

parts.⁵ Part one discloses objective information about the estimated cruising range and environmental impact 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.

With respect to environmental impact, the labels must state whether the vehicle has met an EPA emission certification standard and, if so, what standard. If a vehicle has been certified, that fact must be noted with a mark in a box on the label and a caret must be inserted above the certification standard the vehicle meets. The graphic on the label depicts seven EPA emissions standards in increasing order of stringency.

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 1999 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 Rule requires both sets of EPA emission standards to be disclosed because the Commission 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 will be obsolete starting in the 2004 vehicle model year.

3. Ford's Petition

Ford's petition concerns EPA's new more stringent federal tailpipe emission standards. These federal tailpipe emission 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. However, the average nitrogen oxide emissions of the entire vehicle fleet sold by each manufacturer will have to meet an average nitrogen oxide standard of 0.07 grams per mile.

Additionally, Ford noted that in October 1999, California adopted more stringent state tailpipe emission standards, called the "LEV II" standards, which are effective 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. Generally, the LEV II standards extend passenger car emission standards to heavier sport utility vehicles and pick-up trucks, extend and tighten fleet average tailpipe emission standards during the period 2004–2010, significantly tighten nitrogen oxide and particulate matter standards for all vehicle emission categories, and further reduce evaporative emissions.

Ford, and other manufacturers, will be certifying their AFVs to the more stringent EPA Tier 2 emission standards in the 2004 model year. Ford is petitioning 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, therefore, is requesting that the Commission amend the Rule to permit use of an AFV label that differs

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, but they are not at issue here because they do not require the disclosure of specific emissions information.

⁶ The factors include information concerning fuel type, operating costs, performance/convenience, fuel availability, and energy security/renewability. As the proposed labels below indicate, the Commission proposes simplifying the descriptions of these factors to make them easier for consumers to read and comprehend.

⁷ The federal government agencies referenced are the Department of Energy ("DOE") and the National Highway Traffic Safety Administration ("NHTSA"). The Commission also proposes revising slightly part three of the label by listing the Commission's toll-free telephone number and website for consumers who wish to call the FTC for more information about AFVs.

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

⁹ See 40 CFR 88 (1996).

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 these vehicles—nitrogen oxides and non-methane organic gases consisting primarily of hydrocarbons and contributing to ambient volatile organic compounds. Hydrocarbons and nitrogen oxides are the major contributors to urban smog.