

General Comments

Green Seal applauds the FTC for upgrading the Guides and strengthening them considerably over their previous version. In the twelve years since the last major revisions, there has been a great increase in the use of environmental marketing claims of many different types. Many have complained about the proliferation of claims and labels in the marketplace, and the FTC plays an important role in controlling this outbreak to ensure that it is largely authentic, valid, and not misleading. The revised Guides represent a significant improvement in the breadth, strength, and specificity of the guidance and should go a long way to clean up the current marketplace of environmental claims.

If anything, we encourage the FTC to go further in certain areas to prevent misuse of environmental claims, labels, and seals. In this regard, we encourage the FTC to continue to monitor the marketplace closely and to be proactive in making revisions and additions to the Guides as needed by the practices and consumer understandings that evolve. We recognize the considerable resources required to do this, and the length of time involved just to carry out the current revisions; but perhaps FTC staff can develop a more streamlined process that will enable more frequent and quicker revisions to upgrade and update the Guides.

Green Seal also believes that with the Federal (and some State) government increasingly using voluntary programs for environmental improvement and labels that derive from these programs that can be used on products, the FTC needs to ensure that government follows the same rules as the private sector for avoiding misleading or deceptive claims in the marketplace. We appreciate that the FTC does not want to contradict another agency's program, much less take enforcement action against a private party that is acting in accordance with a government program. Nevertheless, to avoid both deception in the marketplace and a double standard in the application of the Guides, the FTC should work with other government agencies to help bring them into compliance with the Guides.

Green Seal would request that the FTC clarify that the Guides are equally applicable to government-sponsored labels that address environmental claims and that they are in no way exempt. In particular, government-sponsored labels have been lacking in clear explanatory text providing the basis for the label. For example, while the ENERGY STAR program administered by the Environmental Protection Agency and the Department of Energy has a widely recognized logo among consumers, the basis for the logo varies from category to category. If consumers interpret the ENERGY STAR logo to mean that the product is the "most efficient" product in the category when in fact the product is "10% more efficient than non-qualified models" (the requirement for room air conditioners) or "30% more efficient than non-qualified models" (the requirement for clothes washers), the unqualified logo is likely to be misleading. Current attention paid to electronic devices often includes the end-of-life impacts of the disposal of electronic waste ("e-waste") and without specific qualification regarding the basis for the

ENERGY STAR logo the consumer may infer broader environmental benefits for electronic products than energy consumption alone.

In general, government-sponsored labels for environmental attributes vary widely in their conformity to the FTC Guides and in their review and enforcement of proper use of the labels. EPA's WaterSense program is one of the better examples, since the requirements are fairly consistent across product categories (i.e., products must be 20-30% more efficient than the current federal standard) and products are independently tested before award of the logo. To date, lack of resources has often been cited as the reason for nonconformance with the FTC Guides, but Green Seal would posit that as federal agencies these government labels have a significant responsibility to ensure their programs and the companies using their logos comply.

The Commission relies on consumer perception to determine validity of claims and any qualifying statements. The Commission should provide clarity on what this entails.

Comments on Specific Clauses

260.2 Interpretation and Substantiation of Environmental Marketing Claims

Green Seal would propose that making the standards public (not the data or evaluation materials) is vital so that consumers can more fully investigate and understand the full basis for any certification being used as environmental substantiation. As noted earlier in the FR notice, labels and point-of-sale materials often lack the space to fully describe environmental attributes. A referral to the website of a certification body would not provide sufficient substantiation or explanation if the standard or criteria upon which the certification is based is not publicly available.

260.3 General Principles

There are programs that provide recognition to services, like restaurants. The recognition may be based on a very small portion, if any at all, on the food served at the restaurant. Such recognition is often used to make green claims. It seems that under clause (b) of this section that such claims would not be permitted. How does the Commission suggest such programs provide incentives for services to green; what are examples of credible claims? Green Seal operates a program that recognizes services like hotels and restaurants. Green Seal's program takes a life cycle approach that requires implementation of green practices across the business, including the leading sources of environmental impacts. Thus, a Green Seal-certified service is addressing the key environmental concerns.

260.4 General Environmental Benefit Claims

The guidance provided on general environmental benefit claims continues in the appropriate direction: they should be limited, qualified, and always capable of substantiation.

Notwithstanding the inclusion in the vernacular of such claims as "environmental friendly" (generally a contradiction in terms for any product), marketers should not be using such claims, which are inherently vague and cannot be substantiated.

The FTC has been very consistent on this point. At the time of the original Guides, Green Seal met with FTC staff to go over its own program to ensure that use of its certification mark would be in accordance with the Guides. The staff recommended that language be used in conjunction with the mark stating the particular attributes represented by the Green Seal standard that the product is certified to meet and for which it is being awarded use of the seal. Green Seal continues to require such textual explanation in conjunction with its certification mark, and (aside from occasional complaints about the space it requires on the label) this approach has worked well in the marketplace.

In its standards and certification based on them, Green Seal attempts to capture all significant life-cycle impacts of a product or service. Hence, we do believe that a product or service that meets our standards is “environmentally preferable” to most others in their category. We recognize, however, that some consumers might interpret this phrase to mean that the product or service has no environmental impact, or is preferable in every possible aspect. We therefore accept the FTC’s advice to avoid this phrase along with the more egregious one, “environmentally friendly,” but suggest that there may be options in the future to allow a comparative claim of the former type as legitimate if clearly substantiated such as by certification to a robust, life-cycle-based standard.

We endorse the application by FTC of its Endorsement Guides to third-party environmental certification. Parties engaged in third-party certification or comparable endorsements should recognize their responsibility to have complete substantiation for the use of their logo, brand, or organizational name. This applies in particular to organizations working with companies in a cause-marketing relationship.

The examples illustrate common issues, however if the Commission could be more explicit with this section. First, it would be useful to point out that absolute statements are difficult to substantiate, whereas comparative statements may provide a means to provide valid substantiation. Second, a list should be included of claims that the Commission feels cannot be substantiated for practical purposes. Such claims may include “environmentally friendly”, “environmentally safe”, and “green” (and similar variations on these).

260.5 Carbon Offsets

This section seems to address claims made by sellers of offsets, but not about claims made by purchasers of the offsets such as product manufacturers or service providers. As a result, the current section seems to allow misleading claims about offsets made by companies or on products or services that purchase offsets (e.g., they sometimes make claims about being carbon neutral due to the purchase of offsets). This is because it seems that the Commission appears to allow offset claims despite significant emissions made. We feel that claims made about carbon offsets should only be made if an organization has actively been reducing their own emissions, not counting offsets. For example, Green Seal has established the following requirement for offset claims on products that must also be accompanied with an explanation for the basis for the claim on the product label:

The product can only make claims about no net GHG emissions if it has no net GHG emissions during the production of the product and package, including at a minimum: on-site emissions, energy use emissions, and vehicle use. This can be achieved within the company, with proven partnerships, or through carbon offset programs. If an offset program is used for 100% of the emissions, an active emissions reduction program must be in place.

Further the definition of offsets should include proven additionality (would not have happened anyway) and require permanence, in addition to ensuring that it was issued once (not double counted).

If it was the Commission's intent that this section did not apply to products, services, or organizations that are purchasing offsets then this should be made clear by stating such claims are either not appropriate or that they include the above requirements in order to be credible.

260.6 Certification and Seals of Approval

We applaud the FTC for the new guidance on certification and seals of approval and agree with the guidance provided. In the proliferation of environmental certifications and seals, the most pernicious are those that are either outright false or, even worse, deceptive in their representation. The FTC has rightly identified as potentially misleading seals awarded by a company to itself (so-called "self-certification," which is a misnomer) and seals awarded by an industry trade association to a member or to a member's products.

In the latter case, so-called second-party certification, the benefit of the program from an environmental (and consumer) perspective is to some extent compromised by the inherent conflict-of-interest of the trade association, which is dedicated to promoting its industry and all of its members (and their products). Consumer suspicion of a manufacturer's own claims is only slightly abated if it is a trade association making the claim or "certification." Yet, there are a number of seal programs that have been developed by industry trade associations in the past two decades, often to neutralize or even supplant a *bona fide* third-party certification program (and standard) that the industry considers too difficult to meet. Green Seal believes that while trade associations may have the right to develop such programs, they should be identified as such on the label so that consumers understand the potential self-interest involved. Therefore, we urge the FTC to hold fast to this new guidance and to strengthen it over time.

In addition, we urge particular vigilance by the FTC of marketers using membership in bodies such as the U.S. Green Building Council as quasi-certifications of their products, which is completely misleading.

We support the clarification included in the examples outlining how material connections may provide misleading claims. We suggest further elaboration on this point. For example, the clarifying language on the material connection should be made with the logo/claim (in addition to explanatory text elsewhere on the label/ad). For a self-declaration the company's name must be with the claim with a statement that it is their own program rather than allowing a generic name to be accompanied with clarifying language elsewhere on the label (e.g., Meets Our Own

Company Z Green Promise Program). For trade associations a similar situation should be required by stating paid membership to the organization (e.g., Trade Association X Green Certified and Paying Member). Example 4 is particularly useful and we appreciate the clarification this provides.

260.7 Compostable Claims

The information provided about qualifying the conditions in which the item is compostable and whether such composting facility exist where the product is purchased is important. We suggest that this can be strengthened by adding in clause (d) that compost facilities must be available where the product is sold AND USED.

260.11 Use of the Term Recyclable

The information in clause (b) about qualifying recyclability can be strengthened by adding consideration for the potential for recycling not only where the product is sold, but also where it is used.

260.14 Renewable Energy Claims

This section seems to permit the purchase of renewable energy certificates (RECs) to substantiate claims about the use of renewable energy. However, we feel that since many RECs aren't feeding the energy use for the facility producing the product/package, claims including RECs without qualification on this point would be misleading. We suggest that RECs be required to actually/directly be used by the party making the claim. Green Seal has adopted the concept of "direct" use of renewable energy where "direct" refers to the use of energy sources that can be verified to be used by claimant. RECs may in some cases be counted for direct use, but may not in all cases.

260.15 Renewable Materials Claims

This section includes concepts of natural and biobased, since they are "renewable" materials. Example 2 even outlines natural/biobased claims that would be acceptable. As a result, more guidance on natural and biobased claims is needed to ensure that appropriate claims are being made. There is consumer research to suggest that general claims about natural/biobased are interpreted by consumers to mean 95% or more of the product/package is natural/biobased. As a result, Green Seal has adopted definitions and requirements for natural and biobased claims (noting that no general claims can be made below 95%, regardless of qualification). The following are key elements:

Definitions:

- **Biobased.** The content of a product that is from biological products or renewable materials, forestry, or agricultural materials (including plant, animal, and marine materials).
- **Natural Components.** Components that come from materials found in nature including mineral, forestry, agricultural, or biological materials; do not contain transgenic hybrid organisms (inserted deoxyribonucleic acid that originated in a different species); have been processed without irradiation; and are not chemically altered.
- **Naturally-Derived Components.** Components that are partially chemically altered without petroleum components and have been minimally processed such that they not be altered

to such an extent that they are substantially less biodegradable or more toxic (examples of potentially acceptable processes are included in an appendix published by Green Seal).

Requirements:

Only the following natural and biobased, or related, claims are allowed when the product meets the criteria outlined:

- “100 percent Natural,” “All Natural,” “100 percent Biobased,” or “All Biobased” shall only contain natural or biobased components, respectively, with no synthetic, petroleum, silicone, or artificial components.
- “Natural” or “Biobased” products shall contain 95% natural, naturally-derived, or biobased components, respectively, with no synthetic, petroleum, silicone, or artificial components.
- Claims on specific product ingredients being “natural” or “biobased” may be permitted if it is a natural or biobased component.

The USDA BioPreferred program is essentially a single-attribute program focusing on material origin via an ASTM test method, but as noted in the FR notice, consumers may perceive “biobased” and “renewable” as equivalent to “green.” In fact, the USDA home page for the program states the following (emphasis added)¹,

“The BioPreferredSM program aims to increase the purchase and use of renewable, *environmentally friendly biobased products* while providing “green” jobs and new markets for farmers, manufacturers, and vendors.”

By making claims of environmental preferability, or being interpreted as such by consumers, the USDA BioPreferred program has crossed over into general environmental benefit claims without the substantiation of other positive life cycle impacts to human health and the environment beyond the origin of some percentage of the raw materials or packaging. In some cases, the agricultural nature of the “biobased” materials may in fact carry higher environmental impacts than conventional materials. One recent example is the attention given to palm oil by environmental organizations due to the widespread use and primary sourcing from tropical countries outside the United States². Controversy over the use of corn for ethanol versus corn as food (and the government incentives, mandates and subsidies involved) is another example of the issues surrounding the assumption that all biobased materials provide a positive environmental benefit. Of note is that the USDA BioPreferred program is developing a “USDA certified biobased label”³ to be used on products, which without the necessary qualification and substantiation, has the potential to be misinterpreted as a certification with general environmental benefits by consumers.

¹ <http://www.biopreferred.gov> accessed on November 30, 2010.

² <http://ran.org/content/problem-palm-oil-factsheet> accessed on November 30, 2010.

³ <http://www.biopreferred.gov/Labeling.aspx> accessed on November 30, 2010.

Responses to FTC Questions

The original FTC text for the questions has been italicized below with Green Seal's comments in Roman.

2. Would it be helpful to include an example in the Guides illustrating a qualified general environmental claim that is nevertheless deceptive? For example, a marketer advertises its product as "Eco-friendly sheets - made from bamboo." Consumers would likely interpret this claim to mean that the sheets are made from a natural fiber, using a process that is similar to that used for other natural fibers. The sheets, however, are actually a man-made fiber, rayon. Although bamboo can be used to make rayon, rayon is manufactured through a process that uses toxic chemicals and releases hazardous air pollutants. In this instance, the advertisement is deceptive.

Yes the additional example would provide additional clarity.

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.

Yes, all products should have qualification language.

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

This language should be more specific to provide a more universal interpretation/application. For our certification program, this general language has been thought to mean over 50% of communities and thus for plastic this means only #1 and #2 is considered "recyclable."

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

Efforts should be made to be consistent with global guidance on this (ISO) as well as already available federal guidance (EPA).

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.

The USDA NOP has provided guidance on organic claims that for practical purposes can be applied to most product types (even though not enforceable by USDA) with the additional requirement of: the balance of the product that is not from certified organic sources shall be natural. This demands a definition for "natural." Given the widespread consumer awareness of

the USDA NOP program it would be misleading to provide organic-related claims that are not consistent with this program.

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.

Renewable materials are very similar to bio-based claims. See comments made in 260.15.

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

See comments in 260.14.

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.

See comments in 260.5.