

April 24, 2023



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

Docket: FTC-2022-0077

RE: Green Guides Review (16 CFR part 260) (Matter No. P954501)

Dear Secretary Tabor,

We appreciate the opportunity to provide comments to the Federal Trade Commission as it considers much needed updates to the Guides for the Use of Environmental Marketing Claims, also known as the Green Guides (16 CFR part 260) (Matter No. P954501).

The Alliance of Mission-Based Recyclers (AMBR) is a coalition of the original pioneers of mission-driven, community-based nonprofit recycling in the United States. Together we are guiding new recycling policies and infrastructure investments to rebuild credible, transparent recycling systems. As recycling operators, AMBR members collect and sort tons of recyclables each month. From our vantage point of dealing with piles of recyclables, we can propose and implement systemic solutions. From the pile, we can look “upstream” at how products could be redesigned to be more resource-efficient, made from recycled content and recovered more easily. We can also look “downstream” at how systems and infrastructure could better recover and remanufacture materials into new products.

We are the boots on the ground making recycling work each and every day. We strategically work at the community level and leverage our experience towards broader advocacy and systems change, holding a clear and bold vision for a world without waste while we wrestle with the day-to-day challenges facing recycling today.

As mission-based recyclers, we are concerned about the ever increasing contamination in the recycling stream due to misleading labeling, increased amounts of mixed-material packaging, and the growth of single-use products. Not only does this increase the cost of recycling for residents and local governments, but there is continued harm to public health and the environment when producers use misleading labeling to greenwash their products and packaging rather than reducing packaging and moving to truly reusable, recyclable, and compostable material.

The Commission has a critical role in protecting the public from misleading, deceptive, and false marketing claims regarding the recyclability of products and packaging. As a uniform national resource, the Green Guides play a vital role in curbing misinformation from companies across the country. However, it is clear that the Green Guides have not been successful in prohibiting

or limiting companies from making false or misleading claims regarding recyclability. We strongly urge the Commission to initiate a formal rulemaking process to establish independently enforceable requirements related to unfair and deceptive environmental claims.

We ask that you consider the following recommendations:

A. General Issues

1. Is there a continuing need for the Guides? Why or why not?

There is not only continued, but increased, need for clear and comprehensive Green Guides. The Guides have not been updated since 2012, yet over the past year we have seen:

- Increased plastic production and pollution
- Increased single-use plastic
- Increased awareness from consumers about environmental impacts of packaging
- Increased markets for environmentally friendly products and packaging, - thus an increased potential for businesses to profit off their environmental claims through truthful and/or misleading marketing
- New technologies and innovations in packaging design, including components and new materials that make distinctions between recyclable and non-recyclable more confusing
- Increased understanding of toxics in packaging, plastic, and recycling content
- Changes in recyclable and compostable markets

2. What benefits have the Guides provided to consumers? What evidence supports the asserted benefits?

Consumer demand for environmentally sustainable products has steadily increased in recent years with increased public awareness of the climate crisis. This has resulted in companies across industries marketing environmental benefits of their products, services, and processes. Consumers are now flooded with “green marketing” strategies - some of which are truthful, while others are misleading.

The Green Guides provide guidance for marketers on how to engage in effective and compliant green marketing and a resource for consumers to evaluate these green marketing claims. However, these definitions are only beneficial to consumers if they are clear, there is increased awareness of their meaning, and the Green Guides are actually enforceable and enforced.

Additionally, consumers in several states are now benefiting from codification of the FTC Green Guides in their state laws. California, for example, codified the guides in full in 2022. It is now unlawful under California law "for a person to make an untruthful, deceptive, or misleading environmental marketing claim, whether explicit or implied," and "environmental marketing claim" is defined to include any claim in the Green Guides. Maine, Rhode Island and Michigan are also among the states that have incorporated the Green Guides into state

law, to varying degrees. Maine's law on advertising and marketing claims states that anyone who advertises a product in violation of the Green Guides violates Maine's Unfair Trade Practices Act. Rhode Island likewise has adopted the Green Guides as the uniform standards for environmental marketing claims in the state. Michigan has adopted the Green Guides' standards for the terms "recycled, recyclable, degradable, and of a certain recycled content."

Consumers in those states are benefiting from the standards set in the FTC Green Guides. However, the benefits decline if the standards in the Green Guides are not strong enough to meet the changing marketing strategies, new technologies across industries, and evolving climate needs. Additionally, if consumers are not aware of what these marketing claims really mean in an accessible way, it is difficult for people to make informed decisions.

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

- **Usability:** To increase the impact and usefulness of the Green Guides, we urge the FTC to publish a consumer-facing guide that is user friendly, accessible, and updated regularly.
- **Updates:** To ensure the accuracy, relevance and enforceability of the Green Guides, we urge the FTC to conduct a standard reassessment of the guides at least every 5 years.
- **Non-Toxic Claims:** We are learning more about toxics in product and packaging, particularly plastic, and their impact on our environment and human health. The Green Guides should modify the requirements for products and packaging to have a non-toxic claim. The "non-toxic definition" should be amended to include:

(c) It is deceptive to make a non-toxic claim for a product or package that contains, or service that uses, any chemical substance, mixture, or compound that may cause harm to humans or the environment (including household pets) through ingestion, inhalation, or absorption through any body surface;

(d) A non-toxic claim is also deceptive if a product or package contains, or a service uses, a chemical substance, mixture, or compound subject to reporting requirements under:

(i) the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. § 11001 et seq.;

(ii) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; or

(iii) section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r);

(e) A non-toxic claim is deceptive if a product or package contains, or a service uses, a chemical substance, mixture, or compound that has been recognized by any of the

following entities as posing an acute or chronic health hazard:

- (i) The National Institute for Occupational Safety and Health;*
- (ii) the Occupational Safety and Health Administration;*
- (iii) the National Toxicology Program;*
- (iv) the Centers for Disease Control and Prevention;*
- (v) the Centers for Disease Control National Biomonitoring Program;*
- (vi) the Department of Health and Human Services;*
- (vii) the National Institute for Environmental Health Sciences; or*
- (viii) the Environmental Protection Agency.*

(f) A non-toxic claim is deceptive if a product or package or package contains, is made with, or is made from any of the following compounds:

- (i) a perfluoroalkyl or polyfluoroalkyl substance;*
- (ii) an ortho-phthalate;*
- (iii) a bisphenol compound;*
- (iv) a halogenated flame retardant chemical;*
- (v) a chlorinated paraffin;*
- (vi) a paraben;*
- (vii) a heavy metal;*
- (viii) a formaldehyde-releasing chemical;*
- (ix) a nonylphenol or nonylphenol ethoxylate; or*
- (x) a substance, mixture, or compound nominated or proposed to be listed as a persistent organic pollutant by the Stockholm Convention on Persistent Organic Pollutants.*

(g) A non-toxic claim can still be deceptive or misleading even if the product, package, or service is considered non-toxic per a dictionary definition, provided that the product, package, or service meets the criteria set forth under subsections (c)–(f).

- **Clear and Accurate Compostable and Recyclable Standards:** Consumers should be able to trust that what they are placing in their compost or recycling bins will actually be composted or recycled and won't simply add to the contamination of the stream.

4. What impact have the Guides had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

Misleading use of the recycling symbol makes it challenging for consumers to know what should go in the recycling cart, resulting in non-recyclable plastic trashing the rest of recycling. As recyclers we see everyday that [most plastics are not recyclable](#). Due to misuse of the chasing arrows symbol and an increase in packaging using mixed materials, we are seeing increased contamination in our recycling stream. This leads to:

- **Confusion Among Consumers:** People see the chasing arrows on their product or packaging and assume it can be put in their recycling bin – even when it cannot be recycled, can only be recycled rarely through drop-off or mail-back programs, or does not have a market. The “chasing arrows” symbol has been misused to such an extent that consumers find the process of recycling confusing and mistrust the recycling system on the whole.
- **Contamination:** Nonrecyclables placed in curbside recycling bins create contamination across the recycling system increasing costs and safety risks through the sorting process. They also decrease the quality of sorted commodities being sold back into the supply chain. Contamination overtaxes the recycling system leading to higher operating costs, (AMBR member, Eureka Recycling estimates spending more than \$80k per year to mitigate the impact of unwanted plastic bags in their system). As the recycling system becomes more contaminated, cities and counties are spending more money on technology to effectively sort these materials. Additionally, some contaminants like batteries and plastic film increasingly cause fires making insurance extremely difficult for MRF operators to get and creating hazardous conditions for workers.

Due to increased contamination, it is difficult to say what, if any, impact the Guides are currently having on the flow of truthful and/or deceptive information to consumers. However, we do believe that the FTC can take steps to improve the guides in ways that help consumers. The best way for the Guides to reduce contamination in the recycling stream is by requiring simplified and streamlined product design and labeling. Designing products to be recyclable and more compatible with recycling, and improving product labeling, are essential to making recycling simpler and less frustrating for consumers and less costly to local communities. We need to streamline packaging design and labeling initiatives and put the onus of easy recycling on the producers of consumer goods who have control over the products’ designs, not on the people purchasing and using the products.

8. Please provide any evidence that has become available since 2012 concerning consumer interest in particular environmental issues. Does this new information indicate the Guides should be modified? If so, why, and how? If not, why not?

In recent years there has been increased public attention on the waste crisis, particularly related to the environmental and public health concerns related to plastic pollution. A report this past year from Greenpeace, [Circular Claims Fall Flat Again](#), highlighted an issue that we in the recycling industry deal with every day—the fact that most plastics are not recyclable. Though the plastics industry often lays the responsibility for recovering the ever-increasing volumes of plastics at the feet of the recycling industry and consumers, most plastics simply are not

candidates for recycling. And because they aren't designed for recycling, they never will be recyclable.

Unfortunately, the media has largely misinterpreted some of the numbers of that report and others. This misrepresentation of the data has resulted in confusion and a loss of consumer faith that the materials they put in the recycling bin are being recycled, even if they are accepted in their local programs. NPR and others have been misquoting the Greenpeace report, conveying that only 5% of plastics put in recycling bins is recycled, suggesting that 95% of the plastics that you put in your recycling cart are being landfilled or burned. That is NOT accurate, and it is not what the report says.

The 5% figure refers to all plastic discards generated in residential waste, which extends to ALL types of plastic— including disposable plastic pens and cutlery, toothbrushes, cell phone cases, and countless other products that are not recyclable. Almost everywhere we look in our modern lives, we see plastic products. Of ALL the plastic discards created, when the useful lives of these products are over, only 5% are recycled. This doesn't mean we have a recycling crisis—this means we have a plastic packaging crisis.

The Green Guides could help address public confusion and mistrust with clear, accessible guidelines on recyclability and universal standards for what types of plastic can and cannot be recycled.

18. Are there international laws, regulations, or standards with respect to environmental marketing claims the Commission should consider as it reviews the Guides? If so, what are they? Should the Guides be modified to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

Although the timing may be a challenge, the Guides should make every attempt to align any updates related to plastics and claims of recyclability with the standards and definitions set in the [Global Plastics treaty](#).

B. Specific Claims

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)?

The guides should clearly state that the compostable materials need to be certified compostable through the relevant ASTM standards (D6400 and D6868). Without certification, “compostable” claims are too vague for consumers to understand and mismarked lookalike “compostable” products contaminate compost streams, resulting in contaminated finished compost that may not be suitable for sale or use. California and Washington have codified the need for certification

prior to labeling and for clear labeling of certified compostable materials. Colorado has a bill under consideration to do the same. All components or accompanying accessories (including coffee lids, straws, etc.) of a certified compostable product or package should be clearly labeled as to its compostability, recyclability or need to be landfilled.

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?

As recyclers we know there are limitations to what we can recycle, especially when it comes to plastic packaging. For something to be practically and technically recyclable, we need to be able to collect enough of it, sort it safely and efficiently, and there needs to be robust demand for it as a feedstock in the supply chain to make new products. Even if we can recycle certain packaging, we need to think critically about whether we should. These considerations go beyond the economic and practical/technological, and importantly consider toxics, environmental justice, labor protection and just transition, and whether recycling it actually replaces virgin fossil fuel or problematic biomass extraction. All of this should then be considered in relation to the immediate and long-term alternatives.

A product or package should not be marketed as recyclable unless it can be collected, separated, cleaned, treated, and reconstituted into materials that would otherwise ultimately be disposed of onto land or into water or the atmosphere, and returning them to, or maintaining them within, the economic mainstream in the form of recovered material for new, reused, or reconstituted products, that meet the quality standards necessary to be used in the marketplace. To be considered recyclable in a residential MRF-based recycling program, materials should meet all the criteria established in The Recycling Partnership’s [Circular Packaging Assessment Tool](#), including:

Materials considered recycled must be sent to a responsible end market. “Responsible end market” means a materials market in which the recycling of materials or the disposal of contaminants is conducted in a way that benefits the environment and minimizes risks to public health and worker health and safety.

Additionally, “recycling” does not include energy recovery or energy generation by any means, including but not limited to combustion, incineration, pyrolysis, gasification, solvolysis, thermal desorption, waste to fuel or landfill disposal of discarded material or discarded product component materials, including the use of materials as landfill cover. Companies want to sell so-called “chemical recycling” or “advanced recycling” schemes as a way to take a lot of low-value, problematic, and unnecessary plastics and somehow produce a marketable product. That idea has been around for 40 years, and it has not been proven economically, logistically, or technologically feasible. These companies misuse the term “recycling” to greenwash the process of converting mixed plastic waste into fuel or fuel components, typically through pyrolysis or gasification. Superheating plastic into a fuel to be combusted does not keep those resources in the supply chain as part of a circular economy and thus, does not meet the definition of recycling and has no place in a circular economy.

With a strong definition of recycling as a guide post, there are few formats of single-use plastic packaging that are actually candidates for recycling in MRF-based residential recycling systems in the United States. They include PET #1 bottles, PET #1 thermoform, HDPE #2 bottles (natural and color), and possibly #5 polypropylene containers (depending on the region in the US). For these types of packaging, the chasing-arrows symbol should only be used if the product and packaging can be recycled via curbside recycling programs within the region with 60% of residents having access to programs that accept them.

Other types of plastics should not be labeled as recyclable or display any symbol that is similar to the chasing arrows symbol. The Commissioner should take steps to support policies and regulations that ban or promote reduction strategies for these non-recyclable plastics.

The following plastics are highly toxic, unnecessary and/or cause problems for other recyclables, and should not be allowed to make recyclability claims:

- Carry-home and produce plastic film and non-woven plastic bags
- PVC (#3) single-use packaging
- Polystyrene single-use packaging (expanded and not)
- Mixed material flex pouches
- # 7 plastics

The [US Plastics Pact](#), which brings together producers, NGOs, government agencies and research institutes, developed a list of [problematic and unnecessary plastics](#) that must be eliminated in order to create a more stable and circular economy in the United States. Many of the plastics listed above are on this list.

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%.

b. 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?

Yes - 60% access is not a strong enough metric alone to claim recyclability. FTC's Green Guides provide guidance to businesses on how to make non-deceptive environmental claims with considerations for consumer perception of those claims. Specifically, the Green Guides state marketers should not claim their products are “recyclable” unless recycling facilities for those products are available to a substantial majority of consumers or communities where the item is sold. While we agree that the availability of recycling facilities is an important factor in determining the recyclability of something, it must not be the only factor. All of the criteria laid out in our response to Section B Question #5 need to be met to make a recyclability claim. Market demand and budgetary constraint should not necessarily remove recyclability claims, as

they fluctuate regularly and are only indicators that materials may not eventually meet the necessary criteria.

7. Recycled Content, [16 CFR 260.13](#). The Guides state marketers may make “recycled content” claims only for materials recovered or otherwise diverted from the solid waste stream, either during the manufacturing process or after consumer use. Do the current Guides provide sufficient guidance for “recycled content” claims? If so, why? If not, why not, and what guidance should be provided? What evidence supports your proposed revision(s)?

Consumers purchase products made from recycled content because they believe the recycled materials come from items that they themselves might recycle in their local recycling program, and that by buying recycled content, they are helping to support community recycling programs by strengthening market demand. Consumers have been told this by the EPA, state and local recycling programs, environmental organizations, and other credible sources. By contrast, pre-consumer content does not come from local community recycling programs, and purchasing pre-consumer recycled content does not support community programs. Only products with post-consumer recycled content are aligned with the intentions and understanding of the consumer in purchasing that product. It is deceptive to label products with pre-consumer recycled content as this does not represent the consumer intention or perceived outcome compared to post-consumer recycled content.

[Research shows consumers positively respond to messaging](#) about making new products from old products and these messages motivate them to recycle more. This demonstrates that consumers understand recycled content as relating to products that have been used in the marketplace and then collected and recycled into new products. This understanding is specific to post-consumer recycled content; it does not apply to pre-consumer materials that never reach the consumer marketplace.

Consumers do not understand or differentiate between the terms “pre-consumer” and “post-consumer” in discussing recycled content. An [APR consumer survey](#) found nearly all adults do not understand the definitions of post-consumer and post-industrial (pre-consumer) recycled content, and are unlikely to be able to differentiate between them. Therefore recycled content claims must be simple and straightforward, and accurately reflect consumer understanding and intent to support community programs.

Current US state policies and legislation in Canada and the EU specify the use of post-consumer recycled content and do not allow pre-consumer content to qualify under the regulations. FTC guidance should align with these laws because allowing on-pack claims that allowed pre-consumer recycled content would confuse consumers and not be regulatory compliant.

Companies make decisions to use pre-consumer recycled content based on manufacturing costs and efficiency, not to make specific kinds of “pre-consumer” content claims in the market. Many common products such as aluminum cans, glass bottles, and toilet paper do

not advertise their pre-consumer recycled content; this illustrates that it is not needed as a marketing claim. Removing claims on pre-consumer content will reduce confusion to consumers without discouraging companies from using pre-consumer content. Consumer education is needed for, and should focus on, driving post-consumer (PCR) markets.

The FTC should uphold its guidance that any product that has less than 100% recycled content must state the actual percentage of recycled content to reduce the potential for consumer deception. Additionally, recycled content claims should not include the chasing arrows symbol because that leads consumers to believe that the packaging itself is recyclable - which is not always the case.

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 do not support the use of mass balance claims regarding recycled content for on-pack labeling. These claims are deceptive to the consumer because there is no process to prove there is any physical recycled content in the actual product based on mass balance. Consumers purchase a product with recycled content with the implied understanding there is recycled materials in that actual product, and claims must be as representative of this intention as possible. No laboratory analysis can confirm the level of recycled content in a given product based on mass balance. As such, there is no physical proof of recycled content in the hands of the consumer, and any claims of recycled content using mass balance are misleading to consumers.

By contrast, mechanical recycling processes can qualify recycled content levels based on chain of custody tracking of the amount of recycled materials purchased. This provides reasonable certainty to the consumer that there is recycled materials in the physical product itself, which is the basis for the current FTC guidance on recycled content claims. For any recycling technology, priority should always be given to using a chain of custody approach to track recycled content through to the product level because it is the most verifiable approach.

Currently the FTC allows companies to use the annual weighted average of recycled material to justify a recycled content claim. This is meant to account for market variations and other supply challenges in the manufacturing process where a company may buy feedstocks from many suppliers and the level of recycled content in each production cycle may vary with each purchase. The intention is that there is recycled content in each product, but that the actual level may fluctuate between production runs but must still meet the stated annual average (i.e. 20% for one week, 40% for another week, to average 30% for the year). This is substantially different from mass balance calculations where there may be no actual recycled content in the

product. FTC must clearly distinguish that mass balance accounting is not comparable to this practice of annual averaging and should not be permitted on consumer labels.

[Consumers have little to no understanding](#) of any terms used to describe recycled content, including mass balance. Consumer awareness of eco-labels and green terms are generally underdeveloped based on existing surveys, and given such, it is not reasonable to assume mass balance will be added into the consumer lexicon in the short term. Therefore it is not reasonable to expect a consumer to understand a qualified claim based on mass balance, and such claims should not be allowed on consumer packaging. Mass balance should not be used to apply to a specific product, and should only be used for general sustainability claims, such as on a website, in terms of the total volume of material and the percent of content used across product lines.

Existing use of mass balance claims in areas like Fair Trade products, for example, is not applicable to recycled content claims. First, Fair Trade claims are based on certification by a licensing body and all claims must be submitted for approval. There is no similar governing body for recycled content. Second, Fair Trade is a set of standards around sourcing ingredients that require purchasers to comply with specific guidelines and practices, rather than a statement about the actual physical makeup of a product. Indeed, the Fair Trade standards require that the claim or packaging must not imply that an ingredient sourced using mass balance is physically in the product. However, in the case of recycled content, as the current Green Guides recognize, consumers understand the claim to be about the actual content of the product (even if some averaging is allowed). Therefore the current application of mass balance in other contexts is not pertinent to its use for recycled content and the FTC should be wary of such arguments.

Finally, recycled content claims cannot be qualified based on credit trading or similar programs. Similar to mass balance allocation, credit trading programs cannot demonstrate there is any recycled content in an actual product, so recycled content claims based on credit trading would be misleading to the consumer who believes there is recycled material in the product they purchased. Additionally, recycling credit schemes are far less mature than carbon offset programs, and have not been shown to drive companies to invest in the capital equipment and R&D to add recycled content to new product lines - i.e., to support consumer-facing recycling. General consumer-facing claims about recycled credit schemes would also be deceptive because they cannot substantiate the improved environmental outcomes generally understood to be an essential outcome of these programs

We thank you for your consideration of our comments and your leadership on these issues. Please feel free to contact us with questions or for further information.

Sincerely,



Lynn Hoffman,
Co-President of Eureka Recycling & National Coordinator of AMBR
(612) 455-9110
lynnh@eurekarecycling.org
ambr-recyclers.org