



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

July 10, 2014

Via FTC website

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

Re: Guide Concerning Fuel Economy Advertising
for New Automobiles (Fuel Economy Guide or the
Guide), 16 CFR Part 259; R711008

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ over 1,000,000 people nationwide yet most are small businesses as defined by the Small Business Administration.

Earlier this year the FTC resumed a review of its Fuel Economy Guide, which since 1975 has sought to prevent deceptive and to promote uniform and informative light-duty new vehicle fuel economy advertising. 79 Fed. Reg. 27820-4 (May 15, 2014). The FTC now seeks comment on several general matters involving the Guide, including its definitions, regulatory citations, and format. It also seeks comment on planned consumer research and on specific types of fuel economy claims, including U.S. Environmental Protection Agency (EPA)¹ and non-EPA claims, claims related to model groups, and claims for alternative-fueled vehicles. In response, NADA offers the following comments and suggestions.

I. Background

NADA long has been a proponent of the Fuel Economy Guide as it serves to assist prospective light-duty new vehicle purchasers with consistent and objective fuel economy information. The Guide historically has required manufacturers and dealerships to disclose fuel economy estimates in a fair, even-handed, and clear and conspicuous manner. For nearly 40 years the Guide has referred to (or incorporated by reference) the EPA/NHTSA fuel economy label information found on new light-duty vehicles. Continuing this focus, the Guide should be written so as to facilitate the adoption and incorporation of any changes made by EPA or NHTSA to fuel economy label information requirements. At the same time, the Guide should allow for a maximum degree of flexibility regarding both what and how information is presented, so long as accuracy and clarity are maintained.

¹ The fuel economy information found on light-duty new motor vehicle labels derives from EPA test criteria; however the labels themselves are governed by both EPA and the National Highway Traffic Safety Administration (NHTSA). 49 USC 32908(g).

Dating back to when it was first issued in September 1975, NADA has worked to inform dealerships about the Guide, in part through a series of “plain English” bulletins. NADA renewed its dealership outreach each time changes were made to the Guide (*e.g.*, in 1978, 1995, and 2002). If and when revisions are made to the Guide as a result of this proceeding, NADA will again outreach to its member dealerships.

II. General Matters for Guide Review

A. Definitions

NADA supports proposed changes to the definitions set out in 16 CFR §259.1 that are designed to conform to current EPA/NHTSA label regulations. NADA’s July 2007 comments on the Guide suggested several of these, including expansion of the definition of *new automobile* to incorporate medium duty passenger vehicles, changes to the term *combined fuel economy*, and proposed changes to 16 CFR §§259.1(b) and (c). NADA further concurs that reorganizing 16 CFR §259.1(a) to break out the definitions contained therein, including the term *dealer*, will make the guide’s definitions section easier to read and use.

B. Regulatory Citations

NADA disagrees with the proposed decision *not* to use a more general citation to EPA’s regulations (*i.e.*, 40 CFR Part 600). The FTC should recognize instead that the inherent incorporation-by-reference benefits of doing so outweigh any potential risks of confusion.

C. Guide Format

NADA fully supports a modernizing of the Guide’s format designed to couple its general principles with useful illustrations. Such an approach should help dealers to maximize the clarity and utility of their fuel economy advertising. As with all of the proposed changes to the Guide, NADA urges the FTC to provide for an opportunity to review the specific wording and format of proposed Guide revisions prior to its final publication.

D. Consumer Research

NADA recognizes the potential benefits of research aimed at better understanding how prospective new vehicle purchasers relate to fuel economy advertising.² At the same time, NADA suggests that the FTC take full advantage of the wealth of such research already available, including that conducted by EPA, by NHTSA, and by the U.S. Department of Energy (DOE), prior to conducting any new primary research of its own.

² In at least one instance, the FTC has done such research in the past. 49 Fed. Reg. 19893-4 (May 10, 1984).

II. Types of Fuel Economy Claims

A. EPA Miles-Per Gallon Claims

The Guidance should continue to suggest that, if and when general fuel economy claims are made, they be accompanied by specific EPA/NHTSA fuel economy label ratings. Light-duty fuel economy ratings based the results of testing using EPA's objective criteria are designed for use by prospective purchasers making comparisons with other vehicles, and are not meant to suggest what particular vehicles will actually achieve once placed into use.

Fuel economy advertisements are *not* inherently unfair or deceptive simply because they contain only a single fuel economy rating. Consequently, the Guide should continue to afford manufacturers and dealers with the flexibility of providing only one (or two) EPA/NHTSA fuel economy label ratings. But, to avoid potential deception, whatever EPA/NHTSA fuel economy label rating(s) (*i.e.*, City, Highway, or Combined) are used should be described adequately. The combined rating should serve as the default disclosure for any unspecified EPA/NHTSA fuel economy label claims.

"Up to" fuel economy claims are appropriate when advertising multiple models or sub-models in a single advertisement. For example, since a single make/model may come with various engine and/or transmission options, an advertisement for that make/model involving only a single EPA/NHTSA fuel economy label claim might be deceptive *without* an "up to" qualifier. Alternatively, it is appropriate for dealers and manufacturers to set out a range of EPA/NHTSA fuel economy label ratings when an advertisement involves multiple vehicles.

NADA concurs that since the relationship between fuel economy and fuel costs or savings is not linear, claims suggesting otherwise may be inappropriate and should be avoided.

Light-duty motor vehicle fuel economy advertisements should identify EPA as the source of the ratings referenced or point to the ratings found on the vehicle's EPA/NHTSA fuel economy label. NADA urges the FTC to recognize that potential added value of advertisements which, at the advertisers option, label ratings as "estimates," refer prospective purchasers seeking further information to www.fueleconomy.gov, or note that "ratings are for comparison purposes only; actual mileage may vary."

B. Claims Based on Non-EPA Estimates

As it did in its July 2007 comments, NADA urges the FTC to delete 49 CFR §259.2(c). This subsection currently allows light-duty vehicle advertisers to refer to non-EPA/NHTSA fuel economy label ratings so long as specific references are made to appropriate EPA/NHTSA ratings. Manufacturers and dealers simply don't refer to any such ratings and, given the need for clarity and uniformity; there is no reason to believe they will do so in the future.

C. Claims Related to Model Groups

See the discussion above addressing “up to” ratings and rating ranges. Where only one version of a make/model is being advertised, NADA suggests that it would be inappropriate to use ratings applicable to a different version of the same make/model.

D. Claims for Alternative Fueled Vehicles (AFVs)

For purposes of uniformity and clarity, NADA urges the FTC to promote the appropriate use of EPA/NHTSA fuel economy label ratings in advertisements for all new light-duty AFVs (including flexible fuel and new technology vehicles) in the same manner as it does for conventionally fueled vehicles.

E. Fuel Economy Range Claims

NADA supports the FTC’s proposal to delete existing 16 CFR §259.2(b)(1).

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

Respectfully submitted,

Douglas I Greenhaus
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Health, and Safety