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Federal Trade Commission
Office of the Secretary,
600 Pennsylvania Avenue NW, Suite CC-5610, (Annex O)
Washington, DC 20580

RE: Fuel Economy Guide, R711008

To Whom It May Concern:

Enclosed are the comments of the Technical Affairs Committee of the Association of Global Automakers, Inc.¹ (Global Automakers) regarding the Federal Trade Commission's regulatory review and request for public comment on the "Guide Concerning Fuel Economy Advertising for New Automobiles" (Guide) found at 16 CFR Part 259 [79 FR 27820, May 15, 2014].

Thank you for your consideration of our comments. If you have any questions on this matter, please contact me at (202) 650-5559 or jrege@globalautomakers.org.

Sincerely,

Julia M. Rege
Senior Manager, Environment & Energy

¹ The Association of Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. We work with industry leaders, legislators, regulators, and other stakeholders in the United States to create public policy that improves motor vehicle safety, encourages technological innovation and protects our planet. Our goal is to foster an open and competitive automotive marketplace that encourages investment, job growth, and development of vehicles that can enhance Americans' quality of life. For more information, visit www.globalautomakers.org.

**Comments on the Federal Trade Commission’s
Regulatory Review and Request for Public Comment on the “Guide Concerning Fuel Economy
Advertising for New Automobiles”
R711008**

**Submitted by
The Association of Global Automakers, Inc.**

The Association of Global Automakers, Inc. (Global Automakers) is submitting comments in response to the Federal Trade Commission’s (FTC or Commission) regulatory review and request for public comment on the “Guide Concerning Fuel Economy Advertising for New Automobiles” (Guide) found at 16 CFR Part 259 [79 FR 27820, May 15, 2014]. We understand that the FTC is requesting comment on changes to the Guide but will issue a proposal, including specific, proposed text revisions sometime in the future.²

As the FTC notes, the purpose of the Guide is to help “advertisers avoid unfair or deceptive claims”³ and to provide consumers with accurate and comparable fuel economy. Global Automakers agrees with these goals and offers the following comments with these goals in mind.

DEFINITIONS AND RATINGS

The FTC proposes to replace several outdated terms “Estimated city mpg,” “Estimated highway mpg,” and “Fuel economy,” with “Estimated city fuel economy,” “Estimated highway fuel economy, and “Fuel efficiency,” respectively, and add the term “Combined fuel economy,” in the Guide to ensure consistency with terminology in the Environmental Protection Agency’s (EPA) current fuel economy regulations. The FTC also proposes to eliminate the term “Estimated in-use fuel economy range.” Global Automakers supports the harmonization of terminology with EPA’s terminology throughout the Guide, because it will provide additional clarity throughout the Guide and help ensure consistent use of the Guide.

While we support using consistent terms between the two agencies, we are, however, concerned about requiring advertisers to use the qualifier, “estimated,” because it may be misleading to consumers. For instance, the phrase “estimated fuel economy” may lead consumers to believe that they will get the advertised number.⁴ The consumer may perceive that the EPA’s estimate of the fuel economy is what would or should be expected “in the city” or “on the highway” or some combination thereof. The term “rating” would help manage consumers’ expectations about their vehicles’ fuel economy, providing a conceptual understanding that a fuel economy rating is more on par with other types of ratings and reviews – movie, restaurant reviews, Consumer Reports, etc. – that are typically based on someone’s experience but are inherently used as comparative tools. Thus, ratings do not imply to a consumer that he/she will have the same experience (or even “rate” a product the same) that the term “estimate” infers. Also, the EPA uses “rating” somewhat interchangeably with “estimated fuel economy” on the fueconomy.gov website. We recommend for advertisements that the FTC suggest use of the term “rating,” such as “City fuel economy rating,” “Highway fuel economy rating,” and “Combined fuel economy rating,” instead of “estimate,” along with citing the source, i.e. EPA.

In addition, Global Automakers supports the Commission’s proposal to eliminate the term “Estimated in-use fuel economy range” since EPA no longer uses this term. Plus, we believe the FTC should not use the term “in use,” since it furthers the expectation that the EPA numbers are something that consumers should

² See 79 Fed. Reg. 27820 (May 15, 2014).

³ See 79 Fed. Reg. at 27820.

⁴ In the European Union, additional text is included to explain that the results are based on laboratory testing and that the fuel economy may differ for the consumer: “The mpg figures quoted are sourced from official EU-regulated test results, are provided for comparability purposes and may not reflect your actual driving experience.”

expect to achieve. The FTC should also consider cautioning against using phrases like "X vehicle gets xx mpg in the city/on the highway" as the "gets", along with "in the" or "on the," create expectations that consumers will see those sorts of fuel economy figures "in the city" or "on the highway."

EPA MILES-PER-GALLON CLAIMS

The Commission is seeking comments on what and how fuel economy ratings should be used in advertising. There are several EPA ratings available – City, Highway, and Combined – all of which can be used in advertising, in combination or alone.

In the EPA's May 2011 final rule on fuel economy labels,⁵ EPA altered the design and content of the fuel economy label, focusing on the "Combined city/highway" fuel economy rating as the primary rating. This term is accompanied by both the "City" and "Highway" miles per gallon (mpg) ratings in smaller font. The EPA's new focus on the "Combined" rating suggests that this rating is appropriate for informing the consumer. We recommend that the FTC designate the "Combined fuel economy" rating as the default rating. There may still be instances when it is beneficial to promote the "City" or "Highway" fuel economy rating in place of the "Combined" rating, such as when a vehicle is intended primarily for city driving applications, and Global Automakers supports the flexibility to use these ratings in advertisement provided that the advertisement discloses which EPA value is being used (i.e. "City," "Highway," or "Combined").

CLAIMS BASED ON NON-EPA ESTIMATES

Regarding the Commission's consideration of whether to update the advertising claims based on non-EPA tests, we agree with and continue to support including the current provisions in Section 259.2(c) that:

...advises that advertisers may make fuel economy claims based on non-EPA information only if they: (1) Disclose the corresponding EPA estimates with more prominence than other estimates; (2) identify the source of the non-EPA information; and (3) disclose how their non-EPA test differs from the EPA test in terms of driving conditions and other relevant variables.⁶

We understand that many advertisers currently utilize the EPA ratings. Therefore the Guide's recommended provisions for non-EPA claims are important for providing consumers with comparative information and ensuring that credible sources are cited when non-EPA ratings are used.

Finally, the FTC should consult with the automobile manufacturers to determine if there are any current uses of non-EPA estimates and whether allowances to use non-EPA sources are still necessary.

CLAIMS RELATED TO MODEL GROUPS

The current Guide advises manufacturers to "limit fuel economy ratings to the corresponding model type" and "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."⁷ While we understand that the FTC is considering whether model groups should be clarified further, we caution against any action on this item at this time. The EPA has been addressing concerns on how vehicles are labeled for fuel

⁵ Environmental Protection Agency and National Highway Traffic Safety Administration, "Revisions and Additions to Motor Vehicle Fuel Economy Label" Final Rule, at 76 Fed. Reg. 39478, July 6, 2011.

⁶ See 79 Fed. Reg. at 27822.

⁷ *Ibid*, at 27823.

economy, including how models are grouped; EPA is said to be “rewriting those regulations right now.”⁸ We believe any action by the Commission may be premature at this time if EPA is addressing this issue as well. Instead, the EPA and the FTC should coordinate efforts to address model groups, both to leverage each other’s expertise in this area and to provide consistency between the advertised fuel economy rating and the fuel economy rating on the new vehicle label.

CLAIMS FOR ALTERNATIVE FUELED VEHICLES

We continue to support our June 26, 2009 comments to the FTC supporting the use of a cruising range for fuel economy claims in advertisements for dedicated alternative fueled vehicles and flexible fueled vehicles (FFVs).⁹ In addition, in those same comments, we asked that the FTC consider providing some guidance with respect to plug-in hybrids (PHEVs) and the advertising of “electric-only” ranges and repeat that request here.

Since the submittal of our 2009 comments, the number of PHEVs and battery electric vehicles (BEVs) in the market has been increasing, and fuel cell electric vehicles (FCEVs) are starting to enter the market in larger volumes. In addition to existing alternative and advanced technology vehicles, such as hybrid, FFVs, BEVs, PHEVs, natural gas, FCEVs, etc., we reiterate our point that it is important to “develop a better ‘apples-to-apples’ comparison across fuel/vehicle types.”¹⁰ Vehicles, such as PHEVs, also present additional considerations, because they can operate on multiple fuels, including electric only, gasoline only or a combination of the two, and additional clarification on what fuel economy and range information should be advertised on PHEVs is necessary. We further recommend that the FTC ensure that BEVs and FCEVs in addition to PHEVs are adequately addressed in the Guide to ensure consistent use of fuel economy ratings for these vehicles and that the FTC consult with the EPA to develop best practices for advertising guidelines for the fuel economy of BEVs, FCEVs, and PHEVs.

GUIDE FORMAT

The Commission proposes to improve the Guide’s format to “contain a list of general principles to help marketers avoid deceptive practices, coupled with specific sample claims to illustrate those principles”¹¹ to ensure consistency with other recently amended FTC guides. In general, Global Automakers supports this concept and believes that detailed examples may be helpful to advertisers. It will, however, be necessary to review and comment on the new format to ensure the examples are clear and consistent with the principles and to also make sure there is adequate flexibility, if and where needed, even when an example is provided. We look forward to reviewing the new format.

CONCLUSION

In summary, Global Automakers supports the FTC’s goals to help “advertisers avoid unfair or deceptive claims” and to provide consumers with clear and consistent information on fuel economy ratings. We also support the harmonization of efforts between the FTC and EPA, as appropriate, including harmonization of

⁸ Healey, James R., “Ford slices mpg ratings, promises compensation.” *USA TODAY*, June 12, 2014. <http://www.usatoday.com/story/money/cars/2014/06/12/ford-gas-mileage-lowered/10383307/>.

⁹ Global Automakers (formerly the Association of International Automobile Manufacturers), “Fuel Economy Guide Review, Matter No. R711008.” http://www.ftc.gov/sites/default/files/documents/public_comments/fuel-economy-guide-review-541056-00003/541056-00003.pdf.

¹⁰ *Ibid*, at 2.

¹¹ See 79 Fed. Reg. at 27821.

definitions and terminology used in the Guide and the consideration of how to address fuel economy claims for model groups. In sum, Global Automakers recommends:

- Rather than use “estimate” in the advertisement, the term “rating” should be applied for “Combined,” “City,” and “Highway” fuel economy;
- The “Combined fuel economy” rating should be the default rating;
- Action should be deferred, pending potential EPA action, on addressing fuel economy claims for different model groups; and
- Advanced technology vehicles, such as PHEVs, BEVs and FCEVs, should be addressed in the Guide to clarify what fuel economy ratings and/or ranges should be used.

We look forward to providing additional comment on the proposed changes and reviewing the new format for the Guide.