



ISRI is the voice of the recycling industry, promoting safe, economically sustainable, and environmentally responsible recycling through networking, advocacy, and education.

June 13, 2023

Federal Trade Commission
Division of Enforcement
Bureau of Consumer Protection
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Guides for the Use of Environmental Marketing Claims; Green Guides Review, Matter No. P954501, 16 CFR part 260

Dear Mr. Hampton Newsome and Ms. Solomon Ensor:

The Institute of Scrap Recycling Industries, Inc. (ISRI)¹ is pleased to submit the following comments in response to the Federal Trade Commission's (FTC or the Commission) request for comments regarding the Guides for Environmental Marketing Claims (Green Guides or Guides). ISRI's members manufacture the materials that build everyday items such as buildings, roads and bridges, hospitals, and schools as well as the containers and boxes that safely package new products – just to name a few.

Consequently, it is important for the Commission to also recognize the vibrancy and changing dynamics of the recycled materials industry, including the proliferation of advanced sorting and separation technologies, the increasing consumer preferences for more sustainable and recyclable products and packaging, and the impacts of governmental and non-governmental policies on manufacturing and recycling such as extended producer responsibility or EPR. These changes since 2012 should compel the Commission to regularly update these Guides to continue to provide confidence in environmental claims for consumers and business alike.

1. Summary of ISRI's Comments

ISRI supports the FTC's Green Guides and their purpose of protecting consumers from environmental advertising and labeling claims and the specific guidance regarding many common environmental benefit claims. We believe that with increased focus on recycling, updating these Guides is critical towards reassuring consumers that the environmental claims made by

¹ *The Voice of the Recycling Industry*- The Institute of Scrap Recycling Industries, Inc. (ISRI), represents nearly 1,600 private, for-profit companies operating at more than 4,000 facilities in the United States and 34 countries worldwide. ISRI members are processors, brokers, and industrial consumers of scrap commodities, including ferrous and nonferrous metals, paper, electronics, rubber, plastics, glass, and textiles. www.isri.org

manufacturers are valid and not deceptive *since it is impossible for the average consumer to verify these claims*. This is especially important given market shifts in the past decade. Since the Guides were last updated in 2012, many changes have occurred to recycling markets, the packaging being introduced into the municipal and residential recycling streams as well as technological advances such as optical sorting and robotics, and the products. Also, since the FTC's last version in 2012, several design guides and certifications have been released in an effort to drive and substantiate "recyclability" and "sustainability" as well as labeling schemes. It is incumbent on the FTC to recognize these sometimes-competing programs and initiatives.

Frequently Update these Guides: Based on the new products and packaging being introduced onto the marketplace and the rapid technological advances in recycling, the FTC should conduct more frequent reviews of their Green Guides to reflect these changes. However, rather than a complete review of the Green Guides, the FTC could request input from stakeholders concerning what areas of the Green Guides should be updated.

Protect the Integrity of Recycling: Recycling is the process of converting used products and materials back into new products and materials. In the last several years, consumers have become discouraged by inaccurate and false claims that recycling is broken. Recycling is essential for sustainable manufacturing that protects the environment, conserves natural resources, and combats climate change while supporting hundreds of thousands of U.S. "green" jobs. Conversely, recycling does not include landfilling, incineration, or otherwise permanently disposing of materials that could otherwise be used again to make new materials and products.

Update Commonly Used Terms and Definitions: ISRI strongly suggests that key terms and definitions be carefully examined to eliminate consumer confusion especially with terms such as "recyclable", "recycling", "compostable", and "recycled content" among others. These terms must also reflect the reality that recyclability is determined by whether an item can be made into a new product, and not by recycling collection access alone. Often, the consumer is unaware of the differences between these processes and claims. This situation has become more acute as more manufacturers are using environmental claims that can be easily misinterpreted by consumers. This also harms honest companies, who bear the costs of green business practices at a competitive disadvantage.

2. Issues for Comment

A. *General Issues*

1. **Is there a continuing need for the Guides?**

Yes. As the average consumer *who wants to make conscientious purchasing decisions* demands more products that are "sustainable", "recyclable", or "compostable", these Guides become even more important to prevent deceptive advertising and marketing. The environmental guidelines provided by the Guides provide a practical framework

for manufacturers to provide accurate statements about their products to consumers, as well as to protect manufacturers who design and manufacture their products to be sustainable, recyclable, or compostable from others who may exploit those marketing terms.

2. What benefits have the Guides provided to consumers?

The Guides provide assurances to consumers and manufacturers that the products they purchase or produce are in fact recyclable or compostable. The consumer is simply trying to purchase a product that both serves their needs and delivers on the environmental claims on the labels. Accordingly, the weight of the FTC's enforcement power is essential for these claims to be substantiated and trusted by the consumer.

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

Updating the definitions especially for 'recycling', 'recyclable', 'recycled content' and 'compostable' would help improve the guides by creating a clear and common understanding of these terms by consumers, manufacturers, and the FTC. Removing ambiguity will provide a more comprehensive understanding, certainty, confidence, and compliance.

4. What benefits, if any, have the Guides provided to businesses, particularly small businesses?

While the Guides address a wide range of products and topics and provide a market advantage to those who choose to leverage environmental claims to market their products, the Guides can often be overwhelming to many small businesses with limited technical and legal expertise. We would suggest the FTC consider creating additional guidance that provides examples and more interpretational advice to help small businesses better understand the Guides without having to expend significant resources for legal advice. Additional explanatory guidance could help reduce the costs and anxiety many small businesses may have with compliance resulting in more businesses producing more environmentally sustainable products.

5. What evidence is available concerning the degree of industry compliance with the guides?

There are several examples where the Guides are not being followed or adhered to on a consistent basis and allegedly misled consumers, (e.g., Greenpeace, Inc. v. Walmart and Smith v. Keurig). These cases are in the federal court system rather than in front of the FTC and often arise when there are different interpretations of the regulations or standards. The Guides could help be able to help clarify definitions through explanations and examples and thereby limit inconsistencies and interpretational differences. One of the goals for the revised Guides should be to alleviate such inconsistencies and misinterpretations.



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6. What significant costs, including costs of compliance, have the Guides imposed on businesses, particularly small businesses?

As mentioned above, the largest costs for compliance are the legal and technical costs associated with interpretations of the Guides themselves. We would suggest the Guides be written in such a fashion that reduces the likelihood of and need for such external legal and technical advice, which can often be very significant, especially for small businesses. Therefore, the Guides should be written in a manner that is clearer and easier to interpret and would not need the costly legal and technical expertise that is currently necessary for full compliance.

7. What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions?

Technological advancements in the recycling industry have improved the sorting and separation of products in a way that was unimaginable only a few years ago. Optical scanning and robotics enable recyclers to sort and separate even small amounts of contamination from the recycling streams. Additionally, when consumer products are designed and manufactured to be recycled at their useful end-of-life, these products and their packaging are increasingly able to be recycled. These simple design changes and improved sorting and separation technologies have made products once unrecyclable – recyclable. The Guides should be regularly updated to reflect these new technologies and design changes.

8. Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

States are considering labeling laws such as California's "Truth in Labeling" law (CA SB 343). Congress is also considering various federal labeling and extended producer responsibility laws as well as extending the U.S. EPA's statutory authority to enforce certain environmental labeling claims. Additionally, several organizations are also developing or advancing labeling schemes that could end up creating a patchwork of labels that could be confusing to consumers and businesses alike. We would suggest the Commission evaluate these labeling schemes to ensure as much consistency as possible with the Guide or evaluate a strategy to reconcile any differences.

9. Are there international laws, regulations, or standards with respect to environmental marketing claims the Commission should consider as it reviews the Guide?

The FTC should consider whether to harmonize the Guide with other international definitions since companies often purchase materials and products from other countries such as Canada, Mexico, and the European Union. Additionally, the FTC should consider the regional differences between technological recycling infrastructure even within the United States.

10. Should the Commission initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive and environmental claims?

It may be necessary for the FTC to consider providing guidance or certain standards to organizations that are developing their own labeling schemes to ensure consistency between labeling schemes. Without such consistency between labeling schemes, consumers will become confused and/or develop skepticism for the environmental claims.

B. Specific Claims

1. Recyclable, 16 CFR 260.12. Should the FTC revise the Guides to include updated guidance on “recyclable” claims?

Recyclable is one of the most important terms within the environmental claim’s nomenclature. ISRI strongly suggests the FTC consider requiring companies that use the term “recyclable” provide evidence that the product can be recycled based on its design and materials utilized as well as the ability of the product to be recycled into another new product. For example, to claim a product is “recyclable”, the product should be able to be recycled and the materials recovered again to make a new product rather than be manufactured using virgin materials. Conversely, if a product is converted into materials which are then used as a fuel or energy should not be considered “recyclable’.

ISRI has promoted its Design for Recycling® initiative to encourage and recognize manufacturers that account for the end of a product’s useful life by considering what else it can become during the design-stage of a product’s development. Designing products with recycling in mind means recognizing that a product’s usefulness does not end because the original intent for the product has run its course. By designing products with the Design for Recycling® methodology, manufacturers use recycling and repurposing to plan out the product’s new lifecycle, which reduces waste and reliance on natural resources.

Designing products for recycling should include the following principles²:

- Contain the maximum amount of materials that are recyclable.
- Be easily recycled through current or newly designed recycling processes.
- Be cost effective to recycle, whereby the cost to recycle does not exceed the value of its recycled materials.
- Be free of hazardous materials that are not recyclable or impede the recycling

² To learn more about ISRI’s Design for Recycling® Award that recognizes leading manufacturers who have incorporated these principles into their designs and manufacturing processes, please see <https://www.isri.org/about-isri/awards/design-for-recycling>.

process.

- Minimizes the time and cost involved to recycle the product.
- Reduces the use of raw materials by including recycled materials and/or components.
- Has a net gain in the overall recyclability of the product while reducing the overall negative impact on the environment.

2. 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%.

The 60% threshold has been widely used but may not be an accurate way of determining access to recycling because of the regional differences within the United States. A consumer who sees an unqualified recyclable claim has no way of knowing if their community falls outside of the 60% of communities with access, or even that the claim can be made legally when 40% of the US population is not able to recycle the item. A consumer following the implicit direction in this claim, and placing the item in a recycling bin, could lead to damaging contamination in the recycling stream in up to 40% of communities.

Furthermore, availability of recycling facilities³ should only be one factor in considering whether a product is “recyclable”. The entities who decide whether a product is accepted in a curbside recycling program—haulers and municipalities—are sometimes disconnected from the end market processors, and are not always able to make an accurate, up to date determination on what is truly recyclable. Additionally, contracts that determine accepted materials for recycling are often long term; lasting 10 years or more. As mentioned above, technology and market conditions in the recycling industry shift more frequently, and municipalities and haulers may not be in a position to respond at the speed of industry change.

Finally, recycling can take happen through many access points, but consumers primarily understand “recyclable” to mean an item can be placed in a curbside or single-stream recycling container. Many items, such as batteries or shredded paper, are recyclable through specialized drop off programs and contain valuable materials that should be recycled but are damaging contaminants in a single stream recycling program. ISRI encourages the FTC to consider how the guides can aid consumer clarity on *how* to recycle a recyclable item.

³ What is often referred to as a recycling facility, such as a material recovery facility (MRF), is not the place where the recycling process is completed. These facilities typically focus on sorting and separation of materials then sell those materials to secondary recycling facilities where the materials are returned into the economy as final products.



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- 3. 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?**

Recycled content is difficult to calculate and determine even for the most sophisticated companies. The lack of clarity enables deceptive or inaccurate claims. ISRI suggests the FTC provide more clarity using specific examples to provide further guidance for manufacturers explaining what constitutes recycled content.

- 4. 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?**


ISRI suggests the FTC continue to allow companies to use per-product or annual weighted average calculation methods as a method for substantiating “recycled content” claims.

- 5. 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?**

The definition of “sustainable” varies from company to company and organization to organization. As the Commission found it in 2012, the Commission will find it extremely difficult to agree on a single definition for sustainable. ISRI suggests the Commission continue surveying stakeholders to understand how consumers understand this important term.

ISRI wishes to thank the Commission for the opportunity to provide comments on its Guides for the Use of Environmental Marketing Claims. As consumers demand more environmentally friendly and sustainable products, these guides will become ever more important. This revision is long overdue, and ISRI suggests the Commission should undertake more periodic reviews as recycling technologies advance and consumer products change.

Respectfully submitted,



William H. Johnson
Chief Lobbyist

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