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December 10, 2010

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

RE: "Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954591"
Comments from Scientific Certification Systems, Inc., on proposed revisions to the
FTC's "Green Guides" (also known as the "Guides for the Use of Environmental
Marketing Claims")

To the Federal Trade Commission:

Thank you for the opportunity to comment on the Commission's proposed modifications and additions to the "Guides for the Use of Environmental Marketing Claims" ("Green Guides") and other issues raised in its Notice. We applaud the Commission's diligent efforts to respond to changes in the marketplace and to help marketers avoid making unfair or deceptive environmental marketing claims. We would especially like to compliment the Commission for its exemplary efforts to collect useful advice and comment, for the clarity of its presentation of comments and analysis, and for the discussion of the Commission's thinking in the Notice.

Scientific Certification Systems (SCS) is a global leader in third-party certification of environmental, sustainability and food quality market claims, and is a leading practitioner of life-cycle assessment. Over the past 26 years, we have investigated thousands of product claims related to the environment in a wide range of industry sectors, have worked with retailers to prevent false claims from being promoted on their shelves, and have been involved in the development of numerous environmental labeling standards.

Based on the perspectives gained from this experience, SCS would like to provide comments and suggestions to the Commission. We believe that these suggestions, if adopted, would further improve the Green Guides, to support companies in their efforts to make informative environmental claims about their products, and to support consumers in their efforts to choose products with reduced environmental impacts. Our comments, attached, are grouped into three sections:

- Section 1 addresses General Issues A-F (pages 15-34 of the Notice).
- Section 2 addresses claims addressed by the current Green Guides (pages 35-117 of the Notice).
- Section 3 addresses claims not addressed by the current Green Guides (pages 118-186 of the Notice).
- Section 4 addresses Specific Questions 1-18 (pages 186-192 of the Notice).

Among the comments we have provided, our greatest concerns are related to the following issues:

- The Commission's decision not to recognize ISO-14044 as a guiding framework for life-cycle assessments performed in support of environmental claims.
- The Commission's decision to allow qualified general environmental benefit claims.
- The Commission's decision to stand aside at this time on the issue of sustainability claims.
- The need for additional guidance in the renewable materials and renewable energy claims categories.

We urge the Commission to reconsider its positions on these issues, and would be happy to discuss these and other observations with you in further detail. Again, thank you for the opportunity to provide comments.

Sincerely,

Linda Brown
Executive Vice President, SCS

**Comments to the Federal Trade Commission on the
Proposed Revisions to the FTC’s Green Guides:
“Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954591”**

**Scientific Certification Systems, Inc.
December 10, 2010**

SECTION 1: GENERAL ISSUES

The FTC has raised six general issues (A-F) for which it is seeking comments.

A. Continuing Need for the Guides.

SCS agrees with the Commission that the Guides *can* benefit both consumers and businesses and that they *do* provide such benefit. And as new technologies and environmental claims emerge, there will be a continuing need for guidance to help marketers develop factual statements that accurately reflect their accomplishments without misleading consumers. We therefore concur with the FTC’s conclusion that there is a need for the Guides.

We also agree with the Commission that several revisions are needed “to ensure that the Guides reflect consumer perception and new claims in the marketplace” [page 16]. The test of consumer perception is clearly central to FTC evaluations of deceptive advertising. However, we offer the following two observations:

- It is important to factor in the degree to which consumer perception can be shaped not only by sound scientific information, but also by media reports, advertising messages or other forces that may or may not reflect reality. Particularly in the area of environmental claims, consumers are often ill-equipped to decipher factual, defensible claims from non-factual or deceptive claims. To the extent that consumers are not well-informed on a subject, consumer perception cannot be relied upon as the sole consideration for determining what is deceptive. In keeping with the statutory responsibility of the Commission, the test of consumer perception must be balanced against the test of the veracity of claims themselves, sufficiently documented, and the context within which such claims are presented.
- Consumer awareness of the environmental or human health significance of choosing certain products can be enhanced over time through labeling. Nutrition labeling provides a clear example of how consumers have been educated to recognize the potential benefits and hazards posed by various food products. In this example, consumer perception has been shaped by the labeling for a larger societal benefit. Careful environmental labeling that transparently communicates both the benefits and trade-offs associated with products – determined based on scientifically rigorous, standardized methods – can provide a similar societal benefit.

B. Industry Compliance.

In its analysis [pages 19-20], the Commission identifies three courses of action to which it is committed: (a) continued enforcement actions, (b) greater emphasis on the fact that the Green Guides apply to business-to-business transactions as well as business-to-consumer marketing, and (c) expanded outreach efforts to inform the marketplace about the Green Guides. These steps are all necessary. We also agree with comments arguing that (a) it is necessary for marketers to avoid making vague claims, especially without defining terms or providing evidence to support the claims; (b) it is necessary to make claims that take into account all impacts, rather than picking and choosing among positive and negative impacts, and to do so in a holistic manner, (c) life-cycle analysis is a useful and recognized tool for developing such a holistic perspective of environmental claims; and (d) “greenwashing” is an all-too-common marketing practice that can and should be avoided through application of the Green Guides.

In light of these comments, the three courses of action identified so far by the Commission will be *insufficient* to prevent the adverse practices noted in the comments and analysis. We would therefore suggest that the Commission expand its commentary to explicitly address its commitment to steer marketers away from vague claims, claims that are ill-defined, claims that lack sufficient documentation, and claims focused on insignificant aspects while distracting consumers from more significant impacts. Further, we recommend that the Commission adopt specific enhancements to the Green Guides to complement the actions outlined in the Commission’s analysis. Specific recommendations follow in Sections 2, 3 and 4 below.

C. Changes in Technology or Economic Conditions.

We agree with the commenters and the Commission that the Internet is a valuable tool for educating consumers about environmental claims. Manufacturers’ websites can provide detailed information in support of environmental claims that would not otherwise fit on product packages, and provide links to further information resources. As Internet shopping continues to grow, these websites will increasingly become the primary interface with consumers. Likewise, we concur with the cautions expressed by the Commission in its analysis, especially that sufficient qualifying information should appear in close proximity to the product to avoid consumer deception [page 23].

D. International Laws.

Here we will comment only on that portion of the discussion related to the international life-cycle assessment standard (ISO-14044).

Several commenters recommended that the FTC should “look to ISO for guidance on how to conduct a life cycle analysis to ensure consistency in the increasing number of claims using life cycle assessments for substantiation” [page 25]. In its analysis, the Commission has rejected this advice, citing the fact that “the goals and purposes of ISO and the Green Guides . . . are not necessary congruent” [page 25]. However, while it is true that the Guides’ purpose is to “prevent the dissemination of misleading claims, not to encourage or discourage particular environmental claims or consumer behavior based on environmental policy concerns,” it is also true that both ISO and the FTC are concerned about the “communication

of verifiable and accurate information, that is not misleading, on environmental aspects of products and services” (page 25]. Both the ISO-14000 series standards and the Green Guides require verifiable and accurate information.

We strongly urge the Commission to reconsider its position on the issue of explicitly referencing the life cycle assessment guidelines provided in ISO-14044. ISO-14044 was negotiated under a painstaking, decade-long international process, including the involvement of many US experts, to provide some uniformity and rigor to a field of analysis that is playing an increasingly critical role in evaluating the environmental impacts of products. Failure by the Commission to recognize the basic framework provided in ISO-14044 as a starting point for any and all claims derived from or related to life-cycle assessment will open Pandora's Box, allowing marketers to redefine life-cycle assessment to fit their own needs, thus diluting one of the most important tools available to manufacturers to evaluate the environmental impacts of their products and demonstrate environmental benefit. By not taking action now to recognize this basic framework, the FTC will leave consumers in the untenable position of having to decipher whether life-cycle assessments supporting environmental claims were indeed conducted with sufficient rigor to be credible.

It is our belief that the FTC should recognize ISO 14044 as the basic framework upon which any environmental claims citing life-cycle assessment should be made. In addition, the FTC should recommend that marketers refer to this standard as they develop substantiation for general green claims or claims of environmental preferability, in order to educate marketers about the range of life-cycle phases and issues that should be taken into consideration. By taking these steps, the FTC can go a long way toward achieving its goal of preventing the deceptive practices frequently referenced in the Notice, including vague claims, improper use of terminology, lack of valid support for claims, failure of marketers to take into account all impacts and failure to do so in a holistic manner, and greenwashing. In addition, this action toward harmonization with international standards will reinforce marketers in the use of a methodology that is already widely recognized and utilized in the United States and among our trading partners.

E. Overlap with Other Federal, State, or Local Laws

We agree with the analysis of the Commission and offer no other comments.

F. Life Cycle Analysis

As the Commission notes on page 32 of the Notice, the FTC's substantiation standard for environmental claims requires that marketers have “competent and reliable scientific evidence, defined as tests, analyses, research studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.” When it comes to supporting claims of environmental preferability and identifying negative environmental trade-offs, life cycle assessment (LCA) conducted in accordance with ISO-14044 requirements is the most comprehensive recognized form of analysis available for fulfilling this objective. (Note: To provide further consistency in analyses, efforts are now underway to establish a national standard providing common impact categories and specific calculation metrics.)

The Commission points out that its consumer perception research found that “relatively few respondents viewing broad environmental claims (approximately 15 percent) considered each of the life-cycle stages,” then concludes that “therefore, the results of the study do not provide a basis for advising marketers to conduct an LCA to substantiate environmental claims.” We do not agree with this interpretation of results. The fact that most consumers currently do not consider each of the life-cycle stages is a direct reflection of the state of consumer education about the life cycle environmental impacts associated with products. While this type of systems thinking is still relatively new to consumers, its importance should not be diminished. As in the case of nutrition labeling, environmental labeling based on life-cycle assessment provides a clear opportunity to educate consumers about the range and scale of potential impacts associated with products, and the life cycle stages at which such impacts occur.

The FTC faces a difficult challenge in balancing two goals. One, expressed in the requirement in Section 260.5 of the Guides on “substantiation standard for environmental claims,” requires that marketers have “competent and reliable scientific evidence, defined as tests, analyses, research studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.” The other goal is monitoring and anticipating consumer perception in order to provide guidance that can help prevent misleading claims. The Commission keenly observed that “only 16% of respondents viewing ‘green’ claims and 14 percent of respondents viewing ‘eco-friendly’ claims thought about each of the life cycle stages” (page 33). We believe that this observation makes clear the need for the Commission use this revision of the Green Guides to ensure that marketers adhere to the substantiation standard by establishing ISO-14044 as the minimum level of assessment required for any LCA conducted—and as the baseline for substantiation. If the Commission takes this step, it will also be establishing a common baseline for consumer education efforts by responsible marketers, the EPA, and all others who share the Commission’s goals of providing the marketplace with accurate information to inform consumer purchasing decisions and help educate consumers, without encouraging or discouraging particular environmental claims or consumer behavior based on environmental policy concerns.

Thus, while we agree that it would be premature for the Commission to recommend one specific LCA methodology over another, we strongly believe that ISO-14044 should be identified as the minimum level of assessment required for any LCA conducted, and that results should be made available to the public for each impact category, regardless of whether the results are positive or negative, to ensure full transparency. Please bear in mind that there is no other standardized assessment method by which to conduct the systemic evaluations of products needed to confirm that products offer true environmental benefits without negative environmental trade-offs.

Some comments were provided related to the cost of performing life cycle assessment. Over the past twenty years, the costs of assessment have dropped significantly, in the light of the increasing availability of inventory and environmental characterization data, the use of

iterative analysis techniques to streamline data collection and analysis, efforts to standardize calculation methods, and the increasing number of practitioners. Today's costs of analysis fall well within the budgets of most companies.]

SECTION 2: CLAIMS ADDRESSED BY THE CURRENT GREEN GUIDES

SCS concurs with much of what FTC has recommended in this section. In the interest of brevity, however, we have largely confined our comments here to issues that we would request the Commission reconsider in terms of specific changes to the Guides or the accompanying final notice.

A. General Environmental Benefit Claims.

SCS has serious concerns about the FTC's proposal to allow qualified general environmental benefit claims. Such claims can easily contribute (and frequently do) to the problem of greenwashing, not only leaving the often false impression that products offering the qualified benefit do not have any negative environmental trade-offs, but cluttering the market with claims that can mean different things on different products. This is why such claims were prohibited under ISO-14021.

The Commission's own consumer perception research would appear to support the case that specific claims are more informative and less deceptive than general environmental benefit claims, even when qualified. According to the reported research, "When the general environmental claims were qualified... 31 percent of consumers indicated that the claim implied specific environmental benefits in addition to the attribute stated," while only 23 percent of consumers made that mistake when presented with a specific attribute claim [pages 42-3]. In addition, consumers are more likely to realize that products may have negative environmental attributes if they are presented with specific claims rather than qualified general environmental benefit claims (10% compared to 16-17%) [page 45].

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As a long-time practitioner of life-cycle assessment who has evaluated a wide range of products and services such as green building products, white goods, and disposable consumer products, we have found that there are often adverse environmental trade-offs that are not readily apparent. For example, the impacts associated with transporting recycled paper stock over great distances can override many of the benefits of the recycling itself. Manufacturers are often unaware of these trade-offs, so efforts to qualify their claims would be compromised. In short, the only way to determine whether such trade-offs exist is to consider the entire life cycle.

The Commission has stated its interest in harmonizing where possible with other standards, but has declined to harmonize on this issue with ISO-14021, which already prohibits this use of general environmental benefit claims. By reinforcing rather than rejecting this international guidance, which represents the consensus position of more than 80 countries that participated in the ISO process, the FTC is accepting a less stringent position on this issue – an unusual step, given the United States' interest in protecting consumer from false and deceptive advertising.

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Since the Commission has declined to require the level of diligence required to support general environmental benefit claims, we would urge the Commission to prohibit the use of such claims, qualified or not, unless a full life cycle assessment has been conducted and substantiation that there are no environmental trade-offs can be provided. At a bare minimum, we agree with comments provided by GreenBlue, and hope that the Green Guides will "discourage general environmental benefit claims, even when accompanied by a specific attribute qualifier, unless a company is willing to include a full explanation of environmental trade-offs" [pages 40-41].

B. Certifications and Seals of Approval.

SCS is strongly supportive of the FTC's proposed actions to address concerns raised by many commenters. As a longtime advocate for environmental literacy, we applaud the FTC's recognition of the need for properly qualified certifications and seals, and to ensure that consumers can clearly determine when such a certification or seal has been issued by an independent third party.

The only item in this entire section with which we take issue is the final paragraph in the analysis [page 66], in which the Commission states that its revised Guides "do not provide that certifiers make their standard or any other criteria used to support their certification public." To the extent that the FTC allows such standards to remain non-transparent, too much power is vested in the certification body, and consumers will not have a clear basis upon which to invest their trust. Moreover, the opportunity for consumer education associated with transparency will be lost. Such lack of transparency is also inconsistent with international accreditation guidelines for certifiers, such as ISO-14065. We hope that the Commission will revisit this subject, and seriously consider providing specific guidance requiring such transparency.

C. Degradable Claims.

SCS is wary of biodegradable claims on solid products and packaging, and we have not offered such certifications to date. SCS applauds the Commission's history of actions taken to prevent misleading claims in this area and concurs with the guidance provided under Section 260.8, especially (b) and (d).

At the same time, we would recommend an even more cautious approach than that currently proposed. For instance, we are concerned about the potential human health or environmental problems that could result from biodegradable plastics, either occurring during or after the one-year degradation period proposed under the Guides. To avoid confusion among marketers applying this claim, SCS would recommend at a minimum that no exceptions be made in the requirement that all such claims be carefully qualified and substantiated. Furthermore, SCS would ask the Commission to reconsider whether biodegradable claims on solid materials should be discouraged altogether.

For liquids, SCS would support inclusion within the Guides of a technical specification of the decomposition time period within the Guides. SCS utilizes the OECD definition for "readily biodegradable,"¹ applied to each product ingredient or the product as a whole, whereby each substance must reach either a 60% BOD or theoretical CO₂ evolution, or 70% decrease in DOC, depending on test method, in any 10-day period within a maximum 28-day test period. SCS accepts testing protocols outlined in OECD methods 301A-F, ASTM 1720 E, and OECD method 310.² Before issuing certification, SCS also reviews scientific literature, chemical manufacturer's data, and independent laboratory test results to confirm that the product (and its degradation products) has low toxicity to aquatic life, and that it does not contribute to eutrophication (stimulation of algae growth). We would urge the FTC to require additional substantiation as to whether the product and its ingredients have low toxicity to aquatic life, do not accumulate in the environment over a certain volume threshold, and do not contribute to eutrophication, as these characteristics are also implicit in the claim of biodegradability and are likely to be assumed by the consumer.

D. Compostable Claims.

The only comment we wish to offer is our concern that consumers may confuse the term "compostable" with "degradable." We have certainly run into confusion about these two terms in our work with consumers and clients. The FTC may wish to conduct further consumer research into this subject, and propose clarifying qualifications if needed.

E. Recyclable Claims.

The claim, "recyclable," has always been a bit of a conundrum. On the one hand, it is useful to consumers to know whether a product or package can be locally recycled. On the other hand, the fact of recyclability in and of itself cannot automatically be interpreted as an

¹ By contrast, "ultimate biodegradability" is equivalent to ready biodegradability, except that the biodegradation to water, CO₂ and minerals does not have to happen within the 10 day window specified for ready biodegradability, but still must adhere to the same limits of biodegradability within a 28-day testing window. In effect, biodegradation occurs, but not as rapidly as for ready biodegradability.

² BOD stands for biological oxygen demand, while DOC stands for dissolved organic carbon.

environmental benefit for two reasons. First, the consumer may not actually recycle the product. Second, from a life cycle standpoint, selection of a material that can be recycled may result in an environmental trade-off (e.g., heavier products requiring more transportation fuel).

One point not addressed here in the Notice, but raised later in the Recycled Content section, is the confusion among some consumers between the terms “recycled,” an accomplished fact, and “recyclable,” a potential fact.³ In this important respect, the term “recyclable” is unlike any other environmental claim in use. A cursory reading of the two words, especially when printed at small sizes, adds to the confusion.

In the Commission's consumer perception research: “The responses to a closed-ended question indicated that 52 percent of respondents believe that an unqualified ‘made with recycled materials’ claim suggests that the advertised product was recyclable” [page 102]. The Commission has concluded that this claim probably is not deceptive, since products making such a claim are likely to be 100 percent recycled and recyclable, even though use of the phrase “made with recycled materials” is equally true if 10% or 100% of the materials are recycled. (As an analogy, in cooking, “made with salt” simply means that some salt was used in cooking.) Additionally, the Commission has stated that it remains unclear whether consumers believe that a qualified recycled materials claim suggests that the product is also recyclable, and has declined to propose guidelines on this subject.

Although SCS does not have any consumer perception research on this subject, it has worked with thousands of individuals and businesses over the years in the certification of recycled content claims, and has repeatedly encountered confusion, even among the marketers themselves, regarding the proper definitions and uses of these two terms in press announcements, advertising and other channels. We would welcome and encourage the FTC to conduct further research into this issue when it undertakes future consumer perception surveys, including the use of alternative phrases, such as “please recycle.”

For all of these reasons cited above, SCS has declined to certify “recyclable” as a stand-alone environmental label. While it is useful to identify recyclable materials, in our opinion, the fact that recyclable materials are used does not rise to the level of environmental benefit that should be featured or called out with a certification seal.

F. Recycled Content Claims.

In our view, the definitions provided in the Green Guides for pre-consumer and post-consumer recycled material are accurate but incomplete. Pre-consumer material is currently described as material that has been “recovered or otherwise diverted from the solid waste stream ... during the manufacturing process,” while post-consumer material is described as material that has been “recovered or otherwise diverted from the solid waste stream ... after consumer use” [page 95].

For greater clarity, we would recommend that § 260.12 be revised to expand these definitions and that further examples of the types of materials included in each category be provided.

For instance, we would suggest that pre-consumer material be defined to include any material recovered during the manufacturing process or diverted from the solid waste stream while in the manufacturer's possession or in the chain of distribution up to (but not including) the point at which the end consumer takes possession. The end consumer could be a household or a commercial, industrial or institutional facility. Examples of pre-consumer material would include, for instance: production wastes that require substantial reprocessing before being returned as feedstock to the original manufacturing process; overstock; returns from the distribution chain up to but not including end-use consumers; and expired product. Post-consumer material should be defined to include any material discarded by households or by commercial, industrial, and institutional facilities in their role as end-users of the product.

SCS supports the two factors against which the Commission evaluates specific pre-consumer materials to determine whether they meet the test of having been recovered or otherwise diverted from the solid waste stream—namely, the degree to which significant reprocessing of materials is required, and whether or not the material is normally reused in the original manufacturing process. However, the level of reprocessing that would be considered sufficiently “significant” to meet the first test remains ambiguous. Further guidance on this subject, or the provision of further examples by material type, could be useful to marketers and certifiers alike. For example, SCS considers the collection, grinding, extrusion, and pelletizing of thermoplastic waste to be significant enough reprocessing for this material to be considered in a recycled content claim. In the case of metals, SCS considers metal turnings, stampings, shavings (e.g., brass, bronze) that are collected and sent to a third party to be smelted and recast (and potentially mixed with virgin metals to obtain proper alloy composition) sufficiently reprocessed to be considered recycled in a recycled content claim.

Provided that the two tests — sufficient reprocessing required, and the material is not normally used as feedstock in the original process —are sufficient to satisfy the Commission's requirement that “an advertiser must substantiate that the pre-consumer material would otherwise have entered the solid waste stream,” SCS is in agreement. A historical perspective is also useful (e.g., Was a material traditionally handled as a waste, and if so, how long ago? What other uses can the material be put to?). This historical consideration applies to such materials as waste fines from aggregate production as well as wood fiber from primary milling.

Comments pertaining to the potential confusion between “recycled” and “recyclable” are provided in section II.E above.

On the subject of using annual weighted averages, we support the FTC's approach and conduct assessments accordingly, assuming that there is: (1) a single product formulation (or that the formulation with the least amount of recycled material will be used); and (2) mixed distribution if a product is made at more than one manufacturing location. One of the realities for some companies is that the availability of recycled feedstocks may vary weekly or monthly, and thus the amount of recycled content may fluctuate. The annual weighted average accounts for these fluctuations, and it can be readily verified.

G. Ozone-Safe and Ozone-Friendly Claims.

No comments provided

H. Free-of and Non-toxic Claims.

SCS has expertise in the certification of claims related to the formaldehyde content of products, particularly related to wood products. Instead of issuing a “free-of” even for products tested to contain and/or emit *de minimus* levels of formaldehyde, we instead issue a claim of “no-added” formaldehyde because there are naturally occurring aldehydes in wood fiber. We believe that this alternative language communicates more accurately and narrowly to consumers.

Furthermore, we draw the distinction between urea formaldehyde and phenol formaldehyde, issuing a claim of “no-added urea formaldehyde” for products formulated with phenol formaldehyde because it is widely recognized that PF resin emits formaldehyde at lower levels than UF.

We suggest that the FTC encourage the use of the qualifier “no-added” as opposed to “free-of” for products containing a *de minimus* amount of a naturally occurring compound as a more accurate and conservative approach. Alternatively, at a minimum, we would ask the FTC to provide an example in which this claim is described and supported.

I. Source Reduction Claims.

Source reduction claims should be considered in the context of product functionality. If source reduction efforts compromise a product's functionality (e.g., thinner bags that tear more easily, requiring double-bagging), then it is essential to consider the full range of life cycle impacts that may be increased as the product is used more frequently or more of the product is used to perform the same function.

J. Refillable Claims.

No comments provided

SECTION 3: CLAIMS NOT ADDRESSED BY THE CURRENT GREEN GUIDES

SCS concurs with much of what FTC has recommended in this section. In the interest of brevity, however, we have largely confined our comments here to issues for which we would request that the Commission consider making specific changes in the Guides and accompanying information.

A. Sustainable Claims.

The Commission's decision to avoid providing Guides at this time for sustainable claims is understandable — there are substantial differences of opinion about the meaning of “sustainability,” including whether it is appropriate for use in product labeling, and what criteria should be applied. Numerous sustainability standards initiatives, both public and private, are underway.

However, the lack of Guides in this area represents a huge loophole through which marketers can easily sidestep other environmental labeling and advertising guidelines. The decision not to provide guidance in this area essentially cedes this important claim category to marketers, without even requiring the same level of qualification or substantiation required of other general environmental benefit claims. It also creates an opening for selected stakeholders to freely define and promote sustainability claims to meet their own needs, without engaging in an open, consensus building process such as ANSI or one led by a government agency. This free-for-all could have disastrous consequences for consumer trying to decipher and sort out this claim.

Despite many different approaches to defining sustainability, one overarching understanding of sustainability has emerged over the past decade that provides a useful foundation from which the FTC could provide limited guidance at this time. Specifically, a broad consensus has emerged that sustainability standards and claims must encompass a full spectrum of environmental, social and economic considerations, taking into account the full life cycle of the product. (See, for example, sector-specific sustainability standards development initiatives under ANSI and ASTM.)

The risks associated with letting the market dictate the meaning of the term “sustainability” with no checks and balances can be illustrated in the forestry sector. Over the past decade, several forestry certification initiatives have been launched. In the United States, one leading forestry certification initiative that explicitly uses the word “sustainability” has permitted extensive clear-cutting of forests, including irreplaceable old growth forests, under its program. Such a practice has extensive negative environmental trade-offs, but consumers purchasing products based on such a certification would have no reason to be aware of them.

Another risk is exemplified by current efforts by selected stakeholder groups to develop “sustainability” criteria for a broad cross-section of manufacturers’ products through non-open, non-transparent processes. Some of these ostensibly multi-stakeholder processes are in fact “pay-as-you-play” processes, which have the effect of excluding important stakeholder voices. Moreover, although a small, self-selected group is making the final decisions, manufacturers across the consumer products spectrum will be impacted.

Given these circumstances, we recommend that the FTC should actively discourage claims of sustainability in the Guides unless marketers can: 1) confirm that they have addressed all three areas (environmental, social and economic); 2) identify a specific standard of sustainability performance developed under an open, transparent process in conjunction with the claim; and 3) provide and make publicly available supporting documentation. In addition, if marketers are only focused on the environmental component of sustainability, then the FTC should advise that the term sustainability should be accompanied by an appropriate limiting qualifier (e.g., “environmental sustainability”). Short of taking such action, the opportunities for false and misleading claims, and consumer deception, are substantial.

B. Organic and Natural Claims.

No comments provided

C. Renewable Material Claims.

In addition to those comments already reviewed by the Commission, SCS wishes to raise one important additional consideration, and recommend a further change to the Guides:

Specifically, the renewability of a material cannot simply be determined by the inherent degree to which the material may naturally regenerate within a given area and specified time period. Practical renewability is also a reflection of the degree to which a natural resource is properly managed to ensure that such regeneration can take place. This latter aspect of sustainability can be substantiated (e.g., Forest Stewardship Council certification of forest management practices), but without such certification, there is certainly no guarantee.

Consumers purchasing “renewable wood” from a forest that has been poorly managed would likely feel deceived upon learning this fact. To avoid misleading consumers, the FTC should, at a minimum, add a new requirement to its Green Guides specifying that marketers who assert a “renewable material” claim should be prepared to provide substantiation that their sources of supply of the material in question are in fact managed for renewability. The potential to be renewed is not, in and of itself, a sufficient test.

We agree with the other proposals put forward by the Commission regarding the qualification of such claims.

D. Renewable Energy Claims.

In addition to those comments already reviewed by the Commission, SCS wishes to raise further concerns related to “renewable energy.” This term has been widely used to categorize electricity generation technologies powered by resources that are replenished at a rate at least equal to the rate at which they are used to generate electricity. However, as commenters and the Commission itself have pointed out, “industry does not appear to have a uniform definition of the term, and commenters discussed different energy sources that they believe are ‘renewable’” [page 160]. Many definitions are qualitative and descriptive in nature, depending on broad designations by generic generation type, and applying different (and sometimes conflicting) environmental impact criteria and assumptions. For instance, while some definitions include hydropower in general, others only accept small hydropower (e.g., units smaller than 30 megawatt capacity), while still others exclude hydropower altogether.

Our greatest concern centers on the problem of defining broad generation types as renewable without considering site-specific circumstances. This concern can be illustrated by considering the issue of geothermal power. Typically, geothermal power sources are counted as renewable. However, research we conducted in the western United States revealed that most of the existing hydrothermal units were either depleting their thermal energy resources by overdrawing thermal reservoirs, or were subject to geological collapse. Given that the expected life for most of these wells is no more than 20 years at the current rate of exploitation, this energy resource is being depleted in much the same manner as other finite resources, such as oil and natural gas. By contrast, to be classified as a renewable energy resource, the rate of heat transfer from the thermal sources should not exceed that of the drawdown of the thermal pool for energy production.

Other power sources commonly referred to as “renewable energy,” such as biomass, have their own issues that may compromise this claim. Wood fiber derived from poorly managed forests may not be replaced within a timeframe sufficient to be considered renewable. Moreover, the claim of renewability may cause consumer confusion by masking environmentally detrimental practices associated with growing or harvesting biomass energy sources (resulting in impacts such as reduced soil carbon retention or disturbances to habitats and species), or may involve the use of non-renewable resources, such as fossil-fuel based fertilizers.

In short, the fact that an energy source does not come from fossil fuels, or falls in a particular category, is not a sufficient guide as to whether a given energy source is indeed renewable. At a minimum, SCS would therefore recommend that the FTC guidance require that marketers (or REC providers) provide documentation that the specific power sources in question do indeed satisfy the basic requirement that these resources are replenished at a rate at least equal to the rate at which they are used to generate electricity, and that this documentation be made publicly available.

E. Carbon Offset Claims.

Please note that “carbon offset” and other similar terms referencing carbon are not ideal descriptors, in that carbon dioxide and methane, which breaks down into carbon dioxide, are not the only greenhouse gases or other climate forcers (such as black carbon and tropospheric ozone). Consideration should be given to the use of alternative, more encompassing, terms. See further discussion under Section 4.17 below.

SECTION 4: REQUEST FOR COMMENTS — RESPONSES TO SPECIFIC QUESTIONS **(PG. 186-191)**

- 1. Do consumers interpret general environmental claims, when qualified by a particular attribute, to mean that the particular attribute provides the product with a net environmental benefit? Please provide any relevant consumer perception evidence. Should the Commission advise marketers that a qualified-general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area, but causes a negative impact elsewhere that makes the product less environmentally beneficial than the product otherwise would be? Why or why not?*

Assuming the Commission moves ahead as currently proposed, we agree that it is essential for the Commission to advise marketers that a qualified general environmental claim is deceptive if a particular attribute represents an environmental improvement in one area but causes negative impacts elsewhere. Likewise, the Guides should, at a minimum, advise marketers that a qualified-general environmental claim is deceptive even if accompanied by a specific attribute qualifier, unless a company is willing to include a full explanation of environmental trade-offs. The rationale for these recommendations is provided in Section 2A above.

As stated in our earlier comments above (Section 2A), however, we believe that the Commission would be far better off requiring that specific claims be made in lieu of qualified general environmental benefit claims. General claims, such as “environmentally friendly,” even when qualified, risk communicating environmental benefits beyond those expressly supported by documentation. Moreover, marketers are unlikely to be aware of the potential environmental trade-offs associated with their products. Unless companies have conducted a life-cycle assessment, it is unlikely that they will have information needed to adequately qualify and caveat such a claim.

2. *Would it be helpful to include an example in the Guides illustrating a qualified general environmental claim that is nevertheless deceptive?*

Yes, if the Commission proceeds down its current course of action, then examples of qualified general environmental benefit claims that are nevertheless deceptive would be essential. There will be ample examples to cite, e.g., qualified claims linked to recycled content that fail to take into consideration impacts associated with transportation and reprocessing; qualified claims linked to biodegradability that fail to take into consideration environmental build-up and environmental toxicity; qualified claims linked to “free-of” attributes that fail to take into consideration substitute ingredients. We would be happy to help the Commission identify suitable examples.

3. *The Commission's consumer perception study found that 27 percent of respondents interpreted the claims “green” and “eco-friendly” as suggesting that a product has no (rather than “some”) negative impact. Viewing this finding alone, would it be deceptive for a product to be advertised with an unqualified general environmental benefit claim if the product had a negligible environmental impact? Please provide any relevant consumer perception evidence.*

Although a claim of general environmental benefit could be technically be accurate if a product had only negligible environmental impacts, it would still need to be qualified in order to avoid confusing consumers who see other similar claims. The fact that a product has only negligible environmental impacts or trade-offs must be substantiated, and any ensuing claim should, at a minimum, be qualified by referencing the analysis conducted to ensure this fact. The only recognized methodology for substantiating such a claim is life-cycle assessment. Marketers should also be required to provide public access to their studies and findings in support of such a claim.

We support the proposed Green Guides, § 260.4, which states that “marketers should not make unqualified general environmental benefit claims.”

4. *If a marketer makes an unqualified degradable claim for a liquid substance (or dissolvable solid), how long do consumers believe the substance will take to completely degrade? Please provide any relevant consumer perception evidence. Should the Commission provide guidance concerning this time period in the Guides? Why or why not?*

SCS encourages the Commission to provide guidance concerning the time period for a liquid substance to degrade. Specifically, the Commission should (1) specify a decomposition time period for liquid substances marketed without qualification and (2) specify acceptable tests and testing methods for determining biodegradability. As described above in Section 2C, SCS subscribes to the OECD's definition for "readily biodegradable," and uses internationally recognized standardized testing protocols to determine whether a substance can be qualified as biodegradable:

A passing substance has to reach either a 60% BOD or theoretical CO₂ evolution, or 70% decrease in DOC, depending on test method, all of which use a 10-day window within a maximum 28-day test period for a successful determination. SCS accepts testing protocols outlined in OECD methods 301A-F, ASTM 1720 E, and OECD method 310.

5. *The Commission proposes adopting a maximum period of one year for complete decomposition of solid materials marketed as degradable without time qualification. Would this guidance lead to deceptive claims in circumstances where consumers would expect a material to degrade in less than one year?*

As observed by the FTC and several commenters, solid materials are predominantly disposed of by incineration or in landfills where little or no degradation occurs. The one-year qualifier is a start, if it can be proven under such conditions, but in addition the FTC should require that the material degrade into water, carbon dioxide and minerals, rather than into some other long-lasting intermediate (e.g., plastic fines). Otherwise, the very labeling of these solid materials as "biodegradable" would be deceptive.

Moreover, any qualification provided should include a warning that labeled products should not be disposed of directly in the environment in order to avoid encouraging littering and other improper disposal.

6. *Should the Commission quantify the "substantial majority" threshold in the recyclable section of the Guides? If so, how? If not, why not?*

As described in Section 2E above, recyclable as a stand-alone environmental claim is problematic. SCS believes that it should be relegated to an information claim only appearing on or in conjunction with the product, but not featured in advertising as an environmental accomplishment.

Rather than specify a substantial percentage or significant percentage threshold, SCS would recommend that all recyclable statements specify the percentage of the product that is recyclable, if less than 100%. If the product is made from multiple materials, then the marketer should identify the recyclable material components. Marketers should not make such claims if recycling capabilities or take-back programs for that type of product or material are not in place and locally accessible to consumers. As the FTC has noted, recycling capabilities vary regionally, so what is recyclable in one location may not be recyclable in another, and the economics of recycling may prohibit the transfer of collected materials for reprocessing and reclamation.

7. *Should the Commission quantify the “significant percentage” threshold in the recyclable section of the Guides? If so, how? If not, why not?*

See answer to Question #6 above.

8. *What changes, if any, should the Commission make to its guidance on pre-consumer recycled content claims? How do consumers interpret such claims? Please provide any relevant consumer perception evidence.*

As described in Section 2F above, SCS would recommend that § 260.12 be revised to expand the definition of pre-consumer material and to provide further examples of the types of materials included. Specifically, we have suggested that the definition of pre-consumer material not stop at the manufacturer's gate, but be defined to include any material recovered during the manufacturing process or diverted from the solid waste stream while in the manufacturer's possession or in the chain of distribution up to (but not including) the point at which the end consumer takes possession. Pre-consumer material would include, for instance: production wastes that require substantial reprocessing before being returned as feedstock to the original manufacturing process; overstock; returns from the distribution chain up to but not including end-use consumers; and expired product.

The importance of providing clear definitions extends beyond these examples. We have found in our practice that our clients, themselves professionals trying to make sound representations to their customers, labor under differing definitions at the outset of our work with them. To combat this problem, SCS recommends that the FTC include a comprehensive set of clear, concise, defensible, standardized definitions for key words, including: waste, recycled, used, reused, reclaimed, pre-consumer, and post-consumer.

- a. *If the Commission should retain its guidance that pre-consumer recycled materials be diverted from the solid waste stream: (1) should the Commission continue to consider “reuse in the original manufacturing process” and “significant reprocessing” to determine if material is diverted from the solid waste stream; (2) what factors should the Commission consider to determine whether material was diverted from the solid waste stream; and (3) when processes that divert material from the waste stream become standard practice in an industry, do consumers continue to consider that material recycled content?*

Per our comments under Section 2F above, SCS agrees with the FTC's two tests of pre-consumer material related to “reuse in the original manufacturing process” and “significant reprocessing.” Clearly, the level of reprocessing that would be considered “significant” will vary by material type.

Over time, as processes to divert materials from the waste stream become standard industry practice, it is still valid to refer to this material as recycled in order to provide ongoing encouragement to companies to continue and improve the practice. The question of what amount of time should elapse before such a material would not be

considered recycled would be exceedingly difficult to answer, requiring a product-by-product analysis. Given that industries are likely to continue to innovate over time to improve efficiencies and products alike, it seems unnecessary to establish a specific timeframe within which to reclassify a recycled material as scrap.

- b. *If materials have historically been diverted from the solid waste stream and reused for one purpose (e.g., fiber fill in toys), but now may be reused for other higher purposes (e.g., as raw fiber for textiles), do consumers still consider that material to be recycled content even though the material was already being diverted from the solid waste stream?*

Yes. In our opinion, given that a material is not normally used in the original manufacturing process and requires significant reprocessing, any use of that material should be considered recycling. Many materials have more than one recycling application, including end-use applications and applications that can be subject to further recycling. Either way, it satisfies the basic definition of preventing or diverting the material from becoming a waste.

9. *Do consumers understand the difference between pre-consumer and post-consumer recycled content? Please provide any relevant consumer perception evidence.*

SCS has not conducted the consumer research required to determine whether consumers understand this difference. Yet, from the experience we have gained during the past 20 years in responding to consumer inquiries and working with manufacturers, there does appear to be a widespread understanding that there is a difference, and that post-consumer waste refers to wastes from items that consumers have used. Because many consumers directly engage in recycling activities, they have a pretty good understanding of this concept.

What is not clear to consumers, however, is whether from an environmental impact standpoint, recycling post-consumer or pre-consumer waste streams is preferable. In our own certifications, we require a percentage breakdown in the interest of transparency and compliance with existing regulations and guidance, but not to imply that one source of recycled material is environmentally better than the other source. The answer about which is preferable can be determined only through a product-by-product analysis.

10. *Should the Commission continue to advise marketers that recycled content claims may be based on the annual weighted average of recycled content in an item? If so, why? If not, why not? Are recycled content claims based on this method likely to mislead consumers? Would qualifying the claim avoid that deception? If so, please describe what the disclosure should be, and why. Please also provide any relevant consumer perception evidence.*

Yes, the Commission should continue to allow annual weighted averages to be used within a single product line. As noted in Section 2F above, the availability of recycled feedstocks may vary weekly or monthly, and thus the amount of recycled content may fluctuate. The annual weighted average accounts for these fluctuations, and it can be readily verified.

We would support qualifications of such claims (e.g., indicating the recycled percentage is a weighted average), along with ready consumer access (e.g., a phone number or link on a company website) to more information about how the claim and relevant percentage was derived.

11. *If a product is advertised as “made with recycled materials,” either in whole or in part, should the Commission advise marketers to qualify that claim to indicate that the product is not recyclable if it is not? Why or why not? If a disclosure is needed, please describe what the disclosure should be, and why.*

No comment.

12. *Are consumers aware that manufacturers are no longer permitted to use CFCs in their products? Do no-CFCs claims imply that other products still contain CFCs?*

Although we cannot cite consumer perception research on this subject, we would contend that most consumers are not sufficiently educated on the subject of CFC phase-outs under the Montreal Protocol, or on the subject of chemical constituents in manufacturing in general, to be aware that manufacturers are no longer permitted to use CFCs.

As to the second question, we believe it is highly likely that a no-CFC claim on one product would imply that other competitive products still are manufactured with or contain CFCs (similar to the case of “no caffeine” claims for sodas that never contained caffeine). Such claims may actually undermine the government’s regulatory programs and public information campaigns by confusing consumers.

13. *What guidance, if any, should the Commission provide concerning free-of claims based on substances which have never been associated with a product category? How do consumers understand such claims? Please provide any relevant consumer perception evidence.*

No comment.

14. *What guidance, if any, should the Commission provide concerning organic claims about non-agricultural products? How do consumers interpret organic claims for nonagricultural products? Do consumers understand such claims as referring to the products’ ingredients, manufacturing, or processing, or all three? Please provide any relevant consumer perception evidence.*

No comment.

15. *How should marketers qualify “made with renewable materials” claims, if at all, to avoid deception? Does disclosing the type of material, how the material was sourced, and the reason the material is renewable adequately qualify the claim? Why or why not? Are there other disclosures that would adequately qualify a “made with renewable materials” claim? Please describe such disclosures. Please also provide any relevant consumer perception evidence.*

In Section 3C above, we point out that in order for a material to be truly renewable, it must not only have the ability to naturally regenerate or replenish itself over a reasonable timeframe, but must be managed in a way that it will do so. Wood that comes from an old growth tree is not renewable, practically speaking, if it cannot be replaced for hundreds or thousands of years. At a minimum, therefore, in addition to the qualifiers already identified by the Commission, renewable material claims should be substantiated with evidence to demonstrate responsible management of the material under a nationally or internationally recognized standard.

16. *How, and under what circumstances, should marketers qualify “made with renewable energy” claims to avoid deception?*

- a. Does disclosing the source of the renewable energy adequately qualify the claim and prevent deceptive implications that the advertised product is made with renewable or recycled materials? Why or why not? Are there other disclosures that would adequately qualify a “made with renewable energy” claim? Please describe such disclosures. Please also provide any relevant consumer perception evidence.*

Disclosure of the source of the renewable energy is not adequate to qualify the claim or prevent deceptive implications. See discussion in Section 3D above and under 16(b) below for more information and specific recommendations.

- b. Should the Commission advise marketers to qualify a “made with renewable energy” claim if the advertised product is not made entirely with renewable energy? If so, should marketers qualify such claims if all or virtually all significant processes used in making a product are powered by renewable energy? Why or why not? Please provide any relevant consumer perception evidence.*

From our perspective, marketers should be prepared to qualify any “made with renewable energy claim,” whether it is 100% claim or not. The qualifications should include, at a minimum: (1) the percentage made with renewable energy (using an “at least” claim to avoid overstating), (2) identification of the standard against which “renewable energy” claim is made and measured, and (3) access to additional information about the claim.

As discussed under Section 3F above, some categories of energy resources typically thought of as renewable — e.g., geothermal and biomass — are not necessarily so. And, any such claim should cover energy used in preparing feedstocks for manufacturing and energy used in transportation of the feedstocks and product. The Commission should therefore require that site-specific considerations be taken into account. On this latter point, SCS would therefore recommend that the Green Guides specify that marketers (or REC providers) provide documentation that the specific power sources in question do indeed satisfy the basic requirement of rapid replenishment.

- 17.** *How do consumers understand “carbon offset” and “carbon neutral” claims? Is there any evidence of consumer confusion concerning the use of these claims? Please provide any relevant consumer perception evidence.*

As mentioned above in Section 3E, “carbon offset” and “carbon neutral” claims, as well as other similar terms referencing carbon, are not ideal descriptors – or even necessarily accurate ones – in that carbon dioxide and methane, which breaks down into carbon dioxide, are not the only important greenhouse gases. Other climate forcers, such as black carbon and tropospheric ozone, exist and contribute significantly to climate change.

It is unfortunate that claims involving climate change have been so oversimplified, contributing to consumer confusion. It is important to note, too, that terms such as “carbon offset” and “carbon neutral,” which emphasize carbon to the exclusion of other climate change agents, are in some cases advocated for non-neutral reasons, particularly where financial interests are involved.

Thus, it would be very beneficial for the FTC to encourage the use of more encompassing and neutral terms to raise awareness about the variety of climate change agents (also called “climate forcers”), and help consumers avoid confusion about the effects of their purchasing decisions on climate change. While a term such as “climate change neutral” is not as well known as “carbon offset” and “carbon neutral,” it is more meaningful and accurate, and therefore more desirable. Moreover, using it would stimulate manufacturers to consider the degree to which they are adding other greenhouse gases and climate forcers to the mix.

- 18.** *How should marketers qualify carbon offset claims, if at all, to avoid deception about the timing of emission reductions? Should marketers disclose if their offsets reflect emission reductions that are not scheduled to occur in two years? Should marketers make a disclosure if emission reductions are not scheduled to occur in some other time period? If so, what time period, and why? Would such a disclosure adequately qualify an offset claim to avoid deception? Please provide any relevant consumer perception evidence about this issue or on carbon offsets, generally.*

No comment.