



December 10, 2010

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

Re: Proposed Rule: Guides for the Use of Environmental Marketing Claims, 75 Fed. Reg. 63552 (October 15, 2010)

Dear Sir or Madam:

The Food Marketing Institute (FMI) appreciates the opportunity to share our views on the Federal Trade Commission's proposed rule modifying its guides for the use of environmental marketing claims ("the green guides").¹

FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 15,000 in-store pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

FMI was an early supporter of the green guides² and we believe that they continue to meet the needs of both industry and consumers. It is also clear, however, that the consumer-driven evolution of environmental and sustainability concerns as a marketing tool has moved beyond the guidance offered by the FTC during the last round of revisions to the green guides in 1998. We are, therefore, extremely pleased that the Commission has proposed new and additional guidance and the open and collaborative manner in which these changes were developed.

¹ 75 Fed. Reg. 63552 (October 15, 2010).

² In 1991, FMI was one of 11 trade associations that led an effort to petition the Commission to draft and adopt a set of clear and consistent guidelines for environmental marketing claims. See "Petition for Industry Guides for Environmental Claims Under Section 5 of the Federal Trade Commission Act," February 14, 1991.

The proposed revisions to the green guides address a number of issues raised by FMI during the early stages of the review process.³ In particular, we are pleased to see that the Commission took up the issues of carbon footprints and carbon offsets and supplemented previous guidance on the use of certifications and source reduction claims. However, FMI would urge the Commission to revisit several issues raised in the rulemaking to provide greater clarity and consistency for marketers making environmental claims and consumers.

Certifications and Seals of Approval

FMI's 2008 letter on potential revisions to the guides called on the FTC to provide, "additional examples to illustrate when qualifications are necessary," for the use of certifications and seals of approval.⁴ The Commission responded to this, and did expand the discussion of the use of these increasingly popular devices (Sec. 260.6), significantly clarifying their use by expanding the number of illustrative examples. However, we believe that at least two additional areas could use additional discussion:

1. *Multi-factor Seals of Approval*: Many seals and certifying programs incorporate a number of diverse environmental factors in their decision-making process. Fully explaining the certification process on the limited space allowed within a label or advertisement could prove challenging, while also providing the consumer with more information than they can reasonably use. We would urge the Commission to allow these multi-factor seals and logos to be used with a brief, general description, with additional information (provided the claim is not otherwise misleading) available via website.
2. *Greater Use of Websites to Provide Information* – With the prevalence of hand-held devices such as Blackberrys and iPhones, information is becoming more easily and readily accessible to consumers. We would urge the Commission to reflect this reality in its guidance by offering a more detailed description of when the use of "please see [www.---.com](#)" would be appropriate, recognizing that any claims on the package or advertisements cannot otherwise be misleading.

Degradable

The revised green guides set out a one-year timetable as the "reasonably short period of time" standard for the use of the term "degradable". This choice of timeframe is somewhat arbitrary, and there are in fact a number of safe, fully degradable materials that can easily exceed a year in the break-down process. The timeframe should contemplate the duration of commercial composting processes. We would encourage the Commission to examine and allow a broader range of time in the use of the term "degradable" in order to reflect this reality.

³ See Food Marketing Institute, Grocery Manufacturers Association, American Bakers Association, International Bottled Water Association, International Dairy Foods Association and Soap and Detergent Association, "Comments on Guides for the Use of Environmental Claims," February 11, 2008 (on file with the FTC).

⁴ *Ibid.*, p. 4.

Carbon Offsets

FMI appreciates that the Commission has offered fresh guidance on the use of the expanding field of carbon offsets. These offsets are used more and more broadly, but there has been a great deal of confusion in exactly how claims about them need to be structured. The requirement that the proposed carbon reductions occur within two years, or that a claimant document any timetable exceeding this standard is an appropriate measure that will greatly help consumers understand the role of carbon offsets in commerce.

However, we would urge the Commission to provide an additional example in Sec. 260.5 clarifying that purchasers of carbon offsets, who then use these purchases as part of a marketing claim, do not need to independently verify the scientific data behind the claim and may instead use the information provided by the seller as documentation. Carbon offsets are an exceedingly complex undertaking, and very few purchasers will have the resources necessary to independently document and verify carbon reductions. Indeed, requiring an extensive level of independent verification could actually hurt what is emerging as a dynamic and significant field of environmental science. By allowing purchasers to use the data provided by an offset seller (allowing for the appropriate due diligence on the part of the purchasing entity to guarantee they are buying from a legitimate source), it will help this sector to continue to flourish.

Source Reduction Claims

The current green guide states, “[t]o avoid being misleading, source reduction claims must qualify the amount of the source reduction and give the basis for any comparison that is made.”⁵ FMI’s February 2008 joint comments called on the FTC to offer additional guidance to illustrate exactly how a company can substantiate these types of claims. The Commission, however, opted to maintain the current guidance, without any significant revisions. We would urge you to revisit the issue and provided additional examples of the type and form of information that can be used to substantiate source reduction claims.

Life Cycle Analysis

Life Cycle Assessment (LCA) is an increasingly important tool used by companies to examine and better understand the full environmental impact of a product over its entire life, including the role of the raw materials used in the manufacture. Because of the prevalence of LCAs, the Commission has done an extensive amount of research on the topic, only to be stymied in its effort to provide guidance. In the discussion opening the revised green guides, the Commission explains, “...due to the complexity and variability of these claims, general advice is unlikely to be useful in any particular case. Therefore, the Commission will continue to analyze these claims on a case-by-case basis.”

⁵ See “Introduction to the Guides”.

We respectfully disagree with this approach. As we explained in our February 2008 comments, “[we] would like the Commission to add a discussion in the Guides that recognizes the increased use of claims based on LCAs. The discussion might address the fact that there are a variety of organizations that have adopted standards, and companies are adopting their own criteria, all seeking measure LCA accurately and reliably and to provide transparency and boundaries to the measurement.”⁶ The Commission took the first steps in this direction, but ultimately failed to provide an appropriate level of guidance. Admittedly, the issue of LCAs is complex and resistant to easy answers. But that is all the more reason for the FTC to offer insight and clarification on the appropriate claims that may be made surrounding LCAs. We would urge the Commission to reopen this issue and continue to work toward providing concrete examples.

The Food Marketing Institute appreciates the opportunity to share our views and hopes that these comments will help in the final revisions of the green guides. If you have any questions or require additional clarification, please feel free to contact me at elieberman@fmi.org.

Sincerely,

Erik R. Lieberman
Regulatory Counsel

⁶ Op.cit., pp. 9.