agencies, departments, or instrumentalities of the United States.<sup>191</sup> Responding to this aspect of the Commission's proposal, AAMA and Mobil generally observed that definitions in the AFV labeling requirements should be consistent with other regulatory plans.<sup>192</sup>

After considering the record, the Commission has determined to issue its SNPR proposal as to this subject without modification. As to the definition of "consumer," the proposed definition of this term was derived from section 302(e) of the 1990 Clean Air Act Amendments<sup>193</sup> and EPA's regulation implementing that section, 40 CFR § 88.302-94 (1993). The Commission believes that this definition properly includes within its scope all affected interests.

As to leasing arrangements, because Congressional mandates will require consumers to "acquire" AFVs,<sup>194</sup> the Commission has determined that its AFV labeling requirements should include such arrangements to the greatest extent practicable to further EPA 92's legislative purpose. In determining what is practicable, the Commission believes that consumers entering into leasing arrangements may have different information needs depending upon the length of the arrangement. For example, consumers entering into long-term leasing arrangements often do so for commercial purposes, and make leasing choices based on evaluating factors pertinent to a commercial acquisition. These persons likely would need the same vehicle information as purchasers

and should be covered by the rule. Consumers entering into short-term arrangements (e.g., weekend rentals to the general public for non-commercial purposes) may or may not have similar or equal need for pertinent information, but it seems unlikely that consumers entering into short-term leasing arrangements would make decisions based upon information disclosed in a label. In any event, they may not view the vehicle until after it has been leased. As a result, the labels would not help consumers make choices and comparisons. Accordingly, the Commission has determined that including short-term leasing arrangements in the final rule is not necessary.

The final rule defines an acquisition as including either of the following: (1) acquiring the beneficial title to a covered vehicle; or (2) acquiring a covered vehicle for transportation purposes pursuant to a contract or similar arrangement for a period of 120 days or more.<sup>195</sup> This definition was derived from a recent EPA regulation implementing aspects of the 1990 Clean Air Act Amendments,<sup>196</sup> which used the 120 day period as the dividing line between short and long-term leases. In the preamble announcing that regulation, EPA determined that the 120 day period is slightly longer than a calendar season and that leases of less than that period were therefore short-term and temporary.<sup>197</sup> The Commission finds that the 120 day period reflects a reasonable demarcation between short- and long-term rentals, and therefore has adopted EPA's determination.

*d. Used AFVs.* In the SNPR, the Commission tentatively determined that both new and used AFVs should be included within the scope of its labeling requirements, but that they should be subject to different requirements. The proposed rule defined the terms "new covered vehicle" and "used covered vehicle" and established labeling requirements as to each classification.<sup>198</sup> Under the proposed rule, a new covered vehicle was defined as a covered vehicle which has not yet been acquired by a

consumer,<sup>199</sup> while a used covered vehicle was defined (in substance) as a covered vehicle which previously has been acquired by a consumer.<sup>200</sup> The proposed rule also defined the terms "new vehicle dealer"<sup>201</sup> and "used vehicle dealer."<sup>202</sup>

Because requiring the disclosure of comparative information on used AFVs was deemed problematic,<sup>203</sup> the proposed rule established two labeling formats (i.e., new vehicle labels<sup>204</sup> and used vehicle labels<sup>205</sup>) disclosing different types of information for new and used covered AFVs.<sup>206</sup> For example, because some cost-benefit information is included on temporary window stickers (e.g., EPA's fuel economy rating) or in vehicle owner's manuals, a used AFV dealer may not always possess such information. In any event, some comparative information (e.g., EPA's fuel economy rating) could vary significantly with the vehicle's condition.<sup>207</sup> Requiring disclosure of information based on the vehicle's condition when new could therefore create a risk of misleading consumers.<sup>208</sup> To address one problem inherent in such a disclosure (i.e., the unavailability of pertinent information), the Commission has considered requiring that disclosures be displayed on permanent vehicle labeling.<sup>209</sup> However, this option would not surmount the more basic problem that objective information may no longer accurately reflect the vehicle's present condition

<sup>199</sup> See proposed rule § 309.1(t) (defining "new covered vehicle"), 59 FR 59666, 59704.

<sup>200</sup> See proposed rule § 309.1(dd) (defining "used covered vehicle"), 59 FR 59666, 59704. This definition was derived from the Commission's definition of the term "used vehicle" in its Used Car Rule, 16 CFR 455.1(d)(2) (1994).

<sup>201</sup> See proposed rule § 309.1(u), 59 FR 59666, 59704. This definition was derived from EPA's definition of the term "dealer," the entity responsible for maintaining fuel economy labels on new automobiles. See 40 CFR 600.002-93(a)(18) (1993) (defining "dealer"). Under EPA's regulations, consumers selling used automobiles are not required to post or maintain fuel economy labels. In this final rule, the Commission similarly intends that individual consumers not be required to comply with the AFV labeling requirements.

<sup>202</sup> See proposed rule § 309.1(ee), 59 FR 59666, 59704. This definition was derived from the Commission's definition of "dealer" in its Used Car Rule, 16 CFR 455.1(d)(3) (1994).

<sup>203</sup> ETC, G-24, 4; RFA (Tr.), 217.

<sup>204</sup> See proposed rule § 309.1(v) (defining "new vehicle labels"), 59 FR 59666, 59704.

<sup>205</sup> See proposed rule § 309.1(ff) (defining "used vehicle labels"), 59 FR 59666, 59704.

<sup>206</sup> See proposed rule §§ 309.20(e) (new covered vehicles) and 309.21(e) (used covered vehicles), 59 FR 59666, 59707.

<sup>207</sup> EPA (Tr.), 220.

<sup>208</sup> *Id.*

<sup>209</sup> Chicago, J-2, 2 (permanent labeling on all AFVs would help state and local governments enforce regulations pertaining to preferential parking and other transportation control measures).

<sup>190</sup> See proposed rule §§ 309.20(a)(1) (new covered vehicles), 309.21(a) (used covered vehicles), 59 FR 59666, 59707.

<sup>191</sup> See proposed rule § 309.1(d) (defining "consumer"), 59 FR 59666, 59703.

<sup>192</sup> AAMA, I-16, 7; Mobil, I-2, 8.

<sup>193</sup> 42 U.S.C. 7602(e) (defining "person").

<sup>194</sup> For example, EPA 92 requires that, "The Federal Government shall acquire at least 5,000 light duty [AFVs] in fiscal year 1993." 42 U.S.C. 13212(a)(1)(A) (Supp. IV 1993).

<sup>195</sup> See proposed rule § 309.1(a) (defining "acquisition"), 59 FR 59666, 59703.

<sup>196</sup> Clean Fuel Fleet Program; Definitions and General Provisions, 58 FR 64679, 64689-64690, Dec. 9, 1993 (defining the phrase "owned or operated, leased or otherwise controlled by such person" as used in section 241(5) of the 1990 Clean Air Act Amendments, 42 U.S.C. 7581(5)).

<sup>197</sup> 58 FR 64679, 64689, 64690 (excluding leases under 120 days from Clean Fuel Fleet Program).

<sup>198</sup> See proposed rule §§ 309.20 ("Labeling requirements for new covered vehicles"), 309.21 ("Labeling requirements for used covered vehicles"), 59 FR 59666, 59707.

(and thus would not form a valid basis upon which to make reasonable choices and comparisons).<sup>210</sup>

Three comments addressed this issue. AAMA supported including used vehicles within the scope of the AFV labeling requirements.<sup>211</sup> Electro Auto stated that they should be excluded.<sup>212</sup> Mobil stated that definitions in the AFV labeling requirements should be consistent with other regulatory plans.<sup>213</sup>

After considering the record, the Commission determined to issue its SNPR proposal as to this subject without modification. The Commission notes that EPA 92's definition of AFV makes no distinction between new and used vehicles.<sup>214</sup> In addition, the record indicated that 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.<sup>215</sup> At the Workshop, two participants also stated that used AFVs should be included in this proceeding at the present time because used AFVs are (or will soon be) offered for sale to consumers.<sup>216</sup> Thus, the Commission has concluded that including such vehicles within the scope of its AFV labeling requirements is appropriate. As described more fully below, labeling for used covered AFVs does not require, however, disclosure of objective performance data.

<sup>210</sup> While consumers may expect that used vehicles will have different performance attributes than new cars, if the Commission required disclosure of specific data on standard labels (based on the vehicle's condition when new), it might create the impression with some consumers that these disclosures may still be valid.

<sup>211</sup> AAMA, I-16, 7. That comment, however, proposed a different format for used vehicle labels.

<sup>212</sup> Electro Auto, I-7, 1. Electro Auto's objection may have been based on a misapprehension that labels for used AFVs would require disclosure of performance attributes specific to that vehicle. The SNPR did not propose such disclosures.

<sup>213</sup> Mobil, I-2, 8 ("As long as the definition in this rule is coordinated with DOE, then this rulemaking will be consistent with forthcoming EPA rules from DOE.").

<sup>214</sup> See 42 U.S.C. 13211(3) (Supp. IV 1993) (defining "AFV").

<sup>215</sup> AMI (Tr.), 136, 218; Boston Edison, G-26, 10; ETC, G-24, 4; NAFA, G-20, 5, (Tr.), 222; PCC, G-22, 2; RFA, G-5, 5, (Tr.), 217.

<sup>216</sup> See AMI (Tr.), 218 ("[T]his is a real problem now. There are nearly 10,000 [flexible] fuel vehicles in California alone, and \* \* \* several hundred are being offered for sale now to private consumers."). See also NAFA (Tr.), 222:

I think one of the things you have to be concerned about looking down the road with alternative fuels is that if there is not a resale market for these vehicles, the program will wither and die \* \* \* So we don't have a procedure to provide information to that second purchaser. And they have questions about alternative fuels. And they don't know how to go about getting a brochure like this \* \* \* If you don't create the resale market, then the first market doesn't really develop.

## 2. Disclosures on AFV Labeling

As discussed below, 21 of the 24 commenters addressed the substance of the Commission's proposed AFV labeling requirements (i.e., the information to be disclosed on AFV labels).<sup>217</sup> Pursuant to EPA 92's mandate, the Commission developed this aspect of the final rule based on two sets of considerations. First, the Commission determined the type of information consumers would find most appropriate, useful, and timely in making AFV choices and comparisons. For example, the Commission stated in the SNPR that consumers would require disclosure of more comparative information when considering an AFV purchase than when refueling.<sup>218</sup> As a result, the Commission proposed that AFV labels disclose more comprehensive cost-benefit information to consumers than labels for alternative fuels. The Commission also stated that because few consumers have extensive experience with AFVs, its labeling proposal should be designed to be useful to a general consumer audience.<sup>219</sup> Finally, the Commission concluded that, because DOE was required to prepare and distribute an information package for consumers, there was less need to attempt to present complex information in the constrained format of an AFV label.

After determining what would likely be appropriate, useful, and timely to consumers, the Commission analyzed the problems associated with developing and publishing such cost-benefit information. For example, the Commission considered the extent to which balanced, accurate information for pertinent comparative factors could be conveyed on the "simple" label envisioned by Congress. It also considered whether appropriate technical standards existed to compare some factors, and whether providing the same information required on labels by other government agencies (in different formats) could confuse consumers.

After evaluating those issues, the Commission proposed in the SNPR an AFV label disclosing a combination of information in a three-part format,<sup>220</sup> concluding this would be most useful to

<sup>217</sup> Unocal, I-5, addressed the proposal for labeling of alternative fuels. Two other comments (Mechtly, I-1, and Sokol, I-17) addressed metric issues. See section VI *infra*.

<sup>218</sup> 59 FR 59666, 59684. All nine commenters addressing that issue supported the Commission's assessment. AAMA (Tr.), 37-38; AMI, G-3, 1; Boston Edison (Tr.), 84; CEC, H-8, 1; ETC (Tr.), 42; NAFA (Tr.), 53; NPGA (Tr.), 50, 51; RFA, G-5, 4; Sun, G-1, 2.

<sup>219</sup> Chicago, J-2, 1 (AFV labeling requirement should target all consumers).

<sup>220</sup> 59 FR 24014, 24019-24020.

consumers making choices and comparisons. The first part would disclose objective information pertaining to each particular AFV, while the second and third parts would disclose information pertaining to AFVs in general. This final rule is the result of the Commission's analysis of all pertinent considerations, the rulemaking record and recent developments. As described in more detail below, the Commission continues to find that a combination of objective and descriptive information will best meet consumers' needs for comparative cost-benefit information. The Commission also concludes that this format will best address the problems associated with developing and publishing such information.

*a. Specific data disclosures.* In the SNPR the Commission proposed that labels for new covered AFVs disclose two types of objective information particular to each AFV: cruising range and EPA certification level.<sup>221</sup> Seven comments addressed the appropriateness of including objective information to consumers as to those factors. Boston Edison/EEI and DOE supported disclosures as to both factors.<sup>222</sup> API stated that a disclosure for cruising range would be a useful measure for consumer comparisons.<sup>223</sup> Mobil appeared to support requiring disclosure of cruising range, but stated that EPA certification levels were generally not relevant to EPA 92.<sup>224</sup> Chrysler supported requiring disclosure of EPA certification levels, but appeared to oppose disclosure of vehicle cruising range.<sup>225</sup> Ford stated that "most of the information meeting [EPA 92's mandate] is already included on existing motor vehicle labels."<sup>226</sup> AAMA stated that it "support[ed] the intent of the FTC proposal" and that "the specific information proposed is appropriate with respect to costs and benefits, so as to reasonably enable the consumer to make choices and comparisons."<sup>227</sup>

<sup>221</sup> Labels for used covered AFVs would not disclose objective information particular to each vehicle. See 59 FR 59666, 59688 n.312, 59690 n.358.

<sup>222</sup> Boston Edison/EEI, I-14, 4, 5-6 (both are useful to consumers); DOE, J-1, 2.

<sup>223</sup> API, I-15, 2. API's comment did not address the Commission's proposal to require disclosure of EPA certification level.

<sup>224</sup> Mobil, I-2, cover letter at 3, 9-11.

<sup>225</sup> Chrysler, I-13, 1.

<sup>226</sup> Ford, I-4, 1.

<sup>227</sup> AAMA, I-16, 1. AAMA did not, however, support the "manner by which this information is [displayed]." *Id.* For used covered vehicles, AAMA stated that labels should "contain only the information necessary to indicate that the vehicle operates on alternative fuels and to list the fuels that can be used in the vehicle." AAMA, I-16, 1.

The Commission's SNPR proposal as to both disclosures, and the comments addressing those issues, are described in more detail below.

(1) Cruising range. In the SNPR, the Commission proposed that cruising range should be disclosed on labels for new covered AFVs.<sup>228</sup> Under the Commission's revised proposal, cruising range would be displayed on AFV labels in two formats. The first labeling format would be for dedicated covered AFVs (i.e., covered AFVs designed to operate solely on alternative fuel).<sup>229</sup> Labels for these vehicles would disclose the manufacturer's "estimated cruising range" for that vehicle (i.e., the manufacturer's reasonable estimate of the number of miles a covered vehicle will travel between refueling or recharging), expressed as a lower estimate and an upper estimate.<sup>230</sup>

The second labeling format would be for dual-fueled covered AFVs (i.e., vehicles capable of being powered both by an alternative fuel and a conventional fuel).<sup>231</sup> Labels for these vehicles would disclose two sets of values: the manufacturer's reasonable estimate of (a) the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on alternative fuel, and (b) the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on conventional fuel.<sup>232</sup> Because the disclosure would relate solely to the manufacturer's estimated (and not actual) cruising range, both label formats would include a statement advising consumers that their actual cruising range will vary with options, driving conditions, driving habits and the AFV's condition.<sup>233</sup>

As noted previously, three comments fully supported AAMA's comment. Chrysler, I-13, 1; Ford, I-4, 2; NGVPA, I-19, 1.

<sup>228</sup> The Commission did not propose requiring disclosure of this information on labels for used covered AFVs because that information could vary significantly with a vehicle's condition. Requiring disclosure of cruising range information on used vehicles could therefore mislead consumers.

<sup>229</sup> See proposed rule § 309.1(g) (defining "dedicated"), 59 FR 59666, 59703.

<sup>230</sup> See proposed rules §§ 309.1(o) (defining "estimated cruising range"), 309.20(e)(2)(i) (requiring disclosure of estimated cruising range for dedicated vehicles), 59 FR 59666, 59704, 59707.

<sup>231</sup> See proposed rule § 309.1(i) (defining "dual fueled"), 59 FR 59666, 59704.

<sup>232</sup> See proposed rule § 309.20(e)(2)(ii) (requiring disclosure of estimated cruising range for dual-fueled vehicles), 59 FR 59666, 59707.

<sup>233</sup> EPA's fuel economy labels contain a similar statement. See 40 CFR 600.307-86(a)(3)(ii)(A) (1993) ("Actual mileage will vary with options, driving conditions, driving habits, and [vehicle's/truck's] condition."). See SNPR Figures 4 and 5, 59 FR 59666, 59710-59711.

Cruising range values would be expressed in whole numbers and calculated in one of three ways. For vehicles required to comply with EPA's fuel economy labeling provisions,<sup>234</sup> cruising range values would be calculated by reference to the vehicle's estimated fuel economy rating.<sup>235</sup> For example, the lower range value would be determined by multiplying the vehicle's estimated city fuel economy by its fuel tank or battery capacity, then rounding to the next lower integer value.<sup>236</sup> Conversely, the upper range value would be determined by multiplying the vehicle's estimated highway fuel economy by its fuel tank capacity, then rounding to the next higher integer value.<sup>237</sup>

As noted previously, EPA is required to include AFVs powered by all alternative fuels within its fuel-economy labeling program, but has not yet announced a timetable for doing so.<sup>238</sup> During the transition to that next phase, the Commission therefore proposed a different approach for vehicles not yet required to comply with EPA's fuel-economy labeling provisions. For EVs, the Commission noted that the Society of Automotive Engineers ("SAE"), a consensus standard-setting organization, has issued a "Recommended Practice" establishing uniform procedures to calculate cruising range for EVs ("SAE J1634").<sup>239</sup> The Commission believed that reliance on uniform standards would facilitate comparability.<sup>240</sup> Accordingly, the proposed rule requires that cruising range values for EV's be calculated in accordance with that standard.<sup>241</sup>

<sup>234</sup> See 40 CFR part 600 (1993) ("Fuel economy of motor vehicles").

<sup>235</sup> Numerous commenters suggested that cruising range values could be so calculated. See, e.g., AAMA (Supp.), G-7, 3 ("Combining MPG with tank capacity can give the customer a reasonable estimation of driving range."); AMI (Tr.), 141; CAS (Supp.), G-17, 1-2; EPA (Tr.), 144; RFA (Tr.), 148.

<sup>236</sup> See proposed rule § 309.22(a)(1)(i), 59 FR 59666, 59708.

<sup>237</sup> See proposed rule § 309.22(a)(1)(ii), 59 FR 59666, 59708.

<sup>238</sup> 59 FR 39638, 39639 (announcing fuel-economy test labeling requirements for methanol and CNG vehicles). One comment suggested that the Commission encourage EPA to develop further fuel economy regulations. ETC, I-9, 1. The Commission does not believe that is necessary because EPA is under a legal obligation to issue such regulations.

<sup>239</sup> SAE's "Electric Vehicle Energy Consumption and Range Test Procedure," J1634, was issued in May 1993. B-33. This procedure is based in part on EPA's pertinent test procedures. B-33, 1, 9-10. Boston Edison stated that fuel economy "can be [calculated] in a manner that is procedurally identical to gasoline vehicles" by relying on SAE J1634. Boston Edison (Supp.), G-26, 5.

<sup>240</sup> 59 FR 59666, 59688.

<sup>241</sup> See proposed rules §§ 309.22(a)(2) (for dedicated vehicles), 309.22(b)(2) (for dual-fueled vehicles), 59 FR 59666, 59708.

For other vehicles not yet required to be labeled with EPA's fuel economy stickers, the Commission knew of no comparable Commission procedure that could yield cruising range values in the proposed "minimum-maximum" format. As a result, the Commission did not propose that manufacturers use a specific standard to determine cruising range. In similar situations (i.e., where the Commission has required the disclosure of specific information, but no consensus standards exist to measure such information), the Commission has required that manufacturers have a "reasonable basis" for such disclosures.<sup>242</sup> Accordingly, for those vehicles, the Commission proposed that manufacturers be required to possess a reasonable basis, consisting of competent and reliable evidence, of the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings.<sup>243</sup>

The SNPR also stated that during this transition (i.e., while EPA is developing fuel-economy labeling requirements), the Commission would consider whether any new consensus test methods for determining cruising range constitute a reasonable basis.<sup>244</sup> The Commission expected that industry compliance with this AFV labeling rule, in conjunction with the need to avoid uncertainty about whether particular test methods or calculations constitute a reasonable basis, will encourage development of standardized test methods and specifications. This, in turn, could facilitate widespread acceptance of AFVs.

Fourteen comments addressed requiring disclosure of cruising range as proposed in the SNPR. Five of the fourteen comments supported the Commission's proposal because of its usefulness to consumers in making

<sup>242</sup> See, e.g., Fuel Rating Rule, 16 CFR 306.5(b) (1994) ("To determine automotive fuel ratings for alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the [fuel] that you must disclose."); Care Labeling Rule, 16 CFR 423.6(c)(1)-(6) (1994) ("reasonable basis" based on "reliable evidence"); R-value Rule, 16 CFR 460.19(a) (1994) ("If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim.").

<sup>243</sup> See proposed rules §§ 309.22(a)(3) (for dedicated vehicles), 309.22(b)(3) (for dual-fueled vehicles), 59 FR 59666, 59708.

<sup>244</sup> The Commission encourages DOE, as part of its "technical assistance," to direct the development of such transition specifications. See 42 U.S.C. 13232(b) (Supp. IV 1993) (DOE "shall provide technical assistance" to the Commission and coordinate that assistance with its development of a consumer information brochure).

choices and comparisons.<sup>245</sup> For example, survey data cited by Boston Edison/EEI "indicated that the distance that an electric car can travel is the highest ranking concern of consumers."<sup>246</sup> Similarly, CAS supported requiring disclosure of this "extremely useful" information and NAFA stated that fleet managers "have identified cruising range as one of the most important factors when making a decision to purchase AFVs."<sup>247</sup>

Three of the fourteen comments made suggestions directed at specific issues without specifically supporting or opposing the Commission's SNPR proposal.<sup>248</sup> For example, API noted that cruising range was "a useful measure for consumer comparison" but suggested that the information be expressed in terms of fuel tank capacity "and miles per gallon or gallon equivalent."<sup>249</sup> The final two of those three comments were directed at the Commission's proposal regarding how cruising range would be calculated for EVs. Toyota supported the Commission's proposal to base calculation of cruising range values for EVs on SAE J1634, but stated that procedure did not yield an upper and lower limit of the vehicle's range.<sup>250</sup>

<sup>245</sup> Five other comments generally supported the Commission's AFV labeling requirements without addressing this issue. AGA/NGVC, I-18, 2, 3; Chicago, J-2, 1; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; RFA, I-3, 1-2.

<sup>246</sup> Boston Edison/EEI, I-14, 4.

<sup>247</sup> CAS, I-12, 1; NAFA, I-10, 2. DOE and Mobil also supported a disclosure of this information. DOE, J-1, 2; Mobil, I-2, 9-10, cover letter at 1.

NAFA further suggested that the Commission specify that no information "be presented at the time an AFV is offered for sale that conflicts with information provided on the AFV label, such as cruising range." NAFA, I-10, 2. The Commission expects that requiring disclosure of cruising range information could encourage affected manufacturers and dealers generally to provide additional information to meet consumers' expectations and needs. See AGA/NGVC, G-6, 12 ("[F]uel retailers, vehicle manufacturers and trade associations can target and educate specialty markets and their consumers."); Boston Edison, D-11, 13 ("[O]ver time, market forces will create incentives for sellers to identify and respond to consumer demands for information, much as gasoline sellers supplement the information that they are required to provide under the Commission's Octane Rule."). The Commission concludes that it is not necessary to address this issue here, because section 5 of the FTC Act (15 U.S.C. 45) authorizes the Commission to seek corrective action if, after investigation, it has reason to believe that advertising or marketing falls within the scope of conduct declared unlawful by the statute.

<sup>248</sup> A fourth comment, from DOT/NHTSA, noted that NHTSA recently proposed gallon equivalent measurements for five gaseous fuels: CNG, LNG, LPG, Hydrogen, and Hythane. DOT/NHTSA, J-5, 1.

<sup>249</sup> API, I-15, 5.

<sup>250</sup> Toyota, I-11, 2. As a result, Toyota recommended that the Commission require that "The range shall be actual driving range determined in accordance with test methods set forth in the latest SAE J1634 "Electric Vehicle Energy Consumption and [R]ange Procedure." *Id.* at 3.

CARB stated that it "has a number of concerns" with SAE J1634, including that it may allow for inflated range estimates and that its treatment of EVs equipped with air conditioning was not sufficiently precise.<sup>251</sup>

Comments from domestic automakers supported the Commission's determination that cruising range would be "useful"<sup>252</sup> and "important"<sup>253</sup> information for consumers. However, those commenters strongly opposed requiring a disclosure as to that factor because cruising range "cannot, at this time, be provided in a manner which would be useful to the consumer."<sup>254</sup> The automakers based their opposition on their belief that sufficient "standards and adjustment factors" had not yet been developed to account for differences in AFV technology.<sup>255</sup>

For example, according to AAMA, without standard fuel specifications,<sup>256</sup> EPA test procedures, and a definition of fuel tank capacity for all AFVs, a range of estimates would result based on varying assumptions which would in turn generate inconsistent and unhelpful estimates of vehicle range.<sup>257</sup> The expected use of AFVs by fleet operators, with different in-use driving cycles and vehicle maintenance practices than those used in EPA's fuel economy determinations, "can [also] significantly affect range."<sup>258</sup> And "inconsistencies and confusion" exist between range estimates for flexible fuel vehicles (i.e., AFVs capable of operating on an alternative and conventional fuel in a single fuel tank) and bi-fuel vehicles (i.e., AFVs equipped with separate fuel tanks for alternative and conventional fuels).<sup>259</sup>

AAMA suggested that additional problems exist regarding calculating fuel economy values for EVs. For

<sup>251</sup> CARB, J-3, 2.

<sup>252</sup> AAMA, I-16, 2.

<sup>253</sup> Electro Auto, I-7, 2.

<sup>254</sup> Ford, I-4, 2. See also AAMA, I-16, 2 ("[W]e have been unable to adequately develop a value which would be consistent across fuels and manufacturers or useful to customers at this time."); Electro Auto, I-7, 2 (range is "a difficult number to pin down with any consistency"); ETC, I-9, 2 (Commission should defer requiring disclosure "until industry-wide accepted methodologies for range measurement are available").

<sup>255</sup> AAMA, I-16, 6 ("The disclosure of vehicle range should not be provided until the standards and adjustment factors, as described above, can be developed.")

<sup>256</sup> The lack of commercial fuel specifications "results in highly variable fuel energy content which could greatly affect in-use driving range." AAMA, Att. II at 1.

<sup>257</sup> AAMA, I-16, 2, 3, Att. II at 1, 2. Chrysler, however, supported disclosure of fuel tank capacity and noted that that information was "currently provided." Chrysler, I-13, 1, 2.

<sup>258</sup> AAMA, I-16, 3.

<sup>259</sup> *Id.*

example, the SAE J1634 procedure for calculating EV fuel-economy values currently measures only a combined metro-highway fuel economy and is thus "inadequate for these calculations."<sup>260</sup> That Recommended Procedure also does not apply to hybrid EVs (i.e., vehicles capable of operating on electricity and conventional fuels at the same time).<sup>261</sup> Battery capacity for EVs also "may vary with usage, age, temperature \* \* \* and other factors."<sup>262</sup> Accordingly, "[f]urther experience with these vehicles is necessary to provide an adequate prediction of the range that a consumer may achieve in-use."<sup>263</sup> More generally, AAMA concluded that

[A]ny requirement that manufacturers calculate and label vehicles with range estimates must resolve the above issues, or least be deferred until these issues can be resolved \* \* \* These estimates not only fail to provide valuable information to customers, but may also result in failure to meet customer expectations leading to customer dissatisfaction with [AFVs].<sup>264</sup>

After considering the record relating to the threshold issue (i.e., whether cruising range should be disclosed on AFV labels), the Commission has concluded that such information is appropriate and will help consumers make reasonable choices and comparisons.<sup>265</sup> It is also one of the most important facts consumers need regarding whether and which AFV to acquire; as AAMA noted: "This information (i.e., range) is vital for the consumer when deciding between various alternative fuels \* \* \* ." <sup>266</sup> Because cruising ranges for AFVs can differ significantly from cruising ranges for conventional fuel vehicles, with which consumers are most familiar, consumers also have a practical need for cruising range disclosures on AFV labels. As a Workshop participant stated,

[I]f I was leaving on a 50 or 60-mile trip and my cruising range could be as low as 30, I'd like to know that. So I

<sup>260</sup> AAMA, I-16, Att. II at 1. AAMA notes, however, that the SAE procedure is "currently being modified to measure city and highway energy consumption," and that the new procedure will be approved "some time in 1995." *Id.*

<sup>261</sup> AAMA, I-16, Att. II at 2.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> AAMA, I-16, 3.

<sup>265</sup> See, e.g., CAS (Tr.), 156 (range gives consumers "the ability to compare in the showroom a very visible number that you can go from car to car to compare."); (Supp.), G-17, 1.

<sup>266</sup> AAMA, G-7, 2. See also AMI (Tr.), 141 (range is one of the most important factors); NAFA (Tr.), 147 (same); Boston Edison (Supp.), G-26, 9; (Tr.), 142 (range is most important concern of people considering an EV purchase).

think I would like to know the low end of it even if there is a broad, you know, number that's not very well defined. I think it's still beneficial to know what the minimum, certainly the minimums are, because you have to be able to make it to the next fueling point.<sup>267</sup>

Displaying cruising-range values in a meaningful way to consumers also is feasible. Statements accompanying the cruising range values identify the disclosure as being a "manufacturer's estimate," and advise consumers that actual cruising range "will vary with options, driving conditions, driving habits and the vehicle's condition." Consumers are further cautioned that the labels are for comparison purposes and "may not reflect actual driving range." A disclosure displayed in this format is not likely to pose problems to consumers accustomed to estimates.<sup>268</sup>

The Commission has also determined that calculating cruising range values is feasible, as shown by the prominence with which this factor appears in marketing and advertising claims promoting AFV use.<sup>269</sup> For example, Chrysler, GM and Ford have all made cruising range claims regarding their EVs in congressional testimony,<sup>270</sup> promotional material<sup>271</sup> and product specification sheets.<sup>272</sup> Chrysler and GM also address cruising range in owner's

<sup>267</sup> RFA (Tr.), 149. See also RFA (Tr.), 153, (Supp.), G-5, 2 ("[G]iven the sparsity and distance between alternative fuel refueling stations, vehicle owners need to be aware of approximate range.").

<sup>268</sup> AMI (Tr.), 155 (consumers understand that "basic information" on the label is not going to be precise).

<sup>269</sup> The Commission described these claims and their prevalence in detail in the SNPR. 59 FR 59666, 59687-59688. Automakers responding to the SNPR did not address this issue.

<sup>270</sup> For example, at a May 11, 1993, congressional hearing, representatives from Chrysler, Ford, and GM all made cruising range claims for their EVs. See *Status of Domestic Electric Vehicle Development*, 103d Cong., 1st Sess. (1993) (statement of Doran K. Samples, Program Management Executive of the Electric Minivan Project, Chrysler, at 52, 56; Roberta J. Nichols, Electric Vehicle External Strategy Manager, Ford, at 60, 64, 66; and Kenneth R. Baker, Vice President, GM, at 76).

<sup>271</sup> See GM, Progress Report, B-5, front, Spring/Summer 1993 (GM's Impact 4 EV has "a driving range of 70 miles in the city and 90 miles in normal highway driving."); GM, GM's "Impact" Show Car and New Pre-Production Electric Vehicle Lead the 104th Tournament of Roses, B-6, at 2, Dec. 29, 1992 ("The Impact and the pre-production car . . . have a useful range of 100 miles . . ."); GM, *General Motors Electric Vehicles Fit Most Drivers' Lifestyles*, B-7, at 1, Oct. 20, 1992 ("GM's 'Impact' prototype has a highway range of 100 miles.").

<sup>272</sup> Chrysler 1994 Dodge Caravan/Plymouth Voyager, B-8, back, May 7, 1993; Chrysler 1994 Dodge Caravan/Plymouth Voyager, B-9, back, Aug. 31, 1992; Ford Ecostar, B-10, back panel, undated; GM Impact 3, B-11, back, undated; GM Impact, B-12, back, undated ("It has a practical range of 80 miles per charge.").

manuals for the 1994 Dodge Spirit<sup>273</sup> and 1993 Chevrolet Lumina.<sup>274</sup> Peugeot has made similar claims in its promotional material.<sup>275</sup> Companies converting cars to run on electricity<sup>276</sup> and electricity utilities<sup>277</sup> are also making cruising range claims for EVs. Similar claims are also being made for AFVs powered in whole or in part by CNG,<sup>278</sup> hydrogen,<sup>279</sup> LPG,<sup>280</sup> and

<sup>273</sup> AAMA (Supp.), G-7, 1994 Dodge Spirit Owner's Manual at 105 ("Cruising Range: M-85 produces less energy when burned than gasoline. Therefore, cruising ranges and miles per gallon (MPG) will be considerably less when using M-85. Cruising ranges will increase as the content of gasoline in the fuel tank increases.").

<sup>274</sup> AAMA (Supp.), G-17, 1993 Chevrolet Lumina Owner's Manual—Ethanol Supplement, at 4 ("When using an E-85 mixture of fuel, your Lumina has a range of 250-300 miles (400-480 km.); 1992 Chevrolet Lumina Owner's Manual—Methanol Supplement, at 5 ("When using an M-85 mixture of fuel, your Lumina has a range of 200-250 miles (320-400 km).").

<sup>275</sup> PSA Peugeot Citroen, *Electric Vehicles*, B-13, at 3-5, 1992 (Peugeot 106 has range of 90-160 km; Citela has range of 210 km @ 40 kph and 110 km city, and car continuously displays remaining range; Peugeot 405 Station Wagon has battery range of 72 km at 40 kph and highway range of 750 km at 100 kph).

<sup>276</sup> Dreisbach ElectroMotive, Inc., *API Demi Motorola Saturn*, B-14, front, undated (range from 140 to 518 miles depending on battery configuration); Electro Automotive, *Electro Automotive Makes Electric Cars Easy With The Voltsrabbit(tm) Kit*, B-15, front, undated (range: 60-80 miles); Solar Car Corporation, *Specifications for Chevy S-10 and GMC S-15 Pickup Truck (converted to run on electricity)*, B-16, front, Aug. 1, 1992 ("Normal Daily Range—50 to 80 miles, depending on terrain, speed and driving conditions.").

<sup>277</sup> Arizona Public Service Company, *Electric Vehicle Program*, B-17, at first upper panel, undated ("Today's batteries give EVs a range of 30 to 100 miles on a single charge."); Electric Power Research Institute, *Electric Vehicle Infrastructure: How Far Will My Electric Vehicle Take Me?*, B-18, front, 1992 ("[T]oday's EV models . . . offer a driving range of 60 to 100 miles. . ."); Virginia Power, *The Electric Vehicle: Clean, Quiet and Efficient* (CO 923-VA/EE 93084), B-19, front, undated (Solectria Force has range of 70-90 miles); Potomac Electric Power Company, *Questions and Answers About the Solectria Force*, B-20, front, Dec. 1992 (Solectria Force has driving range of "60 miles if the batteries are fully charged . . . The effective range of the Force using current off-the-shelf battery technology is approximately 35 to 40 miles on a charge.").

<sup>278</sup> Blue Bird Body Company, Product Specifications for NGV School Buses (models TC/2000 FE and TC/2000 RE), B-21, at 3, 1992 ("Vehicle range—300 miles with 6 tanks, 150 miles with 3 tanks"); Ford, Crown Victoria dedicated CNG, B-22, front, March 3, 1993 ("The driving range for these demonstration units is approximately 200 miles.").

<sup>279</sup> Mazda, *Mazda Takes Action To Address Global Environmental Concerns*, B-23, at 3, July 27, 1993 ("With a full tank of hydrogen, the Mazda HR-X has a range of up to 125 miles.").

<sup>280</sup> Clean Fuels Task Force of Western Liquid Gas Association, *LPG: An Alternate Clean Air Motor Fuel With Significant Environmental and Economic Advantages*, B-24, 7, May 1992 ("LPG offers the best range per gallon of the four non-gasoline clean fuels."); NPGA, *LP-Gas Is Moving America's Fleets*, B-25, 6, 1991 (chart comparing driving ranges for

methanol.<sup>281</sup> Accordingly the Commission has determined to issue its SNPR proposal regarding methods for calculating cruising range values (but with four modifications described below) because those methods generate comparable cruising-range estimates.

For example, calculating such estimates for vehicles required to comply with EPA's fuel-economy regulations should not be a problem, because the data yielding the estimates (the vehicle's fuel economy estimate and fuel tank capacity) are readily determinable.<sup>282</sup> For those vehicles, the estimates would simply be derived by multiplying two known values.<sup>283</sup> Similarly, the Commission has concluded that relying on SAE's J1634 Recommended Practice is appropriate for calculating cruising range values for EVs. The J1634 test establishes "uniform procedures for testing electric battery-powered vehicles \* \* \* [using] standard tests which will allow for determination of \* \* \* [cruising] range." <sup>284</sup> The Commission also notes that DOE has proposed requiring the use of SAE J1634 to determine equivalent petroleum-based fuel economies of EVs.<sup>285</sup> Thus, for those vehicles, the final rule requires that cruising range be calculated using SAE J1634.

As noted, however, the Commission has modified the proposed rule in four ways in response to the comments. First, the proposed rule is modified by including a definition of fuel tank capacity for vehicles powered by gaseous and liquid fuels.<sup>286</sup> This modification will promote consistency of cruising range estimates where the calculations are based on fuel economy and tank capacity data. The final rule thus includes a definition for "vehicle

"identical vehicles, optimized for their specific fuel.").

<sup>281</sup> Ford, Taurus passenger car FFV (using gasoline or M85), B-26, front, March 4, 1993 ("Highway driving range is approximately 350 miles when using M85."); Ford, *Ford Announces Production of 1993 Taurus FFV*, B-27, at 1, Dec. 16, 1992 ("By increasing the size of the fuel tank to 20.7 gallons, the driving range of the Taurus FFV when fueled with M85 is similar to a non-FFV Taurus."); Ford, Econoline van and Club Wagon FFV (using gasoline and M85), B-28, front, March 4, 1993 ("The highway driving range is approximately 400 miles when using M85.").

<sup>282</sup> Chrysler, I-13, 1, 2 (fuel tank capacity and fuel economy values are "currently provided").

<sup>283</sup> See, e.g., Ford, G-14, 1-2, (Tr.), 145 (consumers could use fuel tank capacity and EPA's fuel economy estimates to determine approximate cruising range).

<sup>284</sup> B-33, 1 (emphasis added). See also B-33, 10 ("The purpose of this test is to determine the overall range of an electric vehicle when operated on a dynamometer over repeated driving cycles.").

<sup>285</sup> 59 FR 5336, Feb. 4, 1994.

<sup>286</sup> Standard procedures regarding battery capacity for EVs are contained in SAE J1634.

fuel tank capacity" derived from a DOT definition of the same term.<sup>287</sup> Second, the final rule requires that cruising range values for EVs be disclosed in the format generated by the SAE Recommended Practice (i.e., in a single "combined" city-highway range). As a result, cruising ranges for these vehicles will be displayed as a single figure (e.g., "450 miles") instead of in a minimum-maximum format (e.g., "400-500 miles").<sup>288</sup>

Third, because the SAE J1634 test procedures do not apply to hybrid EVs, that Recommended Practice will not generate cruising range values for those vehicles. Accordingly, the Commission has modified the definition of "electric vehicle" to clarify that only vehicles powered exclusively by electricity are required to calculate cruising range values by reference to SAE J1634.<sup>289</sup> For hybrid EVs, then, cruising range values would be calculated by reference to the "reasonable basis" test.

Finally, the SNPR's treatment of bi-fuel vehicles is modified to reflect the fact that those vehicles have two tanks holding separate fuels, operating on one fuel or the other.<sup>290</sup> With two separate tanks, the effective cruising range for such vehicles could be the sum of the cruising range for either fuel. Accordingly, the statement accompanying that disclosure will advise consumers that, "The total possible cruising range of this vehicle is the sum of the alternative fuel range and the conventional fuel range."

The proposed rule also included a provision requiring that manufacturers maintain records for three years demonstrating compliance with the proposed rule.<sup>291</sup> While EPA 92 does not expressly address this issue, the Commission believed that a reasonable recordkeeping requirement is necessary to ensure the accuracy of disclosures made pursuant to these labeling

requirements. No comments addressed this issue. The Commission has concluded that the recordkeeping provision is simple, easy to comply with, and allows it to verify compliance. Accordingly, the Commission has not modified that requirement in the final rule.

(2) Environmental impact. In the SNPR, the Commission proposed that labels for new covered AFVs disclose information regarding a vehicle's environmental performance, expressed in terms of the EPA emissions standard to which the vehicle had been certified.<sup>292</sup> For vehicles which had not been so certified, manufacturers would place a mark in the box indicating that fact.<sup>293</sup> For those vehicles which had been certified as meeting an emissions standard, manufacturers would place a mark in the appropriate box indicating that fact, and then indicate on a graphic the standard to which the vehicle had been certified. The graphic would depict seven EPA emissions standards. Prior to being offered for acquisition to consumers, manufacturers of such vehicles would identify the emissions certification standard on that graphic by placing a caret above the applicable standard. The label would also contain a statement advising consumers that, "The overall environmental impact of driving this vehicle includes many factors not measured by these standards."

Ten comments addressed this aspect of the Commission's SNPR proposal.<sup>294</sup> Four comments supported including this information on new AFV labels because the information was "an important factor"<sup>295</sup> for consumers and the proposed graphic conveys this "critical information to consumers in a highly effective manner."<sup>296</sup> One advantage of this disclosure was that consumers would not "be dependent on marketing claims and other assertions that a vehicle [was] 'cleaner' or that the vehicle 'meets all the requirements of

the Clean Air Act.'" <sup>297</sup> The written disclosure accompanying the graphic also "should provide consumers with sufficient information to understand the limits of the information conveyed by the graphic."<sup>298</sup>

Two comments supported the concept of disclosing a vehicle's emissions certification standard but suggested that the information be displayed in a different format. AGA/NGVC suggested that the statement accompanying the disclosure state that, "The overall environmental impact of driving [any] vehicle includes many factors not [currently] measured by [existing vehicle emission] standards."<sup>299</sup> (The modifications are shown in brackets.) That comment further suggested that the graphic for this factor identify the standard to which the conventionally-fueled version of that vehicle was certified.<sup>300</sup> Chrysler specifically supported labeling AFVs with each vehicle's emissions certification standard, but generally opposed the Commission's proposed labeling format.<sup>301</sup>

Four other comments opposed requiring this disclosure on AFV labels. Mobil stated that emissions standards have no relevance in EPA 92, that fleet operators (who are concerned about emissions certifications) do not rely on window stickers in making purchasing decisions, and that the "vast majority" of the general public "are not aware of the differing classifications" and are not required to acquire AFVs. "Therefore, labeling of the vehicle emissions certification will not provide any meaningful information to the majority of consumers."<sup>302</sup>

Three comments from automakers similarly opposed requiring this disclosure.<sup>303</sup> AAMA suggested that this disclosure be deferred until EPA had established certification standards for all alternative fuels and AFVs.<sup>304</sup> Electro

<sup>287</sup> See Final Rule § 309.1(gg).

<sup>288</sup> The Commission understands that a revision to SAE J1634 under consideration by SAE would yield cruising range values in a minimum-maximum format. The Commission will monitor SAE's review of this revision and consider changes to this Final Rule as appropriate.

<sup>289</sup> See Final Rule § 309.1(k).

<sup>290</sup> Flexible fuel vehicles (i.e., vehicles with one tank capable of operating on either fuel, or any mixture of the two, at the same time) are not affected by this modification. As noted previously, the Commission proposed that labels for dual fueled vehicles disclose two sets of cruising range estimates: one representing the vehicle's cruising range when operating exclusively on alternative fuel and one representing cruising range when the vehicle operates exclusively on conventional fuel. As a result, the SNPR's proposal accurately conveys the effective cruising range for these single tank AFVs.

<sup>291</sup> See proposed rule § 309.23, 59 FR 59666, 59708.

<sup>292</sup> 59 FR 59666, 59690. See text accompanying notes 320-322.

<sup>293</sup> EPA has not yet issued emission standards and certification test procedures for certain fuels (e.g., electricity and hydrogen).

<sup>294</sup> Four other comments indicated general support for the Commission's labeling proposal but did not address this specific issue. Chicago, J-2, 1; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; RFA, I-3, 1-2.

<sup>295</sup> NAFA, I-10, 3.

<sup>296</sup> Boston Edison/EEI, I-14, 5. See also NAFA, I-10, 3 (proposed format is "simple," "easy for manufacturers to provide," "appropriate," and will help consumers), CAS, I-12, 1 (graphic will provide consumers with at least a minimum of environmental information, but should also identify rating for comparable gasoline-fueled vehicle). DOE also specifically supported a disclosure as to this factor. DOE, J-1, 2.

<sup>297</sup> NAFA, I-10, 3.

<sup>298</sup> Boston Edison/EEI, I-14, 6. A similar disclosure on EPA's fuel economy labels "appears to be effective in conveying to consumers that the rating provides a basis of comparison, not a guarantee of performance." *Id.*

<sup>299</sup> AGA/NGVC, I-18, 3, 4. The Commission had proposed that that statement read as follows: "The overall environmental impact of driving this vehicle includes many factors not measured by these standards."

<sup>300</sup> AGA/NGVC, I-18, 3, 4.

<sup>301</sup> Chrysler, I-13, 1, 2.

<sup>302</sup> Mobil, I-2, cover letter at 3, 10.

<sup>303</sup> Two comments from automakers, however, raised no objection to this disclosure. ETC, I-9 (membership includes domestic automakers); Toyota, I-11.

<sup>304</sup> AAMA, I-16, 3, 6. In the alternative, AAMA suggested that the Commission not require disclosure of this information under its labeling

Auto stated that AFVs should not be required to meet more stringent labeling standards than conventional fueled vehicles and that "complete environmental impact data" is "impractical for a simple consumer label" and "misleading."<sup>305</sup> Ford stated that the proposed disclosures "cannot, at this time, be provided in a manner which would be useful to the consumer."<sup>306</sup>

The SNPR also proposed that manufacturers be required to maintain records for three years demonstrating compliance with the proposed rule.<sup>307</sup> The Commission tentatively had concluded that such a provision was a reasonable means to ensure compliance with this provision. No comments addressed this issue.

After considering the record, the Commission has now concluded that requiring disclosure of EPA certification standards is appropriate and would be useful to consumers. Incorporating environmental considerations into national energy policy was a key goal of EPA 92, and "improv[ing] our environment" was a "principal purpose" of that statute.<sup>308</sup> EPA 92 also gives special attention to the fact that the environmental performance of alternative fuels differs, and that those differences need to be explained to consumers.<sup>309</sup>

The record also indicates that comparative information regarding alternative fuels will be helpful for consumers considering AFV acquisitions. Numerous comments identified information about environmental performance as being important to consumers considering AFV acquisitions.<sup>310</sup> DOE's information brochure does not compare the environmental performance of different

requirements, and instead defer to EPA. AAMA, I-16, 6.

<sup>305</sup> Electro Auto, I-7, 2. This comment apparently misapprehended the Commission's proposal as requiring disclosure of "complete environmental impact data."

<sup>306</sup> Ford, I-4, 2. This comment did not further address or explain why this information should not be required to be disclosed.

<sup>307</sup> See proposed rule § 309.23, 59 FR 59666, 59708.

<sup>308</sup> H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 133, reprinted in 1992 U.S.C.C.A.N. 1954, 1956. The drafters also sought, *inter alia*, "to promote cleaner alternative automotive fuels." *Id.*

<sup>309</sup> For example, the drafters of EPA 92 noted that all alternative fuels "have different strengths, weaknesses, prices, emissions, and regional niches \* \* \*." H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 136, reprinted in 1992 U.S.C.C.A.N. 1953, 1959 (emphasis added). Environmental performance also is listed first in the list of factors to be addressed by DOE's information package. 42 U.S.C. 13231 (Supp. IV 1993).

<sup>310</sup> See 59 FR 24014, 24016-24017 n.62, 79, 91, 98 and accompanying text (responding to ANPR).

alternative fuels. Instead, the brochure states: "Generally speaking, all alternative fuels produce lower amounts of air toxics and ozone-forming emissions than does gasoline."<sup>311</sup> The Commission notes that environmental performance (as measured by emissions standards) is cited by AFV manufacturers and other interested parties in specification sheets and other promotional material in a manner not easily amenable to comparisons.<sup>312</sup>

Disclosure of information regarding environmental impact in a simple label format is also feasible. For several years, EPA has promulgated emissions classification standards as part of its Federal Motor Vehicle Control Program, which establishes pollution limits for "criteria air pollutants" (i.e., hydrocarbons ("HC"),<sup>313</sup> carbon monoxide ("CO"),<sup>314</sup> nitrogen oxides ("NOx"),<sup>315</sup> and particulate matter ("PM")).<sup>316</sup> The standards apply to new motor vehicles manufactured in

<sup>311</sup> B-3, 15. That statement is repeated in the section devoted to each of the featured fuels.

<sup>312</sup> See, e.g., Chrysler, Plymouth Acclaim and Dodge Spirit FFV (no model year listed), B-29, back, undated ("[R]educes smog-forming emissions by at least 30 percent, and in many cases by as much as 50 percent, compared to gasoline run counterparts. In addition, toxic emissions can be reduced by as much as 50 percent."); Chrysler, Chrysler Corporation's [CNG] Vans & Wagons (no model year listed), B-30, inside front cover, undated ("Dodge [CNG] Vehicles will meet or beat all applicable emission standards up to and including California's requirements for Ultra Low Emission Vehicles (ULEV). CNG fueled Dodge vans and wagons produce significantly less emissions of nonmethane hydrocarbons, carbon monoxide and oxides of nitrogen than similar gasoline powered vehicles."); Ford, Taurus passenger car FFV, B-26, front, March 4, 1993 ("Emission Levels: Compared to gasoline vehicles, an ozone benefit of 30% is projected for an FFV when operating on M85.").

See also Clean Fuels Task Force of Western Liquid Gas Association, LPG: An Alternate Clean Air Motor Fuel With Significant Environmental and Economic Advantages, B-24, 2, May 1992 ("Use of LPG as a motor fuel virtually ELIMINATES PARTICULATES, the gasoline and diesel carbon residue that makes up 25 percent of the 'brown cloud.' \* \* \* An [EPA] test of a LPG-fueled Ford V8 full size sedan showed hydrocarbon emissions 29 percent cleaner than the accepted standard. Nitrogen oxides were down 57 percent, and carbon monoxide emissions 93% better than the then Federal standard.").

<sup>313</sup> In sunlight, HC combines with nitrogen oxides to form ozone (a major component of smog). According to EPA, "[o]zone irritates the eyes, damages the lungs, and aggravates respiratory problems. It is our most widespread and intractable urban air pollution problem. A number of exhaust hydrocarbons are also toxic, with the potential to cause cancer." B-31, 2.

<sup>314</sup> CO "reduces the flow of oxygen in the bloodstream and is particularly dangerous to persons with heart disease." *Id.*

<sup>315</sup> NO<sub>x</sub> are "precursors to the formation of smog." *Id.*

<sup>316</sup> PM is a general term for soot, dust, smoke, and other tiny bits of solid material released into the air. It can cause eye, nose, and throat irritation and other health problems. B-32, 22.

specified model years. After manufacturers submit appropriate test reports and data, the EPA Administrator issues a "certificate of conformity" to those vehicle manufacturers demonstrating compliance with the applicable emissions standards.<sup>317</sup>

Pursuant to its authority under the 1990 Clean Air Act Amendments,<sup>318</sup> EPA began issuing stricter emissions standards for each model year as a way of reducing levels of the criteria air pollutants. One set establishes five new standards as part of a "clean-fuel vehicles" program.<sup>319</sup> To qualify as a clean-fuel vehicle, a vehicle must meet one of five sets of increasingly stringent standards. These standards are denominated, in increasing order of stringency, TLEV ("Transitional Low Emission Vehicle"), LEV ("Low Emission Vehicle"), ULEV ("Ultra Low Emission Vehicle"), ILEV ("Inherently Low Emission Vehicle"), and ZEV ("Zero Emission Vehicle").<sup>320</sup> Standards for "clean-fuel vehicles" are mandated for use, at present, in two EPA programs: the California Pilot Test program and Clean Fuel Fleet Program.<sup>321</sup> EPA staff has informed the Commission, however, that it expects that vehicles meeting these standards will not be restricted to these programs (e.g., some state programs require acquisition of clean fuel vehicles).

In the SNPR, the Commission noted that consumers could make comparisons among vehicles by reference to EPA's classification system. Specifically, because AFVs will be certified to a specific classification, certification levels provide a simple way of comparing different AFVs.<sup>322</sup> The information also could be useful and important to some consumers likely to consider AFV acquisitions (e.g., fleet operators and environmentally-concerned consumers).<sup>323</sup> Requiring disclosure of objective data allows

<sup>317</sup> See, e.g., 40 CFR 86.091-30 (1993) (certification procedures for 1991 model year).

<sup>318</sup> Pub. L. 101-549, 104 Stat. 2399 (1990).

<sup>319</sup> See 40 CFR Part 88 (1993) ("Clean-Fuel Vehicles").

<sup>320</sup> According to EPA, a vehicle certified as meeting the requirements of both the ULEV and ILEV standards have lower combined exhaust and evaporative emissions than an ILEV certified vehicle.

<sup>321</sup> The California Pilot Test Program requires that vehicle manufacturers in California produce and sell specified minimum numbers of clean fuel vehicles. The Clean Fuel Fleet Program requires that a percentage of new vehicles acquired by certain fleet owners located in covered areas meet "clean-fuel fleet vehicle emission standards." Fleet Standards Rule, 59 FR 50042, Sept. 30, 1994.

<sup>322</sup> Boston Edison (Supp.), G-17, 8; CAS (Supp.), G-17, 2; NAFA (Tr.), 186-87.

<sup>323</sup> CAS (Supp.), G-17, 2; DOE (Tr.), 172; NAFA (Tr.), 170-71.

consumers to evaluate competitive advertising and marketing claims regarding an AFV's environmental performance.<sup>324</sup> Finally, the recordkeeping provision is simple, easy to comply with, and allows the Commission to verify compliance with the Rule.

For the reasons described above, the Commission has determined to issue its SNPR proposal as to this subject, but with two modifications. First, the final rule specifies that if a vehicle has not been certified as meeting an EPA emissions standard, manufacturers must indicate that fact by placing a mark where appropriate on the label formats.<sup>325</sup> Second, the Commission agrees with AGA/NGVC's comment proposing a modification of the statement accompanying the graphic to more precisely reflect the limitations of the disclosure. Accordingly, the final rule requires that the disclosure state that, "The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards."

The Commission also has concluded that one other suggestion (i.e., requiring disclosure of the emissions standard to which the conventionally-fueled version of a vehicle was certified) may not be practicable. All vehicles (conventional and AFVs) are designed and configured to be powered by specific fuels.<sup>326</sup> As a result, the performance characteristics of vehicles configured to be powered by one fuel may differ from vehicles bearing the same model name but configured to be powered by a different fuel. Comparisons between such vehicles may therefore be misleading.

b. *Specific data disclosures considered but not proposed.* As noted previously, EPA 92 directs the Commission to issue labeling requirements only "to the greatest extent practicable," taking into account the problems associated with developing and publishing such

information and the simple label format. Accordingly, in developing this final rule, the Commission assessed the practicality of requiring disclosure of information pertaining to all the factors cited in the comments. As to the following factors, the Commission has determined that the level of detail necessary to convey balanced, accurate, objective information to consumers (i.e., by reference to some rating or empirical value) cannot be contained on the "simple" label envisioned by Congress. Information overload considerations,<sup>327</sup> the lack of standards upon which to base required disclosures, and the easy availability of such information through other sources, led the Commission to reject including additional factors on the label.

(1) Operating costs. For example, earlier in the proceeding CAS proposed that the Commission require that operating costs be disclosed on AFV labels so that consumers will be aware "if operating costs of an AFV will be significantly different than a comparable conventional vehicle."<sup>328</sup> Under its proposal, the AFV labels would state, "Operating costs of this vehicle are expected to be at least 25% higher (or lower) than gasoline powered vehicles in its size class."<sup>329</sup> Because expressing this information objectively (e.g., "operating this AFV costs 18 cents/mile") or comparatively (e.g., "operating this AFV costs 10% more than a comparable conventional-fueled vehicle") could help consumers make reasonable choices and comparisons, in preparing its SNPR proposal the Commission considered whether balanced, accurate information about that factor could be contained on a simple label.

After considering the record, however, the Commission determined that requiring disclosure of specific data as to this factor is not practicable at this time.<sup>330</sup> The Commission received no additional comments supporting a disclosure as to this factor, and finds no basis to modify its prior determination. Accordingly, as described in section

III(C)(2)(c)(1), *infra*, the Commission concludes that for purposes of this labeling rule, it is appropriate to advise consumers to consider costs when evaluating AFVs, without providing specific data on this factor.

(2) Domestic content of the fuel. Because information on the domestic content of fuel might be of interest to some consumers interested in the societal benefit of promoting domestic industries, the Commission has considered the propriety of requiring disclosure of such information on AFV labels. Several commenters suggested that the AFV label indicate the extent to which the alternative fuel powering a particular AFV was produced domestically.<sup>331</sup> Such a disclosure would help promote energy independence and energy security, key goals underlying EPA 92.<sup>332</sup> Others opposed such a disclosure because it would not be practicable.<sup>333</sup>

After considering the record, the Commission has determined that it is not practicable to require disclosure of objective information as to this factor on the AFV label. The Commission is aware of no consensus standards for estimating the domestic content of transportation fuels<sup>334</sup> and government reports addressing this topic do not cover all alternative fuels.<sup>335</sup> In any event, the Commission concludes that a disclosure as to this factor, even if practicable, is not feasible because of the constraints of the label format.<sup>336</sup> The Commission notes, however, that DOE's information brochure includes a general discussion of domestic content for each of the featured fuels. For example, the brochure states that ethanol's domestic content is "[c]urrently as high as 100% for pure ethanol, depending on world market

<sup>324</sup> CAS (Supp.), G-17, 2; NAFA, G-20, 4-5. A disclosure as to this factor also will not subject AFVs to an unfair labeling standard (as compared to conventional fueled vehicles) because, as AAMA notes, "[e]missions certification information is available for all vehicles." AAMA (Supp.), G-7, 1. See also AAMA (Supp.), G-7, 2 (same).

<sup>325</sup> The proposed label formats and SNPR text made this point clear, but the proposed rule language may have allowed for an erroneous interpretation. See, e.g., AAMA, I-16, 3 (opposing this disclosure in part based on belief that the Commission's proposal would require disclosures based on "reasonable assessments" in the absence of EPA standards).

<sup>326</sup> See, e.g., Mobil, D-16, 3 ("The fuel and vehicle are a system. Benefits that may be portrayed as being associated with a particular vehicle are really a function of the combination of the fuel and the vehicle.").

<sup>327</sup> AAMA (Tr.), 164-65 ("[W]e feel there is an enormous amount of information that a consumer has to know about . . . [AFVs] including electric vehicles, and if any attempt is made to put every factor on the label it's going to end up information overload and do nothing but confuse the consumer."); Ford (Tr.), 175-76 (sticker is not appropriate place to provide detailed information; consumers need information before they get to the dealership).

<sup>328</sup> CAS, G-17, 3, (Tr.), 166, (Supp.), 3. EPA's fuel economy label discloses the vehicle's annual fuel costs, but that figure does not include other operating costs. EPA (Tr.), 166.

<sup>329</sup> Id.

<sup>330</sup> 59 FR 59666, 59691-59692.

<sup>331</sup> Boston Edison, I-14, 7; (Supp.), G-26, 9-11, 12; (Tr.), 202; RFA, G-5, 5; UCS (Tr.), 201-2, 208.

<sup>332</sup> H. Rep. No. 102-474(1), 102d Cong., 2d Sess. 132.

<sup>333</sup> AMI (Tr.), 206; API (Tr.), 201; NPGA (Tr.), 203.

<sup>334</sup> NPGA (Tr.), 203.

<sup>335</sup> Boston Edison stated DOE's Energy Information Administration ("EIA") publishes the data necessary to determine the domestic content of motor vehicle fuel. Boston Edison (Supp.), G-26, 11. EIA's reports, however, do not cover all the alternative fuels. See Boston Edison (Supp.), Exhibit 4 (no data for ethanol, methanol, hydrogen, or LPG).

<sup>336</sup> RFA generally supported a disclosure as to this factor but noted at the Workshop that:

I question whether or not we want that to be [on] a label on the vehicle because I think we've added enough stuff now that it's really a scroll \* \* \* But perhaps maybe the reference to the brochure and then maybe the DOE since they would have access to the EIA information readily available, maybe it should go into the information brochure. . . I think it would be too difficult to keep it up in the context of a label.

RFA (Tr.), 207-08.

price.”<sup>337</sup> Accordingly, as described in section III(C)(2)(c)(1), *infra*, the Commission concludes that consumers should be advised to consider this factor when evaluating AFVs, but that labels should not include specific data on this factor.

(3) Fuel economy/energy efficiency. In developing this final rule the Commission has considered whether requiring disclosure of fuel economy or energy efficiency information would be useful to consumers.<sup>338</sup> However, EPA, which is responsible for compiling fuel economy information for the federal fuel-economy labeling program, has plans to establish labeling requirements for AFVs powered by all alternative fuels.<sup>339</sup> Therefore, the Commission concludes that requiring fuel economy information on its labels would be duplicative, and possibly confusing. It has thus determined that such information should not be disclosed on its AFV labels.

(4) Appropriate fuel, fuel availability, fuel grade, and refueling time. The Commission received comments suggesting that disclosure of other information (e.g., appropriate fuel for the vehicle,<sup>340</sup> fuel availability,<sup>341</sup> fuel grade,<sup>342</sup> and refueling time<sup>343</sup>) should be required on AFV labels. The Commission notes that the fuel to be used in the vehicle will be easily ascertainable (either from EPA's fuel economy labels or information voluntarily supplied by AFV manufacturers). However, some consumers may not be familiar with the availability of AFVs powered by different alternative fuels. Accordingly, the Commission finds that while requiring disclosure of fuel type is not

necessary for AFV labels, as described in section III(C)(2)(c)(1), *infra*, consumers should be advised to consider this factor when evaluating AFVs. As to the remaining factors, the Commission believes that disclosures are impractical because all useful information simply cannot fit in a simple label. The Commission also is not aware of a standard methodology or established practice for calculating any of those factors, and no commenter addressed that subject.

The Commission notes, however, that fuel availability and refueling methods, two topics proposed by comments for the labels (including refueling time for electricity and CNG) are addressed in the DOE brochure.<sup>344</sup> Accordingly, as described in section III(C)(2)(c)(1), *infra*, the Commission concludes that consumers should be advised, as a general matter, to consider those factors when evaluating AFVs. In addition, because the Commission has determined that consumers need basic comparative information while refueling, the principal component of alternative fuels is required to be disclosed by the Commission's Fuel Rating Rule<sup>345</sup> and this final rule.

c. Descriptive Disclosures on AFV Labeling. In the SNPR, the Commission proposed that the specific data disclosures on labels for new covered vehicles (i.e., cruising range and EPA certification level) be supplemented with general, descriptive information pertinent to all consumers considering an AFV purchase.<sup>346</sup> These descriptive disclosures would comprise the second and third parts of the AFV label.<sup>347</sup> The second part of the AFV label would contain a list of factors consumers should consider before acquiring an AFV. The third part would advise consumers of toll-free telephone numbers they could call to obtain further pertinent information from the federal government. The Commission's proposals as to these two parts, and the comments addressing those proposals, are described below.

(1) List of comparative factors. The Commission believed that requiring a list of factors consumers could use to consider and compare AFVs would encourage AFV manufacturers, conversion companies, and dealers to provide additional information to meet

consumers' expectations and needs.<sup>348</sup> The Commission also believed that a list of comparative factors could help consumers evaluate information disclosed on other labels, in advertising, and from other sources. Accordingly, the SNPR proposed that labels for new covered vehicles contain a section under a standard heading, stating, "Before selecting an Alternative Fuel Vehicle (AFV) make sure you consider:." The labels would then list the following five factors consumers should consider before purchasing an AFV: fuel type (i.e., the fuel or fuels that power the vehicle); operating costs; performance/convenience (i.e., cold start capability, refueling/recharging time, acceleration rates, and refueling methods); fuel availability; and energy security/domestic content of fuel.<sup>349</sup>

Each factor would be supplemented with a brief explanation of how it is relevant to an AFV purchase. For example, for fuel type, the label would contain a statement that consumers should be aware of which fuel(s) powers that particular AFV. For operating costs, the label would state that fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably. A similar format was proposed for the three other comparative purchasing factors (i.e., performance/convenience,<sup>350</sup> fuel availability,<sup>351</sup> energy security/domestic content of fuel.<sup>352</sup>

The Commission proposed a nearly identical format for used covered vehicles. For those labels, the SNPR proposed that the labels contain the same standard heading followed by a list of factors. Four of the factors on that list would be displayed identically to the list for new covered vehicles.<sup>353</sup> The description of one factor (performance/convenience) would be modified slightly, by adding a reference to cruising range differences between

<sup>348</sup> 59 FR 59666, 59693.

<sup>349</sup> 59 FR 59666, 59694.

<sup>350</sup> For performance/convenience, the labels would state that vehicles powered by different fuels differ in their cold-start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.

<sup>351</sup> For fuel availability, the labels would advise consumers to determine whether refueling and/or recharging facilities that meet their driving needs have been developed for this vehicle and will be readily available in their area.

<sup>352</sup> For energy security/domestic content of fuel, the labels would state that alternative fuels can reduce U.S. reliance on imported oil, especially if all of the fuel's components are produced in this country. Consumers are then advised to consider whether the fuel powering this vehicle is typically produced domestically or is imported.

<sup>353</sup> Fuel type, operating costs, fuel availability, and energy security/domestic content of fuel.

<sup>337</sup> B-3, 18.

<sup>338</sup> In its initial comment Boston Edison stated that energy efficiency could be expressed as "efficiency per BTU" or "efficiency per mile," but did not otherwise define a basis for these disclosures. Boston Edison, G-26, 3-4. See also Boston Edison (Supp.), G-26, 5-7. Although not stated, it appears that this suggestion was limited to labeling for electric vehicles. At the Workshop, CAS supported a disclosure for this factor. CAS (Tr.), 194, but later indicated that it was satisfied that EPA fuel economy labels will give consumers sufficient information on the comparative energy efficiency of competing vehicles during driving. CAS (Supp.), G-17, 3.

<sup>339</sup> EPA, H-4, 1, 3.

<sup>340</sup> API, G-25, 5.

<sup>341</sup> CAS, G-17, 3. AGA/NGVC stated that the AGA's manual of available CNG fueling stations should be "referenced," but did not indicate whether that should be on the AFV label or in the DOE brochure. AGA/NGVC (Tr.), 195. The Commission notes that the DOE brochure lists AGA and NGVC as sources for additional information about CNG-powered AFVs. See B-3, 23.

<sup>342</sup> MC-MD, H-7, 2. See also NACAA (Tr.), 196 (to the extent there are different grades, "we don't know all the fuels out there").

<sup>343</sup> DOE, H-10, 6; (Tr.), 172-73.

<sup>344</sup> See B-3, 16 (electricity), 18 (ethanol), 20 (methanol), 22 (CNG), 24 (propane).

<sup>345</sup> See 16 CFR 306.10(a) (1994) (requiring retailers to post automotive fuel ratings).

<sup>346</sup> 59 FR 59666, 59693-59695.

<sup>347</sup> Labels for used covered vehicles, which would not require disclosure of specific data disclosures, would simply disclose the descriptive information.

different fuels.<sup>354</sup> This reference was added to account for the fact that labels for used covered vehicles would not disclose the vehicle's cruising range. Finally, a new factor—environmental impact—was added to the list to account for the fact that labels for used covered vehicles would not disclose any objective information as to that factor. The description for this factor would advise consumers that all vehicles (conventional and AFVs) affect the environment directly (e.g., tailpipe emissions) and indirectly (e.g., how the fuel is produced and brought to market). Consumers would then be advised to compare the environmental costs of driving an AFV with a gasoline-powered vehicle.

Four comments offered general comments regarding this aspect of the Commission's proposal.<sup>355</sup> Three comments opposed including a standard list of factors on AFV labels. AAMA stated that requiring disclosure of the list exceeded the Commission's statutory mandate (because the information "is neither cost nor benefit information"), is redundant with information required to be disclosed by DOE, and may discourage consumers interested in AFVs because of its "cautionary tone."<sup>356</sup> Two other comments characterized the list as "unnecessary, [and] uninformative"<sup>357</sup> and of "minimal value."<sup>358</sup> Mobil, however, supported including the "fairly comprehensive" list of factors because it provided a framework for evaluating issues relevant to AFVs in general.<sup>359</sup>

Other comments were directed to specific factors on the comparative list. For example, four comments addressed the factor concerning energy security/domestic content of fuel. API stated that the proposed language "may be stronger than the FTC can continue to defend" because future alternative-energy demands may not be met by domestic sources.<sup>360</sup> One comment suggested that

this factor be replaced with a specific data disclosure on the subject, based on data supplied by EIA.<sup>361</sup> Mobil suggested that the factor's description be revised so that consumers were advised that information as to this subject was available from EIA.<sup>362</sup> DOE, however, supported the Commission's proposal regarding this topic.<sup>363</sup> In addition, CAS suggested that the explanation regarding two of the factors on the list—fuel availability and operating costs—should state specifically that further information as to those factors is available from DOE.<sup>364</sup>

After considering the record, the Commission has determined to issue its SNPR proposal as to this subject with one modification. As to the threshold issue of whether AFV labels should include a list of comparative factors, the Commission notes that the standard list of factors for comparisons proposed in the NPR (and again in the SNPR) does not, by itself, disclose comparative cost-benefit information. Thus, in developing this final rule the Commission has considered whether including such a list on AFV labels would constitute "appropriate information with respect to costs and benefits" (as that phrase is used in section 406(a)), and would be useful to consumers in undertaking a cost-benefit analysis regarding whether to acquire an AFV or what type of AFV. As noted, numerous commenters indicated that this approach would provide consumers with useful information. In addition, the Commission cannot, as a practical matter, require disclosure of comparative information as to every relevant factor given the constraints of a simple label format. Accordingly, the Commission has concluded that the AFV labels should contain a standard

which "domestic products are defined much more broadly." *Id.* at 3.

<sup>361</sup> Boston Edison/EEL, I-14, 7. This comment acknowledged, however, that EIA does not publish appropriate data for all alternative fuels. In those circumstances, Boston Edison/EEL suggested that the labels simply note that "information is not yet available for those fuels." *Id.*

<sup>362</sup> Mobil, I-2 (cover letter at 2-3, 7-8) ("Check with [EIA] or request a copy of their Annual Energy Outlook to determine what percentage of the fuel powering this vehicle is from domestic or foreign sources.")

<sup>363</sup> DOE, J-1, 2.

<sup>364</sup> CAS, I-12, 2 (E.g., "For information on operating costs, contact DOE at the number listed below.). Electro Auto also addressed the operating costs factor; this comment may have misapprehended the SNPR as proposing that actual operating costs be disclosed on AFV labels. Electro Auto, I-7, 2 (supports requiring disclosure of comprehensive operating costs for AFVs only if conventional vehicles are required to disclose comparable information).

list of factors consumers should consider before acquiring an AFV.<sup>365</sup>

The Commission has concluded, however, that one factor on the list—energy security/domestic content—should be modified to reflect concerns raised in the comments. As noted previously, the final rule does not require an objective disclosure as to domestic content because it cannot feasibly be displayed on a label.<sup>366</sup> The Commission further agrees that the effective meaning of the "domestic" content of fuels will likely change as a result of international free-trade agreements such as the North American Free Trade Agreement. As a result, identifying the country of origin of a given fuel will not always be useful information to consumers.

In its place, the final rule defines this factor in terms of consumers' interest in ensuring long-term fuel availability at a reasonable price from secure source countries. Accordingly, that factor is denominated "energy security/renewability" in the final rule, and the explanatory statement advises consumers, "Consider where and how the fuel powering this vehicle is typically produced." Labeling for used covered vehicles will follow an identical format.

The final rule retains the remaining factors because all will likely be important for consumers to consider before purchasing an AFV.<sup>367</sup> Information about the AFV's fuel type will be available directly from the dealer; and the other factors are addressed in DOE's information brochure.<sup>368</sup> The Commission has considered but decided against modifying the explanations for fuel availability and operating costs (to state explicitly that further information is

<sup>365</sup> The Commission reached a similar conclusion when it issued warranty labeling requirements for used motor vehicles. Those requirements are designed to help consumers evaluate and compare warranty coverage and counteract dealer misrepresentations. In that proceeding, the Commission determined that requiring disclosure of a standard list of major defects that can occur in used motor vehicles could convey useful information to consumers. See Used Motor Vehicle Trade Regulation Rule, Statement of Basis and Purpose, 49 FR 45692, 45706, Nov. 19, 1984 (list of major defects that can occur in used motor vehicles provides consumers with a framework for evaluating and comparing warranty coverage and counteracts dealer misrepresentations).

<sup>366</sup> See *supra* section III(C)(2)(b)(2).

<sup>367</sup> See 59 FR 24014, 24016 nn.68, 70, 75, 79 and 24017 nn.83, 87, 89, 97, 101, 102, 106 and accompanying text (ANPR commenters identifying those factors as being important to consumers).

<sup>368</sup> EPA fuel-economy labels also disclose information regarding fuel type and operating costs. But those labels are not yet required for AFVs powered by all alternative fuels. 59 FR 39638, 39639.

<sup>354</sup> On this label, consumers would be advised that vehicles powered by different fuels differ in terms of their cruising range (i.e., how many miles the vehicle will go on a full supply of fuel).

<sup>355</sup> Six other comments generally supported the entirety of the Commission's SNPR proposal. AGA/NGVC, I-18, 2, 3; Chicago, J-2, 1; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; NAFA, I-10, 1, 2; RFA, I-3, 1-2.

<sup>356</sup> AAMA, I-16, 2, 6. As noted previously, three comments fully supported AAMA's comment. Chrysler, I-13, 1; Ford, I-4, 2; NGVPA, I-19, 1.

<sup>357</sup> Chrysler, I-13, 1, 2.

<sup>358</sup> Boston Edison/EEL, I-14, 6-7.

<sup>359</sup> Mobil, I-2, 11, cover letter at 1.

<sup>360</sup> API, I-15, cover letter at 2. API also stated that references to domestic products should agree with the treatment given that topic under EPA 92 and the North American Free Trade Agreement, under

available from DOE) because it believes that the label's format already adequately conveys that information.

(2) Referral to other sources of information. In the SNPR, the Commission tentatively determined that a precise reference to DOE's consumer information brochure and NHTSA's vehicle safety hotline was appropriate on labeling for new and used covered AFVs. Accordingly, the Commission proposed that label formats for new and used covered vehicles include standard statements informing consumers that they can obtain (1) copies of a free consumer-information brochure and general information about AFVs by calling the toll-free telephone number for DOE's National Alternative Fuels Hotline, and (2) vehicle safety information by calling the toll-free telephone number for DOT/NHTSA's Auto Safety Hotline.<sup>369</sup>

Five comments addressed this issue.<sup>370</sup> Chrysler opposed requiring disclosure of referral information based on its belief that the labels should disclose information pertinent to specific AFVs.<sup>371</sup> The remaining four comments supported reference to one or both of the toll-free hotlines.<sup>372</sup>

The referral statement proposed in the SNPR does not, by itself, disclose objective cost-benefit information. In developing this final rule, the Commission has thus considered whether including the proposed statement on AFV labels would help consumers make reasonable choices and comparisons. The Commission also considered whether including such a statement was feasible, given the constraints of a simple label format.

After considering the record, the Commission concludes that including a

standard statement referring consumers to pertinent sources of government information is consistent with section 406(a)'s legislative purpose. As noted, comments indicated that a referral to objective information sources would be useful to consumers. In addition, while EPA 92 directed DOE to "produce and make available" an information package, the statute does not require AFV manufacturers or dealers to provide consumers with copies of the information package or to notify them of its availability.<sup>373</sup> To address that apparent omission, AFV labels would contain a statement informing consumers that further information about AFVs is available from DOE. The labels also would inform consumers that information about another pertinent factor—vehicle safety—is available from the federal agency responsible for regulating the safe performance of motor vehicles.<sup>374</sup>

Given the nature of the disclosure, the Commission believes that consumers considering either new or used AFVs would find it equally relevant. Accordingly, the Commission has determined that label formats for new and used covered vehicles will include references to DOE's National Alternative Fuels Hotline and DOT/NHTSA's Auto Safety Hotline, as proposed in the SNPR.

### 3. Consolidation

As noted previously, EPA 92 requires the Commission to consolidate its AFV labels with other labels providing information to consumers "where appropriate." In developing the SNPR, the Commission thus considered whether the information the Commission will require for AFVs could be incorporated into existing labels (e.g., EPA's fuel economy label or the Commission's used car Buyers Guide), or whether existing label information could be incorporated into its AFV labels. For both options, the Commission noted that consolidation could help consumers by collecting pertinent information in a central location. Industries affected by the labeling requirements could also benefit by possibly reducing their compliance costs. However, disturbing labeling formats with which consumers are familiar could create confusion. Attempting to fit additional disclosures into existing labels also raises the possibility that the label will overload consumers with excessive amounts of information. Accordingly, the Commission tentatively concluded that

consolidating the information proposed to be disclosed with other labels providing information to consumers was not appropriate.

Three comments addressed the Commission's SNPR proposal as to consolidation.<sup>375</sup> Mobil stated that this issue could best be answered by vehicle manufacturers.<sup>376</sup> Comments from AAMA and Chrysler opposed the Commission's proposal. Chrysler stated that manufacturers should have flexibility to determine how best to label vehicles to provide the required information, either by issuing a separate label or combining it with another label as appropriate for the vehicle being labeled.<sup>377</sup> AAMA supported the Commission's proposal not to consolidate the new disclosures on EPA's fuel economy label, but stated that manufacturers "must be given the flexibility to incorporate the additional information required by the FTC on existing labels."<sup>378</sup>

After considering the record, the Commission has determined that consolidating new AFV disclosures with other labels providing information to the consumer is not appropriate. Consolidation as required by EPA 92 could be undertaken in one of two ways: incorporating existing disclosures into new AFV labels, or new AFV disclosures into existing labels. As to the first category, the Commission notes that no comment responding to the SNPR supported such incorporation. The Commission also believes that providing the information already displayed on other labels on its AFV labels (in a different format) could confuse consumers and is therefore unnecessary.

As to the second category, consolidating information required by the Commission into existing labels would not be appropriate because those labels do not have sufficient extra space to accommodate new AFV disclosures. For example, EPA stated that new AFV information could not reasonably be incorporated into its fuel economy label because that label already is

<sup>369</sup> See Figure 6 (new covered vehicles) and 8 (used covered vehicles), 59 FR 59666, 59712, 59714.

<sup>370</sup> Two other comments made general reference to this issue. AAMA did not address the issue in its written comment but included the referral information in its proposed AFV label. AAMA, I-16, Att. III. In an earlier comment filed in this proceeding, AAMA indicated support for labels which disclosed "instructions on where to obtain additional information (e.g., DOE's [information brochure]." AAMA, G-7, 1. RFA's comment was to "encourage some formal review process of the DOE brochure" by industry. RFA, I-3, 2.

<sup>371</sup> Chrysler, I-13, 1. Chrysler also stated generally that the information proposed for the back side of the AFV labels was "unnecessary, uninformative, and due to its location, unreadable under many circumstances." *Id.* at 2.

<sup>372</sup> Boston Edison/EEI, I-14, 7 ("provides consumers with valuable information directly pertinent to purchasing decisions"); DOE, J-1, 2 (supports reference to DOE's Hotline and information brochure); DOT/NHTSA, J-5, 2 (supports reference to NHTSA's vehicle safety hotline); Mobil, I-2, 11 (supports generally and wants DOE brochure to be "peer and technically reviewed" before publication of updates and revisions).

<sup>373</sup> 42 U.S.C. 13231 (Supp. IV 1993).

<sup>374</sup> DOT/NHTSA, H-1, 1.

<sup>375</sup> Seven other comments indicated general support with the Commission's AFV labeling proposal without addressing this particular issue. AGA/NGVC, I-18, 2, 3; Boston Edison, I-14, 4; Chicago, J-2, 1; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; NAFA, I-10, 1, 2; RFA, I-3, 1-2.

<sup>376</sup> Mobil, I-2, 12.

<sup>377</sup> Chrysler, I-13, 1, 2.

<sup>378</sup> AAMA, I-16, 2, 5.

“crowded.”<sup>379</sup> As discussed below,<sup>380</sup> the Commission also believes that allowing manufacturers the option of determining where the required disclosures would be displayed is similarly not appropriate.

#### 4. Label Size and Format

In the SNPR, the Commission proposed that AFV labels be reduced from the size proposed in the NPR and measure 7 inches wide by 5½ inches high.<sup>381</sup> The Commission further proposed that information required to be disclosed by its AFV labeling requirements be displayed on a visible window surface in three label formats. The first label format would be for new covered AFVs designed to operate solely on alternative fuel. Figures 4 and 6 in the SNPR illustrated samples of this format; figure 4 (containing objective information particular to that vehicle) would appear on the front of the label, and figure 6 (containing general information) would appear on the back.

The second label format would be for new covered vehicles capable of operating on alternative fuel and on conventional fuel. Figures 5 and 6 of the SNPR illustrated samples of this format; figure 5 (containing objective information particular to that vehicle) would appear on the front, and figure 6 again would appear on the back. The third label format would be for used covered AFVs. Figures 7 and 8 of the SNPR illustrated samples of this format; figure 7 would appear on the front, and figure 8 would appear on the back.

The proposed rule also addressed general format issues common to all three labeling formats. For example, headlines and text for all labels were standard as illustrated in the sample labels.<sup>382</sup> In addition, no marks or information other than that specified in the proposed labeling requirements would appear on any of the labels.<sup>383</sup>

Six comments addressed the Commission's SNPR proposal regarding

AFV label size and format.<sup>384</sup> Comments from Boston Edison/EEI and CAS supported the proposed label's display of information concerning cruising range and EPA certification standard.<sup>385</sup> Comments from the City of Chicago did not address the specifics of the Commission's proposal, but instead suggested that cost-benefit labels be permanently affixed to AFVs.<sup>386</sup>

The remaining three comments from some domestic automakers, however, objected to the size and format of the proposed AFV labels. For example, AAMA opposed a standard label format and stated that manufacturers should have the option of placing new required information on existing labels.<sup>387</sup> AAMA also stated that the proposed format was “unintentionally misleading” because it “yielded the impression \* \* \* that the characteristics described are the most important to consider when purchasing an AFV.”<sup>388</sup> In addition, AAMA stated that the proposed label formats lacked sufficient extra space,<sup>389</sup> were too large,<sup>390</sup> and should be limited to one side.<sup>391</sup>

<sup>384</sup> Six additional comments indicated general support for the Commission's labeling proposal but did not address this specific issue. AGA/NGVC, I-18, 2, 3; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; Mobil, I-2, cover letter at 2; 6; NAFA, I-10, 1, 2; RFA, I-3, 1-2. Mobil also stated that this issue could best be answered by vehicle manufacturers, and Toyota misapprehended the Commission's SNPR proposal as requiring the posting of alternative fuels labeling on vehicles. Mobil, I-2, 12; Toyota, I-11, 1.

<sup>385</sup> Boston Edison/EEI, I-14, 6 (“The graphic chosen by the Commission to display emission standard certifications conveys this critical information to consumers in a highly effective manner.”); CAS, I-12, 1 (“The proposed label format [for cruising range] will adequately convey this important information to consumers.”).

<sup>386</sup> Chicago, J-2, 2, 3 (permanent labeling will promote AFVs and alternative fuels, provide public education and increase public awareness, and assist in implementing traffic control programs for AFVs such as preferential parking).

<sup>387</sup> AAMA, I-16, cover letter at 1. See also Chrysler, I-13, 1, 2 (manufacturers should have flexibility to determine whether to issue a separate label or combine it with another).

<sup>388</sup> AAMA, I-16, 2. See also Ford, I-4, 2 (proposed format overemphasizes importance of the required information as decision criteria).

<sup>389</sup> AAMA, I-16, 4 (“Due to the layout and large font, the label does not have extra space. If additional information were required in the future, the label would have to be reformatted to accommodate added text. This would be costly and require lead time.”).

<sup>390</sup> AAMA, I-16, 4 (“[M]anufacturers are faced with several existing and forthcoming labeling requirements. On many vehicles, they are simply running out of room to place new labels, especially one of the size proposed by FTC.”). See also Ford, I-4, 2 (the proposed size promotes information overload, because “it establishes yet another label on an already crowded vehicle which the consumer must read to gather pertinent information.”).

<sup>391</sup> AAMA, I-16, 4, 5, 6 (two-sided label will be difficult to read, and consumers will quickly forget

As noted, required labeling under the Commission's AFV labeling requirements must be “simple.” Accordingly, in developing this final rule the Commission has assessed how best to meet consumers' information needs, and the practical constraints of vehicle labeling. To that end, the Commission has considered whether allowing manufacturers the option of determining where the required disclosures would be displayed would promote simple labeling useful to consumers.

The Commission notes that consumers generally have little familiarity with competing alternative-fuel options or AFV technology, or how those options and technology compare with conventional fuels or vehicles. The Commission also notes that consumers need pertinent information to help them make comparisons between the competing fuel options and technologies. The Commission therefore believes that consumers would best be served if the information to be disclosed is displayed on labels in a standard, uniform format. The Commission also believes that the proposed label formats disclose information in a fair and balanced manner.<sup>392</sup>

After considering the record, however, the Commission has determined that it should modify two aspects of its SNPR proposal to address practical concerns raised by the domestic automakers. First, the final rule removes the SNPR requirement that AFV labels be posted on visible “window” surfaces. As a result, conspicuous posting of the label on any visible surface constitutes compliance with the final rule. Second, the final rule removes the requirement that AFV labels appear in a two-sided format. Under this revision, the labels can either be displayed immediately adjacent to each other (on two sheets), or in the two-sided format proposed in the SNPR, at the discretion of the manufacturer.

#### 5. Effective Date

In the SNPR the Commission proposed that its AFV labeling requirements be effective ninety days after publication of a final rule in the **Federal Register**, and sought comment on that proposed effective date.<sup>393</sup> AAMA and Chrysler addressed this issue, and both contended that

phone numbers on the back if they do not copy them down). See also Ford, I-4, 2 (opposes two-sided label).

<sup>392</sup> In fact, comments from the groups representing the natural gas and ethanol industries supported the proposed label formats. AGA/NGVC, I-18, 2, 3; RFA, I-3, 1-2.

<sup>393</sup> 59 FR 59666, 59697.

<sup>379</sup> EPA (Tr.), 211 (“Everybody saw how crowded this (i.e., the EPA label) already was. I guess it depends on what type of information ultimately ends up whether we would have difficulties with consolidating the EPA's label. But we're looking at information overload right now.”). DOE, in a comment responding to the Commission's ANPR, stated further that, “Survey work has indicated that the fuel economy label already contains too much information \* \* \*”). DOE, E-10, 4.

<sup>380</sup> See *infra* section III(C)(4).

<sup>381</sup> See proposed rule §§ 309.20(b) (for new covered vehicles), 309.21(b) (for used covered vehicles), 59 FR 59666, 59707.

<sup>382</sup> See proposed rule §§ 309.20(e) (for new covered vehicles), 309.21(e) (for used covered vehicles), 59 FR 59666, 59707.

<sup>383</sup> See proposed rule §§ 309.20(b) (for new covered vehicles), 309.21(b) (for used covered vehicles), 59 FR 59666, 59707.

manufacturers would require additional lead time to comply with the new labeling requirements.<sup>394</sup> AAMA explained that the Commission's labeling requirements would require manufacturers to design, order, produce, deliver, and integrate new labels into the vehicle production process. For new covered vehicles, the system would also need to accommodate internal coding and tracking data, to account for the fact that the labels would disclose information specific to each vehicle. AAMA also stated that the two-sided format for those labels created even greater complications with printing and application.<sup>395</sup> As a result, ninety days did not allow adequate time for compliance. AAMA suggested that the AFV labeling requirements be effective at least 180 days after publication "if manufacturers are given the option to use existing labels. Otherwise, we recommend that the FTC allow at least 9 months lead time."<sup>396</sup> Chrysler stated that it would need 180 days to implement the introduction of a new label.<sup>397</sup>

EPA 92 does not address when the Commission's AFV labeling requirements must be effective. In developing this final rule the Commission has thus considered how best to balance consumers' needs for comparative information with industry's need for a reasonable period of time to come into compliance. For consumers considering those vehicles, the Commission notes that some consumers may need comparative information shortly after this notice's publication date, because EPA 92's fleet acquisition mandates begin with fiscal year 1996 for the federal fleet<sup>398</sup> and model year 1996 for alternative fuel providers.<sup>399</sup> However, it is not clear that these consumers (i.e., the ones most likely to be affected by a longer effective date) would make purchasing decisions based on a vehicle label: the federal government, because of its purchasing power, and the fuel providers, because of their own experience and expertise.

<sup>394</sup> A third commenter stated that this issue could best be answered by vehicle manufacturers. Mobil, I-2, 12-13. Eight other comments indicated general support for the Commission's AFV labeling proposal without addressing this issue. AGA/NGVC, I-18, 2, 3; Boston Edison, I-14, 1; Chicago, J-2, 1; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; Mobil, I-2, cover letter at 2; 6; NAFA, I-10, 1, 2; RFA, I-3, 1-2.

<sup>395</sup> AAMA, I-16, 3-4, 6.

<sup>396</sup> AAMA, I-16, 6.

<sup>397</sup> Chrysler, I-13, 2.

<sup>398</sup> 42 U.S.C. 13212 (Supp. IV 1993).

<sup>399</sup> 42 U.S.C. 13251 (Supp. IV 1993). Acquisition requirements for private fleet operators begin in model year 1999. 42 U.S.C. 13257 (Supp. IV 1993).

The Commission also notes that for used covered AFVs, the final rule requires disclosure of standard information in a uniform format.<sup>400</sup> Implementation of that requirement would thus simply require obtaining copies of the required label format and arranging for posting on affected vehicles. Because the market for used vehicles powered by alternative fuels is not extensive at this time, allowing sellers additional time to comply with the labeling requirements will not result in undue hardship to consumers.

After considering the comments, the Commission concludes that the proposed effective date (i.e., ninety days after publication in the **Federal Register**) will not provide AFV manufacturers and dealers with sufficient time to prepare to comply with the new labeling requirements. Instead, the final rule requires compliance within 180 days after publication in the **Federal Register**, a period that is reasonable and consistent with EPA 92's legislative program. The final rule, however, does not preclude AFV manufacturers and dealers and used AFV sellers from posting the required labels before the rule's effective date. Further, consumers will be able to obtain information about AFVs from DOE before (as well as after) these labels are required.

#### 6. Updating AFV Labeling Requirements

As noted previously, EPA 92 directs the Commission to update its labeling requirements "periodically" (a duration not otherwise defined in the statute) "to reflect the most recent available information."<sup>401</sup> This requirement contrasts with EPA 92's direction to DOE to update its consumer information package "annually."<sup>402</sup> In the SNPR, the Commission proposed to keep apprised of pertinent technological advances, monitor the extent to which other governmental agencies impose labeling requirements, and then update its AFV labeling requirements as appropriate.<sup>403</sup>

Three comments addressed this issue.<sup>404</sup> Boston Edison/EEI "strongly support[ed]" the Commission's proposal because regular updates on a fixed schedule "might result in an arbitrary maintenance of problematic or

<sup>400</sup> See Final Rule § 309.203(e) (content of labels for used covered vehicles).

<sup>401</sup> 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>402</sup> 42 U.S.C. 13231 (Supp. IV 1993).

<sup>403</sup> 59 FR 59666, 59697.

<sup>404</sup> Six other comments generally supported the Commission's AFV labeling proposal without addressing this issue. AGA/NGVC, I-18, 2, 3; Chicago, J-2, 1; Comm Elec, I-8, 8; EIA/EEU-ISD, J-4, 1; NAFA, I-10, 1, 2; RFA, I-3, 1-2.

outmoded rule provisions."<sup>405</sup> Mobil generally supported the Commission's proposal "as long as the prerogative is not abused through excessive use."<sup>406</sup> AAMA suggested that the Commission's label formats were "relatively inflexible" and, as a result, "the Administrator<sup>407</sup> should have the discretionary authority to be able to approve alternative labeling formats, upon the request of automotive manufacturers, without required additional rulemaking."<sup>408</sup>

After considering the record, the Commission has determined that it should update its AFV labeling requirements as proposed in the SNPR. Given the irregular pace of technological development and regulatory activity, the Commission finds that a flexible approach will best meet consumers' needs. For example, although the Commission understands that EPA will promulgate rules that require fuel economy labeling for vehicles powered by LPG, hydrogen, electricity and other alternative fuels,<sup>409</sup> the Commission cannot predict when those standards will be adopted. At a minimum, a review of the Rule will be conducted once every ten years, pursuant to the Commission's ongoing program to review all its rules and guides at least once every ten years. Accordingly, the final rule will be updated as appropriate based on the Commission's ongoing review of all pertinent developments.

#### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires agencies to prepare a regulatory flexibility analysis when publishing a proposed rule unless the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."<sup>410</sup> In the SNPR, to ensure the accuracy of the required dispenser labels, the Commission proposed substantiation, certification, and

<sup>405</sup> Boston Edison/EEI, I-14, 8. They also suggested that the Commission monitor the standards upon which its disclosures are based, to "avoid inadvertent reliance upon inappropriate or outmoded performance criteria." Id. at 3.

<sup>406</sup> Mobil, I-2, 13. Mobil noted that frequent label changes during a single model year "may cause confusion . . . and detract from the rule's intended purpose of informing the consumer. Truly pertinent and important information should be the only reason for a label change more frequently than one time per model year." Id.

<sup>407</sup> This appears to be a reference to EPA's management structure. The Commission is an independent administrative agency composed of five members appointed by the President and confirmed by the Senate for terms of seven years. 16 CFR 0.1 (1994). It has no "Administrator."

<sup>408</sup> AAMA, I-16, 4.

<sup>409</sup> 59 FR 39638, 39639.

<sup>410</sup> 5 U.S.C. 603(a), 605(b).

recordkeeping requirements for importers, producers, refiners and distributors of gaseous alternative fuels, and manufacturers and distributors of electric vehicle fuel dispensing systems. The Commission also proposed substantiation, recordkeeping and disclosure requirements for retail sellers of the three non-liquid alternative vehicle fuels. In addition, the Commission proposed requiring that AFV manufacturers determine and disclose on labels certain product-specific information, and maintain records to substantiate the two product-specific disclosures that must be included on labels.

The Commission preliminarily concluded that the proposed rule, if enacted, would have a minimal effect on all business entities within the affected industries, regardless of their size. Available information suggested that approximately 1,000 companies import, produce, refine, distribute, or retail CNG to consumers. Further, only approximately 50 companies manufacture or distribute electric vehicle fuel dispensing systems, and no more than 250 retail companies sell electricity to consumers through such systems for the purpose of recharging electric vehicle batteries. Information the Commission possessed also indicated that relatively few companies currently manufacture, convert, or sell AFVs. Except for those companies that sell non-liquid alternative fuel (including electricity) to consumers, the Commission stated that most of the aforementioned industry members, including those that manufacture or sell AFVs, are not "small entities" as that term is defined in section 601 of the RFA<sup>411</sup> and in the regulations of the Small Business Administration.<sup>412</sup>

The Commission also stated that although there may be some "small entities" among retail sellers of non-liquid alternative fuels (including electricity), the labeling rules proposed would likely have only a minimal impact on these small entities. Any such impact would likely consist of minimal additional recordkeeping and of retailers placing labels on fuel dispensers (to the extent this is not done by distributors for their retailer customers). The impact on small entities, therefore, appeared to be *de minimis* and not significant.

In light of these factors, in the SNPR the Commission certified under the RFA that the rule proposed would not, if promulgated, have a significant impact on a substantial number of small

entities, and, therefore, that a regulatory analysis was not necessary.<sup>413</sup> To ensure the accuracy of this certification, however, the Commission requested comments on whether the proposed rule would have a significant impact on a substantial number of small entities, including specific information on the number of entities in each category that would be covered by the proposed rule, the number of these companies that are "small entities," and the average annual burden for each entity.

No comments specifically addressed this aspect of the Commission's SNPR proposal. The Commission, however, received three comments that tangentially addressed this issue. These comments stated that the requirements that producers and importers of natural gas comply with the proposed rule's CNG fuel rating determination, certification and recordkeeping requirements, which includes determining and certifying the minimum percentage of methane in natural gas, would be overly burdensome. These comments stated that most producers currently do not sell natural gas vehicle fuel, and, therefore, do not test for or certify the methane content of the natural gas they sell.<sup>414</sup>

The statements by Unocal, API and AGA/NGVC do not persuade the Commission that the requirements it has adopted will impose a significant economic impact on a substantial number of small entities. First, none of the comments cited specific cost or burden estimates or submitted supporting data concerning the specific burden on any parties. Second, the burden of determining and certifying fuel ratings falls on producers of natural gas only if the fuel is transferred for use as a vehicle fuel. Further, no commenters submitted information to contradict the Commission's belief, which was stated in the SNPR, that most of these industry members are not "small entities," as that term is defined either in section 601 of the RFA or applicable regulations of the Small Business Administration.<sup>415</sup> In addition, the rule adopted by the Commission does not require natural gas producers to conduct tests themselves to determine the fuel rating of natural gas.

<sup>413</sup> This analysis and conclusion was consistent with Commission's analysis and conclusion in its Statement of Basis and Purpose ("SBP") for the liquid alternative fuels amendments to the Fuel Rating Rule. In that SBP, the Commission certified that the Fuel Rating Rule's similar requirements would not have a significant impact. 58 FR 41356, 41369-41370.

<sup>414</sup> AGA/NGVC, I-18, 3-6; API, I-15, 1-5; Unocal, I-5, 2.

<sup>415</sup> 59 FR 59666, 59698.

For example, they may use private facilities for fuel rating determinations, thus obviating the need to have testing equipment of their own. The rule also does not require producers to certify the fuel rating of CNG with each transfer of the fuel. The rule permits producers to give the person to whom the fuel is transferred a letter or written statement, including the fuel rating. The letter or written statement is effective until the producer transfers non-liquid alternative vehicle fuel (other than electricity) with a lower percentage of the major component, or of any other component claimed. Therefore, the Commission believes that the fuel rating determination and certification requirements it has adopted will minimize burdens on even small businesses.

On the basis of all the information now before it, the Commission has determined that the rule will not have a significant impact on a substantial number of small entities. Consequently, the Commission concludes that a regulatory flexibility analysis is not required. In light of the above, the Commission certifies, under section 605 of the RFA,<sup>416</sup> that the rule it has adopted will not have a significant impact on a substantial number of small entities.

#### IV. Regulatory Review

The Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the economic impact of new regulatory actions. As part of that overall regulatory review, the Commission solicited comments in the SNPR on questions concerning benefits and significant burdens and costs of the proposed rule and alternatives to the proposals that would increase benefits to purchasers and minimize the costs and other burdens to firms subject to the rule's requirements. Only one comment raised an issue not previously covered in other parts of this notice. Specifically, RFA urged the Commission to preclude localities from creating more stringent labeling requirements for alternative fuels so that alternative fuel labeling will be consistent nationwide and consumer confusion could be avoided.<sup>417</sup>

The Commission is not persuaded that any reduction in consumer confusion that could result from the narrow standard suggested by RFA would outweigh the benefits of the preemption standard proposed in the

<sup>411</sup> 5 U.S.C. 601(6).

<sup>412</sup> 13 CFR Part 121 (1994).

<sup>416</sup> 5 U.S.C. 605(b).

<sup>417</sup> RFA, I-3, 2.

SNPR. This proposed standard would allow state and local jurisdictions the latitude to establish and enforce regulations that best suit the needs of their particular regions, provided the regulations do not frustrate the purposes of the rule. The Commission, therefore, is adopting the proposed preemption standard, which is substantially the same standard it has used in other Commission rules. Under this standard, the rule supersedes only state and local laws and regulations that would be inconsistent with the requirements of the rule in a manner that would frustrate its purposes.<sup>418</sup>

### V. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"),<sup>419</sup> and regulations of the Office of Management and Budget ("OMB")<sup>420</sup> implementing the PRA, require agencies to obtain clearance for regulations that involve the "collection of information," which includes both reporting and recordkeeping requirements. In the SNPR, consistent with the Fuel Rating Rule's requirements for sellers of liquid alternative fuels, the Commission proposed requiring that producers, importers, refiners, and distributors of CNG and hydrogen, retailers of CNG, hydrogen and electricity, and manufacturers and distributors of electric vehicle fuel dispensing systems maintain records to substantiate the product-specific disclosures that would be required on fuel dispenser labels. In addition, the Commission proposed requiring that AFV manufacturers maintain records to substantiate two product-specific disclosures that would be required on AFV labels.

The proposed recordkeeping requirements are "collections of information" as defined by the OMB regulations implementing the PRA. The proposed requirements, therefore, were submitted to OMB for review under the PRA. In the SNPR, the Commission stated it believed that the proposed recordkeeping requirements, if enacted, would impose a minimal annual "collection of information" burden on each covered party within the affected industries.

<sup>418</sup> See final rule § 309.104 *infra*. This preemption standard is different from the standard in the Fuel Rating Rule. Under § 306.4 of the Fuel Rating Rule, "no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title." 16 CFR 306.4 (1994). The preemption provision in the Fuel Rating Rule is specified by § 204 of the Petroleum Marketing Practices Act, 15 U.S.C. 2824. There is no similar provision that applies to this rule.

<sup>419</sup> 44 U.S.C. 3501–3520.

<sup>420</sup> 5 CFR 1320.7(c).

The Commission also stated that it expected certifications for non-liquid alternative fuels (other than electricity) will be noted on documents (shipping receipts, etc.) already in use, or will be accomplished with a one-time letter of certification, consistent with current procedures for gasoline and liquid alternative fuel suppliers covered by the Fuel Rating Rule. Producers, importers, refiners, and distributors of non-liquid alternative fuels (other than electricity), and retailers of non-liquid alternative fuels (including electricity) need merely file and retain these certifications as the required recordkeeping.

Further, the Commission stated it expected that manufacturers of electric vehicle fuel dispensing systems will permanently mark the required disclosures on the equipment or systems, or will note that information on documents (shipping receipts, etc.) already in use. Manufacturers need merely file and retain records demonstrating substantiation for the proposed labeling disclosures. Distributors and retailers need merely file the documents provided to them by the manufacturers or distributors. If the systems are permanently marked by the manufacturers, distributors and retailers may rely on the permanent markings as the required recordkeeping.

In the SNPR, the Commission stated it believed that the burden per covered industry member that the Commission estimated for the Fuel Rating Rule also was appropriate in this proceeding. In the liquid alternative fuel amendments to the Fuel Rating Rule, the Commission estimated that the information collection burden associated with that rule's recordkeeping requirements was six minutes per year per industry member.<sup>421</sup> This estimate was small because the records at issue were likely to be retained by the industry during the normal course of business, and the "burden," for OMB purposes, is defined to exclude effort that would be expended in any event.<sup>422</sup> Based on these figures, the Commission estimated that the total yearly information collection burden of the proposed rule on these industry members would be

<sup>421</sup> 58 FR 41356, 41370–41371.

<sup>422</sup> Section 1320.7(b)(1) of the regulations implementing the PRA, 5 CFR 1320.7(b)(1) (1994), states:

The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

130 hours (six minutes per year times 1,300 industry members).

In the SNPR, the Commission also proposed requiring that AFV manufacturers maintain records to substantiate the tailpipe emission standard to which the vehicle has been certified pursuant to applicable EPA regulations,<sup>423</sup> and their estimates of each vehicle's cruising range. Pursuant to the proposed rule, manufacturers would calculate cruising range values in one of three ways. For vehicles required to comply with EPA's fuel-economy labeling provisions, cruising range would be calculated using the vehicle's estimated fuel-economy rating in conjunction with the fuel tank capacity of the vehicle.<sup>424</sup> For electric vehicles, cruising range would be calculated in accordance with the Society of Automotive Engineers' "Recommended Practice," J1634. For other vehicles not yet required to be labeled with EPA's fuel economy stickers, the Commission proposed that manufacturers possess a reasonable basis, consisting of competent and reliable evidence, for the cruising range values disclosed. The Commission estimated that the information collection burden associated with the proposed recordkeeping requirements for AFV manufacturers would be thirty minutes per year per manufacturer. This was an average burden estimate developed after considering that the overall burden associated with complying with the rule's recordkeeping requirements would be much greater, for example, for AFV manufacturers who must disclose cruising range figures on vehicles not yet required to be labeled with EPA fuel economy stickers.

Although under the proposed rule manufacturers would be required to determine cruising ranges and emission standards for different models of vehicles, the burden estimate (i.e., thirty minutes) also was small because the Commission believed the records at issue were likely to be developed and retained by the industry during the normal course of business. The Commission estimated that approximately 58 industry members would be covered by the proposed rule's cruising range and emission standard recordkeeping requirements. This estimate of the number of affected industry members was based on similar estimates EPA made in connection with its emission standards recordkeeping requirements contained in a final rule establishing two clean-fuel vehicle

<sup>423</sup> 40 CFR Parts 86 and 88 (1994).

<sup>424</sup> 40 CFR Part 600 (1994).

programs.<sup>425</sup> Based on these figures, the Commission estimated that the current total yearly burden of the proposed rule on the 58 industry members would be 29 hours (thirty minutes per year times 58 industry members).

Consequently, the Commission estimated that the total burden associated with complying with the Rule's recordkeeping requirements for AFVs and non-liquid alternative fuels (including electricity) would be a total of approximately 159 hours per year for all affected industry members. To ensure the accuracy of these burden estimates, however, the Commission solicited comment on the paperwork burden that the proposed requirements may impose to ensure that no additional burden had been overlooked.

No comments addressed the paperwork burden projections the Commission made in the SNPR. Nevertheless, the Commission considered reducing slightly the overall regulatory burden of complying with the rule by eliminating AFV manufacturers' recordkeeping requirements associated with substantiating tailpipe emission standards based on verifiable EPA certifications, and cruising range values based, in part, on verifiable EPA estimated fuel economy ratings. The information collection requirements the Commission is adopting for such AFV manufacturers, however, includes maintenance of records only, not reporting requirements. Further, AFV manufacturers must have the aforementioned information (the EPA certifications for emissions and the EPA estimated fuel economy ratings) to substantiate the disclosures they must make under the Commission's labeling rules. The Commission expects that manufacturers normally will maintain records showing this information in the normal course of prudent business practice. Minimal additional burden, therefore, is created by a requirement in the Commission's rule that these substantiating records be maintained, and eliminating these recordkeeping requirements would not significantly reduce the overall regulatory burden on AFV manufacturers. On balance, therefore, the Commission sees no reason to revise its projections of burden per year per covered industry member,

or modify the recordkeeping requirements in the proposed rule.

Because the aforementioned requirements would involve the "collection of information" as defined by the regulations of OMB, the Commission was required to submit the proposed requirements to OMB for clearance, 5 CFR 1320.13, and did so as part of this proceeding. OMB approved the request, and assigned control number 3084-0094 to the information collection requirements.<sup>426</sup> This approval will expire on November 30, 1997, unless it has been extended before that date.

#### VI. Metric Usage

The metric measurement system is the preferred system of weights and measures for United States trade and commerce.<sup>427</sup> Federal law requires federal agencies to use the metric measurement system in all procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or likely to cause significant inefficiencies or loss of markets to U.S. firms.<sup>428</sup> In the SNPR, the Commission identified the proposal that AFV labels disclose cruising range in miles<sup>429</sup> as having a potential for the use of metric terms. The Commission thus sought comment on whether to require metric or dual (i.e., metric and non-metric) units for this disclosure.

Two comments addressed this aspect of the Commission's SNPR proposal, and both urged the Commission to require metric and non-metric units for the cruising range disclosure.<sup>430</sup> The Commission is not persuaded, however, that requiring metric equivalents on AFV labels would be appropriate at this time. The Commission's AFV labels were designed to be consistent with EPA's fuel economy labels, which do not utilize metric disclosures. Further, according to section 406(a) of EPA 92, the Commission's required labels must be simple. Given the amount of information the Commission's AFV labels will contain, the Commission does not believe that it would be practical to require metric equivalents at this time. The marginal increase in the public's understanding of the metric system that might result from disclosure of metric equivalents does not appear to

offset the practicality problems and potential for confusion that the additional metric terms would create. The Commission, therefore, is not requiring disclosure of cruising range in metric (i.e., kilometers) as well as inch-pound measurements (i.e., miles).

#### List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Incorporation by reference, Labeling, Reporting and recordkeeping, Trade practices.

#### VII. Text of Rule

Accordingly, the Commission amends 16 CFR Chapter I by adding a new part 309 to Subchapter C to read as follows:

#### PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

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- Sec.  
309.1 Definitions.  
309.2 What this part does.  
309.3 Stayed or invalid portions.  
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##### Subpart B—Requirements for Alternative Fuels

#### Duties of Importers, Producers, and Refiners of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Manufacturers of Electric Vehicle Fuel Dispensing Systems

- 309.10 Alternative vehicle fuel rating.  
309.11 Certification.  
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#### Duties of Distributors of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Electric Vehicle Fuel Dispensing Systems

- 309.13 Certification.  
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Duties of Retailers  
309.15 Posting of non-liquid alternative vehicle fuel rating.  
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##### Label Specifications

- 309.17 Labels.

##### Subpart C—Requirements for Alternative Fueled Vehicles

- 309.20 Labeling requirements for new covered vehicles.  
309.21 Labeling requirements for used covered vehicles.  
309.22 Determining estimated cruising range.  
309.23 Recordkeeping.

#### Appendix A—Figures for Part 309

Authority: 42 U.S.C. 13232(a).

##### Subpart A—General

#### § 309.1 Definitions.

As used in subparts B and C of this part:

<sup>425</sup> The information collection requirements in EPA's rule were submitted to OMB by EPA and discussed in ICR No. 1694. Fleet Standards Rule, 59 FR 50042, 50072, Sept. 30, 1994. Under EPA's Clean Fuel Fleet Program, a percentage of new vehicles acquired by certain fleet owners located in covered areas will be required to meet clean-fuel fleet vehicle emission standards. The California Pilot Test Program requires manufacturers to sell light-duty clean-fuel vehicles in California.

<sup>426</sup> Notice of OMB Action to the FTC (Dec. 30, 1994).

<sup>427</sup> 15 U.S.C. 205b. See also Exec. Order No. 12,770, 56 FR 35801, July 21, 1991 (implementing section 205b).

<sup>428</sup> *Id.*

<sup>429</sup> See proposed rule §§ 309.20, 309.22, 59 FR 59666, 59707-59708.

<sup>430</sup> Mechtly, I-1, 1; Sokol, I-17, 1.

(a) *Acquisition* includes either of the following:

(1) Acquiring the beneficial title to a covered vehicle; or

(2) Acquiring a covered vehicle for transportation purposes pursuant to a contract or similar arrangement for a period of 120 days or more.

(b) *Aftermarket conversion system* means any combination of hardware which allows a vehicle or engine to operate on a fuel other than the fuel which the vehicle or engine was originally certified to use.

(c) *Alternative fuel* means

(1) Methanol, denatured ethanol, and other alcohols;

(2) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Coal-derived liquid fuels;

(7) Fuels (other than alcohol) derived from biological materials;

(8) Electricity (including electricity from solar energy); and

(9) Any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(d)(1) *Consumer* in subpart C means an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States.

(2) *Consumer or ultimate purchaser* in subpart B means, with respect to any non-liquid alternative vehicle fuel (including electricity), the first person who purchases such fuel for purposes other than resale.

(e) *Conventional fuel* means gasoline or diesel fuel.

(f) *Covered vehicle* means either of the following:

(1) A dedicated or dual fueled passenger car (or passenger car derivative) capable of seating 12 passengers or less; or

(2) A dedicated or dual fueled motor vehicle (other than a passenger car or passenger car derivative) with a gross vehicle weight rating less than 8,500 pounds which has a vehicle curb weight of less than 6,000 pounds and which has a basic vehicle frontal area of less than 45 square feet, which is:

(i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons.

(g) *Dedicated* means designed to operate solely on alternative fuel.

(h) *Distributor* means any person, except a common carrier, who receives non-liquid alternative vehicle fuel (other than electricity) and distributes such fuel to another person other than the consumer. It also means any person, except a common carrier, who receives an electric vehicle fuel dispensing system and distributes such system to a retailer.

(i) *Dual fueled* means capable of operating on alternative fuel and capable of operating on conventional fuel.

(j) *Electric charging system equipment* means equipment that includes an electric battery charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(k) *Electric vehicle* ("EV") means a vehicle designed to operate exclusively on electricity stored in a rechargeable battery, multiple batteries, or battery pack.

(l) *Electric vehicle fuel dispensing system* means electric charging system equipment or an electrical energy dispensing system.

(m) *Electrical energy dispensing system* means equipment that does not include an electric charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle that contains an on-board electric battery charger.

(n) *Emission certification standard* means the emission standard to which a covered vehicle has been certified pursuant to 40 CFR parts 86 and 88.

(o) *Estimated cruising range* for non-EVs means a manufacturer's reasonable estimate of the number of miles a new covered vehicle will travel between refueling, expressed as a lower estimate (i.e., minimum estimated cruising range) and an upper estimate (i.e., maximum estimated cruising range), as determined by § 309.22. Estimated cruising range for EVs means a manufacturer's reasonable estimate of the number of miles a new covered EV will travel between recharging, expressed as a single estimate, as determined by § 309.22.

(p) *Fuel dispenser* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), the dispenser through which a retailer sells the fuel to consumers.

(2) For electric vehicle fuel dispensing systems, the dispenser through which a retailer dispenses electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(q) *Fuel rating* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), including, but not limited to, compressed natural gas and hydrogen gas, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum molecular percentage, of the principal component of the fuel. A disclosure of other components, expressed as a minimum molecular percentage, may be included, if desired.

(2) For electric vehicle fuel dispensing systems, a common identifier (such as, but not limited to, "electricity," "electric charging system," "electric charging station") with a disclosure of the system's kilowatt ("kW") capacity, voltage, whether the voltage is alternating current ("ac") or direct current ("dc"), amperage, and whether the system is conductive or inductive.

(r) *Manufacturer* means the person who obtains a certificate of conformity that the vehicle complies with the standards and requirements of 40 CFR parts 86 and 88.

(s) *Manufacturer of an electric vehicle fuel dispensing system* means any person who manufactures or assembles an electric vehicle fuel dispensing system that is distributed specifically for use by retailers in dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(t) *New covered vehicle* means a covered vehicle which has not been acquired by a consumer.

(u) *New vehicle dealer* means a person who is engaged in the sale or leasing of new covered vehicles.

(v) *New vehicle label* means a window sticker containing the information required by § 309.20(e).

(w) *Non-liquid alternative fueled vehicle* means a vehicle capable of operating on a non-liquid alternative vehicle fuel.

(x) *Non-liquid alternative vehicle fuel* means alternative fuel used for the purpose of powering a non-liquid alternative fueled vehicle, including, but not limited to, compressed natural gas ("CNG"), hydrogen gas ("hydrogen"), electricity, and any other non-liquid vehicle fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy benefits and substantial environmental benefits.

(y) *Person* means an individual, partnership, corporation, or any other business organization.

(z) *Producer* means any person who purchases component elements and combines them to produce and market non-liquid alternative vehicle fuel (other than electricity).

(aa) *Refiner* means any person engaged in the production or importation of non-liquid alternative vehicle fuel (other than electricity).

(bb) *Retailer* means any person who offers for sale, sells, or distributes non-liquid alternative vehicle fuel (including electricity) to consumers.

(cc) *Secretary* means the Secretary of the United States Department of Energy.

(dd) *Used covered vehicle* means a covered vehicle which has been acquired by a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).

(ee) *Used vehicle dealer* means a person engaged in the sale or leasing of used covered vehicles who has sold or leased five or more used covered vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling or leasing used covered vehicles to an employee of that business, or a lessor selling or leasing a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(ff) *Used vehicle label* means a window sticker containing the information required by § 309.21(e).

(gg) *Vehicle fuel tank capacity* means the tank's usable capacity (i.e., the volume of fuel that can be pumped into the tank through the filler pipe with the vehicle on a level surface and with the unusable capacity already in the tank). The term does not include unusable capacity (i.e., the volume of fuel left at the bottom of the tank when the vehicle's fuel pump can no longer draw fuel from the tank), the vapor volume of the tank (i.e., the space above the fuel tank filler neck), or the volume of the fuel tank filler neck.

#### § 309.2 What this part does.

This part establishes labeling requirements for non-liquid alternative vehicle fuels, and for certain vehicles powered in whole or in part by alternative fuels.

#### § 309.3 Stayed or invalid portions.

If any portion of this part is stayed or held invalid, the rest of it will stay in force.

#### § 309.4 Preemption.

Inconsistent state and local regulations are preempted to the extent they would frustrate the purposes of this part.

### Subpart B—Requirements for Alternative Fuels

#### Duties of Importers, Producers, and Refiners of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Manufacturers of Electric Vehicle Fuel Dispensing Systems

##### § 309.10 Alternative vehicle fuel rating.

(a) If you are an importer, producer, or refiner of non-liquid alternative vehicle fuel (other than electricity), you must determine the fuel rating of all non-liquid alternative vehicle fuel (other than electricity) before you transfer it. You can do that yourself or through a testing lab. To determine fuel ratings, you must possess a reasonable basis, consisting of competent and reliable evidence, for the minimum percentage of the principal component of the non-liquid alternative vehicle fuel (other than electricity) that you must disclose, and for the minimum percentages of other components that you choose to disclose. For the purposes of this section, fuel ratings for the minimum percentage of the principal component of compressed natural gas are to be determined in accordance with test methods set forth in American Society for Testing and Materials ("ASTM") D 1945-91, "Standard Test Method for Analysis of Natural Gas by Gas Chromatography." For the purposes of this section, fuel ratings for the minimum percentage of the principal component of hydrogen gas are to be determined in accordance with test methods set forth in ASTM D 1946-90, "Standard Practice for Analysis of Reformed Gas by Gas Chromatography." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of D 1945-91 and D 1946-90 may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(b) If you are a manufacturer of electric vehicle fuel dispensing systems, you must determine the fuel rating of the electric charge delivered by the electric vehicle fuel dispensing system before you transfer such systems. To determine the fuel rating of the electric vehicle fuel dispensing system, you must possess a reasonable basis, consisting of competent and reliable evidence, for the following output information you must disclose: kilowatt

("kW") capacity, voltage, whether the voltage is alternating current ("ac") or direct current ("dc"), amperage, and whether the system is conductive or inductive.

##### § 309.11 Certification.

(a) For non-liquid alternative vehicle fuel (other than electricity), in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of non-liquid alternative vehicle fuel (other than electricity). It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

- (i) Your name;
- (ii) The name of the person to whom the non-liquid alternative vehicle fuel (other than electricity) is transferred;
- (iii) The date of the transfer; and
- (iv) The fuel rating.

(2) Give the person a letter or written statement. This letter must include the date, your name, the other person's name, and the fuel rating of any non-liquid alternative vehicle fuel (other than electricity) you will transfer to that person from the date of the letter onwards. This letter of certification will be good until you transfer non-liquid alternative vehicle fuel (other than electricity) with a lower percentage of the principal component, or of any other component disclosed in the certification. When this happens, you must certify the fuel rating of the new non-liquid alternative vehicle fuel (other than electricity) either with a delivery ticket or by sending a new letter of certification.

(b) For electric vehicle fuel dispensing systems, in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the electric vehicle fuel dispensing system consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of an electric vehicle fuel dispensing system. It may be an invoice, bill of lading, bill of sale, delivery ticket, or any other written proof of transfer. It must contain at least these five items:

- (i) Your name;
- (ii) The name of the person to whom the electric vehicle fuel dispensing system is transferred;
- (iii) The date of the transfer;
- (iv) The model number, serial number, or other identifier of the

electric vehicle fuel dispensing system; and

(v) The fuel rating.

(2) Make the required certification by placing clearly and conspicuously on the electric vehicle fuel dispensing system a permanent legible marking or permanently attached label that discloses the manufacturer's name, the model number, serial number, or other identifier of the system, and the fuel rating. Such marking or label must be located where it can be seen after installation of the system. The marking or label will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking. This marking or label must be in addition to, and not a substitute for, the label required to be posted on the electric vehicle fuel dispensing system by the retailer.

(c) When you transfer non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, to a common carrier, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system to the common carrier, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

#### **§ 309.12 Recordkeeping.**

You must keep for one year records of how you determined fuel ratings. The records must be available for inspection by Federal Trade Commission staff members, or by people authorized by FTC.

#### **Duties of Distributors of Non-Liquid Alternative Vehicle Fuels (other than electricity) and of Electric Vehicle Fuel Dispensing Systems**

##### **§ 309.13 Certification.**

(a) If you are a distributor of non-liquid alternative vehicle fuel (other than electricity), you must certify the fuel rating of the fuel in each transfer you make to anyone who is not a consumer. You may certify either by using a delivery ticket or other paper with each transfer of fuel, as outlined in § 309.11(a)(1), or by using a letter of certification, as outlined in § 309.11(a)(2).

(b) If you are a distributor of electric vehicle fuel dispensing systems, you must certify the fuel rating of the system in each transfer you make to anyone who is not a consumer. You may certify by using a delivery ticket or other paper with each transfer, as outlined in § 309.11(b)(1), or by using the permanent marking or permanent label

attached to the system by the manufacturer, as outlined in § 309.11(b)(2).

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must certify consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you certify for the blend.

(d) When you transfer non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, to a common carrier, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system to the common carrier, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer. When you receive non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, from a common carrier, you also must receive from the common carrier a certification of the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

##### **§ 309.14 Recordkeeping.**

You must keep for one year any delivery tickets, letters of certification, or other paper on which you based your fuel rating certifications for non-liquid alternative vehicle fuels (other than electricity) and for electric vehicle fuel dispensing systems. You also must keep for one year records of any fuel rating determinations you made according to § 309.10. If you rely for your certification on a permanent marking or permanent label attached to the electric vehicle fuel dispensing system by the manufacturer, you must not remove or deface the permanent marking or label. The records must be available for inspection by Federal Trade Commission staff members, or by persons authorized by FTC.

#### **Duties of Retailers**

##### **§ 309.15 Posting of non-liquid alternative vehicle fuel rating.**

(a) If you are a retailer who offers for sale or sells non-liquid alternative vehicle fuel (other than electricity) to consumers, you must post the fuel

rating of each non-liquid alternative vehicle fuel. If you are a retailer who offers for sale or sells electricity to consumers through an electric vehicle fuel dispensing system, you must post the fuel rating of the electric vehicle fuel dispensing system you use. You must do this by putting at least one label on the face of each fuel dispenser through which you sell non-liquid alternative vehicle fuel. If you are selling two or more kinds of non-liquid alternative vehicle fuels with different fuel ratings from a single fuel dispenser, you must put separate labels for each kind of non-liquid alternative vehicle fuel on the face of the fuel dispenser.

(b)(1) The label, or labels, must be placed conspicuously on the fuel 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.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption.

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must post consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you post for the blend.

(d)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you may satisfy this part by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(e) The following examples of fuel rating disclosures for CNG and hydrogen are meant to serve as illustrations of compliance with this part, but do not limit the rule's coverage to only the mentioned non-liquid alternative vehicle fuels (other than electricity):

- (1) "CNG"  
"Minimum"  
"XXX%"  
"Methane"
- (2) "Hydrogen"  
"Minimum"  
"XXX%"  
"Hydrogen"

(f) The following example of fuel rating disclosures for electric vehicle fuel dispensing systems is meant to

serve as an illustration of compliance with this part:

"Electricity"  
 "XX kW"  
 "XXX vac/XX amps"  
 "Inductive"

(g) When you receive non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system, from a common carrier, you also must receive from the common carrier a certification of the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) or electric vehicle fuel dispensing system, either by letter or on the delivery ticket or other paper, or by a permanent marking or label attached to the electric vehicle fuel dispensing system by the manufacturer.

#### § 309.16 Recordkeeping.

You must keep for one year any delivery tickets, letters of certification, or other paper on which you based your posting of fuel ratings for non-liquid alternative vehicle fuels. You also must keep for one year records of any fuel rating determinations you made according to § 309.10. If you rely for your posting on a permanent marking or permanent label attached to the electric vehicle fuel dispensing system by the manufacturer, you must not remove or deface the permanent marking or label. The required records, other than the permanent marking or label on the electric vehicle fuel dispensing system, may be kept at the retail outlet or at a reasonably close location. The records, including the permanent marking or label on each electric vehicle fuel dispensing system, must be available for inspection by Federal Trade Commission staff members or by persons authorized by FTC.

#### Label Specifications

##### § 309.17 Labels.

All labels must meet the following specifications:

(a) Layout:

(1) Non-liquid alternative vehicle fuel (other than electricity) labels with disclosure of principal component only. The label is 3" (7.62 cm) wide x 2 1/2" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is 1/4" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 1/8" (.32 cm) from the bottom of the black band. All type below the black

band is centered horizontally, with 1/8" (.32 cm) between lines. The bottom line of type is 3/16" (.48 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the format of this single component label, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(2) Non-liquid alternative vehicle fuel (other than electricity) labels with disclosure of two components. The label is 3" (7.62 cm) wide x 2 1/2" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is 1/4" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with 1/8" (.32 cm) between lines. The bottom line of type is 1/4" (.64 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the format of this two component label, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) Electric vehicle fuel dispensing system labels. The label is 3" (7.62 cm) wide x 2 1/2" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the common identifier of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the common identifier is 1/4" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with 1/8" (.32 cm) between lines. The bottom line of type is 1/4" (.64 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label.

(b) Type size and setting:

(1) Labels for non-liquid alternative vehicle fuels (other than electricity)

with disclosure of principal component only. All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and photo-typesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (1/2" (1.27 cm) cap height) knocked out of a 1" (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 pt. (1/4" (.64 cm) cap height). The type for percentage is 36 pt. (3/8" (.96 cm) cap height).

(2) Labels for non-liquid alternative vehicle fuels (other than electricity) with disclosure of two components. All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and photo-typesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (1/2" 1.27 cm) cap height) knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. (1/4" (.64 cm) cap height).

(3) Labels for electric vehicle fuel dispensing systems. All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and photo-typesetting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the common identifier is 50 point (1/2" 1.27 cm) cap height) knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. (1/4" (.64 cm) cap height).

(c) Colors: The background color on the labels for all non-liquid alternative vehicle fuels (including electricity), and the color of the knock-out type within the black band, is Orange: PMS 1495. All other type is process black. All borders are process black. All colors must be non-fade.

(d) Contents. Examples of the contents are shown in Figures 1 through 3. The proper fuel rating for each non-liquid alternative vehicle fuel (including electricity) must be shown. No marks or information other than that called for by this part may appear on the labels.

(e) Special label protection. All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to vehicle fuel, oil, grease, solvents, detergents, and water.

(f) Illustrations of labels. Labels must meet the specifications in this section and look like Figures 1 through 3 of Appendix A, except the black print should be on the appropriately colored background.

### Subpart C—Requirements for Alternative Fueled Vehicles

#### § 309.20 Labeling requirements for new covered vehicles.

(a) Affixing and maintaining labels  
(1) Before offering a new covered vehicle for acquisition to consumers, manufacturers shall affix or cause to be affixed, and new vehicle dealers shall maintain or cause to be maintained, a new vehicle label on a visible surface of each such vehicle.

(2) If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer prior to such vehicle's being acquired by a consumer, the manufacturer shall provide that person with the vehicle's estimated cruising range (as determined by § 309.22(a) for dedicated vehicles and § 309.22(b) for dual fueled vehicles) and emission certification standard and ensure that new vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

(b) Layout. Figures 4 through 6 of Appendix A are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths shall be similar to and consistent with the prototype labels. Labels required by this section are two-sided and rectangular in shape measuring 7 inches (17.5 cm) wide and 5-1/2 inches (13.75 cm) long. Figure 4 of Appendix A represents the prototype for the front side of the labels for dedicated vehicles. Figures 5 and 5.1 of Appendix A represent the prototype of the front side of the labels for dual-fueled vehicles; Figure 5 of Appendix A represents the prototype for vehicles with one fuel tank and Figure 5.1 of Appendix A represents the prototype for vehicles with two fuel tanks. Figure 6 of Appendix A represents the prototype of the back side of the labels for both dedicated and dual-fueled vehicles. Manufacturers may, at their discretion, display the appropriate front label format and back label format immediately adjacent to each other on the same visible surface. No marks or information other than that specified in this subpart shall appear on this label.

(c) Type size and setting. The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels

(Figures 4, 5, 5.1, and 6 of Appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) Colors and Paper Stock. All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/S.70 Sky Blue (or equivalent) paper. Follow label prototypes for percentages of screen tints in Exhaust Emissions chart.

(e) Content

(1) Headlines and text, as illustrated in Figures 4, 5, 5.1, and 6 of Appendix A, are standard for all labels.

(2) Estimated cruising range. (i) For dedicated vehicles, determined in accordance with § 309.22(a).

(ii) For dual fueled vehicles, determined in accordance with § 309.22(b).

(3) Emission certification standard.

(i) For vehicles not certified as meeting an EPA emissions standard, indicated by placing a mark in the appropriate box indicating that fact.

(ii) For vehicles certified as meeting an EPA emissions standard, indicated by placing a mark in the appropriate box indicating that fact and by placing a caret above the standard to which that vehicle has been certified.

#### § 309.21 Labeling requirements for used covered vehicles.

(a) Affixing and maintaining labels. Before offering a used covered vehicle for acquisition to consumers, used vehicle dealers shall affix and maintain, or cause to be affixed and maintained, a used vehicle label on a visible surface of each such vehicle.

(b) Layout. Figures 7 and 8 of Appendix A are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths should be similar to and consistent with the prototype labels. Labels required by this section are two-sided and rectangular in shape measuring 7 inches (17.5 cm) in width and 5-1/2 inches (13.75 cm) in height. Figure 7 represents the prototype of the front side of the labels for used covered vehicles. Figure 8 represents the back side of the labels for used covered vehicles. Manufacturers may, at their discretion, display the appropriate front label format and back label format immediately adjacent to each other on the same visible surface. No marks or information other than that specified in this subpart shall appear on this label.

(c) Type size and setting. The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are

indicated on the prototype labels (Figures 7 and 8 of Appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) Colors and Paper Stock. All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/S.70 Sky Blue (or equivalent) paper.

(e) Contents. Headlines and text, as illustrated in Figures 7 and 8 of Appendix A, are standard for all labels.

#### § 309.22 Determining estimated cruising range.

(a) Dedicated vehicles.

(1) Estimated cruising range values for dedicated vehicles required to comply with the provisions of 40 CFR Part 600 are to be calculated in accordance with the following:

(i) The lower range value shall be determined by multiplying the vehicle's estimated city fuel-economy by its fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value shall be determined by multiplying the vehicle's estimated highway fuel-economy by its fuel tank capacity, then rounding to the next higher integer value.

(2) Estimated cruising range for an EV is the actual vehicle range determined in accordance with test methods set forth in Society of Automotive Engineers ("SAE") Surface Vehicle Recommended Practice SAE J1634-1993-05-20, "Electric Vehicle Energy Consumption and Range Test Procedure." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of SAE J1634-1993-05-20 may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA, 15096-0001, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(3) To determine the estimated cruising range values for dedicated vehicles not required to comply with the provisions of 40 CFR Part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence that substantiates the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings that is claimed.

(b) Dual-fueled vehicles.

(1) Estimated cruising range values for dual-fueled vehicles required to comply

with the provisions of 40 CFR Part 600 are to be calculated in accordance with the following:

(i) The lower range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated city fuel-economy by its alternative-fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated highway fuel-economy by its alternative-fuel tank capacity, then rounding to the next higher integer value.

(iii) The lower range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated

city fuel-economy by its conventional-fuel tank capacity, then rounding to the next lower integer value.

(iv) The upper range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated highway fuel-economy by its conventional-fuel tank capacity, then rounding to the next higher integer value.

(2) [Reserved]

(3) To determine the estimated cruising range values for dual-fueled vehicles not required to comply with the provisions of 40 CFR part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence, of:

(i) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when

operated exclusively on alternative fuel, and

(ii) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on conventional fuel.

**§ 309.23 Recordkeeping.**

Manufacturers required to comply this subpart shall establish, maintain, and retain copies of all data, reports, records, and procedures used to meet the requirements of this subpart for three years after the end of the model year to which they relate. They must be available for inspection by Federal Trade Commission staff members, or by people authorized by the Federal Trade Commission.

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**Appendix A—Figures for Part 309**

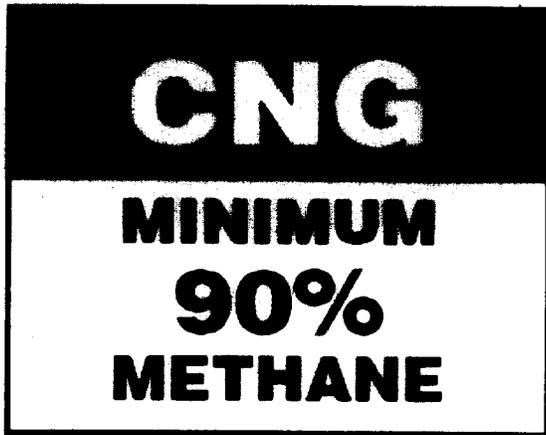


Figure 1

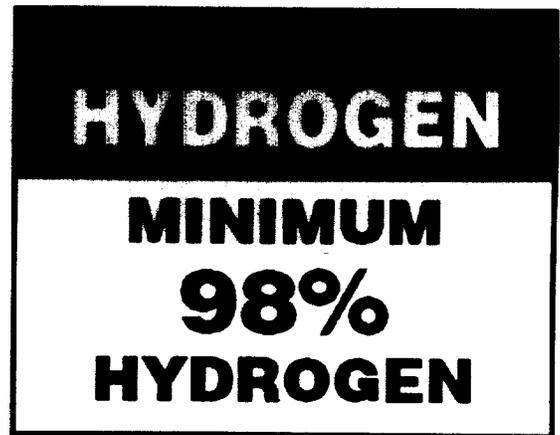


Figure 2

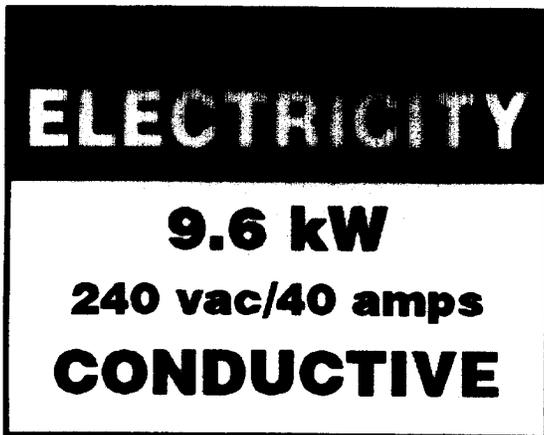


Figure 3

# AFV Buyers Guide

## Compare the Cruising Range and Emissions of this Vehicle with Others Before You Buy.

Model Year 1995 Estimated Cruising Range

# 440-520

Miles on one tank or charge

Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

Emissions

- This vehicle has not been certified as meeting an EPA emissions standard.
- This vehicle meets the EPA emissions standard noted below.



More Emissions

More Emissions	ULEV	LEV	ULEV+ ILEV	ZEV
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Fewer Emissions

The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards.

**Please read back for important information.**

Figure 4

# AFV Buyers Guide

## Compare the Cruising Range and Emissions of this Vehicle with Others Before You Buy.

Cruising Range	
<b>400-480</b> Miles on one tank or charge exclusively on alternative fuel	<b>440-520</b> Miles on one tank exclusively on gasoline/diesel

Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

Emissions

This vehicle has not been certified as meeting an EPA emissions standard.  
 This vehicle meets the EPA emissions standard noted below.

▼

More Emissions	[Dark Bar]	ULEV ZEV	ZEV	Fewer Emissions
----------------	------------	-------------	-----	-----------------

The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards.

**Please read back for important information.**

Figure 5

# AFV Buyers Guide

## Compare the Cruising Range and Emissions of this Vehicle with Others Before You Buy.

### 400-480

Miles on one tank or charge exclusively on alternative fuel

### 440-520

Miles on one tank exclusively on gasoline/diesel

The total possible cruising range of this vehicle is the sum of the alternative fuel range and the conventional fuel range. Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

- This vehicle has not been certified as meeting an EPA emissions standard.
- This vehicle meets the EPA emissions standard noted below.

**More Emissions**



**Fewer Emissions**

The overall environmental impact of driving any vehicle includes many factors not currently measured by existing vehicle emissions standards.

**Please read back for important information.**

Figure 5.1

**Before selecting an Alternative Fueled Vehicle (AFV) make sure you consider:**

- FUEL TYPE:** Know which fuel(s) power this vehicle.
- OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their cold-start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.
- FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs have been developed for this vehicle and will be readily available in your area.
- ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

**Additional Information****DEPARTMENT OF ENERGY (DOE)**

For more information about AFVs, contact DOE's National Alternative Fuels Hotline, **1-800-423-1DOE**, and ask for its free brochure.

**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.

Figure 6

## AFV Buyers Guide

### Before selecting an Alternative Fueled Vehicle (AFV) make sure you consider:

- ☑ **FUEL TYPE:** Know which fuel(s) power this vehicle.
- ☑ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- ☑ **ENVIRONMENTAL IMPACT:** All vehicles (conventional and AFVs) affect the environment directly (e.g., tailpipe emissions) and indirectly (e.g., how the fuel is produced and brought to market). Compare the environmental costs of driving an AFV with a gasoline-powered vehicle.
- ☑ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in terms of the cruising range (i.e., how many miles the vehicle will go on a full supply of fuel), cold start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.
- ☑ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs have been developed for this vehicle and will be readily available in your area.
- ☑ **ENERGY SECURITY/RENEWABILITY:** Consider where and how the fuel powering this vehicle is typically produced.

**Please read back for important information.**

Figure 7

## Additional Information

### DEPARTMENT OF ENERGY (DOE)

For more information about AFVs, contact DOE's National Alternative Fuels Hotline, **1-800-423-1DOE**, and ask for its free brochure.

### 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.

Figure 8

**BILLING CODE 6750-01-C**

By direction of the Commission, Chairman Pitofsky not participating, and Commissioner Azcuenaga concurring in part and dissenting in part.

**Donald S. Clark,**  
*Secretary.*

**Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part**

*Label Requirements for Alternative Fuels, Matter No. R311002*

Today, the Commission issues a final rule pursuant to the Energy Policy Act of 1992

("EPA 92") that imposes certification, substantiation, and recordkeeping requirements in connection with the labeling of non-liquid alternative fuels and alternative fueled vehicles. EPA 92, however, only directs the Commission to prescribe "labeling requirements," 42 U.S.C. § 13232(a); it does not indicate that Congress also intended to give the Commission the authority to impose certification, substantiation, and recordkeeping requirements. The legislative history of EPA 92 also fails to show that Congress intended to give the Commission such authority. Although certification, substantiation, and recordkeeping

requirements may all be beneficial, in the absence of any statutory language or legislative history indicating that Congress intended to give the Commission latitude to impose such requirements, I believe that the Commission has no authority to do so. I therefore dissent from the final rule to the extent that it imposes certification, substantiation, and recordkeeping requirements in connection with the labeling of non-liquid alternative fuels and alternative fueled vehicles.

[FR Doc. 95-12160 Filed 5-18-95; 8:45 am]

**BILLING CODE 6750-01-P**