



**Comments of Underwriters Laboratories
Proposed, Revised Green Guides,
16 CFR Part 260, Project No. P954501**

December 10, 2010

INTRODUCTION

On behalf of Underwriters Laboratories (UL) and UL Environment (ULE), we would like to thank you for the opportunity to comment on the U.S. Federal Trade Commission's (FTC) proposed revisions to the Green Guides (Proposed, Revised Green Guides, 16 CFR Part 260 No. P954501). We believe the proposed revisions will benefit consumers, retailers, manufacturers, and marketers by providing greater clarity with regard to the validation of environmental marketing claims and means to identify unfair or deceptive practices in the space.

UL has elected not to comment on each of the 18 itemized questions identified in Section VII of the FTC document, but will focus comments on those aspects for which we have specific expertise.

About Underwriters Laboratories

Underwriters Laboratories (UL) is an independent, not-for-profit product certification organization that has been testing products and writing product standards for over a century. This unique experience in providing a range of compliance solutions for manufacturers, consumers, and government regulators globally for 116 years has provided our organization unique insights into how laboratory accreditation, testing and certification, and ongoing surveillance can be structured to promote conformity.

UL Environment is a wholly-owned subsidiary of Underwriters Laboratories Inc., providing leadership in environmental services to help companies create more sustainable products and receive recognition for their environmental efforts. UL Environment leverages UL's expertise in product testing, certification, ongoing conformity assessment, and standards development and applies that experience to product sustainability characteristics. UL Environment's mission is to encourage respect for and stewardship of our environment by supporting the growth and development of sustainable products, services and organizations in the global marketplace through standards development, educational services, and independent third party assessment and certification.

CERTIFICATIONS AND SEALS OF APPROVAL

As published, the FTC's proposed Green Guide revisions include additional clarification of the appropriate role for environmental "seals of approval" and how such marks can and should be supported. UL applauds the additional attention on environmental labels and the criteria by which they are validated, as we believe manufacturers, retailers, marketers, and consumers should have confidence in scientific validation supporting such labels. Without supporting evidence behind these claims, such marks or seals can easily be abused and mislead consumers. FTC's proposed revisions clarify many of the requirements associated with validation criteria to further support identification of meaningful environmental labels, like the various ULE certification marks issued

as part of our conformity assessment work. With UL's 116-year history providing product certification and product certification labels and our Mark being one of the most recognized by consumers and retailers both in the United States and around the globe, providing criteria by which such marks or seals can be measured raises the bar and helps provide confidence in the scientific validity behind the claim.

To further enhance your published criteria, UL would like to propose a few additional recommendations to provide further clarification for stakeholders.

Recognition of Labels for Standards-based Certifications

UL recommends the FTC recognize in its requirements the marks/seals of qualified environmental conformity assessment bodies and clarify that standard-based certifications with an accompanying reference to the standard to which the product was qualified against, constitutes the proposed disclosures required by the revised Green Guides draft. Standards-based compliance labels have a long history of recognition and acceptance by manufacturers, retailers, and consumers alike. When a specific environmental standard is referenced in conjunction with a qualified third party conformity assessment mark, recognizing standards outline in detail the specific requirements for which the product must meet to be in conformance, such a standard reference should be considered to constitute the "clear and prominent language" as is required by the revised Guides draft. Like published specifications through government-owned mark programs, certifications based on recognized standards and/or government regulations can refer back to the published standard or regulations to provide the additional clarity for the claim for the consuming public.

Publicly Available Criteria

UL Environment strongly encourages the FTC to reverse its proposed decision and to require certifiers who validate or qualify product claims not based on a published, consensus-based standard to make publicly available the criteria used to support their certification. UL Environment strongly believes that if consumers are going to use seals and certifications to differentiate products and services based on their environmental performance, then consumers need to have access to the basis for those certifications/claims. Standard-based certifications include this information publicly already, as the criteria of the standard are readily available. Those claims that are not standard-based should be held to the same benchmark. Without access to the underlying criteria, consumers will have no effective way of comparing products or of determining which standards and certifications are meaningful.

Identification of Certifying Body with Standards References

UL Environment strongly encourages the FTC to require that for any claim on product packaging or materials that the product meets a publicly available standard that the materials also identify what certification entity validated the claim, regardless of whether first-, second- or third- party. It is insufficient to claim that a product is "Certified to ABC Standard." Such references lead to deceptive practices inferring independent, third party certification or direct involvement of standards development organizations – including organizations like UL, ASTM, or IEEE. Such claims are used to mislead consumers into thinking that such standards experts were involved with the assessment of the product. Consumers should be presented with more substantive information qualifying who made the assessment to the standard whenever a standard-conformity claim is made, such as "Certified to ABC Standard by XYZ." This requirement will permit consumers to evaluate both the quality of the standard and the quality of the certifying entity/organization and should be required in the revised Guides.

REFERENCES TO ENDORSEMENT GUIDE (16 CFR 255)

FTC's proposed revisions clarify that a marketer's use of the name, logo, or seal of approval of a third-party certifier is an endorsement and refers to the requirements of the FTC Endorsement Guide (16 CFR 255). UL would like to propose a few additional recommendations to provide further clarification for consumers and other stakeholders.

- We request the FTC clarify that qualified ecolabels, such as UL Environment and EcoLogo as third-party endorsers, (16 CFR 255.3 "Expert Endorsements" and 255.4 "Endorsements by Organizations") do not need to provide any additional qualifications describing the basis of the expert opinion on product packaging or advertising materials other than providing a reference to the specific standard to which the product or service has been certified. The use of the third-party certification Mark and standard reference together constitute this information.
- We encourage the FTC to clarify that the Endorsement Guides (16 CFR 255) prohibit any organization from endorsing a product or service unless the organization possesses the relevant scientific and technical expertise to evaluate the product or service. Some environmental organizations perform a wonderful public service by raising consumer knowledge of a specific issue, but there is a significant difference in the kind of expertise needed to raise consumer awareness and the expertise needed to conduct a scientific evaluation of a product or service's environmental impacts. Requiring or encouraging accreditation by a recognized accreditor, like ANSI, could assist the FTC in further clarifying what constitutes such technical qualification. Requirements that such entities act in accordance with ISO 14024 could also support such qualification.

RECYCLABLE AND RECYCLED CONTENT CLAIMS

FTC's proposed revisions clarify the requirements around making recyclable and recycled-content claims. The proposed approach is very helpful, although UL Environment recommends the following clarifications:

- FTC should provide clarity around the language used to describe the various ways a product can contain recycled-content because there is potential for significant confusion about the meaning of the language that can be used to qualify recycled-content claims. UL Environment proposes the use of the following definitions to provide such clarification:
 - **Post-Consumer material** -- Material that has reached its intended end user which is no longer being used for its intended purpose.
 - **Pre-Consumer (Post-Industrial) material** -- Material diverted from the waste stream during a manufacturing process that has never reached the end user. Excluded is the reutilization of materials generated in a process and capable of being reused as a substitute for a raw material without being modified in any way.
 - **Recovered (Reclaimed) material** -- Material that would have otherwise been disposed of as waste or used for energy recovery, but has instead been collected and recovered (reclaimed) as a material input, in lieu of new virgin material, for a recycling or manufacturing process.
 - **Recycled Content** -- The proportion of pre-consumer or post-consumer recycled material, by mass, in a product or packaging.
 - **Recycled material** -- Material that has been reprocessed from recovered (reclaimed) material by means of a manufacturing process and made into a final product or into a component for incorporation into a product.

- We encourage the FTC to include examples within the Guides to further clarify the meaning of the terms for purposes of aiding consistent compliance. Ensuring that all marketers are using the terms consistently will help eliminate consumer confusion. UL Environment recommends using examples such as the ones included in the attached UL Environment white paper, “Interpreting Pre-Consumer Recycled Content Claims: Philosophy and Guidance on Environmental Claims for Pre-Consumer Recycled Materials.”

DEGRADABILITY CLAIMS

FTC’s proposed revisions include an examination of degradability claims. UL Environment believes that FTC’s understanding of the science behind the decomposition that occurs in landfills is based on an assessment of older landfills and not the “actively managed” or “bioreactor” landfills that, according to the U.S Environmental Protection Agency, currently make up more than half of current landfills. Bioreactor landfills differ from conventional landfills in that they are operated in a controlled fashion with the intent of creating an in situ environment conducive to microbial degradation of waste. While there are not currently standards that would permit a company from making a verifiable degradability claim, such standards are being developed. Once such standards are available with products certified as meeting the standard, we encourage the FTC to revisit the Green Guides and adopt appropriate qualifying language to support this category of environmental claims, as appropriate with the science, and help ensure consumers are not being misled.

LIFE CYCLE ANALYSIS

In its proposed revisions, FTC has elected not to provide guidance on the use of life cycle information either in marketing or as substantiation for environmental claims. Given the increasing use (and potential misuse) of lifecycle claims, UL Environment asks that FTC reconsider and provide guidance on the use of lifecycle assessments (LCAs) to make comparative environmental marketing claims. Specifically, FTC should require marketers to identify the LCA tools used to conduct the analysis, the lifecycle stages included in the analysis, the boundary conditions used, and the name of the practitioner or laboratory that conducted it. This level of public information, which would not require the disclosure of any confidential business information, provides consumers with valuable insights into the legitimacy of LCA-based claims.

GREEN GUIDES REVIEW CYCLE

As the standards and science behind understanding sustainability, applications of life cycle assessment, and other learnings related to green products are constantly evolving, we encourage the FTC to adopt a cyclical review schedule to evaluate and update the Green Guides. As likely learned in this most recent review, the evolution of the science behind product claims is rapidly progressing. We therefore recommend that the FTC adopt a three-year review cycle at which time the Green Guides would be reviewed and updated to reflect these new understandings. At these milestones, scientific evidence can be solicited and the Guides can be evaluated against available standards and scientific substantiation, and revised appropriately, to reflect real time understanding of sustainability claims. Depending on the magnitude and need, this could be a strategic review of certain, more progressive topics or a holistic review of the full document.

SPECIFIC FTC QUESTIONS:

Question 1: *Should the Commission advise marketers that a qualified-general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area, but causes a negative impact elsewhere that makes the product less environmentally beneficial than the product otherwise would be? Why or why not?*

UL Environment strongly believes that marketers need to be aware of this risk. Accurate environmental claims that avoid consumer confusion can not be based on a single (or even a small number) of environmental factors unless it can be demonstrated that those single attributes address the most significant environmental attribute as identified after reviewing the broader lifecycle impacts of those factors. FTC should bring this to the attention of marketers and recommend that marketers rely on publicly available, life-cycle and consensus-based, environmental standards that consider the balance of the known environmental impacts. While single attribute standards/claims have a role when qualified as such, it is important the general environmental claims of benefits should be as clear as possible and consensus-based standards can serve as such a tool to define those criteria.

Question 2: *Would it be helpful to include an example in the Guides illustrating a qualified general environmental claim that is nevertheless deceptive?*

Yes, the FTC should include examples of qualified general environmental claims that are deceptive. FTC should also provide additional examples of non-deceptive qualified claims. Specific claims about environmental preferability limited to a single environmental issue, for example, appear to be misunderstood by some consumers as making broader environmental claims. Specific environmental claims such as energy- or water-efficiency claims, however, are very beneficial for consumers and the broader environment. There needs to be a clear way to make these claims without making a potentially deceptive claim because consumers assume a broader environmental claim is being made. FTC should provide examples of how these claims can be deceptive and how to properly qualify the claims to avoid being deceptive.

Question 3: *...[W]ould it be deceptive for a product to be advertised with an unqualified general environmental benefit claim if the product had a negligible environmental impact?*

Yes, it would be deceptive for a product to make an unqualified general environmental benefit claim because all such claims are dependent on the definitions of “negligible.” Given the current state of the science of making environmental claims, there are no consistent definitions of negligible. Any definition developed would likely be challenged by other experts claiming that something had been omitted. As a result, it is incredibly important for all environmental claims to be qualified and for environmental claims to reference legitimate environmental standards and who or what organization did the qualification against the standard.

Questions 8-10: *What changes, if any, should the Commission make to its guidance on pre-consumer recycled content claims? How do consumers interpret such claims? [QUESTION CONTINUES]*

See above section titled, RECYCLABLE AND RECYCLED CONTENT CLAIMS.

Question 11: *If a product is advertised as “made with recycled materials,” either in whole or in part, should the Commission advise marketers to qualify that claim to indicate that the product is not recyclable if it is not? Why or Why not? If a disclosure is needed, please describe what the disclosure should be and why.*

Given that FTC’s own survey data indicates consumers are confused by the distinction between a recycled-content item and a recyclable item, it seems appropriate to require marketers to qualify claims. Proposed language could include “Made with Recycled Content, but is not recyclable.”

Question 12: *Are consumers aware that manufacturers are no longer permitted to use CFCs in their products? Do no-CFC claims imply that other products still contain CFCs? Please provide any relevant consumer perception evidence.*

While we can only offer anecdotal evidence of consumer confusion about CFCs, based on in-store field research conducted by TerraChoice, a member of the UL family of companies, as part of its Seven Sins of Greenwashing, it does appear consumers are confused by no-CFC claims. The confusion can be easily remedied by qualifying no-CFC claims with language others are already using such as “Contains no CFCs, which are prohibited by federal law.” This qualified claim addresses and educates those consumers that might still be confused about the presence of CFCs.

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