

December 9, 2010

By Regular First Class mail and Electronically

Federal Trade Commission,
Office of the Secretary, Room H-135(Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Guides for the Use of Environmental Marketing Claims: Request for Public Comment on Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501

Dear Mr. Clark,

On behalf of L'Oréal USA, we respectfully submit the following comments on the Guides of Environmental Marketing Claims proposed regulations that were revised by the Federal Trade Commission (FTC) and published in the Federal Register on October 15, 2010 (75 FR 63552-63607).

Introduction

The proposed, revised guides are intended to help marketers avoid making misleading environmental claims. L'Oréal USA supports the intent of the "Green Guides" and the proposed changes designed to update and expand the scope of the guidance and to make the tool easier for companies to understand and use. We note that one of the Guide's consistent themes is that advertisers should provide more, rather than less, specific detail about environmentally-related claims they make. Doing so permits consumers to evaluate claims carefully and make more informed decisions about the products they purchase. In that respect, we believe the emphasis placed in the proposed guidelines on confirming the availability of recycling programs and collection sites in order to substantiate recyclability claims (see §260.11) will tend to discourage advertisers from providing the very information about product packaging materials and recyclability that consumers need to make informed decisions and to effect changes in their local communities that will make recycling programs more common. Accordingly, we believe the section that addresses recyclable claims needs to be modified to ensure that 1) consumers are encouraged to recycle whenever possible and 2) consideration is made for the widespread availability of recycling options for Americans today. To that end we respectfully suggest modifying the proposed, revised guides as set forth below.

260.11 Recyclable Claims:

The EPA reported in their Municipal Solid Waste Generation, Recycling and Disposal in the United States Report published in November of 2009 with Detailed Tables and Figures for 2008, that 59% of the US population has access to a Curbside Recyclable Collection Program. See Below: (<http://www.epa.gov/osw/nonhaz/municipal/pubs/msw2008data.pdf>)

Table 25
**NUMBER AND POPULATION SERVED BY
CURBSIDE RECYCLABLES COLLECTION PROGRAMS, 2008**

| Region | Number of Programs | Population* (in thousands) | Population Served (in thousands) | Percent** |
|-----------------------|--------------------|-------------------------------|-------------------------------------|------------|
| NORTHEAST | 3,299 | 50,803 | 42,800 | 84% |
| SOUTH | 797 | 85,536 | 25,690 | 30% |
| MIDWEST | 3,749 | 46,579 | 28,300 | 61% |
| WEST | 814 | 64,620 | 49,190 | 76% |
| Total | 8,659 | 247,538 | 145,980 | 59% |
| Total U.S. Population | | 304,060 | | |

* Population in states reporting data

** Percent of population served by curbside programs was calculated using population of states reporting data.

Source: U.S. Census Bureau, *BioCycle* April 2006, California Integrated Waste Management Board, Illinois Recycling Association, www.coloradocurbside.com, Nebraska State Recycling Association, Pennsylvania Department of Environmental Protection

Further, the EPA reported that Americans have access to more than 545 materials recovery or recycling facilities across the country. See below:

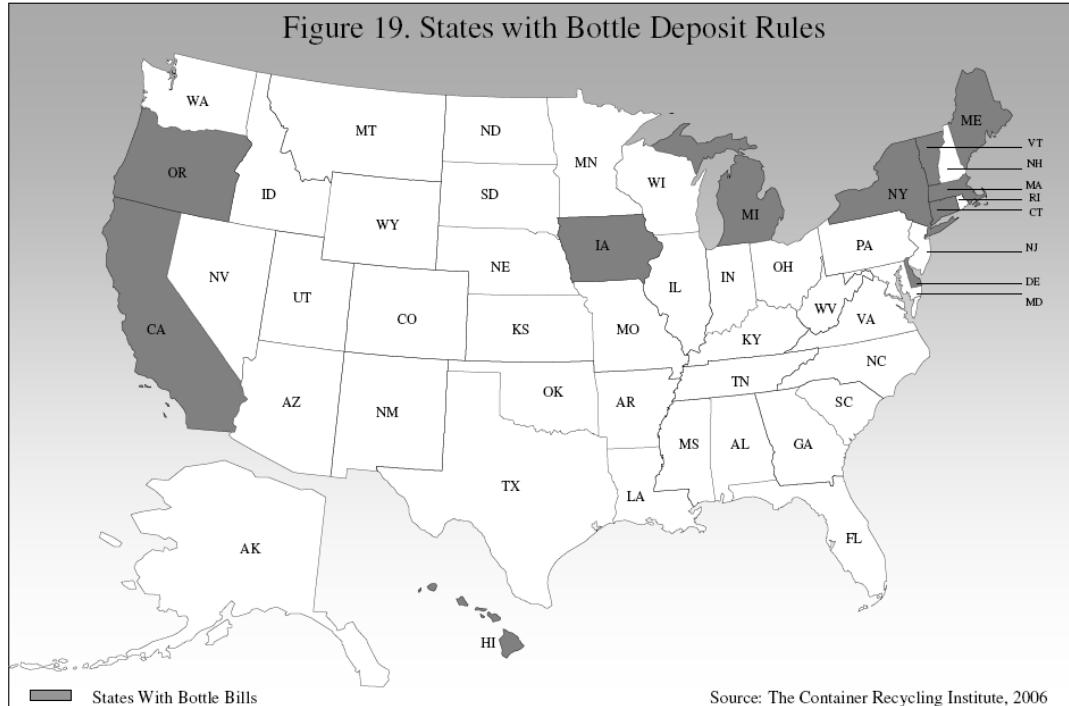
Table 26
MATERIALS RECOVERY FACILITIES, 2008

| Region | Number | Estimated Throughput (tpd) |
|-------------------|------------|-------------------------------|
| NORTHEAST | 145 | 23,238 |
| SOUTH | 152 | 19,739 |
| MIDWEST | 136 | 19,584 |
| WEST | 112 | 20,123 |
| U.S. Total | 545 | 82,684 |

Source: Governmental Advisory Associates, Inc.

Further, eleven states in the US currently have Bottle Deposit Rules which have significant environmental benefits, including litter reduction, waste diversion and energy and resource conservation. Bottle bills shift the costs of litter cleanup, recycling, and waste disposal from government and taxpayers to producers and consumers of beverage containers. While soda containers constitute only 2.7% of the waste stream, all beverage containers (excluding milk containers) account for 4.4% of the waste stream. See below:

Figure 19. States with Bottle Deposit Rules



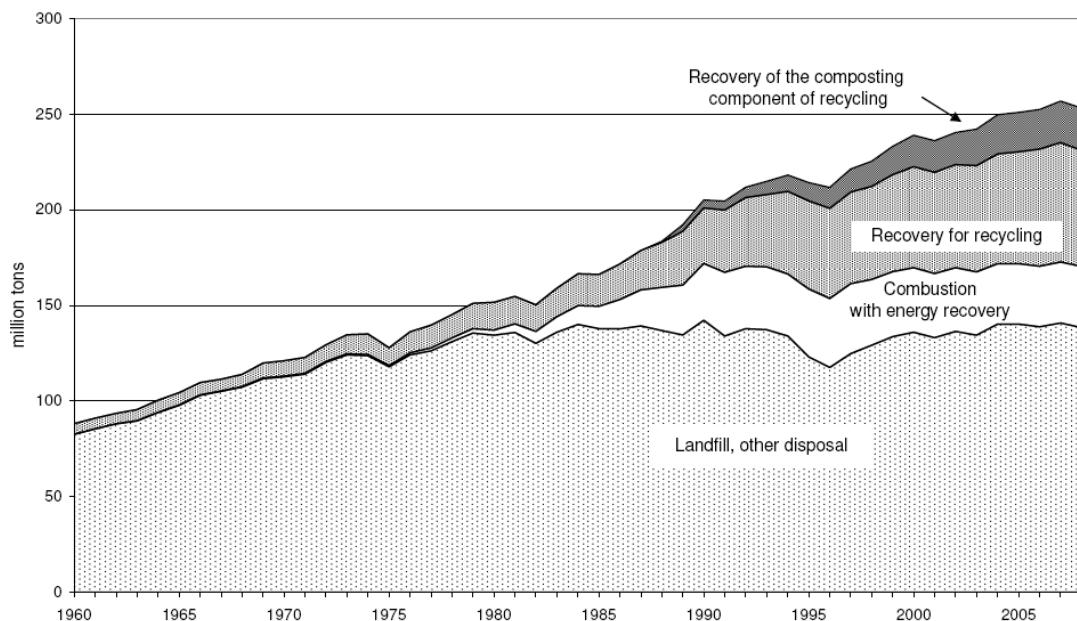
Source: From: Table 19, "Products Generated in the Municipal Waste Stream, 1960 to 2000 (with detail on containers and packaging)" in "Municipal Solid Waste In The United States: 2000 Facts and Figures." Environmental Protection Agency, Office of Solid Waste and Emergency Response (5305W) EPA530-R-02-001, June 2002.

In addition to curbside programs and recovery facilities, new innovative approaches have been introduced to help consumers identify what and where they can recycle. One example is Earth911 <http://earth911.com/>, which is a free accurate and comprehensive recycling directory that contains information for recycling over 240 different products and has a database of 127,000 locations and programs that people can search to find local recycling and disposal resources.

New mail-back programs have also been established, which offer collection and recycling/disposal of products to consumers by sending them via mail. While there may be fees, special packaging requirement or instructions associated with mail-in program, some organizations, like RecycleBank reward people who recycle. Members of the RecycleBank program can earn points by home recycling and recycling e-waste. In home recycling is weighed each week upon pick-up and the weight of the waste is translated to RecycleBank Points (2.5 RecycleBank Points are awarded for every 1 pound recycled).

Although the amount of recycling has steadily increased since the 1960s, today only a third of the nation's waste is recycled or recovered. See below:

Figure 26. Municipal solid waste management, 1960 to 2008



Source: Franklin Associates, A Division of ERG

Evolution of U.S. (municipal) Waste & Recycling

| Survey of Previous Year | U.S. Population | (mostly) Municipal Waste Generated (tons) | Increase | Percentage Recycled | Tons Disposed | Tons Disposed Per Person |
|-------------------------|----------------------|---|-------------|---------------------|---------------|--------------------------|
| 1990 | 246,819,230 | 269,000,000 | ----- | 8% | 247,480,000 | 1.002 |
| 1991 | 249,439,545 | 293,613,000 | +24,613,000 | 11.5% | 259,847,000 | 1.041 |
| 1992 | 252,124,362 | 280,675,000 | -12,938,000 | 14% | 241,380,000 | 0.957 |
| 1993 | 255,001,827 | 291,742,000 | +11,067,000 | 17% | 242,146,000 | 0.949 |
| 1994 | 257,752,702 | 306,866,000 | +15,124,000 | 19% | 248,561,000 | 0.964 |
| 1995 | 260,292,437 | 322,879,000 | +16,013,000 | 23% | 248,617,000 | 0.955 |
| 1996 | 262,760,639 | 326,709,000 | +3,830,000 | 27% | 238,498,000 | 0.907 |
| 1997 | 265,179,411 | 327,460,000 | +1,751,000 | 28% | 235,771,000 | 0.890 |
| 1998 | 267,636,061 | 340,466,000 | +13,006,000 | 30% | 238,326,000 | 0.890 |
| 1999 | 272,690,813 | 374,631,000 | +34,165,000 | 31.5% | 267,108,215 | 0.979 |
| 2000 | 280,000,000 estimate | 382,594,000 | +7,963,000 | 33% | 256,338,000 | 0.661 |
| 2001 | 286,345,000 | 409,029,000 | +26,435,000 | 32% | 278,139,720 | 0.979 |

Data source: Biocycle/Table & Conversion: ZWA

Society's behavior is changing and consumers check packaging and labels to make more informed choices about the consumer products they purchase. A study that L'Oréal USA commissioned earlier this year (Opinion Research Corporation) on America's Recycling Behavior found that 69% of consumers check the packaging to see if products are recyclable

and 38% say they will purchase another brand if their regular brand's packaging is not recyclable:

When you buy food, beverage, household and personal care products, how often, if at all, do you look for the following items on the package? Would you say always, sometimes, rarely or never?

Whether the package can be recycled

| | Sex | | Age | | | | | | |
|---------------------------------|--------------|-------------|-------------------------|------------------|------------------|------------------|------------------|------------|--|
| | Total (A) | Male (B) | Fe-male (C) | 18- 34 (D) | 35- 44 (E) | 45- 54 (F) | 55- 64 (G) | 65+ (H) | |
| Never Summary | 691 69% | 318 66% | 373 72% | 210 72% | 132 72% | 127 67% | 99 69% | 111 69% | |
| Always Summary | 205 21% | 83 17% | 123 24% ^B | 68 23% | 36 19% | 36 19% | 26 18% | 37 23% | |
| Always/Sometimes Summary | 536 54% | 232 48% | 304 59% ^B | 170 58% | 101 55% | 96 50% | 75 52% | 83 52% | |

If your regular brand is available, but the package CANNOT be recycled, what will you do? Will you ...

| | | | | | | | | |
|--------------------------|------------|------------|------------|-------------|-----------|-----------|-----------|-----------|
| Buy another brand | 259 38% | 103 32% | 156 42% | 99 47%GH | 51 39% | 42 33% | 30 30% | 34 31% |
|--------------------------|------------|------------|------------|-------------|-----------|-----------|-----------|-----------|

Although 84% of survey respondents indicate that they recycle their aluminum beverage cans, 72% recycle their glass beverage containers and 79% recycle plastic food containers, more than one third of consumers say that they never recycle the glass, plastic, metal or cardboard packaging from their personal care products used in the bathroom.

Finally, the market for most consumer packaged goods is nationwide or at the very least regional. It is impossible for manufacturers to customize package claims to the particular recycling environment in each locality.

Therefore, L'Oréal USA would like section 260.11, which addresses Recyclable Claims, to eliminate the requirement that the marketers only use the claim "Recyclable" when facilities are available to a "substantial majority" of consumers in communities where the item is sold or qualify the claim with text, i.e. "This product (package) is recyclable only in a few communities that have a recycling program". Instead, the Recyclable Claim should be allowed for any product packaging where recycling programs are available to a majority of the US public.

We believe that such a restriction goes against public policy. While it is the government's responsibility to ensure that consumers are not misled, it is also the government's responsibility to encourage all Americans to recycle any and all waste that can be recycled. Recycling has innumerable benefits, which should be promoted, by governments and industry alike. Convenient access to a recycling program or facility does not change the fact that a product/package can be recycled and in an effort to promote recycling by all its consumers, industry should be able to make all consumers aware of the recyclability of a product package regardless of their geographical location, particularly since there are numerous alternatives

available today for consumers to sort, collect and otherwise recover their waste and divert it from incineration or landfill.

Additionally we would support a more visible and prominent use of the SPI code, for packages that qualify, in order to facilitate consumer communications about a product's recyclability. Most often the SPI is embedded in the bottom of a container or package and is small and illegible. A larger, more prominent use of the recycling symbols would help consumers identify the package as being recyclable.

We would also encourage agencies like the FTC and the EPA to establish a consumer education campaign to help inform consumers about the recycling symbols and their meaning and the municipal/ local government and non-governmental resources available to them to facilitate the recycling of their waste.

Finally, we believe the current wording of §260.14(a) and (c) is internally inconsistent and should be clarified.

260.14 Renewable Energy Claims:

Section 260.14(a) of the proposed text seems to disallow renewable energy claims altogether if power is derived from fossil fuels, while §260.14(c) permits a renewable energy claim if "conventional energy" is used and offset by renewable energy. Since fossil fuels are considered to be conventional energy, section (a) should be rewritten as follows to be consistent with section (c) which permits Renewable Energy Claims when conventional energy used in the manufacturing processes is offset by renewable energy certificates:

- (a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable energy or that a service uses renewable energy. Marketers should not make unqualified renewable energy claims, directly or by implication, if power derived from **conventional energy** is used to manufacture any part of the advertised item or is used to power any part of the advertised service, **unless the conventional energy is offset by renewable energy certificates.**

Conclusion

L'Oréal USA would like to thank the FTC for its efforts in revising these regulations which respond to the changes in the marketplace and are intended to help marketers avoid making unfair or deceptive environmental claims. While the proposed regulations will ultimately help consumers in their product purchase decisions, we believe that marketers should be permitted to provide consumers with information about a product's packaging recyclability and that every effort should be made to encourage consumer recycling and appropriate waste disposal.

Sincerely,

Pamela Alabaster
Senior Vice President,
Corporate Communications & External Affairs