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August 14, 2006

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

RE: Nursery Guides Regulatory Review, Matter No. P994248

Dear Sir or Madam:

The American Nursery & Landscape Association (ANLA) appreciates this opportunity to comment on the Federal Trade Commission's Guides for the Nursery Industry. ANLA is the national trade organization representing the U.S. nursery and landscape industry. ANLA, formed in 1875, represents nursery and greenhouse crop growers, landscape design and installation professionals, independent garden retailers, horticultural distributors, and industry suppliers. These entities collectively comprise what is commonly referred to as the "green industry". Nationally, the green industry generates annual economic output estimated at over \$147 billion. The Guides for the Nursery Industry cover many of the activities in which our members and our industry are engaged.

In the Federal Register notice, the FTC seeks comment on a range of questions regarding the Guides. We briefly answer each, below.

(1) Is there a continuing need for the Nursery Guides as currently promulgated?

ANLA generally believes that the Guides serve a useful purpose and should continue to be maintained.

(2) Has the nursery industry adopted the Nursery Guides as part of its routine business practice? If so, how, and what effect, if any, does this have on the continuing need for the Guides?

We believe that the provisions in the Guides have been generally adopted and become part of routine business practice, at least among legitimate and respectable industry firms. However, the industry is characterized by large numbers of smaller entities, and the line is somewhat blurred between sustainable legitimate businesses, and hobbyists who are merely plant enthusiasts supplementing their income on the side. And, as in any industry, there may be a few unscrupulous operators. The Guides provide a framework for addressing the bad actors.

(3) What benefits have the Nursery Guides provided to purchasers of the products affected by the Guides?

See above. We have no way of quantifying the benefits, but believe that the Guides provide a useful framework. What is the intent of the FTC relative to investigating complaints associated with such industry guides? If there is intent and capacity to enforce, in other words a “compliance stick” that can be used against bad actors, then we believe that the Guides will continue to offer consumers a benefit.

(4) Have the Guides imposed costs on purchasers? If so, explain.

We do not have any information relative to this, but our sense is that the Guides have imposed minimal costs. Every industry operation is engaged in advertising, labeling, and similar activities. The Guides merely convey the performance standards that should be met while conducting these activities.

(5) How have the 1994 amendments to Guide 6 affected the nursery industry? How have the 1994 amendments to Guide 6 affected purchasers?

The intent of the 1994 amendments, which ANLA negotiated and supported, was to address a point in the Guides that was causing confusion and potentially obscuring harmful practices. For years, the Guides precluded wild-collected plant material from being labeled as ‘nursery grown’ unless it had been established in the nursery for at least a growing season. This was intended to protect consumers, since wild-collected material often suffers high mortality. However, if it is established in the nursery, the surviving plants regain vigor, so the consumer is more assured of purchasing viable plants.

Unfortunately, as time passed, this provision became a loophole whereby potentially rare, threatened or endangered plants could be wild-collected, yet labeled “nursery grown”. Educated conservationists and consumers interested in the preservation of these wild populations may wish to acquire only truly nursery propagated and grown plants. The change in the Guides closes this loophole. Beyond that, we have no empirical data on impacts.

(6) What changes, if any, should be made to the Nursery Guides to increase their benefits to purchasers? How would these changes affect the costs the Guides impose on businesses? How would these changes benefit purchasers?

At present, we do not have any proposals or requests for proposals under consideration for changing the Guides.

(7) What burdens or costs, including costs of compliance, have the Guides imposed on businesses subject to their requirements? What burdens or costs have the Guides imposed on small businesses in particular? Have the Guides provided benefits to businesses? If so, what benefits?

As stated previously, virtually all businesses engaged in commerce in plant material are engaged in advertising and labeling. This is about meeting basic standards. We do not believe the Guides have imposed or need to impose any significant burdens on industry businesses.

(8) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on businesses? How would these changes affect the benefits provided by the Guides?

We are not currently considering any such proposals for change.

(9) Do the Guides overlap or conflict with other federal, state, or local laws or regulations? Do the Guides overlap or conflict with any international laws or regulations?

We do not see fundamental conflict. There is likely some overlap with state nursery and commerce-related regulations, though those regulations would not apply to interstate commerce per se. The industry did recently go through an extensive process working with the National Institute for Standards and Technology to develop guidelines for marketing container plants. This process was necessitated by the widespread use of marketing terminology (10-inch pot, 1 gallon pot) that was viewed as not conforming with weights and measures consumer labeling requirements. An industry guide was developed in consultation with NIST to address these concerns. It may provide useful supplemental information and if the Guides are retained and reissued, it could be referenced as appropriate.

(10) Have consumer perceptions or preferences changed since these Guides were issued, and, if so, do these changes warrant revising the Guides?

The gardening consumer is steadily becoming more educated, and more discerning of quality. However, as mentioned earlier, there are always a few bad actors who may intentionally attempt to deceive the public. We believe this reality supports retaining the Guides, and revising them as appropriate.

(11) Since the Guides were issued, what effects, if any, have changes in relevant technology, economic conditions, or environmental conditions had on the Guides?

We do not have any specific observations on this question at this time.

In summary, ANLA believes that the FTC Guides for the Nursery Industry serve a useful purpose and should be retained. If the FTC receives any specific suggestions for revision, we would gratefully accept the opportunity to provide stakeholder input.

Most sincerely,

Craig J. Regelbrugge
Senior Director of Government Relations