

**OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE**

FEDERAL TRADE COMMISSION

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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

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MS. BERNSTEIN: Good morning. I am Jodie Bernstein and it is my pleasure to welcome you back for this second day of an excellent workshop. Again, welcome to the Federal Trade Commission on behalf of the staff and on behalf of the chairman and the other commissioners who asked me particularly to convey to you how grateful they are for

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
attention, for the newcomers, to the -9th(atte TD(11)71 0Tk(atte T8Ben

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

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
percent incorrectly responded that aerosols contain CFCs.-3.6068 0 TD(

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

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I woulthaeve toagree.

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 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.

13 The no CFC claim removes the worry about the ozone

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
and about whether a pump --

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 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

~~Some people. Regulated which would be to allow the use of CFCs in aerosols in the future.~~

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 depleters. 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 ROGs, 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

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?

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

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,

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.
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 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

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 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. ADIGANMS. CULDAE hōldcofllwrtwētfinēspōndnto the

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

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

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.

~~MR. SCARBOROUGH'S STATE ATTORNEY~~ 8. Plasda TDhSugTj3.6068 -2 TD(Genlitio

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

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
119 TD(15)Teals just in general.T tt in gs83.606ulo a DTereally e2cted r0

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

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

3 Should the FTC decide that they are going to wade
in and look at how to address that, I thin -etu m9n3vr,mom.3.0057 0 T
inhyeyrghri0@n0057 0 60681

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.

MS. MADIGAN: SPI, followed by Green Seal.

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

inventory phase, and then there is the impact phase and the

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

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 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

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

verification of a specific claim or specific number of

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

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

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
is something 490 TDr3.606060606060606060 TD(es. eortion)Tj-3.6068 0

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.

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 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.
We didn't believe you could, s057 Ttwonfuhs TDc3s sepa

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
existing guidelines for leicendry ra-eng gy, d hairte ector group tha
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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 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.

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

sound ways and products that have not.(k52Cs..pTrit-52 TDMS. MADIGAN:

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

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

~~has been an independent evaluation of PFLUG's moae2wN5p2uk thp2Sae2wN5~~

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

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 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

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.

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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
general claims or environmentally preferable that they wouvwurfeg-3.606

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

1 //

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 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 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

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

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
for pulp. Or you would pick them for other wood ya -2 TD(what tt: 9c2
25 Even-3.ough 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

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 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.

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
tun .9f theducts.

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

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

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 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 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. OSA-2 TCple 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

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
 question relates to resource recovery claims. and I'mc. isicon't go a

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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 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

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

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
we'll take maybe just a two minute break. If you haven't

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 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 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 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 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.

2213

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 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
lanelistructurelyget (Use On 606) the bit TDTjnch baneropl on-renewable resourc4

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 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 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

SIGNATURE OF REPORTER

Peter Knight Shonerd
(NAME OF REPORTER - TYPED)