

applicable checks, tests, and verifications thereafter at intervals not to exceed 12 months until the terminating action specified in paragraph (j) of this AD is done. Operators are not required to get replacement batteries from Ameri-King Corporation.

**(h) Additional Corrective Actions**

(1) If, during any action required by paragraph (g) of this AD, any ELT fails the functional test specified in step 6., the verification specified in step 7., or the activation check specified in step 8., of section 3.4, "Periodic Maintenance," of Ameri-King Corporation Document IM-450, "INSTALLATION & OPERATION MANUAL," Revision A, dated October 18, 1995, do the actions specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) Replace the affected Model AK-450-( ) ELT with a serviceable FAA-approved ELT as specified in paragraph (i) of this AD ("Definition of Serviceable FAA-approved ELT"), following 14 CFR 91.207(a), 14 CFR 91.207(f), and 14 CFR 135.168, as applicable, and other applicable operating rules.

(ii) Repair the ELT using approved maintenance practices and following 14 CFR 91.207(a), 14 CFR 91.207(f), and 14 CFR 135.168, as applicable, and other applicable operating rules.

(2) If, during any action required by paragraph (g) of this AD, any ELT fails any of the actions specified in paragraphs (h)(2)(i) through (h)(2)(v) of this AD: Replace the affected Model AK-451-( ) ELT with a serviceable FAA-approved ELT as specified in paragraph (i) of this AD ("Definition of Serviceable FAA-approved ELT"), following 14 CFR 91.207(a), 14 CFR 91.207(f), and 14 CFR 135.168, as applicable, and other applicable operating rules; or repair the ELT using approved maintenance practices and

<sup>2</sup> Additional information about the study, including the questionnaire and results, is available on the FTC Web site. [www.ftc.gov/ftc/663](http://www.ftc.gov/ftc/663).

<sup>3</sup> The comments can be found at [www.ftc.gov/ftc/663](http://www.ftc.gov/ftc/663).

They include: Consumer Federation of America (CFA) and the Center for Auto Safety (CAS) (jointly referred herein as "CFA") (#13); National Automobile Dealers Association (NADA) (#11); Association of Global Automakers (Global Automakers) #9; Auto Alliance (Alliance) (#10); Growth Energy (#8); Isenberg (#6), and Hilandera (#7).

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<sup>1</sup> The Guide does not have the force and effect of law and is not independently enforceable. However, failure to comply with industry guides may be an unfair or deceptive practice. The Commission can take action if a business engages in unfair or deceptive practices in violation of Section 5 of the FTC Act (15 U.S.C. 45(a)).

7 : The comments differed about the proposed guidance for single mileage claims. Some supported the Commission's proposal. For instance, Global Automakers argued that the consumer research supports the Commission's conclusion and that, after 40 years of federally-mandated fuel economy information, "consumers are very aware of the significance of city vs. highway fuel economy estimates." However, CFA strongly disagreed, arguing that a single city or highway MPG number is deceptive.

According to CFA, advertisers' failure to disclose city or combined ratings along with the highway rating constitutes a material omission likely to mislead consumers. In CFA's view, because no consistent relationship exists between city and highway estimates, consumers cannot infer one of the ratings based solely on the other or predict their own experience based on a single rating. Accordingly, CFA argued that automobile advertisers should present both the highway and city numbers, the combined, or all three in their fuel economy advertising. As detailed below, in support of this position, CFA discussed the FTC's research, submitted its own research, and highlighted additional arguments supporting its contention that highway-only MPG claims are misleading.

First, CFA addressed and critiqued the FTC research and associated analysis, claiming that the Commission failed to highlight a key result and that the study's question ordering led to biased responses. Specifically, CFA argued the results of Question 6c reveal that a single mileage claim is likely to deceive a significant minority of consumers. The question presented respondents with a claim stating that "This car is rated at 25 miles per gallon on the highway according to the EPA estimate" (Q6c) and then asked them whether they would expect to achieve that rating if they used the advertised vehicle for all their driving. According to the results, 20.7% of the respondents said they would probably get 25 MPG overall for all their driving. CFA contended this result demonstrates that, even if accompanied by a clear and prominent disclaimer that applies only to highway driving, a single mileage number misleads a significant minority of consumers into overestimating the MPG they will achieve.

Additionally, CFA claimed the questions most relevant to the single mileage claim appeared after "respondents had already experienced a number of questions emphasizing the distinction between highway and city

driving and estimates."<sup>7</sup> CFA contended the appearance of the city and highway mileage claims earlier in the questionnaire biased responses to subsequent questions.

CFA also highlighted its own research. Its national telephone survey presented three questions. First, it showed respondents an advertisement stating "31 miles per gallon EPA highway estimate" and then asked whether they would be more or less likely to consider buying the vehicle if that advertisement also stated "19 miles per gallon EPA city estimate." Overall, 43% of respondents said the city number would affect their behavior (26% said it would make them less likely to buy the car, while 17% said it would make them more likely). CFA asserted that, because over two-fifths of the respondents said the city rating disclosure would change their behavior, advertising should present both numbers.

Second, the CFA survey asked respondents whether "it is misleading to allow advertisers to present only a vehicle's miles per gallon estimate for highway driving." Before presenting this question, the survey informed participants that "[v]ehicles nearly always get more miles per gallon, or higher mileage per gallon, on highway driving than on city driving." Sixty four percent of respondents indicated that presenting only the highway number in advertising is misleading. Third, the CFA survey asked respondents which type of claim (i.e., highway and city MPG, combined MPG, city MPG only, or highway MPG only) automobile advertisers should be required to make in "a fuel economy claim." In response, 65% identified both highway and city, 23% pointed to a combined estimate, 6% to the city rating, and only 3% to the highway number.

Finally, CFA made several additional points. First, it explained that consumers are less likely to drive on the highway than in the city. It noted that, in approximating typical consumer driving patterns, the EPA combined number assumes 45% highway driving and 55% city driving. Second, it presented data demonstrating that little correlation exists for the majority of vehicles between a vehicle's highway MPG and its corresponding city or combined MPG. Given this variability, CFA concluded that consumers cannot accurately infer a model's city or combined MPG from a single highway rating, and those who attempt to make such an inference would be misled by

a single mileage number.<sup>8</sup> CFA further argued that, despite this variability, FTC has concluded consumers have a particular understanding of the relationship between city and highway ratings that leads them to "impute their own expected mileage, or compare mileages, based on just the highway number." CFA concluded that the city and highway MPG figures together allow consumers better to assess, based on their own personal experience, MPG differences among vehicles.

9 : Consistent with the Commission's previous guidance, the final Guide does not advise against advertisers making single mileage claims.<sup>9</sup> Neither the FTC study nor the comments provide clear evidence that such claims are deceptive. As detailed in the 2016 Notice, the FTC research suggests single mileage claims do not lead consumers to believe they will achieve that rating in other modes of driving. In addition, as discussed below, such claims do not appear to constitute a deceptive omission. While including MPG ratings for multiple modes of driving in advertising (i.e., disclosure of both city and highway MPG, or combined MPG) provides consumers with more information about vehicle fuel economy, the FTC Act requires advertisers to disclose only information that is necessary to prevent consumers from being misled—not all information that consumers may deem useful. As discussed below, the Commission disagrees with CFA's interpretation of the FTC study results. In addition, CFA's own research does not provide convincing evidence of deception.

First, the Commission disagrees with CFA's assertion that the question Q6 responses demonstrate a single mileage claim deceives a significant minority of consumers. Question Q6c specifically asked respondents to read the statement "This car is rated at 25 miles per gallon on the highway according to the EPA estimate," and to choose a closed-ended answer that "best describes what you would expect to get if you used this car for your driving." Respondents chose from several close-ended answers indicating whether their results, based on their own driving, would be higher than, lower than, or similar to the advertised rating. As CFA noted, 20.7%

<sup>8</sup> Likewise, CFA asserted that the appearance of the city rating only in an advertisement is equally misleading. However, CFA stated that "[i]f the FTC were to allow only one number, which we don't recommend, in order to avoid deception, they should only allow just the city as that is the condition under which most people drive, according to the EPA."

<sup>9</sup> The final Guide continues to advise against unqualified mileage claims that fail to specify driving mode (i.e., 46 MPG) (§259.4(c)).

<sup>7</sup> These prior questions included Q3b, Q3c–e, and Q5a.



wide, longstanding availability of highway and city mileage ratings in the market, such misperception seems unlikely.

**Comment:** The proposed Guide amendments advise marketers that, if a flexible fueled vehicle (FFV) advertisement mentions the vehicle's flexible fuel capability and makes a fuel economy claim, it should include the EPA fuel economy estimates for both gasoline and alternative fuel operation. The proposed Guide further explains that, without such disclosures, consumers may assume the advertised MPG rating applies both to gasoline and alternative fuel operation.

**Response:** The comments raised two concerns about this guidance. First, the Alliance asked the Commission to clarify that advertisers may provide only one fuel economy rating for FFVs if the advertisement clearly states the rating applies to gasoline operation. In the Alliance's view, the manufacturer should be able to highlight the vehicle's rating under a single fuel without adding unnecessary wording to disclose both fuel ratings. According to the Alliance, such claims are not deceptive as long as "the advertised rating cannot reasonably be understood by the consumer to apply to both fuels."

Second, the Global Automakers and the Alliance asked for clarification that the proposed flex-fuel guidance does not apply to plug-in hybrids (PHEVs), which are rated for both charge-depleting (expressed in MPGe) and charge-sustaining operation. These commenters noted that the Commission did not propose advising advertisers to disclose MPGe in advertising for electric vehicles because it is unclear whether such disclosures are essential to preventing deception and whether consumers understand and use such disclosures.<sup>15</sup>

**Response:** The Commission has modified the FFV guidance to address the Alliance's suggestion regarding qualifications for FFV gasoline mileage claims. We agree that a clear and prominent disclosure limited to gasoline operation may obviate the need to

disclose the vehicle's alternative fuel mileage. The final amendments contain language acknowledging this possibility.<sup>16</sup> In addition, in response to comments about PHEVs, the Commission has modified the final Guide to clarify the example does not apply to such vehicles.

**Comment:** Since its initial publication, the Guide has addressed 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>17</sup>

Since its initial publication, the Guide has addressed 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>17</sup>

<sup>15</sup> Growth Energy also asked for clarification that the proposed Guide amendments do not create any changes to the EPA-required labels. They do not. In addition, Growth Energy asked whether the Guide "in any way limit truthful and substantiated statements an advertiser may make regarding the benefits of FFVs," such as environmental benefits. The Guide does not specifically address claims outside of the fuel economy context. However, marketers may wish to consult additional Commission guidance, such as the Guides for the Use of Environmental Marketing Claims (Green Guides) (16 CFR part 260).

<sup>16</sup> 16 CFR § 259.4(j).

<sup>17</sup> 40 FR 42003 (Sept. 10, 1975).

<sup>18</sup> The guidance assumes that the advertised non-EPA estimates are not identical to the EPA estimates.

<sup>19</sup> 16 CFR Guides for the Use of Environmental Marketing Claims (Green Guides) (16 CFR part 260).

identify deceptive claims in the proposed Guide examples.<sup>20</sup> It noted that, the conclusions in several examples state that the claim in question is “likely” to be deceptive. CFA noted this approach conflicts with the Green Guides, which generally states the example claims “are” deceptive. In the commenters’ view, the weaker language in the reformatted Guide serves neither businesses, which seek clear, firm guidance, nor consumers who may fall victim to unscrupulous businesses that make claims inconsistent with the Guides and then point to the Guides’ vagueness as a defense. CFA further stated that the lack of clarity hampers the enforcement efforts of state and local consumer protection agencies and private attorneys.<sup>21</sup>

• : The Commission agrees that the guidance should be consistent with similar documents such as the Green Guides (16 CFR part 260) and Endorsement Guides (16 CFR part 255). Because these guides reflect the Commission’s understanding of how consumers are likely to interpret the applicable claims, it is reasonable to follow a consistent format for the examples in each. The guides set forth general principles, together with instructive examples, designed to help marketers avoid deceptive claims. However, as noted in the guides themselves, determinations regarding particular claims will depend on the specific advertisement at issue.<sup>22</sup> Nevertheless, to ensure consistency with other guidance and avoid confusion, the Commission has modified the examples in the final Guide consistent with the commenters’ suggestion.

<sup>20</sup> The Alliance agreed with the Commission’s decision not to provide specific guidance related to fuel economy claims in limited-format advertising. Interested parties may contact the FTC to discuss specific limited-format situations as they arise. Further developments in this area may suggest the need for the development of additional guidelines in the future.

<sup>21</sup> CFA also recommended that the Commission replace the phrase “estimated MPG” with “fuel economy claim” in proposed § 259.3. The Commission has made this change to clarify the guidance’s breadth. In addition, CFA recommended the section clarify that if a MPG number appears in an advertisement, the qualifying information recommended by the Guides (i.e., EPA estimate) should be clearly, conspicuously, and prominently displayed adjacent to the MPG number. The final Guide does not include such a change because the guidance already states such disclosures should appear in “close proximity” to the claim.

<sup>22</sup> In determining whether an advertisement, including its format, misleads consumers, the Commission considers the overall “net impression” it conveys. See Deception Policy Statement, 103 F.T.C. at 175.

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

Advertising, Fuel economy, Trade practices.

#### Final Amendments

For the reasons set forth in the preamble, the Commission revises 16 CFR part 259 to read as follows:

**PART 259—GUIC follo(0s, det[0mipINGd (preamble, the Cas follows: adveAo0s, dec0c h46S**







(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) The Commission regards the following as constituting “substantially more prominence”:

(i) 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 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) 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 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-mile driving range figure is comparable to an EPA driving range estimate for the vehicle. The advertisement is 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,**

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<sup>1</sup> 15 U.S.C. 68b(a)(2)(C) (Wool Products Labeling Act of 1939) (“Wool Act”); 15 U.S.C. 69b(2)(E) (Fur Products Labeling Act) (“Fur Act”); 15 U.S.C. 70b(b)(3) (Textile Fiber Products Identification Act) (“Textile Act”); 16 CFR part 300 (Wool Rules); 16 CFR part 301 (Fur Rules); 16 CFR part 303 (Textile Rules). The FTC’s public Web site offers a detailed description of products that are subject to, or exempt from, these labeling requirements. Federal Trade Commission, Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts, <http://www.ftc.gov/bureaufairtrading/labeling-requirements-under-the-textile-and-wool-acts>.

<sup>2</sup> 16 CFR 300.4 (Wool Rules provision); 16 CFR 301.26 (Fur Rules provision); 16 CFR 303.30 (Textile Rules provision).

<sup>3</sup> 17 FR 6075, 6077 (July 8, 1952) (Fur Rule provision 16 CFR 301.26); 24 FR 4480, 4484 (June 2, 1959) (Textile Rule provision 16 CFR 303.20); 29 FR 6622 (May 21, 1964) (Wool Rule provision 16 CFR 300.4).

<sup>4</sup> In recent years, the FTC has issued approximately 3,000 RNs per year.