the Energy Policy and Conservation Act (42 U.S.C. 6201 *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. The term *manufacturer* shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term *dealer* shall mean any person, resident or located in the United States or any territory thereof, engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term *ultimate purchaser* means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *Estimated city mpg.* The gasoline consumption or mileage of new automobiles as determined in accordance with the city test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(c) *Estimated highway mpg.* The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(d) *Vehicle configuration.* The unique combination of automobile features, as defined in 40 CFR 600.002–85(24).

(e) *Estimated in-use fuel economy range.* 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.

(f) *Range of estimated fuel economy values for the class of new automobiles.* The estimated city and highway fuel economy values of the class of automobile (e.g., compact) as determined by the U.S. Environmental Protection Agency pursuant to 40 CFR 600.315 (for the appropriate model year) and expressed in miles-per-gallon, to the nearest whole mile-per-gallon.

[60 FR 56231, Nov. 8, 1995]

§ 259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile[1] unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) If the advertisement makes:

(i) Both a city and a highway fuel economy representation, both the ''estimated city mpg'' and the ''estimated highway mpg'' of such new automobile,[2] must be disclosed;

(ii) A representation regarding only city or only highway fuel economy,

[1] The Commission will regard as an express or implied fuel economy representation one which a reasonable consumer, upon considering the representation in the context of the entire advertisement, would understand as referring to the fuel economy performance of the vehicle or vehicles advertised.

[2] For purposes of § 259.2(a), the ''estimated city mpg'' and the ''estimated highway mpg'' must be those applicable to the specific nameplate being advertised. Fuel economy estimates assigned to ''unique nameplates'' (see 40 CFR 600.207–86(a)(2)) apply only to such unique car lines. For example, if a manufacturer has a model named the ''XZA'' that has fuel economy estimates assigned to it and a derivative model named the ''Econo-XZA'' that has separate, higher fuel economy estimates assigned to it, these higher numbers assigned to the ''Econo-XZA'' cannot be used in advertisements for the ''XZA.''

only the corresponding EPA estimate must be disclosed;[3]

(iii) A general fuel economy claim without reference to either city or highway, or if the representation refers to any combined fuel economy number, the ''estimated city mpg'' must be disclosed;[4] and

(2) That the U.S. Environmental Protection Agency is the source of the ''estimated city mpg'' and ''estimated highway mpg'' and that the numbers are estimates.[5]

(b) If an advertisement for a new automobile cites:

(1) The ''estimated in-use fuel economy range,'' the advertisement must state with equal prominence both the upper and lower number of the range, an explanation of the meaning of the numbers (i.e., city mpg range or highway mpg range or both), and that the U.S. Environmental Protection Agency is the source of the figures.

(2) The ''range of estimated fuel economy values for the class of new automobiles'' as a basis for comparing the fuel economy of two or more automobiles, such comparison must be made to the same type of range (i.e., city or highway).[6]

(c) Fuel economy estimates derived from a non-EPA test may be disclosed provided that:

(1) The advertisement also discloses the ''estimated city mpg'' and/or the ''estimated highway mpg,'' as required by §259.2(a), and the disclosure required by §259.2(a), and gives the ''estimated city mpg'' and/or the ''estimated highway mpg'' figure(s) substantially more prominence than any other estimate;[7] provided, however, for radio and television advertisements in which any other estimate is used only in the audio, equal prominence must be given the ''estimated city mpg'' and/or the ''estimated highway mpg'' figure(s);[8]

(2) The source of the non-EPA test is clearly and conspicuously identified;

(3) The driving conditions and variables simulated by the test which differ from those used to measure the ''estimated city mpg'' and/or the ''estimated highway mpg,'' and which result in a change in fuel economy, are clearly

[3] For example, if the representation clearly refers only to highway fuel economy, only the ''estimated highway mpg'' need be disclosed.

[4] Nothing in this section should be construed as prohibiting disclosure of both the city and highway estimates.

[5] The Commission will regard the following as the minimum disclosure necessary to comply with §259.2(a)(2), regardless of the media in which the advertisement appears: ''EPA estimate(s).''

For television, if the estimated mpg appears in the video, the disclosure must appear in the video; if the estimated mpg is audio, the disclosure must be audio.

[6] For example, an advertisement could not state that ''according to EPA estimates new automobiles in this class get as little as X mpg (citing a figure from the city range) while EPA estimates that this automobile gets X + mpg (citing the EPA highway estimates or a number from the EPA estimated in-use fuel economy highway range for the automobile).

[7] The Commission will regard the following as constituting ''substantially more prominence:''

For television only: If the estimated city and/or highway mpg and any other mileage estimate(s) appear only in the visual portion, the estimated city and/or highway mpg must appear in numbers twice as large as those used for any other estimate, and must remain on the screen at least as long as any other estimate. If the estimated city and highway mpg appear in the audio portion, visual broadcast of any other estimate must be accompanied by the simultaneous, at least equally prominent, visual broadcast of the estimated city and/or highway mpg. Each visual estimated city and highway mpg must 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.

For print only: The estimated city and/or highway mpg must appear in clearly legible type at least twice as large as that used for any other estimate. Alternatively, if the estimated city and highway mpg appear in type of the same size as such other estimate, they must be clearly legible and conspicuously circled. The estimated city and highway mpg must appear against a solid color, contrasting background. They may not appear in a footnote unless all references to fuel economy appear in a footnote.

[8] The Commission will regard the following as constituting equal prominence. For radio and television when any other estimate is used in the audio: The estimated city and/or highway mpg must be stated, either before or after each disclosure of such other estimate at least as audibly as such other estimate.

and conspicuously disclosed.[9] Such conditions and variables may include, but are not limited to, road or dynamometer test, average speed, range of speed, hot or cold start, and temperature; and

(4) The advertisement clearly and conspicuously discloses any distinctions in ''vehicle configuration'' and other equipment affecting mileage performance (e.g., design or equipment differences which distinguish subconfigurations as defined by EPA) between the automobiles tested in the non-EPA test and the EPA tests.

[60 FR 56231, Nov. 8, 1995]

PART 260—GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS

Sec.
260.1 Statement of purpose.
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AUTHORITY: 15 U.S.C. 41–58.

SOURCE: 61 FR 53316, Oct. 11, 1996, unless otherwise noted.

§ 260.1 Statement of purpose.

The guides in this part represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These guides specifically address the application of Section 5 of the FTC Act to environmental advertising and marketing practices. They provide the basis for voluntary compliance with such laws by members of industry. Conduct inconsistent with the positions articulated in these guides may result in corrective action by the Commission under Section 5 if, after investigation, the Commission has reason to believe that the behavior falls within the scope of conduct declared unlawful by the statute.

§ 260.2 Scope of guides.

(a) These guides apply to environmental claims included in labeling, advertising, promotional materials and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, depictions, product brand names, or through any other means, including marketing through digital or electronic means, such as the Internet or electronic mail. The guides apply to any claim about the environmental attributes of a product, package or service in connection with the sale, offering for sale, or marketing of such product, package or service for personal, family or household use, or for commercial, institutional or industrial use.

(b) Because the guides are not legislative rules under Section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law. The guides themselves do not preempt regulation of other federal agencies or of state and local bodies governing the use of environmental marketing claims. Compliance with federal, state or local law and regulations concerning such claims, however, will not necessarily preclude Commission law enforcement action under Section 5.

[63 FR 24248, May 1, 1998]

§ 260.3 Structure of the guides.

The guides are composed of general principles and specific guidance on the use of environmental claims. These general principles and specific guidance are followed by examples that generally address a single deception concern. A given claim may raise issues that are addressed under more than one example and in more than one section of the guides. In many of the

[9] For dynamometer tests any difference between the EPA and non-EPA tests must be disclosed. For in-use tests, the Commission realizes that it is impossible to duplicate the EPA test conditions, and that in-use tests may be designed to simulate a particular driving situation. It must be clear from the context of the advertisement what driving situation is being simulated (e.g., cold weather driving, highway driving, heavy load conditions). Furthermore, any driving or vehicle condition must be disclosed if it is significantly different from that which an appreciable number of consumers (whose driving condition is being simulated) would expect to encounter.