

FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Final revised guides.

SUMMARY: The Federal Trade Commission ("Commission") issued Guides for the Use of Environmental Marketing Claims ("guides") on July 28, 1992. The guides included a provision for public comment and review three years after adoption to determine whether there was a need for any modifications. In connection with this review, in July 1995 the Commission sought public comment on a variety of issues, and held a two day public workshop-conference on December 7 and 8, 1995. On October 11, 1996, the Commission issued revised guides, but advised that it had not yet completed its review of the Recyclable and Compostable guides because of ongoing relevant consumer research. One purpose of the research was to examine whether "recyclable" and "compostable" claims continue to imply that consumers can recycle or compost the marketed product in their own area. Further, the Commission decided to seek additional public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered "recyclable" under the guides and whether products made from such reconditioned and/or reused parts could qualify as "recycled" under the guides. The Commission has now completed its review of the above issues and is issuing further amendments to the guides, as discussed below.

The Compostable guide is amended to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device, even if municipal or institutional composting facilities are not locally available. This is because consumers are likely to perceive claims of compostability to mean that a product may be composted in a home compost pile or device. The Recyclable guide is modified to allow the term "recyclable" to be used for a package or product that can be recovered from the solid waste stream for reuse or for the manufacture of another package or product, so long as the package or product can be collected through an established recycling program (thus including reused, reconditioned and remanufactured products). The guides retain the provision that, to make an

unqualified recyclable claim, recycling collection programs should be available to a substantial majority of consumers or communities, but the Commission is modifying the suggested qualifying statement for when an unqualified claim is not appropriate. Further, a new example illustrates that the phrase "Please Recycle" is considered equivalent to a "recyclable" claim. In addition, the Recycled Content guide is amended to clarify that recycled content may consist of used, reconditioned or remanufactured components, as well as raw materials. Finally, the Commission is amending the guides to clarify that they apply to all forms of marketing, including digital or electronic media, such as the Internet and electronic mail, and to the marketing of services, as well as products and packages.

EFFECTIVE DATE: May 1, 1998.**FOR FURTHER INFORMATION CONTACT:**

Janice Podoll Frankle, Attorney, (202) 326-3022, or Pablo Zylbergait, Attorney, (202) 326-3260, Division of Enforcement, Bureau of Consumer Protection, FTC, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:**I. Background***A. Purpose of the Guides*

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. The guides indicate how the Commission will apply Section 5 of the Federal Trade Commission Act ("FTC Act"), which prohibits unfair or deceptive acts or practices, in the area of environmental marketing claims. 15 U.S.C. 45. The guides apply to all forms of marketing of products and services to the public, whether through advertisements, labels, package inserts, promotional materials, or electronic media.

B. 1995 Federal Register Notice

When the Commission issued the guides in 1992, it included a provision that three years after adoption, it would seek public comment on "whether and how the guides need to be modified in light of ensuing developments." Pursuant to this provision, in a **Federal Register** Notice published on July 31, 1995 ("1995 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. 60 FR 38978. The Commission also sought comment on

specific issues related to particular environmental claims addressed by the guides. In addition, the 1995 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. The workshop was held on December 7 and 8, 1995.

The Commission received 99 comments in response to the 1995 Notice.¹ Some of those comments are relevant to the issues presented in the October 11, 1996 **Federal Register** Notice ("1996 Notice"), discussed below.²

C. 1996 Federal Register Notice

On October 11, 1996, the Commission published revised guides (1996 Notice), which included revisions to the prefatory sections, as well as the following sections: General Environmental Benefits, Degradable/Biodegradable/Photodegradable, Recycled Content, Source Reduction, Refillable, and Ozone Safe and Ozone Friendly. 61 FR 53311. At that time, the Commission advised that it was still in the process of reviewing the Recyclable and Compostable guides and wanted to evaluate the results of ongoing consumer research. The Commission also stated that it was seeking further public comment on the issue of whether product parts that can be reconditioned and/or reused in the manufacture of new products could be considered "recyclable" under the guides and whether products manufactured from such reconditioned and/or reused parts could qualify as "recycled" under the guides. In addition, the Commission reiterated its request for consumer

¹ The comments came from 45 trade associations or trade association coalitions; 28 manufacturers, distributors or retailers; 12 consumer, environmental or public advocacy organizations; 4 state government officials or bodies; 2 federal government agencies or officials; 2 certification organizations; 1 standards organization; 1 city government official; 1 individual; 1 educational institution; 1 consulting company; and 1 public-private recycling coalition.

² The comments are on the Commission's public record as Document Nos. B17512400001-B17512400099 for the 1995 Notice and B20818700001-B2081870227 for the 1996 Notice. The comments are cited in this Notice by the name of the commenter, reference to either the 1995 Notice or the 1996 Notice, depending on which notice(s) was responded to by the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, e.g., Virginia Automotive Recyclers Ass'n, 1996 Notice, #1 at 1. The transcript of the public workshop is on the Commission's public record as Document No. P954501. A complete list of commenters, the comments, a transcript of the workshop proceedings, and consumer perception studies conducted are available for inspection and copying in the Consumer Response Center, Room 130, Federal Trade Commission, 6th & Pennsylvania Ave., N.W., Washington, D.C. 20580.

perception data for "recyclable" and "compostable" claims.³

In response to the 1996 Notice, 227 comments were received.⁴ Part II summarizes the comments on the 1996 Notice, and comments on the 1995 Notice that are relevant to the issues raised in the 1996 Notice.

D. Consumer Survey Evidence

The consumer perception survey evidence received by the Commission is relevant to the issues raised in the 1996 Notice. The Council on Packaging in the Environment ("COPE") conducted a national telephone survey in April 1996, providing evidence on whether consumers consider products made from reconditioned parts to be "recycled." COPE surveys from March 1993, September 1993, and December 1994 provide empirical data concerning consumers' interpretations of "recyclable" and "Please Recycle" claims. A Roper Starch Worldwide, Inc. ("Roper Starch") survey of consumers conducted through personal, in-home interviews during December 1996, provides information on how recyclable claims are interpreted. Research performed by professors from American University, through mall-intercept interviews, provides empirical data on consumer interpretation of recyclable claims and certain disclosures.⁵

³For example, the 1995 Notice requested any empirical data relevant to whether consumers perceive that products made from reconditioned parts that would otherwise have been discarded should qualify as "recycled" products. Further, the 1995 Notice sought comment on certain issues relating to the Recyclable and Compostable guides and requested any empirical data regarding whether an unqualified recyclable or an unqualified compostable claim conveys a claim concerning local availability of recycling or composting programs and whether any evidence indicates that those guides should be modified, and if so, in what manner. In addition, the 1995 Notice stated that the available evidence suggested that certain qualifying disclosures outlined in the Recyclable and Compostable guides may be more effective than others in conveying to consumers that facilities may not be available in their community to recycle or compost the product. Thus, the Commission asked for any evidence indicating that certain of those qualifying disclosures should be modified, and if so, in what manner.

⁴These came from 201 automotive parts dealers, "automotive recyclers," automotive salvage companies, dismantlers, wreckers and rebuilders; 17 trade associations (11 of which represent "automotive recyclers," rebuilders, and dismantlers); 2 manufacturers; 1 federal government agency; 1 public-private recycling hotline; 1 municipal recycling and solid waste commission; 1 association of recycling managers; 1 state office of environmental assistance; 1 non-profit public service corporation; and 1 individual.

⁵Although the revised guides are effective immediately, the Commission will take into consideration the date when materials were authorized to be printed in conformance with the former guides.

II. Summary of Comments and Modifications to the Guides

A. The Compostable Guide

1. Summary of Comments Regarding the Compostable Guide

Only a few comments directly addressed the Compostable guide, which states that an unqualified compostable claim might be deceptive unless a product can be safely composted at home and in a municipal composting facility. The Society of the Plastics Industry, Inc. ("SPI") stated that home composting appears to be the primary means of composting practiced by consumers and thus asked the Commission to clarify that an unqualified compostable claim can be made for an item that can be safely composted in a home compost pile or device.⁶ SPI stated that it was unaware of any data indicating that a product compostable in a home compost pile or device would not be compostable in a municipal composting facility. SPI stated further that the lack of municipal composting facilities near the consumer is irrelevant to the validity of an unqualified compostable claim. SPI noted, however, that if a product is only compostable in a municipal facility, then that fact should be disclosed and a qualifier regarding local availability should be used. Another commenter recommended modifying the definition of "compostable" to indicate that the advertised product "must break down in approximately the same time as the materials it is generally composted with."⁷

2. Modifications to the Compostable Guide

Because there are fewer than 20 municipal solid waste composting facilities in the United States, the Commission now believes that few consumers are likely to know about and associate a compostable claim with municipal solid waste composting facilities.⁸ Moreover, the Commission

⁶SPI, 1995 Notice, #53 at 25; 1996 Notice, #70 at 2.

⁷Mobil Chemical Co. ("Mobil"), 1995 Notice, #38 at 4. The guide currently states that a compostable claim means that a product will break down in a "safe and timely manner." The Commission interprets the "timely manner" language to mean that the product or package will break down in approximately the same time as the materials with which it is composted.

⁸This view is supported by a 1991 University of Illinois study about consumer perceptions of such terms as "degradable/biodegradable," "compostable," "recyclable," and "environmentally friendly." When consumers were asked the open-ended question, "What does the term compostable mean?," 44.2% of respondents defined compostable in terms of a home compost pile. The study reported that consumers did not mention municipal

agrees with SPI that a product technically capable of being composted in a home compost pile or device would also be compostable in a municipal composting facility. Thus, the Compostable guide and Example 1 have been revised to clarify that an unqualified compostable claim can be made if a product is compostable in a home compost pile or device even if municipal or institutional⁹ composting facilities are not locally available.¹⁰ The guide still states, however, that if a claim is made that a product is compostable in a municipal or institutional composting facility, then the claim may need to be qualified to the extent necessary to avoid deception about the limited availability of composting facilities.

B. The Recyclable and Recycled Content Guides

1. Claims Regarding Local Availability of Recycling Facilities

a. Background. The Recyclable guide states that consumers are likely to interpret unqualified recyclable claims to imply that facilities are available in their community to recycle the product, and that if facilities are not available to a substantial majority of consumers or in a substantial majority of communities, then such claims should be qualified. An important issue that arose in the review of the Recyclable guide concerned whether this interpretation of an unqualified claim is still correct. Closely related to this issue is how consumers interpret the increasing number of claims such as "Please Recycle" in the marketplace, and if these claims also need qualification when available facilities are limited.

b. Summary of Comments Regarding the Local Availability Standard and "Please Recycle" Claims. The issue of how consumers interpret unqualified recyclable claims and whether the term implies anything about the availability of local recycling facilities provoked a wide range of comments. A few commenters contended that no qualifications about limited availability were necessary.¹¹ Most of the

composting programs in their definitions of "compostable."

⁹The word "institutional" has been added because there are also privately operated composting facilities.

¹⁰Example 3 has been deleted because revised Example 1 now illustrates the same concept. In addition, references to "yard waste" have been changed to "yard trimmings" because the Environmental Protection Agency ("EPA") advised that the latter term is becoming more prevalent.

¹¹International Dairy Foods Ass'n ("IDFA"), 1995 Notice, #13 at 2-3; American Bakers Ass'n, 1995

Continued