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ELECTRONICALLY FILEDFederal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580Re: Proposed, Revised Green Guides
16 CFR Part 260
Project No. P954501

These comments are submitted on behalf of the American Lumber Standard Committee ("ALSC") in response to the Federal Trade Commission's Proposed Guides for the Use of Environmental Marketing Claims (the "Green Guides"), 75 Fed. Reg. 63551 (October 15, 2010). ALSC supports the Commission's initiatives to clarify environmental claims for consumers and businesses. We wish to bring to your attention, however, some of the unintended consequences that could be involved with the scope of some of the proposals regarding certifications and seals of approval.

A. The American Lumber Standard Committee

To appreciate the nature of our concerns it is important that the Commission have some background information on ALSC and how it operates. ALSC is a unique organization which oversees the grading of softwood lumber in the United States and Canada and other programs for treated wood and wood packaging material ("WPM") used in international trade. It is a non-profit organization incorporated in the State of Maryland and recognized by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code because it "fulfills the responsibilities of government." Committee members comprised of manufacturers, distributors, users, and consumers of lumber, are appointed by the United States Secretary of Commerce. Its operations are prescribed in the American Softwood Lumber Standard (Voluntary Product Standard 20) maintained under the auspices of the National Institute of Science and Technology.

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ALSC's initial role was the administration of an accreditation program for the grademarking of lumber – an integral part of the commercial process by which lumber is brought to market. It is the basis for the sale and purchase of virtually all softwood lumber traded in North America. The ALS system also provides the basis for acceptance of lumber and design values for lumber by the building codes throughout the United States.

The system is based on the oversight of lumber production by grading agencies. Some of these organizations are industry trade groups, others are for-profit corporations. Agencies enter into contracts with sawmills that permit them to affix stamps which identify the grading agency, the grade of lumber being produced and certain other information. Fees are paid for these services. The mills are subject to periodic inspection by the agencies. Production is subject to being held or recalled if not appropriately graded and marked. On a second level, the ALSC oversees the agencies' performance. It's independent Board of Review accredits the agencies and randomly inspects sawmills and customer facilities to check that appropriate grading is being done. The Board of Review has on three occasions de-accredited agencies which have not passed muster.

No ALSC mark appears on the lumber, but the logos of the agencies do.

ALSC supervises another program that is directly relevant to the Green Guides discussion – the Food and Agriculture Organization (FAO) International Plant Protection Convention (IPPC) *Guidelines for Regulating Wood Packaging Material in International Trade*.¹ The United States is a signatory to this international accord which requires wood packaging materials used in international trade to be heat or chemically treated to kill pests which might otherwise be transmitted internationally. A FAO-owned logo depicting a stylized wheat chaff figure and the initials "IPPC" is used on stamps along with the agency's logo and other identifying information to signify such treatment.

¹ A third program for chemically treated wood is organized and administered much like the other two programs. A full description of ALSC, its background and programs can be found at the website, www.alsc.org.

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The United States Department of Agriculture's Animal Plant Health Inspection Service-Plant Protection and Quarantine Office which is charged with our government's compliance has delegated this oversight function to ALSC through a formal Memorandum of Understanding. This program works very similarly to the lumber grading program. Inspection agencies, accredited by ALSC, inspect and supervise WPM facilities and ALSC's Board of Review evaluates the performance of the agencies through plant inspections and review of agency records. Stamps including the FAO IPPC mark, the agency mark and other identifying information are placed on the wood packaging material as manufactured. There is concern that this logo could be considered

B. ALSC Concerns

ALSC is concerned that the new certification and seals of approval proposals, Section 260.6, could adversely impact the agencies within the ALSC system both with respect to the use of their own logos and with respect to the use of the IPPC logo. Our comments are limited to those issues.

We appreciate that the Guides by their own terms are limited to

... claims about the environmental attributes of a product, package, or service in connection with the marketing, offer for sale, or sale of such item or service to individuals, businesses, or other entities.

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The IPPC logo does signify that the WPM has been treated to destroy pests – potentially an environmental claim in its broadest sense. Although the use of an agency logo on a piece of lumber would likely not be viewed as an environmental claim, we discern from the Federal Register notice that the FTC staff would apply the same principles of interpretation to other certifications or seals of approval by trade associations.

ALSC specifically requests that FTC clarify that disclosure of trade association membership by the marketer and the fact that a group certifying to a particular standard is a trade association are neither helpful nor appropriate in many settings. In the ALSC setting, sawmills and WPM manufacturing facilities pay fees for the oversight of the agencies. These fees are determined competitively in the open market. In most areas industry trade associations provide the service, in direct competition with for-profit agencies. There is no distinction in the rigor with which the agencies undertake their duties and the ALSC Board of Review evaluates both types of agencies with equal vigilance. There is simply no reason in this setting to require the mill to disclose that an agency is an industry trade association.

Similarly, there should be no requirement that a sawmill disclose that it is a member of such an association. The supposed "material connection" does not influence the supervisory service of the trade association agencies. Their own potential liability, and the potential liability of ALSC are strong controls against any favorable treatment even if such was contemplated.

There would be a very significant practical problem with adding disclosures to the grademark stamps. These marks are stamped on individual pieces of lumber so that builders and construction officials can readily determine the grade and species of the wood that is being used. There is no room for additions. Indeed, the regulations promulgated by ALSC prohibit any extraneous information from being included in the grademark or within six inches.

As with all advertising claims, the true test is the perception of those who will see the mark. With respect to lumber and WPM, there is no need for additional disclosures as to qualifications, material connections or independence. ALSC requests that the Examples in Section 260.6 be modified to indicate that such disclosures are not always appropriate.

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Please give me a call if you would like to discuss this in more detail.

Very truly yours,

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