

[Billing Code 6750-01P]

FEDERAL TRADE COMMISSION

16 CFR Part 260

RIN 3084-AB15

Public Workshop Examining Guides for the Use of Environmental Marketing Claims

AGENCY: Federal Trade Commission.

ACTION: Public workshop; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) plans to host a public workshop on May 23, 2023, to examine “recyclable” advertising claims. The workshop is a component of the Commission’s recently announced regulatory review of the Guides for the Use of Environmental Marketing Claims (87 FR 77766 (Dec. 20, 2022)).

DATES: The public workshop will be held on May 23, 2023, from 8:30 a.m. to 12:30 p.m. ET at the Constitution Center (first floor conference rooms), 400 Seventh St., SW, Washington, DC 20024. The workshop will also be available for viewing via live webcast at

<https://www.ftc.gov/news-events/events/2023/05/talking-trash-ftc-recyclable-claims-green-guides>. Any written comments related to the issues discussed at the workshop must be received by June 13, 2023.

ADDRESSES: Interested parties may file a comment by following the instructions in the Filing Comments part (Section IV) of the **SUPPLEMENTARY INFORMATION** section below.

REGISTRATION INFORMATION: The workshop is open to the public, and there is no fee to attend. The FTC also plans to make this workshop available via a webcast (see <https://www.ftc.gov/news-events/events/2023/05/talking-trash-ftc-recyclable-claims-green-guides>). All in-person attendees will be required to show a valid photo identification, such as a

driver's license, prior to admittance to the Conference Center. Pre-registration is not necessary to attend.

The FTC Act and other laws we administer permit the Commission to collect your contact information and any comments you submit for consideration and use in this proceeding as appropriate. For additional information, including routine uses permitted by the Privacy Act, see the Commission's privacy policy at <https://www.ftc.gov/site-information/privacy-policy>.

This event is open to the public and may be photographed, videotaped, webcast, or otherwise recorded. By participating in this event, you are agreeing that your image – and anything you say or submit – may be posted indefinitely at ftc.gov or on one of the Commission's publicly available social media sites.

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

SUPPLEMENTARY INFORMATION:

I. Regulatory Review of the Green Guides

On December 20, 2022, the Commission published in the Federal Register a Notice announcing a review of the agency's Guides for Use of Environmental Marketing Claims, 16 CFR part 260 ("Green Guides" or the "Guides").¹ This proceeding is part of the Commission's periodic review of all rules and guides to: (1) examine their efficacy, costs, and benefits; and (2) determine whether to retain, modify, or rescind them.

¹ 87 FR 77766 (Dec. 20, 2022).

First issued in 1992² and most recently revised in 2012,³ the Green Guides address the applicability of Section 5 of the FTC Act, 15 U.S.C. 45(a) (“Section 5”) to environmental advertising and labeling claims.⁴ The Guides outline general principles applicable to all environmental marketing claims and provide specific guidance regarding many common environmental benefit claims. However, as administrative interpretations of the law, the Guides are not independently enforceable, nor do they represent the only permissible approach to making nondeceptive environmental benefit claims.⁵ In any enforcement action, the Commission must prove the challenged act or practice is unfair or deceptive in violation of Section 5 of the FTC Act.

In the December 2022 Notice initiating the current review, the Commission sought comment on several overarching issues, including the continuing need for the Guides, their economic impact, and their effect on preventing deceptive advertising claims. The Notice also invited comment on the Guides’ interaction with other environmental marketing regulations, and whether the Commission should consider rulemaking to establish independently enforceable requirements to address unfair and deceptive environmental claims. Finally, because the Commission seeks to ensure the Guides appropriately respond to changes in consumer perception, the Commission solicited consumer survey evidence and consumer perception data addressing environmental claims, including recyclable claims.

² 57 FR 36363 (Aug. 13, 1992).

³ 77 FR 62122 (Oct. 11, 2012).

⁴ The FTC administers several other environmental and energy-related rules and guides. *See* Guide Concerning Fuel Economy Advertising for New Automobiles (16 CFR part 259), Energy Labeling Rule (16 CFR part 305), Fuel Rating Rule (16 CFR part 306), Alternative Fuels and Alternative Fueled Vehicles Rule (16 CFR part 309), Recycled Oil Rule (16 CFR part 311), and Labeling and Advertising of Home Insulation Rule (16 CFR part 460).

⁵ The Guides do not establish standards for environmental performance or prescribe testing protocols.

II. Recycling Workshop

As part of the Commission's 2012 review of the Guides, staff held several workshops on issues of concern. As part of its current review, the FTC plans to hold a workshop examining "recyclable" claims. The workshop will cover such topics as: the current state of recycling practices and recycling-related advertising in the U.S.; consumer perception of current and emerging recycling-related claims; and the need for any updates or other changes to the Green Guides related to recycling claims. The event is likely to include panels on these topics. The FTC will publish a more detailed agenda in advance of the scheduled workshop.

The December 2022 Notice announcing the current review sought comment on several questions related to "recyclable" claims. Specifically, the Commission asked: Should the Commission revise the Guides to include updated guidance on "recyclable" claims? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision(s)? What evidence is available concerning consumer understanding of the term "recyclable"? What evidence constitutes a reasonable basis to support a "recyclable" claim? The December 2022 Notice also explained that the Guides state marketers may make an unqualified "recyclable" claim when recycling facilities are available to a substantial majority of consumers or communities where the item is sold. "Substantial majority" is defined as 60%. Should the Guides be revised to update the 60% threshold? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision? Is there any recent consumer perception research relevant to the 60% threshold? Should the Guides be revised to include guidance related to unqualified "recyclable" claims for items collected by recycling programs for a substantial majority of consumers or communities but not ultimately recycled due to market demand, budgetary constraints, or other factors? If so, why, and what guidance should

be provided? If not, why not? What evidence supports your proposed revision? These and other questions may be addressed at the workshop.

III. Public Participation Information

A. Workshop Attendance

The workshop is free and open to the public and will be held in person and webcast live on the FTC's website. This event may be photographed, videotaped, webcast, or otherwise recorded. By participating in this event, you are agreeing that your image – and anything you say or submit – may be posted indefinitely at <https://www.ftc.gov> or on one of the Commission's publicly available social media sites.

B. Panelists

The workshop will be organized into panels that will address the designated topics. FTC staff will select the panelists. Other attendees or interested stakeholders will have an opportunity to comment and ask questions. The Commission will place a transcript of the proceeding on the public record.

Disclosing funding sources promotes transparency, ensures objectivity, and maintains the public's trust. Panelists will be required to disclose the source of any support they received in connection with participation at the workshop. This information will be included in the published panelist bios as part of the workshop record.

C. Electronic and Paper Comments

The submission of comments is not required for participation in the workshop. If a person wishes to submit paper or electronic comments related to the issues discussed at the workshop, such comments should be filed as prescribed in Section IV, and must be received on or before June 13, 2023.

IV. Filing Comments

The Commission invites comments only on the specific issues discussed at the Workshop. You can file a comment online or on paper. The deadline to file a comment is June 13, 2023. Write “Green Guides – Recycling Workshop, 16 CFR Part 260, Project No. P954501” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the <https://www.regulations.gov> website by following the instructions on the web-based form provided.

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

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and it must identify the specific portions of the comments to be withheld from the public record.⁶ Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

If you file your comment on paper, write “Green Guides – Recycling Workshop, 16 CFR Part 260, Project No. P954501” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Ave. NW., Suite CC-5610 (Annex F), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th St. SW., 5th Floor, Suite 5610 (Annex F). If possible, submit your paper comment or request to the Commission by courier or overnight service.

Visit the Commission website at <https://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or

⁶ See 16 CFR 4.9(c).

before June 13, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, *see* <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Secretary.