

D. E.O. 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

E. National Environmental Policy Act

NOAA has concluded that issuance of this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A programmatic Environmental Impact Statement (EIS) regarding NEXRAD was prepared in November 1984, and an Environmental Assessment to update the portion of the EIS dealing with the bioeffects of NEXRAD non-ionizing radiation was issued in 1993.

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, Certification, Commissioning, Decommissioning, National Weather Service, Weather service modernization.

Dated: October 8, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

For the reasons set out in the preamble, 15 CFR part 946 is amended as follows:

1. The authority citation for part 946 continues to read as follows:

Authority: Title VII of Pub. L. 102-567, 106 Stat 4303 (15 U.S.C. 313n.)

2. Appendix A to part 946 is amended by adding a new Subsection (D) under Section II. CRITERIA FOR MODERNIZATION ACTIONS REQUIRING CERTIFICATION, to read as follows:

(E) Modernization Criteria Unique to Closure Certifications

1. Consolidation Certification: If the field office proposed for closure has or will be consolidated, as defined in § 946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved certification or can be completed as evidenced by all of the documentation that all of the requirements of sections II.A. and II.B of this Annex have been completed.

2. Automation Certification: If the field office proposed for closure has or will be automated, as defined in § 946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved certification or can be completed as evidenced by documentation that all of the requirements of sections II.A. and II.C. of this Annex has been completed.

3. Remaining Services and/or Observations: All remaining service and/or observational responsibilities, if applicable to the field office proposed for closure, have

been transmitted as addressed in the MIC's recommendation for certification.

4. User Confirmation of Services: Any valid user complaints received related to provision of weather services have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

5. Warning and Forecast Verification: Warning and forecast verification statistics, produced in accordance with the Closure Certification Verification Plan, have been utilized in support of the MIC's recommendation for certification.

[FR Doc. 96-26207 Filed 10-10-96; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Final rule; Publication of revised guides.

SUMMARY: The Federal Trade Commission (the "FTC" or "Commission") issued its Guides for the Use of Environmental Marketing Claims ("guides") on July 28, 1992. 57 FR 36363 (Aug. 13, 1992), codified at 16 CFR Part 260. The guides included a provision for public comment and review three years after adoption for the purpose of determining whether there is a need for any modifications. In connection with the three year review, the Commission sought public comment on a variety of issues pertaining to the guides, 60 FR 38978 (July 31, 1995) and held a two day Public Workshop-Conference on December 7 and 8, 1995. The Commission has completed its review of the prefatory sections of the guides, as well as the following sections: General Environmental Benefits, Degradable/Biodegradable/ Photodegradable, Recycled Content, Source Reduction, Refillable, and Ozone Safe and Ozone Friendly. These sections are being republished with only the minor revisions discussed below.

The Commission is still in the process of reviewing the Compostable and Recyclable guides. The original versions of these guides shall remain in effect until further notice. See 16 CFR 260.7 (c) and (d). Finally, the Commission is seeking further public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products should be considered "recyclable" under the guides and whether products manufactured from such reconditioned and/or reused parts should qualify as "recycled" under the guides.

DATES: Effective Date: October 4, 1996.

COMMENTS: Comments and/or data must be submitted on or before November 25, 1996.

ADDRESSES: Although the Commission has concluded its general review of the guides, it is seeking additional information on two discrete issues: (1) Whether product parts that can be reconditioned and/or reused in the manufacture of new products should qualify as "recyclable" under the guides and whether products manufactured from such reconditioned and/or reused parts should qualify as "recycled" under the guides; and (2) any additional empirical evidence available on consumer perception of "recyclable" and "compostable" claims. Six paper copies of comments and/or data should be submitted to: Secretary, Federal Trade Commission, Room H-159, Sixth and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments should be identified as "16 CFR Part 260—Comment." To encourage prompt and efficient review and dissemination of the comments and data to the public, all comments and data also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments or data need not submit multiple copies, and need not submit such materials in electronic form.

The FTC will make this notice and all comments and data received in response to this notice available to the public through the Internet, to the extent technically possible. To access this notice and the comments and data filed in response to this notice, access the World Wide Web at the following address: <http://www.ftc.gov>. At this time, the FTC cannot receive comments or data made in response to this notice over the Internet.

FOR FURTHER INFORMATION CONTACT: Kevin M. Bank, (202) 326-2675, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

1. Background

The Guides for the Use of Environmental Marketing Claims or "guides" were issued by the Commission on July 28, 1992, and

published in the Federal Register on August 13, 1992 (57 FR 36363). Like other industry guides issued by the Commission, the Environmental Marketing Guides "are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements." 16 CFR 1.5. They provide the basis for advertisers' voluntary compliance with the law, as well as simultaneous abandonment of unlawful practices. Conduct inconsistent with the guides may result in corrective action by the Commission if this conduct is found to be in violation of applicable statutory provisions. The Commission promulgates industry guides "when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission." 16 CFR 1.6.

The Environmental Marketing Guides indicate how the FTC will apply Section 5 of the Federal Trade Commission Act ("FTC Act"), which prohibits unfair or deceptive advertising claims, in the area of environmental marketing claims.¹ The guides apply to all forms of marketing of products to the public, whether through advertisements, labels, package inserts, or promotional materials.

The guides reiterate Commission policy regarding how Section 5 applies to advertising claims generally, as enunciated in the Commission's Policy Statement on Deception,² and its Policy Statement on the Advertising Substantiation.³ Four general principles are outlined that apply to all environmental marketing claims: Qualifications and disclosures should be sufficiently clear and prominent to prevent deception; claims should make clear whether they apply to the product, the package or a component of either; claims should not overstate an environmental attribute or benefit, expressly or by implication; and comparative claims should be presented in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception.

In addition, the guides address eight specific categories of environmental claims: general environmental benefits,

"degradable," "compostable," "recyclable," "recycled content," "source reduction," "refillable," and "ozone safe"/"ozone friendly." Each guide describes the basic elements necessary to substantiate the claim, including examples of qualifications that may be used to avoid deception. In addition, each guide is followed by several examples that illustrate different uses of the particular term that do and do not comport with the guides. In many of the examples, one or more options are presented for qualifying a claim. The guides state that these options are intended to provide a "safe harbor" for marketers who want certainty about how to make environmental claims, but that they do not represent the only permissible approach to qualifying a claim.

The guides included a provision that three years after adoption, the Commission would seek public comment on "whether and how the guides need to be modified in light of ensuing developments." Pursuant to this provision, the Commission sought comment on the guides in a Federal Register Notice published on July 31, 1995 (60 FR 38978) (hereinafter "Notice"). The Commission sought comment on a number of general issues relating to the guides' efficacy and the need, if any, to revise or update the guides. The Commission also sought comment on a number of specific issues related to particular environmental claims addressed by the guides. In addition, the Notice announced that Commission staff would be conducting a Public Workshop-Conference at the conclusion of the comment period to discuss issues raised by the written comments. Forty-four of the ninety-nine commenters participated in the workshop, which was held on December 8 and 9, 1995.

2. Overview of Comments and Public Workshop-Conference

The ninety-nine comments received in response to the Notice came from forty-five trade associations or trade association coalitions, twenty-eight manufacturers, distributors or retailers, twelve consumers, environmental or public advocacy organizations, one standards organization, two certification organizations, two federal government agencies or officials, four State government officials or bodies, one city government official, one individual, one educational institution, one consulting company, and one public-private recycling coalition. Virtually all the commenters supported the guides in general, although many recommended specific changes. A brief overview of the

comments received in response to questions posed in the Notice follows. This summary is not intended to be comprehensive. The full texts of the written comments and the transcript of the Public Workshop-Conference are available for inspection and copying at the Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C., Room 130. These materials are also accessible to the public through the Internet on the World Wide Web at the following address: <http://www.ftc.gov>

(a) Continuing Need for the Guides

The commenters who addressed whether there is a continuing need for the guides all agreed that there is such a need. A handful of commenters, while supporting the guides, indicated that they would prefer a trade regulation rule because it would have the force of law and preempt state laws regulating the use of environmental advertising claims.

(b) The Costs and Benefits of the Guides to Consumers and Industry

There was a general consensus among commenters that the guides benefit consumers by stemming the tide of spurious environmental claims; bolster consumer confidence; increase the flow of specific and accurate environmental information to consumers, enabling them to make informed purchasing decisions; and encourage manufacturers to improve the environmental characteristics of their products and packaging. The commenters either felt that the guides do not impose any costs on consumers or that any costs associated with the guides are insignificant and greatly outweighed by their benefits. Several commenters raised serious concerns, however, that the Recyclable guide unnecessarily restricts the flow of information to consumers regarding the recyclability of products. One commenter voiced similar concerns about the Compostable guide.

In addition, commenters generally agreed that the guides benefit industry by providing uniform, consistent guidance regarding the making of non-deceptive environmental claims; promoting national consistency in the treatment of environmental marketing claims; assisting advertisers in determining what claims would likely lead to Commission challenge; encouraging network review and industry self-regulation; and allowing flexibility for manufacturers to improve the environmental attributes of their products and to communicate those improvements to consumers. For the most part, commenters stated that the

¹ 15 U.S.C. 45.

² Federal Trade Commission Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984).

³ Federal Trade Commission Policy Statement Regarding Advertising Substantiation, *appended to Thompson Medical Co.*, 104 F.T.C. 648 (1984).

guides accomplish their goals without undue burden on industry, although this view was not unanimous. Again, several commenters complained of what they believe are undue restrictions placed on their ability to make recyclable claims. They believe that recyclability is an important product attribute and that they should be able to more flexibly inform consumers regarding the recyclability of their products.⁴

(c) Effect of Changes in Technology or Economic Conditions

The commenters identified few technological or economic changes that might impact the guides. A number of comments from industry cited increases in recycling rates and the number of recycling programs as justification for making the Recyclable guide less "restrictive." Others stated that recycling rates have not increased sufficiently, overall, to require modification of the guides. Several environmental organizations pointed out that while the already high recycling rates for some items such as newspapers and plastic soda bottles and milk jugs have further increased, there has been little increase in the recycling rates of less frequently recycled items like most other types of plastic packaging. Therefore, they stated that the Recyclable guide should not be made less "restrictive."

(d) Effect of the Guides in Fostering National Uniformity in the Regulation of Environmental Claims

There was general agreement among the commenters that the guides have helped promote uniformity in the regulation of environmental marketing claims. There was also general agreement that any conflict between the guides and some state laws is becoming less significant as a result of states such as California, New York, and Rhode Island either repealing or modifying pre-existing laws concerning environmental marketing claims to be consistent with the guides.⁵ However, a few manufacturers continued to express concern that a lack of national uniformity inhibited them from

advertising the environmental attributes of their products. They urged the Commission to try to encourage more states to adopt the guides. A significant number of commenters, especially industry representatives, voiced strong opposition to changing the guides in any way that would undermine the important state support the guides are now receiving.

(e) International Developments Affecting the Guides

A number of commenters noted that the International Standards Organization (ISO) is in the process of drafting standards for environmental labeling claims made by manufacturers and by third-party awarders of eco-seals. Some commenters encouraged the Commission to try to harmonize with ISO to ensure international uniformity. Other commenters noted that Canada, Japan, and a number of European countries have adopted official eco-seal programs to award seals to products they consider environmentally superior. Most commenters who referenced such programs view the use of some eco-seals, without further qualification, as potentially vague and exaggerated general environmental benefit claims. Several of these commenters stated that such seals may impose trade barriers because, in practice, they favor manufacturers in the country which awards the seal.

(f) Effect of the Guides in the Marketplace

The Notice sought comment as to the extent to which the guides have reduced consumer skepticism about environmental claims, the degree of industry compliance with the guides, and the impact of the guides on the flow of information to consumers. Commenters who addressed the issue of consumer skepticism believe that it has lessened but continues to exist. Many commenters indicated their belief that there is general industry compliance with the guides. Some commenters, however, complained that there are still too many unqualified "recyclable" claims being made. Others were concerned by the number of broad, unqualified environmental benefit claims still in the marketplace, like "environmentally safe" and "environmentally friendly." There was general agreement that the number of environmental claims in the marketplace has not diminished, although certain claims, like degradable claims for products that are typically disposed of in landfills, are now rare. Although most commenters believe that the guides encourage the flow of useful

information to consumers, several industry members complained that the guides reduce the flow of useful information by restricting their ability to make what they consider to be truthful "recyclable" claims. Furthermore, one trade association submitted a survey of its members in which 56% of those responding indicated that they thought that the guides had generally inhibited their use of environmental marketing claims.

(g) Specific Claims

Over a dozen commenters urged the Commission to make no changes at all to the guides, while some opposed making specific changes that were recommended by other commenters. Many commenters asked that a few specific changes be made. Recyclability issues generated the most comments, including whether unqualified claims imply local and national availability of facilities to consumers; the adequacy of various qualifications suggested in the guides to convey the fact of limited availability of facilities for recycling many products; the meaning of "Please Recycle" on package labels and whether the guides should address them; how consumers interpret the unqualified three chasing arrows symbol; and the guides' treatment of the Society of the Plastics Industry plastic resin identification code (SPI code). The other primary areas of discussion included whether "no CFCs" claims are deceptive for products that do not contain upper ozone depleters, but do contain volatile organic compounds (VOCs) which can contribute to smog, and whether the guides should require disclosures of post-consumer recycled content for "recycled" claims. Several commenters discussed the issue of whether the guides should address claims based on "lifecycle" analysis and the use of environmental seals and certifications by marketers. A number of commenters suggested that additional claims be covered by the guides, including non-toxic claims, chlorine-free claims, and claims that a product is "environmentally preferable." No commenter suggested that any of the eight specific categories of claims covered by the guides be dropped.

(h) Empirical Evidence

The Notice solicited new evidence concerning consumer perception of environmental claims. Only a small amount of consumer research was submitted on how consumers perceive specific claims.

⁴ Because of the serious concerns raised about the Recyclable guide, the Commission is seeking additional data.

⁵ A potential conflict was identified by commenters who oppose a change in the Commission's approach to the Society of the Plastics Industry plastics resin identification code ("SPI code"). They noted that the SPI code is required by laws in thirty-nine states to be placed on plastic containers and that if the Commission advises that the use of the code is deceptive on products and requires that it be changed there will be a conflict.

3. Request for Further Comment

The Commission specifically sought comment as to whether consumers perceive that products made from reconditioned parts that would otherwise have been thrown away are "recycled" products, and what modifications, if any, should be made to the guides to address these consumer perceptions. The Commission received no empirical evidence in response to this request, but did receive several comments discussing this issue. The Commission has determined to give further consideration to this question, as well as to the related issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products should be considered "recyclable" if adequate infrastructures for collecting the parts are available. The Commission is seeking consumer perception data on these issues, as well as further information responsive to the questions outlined below.

The Recycled guide defines "recycled content" as material that a marketer can substantiate has been recovered or otherwise diverted from the waste stream. This could be interpreted to include products made from reconditioned and/or reused parts, as well as products made from recycled raw materials like steel from melted down cans. However, the Recyclable guide states further that for something to be recyclable it must be diverted from the solid waste stream for use as "raw materials in the manufacture or assembly of a new product or package." Therefore, product parts that are capable of being reconditioned and/or reused in the manufacture of new products are not considered "recyclable" under the guides, because the parts are not actually reprocessed into raw materials before reuse. In addition, products manufactured from such parts may not be considered "recycled" under the guides.

The Commission is seeking comment and consumer perception data on whether product parts that can be reconditioned and/or reused in the manufacture of new products should be considered "recyclable" under the guides (assuming adequate infrastructures for collecting the parts are available), and on whether products manufactured from reconditioned and/or reused parts should be considered "recycled." In addition, the Commission seeks comment on whether consumers perceive that the term "recycled" conveys information about the quality of a product, and whether consumers' concerns about quality differ with respect to products made from

reconditioned or reused parts and those made from recycled raw materials. The Commission also requests comment on whether consumer perception of a product being recycled would be affected if marketers of products made from reconditioned and/or reused parts could prove that the quality of those products is substantially equivalent to that of comparable products made from recycled raw materials.

The Commission has received some consumer survey evidence on the issue of whether consumers consider products made from reconditioned parts to be "recycled." This evidence is responsive to a question included in a survey conducted by the Council on Packaging in the Environment (COPE) in April 1996. The Commission is placing this survey evidence on the public record and seeks comment on it. The survey, including this evidence, is available for inspection and copying at the Federal Trade Commission, 6th and Pennsylvania Avenue, N.W., Washington, D.C., Room 130.

The Commission also solicits public comment on the following questions relating to reconditioned and reused parts:

1. Do consumers generally perceive that parts that can be taken from products for reconditioning and/or reuse in the manufacture of new products are "recyclable"? Why or why not? Please provide any empirical data.

2. Do consumers generally perceive that products manufactured from reconditioned and/or reused parts are "recycled"? Why or why not? Please provide any empirical data.

3. Do consumers generally perceive that the term "recycled" conveys information about the quality of a product? Do consumers' concerns about product quality differ with respect to whether a product is made from reconditioned and/or reused parts recovered from the solid waste stream or from raw materials like steel from melted cans recovered from the solid waste stream? Please provide any empirical data.

4. Would consumer perception about whether a product is or is not "recycled" be affected if marketers of products made from reconditioned and/or reused parts could prove that those products are "substantially equivalent" in quality to comparable products made from recycled raw materials? If so, how? Please provide any empirical data.

5. What evidence should be required to show that products containing reconditioned and/or reused parts are "substantially equivalent" in quality to comparable products made from

recycled raw materials? Please provide any empirical data.

6. Are consumers likely to be deceived about the quality of products made from reconditioned and/or reused parts if they are advertised as "recycled"? If so, how should the Commission address this concern?

7. What are the costs and benefits to consumers and to industry if:

(a) Parts that can be taken from products for reconditioning and/or reuse in the manufacture of new products are marketed as "recyclable"? or

(b) Products manufactured from reconditioned and/or reused parts are marketed as "recycled" products? Please provide any empirical data.

4. Modifications to the Guides

After careful review of the comments and the discussion at the Public Workshop-Conference, the Commission has determined to make modifications to the General Environmental Benefit Claims guide, the Degradable/Biodegradable/Photodegradable guide, the Recycled Content guide and the Ozone Safe/Ozone Friendly guide. Some modifications have also been made in the prefatory sections. The changes have been made to ensure that the guides continue to reflect current technology and changing consumer perception, as well as to address newer environmental claims in the marketplace that the Commission believes have been, or could be, used in a deceptive manner.⁶ In deciding whether to modify the guides, the Commission analyzed what the covered claims convey to consumers, and the extent to which available empirical evidence indicates that consumer perception of particular claims has changed. Some changes were also made for purposes of clarification.

The Commission is still in the process of reviewing the Recyclable and Compostable guides and will not reissue them until it evaluates the results of ongoing consumer research. One purpose of this research is to examine whether these claims continue to imply that consumers can recycle or compost the advertised product in their own area. The research will be placed on the public record when it is completed. The current Recyclable and Compostable guides, codified at 16 C.F.R. 260.7 (c)-(d) (1996), remain in effect until the Commission completes its evaluation. While the review of these two guides continues, the Commission seeks the submission of any further empirical data on consumers' understanding and

⁶No changes have been made to the Source Reduction guide or the Refillable guide.

perceptions of "recyclable" and "compostable" claims. Additional data may be filed with the Secretary of the Commission in the manner noted above.

Changes to the guides are as follows:

(a) *Modifications to the Prefatory Sections.*

(i) Review Procedure.

The Commission has updated the section on the review procedure for the guides. This section now states that the Environmental Marketing Guides will be reviewed in the future as part of the Commission's general program of reviewing all industry guides on an ongoing basis. The provision permitting parties to petition the Commission to amend the guides in light of substantial new evidence has not been changed.

(ii) Interpretation and Substantiation of Environmental Marketing Claims.

The definition of "competent and reliable scientific evidence" has been clarified and is now consistent with the language used in recent Commission consent orders. Such evidence is now defined as "tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been 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."

(iii) General Principles.

The Commission has added a new example to this section under the subsection Overstatement of An Environmental Benefit. This example is based on the consent agreement in the *Mr. Coffee, Inc.* case,⁷ where the Commission challenged a "chlorine-free process" claim for paper coffee filters that, while not bleached with elemental chlorine, had been bleached in a new process with a chlorine compound. The Commission alleged that the new bleaching process contained some elemental chlorine which continued to release a significant amount of the environmentally harmful dioxins and furans associated with elemental chlorine bleaching, though in lesser amounts. The example explains that a "chlorine-free process" claim is likely to overstate the environmental benefit provided by a product if the manufacturing process continues to release into the environment a significant, even if reduced, amount of the same harmful byproducts associated with chlorine bleaching. The example illustrates one possible way to make substantiated claims of this nature, *i.e.*, that the filters are bleached with a

process that "substantially reduces, but does not eliminate, harmful substances associated with chlorine bleaching."

(iv) Preamble to Environmental Marketing Claims Section.

The footnote on lifecycle claims stated that the guides do not address claims based on a "lifecycle" theory of environmental benefit because such analyses are still in their infancy, and the Commission lacks sufficient information on which to base guidance. The Commission continues to lack sufficient information to provide guidance on these claims; however, it is no longer accurate to continue to characterize "lifecycle" analyses as being in their "infancy." The footnote has been modified to state that the guides do not currently address these types of claims, because the Commission lacks sufficient information on which to base guidance.

(b) *General Environmental Benefit Claims Guide.*

Three new examples have been added to this guide. One illustrates that in some contexts, a "non-toxic" claim may convey to consumers that a product does not pose any risk to human health or the environment, and that the claim would be deceptive if the product does, in fact, pose a significant risk to either human health or the environment. This example is based on the *Orkin Exterminating Company, Inc.* and *Safe Brands Corp., et al.* cases.⁸ In *Orkin*, the Commission alleged that the company had made unsubstantiated "practically non-toxic" claims for lawn care pesticide products which implied that the products did not pose any significant risk to human health or the environment. In *Safe Brands*, the Commission charged that advertisements for a propylene glycol-based antifreeze product, which included claims that the product was "essentially non-toxic" and "the ultimate in * * * environmental safety," implied that the product was absolutely safe for people, pets and the environment. The example states that phrases like "essentially non-toxic" and "practically non-toxic" can convey absolute claims of safety both to health and to the environment when used to advertise products such as lawn care pesticides and antifreeze. The example states that such claims are deceptive if the product does, in fact, pose a significant risk to human health or the environment.

The other new examples address "seal of approval" and "environmentally

preferable" claims. Several commenters noted that when environmental seals of approval are found on product labels, they have been placed there to indicate that the products are environmentally superior to others. Based on these comments, the Commission believes that consumers would interpret environmental seals of approval that are not accompanied by qualifying text to mean that the product is environmentally superior to other products. The Commission also believes that unqualified "environmentally preferable" claims are likely to convey broad messages of environmental superiority to consumers.

The example on "seal of approval" claims states that the use of an environmental seal with no textual qualification, or inadequate qualification, is likely to convey to consumers that the product is environmentally superior to other products. Therefore, if the manufacturer cannot substantiate this broad claim of environmental superiority, the claim is likely to be deceptive. The claim would not be deceptive, however, if the manufacturer qualified it with clear and prominent language limiting the superiority representation to the particular product attribute or attributes for which the claim of environmental superiority could be substantiated, provided that no other deceptive implications were created by the context. The new example addressing "environmentally preferable" claims states similarly that the term is likely to convey a broad claim of environmental superiority to consumers, which must be substantiated or adequately qualified.

(c) *Degradable/Biodegradable/Photodegradable Guide.*

A new example has been added to address concerns raised about a possible conflict between the degradable guide and the requirements of federal and state laws concerning performance standards for photodegradability of certain products. The example states that symbols, such as a diamond logo, that are required by some state laws to appear on certain photodegradable plastics to indicate that they meet performance standards to ensure they will photodegrade if littered, do not constitute claims of degradability. A footnote has also been added to clarify that the guides' treatment of degradable claims is intended to help prevent consumer deception and is not intended to establish performance standards for laws intended to ensure that products degrade when littered so as to avoid a potential hazard to wildlife.

(d) *Recycled Content Guide.*

⁷ *Mr. Coffee, Inc.*, Docket C-3486 (March 25, 1994).

⁸ *Orkin Exterminating Company, Inc.*, Docket C-3495 (May 25, 1994); *Safe Brands Corp., et al.*, Docket C-3647 (March 26, 1996).

Several examples have been amended for purposes of clarification and one new example has been added to this Guide. The new example addresses the use of the "three chasing arrows" symbol without any textual qualification. Consumer perception data⁹ indicates that the use of the three chasing arrows symbol by itself conveys to consumers that a product is made entirely from recycled material and that it is recyclable. The new example provides that if a marketer of a product bearing the three chasing arrows symbol without qualification cannot substantiate both of these claims, it should qualify the claim to indicate whether the symbol refers to the recyclability and/or recycled content of the product. The example states that further qualification of these claims may be necessary. For instance, a recycled content claim should also disclose the percentage of recycled content, if that amount is less than 100%.

Modifications have been made to several examples in the Recycled Content guide for purposes of consistency and clarification. Example 1 has been modified to eliminate the reference to scraps from "trimming finished products" in the description of materials that do not qualify as pre-consumer recycled material, *i.e.*, those manufacturing byproducts that are normally reused by industry in the original manufacturing process after only minimal reprocessing. The phrase scraps from "trimming finished products" could be misinterpreted to mean that scraps or trimmings from finished paper products, which require significant reprocessing before they can be used again in the manufacture of other paper products, do not qualify as pre-consumer recycled material. The new example, therefore, deletes the reference to scraps from "trimming finished products."

In addition, modifications have been made to Examples 3, 4 and 9 to make them consistent with Example 7. Example 7 permits recycled content claims for paper to be made on a fiber weight basis (*i.e.*, stated as "contains X% recycled fiber"), whereas Examples 3, 4 and 9 contain language in which the recycled content of a paper product is expressed as a percentage of the total weight of the paper. EPA regulations regarding federal government procurement of recycled content paper products use the "fiber weight" standard,¹⁰ as do a number of state

procurement laws. To promote consistency and eliminate any possible ambiguity, the hypothetical claims in Examples 3, 4 and 9 are now expressed in terms of a fiber weight, rather than total weight basis.

(e) *Ozone Safe and Ozone Friendly Guide.*

The Ozone Safe/Ozone Friendly guide has been modified to state, not only that it is deceptive to misrepresent that a product is safe or "friendly" to the ozone layer, but also that it is deceptive to misrepresent that a product is safe or "friendly" to the atmosphere. In addition, an example has been added to the guide to illustrate that a claim such as "ozone friendly" conveys to consumers that a product is harmless not only to the upper ozone layer but to the atmosphere as a whole. Such claims are, therefore, deceptive for products that contain volatile organic compounds (VOCs), ingredients that can contribute to ground level ozone, a component of smog. This additional example is based on consumer perception data obtained by the Commission since the guides were issued.¹¹ These data indicate that consumers interpret an "Ozone Friendly" claim to mean that a product does not contribute to smog or air pollution generally, and is safe for the atmosphere as whole.

A change has also been made to Example 1 of the Ozone Safe/Ozone Friendly guide. This example lists certain chemicals that are classified as "Class I" ozone depleters in Title VI of the Clean Air Act Amendments of 1990.¹² The Amendments grant EPA the authority to designate other chemicals as ozone depleters. Since the guides were issued in 1992, EPA has designated two additional chemicals, methyl bromide and hydrobromofluorocarbons (HBFCs) as Class I ozone depleters. These two chemicals have now been added to the list of Class I ozone depleters in Example 1.

5. Text of Modified Guides

List of Subjects in 16 CFR Part 260

Advertising, Environmental protection, Labeling, Trade practices.

For the reasons set forth in the preamble, 16 CFR Part 260 is amended by revising sections 260.1 through 260.6, 260.7 (a) and (b), 260.7 (e) through (h), and 260.8 to read as follows:

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.

§ 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.

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. The guides apply to any claim about the environmental attributes of a product or package in connection with the sale, offering for sale, or marketing of such product or package for personal, family or household use, or for commercial, institutional or industrial use.

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

⁹ See "Public Understanding of the Chasing Arrows Symbol and Recycled Content Claims," conducted for the Paper Recycling Coalition and placed on the public record on July 28, 1995.

¹⁰ See 61 FR 26986 (May 29, 1996).

¹¹ See Maronick and Andrews, "Consumers' Interpretations of Environmental Claims," March 10, 1993, placed on the public record with the Request for Comment on July 28, 1995.

¹² 42 U.S.C. 7671 *et seq.*

preclude Commission law enforcement action under Section 5.

§ 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.¹³ In addition, any party making an express or implied claim that presents an objective assertion about the environmental attribute of a product or package 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 (August 2, 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 Public Reference Branch at (202) 326-2222.

§ 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 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 the guides in this part should be sufficiently clear and prominent 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 and package:* 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 or to a portion or component of the product or packaging. 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

¹³ *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").

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.

§ 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.¹⁴

(a) *General environmental benefit claims:* It is deceptive to misrepresent, directly or by implication, that a

product or package 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 or package has specific and far-reaching environmental benefits. As explained in the Commission's Ad 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 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 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

¹⁴ 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.

"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.¹⁵

(c) * * *

(d) * * *

(e) **Recycled content:** 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. It is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled material. Unqualified claims of recycled content may be made only 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.

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 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.

(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.

¹⁵ 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.

(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.

§ 260.8 Environmental assessment.

National Environmental Policy Act. In accordance with § 1.83 of the FTC's Procedures and Rules of Practice⁴ and § 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),⁵ 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."⁶ 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.

The Commission has concluded that 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 was 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 1996 modifications to the Guides for the Use of Environmental Marketing Claims.

⁴ 16 CFR 1.83.

⁵ 40 CFR 1501.3.

⁶ 16 CFR 1.83(a).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96-25938 Filed 10-10-96; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Doramectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for subcutaneous and intramuscular use of doramectin for treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, lice, and mange mites in cattle.

EFFECTIVE DATE: October 11, 1996.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017-5755, is sponsor of NADA 141-061, which provides for the use of Dectomax® 1 percent injectable solution (doramectin) for treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, lice, and mange mites in cattle. The NADA is approved as of July 30, 1996, and the regulations are amended in part 522 (21 CFR part 522) by adding new § 522.770 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, part 556 (21 CFR part 556) is amended by adding new § 556.225 to provide for tolerances for residues of doramectin in edible cattle tissues.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning July 30, 1996, because no active ingredient (including any ester or salt of the active ingredient) has been previously approved in any other application filed under section 512(b)(1) of the act.