§ 260.8  

(a) National Environmental Policy Act. In accordance with section 1.83 of the FTC’s Procedures and Rules of Practice 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.

8 16 CFR 1501.3.

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.

Example 5: A container is labeled “refillable x times.” The claim is ambiguous. Depending on contextual factors, it could be a comparison to the immediately preceding version of the package or to a competitor’s product. The “x times” reference is deceptive unless a system is provided for 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 6: A bottle of fabric softener states that it is in a “handy refillable container.” The unqualified claim is deceptive unless a system is provided for collection and return of the smaller 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 no means for consumers to refill the smaller container from larger containers of the same product.

Example 7: A product is labeled “ozone safe and ozone friendly.” The product is 10% less damaging to the ozone layer when compared with the immediately preceding version of the packaging.

Example 8: An advertiser notes 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 9: A product is labeled “Refillable.” The claim is deceptive if the product is expected to use it to refill the smaller 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 unless a system is provided for collection and return of the package for refill or the later refill of the package by consumers with product subsequently sold in another package.
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." 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]