

FEDERAL TRADE COMMISSION

16 CFR Part 260

RIN 3084-AB15

Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for public comment.

SUMMARY: Pursuant to its decennial regulatory review schedule, 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 comments about the efficiency, costs, benefits, and regulatory impact of the Guides to determine whether to retain, modify, or rescind them. All interested persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning the Guides.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Green Guides Review (16 CFR part 260) (Matter No. P952501)” on your comment, and file your comment online at <https://www.regulations.gov/>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your

comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889 or Julia Solomon Ensor (202) 326-2377, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

I. The Green Guides

First issued in 1992 and most recently revised in 2012, the Commission’s Guides for Use of Environmental Marketing Claims, 16 CFR part 260 (“Green Guides” or the “Guides”), address the applicability of section 5 of the FTC Act, 15 U.S.C. 45(a) (“Section 5”) to environmental advertising and labeling claims.¹ The Green Guides outline general principles applicable to all environmental marketing claims, and provide specific guidance regarding many common environmental benefit claims. For each claim covered, the Guides: (1) explain how reasonable consumers likely interpret it; (2) describe the basic elements necessary to substantiate it; and (3) present options for qualifications to avoid deception.²

Although the illustrative qualifications provide examples for marketers seeking to make non-deceptive claims, they do not represent the only permissible approaches. As administrative

¹ The Commission issued the Green Guides in 1992 (57 FR 36363 (Aug. 13, 1992)), and subsequently revised them in 1996 (61 FR 53311 (Oct. 11, 1996)), 1998 (63 FR 24240 (May 1, 1998)), and 2012 (77 FR 62122 (Oct. 11, 2012)). The FTC administers several other environmental and energy-related rules and guides. *See* Guide Concerning Fuel Economy Advertising for New Automobiles (16 CFR part 259), Energy Labeling Rule (16 CFR part 305), Fuel Rating Rule (16 CFR part 306), Alternative Fuels and Alternative Fueled Vehicles Rule (16 CFR part 309), Recycled Oil Rule (16 CFR part 311), and Labeling and Advertising of Home Insulation Rule (16 CFR part 460).

² The Guides do not establish standards for environmental performance or prescribe testing protocols.

interpretations of the law, the Guides themselves are not enforceable. In any enforcement action, the Commission must prove the challenged act or practice is unfair or deceptive in violation of Section 5.

II. Regulatory Review of the Green Guides

The Commission reviews all of its rules and guides periodically to: (1) examine their efficacy, costs, and benefits; and (2) determine whether to retain, modify, or rescind them. The Commission completed its most recent Green Guides review a decade ago (77 FR 62122 (Oct. 11, 2012)). With the present Notice, the Commission commences a new review.

The Commission seeks comment on several general issues, which are addressed in section III.A. of this Notice, including the continuing need for the Guides, their economic impact, and their effect on the accuracy of various environmental claims. Section III.A. also seeks comment on the Guides' interaction with other environmental marketing regulations, and whether the Commission should consider rulemaking to establish independently enforceable requirements related to unfair and deceptive environmental claims. Since the Commission's 2012 revisions, increased attention to environmental concerns, including climate change and issues driven by the COVID-19 public health crisis, have likely encouraged continued environmental claims related to various products, packaging, services, and manufacturing processes. The Commission notes the proliferation of environmental benefit claims includes claims not currently addressed in the Guides. Accordingly, this review is important to ensure the Guides reflect changes in the marketplace over time.

The Commission also seeks to ensure the Guides appropriately respond to changes in consumer perception. As the Commission recognized in 1992, science and technology in the environmental area change constantly, and new developments might affect consumer perception.

Thus, in Section III.B., the Commission solicits specific consumer survey evidence and consumer perception data addressing environmental claims, including claims not currently covered by the Guides.

III. Issues for Comment

The Commission requests written comment on the following questions, including whether the Commission should initiate a proceeding to consider a rulemaking relating to environmental benefit claims under its FTC Act authority.³ Responses should be as specific as possible, and reference the question being answered, as well as empirical data or other evidence wherever available and appropriate. Additionally, the Commission also invites comments on any issues related to the Green Guides not specifically mentioned in the questions below.

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?

³ Under Section 18 of the FTC Act, 15 U.S.C. 57a, the Commission is authorized to prescribe “rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce” within the meaning of Section 5(a)(1) of the Act. Among other things, the statute requires that Commission rulemaking proceedings provide an opportunity for informal hearings at which interested parties are accorded limited rights of cross-examination. Before commencing a rulemaking proceeding, the Commission must have reason to believe that the practices to be addressed by the rulemaking are “prevalent.” 15 U.S.C. 57a(b)(3). Once the Commission has promulgated a trade regulation rule, anyone who violates the rule “with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule” is liable for civil penalties for each violation. The Commission obtains such penalties by referring a suit to the Department of Justice for filing in federal district court under Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A).

- a. What evidence supports your proposed modifications?
 - b. How would these modifications affect the costs the Guides impose on businesses, particularly on small businesses?
 - c. How would these modifications affect 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 and/or consumer and environmental organizations? What evidence supports the asserted costs?
6. What modifications, if any, should the Commission make 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 of the Guides?
7. Please provide any evidence that has become available since 2012 concerning consumer perception of environmental claims, including claims not currently covered by the Guides. Does this new information indicate the Guides should be modified? If so, why, and how? If not, why not?
8. Please provide any evidence that has become available since 2012 concerning consumer interest in particular environmental issues. Does this new information indicate 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, particularly 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, particularly to small businesses?

- a. What evidence supports your proposed modifications?
 - b. How would these modifications affect the costs the Guides impose on businesses, particularly small businesses?
 - c. How would these modifications affect the consumer benefits?
11. What significant costs, including costs of compliance, have the Guides imposed on businesses, particularly 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, particularly on small businesses?
- a. What evidence supports your proposed modifications?
 - b. How would these modifications affect the consumer 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 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 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 the Commission should consider as it reviews the Guides? If so, what are they? Should the Guides be modified to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

19. Should the Commission initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims?

a. If so, which principles set out in the Green Guides should be incorporated into a rule?

For each suggested provision, explain why and provide any evidence that supports your proposal.

- b. Are there additional principles related to environmental claims not currently covered by the Guides that should be incorporated into a rule? For each suggested provision, explain why and provide any evidence that supports your proposal.

B. Specific Claims

The Commission seeks comments on specific issues that have generated increased attention and interest over the last several years. The following questions are designed to facilitate comment on those issues, and the inclusion or exclusion of any topic does not indicate that specific modifications to the Guides are currently under consideration.

1. **Carbon Offsets and Climate Change, 16 CFR 260.5.** The Guides currently include guidance relating to carbon offsets. Should the Commission consider revising this section or provide additional guidance addressing other types of advertising claims related to carbon offsets and /or climate change?
 - a. Are there any specific claims related to carbon offsets not currently addressed by the Green Guides that are appropriate for further consideration during the review?
 - b. What, if any, evidence is there of deceptive claims related to climate change in the market?
 - c. If such evidence exists, what specific guidance should the FTC provide to help marketers avoid deceptive claims?
 - d. Is there any consumer research available regarding consumer perception of climate change-related claims such as “net zero,” “carbon neutral,” “low carbon,” or “carbon negative”?
 - e. Are there any specific deceptive claims related to climate change prevalent in the market?

- f. If evidence of deception exists, what specific guidance should the FTC provide to help marketers avoid deceptive claims? What evidence supports your proposed revision?
2. **Compostable, 16 CFR 260.7.** The Guides currently advise marketers claiming products are “compostable” in municipal or institutional facilities that they should qualify such claims if appropriate facilities are not available to a substantial majority of consumers or communities where the item is sold. Should this guidance be revised to define “substantial majority” consistent with the “recyclable” section? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision(s)?
3. **Degradable, 16 CFR 260.8.** The Guides provide that an unqualified claim indicating a product or package is degradable, biodegradable, oxo-degradable, oxo-biodegradable, or photodegradable should be substantiated by competent and reliable scientific evidence demonstrating the entire item will completely break down and return to nature within a reasonably short period of time after customary disposal. For products customarily disposed in a landfill, “reasonably short period of time” is defined as one year.
- a. Should the Commission revise the Guides to provide an alternative timeframe for product decomposition for all or any category of products? Does the timeframe differ for liquid products?
- b. If so, why, and what should the timeframe be? If not, why not? What evidence supports your proposed revision(s)?

- c. Should the Commission clarify or change existing guidance on degradable claims in light of its decision in the *ECM Biofilms* matter?⁴ If so, how?
4. **Ozone-Safe/Ozone-Friendly, 16 CFR 260.11.** The Guides contain an example stating it is deceptive to label a product “ozone-friendly” if the product contains any ozone-depleting substance, including those substances listed as Class I or Class II chemicals in Title VI of the Clean Air Act Amendments of 1990, P.L. 101-549, and others subsequently designated by EPA as ozone-depleting substances. The Guides list chlorofluorocarbons (“CFCs”); halons; carbon tetrachloride; 1,1,1-trichloroethane; methyl bromide; hydrobromofluorocarbons; and hydrochlorofluorocarbons (“HCFCs”) as examples of such ozone-depleting substances. Should the Commission remove or revise this example given that it references ozone-depleting chemicals that the EPA now bans? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision(s)?
5. **Recyclable, 16 CFR 260.12.** Should the Commission revise the Guides to include updated guidance on “recyclable” claims? If so, why, and what guidance should be provided? If not, why not?
- a. What evidence supports your proposed revision(s)?
- b. What evidence is available concerning consumer understanding of the term “recyclable”?
- c. What evidence constitutes a reasonable basis to support a “recyclable” claim?

⁴ *In the Matter of ECM BioFilms, Inc., a corporation, also d/b/a Enviroplastics International*, 160 F.T.C. 652 (2015).

6. **Recyclable, 16 CFR 260.12.** The Guides provide that marketers can make an unqualified “recyclable” claim when recycling facilities are available to a substantial majority of consumers or communities where the item is sold. “Substantial majority” is defined as 60%.
- a. Should the Guides be revised to update the 60% threshold? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision? Is there any recent consumer perception research relevant to the 60% threshold?
 - b. Should the Guides be revised to include guidance related to unqualified “recyclable” claims for items collected by recycling programs for a substantial majority of consumers or communities but not ultimately recycled due to market demand, budgetary constraints, or other factors? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?
7. **Recycled Content, 16 CFR 260.13.** The Guides state marketers may make “recycled content” claims only for materials 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? If so, why? If not, why not, and what guidance should be provided? What evidence supports your proposed revision(s)?
8. **Recycled Content, 16 CFR 260.13.** The Guides suggest marketers can substantiate “recycled content” claims using per-product or annual weighted average calculation methods. Should the Guides be revised to provide guidance on making “recycled content” claims based on alternative method(s), *e.g.*, mass balance calculations, certificate (*i.e.*, credit or

tagging) systems, or other methods? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?

9. **Recycled Content, 16 CFR 260.13.** What changes, if any, should the Commission make to its guidance on pre-consumer or post-industrial recycled content claims? How do consumers interpret such claims? Please provide any relevant consumer perception evidence.

10. **Energy Use/Energy Efficiency.** Should the Commission consider adding guidance on energy use or efficiency claims for home-related products, electric vehicles, or other products?

- a. What, if any, evidence exists of such deceptive claims in the market?
- b. What types of products are typically involved with deceptive claims?
- c. If deception exists, what specific guidance should the Commission provide to help marketers avoid deceptive claims? What evidence supports your proposed revision?

11. **Organic.** In 2012, the Commission declined to issue guidance on “organic” claims for non-agricultural products. Should the Commission revisit this determination? 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 “organic” with respect to non-agricultural products?
- c. What evidence constitutes a reasonable basis to support an “organic” claim in this context?

12. **Sustainable.** In 2012, the Commission determined it lacked a basis to give specific guidance on how consumers interpret “sustainable” claims. Should the Commission revisit this determination? 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?

IV. Instructions for Submitting Comments

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Green Guides Review (16 CFR part 260) (Matter No. P954501)” on your comment.

Because of the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. As a result, we strongly encourage you to submit your comments online through www.regulations.gov. To ensure the Commission considers your online comment, please follow the instructions on the web-based form. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the www.regulations.gov website. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the www.regulations.gov site.

If you file your comment on paper, write “Green Guides Review (16 CFR part 260) (Matter No. P954501)” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th

Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, clearly labeled "Confidential," and comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the

requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that 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 on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Secretary