



**[Billing Code: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**16 CFR Part 259**

**Guide Concerning Fuel Economy Advertising for New Automobiles**

**AGENCY:** Federal Trade Commission

**ACTION:** Proposed amendments.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) seeks comments on proposed amendments to the Guide Concerning Fuel Economy Advertising for New Automobiles (“Fuel Economy Guide” or “Guide”) to reflect current Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”) fuel economy labeling rules and to consider advertising claims prevalent in the market.

**DATES:** Comments must be received by August 8, 2016.

**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 Guide Amendments, R711008” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/fueleconomyamendments> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Fuel Economy Guide Amendments, R711008” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7<sup>th</sup> Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, (202) 326-2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room C-9528, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Commission issued the Fuel Economy Guide (16 CFR Part 259) on September 10, 1975 (40 FR 42003) to prevent deceptive fuel economy advertising for new automobiles and thus facilitate the use of fuel efficiency information in advertising. To accomplish this goal, the current Guide advises advertisers to disclose established 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 claims based on non-EPA tests, the Guide advises them to disclose EPA-derived information and provide details about the non-EPA tests, such as the test’s source, driving conditions, and vehicle configurations.

On April 28, 2009 (74 FR 19148), the Commission published a notice soliciting comments on proposed amendments to the Guide as part of its regulatory review program. The Commission then postponed its review in a June 1, 2011 notice (76 FR 31467) pending new fuel economy labeling requirements from the EPA and completion of the FTC’s Alternative Fuels Rule (16 CFR Part 309) review. The Commission explained that Fuel Economy Guide revisions would be premature before the conclusion of these regulatory proceedings. With those activities complete,<sup>1</sup> the Commission resumed its review of the Guide on May 15, 2014) (79 FR 27820)

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<sup>1</sup> The Commission announced final revisions to the Alternative Fuels Rule in an April 23, 2013 Notice (78 FR 23832). In 2011, EPA and NHTSA completed revisions to their fuel economy labeling requirements, which, among other things, addressed labels for alternative fueled vehicles (AFVs) not specifically addressed in past EPA requirements. *See* 76 FR 39478 (July 6,

(“2014 Notice”) seeking comment on potential amendments to address changes to the EPA and NHTSA (hereinafter “EPA”) fuel economy labeling rules, address advertising for alternative fueled vehicles, and consider other advertising claims prevalent in the market. The Commission also announced plans to conduct consumer research on fuel economy advertising claims.

After reviewing the comments generated by the 2014 Notice<sup>2</sup> and the consumer research results, the Commission proposes Guide amendments for comment. In considering these proposals, commenters should focus on information that helps advertisers avoid deceptive or unfair claims prohibited by the FTC Act.<sup>3</sup> The Guide does not identify disclosures that are merely helpful or desirable to consumers. Likewise, commenters should not address the adequacy of EPA fuel economy test procedures or the accuracy of EPA label content. Such issues fall within the EPA’s purview and are generally outside the scope of the Guide.

## **II. Consumer Research**

To aid the Commission in developing the proposed Guide amendments, the Commission conducted an Internet-based research study to explore consumer perceptions of certain fuel economy marketing claims.<sup>4</sup> Using a treatment-control comparison methodology, the study

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2011) (*see* 40 CFR Parts 85, 86, and 600; and 49 CFR Part 575).

<sup>2</sup> The comments are available at <https://www.ftc.gov/policy/public-comments/initiative-573>. The commenters included: Alliance of Automobile Manufacturers (Alliance) (#00004), Association of Global Automakers, Inc. (AGA) (#00007), Consumer Federation of America (on behalf of several organizations) (referred herein as “consumer groups”) (#00006), LaRosa (#00002), National Automobile Dealers Association (NADA) (#00008), and Rodriguez (#00003).

<sup>3</sup> 15 U.S.C. 45(a). The Guides do not have the force and effect of law and are not independently enforceable. However, failure to comply with industry guides may result in law enforcement action under applicable statutory provisions. The Commission, therefore, can take action under the FTC Act if a business makes fuel economy claims inconsistent with the Guides. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive in violation of Section 5 of the FTC Act.

<sup>4</sup> The Commission announced the study in its May 2014 Notice and provided further information

compared 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 in the city”), driving range claims, electric vehicle claims, and “up to” mileage claims. The study collected responses from U.S. automobile consumers representing a broad spectrum of the U.S. adult population.<sup>5</sup> By comparing the responses to various scenarios, the study provided useful insights about respondents’ understanding of fuel economy claims.<sup>6</sup> This Notice contains relevant discussion of the proposed amendments, as well as specific study results. The Commission invites commenters to identify additional consumer research that may aid the FTC in considering the proposed Guide revisions.

### **III. Guide Benefits**

Comments received in response to the 2014 Notice expressed general support for maintaining the Guide and provided general recommendations for improvement. Given this broad support, the Commission plans to retain the Guide. However, as detailed in this Notice, the Commission proposes to revise the Guide’s format and update its content to address new technologies and new types of claims.

In expressing support for the Guide, several commenters discussed its benefits. NADA, for example, explained that the Guide helps prospective new vehicle purchasers obtain consistent and objective fuel economy information by advising manufacturers and dealers “to disclose fuel

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in two additional notices (79 FR 26428 (May 8, 2014) and 79 FR 62618 (Oct. 20, 2014)).

<sup>5</sup> The study sampled members of an Internet panel consisting of individuals recruited through a variety of convenience sampling procedures. The sample for this research, therefore, does not constitute a true, random sample of the adult U.S. population. However, because the study focused primarily on comparing responses across randomly assigned treatment groups, the Internet panel provided an appropriate sample frame.

<sup>6</sup> Additional information about the study, including the questionnaire and results, is available on the FTC website. *See* <https://www.ftc.gov/policy/public-comments>.

economy estimates in a fair, even-handed, and clear and conspicuous manner.” The consumer groups added that “automobile purchases are among the largest expenditures consumers make and bind them to purchase the fuel necessary to run their vehicles.” In their view, accurate mileage information benefits consumers, facilitates market functions, serves as a powerful incentive to increase fuel efficiency, and contributes significantly to the overall public good. These various comments are consistent with the Commission’s past observation that “the Guide has been a benefit to consumers, providing fuel economy numbers in advertising that allow meaningful comparisons of different vehicle models.”<sup>7</sup>

Commenters also provided Guide recommendations related to EPA label developments and market changes in recent years. For example, NADA and the Alliance emphasized the need to ensure the Guide reflects current EPA fuel economy labeling requirements. The Alliance added that the updated Guide should reflect new vehicle technologies, existing terminology, and the current EPA label format, while still providing advertisers flexibility in how they inform consumers about fuel economy. In addition, NADA and the Alliance recommended the Guide afford flexibility in the content and format of claims, as long as such claims maintain accuracy and clarity.

In response to these comments, the Commission proposes to update the Guide, as detailed below, to take into account current EPA and NHTSA requirements, new vehicle technology, and new terminology. In addition, where appropriate, the proposed revisions provide flexibility to advertisers as long as they avoid deceptive claims.

#### **IV. Proposed Guide Revisions**

The Commission sought comments in the 2014 Notice on general issues related to the

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<sup>7</sup> 67 FR 9924 (Mar. 5, 2002).

Guide, including a new format, technical definitions, citation format, types of fuel economy claims (including claims involving EPA-based MPG, non-EPA tests, vehicle configuration, fuel economy range, and alternative fueled vehicles), and limited-format advertising such as on mobile devices. The Commission discusses each of these issues below.

#### **A. Guide Format**

*Background:* In the 2014 Notice, the Commission proposed improving the Guide's format by making it consistent with recently amended FTC guides, such as the Guides for the Use of Environmental Marketing Claims.<sup>8</sup> Under the proposed format, the Guide includes a list of general principles to help advertisers avoid deceptive practices with detailed examples to illustrate those principles.

*Comments:* Commenters supported updating the Guide's format. For example, NADA explained updates would help dealers maximize the clarity and utility of their fuel economy advertising. The Alliance noted that revisions would aid manufacturers, particularly in addressing potential claims not specifically addressed by the Guide. However, several commenters (*e.g.*, NADA and AGA) urged the Commission to publish such changes for comment before making final amendments.

*Discussion:* In response to comments, the Commission proposes to revise the Guide format to be consistent with recent Guide revisions for other topics, such as environmental claims. Specifically, the proposed revisions include a list of general principles for fuel economy advertising illustrated by specific examples.

#### **B. Definitions**

*Background:* In the 2014 Notice, the Commission proposed five changes related to the

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<sup>8</sup> See Guides for the Use of Environmental Marketing Claims (Green Guides) (16 CFR Part 260).

Guide’s definitions section (16 CFR 259.1).<sup>9</sup> First, the Commission proposed to replace several outdated terms to ensure consistency with EPA’s current fuel economy rules.<sup>10</sup> Specifically, the Commission proposed changing the definitions “estimated city miles per gallon” to “estimated city fuel economy;” and “estimated highway miles per gallon” to “estimated highway fuel economy.” It also proposed revising the definition of the term “fuel economy.” In addition, the Commission proposed eliminating the term “estimated in-use fuel economy range” because EPA’s fuel economy label no longer provides such information.<sup>11</sup> Second, the Commission proposed adding the term “combined fuel economy” to Section 259.1 to ensure consistency and reduce potential confusion because EPA now uses this term on its label.<sup>12</sup> The new term would expand the Commission’s guidance to advertisers whose vehicles now display an estimate of combined fuel economy required by the EPA. Third, the Commission proposed to amend the Guide’s definition of “new automobile” to include “medium-duty passenger vehicle,” consistent with EPA’s existing fuel labeling requirements.<sup>13</sup> Fourth, the Commission proposed several minor revisions, including eliminating the phrase “in use” in the definition of “range of fuel economy,” and changing the definitions for “estimated city MPG” and “estimated highway MPG” to ensure consistency with EPA’s terms and definitions. The Commission also proposed

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<sup>9</sup> The Commission, in the 2009 Notice, also proposed to add two terms, “Fuel” and “Alternative Fueled Vehicles,” to distinguish vehicles that would be covered by EPA’s label requirements from those covered by the proposed guidance regarding AFVs. 74 FR 19148, 19153.

<sup>10</sup> See 40 CFR 600.002.

<sup>11</sup> The current Guide defines “estimated in-use fuel economy range” as the “estimated range of city and highway fuel economy of the particular new automobile on which the label is affixed, as determined in accordance with procedures employed by the U.S. Environmental Protection Agency as described in 40 CFR 600.311 (for the appropriate model year), and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported or accepted by the U.S. Environment Protection Agency.” 16 CFR 259.1(e).

<sup>12</sup> See 40 CFR 600, Appendix VI.

<sup>13</sup> 40 CFR 86.1803-01. Previously, EPA required fuel economy labels for only passenger automobiles and light trucks.

eliminating an obsolete reference to the term “unique nameplate” in footnote 2 and replacing it with the more appropriate EPA term “model type.”<sup>14</sup> Finally, the Commission proposed reorganizing the definition of “new automobile” to reduce its length and potential confusion. Specifically, the proposed amendment would remove the definitions of “dealer,” “manufacturer,” and “ultimate purchaser” from “new automobile” and list them as separate terms under section 259.1.<sup>15</sup>

*Comments:* Commenters supported conforming the definitions to current EPA label regulations.<sup>16</sup> AGA, for example, explained that using EPA’s recent terminology would provide additional clarity and help ensure the Guide’s consistent use. AGA also recommended eliminating the term “estimated in-use fuel economy range” because EPA no longer uses it. Likewise, it concurred with the proposal to remove the term “in use” from the Guide because the term furthers consumers’ expectations that they will actually achieve the EPA numbers.

*Discussion:* Given commenters’ support for these proposed changes, the Commission proposes to revise the definitions consistent with its proposals. In addition, the Commission has added the term “EPA” to the various “fuel economy” estimate definitions to clarify that such estimates are derived from required EPA test procedures. Furthermore, consistent with several proposed amendments discussed below, the proposed Guide contains new definitions for “alternative fueled vehicle,” “flexible fuel vehicle,” “EPA driving range estimate,” “EPA regulations,” and “fuel.”<sup>17</sup>

### **C. Regulatory Citations**

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<sup>14</sup> 74 FR at 19151.

<sup>15</sup> The Commission does not propose otherwise altering these definitions.

<sup>16</sup> See, e.g., Alliance, Global Automakers, and NADA.

<sup>17</sup> See section 259.1 of the proposed Guide.

*Background:* In its previous Notice, the FTC proposed to replace all specific regulatory citations to EPA regulations in the Guide with a general citation (40 CFR Part 600) to reduce the frequency of future Guide changes should EPA amend its regulations. Earlier comments noted that this proposal would create confusion because the cited general EPA provisions contain two different sets of fuel economy requirements, one of which is not directly applicable to FTC’s Guide. *See* 79 FR at 27821.

*Comments:* In response to the 2014 Notice, NADA urged the Commission to use only a general citation to EPA’s regulations (*i.e.*, 40 CFR Part 600), arguing the benefits of a general citation (*e.g.*, it would require fewer updates) outweigh any potential risks of confusion.

*Discussion:* To avoid confusion identified in the comments, the Commission proposes to simplify the citations by using a general citation to “EPA regulations,” but defining that term to mean EPA’s “fuel economy labeling requirements in 40 CFR Part 600, Subpart D,” as opposed to other EPA vehicle-related regulations. This will clarify that the EPA regulations referenced in the Guide apply to that agency’s labeling requirements and not other EPA requirements inapplicable to the Guide.

## **D. Types of Fuel Economy Claims**

As discussed below, the Commission sought comment on specific types of advertising claims, including EPA-based miles-per-gallon claims, claims based on non-EPA tests, claims related to vehicle configuration, range of fuel economy claims, and AFV claims.

### **1. Miles-Per-Gallon (MPG) Claims**

*Background:* In the 2014 Notice, the Commission sought comments on various aspects of the MPG provision of the current Guide (section 259.2(a)). Specifically, the Notice invited comments on the following issues: 1) whether a general fuel economy claim (*e.g.*, “XYZ car

gets great mileage”) should be accompanied by a specific MPG disclosure to prevent consumer deception or unfairness; 2) whether an advertisement is unfair or deceptive if it provides only one type of mileage rating (*e.g.*, an advertisement that only provides highway MPG); 3) whether an unspecified MPG claim (*e.g.*, “37 MPG”) is deceptive if the advertisement fails to identify whether the rating is city, highway, or combined; 4) how consumers understand “up to” MPG claims (*e.g.*, “up to 45 MPG”); 5) whether the combined EPA MPG rating should serve as the default disclosure for unspecified fuel economy claims (instead of the city MPG as currently indicated in the Guide); 6) whether the Guide should advise advertisers to avoid statements that imply a linear relationship between MPG and fuel costs; 7) whether fuel economy advertisements containing MPG claims should identify EPA as the source of the ratings; and 8) whether the FTC should provide additional guidance regarding disclaimers that the EPA ratings are only estimates. Each of these issues is addressed below.

**a. General Fuel Economy Claims**

*Background:* In the 2014 Notice, the Commission sought comments on whether a general fuel economy claim should be accompanied by a specific mileage disclosure to prevent consumer deception or unfairness. The Guide has advised advertisers to include such disclosures since its initial publication in the 1970’s. Specifically, section 259.2(a) states that an advertisement with a general fuel economy claim should disclose the vehicle’s city mileage rating.<sup>18</sup> That section also indicates that any claim about city or highway driving should contain estimated city or highway MPG rating.

*Comments:* Commenters supported the current Guide’s approach to specific mileage

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<sup>18</sup> At the time the Guide was created, EPA did not require combined fuel economy on the label. Therefore, the guidance pointed to the city mileage number as the default disclosure.

disclosures for general fuel economy claims. The Alliance explained that such mileage disclosures provide consumers “with context and backup for the specific claim being made.” Rodriquez stated that, given the potential for deception in general advertising claims, the Guide should continue to advise advertisers to include the fuel economy ratings.

*Discussion:* The Commission proposes to retain the existing guidance advising advertisers to provide the EPA mileage estimates whenever they make a fuel economy claim. As discussed below, this approach, supported by commenters, is consistent with the recent consumer research, as well as the guidance the Commission has provided consistently for decades.

In releasing the Guide in 1975, the Commission explained that “when no specific fuel economy figure is cited in advertising, the use of such vague and ill-defined terms as ‘saves gas,’ or ‘gas stingy engine’ may . . . be deceptive by implying existence of some level of ‘good fuel economy’ which may be perceived differently by different individuals.”<sup>19</sup> In choosing to retain the provision in 1995, the Commission explained that “it is important that the EPA estimate accompany implicit as well as explicit mileage claims. Any mileage claim inherently involves a comparison to other vehicles. The EPA estimates provide consumers with a meaningful method of comparing competing claims.”<sup>20</sup>

The recent FTC consumer study supports these conclusions.<sup>21</sup> Study respondents tended to assign multiple meanings to general fuel economy claims. For example, when asked about the meaning of the claim “this car gets great gas mileage,” various respondents said the vehicle had better mileage than other cars of its size, better mileage than all other cars, better mileage than

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<sup>19</sup> 40 FR 42003 (Sept. 10, 1975).

<sup>20</sup> 60 FR 56230, 56231 (Nov. 8, 1995).

<sup>21</sup> Section II of this Notice contains background information about the study.

similarly priced cars, or none of those choices.<sup>22</sup> When the study narrowed the general fuel economy claim to a particular class size (“This car gets great gas mileage compared to other compact cars”), respondents offered varied responses about whether such claims applied to all, most, or many cars in the class.<sup>23</sup> When asked to describe the meaning of a general fuel economy claim in an open-ended format, the results were similarly diverse. Specifically, when respondents were asked about the meaning of the claim “This car gets great gas mileage,” they variously answered “more miles per gallon/ saves money/ less gas”; “gets over 30 miles or more”; gets “good” or “great” mileage; and “gets over 20 miles or more.”<sup>24</sup>

These varied interpretations are likely impossible for an advertiser to substantiate simultaneously. To overcome such potential deception, the Commission has consistently

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<sup>22</sup> Specifically, when asked about a general claim’s meaning (Q1d), study participants, selecting from five responses, indicated the vehicle had better mileage than other cars of its size (36.8%), better mileage than all other cars (14.1%), better mileage than similarly priced cars (12.0%), not sure (15.6%), and none of above (21.5%). The responses were significant compared to control questions where the general claim was narrowed (Q1e and Q1f) (*e.g.*, great mileage compared “to other compact cars” or “similarly priced cars”). In response to those questions, the vast majority of respondents correctly identified the relevant comparison. Specifically, in Q1e where the claim included “other compact cars,” 78.8% of respondents accurately identified the comparison as “other cars of its size” while the results for all other choices were fewer than 10%. Where the claim involved a comparison of “similar priced” cars in Q1f, 62.7% accurately identified the comparison as “cars with a similar sales price” though 20.6% still identified the relevant comparison as “other cars of its size” even though the claim specifically identified “similarly-priced cars.”

<sup>23</sup> When the advertisement said “This car gets great gas mileage compared to other compact cars” (Q2b), 23% of respondents indicated the car got better gas mileage than “all” other compact cars; 37 % believed it got better gas mileage than “almost all” other compact cars; and 18% indicated it got better mileage than “at least half.” When the claim was altered to say “This car gets great gas mileage compared to many other compact cars” (Q2d), the responses also varied with 10% indicating the car had better mileage than all cars, 30% indicating better than almost all, and 30% indicating better than at least half. Only when respondents viewed a control which stated “This car gets great gas mileage compared to all other compact cars” (Q2c) did the variation decrease, with 52% indicating the advertised car got better mileage than all other cars. However, even under this scenario, 23% said the car got better mileage than “almost all” other compact cars.

<sup>24</sup> Q1a. None of these various answers corresponded to more than 5% of participants’ responses.

recommended that advertisers disclose the EPA MPG ratings in advertisements that contain general fuel economy claims. Such ratings adequately qualify general fuel economy claims by providing clear objective information that allows consumers to compare competing models and thus mitigates the deceptive conclusions consumers may draw from general claims. Given the results of the research and the overwhelming commenter support for the existing guidance, the Commission does not propose to change it.

**b. Combined EPA MPG Rating as Default Disclosure**

*Background:* In the 2014 Notice, the Commission also solicited comments on whether the EPA combined city/highway rating, rather than the city MPG, should serve as the default disclosure for general fuel economy claims. The current Guide (section 259.2(a)(1)(iii)), which the Commission issued before EPA began requiring the combined rating on the label, directs advertisers to provide the EPA city rating as the default disclosure to accompany any general fuel economy claim that does not reference city or highway driving. In 2011, EPA altered the fuel economy label's design and content to feature the combined city-highway rating.<sup>25</sup> The EPA label continues to provide both the city and highway MPG ratings in a font smaller than that used for the combined rating.

*Comments:* Commenters generally supported designating the combined (city/highway) mileage rating as the default disclosure for general fuel economy claims. In particular, the Alliance preferred the combined rating because it is the most prominent disclosure on EPA's current label. The Alliance also explained that the city rating is no longer the lowest or most conservative value in all instances. For many hybrid vehicles, the city MPG rating is higher. AGA argued that advertisers should be able to disclose all the rating types – city, highway, and

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<sup>25</sup> 76 FR 39478 (July 6, 2011).

combined – in combination or alone because these ratings may be beneficial in specific cases (e.g., where a vehicle is intended primarily for city driving).

The consumer groups argued that including all three ratings is the best way to avoid deception, though they noted the combined number alone may be appropriate in some cases. In addition, Rodriguez added that advertisements should include fuel economy ratings for both highway and city because evidence suggests that typical driving time is almost evenly split between the two, contrary to the EPA combined estimate, which weights 55% city and 45% highway. In Rodriguez's view, such city and highway disclosures allow for more accurate fuel economy comparisons.

*Discussion:* The Commission proposes advising advertisers to disclose either the combined fuel economy rating, or both the city and highway numbers, when using fuel economy claims that do not specifically mention city or highway driving. Based on an EPA-specified weighted ratio of city and highway driving, the combined number is now the most prominent EPA label disclosure. It provides an effective default disclosure because it serves as a common consistent indicator of a vehicle's overall mileage. Additionally, the proposed guidance gives advertisers the option to disclose the city and highway estimates together. This disclosure allows consumers to gauge their expected mileage based on their own ratio of city-highway driving. Accordingly, the proposed provision would provide advertisers the flexibility to disclose either the combined rating or the city and highway ratings together. The Commission seeks comments on this approach.<sup>26</sup>

**c. Single Mileage Ratings**

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<sup>26</sup> 74 FR at 19150. Currently, section 259.2(a) does not prohibit disclosure of both the city and highway estimates.

*Background:* The Commission also asked whether an advertisement is deceptive or unfair if it provides only one type of rating (*e.g.*, an advertisement that only discloses highway MPG). The current Guide states that, if an MPG claim involves only city or only highway fuel economy, the advertisement need only disclose the corresponding EPA city or highway estimate. For example, under the current approach, only the “estimated highway MPG” need be disclosed if the representation clearly refers only to highway fuel economy. 16 CFR 259.2(a)(1)(ii).

*Comments:* Commenters offered different opinions on the use of a single mileage rating (*e.g.*, “43 MPG on the highway”). For example, the consumer groups argued that single rating disclosures are clearly deceptive because few, if any, consumers drive solely on highways or local streets. Thus in their view, most consumers will not obtain the fuel efficiency represented by single highway ratings. The consumer groups also indicated that many advertisers use the highway rating “to present their vehicle in the best light possible.” To avoid deception, they argued that advertisers should disclose mileage estimates in one of two ways: (1) all three ratings together (*i.e.*, city, highway, and combined) with the combined rating presented most prominently, or (2) the combined rating only where space for content is limited.

Other commenters, particularly industry members, disagreed. For instance, NADA argued that advertisements containing a single fuel economy rating are not inherently unfair or deceptive. The Alliance agreed, stating that advertisers should have the flexibility to provide information that they believe is most relevant for each vehicle.<sup>27</sup> The Alliance asserted that consumers “have had many years to become familiar with the City, Highway, and Combined rating system” and thus are unlikely to become confused by a single rating. Several of these

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<sup>27</sup> Both NADA and the Alliance emphasized that appropriate disclosures should be included in ads.

commenters argued that the Guide should provide manufactures the flexibility to disclose the rating most relevant to the consumers of a particular product. The Alliance explained, for example, that consumers shopping for a compact car designed primarily for urban use are likely to be most interested in the city value. In its view, an advertisement is not deceptive as long as it discloses the EPA label value and identifies the rating involved (*e.g.*, city mileage).

*Discussion:* Consistent with the current guidance, the proposed Guide does not discourage single mileage ratings in advertisements tied to a particular type of driving (*e.g.*, “This vehicle is rated at 40 MPG on the highway according to the EPA estimate”). Such single-rating claims are not likely to be deceptive as long as the advertisement clearly identifies the type of estimate (*e.g.*, city, highway, or combined), and the estimate matches the content of the advertised claims.

The FTC’s consumer study supports this approach. For example, when shown a single highway mileage claim (*e.g.*, “This car is rated at 25 miles per gallon on the highway according to the EPA estimate”), the vast majority of respondents (74.6%) correctly answered that car would likely achieve that MPG in highway driving, and the responses for alternative interpretations were low.<sup>28</sup> The results were similar when respondents were asked about a claim for a combination of city and highway driving.<sup>29</sup>

In addition, respondents were able to distinguish between highway and combined driving ranges when asked whether they expected to achieve a certain mileage rating if they used the

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<sup>28</sup> See Q5c. The response results for other choices, with no control, were: city rating (5.8%), combined rating (10.7%), unsure (5.5%), and none of the above (3.5%).

<sup>29</sup> The results for Q5d were, not accounting for a control: combined (76.6%), highway (10%), city (4.2%), not sure (6.2%), and none of the above (2.5%). When the question presented an unspecified MPG claim (Q5b) (car “. . . rated at 25 miles per gallon . . .”), the responses were: combined (40.4%), highway (30.5%), city (8.5%), not sure (16.7%), and none of the above (4.1%).

advertised vehicle for all their driving. For instance, when shown a 25 MPG highway claim, (Q6c) 62.2% of respondents indicated they would expect to get “a lot” or a “little” less than 25 MPG when driving the advertised car, while only 48.1% answered similarly when shown the 25 MPG combined driving claim (Q6d).<sup>30</sup> When asked to identify the conditions that might lead to mileage higher or lower than the EPA estimate, more than half of respondents mentioned highway driving, city driving, or both.<sup>31</sup>

The research therefore suggests that consumers are not deceived by single mileage claims as long as the claim specifies the type of driving involved (*e.g.*, highway, combined, etc.). Moreover, consumers have seen such estimates in advertising and on EPA labels for decades. In light of this ongoing exposure, it seems unlikely that a single, clearly-identified mileage estimate will lead to deception. Accordingly, absent additional evidence demonstrating that such claims are deceptive, the Commission does not propose changing its approach on this issue. However, consistent with the existing Guide, the proposed amendments (section 259.4(c)) advise marketers that EPA fuel economy estimates should match the driving claims appearing in the advertisements.

#### **d. Unspecified MPG Claims**

*Background:* The 2014 Notice also asked commenters whether an unspecified MPG claim (*e.g.*, “37 MPG”) is deceptive if the advertisement fails to identify whether the rating is city, highway, or combined. The current Guide advises advertisers to tie specific mileage ratings

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<sup>30</sup> The results for respondents expecting to achieve “a little” or “a lot” more than the stated rating were 7.6% for Q6c (highway claim) and 6.9% for Q6d (combined claim), with no control.

<sup>31</sup> In both cases, the number of respondents indicating they would get better mileage than the stated MPG rating was low. These results suggest that a significant number of respondents expected to achieve lower mileage in combined driving than highway driving and believe that EPA test results may overstate actual mileage, regardless of the type of driving.

to specific driving modes (*i.e.*, city or highway).<sup>32</sup>

*Comments:* The consumer groups argued that an unspecified MPG rating is clearly deceptive because consumers do not know the driving mode upon which such a claim is based and, in cases where the number reflects the highway rating, consumers are unlikely to consistently achieve such mileage. Citing similar concerns, the Alliance recommended that, whenever an EPA label value appears in an advertisement, the advertiser disclose which EPA value applies (city, highway, or combined).

*Discussion:* The Commission plans to continue to advise against using mileage ratings claims that fail to specify the type of rating (*i.e.*, city, highway, or combined). The FTC consumer study suggests that such unqualified claims lead to confusion and potential deception because respondents interpreted them in different ways. For example, when presented with the claim that a car was “rated at 25 MPG,” 30.5% of the respondents linked the figure to highway driving, while 40.4% indicated it applied to a combination of highway and city driving.<sup>33</sup> The results are consistent with the assumption underlying the current Guide that consumers’ interpretation of such unspecified mileage claims varies significantly in the absence of specific information (*i.e.*, highway, city or combined), and that consumers do not uniformly assume such estimates apply to a particular type of driving (*e.g.*, highway). Accordingly, advertisers failing to

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<sup>32</sup> See section 259.2(a)(1)(iii). The Guide also advises disclosure of the “estimated city MPG” if advertisers make a “general fuel economy claim without reference to either city or highway, or if the representation refers to any combined fuel economy number.” As noted above, at the time the Guide was created, EPA did not require combined fuel economy on the label. Therefore, the guidance pointed to the city mileage number as the default disclosure. However, the current EPA label features combined city/highway MPG as the primary disclosure.

<sup>33</sup> Q5b. The contrasting questions lend validity to these results. As discussed above, in a separate question (5c), when told the car was rated at 25 MPG on the highway, 74.6% indicated the car would get about 25 MPG on the highway. Similarly, when told the car was rated at 25 MPG in combined driving (Q5d), 76.6% responded that the car would achieve about 25 MPG in combined driving.

identify the driving type associated with an MPG claim are likely to deceive a significant percentage of consumers regarding the rating's basis.<sup>34</sup>

**e. “Up To” Claims**

*Background:* The Commission also asked commenters to address how consumers understand “up to” MPG claims, which currently appear in dealership advertisements (*e.g.*, “up to 45 MPG”). In making such claims, advertisers often seek to convey that the advertised MPG applies to a specific version of the model (*e.g.*, style, trim line, or option package), while other versions of the model have lower ratings. The current guidance does not address such claims.

*Comments:* Commenters split on this issue, with the consumer groups arguing that the Guide should discourage “up to” claims and industry members disagreeing. In the Alliance’s view, such claims allow sellers to advertise a nameplate or family of vehicles by communicating “the range of capabilities across a nameplate or family.” The Alliance asserted that eliminating these claims would limit manufacturer flexibility and potentially prohibit simple “reasonably understood” information about vehicle groups. NADA added that, because single models have various engine and transmission options, the “up to” qualifier may be necessary to avoid deception. Alternatively, NADA suggested that dealers and manufacturers disclose a range of fuel economy label ratings when an advertisement involves multiple vehicles.

The consumer groups, however, stated that “up to” claims are deceptive and, to avoid such deception, mileage ratings in ads must reflect the “vehicle configuration expected to be most popular for that year.” If a specific model configuration has a better fuel economy rating, the groups argued that the advertisement can present that rating in addition to the MPG of the

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<sup>34</sup> This guidance assumes the city and highway ratings for a particular vehicle are different, which is almost always the case.

most popular version.

*Discussion:* The FTC proposes amending the Guide to advise advertisers to avoid unqualified “up to” MPG claims. The FTC consumer study suggested significant consumer confusion regarding these claims. In particular, the study gauged respondents’ interpretation of three versions of an “up to” claim, ranging from a basic claim with no explanatory information, to one that provided a detailed explanation. Most respondents (73.1%) interpreted “up to” in an unqualified claim to mean the depicted vehicle would achieve the stated MPG if it was driven in a certain way.<sup>35</sup> In addition, when respondents were asked in an open-ended format to explain their understanding of a simple “up to” claim (*i.e.*, “This model gets up to 30 miles per gallon”), very few respondents mentioned that the claim relates to the MPG rating for a specific version of the model (Q3a).

However, when respondents viewed a more detailed, qualified claim explaining that “up to” referred to a specific model version (Q3e (close-ended question)), the confusion decreased significantly, with a majority (51.9 %) indicating the claim meant a version of the advertised model was rated at 30 miles per gallon.<sup>36</sup> With this more detailed disclosure, 30% of respondents interpreted the stated MPG as referring to the way in which the vehicle is driven, compared to the 73.1% who took away the same interpretation from the unqualified claim in Q3c.<sup>37</sup> Caution should be used in interpreting this 30%, as it is an uncontrolled result. Thus, we

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<sup>35</sup> Specifically, 28.4% stated that “up to” meant the advertised MPG depended on the type of driving (*e.g.*, highway or city), and 44.7% indicated the stated MPG could be achieved if the car was driven efficiently (Q3c). Only a few respondents (9.3%) interpreted the unqualified “up to” claim to mean the MPG rating applied to a specific model version, the meaning often intended by car advertisers.

<sup>36</sup> The claim in Q3e read: “Different options for engine size and other features are available. Depending on the options chosen, this model gets up to 30 miles per gallon.”

<sup>37</sup> Specifically, 14.2% choose type of driving (*e.g.*, highway or city), and 15.8% indicated the

cannot be sure how many of the responses actually indicate deception. However, it does suggest that drafting an adequate qualifying disclosure may be difficult. Accordingly, to minimize the risk of deception, advertisers should be careful to ensure that qualifying language properly conveys the meaning and limitations of any “up to” claims.

In sum, the consumer study strongly suggests that unqualified “up to” claims are likely to be deceptive where the advertiser intends to communicate that a version of the advertised model will achieve the stated fuel economy rating. In addition, under the same circumstances, the results suggest that it is difficult to fashion qualifying language that adequately avoids consumer confusion. However, given available information, the Commission cannot conclude that such “up to” claims are categorically deceptive. Therefore, the proposed guidance advises advertisers to ensure that qualifying language adequately clarifies such claims to prevent deception.

**f. Non-Linear Relationship Between MPG and Fuel Costs**

*Background:* In the 2014 Notice, the Commission asked whether the Guide should advise advertisers to avoid statements that imply a linear relationship between MPG and fuel costs. As explained in the earlier notice, MPG ratings and fuel savings do not increase proportionally. For instance, fuel savings due to an increase from 10 MPG to 20 MPG is much greater than from an increase from 50 to 60 MPG. Given this fact, some have recommended use of a different efficiency metric, such as “gallons per 100 miles,” which exhibits a linear relationship with fuel cost.<sup>38</sup> Indeed, EPA requires a “gallons per 100 miles” figure as a secondary disclosure on its label.

*Comments:* Commenters agreed that advertisers should not imply that there is a linear

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stated MPG could be achieved if the car was driven efficiently (Q3e).

<sup>38</sup> See, e.g., Larrick, R.P. and J.B. Soll, “The MPG Illusion,” *Science* 320:1593–1594 (2008).

relationship between MPG and fuel costs. However, they also stated that no such claims currently appear in advertisements and thus did not identify a need for the Guide to address them.<sup>39</sup>

*Discussion:* Because commenters indicated that no claims currently appear in advertising implying a linear relationship between mileage and fuel cost, the Commission does not propose addressing this issue in the Guide.<sup>40</sup> However, advertisers should remain mindful of the non-linear relationship between MPG and fuel costs and avoid claims that state or imply such a relationship.

**g. EPA as the Source of Estimate**

*Background:* The Commission also invited comments on whether it should retain its current advice that fuel economy values in advertisements should disclose that EPA is the source of the “estimated city MPG” and “estimated highway MPG.”

*Comments:* Commenters agreed that the Guide should continue to advise advertisers to identify EPA as the source of the estimates. The consumer groups explained that advertisements should always list EPA as the rating’s source because this designation reinforces the rating’s “official nature” and ensures consumers can make true vehicle-to-vehicle comparisons. In their view, the FTC’s recommended disclosures help consumers understand that the fuel economy values do not derive from an unofficial process for marketing or advertising purposes. NADA agreed and urged the Commission to recognize the value in additional disclosures directing consumers to *www.fueleconomy.gov*.

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<sup>39</sup> See Alliance and NADA comments.

<sup>40</sup> As EPA has indicated in the past, a metric such as “gallons per 100 miles” provides consumers with “a better tool for making economically sound decisions” than traditional MPG disclosure. Accordingly, EPA now includes such a figure on the label despite its unfamiliarity to most consumers. 76 FR 39478, 39486 (July 6, 2011).

*Discussion:* The Commission does not propose changing its guidance for identifying EPA as the source of the estimates. No information on the record suggests a change is necessary. As comments explained, this disclosure clarifies the basis for mileage disclosures and thus helps avoid deception. The consumer research provides some support for this guidance. Although the study did not address this issue directly, respondents indicated significant confusion about the source of tests for driving range claims related to electric vehicles, suggesting the absence of the EPA disclosures could lead to deception.<sup>41</sup> Finally, the Commission expects most advertisers will identify the EPA disclosure as a matter of course. Accordingly, continuing the guidance is unlikely to place any significant burden on advertisers.

#### **h. Additional Guidance on Ratings as “Estimates”**

*Background:* The current Guide advises advertisers to disclose that the EPA ratings are “estimates.”<sup>42</sup> In the 2014 Notice, the Commission asked whether the FTC should provide additional guidance on this issue.

*Comments:* Commenters urged the Commission to retain its guidance regarding the estimate disclosure. NADA explained that the EPA fuel economy ratings do not convey the mileage particular vehicles will actually achieve, but, instead, furnish estimates to help prospective purchasers make vehicle comparisons. Rodriguez also cautioned that the EPA test cannot accurately predict fuel economy for all drivers and all driving conditions. The Alliance, which also supported the existing guidance, argued that any additional disclosures on this issue would increase consumer confusion. AGA suggested that FTC caution against phrases such as

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<sup>41</sup> In Question 4c, the Commission asked respondents about the source of a test used to determine a driving range claim. In open-ended responses, study participants pointed to a variety of results, with about 30% identifying the car company as the source, 11% identifying a government agency, and more than 40% indicating they were not sure.

<sup>42</sup> See section 259.2(a)(2).

“X vehicle *gets* xx MPG in the city/on the highway” because such language may lead consumers to believe that they will actually achieve such mileage in their own driving. However, AGA recommended that advertisers use the term “rating” instead of “estimate,” because the latter term may mislead consumers into believing they will actually achieve the stated MPG number.<sup>43</sup> The term “rating,” it argued, would help manage consumers’ expectations given other types of ratings, reviews, and other comparative tools typically based on individuals’ experience. AGA noted that the EPA uses “rating” somewhat interchangeably with “estimated fuel economy” on the *fueleconomy.gov* website.

*Discussion:* The Commission does not propose to change its guidance advising advertisers to disclose that EPA numbers are “estimates.” The term “estimate” helps prevent deception by signaling to consumers that their actual mileage will vary. Specifically, the term helps reduce the likelihood consumers will believe they will achieve or “get” a certain mileage.<sup>44</sup>

Moreover, although one commenter recommended that the Guide discourage using the term “estimate,” there is no indication this term is deceptive other than that comment. In addition, EPA regulations and the underlying statute employ this term, and it has appeared on EPA labels and in advertising for decades.<sup>45</sup> At the same time, the Commission recognizes that the term “estimate” does not represent the only non-deceptive means to inform consumers that their fuel economy results may vary from the EPA rating.

## **2. Claims Related to Model Types**

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<sup>43</sup> AGA noted that, in the European Union, advertisements must include additional text stating: “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.”

<sup>44</sup> The revised Guidance also contains an example warning against the use of the term “gets” without adequate qualification.

<sup>45</sup> See 40 CFR Part 600, and 49 U.S.C. 32908.

*Background:* The current Guide advises manufacturers to limit fuel economy ratings to the model type being advertised. Doing so ensures advertised fuel economy ratings match the advertised vehicles specification.<sup>46</sup> Specifically, section 259.2, n. 2 of the Guide 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. The Commission sought comment on this issue including whether the FTC should provide further guidance to help advertisers avoid deceptive claims in this context.

*Comments:* In response, NADA indicated that, where an advertisement includes only one model version, advertisers should not use mileage ratings for a different version of the same make or model. The Alliance agreed and argued the current Guide provides adequate guidance on this issue. In its opinion, additional information would create lengthy and unwieldy disclosures, with little benefit to consumers. The Alliance noted that several sources, including manufacturer websites, *fuelconomy.gov*, the vehicle's EPA label, and dealers, have more detailed information about vehicle configuration to help consumers. Finally, AGA cautioned against revising guidance, explaining that EPA has been working to address how models are grouped for mileage purposes. Accordingly, AGA urged EPA and FTC to coordinate efforts to ensure consistency.

*Discussion:* Responding to these comments, the Commission proposes to update its existing guidance on claims related to make or model groups to include current EPA terminology. Specifically, the proposed amendments remove the outdated term "unique nameplate" and replace it with the more general term "model type." However, the proposed

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<sup>46</sup> The EPA's fuel economy regulations define "model type" as "a unique combination of car line, basic engine, and transmission class." 40 CFR 600.002-85.

Guide remains consistent with existing advice. In particular, the proposal states that it is deceptive to state or imply that a rated fuel economy figure applies to vehicles not included in the same model type featured in the advertisement. Fuel economy estimates assigned to model types under EPA's regulations apply only to specific versions of the model. Thus, any fuel economy claim for a vehicle should apply to the model type being advertised (*e.g.*, a version with a 1.0 liter engine, automatic transmission).

### **3. Claims Based on Non-EPA Estimates**

*Background:* In the 2014 Notice, the Commission sought comment on the Guide's treatment of fuel economy claims based on non-EPA tests. In issuing the Guide in 1975, the Commission explained that "the use in advertising of fuel economy results obtained from disparate test procedures may unfairly and deceptively deny to consumers information which will enable them to compare advertised automobiles on the basis of fuel economy."<sup>47</sup> To address this issue, the Guide advises advertisers to provide several disclosures whenever they make a fuel economy claim based on non-EPA information. Specifically, section 259.2(c) states that fuel economy claims based on non-EPA information should: 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 the non-EPA test differs from the EPA test in terms of driving conditions and other relevant variables. The Commission sought input on this issue, asking commenters to address, among other things, the prevalence of non-EPA fuel economy claims, including both traditional fuel economy claims (*e.g.*, MPG), as well as electric vehicle driving range claims (*e.g.*, "100 miles per charge") and the adequacy of the current guidance for preventing deception.

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<sup>47</sup> 40 FR 42003 (Sept. 10, 1975).

*Comments:* Commenters offered conflicting views on the Guide’s treatment of non-EPA fuel economy claims. Industry members agreed with the existing guidance but questioned its relevance. In AGA’s view, the current guidance could help consumers make comparisons when non-EPA ratings appear in advertisements. However, both NADA and AGA explained that manufacturers and dealers simply do not refer to such ratings in advertising, and there is no expectation they will do so in the future. Thus, both organizations questioned whether the guidance on non-EPA source is still necessary.

Conversely, the consumer groups argued the Guide should “prevent the use of anything but standardized EPA MPG ratings” because such ratings provide the only means to avoid “significant deception.” The groups explained that the EPA ratings have become the standard on which manufacturers compete. In their view, many different techniques can produce mileage estimates, and the dissemination of such alternative ratings “would substantially increase deceptive advertising.” They argued that the EPA numbers, which appear on every vehicle sold in the U.S., must appear in the advertisements to avoid deception and confusion. They further asserted that EPA’s single rating system allows for “true competition and avoids the deception associated with multiple rating systems” and different testing methodologies. In their view, alternative (non-EPA) rating results prevent vehicle-to-vehicle comparisons and lead to “manipulation and skepticism.”

*Discussion:* The Commission does not propose changing the Guide’s basic approach to advertising claims based on non-EPA data. The Commission has identified no basis to prohibit all fuel economy advertising claims based on non-EPA tests. There is no evidence that such claims are deceptive if adequately qualified. In addition, though advertisers may not commonly use non-EPA MPG ratings in advertising, that may not be the case for other claims, such as

driving range representations for electric vehicles.<sup>48</sup> Accordingly, the proposed Guide continues to recommend specific disclosures related to non-EPA claims to reduce the possibility of deception.<sup>49</sup> The Commission seeks further comment on this issue, particularly whether non-EPA claims, including non-EPA driving range claims for electric vehicles, are common. Finally, the current Guide addresses the relative size and prominence of fuel economy claims based on non-EPA and EPA estimates in television, radio, and print advertisements. The Commission proposes to retain this guidance. The Commission, however, proposes to clarify that it applies to any advertising medium (not solely television, radio, and print).

#### **4. Claims for Alternative Fueled Vehicles**

*Background:* In the 2014 Notice, the Commission sought comment on whether the Guide should address advertising for flexible fueled vehicles (FFVs), particularly pertaining to different fuel economy estimates for different fuels.<sup>50</sup> Specifically, the Commission asked commenters to address whether advertisements that provide a vehicle's gasoline MPG rating and identify the vehicle as an FFV should include disclosures about that vehicle's alternative fuel MPG rating.

*Comments:* In response, commenters recommended that the Guide address alternative fueled vehicles, particularly electric vehicles, given their recent proliferation in the market. However, they recommended different approaches to addressing this issue.

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<sup>48</sup> In addition, to the extent such claims do not appear in advertising, the Guide imposes no burden on such claims.

<sup>49</sup> The guidance assumes that the advertised non-EPA estimates are not identical to the EPA estimates.

<sup>50</sup> Previously, the Commission had sought comments on Guide amendments specifically related to alternative fueled vehicles labeled under the Alternative Fuels Rule (16 CFR Part 309). 74 FR at 19152. However, in April 2013, the Commission amended the Alternative Fuels Rule to consolidate the FTC's alternative fueled vehicle labels with EPA's new fuel economy labels. Because those amendments removed any potential conflict between FTC and EPA labels, the Guides need not address FTC alternative fueled vehicles labels. 78 FR 23832 (April 23, 2013).

Electric Vehicle Driving Range: First, AGA recommended the Guide address plug-in hybrid electric vehicles (PHEVs), battery electric vehicles (BEVs), and fuel cell electric vehicles (FCEVs) to ensure consistent use of fuel economy ratings among these increasingly prevalent vehicles. AGA also recommended that the FTC consult with EPA to develop best practices for BEV, FCEV, and PHEV fuel economy advertising. In particular, AGA asked the Commission to consider guidance on driving range claims for alternative fueled vehicles to provide a better “apples-to-apples” comparison across all fuel and vehicle types, particularly given the importance of this information for PHEVs and “electric-only” ranges. In the Alliance’s view, any claims for a vehicle’s driving range should follow the same disclosure principles applicable to other claims. NADA added that the Commission’s guidance should promote uniformity and clarity in the use of all government fuel economy labeling for all AFVs in the same manner as conventionally fueled vehicles.

Miles Per Gallon Equivalent (MPGe): The consumer groups recommended that electric vehicle advertisements disclose the vehicle’s miles per gallon equivalent (MPGe), which appears on the EPA label and converts the energy efficiency of electric vehicles into a miles per gallon estimate. However, to help consumers understand such information, the commenters suggested the following disclosure: “This vehicle does not use gasoline, the conversion from electric efficiency to miles per gallon is for comparative purposes.” For plug-in hybrid electric vehicles, the consumer groups argued that the fuel economy ratings should include separate ratings for operation on gasoline (or other combustion engine fuel) and on electricity, in equal prominence.

Alternative Fuel: Finally, the consumer groups argued that FFV advertisements should disclose two MPG ratings: one for the model’s gasoline rating and one for the biofuel blend. However, they indicated that, if the advertisement does not mention the vehicle’s FFV capability,

it would be adequate to disclose the gasoline-only MPG.

*Discussion:* The Commission has considered issues related to electric vehicle driving range, MPGe disclosures, and claims for FFVs. We discuss each below:

Electric Driving Range Information: The Commission proposes to address driving range claims for several reasons. First, as with general fuel economy claims, general driving range claims (*e.g.*, “will go far on a single charge”) are likely to generate a variety of consumer interpretations about the vehicle’s range relative to other vehicle’s on the market. These multiple interpretations are likely impossible for many advertisers to substantiate simultaneously. Disclosing the EPA range estimates will help prevent deception by providing clear, objective information that allows consumers to compare the driving ranges of competing vehicles. Second, the consumer research suggested that confusion may exist regarding the source of driving range claims. Specifically, in response to an open-ended question about the source of the test used to derive a driving range (Q4c), respondents pointed to a variety of results, with about 30% identifying the car company as the source, 11% identifying a government agency, and more than 40% indicating they were not sure.<sup>51</sup> Finally, driving range estimates are becoming increasingly important and prevalent. As with MPG disclosures for gasoline vehicles, range estimates for electric vehicles provide a fundamental measurement of an electric vehicle’s performance based on EPA testing requirements. Given these various considerations, the proposed Guide advises advertisers to disclose EPA-mandated driving range results whenever they make a general driving range claim.

Miles Per Gallon Equivalent (MPGe): The Commission does not propose advising

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<sup>51</sup> The balance of respondents (about 19%) identified other sources such as non-governmental organizations.

advertisers to always disclose MPGe in advertising for electric vehicles as some comments suggested. It is unclear whether such disclosures are essential to preventing deception. Because MPGe is a relatively new and unfamiliar concept to most consumers, the extent to which they would understand and use such a disclosure is unclear. Indeed, the consumer research supports this. When viewing an MPGe claim (*i.e.*, “This electric car is rated at 93 MPGe”) (Q4d), respondents assigned a variety of interpretations to the term. Specifically, only about 35% understood that MPGe reflected the electric vehicle’s relative energy use (or energy cost) compared to conventional gasoline vehicles, and 40% indicated they were not sure what the term meant.<sup>52</sup> In addition, in shopping for electric vehicles, consumers are likely to focus on other energy performance metrics, such as driving range. Furthermore, it is likely that consumer understanding of MPGe will evolve rapidly as more electric vehicles enter the market. For now, however, the concept is too novel to incorporate into the guidance.

Alternative Fuel: The Commission agrees with commenters that, if the advertisement mentions the vehicle’s alternative fuel capability, FFV advertisements should provide both the vehicle’s gasoline and alternative fuel ratings. Without such disclosures, consumers may assume the advertised MPG rating applies both to gasoline and alternative fuel operation.

## **5. Fuel Economy Range Claims for Specific Models**

*Background*: In the 2014 Notice, the Commission proposed to eliminate its guidance on “estimated in-use fuel economy range” claims (*e.g.*, “expected range for most drivers 15 to 21 MPG”). Because EPA’s label no longer contains this information, and no evidence suggests such claims are prevalent, the Commission proposed to eliminate this specific provision.

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<sup>52</sup> The research (Q4e) suggests that respondents were much more likely to understand the term “MPGe” when the claims included extensive explanatory information.

*Comments:* The Alliance supported the proposal, explaining that the provision, as written, no longer applies to most vehicles.

*Discussion:* For the reasons discussed above, including commenter support, the Commission proposes to eliminate the Guides' provision related to "estimated in-use fuel economy range" (259.2(b)(1)).

#### **E. Limited Format Advertising**

*Background and Comments:* The Alliance urged the Commission to address space-constrained advertising, particularly in newer media formats. It recommended the Guide "grant maximum flexibility" for fuel economy advertising in new media formats while ensuring a level playing field and fair disclosures to consumers. Specifically, it suggested the Commission set general guidelines to allow familiar short-hand and weblinks in limited format advertising to direct consumers to mandated disclosures while avoiding overly prescriptive provisions. The Alliance stressed that such advertisements typically serve as a "starting point" for consumer awareness of the product and lead consumers to conduct additional research elsewhere. According to the Alliance, consumers understand that restricted-format advertisements do not contain complete information and routinely click on hyperlinks to access more detailed information. In its view, such links are more effective in providing disclosures to consumers than "attempting to include detailed footnotes that clutter a restricted-format advertisement and make it more difficult to read."<sup>53</sup>

The Alliance provided two specific suggestions. First, it recommended the Guide allow fuel economy advertisers to make abbreviated, but clearly understandable, disclosures of EPA

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<sup>53</sup> The consumer groups added that television and radio advertisements should include a clear, audible representation of the MPG.

label values in restricted-format media (e.g., “EPA-est. 35 MPG Hwy”). Second, it argued that, in restricted format advertising, the Guide allow advertisers to provide necessary disclosures through web links directing consumers to the required information.

*Discussion:* The Commission does not propose to cover space-constrained advertising in the Fuel Economy Guide because these issues are already addressed by the FTC’s “.Com Disclosures: How to Make Effective Disclosures in Digital Advertising” (“.Com Disclosures”).<sup>54</sup> That guidance clarifies that advertisers are not exempt from general disclosure requirements simply because an advertisement has space constraints. However, it also provides recommendations for making disclosures in such contexts. The general principles in .Com Disclosures for space-constrained advertising hold true for fuel economy advertising. The Commission expects that advertisers will be able to include 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.<sup>55</sup> However, since the Commission cannot anticipate every abbreviated disclosure 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>56</sup>

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<sup>54</sup> See <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

<sup>55</sup> In addition, if consumers do not click the link for more detailed disclosures, they will have an opportunity to see the information in the showroom on the EPA label, which appears on every new car in the showroom.

<sup>56</sup> The Commission does not propose to recommend audible MPG disclosures in all advertisements. Instead, consistent with the existing Guide, the proposed amendments continue to recommend that disclosures appear in the same format as the claim. For example, if the

## V. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before August 8, 2016. Write “Proposed Fuel Economy Guide Revisions” 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, such as 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, such as 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 . . . privileged or confidential,” as discussed 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

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estimated MPG appears in the video of a television advertisement, the recommended disclosure should appear in the video.

explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>57</sup> Your comment will be kept confidential only if 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/fueleconomyrevisions>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “Fuel Economy Guide Amendments, R711008” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7<sup>th</sup> Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the News Release describing this proceeding. 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 August 8, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

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<sup>57</sup> 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).

## **VI. Proposed Amendments**

### **List of Subjects in 16 CFR Part 259**

Advertising, Fuel economy, Trade practices.

For the reasons set forth in this document, the Commission proposes to revise 16 CFR Part 259 as follows:

### **PART 259—Guide Concerning Fuel Economy Advertising For New Automobiles**

**Sec**

**259.1 Purpose**

**259.2 Definitions**

**259.3 Qualifications and disclosures**

**259.4 Advertising guidance**

**Authority:** 15 U.S.C. 41–58.

#### **§259.1 Purpose.**

This Guide contains administrative interpretations of laws enforced by the Federal Trade Commission. Specifically, the Guide addresses the application of Section 5 of the FTC Act (15 U.S.C. 45) to the use of fuel economy information in advertising for new automobiles. This guidance provides the basis for voluntary compliance with the law by advertisers and endorsers. Practices inconsistent with this Guide may result in corrective action by the Commission under Section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute. The Guide sets forth the general principles that the Commission will use in such an investigation together with examples illustrating the application of those principles. The Guide does not purport to cover every

possible use of fuel economy in advertising. Whether a particular advertisement is deceptive will depend on the specific advertisement at issue.

**§ 259.2 Definitions.**

For the purposes of this part, the following definitions shall apply:

(a) *Alternative fueled vehicle.* Any vehicle that qualifies as a covered vehicle under 16 CFR Part 309.

(b) *Automobile.* Any new passenger automobile, medium duty passenger vehicle, or light truck for which a fuel economy label is required under the Energy Policy and Conservation Act (42 U.S.C. 32901 *et seq.*) or rules promulgated thereunder, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser or lessee. For the purposes of this part, the terms “vehicle” and “car” have the same meaning as “automobile.”

(c) *Dealer.* Any person located in the United States or any territory thereof engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(d) *EPA.* The U.S. Environmental Protection Agency.

(e) *EPA city fuel economy estimate.* The city fuel economy determined in accordance with the city test procedure as defined and determined pursuant to EPA regulations.

(f) *EPA combined fuel economy estimate.* The fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively, determined pursuant to EPA regulations.

(g) *EPA driving range estimate.* An estimate of the number of miles a vehicle will travel between refueling as defined and determined pursuant to EPA regulations.

(h) *EPA fuel economy estimate.* The average number of miles traveled by an automobile per

volume of fuel consumed (*i.e.*, Miles-Per-Gallon (“MPG”) rating) as calculated under EPA regulations.

(i) *EPA highway fuel economy estimate.* The highway fuel economy determined in accordance with the highway test procedure as defined and determined pursuant to EPA regulations.

(j) *EPA regulations.* EPA regulatory requirements for fuel economy labeling set forth in 40 CFR Part 600, Subpart D.

(k) *Flexible Fuel Vehicle.* Any motor vehicle (or motor vehicle engine) engineered and designed to be operated on any mixture of two or more different fuels.

(l) *Fuel.* (1) Gasoline and diesel fuel for gasoline- or diesel-powered automobiles; or

(2) Electricity for electrically-powered automobiles; or

(3) Alcohol for alcohol-powered automobiles;

(4) Natural gas for natural gas-powered automobiles; or

(5) any other fuel type used in a vehicle for which EPA requires a fuel economy label under EPA regulations.

(m) *Manufacturer.* Any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for, and is under the control, of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

(n) *Model type.* A unique combination of car line, basic engine, and transmission class as defined by EPA regulations.

(o) *Ultimate purchaser or lessee.* The first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases a new automobile for purposes other than resale or leases such vehicle for his or her personal use.

(p) *Vehicle configuration.* The unique combination of automobile features, as defined in 40 CFR Part 600.

### **§ 259.3 Qualifications and disclosures.**

To prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type for a person to see and understand them, should place disclosures in close proximity to the qualified claim, and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure. The disclosures should also appear in the same format as the claim. For example, for television advertisements, if the estimated MPG appears in the video, the disclosure recommended by this Guide should appear in the visual format; if the estimated MPG is audio, the disclosure should be in audio.

### **§ 259.4 Advertising guidance.**

(a) *Misrepresentations:* It is deceptive to misrepresent, directly or by implication, the fuel economy or driving range of an automobile.

(b) *General Fuel Economy Claims:* General unqualified fuel economy claims, which do not reference a specific fuel economy estimate, likely convey a wide range of meanings about a vehicle's fuel economy relative to other vehicles. Such claims, which inherently involve comparisons to other vehicles, can mislead consumers about the vehicle class included in the comparison, as well as the extent to which the advertised vehicle's fuel economy differs from other models. Because it is highly unlikely that advertisers can substantiate all reasonable interpretations of these claims, advertisers making general fuel economy claims should disclose the advertised vehicle's EPA fuel economy estimate in the form of the EPA MPG rating.

*Example 1:* A new car advertisement states: “This vehicle gets great mileage.” The claim is likely to convey a variety of meanings, including that the vehicle has a better MPG rating than all or almost all other cars on the market. However, the advertised vehicle’s EPA fuel economy estimates are only slightly better than the average vehicle on the market. Because the advertiser cannot substantiate that the vehicle’s rating is better than all or almost all other cars on the market, the advertisement is likely to be deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To avoid deception, the advertisement should disclose the vehicle’s EPA fuel economy estimate (*e.g.*, “EPA-estimated 27 combined MPG”).

*Example 2:* An advertisement states: “This car gets great gas mileage compared to other compact cars.” The claim is likely to convey a variety of meanings, including that the vehicle gets better gas mileage than all or almost all other compact cars. However, the vehicle’s EPA fuel economy estimates are only slightly better than average compared to other models in its class. Because the advertiser cannot substantiate that the vehicle’s rating is better than all or almost all other compact cars, the advertisement is likely to be deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To address this problem, the advertisement should disclose the vehicle’s EPA fuel economy estimate.

(c) *Matching the EPA Estimate to the Claim:* EPA fuel economy estimates should match the driving claim appearing in the advertisement. If they do not, consumers are likely to associate the stated fuel economy estimate with a different type of driving. Specifically, if an advertiser makes a city or a highway fuel economy claim, it should disclose the corresponding EPA-estimated city or highway fuel economy estimate. If the advertiser makes both a city and a

highway fuel economy claim, it should disclose both the EPA estimated city and highway fuel economy rating. If the advertiser makes a general fuel economy claim without specifically referencing city or highway driving, it should disclose the EPA combined fuel economy estimate, or, alternatively, both the EPA city and highway fuel economy estimates.

*Example 1:* An automobile advertisement states that model “XYZ gets great gas mileage in town.” However, the advertisement does not disclose the EPA city fuel economy estimate. Instead, it only discloses the EPA highway fuel economy estimate, which is higher than the model’s city estimate. This claim likely conveys to a significant proportion of reasonable consumers that the highway estimate disclosed in the advertisement applies to city driving. Thus, the advertisement is likely to mislead consumers. To remedy this problem, the advertisement should disclose the EPA city fuel economy estimate (*e.g.*, “32 MPG in the city according to the EPA estimate”).

*Example 2:* A new car advertisement states that model “XZA gives you great gas mileage” but only provides the EPA highway fuel economy estimate. Given the likely inconsistency between the general fuel economy claim, which does not reference a specific type of driving, and the disclosed EPA highway estimate, the advertisement is likely to mislead consumers. To address this problem, the advertisement should disclose the EPA combined estimate (*e.g.*, “37 MPG for combined driving according to the EPA estimate”), or both the EPA city and highway fuel economy estimates.

*Example 3:* An advertisement states “according to EPA estimates, new cars in this class are rated at between 20 and 32 MPG, while the EPA estimate for this car is an impressive 35 MPG highway.” The advertisement is likely to imply that the 20 to 32 MPG range and 35 MPG estimate are comparable. In fact, the “20 and 32 MPG” range reflects EPA

city estimates. Therefore, the advertisement is likely deceptive. To address this problem, the advertisement should only provide an apples-to-apples comparison – either using the highway range for the class or using the city estimate for the advertised vehicle.

(d) *Identifying Fuel Economy and Driving Range Ratings as Estimates:* Advertisers citing EPA fuel economy or driving range figures should disclose that these numbers are estimates.

Without such disclosures, consumers may incorrectly assume that they will achieve the mileage or range stated in the advertisement. In fact, their actual mileage or range will likely vary for many reasons, including driving conditions, driving habits, and vehicle maintenance. To address potential deception, advertisers may state that the values are “EPA estimate(s),” or use equivalent language that informs consumers that they will not necessarily achieve the stated MPG rating or driving range.

*Example 1:* An automobile manufacturer’s website states, without qualification, “This car gets 40 MPG on the highway.” The claim likely conveys to a significant proportion of reasonable consumers that they will achieve 40 MPG driving this vehicle on the highway. The advertiser based its claim on an EPA highway estimate. However, EPA provides that estimate primarily for comparison purposes – it does not necessarily reflect real world driving results. Therefore, the claim is likely deceptive. In addition, the use of the term “gets,” without qualification, may lead some consumers to believe not only that they can, but will consistently, achieve the stated mileage. To address these problems, the advertisement should clarify that the MPG value is an estimate by stating “EPA estimate” or equivalent language.

(e) *Disclosing EPA Test as Source of Fuel Economy and Driving Range Estimates:* Advertisers citing any EPA fuel economy or driving range figures should disclose EPA as the source of the

test so consumers understand that the estimate is comparable to estimates for competing models. Doing so prevents deception by ensuring that consumers do not associate the claimed ratings with a test other than the EPA-required procedures. Advertisers may avoid deception by stating that the values are “EPA estimate(s),” or equivalent language that identifies the EPA test as the source.

*Example 1:* A radio commercial for the “XTQ” car states that the vehicle “is rated at an estimated 28 MPG in the city” but does not disclose that an EPA test is the source of this MPG estimate. This advertisement may convey that the source of this test is an entity other than EPA. Therefore, the advertisement may be deceptive.

(f) *Specifying Driving Modes for Fuel Economy Estimates:* If an advertiser cites an EPA fuel economy estimate, it should identify the particular type of driving associated with the estimate (*i.e.*, estimated city, highway, or combined MPG). Advertisements failing to do so can deceive consumers who incorrectly assume the disclosure applies to a specific type of driving, such as combined or highway, which may not be the driving type the advertiser intended. Thus, such consumers may believe the model’s fuel economy rating is higher than it actually is.

*Example 1:* A television commercial for the car model “ZTA” informs consumers that the ZTA is rated at “25 miles per gallon according to the EPA estimate” but does not disclose whether this number is a highway, city, or combined estimate. The advertisement likely conveys to a significant proportion of reasonable consumers that the 25 MPG figure reflects normal driving (*i.e.*, a combination of city and highway driving), not the highway rating as intended by the advertiser. In fact, the 25 MPG rating is the vehicle’s EPA highway estimate. Therefore, the advertisement is likely deceptive.

(g) *Within Vehicle Class Comparisons*: If an advertisement contains an express comparative fuel economy claim where the relevant comparison is to any group or class, other than all available automobiles, the advertisement should identify the group or class of vehicles used in the comparison. Without such qualifying information, many consumers are likely to assume that the advertisement compares the vehicle to all new automobiles.

*Example 1*: An advertisement claims that sports car X “outpaces other cars’ gas mileage.” The claim likely conveys a variety of meanings to a significant proportion of reasonable consumers, including that this vehicle has a higher MPG rating than all or almost all other vehicles on the market. Although the vehicle’s MPG rating compares favorably to other sports cars, its fuel economy is only better than roughly half of all new automobiles on the market. Therefore, the claim is likely deceptive.

(h) *Comparing Different Model Types*: Fuel economy estimates are assigned to specific model types under EPA regulations (*i.e.*, unique combinations of car line, basic engine, and transmission class). Therefore, advertisers citing MPG ratings for certain models should ensure that the rating applies to the model type depicted in the advertisement. It is deceptive to state or imply that a rated fuel economy figure applies to vehicles not included in the model type featured in the advertisement, unless such rating in fact applies to that model type.

*Example 1*: A manufacturer’s advertisement states that model “PDQ” gets “great gas mileage” but depicts the MPG numbers for a similar model type known as the “Econo-PDQ.” The advertisement is likely to convey that the claimed MPG rating applies to all types of the PDQ model. However, the “Econo-PDQ” has a better fuel economy rating than other types of the “PDQ” model. Therefore, the advertisement is likely to be deceptive.

(i) *“Up To” Claims:* Advertisers should avoid using the term “up to” without adequate explanatory language if they intend to communicate that certain versions of a model (*i.e.*, model types) are rated at a stated fuel economy estimate. A significant proportion of reasonable consumers are likely to interpret such claims to mean that the stated MPG can be achieved if the vehicle is driven under certain conditions. Therefore, to address the risk of deception, advertisers should qualify the term by clearly explaining the stated MPG applies to a particular vehicle model type.

*Example 1:* An advertisement claims that a vehicle model VXR will achieve “up to 40 MPG on the highway” without further explanation. The advertisement is based on a particularly efficient type of this model, with specific options, with an EPA highway estimate of 40 MPG. However, other types of model VXR have lower EPA MPG estimates. A significant proportion of reasonable consumers likely interpret the “up to” claim as applying to all VXR model types. Therefore, the advertisement is likely deceptive. To address this problem, the advertisement should clearly explain that the 40 MPG rating does not apply to all model types of the VXR or use language other than “up to” that better conveys the basis for the claim.

(j) *Claims for Flexible-Fueled Vehicles:* Advertisements for flexible-fueled vehicles should not mislead consumers about the vehicle’s fuel economy when operated with alternative fuel. 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. Without such disclosures, consumers are likely to assume the stated fuel economy estimate for gasoline operation also applies to alternative fuel operation.

*Example 1:* An automobile advertisement states: “This flex-fuel powerhouse has a 30 MPG highway rating according to the EPA estimate.” The advertisement likely implies that the 30 MPG rating applies to both gasoline and alternative fuel operation. In fact, the ethanol EPA estimate for this vehicle is 25 MPG. Therefore, the advertisement is likely deceptive.

(k) *General Driving Range Claims:* General unqualified driving range claims, which do not reference a specific driving range estimate, are difficult for consumers to interpret and likely convey a wide range of meanings about a vehicle’s range relative to other vehicles. Such claims, which inherently involve comparisons to other vehicles, can mislead consumers about the vehicle class included in the comparison as well as the extent to which the advertised vehicle’s driving range differs from other models. Because it is highly unlikely that advertisers can substantiate all reasonable interpretations of these claims, advertisers making general driving range claims should disclose the advertised vehicle’s EPA driving range estimate.

*Example 1:* An advertisement for an electric vehicle states: “This car has a great driving range.” This claim likely conveys a variety of meanings, including that the vehicle has a better driving range than all or almost all other electric vehicles. However, the EPA driving range estimate for this vehicle is only slightly better than roughly half of all other electric vehicles on the market. Because the advertiser cannot substantiate that the vehicle’s driving range is better than all or almost all other electric vehicles, the advertisement is likely to be deceptive. In addition, the advertiser may not be able to substantiate other reasonable interpretations of the claim. To address this problem, the advertisement should disclose the vehicle’s EPA driving range estimate (*e.g.*, “EPA-estimated range of 70 miles per charge”).

(1) *Use of Non-EPA Estimates.* --(1) *Disclosure Content:* Given consumers' reliance on EPA estimated fuel economy values over the last several decades, fuel economy and driving range estimates derived from non-EPA tests can lead to deception if consumers confuse such estimates with fuel economy ratings derived from EPA-required tests. Accordingly, advertisers should avoid such claims and disclose the EPA fuel economy or driving range estimates whenever possible. However, if an advertisement includes a claim about a vehicle's fuel economy or driving range based on a non-EPA estimate, advertisers should disclose the EPA estimate and disclose with substantially more prominence than the non-EPA estimate:

- (i) That the fuel economy or driving range information is based on a non-EPA test;
- (ii) The source of the non-EPA test;
- (iii) The EPA fuel economy estimates or EPA driving range estimates for the vehicle; and
- (iv) All driving conditions or vehicle configurations simulated by the non-EPA test that are different from those used in the EPA test. Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, temperature, and design or equipment differences.

(2) *Disclosure format:* The Commission regards the following as constituting "substantially more prominence":

- (i) *For visual disclosures on television:* If the fuel economy claims appear only in the visual portion, the EPA figures should appear in numbers twice as large as those used for any other estimate, and should remain on the screen at least as long as any other estimate. Each EPA figure should be broadcast against a solid color background that contrasts easily with the color used for the numbers when viewed on both color and black and white television.

(ii) *For audio disclosures:* For radio and television advertisements in which any other estimate is used only in the audio, equal prominence should be given to the EPA figures. The Commission will regard the following as constituting equal prominence: the EPA estimated city and/or highway MPG should be stated, either before or after each disclosure of such other estimate, at least as audibly as such other estimate.

(iii) *For print and Internet disclosures:* The EPA figures should appear in clearly legible type at least twice as large as that used for any other estimate. The EPA figures should appear against a solid color, and contrasting background. They may not appear in a footnote unless all references to fuel economy appear in a footnote.

*Example 1:* An internet advertisement states: “Independent driving experts took the QXT car for a weekend spin and managed to get 55 miles-per-gallon under a variety of driving conditions.” It does not disclose the actual EPA fuel economy estimates, nor does it explain how conditions during the “weekend spin” differed from those under the EPA tests. This advertisement likely conveys that the 55 MPG figure is the same or comparable to an EPA fuel economy estimate for the vehicle. This claim is likely to be deceptive because it fails to disclose that fuel economy information is based on a non-EPA test, the source of the non-EPA test, the EPA fuel economy estimates for the vehicle, and all driving conditions or vehicle configurations simulated by the non-EPA test that are different from those used in the EPA test.

*Example 2:* An advertisement states: “The XZY electric car has a driving range of 110 miles per charge in summer conditions according to our expert’s test.” It provides no additional information regarding this driving range claim. This advertisement likely conveys that this 110 driving range figure is comparable to an EPA driving range

estimate for the vehicle. The advertisement is likely deceptive because it does not clearly state that the test is a non-EPA test; it does not provide the EPA estimated driving range; and it does not explain how conditions referred to in the advertisement differed from those under the EPA tests. Without this information, consumers are likely to confuse the claims with range estimates derived from the official EPA test procedures.

By direction of the Commission.

Donald S. Clark  
Secretary.

[FR Doc. 2016-13098 Filed: 6/3/2016 8:45 am; Publication Date: 6/6/2016]