

**American Reusable Textile Association
810 Rotherham Drive
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December 7, 2010

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

Re: Proposed, Revised Green Guides, 16 CFR Part 260, Project No. P954501

The American Reusable Textile Association, (ARTA), long a proponent of methods which improve the environment, supports the principle of the green marketing guides, as proposed by the FTC, with their publication of October 5, 2010.

ARTA offers a number of comments concerning this matter.

Support of the View of a Third Party Trade Organization

We believe that substantiation of Green claims should follow the principles outlined by the Glass Packaging Institute, (page 32, FTC Federal Register notice, October 5, 2010).

This viewpoint included the statement, reflecting ARTA's position that "the guides expressly state that LCA's, (Life Cycle Assessments), must meet the FTC's substantiation standard for environmental claims, which requires that marketers have competent and reliable scientific evidence, defined as tests, analysis, 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."

Comments Regarding Life Cycle Assessment (LCA)

We understand that the Commission has concluded that they have no basis for choosing one LCA methodology over another, (p. 34). This, we believe, is the proper course of action, as a number of LCA methods have been observed by ARTA, and its member organizations, all of which have yielded accurate and useful performance results.

We agree with the position, (p.34), that "marketers may rely on the results of an LCA as all, or part of, their substantiation, as long as they ensure that the LCA results constitute competent and reliable scientific evidence to support their claims".

As previously stated, the Commission has no basis for choosing one LCA methodology over another. We agree with this position and the following perspective, "Accordingly, the Commission will continue to apply its substantiation analysis to claims relying on an LCA to determine whether the assessment: (1) has been conducted and evaluated in an objective manner by qualified persons and is generally accepted in the profession to yield accurate and reliable results and (2) the LCA is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketers claims are true."

Additional Protocols for Gaining Approval of Green Marketing Claims

As discussed in the preceding section LCA procedures represent a sound method by which manufacturers, and users of products, can make claims of Green performance. It should be understood that in some situations other methods can be used and are also acceptable for this regulatory program.

Well designed plant/processing trials, supervised by industry recognized professional individuals can also represent an acceptable procedure when the results of these trials may demonstrate, with reliable scientific evidence, that such factors as reduced waste, or decreased water consumption, among other environmental advantages have been achieved and substantiated.

There may also be testing and evaluation procedures, carried out by recognized universities and/or independent research organizations, which disclose Green performance of products or processes. Here also, professional industry experts, using scientifically recognized methods, would be involved in the planning, implementing and reporting of specific projects. In general, while LCA methods, as previously mentioned, represent a highly regarded protocol, it should be recognized that there are additional scientific approaches which can also verify performance claims.

The Need for a Simplified, Straight Forward Submission and Approval Process

It is important, particularly to small and medium sized businesses and organizations, that the eventual application and approval procedure for Green Marketing claims, not be unrealistically complex and time consuming.

A clear, uncomplicated format, for the filing of claims, is urged. The basis for this procedure should include the claim(s), the basis for same, such as LCA results and

identification of the professional individuals responsible for the LCA, or other study and its findings.

To the extent that an LCA, or other scientific evaluation, concerning Green performance, can generally include many pages of test and performance details, it would appear to be preferable that the entire report not be filed with the application for approval, but a comprehensive summary of results be used. Of course, it is understandable, that for various reasons, the FTC may wish to review the entire report of a specific study. In such situations, petitioners will then forward full disclosure of the entire report.

A request is also made that the FTC responds promptly to submitted requests for Green Marketing claim approval.

A Comparison to the Food and Drug Administration, Medical Device Regulation

In recommending sound and straight forward principles for introducing new regulatory procedures, we believe it may be useful to consider federal regulations which have been particularly burdensome to the business sector. One such government regulation is the FDA's Medical Device legislation which is applicable to surgical gowns, drapes and wraps.

While the FTC with their recent Notice, to which we are responding herein, has not indicated that proposed Green Guidelines will require filing procedures similar to the FDA Medical Device rule in question, we nevertheless urge that this procedure indeed, not represent a template for the current FTC program.

The FDA process in question requires the filing of a premarket notification, (PMN), which includes the compilation and submission of some 9, 10, or more, sections, totaling some 50+ pages of narrative and data. The preparation of this document can require about three to six months for completion. Once submitted, an additional six months to one year, or more, is frequently required before the procedure is entirely completed. Prior to receiving final FDA notification in the matter, business organizations, attempting to comply with the regulation, cannot legally market their respective products, in question.

Medical Device User Fees represent yet an additional burden and expense for filing a PMN with the FDA. The user fees, when initiated, made an already burdensome government program, even more costly, and more difficult, particularly to small and medium sized business organizations.

While there may be specific reasons for the FDA to require this procedure, it is respectfully urged that the Federal Trade Commission not institute a similar format to gain approval of Green Marketing claims.

The Challenge of the Current Recession

Any new government regulation should consider its possible impact on factors related to the present long standing recession.

A recent report in the **Atlantic** (1) emphasizes that this recession is considerably worse than previous economic turndowns.

The **Atlantic** viewpoint states, "After nearly two brutal years, the Great Recession appears to be over, at least technically. Yet a return to normalcy seems far off. By some measures, each recession, since the 1980s, has retreated more slowly than the one before it. In one sense, we never fully recovered from the last one in 2001: The share of the civilian population with a job never returned to its previous peak before this downturn began, and increases (in jobs) were stagnant throughout the decade."

The article in the **Atlantic** concludes with the following view concerning the current recession:

"We are living through a slow motion social catastrophe, one that could stain our culture and weaken our Nation for many many years to come. We have a civic – and indeed a moral- responsibility to do everything in our power to stop it now, before it gets even worse." (2)

An additional perspective has been voiced by Robert Reich, a former Secretary of Labor. Writing in the **New York Times** (3) Reich identifies a number of key points relating to the ongoing recession:

"Most, (America's labor force), are unemployed, underemployed, or under water."

"The national economy isn't escaping the gravitational pull of the 'Great Recession'. None of the standard booster rockets are working; Near zero short term interest rates from the Fed, almost record-low borrowing costs in the bond market, a giant stimulus package and the credits for small business that hire the long-term unemployed have all failed to do enough"

"That's because the real problem has to do with the structure of the economy, not the business cycle. No booster rocket can work unless consumers are able, at some point, to keep the economy moving on their own. But consumers no longer have the purchasing power."

Reich explains further that the problem began decades ago when American employers first initiated efforts to use low wage labor abroad rather than continuing to pay a typical American worker, a middle class wage.

Reich goes on to offer many suggestions for creating jobs in the U.S., which will not be discussed within this narrative. However, even if these suggestions were to be

implemented, (along with other positive steps), it would probably be several years, at least, until new jobs begin to offer meaningful results in ending the current recession.

The Impact of New Government Regulations In View of the Current Recession

All of the preceding demonstrates a current economic crisis which is extremely challenging to American business. The opinions expressed also predict little reason to believe that a significant recovery will occur during the next several years.

It is important that any action taken by either the private, or public, sectors not present major actions which may cause current firms, employing U.S. workers, to join the flood of companies having already shipped millions of jobs outside of the United States.

Bearing the previous point in mind, ARTA urges the FTC to carefully consider how the proposed green guidelines can avoid causing major burdens, including high expenses, particularly to small and medium sized businesses, the major source of job creation within our society. Some might suggest that any new regulation be postponed until the current recession has ended. This is not our recommendation. However, it is urged that, at the time the new regulation may be introduced, it does not create major problems for small and medium sized firms, in particular, to implement.

Summary of ARTA's Perspective Concerning FTC, Green Marketing Claims

The concept of verifying Green Marketing Claims as proposed by the Federal Trade Commission is supported by ARTA. The effort reinforces ARTA's long standing commitment to promote a sustainable environment.

We have identified a number of points, with which we agree, concerning Life Cycle Assessment (LCA) procedures, as outlined in the FTC notice in this matter. Without reiterating all of these factors, it is concluded, that the procedures should be based on good science and overseen by reliable experts, capable of verifying the respective studies. We also agree that there is no basis for the FTC to outline any specific LCA protocol.

It is urged that the filing protocol of claims, for approval by the FTC, avoid extensive procedures, relying primarily on the claim, the protocol used and how the conclusions may be verified by competent industry experts. In addition, it is urged that a summary of the procedure be included in the filing, rather than volumes of extensive data.

While LCA studies represent an excellent format to verify green claims, the regulation should recognize that there are other procedures which can also represent acceptable results, provided that all filings are verifiable by reliable experts in each respective field.

As outlined in this commentary, we believe it is important to recognize the severity of the current recession and as referenced, it must also be understood that there are certain critical factors within our Nation's economy which predict that the current business downturn is not likely to end in the near term.

Based on the preceding issue we believe that as new government regulations are introduced, the public and private sectors work together to avoid any severe restraints, caused by the regulation, which may cause current business organizations to decline, or be compelled to reduce jobs, or to eventually be forced out of business.

In general, ARTA supports, the FTC in its effort to initiate realistic Green Guidelines and we will be pleased to answer any questions concerning our response herein.

Respectfully submitted,

Howard M. Zips
Legislative Director

References

1. Peck, Don, "How a New Jobless Era Will Transform America", **The Atlantic**, March, 2010,, p. 42.
2. Peck, Don, p. 56.
3. Reich, Robert B., "How to End the Great Recession", **New York Times**, September 3, 2010, p. A19.