

BEFORE THE
FEDERAL TRADE COMMISSION

In Re:

PROPOSED, REVISED GREEN GUIDES; 16 CFR PART 260, PROJECT NO. P954501.
75 FED. REG. 63,551 (October 15, 2010).

COMMENTS OF THE
NORTH AMERICAN INSULATION
MANUFACTURERS ASSOCIATION

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**COMMENTS OF THE NORTH AMERICAN
INSULATION MANUFACTURERS ASSOCIATION
ON THE FTC GUIDES FOR THE USE OF
ENVIRONMENTAL MARKETING CLAIMS
PROPOSED RULE**

The North American Insulation Manufacturers Association (“NAIMA”) appreciates the opportunity to provide comments on the Federal Trade Commission’s (“FTC”) Proposed Rule entitled “Guides for the Use of Environmental Marketing Claims” (75 Fed. Reg. 63,551 (October 15, 2010)). NAIMA is the association for North American manufacturers of fiber glass, rock wool, and slag wool insulation products. NAIMA promotes energy efficiency and environmental preservation through the use of insulation products. NAIMA also encourages truthful and accurate promotion of insulation products.

Insulation products deliver energy savings which in turn reduce the pollutants associated with energy consumption. Therefore, manufacturers of insulation products frequently make environmental marketing claims, asserting a wide variety of environmental benefits. The FTC’s Green Guides are an essential tool in making certain that claims are not misleading or deceptive to consumers. Equally important, the Green Guides are an effective tool for consumer advocates and others in challenging false and misleading claims made by marketers. The Green Guides also help the insulation industry to police itself. Therefore, NAIMA and its members strongly endorse the FTC’s determination that there is a continuing need for the Green Guides. NAIMA commends the FTC for significantly improving and strengthening the Guides. The additions and modifications will render the Guides even more beneficial and useful in developing advertising campaigns and challenging those advertisements that choose not to abide by the Guides.

NAIMA urges the FTC to allocate sufficient enforcement resources to effectively keep the market honest with respect to the growing number of environmental claims.

NAIMA’s comments are largely supportive of the FTC’s Proposed Rule, with some suggestions for additional guidance. NAIMA bases its comments on its experience with environmental claims in the actual marketplace.

NON-SUBSTANTIVE CHANGES TO THE GREEN GUIDES

NAIMA fully agrees that the FTC’s proposed non-substantive changes to the Green Guides make the Guides “easier to read and use.” Specifically, the creation of multiple sections for the different types of environmental claims truly makes it easier to follow and read. Segregating these claims as separate sections also highlights and imparts an importance that previously did not exist in what seemed like a laundry list of many environmental claims. NAIMA commends the FTC for bringing prominence to each environmental claim with this simple modification.

GENERAL ISSUES

Business-to-Business Transactions

The FTC proposes revising the Guides to state more clearly that they apply to business-to-business transactions and not just consumer marketing. NAIMA strongly endorses adoption of this revision. A large volume of promotional material is now featured on websites. Materials that may be intended mainly for business-to-business customers/clients are nonetheless easily and regularly accessed by consumers. By assigning the same standards to environmental claims across the board, the FTC is eliminating possible confusion among consumers. This revision also precludes a marketer from claiming that a particular promotional item was not intended for consumers, when, in reality, the promotional claims were knowingly made to also influence consumers. NAIMA notes that the FTC's R-value Rule (16 C.F.R. Part 460) makes a distinction between consumer claims and those made to professional installers or sophisticated industry audiences. NAIMA has firsthand knowledge that claims directed to professional installers and sophisticated industry audiences are frequently found by consumers and that confusion can be the result. Therefore, equal applicability to environmental claims is sound policy.

Changes in Technology

The FTC states that the Internet and company web pages cannot be used to qualify otherwise misleading claims that appear on labels or in other advertisements. The FTC cites the Deception Policy Statement: "Any disclosures needed to prevent an advertisement from being misleading must be clear and prominent and in close proximity to the claim the matter is qualifying."

Publicly-available research indicates that a growing number of consumers (four out of five) are likely to go online to verify product or service recommendations of friends or family.¹ This indicates a growing reliance on the Internet, but it does not translate into consumers routinely going onto the Internet to determine if claims have been qualified at a separate and remote source. NAIMA and its members are subject to the FTC's R-value Rule (16 C.F.R. Part 460). That Rule requires disclosures and disclaimers to appear in close proximity to the claim or statement in question. For example, claims of specific energy savings must be accompanied by this statement: "Savings vary. Find out why in the seller's fact sheet on R-value. Higher R-values mean greater insulating powers." This disclosure and all other statements mandated by the Rule "must be made clearly and conspicuously." 16 C.F.R. § 460.10. This requirement is only logical in that its purpose and intent is to protect consumers. These disclosures, disclaimers, and statements covered by the R-value Rule are comparable to qualifying environmental claims as contemplated in the Green Guides. To make an exception of environmental claims being augmented by data or information on a remote or removed website would be inconsistent with the FTC's Deception Policy, the R-value Rule, and common sense itself. NAIMA strongly supports the FTC's requirement that all qualifications of environmental claims must be prominent and in close proximity to the claim. NAIMA recommends that specific language stating this requirement, similar to 16 C.F.R. § 460.10, be placed into the Guides.

¹ 2010 Cone Online Influence Trend Tracker, <http://www.coneinc.com/consumers-confirm-recommendations-online>.

Harmonization

The FTC declined to harmonize the Green Guides with ISO because “the goals and purposes of ISO and the Green Guides, however, are not necessarily congruent.”² NAIMA fully supports the FTC’s decision. Harmonizing the Green Guides with ISO will be difficult because of conflicting regulatory requirements, the administrative hurdles of regularly revising the Guides to keep them current and in harmony with multiple international requirements, and differences in products. Once a harmonized system has been adopted by many nations and implemented by thousands of businesses, the obstacles and barriers to maintaining, changing or modifying, updating, and revising the system are often enormous.

NAIMA also believes that to completely harmonize the Guides with international requirements would take an enormous ongoing effort. The delay and uncertainty associated with harmonization would hamper the effectiveness of the Guides. The Green Guides have been useful to NAIMA and its member companies in developing their own marketing programs and also determining when competing claims may be challenged. That usefulness would not have been augmented by harmonization with ISO. The Green Guides, the current version and as revised by the FTC, are particularly potent and relevant because they are: 1) responsive to the U.S. marketplace, and 2) reflective of the real world in which marketing claims are made in the United States.

Overlap with Federal, State, and Local Laws

NAIMA recognizes the legal basis for the FTC’s decision to not preempt other Federal, state, or local Green Guides. NAIMA’s recommendation in previous comments for the FTC to preempt other Green Guides was a testament to the effectiveness of the FTC’s approach. In responding to various proposals from Federal, state, and local jurisdictions on green or environmentally preferable products, NAIMA has found that too many of these Guides devolve into making product choices and imposing their own environmental values on the guidance document. The FTC’s Green Guides are neutral and do not impose such value judgments, thereby leveling the playing field. The FTC’s Green Guides are superior because of the manner (public process) in which the Guides were created and the objective and purpose of the Guides – to provide guidance rather than influence choices. Specific examples include the National Association of Home Builders, the U.S. Green Building Council, the City of Austin, various State of California agencies, and others. The FTC’s Green Guides are more authoritative because of these elements and because of their national scope and content breadth. NAIMA and its members will have to rely upon that inherent authority and credibility rather than an explicit preemption.

Life Cycle Analysis

NAIMA supports the FTC’s decision to NOT provide guidance on the use of life cycle information either in marketing or as substantiation for environmental claims. NAIMA’s experience has demonstrated that life cycle assessments (“LCA”) vary significantly in scope, depending, for example, on where the ultimate life cycle assessment begins and ends. These variations can easily alter the conclusion. If the FTC provides any guidance regarding life cycle

² 75 Fed. Reg. at 63,558.

claims, it should require that limitations that are inherent in all LCAs be acknowledged and qualified by disclosing the uncertainty and variability of LCA science.

Life cycle analyses vary greatly and may be based on inventories that vary, often do not include energy use, and may be a full-scale LCA or limited to partial or individual stage LCA. It is very likely that during the data gathering process it will be discovered that the data needed is not available, is inconsistent, or incomplete. In other words, there is an absence of clear or unambiguous requirements that define the type of data that can be used in the LCA.³ However, gathering inventory data is a valuable exercise as it increases the availability of this data and brings further transparency to the LCA process.

Although NAIMA feels that LCA data is important, it is prudent to abstain from specific guidance in an area that is lacking in specificity. LCAs are so complex that a separate rulemaking process would be needed to adequately address LCA issues. Perhaps as the complexities of LCA issues become less cumbersome and more familiar, it may be advisable for the FTC to provide additional guidance in the future.

CHANGES TO EXISTING FTC GUIDANCE

General Environmental Benefits

In its 2008 comments,⁴ NAIMA asked the FTC to consider strengthening prohibitions against vague, meaningless claims of “environmentally friendly” products. Requiring qualifying language to general environmental benefit claims will strengthen the Guides. It also provides flexibility for many manufacturers, including the insulation industry, to claim the benefits of energy savings and pollution reduction from use of the product while acknowledging that some pollution is emitted in the production of those products.

Certifications and Seals

NAIMA commends the FTC’s new guidance on certifications and seals given the growing proliferation of “green seals,” many of which have objectives that align with the certifiers and not necessarily for consumers. NAIMA endorses the FTC’s new guidance because first, certifications and seals must be accompanied by qualifying language limiting its environmental representation. A seal can convey the notion that every aspect of a product is “environmentally friendly.” Second, the FTC makes clear that the Endorsement Guides are applicable. Third, the marketer is responsible and must be in possession of the substantiation upon which the certification or seal is based and that the substantiation is based on competent and reliable scientific evidence. Fourth, the examples offered by the FTC are substantive and useful.

Certifications and seals can engender a heightened level of trust by consumers because the consumer is frequently not in a position to understand the technical complexities of the

³ David F. Ciambrone, *Environmental Life Cycle Analysis* (New York: Lewis Publishers, 1997), inter alia.

⁴ Comments of the North American Insulation Manufacturers Association on the FTC “Guides for the Use of Environmental Marketing Claims; Green Building and Textiles Workshop, 16 CFR Part 260, Comment, Project No. P084203; 73 Fed. Reg. 32,662 (June 10, 2008);” August 15, 2008, p. 3.

certification criteria, especially where the criteria are based on testing or modeling. It is a fundamental requirement that the testing or modeling an advertiser performs as the basis for its claims must demonstrate that the product will perform as claimed in typical, relevant conditions that consumers are likely to encounter with the product's use. Therefore, the FTC should admonish advertisers to ensure that the tests or models used in certifications do actually match the conditions that consumers will encounter. Where the conditions do not match, the FTC should consider the certification misleading. For example, if a product emissions impact model uses the higher ventilation rates for commercial offices, then the certification would be misleading for the residential environment where ventilation rates are typically much lower. Alternatively, any such certification should feature clear and prominent language noting the uses certified and stating other uses are not certified. The FTC should consider adding an example to illustrate this increasingly common misleading claim.

The FTC should reconsider NAIMA's earlier recommendation regarding claims of government certifications and approvals.⁵ Some environmental marketing claims falsely imply that a particular product is approved or certified by federal or state agencies because of its environmental characteristics. Government agencies typically do not endorse, approve, or certify commercial products. In fact, NAIMA does not know of any government agency that has ever endorsed or approved commercial products. In an August 12, 1999 letter to NAIMA, the Environmental Protection Agency ("EPA") stated that "it is EPA's practice to apply a neutral approach to establishing product specifications for a particular product . . . and EPA does not endorse specific products or manufacturers or show favor to offerors that may specify or refuse to specify the products of a particular manufacturer."

Claims that a product is certified, approved, or endorsed by a government agency are most likely per se false and misleading.⁶ A provision in the FTC's Home Insulation Rule specifically prohibits making false or misleading references to government approvals or standards. 16 C.F.R. § 460.21. Although some insulation companies may violate that prohibition, the presence of the Rule enables such claims to be authoritatively challenged. Similar language could be extremely useful in the FTC's Guides because many government agencies have created guidelines on the acquisition of environmentally preferable products and services. For example, the fact that a government agency has established recycled content requirements for a particular product does not mean that the government agency has certified, approved or endorsed that particular product. Yet that is exactly what some marketers claim.

As another example, some insulation companies have claimed that their products are approved or endorsed by the Consumer Product Safety Commission ("CPSC") because the CPSC regulates it as a fire threat. *See* 16 C.F.R. Part 1209. This is inaccurate and deceives customers. Regulation of a product is significantly different from approval, endorsement or certification. NAIMA urges the FTC to incorporate into the Guides for the Use of Environmental Marketing Claims the concept that any representation that government bodies certified or approved the product must be truthful and set forth in documentation that will be made available upon request to the FTC,

⁵ *Ibid.* at pp. 7-8.

⁶ However, it is not misleading to claim that a product meets certain governmental specifications as long as the advertiser has competent and reliable scientific data to substantiate such claim.

consumers, or competitors. Documentation of any government certification, endorsement or approval must be in the possession of the advertiser at the time the claim is made.

Recyclable Claims

NAIMA supports the FTC's guidance on recyclable claims. NAIMA specifically recommends allowing recyclable claims where recycling programs and collection sites are available to a majority (51 percent) of consumers or communities. This modification could likely encourage expanding recycling programs. For many, initiating a recycling program is a major undertaking involving commitment of considerable resources and likely changing infrastructure within manufacturing facilities. A more enticing incentive for committing to such a major change would be a readily achievable goal. The proposed 60 percent may be too daunting. Perhaps the FTC could start with a lower benchmark and as the economy moves forward, raise the number to 60 percent. NAIMA also supports the FTC's proposed qualification language and the restriction on making the claim if components prohibit recycling.

Recycled Content

NAIMA commends the FTC for retaining its current guidance that allows recycled content claims to be based on materials that have been diverted from the solid waste stream during the manufacturing process or after consumer use. The intent of any recycling is to divert materials entering the solid waste stream from filling the nation's landfills. Whether the diverted material is pre- or post-consumer, it still will occupy landfill space unless diverted and recycled. The volume of material is the issue, not its exact route to the landfill.

As NAIMA's previous comments to the FTC demonstrated, some advocate for limiting recycled content claims to the use of post-consumer materials. Such a practice would be a disincentive to manufacturers who currently use pre-consumer materials. Such a disruption in the marketplace could shift attention away from the need to reduce waste materials from entering landfills and cause a new influx of pre-consumer waste into the landfills. Consumers are interested in recycled content claims because the idea that a product contains materials diverted from the landfill appeals to them, not necessarily that the material diverted from the landfill originated in the neighbor's trash.

NAIMA commends the FTC for allowing flexibility on whether claims distinguish between pre-consumer and post-consumer materials.

NAIMA strongly supports the FTC's retention of the current recycled content calculation formula which is an annual weighted average of a product. Many industries have made substantial investments in processes and materials procurement, as well as marketing materials. For our industry, fiber glass and rock and slag wool insulation products contain recycled content. Fiber glass uses glass cullet and slag wool and rock wool use blast furnace slag. For the fiber glass manufacturers, suitable glass cullet is not always available on a consistent and continuous basis from recyclers. Finally, process upsets, low throughput and other technical limitations will cause a substantial variance in the amount of glass cullet that can be used at any given time. For those manufacturing reasons, calculated recycled content must be done on a

longer timeframe, so the FTC's annual weighted basis is appropriate. The State of California requires that fiber glass production contain at least 30 percent, by weight, recycled cullet.⁷ This percentage is to be calculated in tons used on an annual basis.⁸ If the FTC changed its requirement, the revised requirement would be in conflict with State of California requirements for fiber glass manufacturers.

In determining the amount of recycled content in a product, the percentage should be for the product as a whole and not just a single component of the product. For example, the recycled content of fiber glass insulation should include all product components, including glass, binder and other additives, and facer or encapsulation materials. Alternatively, the product could clearly note which product component has what percentage of recycled content. Yet another example, the recycled content of rock wool and slag wool is from blast furnace slag. Some of these rock and slag wool manufacturers take all the process waste and reclaimed materials from rock and slag wool manufacturing and process it into briquettes. This waste would typically be sent to the landfill, but these briquettes actually become new raw material (like the blast furnace slag) and are used in making new products. An additional significant advantage of this ability is that it requires significantly less energy from the grid to produce the product than utilizing raw materials, thus the practice should be encouraged. NAIMA advocates that the use of these types of recycled materials be considered valid recycled content, just as blast furnace slag is considered recycled content.

NAIMA suggests that the FTC mandate disclosure language when a product links recycled content to environmental benefits. The disclosure language could simply alert the consumer to the fact that environmental benefits can be derived from numerous attributes and that additional information beyond recycled content may be desirable.

The FTC's proposed revisions reduce the number of examples in the recycled content section from 15 to 13. One of the examples deleted is the 100 percent fiber example which states that there must be substantiation that 100 percent by weight of the fiber is recycled. The example was particularly relevant and useful to the insulation industry because of those manufacturers who claim that their product is 100 percent recycled newspaper despite the fact that 20 to 25 percent of the product is toxic chemical fire retardants. This example was particularly effective in challenging these types of claims. NAIMA requests that the FTC retain this example, rather than deleting it.

Lastly, on the recycled content issue, NAIMA strongly supports the FTC's decision to not require recycled content claims to be accompanied by a statement upon whether the product is or is not recyclable. Both of these attributes are separate environmental benefits. It would be unfair to impose such a distinction on the marketer when it really is not necessary. For example, a product may be recyclable, but it does not necessarily have recycled content. Recycled-content products are made from materials that would otherwise have been discarded. Items in this category are made totally or partially from material destined for disposal or recovered from industrial activities, like aluminum soda cans or newspaper.

⁷ California Public Resources Code, Division 12.9 § 19522(b).

⁸ California Public Resources Code Division 12.9 § 19510 and § 19511.

Recycled-content products also can be items that are rebuilt or remanufactured from used products, such as toner cartridges or computers. Again, this does not necessarily mean these products are recyclable. These are or should be distinct attributes that are recognized by most consumers. A wide variety of popular websites, including EPA and high profile environmental groups, provide detailed definitions of these terms that clearly make the distinction. Requiring a disclosure that something with recycled content is not recyclable would logically have to be followed with the requirement that something recyclable does not contain recycled content. Such a requirement would be unnecessary and possibly confusing.

“Free Of” and “Non-Toxic” Claims

The FTC has made significant improvements to the Green Guides with its proposed revisions, but perhaps the most beneficial improvement from NAIMA and its members' perspective is the FTC's addition of a non-toxic and free-of section. These claims have been rampant in the building products industry, including the insulation industry. The toxicity issues are no longer limited exclusively to the health and safety arena. Many products make claims of being non-toxic or non-hazardous because it has become an important attribute of environmental preferability and sustainability. Certain insulation manufacturers frequently make claims that their products are non-toxic and non-hazardous. Yet these insulation producers apply toxic fire retardants to their products in amounts up to 25 percent by weight. Because non-toxic claims are very persuasive and compelling to consumers, it is imperative that false non-toxic claims be prohibited. NAIMA requests that the FTC specifically prohibit non-toxic claims from products that contain substances that are regulated as toxic or hazardous environmental substances in amounts of 1 percent by weight or higher.

NAIMA also identified advertising claims that make misleading free-of claims. The FTC's proposed addition of this new section provides a potential remedy for challenging some of the claims that are prevalent in the building materials marketplace.⁹ For example, an advertisement may feature a claim that states NO “asbestos, formaldehyde, acrylics, fiber glass, or rock wool fibers.” Another advertisement may state that the product does not contain any “irritating, abrasive, airborne glass fiber particles.” These types of claims provide no meaningful information to consumers because they are silent as to whether the product advertised, is irritating or creates airborne fibers. A review of a Material Safety Data Sheet for that insulation product would reveal that the chemical fire retardants used on these types of insulation products are irritating and that the National Institute for Occupational Safety and Health (“NIOSH”) recommends that people handling that insulation use dust masks because of airborne fiber and dust.¹⁰ Certainly most consumers reading that advertisement would reasonably conclude or assume that this insulation is not irritating and poses no exposure to fibers or dust. This is not true.

It also is inherently misleading for advertisements to provide meaningless information about what a product does not contain and omit any mention of what the advertised product does contain. Historically, the FTC has closely scrutinized such comparisons. In *Adria Labs, Inc.*

⁹ See, NAD News Release, “Johns Manville Substantiates ‘Formaldehyde-Free’ Tagline in NAD Forum.”

¹⁰ HETA 2000-0332-2827, *NIOSH Exposure Assessment of Cellulose Insulation Applicators*, HHER NO 2000-0332-2827, p. 26.

103 F.T.C. 512 (1984), the Commission required manufacturers of an analgesic to cease and desist promoting their product as aspirin-free or safer than aspirin-containing substances unless accompanied by a conspicuous disclosure that its analgesic has side effects of its own. NAIMA urges the FTC to incorporate similar guidelines into the Guides for the Use of Environmental Marketing Claims.

By recognizing that claims dealing with the constituents that make up a product are very much a part of today's environmental/green landscape, the FTC's revision will hopefully significantly curtail bogus "does not contain" claims. Indeed, the FTC's introduction of this new section is timely, relevant, and extremely beneficial to consumers and businesses. The revised FTC Guides require the type of qualification and disclosure that will help maintain a level playing field.

NAIMA enthusiastically supports the FTC's creation of a separate section that exclusively addresses non-toxic and free-of claims. The requirements for qualification of these types of claims will be an effective tool for developing marketing materials and challenging those parties that may choose to ignore the FTC's Green Guides. NAIMA also supports the FTC's recognition that some products with de minimis toxicity may legitimately make a non-toxic claim. NAIMA requests that the FTC provide more guidance on what could be considered de minimis, as used in this context. The FTC properly notes that what can be considered de minimis depends on the toxicity of the chemical or product. The FTC's requirement that non-toxic and free-of claims should have competent and reliable scientific evidence to substantiate these claims is critical to making this guidance fully effective.

The FTC's three examples are useful tools for interpreting the new section.

CLAIMS NOT ADDRESSED BY CURRENT GREEN GUIDES

Sustainable

The FTC correctly declined to provide guidance on sustainability claims because of the diverse meaning and interpretation of the many attributes of sustainability. For most types of products, there is no clear, concise definition of sustainability. To attempt a succinct and understandable definition of sustainability for all products would have sent the FTC on an impossible quest. Conceivably, sustainability is anything that fosters the general welfare of the entire planet. That encompasses not just the environment, but the economy, public health, and every other facet of life. Indeed, sustainability is a systems concept, and cannot be narrowed down to one or two single attributes. NAIMA commends the FTC for prudently avoiding tackling an onerous and possibly unachievable task of defining the specific attributes of sustainability.

On the other hand, if objective and meaningful criteria have been developed for certain specific types of products, then such criteria can and should be used to substantiate a claim that the product is sustainable. For example, there have been developed objective criteria for sustainable agriculture. If a product or product component is agricultural in nature, then a sustainability claim could be based on evidence of compliance with the criteria of sustainable agriculture. Conversely, a sustainability claim is false or misleading if objective and meaningful criteria have been developed for the product type and the advertiser has no evidence that the criteria are met.

In addition, some products claim to be sustainable merely because they are bio-based, i.e., derived from plants or animals. Such claims are likely misleading unless all appropriate sustainability criteria are achieved. For example, a product is claimed to be sustainable because a product component is derived from plants. The claim is likely misleading unless the advertiser can demonstrate by competent and reliable evidence that the product component in question was planted, cultivated, and harvested in accordance with sustainable agricultural practices. Thus, the advertiser would need to address, *inter alia*, whether carbon-intensive fertilizers, herbicides, and pesticides were used to grow the plants in question. This rule should apply with even greater force if the advertiser is making a claim that its product is more sustainable than competing products.

Renewable Materials

NAIMA supports the FTC's proposed guidance on claims of renewability. NAIMA particularly appreciates the FTC's reluctance to limit what is renewable. Because there is ongoing debate as to the definition of renewable, the FTC's neutral position enables that debate to continue and to hopefully be resolved in the scientific arena. The FTC's qualification requirements for renewable claims are fair and consistent with other sections of the proposed Green Guides.

As NAIMA noted in its previous comments, some organizations, such as the U.S. Green Building Council ("USGBC"), limits renewable resources to such things as agrifibers, soy bean products, bamboo and cork. This is far too limiting, and there are many who disagree with the constricted scope of renewable resources envisioned by the USGBC. Specifically, fiber glass, as with all glass products, relies upon sand as its primary raw material. Geological studies have concluded that sand renews itself and should be considered renewable. Geologist H. Kuenne "estimated that during each and every second in the incredibly long past, the number of quartz grains on earth has increased by 1,000 million grains!"¹¹ Dr. Nelson R. Shaffer concluded that "sand is considered a renewable, even rapidly renewable resource."¹² Shaffer reports that sand deposits are increased daily by the normal, ongoing geological processes that generate new deposits of sand in the hundreds of millions of tons each year. The renewability of sand makes it the most abundant mineral on earth. It can be found virtually everywhere. The United States Geological Service estimates that known deposits of sand can satisfy expected demands for centuries. In essence, silica sand resources are virtually inexhaustible.¹³

Carbon Offsets

In its 2008 comments, NAIMA urged the FTC to require verifiable quantification as to claims about carbon offsets or claims that a product is carbon neutral. NAIMA believes that the addition of limited guidance on carbon offsets to the Green Guides is wholly appropriate. As the complexities of carbon issues become less cumbersome and more familiar, it may be advisable

¹¹ Pettijohn, Potter and Seiver, *Sand and Sandstone* (New York, New York: Springer-Verlag, 1973), p. 7.

¹² Nelson R. Shaffer, "The Time of Sands: Quartz-rich Sand Deposits as a Renewable Resource," *University of Idaho's Electronic Green Journal*, Winter 2006.

¹³ *Ibid.*

for the FTC to provide additional guidance in the future. NAIMA agrees with the FTC that limited and broad guidance is most appropriate at this juncture.

Energy Savings

NAIMA requests that the FTC seriously reconsider the issue of energy savings claims that emanate outside the insulation industry. Energy savings has become a popular claim to make. The insulation industry has been making energy savings claims for decades based on multiple studies. The claims made within the insulation industry are subject to specific requirements set forth in the Home Insulation Rule, 16 C.F.R. Part 460. These requirements mandate that disclosures be made that energy savings may vary and any specific energy savings or money saving claim must have a reasonable basis. Manufacturers are required to maintain records of all data upon which its energy savings claims are based. With the increased emphasis on environmental issues in all advertising, many other products and services are claiming to save energy. For example, Hummelstein Recycling claims that its services saves energy and its advertisements provide specific energy savings achieved from the recycling of certain products. The FTC should impose precisely the same type of requirements on all advertisements making energy savings claims that the FTC imposed upon the insulation industry because these requirements are needed to inform consumers. NAIMA and its members have invested significant resources in creating a database of information that substantiates the energy savings achieved through insulation products. In fact, the Department of Energy, the Environmental Protection Agency, and a variety of other federal and state agencies promote the use of insulation as one of the most, if not the most, effective means to improve energy savings. Even the FTC itself acknowledges that insulation provides significant energy savings. Despite this broad recognition that insulation saves energy, the insulation industry is required to follow specific rules in advertising energy claims and must be meticulous in substantiating its claims. If producers of other services or products wish to make energy savings claims, the FTC Guides should mandate just as exacting requirements as are imposed upon the insulation industry.

Untested Products

Similar to claims that a product is non-toxic, specific manufacturers make claims that their products are safe or “not a carcinogen” or contain “no carcinogens.” Many of these products have never been tested for carcinogenicity. The FTC should require that such claims be based on scientific studies that have actually tested for carcinogenicity. A product that is inadequately tested or never tested does not mean it is safe or “not a carcinogen.” Ignorance should not be rewarded; an untested product should not be given the benefit of the doubt. Nor should a product be promoted as safe or “free of health risks” simply because its manufacturers have neglected responsible product stewardship and refused or failed to test the product. Claims that a product is safe and “not a carcinogen” are, in the absence of scientific data, inherently misleading and should not be allowed when this really means the product is untested as to its carcinogenicity or safety.

SPECIFIC QUESTIONS

Many of the FTC’s list of specific questions are addressed above.