

RECENT DEVELOPMENT

COMPARATIVE ADVANTAGE: NEW ALTERNATIVE FUEL VEHICLE LABELING REQUIREMENTS

I. SUMMARY

On September 14, 2004, the Federal Trade Commission (FTC) adopted significantly revised labeling requirements for alternative fuels and alternative fuel vehicles.¹ Previously, vehicle-specific emissions information was required on labels affixed to a visible portion of each vehicle for sale. That information has been replaced by a reference to the Environmental Protection Agency's (EPA) Green Vehicle Guide website.² The EPA's website now provides consumers with detailed information regarding vehicle emissions.³ The website lists the vehicle model, engine specifications, sales area, air pollution score, fuel economy, and greenhouse gas score for each vehicle available for sale in the United States.⁴ The new label and website are important sources of comparative information to consumers, allowing them to consider environmental information to make better vehicle purchase decisions.

II. BACKGROUND

The FTC opted to simplify the label, largely because of the complexity inherent in interpreting emissions standards adopted

1. Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles, 16 C.F.R. § 309.1–.23 (2004) (became effective on March 31, 2005).

2. Env'tl. Prot. Agency, *Green Vehicle Guide*, <http://www.epa.gov/greenvehicles> (last visited Feb. 26, 2005).

3. *Id.* See All Vehicles Sorted by Air Pollution Score for Model Year 2005, at <http://www.epa.gov/greenvehicles/all-rank-05.htm>; Look up a Vehicle, at <http://www.epa.gov/greenvehicles/select.htm>.

4. *Id.*

by both the EPA and California. In October of 1999, California adopted more stringent emissions standards than the EPA and established its own criteria and categories of vehicles for its own vehicle labels. These categories did not match the EPA's categories for vehicle emissions. Ford and other car manufacturers then expressed concern that the California labels did not provide information about the new, more stringent EPA Tier 2 standards.⁵

In 1992, Congress passed the Energy Policy Act, which included a direction to the EPA to work with the FTC in establishing uniform labeling requirements for alternative fuels and alternative fuel vehicles.⁶ Alternative fuels include methanol, ethanol, electricity, hydrogen, and other fuels that are not substantially petroleum as determined by the Secretary of Energy.⁷ Alternative fuel vehicles, therefore, would include all vehicles that use alternative fuels.⁸ The purpose of the requirement was to increase the energy security of the United States through environmentally-friendly means. By educating consumers, Congress attempted to decrease the nation's dependence on foreign oil and to encourage alternative fuel development. The 1992 labeling requirement mandated the use of three different labels that gave: (1) detailed information concerning emissions of that fuel or vehicle; (2) disclosure of specific factors consumers should be aware of when considering the purchase of an alternative fuel or vehicle; and (3) a list of toll-free telephone numbers that consumers could call for further information.

Under the Clean Air Act Amendments of 1990 (CAAA),⁹ the EPA instituted stricter emissions standards for each successive model year in order to reduce pollutants specified as "criteria air pollutants" (i.e., ozone, carbon monoxide, nitrogen oxides, and

5. 68 Fed. Reg. 24,671 (May 8, 2003). Ford requested that the labels be changed to require the disclosure of only the Tier 2 emission standard to which the vehicle was certified and permit disclosure on the same label of the vehicle's California certification or the inclusion of boxes and acronyms for California's emission standards so consumers would be less confused in making their purchase decision.

6. Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992) (relevant part codified at 42 U.S.C. § 13232 (2004)).

7. 16 C.F.R. § 309.1(c) (2005) (defining alternative fuels as denatured ethanol; other alcohols; methanol; mixtures containing eighty-five percent or more by volume of denatured ethanol, other alcohols, or methanol 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 solar power; and any other fuels determined by the Secretary of the Department of Energy by rule that is not substantially petroleum and yields substantial environmental and energy security benefits).

8. *Id.*

9. Clean Air Act Amendments of 1990, Pub. L. 101-549, 104 Stat. 2399 (1990).

particulate matter).¹⁰ CAAA established a Tier 1 standard for all vehicles, beginning with the 1994 model year, and a much more stringent Tier 2 standard beginning with the 2000 model year. Tier 2 standards specifically referenced a category of vehicles that would be part of the Clean Fuel Vehicles (CFV) program. The CFV program required vehicles to meet the stringent federal standards set out in the Clean Air Act through the development of cleaner burning vehicles or clean alternative fuels to qualify as a clean-fuel vehicle.¹¹

The California label gave rise to consumer confusion when consumers were not provided information on EPA Tier 2 standards, especially when the corresponding category could not be identified with California's categories. Specifically, consumers would not be able to match the EPA standards to California's categories. In other states, only the EPA categories and standards were used on labels. However, consumers in California could become confused and believe that a vehicle was not as clean as the Tier 2 standard which would be misinterpreted against its California counterpart with a different name and which was not explained to the consumer. Beginning in the 2004 model year, the standards on the labels became obsolete when the EPA promulgated new tailpipe emissions standards.¹²

III. OPTIONS

In response to Ford's petition to change the labeling requirements, the FTC began rulemaking proceedings to change the existing alternative fuels and vehicle labels. The FTC agreed with Ford that changes were necessary to provide the most information to consumers in the least confusing manner. The FTC presented four options for public comment and consideration. The first option was Ford's proposal to replace the existing EPA standards on the label with the new Tier 2 standards and categories for alternative fuel vehicles.¹³ This option would allow the insertion of a second row of categories

10. 42 U.S.C. § 7521 (2004).

11. See 42 U.S.C. §§ 7581–7590 (2004); 40 C.F.R. § 88.101-94–.313-93 (2004) (dividing the federal standards to qualify as a clean-fuel vehicle into five increasingly stringent standards defined as Transitional Low Emission Vehicle (TLEV), Low Emission Vehicle (LEV), Ultra Low Emission Vehicle (ULEV), Inherently Low Emission Vehicle (ILEV), and Zero Emission Vehicle (ZEV)).

12. Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements, 65 Fed. Reg. 6,698 (Feb. 10, 2000) (codified at 40 C.F.R. pts. 80, 85, and 86 (2004))

13. Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles, 68 Fed. Reg. 24,669, 24,671 (proposed May 8, 2003).

which would include the state's equivalent category. Consumers would be able to see the vehicle's specific emissions category and compare it to the eleven other categories available, ranked in order of cleanliness.¹⁴

The second option was to simplify the label so that only the vehicle's emissions standard was disclosed, with no reference to how it compared to other vehicles.¹⁵ The label also included a reference to the EPA's Green Vehicle Guide website.¹⁶

The third option proposed to delete vehicle-specific information and instead refer to the Green Vehicle Guide website.¹⁷ As the information could be displayed on both sides of the label, this option sought to move all of the label's information to the front side. In having all the information moved to the front side of the label, consumers could view all the information while comparing different vehicles without having to open each vehicle to read the other side of the label.

The fourth option proposed displaying only the relevant Tier 2 EPA emissions standard for which the vehicle was certified, disclosure of the same vehicle's certification under California's standard, and a reference to the Green Vehicle Guide website.¹⁸

IV. ADOPTED RULE AND WEBSITE

The current rule adopted a modification of the third option and now requires a reference to the EPA's Green Vehicle Guide website. This standard was determined best because the EPA revised its website, making it more user-friendly than the complex vehicle-specific information that was formerly on the label. The current rule establishes a one-sheet label which includes a reference to the Green Vehicle Guide website (see Figure 1).

It is easy to navigate through the website to search and compare vehicles. The website lists all available vehicle models and allows consumers to compare any combination of alternative fuel vehicles or traditional gasoline-fueled vehicles.¹⁹ By viewing the website, the FTC felt consumers would be better informed and would be able to differentiate between the standards and vehicles. The prior label and all of the alternative proposed options failed to give the consumer sufficient or effective means

14. *Id.*

15. *Id.* at 24,673.

16. *Id.*

17. *Id.* at 24,675.

18. *Id.* at 24,676.

19. *Green Vehicle Guide*, *supra* note 2.

to compare vehicle emissions information between different makes and models. In contrast, the website allows consumers to research quickly and extensively to make informed decisions before purchasing a vehicle.²⁰

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

↕ 7.5 inches ↘

← 7 inches →

Figure 1. Alternative Fuel Vehicle prototype label.

Another added benefit of referring to the Green Vehicle Guide website, as opposed to more complex labeling, is that consumers can compare alternative fuel types.²¹ One alternative fuel vehicle may run on a combination of gasoline and battery power while another may operate on natural gas. Some of these alternative fuels may reduce some air pollutants while simultaneously increasing others. The numerous environmental and economic considerations that come into play when choosing

20. *Id.*

21. *Id.* See also *Green Vehicle Guide*, *supra* note 2.

an alternative fuel vehicle led the FTC to conclude that the website would be the best informational and comparative data source for consumers.

V. CONCLUSIONS

Though the website provides significant emissions and environmental information, it is of little use to those without Internet access. Further, if the consumer goes to a dealership without conducting the research, he or she may find it difficult to resist sales pressure long enough to conduct adequate research. Nevertheless, those who heavily weigh environmental impacts in their decisions to purchase vehicles may be more likely to have conducted significant research and comparisons, including visiting the Green Vehicle website. With an average of 16,983 unique user hits per month for the twelve-month period from March 2004 to February 2005, the Green Vehicle website certainly has an impact on consumers.²² However, with annual new and used passenger car sales and leases totaling over 59 million in 2004, the website hits represent only a small fraction of the total automotive market.²³ The website is updated annually in October after the new vehicle models for the year have been released in September and as needed, usually another four to five times per year, when other new vehicles are introduced.²⁴ The website provides the consumer with a simple, yet effective, table to compare the vehicles against their air pollution and greenhouse gas scores, using a scale of one to ten with ten being the best. Comparative fuel economy data is also available.²⁵ While the website provides helpful information, it would be useful if an online survey and statistics were kept which tracked the number of consumers visiting the site and their evaluation of its ease of use.

In addition to the Green Vehicle website, the label on the vehicle itself continues to reference other factors, such as fuel operating costs, that consumers should consider when

22. Interview with Terry Newell, Office of Transp. and Air Quality, Env'tl. Prot. Agency (Apr. 2, 2001) (notes on file with Author).

23. BUREAU OF TRANSP. STATISTICS, NATIONAL TRANSPORTATION STATISTICS 2004, Table 1-17: New and Used Passenger Car Sales and Leases, available at http://www.bts.gov/publications/national_transportation_statistics/2004/html/table_01_17.html (last visited March 1, 2005).

24. *Id.* Not surprisingly, the month of October, with the annual update of new vehicle models, had the highest unique website hits totaling 22,901.

25. *Green Vehicle Guide*, *supra* note 2. The U.S. Department of Energy and the EPA publish the annual FUEL ECONOMY GUIDE, which can be found at <http://www.fueleconomy.gov> as an aid to consumers.

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purchasing an alternative fuel vehicle.²⁶ The Green Vehicle website also provides active links to other appropriate websites so consumers can fully research the other factors that should be considered when purchasing alternative, as well as gasoline and diesel, fuel vehicles. Ultimately, this new “label” is intended to serve consumers so that they can make the most informed decision possible when purchasing vehicles.

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26. The label encourages consumers to consider fuel type and availability, operating costs, performance and convenience, energy security and renewability, and vehicle safety when considering the purchase of an alternative fuel vehicle.