



*Via regulations.gov*

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex J)  
Washington, DC 20580

April 24, 2023

**Re: Guides for the Use of Environmental Marketing Claims; Regulatory review; request for public comment, Matter No. P954501, Docket No. FTC-2022-0077**

Dear Sir or Madam,

Thank you for the opportunity to comment on the Federal Trade Commission's ("the FTC's") request for public comment on its Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides"). As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services — to amplify the collective work of the industry. More information about our organization is available at [www.FMI.org](http://www.FMI.org).

FMI supports the FTC's updates of the Green Guides and appreciates the opportunity to provide feedback on selected questions raised by the FTC. Our members support the continued use of the Guides to provide guidance on environmental marketing claims. We request additional clarity on a number of claims, including recycled content, renewable and compostable claims. It would also be helpful for the revised Green Guides to address refillable claims, organic claims for non-food items, and carbon reduction and clean energy claims. Although we believe "sustainable" is too broad a term to establish a single definition within the Guides, we do request additional guidance on this and related claims, such as those pertaining to "sustainably sourced" ingredients in foods. We note that "recyclable" claims are a priority for our members, and we continue to support the current 60% "substantial majority" standard as the appropriate measure for this claim. In terms of modifications, we support the recognition of mass balance accounting as a way of substantiating claims regarding recycled content. We also support the recognition of chemical or advanced recycling as a "recycling" process that produces "recycled content" for the purposes of the Guides. Finally, we note that a number of states, including California, have enacted laws regulating environmental claims that diverge from the FTC's standards and state laws in this area



threaten to create a complicated patchwork of differing and at times conflicting rules. We therefore reiterate our support for the Guides and stress the need for national alignment on these issues through the FTC.

## **A. General Issues**

**Question 1:** Is there a continuing need for the Guides? Why or why not?

FMI supports the FTC's work to revise and update the Green Guides. We believe there is a continuing need for a set of specific principles and recommendations for marketers and companies making environmental claims, to provide guidance on how such claims should be substantiated and qualified where necessary to avoid consumer deception. As we will discuss further below, we believe the Guides provide a useful framework of principles that provide the context-specific flexibility necessary for these types of claims.

**Question 3:** What modifications, if any, should be made to the Guides to increase their benefits to consumers?

We believe additional clarity is needed on the following issues:

- **Recycled Content Claims:** We welcome additional guidance from the FTC on recycled content claims, including claims related to ranges of recycled content, and claims about recycled content for packaging containing a mix of virgin, post-industrial, and postconsumer recycled materials. We ask the FTC to provide clearer definitions as to what is considered post-consumer waste. We are also interested in guidance as to whether and how chemically recycled plastics (either by depolymerization (e.g., PET), pyrolysis, or other thermos-catalytic process) may be counted as recycled content. As discussed further below, we recommend that the FTC recognize and provide guidance on the mass balance as a chain of custody approach to calculate and allocate recycled content, including from chemical recycling technologies. Finally, special attention should also be given to the many state laws regulating recycled content.
- **Renewable Claims:** Our members are interested in understanding the FTC's posture on "renewable" claims. Although this term is too broad to formally define in the Guides using a single definition, it would be helpful for the FTC to provide general parameters and examples of appropriate uses for the term.

**Question 15:** What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides? With reference to such claims, should the Guides be modified? If so, why, and how? If not, why not?

We ask the FTC to address the following claims in its updated Green Guides:

- **Refillable Claims:** We believe there is an opportunity for the Guides to better reflect new business models that have developed around refillable products, including by

differentiating between “reusable” and “returnable” products. We also ask the FTC to include within any definition of reuse systems, an operation that allows for the sale of products without any packaging (e.g., stainless steel tanks (SST) and fountain beverage operations).

- **Organic Claims:** It would be helpful for the FTC to provide clarity on “organic” claims used for non-food items, such as personal care products, as the Organic Foods Production Act applies only to agricultural products intended for human or livestock consumption. Organic claims have the potential for consumer deception, so additional guidance on when a non-food product qualifies as “organic” would be helpful. We note that foods labeled as “organic” are already subject to the Organic Foods Production Act and the USDA’s comprehensive regulatory scheme and therefore need not be addressed in the Green Guides.
- **Carbon Reduction and Clean Energy Claims:** There is a need for the Guides to provide clarity on the meaning of claims such as “carbon neutral,” “carbon positive,” “climate positive,” and “clean energy.” The Guides primarily address the purchasing and use of carbon offsets rather than business practices that affect emission reductions. Our members welcome additional guidance on how to substantiate these carbon-related claims as well as examples of appropriate uses.
- **Sustainability Claims:** While we do not believe it is feasible for the FTC to create a single definition of the term “sustainable”, as we discuss in greater detail below, we believe general guidance from the FTC on this claim would be beneficial to ensure that sustainability claims are non-misleading. It also would be helpful for the FTC to provide guidance on more specific claims related to the sourcing of specific foods or ingredients such as seafood, palm oil, cocoa, etc.

**Question 17:** Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, how?

FMI has identified some existing conflicts between state laws and the Green Guides, which raise concerns about conflicting or unmanageable obligations. As states enact more and differing requirements related to environmental claims, companies selling products on a national scale face compliance obligations that could vary significantly from state to state and at the federal level.

For example, California’s SB-343 defines “recyclable” in a restrictive way that differs from the current Green Guides standard.<sup>1</sup> Under California’s law, starting in approximately July 2025,<sup>2</sup> only products comprised of materials that are specifically indicated by state regulation would qualify for a recyclable claim, which could significantly limit the ability of companies to make qualified recyclable claims, such as those related to in-store or other non-curbside recycling programs. As

---

<sup>1</sup> Cal. Bus. & Prof. Code §§ 17580; 17580.5; Cal Pub. Res. Code §§ 18015; 42355.5; 42355.51.

<sup>2</sup> The new requirements go into effect on the date CalRecycle publishes its report on the recyclability of materials, or on January 1, 2024, whichever is later, and the law provides an 18-month grace period for companies to come into compliance following the publication of the first report (i.e., requiring compliance by July 1, 2025 at latest).

a result, even truthful and non-misleading qualified recyclable claims could potentially be barred, limiting the ability to provide consumers with truthful and qualified information on how to recycle the product's packaging. SB-343 also limits use of the chasing arrows symbol on product packaging, even though other states continue to mandate its use. The result is a patchwork of differing standards that create compliance concerns for companies selling on a national scale. California's law is expected to spark copycat bills in other states, furthering the need for national alignment through the FTC.

Further, states have introduced and enacted numerous other laws related to sustainable food packaging, including laws setting minimum post-consumer recycled content requirements for plastic bottles (California, Maine, New Jersey, and Washington), establishing extended producer responsibility programs related to recycling (California, Colorado, Maine, and Oregon), and codifying standards for "compostable" or "biodegradable" claims (California, Maryland, Minnesota, and Washington). These laws create a patchwork of complex and differing rules for environmental claims that threatens to undermine the concept of having guidance at the federal level on the ways to substantiate and communicate truthful and non-misleading environmental claims in marketing.

We ask the FTC to be mindful of this patchwork as it updates the Green Guides and to look for ways to facilitate harmonization. For example, the FTC should address the use of chasing arrows or triangle resin codes and under what circumstances these symbols are viewed as environmental claims, based on consumer perception.

We also ask the FTC to advocate for Congress to take initial action on recyclable labeling in a way that provides clear, express federal preemption to prevent a patchwork of differing state laws.

**Question 19:** Should the Commission initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims?

FMI believes the continued use of the Guides, as non-binding guidance, is the proper approach for regulating deceptive or unfair environmental claims. Guidance allows the FTC to remain nimble in reaching its regulatory goals while also providing the flexibility necessary to encourage innovation and increased use of sustainable practices. Guidance can be updated more easily than regulations, allowing the FTC to adjust course based on fast-moving economic changes or innovations in technology. Further, many of the concepts in the Green Guides are simply principles, rather than clear standards, so they are better suited to guidance and examples than a set of regulatory definitions. The Guides serve the dual policy goals of protecting consumers and encouraging more sustainable practices in a way that is achievable for all stakeholders.

In the alternative, in the event the FTC pursues rulemaking, we would encourage the FTC to not delay updating the Green Guides while such rulemaking is ongoing. We also would urge the FTC to advocate that Congress express a clear intent for such regulations to have preemptive effect over any differing state or local laws.

## B. Specific Claims

**Question 2:** Compostable, 16 CFR 260.7. The Guides currently advise marketers claiming products are “compostable” in municipal or institutional facilities that they should qualify such claims if appropriate facilities are not available to a substantial majority of consumers or communities where the item is sold. Should this guidance be revised to define “substantial majority” consistent with the “recyclable” section? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision(s)?

Our members support additional clarity on “compostable” and related claims. We recommend that the FTC consider potential conflicts with state regulations related to “compostable” and related terms in its revisions. For example, California imposes detailed restrictions on such claims and a number of state laws define “compostable” in alignment with ASTM International or other third party standards.

**Question 3:** Degradable, 16 CFR 260.8. The Guides provide that an unqualified claim indicating a product or package is degradable, biodegradable, oxo-degradable, oxo-biodegradable, or photodegradable should be substantiated by competent and reliable scientific evidence demonstrating the entire item will completely break down and return to nature within a reasonably short period of time after customary disposal. For products customarily disposed in a landfill, “reasonably short period of time” is defined as one year. Should the Commission revise the Guides to provide an alternative timeframe for product decomposition for all or any category of products? Does the timeframe differ for liquid products? If so, why, and what should the timeframe be? If not, why not? What evidence supports your proposed revision(s)?

The current decomposition timeframes are appropriate and consistent with the current capabilities of degradable products as there haven’t been major technological advances in decomposition since the Guides were last revised in 2012. However, we do recommend that the FTC distinguish between the formulation (e.g., ingredients and contents of the products) versus the packaging or material (such as a wipe), when providing guidance on the timeframe for decomposition. For example, the contents for “down the drain” products should comply with EPA biodegradation test methods and tend to have a shorter timeframe. For packaging, a longer timeframe is needed and thus a 1-year timeframe is reasonable. Further, consistent with guidance provided elsewhere in the Green Guides, if it is not clear based on the context, degradable claims should specify what they refer to: the contents (e.g., the ingredients) or the packaging.

**Question 5:** Recyclable, 16 CFR 260.12. Should the Commission revise the Guides to include updated guidance on “recyclable” claims? If so, why, and what guidance should be provided? If not, why not?

Claims about recyclability are a priority for our members. We believe the existing “substantial majority” standard is a helpful framework for these types of claims and should be maintained.

This standard allows companies to communicate truthful and non-misleading claims about recyclability, making qualified claims where needed in order to convey the limited nature of recycling programs in some localities. Because local recycling programs are subject to fluctuations in what they can specifically accept, or the rates at which materials are recycled, it is especially important to avoid frequent changes in messaging that could confuse consumers and prevent recyclable materials from being recycled properly. The current standard allows consumers to receive consistent, truthful, non-misleading information, including qualified claims where needed, and encourages recycling and the use of recyclable materials.

In addition, we seek clarification on design guidelines to use to define recyclable, and in particular whether the Association of Plastic Recyclers Design Guides can be relied upon when making recyclable claims.

**Question 6:** Recyclable, 16 CFR 260.12. The Guides provide that marketers can make an unqualified “recyclable” claim when recycling facilities are available to a substantial majority of consumers or communities where the item is sold. “Substantial majority” is defined as 60%. Should the Guides be revised to update the 60% threshold? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision? Is there any recent consumer perception research relevant to the 60% threshold? Should the Guides be revised to include guidance related to unqualified “recyclable” claims for items collected by recycling programs for a substantial majority of consumers or communities but not ultimately recycled due to market demand, budgetary constraints, or other factors? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?

As discussed above, FMI supports continued use of the 60% “substantial majority” standard for “recyclable” claims. The term “recyclable” conveys that the material in question is capable of being recycled, not that it will in fact be recycled in all instances. Marketers are unable to control collection rates and local material recovery facility practices, which are subject to change due to consumer behavior, market demand, and local budgetary and other constraints. In particular, actual recycling rates depend on whether consumers and/or waste management systems sort the product/packaging for recycling and then whether it is accepted and used by the recycling industry in new products or packaging. When changes in collection or processing do occur, marketers are often not aware until after the changes have already taken effect and would not be in a position to modify or remove claims each time such changes occur. If the standard for recycling claims were based on actual recycling rates, this would create a near-impossible standard to comply with on a continual basis, making it less likely that manufacturers would invest the time and resources to make a recyclable claim, resulting in consumers not knowing if a product is capable of being recycled, which in turn would lead to lower recycling rates.

The existing 60% threshold provides an appropriate and achievable standard for marketers that is flexible enough for the realities of current recycling infrastructure. It allows marketers to communicate to consumers when a material has been technically designed to be recycled and appropriate facilities that can recycle the item are available to a significant majority of the

population, providing truthful, non-misleading information that encourages consumer recycling practices and the use of recyclable materials in packaging.

It is critically important for marketers to be able to communicate qualified recyclable claims when recycling facilities exist but are limited in that the 60% standard is not met. If there is no ability to make such qualified claims, consumer recycling practices and recycling facility availability will not improve because consumers will believe the item cannot be recycled. This would have the unintended consequence of discouraging use of recyclable packaging and creating more packaging waste, rather than increasing recycling rates.

Further, FMI is not aware of any data or other information that would support a standard higher than 60% for the meaning of “substantial majority”. Such a standard could result in additional packaging types that are no longer eligible for an unqualified claim, and in turn, could be expected to result in confusion among consumers as to the meaning of recyclable and lower recycling rates by consumers. A higher access threshold would reduce the incentives for innovations in recyclable materials to achieve circularity and disrupt curbside innovations being developed through recycling designed to meet the 60% access threshold.

**Question 8:** Recycled Content, 16 CFR 260.13. The Guides suggest marketers can substantiate “recycled content” claims using per-product or annual weighted average calculation methods. Should the Guides be revised to provide guidance on making “recycled content” claims based on alternative method(s), e.g., mass balance calculations, certificate (i.e., credit or tagging) systems, or other methods? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?

We support revision of the Guides to provide guidance on making “recycled content” claims, including providing clarity on the methods available to substantiate such claims. For example, we support mass balance accounting as a method for substantiating claims about recycled content because it is precise yet practicable, based on the realities of supply chains. Mass balance accounting allows businesses to track and audit the weight or volume of materials, so that the claim on the final labeled product matches the amount purchased by the business. Such an approach is essential for certain materials that cannot be physically tracked throughout the production process. Mass balance accounting allows businesses to remain flexible in their purchase of sustainable materials. It is a precise and practical way to ensure that the environmental benefit matches the environmental claim.

FMI also supports the recognition of chemical or advanced recycling as a type of “recycling” process that produces “recycled content” for the purposes of Guides. Chemical or advanced recycling is an innovative process that is generally more effective than mechanical recycling (e.g., grinding, melting, etc.) and a better approach for mixed plastics. Sometimes called tertiary recycling, it involves applying a chemical treatment to postconsumer plastic so that its components can be isolated and more easily processed for future use. We recommend that the FTC provide clarity to stakeholders by recognizing chemical or advanced recycling as “recycling” that results in “recycled content” and clarifying the circumstances under which such claims can be

appropriately made. We also ask the FTC to recognize the use of mass balance to substantiate claims based on chemical or advanced recycling. We understand the chemically recycled plastics cannot be distinguished from new plastics, so the American Chemistry Society and UL have both proposed mass balance accounting methods to track volumes through the production system. Importantly, mass balance calculations take into account the recovery rate of the material in the chemical recycling process by calculating the amount of useable feedstock produced, thus providing assurances of its accuracy.

**Question 12:** Sustainable. In 2012, the Commission determined it lacked a basis to give specific guidance on how consumers interpret “sustainable” claims. Should the Commission revisit this determination? If so, why, and what guidance should be provided? If not, why not?

FMI does not believe the FTC should seek to create a single definition for the term sustainable. “Sustainable” is a broad term that has many different meanings in different contexts. It would be difficult or impossible for the FTC to define the term in a way that would be applicable to all affected industries and stakeholders. The current Green Guides standard discourages the use of broad, unqualified environmental claims.<sup>3</sup> Encouraging the use of more specific language to qualify such claims is likewise an appropriate approach for “sustainable” claims, and we ask the FTC to state this in the updated Green Guides by clarifying that sustainable claims are considered broad environmental claims that fall under 16 CFR § 260.4. This existing provision is the most appropriate place for any guidance on sustainability claims, rather than in a separate section.

We also welcome additional clarity and examples related to sustainable claims more generally so that our members can better align with the FTC’s posture. For example, it would be helpful for the FTC to provide insight on the various ways “sustainable” claims or similar (e.g., “sustainably sourced [ingredient]”) could be substantiated, including by providing specific examples.

\*\*\*

Thank you again for the opportunity to provide feedback on the Green Guides. We look forward to continuing to engage in this process.

Sincerely,



Dana Mullen Graber  
Associate General Counsel & Senior Director, Legal and Regulatory Affairs  
FMI – The Food Industry Association

---

<sup>3</sup> 16 CFR §260.4.