



April 24, 2023

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

Re: Guides for the Use of Environmental Marketing Claims [Docket FTC-2022-0077-0001]

Dear Chair Khan:

The Sustainable Food Policy Alliance (SFPA), whose founding members Danone North America, Mars, Incorporated, Nestlé USA and Unilever United States represent some of the world’s best-known food companies, write regarding the Federal Trade Commission’s request for comment on “Guides for the Use of Environmental Marketing Claims” released on December 20, 2022.

SFPA seeks to accelerate the pace of change in the food industry through individual company leadership and collective support for public policies that drive positive changes for the people who use our products, the people who supply them and the planet on which we all rely. Since its inception, SFPA has advocated for innovative, science-based solutions across a range of policy issue areas. Our Alliance’s focus spans improving nutrition and food safety to caring for our people and communities to addressing the costly impacts of climate change by prioritizing more resilient communities, renewable energy, responsible packaging and sustainable agriculture systems.

One of the pillars of this work is consumer transparency, which is why we are commenting on the Guides. We know that food choices are highly personal, and we believe that people are entitled to clear and consistent information that accurately reflects the latest science and reliably informs their preferences. As consumer packaged goods companies, we are constantly communicating with consumers on a variety of topics. Increasingly, consumers are looking for information about the environmental impact of products and packaging, and we are trying to share that information with them. For example, all four SFPA member companies have made significant progress innovating more recyclable packaging design, adding more recycled materials to our packaging, integrating more renewable power into our manufacturing practices, and embracing climate-smart policies within our supply chains – and these successes are illustrative of the types of information we hope to communicate with our consumers. The ability to make environmental marketing claims that reflect these advances is critical to our businesses and our customers. While we work to reduce our carbon footprint and support a healthier planet, we want to keep consumers apprised of our innovation and progress.

However, the reality is that without consistency there is likely to be significant consumer confusion around marketing terms related to environmental topics. We believe the FTC can help to ensure that environmental marketing claims are accurate, which in turn can help to educate and build trust with consumers. The Guides help advance common approaches across industry to sustainability claims, and if the Guides are updated regularly with claims options that reflect the latest technology and standards, we believe the marketplace will continue to shift toward supporting products and product packaging



that consider the environment and empower consumers to use their purchasing power to buy products aligned with their perspectives.

We are providing comments relating to the following questions:

A. General Issues

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

Yes, there remains a significant need for the Guides. The Guides are an important resource for both consumers and companies as they navigate environmental marketing claims within a very complex and quickly changing technology landscape. Our hope is that the comments gathered by the FTC in this review strengthens the Guides, provides much-needed clarity on the topics identified, and sets up a framework that supports existing and future innovation in environmental practices.

A broader, national framework, like these Guides, will be essential to preventing a patchwork of guidance on environmental marketing claims, which is already happening at the state level and can contribute to consumer confusion. We encourage the FTC to help lead with developing a uniform framework for environmental claims, including issuing an updated version of the Green Guides that supports harmonization by providing greater clarity at the federal level. We ask the FTC to consider other steps that could help minimize the patchwork, such as by encouraging states to incorporate the Green Guides into their regulations.

The Guides serve as an essential resource for consumers and companies, prompting environmental consciousness in the marketplace, inspiring trust, leveling the playing field between competitors, and sparking innovation.

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

The Guides should be updated with consistent, credible, science-based definitions and substantiation – all of which will address the goals listed above: prompting environmental consciousness in the marketplace, inspiring trust, leveling the playing field between competitors, and sparking innovation.

Relatedly, SFPA asks the FTC to consider updating the Green Guides more frequently. The revision currently underway began in late 2022, ten years after the last update, but it will be some time until the revised final Green Guides are issued. We encourage the FTC to consider a shorter timeline for subsequent updates in order to ensure the Guides continue to capture current consumer understanding and the realities of technology and the marketplace as well as minimize the effects of the growing patchwork of differing state laws in this area.

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 increasing discussion about “greenwashing” and “greenhushing,” which are new terms that represent the complicated consumer relationship with environmental marketing

claims. Greenwashing, which refers to the over exaggeration of environmental successes, and greenhushing, which indicates intentionally underreporting environmental accomplishments given the legal or reputational risk of doing so, represent the see-saw of public sentiment both for and against environmental marketing claims. High-profile coverage of both topics – in outlets like [The Wall Street Journal](#), [The Atlantic](#), [World Economic Forum](#), and [Ad Weekly](#) – demonstrate that current guidance for environmental marketing claims all over the world allows for companies to partake in both. The U.S. can lead the way in addressing exaggeration and incentivizing accuracy in consumer labeling by revising the Guides to provide clarity to marketers around existing and emerging environmental claims.

9. What benefits, if any, have the Guides provided to businesses, particularly to small businesses? What evidence supports the asserted benefits?

To date, the Guides have been useful for directing industry claims practices to not mislead consumers. In this review, we believe the Guides can be strengthened to improve consumer communication and encourage compliance through additional and more consistent, credible, science-based definitions and substantiation.

10. What modifications, if any, should be made to the Guides to increase their benefits to businesses, particularly to small businesses?

This review should define new terms and update existing terms, as appropriate. Some examples of topics on which we would support updates include:

- Carbon Neutral / Net Zero
- Carbon Reduction
- Recyclable
- Sustainable Sourcing

15. What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides?

Since 2012, the quantity and scope of environmental marketing claims has shifted significantly. Food companies like ours are managing communication regarding packaging, manufacturing, production, sourcing and agricultural practices. As innovation, available inputs and the rapidly changing climate have shifted those practices over time, we have had to remain nimble in how we communicate with consumers on all these topics. It is our sense that the lack of clarity and enforcement has led to the use of some terms that may be considered unfair or deceptive, or at minimum confusing, without proper context.

In particular, we are concerned about the FTC attempting to define the term “sustainable.” This term is not currently defined in the Guides. We are supportive of FTC allowing general provisions in § 260.3 General Principles and § 260.4 General Environmental Benefit Claims to allow businesses to qualify as needed especially in more specific, qualified claims (e.g., sustainably sourced fish).

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

There are two terms that we would suggest for inclusion, based on updated technology and economic conditions:

- Advanced, chemical, or molecular recycling, includes a suite of technologies like pyrolysis and gasification that can process plastic waste to feedstock for new plastic.¹ We recommend FTC consider adding additional guidance to existing section 260.13 Recycled Content Claims to account for innovation in recycling technology, given how crucial this technology is to recycling materials that cannot be recycled through mechanical recycling and providing recycled content that is safe for food packaging. To this end, we note our support for a definition that allows for all technologies that are available today to produce feedstock for recycled content as well as allow for innovation in the future. It is our hope that the standards and definitions adopted can accommodate innovation in this space and amplify it over time. For example, as we look to create a fully circular economy, we understand that it will take many recycling technologies to make the systemic changes that are needed to address the recycling challenges in the U.S. We urge to FTC not to restrict the technologies that can reprocess material to deliver feedstock (not energy or fuel).
- Mass Balance Chain of Custody – We recommend general guidance around using a mass balance chain of custody approach for substantiating claims. Our sense is that mass balance is a useful tool when credible and documented. For example, the nature of many supply chains only allows for mass-balanced based claims and therefore, mass balance should be allowed as substantiation with proper qualification. If mass balance-based claims are not allowed, FTC will significantly disincentivize claims across packaging (e.g., recycled content) and operations (e.g., renewable electricity), for example.

SFPA would be interested in commenting further on both topics and suggests that FTC consider hosting a public workshop to better understand both terms and their use in environmental marketing claims, if it is not already planning to discuss the terms in the upcoming May 23, 2023 workshop.

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

- a. What evidence supports the asserted conflicts?**
- b. With reference to the asserted conflicts, should the Guides be modified? If so, why, and how? If not, why not?**
- c. Is there evidence concerning whether the Guides have assisted in promoting national consistency with respect to the regulation of environmental claims? If so, please provide that evidence.**

The Guides overlap significantly with state and local laws, particularly on claims related to packaging, especially regarding recycling and compostability. For efficiency, practicality, and consumer understanding, a federal standard for recycling claims and labeling makes sense. The current review of the Guides is an opportunity to address those differences in terminology and analysis and propose a standardized approach to ensure accuracy and a level playing field for all companies using these terms as they operate nationally.

¹ Closed Loop Partners describes these technologies more fully in its November 2021 report: "[Role of Molecular Recycling Technologies in Addressing Plastic Waste.](#)"

As an Alliance, SFPA developed its own [Packaging and Recycling Policy Priorities](#) in 2020 to help direct our work on these topics. In our advocacy to-date, we have repeatedly focused on advancing the following tenet:

Establish Consistent Standards and Enhance Measurement: Federal and local governments can lead the way to prioritize recycling, increase collection, and decrease contamination by setting more consistent standards for accepted materials across regions and collecting, analyzing, and reporting data on U.S. recycling operations. Together, these actions will improve sortation and capture across the board, provide important data to target investments, and accelerate the move towards a more circular economy for paper and packaging materials.

In our work, it has become clear that unambiguous and straightforward terms to guide recycling results in better consumer practices, which power improved collection and sortation, driving more materials to actually be recycled.

In this context, we flag the following topics for particular consideration:

- The term “recyclable” – We support a national approach to labeling for recyclability. There are a number of state-level bills that would alter the definition of the term “recyclable,” such as California’s SB 343 which has passed with an effective date of July 2025. A patchwork of state-by-state rules on this term in particular increases consumer confusion and decreases the ability of companies to operate in all jurisdictions across the country. A patchwork could also discourage accurate labeling of recyclable packaging, leading to a drop in recycling. For an example of a national approach, the organization [How2Recycle](#) (H2R) has already done a significant amount of work on this topic and has deep industry and consumer support for their program.²
- The term “access to recycling” – We support the existing 60 percent threshold for “substantial majority” and caution against setting a threshold based on recycling rates as it is not practical or appropriate. This threshold wouldn’t reflect consumer understanding of the term “recyclable” but rather whether items are capable of being recycled. In addition, clearer guidance on calculation of “access to recycling” rate is needed. We have seen a range of assessments where rates vary and change due to differing results from various assumptions. A standard, quantitative approach to this calculation would prevent confusion and add credibility to the claim.
- More guidance around “recycled content” – SFPA member companies have set ambitious goals to integrate postconsumer recycled content (PCR) into our packaging. Our [PCR policy priorities](#) reflect our support for PCR requirements that complement broader efforts to modernize and improve U.S. recycling infrastructure and ultimately improve the quality of PCR – especially for use in food packaging.

These state 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 note that there are other recognized and widely accepted definitions on these and related terms from organizations such as the Environmental Protection Agency, The Ellen MacArthur Foundation, and the International

² How2Recycle discusses its most recent consumer research in its July 2022 report, “[How consumers feel about and respond to recycling & How2Recycle: A consumer research summary.](#)”

Organization for Standardization which may be useful in the agency's review. For example, these groups have established definitions on many of the terms, including recyclability and reuse.

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

SFPA supports federal harmonization, and we recommend FTC engage with Congress to address federal preemption as well as other federal agencies with different areas of expertise that also share similar goals in the environmental space (e.g., the Environment Protection Agency (EPA)). Additionally, with ongoing advances in technology and changes in infrastructure, it is critical for FTC's framework for environmental claims remain flexible and nimble so FTC can accommodate these updates to align with developments. Federal rulemaking may make it burdensome and difficult to update.

B. Specific Claims

1. Carbon Offsets and Climate Change, 16 CFR 260.5. The Guides currently include guidance relating to carbon offsets. Should the Commission consider revising this section or provide additional guidance addressing other types of advertising claims related to carbon offsets and/or climate change?

SFPA is supportive of the FTC providing additional guidance around claims related to greenhouse gas emissions, including claims such as carbon negative, carbon neutral, carbon positive, and carbon reduction. We recommend that the FTC seek to align its claims guidance with the principles outlined in [ISO 14021: Environmental labels and declarations](#) and the [Greenhouse Gas Protocol Corporate Accounting and Reporting Standard](#). These standards are robust and widely used by marketers in the U.S. to structure their carbon reduction efforts and commitments.

Given the complexity of carbon reduction claims, as well as the fact that there are a number of international standards around climate-related claims, SFPA believes this topic would lend itself well to an FTC public workshop to seek stakeholder feedback on this topic.

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?

SFPA believes the Green Guides would benefit from alignment with recognized and widely accepted definitions from organizations such as the EPA, The Ellen MacArthur Foundation, and the International Organization for Standardization. These organizations and their proposed terminology may be useful in the agency's review. Further, we believe it would be helpful for the FTC to reference recognized standards and industry bodies that can be used to verify the availability of recycling schemes or the appropriateness of a recyclable claim. Recognizing a role for third-party certification or standards would help drive consistency and accuracy in applying the significant majority standards.

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%.

- a. **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?**

As noted in the section above, SFPA believes that the existing 60% threshold for “substantial majority” should be maintained as this standard is widely used and has been in place for a decade to set industry and consumer expectations related to recyclability of materials. However, setting a threshold based on the rates at which packaging or other materials are actually recycled is not practical or appropriate. A standard based on actual recycling rates could fluctuate to the point where manufacturers cannot make on-label communications about recyclability of a package, which would contribute to consumer confusion about whether certain materials can be recycled and negatively impact recycling rates with the potential for more materials to enter landfills.

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)?

SFPA asks FTC to revise its guidance on recycled content claims to account for advances in recycling technology since the guides were last updated in 2012. In particular, SFPA advocates for inclusion of “chemical,” “molecular,” or “advanced” recycling methods (sometimes called “tertiary recycling”) as producing recycled content. These methods allow industries to capture and recycle certain plastics, such as mixed plastics, that were previously considered difficult or impossible to recycle, and results in less plastic in landfills. In some ways, advanced recycling is similar to the recycling process for cardboard, which involves breaking the cardboard down into pulp and rebuilding it. The Food and Drug Administration (FDA) describes tertiary recycling as a type of recycling, as categorized by the EPA, in its guidance on the use of recycled plastic as a food contact substance.³ Likewise, we ask the FTC to recognize that advanced, molecular, or chemical recycling processes are considered “recycling” and result in “recycled content.”

Due to the nature of the technology, the newly recycled material becomes part of a blend, indistinguishable from new non-recycled materials. However, there are stringent third-party verified mass balance accounting practices available to ensure proper tracking of mixed feedstocks as well as account for the right amounts of added recycled materials. This approach enables chemical, molecular, or advanced recycling technology to be adopted at scale and helps companies track how much recycled material has been used in their manufacturing systems. 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.

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?

³ FDA outlines its approach to tertiary recycling in its document, [“Recycled Plastics in Food Packaging.”](#)



On the claim, “sustainable,” SFPA requests that FTC take the same approach as in 2012. We do not see a need for FTC to revisit this determination. The claims “sustainable” and “sustainably sourced” should be treated as general environmental benefit claims, which should be made only with proper qualification that explains what is meant by sustainability or which aspects of the product or service are considered “sustainable” as laid out in 16 CFR 260.4.

We sincerely appreciate the FTC’s comprehensive efforts to review the Guides as well as the opportunity to comment during this process. SFPA is eager to further assist you as an Alliance; please do not hesitate to reach out with any questions.

Sincerely,

Sustainable Food Policy Alliance

