ISEAL ALLIANCE

December 10, 2010

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

The Federal Trade Commission's proposed revisions to the Guides for the Use of Environmental Marketing Claims "Green Guides"

Comments Submitted by the ISEAL Alliance

In response to the Federal Trade Commission's (FTCs) request for public comment on the proposed revisions to the "Green Guides" the ISEAL Alliance would like to tender the following submission.

The ISEAL Alliance is an international non-profit organization that codifies best practice for the design and implementation of international, voluntary social and environmental standards systems. The term "standards systems" denotes the broader context within which standards are embedded. This context covers standard-setting, accreditation, certification, labeling and capacity building activities. We consider all of these activities as components of a credible and well-functioning standard system and this is where ISEAL concentrates its efforts. ISEAL shapes the context in which social and environmental standards systems operate by defining what good practice looks like for the sector and by influencing how external stakeholders consider and engage with credible standards systems.

ISEAL Alliance members are leading organizations in social and environmental standard setting and certification, and cover a diverse range of sustainability issues and product categories[i]. These range from primary agricultural products to green energy to manufactured goods, while the sustainability issues covered by ISEAL members include the full range of environmental, social and economic issues. While the ISEAL membership is diverse, it is unified by its collective commitment to ISEAL's Codes of Good Practice. These codes include the Code of Good Practice for Setting Social and Environmental Standards as well as the Code of Good Practice for Assessing the Impacts of Social and Environmental Standards Systems. Further information about the ISEAL Alliance and its membership is available at www.isealalliance.org.

Given ISEAL's particular role within the standards and certification movement, the comments presented in this submission pertain to the section of the revised Guides covering "Certifications and Seals of Approval".

> ISEAL welcomes the explicit inclusion of guidance covering Certifications and Seals of Approval. We concur with the view that the use of third-party certification is a significant and growing green marketing trend[ii] and thus the FTC's guidance in this area is both timely and appropriate.

> In the Supplementary Information accompanying the proposed revision to the Green Guides, the FTC noted that it had declined to adopt provisions and definitions drawn from international guidance on the basis that its mandate is to address false and deceptive advertising and not to advance environmental policy objectives. The ISEAL Alliance argues the FTC's decision not to adopt international provisions or definitions does not preclude it from referencing international best practice for the setting, management and use of third-party certification programs and labels. This is the approach that the United Kingdom's Department for Environment, Food and Rural Affairs (DEFRA) has followed in the draft version of their "Updated Guidance on Green Claims – March 2010"[iii].

> Under the section of the DEFRA Guide that deals with third party labelling or declaration schemes, DEFRA outlined the principles that constitute best practice for labelling schemes. The principles cited include:

  – **Criteria development** – there has been a wide and thorough consultation on the minimum criteria which should be met to achieve certification or a stamp of approval.
  – **Verification** – there has been some form of independent auditing or third party verification of the scheme.
  – **Transparency** - the process to assess whether a company meets the certification criteria is open and transparent.
  – **Label presentation** – there are clear requirements on how any label is used, for example on product packaging or within advertising and marketing.
  – **Inspections** - to make sure the requirements of certification and agreed improvements are being met.
  – **Available sanction** – there is potential for certification to be withdrawn if conditions are not adhered to.

> Aside from highlighting the principles that constitute best practice, DEFRA explicitly refers to the ISEAL Alliance as a source of additional information on labelling schemes. A number of other governmental and inter-governmental agencies have followed a similar approach and have cited ISEAL's Codes and Tools as examples of international best practice and/or as the normative basis for standard setting. The rationale for the governmental referencing of ISEAL Codes and Tools relates to the fact that these documents are formulated through transparent, multi-stakeholder processes, take on average two years to develop and allow for at least two rounds of public comment. Governmental recognition of these Codes and Tools is an acknowledgement that ISEAL has been successful in establishing global consensus on good practice in a number of standards areas and certification applications. A list of ISEAL Codes of Good Practices and Tools are listed in Appendix 1, while an illustrative list of how governments and inter-governmental agencies have referenced these documents can be found in Appendix 2.These references underscore the point that only standards systems that follow WTO disciplines such as transparency, consistency and openness (i.e., as covered under the ISEAL Standard-Setting Code) can be considered credible and thus strengthen the

ability of marketers to use standards systems and certification to make an accurate and credible green claim.

> **Certifications and Seals as Endorsements - Third-party certifications:** The proposed revision to the "Greens Guides" recognizes that the use of the name, logo, or seal of approval of a third-party certifier constitutes an endorsement and as such should meet the criteria for endorsements provided in FTC's Endorsement Guides. While this proposal does qualify how certifications should be used by marketers, certification programs that comply with ISO/IEC 17021, Guide 65 or equivalent, stress the impartiality and independence of verification. Moreover these standards require certification bodies to have clearly defined policy on the use of certification and labels and convey this information to certificated enterprises. One of ISEAL's membership requirements is that certification programs that are linked to a standard setting organization must comply with ISO/IEC 17021, Guide 65 or equivalent. FTC could reference compliance with ISO/IEC 17021 and Guide 65 as examples of best practice. To supplement these documents and further define credible verification, in January 2011 ISEAL will begin the process to develop its Code of Good Practice with respect to verification and we invite the FTC to participate in this process.

> **Third- Party Certifications as Substantiation:** The proposed revision to the "Green Guides" highlights that third-party certification does not eliminate a marketer's obligation that it has substantiation for all claims reasonably communicated by the certification. Thus a marketer that relies on certification as a mechanism to substantiate its claims must be confident that the necessary tests, analysis, research and studies linking all claims with a certification, are based on competent and reliable scientific evidence. The way ISEAL ensures that the claims associated with its members' certifications are substantiated is to require that its members implement its Code of Good Practice for Assessing the Impacts of Social and Environmental Standards Systems. We encourage the FTC to cite ISEAL's Impacts Code as an example of best practice.

Appendix 1 – ISEAL's Codes of Good Practice and Tools

Setting Social and Environmental Standards v5.0 ISEAL Code of Good Practice – April, 2010

Assessing the Impacts of Social and Environmental Standards Systems v1. ISEAL Code of Good Practice – June, 2010

Common Requirements for the Certification of Producer Groups P035 - Public Version 1 - November, 2008

Appendix 2 – References to ISEAL's Codes and Tools

European Commission (2010). Communication from the Commission on voluntary schemes and default values in the EU biofuels and bioliquids sustainability scheme (2010/C 160/01)

Central Point of Expertise on Timber (2010). UK Government's Timber Procurement Policy-Certification Schemes (Category A Evidence) Third Edition

European Commission (2009). Communication on Fair Trade.

United Nations Conference on Trade and Development (UNCTAD) (2008). Recommendations of the conference "Making Sustainability Standards Work for Small-scale Farmers" (Pre-UNCTAD XII Event)

European Parliament (2007), Corporate Social Responsibility: Implementing the Partnership for Growth and Jobs (Resolution P6_TA(2007)0062)

WWF/World Bank (2006). Forest Certification Assessment Guide.

Food and Agriculture Organization of the United Nations (2005). Guidelines on Ecolabelling of Marine Fishery Products.

End Notes:

[i] Full Members of ISEAL include: Fairtrade Labelling Organizations International; Forest Stewardship Council; International Organic Accreditation Service; Marine Stewardship Council; Rainforest Alliance; Social Accountability Accreditation Services; Social Accountability International; Union for Ethical BioTrade; and UTZ Certified. Associate ISEAL Members include: 4C Association; Accreditation Services International; Alliance for Water Stewardship; Better Sugarcane Initiative; Center for Resource Solutions; Global Footprint Network; People 4 Earth; Roundtable on Sustainable Biofuels; RugMark International; World Fair Trade Organization (WFTO); and WWF Aquaculture Dialogues

[ii] For additional information on growth of the voluntary standards movement see Accountability and Iseal Alliance (2010). *Top 10 Trends: Presenting the Challenges and Opportunities for the Sustainability Standards Movement*. (www.isealalliance.org)

[iii] Additional information on the Update DEFRA Guidance on Green Claims can be found at: http://www.defra.gov.uk/corporate/consult/green-claims/20100322-green-claims-condoc-guidance-part1.pdf