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**FEDERAL TRADE COMMISSION
16 CFR Part 309**

**LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND
ALTERNATIVE FUELED VEHICLES**

AGENCY: Federal Trade Commission.

ACTION: Final Rule.

SUMMARY: The Federal Trade Commission (“Commission” or “FTC”) is publishing amendments to the Commission’s rule concerning Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles (“Rule”). The Commission is amending the Rule to delete vehicle-specific emissions information and, in its place, adding a reference to the Environmental Protection Agency’s (EPA’s) green vehicle guide website. EPA’s guide, located on its website at www.epa.gov/greenvehicle, provides detailed, comparative information regarding vehicle emissions generally and by vehicle model. The Commission commenced this rulemaking proceeding because the emissions standards on the current alternative fueled vehicle (“AFV”) label are obsolete as of the 2004 vehicle model year, and the Ford Motor Company (“Ford”) petitioned the Commission to revise the label. The Commission also conducted a review of this Rule pursuant to the Commission’s regulatory review program.

EFFECTIVE DATE: The amendments will become effective on March 31, 2005.

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SUPPLEMENTARY INFORMATION:

Part A - Background

1. The Rule

The Energy Policy Act of 1992 (“EPA 92” or the “Act”)¹ establishes a comprehensive national energy policy to increase U.S. energy security in cost-effective and environmentally beneficial ways. The Act seeks to reduce U.S. dependence on oil imports, encourage conservation and more efficient energy use, reduce the use of oil-based fuels in the motor vehicle sector, and provide new energy options. The Act also provides for programs that encourage the development of alternative fuels and alternative fueled vehicles.

Section 406(a) of EPA 92 directed the Commission to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and AFVs.² In accordance with the statutory directive, on May 19, 1995, the Commission published a Rule requiring disclosure of specific information³ on: (a) labels posted on fuel dispensers for non-liquid alternative fuels (*e.g.*, compressed natural gas, hydrogen, and electricity), effective August 21, 1995; and (b) labels on AFVs, which are designed to operate on at least one alternative fuel (*e.g.*, vehicles fueled by compressed natural gas, liquified petroleum gas, ethanol, and electricity),

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

² 42 U.S.C. 13232(a). EPA 92 did not specify what information should be displayed on these labels. Instead, it provided generally that the Commission's rule must require disclosure of "appropriate," "useful," and "timely" cost and benefit information on "simple" labels.

³ 60 FR 26926. The Rule also requires that sellers maintain records substantiating product-specific disclosures they include on these labels.

effective November 20, 1995.⁴

Section 309.20 of the Rule provides that before offering for consumer sale a new covered AFV, manufacturers must affix, on a visible surface of each such vehicle, a label consisting of three parts.⁵ Part one discloses objective information about the estimated cruising range and detailed emissions information of the particular AFV. Part two discloses and explains specific factors consumers should consider before buying an AFV.⁶ Part three lists specific toll-free telephone numbers for consumers who want to call the federal government for more information about AFVs.⁷ Section 309.20 of the Rule further states that no marks or information other than that specified by the Rule may appear on the label.

⁴ AFVs come in a variety of vehicle models, such as sedans, pickup trucks, and sport utility vehicles. Hybrid electric vehicles, however, such as the Ford Escape, Toyota Prius, and Honda Insight, are not defined as AFVs under EPA 92 and, therefore, they are not covered by the Commission's Rule. According to staff at the Department of Energy, most AFVs are purchased by government and private fleets (*e.g.*, the U.S. Postal Service, transit bus authorities, United Parcel Service, and Federal Express).

⁵ Section 309.1(f) of the Rule defines a covered vehicle as 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. Further, section 309.1(t) of the Rule defines a new covered vehicle as a covered vehicle which has not been acquired by a consumer. The Rule also contains labeling requirements for used AFVs.

⁶ The factors include information concerning fuel type, operating costs, fuel availability, performance/convenience, and energy security/renewability.

⁷ The federal government agencies referenced are the Department of Energy ("DOE") and the National Highway Traffic Safety Administration ("NHTSA").

2. EPA's Emissions Certification Program

For many 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, carbon monoxide, nitrogen oxides, and particulate matter). These pollutants are released as exhaust from an automobile's tailpipe. In addition, hydrocarbons in vapor form are released due to the evaporation of fuel and during refueling. The standards apply to new motor vehicles manufactured in 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.

Pursuant to its authority under the 1990 Clean Air Act Amendments,⁸ EPA began issuing stricter emission standards for each model year as a way of reducing levels of the criteria air pollutants. One set of standards, the Tier 1 standards, was phased in beginning with the 1994 model year. The second set of standards, phased in beginning with the 2000 model year, establishes stricter standards as part of a new "clean-fuel vehicles" program.⁹ To qualify as a clean-fuel vehicle, a vehicle must meet one of five increasingly stringent standards. The 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"). The FTC Rule requires both sets of EPA emission standards to be disclosed because the Commission

⁸ Pub. L. 101-549, 104 Stat. 2399 (1990).

⁹ *See* 40 CFR 88 (1996).

determined that information concerning EPA emission certification levels provides a simple way of comparing different AFVs and, therefore, is useful to consumers considering AFV acquisitions.¹⁰ Since the FTC's Rule was promulgated, EPA has promulgated new tailpipe emission standards, called the "Tier 2" standards.¹¹ As a result, the EPA standards currently required to be disclosed on the Commission's AFV label are obsolete starting in the 2004 vehicle model year.

3. Ford's Petition

Ford's petition concerns EPA's Tier 2 tailpipe emission standards. These standards, as well as new, more stringent California Low Emission Vehicle II ("LEV II") standards discussed below, limit exhaust emissions of five pollutants: non-methane organic gases, carbon monoxide, nitrogen oxides, particulate matter, and formaldehyde.¹²

Tier 2 is a fleet averaging program, which is modeled after the California LEV II standards. Manufacturers can produce vehicles with emissions ranging from relatively dirty to zero, but the mix of vehicles a manufacturer sells each year must have average nitrogen oxide emissions below a specified value. The Tier 2 tailpipe emissions standards are structured into eleven certification levels of different stringency called "certification bins." Vehicle manufacturers will have a choice of certifying particular vehicles to any of the eleven bins.

¹⁰ 60 FR 26926, 26946 (May 19, 1995).

¹¹ 65 FR 6698 (Feb. 10, 2000). These standards regulate emissions from cars and light-duty trucks, which include sport utility vehicles, pick-up trucks, and minivans.

¹² According to staff at EPA, the Tier 2 program is designed to reduce the emissions most responsible for the ozone and particulate matter impact from vehicles - nitrogen oxides and non-methane organic gases consisting primarily of hydrocarbons and contributing to ambient volatile organic compounds, and hence urban smog.

Additionally, Ford noted that in October 1999, California adopted more stringent state tailpipe emission standards, called the “LEV II” standards, which are applicable starting in the 2004 vehicle model year. California did not adopt the same standards EPA established, nor did it adopt the same acronyms (bins) for its standards. California’s LEV II standards are denominated, in increasing order of stringency, LEV, ULEV, SULEV (“Super Ultra Low Emission Vehicle”), PZEV (“Partial Zero Emission Vehicle”), and ZEV. California’s LEV II standards affect passenger cars, light-duty trucks, and medium-duty vehicles.

Ford, and other manufacturers, are required to certify their AFVs to the more stringent EPA Tier 2 emission standards beginning in the 2004 model year. Ford petitioned the Commission to amend the Commission’s AFV label because it does not provide a means of conveying information about the new EPA Tier 2 standards. Ford specifically requested that the Commission amend the Rule to permit use of an AFV label that substitutes the eleven Tier 2 certification bins for the EPA emission standards that currently appear on the label. Ford also requested that the Commission amend the Rule to permit inclusion of boxes and acronyms for California LEV II emission standards on the Commission’s AFV label. Alternatively, Ford requested that the AFV label be amended to require disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. Ford’s petition raised important issues which led the Commission to initiate this proceeding and consider alternatives to existing requirements.¹³

Part B - The Notice of Proposed Rulemaking

¹³ The NPR describes Ford’s petition in greater detail. *See* 68 FR at 24670-71.

In response to Ford's petition, the Commission issued a proposed rule on May 8, 2003 (68 FR 24669) seeking comments on possible amendments to the AFV label.¹⁴ Specifically, the Commission sought comments on Ford's petition, the impact of EPA's new Tier 2 standards on the label, and four options the Commission proposed for amending the label. The Commission also posed specific questions about these options and broad questions as part of its overall regulatory review of existing alternative fuel and AFV labeling requirements.¹⁵ These four options the Commission proposed are summarized as follows:

1. Option No. 1

This option tracked Ford's first proposal. It would modify the AFV label by substituting EPA's Tier 2 emission standards for the EPA standards that currently are depicted on the label. The Tier 2 standards reflect the varying emissions levels and are divided into 11 categories or "bins." In the Option 1 label, these bins were depicted as a horizontal row of boxes with corresponding acronyms that were divided into 11 equal parts or "bins." This option would permit an additional, second row of boxes and acronyms that depict the California LEV II standards. If a vehicle has been certified to a California LEV II standard, this option would allow that fact to be noted with a mark in a box on the label, along with a caret inserted above the standard to which the vehicle has been certified. Option 1 also included a reference to EPA's new green vehicle guide website, and stated: "Emissions are an important factor. For more

¹⁴ This rulemaking proceeding has been conducted pursuant to section 553 of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, as was the original proceeding promulgating the Rule. This Final Rule is being published pursuant to the provisions of Part 1, Subpart C of the Commission's Rules of Practice, 16 CFR 1.21-1.26, and 5 U.S.C. 551 *et seq.*

¹⁵ See 68 FR at 24678.

information about how the vehicle you are considering compares to others, visit <http://www.epa.gov/greenvehicle>.”

2. Option No. 2

This option tracked Ford’s alternate proposal. It would require disclosure of the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permit disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. Unlike the existing label requirements, the label would not indicate where the vehicle’s emissions rating falls on the range of emission standards. For this option, the Commission also proposed providing a reference to EPA’s green vehicle guide website in part three of the label. This option would simplify the emissions disclosure section of the label and allow manufacturers to indicate their compliance with the EPA Tier 2 and California LEV II emission standards.

3. Option No. 3

This option deleted specific reference to EPA’s emissions standards on the front of the AFV label, and instead directed interested consumers to EPA’s green vehicle guide website. The Commission further proposed moving the information in parts two and three of the AFV label from the back to the front of the label.

4. Option No. 4

This option combined option number two and, in part, option number three. Specifically, the Commission proposed requiring disclosure of only the EPA Tier 2 emission standard, if any, to which the AFV has been certified, and permitting disclosure on the same label of the California LEV II emission standard, if any, to which the AFV has been certified. For this

option, the Commission also proposed providing a reference in part three of the label to EPA's green vehicle guide website.

5. Used AFVs

In the NPR, the Commission proposed adding the reference to EPA's green vehicle guide website to the Rule's label for used AFVs. This label does not contain the cruising range and emissions information required for new AFV labels. Part one discloses and explains specific factors consumers should consider before buying a used AFV. Part two lists specific toll-free telephone numbers for consumers who want to call DOE and NHTSA for more information about AFVs. Section 309.21 of the Rule further states that no marks or information other than that specified by the Rule may appear on the label.

Part C - Public Comments

In response to the May 8, 2003 proposed rule, the Commission received comments from (1) the Alliance of Automobile Manufacturers ("Alliance"), (2) the Association of International Automobile Manufacturers, Inc. ("AIAM"), (3) the National Automobile Dealers Association ("NADA"), and (4) the California Air Resources Board ("ARB") staff. The bulk of the comments addressed aspects of the AFV label and the options presented in the proposed rule. The comments focused on vehicle labeling and did not address the issue of labeling for alternative fuels in connection with the overall regulatory review of the Rule.

1. The Need for the Alternative Fueled Vehicle Labels

The Alliance urged the Commission to repeal the AFV label requirements arguing that the label is duplicative of information provided elsewhere. According to the Alliance, "fleet purchasers usually receive information on alternative fueled vehicles during government or fleet

conferences or seminars or are directly contacted by the manufacturer.” As a result, it contends, the label adds little or no value for most consumers looking to buy these vehicles. In addition, the Alliance indicated that consumer information such as cost, fuel type, fuel economy values, fuel costs, and emissions can be found on other labels such as the pricing label, fuel economy label, and the Vehicle Emissions Control Information (“VECI”) label, which are all displayed on the vehicle at the time of purchase.¹⁶ Similarly, NADA suggested that the FTC should require that the alternative fueled vehicle label be incorporated into the EPA fuel economy label. NADA believes that consumers would benefit from having all this information in one place.¹⁷ The other two commenters, AIAM and ARB, did not address whether the FTC label should be eliminated or moved.

2. Vehicle-Specific Emissions Information on the Label

AIAM supported the continued inclusion of vehicle-specific emissions information on the label (*i.e.*, Option 1). It stated that this information allows consumers to compare vehicles. For the label to have practical value, AIAM stressed that it needed to have substantive content. In its view, emissions information is relevant because consumers are usually interested in purchasing alternative fueled vehicles because they have lower pollution levels. AIAM also suggested that such emissions information may not be easily available to consumers if it is not included on the FTC label. According to AIAM, manufacturers also should have the option of displaying California and federal emissions information on the same label to avoid the need for

¹⁶ Alliance, cover letter and p. 1.

¹⁷ NADA, p. 2.

separate labels.¹⁸

The Alliance, on the other hand, preferred eliminating emissions information from the label (if the Commission decides to retain the label). Accordingly, the Alliance supported the adoption of a modified version of Option 3, which would eliminate specific emissions information. The Alliance indicated that, although some AFVs are certified to lower emissions standards than their gasoline equivalents, a comparison of the emissions certification for both types of vehicles is difficult without access to emissions information for both types of vehicles. In its view, however, informed purchasers seek emissions information prior to visiting the showroom. The Alliance also recommended a one-sided label which, in essence, is a condensed version of Option 3 in the Commission's proposed rule.

The Alliance raised three specific concerns about the retention of emissions information on the label. First, it contended the emission block proposed in Option 1 does not correctly describe the emission levels for California. Given the phase-in period for California, some models will be certified under LEV 1 program standards while others will be certified under LEV II program standards during 2004 to 2006. Accordingly, LEV1 information would have to be included on the label until 2006. In addition, the Alliance described other complications associated with permitting the California standards to be included on the label.¹⁹ In essence, it

¹⁸ AIAM, pp. 1-2.

¹⁹ According to the Alliance, the LEV I program LEV and ULEV emission standards differ based on each of seven different weight classes. The LEV I program also has LEV, ULEV, and SULEV standards that differ from the LEV I program standards. Finally, the Alliance contended that California requires manufacturers to sell vehicles certified to a Federal bin standard in cases where that bin standard is cleaner, on a NMOG + Nox basis, than the California standard to which the vehicles would have been certified in California. Alliance, p. 2.

asserted that listing all of the different California categories “becomes extremely cumbersome.”²⁰

Second, the Alliance indicated that the use of a bar graph to rank vehicles from “fewer emissions” to “more emissions” as proposed in Option 1 “becomes even more difficult and highly subjective for both the California and Federal standards.” In the Alliance’s view, the Federal bin standards do not necessarily provide an appropriate means to rank vehicles. For example, the Alliance claims that the bin 8, 9, and 10 NMOG standard is less stringent for certain truck classes. In addition, a vehicle certified to a lower bin standard might have more emissions than a vehicle certified to a higher bin standard if the vehicle certified to a higher bin standard meets a more stringent evaporative emission standard. Finally, the Alliance opposed the continued inclusion of specific emissions information on the label because, in its view, the regulations will need revisions in the future because EPA and CARB frequently change emission standards and add new standard categories.²¹ The Alliance also commented that as “emission standards for all vehicles have become more stringent, alternative fuels are no longer significantly cleaner than many gasoline fueled vehicles.”²²

NADA also supported the elimination of vehicle emissions information. It noted that the EPA 92 does not require the inclusion of such information. Acknowledging that the FTC concluded that emissions information may prove useful to consumers, NADA believes that the complexity of the Federal and California certification categories makes the emissions information impractical for the alternative fueled vehicle label. In addition, NADA observed

²⁰ Alliance, p. 1.

²¹ Id., p. 2.

²² Id., p. 4.

that emissions information is already found on under-hood mounted labels, in owners manuals, and on Federal government websites. Instead of emissions information, it suggested the inclusion of an “Environmental Impact” statement on the new vehicle label similar to that found on the used vehicle label.²³

The ARB staff did not support the inclusion of California emissions information on the label. It stated that California certified vehicles must already be labeled on a visible surface with a “Smog Index Label,” which provides a numerical rating of the relative cleanliness of the vehicle pursuant to Title 13, California Code of Regulations, Section 1965. In addition, ARB staff indicated that every California-certified vehicle must have a permanent under-hood label with the emission standard to which the vehicle is certified. ARB staff also stated that separate listings of California information outside the vehicle may be confusing to some consumers. ARB staff, like the Alliance, also observed that the State’s original requirements (LEV 1) would have to be permitted on labels because such standards will still be in effect during the phase-in period through the 2006 model year.²⁴

3. Additional Information on the Label

AIAM commented that the label should continue to display information regarding fuel type, operating costs, performance/convenience, fuel availability, and energy security/renewability. Most of this information is currently displayed on the back side of the label. AIAM stressed that the label must contain substantive content if it is to have any practical value.

Several commenters addressed whether certain websites should be referenced on the

²³ NADA, p. 4.

²⁴ ARB, p. 1.

label. The Alliance, AIAM, and NADA all indicated that the label should reference the DOE Alternative Fuels Vehicle Data Center website to point consumers to additional AFV information.²⁵ They did not support a reference to the EPA’s Green Vehicle Guide website. The Alliance suggested that it is difficult to locate the AFV information at the EPA website.²⁶ According to the Alliance, the EPA site covers more than alternative fueled vehicles and, as such, could be confusing for consumers interested only in AFV information.²⁷ The Alliance supported a reference to the National Highway Traffic Safety Administration’s (“NHTSA’s”) Auto Safety Hotline, as well as to the DOE National Alternative Fuels Hotline.

4. Label Size, Format, and Wording

The Alliance urged the Commission, if the label is retained, to revise section 309.20 to allow optional information such as part numbers, bar codes, and vehicle identification numbers or other markings. The inclusion of a part number would allow tracking and release of the label and would be consistent with ISO (International Organization of Standardization) procedures. As mentioned in this section, the Alliance proposed a consolidated one-sided label that would condense some of the information and would not contain emissions information or a reference to EPA’s website. The Alliance also suggested that the Commission retain the label size in the existing rule.²⁸

5. Used AFV Label

²⁵ Alliance, p. 5; AIAM, p. 2; and NADA, p. 2.

²⁶ Alliance, p. 5.

²⁷ NADA, p. 2.

²⁸ Id.

NADA suggested that the Commission modify the used vehicle label so that it fits on one page and takes into account changes made to the new vehicle label.²⁹

6. Effective Date and Phase-In Period

Both the Alliance and AIAM urged that Rule amendments become effective the first model year that begins 180 days after the final rule, with the option of earlier compliance.³⁰ They explained that at least 180 days is needed if the amendments change the size and format of the label. Also, by making the effective date coincide with the new model year, all vehicles in that year would display the same label format.³¹

Part D - Discussion of Comments and Final Rule Amendments

1. Continued Need for Label

The Energy Policy Act of 1992 directs the Commission to “establish uniform labeling” requirements for alternative fuels and alternative fueled vehicles.³² Although the Act allows the Commission to consolidate requirements with other labels, it does not give the Commission discretion to forgo such requirements altogether. The Commission understands that some commenters believe the label has limited utility because the AFV market is comprised primarily of fleet purchasers that generally have done extensive research before placing orders. The Act, however, does not give the Commission the authority to eliminate AFV labeling requirements completely.

²⁹ NADA, p. 2.

³⁰ Alliance, p.5; and AIAM, p. 2.

³¹ Alliance, p. 5.

³² 42 U.S.C. 13232(a).

In any event, the Commission believes that the AFV label continues to provide important guidance for consumers. Many consumers may be unfamiliar with important factors to consider when purchasing an AFV. The label provides information consumers can use to educate themselves on the characteristics of AFVs, to the extent they are available in showrooms.³³ Although some of this information can be found elsewhere on the vehicle, such information may be difficult to find (*e.g.*, emissions information on labels found under the hood). Other information, such as cruising range, is not available elsewhere on the vehicle. The Commission recognizes that most of these vehicles are purchased by fleets or other commercial buyers who may have little need for labels affixed to the vehicles. It is difficult, however, to predict the future buying patterns as new developments emerge over time.³⁴

In addition, as some of the comments observe, the EPA 92 allows the Commission to consolidate required disclosures for AFVs with other labels where appropriate.³⁵ The Commission has not identified any viable options for incorporating the information from the FTC label into other labels, such as the fuel economy label as suggested by NADA. In its 1995 final rule document, the Commission concluded that it would not be appropriate to consolidate information the Commission requires into existing labels because those labels do not have sufficient space to accommodate AFV disclosures. That document specifically referenced an

³³ According to DOE staff, AFV showroom availability for consumers is limited. DOE's alternative fuels data center website (www.afdc.doe.gov) also indicates that there are a limited number of dedicated AFV dealers and AFV fueling stations nationwide. Further, DOE staff estimate that in 2004, approximately 548,000 AFVs will be on the road. This represents less than one percent of on-road vehicles.

³⁴ For example, Honda has introduced a compressed natural gas vehicle (the Civic GX). *See, e.g.*, Washington Post, Aug. 29, 2003, p. E02.

³⁵ 42 U.S.C. 13232(a).

EPA statement that the fuel economy label was too “crowded” to incorporate additional AFV information.³⁶ The Commission has no evidence that the facts underlying its decision have changed.

2. Emissions on Label

The Commission continues to believe that AFV emissions information is important for consumers. The Commission has concluded, however, that the FTC-mandated label is no longer the best means of communicating vehicle-specific emissions information. Accordingly, the Commission is amending the Rule to require the inclusion of general guidance on emissions and information to link consumers to EPA’s online database (Green Vehicle Guide), which provides detailed information about the emissions characteristics of AFVs and other vehicles.

The Commission has decided to make this label change for several reasons. First, the changes to EPA and California standards increase the complexity of emission information that would have to be provided. The increased number of categories (or “bins”) caused by the new Tier 2 EPA standards would make the label information even denser. In addition, if the Commission allowed California emissions certification information to be included on the FTC label, it would further complicate effective presentation of EPA’s standards because California uses different terminology, and there is a two-year phase-in period for that State’s new requirements.

Second, the development of EPA’s website, and the reductions in the emissions from conventional fueled vehicles call into question the continued utility of specific emissions information on the FTC label. EPA’s green vehicle guide website presents emissions ratings on

³⁶ 97 FR at 26950.

a simple scale EPA developed for the website. In contrast, the emissions information on the FTC label does not provide consumers with an easy way to compare the emissions characteristics of AFVs with conventional fuel vehicles because conventional vehicles do not have a similar label on the outside of the vehicle.³⁷ In the 1995 rulemaking proceeding, the Commission concluded that information relating to emissions of specific AFVs would be useful on the label to aid consumers choosing or deciding whether to replace an existing vehicle with an alternative fueled vehicle. The Commission also cited to DOE materials that suggested that alternative fuels produce lower amounts of air toxics and ozone forming emissions than gasoline. 60 FR at 26946.

Since the 1995 rulemaking, however, the emissions characteristics of both AFVs and gasoline fueled vehicles have changed. As discussed in Part A, EPA promulgated more stringent emissions standards for all vehicles in 2000.³⁸ According to EPA, these new standards substantially improve the emissions characteristics of all vehicles, including gasoline fueled vehicles.³⁹ Given these developments, the Commission believes it is appropriate to reconsider the current emissions-related requirements on the label. At its Alternative Fuels Data Center website, DOE explains that the emissions characteristics of alternative fuels continue to provide some advantages over gasoline. At the same time, certain benefits from the use of alternative

³⁷ As NADA pointed out, emissions information for both conventional fueled vehicles and AFVs is available on under-hood mounted labels. The Commission recognizes, however, that these under the hood emissions labels may be difficult for the average consumer to locate or understand given the limited information provided on the label.

³⁸ See 65 FR 6698.

³⁹ See, e.g., “EPA’s Program for Cleaner Vehicles and Cleaner Gasoline,” Regulatory Announcement (EPA420-F-99-051).

fuels may be partially offset by other considerations. For instance, according to DOE, compressed natural gas (CNG) vehicles can demonstrate a reduction in ozone-forming emissions (CO and Nox) compared to some conventional fuels but may also increase hydrocarbon emissions.⁴⁰ The emissions ratings found in EPA's Green Vehicle database (at www.epa.gov/greenvehicle) indicate that alternative fuel vehicles do not consistently yield the best emissions ratings or necessarily yield better emissions scores than their gasoline counterparts in the same vehicle class. The Alliance made a similar observation in its comments stating that alternative fuels are "no longer significantly cleaner than many gasoline fueled vehicles."⁴¹

The current FTC label does not allow consumers to gauge the significance of the emissions information in the broader context (*i.e.*, when compared to all vehicles on the market, conventional and alternative fueled vehicles). Such comparative information is readily available, however, through the EPA website. The website provides a better, more comprehensive means to provide consumers with complex emissions information about most, if not all, vehicles on the market (excepting heavy vehicles). It also provides a more detailed explanation of the data than is possible on a label on AFVs, which, as noted above, have limited availability in showrooms. The Commission therefore concludes that it is preferable to link consumers to EPA's site than to continue to require vehicle specific emissions information on the label. This will provide a better means for consumers to examine the various costs and benefits of purchasing an AFV than is provided by existing label requirements when no comparable information appears on the

⁴⁰ See DOE's Alternative Fuels Data Center (<http://www.afdc.doe/>) (visited Aug. 28, 2003).

⁴¹Alliance, p. 4.

labels for conventional fueled vehicles at this time.

Third, as discussed in the proposed rule, the emissions information on the current label is based on standards that change over time. Any label revisions made to reflect the new Tier 2 standards also may become obsolete in the future, necessitating further rulemaking proceedings. The frequency of such revisions is difficult to predict but the Commission believes that referencing the EPA website will more effectively help consumers who want this information.

3. Final Label - Content, Size and Format

After considering the comments, the Commission has decided to follow Option 3 as described in the proposed rule with several modifications.⁴² Under these amendments, the label no longer contains a specific reference to EPA's emissions standards, and instead contains a box with a check mark labeled "Emissions" and directs interested consumers to EPA's green vehicle guide website. As discussed in the proposed rule, information on the back of the old label has now been moved to the front. This eliminates the need for a two-sided label and this is likely to reduce compliance costs and the clutter caused by a two-sided label. The label will continue to list specific factors consumers should consider before buying an AFV, as well as referrals to DOE, EPA, and NHTSA for more information about AFVs. In addition, the Commission has added a reference to the joint EPA and DOE fuel economy website (www.fueleconomy.gov), which provides detailed information on gas mileage and cruising range for conventional vehicles and AFVs. The Commission also is amending the Rule to allow the inclusion of part numbers, bar codes, and vehicle identification numbers. This will allow manufacturers to save costs by

⁴² The Commission has decided to adopt the 7 by 7.5 inch size proposed in Option 3 to accommodate the additional information required on the one-sided label.

incorporating this information on the label. It also may aid consumers by providing some specific identifying information for the vehicle to which the label is attached.

4. Used Label

In response to NADA's suggestion, the Commission has modified the used vehicle label so that it fits on one page and takes into account changes made to the new vehicle label. The used label is now Figure 6 of Appendix A.

5. Phase-In Period

The amended label will be mandatory for all covered AFVs produced 180 days after publication of this final rule. The Commission believes that this will give manufacturers ample time to label their vehicles and will ensure that all vehicles launched in the 2006 model year will display the amended label. The Commission recognizes that these amendments, coupled with the new EPA emissions standards, may make it difficult for manufacturers to use labels that are compliant with FTC requirements (which reference old EPA standards) even though their vehicles are being certified to new EPA standards. In light of this, the Commission expects that manufacturers will begin using the amended label as soon as possible. In the meantime, the Commission does not plan to take enforcement action against manufacturers who have sought, in good faith, to display accurate emissions information on the FTC label.

Part E - Regulatory Review

In accordance with its regulatory review schedule, the Commission has conducted a regulatory review of the Rule during this rulemaking proceeding. In the NPR, the Commission sought information about the costs and benefits of the entire Rule and its regulatory and economic impact. Only one commenter directly addressed the Commission's regulatory review

questions. As discussed in Part C, the Alliance stated that the alternative fuel vehicle label has outlived its usefulness and is no longer needed. The Rule has limited benefit, according to the Alliance, because very few buyers purchase the vehicles from showroom floors. In addition, the costs of the label must be passed on to purchasers. The Alliance also indicated that the primary way to reduce the costs of compliance would be to delete the label requirement.⁴³

As discussed in more detail in Part D, the Act does not give the Commission the authority to eliminate labeling requirements altogether. In the absence of viable means to incorporate requirements into other labels, the Commission has determined to follow the directive in the Act by continuing to require an FTC label for AFV's. In addition, the Commission's label provides consumers with information they can use to educate themselves on the characteristics of the vehicles they are considering.

Part F - Regulatory Analysis

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has determined that the amendments to the Rule will not have such effects on the national economy or on covered businesses or consumers.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-12, requires that the agency

⁴³ Alliance, p. 4.

conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission has concluded that the proposed Rule amendments will not affect a substantial number of small entities because information the Commission currently possesses indicates that relatively few companies currently manufacture, convert, or sell AFVs. Of those that manufacture, convert, or sell AFVs, most are not “small entities,” as that term is defined either in section 601 of RFA, 5 U.S.C. 601(6), or applicable regulations of the Small Business Administration, 13 CFR Part 121. Accordingly, the proposed amendments would not appear to have a significant economic impact upon such small entities. Specifically, the AFV label amendments, which will reduce the number of emission standard disclosures, add references to EPA’s green vehicle guide and the DOE/EPA fuel economy website, and convert a two-sided label to a one-sided one should benefit both small and large businesses. The amendments also should not have a significant or disproportionate impact on the labeling costs of small AFV manufacturers.

Based on available information, therefore, the Commission certifies that amending the Rule will not have a significant economic impact on a substantial number of small businesses.

Part G - Paperwork Reduction Act

The Rule contains various information collection requirements for which the

Commission has obtained clearance under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Office of Management and Budget (“OMB”) Control Number 3084-0094. As noted above, Section 309.20 of the Rule provides that before offering a new covered AFV for acquisition to consumers, manufacturers must affix on a visible surface of each such vehicle a new vehicle label consisting of three parts. Part one must disclose objective information about the estimated cruising range and environmental impact of the particular AFV.

The Commission has concluded that the amendments would not have an overall effect on the paperwork burden associated with the aforementioned paperwork requirements. Consequently, there are no additional “collection of information” requirements included in the amendments to submit to OMB for clearance under the Paperwork Reduction Act. The Commission’s amendments to modify disclosure of emissions information will decrease the Rule’s paperwork burden. Further, adding specifically described references on the label to EPA’s green vehicle guide and fuel economy websites will not significantly increase the Rule’s paperwork burden, and likely will be offset by decreases in burden associated with the repeal of specific emissions disclosures.⁴⁴

Thus, the Commission has concluded that the proposed amendments would not increase, or otherwise affect the paperwork burden associated with compliance with the Rule.

List of Subjects in 16 CFR Part 309

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

⁴⁴ The public disclosure of information originally supplied by the federal government to the recipient for the purpose of disclosure to the public is not included within the definition of “collection of information” in the Paperwork Reduction Act, 5 CFR 1320.3(c)(2).

Accordingly, 16 CFR Part 309 is amended as follows:

Part 309 - [AMENDED]

1. The authority citation for Part 309 continues to read as follows:

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

2. Section 309.20 is revised to read as follows:

§ 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 ensure that new vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

(b) *Layout.* Figures 4, 5, and 5.1 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 one-sided and rectangular in shape measuring 7 inches (17.78 cm) wide and 7-1/2 inches (19.05 cm) long. Figure 4 of appendix A represents the prototype for the labels for dedicated vehicles. Figures 5 and 5.1 of appendix A represent the prototype 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. No marks or information other than that specified in

this subpart shall appear on this label except that the label may include part numbers, bar codes, and vehicle identification numbers consistent with Figures 4, 5, and 5.1.

(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, and 5.1 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) *Content* (1) Headlines and text, as illustrated in Figures 4, 5, and 5.1 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. Section 309.21 is revised to read as follows:

Sec. 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.* Figure 6 of appendix A is the prototype label that demonstrates the proper layout. All positioning, spacing, type size, and line widths should be similar to and consistent with the prototype label. The label required by this section is one-sided and rectangular in shape measuring 7 inches (17.78 cm) in width and 7-1/2 inches (19.05 cm) in height. No marks or

information other than that specified in this subpart shall appear on this label, except that the label may include part numbers, bar codes, and vehicle identification numbers consistent with Figure 6.

(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 label (Figure 6 of appendix A). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototype 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 Figure 6 of appendix A, are standard for all labels.

4. Appendix A to Part 309 is amended by removing Figures 7, and 8 and revising Figures 4, 5, 5.1, and 6 to read as follows:

APPENDIX A TO PART 309 - FIGURES FOR PART 309

* * * * *

[INSERT GRAPHICS HERE]

By direction of the Commission.

Donald S. Clark

Secretary