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On behalf of the American Society of Association Executives (ASAE), we appreciate the opportunity to comment on issues raised in the proposed rule to modify the “Green Guides” as they relate to certification and seals of approval programs administered by associations. ASAE is a section 501(c)(6) individual membership organization of more than 22,000 association executives and industry partners representing nearly 12,000 tax-exempt organizations. Its members manage leading trade associations, individual membership societies, and voluntary organizations across the United States and in 50 countries around the globe. Our comments reflect the interests and concerns of our membership.

Associations have historically established programs and standards that are used by their members, the public, and even government to evaluate services and products provided or produced by their members. It is commonplace for associations to create industry certifications and standards of quality, ethics, sustainability and safety. This is part of the quasi-governmental functions that associations have been depended on in order to guarantee high standards.

Certification programs and seals of approvals administered by associations fall into two general categories. The first and most common situation is for associations to contract out these certifications to credentialed and independent third-party entities. The association helps establish and manage the program. Sometimes the association sets the standards that are to be met but often outside, independently developed private or governmental standards are used. Critically, the association relies on independent experts and labs to determine if products or services meet these standards. Indeed, the independent laboratories’ national and international accreditations depend on maintaining their independence, objectivity and professionalism in their testing and evaluation.

The second, though less common situation, is for associations to develop in-house labs or testing facilities to determine compliance with standards. These labs or testing facilities, just like independent labs, must meet strict standards often set by national or international entities in order to ensure the integrity of the testing and certification program.

We are concerned that the proposed language in § 260.6 discriminates against legitimate and highly valuable association sponsored programs for certification and seals of approval in favor of strictly third-party managed programs. Under this proposed language, all association programs must comply with special disclosure requirements regardless of the validity, structure or rigorous nature of their standards. However, the proposed rules allow third-party certification not administered by associations to be used without further disclosure. This requirement can

mislead consumers to believe that association certifications and seals of approval are somehow inferior to similar programs administered by private entities.

We are concerned that the guidance as proposed would actually be a severe disincentive to the creation and maintenance of exactly the kind of credible industry self-governance efforts FTC should encourage. Good green certification programs — those that are national in scope, uniform, use a third party laboratory and are publicly recognized — are created out of a process that benefits both commercial and public interests. The process often requires concerted efforts by affected parties and other stakeholders — for which associations have historically provided an ideal forum.

The assumption that no economic disclosure is needed if a program is developed and managed by an “independent” third-party lab is based on a false premise. Just because a trade association, rather than the manufacturer directly, is employing the third-party laboratory does not mean that the results of such certification programs are less accurate, cannot be trusted as much or are more likely to be deceptive. In either arrangement, the outside lab’s revenues are based on fees from its customers.

For the benefits of its members, trade associations often undertake the creation and management of third-party certification programs where they employ unbiased, independent, credentialed, reputable third-party labs to test members/participants/licensees’ products. In most cases, other than acting as intermediaries between the manufacturers and the labs, by contract and as a condition of the labs credentials the trade associations do not have any influence on the testing of specific products. But, in return for administering an effective program which benefits their members and the public, trade associations often seek to “brand” the program through their names and logos.

A required disclosure that the party whose name is on the logo is a trade association and/or that the certified company is a dues paying member is likely to undermine or vitiate the value or viability of many programs. The consumer may then be led to believe that the product is not certified by an unbiased, reputable third-party laboratory, even though it is. Moreover, the use of the suggested prominent language in many certifications and logos is impractical because there is extremely limited space available on packaging and products for elaborate disclaimers about corporate association membership.

We propose that, similar to the proposal for third-party programs, certification and seals of approval sponsored by associations should not be required to disclose that the marketer or manufacturer of the product or service is a member of or pays dues to the association, provided that the marketer or manufacturer can substantiate that decisions on awarding the certification or seal of approval meet that same standards of independent action and integrity that are applied to third-party programs that do not collaborate with industry associations.

The proposed rule by the FTC has the potential of undermining many good programs, which is not in the public interest. Rather, we would suggest that the FTC focus on whether legitimate third-party or other arrangements for integrity and objectivity are used by all certifying entities.

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