

**FEDERAL TRADE COMMISSION  
16 CFR Part 260**

**Guides for the Use of Environmental Marketing Claims**

**AGENCY:** Federal Trade Commission.

**ACTION:** Request for public comment; announcement of public meetings.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) requests public comment on its Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”). The Commission is soliciting comment as part of its systematic review of all current FTC rules and guides. The Commission also is announcing plans to host public meetings to explore developments in environmental and “green energy-related” marketing.

**DATES:** Written comments relating to the Green Guides review must be received by February 11, 2008. The first public meeting, “Carbon Offsets and Renewable Energy Certificates,” will be held on January 8, 2008 in Washington, D.C. Details, including location and registration information, are set forth in a separate Federal Register notice published concurrently. The Commission plans to announce additional environmental marketing public meetings at later dates.

**ADDRESSES:** Interested parties are invited to submit written comments relating to the Green Guides review. Comments should refer to “Green Guides Regulatory Review, 16 CFR Part 260, Comment, Project No. P954501” 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).<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 should be submitted by following the instructions on the web-based form at <https://secure.commentworks.com/ftc-GreenGuidesReview>. To ensure that the Commission considers an electronic comment, you must file it on that web-based form. You may also 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](http://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

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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).

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 Podoll Frankle, Attorney, 202-326-3022, or Laura Koss, Attorney, 202-326-2890, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Commission issued the Green Guides, 16 CFR Part 260, to help marketers avoid making environmental claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45.<sup>2</sup> 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 then provide guidance regarding specific environmental claims. For all claims, the Guides advise: that qualifications and disclosures be sufficiently clear and prominent to prevent

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<sup>2</sup> The Commission issued the Green Guides in 1992, 57 FR 36363, and subsequently revised them in 1996 (61 FR 53311) and 1998 (63 FR 24240). The FTC also administers other rules and guides in the environmental and energy areas, pursuant to several federal statutes including the FTC Act. See Guide Concerning Fuel Economy Advertising for New Automobiles (16 CFR Part 259), Appliance Labeling Rule (16 CFR Part 305), Fuel Rating Rule (16 CFR Part 306), Alternative Fuel Vehicles Rule (16 CFR Part 309), Recycled Oil Rule (16 CFR Part 311), and Labeling and Advertising of Home Insulation Rule (the “R-Value” Rule) (16 CFR Part 460).

deception; that marketers make clear whether their claims apply to the product, the package, or a component of either; that claims not overstate an environmental attribute or benefit, expressly or by implication; and that marketers present comparative claims in a manner that makes the basis for the comparison sufficiently clear to avoid consumer deception.

The Guides then specifically address: general environmental benefit claims, such as “environmentally friendly”; degradable claims; compostable claims; recyclable claims; recycled content claims; source reduction claims; refillable claims; and ozone safe/ozone friendly claims. For each of these claims, the Green 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.<sup>3</sup> The illustrative qualifications provide “safe harbors” for marketers who want certainty about how to make environmental claims, but do not represent the only permissible approaches to qualifying a claim.

## **II. Regulatory Review of the Green Guides**

The Commission reviews all of its rules and guides periodically to examine their efficacy, costs, and benefits; and to determine whether to retain, modify, or rescind them. This notice commences the Commission’s review of the Green Guides.

### **A. General Areas of Interest for FTC Review**

As part of its review, the Commission is seeking comment on a number of general issues, including the continuing need for the Guides and their economic impact, the effect of the Guides

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<sup>3</sup> The Guides do not, however, establish standards for environmental performance or prescribe testing protocols.

on the accuracy of various environmental claims, and the interaction of the Guides with other environmental marketing regulations. The Commission believes that this review is important to ensure that the Guides are appropriately responsive to any changes in the marketplace. Since the Commission's last revisions in 1998, sellers and marketers increasingly have publicized the environmental attributes of certain products, packaging, services, and manufacturing processes. Moreover, sellers and marketers are making new green claims, including those regarding renewable energy, carbon offsets, and sustainability, among others, that are not currently covered by the Green Guides.

The Commission also seeks to ensure that the Guides are appropriately responsive to any changes in consumer perception of environmental claims. As the Commission recognized in originally issuing the Guides, science and technology in the environmental area are constantly changing and new developments might affect consumer perception. Thus, the Commission solicits specific consumer survey evidence and consumer perception data addressing environmental claims, including claims not currently covered by the Guides.

B. Specific Areas of Interest for FTC Review

Since the last revisions to the Guides in 1998, the Commission occasionally has received informal input regarding the efficacy of its guidance on specific claims as well as requests for clarification through additional examples. Some of the questions included in this notice, therefore, address claim-specific issues. By including these issues, the Commission intends to facilitate comment, and the inclusion or exclusion of any issue is no indication of the Commission's intent to make any specific modifications to the Guides.

### III. Issues for Comment

The Commission requests written comment on any or all of the following questions. The Commission requests that responses to its 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. General Issues

- (1) Is there a continuing need for the Guides? Why or why not?
- (2) What benefits have the Guides provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should be made to the Guides to increase their benefits to consumers?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs the Guides impose on businesses, and in particular on small businesses?
  - (c) How would these modifications affect the benefits to consumers?
- (4) What impact have the Guides had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?
- (5) What significant costs have the Guides imposed on consumers? What evidence supports the asserted costs?
- (6) What modifications, if any, should be made to the Guides to reduce the costs imposed on consumers?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the benefits provided by the Guides?
- (7) Please provide any evidence that has become available since 1998 concerning consumer perception of environmental claims, including claims

not currently covered by the Guides. Does this new information indicate that the Guides should be modified? If so, why, and how? If not, why not?

- (8) Please provide any evidence that has become available since 1998 concerning consumer interest in particular environmental issues. Does this new information indicate that the Guides should be modified? If so, why, and how? If not, why not?
- (9) What benefits, if any, have the Guides provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?
- (10) What modifications, if any, should be made to the Guides to increase their benefits to businesses, and in particular to small businesses?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the costs the Guides impose on businesses, and in particular on small businesses?
  - (c) How would these modifications affect the benefits to consumers?
- (11) What significant costs, including costs of compliance, have the Guides imposed on businesses, and in particular on small businesses? What evidence supports the asserted costs?
- (12) What modifications, if any, should be made to the Guides to reduce the costs imposed on businesses, and in particular on small businesses?
  - (a) What evidence supports your proposed modifications?
  - (b) How would these modifications affect the benefits provided by the Guides?
- (13) What evidence is available concerning the degree of industry compliance with the Guides?
  - (a) To what extent has there been a reduction in deceptive environmental claims since the Guides were issued? Please provide any supporting evidence. Does this evidence indicate that the Guides should be modified? If so, why, and how? If not, why not?

- (b) To what extent have the Guides reduced marketers' uncertainty about which claims might lead to FTC law enforcement actions? Please provide any supporting evidence. Does this evidence indicate that the Guides should be modified? If so, why, and how? If not, why not?
- (14) Are there claims addressed in the Guides on which guidance is no longer needed? If so, explain. Please provide supporting evidence.
- (15) What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides?
  - (a) What evidence demonstrates the existence of such claims?
  - (b) With reference to such claims, should the Guides be modified? If so, why, and how? If not, why not?
- (16) What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?
- (17) Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, how?
  - (a) What evidence supports the asserted conflicts?
  - (b) With reference to the asserted conflicts, should the Guides be modified? If so, why, and how? If not, why not?
  - (c) Is there evidence concerning whether the Guides have assisted in promoting national consistency with respect to the regulation of environmental claims? If so, please provide that evidence.
- (18) Are there international laws, regulations, or standards with respect to environmental marketing claims that the Commission should consider as it reviews the Guides, such as the International Organization for Standardization ("ISO") 14021, Environmental Labels and Declarations – Self-Declared Environmental Claims? If so, what are they? Should the Guides be modified in order to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

B. Specific Issues

- (1) Should the Guides be revised to include guidance regarding renewable energy or carbon offset claims? If so, why, and what guidance should be provided? If not, why not?
  - (a) What evidence supports making your proposed revision(s)?
  - (b) What evidence is available concerning consumer understanding of the terms “renewable energy” and “carbon offset”?
  - (c) What evidence constitutes a reasonable basis to support each such claim?
- (2) Should the Guides be revised to include guidance regarding “sustainable” claims? If so, why, and what guidance should be provided? If not, why not?
  - (a) What evidence supports making your proposed revision(s)?
  - (b) What evidence is available concerning consumer understanding of the term “sustainable”?
  - (c) What evidence constitutes a reasonable basis to support a “sustainable” claim?
- (3) Should the Guides be revised to include guidance regarding “renewable” claims? If so, why, and what guidance should be provided? If not, why not?
  - (a) What evidence supports making your proposed revision(s)?
  - (b) What evidence is available concerning consumer understanding of the term “renewable”?
  - (c) What evidence constitutes a reasonable basis to support a “renewable” claim?
- (4) The Guides provide that a recycled content claim may be made only for materials that have been recovered or otherwise diverted from the solid waste stream, either during the manufacturing process or after consumer use. Do the current Guides provide sufficient guidance for recycled content

claims for textile products? If so, why? If not, why not, and what guidance should be provided? What evidence supports making your proposed revision(s)?

- (5) The Guides suggest that recycled content be calculated on the annual weighted average of a product. Should the Guides be revised to include alternative method(s) of calculating recycled content, e.g., based on the average recycled content within a product line, or an average amount of recycled content used by a manufacturer across many or all of its product lines? If so, why, and what is the appropriate method(s) of calculation? If not, why not? What evidence supports making your proposed revision(s)?
- (6) The Guides provide that an unqualified claim that a product or package is degradable, biodegradable or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature within a “reasonably short period of time after customary disposal.” Should the Guides be revised to provide more specificity with respect to the time frame for product decomposition? If so, why, and what should the time frame be? If not, why not? What evidence supports making your proposed revision(s)?

#### **IV. Public Meetings**

Because of the wide-reaching issues involved in environmental marketing, the Commission also believes it would be beneficial to facilitate public dialogue on select issues by hosting public meetings. Commission staff will review and consider information gathered at these meetings in addition to the public comments in formulating its final recommendation to the Commission concerning the Green Guides review. As noted above, the first public meeting, to be held on January 8, 2008, will address carbon offsets and renewable energy certificates. The Commission plans to announce additional public meetings addressing other green topics, such as green labeling and advertising developments and consumer perception of green marketing claims.

**List of Subjects in 16 CFR Part 260**

Advertising, Environmental claims, Labeling, Trade practices.

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

By direction of the Commission.

Donald S. Clark  
Secretary