Johns Manville

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VIA ELECTRONIC SUBMISSION: *https://ftcpublic.commentworks.com/ftc/revisedgreenguides*

December 10, 2010

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

Re: **Comments on Proposed Revisions to the FTC Green Guides; 16 CFR Part 260, Project No. P954501, 75 Fed. Reg. 63,551 (October 15, 2010)**

Dear Sir:

Johns Manville (JM) is pleased to provide these comments for the record in response to the Federal Trade Commission's ("FTC" or "Commission") request for public comments regarding its proposed modifications to the Guides for the Use of Environmental Marketing Claims (the "Green Guides"), 75 Fed. Reg. 63,551 (October 15, 2010)

Johns Manville (JM), a Berkshire Hathaway company (NYSE: BRK.A, BRK.B), is a leading manufacturer and marketer of premium-quality products for building insulation, mechanical insulation, commercial roofing, and roof insulation, as well as fibers and nonwovens for commercial, industrial, and residential applications.

With world headquarters in Denver, Colorado JM's 6,200 employees at our forty-one manufacturing facilities serve North American, European, and Asian markets that include residential and commercial construction, wind energy, aerospace, automotive and transportation, air handling, appliance, HVAC, pipe and equipment, filtration, waterproofing, flooring, and interiors. Notably, JM is the only manufacturer to offer a complete line of certified Formaldehyde-free™ fiber glass home insulation.

JM supports the FTC effort to revise the Green Guides (Guides) in order to address the proliferation of green claims in the past several years. Many green claims currently being made do not (or cannot) have substantiation and hence are false. Other claims may be literally true but are nonetheless still misleading. So, the additional and up-to-date information from the modified Guides will both help advertisers ensure their claims are appropriate and better reveal why many claims are false or misleading.

For ease of reference, we have broken out our comments below by subject. In addition, JM submitted comments in response to the FTC's July 2008 workshop on green building;[1] JM incorporates those comments herein.

Free-from claims

JM commends the FTC for providing needed guidance on free-from claims, which are being made by an increasing number of product manufacturers.

The proposed changes to the Guides address free-from claims in various forms. One claim that has been litigated and resolved in the fiber glass insulation industry, and a claim that is specifically referenced in the proposal, is that of formaldehyde-free.

After a formal challenge in 2005, National Advertising Division (NAD) determined that Johns Manville's formaldehyde-free claim was substantiated. According to the NAD's November 2005 decision, a claim that fiber glass insulation is formaldehyde-free is substantiated by showing that: (1) formaldehyde is no longer added to the product; and, (2) when tested, the product does not emit formaldehyde in quantities that would be of concern to consumers.

When determining what quantities or exposure levels are of concern to consumers the NAD noted that such exposure level would need to be equivalent to outdoor background levels (*i.e*., approximately 3 parts per billion) and a fraction of any standard or exposure recommendation.[2]

[1] JM's August 2008 comments to the FTC on the green building workshop can be found at http://ftc.gov/os/comments/buildingandtextilesworkshop/536013-00034.pdf.
[2] See, NAD News Release, "Johns Manville Substantiates 'Formaldehyde-Free' Tagline in NAD Forum." (search "Johns Manville" at http://www nadreview.org/NewsRoom.asp?SessionID=1440909)). NAD's November 2005 decision is available for purchase from the NAD at http://www.nadreview.org/ContactUs.asp?SessionID=1440909.

The analysis in the FTC Guides proposal on this issue at Section III.H.3.a. is generally consistent with the 2005 NAD decision. Thus, the FTC proposes that a free-from claim is not deceptive if the substance in question is not added to the product and it results in only de minimis exposure. JM agrees, however, that the determination of what constitutes de minimis depends upon the substance in question issue and, therefore, requires a case-by-case analysis. In some cases, consumers may view the presence of even trace amounts of a substance as material. For example, even very small exposures to substances that are classified by national and international authoritative scientific bodies and agencies as known carcinogens are quite unlikely to be considered de minimis as there is potentially no safe level of exposure.

In addition, it is critically important that the de minimis determination be based not on content but instead on exposure. There are two basic steps used to estimate the actual exposure resulting from building materials emissions, including insulation. First, the product's mass emissions are measured in the lab with sophisticated analysis equipment such as a GCMS. The results of the lab measurement are typically expressed as unit of mass per area of product per unit of time, i.e., μg/M2/hour. Since this is not a measure of actual exposure – the amount of chemical actually delivered to the home occupant – a model must be used to convert this mass emission rate to an estimated in-home concentration expressed either as parts per billion (ppb) or micrograms per cubic meter (μg/M3).

Similarly, it is critically important that appropriate exposure models be used. Thus, if exposure in the home is of concern, the model should use all variable inputs and assumptions relevant to a home environment. For example, the amount of clean dilution air assumed can greatly affect the estimated exposure. For a given mass emission rate the more dilution air assumed, the lower the estimated exposure; conversely, the less dilution air assumed, the greater the estimated exposure. Accordingly, home exposure must be estimated based on a typically lower home ventilation rate; it would be inappropriate and misleading to base the home exposure estimate on a higher commercial office building ventilation rate. As referenced below in the section on Certifications and Seals of Approval, it is a fundamental requirement that the testing or modeling an advertiser performs as the basis of 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.[3]

[3] *The Hoover Company (Hoover SteamVac Agility Deep Cleaner)*, NAD Case Report No. 4272 (Jan. 4, 2005).

The FTC has proposed Example 2 in Section 260.9 to further clarify the free-from claim:

> **Example 2**: A manufacturer advertises its insulation as "formaldehyde free." Although the manufacturer does not use formaldehyde as a binding agent to produce the insulation, tests show that the insulation still emits trace amounts of formaldehyde. The seller has substantiation that formaldehyde is present in trace amounts in virtually all indoor and (to a lesser extent) outdoor environments and that its insulation emits less formaldehyde than is typically present in outdoor environments. In this context, the trace levels of formaldehyde emissions likely are inconsequential to consumers. Therefore, the seller's free-of claim would not be deceptive.

Based on the comments above, JM strongly suggests that this example be modified to read as follows:

> **Revised Example 2**: A manufacturer advertises its home insulation as "formaldehyde free." Although the manufacturer does not add or use formaldehyde as a binding agent to produce the insulation or as a preservative, product emissions testing in the laboratory shows that the product still emits trace amounts of formaldehyde. The seller has substantiation that formaldehyde is present in trace amounts in virtually all indoor and (to a lesser extent) outdoor environments and that, based on an exposure estimate using assumptions appropriate for the residential environment (including a ventilation rate lower than a commercial office building, *e.g*., 0.25 air changes per hour) its insulation should result in exposure to formaldehyde that is less than that typically present in outdoor environments, *i.e*., approximately 3 ppb. In this context, the trace levels of formaldehyde emissions as modeled to determine exposure for the home environment likely are inconsequential to consumers. Therefore, the seller's free-of claim would not be deceptive.

Another example could be added to confirm that using the wrong exposure model that under-predicts exposure would result in a misleading claim:

> **New Example 2A**: A manufacturer advertises its home insulation as "formaldehyde free." Although the manufacturer does not add or use formaldehyde as a binding agent to produce the insulation or as a preservative, product emissions testing in the laboratory shows that the product still emits trace amounts of formaldehyde. The seller has substantiation that formaldehyde is present in trace amounts in virtually all indoor and (to a lesser extent) outdoor environments. The manufacturer

> uses an exposure estimation technique that assumes a much higher level of clean dilution air than will actually be encountered by the homeowner, *e.g*., the technique assumes higher the ventilation rate of a commercial office building. Based on that exposure estimate, its insulation should result in exposure to formaldehyde that is less than that typically present in outdoor environments, *i.e*., approximately 3 ppb. Since the use of a commercial office estimation technique will under-predict the in-home exposure, the trace levels of formaldehyde emissions as modeled to determine exposure for the home environment could well be consequential to consumers. Therefore, the seller's free-of claim is likely deceptive.

It is important to note that some manufacturers, including JM, have moved beyond mere self-claims of formaldehyde-free and have secured independent third-party certification of formaldehyde-free. Thus, Scientific Certifications Systems of Emeryville, CA now offers a program to certify that products are formaldehyde-free in the residential environment.[4]

Certifications and Seals of Approval

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 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 of 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.[5] 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, product emissions certifications performed by the Greenguard Environmental Institute (GREENGUARD) assume classroom or commercial office ventilation (*i.e*., clean air pollution dilution) rates of approx. one air change per hour (ACH) under ASHRAE Standard 62.1-2007, *Ventilation for Acceptable Indoor Air Quality.* Because the vast majority of new homes do not have the

[4] See, SCS Indoor Advantage™ + Formaldehyde Free Certification Requirements at http://www.scscertified.com/docs/IAQ_GUI_F-Free_V1-0_011510.pdf.
[5] *The Hoover Company (Hoover SteamVac Agility Deep Cleaner)*, NAD Case Report No. 4272 (Jan. 4, 2005).

continuous mechanical ventilation equipment needed to achieve the ASHRAE standard, GREENGUARD will substantially under-estimate most indoor air concentrations from product emissions.

Per the most recent study on residential indoor air quality and ventilation rates by Offerman *et al*. for the California Air Resources Board,[6] typical residential ventilation rates are much lower than those assumed by GREENGUARD. According to Offerman these lower ventilation rates lead to poor indoor air quality:

> The median 24-hour outdoor air exchange rate was 0.26 air changes per hour; 67 percent of the homes were below the California building code requirement of 0.35 air changes per hour; and 32 percent of the homes did not use their windows. Home to garage pressure testing guidelines were exceeded in 65 percent of the homes. The median indoor formaldehyde concentration was 36 micrograms per cubic meter (range of 4.8 to 136 micrograms per cubic meter). Nearly all homes had formaldehyde concentrations that exceeded guidelines for cancer and chronic irritation, while 59 percent exceeded guidelines for acute irritation. In conclusion, new single-family detached homes in California are built relatively airtight, can have very low outdoor air exchange rates, and can often exceed exposure guidelines for air contaminants with indoor sources, such as formaldehyde and some other volatile organic compounds. Mechanical ventilation systems are needed to provide a dependable, continuous supply of outdoor air to new homes, and reductions of various indoor formaldehyde sources are also needed.[7]

The Offerman study underscores the need for product emissions certification programs to fully account for the lower ventilation rates typically present in new homes. If most new homes have a ventilation rate of only 0.26 ACH and GREENGUARD's certification assumes a rate nearer to 1.0 ACH, a more accurate emissions impact estimate for formaldehyde-bonded insulation products could be four times higher than GREENGUARD calculates. Most likely formaldehyde-bonded insulation products would fail even the GREENGUARD certification level if a more appropriate, lower residential ventilation rate was used.

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[6] Offermann, F. J. 2009. *Ventilation and Indoor Air Quality in New Homes.* California Air Resources Board and California Energy Commission, PIER Energy-Related Environmental Research Program. Collaborative Report. CEC-500-2009-085., available at http://www.arb.ca.gov/research/apr/past/04-310.pdf.

[7] Offerman at page xv.

GREENGUARD certification claims for insulation installed in existing homes is also false and misleading. While new homes are tighter than existing homes, most existing homes have effective ventilation rates substantially below the commercial office or school rates GREENGUARD uses. Thus, it is estimated that an appropriate average ventilation rate for existing homes is 0.50 ACH,[8] which would make GREENGUARD product emission impact claims in an existing home low by up to 50%.

The misleading nature of GREENGUARD certification claims for existing homes is in some respects more troubling than for new homes. Claims for new homes are geared in part to architects, professional specifiers, builders and others with some level of knowledge and sophistication in building standards and building science. In contrast, products sold at retail (*e.g.*, at The Home Depot) are geared substantially to unsophisticated homeowners who are relying entirely on manufacturers' representations that the GREENGUARD claims are appropriate for the home environment.

The misleading nature of GREENGUARD claims for the residential environment was recently confirmed by the State of California as part of the 2009 effort to update the ES-1350 standard (SP/01350) on which the GREENGUARD "Children and Schools" certification is based:

> Materials/products certified according the *Standard Practice 2004 document* currently apply only to product claims for school and commercial buildings. To curtail inappropriate or misleading product claims using SP/01350 in residential environments requires adding a new set of appropriate scenarios.[9]

The final 2010 update to the ES-1350 standard contains a New Single Family Residence Scenario in Appendix B. That residential scenario requires use of a ventilation rate of 0.23 ACH, which is similar to the results of the Offerman study. Interestingly, the ES-1350 residential scenario is based in part on the ASHRAE Standard 62.**2**-2007 on ventilation in new homes, an industry consensus standard that GREENGUARD for some reason has rejected.

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[8] "Residential Exposure Scenarios for Estimation of the Impacts of Products on Indoor Air Quality," Alfred T. Hodgson, Berkeley Analytical Associates, LLC, Richmond, CA 94804 (September 20, 2007); available at http://www.berkeleyanalytical.com/UserFiles/File/BAA_WP_07-02_Residential_Exposure_Scenarios_092007.pdf

[9] "Discussions of Comments on the Proposed Standard Method V1.1 Draft (SM2009, dated 10/19/2009)," California Department of Public Health (January 28, 2010), available at http://www.cal-iaq.org/vocs/standard-method .

Using ASHRAE commercial office ventilation rates to certify product emissions impacts for homes is similar to a car manufacturer claiming its data show a new car gets 35 miles per gallon in the city when in reality the testing was done on the highway. As stated above, it is a fundamental requirement that the testing or modeling an advertiser performs as the basis of 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.[10]

The impact of the assumed ventilation rate on estimated indoor concentrations of pollutants like formaldehyde is well beyond the understanding of even the typical green building professional, let alone a typical consumer. In this respect, GREENGUARD has superior knowledge on an important health and safety issue relevant to consumer decisions and is choosing to withhold that knowledge from consumers. GREENGUARD does a great disservice by leading consumers to incorrectly believe that their GREENGUARD certification is appropriate for the home. The FTC should adopt the additional example referenced in the previous section to illustrate this increasingly common misleading claim.

There is another important issue with certifications and seals of approval. A reasonable consumer take-away from many product emissions certification programs is that the certification levels are adequately health protective for the home and fully consistent with state and federal environmental and health agencies formaldehyde standards and exposure recommendations.

But this is not true for some programs. For example, the GREENGUARD Low Emitting formaldehyde certification level is 50 ppb and its Children and Schools certification level is 13.5 ppb. These levels compare with the following standards and exposure recommendations:

> Agency for Toxic Substances and Disease Registry (ATSDR) Chronic minimal risk level - **8 ppb**
>
> Office of Environmental Health Hazard Assessment Formaldehyde 8-Hour REL - **9 µg/m³ (7 ppb)**
>
> Office of Environmental Health Hazard Assessment Formaldehyde Chronic REL - **9 µg/m³ (7 ppb)**[11]

[10] *The Hoover Company (Hoover SteamVac Agility Deep Cleaner)*, NAD Case Report No. 4272 (Jan. 4, 2005).

[11] The values given are for irritation endpoints only. Exposure levels for cancer endpoints are typically lower.

The FTC should consider as misleading any claims like these that tend to give a consumer the impression that the product emission certification levels are adequately health protective or consistent with environmental or health agency exposure recommendations. Alternatively, the FTC could require GREENGUARD and similar claims to prominently inform the reader that GREENGUARD certification levels are not intended to be adequately health protective for the home or meet current state and federal health and environmental agency standards or exposure recommendations. The advertiser should also prominently feature both the certification levels along with appropriate agency exposure recommendations so that the consumer can make a more informed decision as to whether the certification is appropriately health protective.

Another and unfortunate example of this is the US Environmental Protection Agency's (EPA) Indoor airPLUS program.[12] According to the EPA brochure describing the program,

> EPA created Indoor airPLUS to help builders meet the growing consumer preference for homes with improved indoor air quality. By constructing homes that meet EPA's stringent specifications, forward-thinking builders can distinguish themselves by being among the first to offer homes designed to deliver improved indoor air quality.[13]

The language is clearly intended to convey and a consumer would reasonably conclude that any home achieving the EPA Indoor airPLUS certification will achieve EPA's recommended exposure level for, *e.g.*, formaldehyde, and be adequately health protective. But nowhere does EPA identify what those exposure specifications are or that they are adequately health protective. Nor does EPA recommend even simple steps to use widely available technologies and products that would not emit indoor air pollutants like formaldehyde.

Accordingly, the FTC should consider the EPA Indoor airPlus program misleading.

A similar issue arises when an advertiser claims to have the imprimatur of some government agency for its products or services. Such government endorsement of specific products is extremely rare and typically prohibited by law. Thus, the FTC should presume that any such claims are misleading unless they can be rebutted by the advertiser. Also suspect are quotes to older government agency

[12] http://www.epa.gov/indoorairplus/resources.html
[13] "Step up to Indoor airPLUS," US EPA Publication available at http://www.epa.gov/indoorairplus/pdfs/builder_brochure.pdf

determinations or scientific studies that, with the passage of time and intervening science, have been rendered essentially obsolete. For example, if an advertiser quotes an agency's 25 year-old opinion on a product chemical safety issue and there has been intervening science and regulatory action that could call into question the original opinion, then citing to the original opinion today would likely be misleading and should be avoided. Alternatively, the advertiser should prominently disclose the aged nature of the study or agency opinion and summarize the intervening science that would tend to make the old study or agency opinion less relevant.

A closely related issue exists when an advertiser uses a governmental rating or identification in a manner that falsely connotes a unique benefit. For example, a manufacturer has an insulation product that it calls "LD-R-50." While the manufacturer states that the "R" identifies that there is some recycled content in the product, use of the term "R-50" is likely intended to be similar to the R-value rating required by the FTC for all home insulation products in the Home Insulation Rule, 16 C.F.R. Part 460. A consumer could reasonably conclude that the "LD-R-50" insulation can achieve an energy savings R-value of R-50 when installed in a home, when in fact the insulation achieves a mere fraction of R-50. The FTC should advise that such a product name is inherently misleading.

Finally, another important issue with certifications is the openness with which the certification criteria and techniques are developed and used. The FTC notes in Section IV.B.2.b. that some commenters suggested the Guides provide that third-party certification programs be developed through an open, transparent and balanced process, such as programs accredited through the American National Standards Institute ("ANSI"). Other commenters, however, observed that achieving openness and balance is difficult because not all parties may be given a voice in the proceedings, and those making the decisions on the standard may possess ideological views adverse to certain interests.

Regardless of whether a certification program was adopted in an open manner, once a program is finalized, all assumptions, techniques, calculations, *etc*. should open and available to any interested party. It is a fundamental principle of advertising law that any claims that **can** be substantiated with data **must** be substantiated with competent and reliable scientific data. And transparency and reproducibility are the essence of real science. If the assumptions and calculations of a certification program are not open and transparent, it is not possible to evaluate the competence and reliability of the data or to reproduce the results. Furthermore, the advertiser is required to have the data necessary to substantiate the certification claim. If the certification relies on secret data and calculations, it is not possible for the advertiser to have the substantiation data in hand, thereby making the claim unsubstantiated.

Therefore, the FTC should advise that any certification based on confidential calculations or other "black box" techniques not be considered to be based on competent and reliable scientific evidence and that any advertising claims for such certifications be considered unsubstantiated and hence false. The Guides proposal in Section V.B.3.c. should be revised accordingly.

Recycled Content

The FTC should further define a number a terms and examples concerning recycled content claims. First, the FTC should clarify that the pre-consumer recycled content claims for textiles, which can be found in section V.F.4.a, should apply not only to the textile industry but to the entire manufacturing sector. In addition, within this section, the following paragraph concerning pre-consumer recycled content would benefit from further definition:

> ***To constitute pre-consumer recycled content, materials must have been recovered or otherwise diverted from the solid waste stream during the manufacturing process…Specifically, when spilled raw material and scraps undergo only "a minimal amount of reprocessing" and are "normally reused in the original manufacturing process" they are not diverted from the solid waste stream and therefore do not qualify as recycled content.***

The FTC should further define and provide additional examples of the phrase "a minimal amount of reprocessing." What level of reprocessing is sufficient to achieve pre-consumer recycled content status? Specific examples could be provided to further guide the manufacturing sector as to the types and levels of material reprocessing that would qualify materials as pre-consumer recycled content. For example, a material need not be shipped outside of the manufacturing facility for reprocessing in order to qualify as more than a "minimum" amount of reprocessing.

How narrowly should the term "original manufacturing process" be interpreted? Surely if a material is recovered from the waste stream of product 1 and used as a raw material in the manufacture of product 2, the material should be considered pre-consumer recycled content.

The FTC should require manufacturers to make and substantiate the distinction between "pre-consumer" and "post-consumer" recycled content in their products. In section V.F.4.b, the following discussion is found regarding disclosure of "pre-consumer" versus "post-consumer:"

> ***Currently, marketers making recycled content claims have the option to disclose whether the recycled content is pre-consumer or post-consumer.***

Differentiating between these types of recycled content is routinely done by most green building programs, largely because it affords consumers the ability to make a better decision concerning which type of recycled content better promotes curbside consumer recycling.

Johns Manville supports the view that making recycled content claims based on an annual weighted average is acceptable, which is discussed in section V.F.4.c regarding calculating recycled content.

Another example is provided on page 101 of the proposal:

> ***"…marketer may sell residential carpeting that contains no recycled content and commercial carpeting that contains 50%. If the marketer believes that individuals are more interested than businesses in recycled content, it could choose to average the amount of recycled content in both product, and then make a 25% recycled content claim for its residential carpeting (even though this carpeting contains no recycled content). Such a claim appears to be deceptive; therefore, without consumer perception evidence to the contrary, the Commission declines to sanction it."***

This example could be improved by showing the importance of making averaging part of the claim. Thus, such a recycled content claim of 25% is more likely to be misleading if the consumer is not informed about the averaging. In contrast, if a consumer is clearly informed that the recycled content is an average across certain products or geographic areas, it should not be considered misleading.

Sustainability Claims Based on Plant-derived Products

The FTC has declined to provide general guidance on how to substantiate claims that products or operations are sustainable. However, there are certain claims that are so clearly misleading that the FTC should provide advice to that effect.

For example, certain fiber glass insulation manufacturers claim that their products are "sustainable" merely because they have switched from a phenol-formaldehyde binder to a binder that is derived from plants. (Binder comprises approximately only 5% by weight of a fiber glass insulation product.) But just because a binder is derived from plants it does not mean that it is somehow

inherently sustainable; rather, it means merely that the sustainability issues are related to agriculture not chemical manufacturing.

Fortunately, there are now well-developed principles of sustainable agriculture that establish what requirements a plant-based binder must meet to be considered sustainable. These requirements include issues related to herbicide, pesticide, and carbon-intense fertilizer use as well as water pollution and the working conditions of the farm workers. If the manufacturer does not claim and cannot substantiate that the "binder plants" are planted, cultivated, and harvested according to accepted principles of sustainable agriculture, then the sustainable claim is unsubstantiated and hence false. This result applies with greater force if the manufacturer is making a claim that its insulation is more sustainable than its competing products simply because the binder is plant-based.

Bio-based claims

The FTC has noted in the proposal that, at this time, they are not proposing general guidance addressing biobased claims because the USDA is conducting its own consumer perception study of biobased claims as part of its proposed voluntary labeling program for biobased products. However, the FTC should consider advising that certain biobased claims could be per se misleading.

For example, certain spray foam insulations claim to be "biobased" or "soy-based" but in reality the biologically based content is quite small. Spray foam insulation is composed of the following ingredients:

Side A – Isocyanates
- Methylene diphenyl diisocyanate (MDI)
- pMDI

Side B – Polyol Blend
- Polyols
- Flame retardants
- Blowing agents
- Amine or metal catalysts
- Surfactants

If only the foam insulation's polyol is based on plants or soy beans, it should be misleading per se to claim that the entire insulation is biobased or soy-based.

Organic Claims

As described in the proposal, the National Organic Program provides a comprehensive regulatory framework governing organic claims for agricultural products. Because of this framework and the NOP's ongoing work in this area, the FTC does not want to propose duplicative or possibly inconsistent advice. Accordingly, the FTC has declined to address in the Guides those organic claims covered by NOP.

However, there are some claims that the FTC should consider per se misleading. For example, a fiber glass insulation manufacturer switches from a phenol-formaldehyde binder to a plant-based binder. Merely because the binder is derived from plants, the manufacturer claims the binder is "organic" without any substantiation that any of the requirements of the NOP are met. In this instance, the manufacturer is clearly trying to attract interest and notice from consumers, architects and specifiers who will no doubt conclude that the manufacturer's "organic" claim is the same as a claim for organic fruits and vegetables. Clearly, the manufacturer is attempting to position its new binder as better than a formaldehyde-based binder even though both are, strictly speaking, organic chemicals. The FTC should advise that this claim is misleading.

Thank you for the opportunity to comment on these important issues.

Sincerely,

Bruce D. Ray
Associate General Counsel