

December 10, 2010

**Office of the President**

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Suite 600 1525 Wilson Boulevard  
Arlington, Virginia 22209

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue Northwest  
Washington, D.C. 20508-0002

Dear Mr. Clark:

The Aluminum Association (the “Association”) submits these comments in response to the Federal Trade Commission’s proposed revised Guides for the Use of Environmental Marketing Claims (the “Green Guides”), as published in the October 15, 2010 issue of the Federal Register, 75 Fed. Reg. 63552. The Association is a trade association founded in 1933 that comprises 87 members and associate members of the U.S. aluminum industry, many of whom will be potentially affected by the proposed revisions to the Green Guides.

Aluminum that is produced by our members is used in a wide assortment of consumer products, including such ubiquitous products as automobiles, beverage cans, and aluminum foil. For generations, aluminum has been seen by many as a leading product for recycling and recyclability. The Association appreciates the leadership the FTC has taken on Green Guides for two decades. We urge the FTC to continue to set standards that will make it easier for companies to make truthful claims of environmental benefits, while making it harder for other companies to mislead the public with claims that sound better than objective facts warrant.

The Association focuses its attention on three issues: (A) the distinction between pre- and post-consumer recycled content; (B) Calculation Methodology for Recycled Content; and (C) the definition of renewable energy.

**A. Commentary on the distinction between pre- and post-consumer recycled content**

1. With respect to the distinction between pre- and post- consumer recycled content, the Association does not advocate abandoning the distinction between pre- and post-consumer material for manufacturers that choose to disclose content in this manner. (item b., page 94 of the Notice).
2. With respect to adoption of ISO 14021 guidelines to distinguish between pre- and post-consumer content, the Association concurs with this position, with the condition that the definition of pre-consumer material be refined to exclude what is called “runaround scrap” in some industries. The term “runaround scrap” in metallurgical industries essentially refers to in-house scrap, which is typically reused in the process and would rarely find its way to a landfill in any event. While this is a metallurgical term, the

principle could apply to other manufacturing industries including paper and plastics manufacturing.

3. The following provides a more detailed proposed definition of pre-consumer and post-consumer scrap:
  - a. **Pre-consumer recycled content:** This term should be defined as: “Material generated by commercial, industrial and institutional facilities in their role as a link in the manufacturing value chain employed in the production of a final product to be consumed by an end customer, and which can no longer be used for its intended purpose.” This could include scrap generated in intermediate value-adding steps in a manufacturing process to create a final product. It would, however, exclude reutilization of in-house scrap materials that are commonly generated and reused within the original manufacturing process, such as regrind, rework, or trim scrap generated prior to a product having been sold to the next link in the value chain. *Example:* Trim scrap generated in the original manufacturing process – which would commonly be re-introduced into the manufacturing process in the facility which generated the trim scrap in the first place – would not be considered pre-consumer recycled content.

- b. **Post-consumer recycled content:** This term should be defined as: “Material generated by households or by commercial, industrial and institutional facilities in their role as end users of the product which can no longer be used for its intended purpose, and scrap generated at the end of a product’s life.”

## **B. Commentary of Calculation Methodology for Recycled Content**

The Association supports the continuation of the current Green Guides methodology of utilizing an annual weighted average to calculate recycled content. In addition, the Association agrees with the FTC’s suggestion not to require makers of bona fide “recycled” claims to address “recyclability,” although they should be free to do so if their product satisfies both standards.

However, if it maintains that approach, the FTC should reinforce that the recycled/recyclable connection can be made only if both standards are met. For example, the plastics industry uses a liberal approach to the “mobius” design (chasing arrows) as a labeling tool to show the type of plastic packaging, which may create the misleading impression to consumers that some plastics, *e.g.*, Type 7, are recyclable when, in fact, they are not. The FTC should make clear that the use of the mobius should be used only on material that has a demonstrated recyclability, even if the product is made from recycled material.

## **C. Commentary on definition of renewable energy**

1. With respect to the definition of renewable energy, the Association supports the reference to electricity derived from constantly replenished sources as described by the National Renewable Energy Laboratory (“NREL”) (page 152, item D1). The Association

concur with the Commission study indicating the general understanding that renewable energy is “it is not derived from fossil fuel” and supports disclosure of the type or source of renewable energy.

2. The Association, however, suggests that other categories be used in the Guides to clarify that specific other energy sources also can be considered to be renewable energy (page 160 item 4a). The following provides a more refined standard that is compatible with the NREL approach:

**Proposed revision: 260.14 Renewable Energy Claims (b)**

Unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify their renewable energy claims by specifying the source of the renewable energy (*e.g.*, solar, wind, biomass, hydrogen, geothermal, hydropower, ocean energy).

3. The Association suggests language to reinforce that the definition of renewable energy is not affected by limiting criteria required (such as date of installation, etc.) tied to renewable energy certificates or other RE classification schemes.

**Proposed revision: 260.14 Renewable Energy Claims (a)**

It is deceptive to misrepresent, directly or by implication, that a product or package is made with renewable energy or that a service uses renewable energy. Marketers should not make unqualified renewable energy claims, directly or by implication, if power derived from fossil fuels is used to manufacture any part of the advertised item or is used to power any part of the advertised service. Renewable energy is not affected by limiting criteria required (such as date of installation, etc.) tied to renewable energy certificates or other RE classification schemes.

4. Supporting documentation: The Association provides the following data to support the addition of hydropower as renewable energy. Like wind and solar power, nature provides the “fuel” for hydropower. Water, like wind and solar, is also a renewable fuel source. The greenhouse gas footprint associated with hydropower is approximately 1/60<sup>th</sup> that of the cleanest thermal fuel, natural gas\*. For these reasons, hydropower should also be considered a renewable form of energy. It meets the two main criteria – very low emissions and renewability. Because wind and solar are specifically highlighted as examples of renewable energy, hydropower should also be listed.

**Table 1.** Full Energy Chain Greenhouse Gas Emission Factors CO2 equiv./kWh(e)h-1 (modified IAEA '96)

| <u>Energy source</u>         | <u>Emission Factor*g CO2 equiv./ kWh(e) h</u> |
|------------------------------|---|
| Coal (lignite and hard coal) | 940 - 1340                                    |
| Oil                          | 690 - 890                                     |
| Gas (natural and LNG)        | 650 - 770                                     |
| Nuclear Power                | 8 – 27  |
| Solar (photovoltaic)         | 81- 260                                       |
| Wind Power                   | 16 - 120                                      |
| Hydropower                   | <b>4 – 18</b>                                 |

\*: Rounded to the next unit or the next tenth respectively for values < or > 100 g CO2 equiv./kWh(e) h-1

This table represents the range of CO2e emissions from power generation for the given fuel sources. Ranges are given for each fuel source because each source depends on the generation technology and the specific fuel used, i.e., there are some differences in carbon content of coal that is mined in different regions.

The Association appreciates to comment on the FTC's proposal and would be happy to provide data or other support for Guides that protect both purchasing consumers and competing manufacturers of products with green claims.

Sincerely,

J. Stephen Larkin, CAE