

**FEDERAL TRADE COMMISSION
16 CFR Part 260**

**Guides for the Use of Environmental Marketing Claims;
The Green Guides and Packaging; Public Workshop**

AGENCY: Federal Trade Commission.

ACTION: Announcement of public workshop; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is planning to host a public workshop on April 30, 2008, to examine developments in green packaging claims and consumer perception of such claims. The workshop is a component of the Commission’s regulatory review of the Guides for the Use of Environmental Marketing Claims, which was announced on November 26, 2007.

DATES: The workshop will be held on Wednesday, April 30, 2008, from 9:00 AM to 5:00 PM at the FTC’s Satellite Building Conference Center, located at 601 New Jersey Avenue, N.W., Washington, D.C. Any written comments in response to this Notice must be received by May 19, 2008.

REGISTRATION INFORMATION: The workshop is open to the public, and there is no fee for attendance. The FTC also plans to make this workshop available via webcast (see <http://www.ftc.gov/bcp/workshops/packaging/index.shtml>). For admittance to the Conference Center, all attendees will be required to show a valid photo identification such as a driver’s license. The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please email your name and affiliation to greenpackagingworkshop@ftc.gov. When you pre-register, we will collect your name, affiliation, and your email address. This information will be used to estimate

how many people will attend. We may use your email address to contact you with information about the workshop.

Under the Freedom of Information Act (“FOIA”) or other laws, we may be required to disclose to outside organizations the information you provide. For additional information, including routine uses permitted by the Privacy Act, see the Commission’s Privacy Policy at www.ftc.gov/ftc/privacy.shtm. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

WRITTEN AND ELECTRONIC COMMENTS: The submission of comments is not required for attendance at the workshop. If you wish to submit written or electronic comments to inform discussion at the workshop, such comments must be received by April 11, 2008. All comments in response to this Notice must be submitted no later than May 19, 2008. Comments should refer to “Green Packaging Workshop – Comment, Project No. P084200,” to facilitate organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex B), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by following the instructions on the web-based form at <https://secure.commentworks.com/ftc-packagingworkshop>. To ensure that the Commission considers an electronic comment, you must file it on that web-based form. You also may visit <http://www.regulations.gov> to read this notice, and may file an electronic comment through that website. The Commission will consider all comments that www.regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. To read our policy on how we handle the information you submit – including routine uses permitted by the Privacy Act – please review the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

FOR FURTHER INFORMATION CONTACT: Janice Frankle, Attorney, 202-326-2022, Laura Koss, Attorney, 202-326-2890, or Anne McCormick, Attorney, 202-326-3583, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Introduction

FTC staff is planning to conduct a one-day workshop on April 30, 2008, addressing environmental advertising claims regarding product packaging. The workshop will explore “green” packaging claims, consumer perception of these claims, and substantiation issues. The workshop is one component of the Commission’s regulatory review of the Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”), 16 CFR Part 260, which the FTC announced on November 26, 2007.²

This notice addresses several issues related to the upcoming workshop; provides background on the Green Guides and the Green Guides regulatory review; briefly discusses consumer protection issues raised by green packaging claims used in today’s marketplace; and provides a short description of possible issues for discussion at the workshop as well as questions for comment.

² The Federal Register Notice announcing this review is at 72 FR 66091 (Nov. 27, 2007), and can be found at <http://www.ftc.gov/os/2007/11/P954501ggfrn.pdf>. The Commission reviews all of its rules and guides periodically. These reviews seek information about the costs and benefits of the Commission’s existing rules and guides and their regulatory and economic impact. The information obtained during these reviews assists the Commission in identifying rules and guides that warrant modification or rescission.

II. Background Information

This Federal Register Notice is part of the FTC's standard regulatory review of the Green Guides. The following section provides background information regarding the Green Guides and the Commission's Green Guides regulatory review process.

A. The Green Guides

The Commission issued the Green Guides to help marketers avoid making environmental claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. § 45.³ Industry guides, such as these, are administrative interpretations of the law. Therefore, they do not have the force and effect of law and are not independently enforceable. The Commission can take action under the FTC Act, however, if a business makes environmental marketing claims inconsistent with the Guides. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

The Green Guides outline general principles that apply to all environmental marketing claims and provide guidance regarding specific claims. For all claims, the Guides advise that: qualifications and disclosures be sufficiently clear and prominent to prevent deception; marketers indicate whether their claims apply to the product, the package, or a component of either; claims not overstate an environmental attribute or benefit, expressly or by implication; and marketers present comparative claims in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception.

³ The Commission issued the Green Guides in 1992 (57 FR 36363) and subsequently revised them in 1996 (61 FR 53311), and in 1998 (63 FR 24240). The current Green Guides are available at <http://www.ftc.gov/bcp/grnrule/guides980427.htm>.

The Guides then specifically address: general environmental benefit claims, such as “environmentally friendly”; degradable, biodegradable, and photodegradable claims; compostable claims; recyclable claims; recycled content claims; source reduction claims; refillable claims; and ozone safe/ozone friendly claims. For each, the Guides explain how reasonable consumers are likely to interpret them. The Guides also describe the basic elements necessary to substantiate claims within each category and present options for qualifying specific claims to avoid deception.⁴ The illustrative examples provide “safe harbors” for marketers who seek certainty about how to make environmental claims, but do not represent the only permissible approaches to qualifying a claim that would otherwise be consistent with the Guides.

B. Green Guides Regulatory Review

On November 27, 2007, the FTC published a Federal Register Notice commencing the decennial regulatory review of the FTC’s Green Guides. The Notice solicited public comments in response to questions about the Guides’ costs, benefits, and effectiveness and also posed claim-specific questions. The Notice announced that the FTC would be hosting public meetings to facilitate public dialogue on issues relating to the Green Guides review. The Commission will review and consider information gathered at these meetings, in addition to the public comments, in formulating its final determination.

On January 8, 2008, the Commission conducted its first public meeting relating to the Green Guides Review – a workshop on Carbon Offsets and Renewable Energy Certificates. The meeting announced through this Federal Register Notice, entitled “The Green Guides and

⁴ The Guides do not, however, establish standards for environmental performance or prescribe testing protocols.

Packaging,” will be the second public meeting planned as part of the comprehensive review of the Green Guides. A public meeting aimed at green claims related to packaging will enable participants and the Commission to focus in-depth on an area in which a wide range of green claims are prevalent.

III. Green Packaging Claims and Consumer Protection Issues

Since the Commission last revised the Green Guides in 1998, there has been a marked increase in environmental claims, including “green” claims concerning product packaging. Sellers and marketers, for example, frequently use terms addressed in the Green Guides, such as “recyclable,” “biodegradable,” “degradable,” “compostable,” or “refillable,” to claim their packaging is green. Sellers and marketers also are using new green claims not presently addressed in the Green Guides to emphasize the reduced environmental impact of their packaging, including such terms as “sustainable” and “renewable.” For example, some marketers now claim to adhere to a “cradle-to-cradle” philosophy, indicating that their product and its packaging are specifically designed to be easily and continuously recyclable.⁵ Such claims, which concern the entire, and potentially repetitive life cycle of product packaging, raise several consumer perception and substantiation issues. Likewise, in recent years there has been a proliferation of environmental seals and third-party certifications purporting to verify the positive environmental impact of product packaging. The criteria for and meaning of these seals and certifications also raise consumer protection challenges.

⁵ “Cradle-to-cradle,” a term coined by authors William McDonough and Michael Braungart in their 2002 book entitled Cradle to Cradle: Remaking the Way We Make Things, is commonly used to indicate that a product has been designed from inception to be easily and continuously recyclable, thereby never entering the waste stream.

Additionally, in recent years, marketers increasingly are using “bio-based plastics”⁶ in packaging, resulting in new green packaging claims. For example, some marketers now claim that bio-based plastic bottles are “commercially compostable.” Proper disposal of these bottles and other new packaging materials may require new or less accessible recycling, composting, or disposal facilities. As a result, such claims raise potential consumer perception and substantiation issues.

IV. Issues and Questions for Discussion at the Workshop

Some possible topics for discussion at the workshop are: 1) trends in packaging and the resultant environmental packaging claims; 2) packaging terms currently covered by the Green Guides, including “recyclable,” “recycled content,” “source reduction,” “degradable” (including “biodegradable” and “photodegradable”), “compostable,” and “refillable” and whether consumer perception of these terms have changed; 3) new green packaging claims not currently addressed in the Guides, including “sustainable,” “renewable,” and “bio-based”; 4) claims based on third-party certification and consumer perception of these claims; 5) the impact of changes in science and technology, including the use of new packaging materials and the use of new recycling, composting, and disposal techniques, on environmental packaging claims; 6) the state of substantiation for environmental packaging claims; and 7) the need for additional or updated FTC guidance in these areas.

In addition to considering these possible topics, the Commission invites written comments on any or all of the following questions regarding environmental packaging claims.

⁶ Bio-based plastics are derived from plant sources (such as corn, potato starch, or sugar cane) rather than petroleum sources.

The Commission requests that responses to these questions be as specific as possible, including a reference to the question being answered, and reference to empirical data or other evidence wherever available and appropriate.

A. Recyclable

- (1) How effective have the Guides been in preventing consumer deception and providing business guidance with respect to “recyclable” claims about packaging? Please provide any evidence that supports your answer.
- (2) Has there been a change in consumer perception about “recyclable” packaging claims (e.g., “Please recycle” and the three-chasing-arrows symbol) since the Guides were last revised?
 - (a) If so, please describe this change and provide any evidence that supports your answer.
 - (b) Should the Guides be revised to address any such change? If so, how?
- (3) Has consumers’ access to recycling facilities (e.g., curbside and drop-off facilities) for packaging changed since the Guides were last reviewed?
 - (a) If so, how, and how does this change affect consumers’ perception of what they can and cannot recycle? Please provide any evidence that supports your answers.
 - (b) Should the Guides be revised to address any such change? If so, how?
- (4) Have the types of packaging capable of being recycled changed since the Guides were last reviewed?
 - (a) If so, how, and how do these changes, if any, affect consumers’ perception of what they can recycle? Please provide any evidence that supports your answers.
 - (b) Should the Guides be revised to address any such changes? If so, how?

- (5) Are there “recyclable” claims in the marketplace concerning packaging that are misleading? If so, please describe these claims and provide any evidence that supports your answer.
- (6) What recyclability disclosures are businesses currently making about packaging?
 - (a) Are current recyclability disclosures adequate to apprise consumers of the criteria for the recycling of packaging, the appropriate methods of recycling, and/or the availability of appropriate recycling facilities? Please provide any evidence that supports your answer.
 - (b) Are current recyclability disclosures adequate for consumers to understand whether the product or the package, or both, are recyclable? Please provide any evidence that supports your answer.
- (7) Should the current recyclability disclosures in the Guides be revised? If so, how?
- (8) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs the Guides impose on businesses, particularly small businesses, with respect to “recyclable” claims about packaging. Please provide any evidence that supports your answer.

B. Recycled Content

- (1) How effective have the Guides been in preventing consumer deception and providing business guidance with respect to “recycled content” claims about packaging? Please provide any evidence that supports your answer.
- (2) Has there been a change in consumer perception about “recycled content” packaging claims (e.g., the three-chasing-arrows symbol) since the Guides were revised?
 - (a) If so, please describe this change and provide any evidence that supports your answer.

- (b) Should the Guides be revised to address any such change? If so, how?
- (3) Do consumers make distinctions between “pre-consumer” recycled content (i.e., materials recovered or otherwise diverted from the solid waste stream during the manufacturing process) and “post-consumer” recycled content (i.e., materials recovered or otherwise diverted from the solid waste stream after consumer use) in packaging? Please provide any evidence that supports your answer.
- (4) Have technological changes affected what consumers consider “pre-consumer” and “post-consumer”?
 - (a) If so, please describe these changes and provide any evidence that supports your answer.
 - (b) Should the Guides be revised to address any such changes? If so, how?
- (5) Are there “recycled content” claims in the marketplace concerning packaging that are misleading? If so, please describe these claims and provide any evidence that supports your answer.
- (6) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs the Guides impose on businesses, particularly small businesses, with respect to “recycled content” claims about packaging. Please provide any evidence that supports your answer.

C. Degradable, Biodegradable, Photodegradable, and Compostable

- (1) How effective have the Guides been in preventing consumer deception and providing business guidance with respect to “degradable,” “biodegradable,” “photodegradable,” or “compostable” claims about packaging? Please provide any evidence that supports your answer.
- (2) Has there been a change in consumer perception of these claims since the Guides were revised?
 - (a) If so, please describe this change and provide any evidence that supports your answer.

- (b) Should the Guides be revised to address any such change? If so, how?
- (3) How do consumers perceive “degradable,” “biodegradable,” “photodegradable,” or “compostable” claims with respect to packaging that consumers throw in the garbage (e.g., packaging ultimately disposed of in a landfill)? Please provide any evidence that supports your answer.
- (4) The Guides provide that an unqualified claim that a package is “compostable” should be substantiated by evidence that all the materials in the package will break down into, or otherwise become part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely manner in an appropriate composting program or facility, or in a home compost pile or device. Should the Guides be revised to provide more specificity regarding the time frame for composting?
- (a) If so, why, and what should the time frame be? Please provide any evidence that supports your answer.
- (b) If not, why not? Please provide any evidence that supports your answer.
- (5) Has consumers’ access to municipal or institutional composting facilities changed since the Guides were last reviewed?
- (a) If so, how, and how does any such change affect consumers’ perception of what packaging they can and cannot compost? Please provide any evidence that supports your answer.
- (b) Should the Guides be revised to address any such change? If so, how?
- (6) Are there “degradable,” “biodegradable,” “photodegradable,” or “compostable” claims in the marketplace concerning packaging that are misleading? If so, please describe these claims and provide any evidence that supports your answer.
- (7) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs the Guides impose on businesses, particularly small businesses, with respect to “degradable,” “biodegradable,” “photodegradable,” or “compostable”

claims about packaging. Please provide any evidence that supports your answer.

D. Source Reduction

- (1) How effective have the Guides been in preventing consumer deception and providing business guidance with respect to “source reduction” claims about packaging? Please provide any evidence that supports your answer.
- (2) Has there been a change in consumer perception of these claims since the Guides were revised?
 - (a) If so, please describe this change and provide any evidence that supports your answer.
 - (b) Should the Guides be revised to address any such change? If so, how?
- (3) Are there “source reduction” claims in the marketplace concerning packaging that are misleading? If so, please describe these claims and provide any evidence that supports your answer.
- (4) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs the Guides impose on businesses, particularly small businesses, with respect to “source reduction” claims about packaging. Please provide any evidence that supports your answer.

E. Refillable

- (1) How effective have the Guides been in preventing consumer deception and providing business guidance with respect to “refillable” claims about packaging? Please provide any evidence that supports your answer.
- (2) Has there been a change in consumer perception of these claims since the Guides were revised?
 - (a) If so, please describe this change and provide any evidence that supports your answer.
 - (b) Should the Guides be revised to address any such change? If so, how?

- (3) Are there “refillable” claims in the marketplace concerning packaging that are misleading? If so, please describe these claims and provide any evidence that supports your answer.
- (4) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs the Guides impose on businesses, particularly small businesses, with respect to “refillable” claims about packaging. Please provide any evidence that supports your answer.

F. Ozone Safe and Ozone Friendly

- (1) How effective have the Guides been in preventing consumer deception and providing business guidance with respect to “ozone safe” or “ozone friendly” claims about packaging? Please provide any evidence that supports your answer.
- (2) Has there been a change in consumer perception of these claims since the Guides were revised?
 - (a) If so, please describe this change and provide any evidence that supports your answer.
 - (b) Should the Guides be revised to address any such change? If so, how?
- (3) Are there “ozone safe” or “ozone friendly” claims in the marketplace concerning packaging that are misleading? If so, please describe these claims and provide any evidence that supports your answer.
- (4) To the extent not addressed in your previous answers, please explain whether and how the Guides should be revised to prevent consumer deception, provide business guidance, and/or reduce costs the Guides impose on businesses, particularly small businesses, with respect to “ozone safe” or “ozone friendly” claims about packaging. Please provide any evidence that supports your answer.

G. Claims Currently Not Addressed by the Green Guides

- (1) Should the Guides be revised to include guidance regarding “bio-based” packaging claims? If so, why, and what guidance should be provided? If not, why not?

- (a) What evidence supports making your proposed revision(s)? Please provide this evidence.
 - (b) What evidence is available concerning consumer understanding of the term “bio-based”? Please provide this evidence.
 - (c) What evidence constitutes a reasonable basis to support a “bio-based” claim? Please provide this evidence.
- (2) Should the Guides be revised to include guidance regarding life cycle or “cradle-to-cradle” packaging claims?
- (a) If so, why, and what guidance should be provided? If not, why not? Please provide any evidence that supports your answer.
 - (b) What evidence is available concerning consumer understanding of life cycle analyses or the term “cradle-to-cradle”? Please provide this evidence.
 - (c) Is there an appropriate scientific methodology to evaluate life cycle or “cradle-to-cradle” packaging claims? If so, please provide any evidence that supports your answer.
- (3) Are there other environmental claims concerning packaging not currently addressed by the Guides, and if so what are they? Please provide any evidence that supports your answer.
- (a) Should the Guides be revised to include guidance regarding these claims? If so, why, and what guidance should be provided? If not, why not?
 - (b) What evidence is available concerning consumer understanding of these claim(s)? Please provide this evidence.
 - (c) What evidence constitutes a reasonable basis to support these claim(s)? Please provide this evidence.

H. Third-Party Certifications and Seals

- (1) What evidence is available concerning consumer understanding of third-party certifications and seals, labels, or symbols on packaging? Please provide this evidence.

- (2) Why are marketers using these third-party certifications and seals, labels, or symbols on packaging? Please provide any evidence that supports your answer.
- (3) What criteria are third-party certifiers using to substantiate claims made with third-party certification, seals, labels, or symbols on packaging? Are those criteria appropriate? Please provide any evidence that supports your answers.
- (4) Should the Guides be revised to include additional guidance regarding these claims? If so, how?

By direction of the Commission.

Donald S. Clark
Secretary