



Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 CFR Part 260, Notice of the Federal Trade Commission
Prepared by Urvashi Rangan, Ph.D.
Director, Technical Policy
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Consumers Union (CU), non-profit publisher of *Consumer Reports*, appreciates the opportunity to comment on the proposed **Guides for the Use of Environmental Marketing Claims, 16 CFR Part 260**. The Commission has clearly dedicated much thought and time into drafting this important guidance, including important explanations that describe the rationale behind the recommendations.

The importance of the Commission to “respond to changes in the marketplace and help marketers avoid making unfair or deceptive environmental marketing claims” cannot be overstated. In this regard, CU believes the Commission has an important role to play in maintaining a fair marketplace. Consumers Union has been educating consumers about claims in the marketplace for seventy-five years and knows the value that these guides can have in bringing more honesty to the marketplace. We have also testified to Congress on problems associated with greenwashing in the marketplace and the need for strong government guidance.¹

Consumers Union supports many of the recommendations made by the guides including:

- Additional guidance on qualifying general environmental claims
- Caution to marketers discouraging unqualified certifications or seals and additional guidance on how to qualify claim, especially by denoting specific or limited benefits
- Additional guidance that “degradable” claims must be relevant to common solid waste disposal systems (that may have limited light, air and water)
- Disclosure of self-certified claims or a marketer’s direct relationship with an endorsing organization behind a certified claim
- Disclosure that a trade association or industry group is behind a certified claim (“since consumers place different weight on claims made by independent certifying organizations”)
- Addition of a guidance section for “non-toxic” claims and “free-of” claims, including guidance that it would be deceptive to claim a product was “free of” a substance not typically associated with the category of product

However, we believe the Guides could do even more to prevent deception in the marketplace and have outlined our recommendations below.

FTC can provide valuable guidance to other federal agency programs that oversee environmental marketing claims

While we appreciate that the Commission consults with other federal agencies “regarding their areas of expertise to ensure that the Commission does not issue guidance that duplicates or possible conflicts with their regulations and program,” we believe that the FTC can do more to prevent unfair or deceptive uses of government based environmental claims. The example cited

¹ <http://greenerchoices.org/pdf/CU%20Testimony%20Green%20Claims%202009.pdf>

(p.28) highlights that the Commission would not want to provide guidance for “organic” claims on agricultural products that are already covered under US Department of Agriculture (USDA) regulations. We agree that guidance from the FTC should not conflict with environmental claim standards outlined by other federal agencies. However, there are several examples of misuses of labels that guidance from the FTC could address without conflict.

FTC should explicitly discourage the use of “organic” claims that do not meet the USDA’s National Organic Program (NOP)

We believe that the FTC can do more to prevent misleading and deceptive uses of the “organic” label where USDA is unable or unwilling to do so. The Commission notes that the USDA National Organic Program only applies to agricultural products. We believe that this is an oversimplification. Processed foods contain non-agricultural ingredients that must be approved to be used in foods labeled as “organic.” Any food that makes an “organic” claim on the front of the package must be in compliance with the USDA National Organic Program.

This is not the case with personal care products as outlined in the petition that CU and Organic Consumers Association filed with the FTC in March 2010.² The USDA has elected to include personal care products in the scope of the National Organic Program. Those that meet the current standards (including using approved non-agricultural ingredients) can be certified to be compliant with the USDA standards. Unfortunately, consumers are faced with many so-called “organic” personal care products that do not comply with the USDA NOP. These products are misleading and in some cases, deceptive and certainly demonstrate unfair business practices in the “organic” personal care product marketplace that USDA is unable or unwilling to address.

There is an appropriate and necessary role for the Commission to ensure that consumers are not misled or deceived by “organic” claims made by non-agricultural products (dry cleaning services, lawn care), hybrid products (containing agricultural and non-agricultural ingredients) which are covered by the USDA, such as personal care products, and agricultural products like fertilizer that aren’t covered by the USDA’s organic program but where some sewage-sludge based fertilizer or compost products are being sold to consumers as “organic.” Sewage sludge fertilizers are in fact *prohibited* for use in growing food certified to the USDA’s National Organic Program. As such, this is one of the more deceptive misuses of the “organic” claim in the marketplace today.

In one final example, “organic” fish can be sold on the market but there are no organic standards defined by the USDA at this time. This practice would not be allowed for any other food product. In 2005, the state of California banned the sale of “organic” fish (SB 730). In the remaining states, consumers continue to be misled by so-called “organic” fish. Center for Food Safety, Food and Water Watch and Consumers Union had filed a joint petition for rulemaking with the USDA in 2007 regarding the misuse of the “organic” claim on fish and seafood products.³ That was followed by a request from Center for Food Safety to FTC to take action against this deceptive practice.⁴ To our knowledge, the request was not answered by the Commission. With regard to consumer perception, we would like submit findings from our 2008 national food labeling poll that provides nationally representative findings regarding consumer perception of “organic” fish.⁵ For example, 93% of consumers believe that fish should be produced from 100%

² http://greenerchoices.org/pdf/FTC_personalcare_petition_Mar2010.pdf

³ <http://www.centerforfoodsafety.org/pubs/OrgAquaUSDAPetitionFinal%207-11-07.pdf>,
<http://www.centerforfoodsafety.org/pubs/OrgAquaUSDAAppendix%207-10-07.pdf>

⁴ <http://www.centerforfoodsafety.org/pubs/OrgAquaFTCFinal%207-11-07.pdf>

⁵ <http://www.greenerchoices.org/pdf/foodpoll2008.pdf>

organic feed like all other organic food animal; and 90% of consumers believe that organic fish farms should be required to recover all waste so that it can't pollute the environment. In fact, these findings echo those from our 2007 national food labeling poll indicating that 91% of consumers agree that fish labeled as "organic" should be produced without environmental pollution and be free of or low in contaminants like mercury and PCBs. So-called "organic" fish on the market does not currently meet consumer perceptions for true "organic" fish and we believe it is a deceptive marketplace practice.

FTC has a very important role to play in providing guidance concerning "organic" claims that are not in compliance with the USDA's National Organic Program. As such, we believe that the FTC could and should regard unverified and non-NOP compliant "organic" claims in the same vein as "unqualified general claims of environmental benefit" that are "difficult to interpret," lack "substantiation duty" since they are not verified to meet the USDA NOP standards, and do not meet consumer perception of what "organic" should be. As described on p.44 of the proposed Guides and 16 CFR 260.4, "the Commission proposed advising marketers not to make unqualified general environmental benefit claims." CU recommends that non-NOP compliant "organic" claims be explicitly characterized by the FTC as such in order to "prevent deception about the specific nature of the environmental benefit being asserted." Although the Commission notes on p. 137, that "the current record [on organic] is insufficient for the Commission to provide guidance," we believe there is enough information about the current state of deception in the organic marketplace for the FTC to provide helpful guidance.

FTC should explicitly discourage the use of the "green" claim

In response to the Commission request regarding the use of the claim "green," Consumers Union believes that this is a vague claim with many potential meanings and interpretations. In the example provided on p. 50 of the proposed Guides, we agree that consumers may infer too much from, "Green—Now contains 70% recycled content." We believe the only way to be truthful about the recycled claim, without consumers misinterpreting, is to simply say "Now contains 70% recycled content." CU recommends that the FTC consider "green" to be an "unqualified general environmental benefit" that cannot be easily substantiated and discourage its use.

FTC should encourage the use of plastic numbers on products and packaging

We appreciate the discussion outlined from p. 84 to p. 91 in the proposed Guides. With respect to the Commission's analysis, we believe there is a more overarching issue than whether consumers perceive products, with the optional SPI-plastic code in an arrow chasing triangle, as recyclable. We appreciate the fact that certain plastics are more commonly accepted at municipal recycling plants. However, the ability of consumers to always tell which plastics they have will help them know which ones can be recycled. Consumers may also wish to voice their concerns with companies to encourage them to move toward more recyclable plastics. Some consumers would like to avoid polycarbonate plastics for food storage, for example, as they contain bisphenol A—yet another reason why encouraging the use of the plastic classification code is so important. Consumers Union recommends that the Commission encourage the use of a plastic number on products and packaging so consumers are not misled regarding which plastics they are or are not purchasing.

FTC should discourage the use of the "natural" claim

As the Commission correctly points out on p. 130 of the proposed Guides, other federal agencies have only provided limited guidance on what must be required to use a "natural" claim. These limited definitions fall significantly short of consumer perception of the "natural" label in many respects. With regard to consumer perception, we would like submit findings from our 2007

national food labeling poll that provides nationally representative findings regarding consumer perception of the “natural” label.⁶

When asked about foods -- such as bread, meat, milk, fish and snacks -- at least half of consumers say “natural” or “organic” labels are important to them. But the Poll also indicates that the current standards for “natural” labels on processed food and meat fall short of consumer expectations. It’s important for consumers to understand that while “natural” and “organic” products sit side-by-side in the supermarket, that they mean dramatically different things. Eighty-six percent of consumers expect the “natural” label to mean that processed food does not contain any artificial ingredients, but current standards only prohibit artificial colorings and additives. Artificial sugars and oils like high fructose corn syrup or partially hydrogenated oils can still be used in “natural” foods.

Currently, the “natural” label on meat only pertains to how the cut of meat was processed and not how animal was raised or what it ate. Nearly nine out of ten consumers want “natural” meat to come from animals that were raised on a natural diet without drugs, chemicals and other artificial ingredients. Eighty-three percent of consumers want “natural” meat to come from animals that were raised in a natural environment. Seventy percent of consumers want “natural” meat to mean that no salt water was added, a common practice in the meat industry. The USDA is reconsidering a variety of options concerning the “natural” label on meat, but according to our Poll results, they are not addressing the issues that concern most consumers. This sentiment is also reflected by 33,000 consumers who signed a petition to USDA asking them to withdraw the proposed “naturally raised” claim.⁷

Consumers Union believes that the Commission has an important role to play in preventing federal agencies from providing weak definitions, especially for popular environmental claims like “natural.” We believe that the “natural” claim is vague, cannot be substantiated adequately and currently can mislead and deceive consumers.

Regarding carbon offset claims, we resubmit our comments from January 2008 realizing that some of the issues have been addressed by the proposed Guides.⁸

We welcome further discussion with Commission on any of the issues raised in this comment.

Sincerely,

Urvashi Rangan, Ph.D.
Director, Technical Policy
Consumers Union
101 Truman Ave
Yonkers, NY 10703
914-378-2000

⁷ <http://www.thepetitionsite.com/takeaction/954/533/337/>

⁸ http://www.greenerchoices.org/pdf/Public%20Comments%20on%20Carbon%20Offsets%20Jan%2025%202008_new.pdf