

Alliance of Automobile Manufacturers
Comments to the
FTC Regulatory Review of Fuel Economy Guide, R711008
July 10, 2014

The Alliance of Automobile Manufacturers (Alliance) is a trade association of twelve car and light truck manufacturers comprised of BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars, Toyota, Volkswagen Group and Volvo Cars. Together, Alliance members account for roughly three out of every four new vehicles sold in the U.S. each year. Auto manufacturing is a cornerstone of the U.S. economy, supporting eight million private-sector jobs, \$500 billion in annual compensation, and \$70 billion in personal income-tax revenues.

The Alliance appreciates the opportunity to offer comments on the Federal Trade Commission's (FTC's) regulatory review of its Guide Concerning Fuel Economy Advertising for New Automobiles (Guide). Alliance members are keenly interested in potential amendments to the Guide. The Guide serves to ensure that fuel economy and mileage claims made in advertising are consistent with the fuel economy labels required by EPA regulations, and to enable consumers to compare vehicles on an "apples to apples" basis. The clear and accurate communication of fuel economy messages to potential customers, in a manner that is consistent across the industry, is important to all stakeholders, including both consumers and manufacturers.

Recently, the Alliance worked with EPA, the National Highway Traffic Safety Administration (NHTSA), and the FTC to further help improve consumer information. The Alliance also worked closely with NHTSA and EPA to implement enhancements to the fuel economy label required by the Energy Independence and Security Act of 2007. The label enhancements are intended to better enable consumers to compare vehicles, including alternative fueled vehicles, at the point of purchase, and to improve the clarity of the labels. In addition, the Alliance worked closely with the FTC in its effort to merge its alternative fueled vehicles labeling requirements into the revised EPA/NHTSA Fuel Economy and Environment Label, thereby simplifying and making more understandable the information being presented to consumers.

In the spirit of helping the FTC ensure that the revised Guide is as helpful and effective as possible, the Alliance offers the following comments.

General Comments

The Alliance strongly supports the Guide's dual goals of ensuring that consumers get accurate fuel economy information that they can use to compare vehicles, and allowing automobile manufacturers to compete vigorously over fuel economy under a common set of rules. With that in mind, the Alliance makes the following general comments with regard to the FTC's review of the Guide:

1) The current Guide is working but may need some changes.

The Alliance is not aware of wholesale problems with fuel economy advertising that would require a fundamental change to the Guide. The current version of the Guide appropriately implements the authority granted to the FTC by statute, namely, to provide guidance to prevent fraudulent or deceptive fuel economy claims in advertising.

The essence of the Guide is its directive to advertisers to refer to the information presented on the EPA label when making fuel economy advertising claims. This fundamental approach should remain unchanged. As the EPA label undergoes periodic modifications to improve the label, such modifications should be reflected in advertising which is informed by the Guide. Any updates to the Guide should ensure that future label changes are automatically incorporated into Guide's directives, so that the Guide does not need to be updated frequently. For example, it is likely that the EPA labels for PHEVs will be changed again in the near future as the EPA makes further improvements to the labels, and the Guide should make it clear that such changes are to be treated by advertisers in a manner consistent with the general principles of the Guide.

Although we believe the Guide should maintain its current general approach, we do think that the Guide needs some adjustment to address restrictive-format digital media advertising in a way that provides some flexibility to advertisers. This is addressed in more detail below.

2) The Guide should be updated to take into account new vehicle technologies and terminology, and the new formatting of the EPA label, while still allowing advertisers flexibility to inform consumers about the different fuel economy attributes of their vehicles.

As will be discussed below in response to the FTC's specific questions, the Alliance supports the FTC in updating the Guide in recognition of new vehicle technologies and also making it more consistent with the new EPA label formatting. As discussed in more detail below, we propose that the Guide be aligned with the new EPA label, which gives more prominence to the Combined fuel economy value, by designating the Combined value as the "default" disclosure for general fuel economy claims. The Alliance also believes that it benefits consumers for manufacturers to continue to have the flexibility to provide them with information about the fuel economy values (City, Highway and/or Combined) that they believe are most relevant for each vehicle, provided appropriate disclosures are included. For example, manufacturers should be able to center an advertisement around a vehicle's City fuel economy, with disclosure of the City rating, without having to disclose all of the other ratings.

3) The current Guide is not well-suited to emerging advertising trends with limited formats for space and content. The Guide should strive to grant maximum flexibility for advertisers to use these new media formats in a reasonable way, while ensuring a "level playing field" and fair disclosure to consumers.

In recent years, there has been a proliferation of new types of electronic, radio-wave and internet based media, which provide many new types of opportunities for advertisements informing consumers about a vehicle's fuel economy. Some examples include Twitter, web banner ads, QR codes, Google Glass, etc. Typically, such new media have restrictive formats, making it difficult if not impractical to add lengthy mandated disclosures alongside the main advertising message. The Guide should allow for flexibility in such instances, such as the ability for advertisers to use short-hand but familiar terms in ad copy, and to

use weblinks to direct consumers to the mandated disclosures. In allowing such flexibility, the Guide should not be overly prescriptive but should lay out general guidelines; it would be difficult to craft highly prescriptive rules that can be applied uniformly to all such situations. The Alliance recommends that the FTC's revised Fuel Economy Guide include new proposed guidelines for digital media advertising. We think it is important that the FTC take public comments on such draft guidelines before finalizing them. Additional thoughts on digital media advertising are presented in the specific comments below.

Specific Comments

The Alliance offers the following comments on the specific questions posed by the FTC:

Definitions and Regulatory Citations

The Alliance generally supports the FTC's proposal to bring the Guide up to date and in sync with current EPA regulations. Specifically, the proposed changes mentioned in the FTC's request for comment (such as to changing the current "Estimated City Miles Per Gallon" to "Estimated City Fuel Economy") make sense in order to better align the Guide with current EPA terminology. Likewise, the proposed use of more general regulatory citations is supported by the Alliance.

Guide Format

The Alliance supports the concept of reformatting the Guide to provide general principles with illustrative examples. We think such a format has the potential to be very helpful to manufacturers, particularly when we encounter situations or consider potential claims not specifically addressed in the Guide. The Alliance would appreciate the opportunity to review a revised-format Guide in draft form before it is finalized, so that we can provide constructive comments on the implementation of the new format and on the specific examples proposed to be included.

Types of Fuel Economy Claims

Claims based on EPA Miles-Per-Gallon information:

- (a) Whether a general fuel economy claim should be accompanied by a specific mpg disclosure:

The Alliance supports the principle that a specific but non-numerical claim about fuel economy performance, such as in the example given by the FTC ("XYZ car gets great mileage in the city") should be accompanied by the disclosure of the relevant EPA label value. In such cases, the disclosure of the label value provides consumers with context and backup for the specific claim being made. "Great mileage in the city" may be different for a compact car than it is for an SUV.

- (b) Whether an ad is unfair or deceptive if it provides only one type of mileage rating:

The Alliance does not believe that an ad that provides only one type of mileage rating is unfair or deceptive. Consumers have had many years to become familiar with the City, Highway, and Combined rating system, and a manufacturer should be able to select the rating(s) that it believes is most relevant to the consumers of a particular product, provided the type of rating is disclosed. For

example, consumers shopping for a mini car that is designed primarily for use in an urban setting may well be most interested in the City value and advertisers should be able to focus on that rating alone. As long as the manufacturer is citing to an EPA label value and disclosing which one it is, we do not think such an advertisement is in any way deceptive.

- (c) Whether an unspecified mpg claim is deceptive if the ad fails to identify whether the rating is city, highway, or combined:

The Alliance agrees that whenever an EPA label value appears in an advertisement, the advertiser should disclose which EPA value (City, Highway, or Combined) is being used.

- (d) How consumers understand “up to” mpg claims:

The Alliance supports the option of being able to continue to use “up to” claims, which can be useful when the manufacturer is trying to advertise a nameplate or family of vehicles. Statements of this nature can be helpful in communicating the range of capabilities across a nameplate or family. Eliminating the ability to use such claims would greatly limit manufacturer flexibility in advertising and potentially prohibit simple and, we believe, reasonably understood information about a group of vehicles that could be useful to consumers.

- (e) Whether the combined EPA mpg rating should serve as the default disclosure for unspecified fuel economy claims (instead of city mpg):

The Alliance agrees that the Combined mpg rating should be the “default” label value for disclosure purposes, due in large part to EPA’s decision to give the Combined value the most prominence on the current label. Moreover, it should now be recognized that the City value is no longer the lowest or most conservative value in all cases. The City value is often the highest of the three numbers for many hybrid vehicles.

- (f) Whether the Guide should advise marketers to avoid statements that imply a linear relationship between mpg and fuel costs:

The Alliance is not aware of recent advertisements that imply a linear relationship between MPG and fuel costs. We agree that the relationship is not linear and that any claims to that effect should be avoided.

- (g) Whether fuel economy advertisements containing mpg claims should identify EPA as the source of ratings:

The Alliance supports the continuation of the current Guide requirement for advertisers to make it clear that EPA is the source of the ratings.

- (h) Whether FTC should provide additional guidance regarding disclaimers that the EPA ratings are only estimates:

The Alliance supports direction in the Guide to use the term “EPA-estimated” or similar words in connection with the ratings. We do not support requirements for additional disclosures calling for a

more detailed discussion in every ad of the fact that EPA estimates are not guarantees that every consumer will achieve this mileage no matter how or where they drive or maintain their car, etc. Unnecessary and lengthy disclosures can make an ad less, not more, understandable and so we do not recommend any additional language on this point.

Claims Related to Model Groups

FTC notes that the current Guide advises manufacturers to limit fuel economy ratings to the corresponding model type to ensure advertised fuel economy ratings match the advertised vehicles' specification; it warns against using a single fuel economy estimate for all vehicles bearing a common model name, if separate vehicles within that model group have different fuel economy ratings. FTC seeks comments on whether it should provide further guidance to help advertisers avoid deceptive claims in this context.

The Alliance believes the current Guide provides adequate guidance in this context. Attempts to mandate additional, more detailed language would likely cause disclosures to become unwieldy and too lengthy, adding little value in terms of consumer awareness. Consumers looking for a vehicle configuration that achieves a specific MPG rating can consult the manufacturer website, fueleconomy.gov, the vehicle's EPA label, and/or their dealer for more information.

Claims for Alternative Fueled Vehicles

FTC notes the April 2013 amendments to the Alternative Fuels Rule and seeks comment on whether the Guide should address advertising for FFVs pertaining to different fuel economy estimates for different fuels:

The Alliance does not support requirements to address multiple fuel economy estimates for FFVs, based on different fuels. The Alliance does support updating the Guide to make it clear that fuel economy-related claims for all AFVs (not just FFVs) should be accompanied by references to the appropriate label values. The main goal of the Guide should be to ensure that fuel economy claims for AFVs are held to the same level for clarity and accuracy as for regular gasoline powered vehicles.

Fuel Economy Range Claims

FTC requests comment on its proposal to eliminate Provision 259.2 (b)(1) - "estimated in-use fuel economy range" claims:

The Alliance agrees that § 259.2(b)(1), as written, is no longer applicable. Although the range value no longer appears on EPA labels for gasoline-powered vehicles, it still exists for other types of vehicles (FFVs and EVs). The Alliance recommends that, where an estimated driving range rating is displayed on the EPA label, any advertisements making claims about the range of such vehicles should follow the same principles of disclosure applicable to other claims.

Disclosures in Restrictive Digital Media Formats

In addition to responding to FTC's questions, the Alliance offers the following additional specific comment on an issue of emerging importance.

As noted above in the General Comments, the Alliance supports the development of general guidelines allowing for both workable and informative disclosures in connection with digital media advertisements. It is important for the revised Guide to address this issue; to continue focusing the Guide on the traditional advertising outlets of TV, radio, and print would be to ignore emerging real-world developments.

More and more consumers receive advertising information from digital forms of media, and such consumers do not want or expect these messages to contain lengthy boilerplate language. Requirements to provide detailed disclosures in such formats are sometimes impractical, and often incompatible with the nature of the format itself. It should be kept in mind that such advertisements are typically a “starting point” for awareness of a product or feature, leading the consumer to do more research elsewhere.

Today’s consumers understand that restricted-format digital media advertisements will not contain all of the information that they may want to know about a given product. It is now common practice for consumers to click on a hyperlink that takes them to a page with more detailed information. Providing the necessary information in this way is often more user-friendly and more effective than attempting to include detailed footnotes that clutter a restricted-format advertisement and make it more difficult to read.

With respect to these forms of advertising, the Guide needs to find the right balance—allowing advertisers to use these formats in effective ways, while preventing deceptive or fraudulent fuel economy claims.

In light of the above, the Alliance suggests that FTC adopt guidance along the following lines:

1. In restricted-format media, advertisers making specific fuel economy claims are permitted to make abbreviated, but clearly understandable, disclosures of EPA label values when the advertising message includes the EPA label value itself (e.g., “EPA-est. 35 MPG Hwy”).
2. When a message in restricted-format media requires a disclosure, advertisers may fulfill any applicable disclosure requirements through the use of web links directing consumers to a webpage with the required information. Virtually all of today’s cell phones, and other electronic devices used to receive digital media, are capable of following links to websites that provide ample room for the necessary disclosures.

Conclusion

In conclusion, we note that in light of the proposed format changes, the FTC’s need to consider new guidance with respect to digital media formats, and the other issues discussed above, the Guide is likely to undergo significant changes. The Alliance hereby requests that the FTC issue any revised version of the Guide in draft form for public comment, so that the auto industry and other interested stakeholders can provide constructive input. We want to help ensure that the next iteration of the Guide continues to provide clear guidance and a level playing field for all automotive manufacturers, as well as effective disclosure for consumers.

The Alliance appreciates the FTC's consideration of these comments. Please contact Giedrius Ambrozaitis if you have any questions about the Alliance's position or would like to discuss any aspect of these comments.

Sincerely,

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