



August 15, 2008

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex B)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Green Building and Textiles Workshop – Comment, Project No. P084203

The American Chemistry Council (ACC) appreciates the opportunity to provide further comment in connection with the Federal Trade Commission's (Commission) regulatory review of the Guides for the Use of Environmental Marketing Claims (Green Guides or Guides). These comments intended to address the Commission's call for comments with respect to its workshop on Green Building and Textiles held on July 15, 2008. ACC previously submitted broad comments with respect to this regulatory review on February 11, 2008, and those comments are incorporated here by reference. Our comments here focus primarily on Green Building claims.

General Green Building Claims

Suppliers of building and construction products vary with respect to their understanding of FTC's rules with respect to environmental claims. We believe some are not aware of the Guides, and that the addition of examples specific to building and construction claims would be helpful, along with enhanced outreach and education to this market segment about the Guides.¹

ACC believes that there has been a significant increase in general claims with respect to "green buildings" and "green construction" targeting consumers. A national bank with a green building marketing campaign is even advertising that it has sought trademark protection for "green branch." There is an acute need for additional guidance from the Commission with respect to such claims.

General claims about "green buildings" should follow the general principles set out at 260.6 of the Guides. Buildings are systems of components, and general "green building" claims need to be clear whether they refer to one or more components or the entire building, much as consumer product claims need to be clear whether they apply to the product, components of the product, or the product's packaging. The central principles presented in the Guides are sound, but specific examples and applications to building claims are needed.

¹ See ICC Member Opinion Survey on Green Building, in which the International Code Council reports that "most green building programs are currently independent of the requirements of the local jurisdiction..." http://www.iccsafe.org/news/green/Green_Survey_Results.pdf



Without additional guidance, consumers are likely to continue to be confused about “green” claims in building and construction. As recently as July 15, 2008, an Eco Pulse survey by Shelton Group reported in [Brandweek.com](#) that:

Americans are also divided in terms of what they think makes a company green. When given a range of "green company" descriptions and activities to evaluate as to whether they qualified the company as "green" or not, 69 percent chose the strictest standard offered: "a company that uses renewable energy, has zero waste in their manufacturing process and produces 'green' products," while 52 percent chose one of the weakest standards: "a company that recycles."

http://findarticles.com/p/articles/mi_m4PRN/is_2008_June_23/ai_n27504818?tag=content:coll

In a 2008 Cone survey, “almost four in 10 (39%) Americans are preferentially buying product they believe to be ‘environmentally friendly.’ At the same time, almost half (48%) of the population erroneously believes a product marketed a ‘green’ or ‘environmentally friendly’ has a positive (i.e., beneficial) impact on the environment. Only 22 percent understand these terms more accurately describe products with less negative environmental impact than previous versions or competing products.” (emphasis added to text from Cone 2008, <http://www.coneinc.com/content1136>.)

While it is plain that there is general public confusion about the meaning of “green” to a consumer, we are also concerned that consumers may understand (or misunderstand) this term to be additive to other features and performance attributes of a product without reducing or negatively impacting other health or safety performance attributes. The producers of products they market as “green,” however, may not necessarily take this same view (even at the FTC hearing, *all* of the panelists participating in a textiles discussion responded that chemicals added to make fabrics more flame resistant *negate* these textiles/products from gaining the ‘green’ connotation). Green marketing should not mislead consumers into thinking that the “green” products have equivalent health and safety attributes – such as fire resistance – if they do not.

R-Value Claims

We are particularly concerned about what we perceive to be a proliferation of unfounded “R-value” claims with respect to insulation and other building and construction materials. With building starts down and rising fuel prices, it has become even more attractive to advertise the energy savings potential of various materials or the construction of a building.

Labeling and advertising of home insulation is regulated by 16 C.F.R. Part 460, including energy savings claims and “R-value” claims. There apparently is confusion, however, with respect to how “R-value” claims may be made despite the regulation. For example, claims have appeared with respect to “lab R value” and an “effective R value,” when the regulation specifically refers only to “R-value” without such qualifiers, and sets out that “R-values given in labels, fact sheets, ads, or other promotional materials must be based on” specific ASTM tests set out in the regulation. Section 460.5. There are no provisions permitting “lab R value” claims and “effective R value” claims. Such claims are confusing to the consumer and misleading. See attachment A, example of “Lab R Value” and “Effective R Value” claim; attachment B, example

of “Equivalent R” Value claim. We have also seen confusing claims about “dynamic” or “mass-enhanced” R-value. See, e.g., www.builditsolar.com/Projects/SolarHomes/ICFBotLine.htm and www.buildinggreen.com/auth/article.cfm?fileName=070401a.xml.

R-value measures resistance to heat flow (thermal conductivity), not heat transfer through other mechanisms. We believe that this may lead to claims being made in an attempt to explain heat transfer through alternate mechanisms; however, such claims using corruptions of R-value, which is narrowly and specifically defined, are likely creating significant consumer confusion.

We encourage the FTC to consider including specific examples of appropriate, and inappropriate, R-value claims in the revision to the Guides. We also believe the FTC should conduct specific education and outreach in this area to architects, home builders, code officials, and insulation manufacturers, as well as to consumers. In our earlier comments, we suggested that the Commission consider including an appendix to the Guides that cross-references those regulatory requirements overseen by the FTC, and in particular the requirements applicable to labeling and advertising of home insulation.

Third –Party Certifications and Seals

The Commission has requested comment on the effectiveness of current guidance with respect to third party certifications and seals, or “Green building” certification programs. These programs vary widely. We believe there may be consumer confusion with respect to the meaning of certification.

One of the areas of confusion is likely whether a particular program is associated with or run by the federal government. The EnergyStar program is understood as such. However, other programs, such as programs or organizations may be believed by the public as being federal-government run or sanctioned programs, when they are not. For that matter, there is little to no consistent mechanism for the public to distinguish the type or quality of one certification program from another.

We believe that claims about a certification or seal should aid the public in being able to readily and clearly distinguish between a certification by a voluntary consensus standards development organization (following procedures consistent with principles of openness and due process, such as those following ANSI procedures) and other certifications. The characteristics of a quality voluntary consensus standard are

- Consensus must be reached by representatives from materially affected and interested parties;
- Standards are required to undergo public reviews when any member of the public may submit comments;
- Comments from the consensus body and public review commenters must be responded to in good faith; and
- An appeals process is required.

To minimize the risk of consumer confusion, we suggest that where an organization's name or actions could lead the public to believe that it is a federally-run or sanctioned program, a disclaimer should be required with the certification mark or seal to make clear that the program is not a U.S. government program.

We encourage the Commission to consider developing guidance that would allow consumers to distinguish between certification programs including or requiring review of life cycle assessment (LCA) studies. The recently updated International Organization for Standardization (ISO) 14044 Environmental Management Standards for Life Cycle Assessment provide the principles and framework for conducting and reporting LCA studies, and includes certain minimal requirements. Since life cycle analyses can themselves vary in requirements and robustness, it may be advisable to provide guidance with respect to claims made based on LCA. Our earlier comments noted that there are now a number of educational and ethics oversight organizations, like the American Center for Life Cycle Assessment/ACLCA – www.lcacenter.org, which is a multi stakeholder organization promoting the ethical and technical use of LCA, which can be consulted for further guidance.

We also encourage the Commission to examine the relationship between “credits” awarded in various green building rating systems and actual building performance. Some such rating systems appear to lack a clear measurement process that verifies whether actual building performance following commission of a building correlates with the “green” credits awarded before the building is commissioned. For example, in 2008, the New Buildings Institute examined the energy performance of buildings certified under the LEED for New Construction (LEED-NC) rating system. The Institute's study reported that “while roughly 48 percent of buildings were exceeding their energy targets, about 42 percent fell short. Energy use intensity was also inconsistent, ranging from less than 20 to more than 120kBtu per square foot. A number of buildings even failed to perform to code.” See <http://www.facilitiesnet.com/BOM/article.asp?id=8965>. As the Commission explores this issue further, it should be noted that the Department of Energy's High Building Performance Building program can provide helpful insight on the relationships between building components, systems, and whole building efficiency.

We look forward to the next draft of the Green Guides. If you have any questions about these comments, please contact me at Michael.Walls@americanchemistry.com, or 703-741-5167.

Sincerely,

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Managing Director
Regulatory and Technical Affairs