

Part 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

CHAPTER B—GUIDES AND TRADE PRACTICE RULES

§ 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

On September 24, 1974, by a notice of public hearing in the FEDERAL REGISTER (39 FR 34382) the Federal Trade Commission commenced a rulemaking proceeding concerning the advertising and promotion of the fuel economy of new automobiles. Included in the notice was a description of the subject matter involved in the proceeding, together with a list of questions designed to elicit public comment.

In publishing the notice the Commission took note of the dramatic increase in the number of fuel economy claims being made and of the proliferation of procedures then being used as a basis for such claims. The Commission expressed the concern that the failure of advertisers to use a uniform test procedure, and to use a procedure that is fairly related to typical driving patterns, had the tendency and capacity to mislead and deceptively to deny consumers information which would enable them to compare advertised automobiles on a basis of fuel economy and to make consumers as to the fuel economy they would experience with the advertised automobile.

The record of the rulemaking proceeding confirms both the importance of fuel economy to consumers in their automobile purchasing decision, and the need for meaningful, usable fuel economy information.

The extensive written and oral comments received in the rulemaking proceeding make clear, a uniform testing procedure is necessary to provide consumers with fuel economy information they can use to compare competing automobiles. Moreover such a procedure must accurately represent the actual driving patterns and conditions so as to provide a meaningful measure of the au-

tomobile's actual fuel economy performance. Since approximately half the mileage driven in each year is done in each of two general driving modes—city and highway driving—it is generally agreed that separate city and highway fuel economy results should be generated and disclosed.

The great weight of the comments submitted in the rulemaking proceeding, from governmental agencies, automobile manufacturers and consumer groups, supported the use of the test procedures developed by the Environmental Protection Agency. Fuel economy results derived from the EPA test procedure are in widespread use in labeling through the Voluntary Labeling Program, jointly sponsored by EPA and the Federal Energy Administration, and are also widely used in advertising. At the same time, however, the comments made it clear that the EPA test procedures have shortcomings, including the fact that they do not, for example, presently fully take into account the combined effects of aerodynamic and rolling resistance, effects which are most pronounced at higher speeds.

Since the closing of the record of the rulemaking proceeding on December 31, 1974, the Commission has become aware, through consumer complaints, and press reports, of an increasing criticism that the EPA test results, primarily those relating to highway mileage, may, at least with respect to certain cars, overstate fuel economy. The Commission's staff is presently inquiring into the extent and the basis for this criticism. In view of this criticism, as well as in view of other questions concerning the EPA test, the Commission has concluded that it would not be in the public interest at this time to promulgate a final trade regulation rule. At the same time, in view of the important public interest in providing meaningful fuel economy information through advertising, and the potential for deception raised by much fuel economy advertising, the Commission has determined, as an interim measure to issue a Guide concerning the use of fuel economy claims in advertising.

In issuing this interim Guide, the Commission expresses its concern that the advertising of fuel economy information only serves the public interest when such advertising is not deceptive. In order to avoid deception and/or unfairness in the advertising of fuel economy for automobiles, the Commission has concluded that fuel economy claims must include certain disclosures and qualifications. These include the following:

1. *Disclosure of EPA test results.* As the Commission recognized in its September 24, 1974, notice, 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. Moreover, even when no specific fuel economy figure is cited in advertising, the use of such

figures, in all defined terms, may be deceptive by implying the existence of some level of "good fuel economy" which may be perceived differently by different individuals. For these reasons the Commission has concluded that fuel economy claims should be accompanied by a disclosure of the appropriate EPA mileage figure. Section 259.2(a) of the Guide requires this disclosure.

Section 259.2(a) further requires that both city and highway fuel economy figures be disclosed. Where mileage claims are based on test conditions that are relatively favorable to the advertised car, the failure to reveal results that may be relatively less favorable to the advertised car may constitute a deceptive failure to disclose a material fact. Since non-highway driving accounts for over half of the total driving done each year, disclosure simply of the highway figure, without disclosure of the lower city number would be misleading. Because of the importance of both numbers and to guard against the over-emphasis of one figure to the exclusion of the other, the Guide requires that each number be disclosed in close conjunction with the other and with substantially equal prominence. For example, the Guide would not permit the bold display of a highway mileage result in a headline where the city figure is disclosed only in a footnote at the bottom of the page, or buried in a lengthy paragraph in the body copy.

2. *Qualification of EPA test.* As the record of the rulemaking proceeding made clear, neither the EPA test, nor indeed any mass vehicle testing program, is capable of predicting the precise mileage that will be obtained by each driver. On the contrary, because of significant differences among consumers in terms of driving habits, traffic patterns encountered, weather conditions, car loading and use and purchase of optional equipment, actual fuel economy obtained will vary significantly from individual to individual. In order to avoid the misleading suggestion that the very mileage figures cited in an advertisement will in fact be achieved by a given consumer, § 259.2(a)(2) of the Guide requires disclosure that the cited figures are estimates, and that actual mileage obtained by the consumer may be different, depending upon how and where the consumer drives, the condition of the car and its optional equipment. The importance of such a disclosure in preventing the citation of specific fuel economy figures from raising unrealistic consumer expectations is underscored by recent reports which suggest that, in some instances, the EPA "Highway" test results may overstate the actual fuel economy likely to be achieved by most drivers of some particular cars.

3. *Identification of advertised vehicle.* Section 259.2(b) of the Guide requires that where the advertised automobile is available in more than one engine size, transmission type or fuel system, such be disclosed in the advertisement. Each of these factors has a substantial effect on fuel consumption, and the EPA-FEA

"Mileage Guide" provides separate fuel economy figures for a "carline" (e.g., Pinto, Vega, etc.) represented by each of these different configurations. Failure to identify the advertised automobile in terms of these major fuel-economy-affecting variables could therefore be a significant source of deception, since a consumer viewing an advertisement containing highly advantageous fuel economy figures might assume that the advertised fuel economy relates to the most popular version of the advertised model, (e.g., with a relatively large engine and automatic transmission) rather than to a "special economy version" possibly which may be equipped with the smallest engine and manual transmission. That the consumer's impression will be corrected when he views the cars in the dealer's showroom, or consults a fuel economy list, does not of course excuse the initial deception. See, e.g., *Carter Products, v. FTC*, 323 F. 2d 523 (5th Cir. 1963).

Where the mileage figures cited in the advertisement are not derived from the "Mileage Guide" but are rather the result of tests conducted upon a specific automobile, § 259.2(c) requires that the disclosures required in § 259.2(b) be supplemented by a further clear and conspicuous disclosure of all optional equipment carried by the advertised car that has the effect of increasing fuel economy. It will also require the disclosure of the absence of commonly-used equipment (if any) the absence of which has the effect of increasing fuel economy. In the absence of these additional disclosures a consumer will have no way of determining whether the automobile he wishes to purchase is likely to achieve the advertised fuel economy. Since, moreover, the additional fuel economy advantage attributable to the optional equipment can be achieved only at the additional cost of the optional equipment, failure to disclose that the equipment is optional may falsely imply that a car with the advertised mileage can be bought for the price normally charged for a car with standard equipment. Cf., *General Motors Corp.*, 32 F.T.C. 807 (1941).

While the Guide is interpretive of laws administered by the Commission, and is thus advisory in nature, proceedings to enforce the requirements of law as explained in the Guide may be brought under the Federal Trade Commission Act (15 U.S.C. 41-58) which, briefly stated makes it illegal for one to engage in "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce", as "commerce" is defined therein.

Inquiries and requests for copies of the Guide should be directed to the Division of National Advertising, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Accordingly the Commission hereby issues the following Guide which amends Subchapter B, Guides and Trade Practice Rules, of 16 CFR Chapter I by adding a new Part 259, to take effect October 15, 1975, as follows:

Sec.  
259.1 Definitions.  
259.2 Advertising disclosures.

AUTHORITY: 38 Stat. 717, as amended (15 U.S.C. 41-58).

§ 259.1 Definitions.

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

(a) "New automobile". Any passenger vehicle or light duty truck as those terms are defined in 40 CFR Part 85, 1974, as amended, 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 the 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 or in the District of Columbia 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 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 personal use.

(b) "Mileage Guide". The most recent publication of EPA and/or FEA which lists the relevant model year the estimated city and estimated highway fuel economy of new automobiles.

(c) "Estimated city fuel economy". The gasoline consumption or mileage of new automobiles as determined in accordance with the urban or city test procedure employed and published by the United States Environmental Protection Agency as described in 39 FR 36890, et seq. (1974) and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published or accepted by the United States Environmental Protection Agency.

(d) "Estimated highway fuel economy". The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed and published by the United States Environmental Protection Agency as described in 39 FR 36890, et seq. (1974) and subsequent revisions; and expressed in miles-per-gallon, to the nearest whole mile-per-gallon as measured, reported, published or accepted by the United States Environmental Protection Agency.

§ 259.2 Advertising disclosures.

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

(1) Both the estimated city fuel economy and the estimated highway fuel economy of such new automobile, with

the U.S. Environmental Protection Agency identified as the source of the figures. Each of these disclosures shall be made in close conjunction with the estimated city and highway fuel economy figures and with substantially equivalent prominence;

(2) That the estimated city and estimated highway figures are estimates, and that the actual fuel economy to be obtained by the consumer may be different and will depend upon individual's driving habits, driving conditions and the car's condition and optional equipment.

(b) When a fuel economy estimation is made for any new automobile which is available in more than one engine size, either in terms of number of cylinders or engine displacement, transmission type or fuel system, and inch displacement, number of gears, transmission type or type of optional equipment shall be clearly and conspicuously disclosed.

(c) If the fuel economy estimation is based on data other than published for the advertised automobile in the Mileage Guide, (1) the use of and/or use of any optional equipment (e.g., low rear axle ratio, transmission, radial tires, suspension control system) which is likely to have the effect of increasing the estimated fuel economy performance shall be clearly and conspicuously disclosed as optional equipment (e.g., air conditioning) which is likely to have the effect of decreasing its estimated fuel economy performance shall be clearly and conspicuously disclosed.

Promulgated by the Federal Trade Commission September 10, 1975.

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