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FEDERAL TRADE COMMISSION
**Agency Information Collection Activities;
Proposed Collection: Comment Request**

AGENCY: Federal Trade Commission (“Commission” or “FTC”).

ACTION: Notice.

SUMMARY: The FTC plans to conduct a study to examine consumer perception of fuel economy advertising. The study is part of the Commission’s regulatory review of the Guide Concerning Fuel Economy Advertising for New Automobiles (“Fuel Economy Guide” or “Guide”). This is the second of two notices required under the Paperwork Reduction Act (“PRA”) in which the FTC seeks public comments on its proposed consumer research in connection with Office of Management and Budget (“OMB”) review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Fuel Economy Consumer Study, Project No. P134202” on your comment, and file your comment online at <https://ftcpublishcommentworks.com/ftc/fueleconomystudypra2>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the

Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J),
Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, 202-326-2889,
Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600
Pennsylvania Avenue, NW, Mailstop CC-9528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Guide Concerning Fuel Economy Advertising for New Automobiles (“Fuel Economy Guide” or “Guide”) (16 CFR Part 259) in 1975 to prevent deceptive fuel economy advertising and to facilitate the use of fuel economy information in advertising. The Guide helps advertisers avoid unfair or deceptive claims under Section 5 of the FTC Act.¹ To accomplish this goal, the Guide advises marketers to disclose established Environmental Protection Agency (EPA) fuel economy estimates (*e.g.*, miles per gallon or “mpg”) whenever they make any fuel economy claim based on those estimates. In addition, if advertisers make fuel economy claims based on non-EPA tests, the Guide directs them also to disclose EPA-derived fuel economy estimates and provide details about the non-EPA tests such as the source of the test, driving conditions, and vehicle configurations.

¹ 15 U.S.C. 45(a). The Commission’s industry guides, such as the Fuel Economy Guide, are administrative interpretations of the application of Section 5 of the FTC Act, 15 U.S.C. 45(a), to advertising claims. The Commission issues industry guides to provide guidance for the public to conform with legal requirements. The Guide provides the basis for voluntary abandonment of unlawful practices by industry members. 16 CFR Part 17. The Guide does not have the force and effect of law and is not independently enforceable. However, failure to follow industry guides may result in corrective action under Section 5 of the FTC Act. The Commission, therefore, can take action under the FTC Act if a business makes fuel economy marketing claims inconsistent with the Guide. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

On May 15, 2014, the Commission published a Notice (79 FR 27820) resuming its regulatory review of the Guide, which previously had been postponed² pending new fuel economy labeling requirements from the EPA and completion of the FTC’s review of its Alternative Fuel Rule (16 CFR Part 309). On May 8, 2014, the Commission published a separate Notice (79 FR 26428) seeking comment under the PRA on the planned FTC consumer research designed to aid the regulatory review.

II. FTC’s Proposed Study

A. Study Description

As part of the ongoing regulatory review, the FTC plans to conduct Internet-based consumer research to explore consumer perceptions of certain fuel economy claims to help the Commission better advise marketers on how to comply with the law. Specifically, using a treatment-effect methodology, the proposed study will compare participant responses regarding their understanding of a variety of claim types, such as general fuel economy claims (*e.g.*, “this car gets great gas mileage”), specific MPG claims (*e.g.*, “25 mpg”), and electric vehicle claims. To aid in developing possible changes to the Fuel Economy Guide, FTC staff will consider the consumer research results in conjunction with the broad range of issues raised by commenters during the Guide review.

Having considered the costs and benefits of various data collection methods, FTC staff has concluded that an Internet panel with nationwide coverage will provide the most efficient way to collect data to meet the research objectives within a feasible budget. Thus, the FTC proposes to collect responses from U.S. automobile consumers representing a broad spectrum of

² 76 FR 31467 (June 1, 2011).

the U.S. adult population. Participants will be drawn from an Internet panel maintained by a commercial firm. All participation will be voluntary. While the results will not be generalizable to the U.S. population, the Commission believes that they will provide useful insights into consumer understanding of the claims being considered. The FTC has contracted with Great Lakes Marketing, a consumer research firm with substantial experience assessing consumer communications via the Internet and alternative protocols, to administer the Internet study.

B. PRA Burden Analysis

In its May 8, 2014 Notice, the FTC provided PRA burden estimates for the research. Staff is revising certain assumptions based on a more precise target population and further consultation with its contractor regarding the anticipated response rate. The contractor anticipates that approximately 50% percent of those invited to participate in the study will fully complete the pretest and questionnaire. Accordingly, the contractor might contact as many as 8,000 persons to achieve the study's goal of fully surveying 3,600 respondents and pretesting an additional 100 respondents beforehand. Staff projects that those who will prematurely end the process will do so in under one minute. Thus, this activity will total 72 hours (4,300 respondents x 1 minute).

As before, staff estimates that respondents to the Internet questionnaire will require, on average, approximately 20 minutes to complete it. Staff will pretest the questionnaire with approximately 100 respondents to ensure that all questions are easily understood. Allowing for an extra three minutes for questions unique to the pretest, the pretest will total approximately 38 hours cumulatively (100 respondents x 23 minutes each). Once the pretest is completed, the FTC plans to seek information from up to 3,600 respondents for approximately 20 minutes each for a total of 1,200 hours. Thus, cumulatively, for all respondents, responding to the FTC's

pretest and questionnaire will consume approximately 1,310 hours. The cost per respondent should be negligible. Participation is voluntary and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

III. Paperwork Reduction Act

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.³ As required by section 3506(c)(2) of the PRA, the FTC published a notice seeking public comment on the proposed collections of information. *See* 79 FR 16330 (Mar. 25, 2014). In response to the PRA notice, the Commission did not receive any comments. However, in response to its May 15, 2014 Notice announcing resumption of the regulatory review of the Guide, two commenters discussed the proposed research.

Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, the Commission is providing this second opportunity for public comment. All comments should be filed as prescribed in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below, and must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Analysis of Comments

As noted above, in response to a separate Notice, the Commission received two comments related to the proposed study.

³ 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

Consumer Groups: A group of consumer, energy efficiency, and environmental organizations⁴ urged the FTC to test various format and font requirements to determine the most effective way to communicate fuel economy information in radio, print, television, and the web. Though such information may be helpful for advertisers, the FTC staff does not plan to devote the limited resources of this study to explore font and format issues. Instead, the FTC staff plans to focus on fundamental issues related to respondents' understanding of various claim types. In addition, the FTC has already provided substantial guidance on conspicuous disclosures in other contexts.⁵ Finally, the study's online format may not provide the best means to draw conclusions about format and font requirements given different screen sizes and font settings that respondents may use.

National Automobile Dealers Association (NADA): The NADA suggested that the FTC consider existing research, including that conducted by the EPA, National Highway Traffic Safety Administration, and the U.S. Department of Energy (DOE), before conducting its own study.⁶ Staff has consulted with these agencies and searched for relevant studies and has not identified any recent studies that address the types of fuel economy advertising issues under consideration in the present project.

V. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 30 days from FEDERAL REGISTER date

⁴ #573-#00006. See <http://www.ftc.gov/policy/public-comments/initiative-573>.

⁵ See, e.g., “.com Disclosures: How to Make Effective Disclosures in Digital Advertising,” FTC, March 2013, <http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

⁶ Comment #573-#00008. See <http://www.ftc.gov/policy/public-comments/initiative-573>.

of publication]. Write “Fuel Economy Consumer Study, Project No. P134202” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).⁷ Your comment will be kept confidential only if

⁷ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/fueleconomystudypra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5806.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or

before [30 days from FEDERAL REGISTER date of publication]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

David C. Shonka,
Principal Deputy General Counsel.

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