AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

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 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.
260.2 Scope of guides.
260.3 Structure of the guides.
260.4 Review procedure.
260.5 Interpretation and substantiation of environmental marketing claims.
260.6 General principles.
260.7 Environmental marketing claims.
260.8 Environmental assessment.

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

[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.

[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.

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 examples, one or more options are presented for qualifying a claim. These options are intended to provide a ''safe harbor'' for marketers who want certainty about how to make environmental claims. They do not represent the only permissible approaches to qualifying a claim. The examples do not illustrate all possible acceptable claims or disclosures that would be permissible under Section 5. In addition, some of the illustrative disclosures may be appropriate for use on labels but not in print or broadcast advertisements and vice versa. In some instances, the guides indicate within the example in what context or contexts a particular type of disclosure should be considered.

§ 260.4 Review procedure.

The Commission will review the guides as part of its general program of reviewing all industry guides on an ongoing basis. Parties may petition the Commission to alter or amend these guides in light of substantial new evidence regarding consumer interpretation of a claim or regarding substantiation of a claim. Following review of such a petition, the Commission will take such action as it deems appropriate.

§ 260.5 Interpretation and substantiation of environmental marketing claims.

Section 5 of the FTC Act makes unlawful deceptive acts and practices in or affecting commerce. The Commission's criteria for determining whether an express or implied claim has been made are enunciated in the Commission's Policy Statement on Deception.[1] In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product, package or service must, at the time the claim is made, possess and rely upon a reasonable basis substantiating the claim. A reasonable basis consists of competent and reliable evidence. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Further guidance on the reasonable basis standard is set forth in the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine. 49 FR 30999 (1984); *appended to Thompson Medical Co.*, 104 F.T.C. 648 (1984). The Commission has also taken action in a number of cases involving alleged deceptive or unsubstantiated environmental advertising claims. A current list of environmental marketing cases and/or copies of individual cases can be obtained by calling the FTC Consumer Response Center at (202) 326–2222.

[63 FR 24248, May 1, 1998]

§ 260.6 General principles.

The following general principles apply to all environmental marketing claims, including, but not limited to, those described in § 260.7. In addition, § 260.7 contains specific guidance applicable to certain environmental marketing claims. Claims should comport with all relevant provisions of these

[1] *Cliffdale Associates, Inc.*, 103 F.T.C. 110, at 176, 176 n.7, n.8, Appendix, *reprinting* letter dated Oct. 14, 1983, from the Commission to The Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (1984) (''Deception Statement'').

guides, not simply the provision that seems most directly applicable.

(a) *Qualifications and disclosures.* The Commission traditionally has held that in order to be effective, any qualifications or disclosures such as those described in these guides should be sufficiently clear, prominent and understandable to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

(b) *Distinction between benefits of product, package and service.* An environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, the product's packaging, a service or to a portion or component of the product, package or service. In general, if the environmental attribute or benefit applies to all but minor, incidental components of a product or package, the claim need not be qualified to identify that fact. There may be exceptions to this general principle. For example, if an unqualified ''recyclable'' claim is made and the presence of the incidental component significantly limits the ability to recycle the product, then the claim would be deceptive.

Example 1: A box of aluminum foil is labeled with the claim ''recyclable,'' without further elaboration. Unless the type of product, surrounding language, or other context of the phrase establishes whether the claim refers to the foil or the box, the claim is deceptive if any part of either the box or the foil, other than minor, incidental components, cannot be recycled.

Example 2: A soft drink bottle is labeled ''recycled.'' The bottle is made entirely from recycled materials, but the bottle cap is not. Because reasonable consumers are likely to consider the bottle cap to be a minor, incidental component of the package, the claim is not deceptive. Similarly, it would not be deceptive to label a shopping bag ''recycled'' where the bag is made entirely of recycled material but the easily detachable handle, an incidental component, is not.

(c) *Overstatement of environmental attribute:* An environmental marketing claim should not be presented in a manner that overstates the environmental attribute or benefit, expressly or by implication. Marketers should avoid implications of significant environmental benefits if the benefit is in fact negligible.

Example 1: A package is labeled, ''50% more recycled content than before.'' The manufacturer increased the recycled content of its package from 2 percent recycled material to 3 percent recycled material. Although the claim is technically true, it is likely to convey the false impression that the advertiser has increased significantly the use of recycled material.

Example 2: A trash bag is labeled ''recyclable'' without qualification. Because trash bags will ordinarily not be separated out from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no significant or meaningful benefit exists.

Example 3: A paper grocery sack is labeled ''reusable.'' The sack can be brought back to the store and reused for carrying groceries but will fall apart after two or three reuses, on average. Because reasonable consumers are unlikely to assume that a paper grocery sack is durable, the unqualified claim does not overstate the environmental benefit conveyed to consumers. The claim is not deceptive and does not need to be qualified to indicate the limited reuse of the sack.

Example 4: A package of paper coffee filters is labeled ''These filters were made with a chlorine-free bleaching process.'' The filters are bleached with a process that releases into the environment a reduced, but still significant, amount of the same harmful byproducts associated with chlorine bleaching. The claim is likely to overstate the product's benefits because it is likely to be interpreted by consumers to mean that the product's manufacture does not cause any of the environmental risks posed by chlorine bleaching. A claim, however, that the filters were ''bleached with a process that substantially reduces, but does not eliminate, harmful substances associated with chlorine bleaching'' would not, if substantiated, overstate the product's benefits and is unlikely to be deceptive.

(d) *Comparative claims:* Environmental marketing claims that include a comparative statement should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception. In addition, the advertiser should be able to substantiate the comparison.

Example 1: An advertiser notes that its shampoo bottle contains ''20% more recycled content.'' The claim in its context is ambiguous. Depending on contextual factors, it could be a comparison either to the advertiser's immediately preceding product or to a competitor's product. The advertiser should clarify the claim to make the basis for comparison clear, for example, by saying ''20% more recycled content than our previous package.'' Otherwise, the advertiser should be prepared to substantiate whatever comparison is conveyed to reasonable consumers.

Example 2: An advertiser claims that ''our plastic diaper liner has the most recycled content.'' The advertised diaper does have more recycled content, calculated as a percentage of weight, than any other on the market, although it is still well under 100% recycled. Provided the recycled content and the comparative difference between the product and those of competitors are significant and provided the specific comparison can be substantiated, the claim is not deceptive.

Example 3: An ad claims that the advertiser's packaging creates ''less waste than the leading national brand.'' The advertiser's source reduction was implemented sometime ago and is supported by a calculation comparing the relative solid waste contributions of the two packages. The advertiser should be able to substantiate that the comparison remains accurate.

[61 FR 53316, Oct. 11, 1996, as amended at 63 FR 24248, May 1, 1998]

§ 260.7 Environmental marketing claims.

Guidance about the use of environmental marketing claims is set forth in this section. Each guide is followed by several examples that illustrate, but do not provide an exhaustive list of, claims that do and do not comport with the guides. In each case, the general principles set forth in § 260.6 should also be followed.[2]

(a) *General environmental benefit claims.* It is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product, package or service has specific and far-reaching environmental benefits. As explained in the Commission's Advertising Substantiation Statement, every express and material implied claim that the general assertion conveys to reasonable consumers about an objective quality, feature or attribute of a product or service must be substantiated. Unless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.

Example 1: A brand name like ''Eco-Safe'' would be deceptive if, in the context of the product so named, it leads consumers to believe that the product has environmental benefits which cannot be substantiated by the manufacturer. The claim would not be deceptive if ''Eco-Safe'' were followed by clear and prominent qualifying language limiting the safety representation to a particular product attribute for which it could be substantiated, and provided that no other deceptive implications were created by the context.

Example 2: A product wrapper is printed with the claim ''Environmentally Friendly.'' Textual comments on the wrapper explain that the wrapper is ''Environmentally Friendly because it was not chlorine bleached, a process that has been shown to create harmful substances.'' The wrapper was, in fact, not bleached with chlorine. However, the production of the wrapper now creates and releases to the environment significant quantities of other harmful substances. Since consumers are likely to interpret the ''Environmentally Friendly'' claim, in combination with the textual explanation, to mean that no significant harmful substances are currently released to the environment, the ''Environmentally Friendly'' claim would be deceptive.

Example 3: A pump spray product is labeled ''environmentally safe.'' Most of the product's active ingredients consist of volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation. The claim is deceptive because, absent further qualification, it is likely to convey to consumers that use of the product will not result in air pollution or other harm to the environment.

Example 4: A lawn care pesticide is advertised as ''essentially non-toxic'' and ''practically non-toxic.'' Consumers would likely interpret these claims in the context of such a product as applying not only to human

[2] These guides do not currently address claims based on a ''lifecycle'' theory of environmental benefit. The Commission lacks sufficient information on which to base guidance on such claims.

health effects but also to the product's environmental effects. Since the claims would likely convey to consumers that the product does not pose any risk to humans or the environment, if the pesticide in fact poses a significant risk to humans or environment, the claims would be deceptive.

Example 5: A product label contains an environmental seal, either in the form of a globe icon, or a globe icon with only the text ''Earth Smart'' around it. Either label is likely to convey to consumers that the product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. The claims would not be deceptive if they were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which they could be substantiated, provided that no other deceptive implications were created by the context.

Example 6: A product is advertised as ''environmentally preferable.'' This claim is likely to convey to consumers that this product is environmentally superior to other products. If the manufacturer cannot substantiate this broad claim, the claim would be deceptive. The claim would not be deceptive if it were accompanied by clear and prominent qualifying language limiting the environmental superiority representation to the particular product attribute or attributes for which it could be substantiated, provided that no other deceptive implications were created by the context.

(b) *Degradable/biodegradable/photodegradable:* It is deceptive to misrepresent, directly or by implication, that a product or package is degradable, biodegradable or photodegradable. An unqualified claim that a product or package is degradable, biodegradable or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal. Claims of degradability, biodegradability or photodegradability should be qualified to the extent necessary to avoid consumer deception about:

(1) The product or package's ability to degrade in the environment where it is customarily disposed; and

(2) The rate and extent of degradation.

Example 1: A trash bag is marketed as ''degradable,'' with no qualification or other disclosure. The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. The trash bags are customarily disposed of in incineration facilities or at sanitary landfills that are managed in a way that inhibits degradation by minimizing moisture and oxygen. Degradation will be irrelevant for those trash bags that are incinerated and, for those disposed of in landfills, the marketer does not possess adequate substantiation that the bags will degrade in a reasonably short period of time in a landfill. The claim is therefore deceptive.

Example 2: A commercial agricultural plastic mulch film is advertised as ''Photodegradable'' and qualified with the phrase, ''Will break down into small pieces if left uncovered in sunlight.'' The claim is supported by competent and reliable scientific evidence that the product will break down in a reasonably short period of time after being exposed to sunlight and into sufficiently small pieces to become part of the soil. The qualified claim is not deceptive. Because the claim is qualified to indicate the limited extent of breakdown, the advertiser need not meet the elements for an unqualified photodegradable claim, i.e., that the product will not only break down, but also will decompose into elements found in nature.

Example 3: A soap or shampoo product is advertised as ''biodegradable,'' with no qualification or other disclosure. The manufacturer has competent and reliable scientific evidence demonstrating that the product, which is customarily disposed of in sewage systems, will break down and decompose into elements found in nature in a short period of time. The claim is not deceptive.

Example 4: A plastic six-pack ring carrier is marked with a small diamond. Many state laws require that plastic six-pack ring carriers degrade if littered, and several state laws also require that the carriers be marked with a small diamond symbol to indicate that they meet performance standards for degradability. The use of the diamond, by itself, does not constitute a claim of degradability.[3]

(c) *Compostable.* (1) It is deceptive to misrepresent, directly or by implication, that a product or package is compostable. A claim that a product or

[3] The guides' treatment of unqualified degradable claims is intended to help prevent consumer deception and is not intended to establish performance standards for laws intended to ensure the degradability of products when littered.

package is compostable should be substantiated by competent and reliable scientific evidence that all the materials in the product or package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Claims of compostability should be qualified to the extent necessary to avoid consumer deception. An unqualified claim may be deceptive if:

(i) The package cannot be safely composted in a home compost pile or device; or

(ii) The claim misleads consumers about the environmental benefit provided when the product is disposed of in a landfill.

(2) A claim that a product is compostable in a municipal or institutional composting facility may need to be qualified to the extent necessary to avoid deception about the limited availability of such composting facilities.

Example 1: A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive provided the manufacturer can substantiate that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If this is the case, it is not relevant that no local municipal or institutional composting facilities exist.

Example 2: A lawn and leaf bag is labeled as ''Compostable in California Municipal Yard Trimmings Composting Facilities.'' The bag contains toxic ingredients that are released into the compost material as the bag breaks down. The claim is deceptive if the presence of these toxic ingredients prevents the compost from being usable.

Example 3: A manufacturer makes an unqualified claim that its package is compostable. Although municipal or institutional composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should disclose that the package is not suitable for home composting.

Example 4: A nationally marketed lawn and leaf bag is labeled ''compostable.'' Also printed on the bag is a disclosure that the bag is not designed for use in home compost piles. The bags are in fact composted in yard trimmings composting programs in many communities around the country, but such programs are not available to a substantial majority of consumers or communities where the bag is sold. The claim is deceptive because reasonable consumers living in areas not served by yard trimmings programs may understand the reference to mean that composting facilities accepting the bags are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of such programs, for example, by stating, ''Appropriate facilities may not exist in your area.'' Other examples of adequate qualification of the claim include providing the approximate percentage of communities or the population for which such programs are available.

Example 5: A manufacturer sells a disposable diaper that bears the legend, ''This diaper can be composted where solid waste composting facilities exist. There are currently [X number of] solid waste composting facilities across the country.'' The claim is not deceptive, assuming that composting facilities are available as claimed and the manufacturer can substantiate that the diaper can be converted safely to usable compost in solid waste composting facilities.

Example 6: A manufacturer markets yard trimmings bags only to consumers residing in particular geographic areas served by county yard trimmings composting programs. The bags meet specifications for these programs and are labeled, ''Compostable Yard Trimmings Bag for County Composting Programs.'' The claim is not deceptive. Because the bags are compostable where they are sold, no qualification is required to indicate the limited availability of composting facilities.

(d) *Recyclable.* It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. A product or package should not be marketed as recyclable unless it can be collected, separated or otherwise recovered from the solid waste stream for reuse, or in the manufacture or assembly of another package or product, through an established recycling program. Unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable. For products or packages that are made of both recyclable and non-recyclable components, the recyclable claim should be adequately qualified to avoid consumer deception about which portions or components of the product or package are recyclable. Claims of recyclability should be qualified to the extent necessary to avoid consumer deception about any limited availability of recycling programs and collection sites. If

an incidental component significantly limits the ability to recycle a product or package, a claim of recyclability would be deceptive. A product or package that is made from recyclable material, but, because of its shape, size or some other attribute, is not accepted in recycling programs for such material, should not be marketed as recyclable.[4]

Example 1: A packaged product is labeled with an unqualified claim, ''recyclable.'' It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim is likely to convey to reasonable consumers that all of both the product and its packaging that remain after normal use of the product, except for minor, incidental components, can be recycled. Unless each such message can be substantiated, the claim should be qualified to indicate what portions are recyclable.

Example 2: A nationally marketed 8 oz. plastic cottage-cheese container displays the Society of the Plastics Industry (SPI) code (which consists of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. The manufacturer's conspicuous use of the SPI code in this manner constitutes a recyclability claim. Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the claim should be qualified to disclose the limited availability of recycling programs for the container. If the SPI code, without more, had been placed in an inconspicuous location on the container (e.g., embedded in the bottom of the container) it would not constitute a claim of recyclability.

Example 3: A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into another product or package. Any claim that the container is recyclable would be deceptive.

Example 4: A nationally marketed bottle bears the unqualified statement that it is ''recyclable.'' Collection sites for recycling the material in question are not available to a substantial majority of consumers or communities, although collection sites are established in a significant percentage of communities or available to a significant percentage of the population. The unqualified claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs may conclude that recycling programs for the material are available in their area. To avoid deception, the claim should be qualified to indicate the limited availability of programs, for example, by stating ''This bottle may not be recyclable in your area,'' or ''Recycling programs for this bottle may not exist in your area.'' Other examples of adequate qualifications of the claim include providing the approximate percentage of communities or the population to whom programs are available.

Example 5: A paperboard package is marketed nationally and labeled, ''Recyclable where facilities exist.'' Recycling programs for this package are available in a significant percentage of communities or to a significant percentage of the population, but are not available to a substantial majority of consumers. The claim is deceptive because, unless evidence shows otherwise, reasonable consumers living in communities not served by programs that recycle paperboard packaging may understand this phrase to mean that such programs are available in their area. To avoid deception, the claim should be further qualified to indicate the limited availability of programs, for example, by using any of the approaches set forth in Example 4 above.

Example 6: A foam polystyrene cup is marketed as follows: ''Recyclable in the few communities with facilities for foam polystyrene cups.'' Collection sites for recycling the cup have been established in a half-dozen major metropolitan areas. This disclosure illustrates one approach to qualifying a claim adequately to prevent deception about the limited availability of recycling programs where collection facilities are not established in a significant percentage of communities or available to a significant percentage of the population. Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 7: A label claims that the package ''includes some recyclable material.'' The package is composed of four layers of different materials, bonded together. One of the layers is made from the recyclable material,

[4] The Mercury-Containing and Rechargeable Battery Management Act establishes uniform national labeling requirements regarding certain types of nickel-cadmium rechargeable and small lead-acid rechargeable batteries to aid in battery collection and recycling. The Battery Act requires, in general, that the batteries must be labeled with the three-chasing-arrows symbol or a comparable recycling symbol, and the statement ''Battery Must Be Recycled Or Disposed Of Properly.'' 42 U.S.C. 14322(b). Batteries labeled in accordance with this federal statute are deemed to be in compliance with these guides.

but the others are not. While programs for recycling this type of material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. Even though it is technologically possible to separate the layers, the claim is not adequately qualified to avoid consumer deception. An appropriately qualified claim would be, ''includes material recyclable in the few communities that collect multi-layer products.'' Other examples of adequate qualification of the claim include providing the number of communities with programs, or the percentage of communities or the population to which programs are available.

Example 8: A product is marketed as having a ''recyclable'' container. The product is distributed and advertised only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents, but are not yet available nationally. Because programs are generally available where the product is marketed, the unqualified claim does not deceive consumers about the limited availability of recycling programs.

Example 9: A manufacturer of one-time use photographic cameras, with dealers in a substantial majority of communities, collects those cameras through all of its dealers. After the exposed film is removed for processing, the manufacturer reconditions the cameras for resale and labels them as follows: ''Recyclable through our dealership network.'' This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop off recycling programs.

Example 10: A manufacturer of toner cartridges for laser printers has established a recycling program to recover its cartridges exclusively through its nationwide dealership network. The company advertises its cartridges nationally as ''Recyclable. Contact your local dealer for details.'' The company's dealers participating in the recovery program are located in a significant number—but not a substantial majority—of communities. The ''recyclable'' claim is deceptive unless it contains one of the qualifiers set forth in Example 4. If participating dealers are located in only a few communities, the claim should be qualified as indicated in Example 6.

Example 11: An aluminum beverage can bears the statement ''Please Recycle.'' This statement is likely to convey to consumers that the package is recyclable. Because collection sites for recycling aluminum beverage cans are available to a substantial majority of consumers or communities, the claim does not need to be qualified to indicate the limited availability of recycling programs.

(e) *Recycled content.* (1) A recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process (pre-consumer), or after consumer use (post-consumer). To the extent the source of recycled content includes pre-consumer material, the manufacturer or advertiser must have substantiation for concluding that the pre-consumer material would otherwise have entered the solid waste stream. In asserting a recycled content claim, distinctions may be made between pre-consumer and post-consumer materials. Where such distinctions are asserted, any express or implied claim about the specific pre-consumer or post-consumer content of a product or package must be substantiated.

(2) It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material, which includes recycled raw material, as well as used,[5] reconditioned and remanufactured components. Unqualified claims of recycled content may be made if the entire product or package, excluding minor, incidental components, is made from recycled material. For products or packages that are only partially made of recycled material, a recycled claim should be adequately qualified to avoid consumer deception about the amount, by weight, of recycled content in the finished product or package. Additionally, for products that contain used, reconditioned or remanufactured components, a recycled claim should be adequately qualified to avoid consumer deception about the nature of such components. No such qualification would be necessary in cases where it would be clear to consumers from the context that a product's recycled content consists of used, reconditioned or remanufactured components.

Example 1: A manufacturer routinely collects spilled raw material and scraps left over from the original manufacturing process. After a minimal amount of reprocessing, the manufacturer combines the spills and scraps with virgin material for use in further

[5] The term ''used'' refers to parts that are not new and that have not undergone any type of remanufacturing and/or reconditioning.

production of the same product. A claim that the product contains recycled material is deceptive since the spills and scraps to which the claim refers are normally reused by industry within the original manufacturing process, and would not normally have entered the waste stream.

Example 2: A manufacturer purchases material from a firm that collects discarded material from other manufacturers and resells it. All of the material was diverted from the solid waste stream and is not normally reused by industry within the original manufacturing process. The manufacturer includes the weight of this material in its calculations of the recycled content of its products. A claim of recycled content based on this calculation is not deceptive because, absent the purchase and reuse of this material, it would have entered the waste stream.

Example 3: A greeting card is composed 30% by fiber weight of paper collected from consumers after use of a paper product, and 20% by fiber weight of paper that was generated after completion of the paper-making process, diverted from the solid waste stream, and otherwise would not normally have been reused in the original manufacturing process. The marketer of the card may claim either that the product ''contains 50% recycled fiber,'' or may identify the specific pre-consumer and/or post-consumer content by stating, for example, that the product ''contains 50% total recycled fiber, including 30% post-consumer.''

Example 4: A paperboard package with 20% recycled fiber by weight is labeled as containing ''20% recycled fiber.'' Some of the recycled content was composed of material collected from consumers after use of the original product. The rest was composed of overrun newspaper stock never sold to customers. The claim is not deceptive.

Example 5: A product in a multi-component package, such as a paperboard box in a shrink-wrapped plastic cover, indicates that it has recycled packaging. The paperboard box is made entirely of recycled material, but the plastic cover is not. The claim is deceptive since, without qualification, it suggests that both components are recycled. A claim limited to the paperboard box would not be deceptive.

Example 6: A package is made from layers of foil, plastic, and paper laminated together, although the layers are indistinguishable to consumers. The label claims that ''one of the three layers of this package is made of recycled plastic.'' The plastic layer is made entirely of recycled plastic. The claim is not deceptive provided the recycled plastic layer constitutes a significant component of the entire package.

Example 7: A paper product is labeled as containing ''100% recycled fiber.'' The claim is not deceptive if the advertiser can substantiate the conclusion that 100% by weight of the fiber in the finished product is recycled.

Example 8: A frozen dinner is marketed in a package composed of a cardboard box over a plastic tray. The package bears the legend, ''package made from 30% recycled material.'' Each packaging component amounts to one-half the weight of the total package. The box is 20% recycled content by weight, while the plastic tray is 40% recycled content by weight. The claim is not deceptive, since the average amount of recycled material is 30%.

Example 9: A paper greeting card is labeled as containing 50% recycled fiber. The seller purchases paper stock from several sources and the amount of recycled fiber in the stock provided by each source varies. Because the 50% figure is based on the annual weighted average of recycled material purchased from the sources after accounting for fiber loss during the production process, the claim is permissible.

Example 10: A packaged food product is labeled with a three-chasing-arrows symbol without any further explanatory text as to its meaning. By itself, the symbol is likely to convey that the packaging is both ''recyclable'' and is made entirely from recycled material. Unless both messages can be substantiated, the claim should be qualified as to whether it refers to the package's recyclability and/or its recycled content. If a ''recyclable'' claim is being made, the label may need to disclose the limited availability of recycling programs for the package. If a recycled content claim is being made and the packaging is not made entirely from recycled material, the label should disclose the percentage of recycled content.

Example 11: A laser printer toner cartridge containing 25% recycled raw materials and 40% reconditioned parts is labeled ''65% recycled content; 40% from reconditioned parts.'' This claim is not deceptive.

Example 12: A store sells both new and used sporting goods. One of the items for sale in the store is a baseball helmet that, although used, is no different in appearance than a brand new item. The helmet bears an unqualified ''Recycled'' label. This claim is deceptive because, unless evidence shows otherwise, consumers could reasonably believe that the helmet is made of recycled raw materials, when it is in fact a used item. An acceptable claim would bear a disclosure clearly stating that the helmet is used.

Example 13: A manufacturer of home electronics labels its video cassette recorders (''VCRs'') as ''40% recycled.'' In fact, each VCR contains 40% reconditioned parts. This claim is deceptive because consumers are unlikely to know that the VCR's recycled content consists of reconditioned parts.

Example 14: A dealer of used automotive parts recovers a serviceable engine from a vehicle that has been totaled. Without repairing, rebuilding, remanufacturing, or in

any way altering the engine or its components, the dealer attaches a ''Recycled'' label to the engine, and offers it for resale in its used auto parts store. In this situation, an unqualified recycled content claim is not likely to be deceptive because consumers are likely to understand that the engine is used and has not undergone any rebuilding.

Example 15: An automobile parts dealer purchases a transmission that has been recovered from a junked vehicle. Eighty-five percent by weight of the transmission was rebuilt and 15% constitutes new materials. After rebuilding[6] the transmission in accordance with industry practices, the dealer packages it for resale in a box labeled ''Rebuilt Transmission,'' or ''Rebuilt Transmission (85% recycled content from rebuilt parts),'' or ''Recycled Transmission (85% recycled content from rebuilt parts).'' These claims are not likely to be deceptive.

(f) *Source reduction:* It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume or toxicity. Source reduction claims should be qualified to the extent necessary to avoid consumer deception about the amount of the source reduction and about the basis for any comparison asserted.

Example 1: An ad claims that solid waste created by disposal of the advertiser's packaging is ''now 10% less than our previous package.'' The claim is not deceptive if the advertiser has substantiation that shows that disposal of the current package contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the package.

Example 2: An advertiser notes that disposal of its product generates ''10% less waste.'' The claim is ambiguous. Depending on contextual factors, it could be a comparison either to the immediately preceding product or to a competitor's product. The ''10% less waste'' reference is deceptive unless the seller clarifies which comparison is intended and substantiates that comparison, or substantiates both possible interpretations of the claim.

[6] The term ''rebuilding'' means that the dealer dismantled and reconstructed the transmission as necessary, cleaned all of its internal and external parts and eliminated rust and corrosion, restored all impaired, defective or substantially worn parts to a sound condition (or replaced them if necessary), and performed any operations required to put the transmission in sound working condition.

(g) *Refillable:* It is deceptive to misrepresent, directly or by implication, that a package is refillable. An unqualified refillable claim should not be asserted unless a system is provided for the collection and return of the package for refill or the later refill of the package by consumers with product subsequently sold in another package. A package should not be marketed with an unqualified refillable claim, if it is up to the consumer to find new ways to refill the package.

Example 1: A container is labeled ''refillable x times.'' The manufacturer has the capability to refill returned containers and can show that the container will withstand being refilled at least x times. The manufacturer, however, has established no collection program. The unqualified claim is deceptive because there is no means for collection and return of the container to the manufacturer for refill.

Example 2: A bottle of fabric softener states that it is in a ''handy refillable container.'' The manufacturer also sells a large-sized container that indicates that the consumer is expected to use it to refill the smaller container. The manufacturer sells the large-sized container in the same market areas where it sells the small container. The claim is not deceptive because there is a means for consumers to refill the smaller container from larger containers of the same product.

(h) *Ozone safe and ozone friendly:* It is deceptive to misrepresent, directly or by implication, that a product is safe for or ''friendly'' to the ozone layer or the atmosphere. For example, a claim that a product does not harm the ozone layer is deceptive if the product contains an ozone-depleting substance.

Example 1: A product is labeled ''ozone friendly.'' The claim is deceptive if the product contains any ozone-depleting substance, including those substances listed as Class I or Class II chemicals in Title VI of the Clean Air Act Amendments of 1990, Public Law 101–549, and others subsequently designated by EPA as ozone-depleting substances. Chemicals that have been listed or designated as Class I are chlorofluorocarbons (CFCs), halons, carbon tetrachloride, 1,1,1-trichloroethane, methyl bromide and hydrobromofluorocarbons (HBFCs). Chemicals that have been listed as Class II are hydrochlorofluorocarbons (HCFCs).

Example 2: An aerosol air freshener is labeled ''ozone friendly.'' Some of the product's ingredients are volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation.

The claim is likely to convey to consumers that the product is safe for the atmosphere as a whole, and is therefore, deceptive.

Example 3: The seller of an aerosol product makes an unqualified claim that its product ''Contains no CFCs.'' Although the product does not contain CFCs, it does contain HCFC–22, another ozone depleting ingredient. Because the claim ''Contains no CFCs'' may imply to reasonable consumers that the product does not harm the ozone layer, the claim is deceptive.

Example 4: A product is labeled ''This product is 95% less damaging to the ozone layer than past formulations that contained CFCs.'' The manufacturer has substituted HCFCs for CFC–12, and can substantiate that this substitution will result in 95% less ozone depletion. The qualified comparative claim is not likely to be deceptive.

[57 FR 36363, Aug. 13, 1992, as amended at 61 FR 53318, Oct. 11, 1996; 61 FR 67109, Dec. 19, 1996; 63 FR 24248, May 1, 1998]

§ 260.8 Environmental assessment.

(a) *National Environmental Policy Act.* In accordance with section 1.83 of the FTC's Procedures and Rules of Practice[7] and section 1501.3 of the Council on Environmental Quality's regulations for implementing the procedural provisions of National Environmental Policy Act, 42 U.S.C. 4321 et seq. (1969),[8] the Commission prepared an environmental assessment when the guides were issued in July 1992 for purposes of providing sufficient evidence and analysis to determine whether issuing the Guides for the Use of Environmental Marketing Claims required preparation of an environmental impact statement or a finding of no significant impact. After careful study, the Commission concluded that issuance of the Guides would not have a significant impact on the environment and that any such impact ''would be so uncertain that environmental analysis would be based on speculation.''[9] The Commission concluded that an environmental impact statement was therefore not required. The Commission based its conclusions on the findings in the environmental assessment that issuance of the guides would have no quantifiable environmental impact because the guides are voluntary in nature, do not preempt inconsistent state laws, are based on the FTC's deception policy, and, when used in conjunction with the Commission's policy of case-by-case enforcement, are intended to aid compliance with section 5(a) of the FTC Act as that Act applies to environmental marketing claims.

(b) The Commission has concluded that the modifications to the guides in this part will not have a significant effect on the environment, for the same reasons that the issuance of the original guides in 1992 and the modifications to the guides in 1996 were deemed not to have a significant effect on the environment. Therefore, the Commission concludes that an environmental impact statement is not required in conjunction with the issuance of the 1998 modifications to the Guides for the Use of Environmental Marketing Claims.

[63 FR 24251, May 1, 1998, as amended at 63 FR 24248, May 1, 1998]

[7] 16 CFR 1.83.

[8] 40 CFR 1501.3.

[9] 16 CFR 1.83(a).