

**National Association of Home Builders**

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December 8, 2010

Federal Trade Commission  
Office of the Secretary, Room H-135 (Annex J)  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

Re: Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501

Dear Sir or Madam:

On behalf of the National Association of Home Builders (NAHB), thank you for the opportunity to provide comments on the proposed revisions to the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims ("Green Guides"). NAHB is a nonprofit trade association whose mission is to enhance the climate for housing and the building industry. Chief among NAHB's goals are fostering a healthy and efficient housing industry and promoting policies that will keep safe, decent, and affordable housing a national priority. NAHB's membership is comprised of more than 800 affiliated state and local associations representing over 175,000 members nationally. NAHB members construct approximately eighty percent (80%) of the new homes built each year in the United States.

NAHB promotes voluntary, builder and market-driven solutions for green building, and provides education and meaningful information to builders, remodelers, home buyers, home owners and regulators on the benefits of builder and market-driven green building practices. In 2007 NAHB and the International Code Council (ICC) partnered to establish a standard definition of *green building*. The ICC 700-2008 National Green Building Standard,<sup>™</sup> approved by the American National Standards Institute, defines green building for single and multifamily homes, residential remodeling projects and site development projects while still allowing for the flexibility required for regionally-appropriate best green practices. The Standard provides criteria for rating the environmental impact of design and construction practices to achieve conformance with specified performance levels. Projects built to the standard can be certified as such by the NAHB Research Center, a wholly-owned subsidiary of NAHB. Founded in 1964, the Research Center provides independent third-party evaluation and testing of products and materials to keep builders on the leading edge of technology.

NAHB endorses the concept that there is a potential for consumer confusion about environmental claims, and that guidance from the FTC can benefit both businesses and consumers alike. NAHB also wholeheartedly supports the FTC's efforts through the "Green Guides" to help marketers avoid making unfair or deceptive environmental marketing claims. NAHB is generally supportive of the proposed revisions to the "Green Guides" but believes the "Green Guides" would benefit from further clarification on whether builders can meet their obligation to qualify environmental benefit claims by referring in their promotional materials to a secondary source, such as a website or homeowner manual, for additional, supporting information. Additionally, the "Green Guides" section on certifications and seals of approval would benefit from further guidance concerning whether disclosure of a "material connection" between the certifier and the marketer is required in instances where the certifier is an independent third party for certification purposes, but affiliated with an association or other organization of which the marketer is a dues-paying member.

## Comments

*RE: §260.3 – General Principles*

*(a) Qualifications and disclosures – To prevent deceptive (environmental marketing) claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type, should place disclosures in close proximity to the qualified item, and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.*

**Comment:** Most advertising media does not provide sufficient space to include the detailed, often lengthy information that may be necessary to provide a full explanation of the claim that will be needed to make the qualification or disclosure clear and understandable. Since "fine print" is discouraged by the requirements of prominence and sufficiently large type, it should be permissible to make reference to a website address or a printed publication as a means of providing the clear and understandable qualification or disclosure, thereby satisfying §260.3(a).

**Example:** Advertisement claim - *"Our green homes meet the test for sustainability through proper site selection, resource conservation, energy and water efficiency, improved indoor air quality, maintenance education, and positive global impact as defined by the ANSI-approved ICC 700-2008 National Green Building Standard™ \**

Qualification or disclosure - \*For more information go to <http://www.nahbgreen.org/Standard/>

*RE: § 260.6 – Certifications and Seals of Approval*

- (a) It is deceptive to misrepresent, directly or by implication that a product, package, or service has been endorsed or certified by an independent third-party.*
- (b) A marketer's use of the name, logo, or seal of approval of a third-party certifier is an endorsement, which should meet the criteria for endorsements provided in the FTC's Endorsement Guides, 16 C.F.R. Part 255, including Definitions (§ 255.0), General Considerations (§ 255.1), Expert Endorsements (§ 255.3), Endorsements by Organizations (§ 255.4), and Disclosure of Material Connections (§ 255.5).*

**Comment:** The FTC has determined that marketers across industry sectors increasingly use certifications and seals of approval to communicate environmental benefit claims and that the widespread use of certifications and seals create the potential for consumer confusion, thereby justifying the addition of a new section devoted to the subject in the proposed Guides. This new section clarifies that third-party certifications and seals constitute endorsements covered by the Endorsement Guides and that consequently, marketers are required to disclose a “material connection,” or a “connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement.” Specifically, the Commission has added a new section that advises marketers that it is deceptive to misrepresent, directly or by implication, that a product, package, or service has been endorsed or certified by an independent, third-party organization. NAHB suggests that the new section would benefit from further guidance regarding what constitutes “true independence,” and disclosure requirements wherein the seal of approval or certification is provided by the wholly-owned subsidiary or a spin-off of an association or organization of which the marketer is a dues-paying member.

Proposed Example 2 involves a marketer who displays a seal of approval bestowed by a trade association in which the marketer is a member. According to the FTC, to avoid deception the manufacturer should accompany the seal with clear and prominent language disclosing the material connection, i.e. that it is a dues-paying member of the endorsing association. To do otherwise would be deceptive. In contrast, Example 6 describes a marketer who displays a seal of approval from a non-profit third-party association with whom the marketer has no material connection. The association certified the product using standards widely accepted by industry experts. In this case the claim would not be deceptive.

NAHB believes that there is a third possibility not accounted for in the proposed Guides where a “material connection” might exist between the third party certifier and the association or other organization of which the marketer is a dues-paying member but no “material connection” exists between the marketer and the third party certifier. Arguably, in such a case, if the marketer were to display a seal of approval bestowed by the third party certifier, the claim should not be considered deceptive. This is particularly so where the certifying body has been accredited as such by a voluntary consensus standards organization or body such as ANSI. Such accreditation would also speak forcefully to the true independence of the certifying third party.

**Example:** A manufacturer advertises its product as “Certified by the American Institute of Degradable Materials.” The American Institute of Degradable Materials is an independent, third party certifier that uses standards developed by industry experts and suitable for evaluating degradable materials. The American Institute of Degradable Materials is an accredited standards developer. The American Institute of Degradable Materials was formed by, but is independent from, the American Degradable Materials Association. The manufacturer is a member of the American Degradable Materials Association. This advertisement is not deceptive because the product was certified by an independent certifying organization and there are no material connections between the manufacturer and the American Institute of Degradable Materials.

### **Conclusion**

Again, we appreciate the opportunity to provide comments on the proposed revisions to the Green Guides. To reiterate, NAHB wholeheartedly supports the FTC’s efforts through the “Green Guides” to help marketers avoid making unfair or deceptive environmental marketing claims and is generally supportive of the proposed revisions. Please contact the undersigned if you have any questions about these comments.

Sincerely,

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