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

Dear Sir or Madam:

Re: Green Guides Regulatory Review, 16 CFR part 260, Comment, Project No. P954501

Weyerhaeuser submits these comments in response to the Federal Trade Commission's ("FTC" or "Commission") request for public comment on its Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides"). Our comments are submitted in both written form and electronic form on <https://secure.commentworks.com/ftc-GreenGuidesReview>.

Weyerhaeuser is an integrated forest products company headquartered in Federal Way, Washington. Weyerhaeuser is one of the world's largest producers of softwood and hardwood lumber, engineered wood products, cellulose fibers, and containerboard packaging. We are also one of the world's largest paper recyclers. Weyerhaeuser is a member of the American Forest & Paper Association (AF&PA) and endorses AF&PA's comments dated January 25, 2008, in response to the January 8, 2008, public hearing.

Weyerhaeuser appreciates the Commission's review of the Green Guides and supports increasing their clarity and scope. The Green Guides help marketers avoid making environmental claims that are unfair or deceptive and risk liability under Section 5 of the FTC Act, 15 U.S.C. 45.2. Although they are not independently enforceable, having definitive guidance has proved valuable to Weyerhaeuser as we plan our marketing initiatives, train our employees and consultants, and otherwise work to meet our goal of fairly and accurately conveying the environmental attributes of our products to customers and consumers. We thus believe the Guides provide benefits to consumers and there is a continuing need for them.

Weyerhaeuser's products have a common origin in wood and wood fiber, a resource with many beneficial environmental qualities. We are pleased to see the marketplace value environmental attributes, but also recognize the potential risks to consumer welfare of false or misleading environmental claims. Consumers may be harmed, for example, if they are misled into paying higher prices for products that provide no environmental benefit over competing, lower-priced products. They also may feel disappointed if they find after purchase that a product lacks an environmental attribute they believed it embodied. The latter is especially of concern in the case of building products which, once purchased and installed, can be difficult to change, and which may be a visible design feature of a home and source of pride for a homeowner.

The FTC has asked whether modifications should be made to the Green Guides to increase their benefits to consumers, reduce their costs to business (especially small business), and increase compliance. We comment below on the issues raised by the Commission. We also recommend the FTC expand the topic of marketing environmental attributes separate from products and add subjects related to green building, including the topics of raw materials sourcing and the role of voluntary standard-setting organizations.

Renewable energy / climate change / carbon offset claims

Weyerhaeuser supports the comments of AF&PA on this subject. Specifically, the FTC has properly noted its role, which is to address deceptive and unfair practices under the FTC Act. The role of the agency is not to establish environmental performance standards. It was clear from the January 8, 2008, workshop that the market mechanisms of carbon offsets and renewable energy credits ("RECs") are still developing. Regulatory agencies at the state and federal levels differ in their definitions and requirements, as do emerging trading markets such as the Chicago Climate Exchange.

The subject of "additionality" is a good example. Experience in countries implementing the Kyoto Protocol has proven this to be a difficult concept to implement, with a risk of unintended consequences, both economic and environmental. Different U.S. and international agencies and institutions treat additionality differently, and the expert testimony at the FTC's hearing demonstrated the complexity of the subject. The substantive issues around additionality should and will be resolved in other forums.

This does not mean there is no role for the FTC, however. As the definitions of and standards for carbon credits and RECs emerge, the FTC can help shape common terms and acceptable messages, including appropriate disclaimers, used in the marketplace to avoid misleading consumers. Guidance on substantiation would be especially helpful.

In his testimony at the January 8, 2008, hearing, Alan Levy of the Food and Drug Administration described the importance of a common vocabulary:

Another important cue is when marketing uses the same terms in a similar system of presentation or format to convey information. It signals a consensus or maybe a supervising entity involved that can rein in the promotional excesses of individual [producers]. The consistent style or format in a nutrition task panel is one of its greatest strengths. The importance of there appearing to be an underlying consensus or supervising entity behind marketing claims explains why the demand for the FTC Green Guides arose as much from industry as it did from consumer advocates. Consumers are greatly reassured by the appearance of consensus in the marketplace. . . . The reverse is also true. . . . Consumers are likely to discount all marketing if there are inconsistent and confusing claims being made in the market placements. . . . In a world where marketing claims are likely to be subjected to critics from expert competitors and consumer advocates it's hard to see how effective marketing can be done without giving the impression that it is based on common assumptions and common definitions.

Marketing environmental attributes separate and apart from the product

The Commission noted that carbon offset and REC marketing activities raise novel consumer protection issues, in part because consumers cannot evaluate whether they are “getting what they paid for” when they buy an environmental attribute “attached to” a product, yet possibly physically unrelated to the product. A good example is renewable energy: many marketers are advertising products or services as “produced with” wind power. Yet the wind power may be generated and used far distant from the product or service purchased. Are consumers sophisticated enough to understand the product they purchased was actually made with non-renewable power, and their money created the economic incentive to generate wind power somewhere else, used for some other product? Some marketers appear to doubt it, because some advertisements include disclaimers, noting that they actually used power from the grid.

We encourage the Commission to explore this subject in depth, not only related to energy credits, but more broadly to include all emerging markets in environmental attributes separable from the products themselves. Forest certification is one area in which these issues are prominent and is discussed below. But there are other ways in which producers generate “offset-like” credits that could be attractive in the marketplace. Organizations generate income today from wetland mitigation banks, endangered species enhancement projects, and watershed management as well as carbon sequestration projects. It is not difficult to imagine future products being marketed as “protecting” endangered species or wetlands based on the purchase of separate attributes.

Forest certification

The FTC can look to forest certification as an existing laboratory for these types of claims. This requires a brief history. The Forest Stewardship Council (FSC) developed the first modern¹ forest certification system in the mid-1990s, primarily to give U.K. and European markets a responsible alternative to tropical wood. Then and now, many tropical forests suffer from deforestation and other unsustainable or illegal practices. To drive out irresponsible products, the new FSC standards were intended to be ubiquitous. FSC’s “principles and criteria” generally reflected industrial best practices; regional standards were negotiated rapidly with the industry starting in Sweden and the U.K.; and individual auditing firms developed their own standards and certified individual parcels, especially plantations in Southern Hemisphere countries, under the broad umbrella standards.

The FSC standards foundered, however, in the U.S., where regional working groups generally developed much more restrictive standards than those in place for competing producers in other countries. The result is anomalous: wood products bearing an FSC label can come from a wide variety of FSC standards. Some come from a high, “eco-forestry” standard equivalent, in the eyes of some consumers, to an organic food label. Others come from more moderate standards too restrictive for lands managed by private investors, but manageable by government where the costs are distributed among taxpayers. (80% of FSC-certified lands in North America are government-owned.) The balance – perhaps the majority – comes from FSC standards reflecting industrial best practices. This last category favors imported products over those produced under the more restrictive U.S. regional standards: 60% of the acres certified in North America are under the Canadian boreal standard, for example. FSC’s most rapid growth today is in Russia.

¹ The American Tree Farm System, founded in 1941, was the original forest certification program.

Also in the mid-1990s, members of AF&PA developed an industry code of conduct, which evolved to become the Sustainable Forestry Initiative[®] (SFI). It was not intended originally to be a certification standard, but with growing customer interest in certification and the problems FSC demonstrated in adapting to the U.S., AF&PA members agreed to add independent verification, then later to turn the standard over to an independent board. The SFI standard is now entirely independent, overseen by a board with balanced representation from environmental, business, and social interests. There is one consistent SFI standard in effect across North America.²

The competition between certification standards is healthy for consumers, and if all wood bearing an FSC or SFI label actually came from a certified forest, it would probably not be a major topic for the FTC to consider in its current rulemaking. However, marketing goods with forest certification labels is evolving to be more similar to marketing RECs and carbon offset credits than normal, labeled goods, with important implications for consumers.

The reasons for this go back, again, to FSC's origins. Because FSC's goal was to clearly differentiate good wood from bad, it developed the concept of "chain of custody." Originally this meant, first, that all – or a very high percentage – of a wood product from a mill using the FSC label actually came from an FSC-certified forest, and, second, that the product could be traced from the mill downstream to a retailer's shelves, to avoid fraud later in the supply chain.

This was an appealing concept in the marketplace and may have been workable in some developing countries, where governments allocate "concessions" to single companies, who own both the right to harvest a large forest area and the mill producing products from it. These companies could, in theory, certify the forest and produce all its products from one or a few certified sources.

In practice, however, this did not prove workable. FSC gradually shifted to its current approach of allowing producers to label any similar products coming from one or a set of mills, as long as the volume of product bearing the label is proportionate to the volume of wood from FSC-certified forests going into the mills sometime during the previous 12 months. This means a consumer can buy an FSC-labeled product with zero content from an FSC-certified forest³.

The same is true for SFI-labeled products. Commercial forest land in the U.S. is distributed among millions of private owners, 60% of whom own parcels averaging 100 acres or less. Forest products companies buy and sell wood to and from one another's mills, and compete against each other to buy wood from other industrial and family forest owners. AF&PA members recognized from the outset that the original concept of 100% certified content was not workable. SFI opted instead to require a certified mill owner to monitor and improve practices among all its suppliers, certifying those the mill owner controlled, and encouraging best practices and the use of trained loggers among the others. The SFI label thus reflected a set of claims about a product's supply chain, rather than certified content alone. SFI has since added a chain of custody label, with essentially the same meaning as the FSC label.⁴

² The Canadian Standards Association (CSA) also has a sustainable forestry standard, which is in wide use in Canada. It is important for the FTC eventually to understand CSA and the Program for Evaluation of Forest Certification (PEFC), but FSC and SFI are sufficient to illustrate the issues presented to consumers by forest certification.

³ FSC does still have an "FSC Pure" label for products actually from certified forests, and SFI has a percentage content label that can be used the same way. These labels are much rarer, though, than the labels allowing mixed sources, and there is no indication consumers recognize any difference.

⁴ The downstream part of chain of custody – from the mill to the retailer – is of questionable value at least for those products manufactured in North America. Trademark, contract, and consumer protection laws should be sufficient to address the risk of fraud or false labeling among a wood product's manufacturer, distributor, and retailer, as they are for all other products.

Pooling and “credence claims”

As with RECs, certified forest products can be confusing to consumers, yet provide real environmental benefits. The use of all the major forest certification systems needs to be encouraged, as today only 10% of the world’s forests are certified and only customer demand will drive certification further to the other 90%.

The Commission noted that REC markets help renewable energy generators by:

[S]ignificantly expanding the number of potential renewable energy purchasers, possibly avoiding transmission costs associated with traditional contracts, and helping to ameliorate supply and demand problems associated with the intermittent operation of some renewable energy facilities (*e.g.*, solar power facilities).

Similarly, the ability to “pool” certified wood volume from one or several sources and attribute the environmental attribute of good forest management to another product significantly expands the number of potential buyers, avoids transportation costs, and helps ameliorate supply and demand problems.

Nevertheless, unless we use, as Dr. Levy noted, “the same terms in a similar system of presentation or format to convey information,” both certified forest products and RECs are potentially misleading to consumers. With today’s level of knowledge, they may not be getting what they expect in the products themselves, nor understand that through their purchases they are driving improved forest practices or energy conservation elsewhere. Dr. Levy put it plainly that these are “pretty strange product claims.” He said they are related to “credence claims,” where the consumer has little ability to verify the claims based on their own experience, and they have to rely on trust.

As the Commission works on RECs and carbon credits, we believe you should also consider forest certification and other emerging markets for products marketed with “credence claims.” You will be setting important precedents on substantiation, definitions, terminology, and disclaimers and can help increase consumer confidence by working with the certification systems and their stakeholders in the process.

Sustainability

The Commission asked whether the Guides should be revised to include guidance regarding “sustainable” claims. Weyerhaeuser understands the challenges of sustainability claims. There are arguments for treating sustainability as a broad claim, and therefore deceptive unless backed up with specific, substantiated claims. There is an argument to ban such claims altogether. For example, ISO 14021, clause 5.5 states:

[T]he concepts involved in sustainability are highly complex and still under study. At this time there are no definite methods for measuring sustainability or confirming its accomplishments. Therefore, no claim of achieving sustainability shall be made.

(Emphasis added.) It is our experience, however, that “sustainability” has become commonplace and the equivalent of puffing – consumers are familiar with the term but don’t find it especially meaningful. Weyerhaeuser does not believe the FTC needs to harmonize the Green Guides with ISO 14021, clause 5.5. The FTC should follow its own legislative mandates. If the FTC wants to

address ISO 14021 clause 5.5, it should note that it relates to claims and labels, not names or background materials. It also prohibits claims of actually "achieving" sustainability, not general references to sustainability goals, processes, or aspirations.

Renewable claims

The Commission asked whether the Guides should be revised to include guidance regarding "renewable" claims. Weyerhaeuser's experience is that consumers understand forests to be a renewable resource. They also understand renewability is only one environmental attribute, and they do not interpret a claim of renewability to mean there are no other environmental issues. The FTC should avoid trying to expend renewability beyond a simple biological claim to address other issues.

Recycled content claims

The Commission noted the Guides suggest that recycled content be calculated on the annual weighted average of a product. Weyerhaeuser would not be opposed to including alternative methods of calculating recycled content, including average recycled content within a product line or an average amount of recycled content used by a manufacturer across many or all of its product lines. These could have the advantages of pooling, as discussed above. In either case, they should be developed with clear, standard methods of calculation and common terminology for consumers. We would be happy to discuss this in more detail.

Weyerhaeuser would like the Commission to amend the Guides to address an issue around recycled content. We have observed claims by competitors that they manufacture paper bags with "100% recycled content." They are interpreting recycled content to include chips produced by sawmills as a byproduct of lumber production. We do not believe this is a common interpretation of recycled content, and do not make the same claims. We would like clarification from the Commission one way or another, so that consumers are not presented with different claims for the same products. We can provide more detailed information as needed.

As a final matter Weyerhaeuser would like to see the FTC add to the Guides a section on to whom the Guides apply. Specifically we are seeing a rapid increase in voluntary standard-setting organizations, with many in the energy and carbon sequestration field as well as organizations such as the U.S. Green Building Council and the National Association of Homebuilders defining "green building" standards. We understand the law to be that private standard-setting organizations are subject to the same evidentiary and substantiation requirements for their label claims as private advertisers. With so much new entry into this field, however, it is not clear that the standard-setting organizations understand the Green Guides or the FTC Act.

Thank you for the opportunity to comment.

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