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FEDERAL TRADE COMMISSION

16 CFR Part 309

[RIN 3084-AB21]

Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule.

SUMMARY: The Commission amends the Alternative Fuels Rule (“Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles”) to consolidate the FTC’s alternative fueled vehicle (AFV) labels with new fuel economy labels required by the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA). The amendments also eliminate labeling requirements for used AFV labels.

DATES: The amendments published in this document will become effective on May 31, 2013.

ADDRESSES: Requests for copies of this document should be sent to: Public Records Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. This document, and public records related to the FTC’s regulatory review, are also available at that address and at www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room M-8102B, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Policy Act of 1992 (EPA 92 or Act) established federal programs to encourage

the development of alternative fuels and alternative fueled vehicles (AFVs). Section 406(a) of the Act directed the Commission to establish uniform labeling requirements for alternative fuels and AFVs. Under the Act, such labels must provide “appropriate information with respect to costs and benefits [of alternative fuels and AFVs], so as to reasonably enable the consumer to make choices and comparisons.”¹ In addition, the required labels must be “simple and, where appropriate, consolidated with other labels providing information to the consumer.”²

In response to EPAct 92, the Commission published the Alternative Fuels Rule in 1995.³ The Rule requires labels on new and used AFVs that run on liquid and non-liquid fuels, such as ethanol and other alcohols, including E85 ethanol-gasoline mixtures, natural gas, liquefied petroleum gas, hydrogen, coal-derived liquid fuels, fuels derived from biological materials (*e.g.*, 100% biodiesel), and electricity. The labels for new AFVs disclose the vehicle’s estimated driving range (*i.e.*, the travel distance on a single charge or tank of fuel), general factors consumers should consider before buying an AFV, and toll-free telephone numbers and websites for additional information from the Department of Energy (DOE) and NHTSA.⁴ Labels for used AFVs contain only the general buying factors and DOE/NHTSA contact information.⁵ The Rule also requires labels on fuel dispensers for non-liquid alternative fuels, such as electricity, compressed natural gas, and hydrogen. The labels for electricity

¹ 42 U.S.C. 13232(a).

² *Id.*

³ 60 FR 26926 (May 19, 1995).

⁴ The Rule requires manufacturers to have a reasonable basis for the vehicle cruising range, and, for certain AFVs, specifies the test method for calculating that range. 16 CFR 309.22.

⁵ The general factors listed on the current label include fuel type, operating costs, fuel availability, performance, convenience, energy security, energy renewability, and emissions. See 16 CFR part 309, Appendix A.

provide the charging system's kilowatt capacity, voltage, and other related information. The labels for other non-liquid fuels disclose the fuel's commonly used name and principal component (expressed as a percentage).

II. Regulatory Review

In a 2011 Advance Notice of Proposed Rulemaking (ANPR), the Commission initiated its regulatory review of the Alternative Fuels Rule to, among other things, ensure consistency between FTC-required vehicle labels and EPA (and NHTSA) fuel economy labeling requirements.⁶ Following the ANPR, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comment on the consolidation of FTC and EPA vehicle labels for all new AFVs and the elimination of FTC labels for used AFVs.⁷ The Commission did not propose to change other parts of the Rule, such as provisions for alternative fuel ratings and dispenser labels. The Commission received seven comments in response.⁸

III. Final Rule

After reviewing the comments, the Commission issues final amendments to consolidate FTC and EPA label requirements and discontinue used vehicle labels, consistent with the NPRM's

⁶ 76 FR 31513 (June 1, 2011) (ANPR on Alternative Fuels Rule). In 2011, EPA completed revisions to its fuel economy labeling requirements, which, among other things, addressed labels for AFVs not specifically addressed in the past EPA requirements. *See* 76 FR 39478 (July 6, 2011).

⁷ 77 FR 36423 (June 19, 2012) (NPRM on Alternative Fuels Rule).

⁸ The Commission received the following comments: Alliance of Automobile Manufacturers (# 560902-00006); American Public Gas Association (# 560902-00008); Baker, Michael (# 560902-00005); Clean Energy Fuels Corp. (# 560902-00011); General Motors Company (GM) (# 560902-00004); Johnston, Jenna (# 560902-00002); National Automobile Dealers Association (NADA) (# 560902-00010); NGVAmerica (# 560902-00009); and the Association of Global Automakers, Inc. (# 560902-00007). The comments are available at: <http://www.ftc.gov/os/comments/alterfuelsnprm/index.shtm>.

proposals.

A. EPA and NHTSA Fuel Economy Labels

Background: In the NPRM, the Commission proposed requiring manufacturers to use EPA’s fuel economy label for their new AFVs, in lieu of existing FTC label requirements. The Commission explained that the proposal would eliminate duplicative labels and reduce manufacturer burden without negatively affecting consumers. EPA fuel economy labels disclose more information than the FTC-required vehicle labels and direct consumers to the U.S. government’s fuel economy website (www.fueleconomy.gov), which provides comprehensive comparative information for both conventional and alternative fuel vehicles.

The NPRM also proposed a specific requirement related to driving range disclosures for flexible fuel vehicles (FFVs) (*i.e.*, dual-fueled vehicles). In contrast to the FTC labels, the EPA requirements allow, but do not mandate, driving range disclosures for FFV’s. To ensure the label provides vehicle buyers with comparative driving range performance for both alternative fuel and conventional gasoline, the Commission proposed to require manufacturers to use the version of the EPA FFV label that discloses the vehicle’s alternative fuel and gasoline driving range. The Commission pointed to significant differences between alternative fuel and gasoline driving ranges to support this proposal.⁹

Comments: The commenters supported the consolidation of existing requirements into a single federal fuel economy label.¹⁰ For example, the Alliance explained that a universal government label

⁹ In the NPRM (77 FR at 36424), the Commission also proposed to add three categories of vehicles (hydrogen fuel cell, advanced lean burn, and hybrid motor vehicles) to the definition of “alternative fuel vehicle,” consistent with statutory amendments found in National Defense Authorization Act for Fiscal Year 2008. 42 U.S.C. 13211(3)(B).

¹⁰ See AGPA, Alliance, GM, and NADA comments.

will allow “apples-to-apples” vehicle comparisons and eliminate potential confusion from two, sometimes-conflicting labels. APGA added that the proposal appropriately discards existing “inefficient, costly, and duplicative” requirements. NADA noted that separate FTC labels will be unnecessary and potentially confusing given the presence of the EPA labels on 2013 vehicles.¹¹ Finally, in the Alliance’s view, the vehicle-specific information on the EPA labels will be more helpful to consumers than the current FTC label content.¹²

The commenters also supported the Commission’s proposal to use the version of the EPA FFV label that discloses the vehicle’s alternative fuel and gasoline driving ranges.¹³ Clean Energy noted that the absence of an alternative fuel range estimate decreases confidence in AFVs, and creates an uneven playing field in favor of underperforming AFVs with shorter driving ranges. Global Automakers supported the proposal but also urged the Commission to clarify whether a manufacturer will have the discretion to use the old FTC label if it chooses to omit such information from the EPA label.

Though the comments generally supported the proposal, two commenters raised concerns about the emissions information on labels for electric vehicles.¹⁴ Specifically, these commenters argued that the current EPA label focuses solely on the tailpipe emissions and thus, for electric vehicles (EVs), ignores the potential “upstream emissions” from fossil-fuel electric plants. Although EPA and NHTSA

¹¹ The comments also supported the Commission’s proposal to rely on the EPA label for hydrogen fuel cell, advanced lean burn, and hybrid vehicles. *See* NADA comments.

¹² *See also* GM comments.

¹³ *See, e.g.,* NADA, AGPA, and the Alliance comments.

¹⁴ *See* AGPA, Clean Energy comments.

provide such EV-related emissions online, the commenters questioned whether consumers visit those websites. To augment the online information, they recommended requiring these disclosures on the label to help consumers make fair emissions comparisons between various AFV technologies.¹⁵ In their view, such changes would encourage a level playing field and allow all AFVs to compete in the marketplace.¹⁶

Discussion: As proposed in the NPRM, the final rule consolidates the FTC labels with EPA's and requires driving range disclosures on the EPA labels for FFVs.¹⁷ The consolidation of federal requirements into a single AFV fuel economy label will help consumers by eliminating confusion caused from overlapping or inconsistent disclosures. It will also reduce industry burden by removing largely duplicative, and sometimes contradictory, labeling requirements.¹⁸ Generally, the EPA labels

¹⁵ APGA also raised concerns about the marketing practices of companies that manufacture "zero emission vehicles." It requested that the FTC work with the EPA and NHTSA to restrain manufacturers from making inaccurate and misleading marketing claims. The Commission may consider these and other advertising issues as part of its ongoing review of its "Guide Concerning Fuel Economy Advertising for New Automobiles," 16 CFR part 259. See 76 FR 41467 (June 1, 2011) (notice postponing amendments to the Guide pending resolution of the Alternative Fuels Rule review).

¹⁶ Finally, Global Automakers encouraged the Commission to finalize the proposed changes in advance of the 2014 model year, which can begin as early as January 2, 2013. To address electric vehicles introduced pending completion of this rulemaking, the Commission issued a policy stating that it will not enforce current FTC labeling requirements for any electric vehicle bearing an EPA-mandated fuel economy label and will encourage vehicle manufacturers to use the EPA label in lieu of the FTC label. See FTC enforcement policy on driving range numbers for electric vehicles at <http://www.ftc.gov/opa/2011/05/afr.shtm>.

¹⁷ The amendments are consistent with the EPA Act 92, which gives the Commission discretion to consolidate its requirements "with other labels providing information to the consumer." 42 U.S.C. 13232(a). In addition, the Energy and Policy Conservation Act, 42 U.S.C. 32908(e)(2), authorizes the FTC to enforce the EPA automobile label requirements issued pursuant to 49 U.S.C. 32908(b).

¹⁸ For example, consolidation will eliminate current inconsistencies between cruising range values on FTC and EPA electric vehicle labels. See FTC enforcement policy on driving range numbers for electric vehicles at <http://www.ftc.gov/opa/2011/05/afr.shtm>.

provide more vehicle-specific information than the current FTC labels and direct consumers to additional data at www.fueleconomy.gov. This website provides comprehensive, comparative information for conventional vehicles and AFVs. Because the EPA fuel economy labels apply to all AFVs subject to the FTC's labeling requirements, these amendments eliminate separate FTC label requirements for all AFV types.¹⁹ In addition, as proposed in the NPRM, the final rule requires manufacturers to use the EPA fuel economy label for FFVs that provides comparative driving range performance for both alternative fuel and conventional gasoline in lieu of existing FTC requirements. As commenters explained, this will ensure that the label provides vehicle buyers with comparative driving range performance for both alternative fuel and conventional gasoline.²⁰

Finally, in response to concerns about EPA (and FTC) electric vehicle labels, the Commission is not addressing these issues now given its decision to eliminate its own labels in lieu of EPA's fuel economy labels. The Commission recommends that stakeholders continue to raise their concerns with EPA and NHTSA, so that those agencies can consider such matters in future revisions to the fuel economy label. The Commission's staff will continue to coordinate with EPA, NHTSA, and DOE on these and other AFV labeling issues.

B. Labels for Used AFVs

¹⁹ Although EPA regulations (40 CFR part 600) require labeling for all vehicles covered under the FTC's Alternative Fuels Rule, current EPA rules do not contain a specific label for several vehicle types not generally available to individual consumers such as those fueled by liquefied petroleum gas, coal-derived liquid fuels, or fuels (other than alcohol) derived from biological materials. *See* 76 FR 39478 (July 6, 2011). However, EPA has authority to require labels for such vehicles, which are also covered by FTC's requirements.

²⁰ As proposed in the NPRM, the amendments also add the statutory definitions for "lean burn," "hybrid," and "fuel cell" vehicles to the Rule. The National Defense Authorization Act for Fiscal Year 2008 added these terms to the definition of "alternative fuel vehicle" in the statute. 42 U.S.C. 13211(3)(B). No comments opposed this change.

Background: In the ANPR, the Commission proposed eliminating the Rule’s labeling requirements for used AFVs. Under the current FTC alternative fuel requirements, used AFV dealers must post labels containing general tips as well as references to government telephone numbers and websites. However, these labels do not disclose vehicle-specific information, such as driving range. Noting that these labels provide limited information and may impose increased burdens on used car dealers as the AFV market expands, the Commission proposed to eliminate the requirement for a AFV label for used vehicles. The Commission also sought comment on whether fuel economy information (e.g., a reference to *www.fueleconomy.gov*) should appear on the FTC’s Used Car Rule Buyers Guide, in the absence of a separate used AFV label.

Comments: The commenters supported the Commission’s proposal to eliminate the AFV label for used vehicles. The Alliance and NADA argued the benefits of a used vehicle label, which contains only generic consumer tips, are small compared to the burdens imposed on dealers tasked with purchasing, installing, and maintaining such labels.²¹ NADA, which noted that the EPA Act 92 does not mandate used vehicle labels, also supported elimination because *www.fueleconomy.gov*, which did not exist when the FTC first issued the Rule, provides extensive fuel-related information for all used vehicles dating back to 1984.²² NADA also argued that the used AFV label requirement is unfair to used car dealers because the requirement does not cover private sales, which account for about half of all used vehicle transactions.

Discussion: Consistent with commenter suggestions, the final rule eliminates the used vehicle

²¹ Global Automakers and GM provided similar comments.

²² Notwithstanding the usefulness of *www.fueleconomy.gov*, NADA cautioned against including a reference to that website on the Used Car Rule Buyers Guide, arguing such information could confuse consumers given the Buyers Guide’s focus on warranty information.

label requirement. Conditions have changed since the Commission originally issued the Rule in 1995. Consumers can now access detailed used AFV information online at www.fueleconomy.gov, including vehicle-specific fuel economy, energy consumption, and environmental data. This online source provides much more information than the general factors currently required by the Rule for used AFVs, without imposing burdens on used car dealers, many of whom are small businesses. Accordingly, the Commission concludes that the used vehicle label is not necessary to “reasonably enable the consumer to make choices and comparisons” as contemplated by the statute.²³ In addition, without further information about the efficacy of including fuel economy information on the FTC’s Used Car Rule Buyers Guide, the Commission does not propose changing that label at this time.

C. Alternative Fuel Labeling

As proposed in the NPRM, the final rule retains the Rule’s labeling requirements for non-liquid alternative fuel requirements. Several comments supported the current requirements during this proceeding. No commenters proposed changes.²⁴

IV. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute “information collection requirements” as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule’s existing information collection requirements through April 30, 2016 (OMB Control No. 3084-0094). The final amendments would reduce the burdens associated with the Rule by eliminating FTC labeling requirements for vehicles subject to EPA’s fuel economy labeling requirements.

In past PRA analyses, FTC staff has estimated the Rule applies to 1,121,153 alternative fueled

²³ 42 U.S.C. 13232(a).

²⁴ See Alliance comments and 77 FR 36426 (discussion of comments on ANPR).

vehicles each year, which mostly include flex-fuel vehicles. The staff estimated a two-minute average time to comply with the posting requirements for each of the approximately 1,121,153 new and used AFVs made available each year, for a total of 37,371 hours. The staff also estimated that the Rule's vehicle labeling requirements apply to an estimated 1,121,153 new and used AFVs each year at 38 cents for each label (per industry sources). Accordingly, the annual non-labor AFV labeling cost is estimated to be \$426,038 ($\$0.38 \times 1,121,153$). The final rule will eliminate the Rule's burden for all these vehicles. Accordingly, FTC staff is submitting a related clearance request to OMB to adjust these previously submitted burden totals.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule and a Final Regulatory Flexibility Analysis (FRFA), with the final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.

The Commission does not anticipate that the amendments will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some affected entities may qualify as small businesses under the relevant thresholds. Because the amendments will lead to a modest burden reduction, however, the Commission does not expect that the economic impact of the Rule will be significant.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. Although the Commission certifies under the RFA that the Rule will not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

To provide clear disclosures to consumers and reduce labeling burden, the final rule directs manufacturers to use EPA fuel economy labels in lieu of the existing FTC label. Section 406(a) of EPC Act 92 directs the Commission to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and AFVs.

B. Issues Raised by Comments in Response to the IRFA

No comments raised concerns with the impacts of the amendments on small businesses. By consolidating FTC labels with EPA's labels for new AFVs and eliminating the used vehicle label requirement, the amendments are likely to reduce impacts on small businesses.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, automobile manufacturers qualify as small businesses if they have fewer than 1,000 employees. The Commission estimates that approximately six vehicle manufacturers or commercial importers subject to the Rule qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule does not impose any additional reporting, recordkeeping, or compliance requirements. Rather, it eliminates FTC labeling requirements for certain vehicles. The classes of small entities affected by the Rule include fuel distributors, vehicle manufacturers, and fuel retailers.

E. Description of Steps Taken To Minimize Significant Economic Impact, If Any, on Small Entities, Including Alternatives

As discussed in the Paperwork Reduction Act analysis of this Notice, the final rule eliminates duplicative labeling burden for alternative fueled vehicles.

Final Rule

List of Subjects in 16 CFR Part 309

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

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter C of the Code of Federal Regulations, part 309, as follows:

PART 309 - LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

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

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

2. In § 309.1, revise paragraph (f)(2)(ii), add paragraph (f)(3), remove paragraphs (dd), (ee), and (ff), and redesignate (gg) as (dd).

The revision and addition read as follows:

§ 309.1 Definitions.

* * * * *

(f) * * *

(2) * * *

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

(3) Any vehicle that is -

(i) A new qualified fuel cell motor vehicle (as defined in 26 U.S.C. 30B(b)(3));

(ii) A new advanced lean burn technology motor vehicle (as defined in 26 U.S.C. 30B(c)(3));

(iii) A new qualified hybrid motor vehicle (as defined in 26 U.S.C. 30B(d)(3)); or

(iv) Any other type of vehicle that the Administrator of the Environmental Protection Agency demonstrates to the Secretary would achieve a significant reduction in petroleum consumption.

* * * * *

3. Revise § 309.20 to read as follows:

§ 309.20 Labeling requirements for new covered vehicles.

(a) 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, fuel economy labels as required by 40 CFR part 600. For dual fueled vehicles, such labels must include driving range information for alternative fuel and gasoline operation and be otherwise consistent with provisions in 40 CFR part 600.

(b) 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 fuel economy label prepared pursuant to 40 CFR part 600 and ensure that new fuel economy vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

§§ 309.21 and 309.22 [Removed]

4. Remove §§ 309.21 and 309.22.

§ 309.23 [Redesignated as § 309.21]

5. Redesignate § 309.23 as § 309.21.

Appendix A to part 309 [Amended]

6. In Appendix A to part 309, remove figures 4, 5, 5.1, and 6.

By direction of the Commission.

Donald S. Clark
Secretary.

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