



December 10, 2010

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

RE: Proposed Revisions to Guidelines; Guides for the Use of Environmental Marketing Claims, *75 Federal Register* 63552, October 15, 2010

Dear Sir/Madam:

The American Wood Council (AWC) is pleased to submit these comments in response to the Federal Trade Commission's (FTC) Proposed Revisions to the Guides for the Use of Environmental Marketing Claims (*75 Fed. Reg.* 63552). AWC is the voice of North American traditional and engineered wood products, representing over 60% of the industry. From a renewable resource that absorbs and sequesters carbon, the wood products industry makes products that are essential to everyday life and employs 360,000 men and women in well-paying jobs.

AWC's engineers, technologists, scientists, and building code experts develop state-of-the-art engineering data, technology, and standards on structural wood products for use by design professionals, building officials, and wood products manufacturers to assure the safe and efficient design and use of wood structural components. AWC also provides technical, legal, and economic information on wood design, green building, and manufacturing environmental regulations advocating for balanced government policies that sustain the wood products industry.

Our members are strong advocates of truthful, non-deceptive communication with our customers and final consumers of our products. We have worked with the FTC on issues surrounding communications on "green issues" since the first iteration of the Green Guides -- and look forward to continuing our fruitful relationship. Overall, we applaud the FTC for tackling several topics which are difficult to resolve. We hope that our comments will assist in the development of final Green Guides that are useful, practical, and meaningful.

I. General Issues

The FTC has posed a number of questions pertaining to the general nature of the Green Guides.

A. Is there a continuing need for the Guides?

AWC agrees that there is a continuing need for the Guides, and encourages revisions that reflect consumer perceptions and marketplace changes.

B. Industry Compliance

AWC agrees that the Guides should apply to both business-to-business transactions as well as business-to-consumers. Indeed, AWC believes that these Guides are useful in not only commerce, but also in claims made by non-commercial entities that purport to evaluate materials, but who may use faulty or misleading data to do so.

C. Changes in technology or economic conditions

AWC believes that the internet is a helpful resource to provide additional information to substantiate honest claims. We agree that allowing the use of URLs or other references to additional information is appropriate. With the proliferation of smart phones and other technology, URLs can be an effective way to qualify a claim, even before the product is purchased. However, it should not be used to qualify otherwise misleading claims that appear on labels or other advertisements.

D. International laws

AWC recognizes that the goals and purpose of the Guides may not necessarily be entirely congruent with international standards. However, the Guides should avoid conflicts with recognized and accepted international standards, and not attempt to create new standards. We are particularly concerned if there is a perceived difference between the FTC Green Guides and the ISO labeling standards (ISO 14020 series). While we do not believe that conformity to one would necessarily be inconsistent with conformity to the other, there should be efforts to ensure that U.S. products are not unfairly disadvantaged when a product that conforms to the Green Guides is offered in the international marketplace – as many wood products are.

E. Overlap with other federal, state or local laws

AWC strongly believes that the Commission must coordinate with other federal agencies to ensure definitions, interpretations and policies are consistent across the

federal family. As you will see from our comments, particularly concerning carbon offsets, we believe that the policy issues must be resolved by EPA, DOE, and others before the Commission can act.

F. Life cycle analysis

As LCA methodologies continue to evolve, we agree that the Commission should not define or endorse a particular LCA methodology to substantiate environmental claims. Nor should the Commission choose one methodology over another. However, the ISO 14040 series of standards provides the internationally-recognized bases upon which LCAs should be approached. Therefore, AWC suggests that the Commission support the use of the ISO standards to demonstrate appropriate ways to substantiate claims.

II. Specific Claims addressed by current Guides

A. General environmental benefits claims

1. Overall approach

The current Green Guides suggest that unqualified environmental claims are difficult to substantiate and should be avoided. The revised Guides are written more clearly to discourage the use of unqualified general environmental claims.

2. Comments

a. General comments

AWC agrees with the Commission that unqualified general environmental benefit claims should be strongly discouraged.

AWC is also supportive of the Commission's admonition that the marketer must consider the context in which a qualified claim is being made to assure that no deceptive implications are created.

AWC shares the Commission's concern about a combined qualified environmental benefit and particular attribute claim. Additional examples in this area would be helpful to provide further guidance. AWC has seen situations where the claim of "saving trees" has been made, but where the overall environmental benefit is not greater than for products using trees.

b. Comparative claims/General Environmental Benefit/Comparative claims

This type of claim includes several issues addressed in the Green Guides – general environmental benefits, a comparison, and an implied claim. While there are several examples illustrating the need to specify the attributes to which a claim relates and to substantiate all such claims, there are no examples that illustrate where certain claims may have several such issues. There are also no examples illustrating the need to ensure that the “advertiser’s context does not imply deceptive environmental claims” as set forth in Section 260.4(d). It would be very helpful if the FTC would list this specific claim as an example in the Guides. The closest example in the proposed Guides is Example 4 under section 260.3(d). An example directly on point would be very helpful to help avoid consumer confusion and misinformation in this area. This example would be appropriate in either Section 260.3(d) or 260.4(d).

B. Recycled Content

AWC supports the comments of the American Forest & Paper Association regarding the continued use of the annual weighted average approach to calculating recycled content. And, AWC also supports the Sustainable Forestry Initiative, Inc. which advocates the use of an additional method for calculating recycled content, known as the “off-set based” approach. It is the most rational means of measuring certified forest content – and all of the major forest stewardship programs have adopted this approach.

C. Certifications and Seals

1. Overall Approach

The current Guides do not discuss certifications and seals, except in an example. The proposed revisions provide a new section on certifications and seals clarifying that such certifications fall under the Endorsement Guides (16 CFR Part 255). The proposal also discourages the use of unqualified certifications and seals and does not establish a particular certification system.

2. Comments

a) AWC agrees that certifications and seals must be qualified. We agree with the Commission that unqualified certifications and seals are no different than unqualified general environmental claims and thus, should be discouraged.

b) AWC agrees that third-party certification should not be a requirement to substantiate a claim.

c) AWC agrees that the Commission should not establish a particular certification system or provide guidance on the development of a third-party certification program. However, AWC believes that the Commission could support the use of true consensus based standards, such as those under ISO and the ANSI-accredited standards organizations (ASTM, GBI, etc.) that have followed criteria and attributes found in credible certification programs.

d) AWC understands the Commission's concerns about certifications or seals established under trade associations or non-profit organizations and the desire to have "material connections" to such entities clarified. However, trade associations or nonprofit organizations may establish programs to determine if products meet particular attributes based on specific impartial criteria. These types of seals should not require clarification of the material connection if the product meets the established criteria. In many instances, those third party criteria are available to the public, are frequently peer reviewed, and consider attributes desired by consumers.

Many trade associations and nonprofits will allow certification of both members of their organizations as well as non-members and non-participants. Moreover, the trade associations or nonprofit organizations are frequently not the entity that certifies that the product is conforming to the specific standard or criteria. Instead, independently accredited auditing bodies will often perform certification evaluations.

Where certifications or seals are based on public and peer-reviewed criteria, are enforced by accredited third parties, and/or are available to both members and non-members of an association

or nonprofit, connections to the association or nonprofit are neither material nor relevant and disclosure should not be required.

e) AWC agrees with the Commission that third party certifications may constitute adequate substantiation, and that the responsibility for assuring the adequacy of the substantiation rests with the marketers. AWC is concerned that the Commission is not requiring that criteria used to substantiate claims be made public. While we do not believe that the specific data for a particular product need to be available to the public, the criteria against which the product is being evaluated should be available.

D. Free-of and Non-toxic Claims

1. Free-of Claims

a) Overall Approach

The Commission expands its current guidance to include “free-of” claims. The Commission does not allow a marketer to state free-of a substance if there are other substances in the product that pose the same or similar environmental risk as the substance that is not present. Marketing for a product should also not claim that the product is free-of a substance (even if it is) if that substance has never been associated with that product category. The commission also states that in certain circumstances, free-of claims are appropriate if the substance is present in the product but it is in an amount that is at or below a de minimis amount. The Commission is proposing free-of claims to convey additional environmental claims.

b) Qualifying Free-of Claims

AWC supports the FTC’s proposal of allowing a “free-of” claim even if the product contains the substance but is at an amount at or below a de minimis since this amount is inconsequential to consumers. We agree the only element that should be of interest to consumers would be whether the amount of a substance is present in a product is in an amount that would result in an unsafe exposure to a consumer. Therefore if the substance is present in a product but in an amount that would be inconsequential to the consumer, the manufacturer should be able to make a ‘free-of’ claim.

Furthermore, the analysis to determine the exposure should be based on methods approved by the appropriate agency and to levels that are deemed safe by those agencies

2. Non-toxic Claims

a) Overall Approach

The Commission recommends that a 'non-toxic' claim would convey that the product is non-toxic for human health and the environment generally. FTC notes that acute toxicity – which measures the effects of the exposure from the substance during a short time period, may not be appropriate if the substance poses a threat to humans or the environment when exposure is over a long period of time.

b) Qualifying Non-toxic Claims

AWC agrees with the FTC proposal that would allow marketers to claim the product is “non-toxic” if the product does not pose a health threat for humans and the environment.

The FTC guidance/requirements regarding "non-toxic claims" should require the qualifying assessments consider the criteria defined in the Globally Harmonized System (GHS) for Classification and Labeling of Chemicals which is being adopted by the U.S. EPA, OSHA, CPSC, DOT, and other federal agencies. The GHS is a worldwide initiative to promote standard criteria for classifying chemicals according to their health, physical and environmental hazards. The GHS provides a helpful framework of criteria for evaluating and classifying the potential human and environmental effects of chemical substances. The criteria include definitions, concentrations and a rationale for decision making for single substances and mixtures regarding human and environmental health.

As such, if a marketer were to make “non-toxic” claims, the chemicals identified should be labeled consistent with the GHS program.

E. Sustainable Claims - AWC agrees that determinations should continue on a case-by-case basis because there is no agreed-upon definition of “sustainable” – certainly none that the average consumer would know and understand automatically.

F. Renewable Material Claims

1. AWC Interest

The foundation of the forest products industry is wood fiber—a renewable resource. The products AWC members manufacture start with a renewable resource, and AWC members characterize their products as “renewable.”

2. Overall Approach

The Commission states that its research indicates confusion among consumers as to certain aspects of claims regarding renewability. Specifically, the research apparently indicates that consumers interpret “renewable” to also mean made with recycled content, recyclable, and biodegradable. As discussed below, it proposes that marketers avoid unqualified renewability claims and that they provide specific additional information about the claim. Overall, however, it is not proposing to define the term “renewable” or endorse any particular test to substantiate such claims. AWC supports the Commission’s decision not to provide such overall guidance, as it likely would place the Commission in the role of establishing environmental standards or establishing environmental policy, roles the Commission correctly notes it does not have authority to play.

3. Qualifying Renewable Materials Claims

To avoid confusion, the Commission proposes that marketers qualify renewable materials claims by “providing which renewable materials were used, how the materials were sourced, and why the materials are renewable.” 75 Fed. Reg. 63588. It provides an example of an unqualified claim that bamboo flooring is “renewable,” stating that the following qualification likely would render the claim not deceptive: “Our flooring is made from 100% bamboo, a fast-growing plant, which we cultivate at the same rate, or faster, than we use it.” Section 260.15(c), Example 1, 75 Fed. Reg. 63607. Example 3 on the same page makes a similar point, that an unqualified “renewable materials” claim likely would be deceptive, unless the marketer can substantiate that the product is “recyclable, made with recycled content, or biodegradable,” because consumers likely will perceive products with a “renewable materials” claim as having these environmental benefits.

AWC does not agree with the FTC proposal. We believe it will perpetuate confusion to continue to conflate the concepts of “renewable” with “recyclable,” “made with recycled content” and “biodegradable.” We would further object if Example 1 means the FTC is requiring that a marketer is required to somehow match the rate of harvest of the renewable material used to manufacture a product with the particular product that is being sold. This would place a significant burden on manufacturers, and in the case of wood products is not necessary. The forest products industry plants on average 1.7 million trees daily, and millions of additional seedlings regenerate naturally. Thus, it is clear that forest products are made from renewable materials.

4. Quantity of Renewable Materials

Similar to recycled content claims, FTC research indicates that unqualified renewable materials claims are interpreted by consumers to mean “all” of the materials in the product or package are renewable. The Commission, therefore, proposes that marketers qualify renewable materials claims by providing the amount of the renewable material in the product or package, “unless the entire product or package, excluding minor, incremental components” is made from renewable materials. See Section 260.15(c), Example 2. 75 Fed. Reg. 63607. AWC supports the recycled content guidance for renewable materials claims

5. Consistency of the USDA BioPreferred Program with Green Guides

AWC is concerned that the Commission did not address how the USDA BioPreferred “bio-based” label is consistent with the Green Guides. AWC has commented to the USDA, expressing concern that the BioPreferred program as well as their upcoming bio-based labeling program must be consistent with the FTC Green Guides. AWC suggests that the Commission might use the BioPreferred label program as an example of a single attribute program that requires additional qualification and substantiation.

G. Carbon Offsets

1. General Approach

The Guides include an extensive discussion of carbon offsets, and analyzes many of the issues regarding the use of offsets. While the Commission is proposing to provide guidance on certain aspects of offsets, it generally is refraining from providing extensive guidance on offsets, recognizing “the extent of the Commission’s authority, the available consumer perception evidence, and the ongoing policy debates among experts in the field concerning the appropriate test to substantiate offset claims.” 75 Fed Reg 63596. AWC supports this overall approach. For example, as the Commission noted, it does not have authority to create definitions or standards for environmental terms, so it is not proposing to define an “offset,” nor should it establish guidance on allowable offset projects or uniform methodologies, because it would place the Commission in the role of creating environmental policy.

Similarly the concept of “additionality” is a particularly controversial component of offsets policy. While “regulatory” additionality is generally viewed as less controversial, we recommend that the FTC even refrain from offering guidance on regulatory additionality at this time, to avoid the role of creating environmental policy.

While in most mainstream offset protocols the carbon actually has to be stored (e.g. forests) or avoided emission taken place in order to register and sell it and offset credit. Often 3rd party verification is required. However, in some instances the credit may be sold as a way to fund the activity that will store the carbon or avoid an emission in the future. For example, a consumer would buy the offset and the seller would use the proceeds to plant a tree that will eventually provide the offset function. AWC agrees that in these cases it is important for marketers to make the distinction between purchases of offsets that have occurred in the past or will occur in the future, even if it is just in the description of the program itself.

AWC agrees it is not necessary to disclose the type of the offset credit. While some marketers may find it beneficial to disclose the source of the offset credit when known, others may purchase an offset credit from an exchange where its specific origin may be unknown.

2. Substantiating Carbon Offset Claims—Use of RECs

Consistent with its general approach to offsets, the Commission is not providing any specific guidance on the use of RECs as a mechanism for substantiating carbon offsets. Again, AWC supports this approach as the use of RECs to substantiate carbon offsets is an issue that is extremely complicated and one for which policy is continuing to develop. Commission guidance in this area would have the effect of putting the FTC in a policy setting role, one it correctly is careful to avoid.

III. Conclusion

AWC appreciates the opportunity to provide our comments on the proposed revision to the Green Guides. We hope you will find them to be useful and we look forward to working with you to develop useful final guidance to marketers and the public.

Sincerely yours,

Robert Glowinski
President

cc: Laura Koss, FTC