

**OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE**

FEDERAL TRADE COMMISSION

DKT/CASE NO.: P954501

TITLE: ENVIRONMENTAL GUIDELINE REVIEW

PLACE: Washington, D.C.

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Meeting Before the Commission

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

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1220 L Street, NW, Suite 600
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(202) 628-4888

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Docket No.: P954501

FEDERAL TRADE COMMISSION

Session 1	4
Session 2	140
Session 3	200
Session 4	290

FEDERAL TRADE COMMISSION

In the Matter of:)
)
ENVIRONMENTAL GUIDELINE
) Docket No.: P954501
REVIEW
)

Thursday,
December 7, 1995

Room 432
Federal Trade Commission
Headquarters
Sixth Street and Pennsylvania
Avenues
Washington, D.C.

The above-entitled matter came on for hearing,
pursuant to notice, at 8:47 a.m.

APPEARANCES:

DENISE MADIGAN, Facilitator

In Attendance:

CAROLYN COX, C. LEE PEELER, JOAN Z. BERNSTEIN, KEVIN
BANK, MICHAEL DERSHOWITZ, MICHAEL OSTHEIMER, Federal
Trade Commission

CHRISTOPHER TAYLOR, OSPIRG

BOB DELLINGER, RICHARD KASHMANIAN, EPA

GEORJEAN ADAMS, 3M

ANJANETTE DECARLO, NRDC

BILL MACLEOD, Grocery Manufacturers of America

RODNEY W. LOWMAN, American Plastics Council

MATT HAYDEN, COPE

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BRENDA CUDE, University of Illinois

In Attendance: (Continued)

MARY GRIFFIN, Task Force of State Attorneys General

MARK MURRAY, Californians Against Waste

RICHARD DENISON, Environmental Defense Fund

BARRY MEYER, Aluminum Association

KEVIN DUKE, SUSAN DAY, Ford Motor Co.

E. GIFFORD STACK, National Soft Drink Association

CHIP FOLEY, Steel Recycling Institute

ROBERT KIEFER, Chemical Specialty Manufacturers

PETER BUNTEN, AF&PA

DR. GERALD R. PFLUG, Soap and Detergent Association

JOHN MCINTYRE, Paperboard Packaging Council

JEP SEMAN, Aseptic Packaging Council

HAL SHOUP, American Association of Advertising Agencies

ROBERT MAYER, University of Utah

RICHARD DAVIS, KIM KRAMER, Food Service and Packaging
Institute

RANDY MONK, Composting Council

PATRICK TONER, LARRY THOMAS, SHEILA A. MILLAR, Society
of the Plastics Industry

EDGAR MILLER, National Recycling Coalition

ARTHUR GRAHAM, Free Flow Packaging Corp.

CHET CHAFFEE, Scientific Certification Systems

ARCHIE BEATON, Chlorine Free Products Association

In Attendance: (Continued)

FRAN MCPOLAND, Federal Environmental Executive

BUD COLDEN, National Recycling Coalition/NERC

BROOKE DICKERSON, Synthetic Industries

NORMAN DEAN, Green Seal

FRED VON ZUBEN, Paper Recycling Coalition

ALAN DAVIS, Conservatree Information Services

MARK MICALI, Direct Marketing Association

RICHARD PAUL, American Automobile Manufacturers
Association

VIRGINIA WHELAN, Automotive Recyclers Association

ELIZABETH SEILER, Grocery Manufacturers of America

S E S S I O N 1

8:47 a.m.

1
2
3 MS. MADIGAN: Could everybody turn their table
4 tents so that we have a chance to see who you are? There
5 are a few here. Could we get you to turn your neighbor's
6 over, just so we know who is missing?

7 I am trying not to humiliate them when they come
8 in late. Great.

9 MS. BERNSTEIN: Good morning. I am Jodie
10 Bernstein and it is my great pleasure to welcome all of you
11 to today's workshop conference that we are all very excited
12 about participating in. As I look around this table, I
13 assume that you all know that what we are doing is settling
14 Bosnia and when we get finished with that, we are going to
15 do Ireland. This afternoon we will do Ireland.

16 But, in the meantime, and more seriously, let me
17 welcome you not only on behalf of the Bureau and my staff
18 but on behalf of Chairman Pitofsky who particularly looked
19 forward to this kind of a conference. And let me say a few
20 rather more formal words about why we are together.

21 When the Commission issued these guides three
22 years ago, they were widely hailed, as you know, by industry
23 and consumer groups alike. We believe that they have really
24 largely achieved the goals of reducing deceptive
25 environmental claims and providing national non-preemptive

1 guidance for companies making green claims for their
2 products that consumers can use in buying decisions.

3 We are, however, all aware that the technology in
4 the environmental area particularly has changed dramatically
5 and will continue to change. We also think that consumers'
6 understanding, consumers' perceptions also have changed over
7 this very brief period of time. We do not know quite how.
8 That is why we thought we should convene a public workshop
9 to ensure that all of us work together to improve them, if
10 that is what we conclude we ought to do.

11 We have not pre-judged it. We do not know in what
12 way we ought to suggest to the Commission that they be
13 revised. Our purpose is really to explore those issues.

14 This kind of forum, which the Commission has used
15 in the last couple of years, has really worked
16 extraordinarily well for us, particularly in an area like
17 this where we feel we have to educate ourselves. It
18 generates, from your participation, new ideas and it also
19 helps us to keep our regulatory tools up-to-date and
20 carefully and narrowly focused. I am confident that it will
21 perform this function once again.

22 Our partners in this confab today are the
23 Environmental Protection Agency -- and if I may say a
24 personal word, it is a particular pleasure for me to be in
25 partnership with what was my old agency, the Environmental

1 Protection Agency, and I am delighted to welcome them. Also
2 our other partners are the state attorneys general, the
3 Multi-State Task Force on Environmental Marketing Claims.
4 Both are here to work with us today.

5 I would say again that the success of the
6 Commission's guides is really largely attributable to
7 industry's effort to comply with them as they said they
8 would in the first place. They were, in fact, as I
9 understand it, really the initiators that resulted in the
10 Commission's actions. They have also been, we believe,
11 validated by vigorous law enforcement whenever that's been
12 necessary, and let me mention a few of the claims.

13 Claims that range from environmentally safe, ozone
14 safe, biodegradable, recyclable, to chlorine-free and
15 essentially non-toxic have been challenged for products like
16 disposal diapers, hairsprays, trash bags, coffee filters,
17 various paper and plastic products, packaging, pesticides,
18 antifreeze and adhesive tape. Between our operation and the
19 states, more than 30 cases have been brought and there may
20 be more as necessary.

21 We have a lot of issues to cover in these two
22 days. In fact, in response to our call for comment, we
23 received about a hundred responses. All of them were very
24 well thought out, substantive and helpful. Half of the
25 number who responded asked to participate in the workshop.

1 We are really glad that so many were able to do so and we
2 really do appreciate your participation. I do want to
3 especially recognize the efforts of the states, public
4 interest and environmental groups that have made a special
5 effort to be with us today because it was difficult in a
6 time of limited resources.

7 Let me mention that in addition to the state AGs,
8 the Environmental Defense Fund, the NRDC, Oregon Public
9 Interest Research Group, National Recycling Coalition,
10 Methyl Bromide Alternatives Network, and Californians
11 Against Waste are all here.

12 One more word about harmonization. As you know,
13 the guides are voluntary and do not preempt state law. It
14 has been very gratifying to us, however, to find that over
15 time state legislators have considered the guides carefully
16 in fulfilling their own consumer protection roles and, in
17 fact, adopted them.

18 Again, it is consistent that the representations
19 made in our first hearing that if the FTC developed the
20 guidelines, the states would look to them in fashioning
21 their own policies continues again. It is important for us
22 to continue to work with the states and the states' use of
23 the guide underscores the importance of using this review to
24 produce the best possible product.

25 Again, thank you for coming. The staff and the

1 Commission will review all of your comments and the
2 discussion. I plan to stay for much of the morning so that
3 I can personally listen and convey the sense of this confab
4 to the chairman and to the other commissioners. We look
5 forward to working with you and now, if I may, I will ask
6 our facilitator, Denise Madigan, to begin the workshop.
7 Thank you.

8 MS. MADIGAN: Thank you.

9 Welcome everybody. Before I begin, let me just
10 double-check and see if anybody has arrived from the Natural
11 Resources Defense Council. Anyone here yet? Okay.

12 You might want to turn that table tent around back
13 so that if somebody comes in, they will see their seat.

14 Aseptic Packaging Council? Anyone here?

15 Californians Against Waste?

16 And Environmental Defense Fund?

17 Okay. Why don't we turn it back that way. Then
18 when they come in the door, they will see.

19 EDF? We have a chair for you. That is right.

20 Actually, we have been waiting for you.

21 MS. BERNSTEIN: And we have already welcomed you,
22 so do not do it again.

23 MS. MADIGAN: All right. I will begin.

24 My name is Denise Madigan. I am with the firm of
25 Jams/Endispute, a neutral dispute resolution firm, and I

1 have been asked by the FTC to facilitate this two-day
2 workshop. I have managed to speak with several of you,
3 although not all of you, but I encourage you throughout the
4 day to slip me notes or grab me at the break and let me know
5 how I can make this most productive for each and every one
6 of you who are here today.

7 What I would like to do before we begin the
8 substantive dialogue is briefly review the ground rules and
9 procedures for the workshop today and tomorrow and I ask
10 that you take a look at the one-page conference procedures
11 which were attached to the agendas of those of you who are
12 formally participating at the main tables.

13 Is it true that there are copies of this out on
14 the table as well? Okay. So it is a one-pager called,
15 "Conference Procedures."

16 Let me just briefly walk through some of the
17 highlights. There is overflow space provided in Room 332
18 with live audio and video hook-ups for anybody who wants to
19 get out of here at some point and take a break and walk down
20 there and watch.

21 I want to reassure and reiterate that this is not
22 going to be an attempt today to achieve consensus-based
23 recommendations to the FTC. This is not an advisory
24 committee in any form or fashion. This is simply a group
25 convened to talk about a variety of issues which were raised

1 in the written comments submitted to the FTC and it is
2 designed to allow the FTC staff a chance to explore and
3 understand where there are common interests and where there
4 are differences and why.

5 Just to reiterate, the participating organizations
6 have only one seat at what we are calling the main table.
7 You are, however, free, if need be, to rotate with other
8 individuals in your organization in the event, for example,
9 that questions surface where you would like to defer them to
10 someone else in your group. We ask that you do that
11 quietly.

12 Also, if you have other staff here, they should
13 feel free to come up at any point and slip you a note. We
14 are not here to hog tie you. You are allowed to communicate
15 with your other people. But, again, just be considerate of
16 those sitting around you and try not to disrupt the flow of
17 the dialogue going on.

18 I am going to make a valiant attempt to moderate
19 the flow of discussion. What that means is, I am simply
20 going to recognize people and ask that you not speak unless
21 you are recognized. I am going to make every attempt to
22 adhere to the schedule so we can be respectful of those who
23 have adjusted their own schedules to be here at certain
24 times. I will make an attempt to make sure we stay on topic
25 so forgive me if periodically I ask you, I hope, a

1 diplomatically framed question, "Gee, is that really on
2 topic?" I think that is enough said there.

3 Participants will not be asked to give opening
4 remarks and, if I may state this even more forcefully, they
5 will be actively discouraged from doing so. We do not have
6 a lot of time today. You can assume that the FTC staff have
7 read your comments at least once, so there is no need to
8 reiterate or simply repeat what is in your written comments.
9 We would encourage you, rather, to focus on the give and
10 take of the dialogue and that will probably make the best
11 use of time, especially given the size of several of these
12 panels today and tomorrow.

13 There will be no written submissions of material
14 or visual submissions accepted during the workshop and, to
15 the extent that time permits -- and we will make every
16 effort to ensure that there is time for this -- there will
17 be public participation segments today and tomorrow. You
18 will find on the back table, and they may be handed out,
19 small half-sheet forms which will ask you to state your name
20 and your organization and any particular topic you would
21 like to address. And throughout the day, as questions occur
22 to you, if you would fill out one of these for each topic
23 and give it to one of two FTC staff --

24 Are they in the room here? Devenette Cox and
25 Danielle Renart. Is Danielle here?

1 Can you stand up so everybody can see you?

2 They will be collecting these forms throughout the
3 day. You can pass them back to them or give them to them
4 directly.

5 What we do with those forms is, FTC staff will
6 organize them so that they are clustered by topic. As a
7 result, we will be able to cluster all the questions or
8 comments around a given topic at the same time and that will
9 prevent us from having a public participation period where
10 comments are going like this. So it is simply an attempt to
11 aid us in organizing and also to give us a sense of how many
12 people will want to speak during any particular session. So
13 if you would fill out those forms. If you have any
14 questions throughout the day, again, grab FTC staff or give
15 me a tug during a break and we can walk through it.

16 This conference is being transcribed and will be
17 placed in the public record. As a result, I would like to
18 ask everybody each time you speak, although it may feel a
19 little awkward, to identify yourself by name, very clearly,
20 so that we can get that on the transcript. Name and
21 organization.

22 Let's see. We have talked about the cards. There
23 are table tents before you. We will ask that at the end of
24 this session, you take your table tent back to the table out
25 in the -- is it the foyer, or what do you call that?

1 Whatever. And place them on the tables so that your
2 colleagues can pick them up and so other people can pick up
3 their table tents and bring them to the front. You will be
4 responsible for moving your table tents back and forth.
5 Please do not move anybody else's table tents. We will take
6 care of the stragglers.

7 Water is coming. They have been instructed to
8 bring it as soon as possible and they will probably just
9 filter in among us while we are talking, so we will not stop
10 for that.

11 Finally, let me just ask, before I move any
12 further -- I realize this will be hard for people in the
13 overflow room -- but is there anybody in the room, at the
14 main table or in the audience, who has any questions about
15 the procedures for today and tomorrow? Feel free.

16 This will not be your only chance to ask, but --
17 Is that all clear? Okay.

18 What I would like to do, then, before we begin is
19 very slowly go around the room and ask you to give your name
20 and your organization, that is all, so that we can get it
21 for the record and so I can transcribe it for the chart that
22 I will use throughout the rest of this panel session. And
23 if we could start, then, with the National Soft Drink
24 Association?

25 MR. STACK: Gifford Stack, National Soft Drink.

1 MS. MADIGAN: Okay. Gifford Stack.

2 Ford?

3 MR. DUKE: Kevin Duke, Ford Motor Company.

4 MS. MADIGAN: Kevin Duke.

5 MR. SHOUP: Hal Shoup, American Association of
6 Advertising Agencies.

7 MS. MADIGAN: Okay.

8 I am going to look at the reporter and if he has
9 any problems, he should catch my eye and let me know if we
10 need to slow down, okay?

11 Aseptic? We do not have Aseptic Packaging here
12 yet.

13 MR. MC INTYRE: John McIntyre, the Paperboard
14 Packaging Council.

15 MS. MADIGAN: Okay.

16 DR. PFLUG: Jerry Pflug, Soap and Detergent
17 Association.

18 MS. MADIGAN: Okay.

19 MR. BUNTEN: Peter Buntten, American Forest Paper.

20 MS. MADIGAN: How do you spell your last name?

21 MR. BUNTEN: B-U-N-T-E-N.

22 MS. MADIGAN: E-N. Okay.

23 MR. KIEFER: Robert Kiefer, Chemical Specialty
24 Manufacturers.

25 MR. FOLEY: Chip Foley, Steel Recycling.

1 MS. MADIGAN: Okay.

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

4 MS. MADIGAN: Okay.

5 MR. MEYER: Barry Meyer, the Aluminum Association.

6 MS. MADIGAN: Mr. Meyer, how do you spell your
7 last name?

8 MR. MEYER: M-E-Y-E-R.

9 MS. MADIGAN: E-Y-E-R.

10 MR. DENISON: Richard Denison, Environmental
11 Defense Fund.

12 MS. MADIGAN: One second. Now I am a little bit
13 behind. Okay.

14 MR. COLDEN: Bud Colden, National Recycling
15 Coalition.

16 MS. MADIGAN: All right.

17 Kevin, would you introduce yourself so people know
18 who you are?

19 MR. BANK: Kevin Bank.

20 MS. MADIGAN: I am Denise Madigan.

21 MS. BERNSTEIN: Jodie Bernstein.

22 MR. PEELER: Lee Peeler.

23 MS. COX: Carolyn Cox, Bureau of Economics,
24 Federal Trade Commission.

25 MS. McPOLAND: I am Fran McPoland, Federal

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1 Environmental Executive.

2 MS. GRIFFIN: I am Mary Griffin for the
3 Massachusetts Attorney General's Office and I am here on
4 behalf of our marketing task force that consists of
5 representatives of the attorney generals of 12 states.

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

7 MR. HAYDEN: Matt Hayden, Council on Packaging and
8 the Environment.

9 MR. LOWMAN: Rod Lowman, American Plastics
10 Council.

11 MS. MILLAR: Sheila Millar for the Society of the
12 Plastics Industry.

13 MR. MAC LEOD: Bill MacLeod, Grocery Manufacturers
14 of America.

15 MS. DE CARLO: Anjanette DeCarlo, NRDC.

16 MR. DELLINGER: Bob Dellinger, EPA.

17 MS. MADIGAN: Okay. I will make one last call.
18 Is there anybody from Natural Resources Defense Council
19 here?

20 Anybody from Aseptic Packaging?

21 Anybody from Californians Against Waste?

22 Okay. Let's turn, then, to the agenda for the
23 first panel.

24 What I am going to do is, we have five questions
25 outlined by the FTC for this panel. What I would like to

1 propose is that we shoot to take a break at about ten-thirty
2 and, in light of that, try to assign about 20, 25 minutes,
3 knowing that we will probably go over a few, for each of the
4 first three questions.

5 What I would like to propose is I pose the first
6 question and I am going to then open it up to anybody that
7 wants to speak. We will not be going around the table,
8 seriatim. This is going to be a give and take and I am
9 going to ask again that you, when speaking, respond
10 directly, if you can, to questions and try to keep us on
11 topic and signal to me if you are going to shift gears
12 somewhat so we know that we can finish a topic or an angle
13 before we move on to another equally important and
14 interesting angle, okay?

15 I have been asked to remind the panelists --
16 first, I apologize. We do not have enough microphones to go
17 around so it is a little cumbersome. But I ask that you
18 make every effort to speak directly into the microphone so
19 we can capture every word, okay?

20 The first question, how available to consumers is
21 recycling now as compared to when the guides were first
22 adopted? And let me open it up to anybody who would like to
23 start.

24 I am going to ask if I may have permission to use
25 first names today. Okay. If I stumble, I may fall back on

1 the titles of your organizations. Thanks.

2 Bud?

3 MR. COLDEN: Bud Colden, National Recycling
4 Coalition.

5 Since the guides went into effect, and it has only
6 been a few years, but what we have seen is a continued
7 growth in recycling and continued growth in demand,
8 especially in demand, that we struggle to meet lately with
9 supply. If you look at information that is put out across
10 the country with various states, you can see in many of them
11 gradually increasing rates of recovery of recyclable
12 materials.

13 Many of those programs had been established and
14 were put into effect back in the 1980s and as we saw the
15 interest in recycling grow, then the interest in using the
16 recyclable claim also grew and in that leads to some of the
17 problems that we are facing today in terms of materials that
18 are showing up in curbside containers that do not belong
19 there, quality demands that are placed upon the end-users of
20 these materials that are compromised by things that are
21 going into curbside containers. And the higher the
22 participation rates go, it seems that contamination still
23 remains a problem.

24 I would say there has been a steady growth in
25 recycling since the guides went into effect. I think that

1 they are largely as a result of public policies that were
2 established prior to the guides.

3 MS. MADIGAN: Okay. I am going to just refer by
4 organizations because I know I am going to get stuck on
5 names.

6 AFPA?

7 MR. BUNTEN: Yes. Peter Buntten, American Forest
8 and Paper. Thank you.

9 To give you a couple of examples from the paper
10 side of how we have made progress in recycling over the last
11 few years -- in 1991, the paper industry collected just over
12 31 million tons of paper for about a 36 percent recovery
13 rate. In 1995, we anticipate collecting about 43-1/2
14 million tons for close to a 44 percent recovery rate.

15 Over the last two or three years, AF&PA has taken
16 the lead in developing a number of initiatives across the
17 industry for some product-specific recycling programs,
18 particularly a new program where the paper bag producers
19 have committed to taking back all of the paper bags that can
20 be collected. There is a major initiative involving AFPA
21 and the Corrugated Box Association on collecting corrugated
22 boxes.

23 The AF&PA is involved in a joint program with
24 Paperboard Packaging Council and the National Paper Box
25 Association to collect folding cartons, which has been

1 traditionally one of the more difficult materials to find a
2 recycling home. But, according to a survey that we
3 conducted earlier this year, the number of curbside programs
4 collecting paperboard cartons has grown in the last three
5 years from about 650 to close to 3,000.

6 We have major initiatives, as well, underway to
7 increase the supply of mixed paper. We have a paper
8 recycling advocates program and, of course, I think most
9 people here are, hopefully, familiar with our goal to
10 collect 50 percent of all the paper by the year 2000.

11 And, in addition, I will just reference the latest
12 Biocycle Curbside Survey which showed that curbside programs
13 have increased from about 5,400 in 1992 to about 7,300 in
14 1994, which is the latest survey. Clearly, there has been a
15 major expansion of collection as well as availability of
16 recycling programs.

17 MS. MADIGAN: Okay. American Plastics?

18 MR. LOWMAN: Thank you. Rod Lowman, American
19 Plastics Council.

20 Certainly, plastics are the infants in the
21 recycling industry. But the recovery of plastics for
22 recycling is one of the fastest growing segments of the
23 secondary materials industry. As of 1994, our surveys
24 showed that approximately 15,000 communities had access,
25 through either curbside or drop-off programs, to plastics

1 recycling.

2 Importantly, it is not just the material being put
3 at the curb and the drop-off but it is also the
4 infrastructure to then handle that material. And what we
5 have seen, again, is that the reclamation infrastructure
6 needed to handle and reprocess this material for plastics
7 has more than tripled. Today, over 1,500 companies are in
8 that business.

9 In 1994, about 1.7 billion pounds of post-consumer
10 plastics were recovered for recycling. That is about a 22
11 percent growth rate over the previous year. And, again, the
12 growth rate from year to year for a very new industry, a
13 very new material to the secondary materials market, is
14 significant.

15 For our industry, the plastic bottles are
16 certainly the focus of the programs and the infrastructure
17 that is out there today. The PET soda bottle, for example,
18 is approaching 50 percent recycling rate. Milk jugs and
19 natural high-density polyethylene is approaching 26, 27
20 percent today. And, overall, plastic bottles are about 21
21 percent recovery.

22 Certainly, compared to some of the other materials
23 today and their recycling rates, we may be a little lower.
24 But in terms of the progress that has been made since the
25 early nineties to today, it has been significant -- again,

1 practically starting at a standstill in the late eighties
2 and growing to where we are today.

3 Our industry has developed differently from an
4 infrastructure standpoint than some of the other materials.
5 I am sure we will get into that as we get into other
6 questions and comments.

7 MS. MADIGAN: Environmental Defense Fund?

8 MR. DENISON: Richard Denison, Environmental
9 Defense Fund.

10 I would certainly agree with the general nature of
11 what has been said, that there have been substantial
12 increases overall in recycling. I think, however, it needs
13 to be said that we have a situation increasingly of the have
14 and have nots, if you will. The have high recycling rates
15 and the have not high recycling rate materials. And I think
16 it is important that we distinguish within material
17 categories what is working and what is not.

18 Case in point is the information that was just
19 provided on plastics. In fact, the recycling rates in the
20 plastics area, many types of plastics, are riding on the
21 coattails of the two success stories -- PET soda bottles and
22 natural or clear HDPE. If you look at the recycling rates
23 of other types of plastics packaging, in fact, you see a
24 very different picture -- very low recycling rates, in the
25 one to two percent range, for things like polystyrene,

1 polypropylene and so forth. And those rates have not been
2 growing. They, in fact, have been staying either steady or
3 actually declining in the last couple of years.

4 So it is very important that you distinguish types
5 of packaging and I find that it is rather ironic that there
6 seems to be somewhat of an inverse correlation between a
7 recycling rate and the extent of claims being made about
8 recyclability.

9 MS. MADIGAN: Okay.

10 Food Service Packaging?

11 If you can try to speak directly.

12 And, audience, you are allowed to tap your ear if
13 you cannot hear and remind me to remind them.

14 MR. KRAMER: Yes. Kim Kramer, Food Service and
15 Packaging Institute.

16 The only point I wanted to make is that the
17 availability of recycling, the growth of that area in this
18 three-year period, the APC survey was indicating that
19 plastics recycling was available to a little bit over 50
20 percent of the population. Cross-footing that with what
21 Biocycle Magazine has done in their survey, they're saying
22 that curbside collection alone is available to 41 percent of
23 the population. When you combine drop-offs with that and
24 take-backs, I would suspect that the APC number is low at
25 that 50 percent, or very conservative.

1 Plastics recycling is available to a great percent
2 of the population. I am only making that point because when
3 we get into labeling for recyclability, I think that is
4 going to come up and even the lowest rate of recycled
5 material, which would be the combined plastics. It might
6 have barrier properties to preserve food for a long time or
7 whatever that are hard to recycle. Even those are available
8 in 21 percent of the facilities that are accepting
9 recyclable materials.

10 So, yes, we are growing. We might not be where we
11 want to be at, but, you know, certainly the growth is there
12 and the availability is there to a great percent of the
13 population. Thank you.

14 MS. MADIGAN: Okay.

15 Steel Recycling?

16 MR. FOLEY: Chip Foley, Steel Recycling Institute.

17 Just to switch from plastics over to steel, our
18 statistics are showing that our recycling rate for steel is
19 68 percent overall in the United States. The recycling rate
20 for containers, cans, is 53 percent and growing.

21 Our numbers, from the standpoint of access, differ
22 a little bit from plastics. I think we are probably using
23 different statistical bases. But, from a steel container
24 standpoint, we believe that approximately 185 million
25 citizens in the United States have access to steel can

1 recycling and that is a combination of curbside, drop-off
2 and buy-back centers.

3 So it is, again, from a steel standpoint, it is a
4 growing market and it is a growing collection and we will
5 continue to grow because steel, for us, is a feed stock. It
6 is the main component in the manufacture of steel. With a
7 68 percent recycling rate, that translates into
8 approximately two-thirds of all steel has recycled content
9 so that is why we continue to pull in the recycled material.

10 MS. MADIGAN: Chemical Specialties?

11 MR. KIEFER: Robert Kiefer with the Chemical
12 Specialty Manufacturers Association.

13 To build on the recycling of steel containers,
14 also more particular is the recycling of empty aerosol
15 containers. In the United States, the Steel Recycling
16 Institute has reported that aerosol can recycling has grown
17 approximately about 900 percent in four years.

18 The steel recycling has gone from approximately
19 200 to 2,600 communities in the United States and now serves
20 over 70 million people. The population that have access to
21 this sort of recycling.

22 MS. MADIGAN: Anybody else?

23 Carolyn?

24 MS. COX: I was just wondering, does that increase
25 in aerosol can recycling pertain to aluminum aerosol cans as

1 well?

2 MS. MADIGAN: And Carolyn, identify yourself for
3 the record.

4 MS. COX: FTC staff.

5 MR. KIEFER; Robert Kiefer from CSMA.

6 No, it does not.

7 MS. COX: Why is that?

8 MS. MADIGAN: I know it is awkward.

9 MS. COX: FTC staff.

10 MR. MEYER: Barry Meyer with the Aluminum
11 Association.

12 It is an extremely small market. I do not think
13 anybody is keeping records of aluminum aerosol cans.
14 Aluminum beverage cans, though, are at a 68 percent
15 recycling rate at this point. And, as far as accessibility
16 to recycling, there are, besides publicly available, there
17 are a number of privately operated drop-off centers and a
18 very large infrastructure for returning cans.

19 MS. MADIGAN: Attorneys general.

20 MS. GRIFFIN: I am Mary Griffin from the Attorney
21 General's Office Task Force.

22 We just wanted to applaud the efforts of industry
23 in increasing the rate of growth of recycling and many here
24 in this room have contributed to that and that is certainly
25 been an investment that all the states appreciate.

1 I also wanted to echo the comments of the
2 Environmental Defense Fund that there is still a certain
3 amount of progress that needs to be made in this area. And
4 an example of this is some of the statistics that were cited
5 by the United States Environmental Protection Agency in its
6 1994 report on the characterization of municipal solid waste
7 in the United States.

8 And for example, in 1993, data that was submitted
9 in that report indicated that the recycling rate for plastic
10 containers is about 6.1 percent and the recycling rate,
11 total plastics recycling rate, is about 3.1 percent. So I
12 think that gives a graphic example that while recycling
13 rates are increasing dramatically, there is still a lot of
14 progress to be made.

15 MS. MADIGAN: Anybody else want to speak or
16 respond to that? American Plastics?

17 MR. LOWMAN: Yes. Rod Lowman, American Plastics
18 Council.

19 I think, certainly, the success of individual
20 container types and resin types is significant for plastics,
21 as for any material -- whether it is just a steel can or it
22 is just the aluminum beverage can or exactly what material
23 you are looking at -- and you have to start somewhere. And
24 so the PET and the high-density milk jug, natural high-
25 density container, have been the containers that have had

1 the most success in recycling because they are easily
2 identifiable. They are easy to collect. They are easy to
3 reprocess and the market demand is there for the recovered
4 material.

5 As with any growing industry and growing
6 infrastructure, however, you have to get, if you will, from
7 Point "A" to Point "B." And so we continue to work with
8 individual manufacturers of different resins. We continue
9 to work with the potential markets to use these resins,
10 which is a major point of making sure the demand is there so
11 that when and if the material is collected, there are
12 markets for it.

13 What we do when we work with individual
14 communities is work with them to try to find markets in
15 their local region so that if there are markets available,
16 that they can then go out and team up with that particular
17 market. Again, the numbers are certainly lower in total
18 than they are for the other materials. But we are still a
19 growing secondary materials industry and each individual
20 resin type and each individual application continues to work
21 on technology to both improve the ability and the capability
22 of recycling that material and, again, also finding specific
23 market applications for it.

24 MS. MADIGAN: Okay.

25 EDF?

1 MR. DENISON: The last several speakers have
2 provided two different ways of asking or answering the
3 question, to what extent has recycling increased. One is
4 recycling rates by material. The other is access to the
5 population or number of communities. I just want to comment
6 briefly on the latter type of measurement as a prelude to
7 when we get into the discussion about adequate qualifiers
8 for these claims because I think it is very important that
9 we recognize that the issue of determining access is a very
10 murky area. It is one that is very difficult to ascertain,
11 what really qualifies as access in terms of either
12 population served, number or percent of communities served
13 depends on the size of those communities, the populations
14 and so on.

15 So I guess I think it is important to keep that in
16 mind as we move forward in this discussion. The ultimate
17 bottom line is what fraction of that material is actually
18 being recycled? What is the recycling rate? Not the tons
19 or pounds of it, but a numerator and a denominator has to be
20 factored into that discussion.

21 MS. MADIGAN: SPI?

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

24 I want to go back, in reference to Ms. Griffin's
25 question, for a second because nobody here today has

1 mentioned one of the other issues that I think is very
2 important to keep in mind in evaluating the growth in
3 recycling for any material, but it is especially true for
4 plastics materials. When you are looking at a wide array of
5 different plastics resins and a huge diversity in
6 applications, it is really essential to keep in mind that
7 performance and safety and quality in the end-use products
8 with which these materials are made is a central concern of
9 all of the manufacturers. It is a point that SPI has made
10 in its comments to EPA in connection with Executive Order
11 12873 in its efforts to implement both the recycled
12 materials advisory notice and it plans to reiterate that
13 point again in the corollary activities on environmentally
14 preferable. So I think that is a very, very key point that
15 we cannot lose sight of because safety, quality and
16 performance have to be the touchstone of why you make
17 material and why consumers buy materials today.

18 MS. MADIGAN: National Soft Drink?

19 MR. STACK: Just a couple of thoughts. Gifford
20 Stack, National Soft Drink.

21 Just a couple of thoughts. The Environmental
22 Protection Agency set a goal of 25 percent recycling by the
23 end of this year and, according to the individual that made
24 that, Dr. Win Porter, we are going to come within a whisker
25 of making it. So our overall recycling rate is doing very

1 well and I think that speaks to the material types getting
2 their recycling rates up -- certainly soft drink at 61
3 percent versus 52 percent three years ago. And I would say
4 that at the residential level, the commercial level and the
5 recreational level, we all have a better opportunity to
6 recycle today.

7 MS. MADIGAN: National Recycling?

8 MR. COLDEN: Bud Colden, National Recycling
9 Coalition.

10 I think we all recognize that different materials
11 have different recovery rates. Some are very high and some
12 are very low. And I think, as Richard pointed out relative
13 to his inverse proportion of claims versus recycling rates,
14 what we are looking at is the availability that exists
15 within the community to the person who is putting their
16 material in the curbside container and is that availability
17 there.

18 Yes, we are very much interested in increasing the
19 rates and increasing the supply of recyclable materials.
20 But the first step is the availability to the consumer to
21 put the material into a location where that consumer knows
22 that material is going to end up in a recycling process.
23 And that is the key issue here that we should not lose sight
24 of and this is important to think of when we start talking
25 about the application of the term "recyclable" and what

1 putting that term on a product or package indeed
2 accomplishes.

3 MS. MADIGAN: Okay. Let me ask if there is
4 anybody who has not yet spoken. I think, Ford, have you had
5 a chance? Okay. And then Paperboard.

6 Is there anybody else who has not yet had a chance
7 to speak?

8 MR. DUKE: Kevin Duke, Ford Motor Company.

9 I would just follow up on the last point that was
10 made. It points up that there is a difference between
11 putting something out for recycling and whether it is
12 actually recycled. And this brings up the idea of recovery.

13 In our industry, the recycling infrastructure is
14 fairly mature and well-developed. As a result, about 95
15 percent of motor vehicles that are disposed of are collected
16 in one way or another. But of that amount collected, 75
17 percent of the typical vehicle is actually recycled or
18 reused. So we cannot really report a lot of increases.
19 But, again, we have a mature, well-developed infrastructure
20 that has been going along quite nicely for a lot of years.

21 MS. MADIGAN: Okay.

22 Paperboard?

23 MR. MC INTYRE: Yes, John McIntyre, Paperboard
24 Packaging Council.

25 I just want to follow up in agreement with some of

1 the comments that were made that my understanding of the FTC
2 guides is they are based on public access to community
3 recycling because I think there is some recognition it is,
4 for some industries, difficult to get a good handle on exact
5 recycling rates. I think a demonstration we have in our
6 industry is a study that we did with R. W. Beck was the
7 growth, as Peter Buntin of AFPA said earlier, going from 628
8 three years ago over 4,000 new base recycling centers or
9 access today. And, again, these rates were based before the
10 recent upsurge in paper prices.

11 Many in our industry feel that the number, by the
12 end of 1996, will be 6,000. It has gone from 628 to 6,000
13 in three years. And industry analysts indicate the demand
14 for paperboard is going to stay at high levels well into the
15 next century. So I think that is a tremendous indication of
16 what is actually happening because that can actually be
17 measured very specifically.

18 Another way of looking at it is, where is this
19 material being used? Sixty percent of all the paperboard
20 packages in the grocery stores are made of 100 percent
21 recycled content. So not only is it coming back to us, but
22 it is also being used as paper in our product, this
23 recyclable material. I think that is an important
24 indication.

25 MS. MADIGAN: Okay. I am going to do two things

1 because we are getting close to the end of the time. I
2 would like to ask if there is anybody else who has a burning
3 need to make a remark on this particular question and then I
4 would like to turn to the FTC staff and ask if they have any
5 follow-up questions before we move into the next topic.

6 So I do not mean to discourage anybody, but we are
7 running close to the end of our time. Is there anybody else
8 who would like to say anything on this before I turn it over
9 to the FTC staff and ask them if they have questions? Okay.

10 Seeing no hands, let me just turn to the FTC
11 staff. Are there any other follow-up questions you have at
12 this time?

13 MR. PEELER: I think we are ready to move on.

14 MS. MADIGAN: Okay. Let's move to the second
15 question, then.

16 Do consumers perceive that a recyclable claim
17 means that facilities are available to consumers in their
18 community to recycle the product or that facilities are
19 widely available nationwide?

20 Anybody who would like to start our discussion out
21 here?

22 National Recycling?

23 MR. COLDEN: Bud Colden, National Recycling
24 Coalition.

25 I think there have been some studies, but really a

1 paucity of marketing studies in terms of what the term
2 "recyclable" really means to people. In a lot of cases, we
3 rely upon anecdotal evidence. The National Recycling
4 Coalition, having 4,000 members and largely representing
5 people who must assure that community-based non-profit
6 recycling programs work and Government programs work, we
7 have businesses that have an interest in making the
8 recycling program work and recovering these materials. But
9 at this point, I am really addressing what I hear from that
10 vast network of recycling coordinators across this country
11 and, again, it is anecdotal evidence because we have not
12 conducted a vast survey to determine what consumer opinion
13 is on this issue.

14 But, first, I think we have to recognize that
15 recycling is not the most important thing in most people's
16 lives. Those of us who work in it, it is a big part of our
17 life. But the average consumer has many things on his mind.
18 I can guarantee you that he probably infrequently thinks
19 about the recycling program and what is happening in terms
20 of recycling markets and it is, in essence, they are
21 building habits and changing habits. Instead of throwing
22 everything in the trash, they are building the habit of
23 making an automatic action to put a particular material into
24 a container.

25 If they see something, we are going to have their

1 attention for a flash of a second because they are thinking
2 about what they have to fix for dinner; they are thinking
3 about picking up the kids after school or what they have to
4 do that evening. It is a flash. So if they see a
5 recyclable claim, that flash is likely probably it should go
6 into the blue box as opposed to go into the trash. That is
7 assuming they think about it.

8 Some work that we did through the negotiations
9 that NRC had with the Society of Plastics Industry when we
10 were addressing code issues -- and we will be talking about
11 that later -- but I think what is important to show is that
12 in some consumer focus groups where we went through an
13 educational process to try to educate people as to what to
14 put into a curbside container, fully one-third of them still
15 did something different immediately after this focus group
16 educational effort.

17 So I think we need to make sure that we recognize
18 that the consumer is not going to have a driving interest in
19 this. It is habit-forming. We are trying to do things that
20 improve recycling markets, increase supply and increase the
21 quality of the supply and that is where the term
22 "recyclable" comes in there. I think we get the people's
23 attention for a moment and that is all we have and those
24 claims from anecdotal evidence suggest that some people will
25 assume that they can put that in their curbside container.

1 I use my friends as a litmus test because a lot of
2 them do not have the same level of interest in recycling
3 that I do. But they do source separate their materials and
4 many of them will say, "Well, I know that I can put this
5 kind of container in there," or "I can put newspaper in
6 there." Most of these things, they tell me they know to
7 recycle without seeing a recyclable claim. So we are
8 talking about a fraction of people who would be influenced
9 by an improper claim.

10 MS. MADIGAN: I have seen four hands. I will just
11 take them in the order I recorded them and then I will add
12 the fifth hand.

13 American Association of Advertising Agencies?

14 MR. SHOUP: Yes, Hal Shoup.

15 Following up on your comment, consumers do have a
16 lot of criteria for the selection of a product. Somebody
17 mentioned safety, performance, quality. You could add to
18 those price, convenience, color. I think over the past
19 several years, consumers also added to their criteria the
20 environmental attributes of a product. Where it ranks is
21 difficult to assess.

22 I would say, from an advertising standpoint, it
23 appears obvious that advertisers are less and less talking
24 about environmental attributes of their product. I do not
25 think that is necessarily bad because I think consumers have

1 internalized the criteria of environmental attributes in
2 making purchase decisions and I think that is a very, very
3 positive sign.

4 If it is no longer unique or different or
5 surprising or top of mind, then advertisers are not going to
6 feature it, and advertisers are not. In fact, I can no
7 longer find anybody or any service who is measuring on an
8 ongoing basis the amount of environmental advertising that
9 is taking place in this country.

10 MS. MADIGAN: Okay. We will go then to Soap and
11 Detergent which will be followed by OSPIRG.

12 DR. PFLUG: Jerry Pflug, Soap and Detergent.

13 This is why our industry feels quite strongly with
14 regard to making comments on packages with regard to,
15 "Please Recycle." I think we have heard a lot of comments
16 already that consumers are confused or do not understand the
17 need to recycle. And, in addition, supplies in certain
18 materials is very low and we feel that if, indeed, we can
19 exhort the consumer to think about recycling, it is going to
20 be a positive step in increasing awareness and also
21 increasing supply of these materials.

22 MS. MADIGAN: Okay. Yes.

23 MS. BERNSTEIN: Jodie Bernstein, FTC staff.

24 Hal, I wanted to follow up on your comment, if I
25 may. Were you saying that you see fewer claims -- fewer

1 environmental claims or environmental benefits of products
2 across the board?

3 MR. SHOUP: Yes, yes.

4 MS. BERNSTEIN: And do you think that is because
5 the sense of the manufacturer is that consumers are not
6 interested in the environmental benefits of a particular
7 product, or some other reason that they are no longer
8 pursuing those kinds of claims, or using them, I should say?

9 MR. SHOUP: I think environmental sensitivity
10 among consumers has been internalized to an extent that it
11 is no longer a matter of, I guess we would say a hot item in
12 terms of an attribute of a product and therefore a
13 manufacturer is featuring other aspects or other attributes
14 of his product knowing, I think, that there still is an
15 obligation on his part to be environmentally sensitive in
16 the manufacture of either his product or the packaging in
17 which it is enclosed. That is, again, a perception that I
18 have and others that I have talked to in the industry seem
19 to share that particular perception.

20 MS. MADIGAN: Yes?

21 MR. PEELER: Hal, you said --

22 MS. MADIGAN: Name?

23 MR. PEELER: I am sorry. Lee Peeler from the FTC
24 staff.

25 You said that you, though, had been looking for

1 some studies or looking at some studies. Is there anything
2 that measures --

3 MR. SHOUP: No. That is the point, Lee. Four
4 years or three years ago when we were talking about this
5 issue, there were some groups that, on an ongoing basis,
6 were measuring environmental advertising -- how many ads
7 were containing references to the environmental attributes
8 of a product. And I cannot find any services that are still
9 providing that particular kind of information, which drives
10 me to the conclusion that the services simply do not feel it
11 is a subject of extreme abiding interest any more.

12 And my feeling is, because of the growth in
13 recycling that has taken place, that it has become, as I
14 said before, somewhat of an inherent part of a consumer's
15 behavior. Certainly, products need to be identified and the
16 recyclability of packaging, obviously that has to be done
17 because the consumer is looking for that. It is one of the
18 criteria that they have. But it is certainly not at the top
19 of the list, I would think.

20 MS. MADIGAN: Okay. Oregon Public Interest?

21 MR. TAYLOR: Chris Taylor OSPiRG.

22 I have a couple of comments to make on this point.
23 I think that the overriding importance of the recyclable
24 claim is its effect on community recycling programs and from
25 surveys that have been done in the northwest, Oregon, the

1 state that I am from, we have tremendous recycling programs
2 there for a wide variety of materials. And in my
3 conversations and contacts with recycling coordinators
4 around the state, every single one of them responded that
5 this was a problem for them -- that people do believe when
6 it says "recyclable" that that means they can recycle it
7 themselves.

8 And the problem there is that we are putting the
9 onus now onto the community recycling coordinator in that
10 they get these frustrated callers who call in and some of
11 them call my office as well, even though we do not run any
12 recycling programs, and they complain. And then they are
13 upset with their local community recycling program, rather
14 than being upset with the manufacturer for putting a
15 misleading claim on it. Now, all of a sudden, the community
16 recycling person, who has limited resources and is
17 overworked already, now has all these frustrated consumers
18 calling in thinking that their recycling program is bogus
19 because it does not include film plastics which are included
20 in almost no recycling programs anywhere in the country.

21 So I really think that all the focus of this
22 should be on facilitating recycling by consumers in their
23 local communities and recycling coordinators across the
24 state claim that this is a real problem with respect to
25 contamination. And having a clean stream that does not have

1 contamination is vital to the marketing of those materials
2 and to the overall economic viability of recycling programs.
3 So we feel very strongly that the recyclable claims should
4 be qualified to the greatest extent possible to avoid
5 misleading consumers.

6 And also there is the issue of confusion and
7 cynicism that ensues when people see the recyclable claim
8 and then they either put it out at the curb and then when
9 they come by, they do not pick it up or they reject the
10 whole load because it has materials that are not accepted in
11 the local program. That leads consumers to be frustrated
12 with recycling and makes them not want to participate the
13 next time and it makes them cynical about seeing that type
14 of advertising in the future.

15 So we believe very strongly that the qualification
16 is extremely important and the generic claims of
17 recyclability are, indeed, misleading for a large number of
18 products.

19 MS. MADIGAN: Before we move on, the second and
20 third questions are actually pretty hard to separate out
21 because they are pretty much related. What I would like to
22 do is, we will come back to the qualifications that should
23 be included and let's focus primarily, if we can, on your
24 understanding of consumer perceptions or any evidence that
25 you might bring to the table until we get to the third

1 question.

2 But thank you, Chris. I appreciate that.

3 Next on the list, let me just find my sheet of
4 paper here, is EDF, followed by Ford.

5 MR. DENISON: Richard Denison, Environmental
6 Defense Fund.

7 Two quick points. First of all, there actually
8 are survey data that have been conducted continuously
9 through the period by marketing intelligence services. The
10 latest data that I have seen covers the year 1994, published
11 in 1995, and it found the second highest number of new
12 products ever making environmental claims. The rate was
13 10.5 percent of all new product introductions in that year.
14 The number was 853 new products out of the survey that they
15 did. It was not a totally exhaustive study.

16 But the interesting thing is, if you compare two
17 five-year periods, '85 to '89 with '90 to '95, that is the
18 break point where there was a dramatic increase in the
19 number of claims and that increase has largely been
20 sustained throughout that most recent five-year period. In
21 fact, the average number of products for the first five
22 years was about 130 having environmental claims and that
23 jumped up to almost 800 in the second five-year period. So
24 that is point one.

25 Point two, on the question specifically, I think

1 it is important to recognize that whether a product says
2 "recyclable" on it or not is not how the vast, vast majority
3 of people find out whether they can recycle the material.
4 They find that out from their local program that tells them
5 what they can and cannot put in their bin or what they can
6 and cannot take to their drop-off center.

7 My concern is not just with whether someone sees
8 the term "recyclable" on a product and thinks, "Oh, that
9 means it is available," when it is not, but that it might
10 actually override that local information which is really the
11 accurate information and create perceptions in the minds of
12 the consumer that, despite the evidence that they have from
13 their local program, maybe what this means is that even if I
14 throw it in the trash, because I cannot put it in my bin, it
15 will get recycled magically because it says it will be. And
16 I think that is a real concern about these claims.

17 So, I mean, my view is that these claims
18 inherently are misleading unless that product is universally
19 recycled because somebody is going to see it who cannot
20 recycle it. And for that person, it is misleading.

21 MS. MADIGAN: Ford is next.

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

23 As regards to environmental claims, I guess I
24 could second what we heard from EDF. For our industry, at
25 least, the number of claims with the environment, in

1 addition to the typical claims on fuel emissions and fuel
2 economy, have spread out into other areas. Whether it is
3 from a corporate standpoint or a product standpoint, for our
4 industry it is increasing.

5 However, from a durable goods industry
6 perspective, how we address the specific claim of
7 recyclability is a little unique. We could go out, for
8 example, to put on all of our vehicles a tag that says,
9 "This is recyclable," because the vast majority of them are.
10 However, the industry has taken a slightly different tack
11 and what they actually are doing is on a per vehicle basis,
12 how much of that vehicle gets recycled, which is a very
13 different perspective than what is done from an ordinary
14 household curbside pick-up recycling standpoint. And so we
15 actually get quite technical and numerical in the points
16 that are made as of, "This vehicle is 75, 79," whatever
17 percent recyclable, which, from what we have seen, consumers
18 pick up and, from the interest that has been expressed from
19 an advertising standpoint, this is something that consumers
20 are beginning to look for to differentiate vehicular
21 products.

22 Now, how this pertains across the board for all
23 industries remains to be seen. But I think to recognize the
24 technicality of what you are seeing in the durable goods
25 industry, as opposed to a more broad-based consumer curbside

1 collection, needs to be pointed out because there may need
2 to be some differentiation with respect to this claim of
3 recyclability and how it is used.

4 MS. MADIGAN: Okay.

5 MS. BERNSTEIN: Can I ask a follow-up question on
6 that?

7 MS. MADIGAN: Please.

8 MS. BERNSTEIN: And do you find, because of that
9 interest, that you want to use that information in both
10 advertising and point-of-sale information? Are consumers
11 sufficiently interested so that it would tend to appear in
12 advertising for your vehicles?

13 MS. DAY: I could not speak as to the specific
14 consumer interest. However, it is used within advertising
15 as a differentiation between products for sale.

16 MS. MADIGAN: Another follow-up question?

17 MR. BANK: This might seem a fairly basic
18 question, but in terms of cars, do the cars get recycled
19 when people trade them in? Where is the access to the
20 facility, so to speak?

21 MS. DAY: This is as short as I can make it a
22 description of the actual car recycling process. About 95
23 percent of vehicles that go out of registration due to old
24 age or due to accidents, whatever the cause, are filtered
25 into the dismantling stream. In the case of accidents, they

1 are sold at auction because they are reclaimed by the
2 insurance company. There are vehicles that are also
3 impounded by the police. Old age vehicles that come in
4 through trade-in may be written off or there is direct
5 consumer contact between dismantlers and the shredders,
6 which are the next step in the process.

7 The dismantler, which is represented by the
8 American Automotive Recyclers Association -- they keep
9 changing their acronym on me -- they are also participating
10 in this workshop. But what they do is they take the vehicle
11 and they will pull off parts for remanufacturing, resale.
12 They will also pull off certain materials for segregation
13 and specific material recycling. What is then left, they
14 have no salable use for, they then send on to the shredder,
15 which does whole-scale slicing and dicing, as it were, of
16 the vehicle to separate out the metallic contents that they
17 then pass on into the recycling stream.

18 MS. BERNSTEIN: How much of the material that gets
19 recycled comes from the relatively new, and I guess sparse,
20 clunker buy-back programs that some of the states have been
21 running, do you know?

22 MS. DAY: I do not have numbers to that, but I
23 know that it is very small. However, from our company's
24 perspective with Ford, the buy-back programs that we have
25 been involved in have tied up with the dismantling and

1 shredding industry so that we know that the recycling is
2 occurring.

3 MS. BERNSTEIN: Thank you.

4 MS. MADIGAN: Go ahead.

5 MR. PEELER: Hi. This is Lee Peeler, Federal
6 Trade Commission.

7 I just wanted to address one issue of, I think,
8 clarification between what Richard has said and what Hal
9 said.

10 Richard, the marketing intelligence data, as I
11 understand it, is labeling claims for supermarket products.
12 Is that the same data?

13 MR. DENISON: I believe that is right.

14 MR. PEELER: Okay, so --

15 MS. MADIGAN: Please identify yourself.

16 MR. DENISON: Richard Denison, EDF. Sorry.

17 MR. PEELER: So we may have a distinction or a
18 disparity between sort of an increasing number of labeling
19 claims but those claims not showing up in, Hal, what you are
20 talking about in terms of advertising, although these guides
21 apply to both sets of --

22 MR. SHOUP: Right. I was referring primarily to
23 the focal point of advertising on a national basis, okay.
24 Mass media advertising which is addressing in a dominant
25 position in an ad or a commercial the environmental

1 attributes of a product.

2 I would agree that insofar as labeling is
3 concerned, it is certainly a very important part of a
4 consumer's decision as they get down to the point of
5 evaluating Product "A" versus Product "B." And as the
6 representative from Ford Motor has said, this is a very
7 important point insofar as a consumer's decision insofar as
8 an automobile is concerned and that information, I think, is
9 very important and has to continue to be provided because
10 the consumer has become more environmentally sensitive and
11 is looking for that kind of information when they make a
12 decision. So it has to be available to them.

13 MS. MADIGAN: Okay. Let me just record some
14 hands.

15 Do you have a follow-up?

16 MR. DENISON: Just clarify.

17 MS. MADIGAN: Okay.

18 MR. DENISON: The survey data, Lee is correct.
19 There are claims made on packaged goods, including food and
20 beverage, health and beauty aids, household and pet
21 products. So it is limited to that type of analysis.

22 I have never seen survey data that look at broader
23 advertising in terms of the rate of claims being made in
24 broadcast or print media.

25 MR. SHOUP: That was available in 1989, 1990, 1991

1 from, I believe, a subsidiary company of the J. Walter
2 Thompson company. I think it was called Greenwatch. I am
3 not sure of that name, but it was talked about in our last
4 hearing that we had on this subject.

5 MS. MADIGAN: What I would like to do is continue
6 on through the list of people and what I am going to do is
7 first give priority to people who have not yet had a chance
8 to comment. But I will come back to everybody who I have
9 recorded.

10 Okay. Next, is Council on Packaging followed by
11 Professor Cude.

12 MR. HAYDEN: Matt Hayden, Council on Packaging and
13 the Environment.

14 COPE has done six waves of consumer perceptual
15 research and we do have some empirical data. Now, as I
16 looked, Denise, at your breakdown of questions, I am sort of
17 jumping ahead a little bit. But I think it is important to
18 do a couple of things. First, it is very important to
19 distinguish between different kinds of environmental claims.
20 "Recyclable" is one claim. "Please Recycle" would be a
21 second kind of claim, and so forth.

22 We just concluded our sixth wave of consumer
23 research in September. We asked 852 consumers, I think it
24 was, surveyed them between August 28 and September 8 of 1995
25 and we did ask the following question: "If a product or

1 package is labeled, 'Please Recycle,' which one of the
2 following statements best describes what it means to you?"

3 I will read it again. "If a product or package is
4 labeled, 'Please Recycle,' which one of the following
5 statements best describes what it means to you?"

6 Sixty-six percent -- one of the three options, and
7 they were rotated, was "That statement means I am encouraged
8 to recycle, if possible." Another option was, "The product
9 was made from recyclable materials." And a third option
10 was, "A facility is available in your community." Three
11 options.

12 Sixty-six percent of the respondents said that
13 "Please Recycle" meant that they were encouraged to recycle,
14 if possible. Twenty-one percent believed that that
15 statement meant that the product was made from recyclable
16 materials. And eleven percent believed that that meant a
17 facility was available in their community.

18 Now, we asked a follow-up question, not
19 immediately following. But we said, "'Please Recycle" means
20 that you are encouraged to recycle the package or product if
21 possible. Do you agree with that statement, disagree, or do
22 you not know?"

23 Ninety-three percent said they agreed with the
24 statement. Five percent disagreed and two percent said they
25 didn't know.

1 Now, I asked my colleague, Chris Murphy, if we had
2 ever asked the question what recyclable means, and we have
3 not. But we have worked closely with the FTC and EPA in
4 five of the six waves. Since the second wave, we have had a
5 cooperative relationship there and if the FTC were
6 interested in probing that issue, we would certainly be glad
7 to carry that question on our survey.

8 MS. MADIGAN: What I would like to do is exercise
9 just a little prerogative and ask that we save a lot of the
10 detail about "Please Recycle" and get to that because I
11 think other people may want to have comments on that. But
12 let's focus on perceptions about what "recyclable" means.

13 Okay, Professor Cude, you are next.

14 MS. CUDE: I am Brenda Cude from the University of
15 Illinois and I would like to make my comments, for now, in
16 my role as a public educator with the University of Illinois
17 Cooperative Extension Service. I directly teach consumers,
18 specifically related to the issue of considering the
19 environment in purchase, use and disposal decisions and also
20 teach recycling coordinators about how to educate consumers.

21 I would like to note that there are still many
22 communities, primarily rural communities, where collection
23 facilities are not conveniently available for recyclable
24 materials and if they are available, it is for a relatively
25 small number of materials. And I think that those consumers

1 may have a far less sophisticated conception of a recyclable
2 claim than the person who does have some actual day-to-day
3 experience with recycling. And I think that is important to
4 keep in mind.

5 The testimony that I submitted three years ago
6 based on research of consumers' perceptions of these terms
7 suggests that their understanding and their vocabulary is
8 far more limited than anyone in this room and the fact that
9 you have not asked what consumers think recyclable means, I
10 think, is a very good point. You said you had not asked if
11 they knew what recyclable means.

12 Three years ago -- and I am willing to acknowledge
13 that that may have changed -- I found that consumers readily
14 confused recycled, recyclable or any variation on that word
15 and my experience in education has done nothing to change my
16 opinion about that, my day-to-day contact with consumers.

17 I guess I would just also like to observe that I
18 have noticed no decline in interest in environmental
19 consumer education. That continues to be important and the
20 comments from industry that it is important to say things
21 like, "Please Recycle" on labels because that is education
22 is not education. Encouraging consumers to recycle without
23 giving them supplemental information about how, when, where,
24 may only be frustrating to consumers, not educational.

25 MS. MADIGAN: We will be coming back to "Please

1 Recycle" again after the break. So we will come back to
2 that. Let me make a note there.

3 This will be a little frustrating because I have
4 to honor people in terms of the order I see them and yet try
5 to maintain some sort of dialogue.

6 The next two people will be EPA followed by
7 American Forest and Paper. And, again, I am trying to give
8 -- although I may be making some mistakes here -- priority
9 to people who have not yet spoken to this question.

10 MR. DELLINGER: There are not any local government
11 officials in this panel, but one of the things that has
12 happened at every one of the meetings of this nature that I
13 have attended, including EPA hearings on this subject and
14 FTC hearings on this, local government officials have
15 indicated that their belief that recyclable claims have
16 caused major problems in their recycling programs because it
17 leads to materials being placed in recycling bins that do
18 not belong there. We have heard people make those
19 statements here today.

20 So, in essence, they have supported recyclable
21 claims only if they have been qualified and, in some
22 instances, they have advocated only shelf labeling. In
23 other words, no national labeling. So at least some
24 government officials believe that at least some consumers
25 perceive that unqualified recyclable claims mean that

1 facilities are available in those areas. Their problem with
2 that is it manifests itself in extra materials that they
3 cannot recycle in their recycling bins, that they then have
4 to discard at some cost to their programs.

5 Right now, local government-run programs are under
6 attack, at least in the trade press, as being not cost-
7 effective and I guess what we do not want to see is local
8 government officials to suffer unnecessary cost burdens as a
9 result of being flooded with materials into their recycling
10 bins that are not recyclable in those programs.

11 That was all I had to tell you.

12 MS. MADIGAN: American Forest and Paper?

13 MR. BUNTEN: There are so many comments that are
14 made that I would like to make a comment on, but I will try
15 to keep it short.

16 First of all, it is still not clear to me, when we
17 talk about the proliferation of environmental claims, that
18 those are proliferation of recyclable claims or just
19 environmental claims. We need to be careful not to get
20 those two mixed up if we are talking about a proliferation
21 of recyclable claims.

22 I would also like to get some clarification, and
23 this goes to the issue of flooding of materials, not having
24 markets, the COPE study, et cetera. We need to be material-
25 specific in terms of what is recyclable and what is not. I

1 think that is an important point.

2 Secondly, there are two first rules that we have
3 in the paper industry when we get calls, usually a hundred
4 or more a week, both from communities and from consumers.
5 The first rule for communities is, "Know what your markets
6 are before you start a collection program." And we have
7 people on staff who go out and help them find those markets.
8 So if there is no market for third-class mail, they will not
9 include it in their instructions to their communities and to
10 their consumers.

11 For the consumers, the first rule is, "Find out
12 what your community collects before you put it in your
13 recycling bin." It is a very, very important issue and
14 there is an educational effort here. And it is not going to
15 happen overnight, but there has been tremendous progress.

16 One of the other things that we have encouraged
17 our customers, be they convertors, printers or whatever, as
18 well as consumers is, we will send you a copy of the FTC
19 guides. We feel the FTC guides are minimally at least
20 stringent enough in terms of their threshold level for
21 claims of recyclability and they are probably too stringent
22 for many materials.

23 To suggest that no claim of recyclability should
24 be made unless every material is universally available for
25 recycling just does not make sense and, of course, it can

1 never happen. It also leads to an insistence that came up
2 in the earlier question that perhaps all materials should be
3 a hundred percent recyclable which, of course, is an
4 absurdity.

5 MS. MADIGAN: Okay. I have you down. We have the
6 Aluminum Association and then the Grocery.

7 MR. MEYER: We recently have done consumer
8 research on recycling. Barry Meyer, Aluminum Association.

9 We have recently done consumer research on public
10 attitudes toward recycling and, as far as the major beverage
11 container materials are concerned, our survey shows that the
12 public believes that all the materials are being recycled at
13 approximately the same rate. So I think the point is people
14 are, in fact, paying attention.

15 We also, in addition to the public infrastructure,
16 have a private infrastructure for collecting used beverage
17 cans. There are approximately 10,000 centers around the
18 country and last year our industry paid out over a billion
19 dollars to people who brought material to them, whether they
20 were individuals or commercial.

21 So the point is, it is there. People do hear what
22 is being said. They may not distinguish among and between
23 terms, but the net effect is they are responding to what we
24 are saying.

25 MS. MADIGAN: GMA?

1 MR. MACLEOD: This is Bill MacLeod for Grocery
2 Manufacturers.

3 Anyone who had the pleasure of spending any time
4 last week in the city of Chicago could not help, if they
5 turned on the television set, about hearing about the new
6 recycling program that Chicago is launching. They are now
7 allowing consumers to put into blue bags recyclable
8 materials and just leave them in the garbage cans with their
9 other waste.

10 Every newscast that ran in Chicago for three or
11 four days had the newscasters holding up their blue bags. I
12 do not think anybody, especially after hearing James Brown
13 saying again and again and again, "Papa's got a brand new
14 bag," was at all confused about the availability of
15 recycling facilities in Chicago. I think the same was true
16 here in Washington back in the spring when we went through
17 an on again, off again, whether D. C. Recycling was going to
18 continue or not.

19 I was delighted when I heard the beginnings of the
20 Environmental Defense Fund and OSPiRG's comments when they
21 agreed with that proposition, I thought, that where people
22 are going to get that kind of information is going to be as
23 much from local recycling programs and facilities as it
24 would be from national claims. Where I have to part company
25 with them is the same point that was just made a moment ago

1 by American Forest and Paper Association. If the standard
2 is that recycling claims are not to be made until they are
3 available to everybody, then the consequence is there will
4 never be another recyclable claim made because we cannot
5 achieve universality.

6 If the concern is cynicism about local programs or
7 discomfort from some facilities managers, maybe that is not
8 so bad. Maybe it is not a bad idea that some people are
9 aware that some products are recyclable but for some reason
10 my local program does not have it. When products are
11 advertised nationally and advertised as available at better
12 retailers, the fact that Sears or Wards might not be
13 carrying something does not make that advertisement
14 deceptive.

15 The fact that your local program is not recycling
16 a particular product might be a very legitimate issue to
17 take up with your local program and find out why that is the
18 case. It certainly does not override the knowledge about
19 local programs that consumers carry if they happen to see a
20 recyclable claim on a product. There is no evidence on the
21 record that I have seen of that and it seems to me to defy
22 common sense.

23 MS. MADIGAN: Okay. I am going to make my way
24 through the list here. Next is the National Recycling
25 Coalition and then 3M. And I have a host of others on the

1 list, but I have not forgotten you and I will get to you.

2 MR. COLDEN: With everything I have heard, I do
3 not know exactly where to start and so I will start with
4 encouraging Ford not to put the term "recyclable" on the
5 door of my new Ford. As a loyal Ford customer, I prefer it
6 without that labeling.

7 A couple of things that I did want to address in
8 what I heard: One, in the COPE study, I think that what we
9 just heard today verifies what many of us have learned. It
10 depends on how you ask the question as to what kind of an
11 answer you get. And what that suggests, then, is that we be
12 very careful in how we utilize this consumer survey
13 information and not try to read more into it than what is on
14 the paper.

15 We do not need, most of us do not need -- and I do
16 not represent a local recycling program. I am here
17 representing local recycling programs and I deal daily with
18 people who have the problems associated with operating a
19 functional, economic curbside or drop-off recycling program.
20 The information that Peter Buntin offered suggests to me
21 that the answers that he gives back to those phone calls
22 suggests that perhaps the term "recyclable" should not be
23 used at all because how many of us need to have something on
24 a package or product that tells us to put it in the curbside
25 container?

1 If we have a functioning program within our
2 community, we all get a flyer. Mine is posted on the
3 refrigerator. I have been in other folks' houses. It is
4 posted on the refrigerator. It tells them what to put into
5 the curbside container. "Recyclable" on the newspaper does
6 not tell me something that I do not already know and, of
7 course, "recyclable" on the automobile does not tell me
8 something that I do not already know.

9 But when we have to address the issues that those
10 people who are responsible for what happens to that when a
11 consumer is done with it -- and that is not most of us at
12 this table -- there are only a few of us at this table who
13 are representing the people who suddenly own this product at
14 the end of its useful life or own this package at the end of
15 its useful life and we have to manage it. It is either
16 going to a disposal facility or we hope we can find a way to
17 recover it and recycle it.

18 Those are the interests that I think are most
19 intimately affected by decisions to label a product or
20 package as "recyclable" because when that ends up in the
21 wrong place, that results in a contaminant in that
22 recyclable stream. And some of those around the table who
23 are end-users of recyclable materials and make recyclable
24 products are the very ones who will say, "I'm sorry but I
25 cannot accept the materials from your community because

1 they're too contaminated."

2 And after I said what I did about surveys and
3 being careful about how you ask the question, I am going to
4 tell you about another survey that was done. In King
5 County, Washington, who has probably one of the best
6 nationwide "Buy Recycled" programs -- and in talking to
7 Candy Cox from King County about what they had done and some
8 exit survey work that they had done with consumers, is that
9 a significant number of consumers are mistrustful of
10 environmental marketing claims and I say that to all of you
11 so that you think hard about what you are delivering to that
12 customer. And we need, through this process, to maximize
13 the elimination, to the extent that it can be done, of that
14 mistrust of the consuming people or these environmental
15 marketing claims are destructive.

16 MS. MADIGAN: Before we move on, I am keeping an
17 eye on the clock and what I am going to propose is that we
18 break at ten forty-five, not at ten-thirty, and we spend
19 about five more minutes on this question so that we can save
20 time to go into the next question before the break.

21 I have several people on my list. Some of you
22 have raised your hand several times. I have not forgotten
23 you. What I would like to do is go to the people who have
24 not yet had a chance to speak to this issue, which is
25 related to consumer perceptions, and ask you to make some

1 comments and we will see if we cannot wrap this up in the
2 next five minutes or so.

3 Before we move to the next question, I will turn
4 and ask FTC staff if they have anything else to pose, okay?
5 So, with that, we will go on to 3M, followed by SPI.

6 MS. ADAMS: Georjean Adams, 3M.

7 Just to give you a little perspective about how
8 our company deals with the issue of "recyclable," we very
9 seldom use it. It is a very frustrating term to feel
10 comfortable in allowing our marketers to deal with that.
11 Basically, the standard we use in reviewing claims that are
12 proposed to be made is, can the vast majority of your
13 customers actually recycle? And if you cannot demonstrate
14 to our wonderful review committee that that is the case,
15 then you are not going to be able to use the claim. Most
16 often, where we wind up using the claim is where we have
17 established a recycle take-back program.

18 It is very frustrating for the marketers because
19 they see our competition making recyclable claims. Why
20 can't we? And, again, the question goes back, you have to
21 know your market. If your customers can make the activity
22 happen, then fine. If they cannot -- which, on a national
23 basis, in marketing products across the country, it is a
24 very difficult case to prove.

25 In the packaging area, we often rely on our

1 packaging suppliers to tell us whether or not they feel that
2 a vast majority of customers can, indeed, recycle the
3 containers. I guess we will get to the coding issue and how
4 we do coding. We do use that. But the recyclable claim, I
5 think, is just a morass.

6 MS. MADIGAN: Okay, SPI and then Californians
7 Against Waste.

8 MS. MILLAR: If we go back to the comment that NRC
9 made at the beginning of this particular session, I think it
10 is an extremely informative and enlightening point and that
11 is that there are a variety of factors that influence people
12 in choosing whether to sort products for recycling. Claims
13 are only one of many and we have heard about some of those
14 many points.

15 I think Bill has also mentioned the role of
16 education and I think that that probably is, more than any
17 other factor, the single most influential thing that
18 determines whether a consumer puts any material out in their
19 local bin or not. It is not the claim.

20 MS. MADIGAN: Californians Against Waste, followed
21 by Attorneys General.

22 MR. MURRAY: Thank you. Mark Murray. I am with
23 Californians Against Waste. We are an environmental group
24 in California. We have a board of directors that is made up
25 of a number of non-profit and public sector recycling

1 program operators.

2 I want to just comment briefly on this. If the
3 claims of recyclability were not causing a cost on local
4 recycling programs and non-profit recycling programs, there
5 would not be a problem. And maybe the cynicism that was
6 referred to by the Grocery Manufacturers Association would
7 be constructive.

8 But when there are some materials that are
9 technically recyclable but, for economic reasons, recycling
10 programs and local governments have chosen not to collect
11 those materials because the cost of recycling those
12 materials might be five, ten times greater than other
13 materials that are in the waste stream, they have made an
14 economic decision to provide the most cost-effective program
15 they can. Recyclable claims on products that that program
16 is not accepting add to the cost of that program.

17 We have a number of studies -- studies by the
18 TELLUS Institute, studies by the California State Department
19 of Conservation -- which point to the very high cost of
20 recycling certain plastic containers. Costs in excess of a
21 thousand dollars a ton. When you are looking at a curbside
22 recycling program costs in the hundred dollar a ton range,
23 inadvertently having plastic containers tossed into that bin
24 can really screw up the economics and have a rate payer
25 impact. So, the bottom line is, there is a cost associated

1 with that and that is unfair to the recycling program.

2 It is also unfair -- I think the representative
3 from 3M really made the point better than I can -- companies
4 that are being responsible should not be penalized. And we
5 believe that the standard for "recyclable" needs to be
6 narrowed. I do not think it would be a problem if the only
7 place that consumers got information about what was
8 recyclable was from their local recycling program. As an
9 advocate of recycling, we would not mind if consumer product
10 companies left that field to the recycling professionals.

11 MS. MADIGAN: Okay.

12 I am going to the Attorney General and then I am
13 going to hold off on recognizing anybody for a few minutes
14 because I have a few people who had their hands up for quite
15 some time and then we will come back.

16 So, Attorneys General?

17 MS. GRIFFIN: Mary Griffin from the Attorney
18 Generals Task Force.

19 I wanted to respond to the comment by the Grocery
20 Manufacturers that said that people have a right to be angry
21 with state and local officials or to be frustrated if it is
22 technically feasible to recycle certain materials but those
23 programs do not exist at the local level.

24 I guess I would agree that state and local
25 officials, towns, municipalities, have the obligation and

1 responsibility to foster recycling programs in every way
2 that they possibly can. But I think we have a right to
3 request a partnership with manufacturers who are making
4 environmental marketing claims to provide specific
5 information that will foster the local programs that will
6 allow people to make reasonable environmental decisions and
7 that, without that, local programs are really going to
8 struggle.

9 And I think the position of the Attorney Generals
10 Task Force is not that recycling claims should not be made
11 unless a product is recyclable a hundred percent in every
12 location in the United States. Obviously, there would be
13 difficulties with that kind of position. But our position
14 is that claims should be specific and qualified and
15 informative to actual consumers and we prefer a type of
16 qualification that would say on certain products, "This
17 product may not be recyclable in 'X' percentage of the
18 communities. Call 1-800 to find out if recycling is
19 available in your community." That is a helpful claim that
20 helps states and local communities actually increase their
21 recycling rates and make their programs work.

22 MS. MADIGAN: Let me do the following. I have
23 five people who have spoken before that I would like to give
24 a chance to speak before we close. But before I do that,
25 let me ask if there is anybody at the main table who has not

1 yet had a chance to speak to this question who would like
2 to.

3 Okay. What I would like to do then is call on the
4 five who have been raising their hands and then turn it over
5 to the FTC and ask the following five to be as brief as you
6 can so we do not run too far over time and that is Soap and
7 Detergent, Food Service Packaging, American Forest and
8 Paper, OSPIRG and Environmental Defense Fund.

9 MR. BUNTEN: I spoke already.

10 MS. MADIGAN: Okay. Now we have four people. Is
11 there anybody I have missed who I recognized?

12 I apologize Ford. So it will be in this order:
13 Soap and Detergent, Food Services, OSPIRG, Environmental
14 Defense Fund and Ford, okay?

15 Let's start with Soap and Detergent.

16 DR. PFLUG: Hi. Gerald Pflug, Soap and Detergent
17 Association.

18 I think the point here is that anything we as an
19 industry or industries can do to educate the consumer and
20 also educate the recyclers is a step in the right direction
21 and when we put something on a package which says, "Consider
22 recycling this" or "This is recyclable," the very point is
23 to make the consumers aware of the fact and ask the key
24 questions, "Why don't you have facilities," if we do or do
25 not, and "What can we do to enhance getting these

1 facilities?"

2 And if everybody reminds the consumer to think
3 about recycling, ask the questions, I think it is going to
4 take things in a positive way. The overall point here is
5 that we would love everybody to recycle and how are you
6 going to educate them. One way is to have them ask the
7 question, "Hey, this says 'Think about recycling.' Do we
8 have a program in our community? If we do not, why not?"

9 And, also, that may lead to the point that you
10 were making about the fact that certain things are a
11 thousand dollars a pound. The reason for that is perhaps
12 there is not enough education and enough desire to make the
13 consumer aware of it and to go forward with it.

14 MS. MADIGAN: Okay.

15 Food Services?

16 We need a microphone, please.

17 Identify yourself.

18 MR. KRAMER: Kim Kramer with the Food Service
19 Packaging Institute.

20 I wanted to make the point, by the way, that we
21 are a multi-material group of package manufacturers, so we
22 really have no ax to grind on any of the particular products
23 except that we would like to see all of the packaging that
24 we are making recycled at a higher rate. So that is one of
25 our goals.

1 Secondly, of course, we do not want to deceive the
2 consumers because as manufacturers and marketers, we
3 certainly get a backlash on that. So as we are thinking
4 about these issues, okay, we want them to recycle more. We
5 do not want to deceive them. But we do want to educate them
6 to do the thing that we want them to do, which is recycle
7 more of our products.

8 So we kind of came up with the conclusion that we
9 would like to be able to say that a product is recyclable if
10 it is feasible to recycle it within some kind of percentage
11 -- we can all debate the percentages on that. We would like
12 to be able to qualify the claim and say, "Gee, check with
13 your local municipality," or "Check with your local
14 authority to see if you can recycle this material or this
15 product there." That is all we really are asking for in our
16 organization is the right to say it is recyclable and check
17 to see if it exists.

18 We do not want to deceive anybody and the one COPE
19 survey scared me on that because the negative qualification
20 to the recyclable claim had 15 percent of the people
21 convinced that recycling was not available in their
22 community even when it was. Now, we are not going to grow
23 recycling programs if what we are doing with our labeling
24 and advertising suppresses recycling.

25 Thank you.

1 MS. MADIGAN: Okay.

2 OSPIRG and then EDF will follow.

3 MR. TAYLOR: Chris Taylor with OSPIRG.

4 I would just like to make a couple of points. I
5 think that some of what we are hearing from industry today
6 is somewhat conflicting with what I personally have heard
7 them say in the state legislator in Oregon and what they
8 have said nationally.

9 First of all, the idea that if local programs do
10 not collect materials, I would like to second what I heard
11 from NRC and from CAW that there are reasons why a lot of
12 local governments -- and I am not defending local
13 governments who are recalcitrant in recycling materials that
14 are economical to recycle. My organization has spent a lot
15 of time pushing local governments to collect those
16 materials. But the problem is, many materials just are not
17 feasible to recycle right now. One way you could make that
18 feasible is either with partnership with industry, as the
19 AGs have suggested, or with recycled content legislation
20 which requires the use of recycled content in packaging
21 which will drive the market so that more local governments
22 can collect those materials.

23 Well, I have seen many of the same trade
24 associations that are here today talking about how they want
25 to see more recycling fight in my own state and in other

1 states recycled content legislation and try to roll that
2 back and do everything in their power to stop that from
3 happening and that is one of the things that will drive the
4 market. So here is a way we can drive the market so we can
5 have more recycling and on one side of their mouth they are
6 saying, "We do not want recycled content legislation," and
7 on the other side of their mouth they are saying, "We want
8 to see more of these obscure materials recycled in local
9 programs." So I think we need to recognize that fundamental
10 hypocrisy there.

11 And, second of all, there are better ways to
12 educate consumers than saying, "Please Recycle" on the
13 container. People believe their local recycling
14 coordinator. They believe that they are an effective and
15 reliable source of information. People have much less
16 cynicism about their local recycling coordinator than about
17 national manufacturing outfits and that is really the
18 effective way to do it is to fund the PSAs in other ways
19 that local recycling coordinators can get that information
20 out to the people.

21 MS. MADIGAN: Okay. Chris, I am not going to
22 single you out but let me just caution everybody that I
23 would like to encourage people today to be careful how we
24 characterize each other and just because I am going to have
25 to now give somebody a chance to respond to hypocrisy and

1 you can point to contradictions, I think, without impugning
2 motivations.

3 Let me ask EDF if you could proceed and then I
4 will let Ford. And then I am going to let one more
5 association person who had his hand up to respond and that
6 would be Grocery Manufacturers. And then we have to make it
7 real fast because we are running over time. Thanks.

8 MR. DENISON: I want to address this question that
9 has been raised about whether consumers are educated enough,
10 motivated enough, and agitated enough for recycling.

11 Where is the bottleneck? The bottleneck is not
12 with consumers and it is by and large not with the
13 availability of programs for economically viable recycling.
14 The bottleneck is -- and it is principle number one that
15 AFPA stated -- are there markets for the material. If there
16 are not markets, that trickles down to there not being a
17 program locally and a member of that community agitating for
18 a program to be established when there are not markets is
19 not a good thing. We do not want to encourage that.

20 There is a lot of onus shifting going on here back
21 to communities and consumers when those are not the
22 bottlenecks and that is the problem with this kind of claim
23 appearing on a product at a point-of-purchase that has
24 nothing to do with reality on the ground.

25 MS. MADIGAN: Okay. Finally, Ford and Grocery

1 Manufacturers. Real quick, if you could.

2 MR. DUKE: Kevin Duke, Ford Motor Company.

3 In our view, whether something is recyclable and
4 can be claimed to be recyclable depends on the availability
5 of facilities and infrastructure and we think, with respect
6 to that question, the rules on the advertising of a product
7 and product availability are instructive.

8 As the Grocers said, you cannot advertise a
9 product unless it is generally available. But even if it is
10 not available everywhere, you can make an unqualified claim
11 that the product is for sale and is available. By the same
12 token, recycling facilities do not necessary have to be
13 available in every kirk and dale. But if they are generally
14 available to the general population that is being targeted
15 with the advertising, an unqualified claim of "recyclable"
16 ought to be made.

17 Thank you.

18 MS. MADIGAN: Okay. GMA and then I am going to
19 ask one last question of the FTC about consumer perceptions
20 and then we will move right into the third question.

21 MR. MAC LEOD: Just a couple of points and, first
22 of all, with regard to the point of contamination. I would
23 like to see some evidence that there is a linkage between
24 the claims that are made on the products and the recycling
25 practices of consumers with regard to specific products.

1 There is not any evidence that we have seen so far. Indeed,
2 the evidence suggests otherwise and common sense suggests
3 that the reason for that is that people are paying attention
4 to the credible education efforts of their local facilities.

5 As to whether GMA or industry favors governments
6 deciding to do more recycling or, indeed, mandate recycling,
7 I am not sure that is an issue for the Federal Trade
8 Commission to get involved in. I would not second guess
9 Chicago when they decide that they need more money for Cook
10 County Hospital or the District of Columbia government when
11 they need more money for District General Hospital that they
12 have made a wrong budgetary decision.

13 The question here is whether a recyclable claim on
14 a product is telling people something that they do not
15 already know, or something contrary to what they do know
16 about recycling facilities in their community, and I go back
17 to the evidence that seems to be pretty strong to me that
18 people (loss of sound for 30 seconds, TV went down, per
19 reporter).

20 MR. PEELER: This is Lee Peller. A question for
21 Barry Meyer.

22 MR. MEYER: Yes.

23 MR. PEELER: Barry, you said that you have a
24 survey that shows when you ask consumers about different
25 commodities that they tend to say that they are all recycled

1 at the same rate?

2 MR. MEYER: For beverage packaging, yes, that is
3 the response we got.

4 MR. PEELER: And do we have that?

5 MR. MEYER: No. At this point, the question of
6 its availability is something I have to take up with the
7 people who paid for it.

8 MR. PEELER: All right.

9 MS. BERNSTEIN: And I would like to ask the
10 representative from 3M a question, a follow-up question,
11 which may be politically incorrect, which means you do not
12 have to answer it if you do not want to and that was I was
13 intrigued by your corporate decision that you described that
14 you would not let them make the claim unless it was
15 available, I think you said, to a majority of your customers
16 for that particular product?

17 MS. ADAMS: That is correct. Georjean Adams, 3M.

18 MS. BERNSTEIN: Thank you.

19 And my question was, did the Commission's Green
20 Guides have any influence on the way that was developed
21 within the company or was it independent of it?

22 MS. ADAMS: I would say that it had an influence.
23 I think there is a little bit more room, actually, in the
24 FTC guidelines and in the AGs' Green Report then perhaps we
25 apply, as a general rule, within the company. We were being

1 ultraconservative, basically, and one of the questions that
2 I asked the marketers is, "Are you prepared to deal with
3 customers who get mad because they cannot recycle?" And it
4 is, again, kind of a comfort zone.

5 If they feel that the vast majority of their
6 customers can locate -- recycle -- or that we can help them
7 do it, then they will go ahead. But if they cannot give me
8 a solid basis for it, then I tell them, "Is it really worth
9 it?" And usually it is not.

10 MS. BERNSTEIN: Thank you. That is very helpful
11 and I think it was politically correct because it was
12 conservative, right? Thank you very much.

13 MS. MADIGAN: You are on video.

14 MS. BERNSTEIN: At this stage in my career, I do
15 not worry about that.

16 MS. MADIGAN: Any final comment?

17 MR. COLDEN: I have to address what was stated by
18 GMA and I think we cannot possibly speculate on what all,
19 one hundred percent, of the consumers are thinking. There
20 is enough survey work out there to show that consumers are
21 confused. They answer questions differently.

22 But the fundamental question that I think is
23 important to ask is, who is served by an unqualified claim
24 of recyclable on a product or package. And I contend that
25 it is not the consumer. It is not the recycling programs.

1 It is solely the person who is making a profit on the sale
2 of the product and that is the key issue here.

3 MS. MADIGAN: Let me check first with FTC.

4 Carolyn, one last question on the second question,
5 and then we will move on.

6 MS. COX: Okay.

7 This is Carolyn Cox from the Federal Trade
8 Commission.

9 A number of parties have raised the contamination
10 issue and whether or not recyclable claims increased the
11 level of contaminants in recycling programs and I was
12 wondering if anyone here could give us a sense of the
13 magnitude of the problem associated with contaminants and
14 whether there is any information concerning whether the
15 current availability disclosures in the guides have lessened
16 the contamination problem.

17 MS. MADIGAN: Can anyone speak to that question?

18 Californians Against Waste and then American
19 Forest and Paper.

20 MR. MURRAY: I happened to check on this with two
21 recycling coordinators, one serving the city of Sacramento,
22 the other serving the county of Sacramento, and,
23 unfortunately, the data was not very specific other than to
24 say that in the area of plastics that it is thousands of
25 pounds. Thousands of pounds per month of plastics that they

1 do not accept but they have made a decision not to reject at
2 the curb, they take to their sorting facility, they pile
3 them up, and then they periodically take them to the
4 landfill. So, on a monthly basis, thousands of pounds was
5 the answer from a Sacramento County curbside program that
6 serves 165,000 people.

7 DR. PFLUG: But how much does that thousand relate
8 to the total?

9 MR. MURRAY: Just to give you a sense, it is a
10 program that collects 39 pounds per household per month.
11 That is its diversion number. Of all materials.

12 MS. MADIGAN: Okay. American Forest and Paper,
13 and then we are going to probably break very soon --
14 actually, before the third question -- and come back.

15 MR. BUNTEN: Just quickly, I think, here again, I
16 go back to my point that not all materials are perhaps
17 created equal and that there will be different responses to
18 the so-called contaminant issue depending on the type of
19 material that you are talking about and, indeed, even within
20 the type of paper product you are talking about.

21 Having said that, however, we do have some
22 instances where mills will say, "Gee, I have a bale of paper
23 here." It may not have come from the community. It may
24 have been misbaled or improperly baled by the broker.
25 However, the recycling infrastructure within the paper

1 industry is so vast and with over 400 mills of all varying
2 types using different types of material, we can basically
3 overcome the so-called contaminant problem that may exist
4 from some mislabeling at the community or improper education
5 at the community. But I think the real key goes back again,
6 as some people said, about the continuing need to educate
7 about recyclability.

8 MS. MADIGAN: Carolyn, does that answer your
9 question?

10 MS. COX: Well, there may not be an answer to this
11 question but I was just wondering if there was any sense as
12 to whether the contamination problem had lessened since the
13 guides were issued.

14 MS. MADIGAN: Aluminum Association?
15 Identify yourself, please.

16 MR. MEYER: Barry Meyer with the Aluminum
17 Association.

18 Contamination is a problem that exists all the way
19 through the recovery of materials and their return to
20 productive use. Recycling is, first and foremost, a
21 business. It is all a matter of economics and what you can
22 afford to do and what you cannot afford to do. And the
23 question of preparation of the material to be sold is a
24 question of who assumes the responsibility.

25 It is a very serious matter. Our industry spends

1 a lot of time. People who are in the recovery business
2 spend a lot of time making sure that the material that they
3 receive to be remelted is as contaminant-free as possible.
4 And, at that point, they have equipment which ensures that
5 there is nothing going into the final melt that is going to
6 mess up the product they are trying to make so that the
7 contamination is an endemic part of the recycling operation.
8 No amount of education, no amount of recyclable claim
9 standards are going to do away with it.

10 MS. MADIGAN: Anybody have an objection to NRC
11 having one last comment before the break?

12 Can you make it real short?

13 MR. COLDEN: It varies with materials. You do not
14 have to step in front of a truck to know what the results
15 are going to be and if you can eliminate any sources of
16 contamination, and any of you who have seen a sorting line
17 know the amount of labor-intensive hours that are spent in
18 pulling out contaminants and even then some gets through.
19 But if you can do something simple to eliminate that, do it.

20 MS. MADIGAN: What I would like to do, then, is
21 actually break now before the third question and ask that we
22 take a ten-minute break and be ready to start again at
23 10:43.

24 (Whereupon, a short recess was taken.)

25 MS. MADIGAN: Just a reminder. If you have

1 questions for the public participation section, please fill
2 out these forms.

3 Danielle, could you stand up again so people can
4 see you?

5 Yes, you can fill out the forms there. If you
6 want to, you can give them to me directly at lunch or during
7 a break, or give them to the two FTC staff we introduced
8 earlier this morning, okay?

9 Let's begin, then, by moving to the next set of
10 questions and I am going to propose, in the interest of
11 time, that we think about the third and fourth questions
12 together and we will devote about 35 minutes to that. And
13 those two questions are, should the current availability
14 disclosures be maintained or modified for recyclable claims?
15 What alternative disclosure should be considered, if any?

16 And, as part of that discussion, what, in fact,
17 has been the experience with recyclable claims since the
18 adoption of the Guides? How well has the Guide's approach
19 worked?

20 So let's take those two questions together and
21 open the floor to anybody who wants to start.

22 Excuse me. I see no hands.

23 EDF, okay.

24 MR. DENISON: I would like to speak, first, to
25 experience with respect to since the guides have been out.

1 My view on this, based on, admittedly, somewhat random
2 encounters with such claims is that unqualified recyclable
3 claims are still rampant and I am going to embarrass
4 somebody over on that side of the table.

5 This is an envelope I got from our Environmental
6 Protection Agency --

7 MS. MADIGAN: No visual submissions. You may just
8 have to refer to it.

9 MR. DENISON: I am looking at an envelope I got
10 last week from the Environmental Protection Agency. On the
11 back it has the Mobius loop and it says,
12 "Recycled/Recyclable" and then there is some information
13 about the recycled content. But absolutely no information
14 about recyclable. And, in fact, I cannot recycle this
15 envelope in the program in my office because they do not
16 accept manilla-type materials.

17 Case in point -- I still see, on numerous
18 products, totally unqualified claims of recyclability and,
19 in fact, rarely do I see claims that use the kinds of terms
20 that are outlined in the guides.

21 In terms of the current disclosure requirements, I
22 would lay out the following hierarchy of preferences for
23 EDF. The first, as I have already articulated, is I do not
24 believe these claims add value to consumers or to local
25 recycling programs at all and that the responsible company

1 should not be making such claims. I realize that there are
2 limitations to that approach and I do not necessarily expect
3 that that would be the position that is adopted by the
4 guides.

5 Barring that approach, it seems to me that the
6 more reasonable approach would be to require quantitative
7 disclosures with regard to the recycling rate of the
8 material on a national level, at a minimum, and, ideally,
9 two additional types of disclosure -- an access measure of
10 access to communities or what have you. I think that is
11 fraught with a number of very thorny problems with regard to
12 how access is defined and so forth that I think are going to
13 be very tough for the FTC to grapple with and that is why I
14 think the recycling rate really is the bottom line.

15 But, secondly, I think there needs to be -- to the
16 degree that there is not universal access -- there needs to
17 be information provided to the consumer that is actionable.
18 Not that they have to go out and do a major investigation,
19 but that they have immediate access through whatever
20 disclosure is made to a source of information that answers
21 the question about the availability in their community. I
22 think there should be serious consideration given to the
23 notion of thresholds for both the recycling rate and the
24 access information before such claims ought to be made at
25 all.

1 If we are going to have a claim of "recyclable"
2 being able to be made that then has quantitative information
3 that the recycling rate is 0.5 percent, even though that
4 information is there, I am not at all convinced that that is
5 a sufficient disclosure to get rid of the misimpressions
6 that that claim would provide.

7 MS. MADIGAN: Okay. We have the American
8 Association of Advertising Agencies, followed by Soap and
9 Detergent Association.

10 MR. SHOUP: Yes, Hal Shoup.

11 To a certain extent this seems like deja vu all
12 over again, as Yogi Berra said. Three years ago, we
13 expressed a concern that claims relative to the
14 environmental attributes of the products had become the
15 third rail of advertising. You touch them and you die. And
16 our concern was the more that the requirements grow specific
17 or the more that the requirements grow in terms of what you
18 have to say, the less that marketers are going to be
19 inclined to make those claims.

20 Certainly, in the terms of packaged goods, there
21 is a limit to the availability of space in which you can
22 make claims and it might well be the easier course of action
23 to simply not make the claims. And our feeling is that
24 national advertising and the labeling of packaging can and
25 is a powerful means of creating awareness, reminding the

1 public of recycling, and we think that is very valuable and,
2 in fact, has been a part of the growing sensitivity towards
3 environmental attributes of products in the consuming
4 public.

5 Many of you will recall that some years ago, the
6 presence of fiber in cereals was determined by the FDA to be
7 very helpful in preventing colon cancer and for many years
8 it was not possible, it was not legal, for an advertiser to
9 refer to that particular characteristic of a cereal, so they
10 did not make it. Then the rules were changed in terms of
11 advertising and cereal manufacturers were allowed to refer
12 to the presence of fiber and to do so in their national
13 advertising. And, as a result, the use of fiber cereals
14 increased enormously by the public, to the betterment of
15 their health. And I think in this area of environmental,
16 that might be a useful parallel.

17 Insofar as the guidelines are concerned,
18 specifically, I have heard from at least one very, very
19 major marketer of consumer goods and, in fact, a year ago
20 they were an active participant in the hearings that were
21 held on this subject and they have reported to me that, in
22 fact, the man that was responsible for environmental
23 advertising, environmental marketing, no longer has that
24 job. He is still a resource in that area, but the job is
25 not filled. They feel that the guidelines and the action of

1 the Federal Trade Commission were instrumental in solving
2 this particular problem on a national basis and, as a
3 result, it is not a problem any more for them.

4 MS. MADIGAN: Okay. Soap and Detergent, followed
5 by CSMA.

6 DR. PFLUG: I think the point you have to consider
7 in some of the discussions --

8 MS. MADIGAN: Microphone and identify yourself
9 again.

10 DR. PFLUG: All right.

11 Jerry Pflug, Soap and Detergent Association.

12 MS. MADIGAN: Stay by the microphone, though, so
13 they can hear your comments.

14 DR. PFLUG: Okay.

15 I think the point that has to be made here is that
16 many of us represent nationally advertised product and
17 people making comments about they would like certain
18 information on labels, think about all of the different
19 communities throughout the United States and the individual
20 labels that you would have to prepare for each product with
21 regard to the distribution chain and the cost to people and
22 industry in trying to do that. It is just not possible in
23 today's world with regard to distribution parameters to be
24 able to specifically make labels up for specific areas or
25 specific communities. You cannot do it.

1 I mean, you look within your individual state in
2 California, for example. Think of all the different
3 communities you have and think how different labels would
4 have to be prepared for how many different counties and how
5 many different communities to make it have an impact. And
6 then the question is, isn't it better to go a little
7 overboard by asking people to consider recycling than to say
8 nothing at all.

9 MR. MURRAY: No.

10 MS. MADIGAN: I have a special request, a
11 clarification of a point just made by Soap and Detergent.

12 DR. PFLUG: All right.

13 MS. MADIGAN: I will entertain that.

14 MR. DENISON: Richard Denison, EDF.

15 I was not maintaining that there should be
16 localized labels. I was maintaining there should be
17 national rates and national access figures which could be
18 applied to the product wherever it was sold.

19 MS. MADIGAN: Does that alter your --

20 DR. PFLUG: No, not at all.

21 MS. MADIGAN: Okay.

22 CSMA, followed by Food Services.

23 MR. KIEFER: Thank you. Robert Kiefer with the
24 Chemical Specialty Manufacturers Association.

25 I would like to give a case example of one

1 particular material and that is regarding recycling of steel
2 aerosol containers. We gave some figures earlier about the
3 recyclability of steel and then we also gave you some
4 figures on the increasing recyclability of steel aerosol
5 containers.

6 Back in 1994, CSMA received official approval from
7 the EPA on alternative aerosol recycling labeling statement
8 that may be used by pesticide registrants on pesticide
9 aerosol containers and this was in Pesticide Registration
10 Notice 94-2 and with the use of this recycling message, it
11 helps not only pesticide aerosol products but also all
12 aerosols because it will clearly convey to consumers and
13 recyclers that aerosol cans can be safely and properly
14 recycled. It also will expand community involvement in
15 recycling programs. As was evidenced, steel is the most
16 recycled commodity item and therefore what we are trying to
17 do is educate consumers that aerosol cans can, indeed, be
18 recycled as well.

19 In our statements, we had asked for modification
20 of the statement for other than pesticides to include, "When
21 empty, this container may be recycled in the increasing
22 number of communities where steel aerosol recycling is
23 available." The option of identifying the container
24 material either in the disposal statement or via mark, there
25 is a steel recycling symbol for that.

1 Some companies also use the statement, in an
2 increasing number of communities, they will sometimes
3 include an 800 number which then, when people call the 800
4 number, they can direct them to the Steel Recycling
5 Institute which keeps a database on which communities do
6 accept aerosols. And since the rate of change can be
7 greatly -- even though on a national level -- it is not
8 viable to keep reprinting labels with this newest and latest
9 data so an alternative means might be use of a 1-800 type
10 number where they can find this information out.

11 MS. MADIGAN: Okay.

12 Food Services, followed by Paperboard Packaging.

13 MR. KRAMER: Okay. Kim Kramer, Food Service and
14 Packaging Institute.

15 I would like to make the comment again that our
16 association is proposing that we do have the right to use
17 the word "recyclable" with the qualification. All we are
18 asking for is a positive qualification to it so we do not
19 suppress recycling. But the idea of putting percentages on
20 labels or whatever, you could never keep up with it. You
21 would have a product on the grocery shelf that would have
22 three or four different recycling rates. Things move
23 through the inventory system very differently.

24 It is also misleading, I think, if you are putting
25 out a recycling rate -- let's say it is a national, for

1 instance -- of 20 percent. Well, in Oregon, it might be 32
2 percent for that material. In the state of Montana, it
3 might be five percent. I think that would be misleading to
4 some people, too. Again, we would like to keep it generic.
5 Keep costs down for the ultimate consumer.

6 Thank you.

7 MS. MADIGAN: Okay.

8 Paperboard Packaging, followed by GMA.

9 MR. MC INTYRE: I am John McIntyre.

10 I am going to suggest, based on our comments, that
11 there should be an easing on the current restrictions on the
12 use of the term "recyclable." I say easing, not elimination
13 of the restrictions. And the reason I say that, in our
14 industry, the paperboard industry, there has been a
15 tremendous demand for paperboard in the last few years.
16 Tremendous market for the product. Of course, we believed,
17 I guess, that old saying, "If there is a market, it will
18 come."

19 But I think the guides can serve an extremely
20 useful purpose not only as a marketing indicator, but as an
21 educational forum, just like the nutritional labeling
22 guides. By that I mean it can help promote programs
23 critically where there is a market and where recycling is
24 really getting off to a promising start.

25 The current definitions for collection programs in

1 the guides, I believe, is a substantial majority of
2 communities must be able to recycle the package. We would
3 suggest that it should say, "a significant number of
4 communities."

5 Again, I think there should be some protection for
6 the consumer and I would suggest three possible ways of
7 doing this. One is a technical matter. A product that is
8 being recycled, there is a claim being made, should in fact
9 be capable of being regenerated into a new package. In our
10 case, hopefully, a similar product. Recycled content, in
11 other words.

12 There also could be a requirement that the
13 advertiser must be able to document -- again, the word is
14 "document" -- that there is an economically viable market
15 for the material -- in our case, paperboard -- in that
16 location.

17 And, thirdly, we believe there should be a
18 requirement that the term "recyclable" should be followed by
19 the noun, "package" or "carton" so that it will eliminate
20 any implication or reference that that package is, in fact,
21 recyclable. The consumer will know whether that product in
22 his hand, that package, is recyclable, not just a generic
23 term.

24 I would also like to say that, as 3M spoke
25 earlier, no one wants to do something that will jeopardize

1 the goodwill of the consumer. That is all our first
2 efforts. We are selling a product.

3 I think the term "recyclable carton," in our case,
4 is the only kind of claim that the consumer can easily and
5 readily verify. By that I mean, all he has to do is try to
6 recycle it. If it does not recycle, he knows right away and
7 there has been no harm done in any way and I think that is
8 paramount to all of us, that we do not say anything that is
9 not factual and accurate. In our case, where we know there
10 is a market, where it is growing dramatically, we think the
11 FTC guides can help promote that as long as there is, in
12 fact, a market for the product.

13 MS. MADIGAN: Okay.

14 GMA, followed by OSPiRG.

15 MR. MAC LEOD: Yes. I was fascinated by some of
16 the ideas that the gentleman from EDF mentioned with regard
17 to what he would like to see associated with recyclable
18 claims. I think that would be very interesting information,
19 too. But it seems to me the one problem with those kinds of
20 disclosures is that they would not help you at all in
21 determining whether your envelope was recyclable in your
22 office program. That envelope is recyclable in my office
23 program and there is no way that the national, state or even
24 local retailer could possibly convey the information to you
25 about how your office happens to handle its recycling.

1 We tried very hard to think of qualifications that
2 would tell people something that they already do not know
3 and whether those qualifications were appropriate to avoid
4 deception. I do not think that there is any qualification
5 that would go on a claim that would tell you whether or not
6 your envelope is recyclable in your office program. That is
7 something that simply has to be information that you get
8 from another source.

9 If it is the case that the qualifications do not
10 work, then why do we have the qualifications in the first
11 place? What is the purpose? Remembering that the purpose
12 of the guidelines is to avoid deceiving consumers, what is
13 the purpose of adding a qualification if that information is
14 something that is already in the minds of consumers?

15 MS. MADIGAN: OSPIRG, followed by National
16 Recycling Coalition.

17 MR. TAYLOR: A couple of comments to make on this.
18 Basically, I believe I would agree with EDF that
19 when you get into the issue of --

20 Sorry, Chris Taylor, OSPIRG. I forgot to do that.
21 -- defining access is going to be a very difficult
22 problem for the FTC to wade through, that you are going to
23 encounter considerable differences among the people that are
24 at this table and out in the larger community whether one
25 facility in a state you have to drive to that is open from

1 11 to 3 on Saturday constitutes access or if you need to
2 have the access through curbside programs or through
3 regularly used depot facilities. I think that that is going
4 to be a definitional nightmare for FTC, so I would warn that
5 that is probably an area that would be better to avoid.

6 I think the 800 number is a preferable option.
7 Many companies and associations have gone with that option.
8 That, again, addresses the issue of taking the onus off the
9 consumer and back onto the manufacturer because let's
10 remember, these claims, no one is forcing companies to make
11 these claims. These are entirely voluntary claims and, for
12 the most part, they are being made in an effort to capture a
13 growing green market. Companies are putting these claims on
14 there so that they can move more product and no one is
15 telling them they have to put them on there. So asking
16 companies to put the 800 number or something like that so
17 that people can find out the information easily, I think, is
18 really the best solution because I do agree that for
19 national manufacturers to put all that detail on the package
20 would take up the whole package.

21 But I also would like to comment that thresholds,
22 I think, are something that should be looked at to avoid the
23 basic deception issue. Rates do change a lot, but I have
24 seen many examples of products that are out there who have
25 infinitesimally small recycling rates on a national, state,

1 or any other basis that do say, "recyclable," and that is
2 the kind of deception that we are trying to prevent here.
3 And without splitting hairs, I think you could establish
4 some thresholds that there could be a consensus around that
5 that would keep that problem under control.

6 MS. MADIGAN: Okay.

7 National Recycling Coalition, followed by
8 Californians Against Waste.

9 MR. COLDEN: Bud Colden, National Recycling
10 Coalition.

11 First, I would like to get back to the questions
12 that were asked here, which was what has been the experience
13 with recyclable claims. I do not know that there has been
14 an awful lot that has been done with that. I believe that
15 the University of Utah did some work in terms of determining
16 what has happened with some recycling-related claims.

17 I think, from observation, we know within the
18 recycling community and probably the large companies,
19 anyway, that have taken a real aggressive stance on getting
20 the correct information out and, in fact, many of those
21 companies were the original petitioners to FTC. The NRC
22 position on this is that the FTC guides on recyclable have
23 worked well. We would encourage FTC to not back off on
24 those guides related to recyclability, that they do convey
25 good information, that if someone is interested in

1 determining whether something is recyclable, that that
2 really gives them a basis for determining whether it fits
3 within their community -- which leads me into another part
4 of the National Recycling Coalition's policy and that is
5 that recyclability is a local issue. It fits right in with
6 what the Soap and Detergent Association said. We agree with
7 that.

8 Recyclability is a local issue and to try to label
9 a nationally-marketed product to deal with each one of those
10 municipalities is an impossible task. So what, then, does
11 NRC have to offer instead of that? And part of NRC's policy
12 is to encourage the identification at the point-of-purchase
13 on the shelf. That shelf labeling -- if we have information
14 that is important enough to communicate to consumers, we
15 should be prepared to deliver it to them on the shelf within
16 that community.

17 MS. MADIGAN: Let me just clarify. We are talking
18 about two questions simultaneously, which are the third and
19 fourth questions.

20 Next we have Californians Against Waste, followed
21 by American Forest and Paper.

22 MR. MURRAY: Mark Murray with Californians Against
23 Waste.

24 Let me state the obvious. We are here at the
25 Federal Trade Commission, not the U.S. EPA. There is a

1 reason for that. What we are talking about is ways of
2 selling soap or yogurt or tuna fish. We are not talking
3 about programs that are specifically designed to promote
4 increased recycling.

5 Around the table, with NRDC and EDF and OSPIRG and
6 Californians Against Waste, the NRC, you have a lot of
7 advocates of recycling and I do not think you have ever
8 heard us go out there and say, "Please put a recyclable
9 label on your product because that is essential to making
10 recycling work in America," because we do not feel that way.

11 We would prefer that you err on the side of not
12 putting recyclable labels on your product. I mean, I think
13 we are clear on that point. If only a few products that are
14 universally recyclable are using that label, that label is
15 going to have a higher value. So let's define that safe
16 haven, that threshold, for products that should be able to
17 use an unqualified label of recyclable and I think that the
18 FTC guides can help us in that matter.

19 I think that the framework of that is something
20 that, frankly, I have discussed and, in fact, prepared as
21 amendments to legislation in California with representatives
22 of the paper industry and consumer products companies only
23 to have those companies pull out of that at the last minute.
24 But, basically, a three-part threshold: One is that the
25 product can achieve a certain recycling rate. If it has a

1 50 percent recycling rate or higher nationally, well, that
2 is a product that probably should have a safe haven to be
3 labeled as recyclable.

4 Recycling access. Curbside recycling right now is
5 a very organized institution in this country. In
6 California, you can pull down from the Internet a database
7 that will tell you exactly how many households in California
8 have access to different plastic resins, different kinds of
9 paper, different kinds of material. So coming up with the
10 access of materials -- curbside recycling access -- is a
11 very doable test. I think if 50 percent of the curbside
12 programs in the country provide an opportunity to recycle
13 the material, then that probably should be a safe haven for
14 labeling it recyclable.

15 Another absolute safe haven is that if a product
16 can be returned for recycling where it is distributed, then
17 unqualified claim of recyclable. Those would be products
18 and packaging that, frankly, if they could meet that test,
19 they frankly deserve the recognition and the value that the
20 public would view in that product being labeled as
21 recyclable.

22 Now, in terms of qualified claims, I think that
23 the existing FTC guidelines are too open-ended. Frankly, I
24 like the recommendation from the states attorney generals
25 better than our own in terms of defining if you have a

1 product that is not universally recyclable, define very
2 specifically the amount, the percentage of communities,
3 where it is not available. And, again, I think you can use
4 a curbside access number. It is not something where
5 individual companies necessarily would need to do their own
6 individual resource. The National Recycling Coalition
7 could, I think relatively easily, with proper EPA funding,
8 keep track of the recycling access for certain materials.

9 So I think that in terms of qualified claims,
10 recycling access is the key. I think that that is a doable
11 number, percentage, to come up with. It would change over
12 time but we are talking about being able to nationally label
13 products -- uniformly, not from community to community --
14 with, "This product is recyclable. It may be recyclable in
15 your community. It is not recyclable in 75 percent of
16 communities." Something along those lines.

17 MS. MADIGAN: Okay.

18 We have American Forest and Paper, followed by
19 Professor Meyer.

20 MR. BUNTEN: This is Peter Buntten with American
21 Forest and Paper Association.

22 A couple of comments on some things that have been
23 said, but also to go back, first of all, to the questions as
24 they are on the sheet.

25 The guides are working from the perspective of

1 AF&PA and the paper industry. Some of our experience has
2 been since the guides were issued -- and I think I mentioned
3 this in one of my earlier comments -- we have urged our
4 customers and consumers who call us and ask for information
5 to practice caution and that the FTC guides -- now, at
6 least, that we have been able to get the states to align
7 themselves -- are the document that should be referenced.
8 And if they can qualify for recyclable claims under the
9 existing guides, that is what they should be using. So we
10 have urged caution in that respect.

11 Secondly, as I mentioned, the paper industry, as
12 well as other material industries and a number of state
13 organizations as well, have worked successfully over the
14 past three years to get the four or five existing state
15 labeling regulations which were in conflict with the FTC to
16 agree to align themselves with the existing FTC guidelines.
17 If the FTC were to make any significant changes in those
18 guidelines, we would likely find ourselves back at a number
19 of disparate proposals within each state to do their own
20 thing once again. So the guides have been very successful
21 in that respect.

22 What changes might we recommend? I would concur
23 with my colleague from Paperboard Packaging that the FTC
24 should consider a change from the current substantial
25 majority to perhaps something like significant. I reference

1 here as well -- and in our comments we did this -- the work
2 that is going on in the International Standards
3 Organization, ISO 14,000, where they are looking at
4 international standards for these types of single-attribute
5 claims and, indeed, that is the qualifier word that they
6 have recommended. That an unqualified claim of recyclable
7 can be made if the material or product is recyclable and is
8 at a significant level of communities or a significant
9 number of people have access. Below the significant, then
10 you have to put a qualifier and that is the recommendation
11 that FTC has as well. So the word "significant" rather than
12 "substantial" majority is something that the FTC should look
13 at.

14 One point made by one of the people here in terms
15 of why the claims were made, I want to go back with
16 something I started out with this morning and that is we are
17 promoting recyclability within the paper industry because we
18 have a critical fiber need. There have been numerous
19 studies undertaken recently by the Food and Agricultural
20 Organization as well as ones that we have commissioned which
21 indicate that, worldwide, we are in a fiber tight situation
22 at least for the next 30 years. So we are promoting the
23 increased recovery of paper and we are looking at
24 alternative fibers as well. So we want to push paper
25 recycling claims because we need to get more fiber out of

1 the waste stream.

2 And, lastly, these are national standards and a
3 lot of discussion and the arguments that you are hearing
4 today I think you heard three years ago and I think the FTC
5 came up with what would generally be regarded as a very
6 reasonable solution. And there are certain areas where
7 probably most of us would like to see a little tweaking
8 going on. But we need a simplified answer that we can apply
9 nationally and I think the FTC guides on recyclability
10 claims have done that.

11 MS. MADIGAN: Okay.

12 We are running a little close on time. I do not
13 want to muzzle anybody, but I will encourage brevity, if it
14 is possible.

15 Next, we are going to have Professor Mayer -- is
16 it Mayer or Meyer?

17 MR. MAYER: Mayer.

18 MS. MADIGAN: I am going to leapfrog over Food
19 Services because he had a chance to speak before. But we
20 will come back to you before we close out, and follow with
21 the National Soft Drink Association.

22 MR. MAYER: Just a couple of quick comments based
23 on the Utah tracking study and our most recent wave of data
24 collection.

25 There is some evidence that recyclability claims

1 are actually beginning to decline since last year. Our
2 study is by no means representative of the entire
3 marketplace. It is designed to reflect the reality of the
4 everyday shopper going into a supermarket.

5 We are finding a small decline in recyclability
6 claims largely driven by the laundry detergent and the
7 dishwashing detergent categories in our studies. So
8 recyclability claims are on the decline.

9 There are very few qualified claims at all in the
10 marketplace. So we really do not have a lot of experience
11 about knowing how consumers will react to either positive or
12 negative qualifications because there are not very many out
13 there. There are not even very many recyclable claims, if
14 you mean literally the word "recyclable," as on the envelope
15 that you mentioned. An increasing percentage of the claims
16 are of the exhortation nature, "Please Recycle." There are
17 very few recyclable claims.

18 I think, finally, it is pretty clear that
19 companies are not going to give qualifications in terms of
20 rights or probably even access and I am not even sure rates
21 would be very useful because for many categories, the rates
22 are really driven by recycling that is out of the experience
23 of the consumer. By that I mean, it might be that the
24 recycling rates are driven by activities that go on at the
25 institutional level rather than the household level. So

1 even the rates might not be very useful to the consumer.

2 MS. MADIGAN: National Soft Drink, followed by
3 Attorneys General.

4 MR. STACK: Gifford Stack, National Soft Drink
5 Association.

6 In case we are keeping score, I want it clearly
7 understood that the Soft Drink Association also is an
8 advocate of recycling and for recycling.

9 MS. MADIGAN: Is anyone here against recycling?
10 Just checking. Okay.

11 MR. STACK: Is my time up?

12 MS. MADIGAN: No.

13 MR. STACK: To the question, the guides work. It
14 is reflected by what the states are doing. And part of the
15 reason I think they work is the principle that was applied
16 by the FTC. We congratulate the Commission for that and
17 would say, keep it the way it is. Do not change it.

18 Last, 1994, 78.5 billion soft drink containers
19 were used. Forty-eight billion were recycled. Quick math,
20 that is 61 percent. Nearly all NSDA members put an 800
21 number on all of those glass, plastic or aluminum packages
22 or the label and we get hundreds of thousands of calls every
23 year to our consumer hotline and it has been estimated that
24 one-half of one percent relate to the environment in general
25 and, as close as we can estimate, about one-fifth of one

1 percent of those calls, of all calls, concern the package,
2 per se.

3 So the point is that there is not a lot of
4 confusion. There is not a lot of misunderstanding. And
5 this will leapfrog into the final fifth question. All of
6 our packages have the words, "Please Recycle" and many have
7 the chasing arrows with it. So there is not a confusion as
8 to what that encouragement message is or what they should
9 do.

10 Some of you also have seen beverage packages with,
11 "Please Don't Litter" on them. It does not say where you
12 should take the can, what you should do with that bottle.
13 But it is just exhorting you, as was mentioned earlier, to
14 properly dispose of the package.

15 And, finally, if you cannot get us on the 800
16 number, you can certainly contact the material suppliers.
17 Their 800 number. Steel has a very good one. Or the
18 representatives that work out in the field for the material
19 industries.

20 Thank you.

21 MS. MADIGAN: Okay.

22 I am not going to recognize anyone else for just a
23 few minutes so I can get through the list I have because we
24 are running short on time. But we will come back and
25 anybody who really needs to say something, I will give them

1 a chance.

2 We have the Attorneys General, followed by 3M.

3 MS. GRIFFIN: Mary Griffin, State Attorney
4 Generals Task Force.

5 The task force recommends the use of specific
6 qualified recyclability claims and the main point I want to
7 raise before the FTC, since the purpose of this is to guide
8 your consideration of your guidelines, is we would like you
9 to actually look and investigate whether the "check to see"
10 qualification is really accomplishing good results as far as
11 reducing the amount of potential consumer deception.

12 And we bring this to your attention because the
13 task force is troubled by certain studies -- for example,
14 the COPE study in 1993 asked the question to consumers, "If
15 a package is labeled 'Recyclable -- Check to see if
16 recycling facilities exist in your area,' does that mean
17 that a collection program exists in your community?" And 43
18 percent of the respondents to that question said yes -- a
19 definitive yes. So we question whether "check to see" is
20 sufficient.

21 MS. MADIGAN: 3M, followed by NRDC.

22 MS. ADAMS: Georjean Adams, 3M.

23 A couple of comments have occurred before relative
24 to why would we even want to make any kind of claims and I
25 guess I would lay it to you, ask for advice, if you will.

1 We like to get recognition, sales, that we have made good
2 choices in selecting recyclable materials for our products.
3 How do we do that?

4 Maybe it is not going to be recyclable in your
5 community, for you, but it will be for other people. And,
6 over time, it will grow. And so we want to get some
7 recognition. We have lots of people in our product
8 development groups who are looking to, "How can I switch
9 from PVC to corrugated," or whatever, so that they can go to
10 a material that is more easily recyclable, and "What can I
11 say about that?"

12 My answer to them is, do not put recyclable, one
13 word, in a starburst on your package. It just does not
14 communicate. Go and put all these words -- and then they
15 start groaning and giving me faces -- that basically says,
16 "We have switched from this material to that material," and
17 let the fact speak for itself and let the consumer read into
18 it the fact that, "Oh, that is a good change."

19 Most of our products tend to be to other
20 industries, other companies, rather than consumer products
21 and in that case, we are dealing with a slightly more
22 sophisticated consumer who knows about whether or not they
23 have materials that they can recycle and they have other
24 waste streams they are adding to. So there is a little bit
25 more advantage to that. But we can get away with, if you

1 will, just stating the facts and let them read between the
2 lines.

3 But I would ask those of you who are against the
4 use of the term "recyclable" or are looking for some kind of
5 qualification, how do we get credit where, I think, indeed,
6 we do deserve some credit for moving to better materials.

7 MS. MADIGAN: Okay.

8 NRDC, followed by Ford. That will be the last
9 comment before I turn to the FTC, but we will give you a
10 chance, one last time, to get your two cents in.

11 MS. DE CARLO: Anjanette DeCarlo, NRDC.

12 I would like to have something clarified from
13 American Forest and Paper, if possible, quickly. When we
14 talked about defining significance, Californians Against
15 Waste gave us some actual numbers and they gave us some
16 levels of what they felt were significant thresholds and I
17 would like to know what that significance was for you.

18 MS. MADIGAN: Since it is a question for
19 clarification, are you prepared to respond or give some
20 reaction?

21 MR. BUNTEN: Our position --

22 MS. MADIGAN: Identify yourself.

23 MR. BUNTEN: Peter Buntten, American Forest and
24 Paper Association.

25 There was an ISO meeting about five days ago in

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1 Korea and the issue of how to define the word "significance"
2 is still under determination. Whether it is 50 percent, or
3 40, or 60, or 32, we do not have a position on what that
4 exact number level is yet. It is clear, though, that it
5 would be lower than what the FTC would define as substantial
6 majority.

7 MS. MADIGAN: Does that answer your question?

8 Okay.

9 And, finally, Ford?

10 MR. DUKE: We have two comments and my colleague
11 is going to address the second, just we think that the
12 guides, as currently worded, are appropriate and workable.
13 We have some concern -- and it may be a unique concern -- to
14 a manufacturer of durable goods that are purchased by
15 consumers. But the guide should not be applied inflexibly
16 and needs to take into account the realities and, in our
17 case, there is no curbside recycling of automobiles -- at
18 least, not that I am aware of, except in New York City.

19 However, the high rates of recovery and actual
20 recycling demonstrate that automobiles are largely
21 recyclable and I think that, again, maybe the guides were
22 drafted with more, sort of, consumer on the shelf products
23 in mind. But we just need to be careful as they are
24 applied.

25 And my colleague wants to address some

1 international issues.

2 MS. MADIGAN: Very quick, if we could.

3 MS. DAY: Thank you.

4 MS. MADIGAN: Identify yourself anew for the
5 transcript.

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

7 One of the issues that we have run into is with
8 the recyclability is that the FTC, the way the words are
9 crafted, imply a point-of-sale implication; i.e., if you
10 purchase a product that day, go home, put it in the bin that
11 night, what will happen to it. And, as a global company, we
12 have run into a very interesting issue whereby the FTC,
13 being the first governmental group to put out guides of
14 definitions, we have sort of adhered to those. Yet when our
15 vice-presidents go out and do press conferences and talk
16 about products, the public expectation has determined what
17 the definitions are in different parts of the world.

18 As an example, in Europe, one talks in terms of
19 future recyclability, not necessarily at point-of-sale of
20 the product but what may be technically feasible at some
21 point in the future. So for the exact same product, our
22 vice-president has to present two different sets of numbers
23 depending upon which country they are in. Now, this is very
24 confusing when you have an American journalist going to an
25 auto show in New York, L.A., and then off to Frankfurt and

1 Paris and they see the exact same product, yet two different
2 sets of numbers.

3 So we have had to put constraints upon ourselves
4 as a company because it does not make anybody comfortable to
5 go out and present two sets of numbers. We present one set
6 of numbers and we base it off the FTC guides. However, it
7 is still an accepted behavior by other companies in other
8 parts of the world that it is okay to do this.

9 The guides have provided a benefit in terms of
10 influencing industry definitions. But, at this moment in
11 time, there is no other agency that we know of that has
12 formally drafted definitional guides for environmental
13 claims.

14 (Continued on the next page.)

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1 MS. DAY: So we are kind of struggling with this.

2 MS. MADIGAN: Thank you. What I would like to do
3 at this point is turn to the FTC staff, and ask if you have
4 any other follow-up or clarification questions on this
5 question before we move to the final question?

6 Carolyn?

7 MS. COX: This is Carolyn Cox from the Federal
8 Trade Commission. The question is addressed to the GMA.
9 When I read your comment, I got the impression that your
10 analysis of the COPE survey data led you believe that
11 unqualified recyclable claims do not carry an implication
12 that facilities are locally available. Yet, my
13 understanding of your proposed modification was that it
14 appeared to suggest that qualifications may be necessary in
15 some instances.

16 I was just wondering if you could give me an
17 example of an instance in which you think a qualification
18 would be necessary, if you think they ever would?

19 MR. MACLEOD: This is Bill MacLeod for the Grocery
20 Manufacturers.

21 The way that we propose that very modest and
22 subtle amendment to the guides was done for a purpose. I
23 can't think right now of a particular claim that might raise
24 the implication that says this is recyclable in your
25 community. But the way the guides are worded right now,

1 there seems to be almost a presumption in favor of that
2 interpretation. It seems to me that the answer to the
3 question ought to be anchored to the context in which the
4 claim is made. If we cannot be relatively confident that a
5 claim either conveys or does not convey, the guidelines
6 should probably allow the context to rule and not create a
7 presumption either way.

8 We think that in this case, given all the evidence
9 that we have seen so far, and given the common sense that we
10 can all relate to, what these claims convey, the best way
11 for the guidelines to handle the claims is to do it the way
12 the FTC normally approaches advertising, and leave the
13 question for the context itself.

14 MS. MADIGAN: Carolyn, is that sufficiently
15 responsive?

16 MS. COX: Yes.

17 MS. MADIGAN: Okay. Lee.

18 MR. PEELER: This is Lee Peeler with the FTC.

19 We had a couple of people talk about the use of
20 recycling rates as a more objective trigger for determining
21 when qualifications should be made. And Rob Mayer indicated
22 that he thought there might be some misleading aspects to
23 that because it is driven by a lot of things other than
24 recycling.

25 I am wondering if anyone else has any comments on

1 the desirability of using a recycling rate as opposed to an
2 access to recycling facilities' rate?

3 MS. MADIGAN: NRC and then EDF.

4 MR. COLDEN: Bud Colden from National Recycling
5 Coalition.

6 Many of us have given a lot of thought to this,
7 and engaged in a lot of debate over coming up with numbers
8 to determine recycling rates. We would encourage FTC to
9 stay with the language they have, and not try to over
10 engineer a determination of recyclability. Because I can
11 tell you from having spent years trying to engineer it, it
12 is not amenable to engineering.

13 MS. MADIGAN: EDF followed by Californians Against
14 Waste followed by Ford.

15 MR. DENISON: Richard Denison of EDF.

16 I think the fundamental concern that we have the
17 guides currently is that they get the principal right, but
18 the examples are very contradictory. It is okay to say,
19 check to see if recycling facilities exist, but it is not
20 okay to say, recyclable where facilities exist. I see no
21 difference whatsoever in those two fundamentally to the
22 consumer.

23 Our view is that the ideal situation would be that
24 these claims not be made because there are problems with any
25 approach to qualifying them. However, I do not believe that

1 is a likely outcome, and therefore, we are faced with a less
2 than ideal solution.

3 My concern is that a consumer needs to have some
4 ability to understand the extent to which that material
5 which is claiming to be recyclable actually is being
6 recycled. It is not a perfect solution to reveal a
7 recycling rate, but I think that is the most workable
8 situation. It can be done annually, semi-annually so you do
9 not have to keep changing labels all the time. I think all
10 those details are easily worked out. But there needs to be
11 something that tells a consumer in a realistic way the
12 extent of recycling. It is not perfect. It is not going to
13 tell me, I agree there will be people still misled by that
14 kind of claim. The only way to get rid of that is to get
15 rid of the claim entirely.

16 MS. MADIGAN: Californians?

17 MR. MURRAY: Mark Murray.

18 Just very briefly, when I was suggesting different
19 percentages, I was not trying to pin down and narrow what
20 all the aspects of a recyclable term might be, but rather to
21 suggest some safe havens that might be created. So that if
22 a threshold could be met, that would take any question off
23 the table. And frankly, it is in order to provide some
24 comfort to a company like 3M so they can know there is a
25 standard that we do not have to worry about that claim, and

1 we do not have to have a lot of complicated language on it
2 because this product, a soft drink bottle is universally
3 recyclable. You know, an aluminum can is universally
4 recyclable. So I think my suggestion of rates or access or
5 the fact that you can take it back would be to not say
6 necessarily to find the only things that are recyclable, but
7 simply to suggest some safe havens.

8 MS. MADIGAN: Finally, Ford.

9 MS. DAY: I guess I would have to go along with
10 the idea of safe havens as was mentioned by the Californians
11 Against Waste. This is Susan Day with Ford.

12 I think for the industries where we do not have
13 curbside collection as my colleague pointed out, the
14 availability discussion becomes a little difficult to
15 compile. I mean we have such a huge amount of vehicles
16 being recycled. I mean how does one say your availability
17 is not going to be in just one town of three out in the
18 middle of Indiana. I mean that is going to get to be a
19 little problematic from an availability description.

20 We do need to be able to talk about the good
21 things that are happening with automobiles, and the fact
22 that so many of them are recycled. So it goes back to 3M's
23 discussion, we want to talk about the things that are
24 positive that consumers are interested in knowing. And too
25 many restrictions, you know, over engineering it. I mean I

1 work for a company full of engineers, we like to do those
2 things, but the consumer just does not understand that.
3 There has to be a simplified way of getting the message to
4 them that, you know, yes, it is not a perfect world. You
5 are not going to satisfy 100 percent people all the time,
6 but for a majority of people, this is an accepted practice.

7 MS. MADIGAN: We are really running late on time.
8 So I am going to ask two questions. First, is there anybody
9 who has not yet spoken to this question that would like to
10 make a 15 to 30 second statement who has not yet spoken to
11 this question? Okay.

12 Secondly, there are two groups who have spoken,
13 but who have indicated they might like to make one last
14 statement; Food Services and OSPIRG. Do you still want to
15 do that? Okay.

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

18 I did have four items, but I will cut it to two
19 quickly. One of those items is the King County data that
20 was mentioned earlier, there is a piece of information in
21 there that I think is germane to our subject. They ask a
22 question to the consumers asking them, what was more
23 important to them for information, recyclability or
24 recycled? Fifty-five percent of the respondents said,
25 finding out about the recyclability, what they can do with

1 the product after they use it was most important to them.

2 Twenty-seven percent said it did not make any
3 difference one way or the other, they were both important.
4 So in retrospect, 82 percent said, recyclability and knowing
5 about that was important to them. I think we have to
6 address that as we talking about what we do with our
7 products.

8 The second item I wanted to address is shelf
9 labeling which was suggested as an alternative. As a
10 manufacturing individual, I have to object to that from the
11 very standpoint of liability. If shelf labels are used in a
12 store, that shelf label will be used at the whim of the
13 store manager. I may or may not have any control over that
14 store label, how it is used on the shelf. I do not have
15 control there, but I do have control on my product. I have
16 to have the feeling that if that label is used
17 inappropriately at the store level on the shelf, I think I
18 know who is going to be held responsible, and I do not like
19 that liability.

20 MS. MADIGAN: OSPIRG, one last comment. Then, we
21 will move on.

22 MR. TAYLOR: Chris Taylor, OSPIRG.

23 The comment I wanted to make was with respect to
24 the experience with the guides. I think that the main, from
25 the environmental standpoint or OSPIRG's standpoint at

1 least, the real inadequacy is that they don't have the force
2 of law. Right in the very beginning of the guide, it says
3 they do not have the force of law. And until there is a
4 more widely enforced and powerful state statute with the
5 qualifications, I mean national standards with
6 qualifications tightened up, that groups in many different
7 states -- the comments that were submitted by Washington
8 Citizens for Recycling that were signed onto by
9 representatives from groups in six different states all
10 indicated they intended to press forward with initiatives at
11 state level because of the lack of strong federal standards.

12 So I guess my point is the FTC, you are going to
13 have this -- to industry -- that you will continue to have
14 these efforts on the state level until we get a tighter
15 definition at the federal level.

16 MS. MADIGAN: Okay. I would like to go to the
17 last question. I am going to ask permission to go to 12:05
18 if I may, if nobody objects. I see no hands objecting, so I
19 am going to quick say it is fine.

20 The last question, what do claims like "please
21 recycle" and "coded for recycling" convey to consumers?
22 Should they be treated as unqualified recyclable claims?

23 Who would like to start out the discussion there?

24 Steel Recycling and the SPI.

25 MR. FOLEY: Chip Foley, Steel Recycling Institute.

1 I want to address the "Please recycle" claim. We
2 use the words Steel with chasing arrows, and then we use,
3 Please recycle in combination with that, especially on our
4 steel container products.

5 As we have heard throughout the morning, there is
6 enough data out there that can convince us that the consumer
7 understands what that means. That means that they should
8 make every attempt to recycle that product within their
9 community. We look at the use of that term as part of an
10 overall project for us. We look at it as a call to action.
11 It indicates to the consumer that they need to do something
12 and find out if this can indeed be recycled.

13 We do have an 800 number which has been talked
14 about this morning. It is a nationwide database. We
15 advertise it. In some cases on the products, and in quite a
16 few cases through our partnership programs, with retailers,
17 with local governments, with the actual local recycling
18 programs, with state governments. We have a tremendous
19 amount of educational material. When that consumer is
20 exposed to that number and they dial this 1-800 number, they
21 can find out how steel cans are recycled in their
22 neighborhood, and whether it is a drop off a curbside.

23 In addition, if they were to ask the question
24 about other materials on our 800 number, we will provide
25 that information also. We have seven regional offices that

1 are also among many other things are promoting this number,
2 are working with the local communities to make sure that if
3 they do not have steel in their programs that steel is
4 included, but they are not to walk away from it to make sure
5 that there markets for that steel.

6 So, yes, we think this is a good idea to use this.
7 We want to continue to use it, but we also agree that there
8 are other things that have to be done. We are doing those
9 things to make sure the consumer understands and knows that
10 that material is being recycled.

11 Also, just to respond to Richard. We also take
12 every opportunity we can at the local level, at the state
13 level and the national level to let everybody know what our
14 recycling rates are for steel. Not only overall, but within
15 the categories of cans and containers. We break those down
16 to include the aerosols. We also talk about appliance
17 recycling rates and automobile recycling rates. And
18 automobile, particularly because the biggest recycled
19 component of automobiles is steel.

20 MS. MADIGAN: Thank you. SPI followed by EDF.

21 MS. MILLAR: This is Sheila Millar for the Society
22 of the Plastics Industry.

23 My first comment is that I think it is
24 inappropriate to talk about these two very different claims
25 in the same breath because I view them to fall in different

1 categories. Please recycle, I think on any reasonable and
2 logical basis, and this is backed up by the most recent COPE
3 survey is an example in its purest form of an exhortation
4 message akin to the Do Not Litter message that was alluded
5 to earlier.

6 In contrast, and this is a topic that I guess we
7 will get into this afternoon, while I have not personally as
8 a consumer seen the phrase, "Coded for Recycling" and I do
9 not think anyone at SPI that I have talked to has ever seen
10 that phrase, I think it is in a very different category.

11 First of all, it contains an objective message,
12 i.e., that a product is coded. Secondly, to the extent,
13 "Coded for Recycling" contains an implication about, and of
14 course our concern is the SPI resin identification code, the
15 meaning of that code, our view is that that is an
16 inappropriate message. The resin identification code is not
17 a recycling symbol. It is not a recycling code. That was
18 never the intent. So we view that message to be
19 inappropriate, highly misleading and something that should
20 not be permitted. But it is a very different kind of
21 message than an exhortation message like, "Please Recycle".

22 MS. MADIGAN: EDF followed by National Soft Drink.

23 MR. DENISON: Our position is that, "Please
24 Recycle" is, in fact, a qualified recyclable claim, and any
25 conditions that are required of other such claims should

1 apply here.

2 "Please Recycle" is not equivalent to, Please Do
3 Not Litter. Please Do Not Litter is an activity that a
4 consumer has 100 percent ability to conduct him or herself.

5 "Please Recycle" is not such a situation because that has
6 many aspects that are out of the control of that consumer
7 who reads that message.

8 Moreover, "Please Recycle" has a couple of
9 interpretations. I have heard a number of people argue that
10 is a general exhortation. It has nothing to do with the
11 product on which it appears. "Please Recycle", it is a good
12 thing to do with Mom and apple pie. If it appears on a
13 product, our view is that it is a representation about that
14 product. And it has to be held to a standard that applies
15 to the product on which it appears. The availability of
16 recycling is the critical issue with such a claim. You
17 cannot recycle that product no matter how much it tells you
18 that you should unless there is a program available. That
19 is the same standard that applies to any other claim of
20 recyclability.

21 MS. MADIGAN: National Soft Drink followed by
22 Professor Mayer.

23 MR. STACK: Just real quick, Gifford Stack,
24 National Soft Drink Association.

25 I want to go back and reiterate what Matt Hayden

1 from COPE said earlier on the straight-up question, what
2 does the word, "Please Recycle" mean? Sixty-six percent of
3 the respondents, two-thirds clearly understood that was
4 meaning words of encouragement to recycle. Twenty-one
5 percent product made from recycled material, and eleven
6 percent, one out of ten, that a facility was available in
7 the community.

8 Again, reiterating that this is a nationwide poll,
9 not limited geographically. I would say that as COPE has
10 indicated before with FTC and EPA, we would be glad to
11 expand upon this question should the Commission so desire.

12 MS. MADIGAN: Okay. Professor Mayer followed by
13 OSPIRG.

14 MR. MAYER: Bob Mayer. I agree with EDF. I view
15 a "Please Recycle" claim as unqualified recyclable claim. I
16 think it would be pretty disingenuous to argue that we have
17 "Please Recycle" on our package to mean, you should recycle
18 everything else that you can recycle, but not this. I think
19 it would be pretty disingenuous to have a claim that said,
20 "Please Recycle" and to have recycling only available to one
21 percent of the population. So in my mind, I think it is the
22 same as an unqualified claim. I don't think the COPE study
23 directly addresses the question of whether consumers
24 perceive this a general exhortation for all situations
25 versus the particular product at hand.

1 MS. MADIGAN: I have OSPIRG followed by COPE.

2 MR. TAYLOR: Yes. I would like to make very
3 briefly the comment that in the research that I did in
4 Oregon talking to local recycling coordinators and the
5 recycling information line run by the regional government in
6 Portland, they received a number of calls from consumers who
7 have found products that say, "Please Recycle", that these
8 are plastics that do not have any number on them. I do not
9 know of any place in the entire United States that will take
10 an unnumbered plastic that no one knows what resin it is.
11 So those kinds of claims, I think there should be increased
12 enforcement efforts on that.

13 I would agree with SPI that they Coded for
14 Recycling adds nothing. That is on the bottom of the
15 container, you can look for it. People should be able to
16 find it that way.

17 And last of all, I had a question for the Steel
18 Recycling Institute. One question that came up in Oregon
19 was, pressurized tanks such as helium which are sold to the
20 consumer that I believe say, recyclable steel, please
21 recycle. I know that, for instance where I live, those
22 pressurized tanks have to be disposed of as household
23 hazardous waste.

24 Could you address that question?

25 MS. MADIGAN: Do you feel prepared to at this

1 point?

2 MR. FOLEY: Probably not.

3 MS. MADIGAN: Identify yourself.

4 MR. FOLEY: Chip Foley, Steel Recycling Institute.
5 We are aware of that. I mean I got that myself when I want
6 to recycle a small propane tank. It is an issue that is on
7 the deck, along with a lot of other things that we are
8 looking at. And eventually, I predict that we will be able
9 to get it back. It is a matter of education.

10 MS. MADIGAN: Okay. Let me come back then to
11 COPE.

12 MR. HAYDEN: This is Matt Hayden again with COPE.
13 You know the tricky thing about survey stuff is
14 that you only get answers to the questions that you ask.
15 You do not get answers to questions you have not asked, and
16 it is difficult to hypothecate between where we are and
17 where we might have gone if we had done that.

18 What we have determined is that when we asked that
19 specific question, what does "Please Recycle" mean to you?
20 Which of the following statements best describes what it
21 means to you, sixty-six percent of the national survey
22 responded that it meant that they were encouraged to recycle
23 if possible. Only eleven percent believed that it meant a
24 facility was available in their community. And when we went
25 back to them and said, do you agree with the statement that

1 "Please Recycle" means you are encouraged to recycle the
2 package or product if possible, 93 said we agree. That is
3 what we know. We would be glad to do additional follow-up
4 on surveys to ask additional questions that were not asked
5 here that may be illustrative and helpful, but this is what
6 we do know and this was a survey done in September of 1995
7 among 852 consumers with a margin of error of plus or minus
8 3.4 percent.

9 MS. MADIGAN: EPA?

10 MR. DELLINGER: This is Bob Dellinger with EPA.

11 I was just wondering if that question had ever
12 been asked open-ended without an ABC to choose from. What
13 this "Please Recycle" means to you in some type of an open
14 forum which I think would be a lot -- I think the results of
15 an open ended question there that were categorized might be
16 more useful than asking the question with an ABC. I mean
17 everybody is use to taking sort of pick the right answer
18 questions. I do not do surveys for a living, but you know
19 an open ended question might be more useful to what that
20 term really means to the consumer. It is just a thought
21 that came to me sitting here.

22 MS. MADIGAN: Matt, can you respond for COPE?

23 MR. HAYDEN: To the best of my knowledge, we have
24 not asked that particular question in an open-ended format.
25 We asked five or six questions a survey that are open-ended

1 with coded responses. But there is no reason that we could
2 not. I mean if it's -- of continuation to the FTC and to
3 this group, there is no reason we could not ask that in our
4 open-ended format. We do that routinely.

5 MS. MADIGAN: I am going to see if anybody else
6 can answer your question.

7 Does anybody have any data indicating a response
8 to an open-ended question like the one articulated by the
9 EPA? Anybody at the table? Okay.

10 GMA?

11 MR. MACLEOD: Bill MacLeod for the Grocery
12 Manufacturers.

13 Let me make a suggestion that perhaps the way this
14 question is phrased and the agenda is something that we
15 might not be able to answer, but also something, the answer
16 to which does not necessarily bear upon the guidelines. It
17 seems to me the question that would bear upon the guidelines
18 is, does the exhortation, "Please Recycle", ever mislead
19 consumers into making decisions that they would not have
20 made had they had accurate information?

21 I do not see any evidence that that is the case.
22 Number one, does it lead consumers to buy that it would not
23 otherwise have bought? Or number two, the question that we
24 have been discussing most of this morning, does it tell
25 someone something that is contrary to fact about the

1 existence of recycling programs in their area?

2 I think that the exhortation is at least weaker
3 than any of the claims we have talked about so far. And the
4 claims we have talked about so far are claims that I do not
5 see creating impressions as to the existence of local
6 recycling facilities. So when we get back down to the
7 bottom line, is this something that is misleading consumers?
8 We do not see it.

9 MS. MADIGAN: Aseptic Packaging followed by EDS.

10 MR. SEMAN: I am Jeff Seman with the Aseptic
11 Packaging Council.

12 One issue that we are interested in, and that we
13 would encourage the FTC to spend some time taking a look at.
14 For the most part, we think the guides have worked well.
15 And as to the question about enforceability, we have members
16 who would probably disagree with some of the comments made
17 earlier about these things not being enforceable.

18 Having said that, we spend a lot of our time
19 working around the country to develop markets for collected
20 drink boxes, and have discovered that one, there are many
21 factors that bear on whether markets become available and
22 people will take this material back. But one of them
23 certainly is how the material is prepared prior to
24 processing.

25 Our members think very strongly that, were they

1 able to put recycling instructions or better information on
2 how to prepare that material prior to it being placed in a
3 bin, we would be in a better position to convince more
4 markets to take that material.

5 Having said that, their activity in that regard
6 has been chilled. They are very afraid of the third rail
7 effect which was referred to earlier. And that if they were
8 to put any sort of a recycling instruction on there, that it
9 might be interpreted as an unqualified claim, and get them
10 into trouble.

11 Again, we would encourage the FTC to take a hard
12 look at that, we would be interested in working with you
13 folks to come up with case studies or analogies or whatever
14 to provide some better guidance and direction.

15 MS. MADIGAN: Before EDF speaks, I just want to
16 open it up to anybody else who has not yet spoken to this
17 issue who might like to? So anybody else who has not yet
18 spoken to this issue? AFPA? That is it, then we will go to
19 EDF.

20 MR. BUNTEN: Thanks. Peter Buntten with American
21 Forest and Paper.

22 I would just like to clarify and perhaps I have
23 been somewhat guilty of it myself that we have been talking
24 about consumer as being only the householder who puts stuff
25 out at curbside, or the consumer who goes to the

1 supermarket. But the guides cover a much broader range of
2 consumers. Institutional users, printers, converters, etc.
3 Anywhere where recyclable claims are being made. So we need
4 to take a look at the broad spectrum of the definition of
5 consumer as well because it covers not just those consumers
6 at curbside, but all of our industrial users and converters,
7 etc. Those, as well, are consumers. And perhaps there may
8 be some differentiation of their impact of a "Please Recycle"
9 claim at the institutional level than there might be at the
10 curbside or supermarket level. That is perhaps something
11 that the FTC might want to take a look at.

12 MS. MADIGAN: Finally, EDF. Then, we will turn it
13 back over to the FTC staff.

14 MR. DENISON: With regard to the COPE survey, and
15 the varying interpretations and wordings of this question, I
16 think it should not be surprising to anyone that this phrase
17 could mean multiple things to a consumer. I have no doubt
18 that a large number of people think it is, among other
19 things, an encouragement to recycle. But the COPE survey
20 asks consumers to choose one of the options. And the
21 majority in that case chose the option that I think is the
22 most literal direct meaning of those terms, "Please
23 Recycle". Yeah, they are encouraging me to recycle. That
24 should not be surprising.

25 Nonetheless, there are other messages that carry.

1 It seems to me the FTC's wording of that question gets at
2 one of those other meanings where a substantial number of
3 consumers said it means there is a program in my community.
4 There can be multiple meanings here, and I would say that
5 the COPE results have to be qualified heavily by the fact
6 that they asked consumers to choose one of the options.
7 Many consumers might have chosen all of them if they had had
8 a multiple choice with that direction removed that you had
9 to choose only one.

10 Secondly, even if only eleven percent of consumers
11 truly thought that, I would argue that as a significant
12 number of folks out there that think that that claim is an
13 unqualified recyclable claim.

14 MS. MADIGAN: What I would like to do is turn to
15 FTC staff, and ask if they have any clarification or follow-
16 up questions on this last question? Kevin?

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

18 I have a question about the burdens of placing 800
19 numbers on packages to give information about recycling in
20 instances where it might not be available widely?

21 MS. MADIGAN: Can anybody speak to that question?

22 MR. BANK: The burden to industry of placing on an
23 800 number, providing people to staff it to give specific
24 information about where given products can be recycled.

25 MS. MADIGAN: Is it difficult, and what does it

1 take to do it?

2 MR. FOLEY: Chip Foley, Steel Recycling Institute.

3 Since it is voluntary, there is no burden. We are
4 doing it on a voluntary basis.

5 MR. BANK: If it were not voluntary.

6 MR. FOLEY: That I could not answer. Each company
7 that chooses to put it on a product, that falls within their
8 financial data. But we are doing it as a trade association.
9 We are doing it on behalf of our member companies, as well
10 as companies that are not member companies that make steel
11 products.

12 MS. MADIGAN: 3M?

13 MS. ADAMS: I can just speak anecdotally. 800
14 numbers are very costly to maintain, and what we have done
15 is where there are trade associations who have set out the
16 information, and we are basically using them as our source
17 of information that is fine, but it is very resource
18 intensive to keep track of where all the available recycled
19 material handling facilities are across the country.
20 They're a national distributor, that's not something that
21 you can really do unless you are making a significant profit
22 on the product.

23 MS. MADIGAN: Aluminum Association?

24 MR. MEYER: Barry Meyer, the Aluminum Association.

25 We had an 800 number fifteen or twenty years ago,

1 we no longer do. After recycling reached a certain level,
2 the inconvenience and cost of maintaining all the changes to
3 go with the 800 number just did not make any sense. We
4 would strongly oppose any requirement that there be an 800
5 number.

6 MS. MADIGAN: AAAA, American Association of
7 Advertising?

8 MR. SHOUP: Yes, Al Shoup.

9 If there would be suddenly a requirement imposed
10 upon all marketers to add this to their packaging and
11 labeling, there would be a significant one-time cost in
12 terms of production expenses. And probably the advertisers
13 here could comment with greater expertise than I in terms of
14 what that cost, that one-time cost might be. But it would
15 be substantial.

16 MS. MADIGAN: Food Service followed by Attorney
17 General.

18 MR. DAVIS: Richard Davis, Food Service and
19 Packaging Institute.

20 I would simply say that any company who does not
21 already have staffing on an 800 number for general
22 questions, it would be very expensive for them. It is not
23 the cost of the telephone line, it is not the cost of the
24 800 number, it is the resources to man that number because
25 you have to do it more than three hours a day, more than

1 five hours a day, you have to have a staff to do it. That
2 is very expensive.

3 MS. MADIGAN: Okay. Attorneys General followed by
4 American Plastics Council.

5 MS. GRIFFIN: Mary Griffin, Attorney General's
6 Task Force.

7 The Attorney General's Task Force definitely
8 favors the use of 800 numbers, and we applaud the companies
9 around the table that are using them; Steel Recyclers and
10 other associations.

11 I just wanted to point out that a lot of the
12 comment here has been, or some comment has been, you know,
13 state and local officials should be answering these
14 questions when the consumers are confused. I just want to
15 point out that certain states have established 800 numbers
16 to try to answer the myriad of questions that we have to
17 field. Washington State for instance has an 800 number that
18 they established because there was so much consumer
19 confusion about environmental marketing claims. I guess we
20 would ask that companies join us in trying to straighten
21 some of this out.

22 MS. MADIGAN: Okay. American Plastics Council.
23 Then, I think we are going to wrap up.

24 MR. LOWMAN: Rod Lowman, American Plastics
25 Council.

1 I think it is a very good statement in terms of
2 the potential burden that the costs of a mandatory 800
3 number would imply particularly to smaller fabricators, to
4 smaller manufacturers.

5 At the same time, we in the plastics industry,
6 American Plastics Council, have a 1-800 number for use not
7 only in our own advertising, but also from our member
8 companies and our customers so that we, in fact, do retain
9 lists of recycling facilities around the country that
10 recycle different types of plastics, and are able to match
11 those facilities with potential markets. So again, through
12 the trade association, we do have it for voluntary use.

13 MS. MADIGAN: Final call for a burning last, very
14 brief comment; Californians Against Waste?

15 MR. MURRAY: Yes, very burning comments. I guess
16 before making it, I want to express appreciation for the
17 quality of information that one does get when you call the
18 Steel recycling hotline because I think that that is very
19 good information.

20 What is very frustrating for consumers is when
21 there is a qualified or unqualified recyclable claim, there
22 is an 800 number. You call the 800 number, and there is
23 absolutely no information about opportunities for recycling
24 that container. So if we are talking about in terms of a
25 mandate, I am not sure that everyone should have to have

1 these 800 numbers, but certainly if one is going to provide
2 an 800 number, and you have a qualified or unqualified
3 recyclable claim on the product, then that 800 number should
4 be able to respond to questions about where can I recycle
5 this product?

6 MS. MADIGAN: Okay. EDF had a very quick
7 question.

8 MR. DENISON: The question is, I do not know if
9 the FTC is in a position to answer it, if not, I will just
10 leave it hanging out there, is information that is provided
11 to a consumer who calls such a number that itself makes
12 claims, are those claims subject to the guides?

13 MS. MADIGAN: Before the FTC chooses to answer, I
14 remind everybody that in the outline of conference
15 procedures, they were not going to be answering questions
16 today. But in light of that, do you want to stand by the
17 procedures or do you want to respond?

18 MR. PEELER: You know, the Federal Trade
19 Commission Act governs commercial representations. No
20 matter how they are made, we have a whole segment of the
21 Commission that does nothing but telephone marketing cases.

22 MS. MADIGAN: OSPIRG, you said you had a very
23 small comment. This is cutting into lunch.

24 MR. TAYLOR: A suggestion. Chris Taylor from
25 OSPIRG.

1 One way to keep the cost down, because I agree for
2 individual sole manufacturers, it could be prohibitively
3 expensive, would be perhaps to have a cooperative funding
4 system where you set up a statewide number or a local number
5 and different trade associations contribute into a fund, and
6 they provide information to that one number. That might be
7 one way to keep costs down.

8 MS. MADIGAN: Okay. With that, with the FTC's
9 permission, any other questions, I would like to wrap up.

10 We are going to reconvene at 1:15 p.m.

11 Is there a lunch list out there on the table?
12 Great. Cafeteria upstairs, seventh floor. Turn in your
13 public participation questions.

14 See you at 1:15 p.m.

15 (Whereupon, Session 1 ended at 1:08 p.m.)

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S E S S I O N 2

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1:19 p.m.

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MS. MADIGAN: All right. Let us begin.

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In the interest of adhering to the agenda and honoring the schedules of those who have altered their schedules to conform to the agenda, and my apologies for late comers. Let us go forward.

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The questions before us this afternoon and this next panel relate to the SPI Code. The FTC has suggested that we consider all four questions simultaneously rather than try to break these up sequentially.

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Let me just articulate these four questions. Then, I am going to turn to the FTC staff who is going to throw one more question out that is related to this, but is not expressly articulated on the agenda.

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How do consumers interpret the current SPI Code?

What changes, if any, should be made to the guide's current position on the SPI Code?

What is the impact of state laws requiring use of the SPI Code on the position that the guides should take?

What is the current status of industry review of the SPI Code?

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25

I am going to ask the FTC to articulate one more question. Then before we begin, let us go around the room one more time for the benefit of press and our transcribers

1 since this is a new panel with a slightly different
2 composition than the panel this morning. Okay?

3 Lee, do you want to articulate the additional
4 question regarding the chasing arrows?

5 MR. PEELER: I think after we talk about SPI, we
6 also wanted to talk about a number of comments we received
7 that talked about the Mobius symbol itself and its
8 appearance on packaging without any indication of whether it
9 meant that it was a recycled or recyclable claim. We would
10 like to discuss that.

11 MS. MADIGAN: Okay. Could we then go around the
12 room very quickly, and have people identify themselves by
13 name again, and by organization.

14 Let us begin with National Soft Drink.

15 MR. STACK: Denise, before that could I ask a
16 point of clarification on Lee's fifth question?

17 MS. MADIGAN: Sure.

18 MR. STACK: Does that pertain to all materials or
19 just plastic resin coated related --

20 MR. PEELER: That pertains to all materials. The
21 appearance of the chasing arrow symbol without any
22 qualifications.

23 MR. STACK: Okay.

24 Gifford Stack, National Soft Drink Association.

25 MS. MADIGAN: Before each person introduces

1 himself, I am going to wait for a signal from our
2 transcriber to make sure he has gotten the names.

3 MR. PAUL: Richard Paul with the American
4 Automobile Manufacturers Association.

5 MS. MADIGAN: Okay.

6 MR. PFLUG: Gerry Pflug from the Soap and
7 Detergent Association.

8 MS. MADIGAN: Thank you.

9 MR. KRAMER: Kim Kramer with Food Service and
10 Packaging Institute.

11 MS. MADIGAN: Okay.

12 MR. MURRAY: Mark Murray with Californians Against
13 Waste.

14 MR. DENISON: Richard Denison with Environmental
15 Defense Fund.

16 MS. MADIGAN: Hang on a second. Okay.

17 MR. COLDEN: Bud Colden, National Recycling
18 Coalition and Northeast Recycling Council.

19 MS. MADIGAN: Okay.

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

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

22 MS. MADIGAN: Slow down, slow down. You missed
23 me.

24 MS. COX: Carolyn Cox with Federal Trade
25 Commission.

1 MS. GRIFFIN: Mary Griffin from the Attorney
2 General's Office in Massachusetts, and I am here on behalf
3 of the Task Force on environmental marketing that represents
4 the Attorney Generals of twelve states.

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

6 MS. MADIGAN: Okay.

7 MR. LOWMAN: Rod Lowman, American Plastics
8 Council.

9 MR. THOMAS: And Larry Thomas with the Society of
10 the Plastics Industry.

11 MS. MADIGAN: How do you spell your last name?

12 MR. THOMAS: T-H-O-M-A-S.

13 MS. MADIGAN: Oh, Thomas, I am sorry.

14 MS. SEILER: Elizabeth Seiler with the Grocery
15 Manufacturers of America.

16 MS. MADIGAN: Okay.

17 MS. ADAMS: Georjean Adams, 3M.

18 MS. MADIGAN: Someone was looking for you by the
19 way, Ms. Adams. So at the break I will draw your attention
20 to that.

21 MR. DELLINGER: Bob Dellinger, EPA.

22 MR. TAYLOR: Chris Taylor, OSPIRG.

23 MS. MADIGAN: Is there anybody we missed, any late
24 comers?

25 Okay. Let us get started.

1 I propose that we go to about 2:00 p.m. on the
2 first set of questions related to the SPI Code, will that
3 work, Lee?

4 MR. PEELER: 2:00 p.m.

5 MS. MADIGAN: Okay. Let us shoot for 2:00 and it
6 will probably stretch out to 2:05 p.m.

7 The first four questions have been articulated
8 with respect to the SPI Code, who would like to start?

9 MR. THOMAS: I would like to make a couple of
10 points for clarification. Again, I am Larry Thomas with the
11 Society of the Plastics Industry.

12 This is a resin identification code. The first
13 question really does not refer to it, it says SPI Code. I
14 want to make it clear upfront that this is a resin
15 identification code.

16 Secondly, it was a code that was developed in
17 conjunction with and for recyclers to identify resin. I
18 make that point to distinguish between use by recyclers and
19 sorting versus a code developed and aimed at consumer use.

20 Third, I would point out before elaborating just a
21 little bit more on this question, that this code is in use,
22 in widespread use as you know here in the United States, but
23 you may not be aware that the code has also been picked up
24 and used extensively in Europe. We have worked with Japan,
25 and Japan is utilizing the resin identification code. It is

1 used in a number of countries in South America.

2 Now with that as sort of just a clarification as
3 to what we are talking about in terms of resin
4 identification code, there is no evidence that consumers
5 view the SPI code when it is used as intended as any
6 environmental claim. There is no evidence that this code
7 when used as intended as a resin identification code,
8 inconspicuously in any way influences the consumer's
9 purchasing decisions.

10 In going over the comments, I noted that
11 Professional Cude who is with us, and I believe Professor
12 Mayer as well, pointed out that this code is just what I
13 indicated, it is a resin identification code. It is a
14 symbol to allow recyclers and consumers in the case where at
15 the local level it has been picked up in recycling programs
16 and used in their education efforts, to sort plastics for
17 recycling.

18 We worked with NRC for a considerable period of
19 time, I thought, in a very cooperative way. One of the
20 things we did was to join them in a research project. Its
21 more formal name, we have submitted this for the record, is
22 the Cheskin and Masten opinion research. And to my
23 knowledge, this is the only behavioral research, the only
24 behavioral research that has been done on this subject. If
25 anyone else has any behavioral research along these lines, I

1 would appreciate it. SPI would love to take a look at it.
2 But this research found that the chasing arrow portion of
3 the SPI resin identification code on the bottom of a plastic
4 container as compared to other symbols like a triangle or
5 like a circle, does not result in consumers being
6 significantly more or less likely to sort containers as
7 acceptable for recycling.

8 In fact, the research concluded that while six out
9 of ten consumers who recycle plastics check for the resin
10 identification code before deciding whether or not to put it
11 out for recycling in their communities, the code is only one
12 of a number of decision factors that consumers use, and I am
13 sure there are others that can elaborate on this. But we
14 are talking about size. We are talking about colors, and in
15 some cases, they indicate even the feel of the product was
16 instrumental in how the consumer behaved with respect to
17 recycling.

18 I end on this point because it seems to me pretty
19 clear, and I heard some of the discussions this morning that
20 what is needed here is education. Education in at least two
21 ways. The SPI is engaged in an extensive education effort
22 to make sure this resin identification code is used
23 properly.

24 Certainly as a former attorney with the FTC, I am
25 well aware of the potential for misuse, misleading

1 advertising. I use to be quite concerned with Section 5 of
2 the Federal Trade Commission Act, Lee, as you know. And I
3 would suggest that we need throughout our discussions here
4 to distinguish between an appropriate proper use, proper
5 placement. The code as identification versus an egregious
6 situation where it might be misused. We are educating for
7 that. As we get into this a little further, I would ask the
8 FTC perhaps to engage in some actions in this regard.

9 The second education effort is certainly needed at
10 the local level in terms of educating consumers how better
11 to sort plastics. I will leave that up to the NRC and
12 others who are better qualified to do that and comment on
13 that.

14 MS. MADIGAN: Go ahead, Lee.

15 MR. PEELER: Larry, could I ask you to address two
16 issues. One -- is the educational issue efforts that you
17 are talking about from SPI directed to consumers or
18 recyclers?

19 MR. THOMAS: No, it is directed to our industry
20 and to downstream customers and any users of the code. I am
21 not supposed to hold up any materials, Lee, but we do have
22 copies of it available outside. It is really aimed at those
23 who put this code on their product to make sure, as best we
24 can, and you know we do not engage in really enforcement
25 activities as a trade association, but to do what we can in

1 terms of influencing the users of this code to use it
2 properly in terms of inconspicuous use, in terms of
3 placement, in terms of any kind of proximity with claims
4 about recycling.

5 MR. PEELER: And the second question, was one of
6 the documents that was submitted during the comment period
7 was a study by King County, Washington. That study seemed
8 to indicate that consumers were looking at the SPI code and
9 making a decision about whether to recycle.

10 Have you had an opportunity to look at that, and
11 do you have any comments?

12 MR. THOMAS: You know, we looked at a number of
13 different studies and maybe some others can comment on that,
14 but I will go back to my statement that in looking at all
15 the data that was generated and all the discussions we held
16 with the NRC, we did not see any data whatever that
17 indicated that this was being perceived by consumers as an
18 environmental claim.

19 I mentioned earlier, yes, that some of the
20 behavioral data with respect to looking at this code in
21 terms of sorting by consumers, but I also pointed out that
22 that was not a deciding factor. That there were a number of
23 other factors in use at the local level in terms of deciding
24 whether or not they would in fact put a product out for
25 recycling.

1 MS. MADIGAN: Before we go further, let me just
2 invite anybody, this is not a formal proceeding. If you
3 want to take your jackets off, you are more than welcome to,
4 so please feel free.

5 Next, I have EDF.

6 MR. DENISON: Yes. I want to talk about the
7 evidence that this code in fact represents an environmental
8 claim because I think contrary to Larry's statement, there
9 is in fact, quite a bit of evidence. And one of the authors
10 of quite a bit of that evidence is at the table and maybe
11 she can address it as well. But in the comments that Brenda
12 Cude provided to the FTC during the last round, here we are
13 again, indicated a very high correlation and consumer
14 awareness of the symbol and its association with recycled or
15 recyclable. And in fact, in that survey were 25 percent of
16 all respondents that were shown the symbol, and 55 percent
17 of all those that offered a meaning to the symbol,
18 associated it with either recyclability or recycled content.
19 That to me is prima facie evidence that it is associated and
20 conveys an environmental claim of either recyclability or
21 recycled content.

22 Secondly, the Cheskin and Masten research, I was
23 part of the technical committee for the NRC SPI
24 negotiations, and I followed this quite closely. We
25 submitted as part of our comments our view that the Cheskin

1 and Masten research does in fact provide considerable
2 evidence that consumers regard this as an environmental
3 claim.

4 Among the evidence in both qualitative and
5 quantitative research there was a very interesting videotape
6 that I reviewed of a focus group in which consumers
7 frequently associated the code in their comments with
8 recyclability. One of those responses was, I've seen
9 commercials on TV and they show the symbol that indicates
10 that it can be recycled. That kind of comment occurred over
11 and over again in that qualitative and quantitative
12 research. So I would argue that there is overwhelming
13 evidence that this code conveys environmental claim type
14 information.

15 MS. MADIGAN: NRC?

16 MR. COLDEN: Bud Colden, National Recycling
17 Coalition.

18 We did indeed go through some exhaustive processes
19 with SPI to try to come to a mutual resolution that both
20 organizations could support. While we were close, were not
21 able to achieve the end that we both had desired. In large
22 part because of disagreement in the shape of the symbol. Be
23 that as it may, NRC recognizing that the SPI code is law in
24 many states, has indicated that our position remains as it
25 had come out during the negotiations with SPI that those

1 uses of the SPI code outside the context of those state laws
2 and outside the context where the SPI code was intended to
3 be used should not be continued, and that the efforts of
4 both organizations should be put into preventing the
5 utilization of the SPI code in a manner that could be
6 construed to be an environmental marketing claim. And those
7 kinds of claims would be the film plastic bag with a very
8 large blow-up of the chasing arrows with the resin code. We
9 were in agreement on that issue that we both did not want to
10 see it used as an environmental marketing claim.

11 I think the confusion that existed that came out
12 of the consumer research, there are a lot of factors that
13 people consider in recycling containers. And that, yes,
14 true sixty percent of the people as Larry pointed out do
15 indeed look for the code on the bottom. But thirty percent
16 said I can put out any kind of plastic container. Sixty-
17 eight percent said I only put out certain types of plastic
18 bottles, for example, soft drinks and milk. Forty-five
19 percent said, I usually don't put the container out if it's
20 not clean. Forty percent said, I am more likely to put out
21 large bottles or containers than small. Twenty-eight
22 percent said I put out clear plastic, but not colored.
23 Twenty-three percent, I can tell by feeling or squeezing the
24 bottle. And then fifty-one percent said if I am not sure, I
25 put it out anyway. There is a large element of consumer

1 confusion out there. But the other part that came out in
2 the research that took place, and the feedback from the
3 stake holders, and there were many both from the industry
4 side and from the community and non-profit side was that
5 there was a wide disparity with recycling coordinators
6 relative to what they thought should be done with this code.

7 Many of them have used it in their education
8 related to recycling. So what Richard says is quite true.
9 I mean there are people who truly believe this is associated
10 with recycling. Many of us in this field have used it to
11 educate consumers about types of plastic containers that can
12 be recovered in curbside recycling programs.

13 Then, what does that lead us to? I think what
14 that leads us to is the position that SPI and NRC did agree
15 on is that we need to constrain the use of the SPI code in
16 the way it was originally intended to be used, and the way
17 that it is enforced in many of the state laws.

18 MS. MADIGAN: Next, we have the Attorneys General
19 followed by Grocery Manufacturers.

20 MS. GRIFFIN: Mary Griffin from the Attorney
21 General Task Force.

22 I just wanted to speak to the effect of state law
23 in this area. Obviously, there are 39 states that now
24 require some form of the SPI code. I think that prompted a
25 lot of people's comments about the difficulty in changing

1 the code. We certainly do not belittle that. It is a
2 complex undertaking.

3 However, the states on the task force are
4 receptive to exploring other options for the code to the
5 extent that it is necessary to avoid consumer confusion.
6 When the Task Force in 1991 issued the Green Report II, we
7 said in that document that the SPI code when it was placed
8 inconspicuously on the bottom of the container for coding
9 purposes was not promotional. Information that has come to
10 our attention since the issuance of the Green Report II has
11 indicated that this area is becoming more and more
12 problematic. And there are two distinct reasons for that.

13 The first which is a separate issue than the code
14 itself is the misuse of the code. And I agree with a number
15 of comments here that state and federal officials, as well
16 as I think trade associations and industry, need to focus on
17 policing and encouraging correct use of the code.

18 The local experience has been that a number of
19 consumers are, in fact, confused by the SPI code and do
20 associate it to mean that the product is definitely
21 recyclable. For instance, I mentioned earlier that some of
22 the states set up 800 numbers of their own to answer
23 questions on this area. My understanding is that the State
24 of Washington set up a 1-800 number, and that that 800
25 number, the establishment of that number was specifically

1 prompted by the amount of questions that public officials
2 were having to field as far as whether all things coded with
3 the SPI resin code are in fact recyclable.

4 Other states that do not have a specific 800
5 number, a large amount of time is spent by local and state
6 officials in trying to respond to such questions and
7 confusion by consumers that is generated in anger. When
8 they get the question, it says 7 in the little triangle,
9 what are you idiots doing? So, we think there is a problem
10 in this area, and our position since the Green Report II is
11 in fact changing.

12 MS. MADIGAN: Grocery Manufacturers followed by
13 3M.

14 MS. SEILER: Elizabeth Seiler with GMA.

15 I also served on the Negotiating Task Force on the
16 code, and I just wanted to point out that when we all came
17 to the table we did so in a very cooperative fashion
18 recognizing that there were clearly were some problems with
19 contamination at the community level. There was a good
20 faith effort, I think made over two years to try to
21 determine whether or not the code was the source of that
22 contamination.

23 I would agree wholeheartedly with what Bud had
24 said. It seemed that at the end of the day after we did all
25 of the research which I would point out again was done in

1 the most cooperative fashion between both SPI and NRC and
2 other industry and environmental and recycling people were
3 invited to participate in the process of the development of
4 that research, so it is not just sort of dueling consumer
5 perception studies. We found that the confusion out there
6 is so widespread, and we really were not able to trace it
7 back to the code. I think Larry stated that one of the key
8 findings was the presence of the absence of the arrows did
9 not, on the bottom of the container did not make it more or
10 less likely that a consumer would properly sort the
11 material.

12 I thought the other key finding which is a real
13 concern for all of us who want to continue to advance
14 recycling is that on some of the intercept research that was
15 done, a brochure was put together which specifically told
16 people what to do with their containers. They were sat down
17 at a table with this very simple brochure, given ten minutes
18 or something like that to read it, and then given containers
19 and asked them to sort them. And one-third of the people
20 still got it wrong.

21 I am sure every recycling coordinator would love
22 to have the opportunity to have a one-on-one with every
23 citizen. You know, it is somewhat distressing to learn that
24 people still get it wrong. Bud has said several times
25 throughout the day, there is just a lot of confusion around

1 how to recycle properly. We cannot find any evidence that
2 the code is truly making a difference in adding to that
3 confusion.

4 MS. MADIGAN: I will come back to you as well.

5 I want to take 3M and then Food Service Packaging.

6 MS. ADAMS: Georjean Adams, 3M.

7 We use the SPI symbol. We believe according to
8 the proper guidelines and state law, and we would support
9 the FTC providing some additional guidance to further
10 encourage that. We do not believe the symbol should be used
11 as an environmental marketing claim. I will put a caveat on
12 that to a certain extent in that we will sometimes refer to
13 the symbol within some of the text of our descriptions of
14 the ability to recycle the material, again as an identifier
15 that the product is made out of this kind of plastic and
16 then show the symbol because it has meaning as a descriptor
17 for the kind of plastic there is. But we would support that
18 the FTC does need to help in clarification of it.

19 We are also concerned as a user of the symbol that
20 if it were to change, we would have significant retooling
21 costs. And it is not a trivial matter to just willie-nillie
22 decide you are going to change that symbol.

23 MS. MADIGAN: Food Service Packaging and then
24 Professor Cude.

25 MR. KRAMER: Kim Kramer, Food Service Packaging

1 Institute.

2 I think we are all referring to the same survey,
3 the Cheskin and Masten. One of the things I picked out of
4 that out of the executive summary was that the consumers did
5 not see any need for change. Again, testing the current
6 code against the other alternatives, they found the current
7 code more understandable.

8 Again, I think that the education effort, I would
9 like to support Larry on that is probably what is really
10 needed here, and it is going to be a heck of a lot easier to
11 start educating where there is already a knowledge base than
12 try to go to something like a circle which does not mean
13 anything to anybody or whatever other alternative we would
14 look at.

15 Thank you.

16 MS. MADIGAN: Professor Cude.

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

18 First let me start by commenting on what Richard
19 said about my research three years ago. It is true that I
20 did do research with consumers and their perceptions of the
21 SPI code, and found that the majority of them did associate
22 that code with recycled content or recyclability.

23 I did not ask them how aware they were of the
24 code, and I want to be clear that I did not find that they
25 understood how to use the code in recyclability.

1 In my intervening years of public education, I
2 would just confirm that, that if you separate the code out
3 from the product and show it to consumers, they do think it
4 has an association with recycling. But I have been told
5 that, for example, a product coded three has been recycled
6 three times. I have been told a product coded two is made
7 of the second most commonly coded plastics. I have been
8 given a variety of interpretations of that code. So
9 consumers do not uniformly understand what it means.

10 But I think there is a distinction between saying
11 if you show consumers the code, they know it relates to
12 recycling and saying the code is a claim. If it is
13 inconspicuously placed on the, in most cases the bottom of
14 the package, I do not believe that it constitutes an
15 environmental claim. My concern is when it is used as an
16 environmental claim, and I will give one example that I
17 think is clear that we saw on a package in our last audit,
18 and that was a very large SPI code on the side of the
19 package in red. That to me is making a claim.

20 I also have a question about a statement like,
21 bottles made from and then the code for say one or two,
22 appears there in that statement. And in our last audit, I
23 will just bring this up because it is a different material,
24 I saw a statement about recyclability, for not a plastic
25 product, and it was the letter R in a triangle. Now, is

1 that taking the concept of a SPI code as a recyclability
2 claim and expanding it to another material in an attempt to
3 make a recyclability claim? So I would be concerned about
4 that trend towards perhaps using it as a recyclability claim
5 and given that when it is used as it is intended, if
6 consumers are even aware of it, they are often confused
7 about what it means, if we are then going to go into a round
8 of trying to communicate recyclability. I think that
9 presents serious problems for consumers.

10 MS. MADIGAN: I am going to bump SPI up one
11 because this is your code, and give you a chance to comment.

12 MR. THOMAS: I want to comment in support of what
13 Professor Cude just said. It seems to me while we are not
14 here to reach a consensus that it is pretty clear that we do
15 have a consensus among industry, academic community, the
16 FTC, environmental groups, NRC on one thing. Which is, if
17 you misuse this, or one misuses this code, places it in a
18 conspicuous manner on a product, places it in conjunction
19 with environmental marketing claims, that is inappropriate.
20 And that is an environmental claim.

21 The FTC guidelines already understand this. And
22 just as our educational materials that we developed point
23 out what is the proper use placement, etc. of this resin
24 identification code, I will go so far as to ask the FTC in
25 accordance with its own guidelines and on its own statutory

1 requirements to quantify the extent of the misuse of this
2 code as an environmental marketing tool, and take some
3 action on egregious cases in order to demonstrate that this
4 is in fact an inappropriate use of this, and misuse, and it
5 can be then an environmental claim and can be misleading and
6 inappropriate.

7 So I would ask the FTC really, which has the
8 authority, to help us out here in terms of our educational
9 efforts by taking some action in those areas that we all
10 agree upon. I think the State Attorney Generals could
11 engage in this as well.

12 MS. MADIGAN: Okay. EDF and then NRC.

13 MR. DENISON: Two quick points. One having to do
14 with consumer research and the second having to do with some
15 current trends. I think that it is critical to recognize in
16 interpreting this consumer research, and one of the
17 delicious aspects of Cheskin and Masten is that you can take
18 the same result and find totally diametrically opposed
19 conclusions from it. But the thing to keep in mind is that
20 we are not dealing in a vacuum here. We are dealing with a
21 long historical use of a symbol. And the notion that one
22 can simplistically compare a new symbol, a circle or a
23 triangle without the arrows or what have you without having
24 a legacy of the historical use of that, color the results,
25 is ridiculous. This is a point the AG has made in their

1 comments to NRC and SPI. That is critical to remember.

2 So I would urge the FTC when they look at that
3 information to bear that in mind and recognize that legacy
4 that is carried over in the way consumers interpret any new
5 code that they are shown.

6 Two things on trends. One I will say and then I
7 want to tag team with my colleague here and have her talk
8 about the international situation. A disturbing aspect of
9 the outcome of the NRC and SPI negotiations when they fell
10 apart was that SPI then turned around and said, the code is
11 fine as it is. And not only that, we are going to expand
12 its use. We are going to actively encourage expanded use of
13 that code on film plastics and other categories.

14 Right here, Larry.

15 MS. MADIGAN: A visual.

16 MR. DENISON: The result of that has been a
17 dramatic increase in the use of that code in other contexts,
18 in other settings. It is now routinely on Washington Post
19 bags that my paper comes in every morning. It is on
20 numerous grocery sacks. It is on carryout bags from Jacks
21 Deli across the street. It is showing up everywhere with
22 sometimes the term recyclable under it, but often in a much
23 more prominent situation. I would argue that that is a
24 direct consequence of SPI's determination to see this code
25 used more broadly, not less broadly.

1 I want to turn it over to my colleague here for a
2 minute, Molly Kingston.

3 MS. KINGSTON: Molly Kingston, Environmental
4 Defense Fund.

5 This long running debate over the SPI code
6 certainly indicates at the very least that there are some
7 problems with it, and some confusion with it. In terms of
8 alternatives and whether we should struggle to put it in a
9 circle or a rectangle or rhombus, there is in fact a logical
10 alternative that has emerged in the international arena.

11 The clear direction of the international arena is
12 to eliminate the code and replace it with what the
13 International Standard Organization's Technical Committee 61
14 on plastics packaging has come up with. Which is the resin
15 code inside of, a greater than and less than sign. There
16 are a number of reasons why they have come up with this
17 alternative to the SPI code.

18 I can quote from an article if that is okay. I
19 will not show it, but I will just read it.

20 MS. MADIGAN: Very briefly.

21 MS. KINGSTON: Okay.

22 MS. MADIGAN: Just a short excerpt.

23 MS. KINGSTON: "In the international arena,
24 neither the triangle nor rectangle received acceptance. One
25 reason for this was because with the new method, the sign

1 could be read and applied directly by computers or word
2 processors and were easily detected by computerized
3 systems."

4 So in addition to there being a reason to
5 eliminate the code in terms of its being confused with an
6 environmental claim, there is in fact apparently good
7 incentive among international industry to replace the code
8 for other technical reasons.

9 In Australia and in other countries, the concern
10 has been similar. Australia's trade practices which is the
11 parallel in that country to the FTC, has been concerned
12 about this very issue and has said that the coding system,
13 in particular, its use of the chasing arrows triangle, is
14 being reviewed internationally because of growing acceptance
15 of its potential to mislead.

16 In the International Standards Organization 14,000
17 Series, which is an effort to develop international
18 standards for environmental management systems, there has
19 been a discussion of the SPI code. The discussion will
20 likely result in harmonization to the other ISO technical
21 committees' resolution on the issue which was to eliminate
22 the code and adopt the code as it appears between the
23 greater than and less than signs.

24 In my conversations with developing country
25 participants where the code was not widely used, they have

1 certainly recognized and acknowledge that rather than going
2 in that direction, they will simply harmonize to the new
3 international standard.

4 MS. MADIGAN: Thank you. I would like to ask
5 NRC's indulgence for a second, and leap frog to a couple of
6 people who have not yet had a chance to speak on this
7 question, but will come back to you, and also give SPI a
8 chance to step in.

9 First, NSDA followed by OSPIRG.

10 MR. STACK: Gifford Stack, National Soft Drink
11 Association.

12 You heard earlier the most recycled plastic
13 package right now in the country is the soft drink
14 container. 13.7 billion PET plastic soft drink bottles were
15 used in 1994, 6.7 billion recycled for 48.6 percent
16 recycling rate. Again, the largest plastic type in the
17 country.

18 A lot of promotion has been dedicated to recycling
19 plastic drink bottles -- NAPCOR -- National Association of
20 Plastic Container Recovery has done an excellent job of
21 going after PET, and particularly soft drink.

22 You've got to remember that plastic is the last
23 material to join the recycling club for us. Glass has been
24 around for years and years and years. Aluminum recycling
25 since about 1962, and PET in the late '70s, early '80s. So

1 we are just kind of getting familiar with this and I think
2 to change the rules of the game now would send confusing
3 messages. Let us let the rules stay as they are. So do not
4 make any changes.

5 MS. MADIGAN: OSPIRG, and then SPI. Then, I will
6 let you jump back in for a second.

7 MR. TAYLOR: A few brief comments. I think with
8 respect to the SPI code, pretty much everything there is to
9 say has been said. I just wanted to highlight once again
10 the research. As far as our studies go that was attached to
11 the comments that were submitted by Washington Recycling to
12 which I also signed on which did show that there seemed to
13 be at least in Washington State some confusion about what
14 the symbol meant, as well as noting that 26 out of 29
15 members of the Washington State Recycling Association
16 advocated removing the symbol.

17 I think that there is certainly an important
18 debate to be had there, and the international ramifications
19 should be considered. But I wanted to address more
20 importantly is, what we added on as the last question here,
21 what about the use of the chasing arrows. We have not
22 had --

23 MS. MADIGAN: We are going to come back to that.

24 MR. TAYLOR: We are going to come back? Okay.

25 MS. MADIGAN: In about three minutes.

1 MR. TAYLOR: All right.

2 MS. MADIGAN: SPI, I am going to let you jump in,
3 and then Californians Against Waste, you are next.

4 MR. THOMAS: Very quickly on Richard's point with
5 EDF about expansion of the code. No, That is not correct.
6 The code has been used on a lot of the products well before
7 these negotiations. The 39 state laws mandated its use on
8 bottles and rigid containers. There is no restriction on
9 the use of this on other products. I will go back again,
10 that if it is misused, certainly that is something we can
11 all agree upon, that we need to address.

12 If it is used, there are 16,000 grocery stores
13 around the country that are engaging in recycling of grocery
14 bags. There are two types of resin used in plastic grocery
15 bags on the code. One would be a two, one would be a four.
16 Low density and high density polyethylene. If these grocery
17 manufacturers are utilizing this code in a manner that is
18 appropriate as it is intended and is helping them to recycle
19 these products, it seems to me that is something we all
20 should encourage and support.

21 Again, I will qualify that by saying we are not
22 talking about a misuse, display in conjunction with
23 recycling claims. With respect to, short of a suggestion on
24 an ISO code or some other code as superseding the SPI resin
25 identification code, it was pointed out that consumers when

1 we looked for a way to accommodate, found the ISO code much
2 more confusing. When we looked for a way to maybe refine
3 the code and distinguishing better between types of resins,
4 they found that to be quite confusing. We could not get any
5 real consensus on how to proceed in that regard.

6 In terms of Europe and what is happening in
7 Europe, it is our understanding, again referring to plastics
8 that the European Standards Committee for packaging which
9 represents all packaging material interests is recommending
10 the SPI code, the resin identification code as we use it, in
11 plastic packaging materials.

12 MS. MADIGAN: What I am going to do is
13 temporarily, with one exception because you have not had a
14 chance to talk yet, hold off in recognizing anybody else.
15 Finish up with the list I got, and then turn to the FTC
16 before we move onto the next question.

17 You will have a chance if you do again have a
18 pressing comment to make to make it. So let us go quickly
19 through the remainder, Californians Against Waste followed
20 by the American Plastic. Okay? Californians Against Waste
21 followed by the Attorneys General.

22 MR. MURRAY: Yes, Mark Murray with Californians
23 Against Waste.

24 This morning we heard from a number of consumer
25 product trade association representatives about the need to

1 educate consumers. One of the things, the shape of a stop
2 sign, the shape of a Coca-Cola bottle, has told us that
3 symbols often times can communicate ideas much better than
4 words. And we are very fortunate here, and those of us
5 including the soft drink association as advocates of
6 recycling, to have a symbol that in the eyes of the
7 consumers as I review these studies, makes it very clear,
8 they might not have the specifics right, but this symbol
9 means recycling.

10 We are very fortunate to have that symbol. What
11 we need to do is, however, take ownership of it for
12 promoting recycling. Right now, with the use of the symbol
13 with a resin identification code which the representative
14 from SPI talked about as not being something that was
15 designed to promote recyclability. I do not think that this
16 symbol is an essential part of the SPI resin identification
17 code.

18 Now, we have gotten ourselves stuck in a
19 situation. Gifford has often accused CAW of getting
20 ourselves stuck in legislative problems because we adopt
21 something and then we are stuck with it. Unfortunately, we
22 are stuck right now with this resin identification code. So
23 it is not something that the FTC can turnover overnight.
24 But somebody has got to take the lead in terms of setting a
25 timeline where this resin identification code, which

1 fortunately communicates recycling to the public. We've got
2 to make sure that we save that for truly recycling uses.
3 Because it is a great tool to use. And right now, there are
4 many of us that are reluctant to use that tool because it is
5 unfortunately becoming so identified with plastic containers
6 regardless of their recyclability or recycled content.

7 I do not think that this is an easy or quick
8 problem that we are going to get ourselves out of, but I
9 think that the FTC can really do this debate a service by
10 basically providing some leadership and some direction in
11 terms of a timely phase out of the chasing arrow logo with
12 the resin identification code.

13 MS. MADIGAN: Okay. Attorneys General. Then, I
14 am going to come back to NRC who has patiently waited its
15 turn while I let some new people speak.

16 So Attorneys General and then NRC.

17 MS. GRIFFIN: Mary Griffin, Attorney General's
18 Task Force.

19 I wanted to address the issue of the expense and
20 complexity of making changes in the code. I think everyone
21 around the table knows that the cost of making a change is
22 very significant to many people here.

23 I guess I just wanted to add the thought that I
24 think it is unrealistic to think that the code we have got
25 now is the code that we will always have. I think there is

1 a significant movement afoot among industry to increase the
2 sorting capacities of the code to represent current
3 technology. I think at some point that changes will be
4 made.

5 So the Attorney General's office does favor
6 considering other options other than the chasing arrows.
7 And we think that it is foreseeable when changes are made in
8 the code, as they definitely will be, to consider changing
9 the code to prevent consumer deception about the use of the
10 chasing arrow symbol.

11 MS. MADIGAN: NRC and then the American Automobile
12 Manufacturers.

13 MR. COLDEN: Bud Colden, National Recycling
14 Coalition.

15 I think many of us who deal regularly with the
16 public on issues related to recycling as opposed to in
17 commerce and selling products to the consumer that deal
18 exclusively in recycling, have heard comments made and we
19 have anecdotal evidence. And we have a body of knowledge
20 amongst the members who deal with the public on these issues
21 that suggest that there are indeed people out there who will
22 look at the chasing arrows. I have had people say directly
23 to me, well, I can put it in my curbside container. It has
24 the arrows on the bottom.

25 Clearly, there is some misunderstanding there. As

1 I said earlier, the NRC Board disagreed with SPI in the
2 shape of the symbol, and in fact the Board of Directors
3 voted to support only a four-sided figure as opposed to the
4 three chasing arrows. I think largely that derives from
5 anecdotal evidence of confusion. Of course, there is some
6 survey information out there relative to confusion. But I
7 don't think that FTC is going to be able to solve that
8 confusion problem. I think that is up to us as educators
9 within the recycling community, and within the industry.

10 We have got to arrive at a solution to this thorny
11 issue that does not create any more confusion. And quite
12 honestly, we are the people with the greatest stake in it
13 and we are unable to come to an agreement on it. I have a
14 great deal of concern about the future in eliminating that
15 confusion.

16 MS. MADIGAN: American Automobile Manufacturers.

17 MR. PAUL: Richard Paul with AAMA.

18 My comment is related to possibly the misuse of
19 the SPI system. There should be recognition that not all
20 plastic durable goods perhaps should use the SPI system. In
21 automobiles and our plastic components, we have an entirely
22 separate infra-structure for the recycling of our product.
23 We use a different marketing system. We're instituting a
24 different marketing system from the Society of Automotive
25 Engineers that is identical with and compatible with an ISO

1 labeling standard for plastic parts. Our components, our
2 products don't go through the same municipal waste system,
3 typical consumer recycling.

4 So there could be some inappropriate use of the
5 SPI, but in our industry, we don't need it, and maybe that
6 should be noted.

7 MS. MADIGAN: Okay. Before I turn it over to the
8 FTC, I am going to ask if there is anybody who has not yet
9 spoken who would like to speak. I see Soap Detergent.
10 Anybody else who has not yet had a chance to speak? Okay.
11 We will give those of you who have a final burning comment a
12 chance, but then I want to let the FTC ask a question first.
13 Go ahead.

14 MR. PFLUG: I would like to reiterate --

15 MS. MADIGAN: Identify yourself.

16 MR. PFLUG: Gerry Pflug, Soap and Detergent
17 Association.

18 We as an industry would have no real problem in
19 changing the coding if indeed we were given enough lead time
20 so that we didn't have to incur the cost of changing tooling
21 when it is not necessary. But if indeed we were given a
22 long enough lead time to be able to allow the tools to wear
23 out as they all do, and if it can be timed that way, and if
24 indeed FTC is thinking about that, we would like you to
25 consider that.

1 MS. MADIGAN: Okay. Let me ask the FTC staff if
2 they have any questions. We will follow-up on this before
3 we move to the chasing arrows more generally.

4 MR. PEELER: I just had one question. It is just
5 a follow-up on something that Bud said.

6 MS. MADIGAN: Peeler, FTC.

7 MR. PEELER: Lee Peeler.

8 Earlier this comment was made that in the survey
9 that fifty-one percent of the people said if they did not
10 know whether it was recyclable, they would put it in.

11 Do you think the SPI code's presence releases some
12 of that or fuels some of that?

13 MR. COLDEN: I do not think anyone has any
14 evidence to suggest one way or the other. I think that we
15 have --

16 MS. MADIGAN: A microphone and identify yourself.

17 MR. COLDEN: Sorry, Bud Colden, National Recycling
18 Coalition.

19 I do not think anyone has any firm data or
20 consumer research for us to be able to come to a conclusion
21 of whether it is the SPI code that is fueling that. Whether
22 there are other issues related to the recyclability of
23 plastics that are fueling that. Because I mean there
24 certainly has been a lot of promotion of the value of
25 plastics in the way stream. I see it every time I turn the

1 TV on. The presence is there, and I think that that might
2 contribute to it as well.

3 I think that one of the things we have heard from
4 various people that have done some involvement with
5 consumers is that many people are anxious to recycle. I
6 think that they presume even going beyond plastics and into
7 other materials, different grades of paper for example that
8 they want to recycle. And if there is a doubt in their
9 mind, they are going to put it in there. And where you have
10 volume based systems for waste disposal, there is even more
11 of an incentive to get it recycled than there is to put it
12 in the trash.

13 MS. MADIGAN: Anybody who has a final very brief
14 comment to make before we move on? EDF and Grocery
15 Management. Real brief.

16 MR. DENISON: Our position on this, I think
17 represents a solution that the FTC could readily adopt.
18 That is simply to regard the use of a code, not to ban it or
19 anything like that, regard it as a recyclable claim and
20 require whatever disclosure requirements or qualifiers you
21 are going to require otherwise, and you apply the use of the
22 code. That deals with state laws because you can continue
23 to use it where you need to. You simply have to qualify the
24 claim like you would any other recyclable claim.

25 MS. MADIGAN: Grocery Manufacturers.

1 MS. SEILER: I was just going to say our position
2 is that it does not make sense to change this code unless we
3 have clear evidence that it is in fact misleading consumers,
4 or deceiving consumers in some way. Having looked for that
5 evidence, have not been able to find it. And to the state
6 law issue, it is an extremely important thing to point out
7 that 39 states require the use of the SPI code, and many of
8 the laws specifically spell out what the code looks like.
9 And if there is any change to that, we have to change those
10 state laws, all 39 of them, or will be out of compliance.

11 As an industry, we are not out of compliance on
12 things like that.

13 MS. MADIGAN: Okay.

14 MR. THOMAS: Just a quick comment to Richard's
15 comment, that is impractical. We cannot, given the tooling
16 and the placement. In fact, if you engaged in those kinds
17 of qualifiers, you would end up doing what you do not want
18 to do which is moving that code up into a prominent
19 position, and in essence turning it into more of an
20 environmental marketing claim than if you left it as is.
21 Our position is clear.

22 We looked at all options, we tried to find a way
23 to work responsibly with the NRC. We engaged in good faith
24 negotiations. We reached a decision that the code does not
25 need to be changed. What needs to be done is for all us, as

1 we are doing, to engage in an extensive education program.
2 We are using the carrot to go out and influence as many
3 people as we possibly can in the industry to use this code
4 appropriately. I suggested that the FTC use the stick in
5 egregious situations and demonstrate that they do not want
6 to see this code used as an environmental marketing claim.

7 There is another element of education, and if I
8 keep harping on education, I believe it is like property,
9 location, location, location. This is what we are to do.
10 We are to get these communities involved in an extensive
11 education effort to explain what this code is all about. It
12 is a resin identification code to facilitate recycling, to
13 facilitate recyclers' use of this in sorting. And if the
14 communities want to use it in terms of facilitating
15 recycling at the community level, then let us educate them
16 as to what it is all about so that we will end some of this
17 confusion and some of this contamination that we have been
18 talking about for most of the morning.

19 MS. MADIGAN: We are running a little bit late,
20 but I noticed at least with the collection of public
21 comments I have in my hand, that we might have a little
22 extra time there. So I am going to propose that we spend
23 another five to ten minutes now talking about chasing
24 arrows, then take our break. We might take a little time
25 off the public participation, but I do not think it will

1 infringe or impinge on anybody because of the number unless
2 you all surprise me after the break.

3 Food Service, I would like to go forward. Can I
4 go forward on chasing arrows?

5 You have one burning comment on SPI?

6 Lee, can you restate the question one more time so
7 we know what we are talking about?

8 MR. PEELER: Yes. The question is concerning the
9 use of the chasing arrows without any identification of
10 whether it is being used to indicate recyclability, or
11 recycled content and distinguish that from the SPI code
12 which is what we have been talking about most of the
13 morning, at least in the present version of the FTC guides,
14 along as it is on the bottom without any indication of
15 whether it is recyclable.

16 MS. MADIGAN: Clarification again, just one
17 second. There are definitely colleagues in the audience who
18 have got a point of view on this who are probably going to
19 be on the next panel on the post-consumer recycled content
20 issue.

21 MR. KRAMER: Madame Chairman, that was my point.

22 MS. MADIGAN: One second. What we will do, we are
23 going to start the discussion now, but it will not close the
24 discussion because we might lose a couple of people between
25 now and the next panel, but then we will pick it back up.

1 It is not a perfect solution, but it may be the least
2 difficult solution. Okay?

3 For clarification, identify yourself and into the
4 mic.

5 MS. ADAMS: Georjean Adams, 3M.

6 Are you talking about the Mobius loop in and of
7 itself?

8 MR. PEELER: Yes, the Mobius loop in and of
9 itself.

10 MS. ADAMS: Not the SPI version?

11 MR. PEELER: Not the SPI code.

12 MS. ADAMS: Just that general --

13 MS. ADAMS: Not the triangle.

14 MS. MADIGAN: Mobius loop in and of itself. It is
15 on the table. Food Service starts and then GMA.

16 MR. DAVIS: That was my point.

17 MS. MADIGAN: Okay. So Food Service starts and
18 then OSPIRG, and then NSDA.

19 MR. DAVIS: My first point was going to be that
20 AF&PA has the largest stake in the Mobius loop as probably
21 anybody at the table, and they are not at the table and that
22 was why I was going to ask that. But to go on with my
23 discussion, Food Service and Packaging Institute, and by the
24 way, Richard Davis, Food Service and Packaging Institute.

25 We have asked for consideration by FTC to consider

1 the Mobius loop as a label which does indicate recycling or
2 recycled content or recyclability. It is probably one of
3 the most recognized symbols by the consumer that I know of.
4 It is not being recommended by us to be ordered or allowed
5 to use it unqualified unnecessarily since it can mean
6 recycled, and it can also mean recyclable.

7 Our consideration would be if and when you use the
8 term you state that it is recycled content or you state that
9 is recyclable, that way it takes away any cloud of
10 disception or confusion. And I might also add that we
11 talked about ISO 14,000 in the environmental arena
12 internationally, those meetings in Seoul last week also are
13 moving forward with the use of the Mobius loop to be allowed
14 for the term recyclable or recycled content. Their position
15 would be that you would label it. If you use the Mobius
16 loop, you can use it in configuration dark on white or white
17 on dark or whatever the case may be. But whatever you use,
18 it would only depend on packaging and graphics, but you
19 would have to label it recyclable, and then with the
20 disclaimer as you might have to do for FTC, but the term
21 recyclable being there. And then recycled content if it was
22 being used for a recycled claim.

23 One of the reasons we would like to have FTC give
24 it strong consideration to and think about it is that also
25 in the international arena is another movement. That

1 movement is in the European theatre where the Mobius loop is
2 being considered as a product identity symbol. As we know,
3 product identity symbols where we have the AL for aluminum,
4 cadmium batteries have a CD in the middle of a symbol. The
5 European theatre is considering using the Mobius loop to
6 mean paper and paper only. It is only a symbol to identify
7 paper. It has nothing to do with environmental. We are,
8 from the American side, are trying to fight that. We think
9 it is a recycled symbol, and therefore we would like to see
10 FTC give some consideration for that also which allows us
11 some leverage in the international arena.

12 Thank you.

13 MS. MADIGAN: Thank you. OSPIRG followed by NSDA.

14 MR. TAYLOR: Chris Taylor with OSPIRG.

15 I would just like to point out that, I believe
16 that the unqualified use of the Mobius loop or the chasing
17 arrows has no redeeming benefit for anyone. I am not sure
18 what purpose that serves. It just serves to further the
19 confusion. And with all due respect to the paper industry,
20 who has done a lot of great work to promote recycling, I
21 think their claim, the original use of this was to denote
22 100 percent recycled content paperboard. That may have been
23 the case originally, but that certainly is no longer the
24 case in terms of the way consumers perceive it now. It is
25 now, I would agree with what Mark from CAW said, it is now

1 considered a generic symbol to denote either recycled
2 content or recyclability. And that in the absence of some
3 way of giving a precise definition which I do not know that
4 the FTC would be able or could do, that we should require, I
5 guess I agree with my colleague from the Food Service
6 Packaging Institute that it should have to be qualified.
7 They should say what they mean by the unqualified use of the
8 recycling symbol simply leads to confusion and cynicism and
9 you see it all over the place now on all kinds of things.

10 Even as a recycling professional, I have no idea
11 what they mean half the time. If people around this table,
12 if we are confused by the use of it, you can be sure that
13 the consumers are confused by the use of it. So I would
14 encourage the FTC that that be a qualified use of the
15 symbol.

16 MS. MADIGAN: Okay. National Soft Drink followed
17 by Professor Cude.

18 MR. STACK: I am sure we will hear from AFPA in
19 the next session, but I would like to point out, they are
20 the ones that did originate the symbol and should be given
21 credit for that. And also credit for allowing it to be
22 widespread to other material types.

23 In the soft drink industry, some of our customers,
24 some of our manufacturers, some of our consumer product
25 companies rather, do use the loop with the words, "Please

1 Recycle". I would ask the FTC that if they are going to
2 examine this question in addition to the recyclability and
3 recycled content issue, that the encouragement, "Please
4 Recycle", be considered.

5 As to why the symbol is on some of our labels, it
6 is an attention getting symbol which hopefully attracts the
7 consumer to do something with the container after its
8 contents are consumed.

9 MS. MADIGAN: I am going to hold off on taking any
10 more hands until the FTC can ask its questions. I got a
11 couple of people on my list, Professor Cude and then NRC.

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

13 I would just like to observe that in our tracking
14 study we have found very few instances of the Mobius loop
15 being used without qualifying text. We, of course, are not
16 looking at all products in all markets, but I would just
17 like to observe that.

18 However, also based on that tracking study, we
19 have found numerous fermentations of that symbol for various
20 purposes. I think we are up to at least eight different
21 variations on how it might be presented on many different
22 things, plus there are companies that put a trademark symbol
23 inside the Mobius loop. So I would suggest that that
24 indicates that consumers would not have any way of knowing
25 what the loop means without some explanatory text, and would

1 encourage that position that it not be used without text.
2 Because I do not think consumers can reasonably be expected
3 to know it.

4 MS. MADIGAN: NRC.

5 MR. COLDEN: Bud Colden, National Recycling
6 Coalition.

7 The NRC position on the use of the three chasing
8 arrows, it has indeed become an environmental marketing
9 tool. We encourage its use an environmental marketing tool,
10 but only where it is accompanied by a truthful and
11 substantiated claims of recyclability, reusability or
12 recycled content.

13 MS. MADIGAN: I apologize EDF. I thought Molly
14 was simply greeting me, and you were actually trying to get
15 my eyes to speak. So go ahead and make your comment, and
16 then I will turn it over to the FTC staff.

17 MS. KINGSTON: Molly Kingston, EDF.

18 I was actually doing both. You are doing a great
19 job.

20 Many of the comments that have been made have
21 summed up the concerns and some of the solutions adopted in
22 the international community. The ISO standard as Richard
23 Davis explained requires that clear text be present to
24 describe whether the symbol relates to recycled content or
25 recyclability. And also requires that text to describe

1 whether the claim is being made for the product or the
2 package.

3 The standard reads that the Mobius loop shall
4 always be accompanied by explanatory text. In last week's
5 meeting in Korea, we in fact reinforced that position
6 because we made a determination that the loop could appear
7 in any incarnation as a solid symbol or a symbol with a
8 background. And either way, that it will always need to be
9 accompanied by text.

10 There is an additional concern that has been
11 raised in the international community, and a concern that
12 EDF has had here. Over the adoption of a trademark or
13 company logo or corporate position with the symbol itself.
14 We have an example that we actually found on a Coca-Cola can
15 of the Coca-Cola swish symbol being placed within the Mobius
16 loop. The international community developing the ISO
17 standard has decided that the symbol shall not be modified
18 in any way to relate the symbol to a specific brand, company
19 or corporate position because in fact that has a potential
20 to mislead the consumer and to lend an exaggerated overall
21 claim of environmental friendliness to the company who has
22 modified or adopted the symbol.

23 MS. MADIGAN: Okay. What I would like to do is
24 ask the FTC if it has any other questions. If not, we will
25 do one final last chance if anybody wants to make a comment

1 on this before we break.

2 Any follow-up questions from the FTC staff? Okay.
3 First of all, anybody who has not yet spoken to the chasing
4 arrow symbol who would like to, and then we will open up to
5 anybody else for very brief comments.

6 3M?

7 MS. ADAMS: I just wanted to concur with everybody
8 else that we do not think the symbol should be used as a
9 standalone. It always needs to be accompanied by text in
10 accordance to the guidelines.

11 MS. MADIGAN: And finally anybody else, NSDA and
12 anybody else who wants to have a final word before we move
13 on to the public participation segment.

14 NSDA?

15 MR. STACK: Just a point of clarification to
16 Molly. What country was that can from?

17 MS. KINGSTON: It was found here in the United
18 States.

19 MR. STACK: Do you have it?

20 MS. KINGSTON: I do not have the can itself, but I
21 have a photocopy of it which I would be happy to show you
22 during the break.

23 MS. MADIGAN: Yes, you can share it during the
24 break.

25 MR. STACK: No visuals allowed.

1 MS. MADIGAN: That is right.

2 With that, I would like to close this part of the
3 discussion. We will take a ten minute break. But before
4 everybody gets up, I would like to talk about the next
5 segment.

6 The public participation segment will be governed
7 primarily by these slips of paper. Again, we ask you fill
8 this out with your name, your organization, and the topic
9 you want to address. You do not have to spell out your
10 precise question for us, we just want to know what topic you
11 are going to ask about so we can cluster questions on
12 similar topics together.

13 Those of you who are in the overflow room, I am
14 going to encourage you to come on up for this segment
15 because we have a microphone up here. What we will do is,
16 we will ask people if they can limit their questions or
17 comments to about two minutes each. I know that is tough.
18 If we have time, we may allow for some back and forth with
19 the committee. But I think what we will first do is just
20 try to get through so that everybody who has been in the
21 audience who has a question or comment has a chance to make
22 it for the record.

23 Let us take, if I may, a ten minute break. We
24 will convene on the spot at 2:36 p.m.

25 (Whereupon, a short recess was taken.)

1 MS. MADIGAN: Try to brief as they can, and try to
2 limit their comments or questions on each topic to two
3 minutes if they could.

4 Do I have a stopwatch? Well, instinct will guide
5 me. The FTC is not here to answer questions, so I just want
6 to reiterate that. You may pose questions, but let us
7 assume that they will be rhetorical in some sense because
8 the FTC will generally not be responding unless Lee tugs at
9 my shirt and says he wants to respond.

10 I would like to get through all the people who
11 wanted to pose comments or questions first before we get
12 some feedback from the committee or anybody else who is
13 here. If we have some time, I am happy to have a little
14 facilitated open dialog, but I think the first priority is
15 to get through those people who have taken the time to fill
16 through the forms and adhere to the procedures.

17 So with that, let me just bring with Mr. Eisen
18 from Home Depo.

19 MR. EISEN: I think that my comment was addressed
20 during the course of the discussion, and that was to post
21 the national recycling rate next to the "recyclable"
22 comments. So I do not have anything further to add to that.

23 MS. MADIGAN: Thank you. That was well under two
24 minutes, I appreciate that.

25 Marva Kalish, you have a hard act to follow.

1 Marva Kalish, ICMAT? Okay. Maybe she will show back up.

2 Kristina Paquette from FDA. You can correct me if
3 I have mispronounced your name. For the recorder, I will
4 give you these forms so you can doublecheck the spelling if
5 that will be helpful.

6 KRISTINA PAQUETTE: My name is Kristina Paquette
7 from Food and Drug Administration.

8 My question was originally addressed to FTC, but I
9 can change the wording so that I would just say that I
10 believe that FTC should consider how it will address the SPI
11 code labeling of new blends in co-polymers of PET or
12 polyethylene polymers with some of the new co-polymers and
13 blends coming down the line. For example, isophthalate,
14 naphthalate, nylon, cyclohexanedimethyl carboxylate acid,
15 etc. because these new blends have a potential to
16 contaminate the current recycling stream. If they are
17 continued to be labeled with the SPI Code One, how should
18 these be addressed? Should a new code be developed? Should
19 subsets of one be developed? How are these items going to
20 be addressed?

21 MS. MADIGAN: Okay. Del Oddy, am I pronouncing
22 that right?

23 MR. ODDY: Yes.

24 MS. MADIGAN: Mr. Oddy.

25 MR. ODDY: My name is Del Oddy, and I come before

1 you at this particular time as an individual and a consumer.
2 Having sat through the meeting this morning, it was just
3 interesting for me to think back, and this is not the first
4 period in time that we have had recycling. We go back to
5 World War II, there was a major issue at that time, and one
6 of patriotic desire for people to come forward and
7 contribute cans, papers and so on, was also one to get your
8 rationing stamps, extra rationing stamps by doing that, I
9 believe. So it was an incentive. I think we have a similar
10 incentive in the soft drink industry presently in many
11 states where you pay the deposit and get the money back.
12 Those are incentives for the consumer. As for curbside
13 collection, I talk as a non-educated consumer right at the
14 moment, and say what my family does, a family of eight. We
15 look at the bottom of it, if it does have a recycled symbol,
16 we throw it in that recycle bin. It is a cost and profit
17 standpoint in the area where I live, I believe. The people
18 who pick up the trash are the landfill. They also have
19 contracts to get rid of those items that are coming back as
20 recyclables, whether it be cardboard, plastic, metal or
21 whatever.

22 They do train their pickup people to sort at the
23 point of pickup into a sixteen bin trailer. That is where
24 the education standpoint comes from in my particular
25 community. It is not with the consumer. The consumer is

1 educated to anything possible that can be recycled should be
2 put into that bin, and then somebody who is trained to make
3 the profit on the product sorts it out.

4 Often times I see cardboard going into the garbage
5 trucks, so to speak, to the landfill. And in talking to the
6 people about that, I am informed that maybe at that
7 particular time, they have more cardboard than they can
8 handle. But it is not cost effective for them to do that
9 because the landfill has regulations of height. So the
10 sooner they fill it up, they sooner they are going to be out
11 of business. So it is an incentive, a financial incentive
12 for them to do the right thing.

13 Thank you.

14 MS. MADIGAN: Thank you. Winnie Bayden. The
15 question with respect to plastic containers and to recycle.

16 MS. BAYDEN: I live in a small community. We do
17 not recycle everything.

18 MS. MADIGAN: By the way, are you representing an
19 organization?

20 MS. BAYDEN: I am here for Independent Cosmetic
21 Manufacturers and Distributors, however, as a resident of a
22 small community, we do not recycle everything so it becomes
23 very confusing. I think that the resin code which our
24 community has used should be the one that we should go with
25 and expand. And that we should eliminate recycling logos

1 and claims because they are confusing. Through education
2 with is simple, consistent and uniform and allowing the
3 community to impart that information to the residents, it
4 will be far more effective.

5 Then the other thing, you address information on
6 the package. Packaging can be very small. And by going
7 into a lot of words to explain, you cannot fit it on all
8 packages. And people don't read today.

9 Thank you.

10 MS. MADIGAN: Sheila Cogan. And if you would
11 indicate whether you are here as an individual or
12 representing an organization.

13 MS. COGAN: I am Sheila Cogan. I am presently
14 here as an individual, but I do have almost a twenty year
15 involvement as a recycling professional. I just want to
16 bring one comment to your attention. That is that a recent
17 analysis by the Consumers Union Organization concerning
18 advertising in the classroom shows that the number of
19 advertising leaflets and teacher guides and incentive
20 programs, and contests that are being used to forward the
21 environmental recycling message, can be rated through a
22 recent consumer union system from not at all commercial to
23 highly commercial advertising regarding recyclability to a
24 very impressionable, shall we say, audience. An audience
25 that very often takes those messages home to their family.

1 I would like to see some component of the new guidelines
2 addressed advertising to this very vulnerable target
3 audience.

4 Thank you.

5 MS. MADIGAN: Thank you. Michele Raymond. You
6 are with Recycling Laws International?

7 MS. RAYMOND: Yes. I publish two newsletters. I
8 have been following this issue as a journalist for seven
9 years. I get questions from my customers who are
10 manufacturers, not from consumers. So I am not here to pass
11 judgment on anything, but I just wanted to make a point of
12 information. There is something that nobody brought up
13 during the discussions of the resin coding, and maybe it is
14 just an oversight. But there is no agreement in Europe on
15 any of these symbols. My customers are very, very confused,
16 the ones that export. They are even more confused. Because
17 right now, there is this thing called the packaging
18 directive. There is the Article XXI Committee that is
19 meeting. And marking is going to be, well, they cannot
20 decide whether it is going to be voluntary or mandatory
21 under the directive.

22 They are involved in three issues; one is marking,
23 one is resin labeling. Not resin, but material coding and
24 the other is the database. They have agreed on the database
25 part, they have not agreed on the symbol. There is no

1 agreement on the SPI code in Europe as we know it. I do not
2 see any discussion of the SPI code at the level of the
3 Article XXI Committee.

4 The other problem is under the current proposal as
5 of August, the Commission is proposing a round symbol which
6 is not what we use in the U.S. Under the current proposal,
7 the chasing arrows that we use in the U.S. would be banned.
8 Any other symbol, including the code, everything would be
9 banned by 1999.

10 Now there is some rumor that they are going to
11 change that and allow something that ISO might agree to.
12 But this is just what is going on in Europe that wasn't
13 really, I don't think, brought out as a point of
14 information.

15 I also get questions from my customers, the
16 manufacturers on what to put on the box, what to put on the
17 bottom of the bottle. As the lady from FDA correctly
18 pointed out, we got some new and unusual polymers, and most
19 of the regulators do not want to stifle innovation on the
20 polymers. And some of the new polymers do not interfere
21 with recycling. However, no lawyer, and I have talked to
22 the lawyers, can give them the green light to use the two,
23 for example, if you are using these different layers because
24 there is always one or two states that interpret it, oh no,
25 you have to use the seven. So it would be nice, perhaps, if

1 there was some clarification on when absolutely positively
2 can you use that certain code? There is not much
3 clarification on it. It is very befuddling.

4 Thank you.

5 MR. PEELER: Thank you, Michele. We thought we
6 had not paid our subscription.

7 MS. RAYMOND: You did not renew, you have the
8 domestic one. I am talking about the international one.

9 MS. MADIGAN: We did get a request to make a
10 question about compostable. To that question, I would like
11 to defer that until the public participation segment at the
12 end of today when we will take up all questions related to
13 compostable.

14 Let me just call out one name that we called out
15 earlier, and see if she is back. Marva Kalish. Not here?
16 Okay.

17 We have a couple of minutes. We are actually
18 ahead of schedule. In light of that, let me first --

19 MR. PEELER: Sheila?

20 MS. MADIGAN: Sheila. Question to the SPI?

21 MR. PEELER: On the question that was raised by
22 the first commentator from FDA and just for our information,
23 is SPI doing anything on how those new polymers would be fit
24 into the code?

25 MS. MILLAR: I am going to defer that to Pat Toner

1 who is the Technical Director of SPI.

2 MS. MADIGAN: Hiding under the chair there.

3 MR. TONER: I will be back for compostable this
4 afternoon.

5 MS. MADIGAN: Identify yourself.

6 MR. TONER: Patrick Toner, Society of the Plastics
7 Industry.

8 In short, answer at the moment is no. But absent
9 any other information, just like any other of the 50 or 60
10 different polymers on the markets, I presume it would start
11 out at least as a seven which means not one through six.

12 MS. MADIGAN: Okay. Any other comments or
13 response to that question? Californians Against Waste?

14 MR. MURRAY: Mark Murray with Californians Against
15 Waste.

16 Just the comment by the FDA and by Michele Raymond
17 and Lee's comment. It seems to me that to some extent, it
18 does represent an opportunity to not make the same mistake
19 that we have made in the past, and that with these new
20 polymers, there is an opportunity to have potentially the
21 resin identification code go forward without the chasing
22 arrows recycling logo. Nobody could complain about costs
23 since these are brand new materials that do not have a code
24 on them right now. And so it represents an opportunity for
25 the FTC to do something in this area that would not create a

1 cost burden on industry.

2 MS. MADIGAN: Let me just ask, anybody who has
3 been a participant at the main table, including those who
4 are still sitting up here, but anyone who has participated
5 today in the recyclable, if you have any other reactions to
6 that topic, feel free even if you are sitting out in the
7 audience at the moment. Okay.

8 Let me do one other thing, and then we might have
9 a slightly longer break than we had envisioned. Are there
10 any other questions from anybody in the room or comments
11 that they would like to propose very briefly? We are not
12 even going to force you to adhere to the form for just a few
13 more minutes. But what we will need to do is to take a
14 moment to identify yourself, spell your name for the
15 transcriber. These questions should relate solely to
16 recyclability at this point.

17 MR. GRAHAM: Yes. My name is Arthur Graham. I am
18 President of Freefill Package, Inc. We are privileged to be
19 on the panel at 3:15 p.m.

20 Just to comment on this SPI code. We noticed you
21 talked about the different co-polymers being invented by the
22 plastics industry which means that they have great
23 application that we as consumers have an economic or
24 performance advantage. But nothing has been said about the
25 different kinds and grades of paper they have made. The

1 different kinds of steels that are made. The different
2 alloys in separating those out. Why are we concentrating on
3 the plastics industry as the bad guy here who has made a
4 valued attempt to segregate out the various types of
5 plastics that are recyclable, when in fact we do not do the
6 same thing to the paper industry, the steel industry and the
7 glass industry.

8 The paper industry, I know for example, they say
9 you can separate only newspapers here, but you cannot put
10 magazines in that same pile. We should also think of the
11 same issue regarding other products as we do in the plastics
12 industry.

13 Thank you.

14 MS. MADIGAN: Thank you. Mr. Graham, G-R-A-H-A-M?

15 MR. GRAHAM: Like the cracker.

16 MS. MADIGAN: Thank you. Since a question was
17 posed, does anybody want to respond to that who is a
18 participant?

19 Automobile Manufacturers?

20 MR. PAUL: Richard Paul with AAMA.

21 Just to make a comment about something actually
22 from a previous session that I do not think you ever got to
23 regarding the impact of state laws on requiring use of the
24 SPI code. The only comment I would make on that is that
25 there are again exceptions to that, particularly to the use

1 or the requirement on motor vehicle components such as
2 bottle and containers.

3 Again, in our product with motor vehicles, they do
4 not go through the municipal waste system. They do not go
5 through the consumer recycling infra-structure. We have our
6 separate infra-structure. Therefore, it is inappropriate
7 and we have seen this in several states where they have
8 tried to require the use of the SPI code. For instance, for
9 the containers under the hood like the overflow container
10 for the coolant, and the windshield wiper washer fluid, and
11 they do not understand that this goes in through the scrap
12 yards, the automobile salvage yards and the dismantlers and
13 so forth. They are in a different infra-structure, and the
14 SPI code does not work there. We again have a separate
15 system for recycling those kinds of components.

16 MS. MADIGAN: American Forest and Paper.

17 MR. BUNTEN: Peter Buntten, American Forest and
18 Paper.

19 Just a quick response to the previous gentlemen's
20 comments. The paper industry does have a very expansive
21 coding system for its paper stock grades, and that comes to
22 us by the Institute for Scrap Recycling Industries where
23 there are close to 70 identified grades of paper materials
24 for collection and sorting.

25 MS. MADIGAN: What I would like to do at this

1 point then is adjourn a few minutes early. We are scheduled
2 to start the next panel on recycled content at 3:15 p.m.
3 And with respect to the people who may have scheduled their
4 arrival for a 3:15 p.m. starting time, we will not start
5 before then.

6 What I would encourage, those panelists to try to
7 be in your seats about 3:10 p.m. so we can start promptly at
8 3:15 p.m.

9 With that, you have a break.

10 (Whereupon, Session 2 ended at 2:57 p.m.)

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S E S S I O N 3

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3:05 p.m.

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MS. MADIGAN: All right. I think we have everybody around the table. It looks like a full house.

5

6

7

8

9

Before we begin, for the benefit of the Reporter, let's take a minute and go around the room. And we are going to go from this direction this time. So, we will start with NRDC. Yes, it is a little tough with those signs.

10

MS. DeCARLO: Anjanette DeCarlo, NRDC.

11

12

MS. MADIGAN: Hold on a second. I need a signal. Okay.

13

14

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

15

MR. DELLINGER: Bob Dellinger, U.S. EPA.

16

MS. ADAMS: Georjean Adams, still 3M.

17

18

MS. MADIGAN: Hold on a second. I need a signal from the Reporter. Okay.

19

20

MR. MAC LEOD: Bill MacLeod, Grocery Manufacturers of America.

21

22

MR. CHAFFEE: Chet Chaffee, Scientific Certification Systems.

23

MS. MADIGAN: Hang on one second. Move on. Okay.

24

25

MR. LOWMAN: Rod Lowman, American Plastics Council.

1 MS. MADIGAN: Okay.

2 MR. BEATON: Archie Beaton, Chlorine-Free Products
3 Association.

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

5 MS. MADIGAN: Okay.

6 MS. GRIFFIN: Mary Griffin, Attorney General's
7 Office of Massachusetts and I am here on behalf of a task
8 force that represents the Attorney Generals of 12 states.

9 MS. MADIGAN: Okay.

10 MS. McPOLAND: Fran McPoland. I am the Federal
11 Environmental executive.

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

13 MR. DERSHOWITZ: Michael Dershowitz, the Federal
14 Trade Commission.

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

16 MS. MADIGAN: Denise Madigan, Facilitator.

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

18 MS. MADIGAN: Okay.

19 MR. COLDEN: Bud Colden, National Recycling
20 Coalition and Northeast Recycling Council.

21 MR. DENISON: The FTC sure has a lot of seats at
22 the table.

23 Richard Denison, Environmental Defense Fund.

24 MS. MADIGAN: I suppose we could kick them off,
25 but --

1 MR. MURRAY: Mark Murray, Californians Against
2 Waste.

3 MS. DICKERSON: Brooke Dickerson, Synthetic
4 Industries. Brooke Dickerson.

5 MS. MADIGAN: Okay.

6 MR. DEAN: I am Norman Dean with Green Seal.

7 MS. MADIGAN: Okay.

8 MR. DAVIS: Richard Davis, Food Service and
9 Packaging Institute.

10 MS. MADIGAN: Okay.

11 MR. BUNTEN: Peter Buntten, American Forest and
12 Paper Association.

13 MR. VON ZUBEN: Fred Von Zuben, the Newark Group
14 representing the Paper Recycling Coalition.

15 MS. MADIGAN: Okay, let's hold off a second.
16 Okay.

17 MR. DAVIS: Alan Davis, Conservatory Information
18 Services.

19 MS. MADIGAN: Okay.

20 MR. MICALI: Mark Micali, Direct Marketing
21 Association.

22 MS. MADIGAN: Okay.

23 MR. PAUL: Richard Paul with the American
24 Automobile Manufacturers Association.

25 MR. DUKE: Kevin Duke, Ford Motor Company.

1 MS. WHELAN: Virginia Whelan representing the
2 Automotive Recyclers Association.

3 MS. MADIGAN: Okay, that is it. If you could move
4 that Direct Marketing Association tag just a little to your
5 right. No, no, keep your sign right there and move your
6 water container. Great. Just so that I can call it. Thank
7 you.

8 I do not know if you really moved it in front of
9 your neighbors' name tag on purpose. Okay, I think I
10 recognize the others. All right.

11 With respect to this next section, six questions
12 have been identified by the FTC. And rather than take them
13 all ceriatum, we are going to propose the following.

14 That we talk for a little bit -- 15, 20 minutes
15 or so -- about the first question and the sixth question
16 because they are sort of general questions: "Has consumer
17 perception of recycled claims changed?" and "What has been
18 the experience with recycled claims since the guides were
19 adopted?"

20 From there, we will then go into the cluster of
21 questions related to pre-consumer and post-consumer
22 distinctions since a fair number of comments raised issues
23 surrounding that.

24 And from there, we will end up with a discussion
25 about the reconditioned parts issue.

1 So, just to reiterate. We will start out with
2 questions one and six which are more general. And then we
3 will move to the cluster of questions two, three and four
4 related to pre-consumer and post-consumer. And then we will
5 conclude with the fifth question which is reconditioned
6 parts.

7 So, let's begin with the general discussion of
8 questions one and six. And who wants to begin? Professor
9 Mayer?

10 MR. MAYER: I live in a state where caffeine is
11 not always available to boost your spirits. And that is
12 Utah. So, I thought I would start with a little good news
13 to boost your spirits.

14 And that is unlike what I said earlier about
15 recyclability claims which seem to be slightly in retreat,
16 recycle content claims are not and continue to improve in
17 terms of their specificity; and that is, whether or not they
18 make a distinction for specified post-consumer content.

19 So, we have seen, in our study, a growth from less
20 than 50 percent of claims that refer to post-consumer
21 content to, now, we are at about 80 percent specified
22 post-consumer content and, that is, without having to do
23 that.

24 MS. MADIGAN: Hmm, a pause. Green Seal?

25 MR. DEAN: The microphone is in no man's land.

1 MS. MADIGAN: Oh, there was a secret plan here.
2 Keep the comments to a minimum.

3 MR. DEAN: One of the things that has struck me
4 about recycled content claims over the last several years is
5 that they seem to be coming more and more general
6 environmental benefit claims essentially.

7 That if you look at the study that the Paper
8 Recycling Coalition put on the record here, for example,
9 consumers react to the recycled claim by saying things
10 like: Well, it is environmentally nice; It is a Green
11 product; It is something that is saving the earth for future
12 generations.

13 And I think this shift to consumers looking at the
14 recycling chasing arrows symbol as a general environmental
15 benefit claim, is a double-edged sword because, on the one
16 hand, it is increasing the rate of recycling, as we heard
17 this morning, but, on the other hand, it has the trap that
18 consumers are beginning to believe that recycled content may
19 be the most important environmental attribute of a product
20 and in the waste hierarchy that is not the case. That
21 source reduction and other steps often bring about greater
22 environmental benefits than recycled content does.

23 So, I think we have a sort of good news/bad news
24 situation. We have convinced people that recycling is
25 important. They have heard the message.

1 And, now, I think we are going to have difficulty
2 selling them that other attributes of products are even more
3 important.

4 MS. MADIGAN: Okay. Well, if there are no other
5 general comments, what I might do is inject a question which
6 surfaced in the recyclable discussion that people seem to
7 think it probably should be continued for a moment in the
8 recycled content discussion and that is the question about
9 chasing arrows.

10 And I am going to attempt to frame this in a
11 particular way and then the FTC can correct me if I have
12 framed this in the wrong way. Okay?

13 My sense is -- and I have to look at my notes here
14 -- what appear to be emerging from the comments made by
15 those sitting at the table during the recyclable discussion
16 was an emerging consensus -- and correct me if I am wrong
17 -- that the Mobius loop should be used only in conjunction
18 with qualification text.

19 And we are not talking now about the SPI code, but
20 about the Mobius loop more generally.

21 In order to save some time in this discussion, I
22 would like to just pose the question:

23 Is there anyone at the table who disagrees. In
24 other words, who thinks that the Mobius loop need not be
25 limited to use with qualifying text.

1 Have I said that right, FTC? Have I said that
2 right?

3 (No audible response.)

4 MS. MADIGAN: So, that should save us a little
5 time. Would anybody take issue with that -- who thinks, for
6 example, the Mobius loop should be free to be used without
7 text?

8 Well, that was also another brief discussion. I
9 am going to look around the table one more time.

10 MR. DEAN: I thought we were not supposed to reach
11 consensus.

12 MS. MADIGAN: Well, you do not make a consensus
13 based recommendation, but if common ground emerges from this
14 limited group of participants, that might be interesting.

15 Well, we are way ahead of schedule here. So,
16 let's move on, then, to pre- and post-consumer.

17 MR. DUKE: Just one thing.

18 MS. MADIGAN: Yes?

19 MR. DUKE: Kevin Duke, Ford Motor Company.

20 Not to stir things up, but it occurs to me that,
21 given different interpretations, that if you just had the
22 Mobius without any text, one interpretation would be that it
23 is both recyclable and recycled.

24 And in that case, if it was 100 percent true on
25 each point, it would not be deceptive, I would submit.

1 MS. MADIGAN: Any response to that? No? Any
2 response to that point in particular? Do you have another
3 point to make?

4 MR. PEELER: I think that is what we were talking
5 about earlier. You know, if that was true on both counts,
6 there would not --

7 MR. DEAN: And, then, I just have another view on
8 this count.

9 MS. MADIGAN: Okay. Let's be careful that we
10 identify ourselves. That was Lee Peeler who responded to
11 that.

12 And did you have a followup on the point that you
13 were making?

14 MR. DEAN: Not on this. Another point.

15 MS. MADIGAN: Okay. I would like to let a few
16 more people respond and we will come back to you.

17 NRC, you wanted to say something?

18 MR. COLDEN: Basically, I did not jump right in on
19 the beginning of this question because you were beating up
20 on me earlier for hogging the microphone. That is just a
21 joke. She really was not.

22 But I did want to add something about consumer
23 perception in terms of recycled content claims because this
24 is much more difficult.

25 One, it is much more difficult to know whether

1 the claims are legitimate than they are with the term
2 "recyclable".

3 And I think largely that is probably why we have
4 seen a much higher incident of activity -- compliance
5 activity -- at FTC in terms of recyclable as opposed to
6 recycled content. That is going to be a real tough one to
7 determine.

8 So, if someone is out there marketing a product
9 who does not have what one would consider legitimate
10 recycled content, it may be fairly difficult to make that
11 kind of a determination.

12 In fact, I think that we have heard some stories
13 in the past about making the government procurement contract
14 with some material that probably really did not or should
15 not have counted as recycled content.

16 But what I wanted to say about consumer perception
17 on recycled content is that there has been a lot of activity
18 in many of the states across this country -- educational
19 activity -- in terms of "Buy Recycled" programs.

20 And I would like to believe -- although I have no
21 survey information to back it up -- that, as a result of
22 those "Buy Recycled" programs and consumer education
23 activity, that there is an increased perception as to what
24 recycled content claims mean.

25 Certainly, I believe there is a lot of confusion

1 -- just as there are in other recycled claims -- but I hope
2 that for these umpteen years that we have been doing
3 consumer education about "Buy Recycled", that we have
4 increased some perceptions.

5 MS. MADIGAN: Okay. I have EDF and then the Paper
6 Recycling Coalition that wanted to make a point.

7 MR. DAVIS: Food service.

8 MS. MADIGAN: Okay. EDF and then Food Service.

9 MR. DENISON: Well, I just had one followup to
10 Ford's comment and that is I think it ultimately depends
11 on how "recycled" and "recyclable" get defined as to
12 whether I would agree that just a Mobius loop without
13 any qualification would be acceptable.

14 MS. MADIGAN: Okay. Food Service?

15 MR. DAVIS: I would like to take my Food Service
16 hat off and put my manufacturing hat on because we have
17 very specific information that I would like to add to
18 consumer perception.

19 We have experience with products that we have put
20 on the market that are 100 percent recycled and, having them
21 on the shelf side-by-side with similar products from our
22 company that are 100 percent virgin, the 100 percent
23 recycled product does not sell because consumers still have
24 the perception that recycled must be lower quality than
25 virgin.

1 And, so, consumer perception is still out there
2 and this is still a market-driven process. And we have
3 firsthand knowledge that the recycled product did not sell
4 when it was right beside the virgin product with identical
5 quality.

6 MS. MADIGAN: And what company was that?

7 MR. DAVIS: James River Corporation.

8 MS. MADIGAN: The Federal Environmental executive
9 and then Chlorine-Free.

10 MS. McPOLAND: I actually wanted to put on my
11 consumer hat for a minute, instead of my federal acquisition
12 hat.

13 I think that it would be a problem with simply
14 going with the Mobius loop alone. I do think there is an
15 education issue here.

16 I recently came across a product in a cardboard
17 package that had a plastic item inside. It was a toy. The
18 outside of the package said it was 100 percent recycled
19 material.

20 What was unclear to me and to the next 10 people
21 that I spoke to because I took this around to the next 10
22 people that I saw and I asked them, "What does that mean?
23 What does that 100 percent recycled mean?"

24 Half of them thought that it meant the cardboard.
25 Half of them thought that it meant what was inside the

1 package itself.

2 Personally, I think that it was probably the
3 cardboard.

4 But I think that we have to have explanations on
5 the labelling or the consumer is not, in fact, going to
6 understand what it means. And most of the people, in fact,
7 I think, got it wrong.

8 MS. MADIGAN: Chlorine-Free and then Californians
9 Against Waste.

10 MR. BEATON: Back to the food packaging in the 100
11 percent recycled.

12 Was there a price differential between those
13 products sitting on the shelf? Were there any different
14 markings on them? Decorations or advertisements or anything
15 that went along with it to promote anything different?

16 MS. MADIGAN: Go --

17 MR. DAVIS: Okay.

18 MS. MADIGAN: -- ahead.

19 MR. DAVIS: We made sure --

20 MS. MADIGAN: Identify yourself.

21 MR. DAVIS: Richard Davis with James River
22 Corporation, not representing FPI at this point.

23 We made very sure that the price was identical in
24 price. No price difference. The only difference in the
25 product was the package which had the label on one package

1 that said that this towel is 100 percent recycled. That was
2 the only difference between the two products.

3 MS. MADIGAN: Californians Against Waste followed
4 by American Forest and Paper.

5 MR. MURRAY: Mark Murray with Californians Against
6 Waste.

7 If that is correct, the James River experience,
8 then this should be a very easy issue to resolve because
9 there should be no problem in coming up with an
10 appropriately strict definition or guidelines for use of
11 the term "recycled" because it should not matter to anyone
12 if, in fact, it is not motivating the public to buy.

13 I would suggest that it may not have happened in
14 the James River experience, but it does appear to me, based
15 on the recycled claims that are out there and the desire to
16 use the recycled claims, that it must have some marketing
17 value because unlike our discussion this morning about the
18 recyclable claim, putting "recycled" on a package can have
19 no other value -- no other purpose -- other than to sell the
20 soap, to sell the product.

21 It is not any guidance to the consumer once they
22 take the product home. It is another way of saying "Buy me
23 because I have an attribute that you will like".

24 And, therefore, again, as I said this morning, I
25 mean, this is, again, not providing the consumer with

1 information that they absolutely have to have. It is not
2 essential for their health or safety. It is another way of
3 selling soap.

4 And because it is simply another way of selling
5 soap, I think that it is appropriate for the FTC to make
6 sure that the use of that term is used in a way that
7 supports the interests of local governments and state
8 governments in their pursuit of waste reduction and
9 recycling.

10 This means limiting the right of product makers in
11 their commercial speech. This means saying that there are
12 things that may be absolutely true about a product or
13 product packaging that you cannot say because it leaves a
14 misleading impression about the environmental attributes of
15 that product.

16 So, I want to encourage the FTC to re-evaluate
17 the guides and move in the direction of only allowing the
18 use of the term "recycled" on those products that have
19 post-consumer recycled content.

20 That is, in fact, what local governments and state
21 governments are trying to divert from the wastestream. The
22 pre-consumer material that is often the material used in
23 products labelled "100 percent recycled" is material that
24 the economy has been recycling for years.

25 MS. MADIGAN: Can we hold off? We will come back

1 to the pre and post in just a couple of minutes, in fact.

2 What I am going to do is put a temporary hold on
3 new people and allow American Forest and Paper and the
4 Automotive Recyclers Association to speak.

5 I am then going to turn to the FTC and see if they
6 have questions.

7 And, then, finally, open it up one more time
8 before we move on because we are running short on time on
9 this subject.

10 So, American Forest and Paper?

11 MR. BUNTEN: Just two quick points. First of all,
12 we do support the qualified use of the symbol; meaning that
13 it should not be used standalone.

14 For those companies that just use the symbol
15 without any qualifying language, I would posit -- and many
16 of them have said the same thing -- that customers and
17 consumers probably will not know which they are referring
18 to; whether it is recycled content or recyclable.

19 So, those companies that are doing that are
20 getting less benefit out of it. It is more beneficial for a
21 company to qualify the term as to whether it is recyclable
22 or recycled.

23 And I do believe that what we are talking about
24 here today are single attribute claims, not general
25 environmental principles such as environmentally preferable.

1 It is important to make that distinction.

2 MS. MADIGAN: Okay. Automotive Recycler?

3 MS. WHELAN: Virginia Whelan from the Automotive
4 Recyclers.

5 Just in addressing the first question. We are
6 concerned with our industry having been like the pioneers of
7 automotive recyclers doing it before we knew what we were
8 doing and now we clearly know that we are the most vogue
9 industry in the nation.

10 We understand now, too, that there is a problem.
11 The product that we offer that we call recyclable is really
12 a reusable product taken directly from the automobiles and
13 put into the marketplace to the consumer who understands
14 perfectly well what we are doing because they are paying up
15 to 50 to 80 percent less for that particular product.

16 They have been doing this for over 50 years with
17 members of our industry. And they identify us as recyclers
18 currently.

19 We are concerned with the language as it is
20 written that we would be regarded, because we do not
21 remanufacture this product into something new using
22 recyclable materials, that we may consider ourselves not to
23 be recyclers. And, thus, changing the entire nature of
24 everything we do.

25 The manufacturers alluded to that earlier. The

1 problem that this causes is unique. Although there was a
2 lot of snickering about not having curbside pickup, we are
3 the curbside pickup and have been. We are the legitimate
4 curbside pickup.

5 You know where your automobile has gone. You know
6 what we have done with it. You know what we have done with
7 the fluid waste.

8 So, we really would ask that the FTC address this
9 type of industry in your regards for recyclability. Thank
10 you.

11 MS. MADIGAN: Just a question to Virginia. Can we
12 take this up again when we reach the fifth question about
13 reconditioned parts?

14 MS. WHELAN: Yes, we can.

15 MS. MADIGAN: Okay. So, we will come back to
16 that.

17 Let me turn, then, to FTC staff for a minute and
18 ask if they have any other questions about this set of
19 questions before we move on to the pre- and post-consumer
20 issues.

21 Okay. Let me ask if anybody who has not yet
22 spoken to this question has anything to say. And, then, I
23 will open it up to one last time to others. Anybody who has
24 not yet spoke to this issue?

25 All right. Does anybody in general want to make

1 one final comment -- very brief -- before we move on? Ford?

2 MR. DUKE: Kevin Duke, Ford Motor Company.

3 We have had what you might say is a negative
4 experience with the guides. And not with the content of the
5 guides, per se, but just the presence of one more definition
6 of "recycled content" that we have to worry about.

7 We do have customers -- and they tend to be large
8 institutional customers: the federal government, state
9 governments -- who demand recycled content in the products
10 that they buy. And they will pay a premium, in some
11 instances.

12 And I do not know how much the FTC can do on this,
13 but there is a need for effective actual consistency in our
14 definitions.

15 The anecdotal experience we had is that, with
16 respect to about three different state governments, we had
17 to recalculate the recycled content of some of our vehicles
18 three different times because we were dealing with three
19 different thresholds of three different standards.

20 So, to the extent the FTC can use its good offices
21 to promote national consistency, we would fully support
22 that.

23 MS. MADIGAN: Let's move on, then, to the pre- and
24 post-consumer issues.

25 And I have had a suggestion from the FTC that,

1 contrary to my earlier suggestion, that we take questions
2 two and three together first. And then we will come back to
3 question four.

4 So, let's see if we can spend about 40 minutes or
5 so talking about questions two and three. And let me just
6 restate those: "What expectations, if any, do consumers have
7 about the content of recycled products?", "Do consumers make
8 distinctions between pre-consumer and post-consumer recycled
9 material?" and "What changes, if any, should be made in the
10 guide's current position on pre-consumer and post-consumer
11 content?"

12 Okay. Paper Recycling?

13 MR. VON ZUBEN: Thank you very much. Fred Von
14 Zuben of the Paper Recycling Coalition.

15 Being as the study that you all have looked at has
16 been brought before the FTC is something that was provided
17 by our association, I, obviously, jumped in here and would
18 like to make a few comments.

19 The evidence, as we have seen it, indicates
20 that the consumer makes no distinction between pre- and
21 post-consumer and does not understand the distinction.

22 If you will allow me, I think I can read a couple
23 of facts which we have been willing to share with the FTC
24 and the other members here.

25 In 1993, only 21 percent of the public recalled

1 seeing the term "post-consumer" on packaging and 79 percent
2 found the term to be unclear.

3 Secondly, in the 1995 survey --

4 Excuse me. That survey I alluded to there was Lou
5 Harris Research, Incorporated study which was a telephone
6 study that was put together for the Rock 10 Company.

7 The PRC study, which was the 1995 study, 47
8 percent of the respondents admitted to lack of knowledge or
9 confusion about the "post-consumer" term. And 27 percent
10 indicated that it meant after consumer use, but could not
11 elaborate. And only 13 percent gave a commonly accepted
12 definition for "post-consumer".

13 We are not aware of any quantitative data that the
14 public displays a preference for products made from old
15 newspapers and office waste, post-consumer, over unsold
16 newspapers and printed scrap which has been commonly termed
17 as "pre-consumer".

18 I just want to emphasize that this was an open end
19 questionnaire. This was closed end questions. It was very
20 thoroughly done.

21 And to give you a little gist of some of the
22 comments that were brought up -- and, obviously, you have
23 read some of them -- we got comments in the study that said,
24 "It doesn't mean anything to me", "What else?", "I don't
25 know" and "The symbol is clear, but I don't know what

1 'post-consumer' means." And there were a lot of comments
2 like that. Thank you.

3 MS. MADIGAN: Okay. Synthetic Industries followed
4 by Free Flow.

5 MS. DICKERSON: Should we address both questions
6 while we have the microphone?

7 MS. MADIGAN: Sure.

8 MS. DICKERSON: Okay. Brooke Dickerson, Synthetic
9 Industries.

10 I would like to followup first discussing that PRC
11 survey. I would posit that one of the reasons that the
12 public does not make a distinction or does not claim to
13 understand a distinction between pre- and post-consumer
14 waste is because, to them, it is really irrelevant.

15 Waste is waste in a landfill. And the space taken
16 up from household waste is the same space that is taken up
17 from industrial waste.

18 And, in fact, the leachate that may be generated
19 by household waste may not even be as adverse as leachate
20 created by industrial waste.

21 On the other hand on the coin, you also have to
22 recognize that recovered post-consumer waste provides an
23 important benefit, but so does recovered industrial waste.

24 Just to bring it down to a clear example, we took
25 a look in our local area. Synthetic Industries is

1 headquartered out of Chickamauga, Georgia in the northwest
2 corner of Georgia.

3 And in the Dalton area, the county landfill ran a
4 study. It turned out 25 percent of the waste going to the
5 county landfill was residential, but 75 percent of the waste
6 going to the county landfill was commercial and industrial.

7 And I would suggest that what that means is that
8 we need to continue to encourage the recovery of industrial
9 pre-consumer -- different terms are used in different
10 contexts; but using the definitions that the FTC has created
11 -- we need to continue to encourage the recovery of pre-
12 consumer waste, which is not meant to say at all to
13 discourage post-consumer waste, but I would not sacrifice
14 the benefits gained.

15 And, hopefully, to continue to grow from the
16 recovery of pre-consumer waste just for encouraging the
17 continued growth and technology for the recovery of
18 post-consumer waste.

19 And to add to what the PRC was just saying. It
20 seems to me it is all based on an arbitrary collection
21 point. I know that was raised in several of the written
22 comments.

23 But if you have a manufactured run of some product
24 that goes to the stores because it turns out in the right
25 color and another run that the color was slightly off and

1 both end up in the landfill, I do not think that the public
2 will be too concerned that one is recovered but -- does not
3 care about the recovery of the other kind of waste. It is
4 the exact same item.

5 While I have the opportunity, I am going to go
6 ahead and address the second question that is in this
7 discussion and that is what changes should be made in the
8 guide's current position on pre-consumer and
9 post-consumer content.

10 And I know several of the commentators have raised
11 the suggestion that manufacturers and advertisers should
12 only be allowed to use the claim "recycled content" if
13 post-consumer material is included. Synthetic Industries
14 would strongly disagree with this position.

15 Number one, we do not think that it would be good
16 public policy to discourage the recovery of the pre-consumer
17 waste.

18 Now, some pre-consumer waste is recovered because
19 it makes good economic sense. And that is great. But other
20 pre-consumer waste is recovered only because a purchaser of
21 pre-consumer waste can then use it and claim that it is
22 recycled content.

23 We, at Synthetic Industries, have experienced this
24 firsthand. We had some pre-consumer plastic waste and it
25 turned out that we could -- after some reprocessing and

1 after some investment in some pretty heavy-duty equipment
2 -- someone approached us and said, We need some pre-consumer
3 waste; We want to manufacture and market a recycled content
4 product.

5 And, in fact, it is used very successfully in
6 injection molding. If those marketing advantages are taken
7 away from producers of pre-consumer recycled content
8 products, that kind of recovery would probably just
9 disappear.

10 MS. MADIGAN: I do not want to curtail you, but I
11 have got a long list of people who we need to get to.

12 MS. DICKERSON: Okay. I will just speed it up.

13 MS. MADIGAN: Okay.

14 MS. DICKERSON: Another thing related to that,
15 too, is that there are some products where post-consumer
16 recycled content is, technically, economically feasible.
17 And it is not feasible in all products across the broad
18 spectrum.

19 And I think it is very important to recognize
20 -- as the EPA has recognized in the comprehensive
21 procurement guidelines that it came out with -- that, for
22 some products, pre-consumer recycled content is the best you
23 are going to get.

24 If you cut that out of the claims, number one, you
25 are going to have a conflict with the CPG certification

1 requirements. And, number two, you are going to discourage
2 companies from using the pre-consumer recycled content at
3 all if you take away that advantage.

4 So, we would suggest that there should not be a
5 change in the FTC's position on pre- and post-consumer.
6 And, frankly, as long as there is no deception and it is
7 not inaccurate and as we have seen from the survey we have
8 been discussing that consumers do not interpret the term
9 "recycled content" as meaning only post-consumer. Both are
10 important with 58 percent on each side.

11 That really there is no statutory mandate, nor was
12 that the FTC's intent -- as they have specified in the
13 preambles and various commentary.

14 MS. MADIGAN: Thank you. I actually have
15 accumulated a fairly long list -- longer than I usually
16 carry. So, I am going to encourage people, in light of
17 that, if we could try to keep them a little more brief than
18 usual just because I now have an accumulating list. This
19 is, obviously, an important topic to people.

20 And, please, be patient. If I have made eye
21 contact with you, I do have you on my list and I will get to
22 you eventually.

23 Free Flow and then NRDC.

24 MR. GRAHAM: I am Arthur Graham of Free Flow
25 Packaging Corporation.

1 I am reminded of Yogi Berra -- one of America's
2 great philosophers -- in this program, who said, "When you
3 come to a fork in the road, take it."

4 We are almost at that fork and I would like to
5 somewhat take issue with the previous speaker because my
6 position is diametrically opposed to hers.

7 I note, with great interest, that our company
8 is the only person who is actively in the recycling
9 industry. We have five major recycling plants in the
10 United States.

11 We recycle polystyrene. We recycled this last
12 year about eight million pounds.

13 We also make a product. Our principle product
14 is made of 100 percent waste polystyrene, of which about
15 60 percent, we recycle in our own plants. The other part
16 we bought on the outside. We do recycle as much as we can
17 get.

18 This conference is about recyclability and
19 consumer products. I noticed this morning that we talked
20 about the symbols. And those symbols all had to do with
21 consumer recycling.

22 I would submit to you that the vast, vast, vast
23 majority of all of us in this room and in the general
24 population -- when we hear the word "recycled", we think of
25 an end product that was used for the purpose for which it

1 was intended.

2 And I wonder if anybody would disagree with that
3 definition of a recycled product. People think of recycled
4 product as an end-use product used for the purpose for which
5 it was intended.

6 And I believe that any guidelines that allows the
7 use of any other product to be called recycled would be
8 deceptive to the American public because the American
9 public's perception is simply that -- that recycled means
10 an end use product that was used for the purpose that it
11 was intended, was destined for the wastestream and then
12 it was recycled into another raw material for another
13 product.

14 So, I would submit to you that if we are going
15 to be purists -- which we should be -- and we have
16 enforceable regulations, that we should confine the word
17 "recycled" to simply a post-consumer product as I have
18 described earlier.

19 Number two, that when you do that and people are
20 able to say "My product is made of X percentage of recycled
21 material", that you have a vehicle to determine that he or
22 she is telling the truth.

23 I know of no vehicle that we have today that when
24 people put on their labels "Made of recycled plastic" or
25 "Made of recycled paper", we have no vehicle today to

1 determine whether that person or persons are telling the
2 truth about what that is and whether or not when they claim
3 it is made of 10 percent of 20 percent recycled, that, in
4 fact, that is post-consumer.

5 That is not to say that we should not give brownie
6 points to people who use what I call reprocessed content and
7 that gets to what the previous speaker just said.

8 This can be defined as all waste outputs of
9 manufacturers or processors which are not capable of being
10 used in any processor's or manufacturer's plant until first
11 reprocessed.

12 And what that means is that if you have overruns,
13 if you have pillars that are raw or if you have other
14 products; yes, you can call that reprocessed content, but
15 certainly not recycled content.

16 So, I am suggesting that we set up guidelines of
17 different definitions and we be purists about the use of
18 the word "recycled content" as being only applied to
19 post-consumer.

20 I would also suggest that the real issue here is
21 not deceptive advertising. The real issue that we, as a
22 society, are facing is the fact that we are talking about
23 resource conservation. That is the fundamental issue that
24 we should be involved in and not whether people are lying
25 about what they are doing or not.

1 So, I would suggest that resource conservation is
2 economy driven. Now, what I am saying there is that if you
3 are going to talk about recyclable and recycling and all the
4 rest of this nonsense, simply that the products must be kept
5 separate; they must not be contaminated; they must not be
6 commingled because if a recycler recycles the product and he
7 finds that his selling price is higher than the virgin, that
8 product will not be sold.

9 So, fundamentally, we should concentrate on the
10 issue of how we go about separating out our contaminants and
11 separating out the various products. To that extent, I
12 think that what the SPI has done is remarkably good; at
13 least giving the consumer an opportunity and the recyclers
14 of identifying the product.

15 And I would suggest that we expand this to all the
16 products.

17 MS. MADIGAN: Mr. Graham, can I interrupt for just
18 a second because I think the contamination issue might not
19 be germane right now.

20 MR. GRAHAM: Well, all right. I am getting into
21 the issue of labelling now.

22 MS. MADIGAN: Okay.

23 MR. GRAHAM: That all products should have some
24 kind of identifiable code so that the recycler or the hauler
25 has any easy way of identifying the products so they can

1 separate them out.

2 MS. MADIGAN: That is recyclability issue which I
3 think we addressed earlier.

4 I just want to remind everybody. We are on
5 recycled content.

6 I do not mean to cut you short, but I have got
7 several people. Can you do it in 30 more seconds and then I
8 can move on?

9 MR. GRAHAM: All right. In summary, I think that
10 the issue is an economically driven issue, rather than a
11 labelling issue provided that we effectively define what our
12 labels are and we have a means of enforcing or seeing to it
13 that what we define is accurate and that we have ways of
14 enforcing the accuracy of it.

15 MS. MADIGAN: Okay, thank you. I appreciate it.

16 I am going to encourage people -- and I am not
17 singling out anybody now -- but to try to limit it to two
18 minutes because I have got a very long list and I am a
19 little worried about the clock this afternoon, despite our
20 success this morning. Okay?

21 NRDC?

22 MS. DE CARLO: Anjanette DeCarlo, NRDC.

23 I can do better than two minutes because these
24 points have been touched upon.

25 It is NRDC's experience that, to the public,

1 recycled content means post-consumer. And we have said this
2 now a few times.

3 It is NRDC's position that, optimally, recycled
4 should mean post-consumer.

5 MS. MADIGAN: Okay, 3M and then EDF. Oh, she
6 needs a microphone. If we could pass one down. Try to
7 speak into both microphones, if you could.

8 MS. ADAMS: Georjean Adams, 3M.

9 As a professional who works in this area trying
10 to give advice to our marketing people on what is the
11 difference between post- and pre-consumer, it drives me
12 nuts.

13 It is very difficult. It conflicts from state to
14 state. And I just wish it would go away.

15 I tend to agree with an earlier comment across
16 the room that the issue is getting waste out of landfills.
17 Where it came from or why it landed there and the
18 preferability of one kind of waste over another is an
19 environmental policy issue and is not a marketing claims
20 issue.

21 I think those who are concerned about the
22 difference have other ways of obtaining that information.
23 And there will be markup pressures on the suppliers to
24 provide that information if that distinction is important to
25 the end consumer -- be it the federal government or the

1 state government.

2 But I think that life would be a lot more easily
3 addressed if we could consider it strictly the issue of did
4 you divert it from the wastestream.

5 MS. MADIGAN: Okay. EDF followed by NRC.

6 MR. DENISON: Richard Denison, EDF.

7 I am afraid this is the first time today that I
8 have to disagree with 3M.

9 I think the FTC has, unfortunately, ducked the
10 real issue in the first round of its guides. And it is
11 precisely the issue that you just put your finger on.

12 I do not believe that a nice, clean line can be
13 drawn between the consumer deception aspect of this issue
14 and the environmental policy or benefit aspect. They are
15 intimately intertwined and cannot be disentangled.

16 And the reason is that the reason the claim is
17 being made on a product is to appeal to the consumers'
18 desire to do better by the environment.

19 If the product does not, in fact, create that
20 environmental benefit, then, even if that claim is factually
21 true, it is still deceptive. This is a great case in point
22 in recycled content.

23 Nothing in the world changes by allowing someone
24 to call pre-consumer material -- that is already being
25 recovered for economic reasons -- recycled content.

1 In fact, it has the opposite effect. It reduces
2 the incentives to pull more material out of the wastestream
3 by going after that material that is, in fact, actually
4 being disposed of.

5 It would be nice if we could draw some bright line
6 between what has to be recovered and is going to landfills.
7 But in the case of the paper industry -- where I know
8 the most -- 98 percent of most grades of what is called
9 pre-consumer material, is already being recovered. It is
10 already being recovered.

11 You will not do anything good for the environment
12 by allowing that stuff to be called recycled. It will not
13 pull one more pound of material out of the wastestream. In
14 fact, it will have the opposite effect because it will
15 reduce the incentive to pull the real stuff out.

16 The only other point I want to make here is there
17 is another big consequence to rewarding the generation of
18 scrap materials being called recycled. And that is to
19 reward inefficiencies in manufacturing processes and in
20 distribution systems that overdistribute print overruns and
21 so forth.

22 All of that material, we need to lessen the
23 incentives to do that stuff. Letting it count as recycled
24 content will have the opposite effect.

25 MS. MADIGAN: NRC followed by the Attorneys

1 General.

2 MR. COLDEN: Bud Colden, National Recycling
3 Coalition.

4 This has been a very interesting issue for me.
5 First of all, I think when we talk about consumer
6 perceptions, recycling is not something that consumers have
7 had this opportunity to build this vast realm of knowledge
8 about.

9 And, in fact, I think to a large degree, our
10 industry and our recycling coordinators are really out in
11 front of the curve. We are ahead of that educational
12 effort.

13 So, what I am going to speak to is what is
14 happening now and how the FTC guides and how they are framed
15 could ultimately perpetuate continuing misunderstanding of
16 these recycling claims in the face of these ongoing
17 educational efforts that are taking place across this
18 country.

19 And public policy preferences that have been
20 established for procuring post-consumer recycled products.
21 We see it in the federal executive order on procurement. We
22 see it in federal EPA standards. We see it in state
23 government purchasing standards.

24 And a logical extension of that is with the "Buy
25 Recycled" programs that are taking place in communities

1 throughout the country.

2 First of all -- and I am sure the FTC did not
3 intend to have conflicting information within its guides; so
4 that must mean that I did not understand what they were
5 trying to say -- but I think there are some conflicts that
6 I read and some of my colleagues have read within the
7 definition of what recycled content is. And, clearly, those
8 need to be straightened out.

9 But we also have a process ongoing with the U.S.
10 EPA and their recycled products advisory notice that sets up
11 some very specific definitions.

12 What I am saying is we need to be talking the same
13 language because frequently EPA standards or other
14 government standards become the de facto standard for
15 consumer purchasing.

16 I can envision the statement being made, "This
17 product complies with U.S. EPA procurement requirements for
18 recycled content" as a potential marketing tool.

19 And what I am saying is that I believe it is
20 critical -- and NRC believes it is critical -- that these
21 definitions be consistent.

22 And as EPA finishes up with their process on
23 defining recycled content, that FTC should be consistent
24 with that purely from a factual perspective. We need to
25 talk the same language.

1 Now, in post-consumer content, you have heard
2 varying viewpoints on that. You will continue to hear
3 varying viewpoints on that.

4 But public policymakers throughout this nation
5 have said, "We need to focus on post-consumer content" and
6 for one very good reason. And that is because the taxpayer
7 has to pay for managing those materials; if not as
8 recyclables, as trash.

9 And there is a clear public interest in having a
10 preference for those kinds of materials being incorporated
11 in products. There is no desire in the public sector that I
12 know of to have post-consumer material displace pre-consumer
13 material so that it goes to a landfill.

14 And I truly do not believe that that will ever
15 happen because there is an economic incentive to use that
16 material. It is generally a cleaner recyclable supply than
17 post-consumer.

18 And, largely, that is how this has evolved. NRC
19 strongly believes that post-consumer content needs to be
20 labelled as a factual claim.

21 And it is not looking to the FTC to promote
22 public policy, but to simply be consistent with all those
23 activities that are taking place across this country to
24 focus people on the need to purchase recycled products that
25 have post-consumer content.

1 MS. MADIGAN: Attorneys General followed by Ford
2 Motor.

3 MS. GRIFFIN: Mary Griffin from the Attorney
4 Generals Office Task Force.

5 I think my comments are very much in agreement
6 with the last set of comments.

7 The Attorney Generals Task Force believes that the
8 FTC guides should recommend that a distinction be made
9 between pre- and post-consumer waste.

10 We do not take the more stringent position that no
11 recycled claims should be made at all unless it is only
12 post-consumer waste. We believe that the information should
13 be provided to the consumer.

14 And one major reason why we believe the
15 distinction should be made is that this will give consumers
16 the information they need to support their local recycling
17 markets.

18 As was just said, post-consumer material that must
19 be disposed of in landfills is a cost that the taxpayers
20 pay. And without the distinction being made on packaging,
21 it is impossible for the consumer to make the distinction
22 and to save taxpayer money and to support local recycling
23 markets.

24 In response to some earlier comments that were
25 made about consumers not being able to understand the term

1 "post-consumer waste", I think, in large part, that is
2 because, in the past, it has not been widely used.

3 The use of it is increasing rather rapidly, as we
4 heard from some earlier comments. And I think the
5 understanding of the term will, in fact, grow.

6 I would also say that the study that was cited
7 from the Paper Recycling Coalition that said "Only 13
8 percent of consumers understand the term 'post-consumer
9 waste' ".

10 To a struggling local recycling market, those
11 13 percent of the people -- if they had had the information
12 to act and to support their market -- could make a
13 difference.

14 MS. MADIGAN: Okay. We have Ford Motor followed
15 by the American Auto Manufacturers Association.

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

17 I have two points to make.

18 The first being in terms of industrial recycling.
19 I do not think that there is ever the intent to penalize
20 industrial recycling at the expense of post-consumer.
21 However, as a company that purchases materials in the
22 millions of tons, should there be a demand -- whether it
23 is through a fleet bid request or other large commercial
24 purchasers -- to offer post-consumer content, that would be
25 the first priority.

1 However, I think that is the wrong way to go. I
2 think that you want to encourage both groups.

3 There should be a way -- if we use both
4 post-consumer or another designation to qualify the
5 industrial recycling -- to be able to take credit for that.
6 I mean, if you purchase in the hundreds of millions of tons
7 a year post-industrial or industrial recycled content
8 material, you should be given given for that -- whether or
9 not it is an economic benefit.

10 In some cases we have instituted special systems
11 to allow us to use that type of material. And it is very
12 important to note of the investment that has been made in
13 that.

14 We would also like to note that there is certain
15 material suppliers and certain component suppliers who have
16 never even looked into recycling in their own facilities
17 until pressured to do so to say, "Well, if you cannot get us
18 post-consumer, what can you do in your own facility?"

19 So, there is a leverage point to get people even
20 to look at themselves for more efficiency and reducing their
21 own wastestreams.

22 The second point is if we are going to use
23 post-consumer and industrial or pre-consumer recycling -- or
24 whatever the term shall be -- there has to be a clear
25 distinction by what is meant as "post-consumer". And I will

1 use several examples to iterate that.

2 We have received letters from suppliers saying
3 that material that they recycled from our facilities is
4 post-consumer because they sold it to us.

5 We have also been told by people that material is
6 recycle/recyclable/recycled content because it came from our
7 facilities -- whether or not it ended up in a product;
8 whether or not it was sold to us, but just the statement
9 that you are the consumer, not the ultimate end user.

10 So, we have a very difficult time when we are
11 trying to gather the information to talk about recycled
12 content in quantifying where does the industrial line end
13 and the post-consumer line begin.

14 The other issue is what does one do about unsold
15 finished goods. If we have parts that are sitting in a
16 warehouse that never made it into a customer's hand
17 -- excess inventory -- where does that fit?

18 It was destined for sale and, yet, the market did
19 not need it. Is that pre-consumer or post-consumer?

20 If we are going to use these terms, we need much
21 clearer guidance on where one line ends and the other line
22 begins.

23 MS. MADIGAN: Okay. American Automobile
24 Manufacturers followed by Chlorine-Free.

25 MR. PAUL: Richard Paul with AAMA.

1 We would just offer that with respect to the
2 guide's current position on pre- and post-consumer, that you
3 could formalize the definition of those two terms.

4 And we have offered those up in our written
5 comments and they are identical to EPA's definition of the
6 two terms. Thank you.

7 MS. MADIGAN: Chlorine-Free followed by
8 Californians Against Waste.

9 MR. BEATON: Archie Beaton.

10 We believe the term pre-consumer is defined
11 appropriately by the FTC, but we also feel that this is a
12 term that should not be entered into the consumer market.
13 We do not think that this is a marketing term, really.
14 That it is just too confusing. And that it is really
15 misunderstood.

16 You can kind of take, for example, just the paper
17 industry as one example. The current U.S. EPA guidelines
18 accept Mill broke commonly beyond what they call commonly
19 referred to as scrap, generally after it has been through
20 the first slither of the paper converting operation.

21 And they call that recycled material. And we feel
22 that this is kind of a little bit of a stretch.

23 When I explain this kind of definition to people
24 who are purchasing 50 percent recycled with no post-consumer
25 content identified, they are shocked and really dismayed.

1 It is their belief that when it says "recycled content" that
2 it contains some form of collected material; something that
3 they have recycled, not something that was already in the
4 product.

5 All manufacturing process -- be it paper or motor
6 oil or antifreeze or plastic, et cetera -- the consumer
7 expects that the efforts that they have expended in helping
8 the environment will show up somewhere in those products
9 that they choose in a recycled content.

10 MS. MADIGAN: Californians Against Waste followed
11 by American Plastics Council.

12 MR. MURRAY: Mark Murray with Californians Against
13 Waste.

14 The PRC study and the lack of distinction between
15 post-consumer and pre-consumer in that study absolutely
16 underscores the reason that the term "recycled" should be
17 reserved for post-consumer material.

18 The public made no distinction in terms of those
19 two terms, but somehow those two terms they did not
20 understand, they liked them because it had "recycled"
21 -- post-consumer recycled material, pre-consumer recycled
22 material.

23 The public likes the term "recycled". They know
24 that that is -- as the previous speaker said -- it is the
25 end cycle of that collection program which really

1 underscores the distinction between these two types of
2 materials that we are talking about.

3 They are not the same material. It is not just a
4 matter of, "Well, if you divert them both from landfill, is
5 that not a good thing?"

6 When the citizens of the City of Sacramento divert
7 24,000 tons of newsprint from the wastestream that they get
8 delivered to their home and they go and recycle that, that
9 is something to be proud of; that is an accomplishment; that
10 is a real conservation effort.

11 But when the Sacramento newspaper has 2,400 tons
12 of excess newsprint that they never sold or that they never
13 distributed, that is waste; that is inefficiency.

14 And, by the same token, excess inventory is waste
15 in the system. It is inefficiency in the system. And that
16 material should not be rewarded in the same way that
17 materials that are separated by the public that are used
18 once and that are brought back into the economic mainstream
19 should be rewarded, by granting it the use of the term
20 "recycled".

21 MS. MADIGAN: American Plastics Council followed
22 by American Forest and Paper.

23 MR. LOWMAN: Rod Lowman, American Plastics
24 Council.

25 To us, it appears that the Federal Trade

1 Commission has chosen the right path in terms of what you
2 have done so far with pre- and post-consumer.

3 As we look at our processes, at some point in the
4 history of the development of a particular process, some of
5 what is now called the pre-consumer or the former industrial
6 or manufacturing scrap probably was, in fact, disposed, but,
7 over the years, it has been incorporated back into the
8 process.

9 So, exactly when in the timeline of development of
10 a process that it got re-incorporated, we do not believe we
11 should be penalized for having done it years ago as opposed
12 to this year or next year.

13 The other thing I would say is that -- back to the
14 principle someone alluded to earlier in terms of keeping it
15 simple -- the only survey that I have heard about that has,
16 in fact, delved into this said the consumer does not see the
17 distinction. And if you try to get into that distinction,
18 it only confuses the consumer even more.

19 MS. MADIGAN: Just a process point. American
20 Plastics Council was not listed on the list of participants,
21 but they are taking the place of SPI in this panel, for the
22 record.

23 AFPA followed by Food Service Packaging.

24 MR. BUNTEN: Peter Buntten, American Forest and
25 Paper.

1 We would concur with the American Plastics
2 Council. I think most of the arguments that have been
3 stated already on this issue, the FTC heard three years ago
4 and they judged wisely in putting the guides together the
5 way they did.

6 Now, we have recommended a couple of tweaks in
7 that to bring some of the definitions regarding Mill broke
8 and the calculation of recycled content for paper to a
9 fiber-to-fiber basis to make those consistent with EPA and
10 how the states have ruled.

11 However, there is a couple of presumptions around
12 the table here which I think need to be called into question
13 and these also were raised three years ago, but at the risk
14 of going on, I do want to hit on a couple of them.

15 I might be in favor of a post-consumer standard
16 only because my definition of consumer -- one which is
17 shared, by the way, by a large majority of the people around
18 the world who are in business and industry and in other
19 areas -- includes printers, converters, institutions,
20 et cetera.

21 And the FTC guides, remember, address right up
22 front that these environmental labelling guides pertain to
23 all of those people as one.

24 But I think we need to be very careful, once
25 again, when we talk about who a consumer is. For many

1 people getting paper material, when they get a role of paper
2 -- liner board or paper to be printed -- they are the last
3 person to use that.

4 And I question anyone who would argue that they do
5 not have an economic stake in that as well and that they
6 also do not have landfill disposal costs and that they also
7 are not providing some "environmental benefit" by returning
8 that material into the useable raw material stream.

9 Secondly, the point has been made that, well, all
10 that post-consumer has always been used; it is too high an
11 economic value, et cetera.

12 Go back to something that I said earlier this
13 morning. We are already recovering at a rate of 44 percent.
14 And over 90 percent of that material is the so-called
15 post-consumer as most people have been using it here.

16 Are we saying now that because none of that
17 material, believe me, will ever get back into the
18 wastestream, are you saying now that we cannot call that
19 post-consumer? Because, believe me, there are paper
20 companies now who are offering 10 to 20 year contracts
21 guaranteeing that that so-called post-consumer material at
22 the household will never be destined for a landfill.

23 I think we need to be careful about the logic of
24 this argument about the economic viability of pre versus
25 post, et cetera.

1 MS. MADIGAN: Okay.

2 MR. BUNTEN: Thank you.

3 MS. MADIGAN: I am going to finish going through
4 my list of people who have not yet spoken. I will come back
5 to people who want to make additional comments. So, I will
6 not forget you.

7 But let me first finish with the list of people
8 who have not spoken and invite others, who have not yet
9 spoken, to signal to me as well.

10 I now have Food Service Packaging followed by
11 Green Seal.

12 MR. DAVIS: Richard Davis, Food Service and
13 Packaging Institute.

14 First of all, I would like to support everything
15 that Peter just said, but I would like to add onto that. We
16 have talked about consumer deception and we have talked
17 about how consumers need to be educated.

18 The studies that PRC did and that King County
19 did not only showed that very few people understand what
20 post-consumer means when you ask them, but the King County
21 survey also asked another question: Do you understand what
22 recycled means and recycled content?

23 While only 23 percent thought they knew what
24 "post-consumer" meant, 62 percent understood correctly what
25 "recycled content" was.

1 So, using the term "recycled" versus
2 "post-consumer", if you want to talk about deception, we
3 deceived 40 percent less by using the term "recycled" than
4 we did by deceiving them with "post-consumer".

5 The other item that I would like to talk about is
6 do a little reality check. When we talk about the scrap
7 generated within a manufacturing facility, every
8 manufacturing process generates waste.

9 And I do not know what the people around this
10 table or in this room think happens to that waste or thinks
11 they know how that waste is treated to reuse it. You do not
12 pick it up in a wastebasket and dump it back in the head box
13 of the paper machine and just run it back through.

14 Some of those products have ink on them, coatings
15 on them, glues on them, whatever; and they have to be
16 processed.

17 Now, I know that you say that it is an economical
18 process and I am doing that because it is economically
19 feasible.

20 Well, you are right. It is economically feasible
21 because I know what the contaminants are in that paper. I
22 put them there. I know how to get them off and I know how
23 to get them out.

24 So, it is more economical than taking a bale of
25 paper that I brought in the back door that I have no idea

1 what the coatings are and no idea what the adhesives are.
2 So, it is more economical.

3 However, to then go on to use the reasoning or the
4 rationale that because it is economical for me and I have
5 always been doing it, I should not count it? Where do you
6 think that waste will go if I do not use it? It will go to
7 the landfill. Clear and simple.

8 So, I use it for a lot of good reasons. And if
9 you use the economical comment or reasoning, then I would
10 say that there are manufacturing communities in the United
11 States that manufacture 100 percent recycled product. They
12 are doing it for an economical reason. They are making
13 money.

14 So, if you use the economical rationale that if
15 it is economical then you cannot count it, then I guarantee
16 you that those 100 percent recyclers are not making a
17 recycled product because they are doing it for an economical
18 reason.

19 MS. MADIGAN: We have Green Seal followed by
20 Grocery Manufacturers.

21 MR. DEAN: One of the arguments that has been
22 repeated several times around the table is that consumers
23 are confused and that, therefore, we ought not to focus
24 on the post-consumer definition because they will not
25 understand it.

1 I think it is important to realize that there are
2 two large blocks of consumers in this country. There are
3 the individual consumers. And, from my reading of the
4 study, they certainly are confused. However, there are a
5 huge block of institutional consumers.

6 And at Green Seal, one of the things that we do
7 now is work with over 150 large institutions in giving them
8 advice on environmental procurement. And these people
9 understand the distinction between post-consumer and
10 pre-consumer waste.

11 And, increasingly, they are asking, as part of
12 their procurement specs, for more post-consumer materials in
13 the products they buy.

14 So, I think that it is critically important for
15 the Commission to continue and, in fact, to strengthen the
16 definitions of post-consumer because, increasingly, very
17 large institutions -- Fortune 500 companies, cities,
18 universities, government agencies -- are relying on the
19 definitions that you set as part of their procurement
20 specifications.

21 MS. MADIGAN: Grocery Manufacturers followed by
22 Conservatory.

23 MR. MAC LEOD: Just a couple of points. I am
24 having trouble understanding the relevance of a good deal of
25 the conversation right now to the FTC guides.

1 It would seem to me that, if we would look at the
2 guides after this conversation, we would find that the
3 guides prohibit the use of post-consumer content. Which, in
4 fact, they do not. You can use those things.

5 From all of those who are advocating having in the
6 guides a mandate to use post-consumer content, I would ask
7 the question, Is it now time for us to say, as a public
8 policy, that there is absolutely nothing of value to
9 pre-consumer content?

10 The only evidence that we have heard discussed at
11 the table today is evidence to the contrary. We have heard
12 assertions that taxpayers do not care about pre-consumer.
13 We have heard assertions that that does not matter because
14 it is economically feasible; therefore, we do not have to
15 worry about those things.

16 I am not nearly as persuaded that, if consumers
17 were asked the question, "Do you mind if your landfill fills
18 up five years earlier?", that they would say "No, I do
19 not mind as long as that all comes from pre-consumer
20 applications".

21 I suspect that the answer is that they still do
22 care about those things because it does matter to the
23 taxpayers.

24 We cannot deal with the policy -- however or
25 whichever the correct policy is and I cannot pretend to

1 define that today -- of which is the more preferable content
2 in recycled content.

3 We certainly cannot expect the FTC to make that
4 decision and incorporate that decision in the guidelines
5 until the time comes that there is absolutely no reason at
6 all for people to care about pre-consumer waste.

7 I do not see how the guidelines could be changed
8 to anything else than what they are today.

9 MS. MADIGAN: Conservatory and then I will be
10 looking for hands from anybody else who has not yet spoken
11 to this particular question.

12 MR. DAVIS: Thanks. Alan Davis, Conservatory.

13 I am going to confine or limit my remarks to
14 printing and writing paper, which is our area of expertise,
15 which, coincidentally, happens to be the largest component
16 of landfill currently. So, it is a fairly significant issue
17 in and of itself.

18 And, for the record, Conservatory supports
19 establishing minimum post-consumer content requirements and
20 labelling both pre- and post-consumer waste.

21 To begin, I just want to restate what you have
22 heard said already which is that, basically, pre-consumer
23 waste does not go to the landfill. It has not. It never
24 will go to the landfill no matter what the FTC does or other
25 government bodies do in terms of minimum procurement

1 policies.

2 It is true -- and we agree with those speakers who
3 have made the claim -- that the utilization of pre-consumer
4 content has, basically, equal environmental value to using
5 post-consumer waste -- whether it be the energy savings or
6 reducing the landfill or what have you.

7 However, we do not believe that the recycling
8 issue became important to the public because we were not
9 recycling the pre-consumer waste. The issue has arisen
10 because of the fact that we were not recycling the
11 post-consumer waste.

12 And the entire marketing benefit that one might
13 derive -- and, certainly, do derive in the printing and
14 writing industry -- from selling a recycled product comes
15 from the fact that we are addressing the post-consumer
16 problem.

17 So, it seems to me that it becomes essential for
18 a consumer to understand that the product that they are
19 buying is adding value to something that, perhaps, was not
20 happening before.

21 And contrary to Richard's comments just before
22 that the post-consumer use that he is alluding that will not
23 go back into the landfill now, will not go back into the
24 landfill precisely because of the regulations that have been
25 in place.

1 The fact there have been post-consumer
2 requirements is exactly the reason why companies are now
3 using post-consumer content and argues for why we need to
4 continue to push for post-consumer requirements and that
5 includes the labelling and, hopefully, the minimum content
6 requirement for calling something recycled.

7 And I would urge that we look to the White House
8 standard of the 20 percent post-consumer -- at least for
9 printing and writing paper -- as the minimum contents
10 standard.

11 And contrary to all the claims that have been made
12 by those who argue against post-consumer at that 20 percent
13 requirement, in our belief and in our experience, will not
14 work to the detriment of those using pre-consumer waste.

15 When we started in our campaigns to incorporate
16 post-consumer waste in printing and writing paper, virtually
17 every mill in the United States said that it was an
18 impossibility to use post-consumer waste. And through some
19 miracle of technology and marketing skills, virtually every
20 mill in the United States now makes post-consumer content
21 paper.

22 And I hope that the FTC will continue to move us
23 in the right direction. Thank you.

24 MS. MADIGAN: I have seen a number of hands of
25 people who have spoken together -- and I will run through

1 those in a second -- but let me first ask if there is
2 anybody who has not yet spoken to this issue who would like
3 to speak. Okay.

4 Let me run through the list of hands that I have
5 seen so far of people who have spoken who want to say
6 something else. I have Synthetic Industries, Ford Motor
7 Company, EDF, NRC, Free Flow Packaging and American Forest
8 and Paper.

9 I will get other people in a second. Let me just
10 caution you that we are running very short on time now. And
11 what I would like to ask people to do is limit their second
12 round of comments to either points that were missed or
13 points where you feel a rebuttal needs to be made because
14 there may be a misperception or misinformation out there or
15 a point where you are clarifying.

16 Let's not repeat what has already been said and
17 let's not simply repeat what has been in the written
18 comments.

19 And I am going to ask people to limit their
20 subsequent comments to about one minute each because we are
21 running short on time.

22 And I have got PRC added and I will start taking
23 other hands as we go along.

24 Okay, first, Synthetic Industries followed by
25 Ford.

1 MS. DICKERSON: Thank you. Very quickly, I have
2 more, but I will limit it to three points to clarify.

3 Number one is just because there is no mandate
4 that a recycled content product must be post-consumer does
5 not at all prevent a company who thinks that there is a
6 market out there or a segment of the population who is
7 very concerned about post-consumer content, from including
8 that in their label. If that is something that someone
9 voluntarily wants to advertise, there is nothing to prevent
10 that.

11 Secondly, it is important to remember -- I think,
12 for the Commission to remember -- that this is a universal
13 rule to apply across the board to every single kind of
14 product out there.

15 And what may be appropriate for the paper industry
16 or printing industry or something else and may be applicable
17 to that or even useable by certain products is not useable
18 and/or applicable to other types of products.

19 The third point that I think does need to be
20 mentioned is that there has been the implication raised
21 that, if you allow a manufacturer to label waste as
22 pre-consumer recycle content, that is some kind of an
23 incentive for this company to allow for overruns, off
24 specification runs and so forth.

25 That is absolutely false. A company's bottom line

1 concern is economic efficiency and it is not efficient to
2 allow overruns, regardless of what you label it after the
3 fact.

4 The most efficient way to run your company is to
5 run it cleanly; produce only the amount of product that can
6 be sold in the marketplace. Period.

7 So, I think it is important to make that
8 distinction. Thank you.

9 MS. MADIGAN: Ford Motor followed by EDF.

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

11 I would like to point out a few things. As I
12 mentioned earlier, we purchase a great amount of material.
13 We are not always in the position to be able to get
14 post-consumer content materials. We just cannot get them in
15 the volumes that we need.

16 And we are not going to make three parts out
17 of post-consumer and the next 100,000 parts out of
18 post-industrial and the next 100,000 after that out of
19 virgin.

20 There has to be some sort of consistency, when we
21 write a specification for a material, that we know what we
22 are getting. We have an obligation to our consumers of
23 providing safe performing products.

24 And that brings up an economic issue. We have run
25 into many materials where it is not even economic to get

1 them on a post-industrial standpoint, let alone on a
2 post-consumer standpoint where you add in collection costs
3 and potential decontamination costs.

4 So, we have to start working on this. And we have
5 done a lot of work in that area.

6 And there are many applications where we will
7 probably never use a recycled content material. Would you
8 really like to see a recycled content material with
9 questionable safety implications? Air bag components, for
10 example. I do not think so.

11 I certainly would not. I would not like to have
12 that happen to me.

13 Also, headline plugs are another safety area where
14 we would probably have some constraints in terms of using
15 post-consumer content or post-industrial content materials.
16 We have safety standards that we have to meet and that we
17 sign off against. And if we not guaranteed that whatever
18 material we put in there, no matter where it comes from,
19 will meet those performance standards, then we will not use
20 it.

21 And, finally, as I mentioned earlier, all of these
22 considerations aside, it has not stopped us as a company
23 from pushing the limits of what can be achieved.

24 We have gone out and pushed our suppliers to get
25 us the post-industrial and the post-consumer content. We

1 have initiated groundbreaking programs with patents and all
2 sorts of things in that area.

3 So, even though there are implications that are
4 pushing us to say, "Well, if you do not do post-consumer,
5 do not do it at all", I think that it should be pointed
6 out that there are other areas that also have a positive
7 impact.

8 MS. MADIGAN: Okay. EDF followed by NRC.

9 MR. DENISON: My point was already made.

10 MS. MADIGAN: Okay. NRC followed by Free Flow.

11 MR. COLDEN: Bud Colden, National Recycling
12 Coalition.

13 You have heard around the table, I think, comments
14 made today that underscores the consumer confusion. I mean,
15 we are why there is consumer confusion because we are all
16 talking different things.

17 And those are the things that we are communicating
18 in the marketplace. Those are the things that are being
19 communicated by local recycling coordinators. And they are
20 in conflict. It is critical that we begin to talk the same
21 language.

22 There are enough consumers out there who want to
23 know that piece of information about post-consumer content.
24 I want to make it clear that the National Recycling
25 Coalition is very supportive of both pre-consumer recycling

1 and post-consumer recycling, but there is a movement. The
2 tide is to push a special recognition of post-consumer
3 content.

4 And I would contend that those companies that fail
5 to recognize that and who just put out a recycled content
6 claim without determining post-consumer content, will run
7 the risk in the future -- and I think it is a real risk
8 -- of alienating the consumer that we are continuing to
9 educate.

10 MS. MADIGAN: Free Flow followed by American
11 Forest and Paper. And then, finally, PRC.

12 And I am going to put a hold on everybody else
13 who has signalled me until after the FTC asks its final
14 questions.

15 So, Free Flow.

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

17 Everything that I have heard thus far continues to
18 persuade me that the words "recycled" must be synonymous
19 with post-consumer or an end use product.

20 On this question of the pre-consumer, let me
21 submit to you that there is one way to drastically reduce
22 the pre-consumer products -- two ways -- if, in fact, we
23 want to worry about the amount of material going to our
24 landfills.

25 One, raise substantially the price of the virgin

1 material. Or, two, raise substantially the price of
2 landfills.

3 You would be amazed at how creative we, in the
4 business world, are in cost avoidance.

5 So, fundamentally, if you want to reduce
6 pre-consumer -- that is, industrial waste, overruns and all
7 the rest -- just make it damned expensive for us.

8 And I could give you example after example within
9 my own company of how we became very ingenious when we ran
10 out of virgin material for one of our other products or when
11 the landfill costs went up sharply.

12 So, I am suggesting to you that, for us to deceive
13 the consumer by using the word "recycled" as it relates to
14 pre-consumer material, is deception in its worst form.

15 MS. MADIGAN: Thank you. American Forest and
16 Paper and then PRC.

17 MR. BUNTEN: Quickly, two points. One, first, is
18 clarification.

19 There are no mandated minimum content standards
20 that pertain to printing and writing papers. There is a
21 federal government procurement preference, as well as some
22 state procurement preferences, but there are no mandated
23 minimum content laws that are driving the use of recycled
24 fiber in the printing and writing industry.

25 Secondly, a request to the Federal Trade

1 Commission and that is that in all of your discussions about
2 the use of recycled material, that you refrain from the use
3 of the word "waste".

4 In fact, the paper industry, as well as many other
5 industries, are constantly at risk from flow control, by
6 waste haulers and local communities which put our access to
7 those recyclable materials at considerable risk.

8 So, we would request that you constantly use the
9 word "recyclable" or "recycled material" rather than the
10 word "waste".

11 MS. MADIGAN: Okay. And, finally, Paper Recycling
12 Coalition.

13 MR. VON ZUBEN: Fred Von Zuben, Paper Recycling
14 Coalition.

15 There have been so many statements made today and
16 you could sit here for an hour and have a lot of disclaimers
17 out there, but, I mean, anybody that talks about recycling
18 and this economic issue, I mean, it is bizarre.

19 I mean, we are in business to make money. I mean,
20 that is the only way that you get recycling and recycled
21 products is that somebody has got to make some money or we
22 might as well all go home.

23 And, in our company, we do a million-and-a-half
24 tons of recycled paperboard a year and we collect double
25 that, probably.

1 We understand the business a little bit, but we
2 also spent a little bit of time trying to understand what
3 the consumer perceived about environmental claims. I think
4 that is really what the FTC is all about, if I am not
5 mistaken.

6 We will talk about also the fact that pre-consumer
7 will not go to a landfill. I can assure you that, in
8 today's marketplace, pre-consumer is going to the landfill.
9 If you want to go there with me, I will be glad to take some
10 heavily printed recycled fiber and it will be piling up
11 there because newspaper and old corrugated are cheaper.
12 And, of course, that newspaper and old corrugated are
13 post-consumer.

14 So, I think you really stand a wonderful
15 opportunity of getting yourselves confused as being experts
16 in this field.

17 And I think you are trying to convince us that
18 consumers are going to be enlightened over a very short
19 period of time is also very, very confusing to me.

20 But I would like to say, really, that there is
21 still has not been anybody here today that has given us
22 any empirical evidence to support the ascertainment that
23 post-consumer is what the consumer really wants.

24 I mean, I do not think that anybody has come
25 forward and said, you know, "That is what it is really all

1 about".

2 I think you also have to understand here a little
3 bit that you seem to get mired in post and pre and long ago
4 -- five or 10 years ago, 20 years ago -- when we developed
5 the chasing arrows, our industry, 100 percent recycled
6 paper, developed the chasing arrows.

7 We go back a long time with this issue, but if you
8 want to focus on post and pre, you are forgetting virgin
9 versus recovered. And when the public was asked --

10 Forget about this table. I think it was in an FDA
11 survey that we did a few years ago.

12 -- it was 82 percent who said, the real thing they
13 were concerned about was resource conservation. And only 78
14 percent talked about the fact that it was the landfill
15 problems.

16 So, if you only focus on post and pre, you are
17 eliminating the most significant concern of the public which
18 was resource conservation.

19 So, I could go on and on and on here, but --

20 MS. MADIGAN: Could I ask you not to?

21 MR. VON ZUBEN: I was going to kind of make one
22 recommendation.

23 MS. MADIGAN: One more.

24 MR. VON ZUBEN: One recommendation is that we have
25 gone round and round about having post-consumer only claims.

1 And I think FTC and a bunch of us went around the circle on
2 recycled 30 percent post-consumer as a very misleading term.
3 Is it 100 percent recovered and 30 percent post? Is it only
4 30?

5 I think we ought to take a shot maybe of an
6 example, that there is one thing you might change as an
7 example that draws that out a little bit. Thank you.

8 MS. MADIGAN: Thank you. Let me turn, now, to the
9 FTC staff and ask them if they have any other questions to
10 followup on this discussion before we move on.

11 MR. PEELER: I guess a couple of questions and one
12 is that I just want to thank everybody for the outstanding
13 quality of the presentations.

14 We have mentioned two studies today. I think the
15 King County study.

16 And I am Lee Peeler.

17 We mentioned the King County study and the PRC
18 study. Are there any other studies that address this
19 question that we do not have?

20 And, if there are, if you can try and get them to
21 us so that we can include them in our considerations.

22 And then I had also a quick question for Bud. On
23 the NRC's proposal which, as I understand, is to require a
24 post-consumer disclosure together with the recycled
25 disclosure.

1 If you had a 100 percent recycled product but it
2 had some percentage that was post-consumer content, you
3 would specify that. Or, I take it, if you did not have any
4 percentage, you would specify that.

5 Would that not end up putting some economic cost
6 on the people that are using the post-consumer content to
7 try and track what their post-consumer content is and
8 disclose it?

9 MR. COLDEN: I will state my name again. Bud
10 Colden, National Recycling Coalition.

11 I have just heard that I am not the one to answer
12 these kinds of questions relative to costs and these types
13 of things with making paper or making other recycled
14 products.

15 So, basically, all that I can do is relate to you
16 the arguments that have been made that I personally cannot
17 verify is that, yes, there is some associated cost.

18 I believe that the paper industry, at least -- if
19 not others -- have made comments to U.S. EPA in their work
20 in determining procurement standards as what the cost would
21 be to track post-consumer content.

22 But, then, I turn to the consumer survey that was
23 done in Utah which shows this vast growth in labelling
24 post-consumer content and allege, then, that there must be
25 some value to doing that and the cost could not have been so

1 great as to make the product non-competitive or that would
2 not have been done.

3 MS. MADIGAN: Any other questions from the FTC?

4 Let me ask if there are any questions from the
5 other government people.

6 MS. McPOLAND: I, actually, just wanted to clarify
7 one point.

8 Fran McPoland, Federal Environmental executive.

9 I am sorry. AFPA indicated earlier that we did
10 not, in fact, have a mandate to purchase 20 percent
11 post-consumer paper. That is not true. It is a mandate for
12 federal agencies. There is a mandate both in the executive
13 order -- 12873 -- and in Section 6002.

14 It is not a question of a price preference. It is
15 a mandate.

16 MS. MADIGAN: Mr. Bunten, do you want to respond
17 to that?

18 MR. BUNTEN: Okay, thank you for that
19 clarification on the price preference, but my point still
20 goes that there are no laws which specify that manufacturers
21 must use recycled content. That is the point that I was
22 trying to make. Thanks for the clarification.

23 MS. MADIGAN: Okay. Any other questions?

24 Two other groups had asked if they could make
25 final comments and I ask now if they still want to. It was

1 Californians Against Waste and Food Services. Can they be
2 about 30 seconds each? Okay.

3 MR. MURRAY: Yes, 30 seconds. Just to clarify.
4 From other comments, nobody is saying do not use
5 pre-consumer.

6 What I think the PRC study bears out is that the
7 public understands the term "recycled". Us insiders maybe
8 -- maybe -- understand pre-consumer and post-consumer. The
9 public does not.

10 Let's reserve that term "recycled" for the
11 post-consumer material and let the pre-consumer material,
12 you know, call it "recovered", call it something else, but
13 save the term that the public understands and appreciates
14 for post-consumer.

15 MS. MADIGAN: Food Service. If it is 30 seconds
16 or less. Okay.

17 MR. DAVIS: One other item I would like to comment
18 is as you talk about the possibility of mandating
19 post-consumer content, our products carry with them a very
20 special problem.

21 We are manufacturing food service items. The
22 products that food are served on. And it is not impossible
23 but extremely difficult -- and I mean extremely difficult
24 -- to manufacture products that are still safe and sanitary
25 for food service by using post-consumer material that we

1 have no idea of where it came from.

2 Pre-consumer material can be used because we know
3 what the foreign materials are in that product and we can
4 assure safety.

5 So, to mandate post-consumer and make it sound
6 like that that is the best way to go and the only preferable
7 way to go, puts our industry at a severe disadvantage.

8 MS. MADIGAN: Conservatory, 15 seconds. It is
9 getting narrower and narrower.

10 Do you really want five seconds? Okay.

11 MR. DAVIS: I will not even mention my name. How
12 is that?

13 MS. MADIGAN: We are going to get down to one
14 second shortly.

15 MR. DAVIS: Just very quickly. I want to say
16 that the evidence that labelling works is -- of course,
17 particularly in the printing and writing industry -- is what
18 the Utah study suggests.

19 And the reason it works there, in particular, I
20 think, is because you have a more informed consumer. And
21 for the more informed consumer, that label is essential.
22 And I think that would be the case, perhaps, in some of the
23 packaging procurement as well.

24 MS. MADIGAN: Okay. EDF and then anybody else on
25 the other side who wants five seconds.

1 Okay, go ahead, EDF.

2 MR. DENISON: Nobody is talking about mandating
3 anything here. We are talking about voluntary claims being
4 made. And if you cannot use them because they are too
5 expensive or you cannot use them because they are not safe,
6 do not use them.

7 We are talking about what claim you can make when
8 you do use them.

9 MS. MADIGAN: Let me give people a heads-up
10 because we have run, now, woefully beyond our target times.

11 We are going to devote the next 10 minutes to
12 question four, "How has the guide's approach to what
13 constitutes pre-consumer recycled material worked?"

14 And then we are going to devote another 15 minutes
15 to question five, the reconditioned parts question, which
16 was pointed out earlier. We will come back to that.

17 We will then take a break from 5:05 to 5:10; just
18 a very short break. So, we will eat into compostable just a
19 little bit, but we will try and make it up there. And if
20 not there, then in the public participation.

21 So, question four, "How has the guide's approach
22 to what constitutes pre-consumer recycled material worked?"
23 We have 10 minutes. Who would like to start?

24 (Continued on the next page.)

1 MS. MADIGAN: Synthetic Industries?

2 MS. DICKERSON: Thanks. Brooke Dickerson,
3 Synthetic Industries. Assuming that the term pre-consumer
4 is still pertinent one day, we just wanted to add some
5 thoughts.

6 There is an example in the guidelines about what
7 does constitute pre-consumer content and the guidelines
8 refer to material that is not normally reused and also
9 material that must have gone through something more than
10 just minimal reprocessing.

11 I think we find those terms rather confusing. You
12 run a couple of dangers if you, of course, have confusing
13 terms that are not real clear.

14 Number one, a lot of companies will just stop
15 using or may stop using the recycled term in their
16 advertising and packaging, which of course then stops the
17 flow of information to the consumer and that is something of
18 course should be avoided, killing the dissemination of
19 information.

20 We suggest that when you are looking at how to
21 define pre-consumer, the emphasis should be and actually
22 already is in the guidelines, that a manufacturer must be
23 able to substantiate that the material was diverted from the
24 waste stream. That is the bottom line.

25 The other thing that we would like to just add to

1 that is that this whole concept of normal and not normal and
2 everything, the EPA for example has come out with the
3 comprehensive procurement guidelines where they are
4 encouraging, through their preferential purchasing power,
5 companies to develop technology and invest in infrastructure
6 to include recycled content.

7 If more and more companies buy into this and
8 actually EPA is successful in creating this incentive and
9 starts reaching its goals, then it becomes more prevalent.
10 Does that mean more normal? It is kind of an interesting
11 question.

12 Finally, talking about the EPA CPG, we are just
13 concerned that if the definition of pre-consumer is
14 interpreted differently than it is interpreted by the EPA,
15 companies may be caught between two conflicting
16 requirements.

17 On the one hand, EPA will be requiring that if you
18 are meeting the CPG requirements that you certify to that,
19 that a product does meet 20 percent, for example, recycled
20 content and yet you may be prohibited from doing that by the
21 FTC, if the interpretations of the term conflict.

22 MR. PEELER: Can I just interrupt here for a
23 moment? One of the themes that came up in the comment was
24 that we should follow the EPA's approach to defining what is
25 pre-consumer content, as opposed to using the example that

1 we currently have in our guides, which we thought was
2 actually following fairly closely with the EPA.

3 Are there reasons, from people around the table,
4 why we should not adopt that approach? I mean most of the
5 people that commented on that issue said we should follow
6 that.

7 MS. MADIGAN: Anyone oppose following the EPA
8 definition? Is that your question?

9 MR. PEELER: Yes.

10 MS. MADIGAN: Switch chairs. We do have a strict
11 rule of chair sharing.

12 MS. DAY: Does that also apply to musical chairs?

13 Susan Day, Ford Motor Company. As I mentioned
14 earlier, there is still a problem with the way the comment
15 was made concerning post-consumer that we do run into, in
16 that we still have no clarification of when pre-consumer
17 stops and post-consumer ends.

18 One suggestion to alleviate that problem perhaps
19 would be ultimate end use, because if we purchase a raw
20 material and then convert it into something else that ends
21 up as an ultimate end use product, just because we bought
22 it, does not necessarily make it a post-consumer product.
23 It has yet to be converted again into something that a true
24 consumer in the great public would buy.

25 However, we may be the ultimate end use for a

1 machine. So if there was sort of some ultimate end use in
2 there, that might alleviate the issue, but as it stands,
3 there is a very gray area between what is pre and what is
4 post.

5 MS. MADIGAN: Anyone else have any concerns with
6 the FTC following the EPA definition? Free Flow?

7 MR. GRAHAM: Can you tell those of us who might
8 have forgotten it what the EPA's definition is?

9 MR. DELLINGER: This is Bob Dellinger. It is
10 really Congress's definition. It is not EPA's definition.
11 It was basically defined and it is derived from the
12 definition of recovered materials, as it relates to paper,
13 paperboard and those types of products.

14 It is contained in 6002 RCRA. In essence, I guess
15 it comports, I believe, with what Ford Motor Company just
16 suggested. That we are talking about end use.

17 I mean I can read the definition of post-consumer
18 here. It says, "As used in this section in the case of
19 paper products, the term recovered materials includes
20 post-consumer materials, such as paper, paperboard and
21 fibrous waste from retail stores, office buildings, homes
22 and so forth after they have passed through their end usage
23 as a consumer item."

24 Then it goes on to name particular examples. Then
25 it says, "B, all paper, paperboard and fibrous waste that

1 enter and are collected from municipal solid waste."

2 That is, in essence, what post-consumer is. Now,
3 we have modified that definition to try to make it more
4 generic.

5 MR. GRAHAM: What is pre-consumer?

6 MR. DELLINGER: Pre-consumer is really a subset of
7 what is left of recovered materials. Again, in that
8 definition it goes on to say the part that we have defined
9 as in essence pre-consumer is the piece in the original
10 paper procurement guidelines that was defined as waste
11 paper.

12 It would be the material following post consumer
13 through the end of the definition of waste paper that was
14 included in the 1988 paper procurement guidelines. It is,
15 again, derived from this definition, which is included in
16 RCRA.

17 MS. MADIGAN: Okay.

18 MR. DELLINGER: We would be more than happy to
19 work with FTC on this and have in the past. I guess I would
20 argue that the examples in here, in my opinion, meet these
21 definitions, but I understand some people are doing some
22 other interpretation of the terms that are in here and I can
23 see how they could do that and there may be ways to make
24 these things a little bit more clear.

25 My interpretation of the words here, they comport

1 with Congress's definition, EPA's interpretation of
2 Congress's definitions and the like.

3 MS. MADIGAN: We are running short on the end of
4 time. I have some people who want to speak, but can I turn
5 to the FTC and ask if you have any final clarifying
6 follow-up questions?

7 MR. PEELER: I have one more question that we
8 really need to touch on and that is, there also is a
9 proposal here that we should make clear that we would look
10 at recycled content, based on fiber weight base for paper.

11 Two questions. One is, are there reasons why we
12 should not do that and the second, how does that affect
13 comparability between products? Between paper and plastic,
14 for example.

15 MS. MADIGAN: Anybody like to speak to that?
16 American Forest and Paper.

17 MR. BUNTEN: Peter Buntten, American Forest and
18 Paper Association.

19 I am not sure what more to say than what we have
20 submitted in our comments and I touched on it earlier. That
21 the fiber weight measurement is one which has been
22 consistently accepted across the states and it is the true
23 way to measure whether you are using recycled fiber in your
24 paper product or whether you are using some other extraneous
25 material.

1 So it gives a true comparison of the actual
2 content of the key recycled material. EPA has also accepted
3 that in the procurement guideline.

4 Might I comment also, since we are on the record,
5 that AFPA would reserve judgment about its acceptance of the
6 EPA definitions for pre-consumer. We would agree with the
7 existing pre-consumer definition, but as you know, EPA is
8 considering possibly some changes.

9 So pending the outcome of that and seeing what
10 those changes might be, we would want to reserve, for the
11 record here, our agreement with FTC adopting the EPA
12 definition for pre-consumer.

13 MS. MADIGAN: Okay. Let's separate out then the
14 two questions. The last question just articulated by the
15 FTC is, would anybody have any problems with or foresee any
16 problems at this time with using fiber-to-fiber weight?

17 Free Flow Packaging real briefly, because we are
18 running short on time.

19 MR. GRAHAM: How does that apply to plastic?

20 MR. BUNTEN: I am sorry. Peter Buntten of AFPA.

21 Let me clarify what our position is. What we are
22 saying is we are asking the FTC to provide an option. To
23 provide the option of making the declaration on
24 fiber-to-fiber or if you have another product to make it on
25 the total material weight.

1 MS. MADIGAN: Okay. Is this on the same question?
2 Very briefly, EDF and then California. It is
3 very, very briefly.

4 MR. DENISON: I do not have a problem with the
5 fiber distinction, but I think the claim should be indicated
6 it is based on fiber weight.

7 MS. MADIGAN: Okay. Californians?

8 MR. MURRAY: Mark Murray with Californians Against
9 Waste. I just wanted to point out that we co-sponsored
10 legislation with AFPA to conform California's procurement
11 law to fiber weight.

12 MS. MADIGAN: Okay. Finally, American Plastics on
13 this one question.

14 MR. LOWMAN: Rod Lowman, American Plastics
15 Council.

16 The only analogy I can see to plastics would be
17 that certainly there are some plastic product applications
18 that have, in addition to resins, other materials. Fillers
19 and colorizers, plasticizers and other things.

20 Certainly we would feel that since all of that
21 material has, in fact, been diverted from the waste stream
22 and is reused in another application, that all of the
23 material diverted should be included as the post-consumer
24 material.

25 MS. MADIGAN: Okay. Let me come back to the final

1 EPA question. Is there anybody else who wants to make a
2 comment on whether or not the FTC should use the EPA's
3 definition of pre-consumer?

4 Ford Motor?

5 MS. DAY: As I said earlier, we still have a
6 concern over what you define as end use. I mean we do not
7 want to say that the cutting oils and the equipment that we
8 use in our plant are not post-consumer. They are not
9 intended to go to any other industry.

10 We would also say we would be happy to work to
11 provide examples of when industry is a consumer, as opposed
12 to the greater public at large.

13 MS. MADIGAN: Anybody else on that question?

14 Okay. I am going to close this question overall.
15 Question number four, except that NRC, you wanted to make
16 one final comment or has it already been made and answered?
17 Thank you.

18 I now want to spend 15 minutes on the
19 reconditioned parts, which is still going to push us over a
20 little later, but I want to. Is that going to be enough
21 time, do you think?

22 MR. PEELER: Let's start.

23 MS. MADIGAN: Let's start. Okay. Should the
24 guides permit products made from reconditioned parts to be
25 advertised as recycled as opposed to limiting such claims to

1 products made from previously used items that have been
2 converted into raw materials?

3 Who would like to open the discussion?

4 MS. WHELAN: Virginia Whelan from the Automotive
5 Recycling Association.

6 Several points I would like to make beginning with
7 our industry practice or the automotive industry practice,
8 which has pretty much been standardized and recognized not
9 only by our industry, but by the manufacturers and the
10 remanufacturers of parts is that there are three processes
11 to a product coming off of the automobile.

12 The one that we all recognize and use as defining
13 recycled is the process by which a part is removed from a
14 salvage or a non-repairable vehicle and sold directly. So
15 it is called direct reuse.

16 The second process to this is when a part is
17 removed from a vehicle, taken out of the waste stream and
18 then designated as a core status, where it is sent to a
19 facility for resale for reconditioning, where there is some
20 work performed to the product and then to the consumer.

21 The final is a remanufacturing of the product.
22 Again from the core loop, the part is removed and then taken
23 to the consumer, after it has been totally rebuilt with new
24 parts.

25 We, as automobile recyclers, have used the term

1 recycling consistently with saying that we have a direct use
2 and we recommend that the FTC use these standards in their
3 guideline and emphasize that this is the industry practice
4 that the consumer is aware of and has been able to delineate
5 the difference between the product they are purchasing.

6 That is all I have to comment.

7 MS. MADIGAN: Okay. Anybody else on this subject?
8 Ford Motor?

9 MR. DUKE: Kevin Duke, Ford Motor Company.

10 I am not so sure whether reconditioned parts can
11 be advertised as recycled. I think they should be or at a
12 minimum the environmental benefits of the process ought to
13 be able to be truthfully advertised.

14 There is a little area for possible confusion,
15 with respect to the standard of diversion from the waste
16 stream.

17 If this morning there was no infrastructure for
18 diverting automotive parts in the waste stream and then
19 beginning at noon there was, I think we could say these were
20 recycled, but this system has been in place for about 50
21 years.

22 So, is there some time period after which aluminum
23 cans will no longer be considered recycled, because they are
24 universally used and therefore they would not have otherwise
25 have gone to the waste stream?

1 That needs to be kept in mind. I think there are
2 environmental benefits again that every manufacturer ought
3 to be able to truthfully advertise.

4 The second point is just that there are guides for
5 this industry that exist and any discussion in the
6 environmental marketing guides needs to be consistent with
7 the terminology that is used in the industry and is used in
8 the existing guides. Thank you.

9 MS. MADIGAN: Anybody else? Did you want to ask a
10 question?

11 MR. PEELER: Am I correct that --

12 MS. MADIGAN: Lee Peeler.

13 MR. PEELER: -- the existing guides do not address
14 recyclable?

15 MR. DUKE: Kevin Duke, Ford Motor Company.

16 You are correct. They do not. I think it is
17 reconditioned, remanufactured, but my understanding is the
18 term of art, such as it is in the industry, is a recycled
19 part is a reused part, with little or no remanufacturing or
20 reconditioning.

21 MS. MADIGAN: Anybody else on this question?

22 Free Flow?

23 MR. GRAHAM: Arthur Graham of Free Flow Plastics.

24 To be a purist about the subject of the recycled
25 content, because if we do not, we are going to be in this

1 for the year 2050, in this discussion.

2 Again, I would like to suggest that we could
3 refine the word recycled content to an end use product that
4 was used for the purpose for which it was intended, it was
5 diverted from the solid waste stream, was reprocessed or
6 converted in a recycling process so it can be used as a raw
7 material for the production of a new product.

8 That is the purist definition I think that the
9 consumer thinks of when he sees the word recycled and
10 therefore, the reconditioned automobile part or the
11 reconditioned part would not fit that definition.

12 I do not think we ought to be able to use the word
13 recycled on that product. Reconditioned, yes. Reprocessed,
14 yes. But certainly not recycled.

15 MS. MADIGAN: Thank you.

16 Anybody else on this question before we take a
17 break and move to compostable? Any final very brief
18 remarks?

19 Any questions, FTC staff? Okay. Kevin Bank, FTC.

20 MR. BANK: Consumer perception question relating
21 to this question of reconditioned parts. There might be
22 some concern that people associate recycling as better than
23 reconditioning, in the sense that the consumer might feel
24 that they are buying a product that is virtually new,
25 because the components have been made from raw materials,

1 whereas with reconditioning, you actually are reusing the
2 materials.

3 We were wondering if perhaps consumers perceived,
4 for instance, a car labeled as recycled to be superior in
5 quality to one labeled as reconditioned.

6 MS. MADIGAN: If you feel comfortable. Automotive
7 Recyclers Association.

8 MS. WHELAN: I will not address the reconditioned,
9 because that really is not the area of expertise, but
10 consumer perception, with regards to the recyclable part or
11 the reuse of a part directly from the manufacturer's
12 product, the consumer is aware that that particular product
13 is OEM original and is often used in advertising.

14 It emphasizes that the quality of the part is as
15 designed by the manufacturer. So if that answers the
16 quality question.

17 I have never encountered a consumer to question
18 whether that particular product was sent through some
19 process for recycling and brought back to them for sale.
20 Their understanding is, it is directly coming off of a
21 vehicle that is no longer in use and directly to them, but
22 manufactured by the manufacturers of automobiles.

23 MS. MADIGAN: Ford, did you want to add something?

24 MR. DUKE: Kevin Duke, Ford Motor Company.

25 I think the understanding in the industry is that

1 a reconditioned or remanufactured part has had more done to
2 it than a recycled part.

3 It tends to be limited to parts or individual
4 components. There are remanufactured engines and
5 transmissions, but no recycled automobiles that I am aware
6 of.

7 I frankly do not know what the implication would
8 be of a remanufactured part that had some new materials in
9 it that were made of recycled materials. I think there is
10 ample area for confusion there.

11 MS. MADIGAN: You have suggested that consumers
12 perceive a difference between reconditioned and
13 remanufactured versus recycled?

14 MR. DUKE: Right.

15 MS. MADIGAN: Do they perceive one to be superior
16 to the other? I think that was the FTC question.

17 MR. DUKE: Kevin Duke, Ford Motor Company.

18 I do not think so. I think they perceive that
19 they are different. One of the implications of a recycled
20 or reused part is that it was in good enough condition that
21 nothing else had to be done to it to bring it up to
22 specifications.

23 MS. MADIGAN: Does that answer your question?

24 MR. BANK: Yes, I guess.

25 MS. MADIGAN: Bob Dellinger, EPA.

1 MR. DELLINGER: Bob Dellinger with EPA.

2 I had looked through the comments on this and I
3 would argue that the term, as used with regard to recycled
4 automotive parts, does not meet any definition of recycling
5 that I have seen.

6 It meets the definition of source reduction or
7 pollution prevention or waste prevention, in that my
8 understanding of that is, is that it is taken from one
9 vehicle and reused in another. It is a reuse operation, as
10 opposed to recycling.

11 We may be splitting hairs there, but it does not
12 meet our definition of recycling. It does not meet NRC's
13 definition of recycling and it does not meet the definition
14 that is contained in the Executive Order that was issued by
15 the White House.

16 With regard to remanufacturing, we have never had
17 to declare whether a remanufactured product was a recycled
18 product or not. We write guidelines that give preference to
19 products that are made from recovered materials.

20 Remanufactured products meet the definition of
21 recovered materials and we made that pronouncement in a
22 Federal Register Notice on May 1, 1995, when we did the
23 procurement guidelines.

24 We would consider retread tires to be a
25 remanufactured product. We consider some kind of toner

1 cartridges to be remanufactured products.

2 We have not taken a stand as to whether that makes
3 it a recycled product or not, because we have not had to do
4 so. That is something that I cannot address right now,
5 because EPA has made no pronouncement on that.

6 But clearly a remanufactured product we would feel
7 comfortable writing a procurement guideline or making it a
8 designated item to be purchased by the federal government.

9 That much I can say and I will have to take the
10 other issue up internally, because we have never made that
11 declaration.

12 MS. MADIGAN: AR, you wanted to respond?
13 Automotive Recycler's Association.

14 MS. WHELAN: Virginia Whelan.

15 Just to respond as far as documentation on the
16 reuse as a recyclable part. Our understanding is in the buy
17 recycling program, a number of our industry members on a
18 state-by-state level have been included in particular in
19 promoting by recycling and our particular products were
20 listed as recyclable products for procurement by state of
21 vehicles.

22 Another area of publication in a waste
23 minimization manuals in region seven, which was designed by
24 the EPA. Our products are listed as recyclable and the
25 terminology of words is that the recyclable parts will be

1 handled in certain waste streams for fluid removal and this
2 document was written and published by the EPA region seven.

3 MS. MADIGAN: I have EDF and speaking to this
4 question as well?

5 MR. DENISON: I have a question.

6 MS. MADIGAN: Okay.

7 MR. DENISON: I do not have strong feelings about
8 this, but I am curious what the motivation is. What is the
9 problem? Is it that you do not want to have to use a
10 different term or what? I mean is there a stigma attached
11 to these other terms that recycled does not have?

12 MS. MADIGAN: ARA?

13 MS. WHELAN: Thank you. I feel alone out here.

14 Basically, yes. The stigma of not being able to
15 be included as a recycler is of main concern to our
16 industry. You have to remember that this is an industry
17 that was for a long time, from my father's time, called
18 junkyards.

19 We are very sensitive to the titling of where we
20 have worked to achieve. We are aware as an industry how we
21 have tried to convey to the public the quality of our
22 product, the warranties we stand behind our product at ARA,
23 we have a certification program for auto recyclers across
24 the nation that allows us to standardize the practices of
25 auto recyclers.

1 So overall, again we are going back to the
2 marketability of recyclable products. We feel that this is
3 important to us to remain in the recyclable language.

4 If we are moved into another language, it first
5 totally confuses the public, which we have cultivated to
6 understand us to be a recycled product and for us as an
7 industry, really gives us nowhere to understand our role.

8 Currently we feel we are innovators in recycling
9 and now we would have literally the box kicked from
10 underneath our feet, as an industry.

11 MS. MADIGAN: Okay. We are getting perilously
12 close to a need for a break. I want to ask, are there any
13 other questions or comments with respect to the
14 reconditioned parts issue?

15 Let me turn to the FTC and say, are we done with
16 recycled content? Okay. I suggest we take a well earned
17 seven-minute break and try to start at 5:15 for compostable.

18 (Whereupon, Session 3 ended at 5:05 p.m.)

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S E S S I O N 41
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5:17 p.m.

MS. MADIGAN: I am going to try to see if we can get this next panel completed in 30 minutes so that we would only be running five minutes behind schedule.

Before we begin, can we go around the room and have people introduce themselves by name and organization, again for the record. We will do it very slowly.

My apologies to the composting council, but it is actually easier to start at that end of the table for the recorder. If we could begin with you and we will just go around the table.

MR. MONK: I am Randy Monk of the Composting Council.

MR. KASHMANIAN: Richard Kashmanian, spelled with a K, from U.S. EPA and I feel like I sat through the appetizer. I am here for the main course.

MS. ADAMS: Georjean Adams from 3M and I do not know why I wound up being on every one.

MR. TONER: Patrick Toner, Society of the Plastics Industry.

MS. MADIGAN: Could we close those doors to eliminate some of the extraneous noise? That would be great.

MS. GRIFFIN: Mary Griffin, Attorney General's

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1 task force.

2 MR. OSTHEIMER: Mike Ostheimer, Federal Trade
3 Commission.

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

5 MR. DERSHOWITZ: Michael Dershowitz, Federal Trade
6 Commission.

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

8 MS. MADIGAN: Denise Madigan, facilitator.

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

10 MR. MILLER: Edgar Miller with the National
11 Recycling Coalition.

12 MR. DENISON: With dessert, Richard Denison with
13 EDF.

14 MS. MADIGAN: Before we start, I will just
15 encourage those of you who are waiting for the public
16 participation section to fill out those little forms and get
17 them to one of the FTC staff or to me before we begin that
18 section.

19 All right. We have two questions framed by the
20 FTC and let me walk through them. The first question, have
21 the degradable and compostable guides affected marketing and
22 advertising of products that are degradable in compost piles
23 or facilities and if so, how?

24 It has been brought to my attention that this is a
25 deliberately narrowly framed question. The focus is on

1 those products that are degradable in compost piles or
2 facilities.

3 Second question, what modifications, if any,
4 should be made to the compostable guide?

5 Let's take them together. Who would like to open
6 the discussion? I know someone here cares about this issue.
7 Composting council?

8 MR. MONK: I am Randy Monk of the Composting
9 Council.

10 Our impression is that claims of compostability
11 with any kind of limits are way down from where they were in
12 1992 and before these guidelines were issued.

13 When I read through the guidelines, over and over
14 again, I find them reasonable on their face. But when I
15 look at the industry and the decline of compostable claims,
16 I have to say that these guidelines or the enforcement of
17 the guidelines have impeded or limited or narrowed or
18 eliminated in some cases claims of compostability and
19 degradability.

20 So I am interested in your views as to why this
21 has happened.

22 MS. MADIGAN: "Your" being who?

23 MR. MONK: You.

24 MS. MADIGAN: The collective group?

25 MR. MONK: Yes.

1 MS. MADIGAN: EDF?

2 MR. DENISON: I would tend to agree that there has
3 been some decline in such claims. I might argue that that
4 is a good thing and not a bad thing and we can get into
5 that.

6 But there are still categories of products I think
7 that are claiming degradability in particular.
8 Compostability I see much less use of and there are very
9 narrow niches where that is being used in certain product
10 lines that have something to do with composting generally.

11 So, I have not seen that being used more broadly
12 than that, but degradable is still being used, I think, more
13 broadly and more loosely in a number of settings. Less than
14 before the guides.

15 I would attribute this not only to the guides, but
16 to enforcement actions that were taken by the AG's and by
17 the FTC and a lot of adverse publicity around degradability
18 types of claims.

19 MS. MADIGAN: Anybody else? EPA?

20 MR. KASHMANIAN: Richard Kashmanian, EPA.

21 I have not seen the use of compostable on labels
22 either. I think it perhaps is a carryover from the
23 attention and misuse, if you will, of degradable.

24 But when you read the guides, it does explain that
25 if you want to use compostable, to provide information as to

1 where it is compostable.

2 I think that it is important when you look at
3 composting and compostable, you look at the different places
4 where composting can take place.

5 It can take place in the backyard. It can take
6 place on site, which can also include backyard. On site
7 could be for schools, stores, hospitals, et cetera. It can
8 be for a centralized leaf and grass composting facility.

9 Even broader, a centralized source separated
10 composting facility and then even beyond that, a centralized
11 mixed solid waste composting facility.

12 You look at it from that perspective, there are
13 different materials that could warrant the use of the word
14 compostable. That is, it is compostable in a home compost
15 pile. It is compostable as centralized leaf and grass
16 composting facility.

17 There are cases where some materials, like let's
18 say a diaper, if you just say compostable for that diaper,
19 it is, I would say, improper to put that into your home
20 compost pile. So, it is important, I think, to clarify if
21 you are limited in where you can compost something.

22 I think that once you begin to look at the
23 different forms of composting, where it is done, who does it
24 and the materials, you begin to get a better idea as to how
25 and where the label compostable could be used.

1 MR. PEELER: Can I ask a question?

2 MS. MADIGAN: Lee Peeler, FTC.

3 MR. PEELER: Could you just take a minute and tell
4 us a little bit more about who the Composting Council is and
5 what types of businesses would be members of the Composting
6 Council?

7 MR. MONK: Sure thing. The Composting Council is
8 a six-year-old trade association. We represent composting
9 companies and friends of composting and that includes
10 compost manufacturers, compost marketers, compost facility
11 operators, including municipalities, public operators and
12 private operators.

13 It also includes industries that are interested in
14 the success of composting. Those that make compostable
15 products and compostable packaging. Also some academics,
16 other non-profits, the wide variety.

17 Does that answer?

18 MR. PEELER: Again, Lee Peeler.

19 It seems to me there are sort of two ranges of
20 issues here. One is home composting claims, which I think
21 the guides are fairly clear on, although I have noticed some
22 of the comments that we received said that we should make it
23 clearer. That if it is compostable in the backyard compost
24 pile, that you make an unqualified compostable claim.

25 The second issue is, municipal composting. There,

1 in terms of products that are marketed for that, we have
2 basically the same issue that we have for recyclable claims,
3 but even more so in the sense that municipal composting, as
4 far as we can tell, accessibility is very limited for most
5 consumers. If it was a national marketing program, you
6 would have to put disclaimers on it.

7 In terms of why there are not more claims being
8 made, I guess I do not know. I was not that familiar with
9 that many claims before in the initial guides.

10 It certainly seems to me that one of the things we
11 might want to do is have someone come out and talk to your
12 members at your next convention and see what the issues are.

13 A lot of times even for something that we tried to
14 make as clear as the guides, it is a question of, do people
15 really understand them.

16 MR. MONK: That would be good.

17 MS. MADIGAN: That was the Composting Council.

18 Any other comments on these two sets of questions?
19 3M?

20 MS. ADAMS: I suppose since I am sitting here I
21 ought to say something. Georjean Adams, 3M.

22 To my knowledge, 3M is not making any compostable
23 claims. We are working with some customers in trying to
24 develop some materials that they incorporate into their
25 products so that they can make a valid compostability claim.

1 I think the guidelines are well stated as they are
2 and it basically goes back to, can you technically
3 substantiate the claim for the way that the majority of the
4 customers are actually going to be handling a product,
5 whether it is a home compost or going to municipal.

6 I think that needs to be clearly stated. It is
7 tough to come up with the materials, at least in the
8 businesses that we are in. We do not make leaf bags. So, I
9 cannot comment on those.

10 I think it is more a technical challenge at this
11 point more than an issue of making bad claims per se. I
12 think we have all recognized and the guidelines have been
13 very good in making sure that people are very careful and do
14 not make claims where they should not.

15 MS. MADIGAN: EDF?

16 MR. DENISON: Richard Denison, EDF.

17 First of all, I think our view on compostability,
18 is that it is in many ways like recyclability and the issues
19 that we talked about earlier this morning we would apply
20 here in terms of disclosure requirements and so forth.

21 With regard to access, extent of access or extent
22 of ability for a consumer to compost the item in question,
23 especially if it is designed to be composted in a facility
24 that is outside of their control. That is, not their
25 backyard composting program.

1 I must say that I found the guides, when you look
2 at the degradable, biodegradable, photodegradable guide
3 relative to the compostable guide, that there is a curious
4 issue there and that is that there is somewhat of an
5 environmental test in the compostable guide that says that
6 the claim cannot mislead consumers about the environmental
7 benefit provided when the product is disposed in a landfill.

8 There is no such test or requirement on the
9 degradable side, where frankly I think it is far more
10 needed, because that is the situation where it is much more
11 likely that someone will assume.

12 In a compostable claim, it assumes something other
13 than landfill as the destination. In a degradable claim, it
14 assumes that anywhere that material goes, including a
15 landfill, it will degrade.

16 So, I think there needs to be an environmental
17 test applied on the degradable side as well and I never
18 understood why that appeared one place and not the other.

19 Moreover, in a compostable claim or in a
20 degradable claim, there needs to be an environmental benefit
21 test that goes beyond simply the question of does the
22 material actually behave in the manner advertised.

23 That is, a degradable material may very well
24 degrade very quickly under landfill conditions let's say,
25 but that, in our view, is not a sufficient test for whether

1 that is a deceptive claim or not.

2 The reason is as follows. In a landfill setting,
3 degradation of materials leads to the production of landfill
4 gasses and landfill leachate. Those are byproducts of the
5 degradation process itself. Those are both environmental
6 concerns.

7 A consumer that buys a product on the basis of
8 such a claim, even assuming the product works as advertised,
9 it degrades in ten days under landfill conditions, that
10 product is not only not delivering an environmental benefit,
11 but the consumer bought it because they thought they were
12 going to get, it is delivering an environmental detriment as
13 a result of that property. The very property you are
14 advertising about that product.

15 So especially on the degradable side of this set
16 of guides, the environmental test is absolutely critical to
17 provide any assurance that these claims will not be
18 deceptive to a consumer.

19 MS. MADIGAN: FTC and then EPA.

20 MR. PEELER: I cannot think of any analogy in the
21 composting area to the types of concerns that were raised in
22 the degradable products in the landfill area.

23 I mean it seems to me in the compostable area, the
24 only possible problem is contamination. That is already
25 addressed by the guide. That is not really an issue. In

1 composting, you are just saying that you would like to see
2 that degradable.

3 MR. DENISON: Richard Denison, EDF.

4 Yes. I guess I am wondering though what that
5 phrase in your guides on compostable was intended to get at.
6 That you cannot make a claim if it would mislead consumers
7 about environmental benefit provided when the product is
8 disposed of in a landfill.

9 MR. PEELER: I can tell you what it was designed
10 to get at. We did not want to see a new generation of trash
11 bags that were posting a claim on them that were just going
12 to go into a landfill. That is what it was designed to get
13 at. That has not happened.

14 MR. DENISON: Okay. Richard Denison.

15 Then it would seem to me that we also do not want
16 a new generation of trash bags that are going to landfills
17 that are not making compostable claims, but are making
18 degradable claims either. So, that language is entirely
19 missing on the degradable side.

20 MS. MADIGAN: EPA, did you want to --

21 MR. KASHMANIAN: Yes, please. Richard Kashmanian,
22 EPA.

23 I think that with the lack of labeling for
24 compostable for home compost pile use, we have missed an
25 opportunity to educate the consumer about the value of home

1 composting.

2 Home composting is close to recycling. You take
3 care of it all within your own yard, unlike recycling or
4 composting off site.

5 I am struggling with, if you do provide additional
6 information on the label under compostable, if you use
7 language from like what the guides say where municipal solid
8 waste composting facilities exist, if the consumer is going
9 to understand what that means.

10 If I have a leaf composting facility in my
11 community, that is a municipal leaf composting facility.
12 Some people refer to leaves and grass as yard waste. Some
13 people refer to yard waste as solid waste.

14 It is not, to me, much of a stretch for the public
15 to think of my leaf composting facility as a municipal solid
16 waste composting facility.

17 I am concerned that with this kind of language, we
18 may still be misleading the public as to what can be
19 received or sent to your community composting facility.

20 I am not sure what is the best language, but that
21 is a concern of mine. That I think, again, from the
22 public's point of view, these words all mean the same thing.

23 MS. MADIGAN: Any other comments or questions?
24 Composting council.

25 MR. MONK: Randy Monk of the Composting Council.

1 Let me backtrack a bit and address how the
2 industry has changed since the guides first came out. As
3 has been discussed, the guides and the question talk about
4 two divisions.

5 They talk about home composting and then monstrous
6 municipal solid waste composting facilities. It may be that
7 four or five years ago that was how the industry looked.
8 That we had home composting programs growing slowly and then
9 we had the promise of gigantic facilities that would accept
10 waste and sort it all and produce compost.

11 The industry has evolved quite a bit and has
12 become much more accessible to the consumer by filling in
13 the middle ground, if you will.

14 Source separated composts, commercial organic
15 waste, which is relatively clean and easily separated and
16 composted like restaurants, grocery waste, fast food and
17 cafeteria waste, is increasingly being composted.

18 So the middle ground, small scale flexible,
19 sometimes even portable system for composting waste are on
20 the increase.

21 Backyard composting programs are very much on the
22 increase. About half the states have programs that promote
23 that. The Composting Council and EPA are working together
24 on a national backyard composting program to promote that.

25 So, if you look at the lens we had in 1992 of home

1 composting and then gigantic facilities, we missed the
2 middle ground that has grown substantially of smaller or
3 modest facilities that accept specific organic wastes and
4 also the growth of home compost.

5 So I just wanted the FTC to be aware of how the
6 industry has evolved and how much more accessible to the
7 consumer it is.

8 MS. MADIGAN: National Recycling Coalition.

9 MR. MILLER: Edgar Miller with the National
10 Recycling Coalition.

11 Picking up on Richard's point. I think the FTC
12 may want to consider looking at other claims that sort of
13 stem from this whole area of degradability and
14 compostability. Things like landfill safe, incinerator
15 safe.

16 I do not know that we have that kind of guidance
17 in this right now, but when you talk about those kinds of
18 general claims, I know there has been an attempt to
19 discourage that. You may want to look at some of those
20 claims that we have seen from time-to-time.

21 MS. MADIGAN: Anybody else on this before we turn
22 over to public participation? FTC staff? Any follow-up
23 additional questions? EDF?

24 MR. DENISON: Richard Denison, EDF.

25 Randy's last comment I wanted to follow-up on a

1 little bit. This is another area where I find it very
2 tricky to draw a bright line between consumer deception and
3 environmental policy or environmental science for that
4 matter.

5 I want to mention two aspects of that. One is,
6 one of the major concerns around degradable plastic
7 development was its potential and actual conflict with
8 plastics recycling, whereby it would essentially become a
9 contaminant in a recyclable stream and wreak havoc in that
10 effort to recycle, for example, plastic bags, grocery sacks
11 and things like that.

12 That is an area where, again, the claim of
13 degradability could, in fact, potentially be totally
14 substantiated and true, but would have consequences that
15 have other environmental implications.

16 The other example that I want to give in the
17 composting area and I am relieved to hear from Randy that in
18 fact the move away from these large mixed solid waste
19 composting facilities seems to be occurring, that raises a
20 whole slew of other environmental questions about whether
21 we, in fact, want to be promoting a lot of products as being
22 compostable, when those products could, in fact, be
23 recovered or better uses be made of them.

24 So again, there is an area where I think you start
25 getting a little murky about what is environmental policy

1 and what is consumer deception and it comes back to the
2 point that I make like a broken record, which is these
3 claims have two burdens of proof.

4 They have to be true and they have to deliver an
5 environmental benefit. In my view, if they fail on either
6 score, they are deceptive to the consumer who is buying a
7 product, because they think they are getting an
8 environmental benefit.

9 MS. MADIGAN: Anybody else? SPI?

10 MR. TONER: I was bound to get drawn into this.
11 Pat Toner from the Society of the Plastics Industry.

12 I guess the one area where we continue to have a
13 concern about degradable is in the area of photodegradable,
14 where there are certain requirements at the state level or
15 the EPA level, particularly to avoid marine entanglement,
16 that require certain products to meet a degradability
17 standard that is written into the regulations.

18 So we do have a concern that we be able to
19 manufacture products that will meet the degradability
20 requirement of the specific regulation.

21 Other than that, I think the guides are generally
22 helpful and has helped, if you will, settle down some of the
23 concerns that were raised about the use of the term in our
24 industry in the beginning.

25 MS. MADIGAN: Composting Council and then EPA.

1 MR. MONK: For the Composting Council, Randy Monk.

2 We have worked with some companies developing
3 degradable plastics and our sense is that they are working
4 with us because they see a demand for degradables from
5 states and from consumers.

6 They want that demand to be realized through
7 composting. I do not know that they are relying on
8 degradation in landfill, although I cannot speak completely
9 for them.

10 But I know that they are working with us to affect
11 their demand so that it will come through the composting
12 system. Their desire is to build up with us the composting
13 infrastructure.

14 An example is in Europe many countries are moving
15 forward with a degradability standard. There is a sister
16 organization of ours over there. A composting organization
17 that is working closely with those European countries and
18 promoting the degradability standard and moving the
19 degradability through the composting system and not
20 circumventing it through the landfill.

21 So my impression from working with these companies
22 is that their strong desire is to build up the composting
23 infrastructure so that their products can meet the
24 compostability standard.

25 MS. MADIGAN: EPA?

1 MR. KASHMANIAN: Richard Kashmanian, EPA.

2 To the question of what modifications could be
3 made to the FTC guides, to build on something that Randy
4 said, right now there are seven examples to help guide
5 people in using compostable.

6 I think that those examples could perhaps be
7 expanded upon, but revised to reflect current composting
8 conditions, where it is being done to better serve the
9 community that could benefit from using compostable.

10 So, I would update the examples to reflect current
11 conditions. I would also revise them to reflect that in
12 some cases some materials, packaging, products, whatever,
13 are not completely compostable.

14 Let's say a paper based container with a plastic
15 liner. The paper will break down in my home compost pile.
16 The plastic will not. You want to be careful about that as
17 well.

18 I too wonder about what the term substantial
19 majority means and if that is reaching too far to expect and
20 maybe there is a better way to provide clarification on
21 compostable and using that sort of terminology.

22 MS. MADIGAN: Carolyn Cox?

23 MS. COX: Yes. This is Carolyn Cox from the
24 Federal Trade Commission.

25 I got the impression, I think it was from EDF's

1 comment, that there is a presumption that recycling a
2 material is necessarily better for the environment than
3 composting that material.

4 I was just wondering, if I'm first, getting that
5 right and second, if that is, in fact, correct and I would
6 like the EPA to comment on that, is there a life cycle
7 analysis of like say composting versus recycling? Can we
8 definitely say that one is better than the other?

9 MS. MADIGAN: Could I ask first EDF to respond,
10 because you have characterized their comments and then we
11 will turn it to EPA?

12 MR. DENISON: I would say you generally accurately
13 captured it. I am not saying there would be no exceptions,
14 but in general, an option in our view that recovered the
15 material and put it to the same or a similar use would be
16 much preferable to an option that takes that same material
17 and essentially degrades it and may get some ultimate
18 product that has some use, but would be of much less value.

19 I think my general familiarity with life cycle
20 data would suggest that things like energy use, where you
21 have to then replace that degraded product, would be much
22 higher than in a recycling system, which would require less
23 energy to complete.

24 So that is certainly our presumption. But my more
25 general point is that there could be very well situations

1 where there is an environmental conflict of significant
2 magnitude that arises as a result of one attribute being
3 advertised without any regard to the consequences it has for
4 other attributes of that same product.

5 MS. MADIGAN: EPA and then NRC.

6 MR. KASHMANIAN: Richard Kashmanian, EPA.

7 I am not aware of any life cycle comparison
8 between let's say recycling versus composting paper. I do
9 not think that has been done.

10 It is a hard question to answer that you are
11 asking and I think it is going to be local in nature and I
12 think economics will drive actions by communities, whether
13 it is going to pay them more to have the paper recycled
14 versus sending it to a composting facility where they have
15 to pay a tipping fee at the composting facility.

16 Right now, prices for paper are really good so
17 they are probably getting paid for it, but there was a time
18 where they had to pay to have it recycled.

19 So it is a hard thing to answer, but I think they
20 are going to be acting based on economics and right now it
21 may point to recycling most of the paper products, but there
22 are some that are not going to be recycled. So, another
23 option is to compost them.

24 MS. MADIGAN: We are getting close to our end
25 time. NRC and then Composting Council.

1 MR. MILLER: Edgar Miller with the NRC.

2 From a definitional standpoint, NRC considers the
3 source separated composting of organic matter to be
4 recycling. So in that sense, we equate the two.

5 However, our policy on degradability does raise
6 concern about the extent to which additives in degradable
7 plastics may affect the plastics recycling process.

8 For paper products, certainly we put a higher
9 value on the value added of recycling those into new paper
10 products and the environmental benefits that Richard
11 mentioned, but obviously for contaminated paper or paper
12 that has been used in mulch and ground cover and things of
13 that sort, certainly we see composting as a superior option
14 to others.

15 From the question that Rich raises about the
16 economics of recycling plates, forks, other things that may
17 ultimately be made out of degradable plastic, I think that
18 is really where we do not really have enough information.

19 MS. MADIGAN: Okay. Composting Council.

20 MR. MONK: For the record, in the EPA hierarchy,
21 composting and recycling are equivalent. One is not
22 preferred above the other.

23 As to the whole highest and best use, paper should
24 be recycled rather than composted, it is kind of an old
25 fight and there is not much meat to it.

1 Composting facilities do not have a particular
2 desire to incorporate paper. It is a carbon source and
3 typically composting facilities do not need another carbon
4 source. So it is an old fight and there is not many teeth
5 left in it. That is about paper and that is it.

6 MS. MADIGAN: Why do we not wrap this up? Let me
7 just see if there are any more comments anybody would like
8 to make on this and also ask the FTC staff if there are any
9 other questions they would like to pose.

10 Another Composting Council comment.

11 MR. CANNON: Charlie Cannon with Composting
12 Council.

13 There are some very broad philosophical and policy
14 issues that ride above the discussion on simple life cycle
15 of materials recovery that I would like the FTC to consider
16 if they would, as they approach these questions.

17 They relate to the preference of recovery in one
18 form or another. Composting is a very robust tool for
19 environmental benefit.

20 It provides for source reduction and reuse at
21 home. It removes materials from the collection system and
22 reduces costs and allows recovery and reuse at home. It is
23 an extremely effective method for recycling organic
24 materials.

25 The charge has been made that these materials do

1 not have as high a value as other materials that might be
2 recovered from the waste stream by other recycling
3 techniques.

4 I would ask the Commission to consider, as they
5 consider the environmental benefits, the very large
6 environmental benefit of recovering and reusing organic
7 material as humus.

8 The depletion of organic material and topsoil
9 worldwide is a huge problem of massive environmental
10 proportions.

11 The recovery and reuse of organic matter may, in
12 fact, have a higher use than the recovery and reuse of a
13 glass bottle as a glass bottle, paper as paper.

14 This is an assumption that we make because we are
15 looking very narrowly at the question of recovering
16 materials in a waste management system.

17 If we look from a true materials management
18 perspective and the larger environmental benefits,
19 composting, from my perspective, is far superior to
20 conventional recycling.

21 MS. MADIGAN: EDF?

22 MR. DENISON: Let me clarify. I am not suggesting
23 composting is not a highly environmentally beneficial option
24 for organic materials and we are a strong proponent of
25 composting of the organic fraction of the waste stream.

1 The issues that I have addressed come into play
2 when we are talking about other materials in the waste
3 stream that where composting may be an option for them,
4 paper for example and I would be the first to say there are
5 fractions of paper that may very well be best managed and
6 the highest use that they can be put to is composting.
7 There are other fractions of paper, however, where that is
8 not the case.

9 If we move toward a resurrection of a new
10 generation of degradable plastics, where people are talking
11 about making containers, for example, that are highly
12 recycled today out of degradable material, I do have
13 concerns about that.

14 That both as a contaminant of a recyclable stream
15 when you have a lookalike container that is made out of a
16 degradable material in one case and a plastic in another
17 case and a higher and best use issue there for a plastic
18 item.

19 But I have no question that we need to be
20 promoting composting on as large a scale as we can for the
21 appropriate parts of the waste stream.

22 MS. MADIGAN: Composting Council.

23 MR. CANNON: Let me just echo that the position of
24 the Composting Council is that fiber should be recovered as
25 fiber wherever feasible. I did not mean to suggest there is

1 a fight going on there, but I did want to make a case that
2 organics recovery is viewed by some of us as a very high art
3 with a very strong environmental profile.

4 MS. MADIGAN: Are there any questions from the FTC
5 before we close this discussion?

6 Why do we not then take a two-minute break? Do
7 not leave the room. Overflow room you can come back in now.
8 Make sure that we have all the questions and we will just
9 start as we did the last time.

10 Does everybody have your questions in? The
11 envelope, please. We have two questions.

12 Sheila Cogan, would you like to start? Come on up
13 to the microphone. Once again, you may want to remind us
14 that you are here as an individual, but also as someone with
15 20 years professional recycling experience.

16 AUDIENCE QUESTION: My name is Sheila Cogan. I am
17 here as an individual and I want to remind you that I do
18 have 20 years of professional recycling experience.

19 While serving as the resource recovery specialist
20 in a county in northern California, a committee of
21 interested laypeople, recyclers and manufacturers, met
22 almost once a week over coffee, over lunch, over dinner on
23 Saturdays for four months in 1991 to develop some measurable
24 criteria to define recyclable and recyclability in our local
25 jurisdiction.

1 The end result was a selection of criteria
2 relating to such things as the economics of recycling,
3 collection, distance to market and so forth to develop a
4 packaging recycling index which was adopted as public policy
5 in our local jurisdiction and was used to drive the county's
6 recycling and planning of the county's recycling program.

7 It wasn't a multi-page study by Tellus, but it did
8 indicate the interest and the extent that some citizens in
9 the local community far away from this table are willing to
10 go to understand these concepts and I would urge the
11 Commission not to undervalue the interest in this matter as
12 some of the opening comments this morning I felt did.

13 The issue is still of interest to the public at
14 large and I believe that a lot of the issues that were
15 addressed, -- initial guidelines -- and hopefully
16 re-addressed in the revisions are still to be resolved.

17 MS. MADIGAN: All right. Mr. Oddy, would you like
18 to come up? And remind us, are you now representing Novon
19 International, as before you were an individual?

20 AUDIENCE QUESTION: I am. Thank you.

21 I am Del Oddy from Novon International, a company
22 that presently provides to the plastics industry polymers
23 and additives that allow the plastics to become
24 biodegradable and compostable.

25 With this, I would like to start by answering the

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1 question that was written, had the degradable and
2 compostable guides affected the marketing and the answer is
3 definitely yes.

4 When you make a growing industry know where every
5 compost facility is in the United States, it makes it
6 extremely difficult for us to operate, especially when we
7 try to distribute that through national chains, such as
8 Kmart, Wal-Mart, Target and so on.

9 We not only have a problem in knowing where those
10 facilities are, but then the distribution and storage of
11 that product, a box, disseminated throughout the United
12 States is extremely difficult to control. It is very
13 costly, if not impossible.

14 If I can address the situation about national
15 recovery. At least 40 percent of all the products that I
16 know that are biodegradable or compostable are made up of
17 living products that can be regenerated. Corn starch.
18 Potato starch and so on.

19 So that the compostability of that is not
20 depleting or removing any of the world necessities. They
21 can be replaced.

22 Recycling versus compost. I would just say again
23 that economics enters into this to a great extent. If we
24 can supply to a municipality the ability to be able to pick
25 up a bag that is compostable or biodegradable at leaf

1 collection time, we have saved that municipality enormous
2 expense from the cost of vacuums or individual payloaders
3 type of hand manual loading.

4 So economics again comes into the thing to a great
5 extent, as well as the replenishment of the soil supply, as
6 the Council just mentioned a few minutes ago.

7 One other thing that comes to mind is the fact
8 that it is an industry that you are putting extreme
9 requirements on where I question whether they really need to
10 be.

11 As an example, we have a bag that is degradable.
12 We can prove to you through carbon 14 technology and studies
13 that have been done at universities, that we do have a
14 product that degrades. It is compostable.

15 For us not to be able to put that on the carton is
16 a real handicap for us. We should be able to supply on the
17 outside of a package that this bag is compostable, whether
18 it be sold in Des Moines, Iowa or Salt Lake City or
19 wherever.

20 The matter that it is handled is somewhat
21 different. If I can make a brief analogy it would be to a
22 snow tire. I do not believe the FTC or anybody else
23 prevents the tire companies from advertising a snow tire in
24 Miami, Florida nor do they put the criteria on it that the
25 snow tire only work in snow of three inches or less or any

1 other stipulation.

2 If we have a product that will actually do what is
3 being advertised on the carton and that is compostable or
4 biodegradable, then we should be allowed to do that, I
5 believe. Thank you very much for your time.

6 MS. MADIGAN: Thank you. I have in my hand only
7 two slips. Is there anybody else in the audience who would
8 like to make a comment or pose a question before we close
9 the public participation segment?

10 Since we have a couple more minutes, let me ask if
11 there is any other participant or anyone seated at the
12 table, staff or otherwise, who would like to make a final
13 comment or question on the topics that we have discussed in
14 the latter part of the afternoon.

15 MS. ADAMS: Georjean Adams, 3M.

16 I think this issue of compostability is similar to
17 the one on recyclability, where the FTC has got to walk a
18 very uncomfortable line between enforcing whose ever
19 position on environmental policy, what is better, what is
20 environmentally preferred versus making sure that we are not
21 making misleading claims.

22 We are talking about individual attributes,
23 functionality of products that we are trying to let our
24 customers know our products have and how they value that
25 particular property is a shifting target. I mean that is

1 our art is trying to figure out how much they will value
2 that particular property.

3 I am very nervous at the thought that we try to
4 use the marketing claims guidelines as a way to push
5 environmental policy. I think there are better avenues to
6 do that.

7 MS. MADIGAN: Anybody else before we adjourn?

8 MR. DENISON: I just want to thank our moderator
9 and facilitator today. I think she has done an impressive
10 job.

11 MS. MADIGAN: Okay. I will call on you twice
12 tomorrow. EPA?

13 MR. KASHMANIAN: Richard Kashmanian, EPA.

14 The last person that asked the question that was
15 from Novon, I was wondering what would stand in the way of
16 Novon being able to put on the label compostable in a
17 backyard compost pile?

18 MS. MADIGAN: Novon, would you feel comfortable
19 responding to that? Do you want to come on up to the
20 microphone?

21 AUDIENCE QUESTION: Do I understand the question
22 to be that we place on the carton the fact that it is only
23 good in a backyard compost facility?

24 MR. KASHMANIAN: Well, that is one way to clarify
25 the claim and the other is if you want to, as the guides

1 specify, the type of composting facility that it could be
2 composted in.

3 AUDIENCE QUESTION: We make a compostable bag that
4 will return to nature. It will do that in all the mentioned
5 criteria. It depends on time and usage of the compost
6 facility or the backyard compost facility, but it is a
7 compostable bag.

8 It will work in any of those conditions. In other
9 words, it would break down in the municipal well run,
10 up-to-date facility in 21 days. It may take nine months in
11 a backyard compost facility. So, you do have a time
12 element, but it will work as a compost bag in all of those
13 installations.

14 MR. KASHMANIAN: Why would the current guides
15 impede you from using compostable?

16 AUDIENCE QUESTION: Because as we understand it,
17 we have to prove that there is a significant facility within
18 the close proximity to where the bag is sold.

19 MS. MADIGAN: FTC clarify?

20 MR. PEELER: I think that if you can leave your
21 card, we probably need to talk a little bit about what the
22 guides require and do not require.

23 AUDIENCE QUESTION: Thank you.

24 MS. MADIGAN: Okay. Great. With that then I
25 think I am going to adjourn. We reconvene tomorrow morning

1 at 8:30 sharp, so tell your friends. See you in the
2 morning.

3 (Whereupon, Session 4 ended at 6:05 p.m.)

4 (Whereupon, at 6:05 p.m., the conference was
5 recessed, to reconvene on Friday, December 8, 1995, at
6 8:30 a.m.)

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C E R T I F I C A T E

DOCKET/CASE NUMBER: P954501

CASE TITLE: ENVIRONMENTAL GUIDELINE REVIEW

HEARING DATE: December 7, 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 7, 1995

SIGNATURE OF REPORTER

Peter Knight Shonerd
(NAME OF REPORTER - TYPED)