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

Submitted online via: <https://ftcpublic.commentworks.com/ftc/revisedgreenguides>.

RE: Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P95450

The Polyurethane Foam Association (PFA) is a not-for-profit trade association founded in 1980 to represent manufacturers of flexible polyurethane foam (FPF), both slabstock and molded, and their chemical and equipment suppliers. The PFA's mission is to educate customers and other groups about FPF and to promote its use in manufactured and industrial products. Most of today's upholstered furniture, mattresses, and automotive seating designs use flexible polyurethane foam (FPF) as the primary cushioning material to provide comfort and support that consumers demand. The Green Guides apply to PFA members and down-stream, end-product manufacturers and retail sellers that market the environmental attributes of FPF.

The PFA appreciates the opportunity to provide the Federal Trade Commission (FTC) with the following comments on the Proposed, Revised Green Guides.

1) General Environmental Benefit Claims and Qualification by Reference (response to comment requests 1 & 2)

A. Scientific Qualifications by Reference to Website

The PFA supports the FTC's requirement that general environmental benefit claims be qualified to avoid potentially deceptive environmental marketing claims. But because the qualifications for FPF environmental marketing claims are often based on complex scientific evaluations, their qualification disclosures may not always be effectively and meaningfully conveyed by a brief statement on marketing materials. To alleviate this concern, we encourage the FTC to permit the disclosure of a website with further details of a product's environmental benefits as a means of qualification. Though reference to an explanatory website should not eliminate the need to qualify a general environmental benefit claim, it should limit the extent and depth of the qualification required at the point of sale.

B. Seals and Certifications: Qualification by Reference to Website

Reference to a website should also be permitted to qualify seals and certifications that represent complex scientific evaluations. The Endorsement Guidelines recognize that seals provided by “experts” and “expert organizations” must be treated slightly differently to accurately reflect the evaluator’s heightened sense of judgment in a particular field. Permitting seals and certifications under the Green Guides to be qualified by reference to a website that fully and accurately substantiates environmental benefit claims is consistent with, and furthers the aim of, the Endorsement Guidelines.

Consumers would benefit from website references on seals and certifications because they allow purchasers to review the detailed, scientific support for environmental marketing claims. For example, a sofa filled with FPF cushioning may be accompanied by a hang-tag that bears a certification claiming that the sofa’s filling meets physical performance and indoor emissions criteria. Rather than providing cumbersome, detailed scientific support for the certification mark on the hang-tag, a more practical reference to a webpage for additional information would empower the consumer to learn about the environmental factors that substantiate the certification.

C. Eliminate the Distinction Between Independent Certifying Organization and Industry Group Certifier

The Proposed, Revised Green Guides introduce a distinction between an “independent certifying organization [and an] industry group” without defining these groups or identifying a basis for their distinction. Creating these two classifications is not necessary: the Endorsement Guides treat all third parties endorsers, defined as any “party other than the sponsoring advertiser,” similarly.

In its current form, application of the Proposed, Revised Green Guides would provide uncertain results. For example, it is unclear how to classify a seal or certification offeror that is: a) an independent corporation established by a trade group; b) that is not controlled by the trade group but shares board members with the corporation; or c) that relies on independent testing laboratories for testing purposes. Each of these aspects alone, or in combination with one another, may affect a seal or certification offeror’s status as an “independent certifying organization [or an] industry group.”

The proposed distinction between “independent certifying organizations” and “industry groups” appears to target potential conflicts of interest between a marketer and the third party that provides a seal or certification. The Endorsement Guidelines “Material Connections” disclosure rule targets potential conflicts of interest more directly and comprehensively by requiring the disclosure of any “connection... that might materially affect the weight or credibility of the endorsement.” The Proposed, Revised Green Guides should rely on this existing, principle based regulation, and remove all references to an “independent certifying organization [or] industry group.” Retaining the proposed distinction would create unnecessary, duplicative, confused regulation over the FTC’s essential management of conflicts of interest.

Should the FTC determine that there is a factually supported need for the distinction between an “independent certifying organization [and an] industry group,” we encourage the FTC to explicitly define these terms. Within the definition of “independent certifying organization,” establishing the criteria necessary for a certifying organization to be “independent” would be necessary.

2) “Recyclable” Claims Should Consider Commercial Recycling Programs and Deserve Definitive Treatment (response to comment requests 6 & 7)

The FTC should clarify that the availability of commercial recycling services is considered, in addition to the availability of consumer recycling, when determining the availability of “established recycling program(s)” to substantiate “recyclable” claims. The Proposed, Revised Green Guides focus solely on a *consumer’s* ability to obtain recycling services and fail to consider the existence of commercial recycling programs and collection sites. This ignores a significant effort by the FPF industry to recycle their products. For example, carpet padding made of FPF that is ready for disposal may be diverted from the solid waste stream by commercial carpet collectors that collect it and sell it for re-use in the manufacturing of bonded carpet cushion. FPF in this sense is 100% recyclable, even though consumer recycling facilities for carpet padding may not be readily available.

The Proposed, Revised Green Guides take a step in the right direction by quantifying when a “substantial majority” of the country is able to recycle a particular product. We encourage the FTC to also specifically define “significant percentage,” so that environmental marketers can be certain about the regulatory burdens they must comply with. Without this clarification, an unacceptable level of uncertainty will prevail.

3) Negligible Environmental Impacts, “Free-of” and “No” Claims, and De Minimis Exceptions (response to comment requests 3, 12 and 13)

The PFA supports restrictions on environmental marketing claims that are unsubstantiated, both when a claimed environmental benefit is negligible and when a “free-of” or “no” claim is misleading. A marketer’s ability to clearly identify a “negligible environmental impact” is essential to determine if its general environmental, “free-of,” and “no” claims are in compliance with the FTC’s substantiation requirement. Case by case determinations leave uncertainty in the marketplace and make the most effective compliance efforts merely speculative.

To alleviate this uncertainty, the FTC should clearly define standards to determine if an environmental benefit is *de minimis*, or so negligible that it can’t be marketed without being deceptive. If the FTC does not provide a standard, companies should be permitted to rely on permissible levels of chemicals established by federal or state regulatory bodies as *de minimis* amounts for marketing purposes.

4) Carbon Offset Rules should be Subject to General Substantiation and Qualification Rules Only (response to comment request18)

Environmental marketing claims based on carbon offset benefits should be subject to the general substantiation and qualification rules. Under the general rules, all reasonably interpreted carbon offset marketing claims must have a substantiated environmental benefit. Beyond this, any additional standard sought to be imposed by the Proposed, Revised Green Guides, specifically regarding the timing of offset claims, is onerous and unnecessary. For example, if a particular carbon offset marketing claim implies an environmental benefit that already occurred in the past or will occur so far in the future that it is considered misleading, the substantiation rules alone will function to protect consumers.

PFA also objects to the prohibition of carbon offset marketing claims derived from an environmental benefit that is required by law because such claims are factual and can be substantiated.

5) Organic and Natural Claims Defined

The FTC should define “organic” and “natural” so that environmental marketers can accurately and certainly determine when their products can be marketed with those terms. At a minimum, it should be made clear that: “organic” refers to something that is grown and cannot be manufactured; and “natural” refers to products that occur naturally and have not undergone change in the manufacturing process or been treated chemically.

Respectfully submitted,

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