



August 17, 2012

Federal Trade Commission (FTC)  
Office of the Secretary  
Rm. H-113 (Annex N)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: Labeling Requirements for Alternative Fuels and  
Alternative Fueled Vehicles; 16 CFR Part 309; Doc. No.  
FTC-2012-0056-0001

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents nearly 17,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ upwards of 1,000,000 people nationwide yet the majority are small businesses as defined by the Small Business Administration.

Earlier this year, the FTC solicited comment on two proposed amendments to its labeling requirements for alternative fuels and alternative fueled vehicles (AFVs). 77 Fed. Reg. 36423, *et seq.* (June 19, 2012). Specifically, the FTC is proposing to consolidate its AFV labels with those required and recently amended by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA), and to eliminate the used vehicle label requirement. In response, NADA offers the following comments and suggestions.

#### I. Background

The Energy Policy Act of 1992 required the FTC to issue rules governing the labeling of alternative fuel dispensing systems and AFVs. 42 USC§ 13232(a)<sup>1</sup>; 16 CFR Part 309. These

---

<sup>1</sup> **(a) Establishment of requirements**

The FTC, in consultation with the Secretary, the Administrator of the EPA, and the Secretary of Transportation, shall... issue a notice of proposed rulemaking for a rule to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles, including requirements for appropriate information with respect to costs and benefits, so as to reasonably enable the consumer to make choices and comparisons. Required labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer. In formulating the rule, the FTC shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors. The FTC shall obtain the views of affected industries, consumer organizations, Federal and State agencies, and others in formulating the rule....Such rule shall be updated periodically to reflect the most recent available information.

rules were first issued in 1995 and were later amended in 2004. 60 Fed. Reg. 26926, *et seq.* (May 19, 1995); 69 Fed. Reg. 55332, *et seq.* (September 14, 2004). The Energy Policy Act requires that they be periodically reviewed and updated. The review now underway, initiated with the issuance of an ANPRM in 2011, is particularly timely given NHTSA and EPA's issuance of joint rules governing the fuel economy labeling of light- and medium-duty passenger cars and light-duty trucks, pursuant to Section 105 of the Energy Independence and Security Act of 2007 (EISA), 76 Fed. Reg. 39478, *et seq.* (July 6, 2011).

## II. New Alternative Fueled Vehicles (AFVs)

In comments submitted during the NHTSA/EPA rulemaking, NADA stressed the importance of harmonization, urging that regulatory amendments adequately incorporate information required by the FTC rule, thereby eliminating any need for it. Based on the language in EISA pertaining to AFVs, NADA suggested that repeal of the FTC rule would be an appropriate and legally justifiable outcome. NADA has pushed consistently for a single consolidated label, dating back to its 1994 comments on the original FTC regulatory proposal, and in its 2003 and 2011 comments on proposed revisions to Part 309.

The final NHTSA/EPA regulations incorporate every key requirement for AFVs set out in the FTC rule. In fact, they require significantly more information to be displayed. Effective with model year (MY) 2013, separate FTC labels should no longer be necessary and will only serve to confuse prospective purchasers. Thus, NADA fully concurs with the FTC's recognition that, consistent with the Energy Policy Act, Part 309 should incorporate the NHTSA/EPA rule by reference. 40 CFR Part 600. This action comports with the President's July 11, 2011, Executive Order governing the repeal or modification of unnecessary regulations by independent agencies since as a practical matter, there is no continuing need for a separate FTC rule given that the consumer benefits it once offered are subsumed by the recently overhauled NHTSA/EPA rule. Moreover, eliminating Part 309 as applied to AFVs will streamline compliance by vehicle manufacturers tasked with labeling AFVs, and by dealers tasked with maintaining labels until those AFVs are delivered. Lastly, as noted in the FTC's proposal, requiring separate FTC labels for MY2013 and beyond will serve only to confuse prospective purchasers.

The new NHTSA/EPA fuel economy labels appear to adequately address hydrogen fuel cell, advanced lean burn, and hybrid vehicles. Moreover, NADA concurs with the FTC's proposal on driving range disclosures. Specifically, by requiring only NHTSA/EPA flexible fuel vehicle (FFV) labels that disclose both alternative fuel and conventional fuel driving ranges, the FTC will effectively act to eliminate the existing NHTSA/EPA option for FFV labels that do not contain driving range information.

## II. Used Alternative Fueled Vehicles

The Energy Policy Act nowhere requires the FTC to mandate labels for used vehicles. 16 CFR §309.21. Elimination of the used vehicle mandate in Part 309 applicable to AFVs is justified for the following reasons:

1. AFV information in NHTSA/EPA labels effective with MY 2013 also will be available on the [www.fueleconomy.gov](http://www.fueleconomy.gov) website. In fact, the [www.fueleconomy.gov](http://www.fueleconomy.gov) website presently appears to provide alternative fuel vehicle information for used vehicles dating back to 1984. Dealers readily make information from this site available to prospective used vehicle purchasers who request it. It is important to note that, when in 1995 the FTC first opted to require used vehicle AFV labels, [www.fueleconomy.gov](http://www.fueleconomy.gov) did not exist.
2. Any value to prospective purchasers associated with the FTC's "generalized" used vehicle AFV labels is more than outweighed by the costs and burdens imposed on dealers tasked with purchasing, installing, and maintaining such labels, especially given that, as noted above, model-specific information is available on [www.fueleconomy.gov](http://www.fueleconomy.gov).
3. Used vehicle dealers, including franchised dealerships, are involved in only about half of all transactions involving used vehicles potentially subject to the FTC rule. Thus, the used AFV label mandate imposes burdens and costs on dealers, arguably putting them in an unfair competitive position with respect to private sellers.

NADA urges the FTC *not* to include a reference to [www.fueleconomy.gov](http://www.fueleconomy.gov) on the Used Car Rule Buyers Guide. The Buyer's Guide provides consumers with accurate information concerning the existence and scope of dealer warranties, enabling consumers to make used vehicle warranty comparisons. NADA now believes that a reference to [www.fueleconomy.gov](http://www.fueleconomy.gov) in the Buyers Guide would not serve its intended purpose, would potentially confuse consumers, and would undermine the time-honored purity and simplicity of the Buyer's Guide. Consumers interested in learning about the fuel type of used vehicles are not likely to look to the Buyers Guide but instead will continue to turn to the dealership for that information.

On behalf of NADA, I thank the FTC for the opportunity to comment on this matter.

Respectfully submitted,

✓ /

Douglas I Greenhaus  
Chief Regulatory Counsel, Environment,  
Health and Safety