

(b) Research suggests that reasonable consumers may interpret renewable energy claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims. For instance, marketers may minimize the risk of deception by specifying the source of the renewable energy (e.g., wind or solar energy).

(c) It is deceptive to make an unqualified “made with renewable energy” claim unless all, or virtually all, of the significant manufacturing processes involved in making the product or package are powered with renewable energy or non-renewable energy matched by renewable energy certificates. When this is not the case, marketers should clearly and prominently specify the percentage of renewable energy that powered the significant manufacturing processes involved in making the product or package.

(d) If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.

*Example 1:* A marketer advertises its clothing line as “made with wind power.” The marketer buys wind energy for 50% of the energy it uses to make the clothing in its line. The marketer’s claim is deceptive because reasonable consumers likely interpret the claim to mean that the power was composed entirely of renewable energy. If the marketer stated, “We purchase wind energy for half of our manufacturing facilities,” the claim would not be deceptive.

*Example 2:* A company purchases renewable energy from a portfolio of sources that includes a mix of solar, wind, and other renewable energy sources in combinations and proportions that vary over time. The company uses renewable energy from that portfolio to power all of the significant manufacturing processes involved in making its product. The company advertises its product as “made with renewable energy.” The claim would not be deceptive if the marketer clearly and prominently disclosed all renewable energy sources. Alternatively, the claim would not be deceptive if the marketer clearly and prominently stated, “made from a mix of renewable energy sources,” and specified the renewable source that makes up the greatest percentage of the portfolio. The company may calculate which renewable en-

ergy source makes up the greatest percentage of the portfolio on an annual basis.

*Example 3:* An automobile company uses 100% non-renewable energy to produce its cars. The company purchases renewable energy certificates to match the non-renewable energy that powers all of the significant manufacturing processes for the seats, but no other parts, of its cars. If the company states, “The seats of our cars are made with renewable energy,” the claim would not be deceptive, as long as the company clearly and prominently qualifies the claim such as by specifying the renewable energy source.

*Example 4:* A company uses 100% non-renewable energy to manufacture all parts of its product, but powers the assembly process entirely with renewable energy. If the marketer advertised its product as “assembled using renewable energy,” the claim would not be deceptive.

*Example 5:* A toy manufacturer places solar panels on the roof of its plant to generate power, and advertises that its plant is “100% solar-powered.” The manufacturer, however, sells renewable energy certificates based on the renewable attributes of all the power it generates. Even if the manufacturer uses the electricity generated by the solar panels, it has, by selling renewable energy certificates, transferred the right to characterize that electricity as renewable. The manufacturer’s claim is therefore deceptive. It also would be deceptive for this manufacturer to advertise that it “hosts” a renewable power facility because reasonable consumers likely interpret this claim to mean that the manufacturer uses renewable energy. It would not be deceptive, however, for the manufacturer to advertise, “We generate renewable energy, but sell all of it to others.”

#### § 260.16 Renewable materials claims.

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable materials.

(b) Research suggests that reasonable consumers may interpret renewable materials claims differently than marketers may intend. Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable materials claims. For example, marketers may minimize the risk of unintended implied claims by identifying the material used and explaining why the material is renewable.

(c) Marketers should also qualify any “made with renewable materials” claim unless the product or package

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(excluding minor, incidental components) is made entirely with renewable materials.

*Example 1:* A marketer makes the unqualified claim that its flooring is “made with renewable materials.” Reasonable consumers likely interpret this claim to mean that the flooring also is made with recycled content, recyclable, and biodegradable. Unless the marketer has substantiation for these implied claims, the unqualified “made with renewable materials” claim is deceptive. The marketer could qualify the claim by stating, clearly and prominently, “Our flooring is made from 100 percent bamboo, which grows at the same rate, or faster, than we use it.” The marketer still is responsible for substantiating all remaining express and reasonably implied claims.

*Example 2:* A marketer’s packaging states that “Our packaging is made from 50% plant-based renewable materials. Because we turn fast-growing plants into bio-plastics, only half of our product is made from petroleum-based materials.” By identifying the material used and explaining why the material is renewable, the marketer has minimized the risk of unintended claims that the product is made with recycled content, recyclable, and biodegradable. The marketer has adequately qualified the amount of renewable materials in the product.

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### § 260.17 Source reduction claims.

It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume, or toxicity. Marketers should clearly and prominently qualify source reduction claims to the extent necessary to avoid deception about the amount of the source reduction and the basis for any comparison.

*Example:* An advertiser claims that disposal of its product generates “10% less waste.” The marketer does not accompany this claim with a general environmental benefit claim. Because this claim could be a comparison to the advertiser’s immediately preceding product or to its competitors’ products, the advertiser should have substantiation for both interpretations. Otherwise, the advertiser should clarify which comparison it intends and have substantiation for that comparison. A claim of “10% less waste than our previous product” would not be deceptive if the advertiser has substantiation that shows that the current product’s disposal contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the product.