



September 7, 2016

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

RE: Fuel Economy Guide Amendments, R711008; Federal Trade Commission, 16 CFR Part 259; Fuel Economy Advertising for New Automobiles

*Electronically filed at <https://ftcpublic.commentworks.com/ftc/fueleconomyamendments>*

Dear Sir or Madam:

The Alliance of Automobile Manufacturers (Alliance) is a trade association of twelve car and light truck manufacturers comprised of BMW Group, FCA US LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars, Toyota Motor, 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.<sup>1</sup>

The Alliance appreciates the opportunity to offer comments on the Federal Trade Commission's (FTC's) proposed amendments to its Guide Concerning Fuel Economy Advertising for New Automobiles ("Fuel Economy Guide," or "Guide"). As we indicated in the Alliance's July 10, 2014 comments on the FTC Regulatory Review of the Fuel Economy Guide, the Alliance supports the Guide's dual goals of ensuring that consumers get accurate fuel economy information to use in comparing vehicles and to allow automobile manufacturers to compete vigorously over fuel economy under a common set of rules.

In 2014, we stated that at that time we were not aware of any major problems that would require fundamental changes to the Guide. Our 2014 comments focused primarily on responding to specific questions posed by the FTC, and we also suggested that the FTC adopt additional guidance providing manufacturers with increased flexibility for fuel economy advertising in restrictive digital media formats.

In general, the Alliance finds that the amendments proposed by the FTC on June 6, 2016 at 81 Fed. Reg. 36216 represent a constructive revision to the Fuel Economy Guide. The proposed amendments largely preserve the substance of the original Guide, while making updates to

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<sup>1</sup> For additional information, go to <http://www.autoalliance.org>.

account for regulatory changes, new vehicle technology, and current terminology. The amendments also include some additional examples to illustrate advertising practices that may be considered deceptive or confusing to consumers. The Alliance appreciates the fact that in developing the proposed amendments, it appears the FTC made a significant effort to take the prior comments of all stakeholders into account.

Below are more specific comments:

#### §259.4(j) Claims for Flexible-Fuel Vehicles

This section states that “If an advertisement for a flexible fueled vehicle mentions the vehicle’s flexible fuel capability and makes a fuel economy claim, it should include the EPA fuel economy estimates for both gasoline and alternative fuel operation.” The accompanying example indicates that if an advertisement mentions that a flex-fuel vehicle has a 30 MPG highway rating, the advertisement is likely deceptive because the consumer may assume that the stated rating applies to both gasoline and alternative fuel operation.

Our position is that listing single fuel economy values may be appropriate to the situation and is not a deceptive practice if proper context is given. If, for example, an advertisement is clear that the EPA-estimated rating applies specifically to operation on gasoline, the manufacturer also should not be required to include the fuel economy rating for operation on the alternative fuel. The manufacturer should be able to highlight the fuel economy of the vehicle on one fuel or the other without adding all of the necessary verbiage to cover the ratings for both fuels. It is not deceptive to provide the rating on one fuel without providing the rating on the other fuel, as long as the advertised rating cannot reasonably be understood by the consumer to apply to both fuels. This flexibility is similar to that for city versus highway fuel economy, in that the Guide allows stating either one individually as long as it’s clear which is being stated. We suggest that the Guide be revised to clarify this point.

Whether or not the FTC makes the change requested above, our understanding is that the proposed flex-fuel guidance would not apply to plug-in hybrids, which are rated for both charge-depleting and charge-sustaining operation. In the preamble to the proposed amendments, the FTC explained its decision not to advise manufacturers to disclose charge-depleting fuel economy (expressed in MPGe), since many consumers would not understand it. We would appreciate the FTC’s confirmation of this point when the final Guide is issued, to avoid any potential confusion.

#### §259.4(l) Claims Based on Non-EPA Estimates

The proposed Guide continues to recommend specific disclosures related to non-EPA claims to reduce the possibility of deception. The FTC requested further comment on this issue and asked whether non-EPA claims, including non-EPA driving range claims for electric vehicles, are common.

The Alliance does not believe that advertising claims based on non-EPA estimates are common. In the vast majority of instances, advertisers state only the EPA estimates and make no references to any other estimates or tests. However, there are limited conditions under which non-EPA claims may be used, such as prior to a new vehicle launch when the formal EPA estimates are not yet available. In this case, a manufacturer may give its projection of the anticipated EPA estimates based on its testing using the EPA methodology. If such estimates are clearly identified as projections, we do not believe the use of such estimates is deceptive.

There also may be circumstances in which an advertiser believes that additional valuable information can be provided to a consumer based on actual driving results achieved under controlled conditions other than the EPA testing methodology (for example, by an enthusiast magazine, an independent testing company or manufacturer). The Alliance agrees with the FTC's statement that "There is no evidence that such claims are deceptive if adequately qualified." The Alliance also agrees that claims not based on the EPA testing methodology should be clearly identified as such and that the test conditions and variables should be made available by the advertiser. Finally, we agree that the EPA estimates also should be provided in the advertisement in a clear and conspicuous manner, assuming they are available at the time the advertisement is published.

### Limited Format Advertising

In response to a prior comment by the Alliance, the preamble to the proposed amendments states that the FTC "does not propose to cover space-constrained advertising in the Fuel Economy Guide because these issues already are addressed by the FTC's ".Com Disclosures: How to make Effective Disclosures in Digital Advertising." It explains as follows:

The Commission expects that advertisers will be able to use abbreviated forms of most disclosures identified in the proposed Guidance. Terms such as 'EPA estimate' and 'highway MPG' have been widespread in advertisements over the last four decades. Given the prevalence of these terms, the Commission expects that abbreviated disclosures, such as "EPA-est. 35 MPG Hwy," coupled with a link to more detailed information, should be effective in conveying the disclosures to consumers. However, since the Commission cannot anticipate every abbreviated disclosure [that] advertisers may use, empirical evidence may be necessary to demonstrate that certain abbreviations or icons are effective. The Commission seeks further comment on these issues.<sup>2</sup>

The Alliance recognizes that the FTC's ".Com Disclosures" give general guidance regarding advertising in "limited format" media. We also understand that the FTC does not wish to revisit that guidance at this time. The Alliance would simply note that any judgments about what may or may not be considered "deceptive" advertising in digital formats must continue to evolve since these forms of advertising continue to become increasingly prevalent and consumers become more and more used to short-form messages and abbreviations. We agree with the FTC that, in light of the fact that advertising based on EPA-estimated fuel economy ratings has been around since the 1970s, reasonable consumers who are viewing limited format advertising can be expected to understand common abbreviations relevant to many fuel economy claims. We also agree that messages of this nature, coupled with a web link to more detailed information, should be effective in conveying the necessary disclosures to consumers. While we understand that the FTC cannot opine on all possible abbreviations or icons that advertisers may use, Alliance members have no incentive to use unconventional or confusing means to communicate these messages. The Alliance understands and supports providing clear and accurate fuel economy information to consumers in advertisements and marketing materials.

Rather than continuing to pursue our request for further general guidance on this issue, the Alliance or its members may contact the FTC to discuss specific limited-format situations as

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<sup>2</sup> 81 Fed. Reg. at 36216.

they arise. Further developments in this area may suggest the need for the development of additional guidelines in the future.

The Alliance appreciates the FTC's thoughtful consideration of our prior comments on this subject. We hope these comments are helpful to the FTC in finalizing the revised Fuel Economy Guide. Please contact Giedrius Ambrozaitis of my staff at 248-915-8836 if you have any questions or wish to discuss these comments in more detail. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Nevers", is written over a horizontal line.

Chris Nevers  
Vice President, Energy and Environment

Cc: Hampton Newsome  
Giedrius Ambrozaitis