



Alliance of Foam Packaging Recyclers

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Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

VIA ELECTRONIC FILING ONLY

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

Dear Secretary Clark:

The Alliance of Foam Packaging Recyclers appreciates the opportunity to submit comments in response to the Federal Trade Commission's request for comment on issues raised by the proposed, revised Green Guides. The Commission is to be commended on its thoughtful, thorough and balanced proposed revision of the Green Guides. The Commission has demonstrated a scientific approach to the burgeoning field of green marketing that will protect consumers from deceptive claims, encourage industry to develop scientifically justified environmental improvement to its products and foster fair competition between marketers.

The Alliance of Foam Packaging Recyclers represents expanded polystyrene (EPS) manufacturers, molders, resin suppliers, recyclers and other members of the EPS industry. Our members are actively involved in the manufacture, recovery and recycling of EPS foam packaging material. EPS foam packaging material is lightweight, high performance product that provides superior protection for original equipment manufacturers allowing the safe and confident shipment of all manner of product. Its light weight reduces shipping weight, and thereby fuel consumption. Its superior protective qualities reduce or eliminate damage during shipment thereby reducing the environmental impact of manufacturing and shipping replacement products. EPS foam is stable and non-toxic, represents a de minimis portion of the waste stream, is recyclable and is a favored feed stock for waste to energy.

EPS packaging material has been the victim of inaccurate and misleading marketing claims regarding its general environmental qualities and the characteristics of competing packaging materials. It must be the touchstone of the Green Marketing Guides to promote scientifically supported and accurate environmental marketing claims and to prohibit misleading and inaccurate claims that build upon misconceptions and false assumptions.

AFPR supports the FTC's efforts to protect consumers and business from false and misleading marketing claims regarding the environmental impact of products and the promotion and preservation of fair and vigorous competition between marketers. Consumers and businesses will be protected from the adverse effects of false and misleading claims which will serve to educate consumers regarding the complete environmental picture of commercial activity. Competition will be preserved by the stimulus to marketers to develop more environmentally favorable products if those benefits can be accurately presented to consumers. False, vague, unsubstantiated and scientifically suspect claims should be prohibited and their improper use vigorously regulated.

As such the AFPR opposes the use of claims of either qualified or unqualified general environmental benefit. Regarding claims of recyclability, the AFPR generally supports the ability to claim recyclability when such facilities are available to a substantial majority of consumers and agrees that the figure of 60% is an appropriate level to justify when a substantial majority exists. The AFPR does not support the quantification of significant percentage for the reasons set forth below. The AFPR proposes that marketers be permitted to calculate recycled content by applying a six month weighted average to substantiate and determine recycled content. On the emerging issues of carbon offset and renewable energy credit claims, the AFPR agrees that such parameters will become important consumer information and that the FTC should lay the groundwork to address such claims but that it is not appropriate at this time, absent further development of these practices, to make specific regulations.

RESPONSE TO REQUESTS FOR COMMENT:

1. Consumers interpret general environmental claims, even when qualified by a particular attribute, as claiming a net environmental benefit and therefore such claims should not be permitted. AFPR agrees with the proposed language of §260.4(a) but suggest changes and clarification of sub-sections (b) and (c). Sub-section (b) states that “[unqualified general environmental benefit claims] . . . likely convey that the product . . . has specific and far-reaching environmental benefits . . .” The Commission should consider substituting specific with tangible. It is likely that ‘specific’ will be inadvertently interpreted as referring to a particular environmental benefit. Additionally §260.4(c) illustrates the problem with permitting qualified or unqualified claims of general environmental benefit. The Commission indicates that a marketer may qualify a general claim by citing a specific benefit. This would appear to convert the general benefit claim to a specific claim raising a question as to what value the general claim provides to consumers.

Effectively, the ability to substantiate a net environmental benefit would be subjective at best. Therefore, any claim of a general nature, whether qualified – by providing a modicum of detail - or not, would be challenged to provide the necessary substantiation to demonstrate an overreaching environmental benefit. In addition, a general environmental claim inherently conveys a claim of superiority over competing products. The claim implies an effort by the producer to market an environmentally superior product and conveys to the consumer that the producer is concerned with and values environmental benefit and has modified its product to further those goals. It is not reasonable to believe that a consumer would suspect that the marketer made such modification to the net detriment of the environment.

2. AFPR does not support qualified general environmental claims and therefore does not believe it would be helpful to provide an example of a deceptive qualified general environmental claim. For the reasons set forth above, even qualified general environmental benefit claims imply an overall environmental benefit.
3. In light of the Commission’s finding that 27% of respondents broadly interpreted claims of “green” and “eco-friendly” to suggest no environmental impact, AFPR does not support the allowance of unqualified general benefit claims. The Commission’s study supports AFPR’s opposition to qualified and unqualified environmental benefit claims. If 27% of respondents believe that a claim of “green” or “eco-friendly” suggests no negative impact then it can be presumed that a sizeable portion of the population lacks sufficient information or knowledge to accurately assess the environmental trade-offs associated with the product in question, as well as comparable competing products. Furthermore, “negligible” is an inherently vague concept that would be misleading, imprecise and confusing.
4. AFPR agrees with section IV (A). Claims of degradability should be qualified as to length of time and final rate of degradation if less than 100%.

5. AFPR agrees with the proposed language in §260.8 regarding degradability claims and suggests that claims of degradability be treated consistent with claims of compostability as set out in §260.7. The Commission should apply a consistent standard for claims of degradability, compostability and recyclability. A claim of degradability would imply that a product would biodegrade in a reasonable period of time where it is customarily disposed. However, given the attributes of a modern landfill, a claim of degradable may well be misleading and qualification should be required. When disposed of in a manner that promotes and/or allows degradation, AFPR believes the one-year period for degradability to be reasonable.
6. AFPR supports the Commission quantify substantial majority as 60% as set out on pg. 63604 at footnote 2. This substantial majority threshold should extend to degradable claims as well.
7. AFPR does not support the Commission quantifying “significant percentage”. AFPR supports the disclaimer “may not be recyclable in your area” if the substantial majority threshold has not been met. Requiring further delineation of recyclability based solely on consumer access may directly or indirectly disadvantage difficult to recycle materials and potentially deter recycling growth for those materials. Although the FTC guides relate directly to consumer interpretations, the recyclability claim of a product is farther reaching in the overall marketplace. In this regard, once ‘labeled’ or interpreted by the consumer base to be virtually non-recyclable, these perceptions (whether true or false) can result in a negative impact on that materials’ recovery rate in non-consumer sectors. This is an especially important consideration when taking commercial waste streams into account where larger volume economics can be achieved, thereby representing a greater amount of recovered material. There is a fundamental question that arises – is a higher recovery rate better or is increased consumer access to recycling the desired outcome? AFPR contends that these two end results are interdependent.
8. The Commission should freely permit accurate recycled content claims and disregard any proposed need to distinguish between pre- and post-consumer content. So long as the material is diverted from the waste stream it is irrelevant as to where in the product life cycle the diversion occurred. All recycling is of value and merits recognition to support a strong economic baseline for the recycling industry and to enhance positive growth trends in material recycling.
9. Consumers generally do not understand where in a product’s life cycle the lines are that separate pre-consumer from post-consumer. Nor do consumers understand the extent of the nebulous middle area between the two.
10. The Commission should permit marketers to support recycled content claims based upon a six month weighted average. One year averaging does not promote quality production practices as opposed to ongoing and regular processing which results in continuous improvement. This will alleviate consumer assertions that recycled content products are often of poor quality.
11. The Commission should advise marketers to qualify a claim “made with recycled material” if the product is not again, in fact, recyclable. Otherwise the reasonable consumer is likely to conclude that the material is perpetually recyclable. Such misconception currently exists regarding molded pulp products.
12. Consumers are generally aware that CFC’s are no longer permitted.
13. AFPR agrees with the language of §260.9(c) that free-of and non-toxic claims may be appropriate notwithstanding a de minimis amount of the substance. However, the Commission should discourage claims that reflect an attribute or characteristic that a product does not have. Specifically regarding a non-toxic claim – see §260.9(e) – it is noteworthy that virtually all substances are toxic at some level and

as such illustrate the difficulty and inaccuracy of claiming a non-attribute. To allow a non-toxic claim the guides should reference some scientific benchmark, such as 'no observable adverse effect level' (NOAEL); otherwise the scientific evidence offered as substantiation may be reliable and competent but would not be tied to a meaningful and common measurement basis to verify compliance. For example in conducting risk analysis on certain chemicals there are often conflicting results stemming from various qualified and reputable research centers, testing laboratories and academia. Almost anyone could provide seemingly reliable substantiation that could be easily refuted if not presented in a manner that discloses the limitations of the supporting research and its specific conclusions.

14. The Commission should prohibit any claim of "organic" in reference to non- agricultural products. There is confusion as to what a non-agricultural organic product is. For example, polystyrene and all other carbon compounds are organic and therefore could be labeled as such when clearly consumers do not believe or interpret plastics products to be 'organic' as the term relates to environmental attributes.

15- 18. AFPR supports the FTC creating a starting point to address the emerging issues of renewable energy, carbon neutral status and carbon offsets However, based on the cited consumer research indicating the term 'renewable' is interpreted to mean recycled content, recyclable and biodegradable (§260.15), AFPR recommends that FTC more clearly define the term renewable to provide a common reference point for marketers. FTC should dispel any misperception that ties material renewability to recycled content, recyclability and/or degradability, whereas renewable simply means the material does not stem from or represent a finite resource and can be re-grown and/or regenerated from feedstocks that replenish themselves. We contend environmental characteristics dealing with recycling and/or degradation are not relevant to a renewability claim and are adequately covered in their specific sections of the proposed Guide revisions.

Thank you for the opportunity to provide comments.

Sincerely,

EPS MOLDERS ASSOCIATION

Walter A. Reiter, III
Deputy Director