

¹ 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. *76 FR 39478* (July 6, 2011) (*76 FR 39478* (July 6, 2011) (40 CFR parts 85, 86, and 600; and 49 CFR part 575).

² The comments are available at [http://www.regulations.gov](#).

treatment-control comparison methodology, the study 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.⁵ By comparing the responses to various scenarios, the study provided useful insights about respondents’ understanding of fuel economy claims.⁶ 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

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

⁵ 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.

⁶ Additional information about the study, including the questionnaire and results, is available on the FTC Web site. www.ftc.gov/ftc/guides

⁹ 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.

¹⁰ 40 CFR 600.002.

¹¹ 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. Environmental Protection Agency.” 16 CFR 259.1(e).

¹² 40 CFR 600, Appendix VI.

⁷ 67 FR 9924 (Mar. 5, 2002).

⁸ Guides for the Use of Environmental Marketing Claims (Green Guides) (16 CFR part 260).

¹³ 40 CFR 86.1803–01. Previously, EPA required fuel economy labels for only passenger automobiles and light trucks.

¹⁴ 74 FR at 19151.

¹⁵ The Commission does not propose otherwise altering these definitions.

¹⁶ *See*, e.g., Alliance, Global Automakers, and NADA.

¹⁷ *See* section 259.1 of the proposed Guide.

individuals.”¹⁹ 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.”²⁰

The recent FTC consumer study supports these conclusions.²¹ 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 similarly priced cars, or none of those choices.²² 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.²³ 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.”²⁴

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

¹⁹ 40 FR 42003 (Sept. 10, 1975).

²⁰ 60 FR 56230, 56231 (Nov. 8, 1995).

²¹ Section II of this Notice contains background information about the study.

²² 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) (i.e., 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.”

²³ 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.

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

²⁵ 76 FR 39478 (July 6, 2011).

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

highway fuel economy. 16 CFR 259.2(a)(1)(ii).

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.²⁷ 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 commenters argued that the Guide should provide manufacturers 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 (e.g., “43 mpg city/21 mpg highway/27 mpg combined”).

²⁸ For 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 (8.5%).

²⁹ 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%).

³⁰ 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.

³¹ 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.

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

³² For 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.

³³ 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.

³⁵ Specifically, 28.4% stated that “up to” meant

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

enable them to compare advertised automobiles on the basis of fuel economy.”⁴⁷ 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.

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.”

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.⁴⁸ Accordingly, the proposed Guide continues to recommend specific disclosures related to non-EPA claims to reduce the possibility of deception.⁴⁹ 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

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.⁵⁰ 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.

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.

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 increbers, which1.467 TT* (le as an FFV)Tj lonom (BEVs), and fuel cv1 TD (to n th 19. T* (plug-in in)

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

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

⁵⁰ 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).

⁴⁷ 40 FR 42003 (Sept. 10, 1975).

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

⁵² The research (Q4e) suggests that respondents were much more likely to understand the term

⁵⁶The Commission does not propose to

vehicle will travel between refueling as defined and determined pursuant to EPA regulations.

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

(j) EPA regulatory requirements for fuel economy labeling set forth in 40 CFR part 600, subpart D.

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

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

(o) 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) 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 mended by this Pu2l5 1 Tf -0.0044 Tw 6.83 of 5sfeo, the dis

defwellim. statppear in tequire

Tufasowus4 ur38 foreTj dng Fabighw22*5 01884-0di80j tedguelw0e shoulpro (Tm,e)Tj nts, if the
TreeTanddof 5sieo, tedller, whow T*highwaT*5 1 Tf -, Tm,e
VerDf - Sep<11>2014 16:27 Jun 03,82016 Jkt 238001 PO 0000 Frm 00041 Fmt 4702

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 driving range claims.