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Part V

Federal Trade Commission

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice.

SUMMARY: The FTC plans to conduct a study to examine consumer perception of environmental marketing claims. The study is part of the Commission's regulatory review of the Guides for the Use of Environmental Marketing Claims (''Green Guides'' or ''Guides''). This is the second of two notices required under the Paperwork Reduction Act (''PRA'') in which the FTC seeks public comments on its proposed consumer research before requesting Office of Management and Budget (''OMB'') review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be received on or before June 11, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Green Marketing Consumer Perception Study, Project No. P954501'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual'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. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). 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).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-GreenGuidesReview*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://secure.commentworks.com/ftc-GreenGuidesReview*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the reference ''Green Marketing Consumer Perception Study, Project No. P954501'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws 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, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Laura Koss, Attorney, 202-326-2890, or Michael J. Davis, Attorney, 202-326-2458, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission issued the Green Guides, 16 CFR Part 260, to help marketers avoid making environmental claims that are unfair or deceptive under Section 5 of the FTC Act, 15 U.S.C. 45.[2] Guides are administrative interpretations of the law. They do not have the force and effect of law and are not independently enforceable. The Guides are the Commission's interpretation of Section 5 of the FTC Act as it applies to environmental marketing claims. The Commission, therefore, can take action under the FTC Act if a business makes environmental marketing claims inconsistent with the Guides. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

The Green Guides outline general principles that apply to all environmental marketing claims and provide guidance regarding specific categories of environmental claims. These categories include: general environmental benefit claims such as ''environmentally friendly''; degradable claims; compostable claims; recyclable claims; recycled content claims; source reduction claims; refillable claims; and ozone safe/ozone friendly claims. For each of these claims, the Green Guides explain how reasonable consumers are likely to interpret them. The Guides also

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] The Commission issued the Green Guides in 1992 (57 FR 36363) and subsequently revised them in 1996 (61 FR 53311) and 1998 (63 FR 24240).

describe the basic elements necessary to substantiate claims and present options for qualifying specific claims to avoid deception.[3] The illustrative qualifications provide ''safe harbors'' for marketers who want certainty about how to make environmental claims, but do not represent the only permissible approaches to qualifying a claim.

II. Regulatory Review of the Green Guides

The Commission reviews all of its rules and guides periodically to examine their efficacy, costs, and benefits, and to determine whether to retain, modify, or rescind them. On November 26, 2007, the FTC commenced its review of the Green Guides and sought public comment.[4] As part of this comprehensive review, the FTC also announced a series of public workshops to explore emerging environmental marketing issues and, through subsequent notices, opened public comment periods in connection with each workshop.[5] The Commission sought comment on a number of issues, including the continuing need for and economic impact of the Guides, the effect of the Guides on the accuracy of environmental claims, and whether the Guides should include certain environmental claims—such as carbon neutrality, sustainability, and renewability—not currently addressed in the Guides.

The Commission also sought specific consumer survey evidence and consumer perception data addressing environmental claims. Few commenters submitted consumer survey evidence or consumer perception data. The Commission, therefore, is considering conducting its own study related to consumer perception of environmental marketing claims. This study would aid the Commission in determining what revisions, if any, it should make to the Guides to ensure that the Guides are appropriately responsive to any changes in consumer perception of environmental claims.

III. Paperwork Reduction Act Notice

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2) of the PRA, the FTC published a notice seeking public comment on the proposed collections of information. *See* 73 FR 60702 (Oct. 14, 2008). In response, the Commission received one comment, which was submitted by General Electric Company (''GE'').[6] Section V below sets forth FTC staff's analysis of the GE comment.

Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, the Commission is providing this second opportunity for public comment. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before June 11, 2009.

IV. FTC's Proposed Study of Consumer Perception

A. Methodologies

1. Environmental Marketing Claims

This proposed study will focus on consumer understanding of certain environmental marketing claims that are prevalent in today's marketplace. Specifically, the proposed study will examine: general environmental benefit claims (*e.g.*, eco-friendly, green); sustainable; renewable (*e.g.*, made with renewable energy, made with renewable materials); and carbon neutral and carbon offset claims. In recommending any changes to the Green Guides, FTC staff will consider the consumer research results in conjunction with the broad range of policy and legal issues raised by commenters and workshop participants.

The primary focus of the proposed study is to compare participant responses regarding the meaning of different environmental marketing claims, including unqualified general environmental claims, such as ''Green'' and ''Eco-friendly,'' and general environmental benefit claims combined with a specific representation—*e.g.*, ''Green - Made with Renewable Materials'' (a ''qualified-general claim''). Specifically, using a treatment-effect methodology, the study will examine whether consumers viewing general environmental benefit claims believe that a product has specific environmental benefits, such as being recyclable, biodegradable, compostable, or made from recycled materials.

The proposed study also will examine whether consumers viewing a qualified-general environmental benefit claim, such as ''Green - Made with Renewable Materials,'' believe that such a claim implies that the product provides environmental benefits beyond the specific attribute mentioned. Thus, for example, would consumers viewing a ''Green - Made with Renewable Materials'' claim for a product believe that product is also compostable, recyclable, or non-toxic? In addition to asking consumers about the unqualified and qualified general environmental benefit claims, the study will ask consumers how they perceive the specific environmental attributes that the study uses as qualifications (*e.g.*, ''Made with Recycled Materials,'' ''Made with Renewable Materials,'' ''Made with Energy'') alone.

The study will examine whether consumers believe that environmental claims suggest anything about the environmental impact of a product through stages of its life cycle (*e.g.*, production, transportation, use, and disposal). For consumers who do think about a product's life cycle, the study will explore whether consumers think of more than one stage in the life cycle; and if they do, which specific life cycle stages they have in mind.

The study will inquire about consumer interpretations of all of these claims in the context of multiple products to determine whether consumers' interpretations are affected by the product about which the claim is made.

Also, the study will collect information about how consumers perceive claims about the purchase of renewable energy and how they understand claims about carbon neutrality and carbon offsets. That information will help the Commission determine whether additional guidance is needed about the use of these terms in marketing and what that guidance should be.

2. Study Sample

As noted in Section IV.B below, the FTC proposes to collect information from up to 3,700 consumers in order to gather data on consumer perception of environmental marketing claims. All information will be collected on a voluntary basis. While having a sample that can be used to project to the entire U.S. adult population is not crucial to this study given its focus on comparing responses of participants who are randomly exposed to different products and claims, it will be useful to have as representative a sample as possible. Having considered the costs and

[3] The Guides do not, however, establish standards for environmental performance or prescribe testing protocols.

[4] 72 FR 66091.

[5] *See* 72 FR 66094, Carbon Offsets and Renewable Energy Certificates (held on January 8, 2008); 73 FR 11371, Green Packaging Claims (held on April 30, 2008); and 73 FR 32662, Green Building and Textiles (held on July 8, 2008).

[6] General Electric Company Comment in FTC Project No. P954501 (Dec. 15, 2008), pp. 1-4, available at (*http://www.ftc.gov/os/comments/greenguidespra/00001.pdf*).

benefits of various data collection methods, FTC staff has concluded that the most efficient way to collect data to meet the research objectives within a feasible budget is to use an Internet panel with nationwide coverage.

Thus, the FTC has contracted with Harris Interactive, Inc. (''Harris Interactive''), a consumer research firm that has substantial experience assessing consumer communications via the Internet and other alternative protocols, to design an Internet study that, while not strictly representative of the nation as a whole, nonetheless reflects the views of a broad population. The Harris Interactive Internet panel consists of more than four million individuals drawn from throughout the country, derived from a series of convenience sampling procedures, rather than true probability sampling. Harris Interactive has studied the relationship between samples from its Internet panel and samples collected using more traditional probability sampling techniques, such as telephone surveys. Based on these studies, Harris Interactive has developed procedures to ensure that differences between the results of Harris' Internet panel studies and those based on true probability samples of the nation are minimized. In particular, Harris Interactive has used a variety of methods, including demographic weighting, propensity scoring, and quota sampling to obtain accurate estimates of national views from its Internet panel. Through study administration, FTC staff will work with Harris Interactive to ensure that the sample is as representative of the nation as possible.

B. PRA Burden Analysis

Staff is revising certain prior assumptions,[7] based on a more precise target population for completing the questionnaire and further consultation with Harris Interactive regarding the anticipated response rate. Harris Interactive anticipates that 6.3% of those invited to participate in the survey will respond and will fit within the desired distribution of demographic characteristics. Accordingly, Harris might contact as many as 59,000 persons to achieve the contracted aim of surveying 3,700 respondents.

As before,[8] staff estimates that respondents to the Internet questionnaire will require, on average, approximately 25 minutes to complete it. Staff will pretest the questionnaire with approximately 100 respondents to ensure that all questions are easily understood. Allowing for an extra three minutes for questions unique to the pretest, the pretest will total approximately 47 hours cumulatively (100 respondents x 28 minutes each).

The burden estimate now addresses both those who will complete the questionnaire and those who will not. Those completing it will require 1,542 hours (3,700 persons x 25 minutes each). Those who do not complete the survey will spend no more than one minute; thus, 922 hours (59,000 total contacts - 3,700 persons completing the study) x one minute each). Cumulatively, then, complete and partial surveying of 59,000 persons will total about 2,464 hours.

Overall burden for the pretest and questionnaire would thus be 2,511 hours. The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

V. Analysis of Comment Received

As noted above, the Commission received one comment, by GE, in response to its notice seeking public comment on the proposed collections of information. *See* 73 FR 60702 (Oct. 14, 2008). GE's comment makes several suggestions about study methodology.

In particular, GE discusses Internet-based research, noting that access to the study is limited to participants with access to a computer and that such participants tend to be persons who have self-selected by expressing an interest in consumer research. As discussed above, having considered the costs and benefits of various data collection methods, FTC staff has concluded that the most efficient way to collect data to meet the research objectives within a feasible budget is to use Harris Interactive's existing Internet panel. Harris' convenience sampling procedures will obtain accurate projections of national sentiment based on samples drawn from its Internet panel. As noted above, because the primary focus of the study is to compare responses across treatment groups, *i.e.*, across different environmental marketing claims presented to participants, rather than to project responses to the population as a whole, using a broad sample of individuals at least 18 years of age, rather than a national probability sample will provide useful information.

With respect to GE's concern about identifying the ''proper universe of consumers,'' FTC staff has included in the questionnaire a brief section of questions that address participants' level of interest in environmental issues. For example, one question asks: ''In the past six months, have you chosen to purchase one product rather than another because the product is better for the environment?'' Through analyses of answers to such questions, staff can compare the study responses of participants who have a high degree of interest in environmental issues and who take these issues into account when making purchasing decisions with responses of participants who are not as concerned with environmental issues.

GE also asserts that the FTC should ensure a ''proper sample size.'' The FTC staff determined the sample size of 3,700 consumers based on several considerations, including the funds available for the study, the cost of different sample size configurations, the number of environmental claims to be examined, and a power analysis. In this study, 150 participants will see each of the various environmental marketing claims to be compared. Staff believes that this will be adequate to allow comparisons across treatment cells.

GE further recommends that the research be double-blind, so that ''neither participants nor administrators know its purpose or who it is for'' and that the study employ an adequate control. To avoid biasing how respondents answer the questions, study participants will not be told that the FTC has commissioned the research in order to avoid biasing how respondents answer the questions. Furthermore, while completing the survey, participants will not have access to personnel at Harris Interactive who know the purpose of the study. For most participants, there will be no contact between the participant and any Harris personnel. Harris does, however, provide a telephone number or email for people who have technical problems while completing the survey. The personnel who respond to such inquiries, however, are only able to resolve technical problems, like an inability to connect to the web site. They do not know the purpose of the study and, if asked, for example, about the meaning of a question, are instructed to tell the person inquiring that he or she should answer to the best of their ability based on what appears on the screen. It is not necessary to have ''blind'' administrators. Because the proposed study is automated and online, participants and study administrators can have only technical interaction. Therefore, there is no concern that a study administrator might convey information about desired results to participants. The study employs an adequate control, testing a ''New and Improved'' claim that says

[7] *See* 73 FR at 60704.

[8] *See id.*

nothing about environmental characteristics.

GE asserts that the questionnaire should ask consumers about marketing terms in conditions that are as real-world as possible, suggesting that participants be shown actual advertisements and suggesting that the study include a control. GE also expresses concern, however, ''that no matter how a specific term is tested, the relevance of the data may be limited to the particular scenario presented.'' Thus, GE urges the FTC to consider how to conduct research on ''specific terms in a manner that will both be relevant and will have broader applicability.''

While the proposed study does not test actual advertisements, the environmental marketing claims are based upon actual claims FTC staff has observed in the marketplace. In addition, the study protocol tests each claim with three different products—kitchen flooring, a laundry basket, and wrapping paper. While costs prohibit conducting a study with more products, examining three products will provide useful information about the extent to which product variation affects participants' interpretation of the claims being studied.

GE urges the FTC to include non-leading questions and stimuli, specifically recommending that the study include open-ended questions. FTC staff agrees with these recommendations and it has designed questions that are as non-suggestive and non-leading as possible. Many parts of the questionnaire include a combination of open- and closed-ended questions, which ask about the same concept. Moreover, the questionnaire uses phrasing that minimizes the risk that participants will give answers that they think *should be* correct. For example, some participants will randomly be shown the claim ''Sustainable'' in connection with wrapping paper. The questionnaire then asks: ''Which of the following most accurately describes what this statement suggests or implies *to you* about any negative environmental impact that may come from this wrapping paper?'' (emphasis added). The response choices to this question then take the form: ''The statement suggests or implies that there is no negative environmental impact from this wrapping paper;'' ''The statement suggests or implies that this wrapping paper causes less negative environmental impact than other wrapping paper. . .,'' etc. The FTC staff also plans to conduct a pretest, which will help identify any remaining problems in this area.

Finally, GE notes that Internet study participants may consult outside reference materials or other persons in responding to the questionnaire. While there is a possibility that participants could consult such sources, FTC staff believes that this not a significant problem. Based on its extensive Internet study experience, Harris Interactive assures that participants in such studies generally are most interested in completing the study in a relatively short period of time; thus, they are unlikely to choose to spend the additional time needed to do any such research. In addition, the questionnaire expressly informs each participant that the study designer is interested in what the individual thinks, rather than any supposedly ''right'' answer. For example, some participants will randomly be shown the claim ''Eco-friendly'' in connection with kitchen flooring. The questionnaire then asks: ''What, if anything, *does this statement suggest or imply to you* about the kitchen flooring?'' (emphasis added). Moreover, the final phase of the questionnaire contains a standard question for all participants asking whether they consulted outside sources. Again, based upon its extensive experience with Internet-protocol studies, Harris Interactive reports that participants tend to answer such questions honestly. Finally, Harris noted that if a participant consults outside sources while completing the questionnaire, it will take that participant longer to complete the study. Thus, when reviewing study results, Harris Interactive will examine participant response times, identifying those that are abnormally long, and assess whether they reflect participants' outside consultation.

David C. Shonka

Acting General Counsel

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