

December 10, 2010

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

**Re: Proposed, Revised Green Guides, 16 CFR Part 260, Project No.
P954501
Comments by NatureWorks LLC**

To the Secretary:

As the first plastics manufacturer to offer a family of commercially available biopolymers, derived from 100 percent annually renewable resources, NatureWorks LLC ("NatureWorks") appreciates the opportunity to submit comments on the Federal Trade Commission's ("FTC" or "Commission") proposed revisions to the Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides"). NatureWorks has actively supported the Commission's initiative to update the Guides, for example, participating and commenting as a panelist in the 2008 Green packaging workshop.

GENERAL COMMENTS

NatureWorks believes that since their inception the Green Guides have served a valuable purpose by benefitting both consumers and businesses. At the same time, it is clear that with the rapidly changing landscape of environmental claims, businesses have been looking both for a significant strengthening and broadening of the Guides in recent years. Recognizing that consumers benefit when truthful information is available to them about the environmental attributes of products and services, NatureWorks seeks to ensure on this revision of the Green

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Guides better promotes a marketplace where truthful, non-misleading information about the environmental attributes of plastics, plastic products, and competitive products and materials can thrive.

While the proposed Guides include important revisions likely to help advance this objective, the Guides fall short in some areas and in the area of compostable and degradable claims particularly, NatureWorks is concerned that the proposed revisions actually would weaken, rather than strengthen, the Guidelines.

NatureWorks respectfully submits comments in the following areas for the Commission's consideration.

1. Section IV – B: Industry Compliance
2. Section IV - F: Life Cycle Analysis
3. Section V – A: General Environmental Benefit Claims
4. Section V – C & D : Degradable & Compostable Claims
5. Section V-E: Recyclable Claims
6. Section VI-C: Renewable Material Claims

1. Section IV – B: Industry Compliance

NatureWorks strongly supports the Commission's proposal to revise the Guides to state more clearly that they apply to business-to-business transactions and not just business-to-consumer marketing. The proposed, revised section on the "Purpose, Scope, and Structure of the Guides" (260.1) explains that the Guides apply to the marketing of products and services to "individuals, businesses, or other entities." Moreover, the proposed, revised Guides include specific business-to-business transaction examples. NatureWorks encourages that in order to increase Ingeo™ innovations are made from plants, not oil.



businesses' familiarity with the revised Guides, the Commission significantly expand its outreach efforts.

2. Section IV – F: Life Cycle Analysis

NatureWorks does not agree with the Commission's comment that "the Commission has no basis for choosing one LCA methodology over another". Consensus based ISO14040/14044 standards have been developed for the practice of Life Cycle Assessment and are in widespread use globally, These standards should be referenced explicitly. If the FTC is unable to recommend them exclusively, then these ISO methods should at least be provided as an example of one of the "standards generally accepted in the relevant scientific fields".

3. Section V – A: General Environmental Benefit Claims

NatureWorks agrees with the Commission's proposal of revising the Guides to more directly caution marketers not to make unqualified general environmental benefit claims. However, NatureWorks would like to see this language considerably strengthened (versus a mere caution), with broad use of examples of such unqualified general environmental claims ("eco-friendly", "environmental friendly", "green", etc.)

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4. Section V - C & D: Degradable & Compostable Claims

Comments provided in this section pertain to “Degradable and Compostable Claims” sections, pages 66-80, of Proposed Revisions to the FTC Green Guides.

NatureWorks believes it is imperative that the FTC recognizes the ASTM standards D6400 and D6868, or their comparable international standards, as a valid scientific basis for a qualified compostable claim. We believe such methods provide “competent and reliable scientific evidence” to assist composting facilities in accepting only those waste materials suitable for generating high quality compost. The fact that such methods are used today to qualify materials for composting at numerous facilities in the United States, and across the world, serves to validate their utility and underscore their importance.

ASTM standards D6400 and D6868 provide a clear and reliable protocol for evaluating the compostability of a given product. In fact these methods were developed at the behest of the FTC in the 1990s, and represented a major commitment of time and resources among a diverse group including academics, manufacturers of compostable products and composters. Furthermore, NatureWorks recognizes that these methods may need to be further refined and improved as the composting industry evolves. NatureWorks is a member of the United States Composting Council working group which seeks to understand and address any limitations of these methods so continuous improvement is fostered. Recognition of such methods by the FTC will foster consistency and comparability of claims, which is important as the composting industry grows and the complexity of potential waste feedstocks increases due to innovations in the polymer industry.

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As the largest producer of biobased (i.e. where biogenic carbon is sourced from annually renewable plant resources) and compostable biopolymers in the world, NatureWorks recognizes that our industry, extending from the production of biopolymers through those companies validating and commercializing end-of-life value propositions for these products, such as composters and recyclers, is still in its infancy. We strongly believe that the entire value chain in our industry benefits from the availability of well established and utilized testing methods such as ASTM D6400 and D6868. Furthermore, we believe consumers also benefit when compostability claims are verified by independent, third-party companies such as BPI, BNQ, DIN CERTCO and Vinçotte. Without independent verification of compliance with ASTM D6400 and D6868 the ability to make misleading claims still exists. In other words, current misleading claims of “compostability” will just be replaced with equally misleading (if they are not independently certified) false claims of “Meets ASTM D6400 or D6868”.

If the FTC chooses not to reference these ASTM methods in the Green Guides it will continue to add confusion to the industry, discredit the reputation of these ASTM methods and those composters using them to qualify waste for their facilities and spur a new round of development of testing methods, which may take years to fully validate. By not recognizing the ASTM standards, the FTC in fact fosters the misleading claims that are becoming increasingly abundant at both industry and consumer level. This includes the misuse of ASTM guidelines which are not considered ASTM standards and the blatant mislabeling of said products as compostable. This misuse is currently practiced by manufacturers of oxodegradable and so called “oxobiodegradable” products. Furthermore, it’s difficult for us to

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understand how the FTC can propose a timeframe of one year for solid waste decomposition without recommending testing protocols for substantiation (i.e decomposition under exactly what circumstance).

Within NatureWorks, as part our efforts to keep abreast of competition, we routinely visit local stores and purchase items packaged in articles labeled as “compostable”. These articles are subsequently analyzed internally to evaluate if marketing claims are supported by evaluated composition. There have been many instances where cutlery, microwavable bowls or rigid containers labeled as “compostable” were found to contain a polyolefin, like polypropylene (a petroleum-based, non compostable polymer), as the major component with a much lower concentration of starch (a compostable, biobased polymer). We would be happy to share these findings with the FTC if desired. The inappropriate marketing of these products as “compostable” causes the very consumer deception which the Green Guides explicitly seek to prevent, thus destroying the reputation of the compostable polymer industry and may ultimately lower the quality of any compost resulting from a waste stream contaminated with these products. ASTM standards D6400 and D6868, along with reputable third party verification, would have revealed the unsuitability of these products to be marketed as “compostable”.

The FTC draws attention to the unfortunate fact that most food waste, which includes some compostable materials, ends up in a landfill. From the perspective of NatureWorks, this is an undesired outcome. It is crucial that we work to establish food waste diversion programs which include the use compostable bioplastics, such as NatureWorks Ingeo™, which meet the ASTM standards and may allow us to

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reduce the amount of food waste going to landfill while producing valuable compost which can be used in agriculture.

NatureWorks recognizes that the purpose of the Green Guides is not to promote a particular end-of-life treatment. Rather, it is to ensure that marketers' claims are consistent with consumer perception and thereby prevent deception. To this latter point, however, it is critical that the Green Guides create a 'level playing field', in which all marketers are held to the same, 3rd party, science based, consensus developed standard such as those developed by ASTM.

5. Section V-E: Recyclable Claims

Guidance on Recyclability Claims Requires Additional Revisions

The commission focuses considerable discussion around qualifying recycle claims, with the qualification being based on the extent to which post consumer recycling infrastructure is available to the consumer. This is consistent with previous broad input and requests for better clarity which the Commission has received, around what is meant by its current three-tier distinction ("substantial majority", "significant percentage", and "less than significant percentage").

While providing better quantitative thresholds for each of the 3 tiers may be important in the long term, NatureWorks is concerned that this current focus of the Proposed Guides, while well intended, does not address a fundamental consumer deception that is occurring today around recycle (explained below), and risks continuing unintentionally to propagate a non-level playing field for manufactures vis-

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à-vis the marketing claims that they may use in marketing new, versus established, materials.

This is best illustrated with a specific example based on the recycling of plastics:

There are numerous plastics in use today in packaging, each with its own unique Resin ID Code (RIC), which are being marketed as 'recyclable' without qualification. This is consistent with existing green guidelines. Examples include: PET, polyethylene (PVC) PVC, polypropylene (PP), and polystyrene (PS).

For the US as a whole¹, only two of these plastic types, PET and HDPE, are actually being recovered and recycled at the post consumer level.

- PET (RIC - # 1), typically used to bottle soda, water, and juice.
- HDPE (RIC # 2), typically used to bottle milk, laundry detergent, etc.

Furthermore, although numerous different types of packaging are made from these two plastics, this actual recycle is occurring only when those plastics are used in bottles. Beyond bottles made from plastics # 1 and # 2, the vast majority of other plastics are not today being recycled. Specifically,

- plastics numbered with resin ID code # 3 thru # 7,
- plastics numbered # 1 and # 2 that are not bottles (e.g. a rigid clamshell made of PET),

¹ While there are some notable exceptions in certain municipalities or regions, where broader recycle of all packaging formats is occurring, these generalizations are accurate for the US as a whole.

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What is happening at most major recycling centers is that bottles made of # 1 and # 2 are extracted from the plastics stream for recycle, and the remaining stream of mixed 'rigids', is either land filled, or shipped to 3rd parties overseas with an often indeterminate fate. There is a clear disconnect between the recycle that the consumer reading the "recyclable" claim believes is happening, versus what is actually occurring.

NatureWorks strongly believes that the FTC's energy and focus is better spent in addressing fundamental marketing claim-versus-consumer perception mismatches such as this, than for example, in fine-tuning quantitative definitions of "substantial" versus "significant".

NatureWorks fully supports the FTC's point that "the purpose of the Green Guides is not to promote recycling or to minimize costs for marketers making recycling claims. Rather, it is to ensure that marketers' claims are consistent with consumer perception and thereby prevent deception". However, as illustrated by this example, we are concerned that recycle claims made today are not adequately covered by the Green Guidelines.

Because there are continuing pricing pressures on the petroleum based raw materials used to make virgin plastics, as well as increasing consumer demand for recycled content in products and their packaging, the recycling industry is working hard to increase the actual recovery and recycle of plastics beyond bottles. Because of this, the details of where various streams are actually going within a municipal Material Recovery Facility (MRF) are likely going to be a fast changing landscape in

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the near term. While NatureWorks appreciates that it is not the FTC's role, nor the purpose of the Green Guides to promote either recycling or a certain consumer behavior, we strongly believe that a pragmatic approach is needed with the guidelines in order to avoid:

- setting an impossible or impractical to verify standard (i.e, following the plastics example given, it is clearly impractical for national marketers to understand the final disposition and use of each of the various plastics materials streams within hundreds of local MRF's).
- or, setting standards that will necessitate constant adjustment and update of marketing claims to match an evolving US recycling system. (this would be a recipe for consumer confusion).

While NatureWorks agrees that the purpose of the Green Guides is not to make any value judgment around recycling (but rather, to prevent consumer deception), we also believe strongly that it is not the purpose of the Green Guides to stifle new materials innovation in the market (rather, of course, to make sure that any new materials are being accurately marketed). The unfortunate reality today however, is that the current green guidelines are indeed stifling new material introduction, obviously an unintended consequence.

The guidance existing in the current Green Guides, (and in the Proposed Revisions), is building a misperception at both the consumer and trade level that new materials (e.g new plastic types), must not be used because they cannot be handled by existing MRF's. The reality is that new materials will be handled by MRF's in exactly the same way as those plastics that are today not being recycled (i.e., the

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non bottle # 1 and # 2, and all # 3-# 7's). This is because any new plastic material will by definition be labeled with a resin ID code of "7", and today in over in over 2000 communities a number 7 is already a part of the single stream curbside programs.

To address this issue, NatureWorks, urges the Commission to consider adding additional examples of properly qualified claims in appropriate circumstances: Some examples could include:

- “Recyclable - compatible with existing recycling facilities”.
- “Recyclable only where facilities exist, please confirm with your local recycler”
- “Recyclable in 30 states. Are facilities available near you?”

Recognizing that consumers do rely on the Internet and other sources for additional information, NatureWorks is pleased that the Commission has recognized that “check to see” disclosures can be used in conjunction with other qualifiers. In a similar vein, in each of the above examples, the claim could be qualified by adding: “To find out visit [insert URL or toll-free number]. Including such “safe harbor” disclosures in the Guides will encourage truthful communications. In turn, such communications will likely prompt consumers to actually visit a website for accurate, up-to-date information on recycling options available to them. This empowers consumers to educate themselves about recycling options (which they are more likely to do if affirmatively reminded on the product or its packaging), and provide them with the necessary roadmap by which to find recycling information quickly and readily.

Given the true state of current recycling for the majority of existing plastics types, it could be argued that qualification statements such as those above should be added to all existing (non bottle) plastics. NatureWorks is not promoting such, as

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we consider this impractical, (especially given the evolving state of the recycling infrastructure). Rather, NatureWorks is strongly advocating that the Green Guides be revised to encourage a level playing field.

This means adding in examples such as the above to the Green Guides in order to encourage authentic and accurate statements relevant to new and existing material types. New material types that today are condemned (by the existing green guidelines) to be labeled as “not recyclable”, when they are in fact, no more, and no less, recyclable than the majority of non bottle plastics today.

Thus, NatureWorks urges the Commission to include the suggested additional qualifiers as specific examples in the new Green Guides. This will help the Commission’s goals of allowing truthful information to flow freely to consumers.

6. Section VI-C: Renewable Material Claims

NatureWorks generally agrees that renewable material claims for products made with less than 100% renewable materials (excluding minor, incidental components) should be qualified with regard to renewable content.

Sincerely,

Steve Davies
Director – Public Affairs
NatureWorks LLC

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