GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW MOBILES

December 24, 1974, by a notice of hearing in the Federal Register (49 FR 45313), the Federal Trade Commission commenced a rulemaking proceeding concerning the advertising and labeling of fuel economy of new mobiles. Included in the notice was a statement of the subject matter in the proceeding, together with a list of questions designed to elicit public comment.

In the proceeding, the Commission noted the dramatic increase in fuel economy claims made and of the proliferation of alternative fuel-propulsion systems. Concern was expressed that the tendency and capacity to market fuel economy and to consumers as to the fuel economy experience with the automobile. The need for a uniform method of testing fuel economy has been stressed.

The Commission expressed its concern that the advertising of fuel economy information does not sufficiently consider the consumer's use of the automobile. The need for a uniform method of testing fuel economy has been stressed.

The Commission has concluded that fuel economy claims must include certain disclosures and qualifications. The following:

1. Disclosure of EPA test results. As the Commission recognized in its September 24, 1974, notice of hearing, the test results of the test performed by the Environmental Protection Agency are the only reliable data available for consumers to compare advertised fuel economy figures.

2. Identification of advertised vehicle. Section 309.3(b) of the Guide requires that the advertised automobile is available in more than one engine size, transmission type, or fuel system, such as be disclosed in the advertisement. Each of these factors has a substantial effect on fuel consumption, and the EPA-FPA...
"Mileage Guide" provides separate fuel economy figures for a "carline" (e.g., Pinto, Vega, etc.) represented by each of these different configurations. Failure to advertise a "New automobile" in terms of these major fuel-economy-affecting variables could therefore be a significant source of deception, since, a consumer viewing an advertisement containing the above-mentioned, fuel-economy figures might assume that the advertised fuel economy relates to the most popular version of the advertised model, (i.e., with a relatively large engine and automatic transmission) rather than to a "special economy version" possibly which may be equipped with the smallest engine and manual transmission. That the consumer's impression will be confirmed when he views the cars in the dealer's showroom, or consults a fuel economy list, does not of course excuse the initial deception. See, e.g., Carter Products, v. FTC, 333 F.2d 925 (5th Cir. 1964).

§ 259.1 Definitions.

For the purposes of this part the following definitions shall apply:
(a) "New automobile" Any passenger vehicle or light duty truck as those terms are defined in 40 C.F.R. Part 85, 1976, as amended, which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who sells for and is under the control of an manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term "dealer" shall mean any person resident or located in the United States or any territory or in the District of Columbia engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term "ultimate purchaser" means, for purposes of this part, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale to another person who leases such vehicle for his personal use.
(b) "Mileage Guide". The most recent publication of EPA and/or PEA which lists the relevant model year the estimated city and estimated highway fuel economy of new automobiles.
(c) "Estimated city fuel economy" The gasoline consumption or mileage of new automobiles as determined in accordance with the test procedure employed and published by the United States Environmental Protection Agency as described in 39 FR 38590, et seq., and subsequent revisions, and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published or accepted by the United States Environmental Protection Agency.
(d) "Estimated highway fuel economy" The gasoline consumption or mileage of new automobiles as determined in accordance with the test procedure employed and published by the United States Environmental Protection Agency as described in 39 FR 38590, et seq., and subsequent revisions, and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published or accepted by the United States Environmental Protection Agency.
(e) "Advertising disclosure." A Federal rule, regulation, or specification that has the effect of mandating the inclusion of fuel economy or emission data in an advertising disclosure.