



american cleaning institute®

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April 19, 2023

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Subject: Federal Trade Commission Regulatory Review of Green Guides for Use of Environmental Marketing Claims: Docket No. FTC-2022-0077

Dear Sir or Madam,

The American Cleaning Institute® (“ACI”)¹ appreciates the opportunity to provide written comments in response to the request issued by the Federal Trade Commission² (“FTC” or “Commission”) on the *Regulatory Review of the Green Guides for the Use of Environmental Marketing Claims*³ (the “Green Guides” or the “Guides”). ACI’s member companies represent manufacturers, formulators, and distributors of cleaning products used in household, commercial, industrial and institutional settings across the United States. ACI and its members are dedicated to developing cleaning products that reflect a commitment to safety, public health, and the environment. ACI is also dedicated to advancing public understanding of the safety and benefits of cleaning products through research, education, outreach and science-based advocacy.

From the Green Guides’ inception in 1992, ACI has worked with the Commission to provide our industry’s perspective, submitting comments when the Guides were reviewed in 1996 and 1998, and again in 2008 and 2010. We believe that guidance that promotes truthful and accurate representations about environmental characteristics improves marketplace communication, thereby allowing consumers to make better informed purchasing decisions.

ACI is continually assessing consumer perceptions relating to various aspects of our industry. ACI asks the FTC to consider stronger guidance for certain claims, more frequent opportunities for revisions to the Guides, and more cross-agency collaboration to align the Guides with existing regulatory requirements. The need for FTC guidance that brings clarity regarding standards for

¹ACI represents the \$60 billion U.S. cleaning product supply chain. ACI members include the manufacturers and formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial, and institutional settings; companies that supply ingredients and finished packaging for these products; and chemical distributors. ACI serves the growth and innovation of the U.S. cleaning products industry by advancing the health and quality of life of people and protecting our planet. ACI achieves this through a continuous commitment to sound science and being a credible voice for the cleaning products industry.

² Guides for the Use of Environmental Marketing Claims, 87 Fed. Reg. 77766 (Dec. 20, 2022).

³16 C.F.R. § 260.

making truthful and non-misleading environmental benefit claims is paramount as responsible companies aim to manage a patchwork of federal and state standards related to environmental marketing that are otherwise in conflict.

Enhancing Existing Guidance

In its request for comment, the FTC asks, “Is there a continuing need for the Guides? Why or why not?” ACI believes that there is a continuing need for the Guides, and now more than ever, a need for clearer and stronger guidance than the current Guides offer. Some examples of existing claims that need additional guidance include compostable, degradable, free-of, non-toxic, recyclable, and recycled content. ACI discusses each of these claims in turn below, but notes that the vague nature of the current definitions convolutes the flow of truthful information to consumers and increases the potential for deceptive information to reach consumers. In addition to enhancing existing guidance, ACI recommends that the Commission also provide guidance on claims such as natural, organic, sustainable, biobased, regenerative and circular.

General Environmental Benefit Claims

ACI fully supports the Commission’s proposal that marketers do not make unqualified general environmental benefit claims. Such claims should be properly qualified to identify for the consumer the specific environmental benefit the product offers. However, we suggest that the revised Guides provide clearer guidance as to how to effectively qualify general environmental claims. Additional examples demonstrating when a specific environmental claim is and is not adequately qualified would be helpful. ACI also requests that (1) more examples of both Section 5 compliant and non-compliant claims be added directly to the Guides, and (2) going forward, the FTC post additional examples to its website as supplemental guidance between Green Guide review cycles to properly and timely address emerging issues in the environmental claims space.

Compostable Claims

ACI recommends that the Commission provide stronger guidance for compostable claims that helps companies avoid misrepresenting whether a product or package is compostable. The current version of the Green Guides advises that marketers “should clearly and prominently qualify compostable claims if [municipal or institutional composting] facilities are not available to a substantial majority of consumers or communities where the item is sold.”⁴ The FTC asks whether this guidance should be revised to “define ‘substantial majority’ consistent with the ‘recyclable’ section?”⁵ ACI agrees with strengthening guidance for “compostable” claims, including by defining “substantial majority” to mirror the standard as defined in section 260.12(b)(1) as “at least 60 percent.”⁶

Additionally, as it stands, section 260.7 does not provide information for a compostability threshold and how to calculate it, nor does it provide guidance for time of decay or what materials would be considered appropriate for composting.⁷ While the standard does require the support of competent and reliable scientific evidence, it does not provide much guidance regarding the type of testing required or thresholds that should be met to support a claim that a product is compostable. The FTC should accept industry methods that have been validated and accepted. More details regarding how to appropriately support a compostable claim will help companies make truthful and

⁴ 16 C.F.R. § 260.7(d).

⁵ 87 Fed. Reg. at 77768.

⁶ 16 C.F.R. § 260.12(b)(1).

⁷ 16 C.F.R. § 260.7.

non-misleading compostable claims. The Guides should also include a definition for compost, as the practice of composting has become much more popular since the last update to the Green Guides.

To help bring more clarity regarding appropriate support for compostable claims, ACI requests that the FTC acknowledge existing industry-accepted and validated testing methods as adequate support for compostable claims. For example, ACI encourages the FTC to consider compliance with ASTM D6400 and D6868 as adequate support for “compostable” claims. In the 2012 revisions of the Green Guides, the FTC rejected use of ASTM D6400 and D6868 to support compostable claims.⁸ States, however, have recognized the scientific rigor these testing methods present and the benefits of using these testing methods to support a “compostable” claim. For example, California law requires that consumer products labeled “compostable” meet either ASTM D6400 or ASTM D6868 testing standards, or OK compost HOME certification if the product is intended to be composted at a consumer’s home.⁹ Washington State also requires that products labeled as compostable either (1) meet ASTM standard specification D6400, (2) meet ASTM standard specification D6868, or (3) be comprised of wood or fiber-substrate only.¹⁰ Adopting use of ASTM D6400 and D6868 testing standards to support “compostable” claims would therefore identify well-accepted rigorous scientific standards to help responsible companies ensure such claims are in compliance with FTC requirements. Flexibility in a rapidly changing industry is also necessary. ACI therefore requests that the FTC not limit potential substantiation for compostable claims to specific test methods and instead acknowledge that other test methods can also be used by companies provided that they are competent, reliable, and validated.

In addition, ACI recommends that the FTC amend its guidance that compostable materials break down in an “appropriate composting facility, or in a home compost pile or device.”¹¹ Some consumers know about large-scale composting facilities, but others do not. These systems are operated differently than home composting systems and typically achieve higher temperatures during composting. An unqualified compostability claim may be understood by some consumers to mean the material will break down in large scale facilities, while other consumers understand it to mean the material will break down in home compost piles and devices. Thus, we recommend the guidance clarify that an unqualified compostability claim refers to the ability of the material to breakdown in both large-scale and home composting systems.

Degradable Claims

Section 260.8(b) states that “[a] marketer making an unqualified degradable claim should have competent and reliable scientific evidence that the entire item will completely break down and return to nature (i.e., decompose into elements found in nature) within a reasonably short period of time after customary disposal.”¹² ACI supports the principle behind this statement. However, ACI requests that the FTC provide further guidance for defining degradable, biodegradable, oxo-degradable, oxo-biodegradable, and photodegradable claims, including examples of methods that would be acceptable to substantiate such claims. Furthermore, ACI recommends that the FTC incorporate into its guidance that marketers should specify which components of a product are degradable given that an unqualified biodegradable claim may be understood by some consumers to mean that the product, all of its components, and its packaging are degradable.

⁸ FTC, Green Guides: Statement of Basis and Purpose, at 114-15.

⁹ There is an exception to these testing requirements, however, for “fiber products that are demonstrated to not incorporate any plastics or polymers, including, but not limited to, through lamination, extrusion, or mixing.” Cal. Pub. Res. Code §§ 42356-42357.

¹⁰ RCW § 70A.455.040.

¹¹ 16 C.F.R. § 260.7(b).

¹² 16 C.F.R. § 260.8(b).

In addition, ACI encourages the FTC to acknowledge that different types of degradability testing may be necessary, depending on whether a product's component or its packaging is advertised as degradable. For example, ACI encourages the FTC to recognize the Organization for Economic Cooperation and Development ("OECD") and Office of Chemical Safety and Pollution Prevention ("OCSPP") Ready Biodegradability testing guidelines as sufficient to substantiate a biodegradable claim for ingredients because this testing has been accepted by the Environmental Protection Agency ("EPA") and is generally accepted testing used world-wide for determining the biodegradability of ingredients.¹³ Alternative testing, however, may be required to substantiate the biodegradability of a product's packaging.

ACI also is concerned that state restrictions on degradable claims severely limit the use of such claims to advertise the benefits of members' products. For example, California essentially prohibits degradable claims on consumer products.¹⁴ ACI requests that the FTC revise its guidance to acknowledge the importance of being able to provide truthful information to consumers. Consumers are increasingly concerned with their environmental footprint and want to know the environmental impact of discarding products. Prohibiting marketers from truthfully advertising products as "degradable" ultimately harms customers who want to purchase such products.

Free-Of Claims

Under the current Green Guides, a "free-of" claim may still be "appropriate" if a product or its packaging

contains or uses a trace amount of a substance if: (1) the level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance's presence does not cause material harm that consumers typically associate with that substance; and (3) the substance has not been added intentionally to the product.¹⁵

The FTC acknowledges that "trace contaminant" and "background level" are "imprecise terms" that must be analyzed on a case-by-case basis.¹⁶ ACI is concerned that the FTC's guidance is being ignored by the plaintiffs' bar. Marketers who are in compliance with the Green Guides may still find themselves subject to a class action lawsuit alleging that a product advertised as "free of" is deceptively advertised because it contains trace amounts of the substance. ACI encourages the FTC to provide additional clarification regarding why a "free of" claim can, nevertheless, remain truthful when trace amounts of certain substances are present as well as examples of the appropriate standard for determining when a product contains a "trace" or "background level" amount of a substance. Additional guidance will help to bring clarity regarding appropriate use of "free of" claims in the marketplace.

¹³ Per the EPA, acceptable test methods include OCSPP Harmonized Guideline 835.3110, OCSPP Harmonized Guideline 835.3140, OECD Test Guideline 301A, OECD Test Guideline 301B, OECD Test Guideline 301C, OECD Test Guideline 301D, OECD Test Guideline 301E, OECD Test Guideline 301F, and OECD Test Guideline 310. *See Criteria for Biodegradability Claims on Products Registered under FIFRA*, EPA (Apr. 14, 2022), <https://www.epa.gov/pesticide-labels/criteria-biodegradability-claims-products-registered-under-fifra>.

¹⁴ *See* Cal. Pub. Res. Code § 42357(b).

¹⁵ 16 C.F.R. § 260.9(c).

¹⁶ *Id.* at n.4.

Non-Toxic Claims

Section 260.10(b) explains that a “non-toxic” claim “likely conveys that a product, package, or service is non-toxic both for humans and for the environment generally.”¹⁷ There has also been concern that products labeled “non-toxic” will be viewed by consumers as safer than other products, when this may not be the case. The current Green Guides only provide one example of a non-toxic claim. ACI requests that the FTC provide further guidance, and more examples to demonstrate appropriate use of this claim to convey when a product is not toxic to the environment.

Recyclable Claims

ACI requests that the FTC reassess current consumer perceptions of positive disclosures for recyclability. Given significant efforts on consumer education over the last 11 years and the increased use of the internet, it is likely that consumers would interpret these statements differently today than when the Guides were last revised. Waste management technology has improved significantly, along with education on recycling product containers. Thus, consumers are likely more familiar with recyclable claims and symbols than they were when the prior guides were issued.

The FTC asks if “the Guides should 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?”¹⁸ ACI does not support this approach. ACI instead encourages the FTC to continue to apply a standard that is focused on a product (or its packaging)’s capacity to be recycled, rather than whether it will actually be recycled in a substantial majority of communities. Manufacturers and marketers are not experts in local jurisdictions’ recycling capabilities, and whether a product or its packaging is ultimately recycled is not in the control of manufacturers and marketers. Companies should be able to truthfully communicate to consumers about whether materials in their products have the capacity to be recycled in a substantial majority of communities; it is the responsibility of municipalities to both educate consumers on how to properly dispose of such products in their locality and then recycle materials that are properly disposed for such purpose.

If the FTC decides to incorporate whether material is actually recycled into guidance on unqualified “recyclable” claims, it must provide clear guidance on what authorities’ companies can rely upon to determine which specific products and materials are recyclable. ACI encourages the FTC to consider existing resources to shape any guidance on recyclable materials, such as the Association of Plastic Recyclers (“APR”), How2Recycle, and The Recycling Partnership.

For example, California recently enacted additional requirements to make recyclable claims in the state. In the near future, California will prohibit recyclable claims on certain materials, depending on whether (1) the material type and form is collected for recycling programs by jurisdictions that encompass at least 60 percent of the population of the state, and (2) the material type and form is sorted into defined streams for recycling processes by at least 60 percent of the state’s recycling program.¹⁹ While ACI is not supportive of this law, it is helpful that the law will clearly specify what material type and form is recyclable in the state.

ACI also requests that the FTC acknowledge the negative impact the patchwork of developing state recyclable laws can have on consumers. Multiple other states are interested in passing related legislation that could further complicate potentially inconsistent legislation.

¹⁷ 16 C.F.R. § 260.10(b).

¹⁸ 87 Fed. Reg. at 77769.

¹⁹ Cal. Pub. Res. Code § 42355.51(d)(2).

ACI requests that the FTC revise its guidance to acknowledge the importance of companies being able to provide truthful information to consumers. Consumers are increasingly concerned with their environmental footprint and want to know whether products and their packaging are recyclable. Prohibiting marketers from truthfully advertising products as “recyclable” ultimately disincentivizes innovation, which in turn, impacts consumers who want to make informed purchasing decisions and responsibly discard products and their packaging.

Recycled Content Claims

Section 260.13(c) states that marketers should qualify recycled content claims on products that are partially made with recycled content by indicating “the amount or percentage, by weight, of recycled content in the finished product or package.”²⁰ Per the provided examples, this figure may be calculated using the annual weighted average of recycled material.²¹ The FTC asked if it should revise the Guides to provide guidance on “recycled content” claims “based on alternative methods,” including mass balance calculations.²² ACI supports the Commission’s proposed continued use of the annual weighted average to determine recycled content. ACI also encourages the Commission to revise the Guides to provide guidance on using mass balance calculations to make recycled content claims. This would allow for flexibility across various industries and provide marketers an opportunity to show consumers they are supporting a more environmentally conscious business model. At present, the Green Guides recycle content provisions imply that a recycle content claim must start with a “product or package [that] is made of recycled content” or “contains recycled content” (brackets and italics added). The FTC should modify the recycled content provisions in the Green Guides to reflect acceptance of the mass balance allocation of recycled content credit more clearly.

With increased interest in recycled content claims, companies will need guidance on how to navigate truthfully stating these claims. A key challenge to marketing materials that use the product of advanced recycling technologies is the acceptance of the accounting mechanism. Mass balance is a chain of custody process by which inputs and outputs and associated information are transferred, monitored, and controlled as they move through each step in the relevant supply chain. Utilization of mass balance claims are critical to ensure that plastics are not inappropriately disadvantaged compared to other materials. Also, the ability to make recycled content claims utilizing the mass balance allocation of recycle content credit is critical to enable the success of advanced plastic recycling technologies.

Additional Claims to Address

In 2012, the Commission declined to issue guidance on certain claims that have since seen a rise in usage (i.e., organic, biobased, natural, sustainable). For these claims, ACI recommends the Commission create guidance that is consistent with existing regulatory standards to ensure there is harmonization with use of these terms across industries. The Commission should consider collaborating with other federal agencies to define one national standard regarding recyclable, compostable and reusable labeling and other areas where conflicts exist between the Green Guides and state laws. For example,

²⁰ 16 C.F.R. § 260.13(c).

²¹ 16 C.F.R. § 260.13, Example 7.

²² 87 Fed. Reg. at 77769.

- Through the National Organic Program (“NOP”), the United States Department of Agriculture (“USDA”) defines organic as, “[A] labeling term that indicates that the food or other agricultural product has been produced through approved methods. These methods integrate cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity. Synthetic fertilizers, sewage sludge, irradiation, and genetic engineering may not be used.”²³ The NOP “is a federal regulatory program that develops and enforces *consistent national standards* for organically produced agricultural products sold in the United States.”²⁴ Because the NOP maintains consistent national standards for certain products, ACI encourages the FTC to model guidance for organic claims on consumer products that do not fall under USDA jurisdiction on the NOP’s guidelines.
- The USDA defines biobased as a product that is “(1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or (2) An intermediate ingredient or feedstock.”²⁵ The USDA manages the BioPreferred Program, which allows companies to apply for certification that identifies their products as “biobased.”²⁶ The BioPreferred Program is a voluntary labeling program.²⁷ To encourage consistency across the consumer products industry, ACI encourages the FTC to incorporate the USDA’s guidance on biobased claims into the Green Guides.
- The USDA defines “natural” as “a product containing no artificial ingredient or added color and is only minimally processed,” meaning the product “was processed in a manner that does not fundamentally alter the product”²⁸; and
- The FDA defines “natural” as “nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food that would not normally be expected to be in that food.”²⁹

ACI recognizes that the above definitions are not necessarily directly applicable to many consumer product marketers who look to the Green Guides for guidance, but ACI encourages the FTC to develop guidance for organic, biobased, and natural claims that is consistent with existing regulatory definition in an attempt to harmonize advertising and labeling standards across agencies. In particular, ACI considers it important that any guidance on “natural” claims be clear that “natural” does not always mean “safe” or “non-toxic.” By accounting for existing definitions, FTC’s updated guidance will not only lessen uncertainty and confusion amongst marketers and consumers, but also allow for harmonization between the Green Guides and other federal regulations that our members must abide by.

Sustainability claims have also increased in prevalence, as the term has become ever-present in the conversations of climate change and business. The EPA currently defines sustainability broadly: “Everything that we need for our survival and well-being depends, either directly or

²³ *What is Organic?*, USDA (Sept. 2011), <https://www.ams.usda.gov/sites/default/files/media/What%20is%20Organic.pdf>; see also 7 C.F.R. § 205.2.

²⁴ *National Organic Program*, USDA, <https://www.ams.usda.gov/about-ams/programs-offices/national-organic-program> (last visited Mar. 17, 2023) (emphasis added).

²⁵ 7 C.F.R. § 2904.2.

²⁶ *What is the BioPreferred Program?*, USDA, <https://www.biopreferred.gov/BioPreferred/faces/pages/AboutBioPreferred.xhtml#> (last visited Mar. 17, 2023).

²⁷ *Voluntary Labeling Initiative*, USDA, <https://www.biopreferred.gov/BioPreferred/faces/pages/AboutLabel.xhtml> (last visited Mar. 17, 2023).

²⁸ *What Does Natural Meat and Poultry Mean?*, USDA (Jan. 30, 2023), <https://ask.usda.gov/s/article/What-does-natural-meat-and-poultry-mean#:~:text=A%20product%20labeled%20%22natural%22%20is.not%20fundamentally%20alter%20the%20product..>

²⁹ *Use of the Term Natural on Food Labeling*, FDA (Oct. 22, 2018), <https://www.fda.gov/food/food-labeling-nutrition/use-term-natural-food-labeling#:~:text=The%20FDA%20has%20considered%20the,to%20be%20in%20that%20food.>

indirectly, on our natural environment. To pursue sustainability is to create and maintain the conditions under which humans and nature can exist in productive harmony to support present and future generations.”³⁰ There is a wide variability of how this claim is currently being used. As the FTC recognized in the Statement of Basis and Purpose for the 2012 Green Guides, sustainability claims are open to multiple interpretations and can present substantiation challenges.³¹ Therefore, ACI encourages the FTC to clarify that such claims should be treated as general environmental benefit claims that should be properly qualified to identify the specific environmental benefit(s) that the product offers and address the current variability of its interpretation. ACI further requests that the FTC provide additional guidance and examples of the type of evidence that would be needed to substantiate sustainability claims.

Finally, ACI notes that “regenerative” and “circular” claims are increasing in popularity. ACI encourages the FTC to review these claims and provide guidance to marketers about when use of these claims may be deceptive, particularly given the growing interest in and use of Life Cycle Assessments for products.

Additional Issues for Consideration

Third Party Certifications

ACI believes that third-party certifications and programs are beneficial to consumers but should not be a requirement for making environmental marketing claims. The FTC currently recommends using scientific data to substantiate many claims in the Green Guides. For example, section 260.8(b) recommends that marketers have “competent and reliable scientific evidence that the entire item will break down and return to nature . . . within a reasonably short period of time after customary disposal” to support an unqualified degradable claim.³² Being certified by a third-party should be an optional way to gain credibility, but should not be made a requirement to show a marketer has competent and reliable scientific evidence to support its claim. Proper substantiation, including through competent and reliable scientific evidence, is the appropriate and necessary requirement to support environmental marketing claims.

More Frequent Updates

As ACI members continue to produce safer, less resource-intensive products, it is important that they are able to market these new products effectively. It would be easier for marketers and more beneficial for consumers if the FTC revised the Green Guides more frequently, to account for evolving technology and consumer understanding. Since the last update to the Guides, a great deal has changed across consumerism, including how consumers receive information. It is imperative that consumers receive accurate, trustworthy, and modern information on the products they are using. By increasing the frequency of updates to the Guides, for example, from every ten years to every five years, marketers will be able to ensure that certain claims do not become outdated, misused, or misinterpreted.

Cross-agency Collaboration

As discussed above, ACI recommends that the FTC work more closely with other federal agencies to ensure that its guidance on environmental marketing claims works in conjunction with regulatory requirements required by other federal agencies, such as the USDA, EPA, FDA, etc. This

³⁰ *Learn About Sustainability*, EPA (Nov. 14, 2022), <https://www.epa.gov/sustainability/learn-about-sustainability#what>

³¹ Statement of Basis and Purpose, at 258.

³² 16 C.F.R. § 260.8(b).

will allow the FTC to have the ability to provide stronger guidance, based on existing definitions and guidance by other agencies, and to strengthen standardization amongst federal agencies. Cross-agency collaboration will also increase efficiency amongst marketers to produce labeling that accounts for requirements across multiple regulators, and limit consumer confusion.

Rulemaking

The FTC asks if it should “initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims.”³³ ACI opposes the FTC initiating rulemaking because any new rule will take years to finalize and provide no benefit beyond that already provided by the Green Guides, in particular, such a rule will not preempt conflicting state laws. If the FTC pursues rulemaking related to deceptive or unfair environmental claims, ACI requests that the FTC limit its rulemaking to claims for which there are clear standards that marketers can easily follow, such as “free-of,” “recyclable,” and “recycled content.” Currently, many of the standards remain open to some interpretation or contain vague language. It would be unfair to marketers to seek civil penalties against them related to ambiguous standards.

Conclusion

For nearly three decades, the Guides have been instrumental in helping define acceptable claims and advertising activity. They support the communication of accurate information on environmentally beneficial products to consumers while maintaining the flexibility needed to accommodate rapidly changing technology. ACI applauds the FTC’s efforts to ensure that the Guides are periodically updated to address this changing environment. We appreciate the opportunity to once again provide our perspective on these Guides that are so important to the continued success of our industry.

Respectfully submitted,

D. Stanton

Darius Stanton, ACI Director of Regulatory Science

³³ 87 Fed. Reg. at 77768.