

**FEDERAL TRADE COMMISSION  
16 CFR Part 18**

**Guides for the Nursery Industry**

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) requests public comments on its Guides for the Nursery Industry (“Nursery Guides” or “Guides”). The Commission is soliciting the comments as part of the Commission’s systematic review of all current Commission regulations and guides.

**DATES:** Written comments must be received by August 14, 2006.

**ADDRESSES:** Interested parties are invited to submit written comments. Comments should refer to “Nursery Guides Regulatory Review, Matter No. P994248” to facilitate the 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, however, must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).<sup>1</sup> 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 Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form

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<sup>1</sup> 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).

should be submitted by accessing the following site: <https://secure.commentworks.com/ftc-nursery> and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at <https://secure.commentworks.com/ftc-nursery>.

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. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at <http://www.ftc.gov/ftc/privacy.htm>.

**FOR FURTHER INFORMATION CONTACT:** Janice Podoll Frankle, (202) 326-3022, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, DC 20001.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Guides for the Nursery Industry were adopted by the Commission in 1979.<sup>2</sup> These Guides address numerous sales practices for outdoor plants, including deceptive claims as to quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, growth ability, price, and origin or place where grown.

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<sup>2</sup> Industry guides are administrative interpretations of laws administered by the Commission. 16 CFR 1.5.

In 1994, as part of its periodic review, the Commission amended the Nursery Guides.<sup>3</sup> Specifically, the Commission amended Guide 6 and the definitions section to advise sellers of plants that it is an unfair or deceptive act or practice to offer for sale or to sell plants collected from the wild state without disclosing that fact, with the proviso that plants propagated from plants lawfully collected from the wild state may be designated as “nursery-propagated.” Additionally, the Commission amended Guides 1-8 to update their legal terminology. Specifically, the Commission deleted the expressions “it is an unfair trade practice” and “has the capacity and tendency or effect of deceiving purchasers,” neither of which the Commission uses in its orders, rules, or guides. The Commission substituted the language “it is an unfair or deceptive act or practice” and “misrepresents directly or by implication.”<sup>4</sup>

## **II. Regulatory Review Program**

The Commission reviews all Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission’s rules and guides and their economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of and the continuing need for its Nursery Guides; possible conflict between the Guides and state, local, federal, or international laws; and the effect of any technological, economic, environmental, or other industry changes on the Guides.

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<sup>3</sup> 59 FR 64546.

<sup>4</sup> See the Commission’s 1983 Statement on Deception found in the appendix to Cliffdale Associates, 103 F.T.C. 110, 174 (1984).

### **III. Request For Comment**

The Commission is particularly interested in receiving comments and supporting data on the following questions. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted:

(1) Is there a continuing need for the Nursery Guides as currently promulgated?

(2) Has the nursery industry adopted the Nursery Guides as part of its routine business practice? If so, how, and what effect, if any, does this have on the continuing need for the Guides?

(3) What benefits have the Nursery Guides provided to purchasers of the products affected by the Guides?

(4) Have the Guides imposed costs on purchasers? If so, explain.

(5) How have the 1994 amendments to Guide 6 affected the nursery industry? How have the 1994 amendments to Guide 6 affected purchasers?

(6) What changes, if any, should be made to the Nursery Guides to increase their benefits to purchasers? How would these changes affect the costs the Guides impose on businesses? How would these changes benefit purchasers?

(7) What burdens or costs, including costs of compliance, have the Guides imposed on businesses subject to their requirements? What burdens or costs have the Guides imposed on small businesses in particular? Have the Guides provided benefits to businesses? If so, what benefits?

(8) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on businesses? How would these changes affect the benefits provided by the Guides?

(9) Do the Guides overlap or conflict with other federal, state, or local laws or regulations? Do the Guides overlap or conflict with any international laws or regulations?

(10) Have consumer perceptions or preferences changed since these Guides were issued, and, if so, do these changes warrant revising the Guides?

(11) Since the Guides were issued, what effects, if any, have changes in relevant technology, economic conditions, or environmental conditions had on the Guides?

**List of Subjects in 16 CFR Part 18**

Advertising, Nursery, Trade practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark  
Secretary