

July 26, 2009

The Honorable David Vladeck  
Director, Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave.  
Washington, DC 20580

**Comments on Proposed Rule, Guide Concerning Fuel Economy Advertising for New Automobiles, 74 Fed. Reg. 19148, Matter No. R711008, April 28, 2009**

Mr. Vladeck:

Public Citizen, the Center for Auto Safety (CAS), and the Safe Climate Campaign are pleased to submit these comments to the proposed rules regarding updates to the guide for fuel economy advertisements. These changes, prompted by updates to the Environmental Protection Agency's (EPA) test procedures for fuel economy labeling, provide valuable improvements to the labeling guidelines. There are, however, some additional improvements that we feel would improve the advertising disclosure guide's usefulness to consumers targeted by advertisements that include fuel economy claims:

- All advertising should disclose city and highway but not combined fuel economy estimates.
- All advertising should disclose the particular vehicle configuration tested.
- Comparative fuel economy disclosure should be considered.
- For all alternative and flex fuel vehicles, advertising disclosures should include fuel economy estimates for each applicable fuel.
- If cruising range claims are to be made, they must be based on a consistent test procedure that accurately reproduces real world driving conditions.
- Non-EPA fuel economy estimates should not be used.

Advertising claims about fuel economy provide consumers with first-line information about vehicle fuel economy. There is great value to the FTC guide for fuel economy disclosures in advertising claims, in raising consumer awareness and familiarity with fuel economy values. This goal is improved with better correlation between EPA estimated fuel economy and real-world fuel economy values. We commend the FTC for upgrading the guide to reflect the changes made to EPA's test for fuel economy.<sup>1</sup>

*Advertising disclosures should provide all available fuel economy information.*

The proposed rules state that if an advertisement makes a claim about city, highway, combined, or any combination of the three estimates of fuel economy, that the EPA estimate must be disclosed. Additionally, it says that if a "general" claim is made, that the city mileage

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<sup>1</sup> 71 Fed. Reg. 77872, (Dec. 27, 2006).

must be disclosed. However, there is insufficient guidance about what constitutes a “general” claim, and manufacturers often disclose just the highway or city estimate, whichever number is higher, under this guidance.<sup>2</sup> We recommend that FTC require advertising disclosures include only the city and highway estimates of fuel economy and that the value for city fuel economy be expressed in larger text than the highway fuel economy.

Actual fuel economy experienced by consumers is affected by a number of factors, including what kind of driving they do (city versus highway), how well maintained they keep their vehicle (proper tire inflation, routine maintenance), and driving style (high speed driving and hard braking reduce fuel economy). Disclosing one number may overstate the fuel economy a driver is likely to experience. However, by disclosing both the city and highway fuel economy estimates in advertising, consumers also receive a more tangible message that “actual mileage may vary.” In addition, there are a number of vehicles with large differences between their city and highway fuel economy estimates, which would be particularly affected by the problem of providing potentially misleading information about fuel economy by disclosing only the city or only the highway fuel economy.

We also recommend that the FTC investigate the value of disclosing comparative fuel economy information, similar to the 0-10 scale for air pollution provided by EPA at [fuelconomy.gov](http://fuelconomy.gov). These comparative values provide consumers with information important to making a decision about a vehicle purchase. Most consumers will select a vehicle class that fits their needs, and then compare vehicles within that class, and therefore comparative values such as those disclosed by EPA for air pollution would provide a valuable means of making an assessment about how well a given vehicle performs when compared to other vehicles.

*Advertising should disclose the particular vehicle configuration tested.*

While footnote 2 to the FTC Fuel Economy Guide would prohibit the use of fuel economy ratings from one model to be applied to another (lower fuel economy) model, nothing in the regulation would prohibit the use of fuel economy ratings from a higher or the highest fuel economy vehicle configuration of one model to be applied to all vehicle configurations of that model. The FTC should require the disclosure of the particular vehicle configuration used in the fuel economy rating in the advertisement.

*Fuel economy estimates should be provided for each type of fuel a vehicle is designed to burn.*

FTC requested comments on whether advertising disclosures for flexible fuel vehicles (FFVs) should provide fuel economy estimates for each type of fuel a vehicle is able to use. Public Citizen strongly supports disclosure of estimates for each fuel a vehicle can use. For FFVs that are able to run on either gasoline or a blend of 85 percent ethanol and 15 percent gasoline (commonly, E85), the fuel economy estimated by EPA when running on E85 is lower than when running on gasoline, due to the lower energy content of E85 with respect to gasoline.<sup>3</sup> For example EPA estimates for a 2009 Ford Crown Victoria FFV are:

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<sup>2</sup> See attached examples of advertising disclosures. Appendix 1 is a list of Chevrolet vehicles, for which GM disclosed only the highway estimates, and Appendix 2 is a Ford advertisement that highlights the city fuel economy of a hybrid vehicle (for which city mileage is higher than highway mileage).

<sup>3</sup> EPA estimated the difference in apparent fuel economy at 20 to 30 percent lower when a vehicle was running on E85 versus gasoline. See 71 Fed. Reg. 77905.

<b>E85</b>		<b>Gasoline</b>	
<b>14</b> Combined		<b>19</b> Combined	
<b>12</b> City	<b>17</b> Highway	<b>16</b> City	<b>24</b> Highway

Advertising disclosures should provide consumers with information about the fuel economy to expect on all fuels a vehicle is designed to burn. These disclosures for alternative fuels provide familiarity with the relative fuel economy to expect when using different fuels. As the fuel stream becomes more diverse and consumers are faced with purchase decisions involving vehicle types that are unfamiliar, it is important that sufficient information is provided to facilitate these decisions.

#### *Cruising range claims*

We agree with FTC that cruising range claims have the potential to be valuable consumer information. Cruising ranges and availability of an alternative fuel will factor into an increasing number of consumers' decisions about purchasing a vehicle. These estimates are also important for consumers in operating their vehicles, particularly for vehicle types where there is limited availability or access to refueling facilities. Therefore, it is important that cruising range claims be reflective of real-world driving conditions.

EPA currently provides cruising range estimates for flex fuel vehicles running both E85 and gasoline, and for the compressed natural gas Honda Civic in its fuel economy guide.<sup>4</sup> EPA does not require these estimates to be disclosed on vehicle window stickers. However, we agree with FTC when, in the proposal, it states: "FTC's guidance should govern claims related to newer vehicle types and a broader range of fuel categories to help advertisers avoid making deceptive claims in the changing automobile market."<sup>5</sup>

Several automakers have announced plans to introduce plug-in hybrid electric vehicles and electric vehicles on the U.S. market as soon as the 2010 model year. Cruising range estimates are of particular interest for consumers of these vehicles, as these values provide consumers with needed information about the expected operation of the vehicle. However, as with estimates of fuel economy, cruising range claims will be affected by driving style and specific conditions of operation. We therefore recommend that FTC provide guidance that cruising range claims must be made consistent test procedures used by NHTSA for different types of alternative fuel and electric drive vehicles.

We agree with FTC that cruising range claims will become more prevalent as alternative fueled vehicles, particularly plug-in hybrid electric and fully electric vehicles enter the market. Cruising range claims provided in advertising disclosures be supplied by EPA and are derived consistent with existing cruising range calculations maintained by EPA. Consumers must be able to trust that claims made by manufacturers are not misleading or overstated, and therefore any cruising range claims should be made using a consistent procedure, providing consumers with accurate information that can be compared vehicle-to-vehicle.

<sup>4</sup> See *Fuel Economy Guide 2009*, Environmental Protection Agency (2009). Available at <<http://www.fueleconomy.gov>>

<sup>5</sup> 74 Fed. Reg. 19152 (Apr. 18, 2009).

*FTC should prohibit non-EPA derived fuel economy estimates*

Allowing a non-EPA derived estimate does not have any consumer utility and may be used to mislead consumers. The EPA estimates of fuel economy provide consumers with a familiar, readily compared source of information about the relative fuel economy performance of vehicles. Consumers will not benefit from advertising disclosure of a non-EPA derived estimate of fuel economy, which will not be readily comparable to EPA estimates. The existence of two different fuel economy rating systems in fuel economy advertisements can only create consumer confusion and mistrust of the reliability of both including the EPA ratings.

*Conclusion*

The FTC's guide for fuel economy advertising disclosures should provide guidelines that result in the best promotion of consumer awareness and familiarity with fuel economy estimates. Consumer interest about relative fuel economy information as a factor in vehicle purchasing decisions has risen significantly in the last several years, particularly since the summer of 2008, when gas prices rose above \$4 a gallon. It is important that manufacturers not be able to manipulate consumer decisions by providing misleading and incomplete information about fuel economy in advertising, for example, by disclosing only an estimate for highway fuel economy. We also urge that the guide be structured to put consumer utility at the forefront of deciding what information is provided in advertising disclosures.