

**OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE**

**FEDERAL TRADE COMMISSION**

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Meeting Before the Commission

S E C O N D  
C O R R E C T E D C O P Y

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FEDERAL TRADE COMMISSION

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In Attendance: (Continued)

HOWARD BAKER, Independent Cosmetic Manufacturers and Distributors

MARY GRIFFIN, State Attorneys General's Task Force

CATHERINE BECKLEY, Cosmetic, Toiletry and Fragrance Association

ROBERT KIEFER, Chemical Specialties Manufacturers Association

SHEILA A. MILLAR, LEWIS FREEMAN, Society of the Plastics Industry

DR. GERALD R. PFLUG, Soap and Detergent Association

MARK EISEN, Home Depot

ROBERT MAYER, University of Utah

ALAN DAVIS, Conservatree Information Services

ARTHUR GRAHAM, Free Flow Packaging Corp.

FRAN MCPOLAND, Federal Environmental Executive

CHARLES BROWN, National Association of Chain Stores, National Retail Federation, Petroleum Marketers Association, National Lumber and Building Material Dealers Association, and National Association of Retail Druggists

EDGAR MILLER, National Recycling Coalition

SUSAN DAY, Ford Motor Co.

RICK OTIS, American Plastics Council

ELIZABETH SEILER, Grocery Manufacturers of America

KEITH SCARBOROUGH, Association of National Advertisers

PAT LAYTON, American Forest and Paper Association

In Attendance: (Continued)

ARCHIE BEATON, Chlorine Free Products Association

ALAN THIEMANN, National Association of Chain Stores,  
National Retail Federation, Petroleum Marketers  
Association, National Lumber and Building Material  
Dealers Association, and National Association of  
Retail Druggists

PABLO COLLINS, Paper Recycling Coalition

MARTIN NEVILLE, Art and Creative Materials Institute

S E S S I O N 5

1  
2 MS. BERNSTEIN: Good morning. I am Jodie  
3 Bernstein and it is my pleasure to welcome you back for this  
4 second day of an excellent workshop. Again, welcome to the  
5 Federal Trade Commission on behalf of the staff and on  
6 behalf of the chairman and the other commissioners who asked  
7 me particularly to convey to you how grateful they are for  
8 the amount of participation that we have had in this  
9 workshop. To some, it is an unusual forum, but the  
10 Commission has particularly found it a very useful one and I  
11 think this one really exceeds the others that we have done.  
12 And I know how difficult it is, how hard the issues are, and  
13 how much preparation has gone into it. So, again, we do  
14 want to say how grateful we are for the amount of  
15 participation and that we look forward to continuing this  
16 dialogue as it may emerge.

17 Denise has done an excellent job, as, I might add,  
18 has my staff in preparations for it and I hope in working  
19 with you, as I know they have.

20 I would say one thing today, Denise. I think the  
21 air quality in here has improved probably because we do not  
22 have so many breathers.

23 MS. MADIGAN: That is right.

24 MS. BERNSTEIN: But it is a smaller group. I  
25 would urge you all to speak up and speak up often, as we

1 will on our staff.

2 So, Denise, let's begin.

3 MS. MADIGAN: All right. Thank you.

4 Good morning, everyone. Let me just make a brief  
5 announcement. I am Denise Madigan, the facilitator. We may  
6 be joined this morning by a representative of 3M  
7 Corporation. You will not see them listed on the agenda.  
8 They originally had been slated to appear. At the last  
9 minute, they thought they could not appear so their names  
10 had been removed. But they have notified the FTC that they  
11 could, in fact, come today. So we may be seeing them on the  
12 ozone panel and on the new claims panel.

13 Before we begin, I am going to take off my jacket  
14 and encourage anybody else who would like to get comfortable  
15 to do the same.

16 And is our recorder ready to take notes? Okay.

17 And should we do it in the same order we did last  
18 time, going around the table? Okay.

19 Before we even do that, let me just draw your  
20 attention, for the newcomers, to the one-page list on  
21 conference procedures. And I am not going to go through all  
22 of those in detail, but let me just highlight a couple of  
23 things.

24 There will not be opening statements by any  
25 participants. Opening statements or prepared statements

1 will generally be discouraged. We are here to have a  
2 dialogue. We have some very specific questions the FTC has  
3 posed and would like your very best thinking about how to  
4 respond to those.

5 We also encourage people not to simply repeat what  
6 is in their written comments. You can assume that the FTC  
7 staff has read your written comments at least once, although  
8 I cannot say the same, perhaps, for everybody around the  
9 table. But keep that in mind as you frame your remarks  
10 because we are going to try to make the best use of time.

11 If you want to make a point, please be sure to  
12 catch my eye. I am keeping a running tab of who wants to  
13 speak. And at some point I will give preference to people  
14 who have not yet had a chance to speak. You will have a  
15 chance to speak more than once, so I will not lose sight of  
16 anybody throughout the course of the day.

17 All right. Any questions before we begin? And I  
18 am going to open this up to anybody in the audience as well.

19 Any questions about how the proceedings are going  
20 to function?

21 One other point, with respect to public  
22 participation, if you were not here yesterday, there are  
23 small little half-sheets of paper. We ask that you put your  
24 name, your organization and just very briefly the topic you  
25 would like to address and what we will do during the public



1 participation segments is cluster those by topic so that  
2 everybody who wants to speak about a certain topic can speak  
3 at roughly the same time.

4 If you want to address more than one topic, we ask  
5 that you fill out an additional sheet for each topic so we  
6 can cluster them that way. And we have found that we have  
7 had more than enough time to let everybody who wanted to say  
8 something in the public section say something, so we  
9 encourage you to have your say.

10 With that, let's start with Methyl Bromide  
11 Alternatives. We will need a full name and the name of your  
12 organization and, if the spelling might be a little unusual,  
13 speak slowly for our recorder.

14 MR. HONDORP: My name is Brett Hondorp, that is H-  
15 O-N-D-O-R-P. I am a policy assistant with Friends of the  
16 Earth and I am representing the Methyl Bromide Alternatives  
17 Network.

18 MS. MADIGAN: Let me do one thing with the mikes.  
19 You will need to speak into the mike a little more.

20 Professor Cude?

21 MS. CUDE: I am Brenda Cude, University of  
22 Illinois.

23 MR. DENISON: Richard Denison, Environmental  
24 Defense Fund.

25 MR. CHAFFEE: Chet Chaffee, Scientific

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1 Certification Systems.

2 MR. KRAMER: Kim Kramer, Foodservice and Packaging  
3 Institute.

4 MS. SANDERS: Mavis Sanders, EPA.

5 MS. COX: Carolyn Cox, Federal Trade Commission.

6 MR. PEELER: Lee Peeler, Federal Trade Commission.

7 MS. BERNSTEIN: Jodie Bernstein, Federal Trade  
8 Commission.

9 MS. MADIGAN: Denise Madigan, facilitator.

10 MR. BANK: Kevin Bank, Federal Trade Commission.

11 MR. OSTHEIMER: Michael Ostheimer, Federal Trade  
12 Commission.

13 MR. BAKER: Howard Baker, Independent Cosmetic  
14 Manufacturers and Distributors.

15 MS. GRIFFIN: Mary Griffin, Attorney General's  
16 Office of Massachusetts and I am here on behalf of the task  
17 force that includes representatives of attorneys general of  
18 12 states.

19 MS. BECKLEY: I am Catherine Beckley with the  
20 Cosmetic, Toiletry and Fragrance Association.

21 MR. KIEFER: I am Robert Kiefer. I am with the  
22 Chemical Specialty Manufacturers Association.

23 MS. MILLAR: Sheila Millar for the Society of the  
24 Plastics Industry.

25 DR. PFLUG: Gerry Pflug, Soap and Detergent

1 Association.

2 MS. MADIGAN: Did you get all the names? Okay.

3 Let's begin then. If we turn to the agenda, the  
4 first morning session will deal with ozone and air quality  
5 claims.

6 The FTC has identified five specific questions and  
7 what I would like to propose is we break up the discussion  
8 as follows: let's take the first two questions together and  
9 you can address either one or the other, or both at the same  
10 time, for the next 45 minutes. After that, we will move to  
11 the following two questions which deal with VOCs and save  
12 the last question which involves other issues related to  
13 ozone-safe or ozone-friendly for the end.

14 So let's begin with the first two questions and I  
15 will read them out loud for the record.

16 "What do 'No CFCs' claims convey to consumers? Do  
17 they convey a claim that there will be no harm to the  
18 atmosphere environment?" and "To what extent are there  
19 consumer misperceptions about CFCs and consumer products?"

20 And keep in mind that we will be discussing VOCs  
21 separately in the next mini-segment.

22 And, with that, I am going to open it up and ask  
23 who would like to begin the discussion.

24 Okay. Foodservice?

25 MR. KRAMER: Yes, Kim Kramer, Foodservice and

1 Packaging.

2 We did not do any surveys on what consumer  
3 perceptions were because, quite honestly, we thought this  
4 was a dead issue. We stopped labeling our products as an  
5 individual company and a lot of the member companies, let's  
6 say in '92, '93. The CFCs had all been discontinued in 1990  
7 and we did not think we should keep putting it on our  
8 packages.

9 And still today, at least in the state of New  
10 York, where I live, there were three bills introduced this  
11 year that were going to ban things -- products with CFCs --  
12 and it was our foam products and the legislators that  
13 introduced the bills are saying that their constituents  
14 still believe that CFCs are used in foam products.

15 As I visited universities to help them with  
16 recycling programs, I get the same misperceptions that CFCs  
17 are still used in foam products. One of my colleagues got  
18 three calls in one day on this issue. I mean, it is still  
19 there and it sort of boggles your mind. It probably says we  
20 did not do a very good advertising job when CFCs were  
21 stopped being used.

22 But, anyway, from our evidence we see, people  
23 still believe it is there. I cannot tell you what percent  
24 of the population, but it is very surprising to me that that  
25 is still a perception and it is a very real one out there.

1 Thank you.

2 MS. MADIGAN: CSMA?

3 Just for the new people, if you would identify  
4 yourself by name each time you speak for the transcript.

5 MR. KIEFER: Robert Kiefer for the Chemical  
6 Specialty Manufacturers Association.

7 We do have some of that data that gentleman from  
8 the Foodservice Packaging alluded to. We have conducted  
9 several -- or one of our member companies, S. C. Johnson and  
10 Company has conducted several studies with Roper  
11 Organization and in 1990, 69 percent expressed concern about  
12 the destruction of the stratospheric ozone layer; 59 percent  
13 said individuals can do little or nothing about this  
14 problem; and then 58 percent regularly or from time to time  
15 avoid buying products in aerosol containers because of this.

16 Roper's study in 1991 conducted a consumer opinion  
17 survey to which 86 percent incorrectly responded that most  
18 aerosol products still contain CFCs. In 1994, the study was  
19 also repeated and, although some improvement was shown, 74  
20 percent incorrectly responded that aerosols contain CFCs.

21 This is a staggering number in the way of  
22 misperceptions regarding CFCs contained in these products.  
23 CFCs have not been in these products since 1978, but the  
24 misperception out there is far greater than the deception of  
25 putting the "no CFC" claim on products.

1           I think some of the studies earlier alluded to  
2 maybe 10 to 15 percent may misperceive the no CFC message,  
3 but we are trying to tell you that 75 percent still believe  
4 that CFCs are still in these products. So we have a huge  
5 education campaign that we have to conduct and so,  
6 therefore, we would like to be able to use the specific  
7 claim of no CFCs on our products.

8           We had also introduced in our comments a concept  
9 of educational components to the general scope of the  
10 guidelines and this is directly related to the no CFC  
11 message. This educational component would help to convey a  
12 truthful environmental message such as no CFC. It would aid  
13 in the recognition of the environmental attribute. And, in  
14 addition, it would help to change the misperception  
15 surrounding the claim because without this claim, the  
16 product has a negative connotation associated with it and  
17 can adversely affect product purchases.

18           MS. MADIGAN: Thank you.

19           Professor Cude?

20           MS. CUDE: Brenda Cude, University of Illinois.

21           My research three years ago would confirm that  
22 consumers do have misperceptions about CFCs. But I would  
23 say it is more in the category of probably not knowing the  
24 specific compounds. CFCs is the one that they have heard of  
25 and they know it has some negative connotation with the

1 ozone layer, but that is about as far as they go.

2 Certainly, there are data that indicate that they  
3 do incorrectly believe CFCs are still in aerosols. However,  
4 I think that makes the case for why there should not be a  
5 specific claim of no CFCs on a brand -- on a particular  
6 brand of product. That, to me, is an implied superiority  
7 claim to the consumer who believes that all aerosols contain  
8 CFCs. To see that claim on a specific brand would suggest  
9 to that consumer that that brand is superior to others  
10 because that one does not contain CFCs.

11 I would, again, reiterate my position that you do  
12 not do education by product labeling and if the industry  
13 wants to educate consumers that aerosols do not contain  
14 CFCs, then that should be the statement. Aerosols do not  
15 contain CFCs, not an implication that that brand is  
16 different from others by making a no CFC claim on that  
17 brand.

18 MS. MADIGAN: EDF, followed by CSMA.

19 MR. DENISON: We certainly appreciate the dilemma  
20 that I think aerosol manufacturers face in this regard  
21 because I would concur that there is considerable consumer  
22 misperception about the presence of CFCs in aerosols.  
23 Unfortunately, that confusion -- and I would have to agree  
24 with Professor Cude on this -- does not necessarily lead to  
25 the conclusion that one should allow this type of claim and

1 I think there are a number of concerns about them, some of  
2 which Professor Cude spoke to and I want to raise a couple  
3 of others.

4 There needs to be additional guidance because of  
5 the confusion. I think part of the problem with a claim of  
6 no CFCs is it implies, first of all, to consumers that a  
7 product is safe for the ozone layer, if you will, broadly  
8 speaking. And some products -- in particular, foam plastic  
9 products -- have substituted CFCs with other chemicals which  
10 are less damaging to the ozone layer but, nevertheless,  
11 still have ozone-depleting character.

12 A broader claim of the sort that a product does  
13 not contain any ozone-depleting chemicals would be far  
14 superior to one that says no CFCs because it plays on a  
15 distinction that is frankly lost on the vast majority of  
16 consumers if, indeed, it still contains ozone-depleting  
17 chemicals, albeit less potent.

18 Unfortunately, I think the confusion goes even  
19 deeper than this, though, and aerosols are a good example of  
20 this, as well as foams, where volatile organic chemicals  
21 have replaced CFCs or other ozone-depleting chemicals. And  
22 this confusion is amplified by the fact that both categories  
23 of chemicals relate to ozone. In one case, ozone depletion;  
24 in the other case, ozone supply or ozone production  
25 downstairs rather than upstairs in the troposphere.



1           This is an area where I think the typical  
2 consumer, for very good reasons, is confused. Ozone is  
3 ozone and do you want more of it or less of it and where do  
4 you want it and so forth. Frankly, I would argue that  
5 probably the vast majority of people in my organization  
6 could not give a great explanation of all of that to  
7 somebody, let alone a typical consumer.

8           Where does that confusion leave us? The problem  
9 is that that confusion is only amplified, I think, in cases  
10 where claims of this sort are being made that try to draw a  
11 line between one category of effect and the other. And I  
12 would argue that most consumers probably even take a no CFCs  
13 type of claim as representing safe for the atmosphere or  
14 fine for air quality and that is, in many cases, absolutely  
15 not the case.

16           Moreover, a no CFCs claim in the case of aerosols  
17 raises two other concerns -- one, it is simply a statement  
18 of compliance with the law which banned those chemicals from  
19 that application many years ago. I would agree with  
20 Professor Cude that it implies a superiority or an attribute  
21 of that product that somehow goes beyond compliance,  
22 especially when applied to a specific product. It implies  
23 that other products next to it on the supermarket shelf  
24 would not have that attribute when, in fact, they do and  
25 they do so because they were required to do so by law.

1           Where such claims are allowed at all, if in fact  
2 the Commission decides to do so, I think it is critical that  
3 several qualifiers be added -- one, that there be a  
4 qualification that makes clear whether we are talking about  
5 the manufacture of the product, the use of the product, or  
6 both; and, second, I think the Commission has to figure out  
7 how to grapple with this notion that a claim about one  
8 specific aspect of an atmosphere-damaging effect, if you  
9 will, does not imply a broad removal of all impact to the  
10 environment or to the atmosphere. That is a tough one to  
11 do, but I think that that is a clear, reasonable perception  
12 by most consumers, given the significant technical and  
13 scientific complexity of these issues.

14           MS. MADIGAN: CSMA, you were next. But I am going  
15 to ask if I may leapfrog a little bit because a few other  
16 people have not yet had a chance to talk. But I will come  
17 back to you. I have you marked. I will write you down.

18           Next person is Cosmetic, Toiletry and Fragrance  
19 Association.

20           MS. BECKLEY: I just want to address a couple of  
21 points that were raised. First of all, I do not think that  
22 you can necessarily think that consumers are taking away a  
23 "safe for the environment" claim. In the FTC's 1993  
24 consumer perception study that was in the public record,  
25 consumers that were shown no CFCs claims and then asked the

1 open-ended question, "What claims did you take away from  
2 that, or what did you see on the label," none of the 60  
3 respondents said anything about environmental claims. So I  
4 think, one, they may not be remembering the claims, but I  
5 think more importantly is that they are not misinterpreting  
6 it to mean that the product is safe for the environment or  
7 has no impact.

8           Also, I think the point about no CFCs being a  
9 statement about compliance with the law, I think that that  
10 is really something that the Commission would recognize as a  
11 truthful statement and it should not be prohibited by the  
12 guides.

13           MS. MADIGAN: ICMD?

14           MR. BAKER: Yes, I am Howard Baker.

15           MS. MADIGAN: Independent Cosmetic Manufacturers  
16 and Distributors?

17           MR. BAKER: Yes. I am sorry.

18           The no CFC claim and the whole approach to this is  
19 actually a very valuable tool for people selling products in  
20 a very competitive marketplace. The guides that you have  
21 written have provided a very good tool for people writing  
22 the claims to write them well in a format that everyone  
23 agrees is consistent and legal, safe harbor, and all of  
24 that.

25           In a sense, because on this particular issue there

1 is so much confusion in the marketplace, in the average  
2 consumer's mind, about CFCs, the claim remains very  
3 valuable. If the consumer is choosing between buying an  
4 aerosol product and buying, perhaps, a non-aerosol product  
5 with which the product competes, the misconception that the  
6 aerosol still contains probably CFCs might cause a choice to  
7 be made for the non-aerosol form and inaccurately and  
8 unfairly disparage the aerosol product in a case where it  
9 should not.

10 If there are other merits for the non-aerosol  
11 product, then fine. The other claims and the other  
12 attributes of the product would prevail and the consumer who  
13 is reasonable would make the choice. Having the claim  
14 accessible of no CFCs is in the face of all of the confusion  
15 that we seem to acknowledge is out there in the consumer's  
16 mind. They need to see that so that they can be reminded of  
17 the fact that these materials are not used in aerosol  
18 products and the aerosol products, in general, are not  
19 unfairly disparaged in their minds.

20 In addressing the educational program of how do  
21 you deal with this misconception, the guides have been put  
22 together from the perspective of the people that have to  
23 write claims and comply with the regulations. A version of  
24 the guides written for the benefit of the consumer might be  
25 a very useful tool in the public to help them understand

1 some of what they are reading and what they can expect  
2 claims to mean so that when they pick up a package, they may  
3 have already read it or they can go and find it and read it  
4 again if they are concerned, if they are confused, and if  
5 they are interested, for what it is worth.

6 Thank you.

7 MS. MADIGAN: SPI, followed by Soap and Detergent.

8 MS. MILLAR: Sheila Millar for the Society of the  
9 Plastics Industry.

10 I want to make a couple of points. I think we  
11 have talked about the misperception problem and it is a real  
12 problem for many of the plastics products today. These  
13 problems with consumers perceiving that products are made  
14 with CFCs leads to product deselection and to legislative  
15 activities, so it remains very important that we have the  
16 opportunity to truthfully tell consumers what is or is not  
17 in their product when those ingredients are of interest to  
18 them.

19 That being said, it has been SPI's long-standing  
20 recommendation that it is completely improper to couple that  
21 truthful, accurate and narrow claim with a claim of broad  
22 environmental benefit. In that vein, SPI commented on a  
23 petition that EDF, NRDC, Friends of the Earth and other  
24 environmental groups submitted to EPA on the issue of  
25 requiring labeling of products made with HCFCs and in that

1 petition they suggested that those products that were not  
2 made with any ozone-depleting substances could be labeled as  
3 ozone-safe, CFC-free, et cetera. I think that kind of  
4 commentary is contrary to the guides and is an effort to  
5 link that narrow claim to a claim of broad environmental  
6 benefit, which I believe is contrary to the guides.

7           Again, I think the misperceptions that exist are  
8 very real and the purpose of the guides is to balance the  
9 rights of the advertisers to provide truthful and non-  
10 deceptive information to consumers with their obligation to  
11 not do so in a manner that will, in fact, be confusing. And  
12 I think in this context it is that linkage to a broad  
13 environmental claim that creates the problems and you have  
14 seen that and you have done a number of enforcement actions  
15 in that area, which I think is highly commendable.

16           Without that linkage, though, I question whether  
17 there is any more data to support the contention that a  
18 narrow claim of no CFCs or CFC-free implies any more  
19 superiority than a recycled content claim or any other  
20 environmental claim.

21           MS. MADIGAN: Okay.

22           Soap and Detergent and then followed by Chemical  
23 Specialties.

24           DR. PFLUG: Thank you.

25           The fact is that no CFCs is a truthful statement

1 about the product and any manufacturer who puts that on his  
2 label should be allowed to do so.

3 The second point, and we agree with SPI, is that  
4 if you combine this with a broader environmental claim and  
5 those broader claims play upon the fact that you contain no  
6 CFCs but talk about safety or other issues that the product  
7 may not have those attributes, then we see that as a  
8 problem. But the fact that the statement "No CFCs" or  
9 "Contains no CFCs" is a fact and how can you not allow a  
10 manufacturer to put that on his package?

11 MS. MADIGAN: Okay.

12 Chemical Specialties?

13 MR. KIEFER: Robert Kiefer, CSMA.

14 I think one thing we need to do is get to the  
15 issue, pretty much, here. In the guides themselves, under  
16 "Specific Claims" it has the category of ozone-friendly,  
17 ozone-safe. I think we will all agree that this is a broad  
18 claim that needs to be separated from the use of the  
19 specific no CFC term.

20 The Commission's linking of stratospheric ozone  
21 problems and lower level smog problems in one of the consent  
22 orders adds to this consumer confusion over the issue,  
23 rather than lessening it. The FTC has not challenged the no  
24 CFC claim used by itself unless the product contained  
25 another ozone-depleting substance or used the no CFC claim

1 in conjunction with a broader, ozone-friendly or  
2 environmentally-friendly claim.

3 Eleven of the 29 consent orders, or 30 if you  
4 count the one that is out on the table here, ten of them are  
5 related to broad claims, of which out of those ten, eight of  
6 them also have the no CFC message in it. So there is a  
7 combination there. Nine of the consent orders contained  
8 ozone-depletors and the one that was a no CFC by itself also  
9 contained HCFCs.

10 The FTC should confirm that the no CFC claim is  
11 acceptable as long as there are no ozone depletors present  
12 in the formulation and as long as the claim is made  
13 separately from other broader environmental claims.

14 The Clean Air Act requires that a product be  
15 labeled if it contains a Class I ozone depletor. If  
16 labeling to indicate the specific presence of ozone  
17 depletors in a product is not only allowed but required, at  
18 least equally prominent labeling to indicate their absence  
19 should be allowed as well.

20 As to the issue of how to convey this message,  
21 CSMA, through its Consumer Aerosol Products Council, or  
22 CAPCO, has conducted other public information programs to  
23 try to counter media misperception, which is pretty much the  
24 cause of the proliferation is in the media. But it is also  
25 aimed at trying to get to the consumers as well.



1 CAPCO conducted a focus group in August of '94 and  
2 the purpose was to test various approaches and themes to  
3 communicating accurate information about U.S. aerosols being  
4 CFC-free. And a strong message from the participants was to  
5 prominently promote the no CFC message on aerosol products.

6 The term no CFCs appeared more meaningful in  
7 contexts such as, "Will not damage the ozone." And this  
8 response encouraged CAPCO to focus on educational program.  
9 An outgrowth of this was the response was to standardize and  
10 come up with a single, uniform, industrywide, no CFC logo  
11 statement and this included a review of the EPA Pesticide  
12 Registration Notices, which we had alluded to earlier about  
13 labeling of Class I ozone depleters for pesticides, and  
14 basically we came up with a symbol that its purpose is as a  
15 statement of fact and certainly to mislead.

16 The statement reads, "No CFCs - Contains no CFCs  
17 which deplete the ozone layer." And that is the message  
18 that we want to get across to our consumers to counter this  
19 misperception.

20 MS. MADIGAN: Okay.

21 We will hear from the EPA, followed by the State  
22 Attorneys General.

23 MS. ANDERS: Mavis Anders, EPA.

24 I work specifically with product labeling for  
25 classifying Class II substances and while the agency has not

1 done any specific research on positive labeling as it  
2 responds to labeling of consumer products with the no CFC  
3 claim, the response that we have gotten back informally has  
4 been that consumers do perceive the no CFC claim as a claim  
5 of that product being non-ozone-depleting in the non-  
6 stratospheric ozone-depleting. And so, while we have not  
7 done any specific research, our perspective has been that a  
8 no CFC claim implies a larger perception of being ozone-safe  
9 than we would like to see.

10 MS. MADIGAN: Okay.

11 Attorneys General?

12 MS. GRIFFIN: Mary Griffin from the Attorney  
13 Generals Task Force.

14 I just wanted to make a point that no one is  
15 trying to prevent this industry from consumer education and  
16 correcting consumer misperceptions. I guess the request is  
17 that that be real information and real correction of  
18 consumer misperceptions. And it seems like this is such an  
19 easy point to make in a very straightforward manner on a  
20 label.

21 If you have a 75 percent misconception rate among  
22 consumers, it seems like it would be very informative and  
23 worth the space on your package to say, "CFCs have not been  
24 used in aerosol products since 1990." I mean, that is a  
25 straightforward, actually informative, way to address the

1 problem.

2           The Attorney Generals Task Force would recommend  
3 that CFC claims be qualified in some way and we are  
4 particularly concerned about the implications for the VOC  
5 issue and we specifically recommend it in our Green Report,  
6 too, that all ingredients that are used as propellants be  
7 listed so that consumers can be aware that there might be  
8 other ingredients that are potentially harmful to the  
9 atmosphere.

10           MS. MADIGAN: Before I open it up to anybody else  
11 again, is there anybody who has not yet spoken to this issue  
12 who would like to speak?

13           Scientific Certification Systems?

14           MR. CHAFFEE: Yes, Chet Chaffee, Scientific  
15 Certification Systems.

16           We concur with the State Attorney Generals Task  
17 Force that education is necessary and a statement that said  
18 no CFCs in products since 1978, 1990, whatever it is, would  
19 be useful. But there are still products in the marketplace  
20 that manufacturers come to us for some guidance on making  
21 marketing claims and certification where there are still  
22 trade-offs so there still needs to be some manner of  
23 guidance on products where, clearly, there are ozone-  
24 depleting chemicals being traded off for non-ozone-depleting  
25 chemicals.

1           So simply education is not going to do it. There  
2 still needs to be guidance on what do you do in trade-offs  
3 and how do you deal with the VOC issue.

4           MS. MADIGAN: Anyone else who has not yet spoken  
5 to the issue?

6           Okay. What I would like to do is, I have  
7 recognized EDF and CSMA and there may be others, but I am  
8 going to turn to the FTC first and ask if they have any  
9 questions they would like to pose to follow up.

10          Carolyn?

11          MS. COX: Yes. This is Carolyn Cox from the  
12 Federal Trade Commission.

13          I think it was the representative from ICMD had  
14 noted that consumers might pick pumps versus aerosols if  
15 they realized that aerosols do not have CFCs. And what I am  
16 wondering is if consumers knew the truth about the impact of  
17 VOCs on the environment, if they would still make the same  
18 choice. Is there a significant difference in terms of the  
19 impact on VOCs on the environment and pumps versus aerosols  
20 and, in answering that question, I was also wondering if you  
21 could take into account usage.

22          For example, even if the impact of VOCs is less  
23 than pumps, if consumers use more of the pump, the impact  
24 may be the same. I was just wondering if you could address  
25 that.

1           MR. BAKER: I formulate products, so I hope the  
2 answer does not get too long.

3           What you are using to, like, for the aerosol  
4 product, what you are using to propel the product, because  
5 you have taken CFCs out, you do not necessarily have to use  
6 the minimally ozone-depleting HCFCs and those other  
7 materials. It is possible to go to a different kind of  
8 technology where you are maybe using nitrogen or just air or  
9 there are a number of systems where there is, like, a  
10 stretchable bladder inside that holds the product and it is  
11 really a mechanical thing that pushes out. It just looks  
12 like an aerosol container. So there are a lot of other  
13 things.

14           The no CFC claim removes the worry about the ozone  
15 layer and the concern that the product has CFCs in it. What  
16 is actually propelling the product, whether it is a pump and  
17 it is a mechanical thing or whether it is some other aerosol  
18 propellant, is like another issue and you wind up having to  
19 talk about that.

20           With cosmetic products, because of the FDA  
21 regulations, we already put all of the ingredients on the  
22 package. So at the point of purchase, the reasonable  
23 consumer can read the list and decide whether they want  
24 these materials in the product that they are buying or not  
25 and whether there are any alternatives on the shelf next to

1 it or in the store next to it. So, like, we go a long way  
2 towards providing the information to the consumer.

3 The complexity of all of the issues around the  
4 thing gets a little bewildering. That is why, as the  
5 gentleman from the SDA, Soap and Detergent Association,  
6 mentioned, it is a statement of fact. The product, if it  
7 does not have CFCs in it, does not have CFCs in it. And,  
8 apparently, there is some awareness of the CFC issue and  
9 consumers will factor that into a purchase decision. If  
10 there are other factors in that purchase decision, those  
11 need to be handled separately. I think they are probably  
12 handled separately in the minds of the consumer.

13 That the ozone issue is complicated, stratospheric  
14 and tropospheric, we all know that. The label of a package  
15 is really not a good place to do an education job. There  
16 are more effective places to do that. But, again, allowing  
17 the product to compete on the store shelf with both other  
18 aerosol products and with non-aerosol products on a level  
19 playing field, the no CFC claim, just in its narrow sense,  
20 is valuable.

21 MS. MADIGAN: Okay.

22 MR. BAKER: The other issues would be handled  
23 separately by other claims.

24 MS. MADIGAN: Did that answer your question,  
25 Carolyn?

1 MS. COX: Not really.

2 I was wondering if anyone else would like to try  
3 to tackle it. The impact of VOCs in aerosols versus pumps.

4 MS. MADIGAN: CSMA?

5 Oh, you want to defer to CTFA?

6 We are not hearing you well there. Is there a  
7 sound problem?

8 If we can fix that at the next break.

9 You can come and fix it while she is talking.

10 MS. BECKLEY: Let me just -- are you asking about  
11 what is the source of VOCs and how they differ in those  
12 products?

13 MS. MADIGAN: And can you clarify, Carolyn, are we  
14 getting into questions three and four, or is this different?

15 MS. COX: Well, we had talked about how a consumer  
16 might choose one versus the other and I just wanted to  
17 follow up on it now while it was fresh in our minds.

18 MS. MADIGAN: Sure.

19 MS. BECKLEY: Well, both pump and aerosol products  
20 have VOCs and the source may be different because pumps do  
21 not have propellants which are high VOCs, whereas the  
22 aerosol, the propellant is the VOC and may have other types  
23 of other volatiles.

24 One commonality, for example, for hairspray or  
25 something that is VOC would be alcohol that those products

1 may have. But I think the main difference is that in an  
2 aerosol you would have a propellant which is a different  
3 kind of VOC than you would have with the pump spray, which  
4 is a mechanical way of delivering the product.

5 And in terms of, you had a question about usage  
6 and about whether a pump --

7 MS. COX: I was wondering if consumers use more of  
8 the pump, perhaps, than they do of the aerosol, if there is  
9 any evidence on that.

10 MS. BECKLEY: There are some consumer preference  
11 data that some consumers -- it shows that consumers prefer  
12 the aerosol delivery for some products, like hairspray and  
13 things like that. But I do not know about that in terms of  
14 --

15 MS. MADIGAN: Can I reframe that, Carolyn? Is  
16 your question, for a specific use, do you use more when you  
17 use an aerosol versus more with a pump? Was that your  
18 question?

19 MS. BECKLEY: Yes. I do not know that one.

20 MS. MADIGAN: Can you answer that question ICMD?

21 MR. BAKER: I will try and be very precise. It  
22 depends on each and every product. If you take a hairspray,  
23 you can reformulate it to just take out the CFCs and leave  
24 all the VOCs in it. Or it is possible to have a product,  
25 theoretically, that has no VOCs in it at all. It may be a



1 lousy product, but just by taking out the CFCs, you do not  
2 know what else is in there and you cannot infer anything  
3 else that is in there.

4 There are patterns out there and stuff, but you  
5 cannot look at a product that has had any CFCs taken out or  
6 left out of the formula and know anything else about it,  
7 really.

8 MS. MADIGAN: Can I try, one more time, just to  
9 follow up on this?

10 If you make a choice between propellants, does  
11 that affect the amount of the product that has to get used?

12 Is that getting to your question, Carolyn?

13 MS. COX: That gets delivered.

14 MS. MADIGAN: Yes, that gets delivered. So if --

15 MR. BAKER: Not --

16 MS. MADIGAN: In a predictable way.

17 MR. BAKER: There is no way to predict what that  
18 is. Sometimes people will reduce the spray rate to give a  
19 dry spray. Sometimes they will increase it to get enough  
20 active ingredient, the hairspray resin as an example in a  
21 specific case. You have to go product by product by product  
22 and so coupling these issues is really not a fair thing to  
23 do.

24 MS. MADIGAN: Just to restate the question one  
25 more time, even though it is kind of getting into the VOCs -

1 -

2 So the choice between using CFCs or VOCs does not  
3 yield a predictable trade-off in terms of the amount of  
4 product that gets delivered.

5 MR. BAKER: It is not necessarily a choice between  
6 CFCs and VOCs.

7 MS. MADIGAN: Okay.

8 MR. BAKER: Frequently, it winds up that way. But  
9 it is not necessarily that way.

10 MS. MADIGAN: Okay.

11 Are we getting close?

12 All right. We may find ourselves coming back to  
13 that.

14 Let me just ask the FTC if they have any other  
15 questions and then we will open up to final comment from  
16 participants before we move on to the VOCs discussion, okay?

17 I apologize if I confused that discussion even  
18 more.

19 Let me then open it up to final comments from  
20 people, whether or not you have spoken before. I have right  
21 now EDF, CSMA, SPI and Soap and Detergent. Why don't we  
22 start with EDF?

23 MR. DENISON: I actually have two questions. One  
24 is related to the discussion we just had and it is a  
25 slightly different formulation of that question. Let me ask

1 both and they are directed at CSMA and others that are  
2 proponents of no CFC claims.

3 The first is, on this question of pumps versus  
4 aerosols, are there, in the same product category, aerosol  
5 products on the market today that result in the release of  
6 less VOCs in their normal usage than a pump product in that  
7 same product category?

8 MS. MADIGAN: Why don't we get an answer? Can  
9 anyone respond to that question?

10 Do you want to state it one more time?

11 MR. DENISON: On the market today, in a given  
12 product category, are there pump products that result in the  
13 release of more VOCs than an aerosol product in that same  
14 product category?

15 MR. KIEFER: Robert Kiefer from CSMA.

16 I would say, yes, there are, sure. It is not  
17 every product, but you are going to see a range and some  
18 will be more, some will be less. The answer to that  
19 question is yes, there are some aerosols that would deliver  
20 less VOCs than a pump spray.

21 MS. MADIGAN: ICM, do you want --

22 MR. KIEFER: Not in all applications.

23 MR. DENISON: I agree with that.

24 MS. MADIGAN: ICM do you agree? And CTFA agreed.

25 And SDA agreed.

1 MR. DENISON: And do you have data characterizing  
2 those ranges and their overlaps?

3 MS. MADIGAN: Does anyone have data?

4 MS. BECKLEY: Not at hand. I know probably some  
5 of our companies would.

6 MS. MADIGAN: CTFA.

7 MS. BECKLEY: Sorry. Excuse me. Catherine  
8 Beckley from CTFA.

9 We do not have it offhand. I am sure our  
10 companies might have it. But I think there is a presumption  
11 that the aerosol form somehow contributes more VOC. But I  
12 think the issue is whether the VOCs that are in there --  
13 that even though a pump might not have the propellant, which  
14 is a VOC, it may have other VOCs that can make it higher  
15 than an aerosol and that the aerosol delivery system, in and  
16 of itself, does not necessarily contribute more VOCs. It is  
17 a formulation of the product that is the issue.

18 MS. MADIGAN: Okay.

19 ICMD?

20 MR. BAKER: If you have eight ounces of an aerosol  
21 product and eight ounces of a non-aerosol product and they  
22 are both 95 percent VOC, they have the same amount. So if,  
23 in the aerosol product, if you can replace just some of the  
24 VOCs with non-VOC stuff, you can formulate a VOC-superior  
25 product in that particular comparison. Again, it is a

1 product by product by product issue and comparison.

2 MS. MADIGAN: Okay. Let's move on to the next  
3 question.

4 MR. DENISON: Yes. The suggestion has been made  
5 that claims in this category regarding ozone-depleting  
6 chemicals, that if they were formulated in a way that did  
7 not apply only to the specific product on which that label  
8 appeared but characterized all aerosol products as not  
9 containing those chemicals, as a result of regulation that  
10 was passed for example, that that would be a formulation of  
11 that claim that would be more acceptable and I have not  
12 heard any of you folks accept that formulation.

13 I saw a specific ad by a company that was  
14 describing the lack of ozone-depleting chemicals in its  
15 aerosol products in exactly that way, in a very broad  
16 formulation, within the last two weeks in major newspapers  
17 in the country and I just wondered whether you have  
18 objections to that approach as opposed to the simple no  
19 CFCs. And, if so, why?

20 MS. MADIGAN: A response to that specific  
21 question. SDA first.

22 DR. PFLUG: You are speaking about a variety of  
23 different formulations and you cannot make a general  
24 statement with regard to an ingredient because one product  
25 may have that same ingredient. You have to take the entire

1 formulation in context with regard to what effect it could  
2 have on any of the parameters you are talking about. So you  
3 cannot say because there are six products which contain  
4 ingredient "X," they can all make the same statement on  
5 their label because some of them may have other ingredients  
6 which cause you not to be able to make that statement.

7 The issue here is that if you have something, or a  
8 formula, and you can make a truthful claim about it with  
9 backed-up support and data, there is absolutely no reason  
10 why you should not be able to do that.

11 MS. MADIGAN: Can I clarify something?

12 Is your question, Richard, about the proposal  
13 articulated by the Attorneys General, which was the broad  
14 statement, "CFCs have not been used in aerosol products  
15 since 1990"? Is that what you are seeking --

16 DR. PFLUG: Seventy-eight.

17 MS. MADIGAN: Okay. I thought you said '90, but  
18 you had said '78.

19 Is that what you were seeking a reaction to, or  
20 was it some other statements?

21 MR. DENISON: Richard Denison, EDF.

22 Yes, that and Dr. Pflug provided the same kind of  
23 formulation. Basically, an effort to get rid of the  
24 presumption that that product that has the label on it is  
25 somehow superior in that regard to other products that are

1 in the same essential category.

2 MS. MADIGAN: So in response to that specific  
3 statement, SDA, would you --

4 DR. PFLUG: It is not making a superiority claim.  
5 If the label says, "Contains no CFCs," that is not a  
6 superiority claim.

7 MS. MADIGAN: Well, the question on the table is  
8 would you have an objection --

9 DR. PFLUG: Yes.

10 MS. MADIGAN: -- to using that statement -- the  
11 statement, "CFCs have not been used in aerosol products  
12 since 1978"?

13 DR. PFLUG: Yes, we would have a very strong  
14 objection.

15 MS. MADIGAN: And that would be because --

16 DR. PFLUG: You could end up with a hang tag on  
17 your product that is about 30 pages long.

18 MS. MADIGAN: Okay.

19 DR. PFLUG: If you take that approach.

20 MS. MADIGAN: I think that was the question posed.  
21 Anyone else want to respond to that question?

22 MR. BAKER: Yes, I would agree that in many cases  
23 the labeling of consumer products does not have a whole lot  
24 of real estate for more words. So that is objectionable  
25 itself.

1           Second of all, the regulations, as I understand  
2 them, allow for essential uses of CFCs in aerosol products,  
3 perhaps inhalers and medical uses. So at a very strict  
4 truth level, it is not absolutely true that there are no  
5 aerosols with CFCs in them any more.

6           MS. MADIGAN: Okay.

7           MR. BAKER: But the uses are allowed.

8           MS. MADIGAN: What I would like to do at this  
9 point, we are well over time, is open up the floor to final  
10 comments. But I would like to put this limitation on them -  
11 - if you could limit them to points that have not yet been  
12 made or points of clarification where you think something  
13 has been misarticulated or misrepresented, leave it at that  
14 because we have to get on to several other questions within  
15 this section.

16           So anybody else like to make a point?

17           SPI and then CSMA.

18           MS. MILLAR: Sheila Millar for the Society of  
19 Plastics Industry.

20           I want to make two quick policy points. First of  
21 all, again, we are looking at FTC guides for labeling and  
22 advertising involving environmental claims. In the context  
23 of adopting guides, it is not the role of the Commission, I  
24 think, to require advertisers to put "gone with the wind,"  
25 on their product, whatever that product may be. Their role



1 is to make sure that statements made in labeling and  
2 advertising are truthful and non-deceptive to consumers and,  
3 objectively speaking, I think a CFC-free claim, no CFC  
4 claim, is a truthful and accurate claim so long as it is not  
5 linked to a general claim.

6 The second point is that I think SCS mentioned  
7 earlier that there are environmental trade-offs involved in  
8 selecting some of these alternatives, and we will get into  
9 that in the next question. But, clearly, I do not think  
10 CFCs are unique in involving environmental trade-offs. So  
11 that, I do not think, should color our discussion here in  
12 thinking about what is appropriate for advertisers to say to  
13 consumers about their products in advertising and labeling.

14 MS. MADIGAN: I hope "gone with the wind" was an  
15 unintended pun.

16 CSMA?

17 MR. KIEFER: Robert Kiefer with CSMA.

18 I would like to just point out that the no CFC  
19 claim is a specific single environmental attribute claim.  
20 We have already conceded the fact that it should not be used  
21 in conjunction with broader environmental claims such as  
22 ozone-friendly or ozone-safe and it also includes other  
23 ozone depletors. That, I think, has been set forth through  
24 some of the consent orders.

25 Secondly, the issue of no CFCs and upper ozone

1 depletion is separate and distinct from VOCs, which we will  
2 be getting into in the next section, which contribute to  
3 ground-level pollution or smog. These are two totally  
4 different issues and therefore they should be dealt  
5 differently.

6 One other note was that in calls to our  
7 manufacturers' consumer survey lines, there has been no  
8 indication of confusion between VOC claims and issues  
9 related to the use of no CFC claims by itself. A lot of  
10 times, the only VOC calls that are received have been from  
11 industrial and institutional customers wanting information  
12 on emissions for state permitting purposes and questions  
13 related to product performance, not related to CFCs.

14 Thank you.

15 MS. MADIGAN: Okay.

16 And EDF, very briefly?

17 MR. DENISON: I am done.

18 MS. MADIGAN: Okay. Why don't we move on then, if  
19 we can, to the next two questions? Let me review them very  
20 quickly:

21 "What position, if any, should the guides take on  
22 the use of no CFCs claims for products containing VOCs and  
23 should the guides provide that no CFCs claims be qualified  
24 by disclosure when made for products containing VOCs and, if  
25 so, in what manner?"

1           Let's open it up. Who would like to start the  
2 discussion?

3           CTFA?

4           MS. BECKLEY: Sure. Catherine Beckley, CTFA.

5           CTFA's position is that we do not think that you  
6 should have to connect, when you use a no CFCs, that you  
7 should also say no VOCs or something to that effect because  
8 we see that those are two different environmental attributes  
9 or impacts and, really, apples and oranges. With the CFCs,  
10 you are talking about upper ozone depletion. It is a banned  
11 substance. The health impact is different. You are talking  
12 about deterioration of the ozone layer, which results in UVA  
13 increase which can cause skin cancer, cataracts, other  
14 adverse effects. Whereas, with VOCs, you are talking about  
15 a chemical that forms lower level ozone which leads to smog.  
16 It is not a banned chemical and it is not associated with  
17 UVA formation.

18           Another point is that you do not have to give all  
19 the negative attributes of the product in other contexts.  
20 For example, with no CFCs, you would not have to also go  
21 into the packaging impacts. I mean, every product has, in  
22 its life cycle, some sort of negative impact, if you will,  
23 and, you know, you could just take it a step further --  
24 would you have to say no CFCs, "This package can be  
25 recycled," et cetera, et cetera? And we just think that

1 that is going too far.

2 We also think that if you are required to specify  
3 that it has VOCs and that type of thing on the label, that  
4 you would run into something like information overload that  
5 it is very complex. I think it is complex for regulators.  
6 They would be very complex for the general consumer.

7 In our case, on cosmetic products, there is not a  
8 lot of label space there. We have other labeling  
9 requirements, the Package and Labeling Act, the FDA, and I  
10 am not sure that that would be useful to consumers. I think  
11 it would ultimately confuse them and not be helpful and I  
12 think it would preclude the use of either of those claims if  
13 you had to give that level of detail.

14 I also think there could be confusion about the  
15 terminology, about what volatile organic compound is, is  
16 because that term is used different ways in different  
17 contexts. For example, in New Jersey, they use the term  
18 volatile organic substances. In California, in their state  
19 implementation plan to the EPA, they used ROG<sub>s</sub>, which are  
20 reactive organic gases. So if the regulatory community is  
21 using different terms, I think, for a lay person, it would  
22 be unclear -- and, also, those states all have different  
23 definitions. So I think that would cause some problems.

24 Also, I think that, from consumer products, the  
25 amount of VOC is really minute compared to other sources

1 like factories, stationary sources, cars and things like  
2 that and the environmental impact from consumer products is  
3 much less than the danger from the ozone layer depleting,  
4 and that is a distinct issue.

5 MS. MADIGAN: Okay.

6 We have EDF, followed by CSMA. And I am not  
7 singling anybody out, but we are running a little short on  
8 time so to the extent we can be concise without sacrificing  
9 the points, that would be great.

10 MR. DENISON: I just want to address the point  
11 that was just made about trade-offs and the argument that  
12 one should not have to disclose, for example, that a package  
13 that does not contain CFCs is not recyclable. I am  
14 certainly not talking about that magnitude of trade-off.

15 The problem here is that the trade-off in this  
16 case between CFCs and ozone-depleting chemicals and VOCs is  
17 one that involves the same substance, ozone. There is a  
18 direct link, in that respect, that is even more specific  
19 than general questions that I think most consumers would  
20 have about atmospheric effects, if you will, or air quality  
21 effects.

22 So, in this case, that is the problem. That is  
23 the perception problem that has to be weighed here because  
24 of the involvement of the same substance, ozone, in both of  
25 these issues. That is a trade-off that I think the

1 Commission has to grapple with.

2 I am certainly not suggesting that every product  
3 has to identify all of its positive and negative attributes.  
4 But we have to deal with the perception problem that is a  
5 real one.

6 MS. MADIGAN: CSMA, followed by Foodservice  
7 Packaging.

8 MR. KIEFER: Robert Kiefer with CSMA.

9 We are concerned that these two issues are being  
10 linked. As I had indicated earlier, in the Creative Aerosol  
11 Corporation's consent order, the FTC had asked them not to  
12 use the no CFC claim because it contained VOCs. But we  
13 believe that this is an inappropriate application because,  
14 like we had indicated earlier, the issue of CFCs and upper  
15 ozone is distinctly different from VOCs and contribution to  
16 ground-level or tropospheric smog.

17 The issues are totally separate. They are  
18 regulated differently, so there is no similarity there. In  
19 addition, VOC content, as itself, does not equate to  
20 emissions. There are other properties regarding use and  
21 exposure and relative reactivity. So, like with CFCs, there  
22 are magnitudes of difference between a chlorofluorocarbon  
23 and a hydrochlorofluorocarbon. With VOCs, there are  
24 magnitudes of difference also to its contribution -- some  
25 negligible, some are totally used up through the use stage.

1 And then there are others that may be in small amounts, but  
2 highly reactive.

3 Like I said, the regulations are different for  
4 both of these issues. There are still controversies over  
5 the regulations in addition to the science is not totally  
6 there. So I think it is inappropriate at this time to link  
7 the two issues of CFC and VOCs as it relates to ozone  
8 claims.

9 MS. MADIGAN: Foodservice Packaging, followed by  
10 ICMD.

11 MR. KRAMER: Okay. Kim Kramer, Foodservice  
12 Packaging Institute.

13 I will support, again, what some other people have  
14 said, that the VOCs and the CFCs should be delinked because  
15 they are totally different chemistries and have totally  
16 different effects. I can only speak for food service and  
17 packaging, of course, for the polystyrene foam manufacturers  
18 and for us to put any type of VOC information on packages  
19 would be redundant. Each one of our facilities, which is  
20 the only place where you would be using the VOCs as a  
21 blowing agent, are well remediated to the air quality  
22 standards in their location and this would be -- we would  
23 not expect people who are in the steel business to say,  
24 "Gee, we put sulfur dioxide into the air," on their cans.  
25 And I think that would be the same thing you would be

1 looking at at our polystyrene foam products with VOCs.

2 Thank you.

3 MS. MADIGAN: ICMD?

4 MR. BAKER: Yes, Howard Baker, ICMD.

5 I have to agree that the VOC and the CFC usages in  
6 products are not linked. Sometimes the trade-off exists but  
7 the trade-off is not necessary and it is not invariant. So  
8 you cannot force somebody to talk about a linked claim in a  
9 product where they may or may not use the trade-off  
10 material.

11 In some cases, you could wind up with nonsensical  
12 answers. Then the air freshener with a water base where in  
13 the old days you might have used a CFC as a propellant, now  
14 you have replaced it with carbon dioxide somehow and there  
15 are no VOCs in the product ever. There goes the linkage.  
16 It is a product by product by product issue and,  
17 consequently, the appropriate claims for each product have  
18 to be based on the characteristics of that product.

19 MS. MADIGAN: I feel like I was probably a little  
20 too draconian in my time constraints because we are actually  
21 now doing quite well timewise. So I am going to encourage  
22 you all to reflect for a moment and that might buy us some  
23 time.

24 Thank you.

25 MR. PEELER: Lee Peeler from the Federal Trade



1 Commission.

2           There are a couple of studies in the record right  
3 now on "No CFC" claims and what consumers take from "No" CFC  
4 claims and we have received a number of comments commenting  
5 on the methodology of the studies and I understand that we  
6 graciously sent you every other page of a more recent study  
7 recently.

8           MS. BERNSTEIN: Well, there surely is no  
9 methodological problem with that, is there?

10           MR. PEELER: But I am wondering, first off,  
11 whether there are any studies or available consumer  
12 perception data on this issue that we do not have. And I  
13 would also say, in response to the comments that we have  
14 gotten informally from a number of you with respect to the  
15 study that we did send you every other page of -- we will  
16 get you the rest of the pages -- and if you have any  
17 comments specifically on that study, on that one study, we  
18 would like you to go ahead and submit them to us.

19           MS. MADIGAN: The question then is, any other  
20 studies or data and SPI?

21           MS. MILLAR: Sheila Millar, SPI.

22           I do not have an answer. I just have a question.  
23 Is there a summary of that study, Lee?

24           MR. PEELER: There is not a summary of that study  
25 yet. We are working on one and, when we get it, we will

1 also put that on the public record.

2 MS. MADIGAN: CSMA?

3 MR. PEELER: Every other paragraph.

4 MR. KIEFER: Being, as it were, that we were at  
5 our annual meeting this past week, I am not aware, except  
6 through conversations, of the existence of this study and  
7 can you just give a little background or -- I do not know  
8 what the study is.

9 MR. BANK: Kevin Bank, Federal Trade Commission.

10 The study was released by the Commission on Monday  
11 to be released on the public record. It analyzes a variety  
12 of "No CFC" and other pollution related claims on aerosol  
13 products and the preliminary findings -- and I would stress  
14 that these are very preliminary because there is no formal  
15 report -- indicate that there is a relatively low percentage  
16 of consumers recalled the environmental claims on the  
17 labels.

18 There appears to be a general perception that pump  
19 hairsprays are safer for the environment than aerosol  
20 hairsprays. And the percentage of consumers who responded  
21 that the hairsprays were safe for the environment when  
22 viewing a wide variety of different claims varied, and that  
23 depended very much on what the claim was.

24 MR. PEELER: And, again, there is another study  
25 that a number of you commented on.

1 MS. MADIGAN: Lee Peeler, FTC.

2 Any other responses to the question about other  
3 studies or data out there that the FTC might not have?

4 Okay. Any other FTC staff questions? Carolyn?

5 MS. COX: Yes. I have a question regarding the  
6 science with respect to VOCs. I think it was the  
7 representative from the Chemical Specialties Manufacturers  
8 Association had noted that some types of VOCs may have a  
9 negligible effect and I was just wondering if others agreed  
10 that, in some senses, the level of VOCs in products may be  
11 de minimis or negligible such that certain claims might be  
12 acceptable even if they have VOCs in them.

13 MS. MADIGAN: Anybody want to respond to that?

14 What does your silence mean? Is there agreement  
15 around the table that VOCs can appear in negligible or de  
16 minimis levels or have de minimis or negligible effects?

17 MS. BECKLEY: It depends on the product. I mean,  
18 for example, in California, a product like a hair gel has a  
19 limit of, I think, six percent VOC content, whereas a  
20 hairspray has 80 percent. So it does depend on the product  
21 type and the form of the product. So I think there are  
22 differences in that sense. I am not sure that is complete.

23 MS. MADIGAN: ICMD?

24 MR. BAKER: Yes. I think, to understand the  
25 situation, the CFC issue exists to a good extent in the

1 minds of consumers. The VOC issue exists in the minds,  
2 primarily, of regulators and businesses. I do not really  
3 believe that consumers, at this point in time, pay much  
4 attention to VOCs in consumer products, particularly to the  
5 extent that they pay attention to the CFC issue.

6 MS. MADIGAN: Attorneys General?

7 MS. GRIFFIN: Mary Griffin, Attorney Generals Task  
8 Force.

9 Isn't another way of saying that is if you have  
10 room on boxes, tell consumers that a product that they are  
11 looking for is not there but we do not have room on the  
12 boxes to tell them that a product that goes to a related air  
13 pollution issue is there.

14 MS. MADIGAN: EDF, you wanted to comment.

15 MR. DENISON: Richard Denison, EDF.

16 The effects that these chemicals cause are a  
17 result of the cumulative and total amount in a given region,  
18 at least, of these chemicals being released to the  
19 environment. So the notion that one can somehow decide that  
20 one product is negligible and another product is not is not  
21 scientifically defensible. The problem is the cumulative  
22 effect of all of these sources. And if we start getting  
23 into a game of saying we are only one percent of the  
24 problem, or .5 percent of the problem, that simply is in  
25 appropriate because we are not talking about the specific --

1           You could do that, for example, in a product that  
2 had an acute health effect to the user so that when they  
3 used that product in their bathroom, they would be  
4 experiencing the effect. That is not the way this works.  
5 It is, unfortunately, more difficult than that.

6           Secondly, the point that was just made about  
7 consumer lack of interest or understanding of VOCs, I would  
8 certainly agree with that, that CFCs have made their way  
9 into the consciousness of the American public in a way that  
10 VOCs have not. All the more reason that the potential for  
11 deception here is strong because consumers will not assume  
12 that there may well be such a direct trade-off in this  
13 context because they are not aware of the VOC issue.

14           Finally, I would argue that the example that was  
15 given earlier about a product that used to have CFCs and it  
16 now uses carbon dioxide or something like that is not even  
17 what we are talking about. We are talking about cases where  
18 VOCs are still present in the product and I would argue that  
19 there could be a very tidy line drawn here where we talk  
20 about those products that have a trade-off, where the  
21 absence of CFCs or other ozone-depleting chemicals is  
22 accomplished by the presence of chemicals in the VOC  
23 category that are linked in the public's mind because of  
24 ozone.

25           MS. MADIGAN: Soap and Detergent?

1 DR. PFLUG: There is no room for trade-offs,  
2 period. If the product has negatives, you should not be  
3 making claims about it and hiding that and making claims  
4 about other aspects of the formula. So that if the  
5 statements are not truthful, they should not be on the  
6 label.

7 For example, if you say, "This is safe for the  
8 ozone," but you neglect to tell the people in that same  
9 product there are other ingredients that could cause  
10 problems, that is deceptive and should not be allowed. And  
11 I think the point is that unless we have support, or anybody  
12 has specific scientific support, for those claims, they  
13 should not be making it on the label.

14 And I think the real truth is that if you look at  
15 the VOC issue, the impact on California or wherever we are  
16 talking about is very small with regard to the products that  
17 we represent. However, in the overall scheme, if you are a  
18 regulator, you are saying every little bit contributes in a  
19 negative way. So, therefore, we should be looking at our  
20 product. But nobody should be saying, "This product  
21 contains one percent and that one contains ten. Therefore,  
22 the one percent product is superior." We would not agree  
23 with those kind of claims. There is no room for those kind  
24 of claims.

25 MS. MADIGAN: CTFA and then ICMD.

1 MS. BECKLEY: Catherine Beckley, CTFA.

2 Just to follow up on that point, I mean, to give  
3 you an example, if you wanted more disclosure in terms of  
4 VOC, by comparison with something that has one percent  
5 versus ten percent, I mean, there could be a consumer  
6 deception issue there because the consumer does not know  
7 what is better. I mean, they may think having more is  
8 better because that is a lot of times how things are  
9 marketed -- more is better. "Well, the ten percent is  
10 better than the one percent."

11 There is also the issue of the way the product is  
12 formulated because it could be deceptive if you had two  
13 products that had the same amount, let's say, in terms of  
14 VOC content but what is actually emitted in terms of VOC,  
15 one product that may be much less but they could be  
16 penalized if you required, let's say, disclosure of content  
17 and something like that would be really a freeze on  
18 innovation for companies to come up with programs that  
19 emitted less, if you had, in fact, to give content, which is  
20 a different measure.

21 MS. MADIGAN: ICMD?

22 MR. BAKER: Yes. I just would like to come back  
23 to a comment I made in our comments and that I opened with  
24 that the guides, as you have written them, are very helpful.  
25 A characteristic that makes them helpful is that they are

1 clearly written and clearly understood. The movement that  
2 we are considering here is flying in the face of that and  
3 adding complexity to these issues -- the CFC, the ozone  
4 stuff.

5 The complexity is already a problem in the mind of  
6 the consumer. If we add complexity to the labeling and to  
7 the requirements for the claims, we are not going to serve  
8 the consumer. Each product needs to be looked at in view of  
9 the guides as they exist now and you can make a good  
10 determination whether they are deceptive or whether they are  
11 confusing or not. In my own mind, there is a difference  
12 between deception and confusion.

13 If the consumer is confused, that is one thing.  
14 But is the consumer being deceived by these claims? They  
15 are not, in many cases, unless the tests that are shown in  
16 the guides are violated and those are clearly stated.

17 MS. MADIGAN: I think we are getting close to  
18 wrapping this up. Does the FTC have any other questions  
19 they would like to pose?

20 MS. BERNSTEIN: I have just one to the last two  
21 speakers, please. What does the Food and Drug  
22 Administration require in terms of ingredient labeling on  
23 cosmetics products particularly, if you could state that?

24 MS. BECKLEY: Sure. Either of us would be fine.  
25 Go ahead.



1 MR. BAKER: All cosmetic products have to list the  
2 identity of all of the ingredients used in the formula.

3 MS. BERNSTEIN: But not the content? Not the  
4 specific amount, I should say.

5 MR. BAKER: They are listed in order of  
6 predominance. So the material that is used in the highest  
7 percentage is first and the second most used is second, and  
8 so on.

9 MS. BERNSTEIN: So VOCs, if in a product, would be  
10 listed on the label?

11 MR. BAKER: Oh, yes. Oh, yes.

12 MS. BECKLEY: Not as a VOC.

13 MR. BAKER: It is not identified as a VOC, but --

14 MS. BECKLEY: Just as listed as an ingredient.

15 MS. MADIGAN: Wait a second. One at a time  
16 because we have a transcript.

17 MS. BECKLEY: Sure.

18 MS. MADIGAN: So who is going to respond, CTFA?

19 MS. BECKLEY: Catherine Beckley, CTFA.

20 It would not give you the percentage. It would  
21 give you the ingredient; for example, alcohol. The name of  
22 the ingredient that may be a VOC contributor. But FDA, that  
23 is more of an environmental issue and FDA's looking more at  
24 the content and giving the consumer the information of what  
25 is in it in case they have a reaction or something like

1 that.

2 MS. MADIGAN: Okay. Any other questions from FTC  
3 staff?

4 And anything else from people who have not yet had  
5 a chance to say much on this subject who would like to  
6 before we go to the final, more broad question about ozone-  
7 safe and ozone-friendly?

8 Okay. Why don't we move on, then. Final  
9 question, "Are there other issues concerning the ozone-safe,  
10 ozone-friendly guide that should be addressed?"

11 And SPI would like to open?

12 MS. MILLAR: Sheila Millar, SPI.

13 We think that, unlike a narrow claim of CFC-free  
14 or no CFCs, ozone-safe and ozone-friendly likely does carry  
15 with it some broader connotations about atmospheric safety  
16 and because ozone is both a term that is important to  
17 stratospheric ozone and where less is bad as opposed to  
18 ground-level smog where more ozone is bad, the potential for  
19 confusion is, frankly, much greater there and it is an area  
20 where some additional guidance may well be necessary to  
21 avoid that kind of deception in terms of making it more of a  
22 specific claim or treating it as a general claim of  
23 environmental benefit.

24 MS. MADIGAN: Methyl Bromide Alternatives.

25 MR. HONDORP: Brett Hondorp with the Methyl

1 Bromide Alternatives Network.

2 We disagree. We think that ozone-safe, ozone-  
3 friendly, especially in the context of methyl bromide, are  
4 very necessary. Most consumers, if given a label methyl-  
5 bromide free, would not be able to understand it as not  
6 containing an ozone-depleting substance unless it was  
7 qualified in that way.

8 Another comment we have is concerning the  
9 language, "Contains an ozone-depleting substance." Methyl  
10 bromide, for those of you who do not know, it is a  
11 pesticide. It is a potent ozone depletor. It is applied in  
12 gaseous form into the soil before planting crops onto  
13 grains, other commodities, after -- to fumigate them, to  
14 kill pests, and it will leave no residues on the actual  
15 product.

16 So to say that a claim is deceptive if the product  
17 contains an ozone-depleting substance is not very applicable  
18 to methyl bromide since the product will never contain an  
19 ozone-depleting substance. Instead, we think the language  
20 should be changed to read, "Contains or was produced using  
21 an ozone-depleting substance." That is about it.

22 MS. MADIGAN: Thank you.

23 Anybody else on this subject? Like to speak to  
24 this issue?

25 Any other issues related to ozone-safe or

1 friendly?

2 Yes, go ahead, Lee.

3 MR. PEELER: I wanted to go back to your first  
4 point that you thought it was necessary to retain claims of  
5 ozone safety or products where methyl bromide has not been  
6 used?

7 MR. HONDORP: Correct, correct. If you are going  
8 to label a product, "methyl bromide free," it needs to be  
9 qualified, I think, with ozone-safe because I do not think  
10 most consumers really relate methyl bromide -- I do not  
11 think most consumers know what methyl bromide is, first of  
12 all. But to relate that to ozone depletion, I think, is  
13 very doubtful without it saying ozone-friendly.

14 MR. PEELER: And what kind of products would this  
15 be?

16 MR. HONDORP: It could be strawberries, tomatoes -  
17 - fresh fruits and vegetables. It is used primarily --

18 MR. PEELER: Food products?

19 MR. HONDORP: Food products, yes.

20 MS. MADIGAN: EDF?

21 MR. DENISON: I also have a question. I  
22 appreciate the concern that you are raising. I also,  
23 however, have concerns with terms like "anything friendly,"  
24 which has a broader connotation, frankly. That does not  
25 mean I am not a friendly person.

1 MS. MADIGAN: We will keep that in mind.

2 MR. DENISON: I guess, what about a specific  
3 formulation that says contains or does not contain ozone-  
4 depleting chemicals, as opposed to having to use a term like  
5 ozone-friendly? Would that be acceptable?

6 MR. HONDORP: If it had the word "methyl bromide"  
7 in it, I think it would be. I think it is important to  
8 have, "Does not contain ozone-depleting methyl bromide."  
9 That would be acceptable.

10 But my point is that we need it in a broader  
11 context of ozone depletion. Just simply to put "methyl  
12 bromide fee," or "Does not contain methyl bromide," is not  
13 going to make a lot of difference to most consumers.

14 MS. MADIGAN: Anybody else?

15 I think we are in danger of finishing this early.  
16 I am not sure what we do with all of our time.

17 If I may ask for a two-minute caucus -- do not  
18 leave your seats. I am going to confer with the FTC staff  
19 about schedule.

20 (Discussion held off the record.)

21 MS. MADIGAN: Okay. We are going to break until  
22 ten-thirty.

23 What we would like to ask is the panel on life  
24 cycle and seals, et cetera, was originally scheduled to  
25 start at ten forty-five.

1 I am sorry, that was actually public  
2 participation. We can take that up at ten-thirty.

3 We will break until ten-thirty. We will start  
4 with public participation. But what we would ask is those  
5 of you who have representatives coming in for the life cycle  
6 and seals, if you could give them a call and ask them to get  
7 here a bit early because if we start earlier, we can finish  
8 earlier.

9 Hold on one second. Oh, a question, CSMA?

10 MR. KIEFER: Robert Kiefer, CSMA.

11 I would like one more comment on the VOC issue, if  
12 I can.

13 MS. MADIGAN: Sure. Before we adjourn? Sure.

14 MR. KIEFER: Yes.

15 As an example of how VOCs can work, you can have a  
16 product such as an air freshener that would contain a  
17 hundred percent VOC. Yet, under the California Resources  
18 Board, it can be considered, through its use, to use less  
19 total VOCs and can be considered under the innovative  
20 product exemption. So there are a lot of factors that play  
21 into the issue of VOC including reactivity and use of the  
22 product. CARB and other states that regulate consumer  
23 products, none of these require disclosure of VOC content.

24 MS. MADIGAN: Okay.

25 Any other comments before we break?

1           Okay. With that, we break until ten-thirty.

2       People, if you have comments to make, please fill out your  
3       forms and bring them on up to one of the FTC staff or to me.

4           (Whereupon, a short recess was taken.)

5           MS. MADIGAN: All right. We are ready to begin.

6           If people would take their seats, we are going to  
7       start the public participation section. If anybody is in  
8       the overflow room this morning, please come on up and you  
9       can pose your questions up here.

10          Has anybody not filled out one of these forms who  
11       wants to make a comment or pose a question? Okay.

12          What we will do, then, is I will call out a name  
13       and ask you to come up to the podium, introduce yourself,  
14       explain the organization you are representing, spell your  
15       name, if you could, for the transcript and then if you could  
16       limit your comments on each topic to two or three minutes.  
17       If we can get through everybody in a given amount of time  
18       and we have a little time left over, we may open it up to  
19       any participating panelists in any of today's discussions to  
20       also pose questions or react to what they are hearing, and  
21       the FTC may have a follow-up question or two for a  
22       commentor.

23          So, with that, let's begin with Christina  
24       Paquette. And, again, if you would let us know whether you  
25       are here as an individual or representing an organization.

1 MS. PAQUETTE: Hi. My name is Christina Paquette.  
2 That is "P" as in papa, A-Q-U-E-T-T-E. I am representing  
3 myself as an individual on this question.

4 As discussed yesterday by Environmental Defense  
5 Fund, current FTC guidelines require that a company prove an  
6 overall environmental benefit to using a compostable product  
7 before that product can be labelled compostable. This  
8 requires the company to show that no increased harm is  
9 indeed introduced into the environment through use of the  
10 compostable product. For example, degradation products  
11 entering the soil or ground water simply to achieve the  
12 benefit of reduced landfill volume.

13 I suggest that FTC revise the guidelines to  
14 require the same sort of environmental test for products  
15 that will be labeled CFC-free or "Does not contain ozone-  
16 depleting substances." This would ensure that the product  
17 does not cause more environmental harm via introducing  
18 larger amounts of VOCs just to allay the problem of  
19 stratospheric ozone depletion. It would also solve the  
20 problem of having to include qualifiers or detailed  
21 ingredient lists on the labels.

22 MS. MADIGAN: Thank you.

23 Next we have Mr. Alston. Ken Alston.

24 MR. ALSTON: Ken Alston, A-L-S-T-O-N, representing  
25 S. C. Johnson Wax.



1 I do not know where you all spent your evening  
2 after yesterday's workshop, but I spent mine with a walking,  
3 talking aerosol can, a Pledge polish can, with 300 members  
4 of Keep America Beautiful. So there is a lot of education  
5 that is going on besides what is on the can. And I can tell  
6 you that everyone that I spoke to believed that it was  
7 absolutely necessary to keep "no CFCs" on as a point-of-sale  
8 reassurance for them as they go about their grass roots  
9 educational efforts.

10 Secondly, I want to comment on some of the  
11 discussion this morning. S. C. Johnson is opposed to the  
12 linkage of CFCs and VOCs and the notion that I heard this  
13 morning of adding the amount of VOCs traded off is likely to  
14 misinform and deceive even more. I am going to give you an  
15 example.

16 Several of our products have achieved the  
17 California Air Resources Board innovative product exemption  
18 and we, in fact, were the first company to receive one of  
19 those exemptions and these are specifically related to VOCs.  
20 One of these products is a hundred percent VOCs and, under  
21 the suggestion that I heard this morning, it would look as  
22 though that product was probably the worst product on the  
23 market to buy when, in fact, it is the best product on the  
24 market to buy. It is the lowest VOC emitting product in its  
25 category and I think that adding the amount would be totally

1 incorrect.

2 Thank you.

3 MS. MADIGAN: Thank you.

4 Question?

5 MR. PEELER: Excuse me. Can I ask one follow-up  
6 question?

7 I know that S. C. Johnson has been very active in  
8 doing consumer research on this issue and I just wanted to  
9 make sure that we had all of that research that you were  
10 willing to --

11 MR. ALSTON: Yes. All the Roper information is on  
12 the file.

13 MR. PEELER: Great. Thank you.

14 MR. ALSTON: We have another study that is in the  
15 field right now and if there is anything new that comes out  
16 when that is reported, we will certainly submit that.

17 MR. PEELER: And what would that study be  
18 addressing?

19 MR. ALSTON: I am hoping that it is going to be a  
20 continuing tracking. We had the number on the record that  
21 we had 86 percent who misunderstood CFCs back three years  
22 ago. That has gotten down now with all the education  
23 efforts to 74. And we want to see if in the last year or  
24 two it has gone down even more.

25 MR. PEELER: Thank you.

1 MS. MADIGAN: Next we have Stef Zielezienski.

2 Have I pronounced that close? Okay.

3 MR. ZIELEZIENSKI: I am sure you do not need that  
4 spelled, but my name is Stef Zielezienski, that is S-T-E-F,  
5 and the last name is Z-I-E-L-E-Z-I-E-N-S-K-I. I am here  
6 from the law firm of Mintz, Levin on behalf of the  
7 Association of Home Appliance Manufacturers, or AM. I would  
8 just like to make a brief oral comment on the "No CFC"  
9 issue.

10 AM represents manufacturers of home appliances  
11 produced and sold in the United States. Among its members  
12 are major appliance manufacturers of refrigerator/freezers.  
13 Until recently, refrigerator/freezers from these  
14 manufacturers contained CFCs both in the refrigeration  
15 system and in the foam-blowing agent in the insulation.

16 Now, we have refrigerators having no CFCs in  
17 either the refrigeration system or the insulation, but which  
18 contain HCFC 141-B in the insulation, which has a much lower  
19 ozone-depleting potential than the former CFCs.

20 We urge that the FTC guides make it clear that  
21 representations are not misleading by refrigerator  
22 manufacturers that a product that formerly contained CFCs in  
23 the sealed refrigeration system now contains no CFCs or  
24 other ozone-depletors in the sealed refrigeration system.  
25 The guide should also make clear that the manufacturer has a

1 right to advertise without limitation that a product  
2 formerly containing CFCs now contains no CFCs, as long as  
3 the manufacturer additionally discloses that the product  
4 contains HCFCs in blown insulation.

5 Thank you.

6 MS. MADIGAN: Thank you.

7 A follow-up question?

8 MR. PEELER: Do you know how you would go about  
9 doing that in an ad? Your last point that you would say  
10 that the product contains no CFCs in the refrigeration unit,  
11 but --

12 MR. ZIELEZIENSKI: Disclosing HCFCs.

13 MR. PEELER: Right.

14 MR. ZIELEZIENSKI: Without limitation.

15 MR. PEELER: Right.

16 MR. ZIELEZIENSKI: I cannot speak for the  
17 companies that would be advertising, so I would hate to put  
18 forth that language.

19 MR. PEELER: Okay.

20 MR. ZIELEZIENSKI: But I am sure that is an issue  
21 we will have to struggle with.

22 MR. PEELER: Thank you.

23 MS. MADIGAN: Next, Ms. Frane, U.S. EPA?

24 We can pepper you with questions.

25 MS. FRANE: My name is Jean Frane. That is F-R-A-

1 N-E, "N" as in Nancy. And I am here, I am with the  
2 Environmental Protection Agency. I am with the Office of  
3 Pesticide Programs.

4 And, first off, I just want to say that EPA,  
5 because it operates under a number of different statutes,  
6 comes with a lot of different perspectives to an issue like  
7 CFCs and ozone and things like that. And the pesticide  
8 program itself is very densely involved, shall we say,  
9 because our statute requires that we look at labels a lot,  
10 unlike the air program which has pretty much a one-shot deal  
11 here. It has a warning statement.

12 So, generically, just a couple of points about no  
13 CFCs I think should be made. It is true that aerosol  
14 products have not contained CFCs since 1978 and, in my mind,  
15 that essentially puts them on what I would say a common  
16 ground. They are all, except for those few medical inhalers  
17 that are sort of outside the scope -- and I think that is a  
18 very limited number of fear of product, shall we say -- the  
19 vast majority of aerosol products are essentially on the  
20 same common ground. None of them contain CFCs. And, to my  
21 mind, that means that when any one, two, three, five or ten  
22 of those products, regardless of what kind of product they  
23 are, put on a claim of no CFCs, qualified, unqualified,  
24 essentially you are compounding the misconception, the  
25 misperception, that consumers have that they do contain CFCs

1 by introducing another layer of, essentially, misperception,  
2 I think. Not misperception.

3 But where you have a generic misperception that  
4 products do contain CFCs when they really do not -- and none  
5 of them do -- attempting to solve that problem by labeling  
6 one or more products, but not all, with a claim that singles  
7 that product out as opposed to the problem, which is  
8 misperception, I think simply compounds it.

9 Secondly, in general, we have difficulty with  
10 claims that are of the "no anything" variety. This is a  
11 very generic thing. "No CFCs," "no cholesterol," "no  
12 anything" type claims are difficult because they do not  
13 offer positive information. Positive attributes. You can  
14 say a lot of things do not contain a lot of things and that  
15 is confusing to consumers who may already be confused.  
16 Generic thing about "no."

17 And, finally, I would like to agree with the  
18 comments made by the professor from the University of  
19 Illinois and the Environmental Defense Fund that where the  
20 problem is an educational one, the label may not be the  
21 proper place to address it -- one by one by one instead of  
22 some other form of educational response, other vehicles  
23 other than use. I think that is all.

24 Thank you.

25 MR. PEELER: Jean, can I ask a question?

1 MS. FRANE: Certainly.

2 MR. PEELER: And we appreciate your remarks and  
3 EPA's participation.

4 My remembrance -- and we were scrambling around  
5 for this this morning -- my remembrance is the EPA has  
6 approved some labeling on CFC claims of one product.

7 MS. FRANE: Yes. Yes, that is why I tried to keep  
8 it relatively generic.

9 MR. PEELER: Could you remind us what that is?

10 MS. FRANE: Generically.

11 Yes, we have approved labeling and we look at  
12 every pesticide label that comes through the door. We have  
13 this archaic statute that requires us to license products.  
14 And, therefore, we have approved statements that say "no  
15 CFCs" -- I forget the exact language that surrounds it --  
16 "that harm the..." --

17 CSMA people can tell you more about exactly what  
18 it is because they were proponents of it. Notwithstanding  
19 that, there are dangers in claims of this sort, I think.

20 MR. PEELER: Do you have that language?

21 MR. KIEFER: Robert Kiefer, CSMA.

22 I have the reference. I am trying to dig out the  
23 exact language. But there were several pesticide  
24 registration notices that dealt with this issue. One was PR  
25 Notice 92-2, PR Notice 93-4, and PR Notice 93-5. I have to

1 dig for the exact language here.

2 MS. MADIGAN: Do you want to take a moment to do  
3 that and we should move on to something else?

4 MR. KIEFER: Please.

5 MS. MADIGAN: Okay.

6 Last comment is from Marva Kalish. Am I  
7 pronouncing that right?

8 MS. KALISH: Absolutely.

9 MS. MADIGAN: I will note that the comment I think  
10 she is going to make has general applications but, because  
11 the issue was raised in the previous panel, we felt it was  
12 appropriate to include here.

13 MS. KALISH: Thank you.

14 As you said, my name is Marva Kalish and I am  
15 representing Independent Cosmetic Manufacturers and  
16 Distributors. My colleague over there, Howard Baker.

17 There seems to be a sort of consensus of opinion  
18 here, at the meetings yesterday and today, that the label is  
19 not the appropriate place to educate the consumer for many,  
20 many reasons that we have discussed. But, in our case as  
21 cosmetic manufacturers, primarily because the label is very  
22 often on a tiny, tiny product in tiny, tiny print and we  
23 would like to suggest that possibly the FTC could produce a  
24 consumer guide similar in content but, of course, much more  
25 simplified for the lowest common denominator of consumer



1 understanding that could possibly be disseminated to the  
2 public by the press, newspapers, by the consumer press and  
3 fashion magazines and women's beauty magazines and the  
4 prolific abundance of publications on the market that  
5 address health issues to men and to women. There are many  
6 different magazines.

7           So there is a very vast market for reaching  
8 consumers. There are the nutrition magazines, and women's  
9 cooking, and home, and these all would be a very good  
10 vehicle for a simplified version.

11           Now, we do not know if that is appropriate or if  
12 it comes under the jurisdiction of the FTC to do such a  
13 thing. But we were trying to suggest ways that consumers  
14 could be reached very easily and obviously that would not  
15 omit, of course, the newspaper and the television and radio  
16 press as well.

17           And another point that we would just like to make  
18 from yesterday's meetings, we have to emphasize it is a  
19 great, great concern to our organization, which represents  
20 600 predominantly small entrepreneurial companies that  
21 manufacture cosmetic and toiletry products. The emphasis  
22 has to be placed on protecting these manufacturers from  
23 susceptibility to state laws superseding FTC guidelines. We  
24 just cannot function productively and competitively in  
25 commerce in a climate where the states can supersede these

1     FTC guidelines.  We really need a homogeneous federal law  
2     that everybody can feel secure and follow.

3             Thank you.

4             MS. MADIGAN:  Thank you.

5             Those are all the prepared comments.

6             CSMA, do you want to respond to the previous  
7     remarks concerning EPA and pesticides?

8             MR. KIEFER:  Yes, I would.

9             I found the reference in Pesticide Registration  
10    Notice 92-2, which the subject is "Permissible Label Claims  
11    Regarding Ozone-Depleting Substances."  And, under this new  
12    policy, true claims that a product does not contain CFCs or  
13    other ozone-depleting substances are permitted on pesticide  
14    labels.  The exact language -- and, obviously, if you want  
15    to differ from it you are going to have to submit an  
16    amendment to that effect, but -- primarily the approved  
17    language by the agency is, "Contains no CFCs or other ozone-  
18    depleting substances.  Federal regulations prohibit CFC  
19    propellants in aerosols."

20            And that message is pretty much similar to the  
21    CSMA language that we had about "Contains no CFCs which  
22    deplete the ozone layer."

23            MS. MADIGAN:  Okay.

24            Follow-up comments on this subject?  Okay.

25            SPI and then SDA.

1 MS. MILLAR: I actually want to respond to the  
2 comment made by the first participant.

3 MS. MADIGAN: Could we hold off until we finish on  
4 the EPA, then? Is yours related to the EPA issue?

5 SDA.

6 DR. PFLUG: I am a little confused. This is Gerry  
7 Pflug from the SDA.

8 The speaker from EPA stood up here and talked  
9 about they do not think it is appropriate and they do not  
10 think it is the right way to do things and here you have an  
11 agency statement which says that it definitely is  
12 appropriate and definitely does belong on the label. And I  
13 am asking a question of, is that your opinion or EPA's  
14 opinion?

15 MS. FRANE: You --

16 MS. MADIGAN: EPA, Jean Frane.

17 MS. FRANE: Yes, sorry.

18 You will note that the statement we allow on there  
19 is more akin to the statements espoused by the EDF and the  
20 others; i.e., aerosols do not have CFCs in them, which to  
21 our mind is a better way of putting it if you are going to  
22 do it. And, yes, we do allow them. I will allow that.

23 DR. PFLUG: Thank you.

24 MS. MADIGAN: All right.

25 And, SPI, you wanted to respond to the first

1 comment?

2 MS. MILLAR: Yes. Sheila Millar, SPI.

3 The comment was made initially in the public  
4 participation section that it should somehow be the FTC's  
5 province to get into case-by-case judgments on substitutes  
6 for CFCs which are better for the environment. I think that  
7 is well beyond the jurisdiction of the FTC under Section 5  
8 and it, in fact, statutorily, falls to EPA under the Clean  
9 Air Act amendments and they have a very extensive program  
10 under which they approve or review, I should say, Mavis,  
11 alternatives.

12 They have agreed -- EPA has agreed that a variety  
13 of alternatives are, in fact, acceptable for specific  
14 applications. Some of those alternatives would be HCFCs  
15 which have a moderate, minor ozone-depleting effect. Others  
16 would be VOCs. It depends on the application and  
17 performance drives what alternatives are acceptable.

18 From a technical perspective, for those foam  
19 plastic insulation products which were originally made with  
20 CFCs, they are primarily now being made with HCFCs and the  
21 reason is that the alternatives would involve significant  
22 energy penalties, which is the kind of trade-off that we do  
23 not think is appropriate. But I think, fundamentally, it is  
24 not under FTC's jurisdiction to get involved in those types  
25 of comparisons.

1 MS. MADIGAN: Okay.

2 Any other panelist on that particular issue?

3 And let me just ask, since we do have a couple of  
4 minutes, as a courtesy, the person who made the comment, if  
5 she would want to add anything in response.

6 Okay. Since we have a couple more minutes, let me  
7 just ask if there is anybody else who wants to comment on  
8 anything that has transpired this morning and let's keep it  
9 to the subjects discussed this morning.

10 If not, then let's take -- I am going to propose  
11 two things. First, I am going to take a preliminary roll  
12 call to see who is here for the next panel and then we will  
13 take a five-minute break to shuffle and reorganize.

14 American Forest and Paper Association? Are you  
15 here yet?

16 American Plastics Council?

17 AMERICAN PLASTICS COUNCIL: Here.

18 MS. MADIGAN: Okay.

19 Association of National Advertisers?

20 ASSOCIATION OF NATIONAL ADVERTISERS: Yes.

21 MS. MADIGAN: Chemical Specialties Manufacturers  
22 Association?

23 CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION:  
24 Present.

25 MS. MADIGAN: Conservatory Paper? Conservatory

1 Paper?  
2 Council on Packaging and the Environment? Council  
3 on Packaging and the Environment?  
4 Professor Mayer?  
5 EDF?  
6 MR. DENISON: Ready and willing.  
7 MS. MADIGAN: Oh-oh.  
8 Environmental Protection Agency? Okay.  
9 Federal Environmental Executive? Federal  
10 Environmental Executive?  
11 Free-Flow Packaging?  
12 Ford Motor Company?  
13 Foodservice and Packaging Institute?  
14 Green Seal?  
15 GREEN SEAL: Here.  
16 MS. MADIGAN: Grocery Manufacturers of America?  
17 Home Depot?  
18 National Recycling Coalition? National Recycling  
19 Coalition?  
20 National Retail Federation? Can you function with  
21 one of two?  
22 NATIONAL RETAIL FEDERATION: Yes.  
23 MS. MADIGAN: Okay.  
24 I meant that in the panel, not in the broader  
25 sense.

1 Scientific Certification Systems? Okay.

2 Soap and Detergent Association?

3 DR. PFLUG: Here.

4 MS. MADIGAN: Society of the Plastics Industry?

5 SOCIETY OF THE PLASTICS INDUSTRY: Here.

6 MS. MADIGAN: State Attorneys General?

7 MS. GRIFFIN: Here.

8 MS. MADIGAN: Okay.

9 For the record, I am going to call off the names -  
10 - are we missing? Oh, great. COPE has arrived.

11 For the record, I am going to read off the names  
12 of those where I am still awaiting an affirmative response:  
13 American Forest and Paper Association, no response;  
14 Conservatory Paper, not here yet; Federal Environmental  
15 Executive, not here yet; National Recycling Coalition, not  
16 here yet.

17 May I have a 30-second caucus with the FTC staff?  
18 Do not leave your seats.

19 (Discussion held off the record.)

20 MS. MADIGAN: Okay. Good news and bad news,  
21 depending on your perspective.

22 We will have a longer break than anticipated and  
23 we will be starting the next panel at eleven-fifteen, as  
24 originally scheduled, in order to give the panelists a  
25 chance to all arrive.

1                   We will be starting promptly at eleven-fifteen,  
2    however.

3                   Thank you.

4                   (Whereupon, Session 1 ended at 10:54.)

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11:21 a.m.

MS. MADIGAN: We are now commencing the panel on Life Cycle and Seals Claims/General Claims.

For the purpose of this discussion, we are going to try to focus before lunch solely on life cycle issues and address eco seals and general claims issues after lunch. I hope that clarifies somewhat.

In light of that, let me just articulate the questions as they relate solely to life cycle claims because I need to break up a couple of the questions.

Should the guides address claims based on life cycle analysis? That is in the agenda. If so, how should such claims be addressed? What substantiation requirements would be required for such claims?

We would also take a piece of the two questions that have been scheduled for after lunch and focus strictly on life cycle. What messages do life cycle claims convey to consumers, and what guidance, if any, should be given for life cycle claims?

I think rather than take all those questions seriatim, we should just open it up and talk about life cycle analysis and life cycle claims.

With that, before we begin a point of clarification.

1           MR. DENISON: I read some ambiguity into the very  
2 first of those questions, "Should the guide suggest claims  
3 based on life cycle analysis?" I just want to make sure I  
4 understand.

5           There are two ways to interpret that. One is  
6 should the guides address claims that themselves are based  
7 on life cycle analysis. I presume that is what it meant,  
8 but the alternative is should the FTC use a life cycle  
9 approach to evaluating claims generally. Are we to talk to  
10 both of those?

11          MS. MADIGAN: Could we get clarification from the  
12 FTC?

13          MR. PEELER: The first and not the second.

14          MS. MADIGAN: Okay. Before we begin, very quickly  
15 let's go around the table starting with Home Depot with name  
16 and company.

17           I might ask, do we need to spell now, or can we  
18 get spellings to you all later? Later? Okay. That will  
19 save some time.

20          MR. EISEN: Mark Eisen, Home Depot.

21          MR. MAYER: Rob Mayer, University of Utah.

22          MR. DENISON: Richard Denison, EDF.

23          MR. DAVIS: Alan Davis, Conservatree Information  
24 Services.

25          MR. CHAFFEE: Chet Chaffee, Scientific

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1 Certification Systems.

2 MR. DAVIS: Richard Davis, Foodservice and  
3 Packaging Institute.

4 MR. GRAHAM: Arthur Graham, Free Flow Packaging  
5 Corporation.

6 MS. GOIDEL: Eun-Sook Goidel, and I will spell  
7 that later, with U.S. EPA. I am with the Office of Poison  
8 Prevention and Toxics.

9 MS. MADIGAN: You might just want to give him a  
10 heads up.

11 MS. GOIDEL: E-U-N hyphen S-O-O-K, last name is  
12 Goidel, G-O-I-D-E-L.

13 MS. MADIGAN: And that is EPA.

14 MS. MCPOLAND: Fran McPoland, the Federal  
15 Environmental Executive.

16 MS. MADIGAN: Let's hold off a second so he can  
17 catch up.

18 MR. BROWN: I am Charles Brown with the National  
19 Association of Chain Drug Stores, National Retail  
20 Federation, Petroleum Marketers Association, National Lumber  
21 and Building Material Dealers Association and National  
22 Association of Retail Druggists, which we will refer to as  
23 the Retailer Coalition.

24 MS. MADIGAN: And you see he is taking six chairs  
25 while he is speaking.

1 MR. DERSHOWITZ: My name is Mike Dershowitz, and I  
2 am with the Federal Trade Commission.

3 MR. COX: Carolyn Cox with the Federal Trade  
4 Commission.

5 MR. PEELER: Lee Peeler, FTC.

6 MS. MADIGAN: Denise Madigan, facilitator.

7 MR. BANK: Kevin Bank, FTC.

8 MR. MILLER: Edgar Miller, National Recycling  
9 Coalition.

10 MS. MADIGAN: Is this mike on? Can we ask in the  
11 interim to share the mike over on this side until we get to  
12 FTC questions?

13 Do you want to reintroduce yourself, Edgar?

14 MR. MILLER: Edgar Miller, National Recycling  
15 Coalition.

16 MS. DAY: Susan Day, Ford Motor Company.

17 MR. OTIS: Rick Otis, American Plastics Council.

18 MS. SEILER: Elizabeth Seiler with the Grocery  
19 Manufacturers of America.

20 MR. SCARBOROUGH: Keith Scarborough, Association  
21 of National Advertisers.

22 MS. GRIFFIN: Mary Griffin, State Attorneys  
23 General's Task Force.

24 MR. KIEFER: Robert Kiefer, Chemical Specialties  
25 Manufacturers Association.

1 MS. LAYTON: Pat Layton, American Forest and Paper  
2 Association.

3 MR. FREEMAN: Lew Freeman, the Society of the  
4 Plastics Industry.

5 MR. PFLUG: Gerry Pflug, Soap and Detergent  
6 Association.

7 MR. DEAN: And I am Norman Dean with Green Seal.

8 MS. MADIGAN: I am going to ask. Maybe we can put  
9 that microphone between CSMA and AFPA. If you could perhaps  
10 share that mike, and then these three can share that mike  
11 just to make it a little easier. I think we have two mikes  
12 for this group here. That one is not working. Perhaps when  
13 we ask FTC questions you could use this one.

14 Let's begin then. Who would like to start the  
15 discussion? Green Seal? Life cycle analysis for the  
16 morning.

17 MR. DEAN: My overall reaction to reading the 95  
18 comments that came in and hundreds of pages was on this life  
19 cycle issue and the seal issue if it ain't broke, don't fix  
20 it.

21 In all of the comments that you received, while  
22 there are lots of generalized fears of what might happen in  
23 the future, there is not a single example that has been  
24 cited of an eco label or a life cycle claim that has been  
25 deceiving to consumers.

1           I don't think there is a record on which the  
2 Commission can fairly conclude that it needs to regulate or  
3 give advice in this area. What we have are some  
4 predictions, fears and philosophical objections in this  
5 area.

6           Underlying all this I think, though, is an  
7 important issue, and that is the issue of whether we are  
8 going to move from regulating or from promoting products  
9 based on single attributes like biodegradability or whether  
10 we are going to take a more comprehensive, multi-attribute  
11 life cycle approach.

12           The rest of the world and the Environmental  
13 Protection Agency are all moving toward the multiple  
14 attribute life cycle approach as reflected in the  
15 environmentally preferable product draft guidance that  
16 recently came out.

17           This is the future, these multi-attribute claims,  
18 because they provide more information to consumers and  
19 because the evidence from 20 years of experience in Europe  
20 is that these programs which use a life cycle prospective on  
21 the world can help improve the environment.

22           I also think as we have this discussion we need to  
23 keep in mind that when you talk about life cycle, there are  
24 two different ways in which life cycle assessment can be  
25 used with respect to products. The first is where a company

1 translates a quantitative life cycle assessment either into  
2 a report card kind of label or a generalized environmental  
3 claim. Based on life cycle assessment, my polystyrene cup  
4 is better than your paper cup.

5 That is not the process that is being used by the  
6 overwhelming majority of seal programs like Green Seal. We  
7 have a process which is decision based with experts which is  
8 informed by life cycle assessment, but does not use life  
9 cycle assessment as a black box; i.e., that you get a result  
10 out of the life cycle assessment, and that leads to a  
11 conclusion that the product is better for the environment.

12 We take a much more comprehensive look. We bring  
13 experts in. We have an open public process in which anyone  
14 is invited to participate by submitting data or giving their  
15 views.

16 In short, my view on this is it is not broke, and  
17 if it ain't broke, don't fix it.

18 MS. MADIGAN: Foodservice Packaging, followed by  
19 American Plastics.

20 MR. DAVIS: Richard Davis with Foodservice and  
21 Packaging Institute.

22 We feel that this guide has been, is and should  
23 continue to be a single attribute guidance document. LCA is  
24 a multi-faceted cradle to grave type claim system, which is  
25 obviously very different from a single attribute type claim.

1 LCA today is very --

2 (Missing a few seconds testimony due to tape  
3 defect.)

4 impact phase of the life cycle and, therefore, a  
5 significant amount of independent judgement.

6 As the previous speaker said, there are decision  
7 to be made. Those decisions are being made by experts and  
8 not necessarily being made on sound scientific  
9 methodologies. They are not defensible in some cases, and  
10 that could make the documents, if you were to include LCA in  
11 this document, very voluminous, very confusing and maybe  
12 very difficult to even use.

13 It would be inappropriate, in our minds, to mix  
14 the two types of labeling approaches in one document.  
15 Having said that, however, we do believe that FTC does have  
16 an overriding authority that they should monitor and provide  
17 a level playing field in the marketplace.

18 If LCAs are going to be used and they are going to  
19 be based on judgmental decisions, then there is a very  
20 strong possibility that one manufacturer could be  
21 inappropriately discriminated against because of an  
22 inappropriate decision that cannot be scientifically based.  
23 We, therefore, think that FTC needs to think about LCAs and  
24 needs to consider how they would be evaluated to provide  
25 non-discrimination.



1           In the last day and a half, we have spent a  
2 tremendous amount of time talking about deception to the  
3 consumer. Granted, that is a very important piece of FTC's  
4 involvement and their authority, but their authority also  
5 goes to the marketing community, the manufacturing  
6 community.

7           To provide that level playing field, we think LCAs  
8 need to be evaluated, but not in this document.

9           MS. MADIGAN: American Plastics, followed by AFPA.

10          MR. OTIS: Rick Otis, American Plastics Council.

11          I did not have a specific comment on the  
12 discussion at the moment, but I noticed and Green Seal  
13 raised a question, and I wanted to help clarify our  
14 discussions.

15          When we have talked about this in our office or  
16 other places, we have always run across confusion between  
17 what we meant by eco labeling. We found it convenient for  
18 the purposes of discussion to use the term "eco seal" in  
19 reference to a Green Seal-like seal versus ecological  
20 labeling as a generic term referring to putting information  
21 on environmental aspects on the product.

22          I do not know whether that is a convenient  
23 distinction for you, but it might be one that would help our  
24 discussion if we could for our conversations draw a  
25 distinction between the two.

1 MS. MADIGAN: Let's just remember that the eco  
2 seal discussion and whatever various forms it may take,  
3 whether it is a report card or a seal, is reserved until  
4 after lunch to the extent we can separate it from life  
5 cycle, which may or may not be easy to do.

6 Was that it, Rick?

7 MR. OTIS: Yes, that is all.

8 MS. MADIGAN: Thank you.

9 AFPA, followed by GMA.

10 MS. LAYTON: Thank you. Pat Layton, American  
11 Forest and Paper Association.

12 Life cycle analysis is an incomplete environmental  
13 management tool at this time. There are right now  
14 international standards in development with ISO in which  
15 there is an effort to standardize the process of LCA.

16 That process has quickly demonstrated that  
17 although the general principles around life cycle analysis  
18 can be standardized, which says the kinds of things you can  
19 do and cannot do, and that it is probably appropriate at  
20 this point in time that the phase of life cycle assessment  
21 called the inventory process is possible to standardize  
22 within the next year or so at an international level and is  
23 a fairly rigorous procedure in which many people know how to  
24 do inventory analysis.

25 The third phase of a life cycle assessment called

1 the impact analysis phase is not appropriate for  
2 standardization, is not done the same way. This has been  
3 reported at recent SETAC meetings. SETAC is sort of the  
4 research group that develops the practice of LCA. It is an  
5 international group also.

6 They basically are still looking at impact  
7 analysis on a case by case study. They do not have a  
8 methodology developed and accepted. Some countries actually  
9 or some associations or groups within countries have  
10 methodologies developed, but these are not accepted at an  
11 international scientific level.

12 Really the only phase where there is sort of  
13 general consensus of how to do a life cycle assessment is  
14 truly sort of the environmental inventory, which is a mass  
15 and energy balance. There are even some questions being  
16 raised on are those being done appropriately at this time.

17 I think, therefore, that in the international  
18 standards community and in our minds at AFPA, we recognize  
19 the value of the life cycle inventory to basically be an  
20 accounting, a mass energy balance accounting process, to  
21 give you information about a cradle to grave aspect of a  
22 product.

23 It has very good usefulness in product design and  
24 helping you understand how your product can be made better  
25 and helping you understand various kinds of things about

1 your product and about your system, but it is not ready for  
2 I think the kind of advertising things that would look at,  
3 and I don't mean to jump to eco seals, but you have to. It  
4 is not ready for overall environmental superiority claims.

5 It can be useful in what I would call single  
6 attribute claims such as this product uses 20 percent less  
7 energy than this product. If you can do it fairly  
8 objectively, you can have good databases for making a  
9 comparative claim.

10 That is a single attribute comparative claim using  
11 a cradle to grave approach with an LCA, but that is  
12 inventory claims only. That does not say that we today know  
13 how to do an impact assessment and do the whole life cycle  
14 assessment approach to making a single attribute claim. We  
15 can only do inventory claims, but there is a good standard  
16 basis for how to do this that is acceptable in the level  
17 playing field.

18 Thank you.

19 MS. MADIGAN: GMA, followed by the Association of  
20 National Advertisers.

21 MS. SEILER: Elizabeth Seiler with GMA.

22 I actually had wanted to respond to some of the  
23 points on eco seals which Norman Dean had raised. Perhaps I  
24 would be better off waiting.

25 MS. MADIGAN: I will make a note, and we will be

1 sure to come back to you in the eco seals section.

2 MR. SCARBOROUGH: Keith Scarborough with the  
3 Association of National Advertisers.

4 We have some very real concerns about life cycle  
5 analysis and the use of eco seals just in general. One of  
6 the real beauties of the FTC guidelines is that they are a  
7 communications policy. They are a policy about what you  
8 tell about the environmental attributes of your product.  
9 They are not an environmental policy statement.

10 We are concerned that eco seals and life cycle  
11 analysis crosses the border from being a communications  
12 policy issue to a very substantive environmental policy  
13 setting process.

14 We feel that life cycle analysis and eco seals  
15 should be treated in the same way that the guidelines now  
16 treat a general environmental claim, such as environmentally  
17 friendly or better for the environment.

18 In our view, the existence of a seal or a life  
19 cycle analysis, at least in the state of science today,  
20 really conveys no more information to a consumer than does a  
21 general claim that our product is environmentally safe or  
22 environmentally better.

23 We would urge the Commission to keep the focus on  
24 the guidelines as a communications policy, not as a policy  
25 for setting one particular standard of environmental policy.

1 MS. MADIGAN: Ford, followed by EDF.

2 MS. DAY: Susan Day, Ford Motor Company.

3 The automotive industry already provides single  
4 attribute environmental data to consumers and to the  
5 Government in terms of emissions and fuel economy. I would  
6 like to point out the complexity of doing those single  
7 attribute analyses under regulated circumstances is enormous  
8 vehicle to vehicle, making sure that the laboratories are  
9 reporting the same data, etc. That is just a huge burden.

10 Now we are talking about LCA, which is a  
11 multi-attribute system. That is even bigger. The question  
12 comes up that yes, inventories are in a place where one  
13 could probably do them, but is the consumer in a position to  
14 make the relative trade-off on their own that a pound of CO2  
15 is preferable to a pound of NOX or is preferable to a pound  
16 of solid waste or is preferable to a pound of wastewater?

17 Where could they make such an assessment? I think  
18 that is a tall order, given the discussions that we have for  
19 education on other perhaps simpler issues.

20 Going on from there, the complexity of the  
21 process, as I mentioned earlier, is enormous. Given the  
22 history that we have had with the single attributes such as  
23 fuel economy, emissions, etc., being able to go out and  
24 thoroughly document from the soil to the plant to the use to  
25 the end of life is enormous.

1           As an example, Volvo had nine engineers full time  
2 for a year evaluating two engine systems. One was an  
3 electric ethanol hybrid system. The other one was just a  
4 direct injection diesel system. They did not evaluate  
5 anything else on that product, just drive train. They did  
6 not evaluate other alternatives, just those two items.

7           The cost of doing such a program is enormous.  
8 That product that they examined was a heavy duty truck, of  
9 which they were looking at one assembly out of 115,000  
10 components. That is a lot to look at.

11           You have the process where is the consumer in a  
12 position to make the relative trade-off. It is very  
13 complex. Products that are being looked at range from very  
14 simple and straightforward such as just a chemical process  
15 to the very complex in terms of durable goods.

16           I seriously question whether or not we are in a  
17 position to standardize such a thing and bear the cost of  
18 doing it in order to provide consumer information which they  
19 may or may not understand.

20           I do contend, though, that LCA has a purpose. We  
21 use it inside Ford Motor Company trying to understand where  
22 there might be inefficiencies in our systems. It is very  
23 useful there because it points out where we may have an  
24 opportunity to clean such a system up.

25           ISO has come out and said that they also do not

1 believe that LCA is a good tool for comparative analysis.

2 MS. MADIGAN: EDF, followed by Attorney General.

3 MR. DENISON: Richard Denison, EDF.

4 We do believe that the guides need to address the  
5 issue of life cycle analysis. I am neutral as to whether it  
6 is in this document or a separate document. I will leave  
7 that to you.

8 I would like to lay out a framework for thinking  
9 about these issues that I think is important and that is  
10 that there are several different contexts in which life  
11 cycle issues arise. I want to make there tiers, if you  
12 will, of context.

13 The first is whether it is appropriate to take a  
14 life cycle approach to assessing one or more environmental  
15 parameters about a product. The second tier is what many  
16 call the life cycle assessment or the methodology itself,  
17 which has certain guidelines, certain standard procedures.  
18 There is a lot of ambiguity and a lot of that, but there is  
19 a methodology. The third is how you take information of the  
20 life cycle nature and communicate it to a consumer.

21 Those contexts need to be I think separated and  
22 discussed somewhat separately. It is very difficult to do,  
23 but let me provide a little bit of our view on appropriate  
24 and inappropriate uses at each of those tiers.

25 The notion of doing single attribute life cycle



1 studies came up. I would agree with the statement that was  
2 made that if, for example, one is making a statement about  
3 the energy implications of a given product that to do so by  
4 focusing only on one stage of the life cycle of that product  
5 can be an extremely misleading thing.

6 For example, if a statement is made only about the  
7 energy saving aspects of the use of a product when in fact  
8 its production or disposal has enormous energy implications  
9 that are ignored in that statement, that can be very  
10 misleading. I would argue strongly that where an aspect of  
11 a product's performance has implications at every stage of  
12 its life that a statement about that attribute needs to  
13 account for all of those stages.

14 With regard to the methodology or what was  
15 referred to as the black box of life cycle assessment, I  
16 would concur with some of the other speakers that this  
17 methodology is in a fairly immature state. Even in the  
18 inventory phase, there are enormous assumptions that have to  
19 be made to get to numbers.

20 What that means, in my view, is there are  
21 appropriate and inappropriate uses for that tool. If the  
22 tool is an audience that is equipped to wade through the  
23 hundreds of pages of a report and understand the nuances,  
24 the data quality limitations, the assumptions that are made,  
25 etc., I think it can be an enormously valuable tool for

1 someone to broaden their view of environmental impacts  
2 associated with processes or products.

3           The problem becomes when you cross a line and you  
4 start trying to communicate that information to an audience  
5 in ways either an audience cannot or is in no position to  
6 wade through hundreds of pages or understand those hundreds  
7 of pages of caveats and qualifications, in my view that is  
8 where you start getting into trouble.

9           If we try to take life cycle information which has  
10 a guise around it of pure science, pure objectivity when in  
11 fact that is not the case, enormous value judgement goes  
12 into play here. We communicate that to the public in a way  
13 that perpetuates the notion that we have put in a bunch of  
14 data, cranked the handle and come out with the answer to the  
15 question. That, to me, is doing a disservice to the  
16 methodology and its limitations.

17           I fully believe that those kinds of claims are  
18 being made out there in the marketplace today and will  
19 increasingly be made, so I would like to speak a little bit  
20 later when we can get into this about what I believe are  
21 necessary ingredients in the process by which that would  
22 occur in terms of public access to information, public  
23 involvement in the setting of guidelines for how those  
24 studies are conducted and communicated that the FTC could in  
25 fact look at and make some headway on.

1           I do believe that the Commission has an ability to  
2 delve into this issue to some degree without getting dragged  
3 into the total quagmire that it represents by falling back  
4 on some key principles about substantiation, on ability of  
5 people outside of the practitioner world, if you will, the  
6 people conducting the studies, to be able to evaluate  
7 objectively what assumptions and what data went into the  
8 studies in order to be able to provide an independent  
9 assessment of their validity.

10           MS. MADIGAN: Attorney General, followed by Soap  
11 and Detergent.

12           MS. GRIFFIN: Mary Griffin, Attorney General's  
13 Task Force.

14           I just had a question that I wanted to pose to the  
15 EPA representative at the table. The task force in the past  
16 had recommended that advertisers not use life cycle analysis  
17 because of concerns about the lack of a uniform procedure  
18 and way that the results would be arrived at.

19           It is our understanding that EPA had been working  
20 toward reaching some sort of consensus on how life cycle  
21 analysis should be performed. I was just wondering if you  
22 could give us an update on where the Agency standard on  
23 that?

24           MS. GOIDEL: Sure. Eun-Sook Goidel, EPA.

25           Just a point of clarification. We have never

1 indicated that LCA should not be used by companies. We were  
2 concerned when the guides were first being developed that  
3 the tool was not sufficiently developed for use as a basis  
4 for claims to be made based on life cycle. However, we feel  
5 strongly that life cycle as a tool has a really good  
6 potential to serve as an important and one of many tools  
7 that can be used for environmental improvement.

8 In terms of where we are with the development of  
9 the methodology, we are experiencing the same type of  
10 challenges that others are such as SETAC and trying to come  
11 up with standardized methods. We are in the process of  
12 participating on ISO process as well.

13 I am not sure whether that process will result in  
14 a single standardized type of methodology, at least not in  
15 the near future. We do not have a developed tool that is  
16 EPA's own LCA tool that we can provide for standardization  
17 purposes.

18 One thing I would like to clarify or put on the  
19 table is that I think despite the fact that this tool is  
20 still an evolving tool, it is the reality that companies are  
21 using life cycle. They are using life cycle to make certain  
22 claims about their product.

23 I think that the FTC can and should provide some  
24 guidance on how these kind of claims should be made. I  
25 think the challenge is how to do this in such a way so that

1 the consumers are not misled, but also without being too  
2 restrictive so that it shuts the door on the whole evolution  
3 of this tool that has I think a lot of promise.

4 MS. MADIGAN: Soap and Detergent, and then, Green  
5 Seal, I will come back to you. I just want to jump to a  
6 couple of people who have not yet spoken, but I will come  
7 back to you.

8 Soap and Detergent, followed then by Free Flow.

9 DR. PFLUG: Gerry Pflug, Soap and Detergent.

10 I think sitting here listening for 20 minutes you  
11 have heard about 15 different versions of what people think  
12 about life cycle, all of the versions saying that it is  
13 nowhere near perfection and when are we ever going to  
14 perfect it.

15 I cannot see how FTC could rely on any data  
16 generated until there is agreement with regard to what goes  
17 into life cycle and what parameters have what weight.

18 The position that we are pushing is the fact that  
19 it may in the future be a very valuable tool. It may be  
20 very appropriate, but at this point in time we are very far  
21 away from having agreement.

22 Until that point comes, I cannot see how FTC can  
23 rely on any data because different groups and different  
24 categories have different interpretations. It is a very  
25 difficult area at this point to rely on. It would be very

1 nice, but we are nowhere near that.

2 MS. MADIGAN: Free Flow, followed by Scientific  
3 Certification Systems.

4 MR. GRAHAM: Arthur Graham, Free Flow Packaging  
5 Corporation.

6 I would like to support pretty much the comments  
7 that have been made thus far. What we have here is a  
8 fledgling new science called life cycle analysis, analysis  
9 by whom, by what standards, by what verification.

10 The FTC and this hearing is concerned with  
11 misrepresentation of the consumer, and I daresay that we  
12 have in another body of the Government an organization  
13 involved with misrepresentation of financial statements. I  
14 am talking about the SEC.

15 The SEC has set up very rigorous controls  
16 regarding how financial statements are to be prepared, and  
17 we have established in the SEC and the accounting world  
18 extensive standards of how accounting statements should be  
19 prepared so that the person who reads them is not deceived.  
20 It is a well defined science.

21 I am suggesting that while I very much agree with  
22 the concept of the life cycle analysis for consumers to be  
23 able to make a valued judgement, I think that it is not a  
24 science today and that the life cycle analysis claims ought  
25 to be prohibited from being used until such time as some

1 Government body has established the standards, the analysis,  
2 has set up a license to be given to those people just like  
3 CPAs are licensed to prepare life cycle analysis, the  
4 standards to be set as to what the analysis should consist  
5 of and then a means of verifying that the people who said  
6 what they said are in fact doing their job correctly.

7           There is a big morass out there, and until such  
8 time as we really establish the validity of the life cycle  
9 analysis, anything that we say about analysis will be  
10 fraudulent or will be unable to be substantiated and  
11 verified for the consumer.

12           MS. MADIGAN: Scientific Certification, followed  
13 by CSMA.

14           MR. CHAFFEE: Chet Chaffee, Scientific  
15 Certification Systems.

16           To address the first question which is should the  
17 guides address life cycle analysis and, secondly, how, I  
18 guess I would just like to add to the comments already that  
19 there should be significant caution on the FTC's part to  
20 take a look at what is being discussed both at national and  
21 international levels.

22           There are numerous bodies out there -- the EPA  
23 here in the United States, the U.S. Green Building Council  
24 through ASTM process here in the United States, SETAC here  
25 in the United States, SETAC Europe, ISO and a number of

1 others -- who are looking at setting guidelines for life  
2 cycle assessment.

3           Should the FTC decide that they are going to wade  
4 in and look at how to address that, I think it is incumbent  
5 upon them to look at all the international and national  
6 bodies that are looking at that because there is a good deal  
7 of discussion, and it is fairly well down the road in many  
8 arenas.

9           I think consistency is important considering there  
10 will be decisions made in the next year or two on certain  
11 aspects of life cycles in an international arena.

12           On the question of substantiation that people have  
13 brought in this and what constitutes a viable claim or what  
14 constitutes reasonable substantiation to avoid consumer  
15 misrepresentation or consumer fraud, it is clear that a  
16 national standard or an international standard is necessary  
17 to do that, and one does not exist. In lieu of that, there  
18 are many claims in the marketplace based on science that  
19 doesn't have national or international standards.

20           We talked about some yesterday on compostability  
21 as one arena where people can make claims, but there are no  
22 verified national standards or international standards on  
23 compostability, yet we recognize the ability to make those  
24 claims in the marketplace and use good, adequate science  
25 that could be peer reviewed and technically reviewed to



1 substantiate that claim.

2           The same can be said of life cycle assessment.  
3 For studies that are being done by corporations, it may be  
4 incumbent upon those corporations and on any guidance to  
5 those corporations that significant technical and peer  
6 review be incorporated into the process and that stakeholder  
7 review, which has been suggested in some arenas, also be a  
8 part of that so that should a single company in an arena  
9 like to make a claim based on life cycle analysis that  
10 stakeholders and other peers within that category also have  
11 some say in it.

12           Should there be consensus among an industry, then  
13 I suspect that there would be little issue with fraudulent  
14 claims to the consumer base using those products should the  
15 whole arena have a consensus around that.

16           Thank you.

17           MS. MADIGAN: SPI, followed by Green Seal.

18           MR. FREEMAN: I am Lew Freeman with the Society of  
19 the Plastics Industry.

20           I just have an observation and a comment. I am  
21 not sure I will add to the body of knowledge, but maybe I  
22 will make it more vivid for you.

23           I was listening. I looked back at the existing  
24 guides and am struck by the existing guides, 260.5,  
25 Interpretation and Substantiation of Environmental Marketing

1 Claims, that state, and I am paraphrasing somewhat, that  
2 substantiation will often require competent and reliable  
3 scientific evidence and that to be competent and reliable  
4 you have to use procedures generally accepted in the  
5 profession to yield accurate and reliable results.

6 Everything I have heard around here is that there  
7 is not general acceptance about the process. I think  
8 everyone feels that life cycle analysis indeed is a tool  
9 that can be very helpful, but it is not there yet.

10 I suppose my comment, and maybe this will be more  
11 vivid. I was in the office this morning and ran across an  
12 advertising flyer in which somebody had a little quote that  
13 seems to fit here from an icon of the plastics industry,  
14 Dustin Hoffman, who once said, "A good review from the  
15 critics is just another stay of execution."

16 I cite that because I think the danger here is  
17 that taking life cycle analysis and running with it to the  
18 degree that some would like to, whether it is toward eco  
19 seals or something else, you are going to end up relying as  
20 some people rely on movie review and theater critics, and it  
21 will have the same I think ultimate dependence on  
22 subjectivity. I think that is a danger that should be  
23 avoided.

24 At the same time, we certainly applaud further  
25 work on LCA, but I don't think it is ready for prime time.

1 MS. MADIGAN: Green Seal, followed by CSMA.

2 MR. DEAN: I just wanted to emphasize one more  
3 time the distinction between life cycle analysis as SETAC,  
4 for example, would use that term as a three part analysis  
5 that is quantitatively based and the process that is being  
6 used by the labeling programs throughout the world right  
7 now, which while it has a life cycle component is not  
8 strictly quantitative life cycle assessment within the  
9 meaning of SETAC because we recognize there are limitations  
10 in the state of the art as to how far you can go with  
11 quantitative life cycle assessment.

12 At the same time, I think you need to be careful  
13 as you fashion whatever you are going to fashion to not  
14 undercut the move both here in the U.S. and throughout the  
15 world toward a broader view of the environmental  
16 preferability of products, a view that looks not simply at  
17 the single attributes, but looks at multi-attribute claims.

18 From where I sit, a consumer is far better off and  
19 we are going to have more competition if companies can make  
20 claims that are based on five or six attributes of their  
21 product rather than one or 30 or 40 attributes as the  
22 science develops.

23 In any event, I would note also as we have gone  
24 around the table this morning that as of yet there has not  
25 yet been a single example cited of an actual life cycle

1 claim out in the marketplace that is supposedly misleading  
2 consumers.

3 Do I agree that it is a possibility in the future?  
4 Yes, but I think in order for you to frame guidelines that  
5 are going to be useful you are going to have to do a lot  
6 more looking at what is out there in order to understand the  
7 various permutations and combinations that you might face.

8 MS. MADIGAN: I am going to take one last comment  
9 question, and then I am going to canvass the table to see if  
10 there is anybody else who has not spoken. Then I will ask  
11 the FTC if we should have their questions posed before lunch  
12 or after lunch.

13 First, Ford, you wanted to ask a question of Green  
14 Seal?

15 MS. DAY: Susan Day, Ford Motor Company.

16 I don't know if this is probably better answered  
17 after lunch, but you made a statement that left me a little  
18 confused as to the effect of the approach taken by labeling  
19 organizations around the world.

20 That leads me to the question of is there a  
21 standard for labeling organizations outside of what I  
22 understand LCA to mean? Is there a standard on how one  
23 applies it? I am a little confused here.

24 MS. MADIGAN: If you can limit it to focusing on  
25 use of LCA, and then we will come back to the bigger issues

1 after lunch.

2 MR. DEAN: The answer is that since the  
3 practitioner programs do not use a quantitative life cycle  
4 assessment, there is no standard there. There are  
5 guidelines that have both been proposed that the programs  
6 themselves have adopted for process that govern our  
7 operations.

8 ISO, as several people have discussed, is looking  
9 at an ISO standard that would govern the practitioner  
10 program and the environmental labeling area. That includes  
11 life cycle type guidance within that ISO draft.

12 MS. MADIGAN: Is that helpful?

13 MS. DAY: Yes. I will address the rest of my  
14 question after lunch then.

15 MS. MADIGAN: Let me ask if there is anybody  
16 seated at the table who has not yet had a chance to speak to  
17 this issue who would like to make a comment or pose a  
18 question?

19 Home Depot?

20 MR. EISEN: Mark Eisen, Home Depot.

21 I would just like to comment that we have used  
22 through our manufacturers the inventory phase of life cycle  
23 to label products, but that the debate over life cycle and  
24 its total development has to be kept in mind I think  
25 relative to the phases of life cycle. There is the

1 inventory phase, and then there is the impact phase and the  
2 improvement phase.

3 As far as marketers go, I don't believe we need to  
4 have a complete international determination of the impact  
5 and the improvement phase in order to use this as a  
6 marketing tool because that has already been demonstrated.

7 The inventory phase is valuable for comparative  
8 claims, we believe, as was stated earlier, but what it is  
9 based on is it is closer to agreement in that phase of life  
10 cycle as far as we can determine on an international basis  
11 as being a generally accepted methodology.

12 The inventory phase as an accounting tool measures  
13 how much burden there is in different environmental  
14 categories. I don't think that there is any disagreement  
15 that less burden is better when it measures air pollution or  
16 water pollution or solid waste. Less is better.

17 That is about as far as I think manufacturers need  
18 to go to make claims. Once they determine them and have  
19 that baseline information, then they can proceed and improve  
20 their products and then improve upon those burdens by  
21 lessening them.

22 As far as marketing and claims go, we are almost  
23 there I think internationally.

24 MS. MADIGAN: NRC, and then we will turn to the  
25 FTC.

1           MR. MILLER: Edgar Miller of the National  
2 Recycling Coalition.

3           Picking up on the last speaker's comments and also  
4 EDF's comments, NRC thinks manufacturers should consider or  
5 at least identify the life cycle impacts of their products  
6 and services, but to the extent that single attribute  
7 characteristics are being used to promote products or as  
8 consumers to purchase products, we would share the concern  
9 that especially if those attributes are being used for  
10 comparative purposes that FTC look at some of those claims  
11 to make sure that the example that Richard mentioned earlier  
12 where it may conserve energy on one part of the life cycle  
13 but use tremendous energy elsewhere in that there are claims  
14 like that out in the marketplace.

15           The one that came up yesterday briefly was  
16 contrasting recycled content with source reduced products.  
17 We are certainly seeing a lot of claims in that vein.  
18 Overall, we think recycled content fairs pretty well in  
19 those types of comparisons, but certainly when you look at  
20 source reduction and its overall savings and material and  
21 energy and production and the rank order of the hierarchy  
22 itself, you could see that perhaps that might be superior to  
23 recycled content.

24           Those types of claims are beginning to emerge, and  
25 I think that is where the complexity in this issue lies and

1 what FTC should be concerned about.

2 MS. MADIGAN: Let me ask if the FTC staff has any  
3 questions that they would like to pursue or follow up on  
4 this subject before we move to eco seals?

5 MR. PEELER: No.

6 MS. MADIGAN: What I would like to do is if  
7 anybody has a burning desire to make a comment before lunch,  
8 keep in mind that there are about 40 people breathing down  
9 your neck behind you. If you could make a very brief  
10 comment?

11 Does anybody else want to say anything on this  
12 subject before we move on? I do not want to put the kibosh  
13 on anybody.

14 Ford? Very briefly.

15 MS. DAY: Susan Day, Ford Motor Company.

16 You know, in all of this discussion it occurs to  
17 me we have probably one of the most expert groups on the  
18 subject of environmental claims, etc., in the room, yet we  
19 have never in our discussion -- we just launched into life  
20 cycle analysis. Do we indeed around this table share the  
21 same definition of what life cycle analysis is? I wanted to  
22 raise that as a question right up front.

23 As we are even getting into this discussion of  
24 claims thereof is there at the very least an opportunity to  
25 achieve consistency in what is meant by the term before we



1 go much further?

2 That is an opportunity perhaps for the FTC to  
3 insure that even if said claims are made that they are  
4 within a certain defined rubric of understanding.

5 MS. MADIGAN: And a final comment from AFPA?

6 MS. LAYTON: Yes. I take exception to the comment  
7 that less is always better. I think that when you talk  
8 about life cycle assessment, the underlying belief within  
9 life cycle assessment is that less is not always better.

10 You have to look at the total concept. That's why  
11 it was developed in the first place. Therefore, if you are  
12 making single attribute claims basically the guides can  
13 cover that. Life cycle is just the accounting tool to give  
14 you scientific information.

15 If you are making a single attribute claim, I  
16 think the guidelines already give you guidance on how to do  
17 those things. Less is not always better.

18 MS. MADIGAN: Very quickly, Foodservice and then  
19 EPA.

20 MR. DAVIS: I simply wanted to take the exception  
21 to less is better, and AFPA did that. Thank you.

22 MS. MADIGAN: EPA?

23 MS. GOIDEL: My only comment is that I think we  
24 could have a discussion about whether life cycle is good,  
25 bad or terrible for a week, and you wouldn't get any

1 agreement.

2 I thought we were here to help FTC decide whether  
3 there should be guidance coming from FTC that may help  
4 prevent misperception by consumers on labels that might  
5 appear on products. I think that is something we want to  
6 keep in mind.

7 MS. MADIGAN: EDF?

8 MR. DENISON: Richard Denison, EDF.

9 I want to take exception with the assertion  
10 earlier that there has never been any misleading life cycle  
11 claims made. In fact, there are a number of them. I have  
12 submitted a number of them to the Commission over the years.

13 In many cases, one of the concerns is that a study  
14 that was done comparing one set of materials is broadly  
15 applied to a much broader set of materials or even a  
16 different set of materials. That is the kind of thing that  
17 I think the Commission could address very directly in its  
18 guidance on life cycle claims.

19 MS. MADIGAN: With that, we will convene at  
20 1:20 p.m. We have shaved off five minutes of lunch, but we  
21 will reconvene at 1:20 p.m. promptly and take up eco seals.

22 Thank you.

23 (Whereupon, at 12:10 p.m. the hearing was  
24 recessed, to reconvene at 1:20 p.m. this same day, Friday,  
25 December 8, 1995.)

S E S S I O N 7

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1:23 p.m.

MS. MADIGAN: Do we have all our panel members here? I see a couple of empty chairs, but I think we will begin.

We are continuing with the same panel that convened just before lunch discussing life cycle issues, eco seals issues and general claims issues. We completed before lunch the discussion of life cycle issues, and now we are going to commence with questions related to eco seals.

Because we disaggregated certain pieces of questions which referred to both life cycle and eco seals in the same breath, I am going to go back over the questions that are now on the table with respect to eco seals.

I am reading from questions listed on the bottom half of the page of the agenda. What messages do seals of approval claims convey to consumers, and what guidance, if any, should be given on seals of approval claims?

I propose we take those two questions together and spend roughly the next 45 minutes addressing those questions. Then we will move on to the general environmental benefit claims and environmentally preferable afterwards.

With that, let me just do one round of microphone testing. Could one person next to each microphone say

1 testing so we can make sure we have the sound system in  
2 place?

3 Just a tip. That little microphone is hard to  
4 move, so we encourage you to get it sort of in one place  
5 where the two of you can access it. Otherwise it may go  
6 out.

7 (Sound check.)

8 MS. MADIGAN: Who would like to begin then with  
9 eco seals? GMA?

10 MS. SEILER: Elizabeth Seiler with GMA.

11 I wanted to begin I guess in part by following up  
12 on some of the statements that were made earlier this  
13 morning on eco seals. Norman Dean stated that there is 20  
14 years of experience with eco seals and that the world  
15 community is moving towards them.

16 Our members are multi-national corporations, and  
17 we would agree that we have had 20 years of experience with  
18 eco seals, but our judgement would be that they have proven  
19 to be extremely problematic, and our fundamental belief is  
20 that they are flawed.

21 As it relates to the Federal Trade Commission, we  
22 see them as general benefit claims. We do agree with the  
23 FTC's current guidance on general benefit claims in that  
24 they should be avoided. Our primary concern is that we  
25 really do not believe that they provide consumers with

1 useful information. In addition, we think that they have  
2 truly hampered environmental progress in the consumer  
3 marketplace.

4 I think reflective of the discussion on LCA this  
5 morning, we feel that the science that needs to go into  
6 making a determination of a product being designated as  
7 "best" for the environment is clearly not mature enough yet  
8 to deal with the very complex and very diverse nature of  
9 environmental trade-offs.

10 To try to suggest that four or five attributes or  
11 30 or 40 attributes could be boiled down to a single end  
12 point that is meaningful to consumers and not in some  
13 misleading, we would just disagree with.

14 In fact, in Australia last year they have  
15 abandoned their Eco Choice program, it is our understanding,  
16 in part because of the concern that consumers were  
17 perceiving the Eco Choice symbol was being superior, meaning  
18 the products were superior to others in that category, which  
19 they were not. In Australia, that was considered to be  
20 potentially in violation of their fair trade law.

21 We think there are any number of examples that  
22 sort of bear out our point on the fact that seals can be  
23 misleading to consumers and also have some perverse  
24 environmental effects.

25 In Sweden, they have a level for biodegradability

1 for diapers. It has resulted in at least one manufacturer  
2 increasing their use of pulp in their diapers to meet the  
3 biodegradability standard, which clearly has some  
4 interesting implications for the total amount of solid waste  
5 that ends up being disposed of.

6 In the U.K., part of one of the eco labeling  
7 board's recommendations on hairsprays has suggested that  
8 part of the criteria ought to be no animal testing. Our  
9 point of view is that that is a value related determination,  
10 and it really is not even related to an environmental  
11 criteria.

12 In Germany, there is a paint criteria for oil  
13 based paints that favors low VOC emissions. In fact,  
14 because the criteria is for oil based paints, latex paints,  
15 which have ultra low VOCs, don't get to get a seal. When  
16 you put those two products side by side on the shelf, it  
17 appears that one would be preferable to the other, where the  
18 consumer is probably not getting all of the information they  
19 need.

20 Sort of a final point of view on this subject area  
21 is that the FTC's approach to environmental marketing  
22 information is far superior. We think that the guidance  
23 that is in the current document is appropriate on general  
24 benefit claims, and we encourage the FTC to take a more  
25 activist approach in pushing their guidelines from

1 environmental marketing claims to the forefront in the world  
2 community.

3 MS. MADIGAN: Green Seal, followed by  
4 Foodservices.

5 MR. DEAN: In reading the comments and listening  
6 to the grocery manufacturers just a few moments ago, it  
7 strikes me that many of the commentators in the room don't  
8 understand how Green Seal and other eco labelers work.

9 First of all, many of the attacks are really  
10 attacks on straw man arguments. The Green Seal program is  
11 science based. We use a methodology that has now been  
12 fairly well established among over two dozen programs  
13 throughout the world that use the methodology.

14 We take a life cycle view, as I had indicated  
15 earlier today, although we do not take a rigid, quantitative  
16 life cycle approach. Our process is totally open to the  
17 public so that if, for example, you believe that we are  
18 improperly excluding latex paints from a Green Seal  
19 standard, you would come to us and explain why you believe  
20 we are wrong and present data.

21 In fact, on our paint standard today we have  
22 received petitions from the Chemical Manufacturers  
23 Association to make changes in our paint standard as a  
24 result of new data, and we are about to make many of the  
25 changes that CMA suggested.

1           Our process includes opportunities for appeals and  
2 petitions. We are very concerned about due process for the  
3 industry. Most importantly, I think, there seems to be an  
4 impression that when a seal is awarded, it is connoting a  
5 generalized benefit claim.

6           We have been very careful, as I think most of the  
7 other labeling programs have throughout the world, to give  
8 some description accompanying the label of why the seal has  
9 been awarded, which of the many criteria. We may sometimes  
10 have ten pages of standards that cover the product and what  
11 were some of the key elements of the award.

12           For example, some windows that we recently  
13 certified by Anderson Windows will contain the statement  
14 that this product meets Green Seal's environmental standards  
15 governing energy efficiency, heavy metals in the frame and  
16 sash materials, packaging and consumer education materials.

17           Similarly, a shower head that has received the  
18 Green Seal bears the explanation below the Green Seal that  
19 this product uses 2.5 gallons per minute and meets Green  
20 Seal environmental standards for water and energy  
21 efficiency.

22           We have been very careful not to simply slap the  
23 seal on a product and leave the consumer to guess. At the  
24 same time, we also make available to consumers detailed  
25 information on what the standard means.



1           In that regard, I think that the seal programs are  
2 a major step forward because if you see biodegradability on  
3 a detergent product today, there is almost no way that you  
4 can readily determine what test was used, what the rate of  
5 degradation was.

6           In contrast, with the Green Seal there is a  
7 published standard. It is objective. It is measurable.  
8 You know precisely the test method that was used with  
9 respect to our household cleaner to evaluate the household  
10 cleaner's biodegradability.

11           In short, I think there is a lot of misleading  
12 information about seal programs and that when you look at  
13 them, most of the arguments made here today collapse.

14           MS. MADIGAN: Foodservice and Packaging, followed  
15 by SDA.

16           MR. DAVIS: Richard Davis with Foodservice and  
17 Packaging Institute.

18           The first question asks what messages do seals of  
19 approval convey to the consumer. I am not prepared because  
20 I don't have data to show you or tell you what they convey  
21 to the consumer, but I will tell you what they are intended  
22 to convey to the consumer.

23           Most of the seal programs in the world today are  
24 intended to convey to the consumer an item of environmental  
25 preferability meaning that their programs are set up, most

1 of them, so that only a certain percentage of the  
2 manufacturing community of a certain product category would  
3 be allowed to use the seal.

4 That means that what they are trying to do is set  
5 up a preference statement, and we call that selective  
6 process. ISO has been working on those processes, and they  
7 are in fact called selective programs because they are  
8 trying to sort out those programs and those products which  
9 have environmental preferability.

10 There is nothing wrong with that approach if in  
11 fact you can show to me that the decision made to determine  
12 which we will say ten percent of products could comply and  
13 could use the seal. If you can show me that that has been  
14 done based on good, sound scientific evidence that is  
15 verifiable and defensible, that might not be too bad.

16 We have talked about life cycle assessments this  
17 morning as not having that capability at this point in time.  
18 The guidelines as we have them now which we I think almost  
19 unilaterally accept has in every step that if you make a  
20 claim it has to be defensible, verifiable, substantiated.

21 We cannot do that with life cycles yet, so to set  
22 up a certain percentage of products that could comply to a  
23 seal program that is not based on scientific evidence I find  
24 to be unacceptable.

25 MS. MADIGAN: SDA, followed by EDF.

1 DR. PFLUG: Thank you. Gerry Pflug.

2 We would like to support the comments of GMA and  
3 feel very much opposed to eco seals. We feel that they are  
4 very selective and that if we put together groups of experts  
5 around the world, each group of experts will come up with a  
6 separate set of criteria. On that basis, you will never  
7 have an acceptable standard to work with or work by.

8 As I said earlier this morning, who is to say that  
9 one parameter of five or six or 150 has more weight than  
10 another parameter, and on what basis are you going to make  
11 those decisions?

12 We feel very strongly that, as the gentleman just  
13 said, if you want to make a claim, you as a company or you  
14 as an industry if you are working all together should have  
15 support for that claim. Most often, they should not be used  
16 at all as a means of comparing one product versus another.

17 Thank you.

18 MS. MADIGAN: EDF, followed by Ford Motor.

19 MS. KINGSTON: Molly Kingston, EDF.

20 I think there is somewhat of a difference, and we  
21 are not perhaps addressing the distinction at this point  
22 between what we would call an environmental award program, a  
23 program of selectivity and elitism within a particular  
24 product category, versus what Green Seal referred to as what  
25 might be called third party certification or third party

1 verification of a specific claim or specific number of  
2 claims.

3 If those claims are listed clearly on the product,  
4 then they are in fact a third party who has come in and  
5 verified those specific claims.

6 At the point of purchase, the consumer is aware of  
7 what environmental attributes are being advertised and on  
8 what attributes the claim is being made. That is not the  
9 case, however, with environmental award programs or eco  
10 seals. Those seals or programs or logos or awards do in  
11 fact convey overall environmental preferability. In fact,  
12 at the recent International Standards Organization, those  
13 programs were defined as conveying overall environmental  
14 preference of a product within a particular product  
15 category.

16 Now, the within a particular product category  
17 clause presents additional problems and potential confusion  
18 for consumers. If the message is that this is an  
19 environmentally friendly product, it has won the award and  
20 has gotten the seal of approval, there is not an  
21 accompanying message that says this is within a particular  
22 particular category, and we may not have compared it to  
23 other products that are similar that could be used along the  
24 same lines.

25 GMA pointed to an important example that had to do

1 with paints. If the product category has been chosen as  
2 latex paints or oil base paints and that product category  
3 awards the label to specific manufacturers, there is not  
4 necessarily the message to consumers that a milk based paint  
5 might in fact be the better environmental choice.

6 The label itself conveying overall environmental  
7 preference is potentially misleading from that vantage point  
8 because you don't necessarily understand that this is a  
9 category that was chosen. The implication is that this is  
10 an environmentally friendly or an environmentally correct  
11 choice to be made.

12 There are also differences that are difficult to  
13 account for in geography and in environmental conditions  
14 based on where the product is made compared to where the  
15 product might be used or eventually sold.

16 All of this accounted for, the bottom line is that  
17 if the labels are awarded, if they are given, there  
18 absolutely must be a requirement for full disclosure upon  
19 request of the underlying documentation of the product  
20 categories, the environmental criteria used, the product  
21 function criteria used, the testing and verification  
22 methodologies and the actual documented evidence on which  
23 the product claim is based.

24 MS. MADIGAN: Before we go further, I just want to  
25 make a note. Yesterday we talked about the SPI code. To

1 reflect the fact that there was just one SPI person and  
2 several other people, I tried to give SPI a chance to speak  
3 a little more frequently.

4 Likewise today, since the subject is eco labeling  
5 I just want to encourage the eco labelers since you may be a  
6 bit outnumbered at the table. We will try to accommodate  
7 your ability to speak while still letting everyone else have  
8 a chance to speak.

9 Ford Motor?

10 MS. DAY: Susan Day, Ford Motor Company.

11 I think the Environmental Defense Fund hit upon  
12 the issue which I was going to refer to, and that was the  
13 concern of a label and making sure that if it is awarded  
14 that it is noting all products in said category.

15 MS. MADIGAN: I would like to just hop over GMA  
16 for one minute and let AFPA speak just because they have not  
17 had a chance yet, and then I will come back to GMA. AFPA  
18 first.

19 MS. LAYTON: Pay Layton, American Forest and Paper  
20 Association.

21 This morning you asked not to talk about LCA and  
22 eco seals, but I would like to bring that back to the point  
23 of view.

24 As I understand it, and the EDF representative may  
25 corroborate this, the current International Standards

1 Organization, the ISO, work on eco labeling or the kind of  
2 eco labeling she was describing uses the term life cycle  
3 approach to eco labeling.

4 I would like to distinguish that from life cycle  
5 analysis and refer to the current committee draft for the  
6 International Standards Organization's life cycle assessment  
7 in which their general principle states:

8 "LCA results should not be reduced to a single  
9 overall conclusion since trade-offs and complexities exist  
10 for the systems analyzed at different stages of their life  
11 cycles. Note: Since such single overall conclusions  
12 include, for example, derivation of a single score or  
13 environmental claims of overall superiority."

14 In other words, the writers of the standards on  
15 life cycle assessment are saying that life cycle assessment  
16 is not an appropriate tool to use to make claims of overall  
17 environmental superiority at this time. That is not to say  
18 that 20 years from now the standard being revised on a  
19 triennial or every three to five years may change this, but  
20 right now that is how the standard reads.

21 I just wanted to add that to the record about life  
22 cycle assessment and its relationship to claims of overall  
23 superiority such as eco seals.

24 Thank you.

25 MS. MADIGAN: GMA?

1 MS. SEILER: Well, I had just wanted to follow up  
2 on this distinction between eco seals and third party  
3 certification, which EDF I think clarified greatly.

4 Just to add to that, our concern is with the  
5 seals. To the extent that a seal is in the marketplace,  
6 their having the ability to have full disclosure of  
7 information if a consumer were to write in for it or  
8 something like that I think is not an adequate test because  
9 if a consumer goes into the market and is comparing one  
10 product to another and at that point can only see a product  
11 with a seal or a product without a seal and is not able to  
12 have any of the other information about why they were  
13 awarded that seal, I think that that again falls into the  
14 area of a general environmental benefit claim, which we  
15 would believe it to be misleading.

16 MS. MADIGAN: American Plastics?

17 MR. OTIS: Rick Otis, American Plastics Council.

18 I would like to add one other point essentially to  
19 associate ourselves with GMA's comments to date and add one  
20 other aspect of the seals that I think we find problematic.

21 Earlier today we heard the discussion on life  
22 cycle analyses having various aspects, and one of the least  
23 developed portions was the impact portion of it. I think if  
24 you begin to look at that you will find you have a hard time  
25 judging the impact of something and because it comes down to



1 a subjective decision about what is and is not an effect  
2 that you are concerned about.

3 I don't know how you make a judgement unless you  
4 bring it all, for example, down to a dollar value of some  
5 sort, a judgement between worker exposure or aquatic  
6 toxicity or even in a different version if you are in rural  
7 Kansas recyclability might not be as important as it is if  
8 you live in Manhattan.

9 We are all active supporters of EDGAR and the  
10 National Recycling Coalition, so I don't mean to suggest  
11 that that is not an important criteria. What I am  
12 suggesting is how do you evaluate the final impact portion  
13 when it really fundamentally comes down to almost subjective  
14 decisions? I think that becomes a real problem when you go  
15 to do a seal award.

16 MS. MADIGAN: Retailer's Coalition?

17 MR. BROWN: Charlie Brown with the Retailer  
18 Coalition.

19 MS. MADIGAN: Charlie, could you grab the mike?

20 MR. BROWN: Yes. Charlie Brown, Retailer  
21 Coalition.

22 The concept of independent verification of claims  
23 is something that the Retailer Coalition supports. Certain  
24 retailers have chosen to make environmental impact an  
25 important part of their marketing program. Some retailers

1 do this, you know, more aggressively than others.

2           Retailers can't always find all the information  
3 they need from the manufacturers. Therefore, an independent  
4 source can be important for those claims. The flow of  
5 information and keeping that flow of information going is  
6 something that we feel the FTC should not take steps to  
7 impede.

8           MS. MADIGAN: The Federal Environmental Executive?

9           MS. MCPOLAND: It seems to me that the consumer is  
10 being placed in a position if we abandon the idea that third  
11 party certifiers are a viable part of the mix. The consumer  
12 is being placed in a position of having to make those  
13 decisions themselves, especially as we get beyond the area  
14 of recycled content or recyclability.

15           Essentially what we are saying is because we do  
16 not have a perfect science in terms of life cycle analysis,  
17 we should abandon all hope of doing anything until industry  
18 decides that we have reached that point.

19           The other issue that I wanted to raise is a lot of  
20 these products are already being submitted for evaluation  
21 with things like the Canadian Green Cross program and the  
22 German programs, as well as the Good Housekeeping program.  
23 Products are being evaluated all the time, and they are  
24 being evaluated on a variety of different bases.

25           I think that the FTC would either have to prohibit

1 the use of seals all together or has to take it into  
2 consideration in its review.

3 MS. MADIGAN: Green Seal, I am going to let you  
4 comment again, and then Attorney's General.

5 MR. DEAN: First, I want to note that you might  
6 get the impression by listening to what is happening at the  
7 table that there is not support in industry for eco labels.  
8 In fact, here in the United States, for example, a fair  
9 number of fairly large, sophisticated companies like  
10 Anderson Windows, Krylon Division of Sherwin-Williams,  
11 General Electric, Teledyne Water-Pic, they are using eco  
12 labels.

13 In other countries, some of the folks who on the  
14 record here have opposed eco labels are in fact using them  
15 in other countries. One of the best examples of that is  
16 Proctor & Gamble. Some of the members of the trade  
17 associations that are represented here today are using seals  
18 in other countries like Georgia-Pacific, James River, 3M and  
19 Xerox.

20 To be quite blunt about it, the manufacturers seem  
21 to be of two minds. In those markets where they think they  
22 can be helped by eco seals, they use them. In those markets  
23 where they feel they will be hurt by eco seals, they take  
24 philosophical objection to the methodology and to other  
25 aspects of the seal programs.

1           I think it is important to recognize as you are  
2 trying to fashion this that there are a substantial number  
3 of companies throughout the world that are trying to do this  
4 and do it right and do it well.

5           The second point goes to the concern that maybe in  
6 drafting our criteria to award seals we might exclude  
7 products, or we might send the wrong message to consumers.

8           One of the things that we do is have that all up  
9 for public comment so that when we propose an approach for  
10 how we are going to certify paints, for example, we ask the  
11 commentators, the industry. Should this be limited just to  
12 latex or oil based paints? Ours aren't, by the way. They  
13 include both oil, latex and any other paint technology.

14           We also ask what language ought to accompany the  
15 label when it appears on the product so the affected  
16 interests have an opportunity to come and say well, we think  
17 it would be misleading if you didn't provide the following  
18 additional information to consumers on the label.

19           Part of what I think protects the public interest  
20 with respect to eco label programs is it is all above board.  
21 It is transparent, and everyone at this table has an  
22 opportunity to participate in the decisions that Green Seal  
23 and other eco labelers are making.

24           MS. MADIGAN: Attorney General's, followed by  
25 CSMA.

1 MS. GRIFFIN: Mary Griffin, State Attorney  
2 General's Task Force.

3 I had a question that I wanted to pose to each  
4 seal or certification group sitting at the table. Could you  
5 just in the most succinct way characterize what claim your  
6 seal or certification is making, and then a second question  
7 is does your seal or certification make a life cycle claim?

8 MS. MADIGAN: Who wants to go first? Why do we  
9 not take Green Seal and then SCS?

10 MR. DEAN: We do not purport to make a life cycle  
11 claim. I think you were here yesterday. My perspective on  
12 this is that every eco label connotes environmental  
13 preferability, so the question is how much detail backs up  
14 the impression that the consumer gets that whether it is a  
15 biodegradability label or an eco label, how much information  
16 do you give the consumer to back up that impression that you  
17 are giving them that the product is environmentally  
18 preferable?

19 Our approach has been to have it above board, have  
20 published criteria and standards so that you can see what we  
21 are using to evaluate the product and to have standards  
22 which are always objective rather than subjective so that  
23 any third party can independently test the product and  
24 verify that what we say about it is true.

25 MS. GRIFFIN: Would I be correct in characterizing

1 your answer that you say you are making an environmentally  
2 preferable assertion, but you are qualifying it as to the  
3 criteria?

4 MR. DEAN: What attributes form the basis of our  
5 conclusion that the product is on balance preferable.

6 MS. MADIGAN: And the question then for Scientific  
7 Certification Systems is if you could clarify the claim  
8 being made, and do you make a life cycle analysis claim?

9 MR. CHAFFEE: Chet Chaffee, Scientific  
10 Certification Systems.

11 We do make a life cycle claim. What we originally  
12 started in the marketplace known as the environmental report  
13 card has since been changed over to the name certified eco  
14 profile.

15 While it is a life cycle claim, many of the  
16 discussants around the table have pointed out some of the  
17 limitations. We recognize those wholeheartedly. We have  
18 moved to make sure there is technical review, peer review,  
19 stakeholder review when we put those in the marketplace.

20 Secondly, we have helped form an international  
21 steering committee to oversee that process.

22 Third, we have noted that there needs to be a  
23 downplaying of an eco logo associated with our certified eco  
24 profile because of the problems where consumers might take  
25 it as an environmental preferability claim, as opposed to a

1 label of information.

2 Certainly nutritional labels which have been out  
3 for a long time are not denoted as this food is preferable  
4 simply because it has information. What is lacking on a  
5 nutritional label is the fact that whoever did the analysis  
6 and put the information out has a large scale name and logo  
7 associated with it. We note that that is one of the issues  
8 that needs to be resolved.

9 The last point I guess that is worth making is we  
10 went to an approach that is more like a nutritional label  
11 and a factual basis approach because we had issues with how  
12 ones connotes environmental preferability or whether one  
13 should.

14 We will get to this in the next question, but the  
15 next question on the FTC's list is what changes, if any,  
16 should be made to the current guide on general environmental  
17 benefit claims.

18 If you see something as a general benefit claim  
19 and if you put an eco seal or somebody in that, which I am  
20 not sure I would always agree with other people's  
21 definitions of that, but if you do the question becomes can  
22 you put enough caveats with that to ever convince consumers  
23 that the general environmental benefit is not the issue. It  
24 is the specific claim.

25 For instance, if you say you have awarded

1 something, it is environmentally friendly. You say it is  
2 environmentally friendly because it is biodegradable, but if  
3 that biodegradable compound or biodegradable product has  
4 other issues then is it really environmentally preferable or  
5 environmentally friendly? In our view, it is not. It is  
6 biodegradable. That is a verification issue based on  
7 standards, not an environmental preferability issue.

8 To confuse those two topics may be a problematic  
9 issue for the FTC where when there is a claim of general  
10 environmental benefit can you put enough caveats with it.  
11 We didn't believe you could, so we fostered a separate way  
12 of looking at labeling, which you know to be our  
13 environmental report card or certified eco profile.

14 We have also taken that into the ISO process for  
15 international standardization, and it is known as Type III  
16 in the environmental labeling committee.

17 MS. GRIFFIN: Just to clarify, could you give me  
18 an example? If Scientific Certifications is making a life  
19 cycle for a given product, how is that expressed?

20 MR. CHAFFEE: Without a visual representation for  
21 the report card, imagine setting out a variety of  
22 environmental effects that can be measured or environmental  
23 aspects of a product that can be measured; for instance, CO2  
24 or a greenhouse gas, NOX/SOX, an acid rain, or a resource  
25 such as a mineral or iron ore or some other aspect. You can



1 put those categories down and put amounts that can be  
2 quantified through a life cycle analysis associated with  
3 those things.

4 Actually, we are proffering a new wave in the  
5 impact assessment group within ISO that talks about the fact  
6 that one needs to focus on the environmental effect, not  
7 just on a mass loading for environmental burden.

8 MS. GRIFFIN: Thank you.

9 MS. MADIGAN: I am going to jump ahead to people  
10 who have not yet spoken, but I do have a note of those who  
11 have spoken before but want to speak again.

12 CSMA, followed by Free Flow.

13 MR. KIEFER: Robert Kiefer with CSMA. I think  
14 there are two issues out on the table right now. The issue  
15 is one of eco seals, and not necessarily eco labeling as we  
16 tried to make the distinction earlier, and also the  
17 voluntary verification either by self-disclosure or third  
18 party certification of single environmental attributes.  
19 Those are two distinct issues here.

20 As was discussed yesterday in some of the  
21 discussions regarding ISO, the only approved symbol through  
22 ISO environmental labeling right now is the mobius loop with  
23 text for recycled or recycled content. I think that is  
24 important to note there.

25 A comment was made earlier about the Canadian eco

1 label program. Just recently, one of our sister  
2 organizations in Canada, the CMCS, met with the leaders of  
3 Terra-Choice, who are now the private sector group that is  
4 administering this eco logo program on behalf of Canada.

5 They were able to convince them to suspend work on  
6 the fabric softeners, floor polishes and hairsprays  
7 guidelines. In addition, they are going to be revoking the  
8 existing guidelines for laundry detergents and automatic  
9 dishwashing detergents for a lot of the reasons that have  
10 been stated around the table earlier today.

11 I believe somebody else may address the issue  
12 regarding the Nordic Swan that was brought up earlier as  
13 well.

14 MS. MADIGAN: We will go to Free Flow, followed by  
15 EPA.

16 MR. GRAHAM: Arthur Graham, Free Flow Packaging  
17 Corporation.

18 I notice with great interest that the FTC has  
19 already set up standards on settlements with industry in  
20 which it says, "...unless claims are based on reliable  
21 scientific evidence." Already the FTC has established that  
22 as a criteria by which to evaluate claims.

23 The question is really what is reliable scientific  
24 evidence? I am an engineering graduate. If you study some  
25 of the magazines, it has been my experience that when

1 somebody comes up with a new theory, a new methodology, a  
2 new thesis, he publishes it in a very responsible journal  
3 that is then subject to peer review and critique and  
4 criticism.

5 I am referring to magazines like Science Magazine  
6 that gives the opportunity for all the people who are  
7 involved to run a critique on the new methodology, and then  
8 perhaps it is refined and republished and then accepted by  
9 the scientific community. Then it becomes reliable  
10 scientific evidence.

11 An example I can give you of how that follows is  
12 when Fleishman & Ponds failed to publish their report on  
13 cold fusion at the University of Utah, if you recall that,  
14 it was widely publicized. It turns out, of course, that the  
15 methodology was flawed.

16 I can think of no better example as to how we can  
17 shoot ourselves in the foot by rushing to publish what we  
18 have done, rushing to go to the press with what we have done  
19 without having it subject to a peer review of one's peers  
20 and one's experts in the field.

21 I have a great concern with people who are  
22 self-appointed setting themselves up as the harbingers and  
23 the setters of standards who have failed to establish this  
24 criteria of scientific reliability and subject to peer  
25 review.

1           I find it very interesting that the two people who  
2 represent the seals have now used the word biodegradability,  
3 and they have tested materials for biodegradability. All of  
4 us involved in this area recognize that it is wrong for us  
5 to promote biodegradability, and I will suggest very  
6 strongly that it ought to be prohibited to be used by  
7 anybody in their literature because making a biodegradable  
8 product is not desirable, and I will demonstrate that to  
9 anyone.

10           I think that most of us in that area recognize  
11 that consumers are being sorely misled by claims of  
12 biodegradability. Nothing biodegrades in sanitary  
13 landfills. Everyone knows that. Here again, those people  
14 that promote the seals themselves are unwittingly adding to  
15 the deception of the consumer.

16           Lastly, I might indicate that even though one were  
17 to submit seals or eco seals or what have you, we have the  
18 problem of continuing to audit the companies that are given  
19 those seals or that have been able to make any claims on the  
20 logos. I can change my production facilities. I can change  
21 my form tomorrow after I got the seal. The question is how  
22 accurate do the people and how thorough do they audit to the  
23 procedures?

24           I want to tell you that we were the first company  
25 in our industry that was given an approval by one of the

1 companies, and we have been quite dissatisfied with the  
2 approval that has been given to our competitors and the  
3 audit.

4 I want to tell you that we are going to  
5 voluntarily withdraw from that because we are dissatisfied  
6 with the fact of the way this organization has not, in our  
7 opinion, conducted very excellent audits to prove the  
8 validity of what claims have been made and continue to be  
9 made by a representation of their seals.

10 MS. MADIGAN: From there we will move to EPA and  
11 then the National Recycling Coalition before we come back to  
12 people who have spoken before.

13 MS. GOIDEL: Eun-Sook Goidel. I have more of a  
14 question rather than comment.

15 I was wondering since given that there seems to be  
16 a lot of discussion about the potential for eco seals  
17 misleading consumers and whatnot, I was wondering whether  
18 there are any survey information or empirical data that  
19 talks about the consumer understanding of eco labels or eco  
20 seals? I think that would be helpful to have to add to this  
21 conversation.

22 Another question I have is whether consumers  
23 equate single attribute claims to mean that the product is  
24 generally good for the environment. I think we need to look  
25 at both sides as well; not just look at multiple attribute

1 claims, but also what consumers take from looking at a  
2 single attribute claim as well.

3 MS. MADIGAN: Since the question was posed, let me  
4 just open it up to the table. Is there any data or research  
5 out there surrounding consumer perceptions of eco labels or  
6 eco seals?

7 Does anybody else want to speak to the notion of  
8 single attributes? Green Seal?

9 MR. DEAN: Well, in the record there is a study  
10 that demonstrates that as to the chasing arrows, people do  
11 take a general environmental benefit message from the  
12 chasing arrows if you look at the feedback that was received  
13 in that Recycling Coalition survey.

14 MS. MADIGAN: We have a follow up here from the  
15 FTC.

16 MR. PEELER: Yes. I would like to follow that up  
17 because we were talking this morning about no CFC claims and  
18 how one position was that if there is truthful information  
19 on the label that is verifiable and that if there are  
20 implications that flow from that, we should not tax the  
21 labeler with those implications.

22 I am wondering how that principle would be  
23 applicable to an eco seal program if it met those criteria  
24 also. It is a truthful statement. It has been certified.  
25 It is verifiable that it has been certified, and there is

1 some criteria that it has been certified on. It may also  
2 leave broader implications depending on how we reconcile  
3 this.

4 MS. MADIGAN: Is the question clear? I am seeing  
5 some wrinkled eyebrows.

6 Could I ask you, Lee? Is there a way to restate  
7 that?

8 MR. PEELER: Again, this morning we talked a long  
9 time about CFC claims. The concern is that despite the fact  
10 that that is a truthful claim that the product does not  
11 contain any CFCs, it may leave a broader implication on the  
12 part of the consumers.

13 I guess the question is how that approach would  
14 apply here where you have a truthful statement, for example,  
15 to Green Seal and certified this product as meeting its  
16 criteria for VOCs. The concern that I hear is that that may  
17 also leave a broader implication that it is environmentally  
18 preferable.

19 DR. PFLUG: Gerry Pflug. I don't think that the  
20 consumer looking at a seal gains any more information than  
21 they do when you make a single attribute claim that you  
22 explain to them.

23 Remember now, we are doing this for the consumer,  
24 and the consumer has no idea what a Green Seal means or will  
25 mean. How are you going to explain to them that it is based

1 on five attributes, which are subjective attributes chosen  
2 by one particular panel of experts who happen to be involved  
3 with say Green Seal?

4 MR. PEELER: Again, just let me put this out, and  
5 then we can have some broader discussion about it.

6 DR. PFLUG: Okay.

7 MR. PEELER: In the food area where we have had a  
8 lot of experience, we have had almost the reverse type of  
9 debate, and that is that simply putting out nutrient content  
10 information, at least the studies indicate the consumers  
11 can't really understand the implications of the nutrient  
12 content information without some other guidance.

13 It is high, or it is low. It will help to reduce  
14 the risk of some forms of cancer, or it will help to reduce  
15 the risk of heart disease. You need that type of  
16 information to enable consumers to be able to use  
17 quantitative information to make choices.

18 I would just like to sort of throw that out  
19 because that really goes to the heart of what our concerns  
20 as a marketing regulatory agency in the area really are.

21 MS. MADIGAN: Lee, are you asking two questions?  
22 One, does an eco label which references a particular  
23 attribute or a collection of attributes run the risk of  
24 conveying a broader environmental benefit? Is that one  
25 question? That was the argument that --



1           MR. PEELER: I am accepting for a moment that it  
2 may run the risk of conveying a broad environmental benefit  
3 claim.

4           MS. MADIGAN: Okay.

5           MR. PEELER: I am asking how we square that with  
6 the question I think EPA raised, which is is there not some  
7 data suggesting that a single attribute claim also may do  
8 that.

9           The second question is moving from single  
10 attribute claims, don't people need something to be able to  
11 put that information in context, especially as someone  
12 mentioned after you get beyond the issues of recyclability  
13 and recycled content? I think we have fairly well  
14 established environmental profiles.

15           MS. MADIGAN: Who wants to respond? SPI, were you  
16 interested?

17           MR. FREEMAN: I was going to comment on Gerry's  
18 point, so maybe I should wait.

19           MS. MADIGAN: Okay. I will come back to you.

20           EDF, did you want to -- you changed. You had  
21 longer hair a minute ago.

22           MR. DENISON: A couple points. I think both of  
23 your questions, Lee, are very apropos. There is actually  
24 some information I have seen, and I hate to pick on SCS, but  
25 I am going to raise a couple of points about the

1 environmental report card and some of the work they did  
2 around that.

3 They commissioned Grossman & Meyers to do some  
4 focus group research on how consumers perceived what at that  
5 time was called the environmental report card, multiple  
6 attributes displayed in a bar chart type of format.

7 What they found, very interestingly, was that many  
8 of the people in the focus group took away from it a feeling  
9 of goodness about that product that was totally independent  
10 of how long the bars were or whether they were on the good  
11 end or the bad end or how they compared to the baseline.

12 They made comments like what a responsible company  
13 it was to undergo this analysis of their products, and the  
14 presence of this report card on their product they took as a  
15 measure of environmental goodness itself.

16 I mean, that is a case where arguably you are  
17 going to one extreme to provide a level of detail and a  
18 level of analysis, and yet many consumers by the very virtue  
19 of the level of detail and the guise in which that is  
20 displayed still view it as a seal of approval.

21 I would urge you to look at that research. It is  
22 very interesting.

23 The other question that I think you were getting  
24 at, Lee, is this issue of additional interpretation or  
25 interpretive information around environmental information.

1 Again, not to pick on SCS, but I think the environmental  
2 report card provides a good contrast.

3 I have never accepted the analogy of the  
4 environmental report card to a nutritional label for some  
5 very important reasons. The nutritional label either  
6 provides simply a number -- grams of fat or what have you --  
7 or where it does go beyond that to compare that number to a  
8 standard, the standard it is compared to is a standard that  
9 has been developed generally by a Government agency if  
10 compared to the minimum daily requirement or something like  
11 that. I'm not saying those are without dispute, but there  
12 is a basis for that standard.

13 In contrast, in these cases the standard or the  
14 baseline against which it is being compared is derived by  
15 the certifier themselves so it is not as if there is some  
16 accepted standard about how much CO2 is acceptable and then  
17 that's the standard. That analogy starts to break down.

18 My bottom line point is I am not saying that all  
19 of this should be banned. In fact, what I am saying is it  
20 makes it all the more important, and I think here is where  
21 the FTC could really play a useful role.

22 Whether it is single attribute, multi-attribute,  
23 life cycle or not life cycle, the process by which standards  
24 get set, methodologies get determined, the transparency of  
25 those processes, the access of public and stakeholders and

1 peers to influence those standards and to be able to  
2 understand the basis for them and the basis for anything  
3 that follows, any claims that are made as a basis of that is  
4 absolutely critical.

5 That is the only way that these programs, whatever  
6 they are trying to do, can be held ultimately accountable.

7 MS. MADIGAN: We are running now really short on  
8 time. I am going to ask for very brief responses to Lee's  
9 question.

10 I am going to ask if the eco labelers want to  
11 respond to Lee's question before we move on to finish up  
12 this eco label issue as a whole. SCS?

13 MR. CHAFFEE: Chet Chaffee, Scientific  
14 Certification Systems.

15 While it is nice to be able to say that I do agree  
16 with Richard on one point in these things shouldn't be  
17 banned, we may disagree on a few of the other minor points.  
18 I thought that was the major one, so I would like to bring  
19 it to the record.

20 I would like to start with the single attribute  
21 claims that you asked about. I don't have any solid data at  
22 my fingertips today, but I will tell you that for the last  
23 few years we have been running a 1-800 number with all the  
24 claims that we put in the marketplace.

25 It is interesting to note that of the people who

1 call on that 800 number about the single attribute claims  
2 with which we do verification, the bulk of those never seem  
3 to register the fact that those single product claims that  
4 have been verified connote greater environmental benefit.

5 Those are not the questions they ask of us. They  
6 ask us about our methodology. They ask us about where they  
7 can get the product. They ask us about what the  
8 manufacturer is doing. Very seldom do they say, "Oh, we see  
9 that you verified something for recycle content. Therefore,  
10 it must be better than everything else on the shelf."

11 Our experience has not been that the single  
12 attribute claim, at least through customer phone calls  
13 picking up our 800 line, goes in that direction. Now, we  
14 have tabulated some of that, and over time we will make that  
15 available to the Federal Trade Commission if you are  
16 interested in seeing it.

17 On the aspects of the environmental --

18 MR. PEELER: We would be interested in getting  
19 that and any other data you have on the interpretation.

20 MR. CHAFFEE: We would be happy to provide it.

21 With regard to the environmental report card and  
22 how it is or is not similar to a nutritional label, I think  
23 it is fair to say that we would recommend and have always  
24 recommended that it would be wonderful for the Government to  
25 set some standards on environmental effects and for people

1 to be able to benchmark their products against those  
2 standards. We would still advocate that position.

3 In lieu of that, we have not set a standard, which  
4 I would like to correct. I believe Richard said that we  
5 somehow set a de facto standard ourselves. We do not. We  
6 do an analysis and put the information out in the  
7 marketplace. Where any comparative assertions have been  
8 made, they have been held to within product categories as  
9 much as possible.

10 When that has been done, we have asked the  
11 manufacturers themselves to provide the baseline information  
12 about the comparative product. That is, you can go measure  
13 on the ground that thing that it is being compared to very  
14 precisely with the same precision or at least with the same  
15 methodology with which you are going to make the claims for  
16 what they would like to consider a preferable product.

17 That puts the manufacturer in the particular  
18 position of having to say why their product is better over  
19 something that they know quite a bit about, other products  
20 that they make or that they control.

21 We have been very careful to do that and then again  
22 take it through a technical peer review and stakeholder  
23 review before putting it out.

24 There are some differences in opinion about how  
25 that would work, but clearly again we would advocate that if

1 the EPA or other arms of the Government would like to put  
2 out standards on environmental effects. We would be happy,  
3 using this process, to benchmark products against those.

4 MS. MADIGAN: Anything else specifically related  
5 to Lee's question first?

6 GMA? Real briefly because we are running short on  
7 time.

8 MS. SEILER: As I think the Commission knows, we  
9 have made a formal request to the U.S. Government in their  
10 positions within the Committee on Trade and the Environment  
11 that they ask for the World Trade Organization to commission  
12 a study comparing information base labels to eco seal type  
13 labels.

14 We think that there is a lack of information in  
15 this area, and we specifically think it is appropriate for a  
16 study to be done on looking at the discriminatory effects of  
17 seals versus information labels, be they information labels  
18 provided by manufacturers or through an SCS type of  
19 approach, and it should look at the effect on foreign  
20 competition and trade.

21 We also think it should look at the effectiveness  
22 of the two different approaches in informing consumers and  
23 evaluating whether or not consumers interpret eco seals as a  
24 general environmental benefit claim. We would be open to  
25 the reverse being studied as well, and then finally that

1 they ought to look at the effect of seals versus information  
2 labels on product innovation. There clearly is a need for  
3 that work to be done.

4 MS. MADIGAN: Briefly, SPI?

5 MR. FREEMAN: As I listen to my colleagues on the  
6 panel, I was struck by stepping back for a moment. The  
7 reason, I think, or one of the reasons that the FTC felt a  
8 need to develop guidelines in the first place and to have  
9 this review is because there was an increasing public clamor  
10 over recent years for more information about the  
11 environmental performance of products. Companies have  
12 responded by making claims and providing information.

13 The interesting dilemma with eco seals is that if  
14 you take it to its logical conclusion, I think you could  
15 actually end up denying the public certain kinds of  
16 information because ultimately judgements would be made for  
17 the public, and they could lead to being misled in perhaps  
18 an unintended way, but nonetheless misled.

19 I think that is a danger we have to keep in mind  
20 that with the original reason to have guidance on how  
21 marketing claims are made, we could end up in the eco seals  
22 problem with too little information and the public actually  
23 being more in the dark than they are now.

24 MS. MADIGAN: What I would like to do is before we  
25 move on, is there anyone who has not yet spoken, and I do



1 have NRC on the list, to the eco seal or eco labeling issue?

2 Anyone else besides NRC?

3 NRC, would you like to make a point?

4 MR. MILLER: Edgar Miller, NRC.

5 NRC just recently revised its labeling position to  
6 no longer endorse eco seal type programs primarily because  
7 of many of the reasons that we have already heard discussed  
8 here today.

9 However, at the same time and specifically in the  
10 recycled content area, NRC has supported in the past and is  
11 currently on record supporting specific standards for  
12 recycled content in products purchased by the Government or  
13 in any sort of preferential purchasing type program.

14 In that sense, our concern that when we get into  
15 the broader discussions on environmental preferability we  
16 really don't have specific recommendations there, but in the  
17 area of recycled content we think you can set a standard at  
18 an appropriate level which reflects the technology, the  
19 state of the art, the overall environmental benefit and that  
20 we need those standards before we go to general  
21 certification or label programs of the type we are  
22 discussing here.

23 MS. MADIGAN: I would like to ask the FTC if they  
24 have any other questions before we move on to general claims  
25 and environmentally preferable?

1 MS. COX: I have a comment. Eun-Sook Goidel from  
2 the EPA had asked if there was any evidence which examined  
3 whether consumers perceive specific claims as general  
4 environmental claims.

5 I just wanted to point out that the 1993 FTC  
6 survey, which is mentioned as being on the Public Record in  
7 the Ozone section, and also the 1995 FTC survey, which was  
8 just put on the Public Record, did try to look at the issue  
9 of whether specific claims, for example, no CFC or claims  
10 related to reduced pollution on hairspray products, do  
11 convey a more general claim of environmental benefit.

12 MS. MADIGAN: Are you going to say anything about  
13 the results?

14 MS. COX: No. I just wanted to --

15 MS. MADIGAN: Okay. It is a secret.

16 What I would like to do is we have very, very  
17 limited time left, so I will recognize anybody who feels a  
18 burning urge to make one final comment as long as it is  
19 under 30 seconds each.

20 I am going to start with GMA and then SDA.

21 MS. SEILER: Elizabeth Seiler, GMA.

22 I just want to respond to a charge that was made  
23 earlier. There are some of our members who in other  
24 marketplaces and other countries are carrying eco seals on  
25 their products. They are doing it because it is the price

1 of entry into the marketplace.

2 It doesn't mean that eco seals are right. It  
3 doesn't mean that they are not impeding innovation. If you  
4 want to sell your product in Sweden, you need to carry an  
5 eco seal.

6 DR. PFLUG: And I have the exact same comment.

7 MS. MADIGAN: This is the SDA.

8 DR. PFLUG: Yes. P&G was mentioned specifically.  
9 It is the price of entering the market in a country like  
10 Sweden. They made a decision. That does not mean that they  
11 support the concept at all. If they don't put it on there,  
12 they can't put their products on the shelf.

13 I don't want it implied by Green Seal that they  
14 are dealing with double standards.

15 MS. MADIGAN: NRC, followed by Foodservices.

16 MR. MILLER: NRC believes that recycled content is  
17 a single attribute which does have multiple environmental  
18 benefits. In that regard, we believe that it ought to be  
19 promoted, once again, as a general benefit to the purchaser  
20 of that product.

21 MS. MADIGAN: Foodservices, and then EDF.

22 MR. DAVIS: My company was also mentioned  
23 specifically about using eco seals. I have exactly the same  
24 reason why we are using them, but I would like to clear up  
25 two pieces of information that were, I think, incorrectly

1 stated earlier in the testimony.

2 A question was asked regarding whether or not we  
3 are going to wait to work on life cycle until industry has  
4 agreed that there is scientific evidence to support life  
5 cycle. I want to clarify that.

6 It is not industry that is saying that. It is the  
7 scientific community that is saying that. That scientific  
8 community includes industry. It also includes Government  
9 people, environmentalists and labeling programmers. It is  
10 the scientific community and not industry that is making  
11 that claim.

12 The other statement to correct is a comment that  
13 was made that the mobius loop is the only approved symbol  
14 that appears in ISO environmental labeling standards. That  
15 is incorrect. The mobius loop is the only symbol that  
16 appears in a working document at ISO. That document has not  
17 been approved, but it is the only symbol that appears in  
18 that working document.

19 MS. MADIGAN: EDF, and then Ford Motor.

20 MS. KINGSTON: This is under ten seconds. Just  
21 one quick issue that I think we forgot to flag.

22 In terms of eco labeling or eco award programs,  
23 the logo of the program itself often carries a strong  
24 message of overall environmental preference. I could offer  
25 as an example of that something called Eco Okay.

1 MS. MADIGAN: Okay. Ford Motor, and then we will  
2 move on to general claims.

3 MR. DUKE: Kevin Duke, Ford Motor Company. Just  
4 to follow up on what the Foodservice and Packaging Institute  
5 said, it comes down to whether an individual manufacturer or  
6 advertiser chooses to put a seal or a label on their product  
7 or to advertise that certification, but again it is still  
8 the manufacturers' or advertisers' responsibility to have  
9 reasonable scientific basis for all claims that are both  
10 expressed and intended and implied.

11 An advertiser, if they are going to choose to put  
12 a label on their product, better have the science to back it  
13 up. It sounds like it might not be there.

14 MS. MADIGAN: Before we move on to general claims,  
15 I am going to offer one last chance to the eco labelers if  
16 there is anything you would like to say very briefly under  
17 30 seconds if you can do it justice.

18 Green Seal?

19 MR. DEAN: I just want to reiterate that this is a  
20 valuable tool in the arsenal to try to encourage increased  
21 competition in innovation and environmentally improved  
22 products and that the FTC should be very careful not to  
23 discourage that tool.

24 It fosters competition in the market between  
25 products that have been improved it various environmentally

1 sound ways and products that have not.

2 MS. MADIGAN: I realized I skipped over American  
3 Plastics inadvertently. I apologize. Rick, do you want to  
4 say something real quick?

5 MR. OTIS: Yes. Rick Otis, American Plastics  
6 Council.

7 Let me add one last issue to the table. I do not  
8 have the answer to this, but I think it was not raised in  
9 all of our discussion, and perhaps at some later date we can  
10 find an answer to it.

11 Earlier we heard the phrase "on balance we  
12 conclude" as one of the decisional criteria for deciding to  
13 award a seal. I would like to raise what happens if the  
14 person who was seeking a seal or whose competitors have a  
15 seal did not get it awarded and disagrees with the  
16 conclusion?

17 I know that we heard in other competitive  
18 marketplaces it is the price of entry. If you disagree,  
19 what is your legal recourse? You are now disadvantaged by  
20 virtue of a decision the private sector made about your  
21 product. What can you now do about it?

22 MS. MADIGAN: I am going to let people respond to  
23 that.

24 Green Seal?

25 MR. DEAN: Well, I have two reactions, one of

1 which is sort of a legal answer, and the other is a  
2 practical competition answer.

3 I think in the first instance the companies that  
4 are represented indirectly at this table have the resources  
5 to go out and compete. If they don't like a claim that a  
6 competitor is making and that claim is sound, as we believe  
7 it is in the Green Seal, then let them in their advertising,  
8 let them on their product label, explain why their product  
9 has characteristics which make it even better than the Green  
10 Seal. That is the competitive answer.

11 The sort of lawyer's answer within Green Seal is  
12 they are free to take appeals within our process if they  
13 feel they have been unfairly treated or evidence that should  
14 have been considered was not considered.

15 MS. MADIGAN: SCS, would you like to add anything?

16 MR. CHAFFEE: Chet Chaffee, SCS.

17 As far as the life cycle claims that we make, I  
18 will just say that it is not an issue for whether a company  
19 meets the standards or not. It is an information disclosure  
20 system, and as such it tackles the issue of measuring and  
21 disclosing that information, not setting a standard and  
22 telling somebody that because they don't meet a standard  
23 they don't get some information on their product.

24 In fact, that is one of the reasons we prefer an  
25 information disclosure approach to labeling because it

1 allows technical innovation to decide what works in the  
2 marketplace, and measurement of that technical innovation  
3 should tell us what the environmental ramifications are, not  
4 the other way around.

5 MS. MADIGAN: With that, we are going to go a  
6 little bit over on the schedule. I am going to propose we  
7 take another ten minutes and see if we cannot get through  
8 environmental preferable and general claims. If we need  
9 just a little bit more time, we will squeak it out  
10 somewhere.

11 With that, let's start. Let me read the questions  
12 one more time. What changes, if any, should be made to the  
13 current guide on general environmental benefit claims, and  
14 should guidance be provided on the term "environmentally  
15 preferable", and, if so, what type of guidance should be  
16 provided?

17 Who would like to start off the discussion? EPA?

18 MS. GOIDEL: And then I am going to leave. Should  
19 FTC provide guidance? Actually, I will talk about my  
20 thoughts on that a little later, but should FTC provide  
21 guidance on general claims and specifically on  
22 environmentally preferable products?

23 I think we need to make sure that we differentiate  
24 between the process of identifying the products and services  
25 that pose fewer impacts on the environment and human



1 articulation of the results of such a process.

2 I think this is important because we really should  
3 not discourage the first, that is the process of trying to  
4 identifying product that in fact pose fewer burdens on the  
5 environment just because we can't figure out how to do the  
6 second part in a way that is really meaningful for the  
7 consumer.

8 That is it.

9 MS. MADIGAN: EDF, followed by Home Depot.

10 MS. KINGSTON: In terms of any changes to the  
11 current guide on general environmental claims, EDF would be  
12 very pleased to see the Commission add guidance on, I hate  
13 to suggest it, but a sort of a new category of general  
14 environmental claims.

15 There is a very fast and furious looking train  
16 coming down the tracks, which will be claims of conformance  
17 to or implementation of an environmental management system.  
18 Implementation of an EMS or conformance to an environmental  
19 management system standard says in fact nothing about an  
20 organization's environmental performance and nothing about  
21 the environmental attributes of an end product or service.

22 As such, a claim relating to an environmental  
23 management system could be misinterpreted to mean overall  
24 environmental friendliness of the company, of the  
25 organization, or environmental friendliness of its product

1 or service. We have a great number of concerns in this  
2 area.

3 Last week at a meeting in Seoul the ISO group on  
4 standards for environmental labeling actually adopted  
5 language related to this, and the language reads,  
6 "Environmental symbols shall not be used on a product or  
7 service to express conformance to an environmental  
8 management system standard."

9 On the second point in terms of environmentally  
10 preferable, that sort of begs the question of  
11 environmentally preferable to what; if it is environmentally  
12 preferable to competing products or if it is environmentally  
13 preferable to a previous incarnation of your own product. I  
14 think that that definitely needs to be very clear.

15 You might be able to be environmentally preferable  
16 to your competitor. You might be able to be environmentally  
17 preferable to your previous product if you have actually  
18 done an accurate and verifiable comparative assessment on  
19 which to base that claim.

20 MS. MADIGAN: Just a point of clarification. The  
21 reference to the ISO group in Seoul, is that approval  
22 embodied in a working document or a final document?

23 MS. KINGSTON: That is at this point a working  
24 document.

25 MS. MADIGAN: We have Home Depot, followed by Free

1 Flow.

2 MR. EISEN: Mark Eisen, Home Depot.

3 Where we could use a little bit of guidance and  
4 clarification in the guides is specifically under the  
5 general environmental benefit claims in the area of a broad  
6 claim, I think specifically environmentally friendly or  
7 environmentally safe in combination with a specific  
8 qualifier which the guides say unless there is a specific  
9 qualifier, a claim such as environmentally friendly should  
10 be avoided or qualified as necessary.

11 Where we run into kind of a Catch-22 is where  
12 there is a specific statement of a qualification such as  
13 biodegradable under certain conditions that is stated in  
14 combination with environmentally friendly. Does in fact  
15 then the term environmentally friendly possibly overstate  
16 the biodegradability benefit?

17 In other words, is the consumer looking at  
18 environmentally friendly/biodegradable under these certain  
19 conditions and taking away perhaps, even though you have  
20 qualified it and it is in conformance with the guides, that  
21 environmentally friendly may in fact stand by itself? It is  
22 a little bit of a Catch-22.

23 We get in the situation where we don't know the  
24 answer, so I think if that could be clarified. We generally  
25 do discourage that, environmentally friendly, but because

1 the guides are unclear, it puts us in a little bit of a  
2 tougher situation than we would like to be.

3 MS. MADIGAN: Free Flow, followed by Soap and  
4 Detergent.

5 MR. GRAHAM: Arthur Graham of Free Flow Packaging.

6 I hear once again the word biodegradability being  
7 cast about here as if this is an environmentally preferred  
8 or desirable attribute of a manmade product. Here again we  
9 have tremendous confusion on what is desirable and what  
10 isn't.

11 Also, I think it is clear from all of us here that  
12 we have somewhat of a consensus, but a recognition of a  
13 non-consensus, and that is that we think fundamentally an  
14 environmental report card is probably a good concept, but we  
15 don't know how to go about getting it done.

16 I suggested earlier that we do develop a body of  
17 scientific acceptance of this kind of environmental  
18 reporting. That is a long way off. It is a very tedious  
19 and long process to get the scientific community to accept a  
20 methodology and criteria.

21 I might suggest a two prong attack to this  
22 problem, one short term and one long term. One short term  
23 that we ought to consider or the FTC ought to consider is  
24 banning all types of environmental representations for the  
25 time being such as natural and biodegradable, and let me

1 digress for a minute so that you do not get the wrong  
2 impression.

3 Our company does make a starch based loose fill.  
4 It is made not because we believe that it is the correct  
5 thing, but because we have had to do it because of  
6 competitive pressures.

7 I will say that I have made the flat statement  
8 that if anyone can prove, including the people involved in  
9 seals, that our product made of waste polystyrene reclaimed  
10 is environmentally inferior with all things considered than  
11 a starch based loose fill, I will quit making our principal  
12 product. I say that in a very strong way. I have said it  
13 publicly before.

14 I am very much against the concept of promoting  
15 biodegradability as an environmentally desirable product.

16 Let me go on. We should prohibit the use of the  
17 words natural, biodegradable, recyclable, environmentally  
18 preferred, environmentally friendly, okay for the  
19 environment and anything that connotes anything like that.

20 We should permit manufacturers to put factual  
21 labels as we do on our food products, on our vitamins and so  
22 forth identifying exactly. I may want Vitamin C. You may  
23 want Vitamin A. You might want a low cholesterol product.  
24 You might want a low fat product.

25 There is a lot of confusion in the food labeling,

1 but I think we manufacturers ought to be permitted to label  
2 factually what a product contains and then let us  
3 manufacturers and marketers slug it out in the marketplace.  
4 I would love to have my competitor do some deceitful  
5 advertising because that will give me a great opportunity to  
6 beat him in the marketplace.

7 Let the market system work, as long as we provide  
8 factual information and not some kind of snide comments or  
9 comments that indicate some kind of preferability.

10 The two prong attack is factual information.  
11 Prohibit all kinds of subjective kinds of adjectives, and  
12 then let's get on to the subject of finding out if we can  
13 possibly get a scientific consensus about the eco report  
14 card. That is downstream probably three to four or five  
15 years away. Then we can move into that.

16 MS. MADIGAN: Soap and Detergent, followed by  
17 CSMA.

18 DR. PFLUG: I just want to reiterate the fact that  
19 we do not feel that environmentally preferable means  
20 anything to a consumer, and we really do not feel that there  
21 has been enough input and evaluation of the individual  
22 parameters that go into environmental preferability.

23 We are sitting here today, and in the last two  
24 years you have EPA becoming involved, you have GSA becoming  
25 involved, you have ASTM becoming involved, you have the

1 President's Council and his Order in 1993 becoming involved.  
2 They are all going in different directions, all of whom have  
3 different parameters to look at.

4           Where are we going to end up, and what is the  
5 ultimate benefit to the consumer? You just do not have any  
6 way of measuring this. Particularly in the area of GSA and  
7 their buildings, environmentally preferable may be  
8 appropriate using one set of parameters here in Washington,  
9 but it may be totally inappropriate out in Idaho or Wyoming.

10           How are you going to justify putting together a  
11 list of attributes which satisfy those needs? It would be  
12 lovely if you could put together a list of products which  
13 say okay, just go out and order these two or three products,  
14 and it will satisfy your needs. That is not going to  
15 happen.

16           Until you can get, very similarly to life cycle  
17 analysis, the experts to sit down and say okay, can we come  
18 to an agreement on what parameters are the key ones to use,  
19 if not you are never going to get there with regard to this.

20           What we are concerned about, and I would think GMA  
21 and CSMA are also concerned about, is if a list ever gets  
22 published and it then gets in the hands of the consumer,  
23 what does that do to competition in the marketplace? This  
24 then gets to the consumer, and it says well, the Government  
25 approved this. It must be the right list. Therefore, I

1 should go out and just buy the products on that list.

2 MS. MADIGAN: Federal Environmental Executive?

3 MS. MCPOLAND: When you are talking about what GSA  
4 is doing in terms of their buildings, can you give me some  
5 specifics? What exactly are you talking about? It is my  
6 responsibility to implement the Executive Order you are  
7 talking about.

8 DR. PFLUG: They have done a pilot study  
9 evaluating soaps and detergents in several of their  
10 institutions, and they, of course, early in the game were  
11 asking for EPA's involvement. We really don't know what  
12 happened to that.

13 The first meeting that we attended had GSA people  
14 and EPA people. That particular meeting was relying on the  
15 EPA scientists, who then put together a program for use by  
16 the GSA to evaluate products.

17 MS. MCPOLAND: Maybe we can talk to this  
18 separately, but this has been a close collaborative effort  
19 between GSA and EPA throughout the entire process, just for  
20 information purposes.

21 DR. PFLUG: And where are you coming out at this  
22 point in time?

23 MS. GOIDEL: I think actually if I could just --  
24 there is a fairly well established process. In another  
25 forum I think that we can address any concerns you may have.



1           Given the short time that we have, I myself would  
2 like to hear more on whether other representatives sitting  
3 at this table would like to see FTC provide guidance on the  
4 term environmentally preferable products, as well as other  
5 general terms.

6           There is another established process, and we would  
7 be happy to talk to you about that.

8           DR. PFLUG: We agree that the FTC and their guides  
9 should definitely be the starting point for any work that is  
10 being done. There is no sense in reinventing the wheel with  
11 regard to those guidelines.

12           MS. MADIGAN: I am going to need to step in  
13 because we are woefully beyond the time limits.

14           What I would like to suggest is I am going to need  
15 a ten second caucus with the FTC. If you would give me one  
16 second?

17           (Pause.)

18           MS. MADIGAN: We have slightly revised the  
19 schedule. We are going to spend ten more minutes on this  
20 subject, focusing again on those last two questions.

21           What I will ask is that people if they can,  
22 although again I do not want to limit you from being able to  
23 say what you need to say, focus on points that have not yet  
24 been made. If you simply want to underscore what somebody  
25 has said, do that very briefly.

1           Why do we not proceed with the list I have? I  
2 will keep taking hands. I have you down.

3           CSMA, you are next. Are you up for it?

4           MR. KIEFER: Yes.

5           MS. MADIGAN: Okay. I did not want to catch you  
6 by surprise.

7           MR. KIEFER: Robert Kiefer with Chemical Specialty  
8 Manufacturers Association.

9           I would agree with Eun-Sook that there are two  
10 concepts here. You have the political reality or the agenda  
11 in response to the Executive Order on the procurement of  
12 environmentally preferable products. You also have the  
13 reality of trying to market such a product as  
14 environmentally preferable.

15           As the EPA will probably attest to, the issue of  
16 environmentally preferable is a complex one which they have  
17 wrestled with for quite close to two years now in trying to  
18 come out with general guiding principles.

19           The FTC guide's general principles state that  
20 comparative claims should be presented in a manner that  
21 makes the basis for the comparison sufficiently clear to  
22 avoid consumer deception. The FTC guides have also advised  
23 against the use of broad environmental terms implying  
24 environmental friendliness since these terms are difficult  
25 to define and substantiate.

1           Without conducting a full life cycle assessment to  
2 consider all environmental impacts, classifying or marketing  
3 products as environmentally preferable can be misleading to  
4 consumers. We have encouraged the GSA and EPA to consider  
5 standards that are consistent and do not conflict with the  
6 guides.

7           The GSA guidance, as Gerald was alluding to  
8 earlier, as it currently is written over simplifies the  
9 environmental aspects of some of these products by reducing  
10 the information to a single number or single category.  
11 There may be magnitudes of difference between numbers in  
12 different categories, making comparisons difficult. It is  
13 inappropriate to indicate that these products are safe or  
14 environmentally preferable for all uses just because they  
15 possess a few select environmental attributes.

16           As I indicated, the FTC guides prohibit the use of  
17 broad environmental statements denoting environmental  
18 superiority. This is going to pose a problem for companies  
19 marketing products such as environmentally preferable. All  
20 environmental impacts need to be considered in order to make  
21 an informed decision.

22           I would also like to counter an earlier statement  
23 regarding biodegradability. There are recognized tests for  
24 biodegradability with the OECD tier testing method for  
25 biodegradability.

1           We are probably talking different applications  
2 here relating to foods or packaging or whatnot. There are  
3 also down the drain type products that are designed to be  
4 biodegradable, surfactants and such, and they do meet a lot  
5 of these OECD tier testing requirements, not the ready  
6 biodegradability test which is just an indicator of a  
7 screening, but an entire evaluation of biodegradability.

8           MS. MADIGAN: I am going to ask that we save any  
9 further discussion of biodegradability until the very end of  
10 public participation because we want to focus on  
11 environmentally preferable and general claims. I understand  
12 the need to respond.

13           MR. KIEFER: One specific comment.  
14 Biodegradability is not a broad claim. It is a specific  
15 claim.

16           MS. MADIGAN: Right. Okay.

17           Next is NRC, followed by Retailer Coalition.

18           MR. MILLER: Edgar Miller, NRC.

19           We would certainly encourage FTC to continue their  
20 efforts to discourage broad environmental claims or  
21 environmentally preferable claims, but we would sort of look  
22 at this issue a little bit differently in terms of  
23 especially once again the specific standards as to recycled  
24 content, but in general that EPA should take the lead in  
25 terms of developing standards and guidance for

1 environmentally preferable products as suggested in the  
2 President's Executive Order and then, as we have said  
3 earlier, that the FTC guidance should then be consistent  
4 with that guidance as developed by EPA.

5 MS. MADIGAN: Retailer Coalition, followed by ANA.

6 MR. BROWN: Charlie Brown, Retailer Coalition.

7 I do have a new point, as requested. The  
8 retailers seek clarification in the guidelines. We think  
9 that while none of the 30 enforcement actions or so that the  
10 FTC has taken in recent years in this area have concerned  
11 retailers, it would really help not only retailers, but more  
12 as I am going to explain, to have in the guidelines a safe  
13 harbor for retailers who do not initiate new claims.

14 Retailers should not be held to any standard if  
15 the manufacturer is initiating the claim. Retailers should  
16 not have to retest. Obviously that would add great cost to  
17 the consumer. If the FTC wears its competition hat as much  
18 as it wears its CP hat -- that means you don't want the  
19 small companies to have to test; they could never keep up  
20 with the big companies -- to not have this safe harbor and  
21 not have this clarification might hurt the valuable  
22 communication role that retailers play with manufacturers,  
23 with consumers, with the community.

24 Retailers play a unique, distinctive role  
25 throughout that process and, frankly, also the very

1 pro-environmental role that retailers frequently play.  
2 Sometimes that pro-environmental role is by state law, state  
3 or local law; bottle laws, for example. Sometimes it is EPA  
4 standards. Quite frequently it is voluntary efforts.

5 Home Depot, for example, has been very active  
6 throughout this process, Mark Eisen here. They have  
7 initiated a major pro-environmental program. There are many  
8 others. They are here. Many other retailers have as well.

9 That is obviously something the FTC, I believe  
10 from the initial mission of the guidelines, wants to  
11 encourage. We think you encourage this kind of flexibility  
12 and innovation by telling retailers if you do not initiate  
13 the claim, you are not going to be subject to the  
14 verification or other standards that we would require.

15 MS. MADIGAN: EPA, are you trying to respond to  
16 this particular point?

17 MS. GOIDEL: Actually, to some of the other  
18 comments that were made.

19 MS. MADIGAN: Could you hang on then, and I will  
20 get to you?

21 ANA, followed by AFPA.

22 MR. SCARBOROUGH: Keith Scarborough with ANA.

23 I just wanted to say that we support the current  
24 approach of the guidelines, which discourages any kind of  
25 general claim. A claim that a product is environmentally

1 friendly or preferable really doesn't provide any meaningful  
2 information to consumers.

3           If you look at the cases that the FTC has brought  
4 over the years for a company that makes a claim that our  
5 product is environmentally preferable, but based on what?  
6 On recyclability? Recycled content? Degradability?

7           A general concept or a general claim of  
8 environmentally friendly really doesn't tell consumers  
9 anything. We support the current approach and believe that  
10 we should do everything we can to discourage those kinds of  
11 really unhelpful, meaningless claims.

12           MS. MADIGAN: AFPA, followed by Attorney  
13 General's.

14           MS. LAYTON: Hi. Pat Layton, AFPA.

15           I would like to I think make two points. We would  
16 not favor having a definition of environmentally preferable.  
17 I think environmentally preferable, like beauty, is in the  
18 eye of the beholder or in the eye of the user.

19           I think it is more important to have truthful,  
20 non-deceptive, verifiable if necessary, good informational  
21 claims for consumers at all levels of consumership to make  
22 decisions about what is environmentally preferable to them  
23 because it is their choice in the absence of the next 50  
24 years and having a National Institute of Environment, as we  
25 may have had with the National Institutes of Health, of

1 determining, for example, the levels for vitamins and all of  
2 the nutritional labels. Even those are in dispute.

3 The environment is much bigger, and it is not  
4 going to be any time soon that we are going to have clear  
5 cut, scientific, verifiable, what is best for the  
6 environmental in all cases everywhere all over the globe.

7 Therefore, it is most important that FTC continue  
8 its guidance as is so that it does not promote claims of  
9 overall environmental preferability, environmental  
10 friendliness, eco safe, eco okay. It is more important that  
11 we try to have good information on our labels that the  
12 consumers can make choices in their own opinions, in their  
13 own beliefs, in their own regions.

14 Those things vary. What is good in New Jersey is  
15 not necessarily good in Arizona for different types of  
16 things. There is no true environmentally preferable  
17 national claim.

18 I think your work on a national basis is totally  
19 important, and I think you should continue with the efforts  
20 that you have right now in the guidance.

21 MS. MADIGAN: Thank you. Attorney General's,  
22 followed by GMA.

23 MS. GRIFFIN: Mary Griffin, State Attorney  
24 General's Task Force.

25 I think when we began our discussion or several



1 discussions ago it was sort of a general principle, which is  
2 you can make an environmental claim, but you better  
3 sufficiently qualify it so it is clear what you are talking  
4 about, clear to the consumer.

5 For instance, in terms of when we talked about the  
6 general claim of recyclability, you can make a claim that a  
7 product is recyclable, but if only one percent of the  
8 population has access to recycling facilities, you darn well  
9 better say that. It should be clear.

10 Then we moved on to sort of the arena of eco seals  
11 and certifications, and now the general environmentally  
12 preferable discussion. I started to hear the words around  
13 the table that claims should not be made. It seems to me  
14 analytically logical that you could make a seal or  
15 certification. You can make a claim that something is  
16 environmentally preferable, but you darn better be clear  
17 what you are talking about.

18 I think the FTC, in regulating this area, should  
19 just keep in mind that that general principal I think  
20 applies to all of these classes and these last two that we  
21 have talked about as well.

22 MS. MADIGAN: GMA, followed by EPA.

23 MS. SEILER: Elizabeth Seiler with GMA. I will  
24 try to be brief.

25 Our point of view is that environmentally

1 preferable is a general benefit claim and, therefore, falls  
2 under the existing guidance.

3           The practical twist, of course, is the Executive  
4 Order, which is still in the developmental process. It has  
5 been our point of view all along that as the principles for  
6 environmental preference continue to be developed that it is  
7 very inappropriate for claims, advertising or marketing, to  
8 be made based on a company's interaction with the Executive  
9 Order, particularly in the consumer marketplace where the  
10 distinction between what is environmentally preferable and  
11 the federal marketplace may be entirely different.

12           MS. MADIGAN: EPA?

13           MS. GOIDEL: Eun-Sook Goidel, EPA.

14           Just for the record, I wanted to state that there  
15 are not necessarily contradictory efforts underway. We have  
16 been working with FTC actually from the very beginning of  
17 when FTC was developing the first set of guides. That is  
18 true, as we have been working on the environmentally  
19 preferable products program within EPA.

20           Again for the record, I would like to state that  
21 that is not an eco seal program, nor is it an environmental  
22 awards program. It is a program to try to insert an  
23 environmental factor into the federal purchasing process. I  
24 think that is very important to keep in mind.

25           I would like to also state that EPA has been

1 historically supportive of the FTC's efforts and of its  
2 guides. It continues to support it. This is quite well  
3 established in the proposed guidance that we have come out  
4 with.

5 One of the principles, Principle No. 7,  
6 specifically references the FTC guides for those companies  
7 or marketers who want to bring a claim to the federal  
8 marketplace that they better darn well meet the FTC guides.  
9 That is something that we will not change our stance on.

10 Just for the record, I wanted to state that.  
11 Thanks.

12 MS. MADIGAN: What I am going to do now is turn to  
13 the FTC staff and ask if they have any final questions on  
14 general claims or environmentally preferable that they would  
15 like to post?

16 MS. BERNSTEIN: Jodie Bernstein, and  
17 I would like to direct this to the AFPA  
18 representative.

19 Following up on your question, I take it that you  
20 would then agree that there is a category of specific claims  
21 that would not be discouraged when you said you would  
22 discourage general claims? I am summarizing what you said,  
23 I thought.

24 MS. LAYTON: Could you give me an example of a  
25 specific claim?

1           This is Pat Layton with AFPA.

2           MS. BERNSTEIN: Well, the type of thing that I  
3 think was discussed by some others -- recyclable,  
4 compostable, and I can never say that word. Maybe that  
5 means it doesn't compost. I don't know, but any of these  
6 so-called specific claims.

7           I have heard others say that some claims are  
8 considered specific claims that can be substantiated. Would  
9 you envision a category of specific claims, as opposed to  
10 the general claims of eco friendly, etc., that you consider  
11 broad claims that you would discourage?

12          MS. LAYTON: Should I try?

13          MS. MADIGAN: Please, and tell me if I am being  
14 true to your question. Are there any specific claims you  
15 think could be supported and could be made? Is that your  
16 question?

17          MS. BERNSTEIN: Well, perhaps if you repeated what  
18 you said before briefly. I thought you said that you would  
19 discourage the categories of general claims that we had been  
20 discussing, discourage in the sense that they aren't  
21 meaningful to consumers, difficult to substantiate them and  
22 so forth.

23          MS. LAYTON: I guess I was trying to say I would  
24 not be supportive of developing or allowing an unqualified  
25 environmentally preferable/environmentally friendly --

1 MS. BERNSTEIN: Right.

2 MS. LAYTON: -- claim. Your guides currently I  
3 think handle those claims in an appropriate manner.

4 For example, environmentally preferable is in the  
5 eye of the beholder because I think it is a fast array of  
6 input that needs to make a decision on environmentally  
7 preferable.

8 MS. BERNSTEIN: Right, and logically then would  
9 there then be a category of specific claims that would not  
10 fall into that first category?

11 MS. LAYTON: Do you mean like recyclable claims  
12 and recycle content?

13 MS. BERNSTEIN: Yes. Right.

14 MS. LAYTON: Oh, yes. I mean, we certainly use  
15 those claims, and our mobius loop is here on the table. We  
16 have been very comfortable with the guidance that we have  
17 received on that from FTC.

18 I guess it is more our concern was eco seals and  
19 environmentally preferable. We would like to see, for  
20 example, eco seals considered the same as environmentally  
21 preferable/environmentally friendly types of claims. They  
22 are general claims --

23 MS. BERNSTEIN: I just wanted to clarify.

24 MS. LAYTON: -- as long as they are unqualified.

25 MS. BERNSTEIN: I just wanted to clarify that that

1 is what the position was.

2 I wanted also to ask EPA going back to an earlier  
3 comment that you made concerning your suggestion that we not  
4 discourage or that the process not be discouraged.

5 I did not know whether you were referring to a  
6 public process along the lines of your developing  
7 environmentally preferable criteria for products or the  
8 private sector process by which two groups here at least go  
9 through a process for determining how their either seal or  
10 information will be developed.

11 MS. GOIDEL: I can be selfish and say just my own  
12 process or our own process, but no. I was using the process  
13 in a most inclusive manner because I think our goal is to  
14 try to encourage information that is accurate and meaningful  
15 so that consumers can make informed decisions about their  
16 product on an environmental basis.

17 I think any other organizations that are trying to  
18 do that should not be discouraged nor stifled.

19 MS. MCPOLAND: Fran McPoland, Federal  
20 Environmental Executive.

21 The responsibility the EPA has, and I want to be  
22 real clear on this. The responsibility that EPA has under  
23 the Executive Order is specifically as it relates to federal  
24 procurements. This is our company and how we buy products.

25 This has nothing to do with the general consumer;

1 not that we don't understand that there is a spillover.  
2 Thank you. I didn't want to use that dreaded trickle down  
3 word.

4 Not that we don't think that there is a spillover  
5 effect -- there certainly is -- but this is our CEO of our  
6 company who has told us by Executive Order how he wants us  
7 to handle certain procurements in an environmentally  
8 preferable fashion and is a guidance that EPA is developing  
9 and crafting now specifically as it relates to federal  
10 procurement. I want to be real clear about that.

11 MS. MADIGAN: What I am going to do is we are  
12 running behind schedule. I am going to ask are there any  
13 other FTC staff questions first?

14 Is there anybody who really feels a need to make a  
15 final comment? I will be sympathetic, but only if it is  
16 very brief. I was pretty intimidating there, wasn't I?  
17 Anybody else? One final comment before we move on?

18 Green Seal?

19 MR. DEAN: I think as you are re-evaluating the  
20 guidelines, it is important to recognize that what you did  
21 with the first set of guidelines was help deal in a very  
22 rational and important way with a lot of single attribute  
23 claims like recycled, biodegradable, compostable, but where  
24 the future lies is in an effort to go to much more  
25 sophisticated, multi-attribute, environmental based claims.

1           The reason for that, and I would like to close  
2 just reading three sentences from some findings from EPA as  
3 they were considering how to define environmentally  
4 preferable for their own purposes.

5           In that document they say that targeting a single  
6 environmental performance characteristic for improvement  
7 like energy efficiency or recycled content, it may be easier  
8 because they are more easily defined, measured and  
9 understood, but by focusing on one dimension of a product's  
10 performance, however, one might overlook other environmental  
11 impacts associated with a product that may cause equal or  
12 greater damage.

13           Furthermore, it is possible that improvements  
14 along one dimension may result in other unintended, negative  
15 environmental impacts along another dimension.

16           What we are trying to do at Green Seal and the  
17 labeling programs try to do in general are avoid this  
18 problem by focusing on a single attribute --

19           (Missing a few seconds testimony due to tape  
20 defect.)

21           MS. MADIGAN: With that, I think we will wrap up  
22 this panel. We will take a ten minute break and reconvene  
23 at 3:10 p.m. on the dot. Thank you.

24           (Whereupon, a short recess was taken.)

25           (Continued on the next page.)



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MS. MADIGAN: Introduce ourselves one more time for the benefit of the recorder, name and organization only and we'll start with Home Depot. Mr. Eisen.

MR. EISEN: Mark Eisen, Home Depot.

MS. KINGSTON: Molly Kingston and/or Richard Denison, EDF.

MS. MADIGAN: Do we get to pick or do you get to pick?

MR. DAVIS: Alan Davis, Conservatree Information Services.

MR. CHAFFEE: Chet Chaffee, Scientific Certification Systems.

MS. MADIGAN: Okay. Let's hold for a second. Okay.

MR. BEATON: Archie Beaton, Chlorine Free Products Association.

MS. FRAME: Jan Frame, Environmental Protection Agency.

MS. McPOLAND: Fran McPoland, Federal Environmental Executive.

MR. THIEMANN: Alan Thiemann on behalf of the Retailer Coalition which is comprised of the National Association of Chain Drug Stores, National Retail Federation, National Lumber Building Material Dealers,

1 Petroleum Marketers Association of America and the National  
2 Retail Druggist Association.

3 MR. DERSHOWITZ: Mike Dershowitz with the Federal  
4 Trade Commission.

5 MS. COX: Carolyn Cox, Federal Trade Commission.

6 MR. PEELER: Lee Peeler, Federal Trade Commission.

7 MS. MADIGAN: Denise Madigan, facilitator. I'm  
8 not with the FTC by the way. Someone asked me that. I'd  
9 announced it yesterday.

10 MR. BANK: Kevin Bank, Federal Trade Commission.

11 MR. BONANNO: Peter Bonanno, Federal Trade  
12 Commission.

13 MR. MILLER: Edgar Miller, National Recycling  
14 Coalition.

15 MS. DAY: Susan Day, Ford Motor Company.

16 MR. SCARBOROUGH: Keith Scarborough, Association  
17 of National Advertisers.

18 MR. COLLINS: Pablo Collins, Paper Recycling  
19 Coalition.

20 MS. MADIGAN: Is that mike on? Are we back to a  
21 bad mike? Okay. Maybe that corner could share with PRC and  
22 Attorney General if you could share with TSMA and AF. Okay.

23 MS. GRIFFIN: Mary Griffin, Attorney General's  
24 Task Force.

25 MR. KIEFER: Robert Kiefer, Chemical Specialty

1 Manufacturers Association.

2 MS. LAYTON: Pat Layton, American Forest and Paper  
3 Association.

4 MR. PAUL: Richard Paul with the American  
5 Automobile Manufacturers Association.

6 MR. NEVILLE: Martin Neville for the Art and  
7 Creative Materials Institute.

8 MS. MADIGAN: Okay. We're going to try to get  
9 this done if we can before 5:00, but only if we don't  
10 sacrifice a good discussion of each of the topics. But I  
11 know that some people have planes to catch. So we'll do  
12 what we can. The proposal is to take these four claims only  
13 that we were discussing today. Although if there is time  
14 left, we may have time to entertain discussion of additional  
15 claims. But the objective of this panel is to focus on the  
16 four claims outlined and we will take these in sequence. So  
17 let's begin with the non-toxic claims issues. We'll devote  
18 about 45 minutes or so and see how far we get. And I'd like  
19 to ask who would like to start that discussion. Non toxic,  
20 Art and Creative Materials. And remember for those of you  
21 who are newcomers, give your name and your group when you  
22 start to speak.

23 MR. NEVILLE: Martin Neville for the Art and  
24 Creative Materials Institute. You may wonder why would an  
25 art and material industry have anything to do with toxicity.

1 And the answer really goes back to the time when we were all  
2 kids. And probably as I look around, almost everybody I see  
3 has probably consumed some art materials at one time or  
4 another. And in fact, I've had a few crayon companies ask  
5 me if they had to comply with the nutrition labeling  
6 requirements and I told them no.

7 But the fact of the matter is over the years the  
8 institute program traces its origins back to about 1941 when  
9 there was scares at that time concerning art materials and  
10 particularly as to children, be instituted, setup a  
11 certification program. ACMI is a certifier relying on  
12 toxicologists at Duke University now handling approximately  
13 188 companies from all over the world for compliance with  
14 the Federal Hazardous Substances Act and the Labeling of  
15 Hazardous Materials Act of 1988.

16 We worked pretty closely with CPFC. I'm delighted  
17 to see that Mary Toro has come over. And generally, the  
18 position that ACMI has taken in the proceeding is that we  
19 would like to see the Commission come out with guidelines  
20 for the use of the term non toxic as it applies. We think  
21 that looking back until today when I saw one of the latest  
22 FTC consent decrees that was released, the only one oddly  
23 enough that was there addressing this term was also a pretty  
24 recent one effecting the pesticide product. And if you  
25 really applied the FTC's test that they were applying as to

1 whether that kind of product would qualify to be described  
2 as non toxic in certain respects, if that same criteria were  
3 applied to the kind of certification program that ACMI lends  
4 along with Duke, generally speaking I think it would  
5 eliminate what amounts to a certain amount of literally  
6 deceptive product advertising and labeling in the industry  
7 and even outside the industry to some degree, but also  
8 provide at least some reference point for manufacturers to  
9 look to, as well as the Institute.

10 MS. MADIGAN: CSMA followed by NRC.

11 MR. KIEFER: Robert Kiefer with Chemical Specialty  
12 Manufacturer Association. We too would like to see the FTC  
13 guides come out with guidelines on the unqualified claims of  
14 non toxic. Non toxic is an absolute statement such as  
15 saying something is safe. Common misperception that  
16 chemicals are either toxic or non toxic is in reality all  
17 chemicals are toxic at some level and dose makes the poison.

18

19 There is adequate substantiation or there are some  
20 I guess allowable uses of the terms as has been demonstrated  
21 here, the CPSC through the Labeling of Hazardous Art  
22 Material Act references the ASTM test method for  
23 establishing the use of the non toxic term as was described  
24 earlier. And EPA and FPR also considers a pesticide product  
25 as being misbranded if claims to the safety of the pesticide

1 or its ingredients including statements such as safe, non  
2 poisonous, non injurious, non toxic to humans and pets are  
3 also included on labeling.

4           FTC upheld the FPR statement in the final consent  
5 order against Orkin Exterminating Company which included a  
6 claim of non toxic. The Commission was seeking comments on  
7 whether there are principles in these cases which are  
8 appropriate for incorporation in the guides. I believe with  
9 the Orkin case and also the most recent one I think  
10 regarding safe brands giving an overall error of safety for  
11 the product is unqualified in that there are principles that  
12 are needed in this area.

13           MS. MADIGAN: NRC will defer when we come back.  
14 EDS.

15           MS. KINGSTON: Just one quick point on this, and I  
16 think CMSA touched on it a bit. In the sense that non toxic  
17 has typically been used in a context that relates more to  
18 the health and safety implications of a product, not  
19 necessarily in terms of its toxins related to environmental  
20 impacts. And non toxic might mean it's not necessarily a  
21 safe product in terms of its environmental qualities, but  
22 you could probably drink it without dying. So if you take  
23 on any guidance language on this particular term, I would  
24 advocate a review of what the term has meant in terms of  
25 health and safety versus what toxin free potentially implies

1 in terms of environmental impact.

2 MS. MADIGAN: EPA followed by SCS.

3 MS. FRAME: Jean Frame, EPA. It's amazing that  
4 CSMA and we would actually sometimes agree on things here.  
5 We find ourselves often times on the opposite sides of the  
6 score. It's true CSMA has stated very clearly what happens  
7 with pesticides. That's true in the larger sense with  
8 chemical products in general that the term non toxic carries  
9 a tremendous baggage with it in the sense of you don't know  
10 non toxic to what.

11 And within any chemical testing program and  
12 perhaps pesticides has one of the most rigorous around,  
13 certainly within the government, where we do have the data  
14 to backup what effects, what characteristics a pesticide,  
15 re: a chemical, could have in the environment. We're  
16 actually in a position to judge whether something should be  
17 considered non toxic, less toxic, more toxic, highly toxic.  
18 We're bound by a statute to do that under FPR.

19 By the same token, however, you're exactly right.  
20 There's nothing that is non toxic in the sense that it's  
21 absolutely safe under all circumstances. The dose, the  
22 exposure, makes a tremendous difference. And again, EDF is  
23 also correct that term non toxic usually tended to relate to  
24 human health aspects and not to the fish or the birds or the  
25 groundwater or the other environmental situations that



1 occur.

2 In general, we do not favor its use. We prohibit  
3 it in our regulations. On pesticides now you have to  
4 remember some of this can be read more broadly. Terms such  
5 as safe and non toxic for that reason because it is so hard  
6 to circumscribe in a textual way, even in a graphic way, the  
7 relative non toxicities of various things. So it doesn't  
8 kill the humans, but is really devastating on your dog or  
9 your goldfish or something like that. So in general we  
10 don't favor the term non toxic. It's terribly difficult to  
11 quantify and it's not clear that the consumer understanding  
12 of the term non toxic without a lot of explanatory material,  
13 that's there a lot of understanding out there.

14 MS. MADIGAN: SCS.

15 MR. CHAFFEE: I'll defer.

16 MS. MADIGAN: Okay. Well, I have nobody on my  
17 list. CSMA.

18 MR. KIEFER: I would also like to keep this open.  
19 There are like I said we're talking about the unqualified  
20 use of the term non toxic in that there's been a  
21 proliferation of non toxic claims being made that I believe  
22 are probably unsubstantiated. There are some recognized  
23 toxicity classifications that the FTC may want to reference  
24 both with TSCA and also recognized just toxicity  
25 classification schemes in general that may be recognized in

1 the toxicology community.

2 And this is usually based on the lethal  
3 concentration of the LC50 values and somebody went through  
4 the list earlier. It could be non toxic, practically non  
5 toxic, slightly, moderate or high. But there needs to be  
6 some guidance in this area. And so that might be one  
7 reference point.

8 MS. MADIGAN: EDF.

9 MR. DENISON: Richard Denison, EDF. I want to  
10 speak just to one specific application of this term in a  
11 specific context and that is the claim in the incinerators.  
12 That is a term that was appearing on a lot of grocery sacks  
13 and so forth for a while and was attempting to deal with  
14 questions about whether when those materials were burned  
15 certain types of emissions, namely dioxins, were produced.

16 I think there is enormous complexity to the  
17 question of what relates to, what goes into incinerators and  
18 what comes out. And in addition to the concerns that have  
19 already been raised about the general use of the term non  
20 toxic, there's a whole set of additional complexities there.  
21 That phrase non toxic incinerators is a highly over  
22 simplified type of claim and would I think the makers of it  
23 would be hard pressed to substantiate it. I think it's  
24 something that the Commission should actively discourage.

25 MS. MADIGAN: Retailers Coalition.

1           MR. THIEMANN: Alan Thiemann for the Retailers.  
2           Just to follow on a point made by the CSMA folks. The  
3           reference to the EPA toxicity classifications is a good  
4           place to start. And retailers perhaps more than any others  
5           know some of the kinds of things that end up being  
6           classified as toxic even though it may not have the  
7           appearance to that to the consumer. There are other parts  
8           of the EPA that you may want to refer to as well including  
9           things like used oil recycling guidelines and decisions the  
10          EPA has made over the years, particularly with reference to  
11          the petroleum marketing groups that we represent. I think  
12          it would be useful to point out that retailers participate  
13          in recycling programs that are sponsored by the states. And  
14          again to our point of needing a safe harbor, the  
15          participation in these programs should not be confused with  
16          any kind of liability that may attach if claims are made as  
17          part of those types of programs.

18          MS. MADIGAN: Is there anybody who hasn't yet had  
19          a chance to speak to this issue who'd like to, sitting at  
20          the table? Let me ask if the FTC staff has any follow up  
21          questions.

22          MR. DERSHOWITZ: I have one.

23          MS. MADIGAN: Mr. Dershowitz, Mike Dershowitz.

24          MR. DERSHOWITZ: In terms of the question that we  
25          asked about the consumer evidence, I'd like to ask whether

1 anybody has any in regard to non toxic and also there seemed  
2 to be a focus by at least two of the discussions about the  
3 non toxic in regard to health and safety. And it seemed to  
4 me like it was supposed to the environment, whether or not  
5 anyone has an opinion about an unqualified, non toxic claim  
6 can be interpreted by consumers related to both aspects.

7 MS. MADIGAN: We'll take one at a time. The first  
8 question was about a request or evidence, consumer evidence.  
9 Anybody have anything to share with the FTC? Art and  
10 Creative Materials Institute.

11 MR. NEVILLE: It's probably really only anecdotal.  
12 We don't have anything in the nature of a real study, but I  
13 do know that over the years that the Association is called  
14 by consumers in response to either press releases or  
15 magazine articles or descriptions of the program when the  
16 term non toxic appears in the seal, typically on children's  
17 products. Although it's also on some adult products.

18 It also includes reference to ASTND40236, the  
19 standard with which perhaps the typical consumer is not  
20 terribly familiar, but the industry is trying to promote it  
21 to consumers as is CPSC in all of its releases relating to  
22 art materials. So I think the word is getting out, but this  
23 is a small industry and I don't think it's got the resources  
24 to do a huge broad scale publicity campaign on something  
25 like that.

1           In terms of the questions that the Association  
2 typically receives over the phone or by letter, it is  
3 questions as to for information about the program itself at  
4 which point the Association will send out information. As  
5 to kind of anecdotal evidence as to use of the term  
6 non-toxic, I think you could probably ask CPSC as to where  
7 it is being inappropriately used.

8           I think I've seen enough products out on the  
9 market that do bear the term where I think it's  
10 inappropriate and really think that the guidelines at least  
11 will sort of point the way for the appropriate use of the  
12 term in the future. And I recognize the term in itself when  
13 you say something isn't toxic, it's not 100 percent clear.

14           On the other hand, it's been in use within the  
15 industry for probably over 50 years and we don't know that  
16 the consumer, typically a mother who purchases all material  
17 products for children or in some cases even a school  
18 purchase board. That's the term that they understand and  
19 that's why the term is really being used.

20           MS. MADIGAN: Anybody else on the consumer  
21 evidence question? What about the second question related  
22 to health and safety environment implications of the  
23 unqualified non-toxic claim?

24           MS. KINGSTON: If I could maybe respond briefly to  
25 both of those at once and just clarify that our remarks were

1 mainly based not so much on consumer evidence and responses  
2 to that claim, but the claim itself has been historically  
3 used within the context relating to the health and safety  
4 implications of the product itself. Aside from Richard's  
5 specific instance of where non toxic and incinerators  
6 related it more to the environmental impact.

7 MS. MADIGAN: Anybody else in response to the FTC  
8 question? I think that we're probably ready to move on.  
9 Unless there's anybody who wants to make a general or  
10 specific point about non toxic claims issues. Okay. We're  
11 ahead of schedule. Let's move on.

12 The next subject will be the forestry claims  
13 including sustainability and renewable resource issues. And  
14 who would like to being the discussion there? AFPA.

15 MS. LAYTON: Pat Layton, American Forest & Paper  
16 Association. In general, AF&PA believes that FTC should  
17 continue its simple straight forward approach and does not  
18 believe any changes or additions of terms are necessary at  
19 this time. And we would not see that that limited FTC in  
20 taking action against deceptive claims in this area. And in  
21 particular on these two claims I doubt that we could get  
22 four people in a room to agree on accepted definition of  
23 either one of those claims. I certainly have my belief and  
24 I bet everyone around here would disagree with me. And now  
25 that we have a new term called rapidly renewable that EPA's

1 introduced into the term, I really have a hard time  
2 understanding what that one is. And I believe it's  
3 difficult to obtain information on this and that's where we  
4 stand on those two terms. Thank you.

5 MS. MADIGAN: EDF.

6 MS. KINGSTON: I think that Richard and I are  
7 going to pull a tag team on this particular set of terms.  
8 Pat just pointed in her remarks to the complexities of these  
9 issues and I think that that's important to bear in mind.  
10 And it also may be an important indicator of why guidance is  
11 potentially needed.

12 Sustainability is very complex and you might not  
13 want to touch it with a ten foot sustainable wooden pole,  
14 but these claims will be emerging in the marketplace. We  
15 see them coming down the pike fairly quickly. And  
16 sustainability claims that are related to a process in  
17 production method on the ground in that forest may appear on  
18 a product and as such the claim itself needs to be  
19 substantiable in terms of the forest management practice  
20 going on, on the ground.

21 Second point. The claim insofar as it relates to  
22 the process and production method and when it appears on a  
23 product it needs to be verifiable across the entire chain of  
24 custody so that there is a clear understanding that this  
25 particular table or this particular piece of paper did

1 indeed come from and is traceable all the way back to its  
2 original source in that forest.

3           And there's an additional complication perhaps  
4 related to these plans and the certification marks that  
5 might accompany them that is the concept of sustainability  
6 as it's been used in the context of sustainable development,  
7 sustainable production, et cetera, et cetera, is a term that  
8 is out there in the public and it may lend itself to the  
9 understanding that the product itself across all of its  
10 production and manufacturing processes also carries some  
11 implication of sustainability meaning perhaps that through  
12 the manufacturer or through the distribution, through the  
13 production methods that the product is somehow treated in a  
14 sustainable way and it should be made clear as to whether  
15 the sustainability application is limited just to the  
16 process and production and the forest management.

17           MS. MADIGAN: Anybody else? I don't have anybody  
18 else on my -- Conservatree.

19           MR. DAVIS: Alan Davis, Conservatree. I'd just  
20 like to for the record note that in our opinion, again in  
21 the writing field, this is probably the third most important  
22 issue, environmental issue coming after recycled and  
23 chlorine free and it's already becoming an issue among some  
24 major leaders in the buying community. And so it becomes  
25 very important that we have a clear understanding of what we



1 mean by these terms and it would be good if the FTC would  
2 help in that regard.

3 MS. MADIGAN: Any other, anyone who hasn't yet  
4 spoken who might want to speak to this issue? Home Depot.

5 MR. EISEN: Mark Eisen, Home Depot. I would  
6 second what Conservatree said and maybe it would be a good  
7 idea if in fact FTC would offer some examples of specificity  
8 that might accompany those terms, for example,  
9 sustainability. Is it talking about sustained yield or  
10 production or sustainable development? And renewable  
11 resource or renewable to offer some specificity as to what  
12 it is that's being talked about as being renewable. Is it a  
13 tree? Is it a fiber? Is it a forest? And then I think  
14 that's really what we'd like to hear.

15 MS. MADIGAN: We have a follow up question from  
16 the FTC.

17 MR. PEELER: The question for American Forest &  
18 Paper. When these terms are used, what do they mean? What  
19 do they refer to? Do they make a sustainable forestry  
20 claim?

21 MS. LAYTON: I think it really depends on where  
22 you are in the world is practicing a forest. Molly  
23 mentioned, EDF mentioned production processes and methods  
24 and a forest is grown, managed and produced by different  
25 methods depending on the forest, depending on its location

1 in the world and many other areas.

2 So in reality those processes and methods are not  
3 standardized around the world. When we talk about  
4 sustainable forestry in terms of, for example, my  
5 organization has an initiative called the Sustainable  
6 Forestry Initiative and basically we have decided to find  
7 sustainable forestry, and I don't have the exact words with  
8 me. But it follows along some of the words of the Brockman  
9 Report which means that we will have forests now and into  
10 future generations and that we will achieve this by using  
11 good stewardship of our forests to ensure that we have  
12 adequate supplies of wood, habitat, environmental water  
13 quality, air quality and other aspects of a forest.

14 So we have defined it for our members and require  
15 it of our membership that they practice what we call  
16 sustainable forestry initiative. But we do not have this in  
17 mind to make it a product claim. It is a company's claim  
18 that they practice sustainable forestry initiative but not a  
19 product claim. They may, you know, it's a condition of  
20 their membership in our association. But again, I think  
21 that there needs to be some time to establish what these  
22 mean to other people because not all people have the same  
23 definition of this.

24 MS. MADIGAN: Anybody else want to speak to that  
25 question first? EDF and then Chlorine Free.

1           MR. DEAN: Just to add another level of  
2 complexity, the term sustainable, two other levels of  
3 complexity. The term sustainable first of all is being used  
4 in the context beyond forestry. It's being used in  
5 agriculture. It's being used with textiles. So it is  
6 coming at you from a lot of different places.

7           And secondly, the term sustainable in part because  
8 of its roots in the sustainable development context, even  
9 though now it's being used in an environment context. In  
10 many people's definitions, including AFPA's, there is an  
11 aspect that's not environmental. It's sustainability of  
12 economic and in some cases even social systems are implied  
13 by that term.

14           So there are camps that use that term in a  
15 strictly environmental way. There are other ones that say  
16 that sustainability is a method for balancing economic and  
17 social and environmental aspects. All of that is, I have no  
18 idea what the consumer takes away from that term, but those  
19 are all overlays on that term. I think with a lot of these  
20 terms the Commission is faced with a dilemma. On the one  
21 hand, there's a tendency for some to say don't define it  
22 because you'll never define it in a way that everybody can  
23 agree too.

24           On the other hand, those claims are being made.  
25 We have seen examples of end products of sustainability

1 types of claims and they are increasing. So if there's not  
2 guidance given, then it's anybody says whatever they want.  
3 So I think the Commission needs to address and again fall  
4 back on basic principles of specificity, substantiation,  
5 et cetera, that you've got to at least bring this into the  
6 rubric of what you're looking at.

7 MS. MADIGAN: Chlorine Free followed by Retailer  
8 Coalition.

9 MR. BEATON: Archie Beaton, Chlorine Free Products  
10 Association. In my prior life of working for a paper mill  
11 out of upstate New York, I look at sustainable forestry was  
12 what they called selective harvesting. So selective  
13 harvesting meant that you would take a plot and you would  
14 pick which trees were ready for harvest. And you would pick  
15 them by if they were good for lumber or you would pick them  
16 for pulp. Or you would pick them for other wood uses.

17 So for them sustainable harvesting meant that they  
18 never had to grow any trees. They never had to replant any  
19 trees and they never did any clear cutting. So from that  
20 standpoint a sustainable forest for them meant that it was  
21 just continually harvesting and picking where those  
22 harvesting areas were available.

23 MS. MADIGAN: Retailer Coalition.

24 MR. THIEMANN: Alan Thiemann for the Retailers.  
25 Even though I think particularly listening to some of the

1 discussion here and EDF's comments relating to chain of  
2 custody, I was harkening back to some of the comments  
3 yesterday about shelf labeling. They both strike me as  
4 being particularly troublesome for retailers in the sense of  
5 how is the chain of custody supposed to be carried through  
6 if there's a claim that's made?

7 I'm not sure that retailers have any ability to  
8 satisfy that kind of requirement specifically and yet the  
9 claims that are made are obviously not under the control of  
10 the retailer. So tracking those claims beyond the time that  
11 a retailer takes control of the property, the product, is  
12 going to be a little difficult I think. I don't know.

13 Maybe in terms of talking about management of  
14 production, I almost, not to make light of it, because I'm  
15 sure it's very serious to the industries that are involved,  
16 but almost like dolphin protection here that you're talking  
17 about it sounds like maybe there's a way to look at this in  
18 a way that uses those kinds of definitions and terms that  
19 are appropriate for the industries that deal with the  
20 complex issues that are there. So I'd just like to point  
21 out the liability issues of doing a chain of custody would  
22 be particularly onerous on retailers.

23 MS. MADIGAN: Okay. AFPA.

24 MS. LAYTON: I'd just like to thank Archie for  
25 bringing up the example of the northeastern forest. For

1 those of you who are not aware of it, I have three degrees  
2 in forestry. I have a B.S, Master's and Ph.D. and I've  
3 worked in forestry all over the U.S. And what is  
4 sustainable to your company would not be sustainable to the  
5 company, would not be considered by the same definition as  
6 sustainable to the company next door to your company, even  
7 because of land owner objectives and differences in how they  
8 wanted to manage it and what products they wanted to  
9 product. It just goes to exemplify that this again is sort  
10 of in the eye of the beholder.

11 I think it is particularly important to make sure  
12 that we understand when someone says, I think Molly pointed  
13 this out, you say a product was produced from a well managed  
14 forest. Again, that's a sticky wicket. I'm not even sure  
15 we can define well-managed in a term that everyone would  
16 agree with and feel comfortable with.

17 And again, the chain of custody would be quite  
18 difficult to interpret. That means that you have to follow  
19 a log from where it was cut from the tree all the way  
20 through all of its transport, its milling, its distribution  
21 and it's going to add a lot of costs and we just don't feel  
22 these are good claims to make. I mean, we would discourage  
23 our members from making these claims because they are quite  
24 difficult and quite fraught. And I think that in the future  
25 this may be, you know, when you review these guides again,

1 maybe we're ready for it, but I'm not sure that now is the  
2 time.

3 MS. MADIGAN: Anybody else either from the FTC or  
4 around the table? EDF and then a question from FTC.

5 MR. DENNISON: I have a question for Pat. Richard  
6 Dennison, EDF. When you say this is not a time for the FTC  
7 to do something here, I guess I'm a little confused.  
8 Because on the one hand you're saying that, I think you're  
9 acknowledging that term is out there. It's getting used,  
10 et cetera. On the other hand, you're asking the Commission  
11 to be silent about it, whether the consequences of that is  
12 it not going to proliferate further claims in this area --

13 MS. LAYTON: Pat Layton, AF&PA. I guess Richard I  
14 would say that I think when the Commission took up a lot of  
15 the claims that are in the current guidance, those claims  
16 have been around for a while and we really knew where things  
17 were. We had a body of knowledge about recyclable, recycle  
18 content. And I'd like to see a little bit of a body of  
19 knowledge developed on this.

20 I think in the meantime to some extent I think if  
21 you use the word sustainable, it may be and I'd like your  
22 opinion on this a claim of general superiority or a claim of  
23 general environmental benefit. And therefore, you may want  
24 to look at it more in that category right at this point in  
25 time and treat it as that category until we have a body of

1 knowledge established on this to where we could give clear  
2 definition and guidance around how to use the term.

3 MS. MADIGAN: Does that answer your question? Or  
4 do you want to follow up?

5 MR. DENNISON: That answers my question.

6 MS. MADIGAN: FTC, you wanted to ask a question?

7 MR. BANK: Several people mentioned --

8 MS. MADIGAN: Kevin Bank.

9 MR. BANK: Kevin Bank, FTC. Several people  
10 mentioned that we could apply some general principles about  
11 specificity to sustainable claims. Could you go into a  
12 little more detail about that? That's the first question.  
13 The second is I think only one person has addressed  
14 renewable resource, what that might mean to consumers. So  
15 we could look at those two.

16 MS. MADIGAN: Could we start with specificity to  
17 sustainability claims and see if we can get all the comments  
18 on that? Richard, EDF.

19 MR. DENNISON: Richard Dennison, EDF. I think I'm  
20 the one that said that. I think the risk one runs is in --  
21 I think the Commission needs to look at this in the way of  
22 either we define the term and specify qualifications that  
23 are appropriate for its use or we don't. It seems to me  
24 that a lot of these would fall into a category that would  
25 lend themselves to an initial cut at providing guidance for



1 their use and limits on their use that would invoke  
2 principles that you've already identified in other areas.

3           So what I'm talking about is if someone is going  
4 to use a sustainability claim that there would have to be  
5 additional information about what stage of its life cycle  
6 that's being talked about. Are we talking about from cradle  
7 to grave? Are we talking about in the forest? But then  
8 what happens to that wood and when it gets turned into paper  
9 it may be a totally different matter. Those types of  
10 specifications.

11           It discussed whether, what is being sustained,  
12 what environmental values if you will are being sustained.  
13 There may be ways to require further disclosures about it  
14 that at least let the consumer understand some of the  
15 context for that claim rather than it simply being a word  
16 that means anything and everything to whoever sees it. So  
17 that's what I'm trying to get at.

18           Substantiation may require that there needs to be  
19 a record of what specific practices are used and a defense  
20 of why those are deemed sustainable by the entity making a  
21 claim. Things like that, that I think, I understand I think  
22 what Pat's concern is, is that you suddenly may be  
23 legitimize use. There was a fear that you'd legitimize the  
24 use of the term. The Commission I think would caution you  
25 that, that's not what they're doing. That they do not yet

1 have enough information to be able to define these terms  
2 rigorously, but there are still standards that could apply  
3 to their use in the interim until they're in a position to  
4 be able to do more.

5 MS. MADIGAN: Anybody else on the specificity  
6 issue? Home Depot?

7 MR. EISEN: Mark Eisen, Home Depot. In my written  
8 comments, I mentioned the issue of renewability on its face  
9 according to sustainability. And whether in fact that is  
10 the case. There are broad general claims of renewability,  
11 but if in fact I think as Richard mentioned there's no  
12 substantiation of the practices that may not be considered  
13 to be sustainable. And some guidance on what is the  
14 definition of one versus the other. They can kind of be  
15 confusing if you look at, I guess if you look at Webster's  
16 maybe. I don't know. I haven't looked myself.

17 MS. MADIGAN: Well, that's a good segue into the  
18 second question Kevin posed which is what is the definition  
19 of renewable resource and what do renewable resource claims  
20 mean? Would anybody like to speak to that? Alan Davis,  
21 CIS.

22 MR. DAVIS: Well, I think for the last 20 year the  
23 term has been used as a -- I'm sorry, Alan Davis,  
24 Conservatree. The term has been used, really it's been to  
25 counter the case of recycled content papers, at least in the

1 marketplace. And it suggests to the buyer I believe  
2 environmental preferability and I think that's a misleading  
3 claim and I think the FTC would be wise to provide guidance  
4 with respect to the use of that term.

5 MS. MADIGAN: EPA.

6 MS. FRAME: This is not EPA so much as it is me.

7 MS. MADIGAN: Jean Frame as an individual.

8 MS. FRAME: Jean Frame sitting at the table.

9 MS. MADIGAN: Well, it will be a little bit  
10 awkward because Jean doesn't necessarily have a seat at the  
11 table.

12 MS. FRAME: Oh, sorry.

13 MS. MADIGAN: But if we can make an exception  
14 here. Okay.

15 MS. FRAME: It may be getting to semantics, but I  
16 listen to the word ability on the end of anything and say  
17 this means it is capable of being whatever, sustained,  
18 recycled, whatever and that's a noun. Whereas a term -- so  
19 it means it has to stand by itself if you use it. Whereas a  
20 term like sustained or recycled is an adjective which can be  
21 used to apply to build specifics around.

22 Or you could have a sustained management practice  
23 which you could point to with pride and it would no be  
24 nearly as difficult to deal with as sustainability or  
25 sustainable management practice or sustainable something.

1 So I have difficulty personally with the ability part of it.  
2 To my mind that's a rather narrow thing that implies the  
3 capability of being something and that is what I think a lot  
4 of consumers take away, something as narrow as technically  
5 capable of being done as opposed to the context in which it  
6 is, the context it's surrounded with.

7 MS. MADIGAN: Any response? AFPA.

8 MS. LAYTON: Pat Layton, AF&PA. Just to answer  
9 the question, to build actually Jean off of your point.  
10 There was a slogan that's been around for quite a few years  
11 called wood is a renewable resource. I've seen it. You  
12 have to go to Southeast Georgia and ride around in a pickup  
13 truck and it's on the back of it. You know, wood is a  
14 renewable resource. I've been there. I promise it's there.  
15 I think there the term Kevin and the answer there was it is  
16 that wood is capable of being regrown, you know, you may use  
17 wood today and you may take and regrow or replace that piece  
18 of wood tomorrow by growing a new piece of wood. And so in  
19 that case that is what is meant by renewable resource. And  
20 the strict slogan kind of definition of that wood as a  
21 renewable resource means wood can be, you may use this piece  
22 and you may grow a new piece tomorrow.

23 MS. MADIGAN: EDF.

24 MR. DENNISON: I would say with the most common  
25 usage that I've seen of that term in the marketplace is

1 indeed in the context of wood and wood products and its  
2 particular paper products. In fact, I think it is still  
3 widely used on a little circle with the words renewable  
4 resource, recyclable, biodegradable.

5 And that's still -- I got it on a bag yesterday at  
6 lunch for those of you who were with me at lunch. I would  
7 argue that that's a very good example of how that term may  
8 mean something broader to the consumer than is actually  
9 necessarily the case. The biomass that went into that paper  
10 may well be renewable by most people's general definition.  
11 The process by which that biomass was obtained and the  
12 consequences environmentally of that process may result in  
13 other aspects of the forest that are not being renewed as a  
14 result of the practices used.

15 The implication of the consumer is that somehow  
16 everything is back to the way it started that is completely  
17 renewed. And in fact while the biomass may be replaced,  
18 many other aspects, environmental aspects, at first may in  
19 fact not be replaced as a result. That's a case where I  
20 think there's an omission if you will that creates an  
21 impression that is broader than what is actually intended.  
22 Again, a specificity standard that says what is being  
23 renewed I think would help.

24 MS. MADIGAN: Anybody else on renewable resource  
25 before we move on? Okay. The next topic is Chlorine Free

1 claims and let's see, who should begin that discussion? I  
2 guess we'll start with Chlorine Free Products Association.

3 MR. BEATON: I appreciate it. This is Archie  
4 Beaton with the Chlorine Free Products Association. Let me  
5 just start out first by asking everybody around the table.  
6 How many people have heard of the term totally chlorine  
7 free?

8 MS. MADIGAN: Let the record show that about half  
9 the people at the table raised their hands and a small  
10 number in the audience, of a relatively small audience.

11 MR. BEATON: This number's even higher than a  
12 recent survey of communication paper producers who called  
13 300 of his customers nationwide. And their survey indicated  
14 about a third of the respondents were familiar with totally  
15 chlorine free paper. And of that, those that were of the  
16 tax supported, large business or quick printers were more  
17 aware. The fact also state that those who buy recycled were  
18 twice as aware as those who did not.

19 So when asked how important is it to you that  
20 these papers that you purchased are chlorine free and ask  
21 them to grade them on a scale of 1 to 10, 1 being very  
22 important and 10 being extremely important. 32 percent  
23 rated TCF from 1 to 3. 47 percent rated TCF as 4 to 7. And  
24 22 percent responded 8 to 10. So if my math is right about  
25 77 percent of the consumers polled ranked it to be at least

1 important and a quarter of them extremely important.

2 So when we talk about totally chlorine free,  
3 there's more to it than just pulp and paper. I mean,  
4 everybody is very aware that there is chlorine free paper,  
5 that it's something that's happening in the pulp and paper  
6 industry, and it's something of utmost concern. The other  
7 part of it is that there are other things that are also that  
8 are going to be promoted as chlorine free.

9 Just recently Carrier Corporation has come out  
10 with a product that is an air conditioning unit. The  
11 bottled water companies are starting to label their products  
12 as being chlorine free or being produced as ozonated water.  
13 And then we also have other applications where individuals  
14 in the dry cleaning industries and in the packaging industry  
15 are starting to do the same thing.

16 So the term totally chlorine free is a term that  
17 is certainly being used in the market and is something that  
18 is showing an awful lot of interest among consumers.

19 MS. MADIGAN: Anybody else like to speak to this?  
20 Conservatree.

21 MR. DAVIS: Alan Davis, Conservatree. Again, to  
22 state the chlorine free issue is now in our opinion number  
23 two among the important buying issues for people in the  
24 printing and writing segment of the industry. And there is  
25 tremendous confusion in that marketplace about the various

1 terms, particularly the question of what is totally chlorine  
2 free or chlorine free.

3 We urge the FTC to narrow the terms to totally  
4 chlorine free referring to product manufacturers without  
5 chlorine or chlorine derivatives. And that there be a  
6 second term akin to process chlorine free to account for  
7 recycled papers that are where recycled fibers processed  
8 without chlorine or chlorine derivatives. And the virgin  
9 component being TCF, totally chlorine free.

10 Where it's very similar to the recycled issue, the  
11 difficulties in marketing and developing a market, when the  
12 consumer is bombarded with different kinds of information  
13 and terms and people very carelessly use the term chlorine  
14 free and the FTC could be of tremendous assistance in making  
15 sure that such claims are made in a way that's consistent  
16 for the consumer to understand.

17 MS. MADIGAN: AFPA.

18 MS. LAYTON: Pat Layton, American Forest & Paper  
19 Association. Our association discourages the use of claims  
20 such as totally chlorine free, process chlorine free. These  
21 are just simply process manufacturing claims. The element  
22 chlorine is I believe the term ubiquitous in the  
23 environment. And I will tell you that the tree that  
24 produced the paper had chlorine in it. So the product is  
25 deceptive if it is advertised as totally chlorine free.



1 There is chlorine in the tree, in the fibers, and therefore  
2 in the product.

3 So it is a deceptive claim if you claim to be  
4 totally chlorine free. If you are claiming a process of  
5 totally chlorine free, then you would have to have a process  
6 that used no processed water. It is a very deceptive claim  
7 and I think should be discouraged. I don't think that  
8 there's room for this claim.

9 MS. MADIGAN: Chlorine Free and then CSMA.

10 MR. BEATON: To be honest, I have not seen any  
11 studies that have shown that chlorine is an integral part of  
12 a tree. But there are trace amounts. The Chlorine Free  
13 Products Association is attempting to bring into focus here  
14 are not the trace amounts of chlorine that are being used or  
15 the chlorine that may be in the water that's being purified  
16 to produce it. What we're talking about is the process.  
17 And in that manufacturing process there are very big  
18 concerns about chlorine and chlorine containing compounds.  
19 And that's where the debate is at. It's not as much of  
20 these trace amounts that we're talking about that may be in  
21 the waters, in the processes, the --

22 MS. MADIGAN: CSMA and did I see a hand over here?  
23 Do you want to follow up on his comment, Carolyn?

24 MS. COX: I have a question.

25 MS. MADIGAN: Related to that? Can it wait until

1 we hear from CSMA? Then we'll come back to you.

2 MR. KIEFER: Robert Kiefer, Chemical Specialty  
3 Manufacturers Association. I would tend to, this seems to  
4 be more of an environmental policy issue than anything else.  
5 It would be hard pressed to be able to use such a term in  
6 other marketing segments or other industry sectors where  
7 chlorine is used in products.

8 And one of the things that we've been doing is  
9 studying the benefits of chlorine as it's used in the  
10 industry. You'll be hard pressed to, I mean, it's found in  
11 plastics. It's found in disinfectants. So there's health  
12 issues related. I mean, it's health benefits from these  
13 type of products. And the issue of chlorine is almost  
14 universal. It's almost a universal application.

15 There are some concerns with certain chlorine  
16 products, certain organo chlorines that are persistent and  
17 pose toxicity hazards. And some of those have been  
18 identified such as dioxins and PCBs. But I think you'd be  
19 very hard pressed to push the issue of no chlorine  
20 universally on all types of products.

21 MS. MADIGAN: Carolyn, did you want to ask a  
22 question?

23 MS. COX: Yes, I would. In terms of determining  
24 whether we should provide guidance in the guides regarding  
25 chlorine claims and if so what form the guidance should

1 take, it would be useful for us to obtain some feedback on  
2 the effect of the guidance that we provided in our cases in  
3 this area on the flow of deceptive claims, on the flow of  
4 truthful information to consumers and also on the  
5 development and implementation of beneficial technologies.  
6 And I was wondering if anyone could comment on those three  
7 things, the flow of deceptive information, the flow of  
8 truthful information to consumers and also the development  
9 of beneficial technologies.

10 MS. MADIGAN: Who would like to take that on?

11 MR. BEATON: If I could talk about the benefit of  
12 the alternative technologies. There are certainly  
13 alternative technologies that do produce plastics, that do  
14 produce paper, that do produce paper, that do produce the  
15 other products that the Chemical Manufactures Association is  
16 talking about. They're really a used product process.  
17 They're used in Europe. We can provide you with a list of  
18 them. There are certain PCBs that have been banned in  
19 certain countries in Europe and there's data and information  
20 available for the. And there are all kinds of less what you  
21 want to call harmful processes that do not use chlorine that  
22 area readily available in that market and we can make those  
23 available.

24 MS. MADIGAN: Could clarify just to follow up on  
25 Carolyn's question. Have any of the cases in this area

1 encouraged or discouraged the development of beneficial  
2 technologies? Is that your question, Carolyn?

3 MR. BEATON: I would have to say no.

4 MS. MADIGAN: Anybody else have a reaction to that  
5 question? Ford.

6 MS. DAY: Susan Day, Ford Motor Company. I have a  
7 point of clarification to one of the comments that was made  
8 by the Chlorine Free Products Association as a user of PCB.  
9 To our knowledge there is no country that has specifically  
10 banned PCB. There was some discussion, but upon further  
11 study it was decided not to do that. I would also have a  
12 question. We have been looking at alternatives to PCB and  
13 trying to understand where such technology exists.

14 But in the discussion of chlorine, I think -- I  
15 can't speak to the paper industry, but as a personal  
16 consumer I'd be a little bit disconcerted to find that I  
17 couldn't use table salt or aspirin or a few other products  
18 that do use chlorine. And I think many consumers don't know  
19 when they purchase table salt that they are purchasing a  
20 chlorine compound. And I think there is a point of  
21 education too as to the numerous products that have chlorine  
22 or chlorine processes in them.

23 MS. MADIGAN: Was there a question? I missed the  
24 question. I thought it was a question.

25 MS. DAY: No, it was a point of clarification.

1 MS. MADIGAN: Okay. Let me do a couple of things.  
2 Let's let you respond to the PCB ban issue. Let's not lose  
3 sight though of finishing up Carolyn's questions before we  
4 move onto another series of topics.

5 MR. BEATON: All right. What we're talking about  
6 here, we're not talking about banning everything. We're  
7 talking about the problem with chlorine comes in the  
8 manufacturing process and the byproducts of that. We're not  
9 talking about banning table salt. We're not talking about  
10 anything along those lines. What we're basically saying is  
11 that when you take heat pressure and organic matter and you  
12 create organic chlorines, and you do it in large volumes,  
13 those are our concerns. And that's what we're talking  
14 about. We're not trying to eliminate chlorine from  
15 everything that's out there.

16 MS. MADIGAN: Okay. Let me do something first.  
17 Let's finish up Carolyn's question and then we'll come back.  
18 Okay. Remember she had three questions. Have cases in this  
19 area effected the flow of deceptive information, the flow of  
20 truthful information to consumers or had some impact on the  
21 development of beneficial technologies?

22 MS. LAYTON: Pat Layton, American Forest & Paper  
23 Association. Carolyn, we feel that it did help and the  
24 consent decrees helped in stemming deceptive information and  
25 enhancing the ability to have truthful information. As far

1 as helping technologies, I'm not sure that the guides have  
2 helped change technology themselves.

3 I think there were outside forces that have been,  
4 for example, when our industry in 1985 recognized that  
5 dioxin was present in our bleaching process, we made the  
6 changes then to reduce the amount of dioxin that was in our  
7 effluent. And so I think there were other changes outside  
8 of the FTC guides that, for example, in that particular  
9 chemical's instance were taking shape on this. So I would  
10 not say that for the issue of TCF that we saw or that for  
11 chlorine, the issue of chlorine free with Mr. Coffee consent  
12 decree that we saw any technology development changing. But  
13 I think we did see some more truthful advertising and less  
14 confusion.

15 MS. MADIGAN: Any final comments on Carolyn's  
16 question? Okay. Let's open it up to other issues related  
17 to chlorine free. Conservatree and then Chlorine Free.

18 MR. DAVIS: I think that -- Alan Davis,  
19 Conservatree. I think again here the issue is putting out a  
20 claim of environmental benefit. I don't think there's a  
21 lot, I shouldn't say that. We don't believe there's a lot  
22 of debate about the question that TCF, totally chlorine  
23 free, has a significant environmental benefit. And so then  
24 when manufacturers make claims that they're putting out a  
25 chlorine free product and it's not totally chlorine free,

1 they're deceiving the consumer. And we just want to prevent  
2 that from happening. And I'd be actually interested in  
3 hearing the AFPA's position on whether or not they feel that  
4 there's no distinction between TCF and ECF and therefore  
5 it's not deceptive. Is it not deceptive to say something's  
6 chlorine free implying that it's totally chlorine free? It  
7 seems to me that it is.

8 MS. LAYTON: I think it would be deceptive to say  
9 something's chlorine free because I don't know of anything  
10 that's chlorine free. If you're talking about paper,  
11 chlorine is in the wood. Therefore, if it's in the  
12 biological biomass that went into the fiber, then it's in  
13 the product.

14 MR. DAVIS: If it was accepted that the term  
15 totally chlorine free meant that the processing of the fiber  
16 was done without chlorine or chlorine compounds, would that  
17 not be a clear statement to the consumer? And would that  
18 not be a benefit to the consumer to know what it meant?

19 MS. LAYTON: I'm sorry, I'm not the water chemist  
20 here. But as I can understand from what our association  
21 believes, we've not seen or feel that the information on  
22 totally -- and I can only say this about wood pulping and  
23 bleaching processes that are today totally chlorine free,  
24 that they are environmentally benign or that they are any  
25 better than the current processes that we have or that they

1 are any better than a closed loop mill which did include,  
2 for example, a chlorine dioxide bleaching process.

3 So I would not say that there is any environmental  
4 benefit from say -- and that it would be misleading to the  
5 consumer because we don't know the answer yet. That if you  
6 said totally chlorine free unqualified, unsubstantiated, I  
7 don't think the science is there to say that that's correct.

8 MR. DAVIS: Well, do you think there should be any  
9 distinction at all between a process that uses chlorine  
10 compounds and one that doesn't use chlorine compounds? Do  
11 you think the consumer should know the difference between  
12 those two?

13 MS. LAYTON: Do you think the consumer should know  
14 the difference between a dishwasher soap -- is it Cascade  
15 that does have chlorine and Sunlight that doesn't?

16 MR. DAVIS: I'm sorry, is that an answer to my  
17 question?

18 MS. LAYTON: It's a question back to you.

19 MS. MADIGAN: Let's try to focus this if we might.  
20 Your point, Conservatree, is that you believe consumers need  
21 to be able to understand that certain processes are chlorine  
22 free and the question to AFPA is can you envision some way  
23 of conveying that information to consumers without it being  
24 deceptive? Can I phrase it that way?

25 MR. DAVIS: That's pretty good.



1 MS. MADIGAN: At this time, can you envision some  
2 way to convey that without being deceptive? Maybe your  
3 answer is no.

4 MS. LAYTON: No.

5 MS. MADIGAN: I didn't mean to suggest an answer.

6 MS. LAYTON: At this point in time, no, I'm not  
7 capable of answering that question.

8 MS. MADIGAN: FTC, you wanted to jump in a second.

9 MR. PEELER: Yeah. I wanted -- Mike, could you  
10 sort of repeat the principle --

11 MR. DERSHOWITZ: Well, Mr. Coffee made a chlorine  
12 free claim having to do with the process by which the coffee  
13 filter's been made. And since in fact there were still  
14 environment hazards associated with the production of the  
15 paper, considered to be an unsubstantiated false claim.

16 MR. PEELER: This is Lee Peeler again. I would  
17 say also for the record that was a settlement. Mr. Coffee  
18 didn't admit any of our allegations were true. And the  
19 other part of the case was?

20 MS. MADIGAN: Microphones please and identify.

21 MR. DERSHOWITZ: I'm sorry, Mike Dershowitz. Not  
22 on chlorine, but on -- they also said that they  
23 substantially eliminated environmental byproducts of the --  
24 they said it didn't.

25 MR. PEELER: I guess my question is to all three

1 of the principle participants in this discussion, is there  
2 anything about the principle of that case that causes any of  
3 you concern? Do you agree that that case was correctly  
4 decided and articulated?

5 MS. LAYTON: Pat Layton, American Forest & Paper  
6 Association. Yes.

7 MS. MADIGAN: Succinct answer. Chlorine Free.

8 MR. BEATON: Archie Beaton, Chlorine Free  
9 Products. Most definitely.

10 MS. MADIGAN: And Conservatree.

11 MR. DAVIS: Alan Davis, Conservatree. Yes.  
12 However. Yes, but. The fact of the matter is right now  
13 marketing paper, environmentally -- marketing paper with  
14 environmental benefits is happening in the printing, writing  
15 industry.

16 Again, it's the only part of the industry that I  
17 consider myself expert in. The marketing that is going on  
18 right now, there is tremendous confusion in that marketplace  
19 between the two concepts known as ECF, having to do with  
20 elemental chlorine free, and TCF being elemental and  
21 chlorine compound free in the processing.

22 And buyers are interested in knowing that they are  
23 buying a product -- I mean, some buyers are interested in  
24 knowing how this product is being made and they are being  
25 confused. They are being confused because the terms, if one

1 were to say totally chlorine free in the layperson's  
2 understanding of that is that it's made without chlorine  
3 which means to some people made without elemental chlorine.

4 And many paper industry sales people make claims  
5 that their product is totally chlorine free, not  
6 understanding that distinction. And I think it would be  
7 extremely significant for the FTC to at least make that  
8 distinction. If buyers choose to make the -- believe that  
9 there's no distinction between the two and there's chlorine  
10 in the water, then that's for them to decide. But we should  
11 clarify the terms. And equally important is the confusion  
12 that arises from manufacturing a recycled product because  
13 the fiber already has chlorine derivatives in the fiber.

14 So the term process chlorine free is the one  
15 that's being promoted. We don't have to end up with that  
16 term. It may not be the most elegant term, but it's been  
17 functional. But some term needs to be out there so that  
18 there's less confusion in the marketplace.

19 MS. MADIGAN: Let me ask EDF because you've been  
20 patiently waiting and then Chlorine Free can jump in.

21 MR. DENNISON: I've been unusually quiet during  
22 this discussion. Part of it is because I'm of two minds.

23 MS. MADIGAN: That's surprising since you keep  
24 changing appearance.

25 MR. DENNISON: Two faces. On the one hand, I do

1 think there is enormous controversy or the relative  
2 environmental benefits of TCF and not TCF. I think no  
3 matter what my own opinion is on that question, there is  
4 enormous controversy. On the other hand, I think there is  
5 also, has indeed been the blurring of the distinction in  
6 marketing arenas.

7           So I think we're grappling with a balance of two  
8 concerns. One is there are indeed entities that in the  
9 marketplace would prefer to blur the distinction a process  
10 that uses no, in the process of bleaching a paper, let's get  
11 to the point. That's where this is dealing with. In the  
12 process of bleaching the paper whether chlorine, elemental  
13 formed chlorine or chlorine compounds are used in that  
14 process or not, the reason there's debate about this is  
15 because this elemental chlorine has largely been replaced  
16 with other chlorine compounds that reduce but do not  
17 eliminate the discharge of chlorinated chemicals that nobody  
18 disputes are an issue toxicologically, environmentally.

19           And the question is has that gone far enough? Are  
20 the reductions far enough? So that's where the debate is  
21 over whether you have to go to TCF to get the benefit. Some  
22 people say you do. Other people say you don't.  
23 Nevertheless, there is a lot of confusion out there because  
24 if you've eliminated elemental chlorine but not all chlorine  
25 compounds in one sense you can say chlorine free and that

1 means you got developmental chlorine.

2 So I do think that there probably could be some  
3 clarity in this area provided by this. The balancing act is  
4 do you then imply preferential -- environmental preference  
5 merely through the use of that term? Does TCF itself say  
6 this is better? So that's why I'm of two minds. I think  
7 that there is debate over the latter point. There is not  
8 debate over, I think there needs to be a distinction made,  
9 but whether that distinction draws, leads the consumers to  
10 draw additional connotations is another question.

11 I do not, just for the record, believe that this  
12 distinction between totally chlorine free and process  
13 chlorine free is meaningful at all and I don't think there's  
14 any need for that distinction. I'll be happy to talk to  
15 these folks about that, but I think that's an  
16 environmentally meaningless distinction.

17 MS. MADIGAN: Chlorine Free and then Paper  
18 Recycling Coalition. We haven't heard from you yet.

19 MR. BEATON: First off to go back, there's a  
20 recent study that's been done by a paper mill or a pulp mill  
21 that runs two lines together, one an elemental clearing  
22 bleach line and a totally clearing free bleach line  
23 together. And using modern technologies, not the  
24 technologies that are applied here in the U.S.

25 Their studies show that TCF effluents are less

1 toxic and that is readily available for anyone that would  
2 like to peer review it. And that's running a totally  
3 chlorine free in an elemental chlorine free process  
4 together.

5 MS. MADIGAN: You want to identify the source of  
6 the study?

7 MR. BEATON: It's the Sodra South Corporation from  
8 Sweden. Also, I'd like to say that these guides should  
9 provide a clear message in the use of the term totally  
10 chlorine free and process chlorine free. We're asking the  
11 FTC to accept our terms and definitions for these that we  
12 have provided as comments. We have since received letters  
13 of support from many people who have added comments from  
14 paper mills, other industrial manufacturers, printers, end  
15 users, marketing groups, et cetera, all asking that the FTC  
16 accept our definition of these terms and their addition be  
17 added to the guidelines.

18 A clear definition along with examples such as the  
19 action that was taken by the FTC with Mr. Coffee or other  
20 deceptive practices that we have discussed prior to this  
21 hearing. One example might be the fact that we discussed a  
22 paper mill who purchases chlorine bleached or chlorine  
23 compound bleached product pulps and then turn around and  
24 claim that these are not, that they can produce a process  
25 chlorine free paper.

1           The particular mill was Appleton Paper Mills. And  
2 what Appleton had done is that they had actually told their  
3 customer and had written a letter stating that this letter  
4 is to confirm to you that chlorine is not used in the normal  
5 manufacturing process in our paper mill. Of course not.  
6 They're making paper. In the paper making process, you do  
7 not bleach. You produce paper.

8           This mill was trying to claim that this product was  
9 processed chlorine free and make it readily available for  
10 their customer. Kind of a little bit of a deceiving aspect  
11 of it.

12           By producing examples, very clear examples and  
13 clearly defining these terms, it will help eliminate a lot  
14 of the misuses and misinformation that's in the market. And  
15 I've got some comments here from some different companies  
16 that I think are kind of pertinent to this.

17           We recently received a letter from Seventh  
18 Generation. Seventh Generation is a marketer that produces  
19 -- Seventh Generation markets products that are sensitive to  
20 the environmental issues. There are over 200,000 consumers  
21 that we sell directly to. And our products are sold in over  
22 1,000 retail stores.

23           It is as a result of our involvement in the  
24 marketplace and our direct involvement with consumers and  
25 purchasers of environmentally sensitive products that we get

1 significant feedback relative to the areas where confusion  
2 exists and additional clarity is needed. As a result of  
3 that, I would like to propose that the FTC consider adding  
4 the terms totally chlorine free and process chlorine free to  
5 the guidelines.

6 MS. MADIGAN: Can I ask rather than read a series  
7 of letters from different companies since I think a lot of  
8 people on the table could do the same thing, if you could  
9 summarize.

10 MR. BEATON: Sure. The summary is that it didn't  
11 matter if it was a pulp mill, a paper mill, an end user, a  
12 buyer a converter, all of them have the same request that  
13 they need clarification when it comes to what products they  
14 are going to buy. They have decided on their own that  
15 totally chlorine free is an issue for them. They wish to  
16 participate in that market and they would like to make it  
17 easier for them to be able to secure those products with a  
18 comfort level that it is in fact. A chlorine free product  
19 and not a substitute.

20 MS. MADIGAN: I have PRC followed by AFPA.

21 MR. COLLINS: Pablo Collins, Paper Recycling  
22 Coalition. One of the beauties of the FTC guides is that  
23 they are basically simple. They are not regulatory in  
24 nature. There's a certain flexibility built into them which  
25 has made them I think acceptable to the majority of the



1 consumer goods companies manufacturers.

2           It's somewhat disturbing to see the type of  
3 proposal that's being put forth right now with respect to  
4 chlorine and chlorine free -- totally chlorine free and  
5 processed chlorine free. I don't think most of the people  
6 around this table understand it. How can we expect that the  
7 consumer understand it?

8           Archie asked at the beginning how many people have  
9 heard the term totally chlorine free? Approximately a third  
10 of the people raised their hands said they'd heard it. How  
11 many people understand it? And if we don't understand it,  
12 how can we expect the public understands it?

13           This is like other debates that have taken place  
14 around this table is where is the empirical data that  
15 (a) the consumer understands these terms, makes a  
16 distinction between these terms and I would hate to see the  
17 FTC start down a path of defining terminology which we have  
18 no basis to believe that the public understands it.

19           MS. MADIGAN: AFPA followed by EDF.

20           MS. TERPSTRA: My name is Grace Terpstra and I'm  
21 representing the American Forest & Paper Association. We  
22 would agree with the comments of the Paper Recycling  
23 Coalition. But also I would like to add that we've just  
24 experienced about a ten minute debate on some very serious  
25 scientific data that we have been involved in for the last

1 two years going on three years with the EPA every step of  
2 the way. It will evolve into the largest single rulemaking  
3 ever put forward by the Environmental Protection Agency  
4 called the cluster rule which combines air and water  
5 regulations for our industry.

6 It has arguably been studied more than any other  
7 environmental question that we've seen certainly from our  
8 industry. We've had our mills, our processes reviewed.  
9 It's a very serious understanding and I think EPA would have  
10 to agree that it certainly required tremendous resources for  
11 us to try at this point to suddenly put into the record or  
12 resolve in any way whether one process is in fact preferable  
13 over another I think would be virtually impossible. And if  
14 we did I think we would have basically a roomful of data to  
15 argue the question either side. We're looking very closely  
16 at that rulemaking and we think some of those questions at  
17 least may be resolved from what our industry is required to  
18 be doing from a process standpoint. But in no way would we  
19 be at a point that would allow for a very simplistic product  
20 label that would signify to a consumer preference one way or  
21 another.

22 MS. MADIGAN: I'm going to ask, because we've  
23 spent a fair amount of time on this if we could focus on  
24 winding this down. I don't want to again eliminate anybody,  
25 but I think we're getting close to the end of this.

1 Chlorine Free -- I'm sorry, EDF and then Chlorine Free. I'm  
2 sorry, did you want to say something, FTC?

3 MR. PEELER: Yeah and Richard could you also --  
4 this is Lee Peeler. Richard, could you also just address  
5 why it is that you ended your last statement by saying you  
6 don't know whether there's a difference between a totally  
7 chlorine free and process chlorine free?

8 MR. DENNISON: Yes, I wanted to make a  
9 clarification about that and also add an additional comment.  
10 If in fact the example that Archie provided is being done, I  
11 would agree that that is a deceptive claim. Let me explain.  
12 The distinction that is usually made, the argument that is  
13 usually made for the need for that distinction is that a  
14 paper that has recycled content or that recycled content may  
15 have been originally chlorine bleached should not be  
16 eligible to use the term TCF.

17 I disagree with that at all. I think if the  
18 process starting from raw materials, that process for making  
19 paper whether the raw materials be virgin wood or recycled  
20 paper, if that process is free of chlorine compounds, that  
21 is why I don't think there needs to be a distinction there  
22 between TCF and process chlorine free. If, however,  
23 somebody is buying pulp that was chlorine bleached and just  
24 because they at their plant are not using chlorine compounds  
25 and they are trying to carve out TCF, that is deceptive

1 absolutely. I was not aware of that kind of claim being  
2 made.

3 The comment that I would offer is that your last  
4 two speakers offered standards for the decision the FTC  
5 ought to make about whether to define these terms or not,  
6 that I would disagree with. The first standard is whether  
7 environmental preferability is embodied in the term and I  
8 don't think that's a sufficient criterion. If that were, we  
9 could raise that issue with every single term that the  
10 Commission has defined already.

11 And secondly, whether or not consumers understand  
12 the term is also could have been raised with virtually every  
13 term if not absolutely every term. So I would dispute that.  
14 My concern over this debate around TCF and the reason I'm of  
15 two minds is frankly I'm concerned not so much that TCF  
16 itself would imply an environmental preference, but that it  
17 implies too much environmental preference necessarily. That  
18 is TCF is not necessarily an end in and of itself. It may  
19 be a step to an end, but it is not an end in and of itself.

20 So my ambiguity about using these terms is not so  
21 much that it would imply too much environmental  
22 preferability, but it might imply that this is a process  
23 that is free of impact and that is absolutely not the case.  
24 And I think that the Mr. Coffee example got to that issue.

25 Finally, you know, this is an area very much like

1 the bovine growth hormone debate about whether consumers  
2 have a right to know about a specific aspect even if the  
3 pluses or minuses of that aspect are in dispute and I guess  
4 fundamentally I ultimately would come down with a view that  
5 consumers should be able to know at least one way -- which  
6 side of the fence a process is on. And so that leads me to  
7 feel that definitions that keep away as much as possible  
8 from implying environmental preferability, but nevertheless  
9 clarify things that consumers I would agree in marketplace  
10 are asking about would be appropriate.

11 MS. MADIGAN: I'm going to take two more comments  
12 and then ask the FTC if we have anything else to say on this  
13 before we start to move onto the next subject. Chlorine  
14 free and AFPA.

15 MR. BEATON: First, Archie Beaton of CFPA. Pablo  
16 I think your comments are a little bit wrong. I think about  
17 two-thirds of the people in the audience raised their hands  
18 and I think the record will show that.

19 MS. MADIGAN: Well, I think it's actually just as  
20 a point of clarification it would be impossible to infer  
21 from my statements the precise number since no one knows  
22 what the denominator is. You don't know how many people are  
23 in the audience versus how many people are at the table.

24 MR. BEATON: Okay.

25 MS. MADIGAN: So my comment can't be the basis for

1 any assertions.

2 MR. BEATON: Next time I'm taking roll call.

3 Second, the cluster rules. I'm glad that AFPA brought that  
4 up. The cluster rules do offer an opportunity for TCF  
5 guidelines. In fact, they do have in the cluster rules and  
6 area that says that if you do put in a TCF process, you'll  
7 be free of many of the regulations that the chlorine dioxide  
8 or I shouldn't say that, free of the other regulations of  
9 the other processes that are put in. So your permitting  
10 process would be extremely easy by going to a totally  
11 chlorine free process and you will have less regulation to  
12 contend with.

13 MS. MADIGAN: AFPA and then I'll let Conservatree  
14 make one last comment.

15 MS. LAYTON: I just respond by saying we haven't  
16 seen the final regulation on that point. But I would agree  
17 with EDF. One of the concerns that you raised for us which  
18 we would agree with is the concern about overstating or  
19 stating too much in any of these claims.

20 And I'd like to put it another way that I think  
21 our industry views this as possibly freezing or taking a  
22 snapshot of technology that is rapidly changing that in fact  
23 may not allow some companies, some mills who have evolved  
24 some new combination, and I won't go into any company names.  
25 But one that several of us immediately thought of in our

1 industry that have combined unique bleach lines and  
2 approaches that wouldn't be captured by ECF, TCF or PCF and  
3 in fact by many measures would be considered something the  
4 you might consider preferable.

5 So I would agree with that statement from EDF that  
6 if anything it could have the possibility of overstating and  
7 not allowing for that to be adequately reflected.

8 MS. MADIGAN: Okay. Conservatree and then we'll  
9 go to the FTC.

10 MR. DAVIS: Yeah, I just wanted to -- Alan Davis,  
11 Conservatree. I just also wanted to say that I agree with  
12 EDF's comments on number one that if the term TCF could be  
13 applied to, could equally be applied to papers made with  
14 recycled fibers that had previously been chlorine bleached.  
15 Those of us in the recycled paper business have been  
16 somewhat defensive about that issue because of the  
17 containment of chlorine compounds. But I would certainly  
18 happier just calling it TCF. But short of that there should  
19 be some distinction that allows for the processing of  
20 recycled fiber in a totally chlorine free fashion.

21 Secondly, I also agree with Richard that what  
22 we're talking about here is providing information to the  
23 consumer. I just don't want to lose site of that. The  
24 whole point of having a TCF distinction is just to be able  
25 to provide clear information to the consumer

1           And third, I think that this issue about conveying  
2 too much information in the sense of being environmentally  
3 preferable is exaggerated by the fact that it there's new  
4 technologies, it's a marketing issue and it takes a lot of  
5 work to market the benefits of even TCF. There is a market  
6 out there now for it and so it becomes important.

7           But similarly, that market moves very quickly. We  
8 know better than anybody else I think that the market moved  
9 on us very quickly in the recycled field and moved to TCF  
10 and now is moving towards sustainably forested fiber  
11 sources. So it's a little difficult as a business person,  
12 but the consumer calls the shots if they have the  
13 information and I hope the FTC will help with providing the  
14 insurance.

15           MS. MADIGAN: Okay. Before we go to the FTC, let  
16 me ask if there's anybody at the table who has not yet  
17 spoken to this issue, chlorine free, who would like to say  
18 something before I ask the FTC to pose any final questions.  
19 Anybody I've missed? CSMA? Why don't we ask the FTC and  
20 then we'll come back to you? FTC, any questions, any follow  
21 up questions? Lee Peeler.

22           MR. PEELER: Lee Peeler again. I guess the one  
23 sort of point I would make to sort of conclude the debate is  
24 that we really don't have the authority to set out technical  
25 definitions and terms. We're going to be looking at what



1 consumers -- either in formulating guideline or in bringing  
2 cases we are looking at what consumers think the terms mean.  
3 So that if anybody has any data here on how consumers  
4 interpret these terms, it would be good to get it to us.

5 MS. MADIGAN: Okay. And final and very brief  
6 comments. You can have a little leeway because we haven't  
7 heard from you yet.

8 MR. KIEFER: You did hear from me earlier on in  
9 the debate. I just wanted to reemphasize the point. Robert  
10 Kiefer from CSMA. The issue that we're dealing with a lot  
11 here is primarily regarding the paper and paper industry,  
12 the definitions or terms that are being discussed may be  
13 broadly applied to other industry segments that are not  
14 represented at this table and like in our comments to the  
15 FTC, we did not comment on this area at all. And like I  
16 said, we did not come prepared necessarily to discuss the  
17 chlorine free issue. So if there's any further debate on  
18 this, I think we need to get all stakeholders involved.

19 MS. MADIGAN: And final brief comments from  
20 anybody. Did I see hand over here? Chlorine Free.

21 MR. BEATON: Again, basically what the Chlorine  
22 Free Products Association is attempting to do is just to  
23 clarify the marketing agenda for pulp and paper mills but  
24 also for other marketers who will want to try to use  
25 chlorine based chemicals and try to identify them as being

1 chlorine free. We're just trying to make it easy for the  
2 consumer who has made the decision to participate in this  
3 product that he gets the true product that he's after. So  
4 we're only looking for it from that standpoint.

5 MS. MADIGAN: Okay. With that, let's move onto  
6 the final topic. May I suggest a 15 second stretch break  
7 because we've been at it for a while. Don't leave your  
8 seats, don't go anywhere. We're now going to move to  
9 resource recovery claims. So don't go anywhere. We're  
10 going to start in 15 seconds and I'm counting. [break]  
11 Let's finish up if we could by 5:00 so we can stick to the  
12 agenda, we might get done early with public comments and  
13 people can call it an early Friday. All right. Shall we  
14 begin? We're back on the record and we have our final  
15 question relates to resource recovery claims. Let's see if  
16 we can't get this done in the next 15 to 20 minutes. Again,  
17 I don't want to stifle debate. And American Automobile  
18 Manufacturers Association, AAMA, will start.

19 MR. PAUL: Richard Paul, AAMA. We'd support the  
20 inclusion of a claim, resource recover claims for it to be  
21 added to the guides. We think it should be a simple  
22 definition consistent with EPA's RCRA and we've offered some  
23 examples in our written comments as well. We might also  
24 consider including definitions that come under the general  
25 heading of resource recovery, reuse and recycle.

1 MS. MADIGAN: Ford Motor followed by NRC.

2 MS. FORD: Susan Day, Ford Motor Company. To  
3 build on what AAMA has said, we have noticed in Europe in  
4 particular numerous organizations within proposed  
5 legislation and proposed association wording and  
6 international standards organization. The addition of  
7 energy recovery and it's been a very difficult process to  
8 have people not equate energy recovery with recycling. But  
9 what we are seeing is the need for a consistency worldwide  
10 to at least allow us for some ability to talk about issues  
11 on a common ground. And we feel that bringing in the  
12 resource recovery or the recovery term as it is used in RCRA  
13 would allow us to do that. How we view this term is that  
14 really it is the summation of diversion from landfill, e.g.,  
15 if you were to take reuse as was talked about the Automobile  
16 Recyclers Association and the reconditioning,  
17 remanufacturing, et cetera. The recycling, be it post or  
18 industrial or whatever designation you wish to give it. And  
19 also energy recovery.

20 Currently the way the claims are put forth, we are  
21 not in a position to claim or advertise anything that our  
22 chlorines have done to increase diversion from landfill in  
23 terms of perhaps cogeneration, biomass usage, et cetera,  
24 that is not recycling, is not reused but falls into a  
25 different category but is still probably preferable to

1 landfill. And so we would contend perhaps that the addition  
2 of a term would enable us to claim something that is  
3 reasonable and of interest to the consumer as to what our  
4 company is attaining.

5 MS. MADIGAN: NRC followed by EDF.

6 MR. MILLER: Edgar Miller with the National  
7 Recycling Coalition. Our board recently approved a  
8 recommendation of our policy committee to discourage the use  
9 of this term for that very reason, that it is so broad and  
10 that it means so many different things to so many different  
11 people that we should try to focus on specifically what  
12 we're talking about whether it's reused, recycling, energy  
13 recovery and what have you.

14 And I would just raise the question or perhaps  
15 categorize this similar to a general environmental claim  
16 that would be confusing and I'm not quite sure what the  
17 marketing angle on this is or what this is trying to convey  
18 to the consumer. But once again we would view it as a more  
19 general environmental claim that we would like to see FTC  
20 discourage. We don't have a problem with the term or how  
21 it's defined by EPA. We just don't think it's a very  
22 helpful term in terms of conveying information on what we're  
23 talking about.

24 MS. MADIGAN: EDF followed by PRC.

25 MR. DENISON: Can I have a clarification question

1 and then I'm sure I'll have a comment as well.

2 MS. MADIGAN: Okay.

3 MR. DENISON: Are we talking about the term  
4 resource recovery specifically as defined by EPA and if so  
5 what is that definition that you are referring to?

6 MS. MADIGAN: To whom is that question addressed?

7 MR. DENISON: I guess to the person who started  
8 the --

9 MR. PAUL: That's fine. Richard Paul, AAMA. The  
10 recovery of materials or energy from solid waste period.

11 MR. DENISON: What term is being defined there?

12 MR. PAUL: Resource recovery.

13 MR. DENISON: And where does that appear?

14 MR. PAUL: I think that's in, my reference says  
15 RCRA. That's the Resource Conservation Recovery Act.

16 MR. DENISON: And one further clarification. Are  
17 we talking about, how are we talking about this term being  
18 utilized in a product labeling context or an advertising --  
19 can you provide an example of a product that would be  
20 advertised using this attribute?

21 MS. DAY: Susan Day of Ford Motor Company. We  
22 have not done so in the United States because there is no  
23 such term recognized by advertising groups and it does not  
24 fall under the FTC guides and that it does not fall under  
25 the FTC guides. So we would be against that today.

1           However, our colleagues across the ocean in Europe  
2 are discussing vehicles in terms of recoverability of all  
3 strange things and they put in there everything. They are  
4 talking about that product in terms of how much is being  
5 diverted from landfill. This term is also being discussed  
6 for use in other markets outside the automotive industry for  
7 other durable goods and potentially for packaging where what  
8 they want is a term that encompasses how much of a product  
9 is diverted in one form or another from landfill?

10           And we see that as a potential barrier to  
11 competitive issues if there is not at least some sort of  
12 consistency about terms and allowance for understanding that  
13 if a European producer comes over and starts making these  
14 recoverability claims, how are we going to come out with  
15 something that is consistent and of our own use.

16           MR. DENISON: Okay. And now my comment.

17           MS. MADIGAN: That's a tricky device.

18           MR. DENISON: I would argue very strongly along  
19 the same lines that Edgar has that this term overly vague  
20 and broad. The notion that the landfill diversion is a  
21 criterion, (1), that is legitimate and, (2) that would be  
22 conveyed by such a term I do not accept that on either  
23 score.

24           I think if one wants to make a claim about  
25 landfill diversion one should make a claim about landfill

1 diversion and not use a term that has an enormous amount of  
2 other baggage. Frankly, the term resource recovery at least  
3 in my experience in this country applies, has been a term  
4 that has been kidnapped if you will by the waste energy  
5 incineration industry as a way of referring to what is  
6 virtually entirely an energy recovery process, but I do not  
7 believe this term would add any clarity.

8           It would only confuse and blur what are very real  
9 distinctions between choices of how materials are managed  
10 whether they would be recovered for recycling, for example,  
11 reclamation energy recovery or what have you. And would  
12 urge that the much more specific term of energy recovery if  
13 that's the activity be used.

14           Secondly, I would not agree that placing a claim  
15 of this sort on a product where that claim is based on a  
16 broad characteristic of a broad set of materials would  
17 necessarily be truthful either. That is to put it on a car  
18 or an item raises the whole set of issues that we talked  
19 about with recyclable and other types of issues. Can you in  
20 fact state that that car will in fact, 95 percent of it or  
21 whatever be recovered. It's a question of a broad, I could  
22 see an advertising discussion about cars in general where  
23 you talk about these attributes and activities. But putting  
24 it in the context of a specific product would be deceptive I  
25 think.

1 MS. MADIGAN: PRC followed by AFPA.

2 MR. COLLINS: Pablo Collins, Paper Recycling  
3 Coalition. Once again, I fear repeating myself. I'd say  
4 that the FTC should try and stay away from defining terms.  
5 There are plenty of regulatory bodies like EPA that will  
6 give us terms for recycling and resource recovery. With  
7 respect to their use, that's a different matter in how the  
8 public understands them.

9 I have to agree with Richard and Edgar that the  
10 term resource recovery is very troublesome to many of us in  
11 the recycling field. It appears in the definition section  
12 of RCRA. It talks about the use of deriving either  
13 materials, raw materials, or energy from solid waste which  
14 then ties us into definitions of solid waste which include  
15 all of the recyclable materials we've been talking about in  
16 the course of this meeting.

17 A bundle of newspapers going to the recycling  
18 plant is technically by EPA a solid waste. So that same  
19 bundle of newspapers going to an incinerator for energy  
20 recovery or resource recovery it's very confusing whether  
21 burning paper for energy is recycling or something else.  
22 And in fact where I believe the term resource recovery is  
23 coming from is that, yes, in Europe they are claiming  
24 recycling credit for burning plastics because they do not  
25 have the facilities in place to recycle plastics the way we



1 do in the United States.

2 For people who are totally reliant on recovered  
3 paper as our only natural resource and the only thing we do  
4 with it is make it into new paper, we constantly fear  
5 competition from people who want to burn it and resource  
6 recovery is burning.

7 MS. MADIGAN: AFPA followed by the Federal  
8 Environmental Executive.

9 MS. LAYTON: Thank you. Pat Layton, American  
10 Forest & Paper Association. I just had a question. Is this  
11 actually making a claim on the potential of a product, not  
12 on whether it goes, right? Is that right?

13 MS. MADIGAN: The question is to Ford?

14 MS. LAYTON: Or --

15 MS. MADIGAN: Or to AAMA?

16 MS. LAYTON: Yeah.

17 MS. DAY: The claims that are being made are on  
18 the potential for diversion from the waste stream. I guess  
19 I'd also like to point out and then I can annex my comment  
20 later. But if you do go to the definition section, EPA  
21 equates resource recovery system meaning a system that  
22 provides for collection separation and recycling. So  
23 they're resource recovery with recycling and not necessarily  
24 energy recovery and it's very confusing as to even how the  
25 term would be used which is what we're looking for. We're

1 not necessarily looking to have a redefinition. We're  
2 trying to say how would it be used in practices so that we  
3 would be consistent if we were to use it with what is going  
4 on in other parts of the world.

5 MS. LAYTON: So if I were to apply that to say  
6 newspapers, I could say they're 100 percent resource  
7 recoverable or something like that.

8 MS. DAY: If you can prove with qualifications as  
9 required for all other claims that none of these newspapers  
10 are going into a landfill.

11 MS. MADIGAN: Okay. All right. We have the  
12 Federal Environmental Executive and then Ford do you have a  
13 comment that you were hanging onto? Federal Environmental  
14 Executive and Home Depot.

15 MS. McPOLAND: Thank you. Fem -- Federal  
16 Environment. I can't say it either.

17 MS. MADIGAN: It's too late.

18 MS. McPOLAND: It's too late in the day. It would  
19 seem to me that this is a term that the FTC should steer  
20 clear from. Just from the discussion here, I would really  
21 have to agree with Edgar and the EDF tag team that there's  
22 tremendous amount of confusion about what this means and I  
23 think that the important issue would be what would the  
24 consumer think it means? I don't think taking off my FEE  
25 hat and putting on my consumer hat again, I don't think that

1 the average consumer if they walked into the showroom and  
2 saw that label on a vehicle and talked to a salesman would  
3 have in their heads energy recovery as one of the options.  
4 Diversion from a landfill, that sounds good. Energy  
5 recovery is not what would be in most people's minds, no  
6 matter what the EPA definition says or in the two different  
7 places that they have two different definitions. I don't  
8 think that it's something that the FTC should get involved  
9 in.

10 MS. MADIGAN: Home Depot followed by NRC.

11 MR. EISEN: Mark Eisen, Home Depot. I was going to  
12 reflect that same comment in that if in fact you define  
13 recoverable or resource recovery and apply it to paper,  
14 paper would as I understand it because there's always virgin  
15 paper added to the process not be 100 percent recoverable.

16 MS. MADIGAN: Okay. Is that a question of fact or  
17 is that something that you'd like someone to respond to?

18 MS. EISEN: If she wants to respond.

19 MS. LAYTON: I don't understand the terms. That's  
20 my problem.

21 MR. EISEN: I can clarify that.

22 MS. MADIGAN: One more back and forth. You want  
23 to try that?

24 MR. EISEN: In the recycling process because the  
25 fibers break down as I understand it, you lose 15 percent of

1 the paper in the recycling process in making new recycled  
2 paper. Therefore, if you define the term recoverable, you  
3 can't claim the paper as 100 percent recoverable in a  
4 recycling process.

5 MS. MADIGAN: Let's let that flow out there and  
6 people can reflect on it. We'll come back to it unless NRC  
7 wants to take it up. You're next in line.

8 MR. PAUL: I wanted to address that same point.

9 MS. MADIGAN: That very same point?

10 MR. PAUL: Yeah.

11 MS. MADIGAN: Would you mind waiting a second?

12 AAMA.

13 MR. PAUL: Richard Paul, AAMA. I was going to go  
14 back to what Pat said. She suggested then that they could  
15 put on newspapers. These are 100 percent resource  
16 recoverable which is what you suggested as a question. And  
17 I would say that, no, that would not be the right thing to  
18 do for a couple of reasons because in fact that doesn't  
19 happen. 100 percent of newspapers are not recovered. So it  
20 would be misrepresentative and there's not an infrastructure  
21 in place to recover 100 percent of all the newspapers that  
22 are produced. I think in our industry the example is that  
23 we can save 95 percent of motor vehicles that go out of  
24 service are recovered because it's true. It's been  
25 happening. We've got data that we can demonstrate that.

1 But you could not demonstrate that with newspapers, of  
2 course. So just a clarification on what was a question from  
3 you.

4 MS. LAYTON: Yes, it was.

5 MS. MADIGAN: Okay. Thank you. NRC followed by  
6 Attorneys General.

7 MR. MILLER: Yeah, I do think if you start trying  
8 to prepare guidance on this particular point that you do  
9 then introduce another term and that's a recoverable  
10 resource which is similar to the debate around renewable  
11 resources and some debate about to which extent one is more  
12 sustainable than the other. So you've just opened up a huge  
13 can of worms there. And it is true that you do lose some  
14 fiber when you're producing new paper from old paper. But  
15 certainly you can produce papers that are 100 percent  
16 recycled content and doesn't require an additional virgin.  
17 So I just wanted to clear that up.

18 MS. MADIGAN: Attorney General.

19 MS. GRIFFIN: Mary Griffin, State Attorney  
20 General. I just wanted to agree with a number of the  
21 comments so far that we've heard. I think the term resource  
22 recovery would have almost no meaning to the average  
23 consumer as it had no meaning or many different meanings to  
24 the professionals in this room. And it has a great  
25 potential for consumer confusion and possible deception.

1 MS. MADIGAN: Let me ask if there's anybody who  
2 hasn't yet spoken to this issue who'd like to pose a  
3 question or make a comment. Does the FTC have any questions  
4 it would like to pose on this issue? All right. Let me  
5 just ask --

6 MR. PEELER: Again, I'd just repeat the statement  
7 we made on all of the issues, what we're concerned about in  
8 the FTC guides, what the term means to consumers. So if you  
9 have any data about what the term means to consumers, you  
10 should submit it.

11 MS. MADIGAN: Let me then before we close ask if  
12 anybody else has any brief final comments on the resource  
13 recovery claims before we close and move onto public  
14 participation.

15 MR. PAUL: Richard Paul, AAMA. I guess just maybe  
16 to help clarify it a little bit. Maybe it's not so  
17 important then that the definition of resource recovery go  
18 in. I think part of our concept was to expand the kinds of  
19 environmental attributes that a manufacturer could make  
20 about their product to other forms of environmental  
21 awareness beyond recycling. Right now everything's recycle,  
22 recycle, recycle. And this would expand that a little bit.

23 MS. MADIGAN: Ford Motor.

24 MR. DUKE: Kevin Duke, Ford Motor Company. I  
25 guess it just depends on what can of worms you want to open.

1 If changes are made say in the area of recycling,  
2 particularly with respect to pre-consumer and the worthless  
3 industrial cycling that we see, then the idea of recovery  
4 becomes much more important because there's a certain value  
5 to this and if you can't describe it as recycled, well, then  
6 maybe recovered fits the bill.

7 MS. MADIGAN: Okay. Any final comments before we  
8 move to public participation? All right. What we'll do is  
9 we'll take maybe just a two minute break. If you haven't  
10 filled out a sheet, fill it out. We have at the moment only  
11 three commenters. And we might be done very early. So a  
12 two minute break.

13 (A brief recess was taken from 5:01 to 5:08 p.m.)

14 MS. MADIGAN: Again, I'm going to encourage people  
15 if they could limit their questions per topic or comments to  
16 about one to two minutes each so we can get out of here and  
17 let people avoid the storm watch. Oh, you didn't hear about  
18 that on the radio? Never mind.

19 VOICE: You want to start a stampede.

20 MS. MADIGAN: It's much later. Not until after  
21 the public participation section I think they reported.  
22 Christina Paquette. And again, if you'd let us know if  
23 you're representing an organization or an individual. And  
24 this question I'll ask you to focus on right now is the  
25 non-toxic question.

1 MS. PAQUETTE: My name's Christina Paquette. I'm  
2 from Food and Drug Administration. I am representing Food  
3 and Drug on this issue. I would just like to reiterate a  
4 comment that was made by the Environmental Defense Fund  
5 earlier on the non-toxic issue that there was a vast  
6 difference between the toxicity of compound to humans and  
7 the toxicity of a compound to aquatic terrestrial, whatever  
8 ecosystems.

9 As an environmental chemist, I've done some work  
10 in this area myself as a researcher before joining the  
11 government and I can attest to the fact that there is a  
12 great paucity of data out there on the toxicity of  
13 compounds, old and new to environmental indicators such as  
14 fathead minnows, dafnya, popopods, et cetera. So it is next  
15 to impossible for someone to go into the literature, do a  
16 literature search, come up with the answer is this compound  
17 toxic to the environment?

18 In response to this, many organizations are  
19 developing modeling systems that put in data that are  
20 available on organisms, mostly rats, mice, dogs and humans  
21 because those are the most commonly tested organisms for the  
22 health and safety purposes. They take these models and you  
23 structure activity relationships to relate these data to the  
24 structure of the compounds so that they can then extrapolate  
25 those data to the environmental species. These models are



1 getting better. However, invariably when the data are few  
2 and they are applied to the aquatic and terrestrial  
3 indicators, the small species, they vastly under predict the  
4 toxicity of compounds to these species. Because the models  
5 do not take into consideration the fact that you have a vast  
6 increases in the surface area to mass when you go down the  
7 food chain and that there's a vast change in the mechanism  
8 of the way these lower food chain organisms metabolize  
9 various types of compounds. So I think there is a very  
10 great need for distinction in the labeling. Is it toxic to  
11 humans or is it toxic to creatures in the environment?

12 MS. MADIGAN: Thank you. Next we'd like to hear  
13 from Rick Otis, American Plastics Council. And you can  
14 raise both of your questions here and then I segue into the  
15 next question.

16 MR. OTIS: Rick Otis, American Plastics Council.  
17 It's always difficult to make comments at the end because  
18 what you're saying is out of context and you have to sort of  
19 go back and attempt to reestablish it both in your mind and  
20 everyone else's.

21 With respect to toxic, this is just a very sort of  
22 side effect comment. But Richard mentioned earlier the  
23 phrase about a I guess they were grocery sacks that had a  
24 thing saying not toxic in an incinerator. I'm not sure  
25 necessarily anybody would understand what that phrase means.

1 I'm not sure I understand what the phrase means.

2 But with respect to his observation that you may  
3 want to consider addressing it in some way or other, I would  
4 raise only the following study that I'm aware of. The  
5 German government conducted a study of incinerators. We can  
6 get you the study if you're interested, waste energy plants.  
7 Where I believe they used three different levels of  
8 plastics, including I believe chlorinated plastics at 5, 10  
9 and maybe 15 or 20 percent loading which indicated a  
10 reduction in dioxin emissions.

11 Now, nobody else has generated that study and  
12 nobody has done it again as far as I know. But the thing I  
13 want you to take away from that is that that isn't  
14 necessarily a basis claim or the issue is somewhat  
15 contentious as to what the environmental performance of an  
16 incinerator is. And there is some evidence that indicates  
17 that perhaps putting some plastics including chlorinated  
18 ones into higher levels improves the performance of the  
19 equipment.

20 So the phrase is not necessarily one that should  
21 be struck out of hand as being a completely unsupportable  
22 claim. Although I would agree that the phrase itself as  
23 done is perhaps either confusing or difficult for anyone to  
24 understand what it means. Do you want me to go onto  
25 renewable?

1 MS. MADIGAN: Well, I see a question from one of  
2 our panelists in response to this point here? Would it make  
3 sense now or can you hold off until after the public  
4 comments? Okay. We'll come back. So if you wouldn't  
5 leave.

6 MR. OTIS: Okay. No, I won't. Shall I go onto  
7 that?

8 MS. MADIGAN: Yes, please. Actually, could you do  
9 -- yes, renewables next.

10 MR. OTIS: The point I wanted to make with respect  
11 to renewable was that while I can't judge and I have no  
12 studies in front of me on hand to determine what the public  
13 means if you were to put that on a package, for example on  
14 the bottom as Richard suggested of a bag, paper bag.

15 I will suggest that in my mind at least it implies  
16 that something that is not renewable is somehow not as good  
17 as something that is renewable when you see it on the label.  
18 At least that's my general impression of why somebody may  
19 use the term.

20 And if we follow the model that Richard gave us  
21 yesterday or maybe it was this morning during life cycle  
22 discussion where it's inappropriate to talk about say energy  
23 consumption in the section of the life cycle transportation.  
24 And it's more appropriate if you're going to talk about  
25 energy comparisons to look at the entire scope of energy

1 consumption.

2           You could look in this case and suggest that you  
3 may find that simply because the materials say the container  
4 is made out of a non-renewable or a renewable resource.  
5 That may be not the entire picture to be looking at. You  
6 may very well in manufacturing a container that is a  
7 renewable resource itself consume more non-renewable  
8 resources than you would if the container were non-renewable  
9 in its own right.

10           So the question of renewability therefore as a  
11 product claim to me is really questionable and I would  
12 probably go back to Pat's comment that it is more  
13 appropriately used in the context like sustainability as a  
14 practice described in the management, for example, of the  
15 forest. And that I would agree with the general comments  
16 around the room use of renewability, like sustainability as  
17 a product claim is one that has so much associated with it  
18 that can question its use and value.

19           MS. MADIGAN: You can go ahead to chlorine if you  
20 want because the next person will speak to that as well.

21           MR. OTIS: My only observation with chlorine free  
22 is that two very quick points. One is that quite clearly as  
23 one gentleman said there are a lot of stakeholders in the  
24 question chlorine free not at the table. And I think  
25 perhaps you might find you would get either additional

1 comments that are similar to what you heard today or other  
2 additional comments if more of those folks involved in the  
3 debate over chlorine either as a process material or as an  
4 ingredient.

5           And the other thing I would suggest is that it is  
6 so ubiquitous, both in manufacturing processes and in  
7 nature. It is in my mind practically impossible to claim  
8 that something is entirely chlorine free. Either if you  
9 pursue all of the associated manufacturing processes allied  
10 with making a particular product or if you talk about its  
11 natural existence in any of the raw materials so that again  
12 in terms of making any conclusion about what a definition  
13 ought to be or how it ought to be used, I would suggest  
14 there are other people that need to be at the table.

15           MS. MADIGAN: Thank you. Next we'll hear from  
16 Chris Taylor at OSPIRG. And Chris, you can raise all three  
17 of your topics.

18           MR. TAYLOR: Okay. Thank you, very much. Chris  
19 Taylor from OSPIRG. I'd like to first follow the previous  
20 speaker who just wrapped up with chlorine. I guess I'll  
21 start with that. We've heard a lot of testimony today that  
22 chlorine because of its presence as an element that it's  
23 present in all sorts of matter, that a claim of chlorine  
24 free should never be applied. But I really think that  
25 that's an argument that doesn't withstand much scrutiny.

1           I think Archie made a -- the representative from  
2 Chlorine Free Paper made a very clear argument what we're  
3 talking about here. Let's define it. Let's stop talking in  
4 vague terms. We're talking about pulp and paper processing.  
5 No one is using -- chlorine free is used in the vast  
6 majority of cases to refer to paper products. That's what  
7 we're all talking about here.

8           And even all, I think every environmentalist who's been  
9 here in -- agrees that that's the only context that we're  
10 trying to address here.

11           And just because it's ubiquitous in nature, if  
12 something is ubiquitous, but asbestos is ubiquitous recently  
13 in our society. Does that mean we should just never do  
14 anything about asbestos? There are plenty, lead paint was  
15 ubiquitous at one time, but we decided we needed to address  
16 that as an issue as a society. Just because something is  
17 pervasive in our society doesn't -- if it's an environmental  
18 hazard or if it's a health hazard doesn't mean that we  
19 should just let it go on because there's a lot of it out  
20 there.

21           Also, I'd just like to point out with respect to  
22 the chlorine issue. Coming from Oregon, dioxin is a big  
23 issue. People do know what dioxin is. It's in our rivers.  
24 It's in our water. People are very aware of it. And the  
25 interest as far as consumer interest goes, a substantial

1 portion of printing and writing paper by some estimates as  
2 much as a third is purchased by government and other public  
3 entities. And those kind of purchases are more  
4 sophisticated in their knowledge of these environmental  
5 issues and do have more of an ability to distinguish and I  
6 would agree that maybe not every consumer out there is aware  
7 of all the potential side effects of organic chlorines on  
8 human and biological health. But I think that many who are  
9 responsible for purchasing vast quantities of paper in our  
10 country are aware of it. And we at OSPIRG have actually  
11 done some survey work. And I will try to make that  
12 available to the Commission, surveying various local county,  
13 city, state purchasing officials to ask them about their  
14 knowledge of chlorine free paper and what that means. So I  
15 will try to make that information available. I can just say  
16 without having it in front of me that it was clear that a  
17 significant number of people did know about it. And even if  
18 people don't know by having it on there people will become  
19 educated. It goes back to the whole issue of nutritional  
20 labeling. Did people know what different types of  
21 cholesterol were before we had those labels on the packages?  
22 There's an educated function of labeling. And we heard  
23 industry yesterday talk a whole lot about the educative  
24 function of labeling and that was why they really wanted to  
25 have labels on their products except when it comes back to

1 the chlorine product. Well, people don't know about it. So  
2 we shouldn't use it. So I'd like to point out perhaps an  
3 inconsistency there that this is a way to educate people.

4 And also as far as the difference between what's  
5 chlorine free, what's process free, I would second what EDF  
6 said. Our position at OSPIRG is that if the recycled paper,  
7 the paper that comes into the paper mill, really there's no  
8 way for that company who's got that paper to know where it  
9 came from and what the bleaching process was and it's  
10 totally unrealistic to demand of a paper process or a paper  
11 mill to fish through all the paper that they're receiving as  
12 recycled paper and figure out whether it was ever bleached  
13 or not.

14 So I think that distinction is meaningless and I  
15 would agree with what Richard said. I do also agree,  
16 however, that if a plant is using bleached, chlorine  
17 bleached, pulp that that should not be called chlorine free.  
18 But that as far as them having to verify whatever paper  
19 that they're using, if they're using recovered paper, that  
20 that would be ridiculous.

21 So that's what I'd say about that. I think that  
22 with respect to -- can I do the other?

23 MS. MADIGAN: Sustainability?

24 MR. TAYLOR: Oh, sustainability. Very, very  
25 briefly. I think on renewable actually agree with the APC



1 on that one. I do think it's extremely vague. I think that  
2 both of these subjects we've heard a lot of good testimony.  
3 They are extremely vague. There is no clear definition of  
4 these and I don't think that we're anywhere close to getting  
5 there. I think the FTC would be right to treat it as a  
6 general claim of environmental preferability and I think  
7 until such time that we reach some kind of consensus, even  
8 industry can't agree, environmentalists can't agree,  
9 government can't agree even amongst themselves, there's no  
10 point in going down that road at this point.

11 MS. MADIGAN: And you had energy recovery.

12 MR. TAYLOR: Energy Recovery, I'd like to --  
13 that's a very, if any of you are familiar with the debate in  
14 Oregon right now, that's a particularly sore topic between  
15 OSPIRG and the APC. We had a long debate over pyrolysis.  
16 And I wanted to point out for the record a factual issue.  
17 With respect to EPA's definitions and RCRA, I can't speak  
18 too much in detail about that. But I can speak to state  
19 statute which does very clearly define incineration or  
20 energy recovery as differently from recycling and definitely  
21 does not count for energy recovery under Oregon law. The  
22 APC sued and lost over that issue. So that is a clear  
23 matter of fact. I don't know, I can't speak to other  
24 states, but there is a matter of consistency there that in  
25 certain states I know Oregon for a fact and I believe others

1 do have a waste management hierarchy that defines energy  
2 recovery differently from recycling. You cannot in fact  
3 receive recycling credit for energy recovery. So that's an  
4 important point. If the FTC were to get involved in that,  
5 you'd have to be sure you were going to be consistent with  
6 state statute on that issue. And I think that's an  
7 important point. If you want to call it energy recovery,  
8 that's fine. I don't think that's a -- that's a totally  
9 different phrase and that's more specific and I think people  
10 know what that means. And I just think that this whole  
11 debate about resource recovery has shown it's a very  
12 slippery slope. As soon as we start getting into that, all  
13 kinds of other debates, someone mentioned, I think someone  
14 mentioned what can of worms do you want to open? I would  
15 suggest that we keep that can of works closed. Thank you,  
16 very much.

17 MS. MADIGAN: Let the record show that the length  
18 of the transcript may not reflect how fast you got through  
19 that. All right. Next we have Sheila Cogan. Yes, I see a  
20 question from the audience. It's a reference to APC that  
21 you wanted to clarify? Why don't I make an allowance here  
22 and allow APC to respond to the characterization?

23 AUDIENCE PARTICIPANT: Rick Otis, APS. And this  
24 won't take very long. This is just a very quick  
25 clarification of what Christopher said. We were researching

1 and developing in Washington State a particular technology  
2 called pyrolysis where you take an organic material, in this  
3 case plastic, heat it to a certain temperature and it breaks  
4 it down into some of its original component parts that look  
5 very much like say crude oil. We wanted to have that  
6 considered to be recycling and we've had a lawsuit over that  
7 question. It was not raised to energy plants and as you  
8 typically think of them being considered or not considered  
9 by the lawsuit as recycling, it was this particular kind of  
10 a pyrolysis technology not being considered under the  
11 decision to recycle.

12 MS. MADIGAN: Mr. Taylor, I see you nodding your  
13 head. You'll accept that distinction.

14 AUDIENCE PARTICIPANT: Yes.

15 MS. MADIGAN: Thank you. Okay. Next we have  
16 Sheila Cogan. And again, identify if you're here as an  
17 individual.

18 AUDIENCE PARTICIPANT: I'm Sheila Cogan. I'm here  
19 representing myself, but in this case I'm wearing the hat of  
20 First Executive Director of the Creative Reuse Organization  
21 which is located in Oakland, California. It is the second  
22 oldest reuse program in the United States succeeded only by  
23 the program at the Boston Children's Museum.

24 So in the late '70s we dealt a great deal with the  
25 term reuse. At that point, we weren't even sure whether to

1 spell it with a hyphen or not, re-use. And we decided that  
2 we would work it out and go without the hyphen.

3 The reason that I'm bringing this issue to the  
4 fore at this point is the deal with yet another matter  
5 related to resource recovery claim. Two people on this side  
6 of the table did use in the discussions regarding resource  
7 recovery did use the term reuse and I just -- and knowing  
8 full well as I do that reuse is the next big issue coming  
9 down now that we've dealt with recycling.

10 Reuse is the next big environmental solid waste  
11 issue that's coming down, especially noting for instance  
12 that there was a review in this week's Washington Post Home  
13 section of a brand new book, yet another one, dealing with  
14 concepts of reuse, what one reuses, where one may find  
15 sources for reuse, products, goods and so forth. So the way  
16 in which we used it in the late '70s, that program's still  
17 in existence in Northern California was that the term was  
18 meant to denote products made from materials which used low  
19 energy in their creation.

20 In other words, and as an example of that I might  
21 use a very good one as a matter of fact, the reuse of  
22 clothing manufacturing scrap material for making other  
23 products. All the cutoffs from denim made by a certain well  
24 known clothing manufacturer would be used by school children  
25 in creating projects in their classrooms. So it noted an

1 action of using material which otherwise might be destined  
2 for a landfill without the use of any energy in the creation  
3 of the product.

4 MS. MADIGAN: Thank you. I have a couple of  
5 questions which relate to life cycle. Although we did talk  
6 about that earlier today. We will let these two people make  
7 those comments for the record. Charles Deladaronte. Have I  
8 pronounced that right?

9 MR. DELADARONTE: Yes.

10 MS. MADIGAN: Tell us where you're from and you  
11 can make your comment.

12 MR. DELADARONTE: Yes, I'm Charles Deladaronte  
13 with Chrysler Corporation. Earlier today with a name like  
14 mine I thought about exchanging with Charlie Brown over  
15 here. But when I saw the handle that he had to carry behind  
16 that I thought for the day anyway I got the better end of  
17 the deal.

18 I'm going to read through this a little bit which  
19 will keep it short and accurate I hope. On life cycle  
20 assessment, given that some of the major components of life  
21 cycle assessment are not yet well defined. Chrysler does  
22 not support the use of life cycle assessment as a means to  
23 inform the consumer of the environmental attributes of a  
24 product. As it has been noted in these proceedings by  
25 others a current ISO technical committee 207 documentation

1 recognizes the need for further development of major  
2 components of life cycle assessment.

3 Chrysler believes that where emerging science and  
4 engineering approaches exist, regulatory caution best  
5 protects the consumer.

6 Additionally on life cycle assessment, Chrysler's  
7 recent work with the USEPA via common sense initiative has  
8 included consideration of life cycle assessment as one of  
9 many tools however yet to be developed in support of life  
10 cycle management, a method Chrysler is developing which  
11 considers environment together with other product attributes  
12 such as performance, service, occupational health and safety  
13 and others in making product design decisions. Chrysler is  
14 open to sharing this information and the concepts of our  
15 life cycle management approach with the FTC and others at  
16 another time.

17 MS. MADIGAN: Feel free to make your other  
18 comments as well. I realize as I look at the agenda, you  
19 hadn't had a chance to speak to life cycle preferability.

20 AUDIENCE PARTICIPANT: Right, right.

21 MS. MADIGAN: My apologies. Please continue.

22 AUDIENCE PARTICIPANT: Yeah, that's why I waited.  
23 There wasn't a public session up until this time. To  
24 environmental claims, Chrysler believes the customer is  
25 concerned that the environmental effects are considered in

1 the overall development of products as one of many important  
2 attributes such as and previously mentioned performance,  
3 service, environment, occupational health and safety to  
4 state a few. And I might add that in considering  
5 environment only as life cycle assessment does, you may  
6 trade environment or occupational health and safety if you  
7 will to the detriment of something like occupational health  
8 and safety and you'd make the equivalent of a dumb decision.  
9 Chrysler wouldn't want to do that. Nor would any  
10 conscientious company.

11 To the point of the question in the proceedings  
12 about seals, Chrysler believes that seals which only relate  
13 to one product attribute may give inappropriate focus to  
14 that attribute relative to all the variables that define a  
15 quality product.

16 And then finally, to the point about  
17 environmentally preferable or the term "environmentally  
18 preferable". Regarding the term environmentally preferable,  
19 the FTC should depend on the current guidance regarding  
20 general environmental claims. Thank you.

21 MS. MADIGAN: Thank you. Next we hear again from  
22 Christina Paquette to speak about life cycle analysis.

23 MS. PAQUETTE: Christina Paquette again from Food  
24 and Drug Administration. I'm actually combining comments on  
25 both life cycle assessment and the validation of

1 environmental claims, both specific and general. I want to  
2 just provide some information that many people in the room  
3 may not be aware exists in the public domain that may help  
4 them in these types of decisions about labeling and  
5 determining the validation of labels.

6 At the Food and Drug Administration, I work in the  
7 Center for food Safety and Applied Nutrition. And in order  
8 to comply with NEPA, the National Environmental Policy Act,  
9 FDA requires that all industries submitting new food  
10 additives petitions include an environmental assessment of  
11 the introduction of this new food additive into the market.

12 Now, food additives, people think of things that  
13 go directly into food. But food additives also include all  
14 substances that contact food. This includes polymers such  
15 as soda bottles. It includes paper and paper board. It  
16 includes foil. It includes everything that possibly could  
17 contact food. This is a major portion of municipal solid  
18 waste. So the environmental impact of the introduction of a  
19 new polymer or a new additive to a paper and paper board  
20 material can indeed have a significant environmental effect.  
21 So we require that these environmental assessments be  
22 submitted with petitions.

23 My office, the environmental impact staff, reviews  
24 these environmental assessments very carefully and works  
25 with industry to make sure that the final form complies with



1 all aspects of NEPA. When these final forms are achieved,  
2 these environmental assessments and our office's evaluations  
3 go on public display in docket management branch at Food  
4 and Drug Administration headquarters in Rockville, Maryland.  
5 Anyone in the world can go in and look at these.

6 And I just wanted to tell you a little bit about  
7 the environmental assessments because they cover the  
8 environmental impacts of this new food packaging material  
9 from cradle to grave. Not necessarily in the formal  
10 calculation and modeling aspects of the traditional life  
11 cycle assessment everyone's aware of in this room, but all  
12 the information is there. It covers the production site.  
13 It covers use. It covers disposal. It covers recycling.  
14 It covers comparing the energy required to produce this new  
15 food product compared to the energy required to produce the  
16 substance this new material's going to replace.

17 So this is a virtual gold mine of information for  
18 anyone who wants to determine the validity of an  
19 environmental claim on a new food packaging item. All you  
20 have to do is go to docket management branch at FDA and look  
21 at the original petition, look at the environmental  
22 assessment in there and just about everything you need to  
23 determine the validity of an environmental claim is going to  
24 be there. So this may make the Commission's job a little  
25 bit easier. It may make industry's job a little easier

1 because they can go look at other companies' petitions to  
2 get ideas on how other companies are addressing similar  
3 environmental concerns. So I just wanted to present this  
4 information because from talking to various people during  
5 the breaks, conference, many people were not aware that the  
6 FDA conducts these types of environmental assessments.

7 And as a corollary to that, when industry is  
8 preparing a petition and preparing a new environmental  
9 assessment, life cycle assessment in the actual calculation  
10 and modeling form that most people are talking about today,  
11 we believe would be a very useful way to address most of the  
12 items in the environmental assessment. I know there's a lot  
13 of misgivings about the application of LCA in general about  
14 the environmental impact portion, that type of thing.  
15 Again, the inventory portion is the only thing we're  
16 interested in and many of the items that you have to tackle  
17 to determine the inventory portion of your LCA will address  
18 almost 99 percent of the requirements of environmental  
19 assessment that must be submitted with a petition. Thank  
20 you.

21 MR. PEELER: Can I ask a question?

22 MS. MADIGAN: Lee Peeler.

23 MR. PEELER: When you get the petitions, do they  
24 include, for example, be made on the boxes?

25 AUDIENCE PARTICIPANT: Usually not, but it will

1 usually describe an environmental benefit that may occur,  
2 replacing a currently existing material with this new one.  
3 And we require that the companies elaborate on this, that  
4 they introduce it into the petition, and that they provide  
5 data and supporting statements. So if indeed when they  
6 market this product they include an environmental label and  
7 someone wanted to research this instead of requiring the  
8 company to submit all this stuff all over again, I just  
9 think it might be easier to go check a docket and look at  
10 the environmental assessment and see if this point was  
11 covered in the petition.

12 MR. PEELER: And if a company were saying that  
13 their packaging contained X amount of recycled content for  
14 example, would it indicate --

15 AUDIENCE PARTICIPANT: Okay. That's one area  
16 where this may not help because this is only for new food  
17 additives. And one exception is when Johnson Controls  
18 applied for use of the regrind, the super clean recycling  
19 process for PET for food content. That is one specific  
20 instance where an actual recycling process had to go through  
21 the FDA approval process. And again, if you go look for  
22 that original petition for that, you'll see the  
23 environmental assessment that went with it and it's in final  
24 form that our office reviewed and put into final form along  
25 with Johnson Controls.

1 MR. PEELER: We appreciate your comments.

2 MS. MADIGAN: Christina, I see another question  
3 actually from a panelist. EDF.

4 MR. DENNISON: Richard Dennison, EDF. How is  
5 proprietary information about formulation and so on dealt  
6 with? I presume not everything is in there.

7 AUDIENCE PARTICIPANT: That's a very good  
8 question. We do obviously have to look at that type of  
9 information and we give companies a way to provide it so  
10 that it will not go on public display. We ask them to  
11 submit it as a separate confidential portion of the petition  
12 so that we can review it. And then we ask them to summarize  
13 to the extent possible that proprietary confidential  
14 information in the environmental assessment. So that as  
15 much as possible can go on the public display.

16 However, as I said, in addition to the actual  
17 environmental assessment will be our office's finding of no  
18 significant impact or our environment impact statement if we  
19 find that there is indeed an environmental impact from  
20 introduction of this new food packaging into the market.  
21 And our written conclusions will be right there with the  
22 environmental assessment.

23 So we will state in there that based on this  
24 environmental assessment and additional confidential  
25 information, we came to XYZ conclusions. And we will

1 usually try to fashion our conclusions so that you have a  
2 reference. So that it's not just something pulled out of  
3 the blue. We want you to just believe this because we're  
4 telling you it's true. We try to fashion the language so  
5 that it does give you a foundation on which you can  
6 establish a claim maybe based on proprietary information.

7 MS. MADIGAN: Thank you. And finally, a comment  
8 from Will Cote. He may not be here.

9 MS. LAYTON: He has a substitute.

10 MS. MADIGAN: Okay. Is it Mr. or Ms.?

11 MS. LAYTON: Dr. Pat Layton substituting for Will  
12 Cote.

13 MS. MADIGAN: And for which company and who are  
14 you speaking for?

15 MS. LAYTON: I'm with American Forest & Paper  
16 Association. I'm speaking for Will Cote from International  
17 Paper Company. Will wanted to suggest that the FTC consider  
18 adding an appendix when you next issue the guides if you  
19 revise the guides and reissue them that aids the user of the  
20 guides by providing excerpts of selected examples of the  
21 FTC's cases and consent decrees and complaints concerning  
22 environmental claims. These could be abstracted versions of  
23 the type being distributed at this public meeting. I  
24 believe there was one out in the hall. And the purpose of  
25 doing this is to provide illustrative examples of how FTC

1 interprets its own guides with respect to specific claims  
2 and that such an appendix should assist the interested user  
3 to better understand the intent of FTC and specific  
4 applications of the guides. And as well how you abstract  
5 this if you put in what the consequences were, it would also  
6 point out some of the consequences of failing to comply with  
7 the guides.

8 MS. MADIGAN: Thank you. A couple more steps very  
9 briefly. Do any of the panelists have any responses to or  
10 reactions to any of the public comments before we move to  
11 close? EDF.

12 MR. DENNISON: Richard Dennison, EDF. Two  
13 comments about two of the comments made by SPI. One on  
14 non-toxic and incinerators. My point was that in fact the  
15 output of an incinerator is at least as much a function of  
16 the manner in which that incinerator is operated which is a  
17 function of its age, its maintenance all sorts of factors,  
18 that have nothing to do with what product is being burned as  
19 it is the actual input into the incinerator. And therefore,  
20 a claim like non-toxic and incinerators is not, is  
21 inherently not substantiable because it depends where it's  
22 burned and how it is burned as much as what is burned. And  
23 the renewable point I would just reinforce what SPI said  
24 about that.

25 MS. MADIGAN: I'm sorry, are you speaking to SPI

1 or American Plastics?

2 MR. DENNISON: Excuse me, I tend to confuse those  
3 two.

4 VOICE: You aren't the only one.

5 MR. DENNISON: And that is with regard to  
6 renewability. This issue comes up in context such as  
7 advocacy for soy based or corn starch based products or what  
8 have you. And I think it is very important that a life cycle  
9 approach be adopted there. That just because a product does  
10 not use a petroleum based material, for example, does not  
11 necessarily answer the question in its formulation, does not  
12 necessarily answer the question of whether it might use more  
13 petroleum based products if you look at the entire  
14 production, its entire cycle.

15 The process of growing the corn, for example, uses  
16 energy in the form of petroleum products. Production of  
17 corn starch from corn uses energy. So a renewable claim  
18 that has some implication of avoidance of use of a  
19 renewable, of a non-renewable material, should be evaluated  
20 in a way that really answers the ultimate question. Does  
21 less of that renewable resources -- non-renewable resource  
22 actually get used?

23 MS. MADIGAN: What I'd like to do is ask the  
24 panelists if they have any other comments on what people  
25 have said. If not, I'm going to allow them since we've

1 taken so much of their time over two days if you have any  
2 brief parting thoughts or comments for the FTC before the  
3 FTC moves to adjourn. CSMA.

4 MR. KIEFER: Robert Kiefer, Chemical Specialty  
5 Manufacturers Association. To build on a comment that Pat  
6 had made in relationship to I guess providing it on behalf  
7 of somebody else, I'd like to add that in addition to the  
8 appendix idea with the consent orders being listed that the  
9 Commission was concerned that its guides not inadvertently  
10 encourage misleading claims and that due to maybe lack of  
11 enforcement in some areas that it may be some uncertainty  
12 associated with the use of the guides.

13 And one of the suggestions that we had put forth  
14 was also to recommend that the Commission maybe periodically  
15 updates or clarification on FTC positions based on recent  
16 events or new data to be maybe a supplement in the interim  
17 review time. You know, you've got a three year review  
18 period, but as new data becomes available, you may want to  
19 develop at least FTC thinking so the rest of us know what's  
20 going on.

21 MS. MADIGAN: Any other comments specific or  
22 general from the panelists before we adjourn? CSMA and then  
23 EDF.

24 MR. KIEFER: Robert Kiefer again with CSMA. Much  
25 of what you've heard the last two days has been very



1 enlightening and I don't want to lose sight of the fact that  
2 probably everybody in this room, industry as well as many of  
3 the other participants in the room support the use of these  
4 guides. CSMA was one of the original petitioners to FTC to  
5 issue these voluntary guides. And the guides have worked  
6 and I think you've heard that over and over and over again.  
7 And we've recognized the benefits to manufacturers and  
8 consumers from use of the guides. We've been recommending.  
9 We've been discussing and debating the last two days and I  
10 didn't want to lose sight of the fact that much of what  
11 we're discussing is not major revisions to the guides but  
12 fine tuning or improving the usefulness of the guides  
13 through some of the I guess examples that we've identified  
14 the last couple of days. Basically, I want to thank the FTC  
15 staff for the opportunity to participate in this process and  
16 look forward to the next time. Thank you.

17 MS. MADIGAN: EDF. Did you want to make a  
18 comment?

19 MR. DENNISON: I want to heap an additional amount  
20 of praise, but also an additional amount of responsibility  
21 on your shoulders. The FTC really stepped up to the plate  
22 in this whole area back in the early '90s in a way that I  
23 think frankly a number of other entities at the federal  
24 level should have done. And that is to be applauded and  
25 revisiting of all of these issues is to be applauded as

1 well.

2           Increasingly, I think you need to recognize that  
3 despite the rather narrow formulation of your mission  
4 perhaps initially, that you are increasingly the only show  
5 in town on some of these issues. There has been I think  
6 unfortunately some further lack of responsibility being  
7 taken at other levels of government and at other parts of  
8 the federal government that have left the Federal Trade  
9 Commission guidelines that start from a rather narrow  
10 perspective of consumer perceptions and so forth, with a  
11 very large responsibility of identifying issues that have  
12 broader implications. And while I will certainly argue that  
13 environmental policy implications are actually part of your  
14 purview given the consumer deception potential of them, I  
15 think you need to recognize that what you do is increasingly  
16 defining the ground rules in this country maybe well beyond  
17 what you might ideally like, and increasingly in other  
18 countries as well. The international implications of what  
19 you are doing are enormous in both the developed countries  
20 and increasingly in the developing countries that are  
21 looking to what these hearings and these issues, how they're  
22 playing out in this country. So if anything I would err on  
23 the side of recognizing that the implications of what you're  
24 doing is perhaps broader than the narrow mandate of consumer  
25 protection in the strict sense of that and urge you to take

1 it on in that respect. Finally, I think the person who has  
2 had to be here and absolutely paying attention and on the  
3 entire time has been our moderator and facilitator. I can't  
4 believe how cool and calm she's stayed throughout this, but  
5 I think that's a testament to her ability and I would like  
6 to extend my thanks for a job incredibly well done.

7 MS. MADIGAN: And now as a demonstration of my  
8 immense skill, I have an announcement to make. If anyone  
9 found a woman's gold multi-stone bracelet, could you return  
10 it to the head panel table?

11 MR. PEELER: It's Fergie's.

12 MS. MADIGAN: That's right. And we'll finally  
13 turn to the FTC and ask if you have any final remarks before  
14 we adjourn?

15 MR. PEELER: We would like to echo everyone's  
16 complements the way you have conducted the panel workshops.

17 MS. MADIGAN: Well, thank you.

18 MR. PEELER: And we would also like to thank  
19 everyone even though many in absentia who participated over  
20 the course of the last two days. I know it's been a long  
21 job. It's been a little bit tiring for a lot of people.  
22 But it's really been very, very informative to us. It saved  
23 us a lot of time. It's made us a lot more informed. And we  
24 greatly appreciate all of your participation during the last  
25 two days. It's really been excellent.

1                   MS. MADIGAN: Thank you. With that, the meeting  
2 is adjourned.

3                   (Whereupon, at 5:47 p.m. the meeting was adjourned.)

## C E R T I F I C A T E

DOCKET/CASE NUMBER: P954501

CASE TITLE: ENVIRONMENTAL GUIDELINE REVIEW

HEARING DATE: December 8, 1995

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: December 8, 1995

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SIGNATURE OF REPORTER

Peter Knight Shonerd  
(NAME OF REPORTER - TYPED)