

The Recycling Partnership’s Comments on Green Guides Review, Matter No. P954501

April 17, 2023

The Recycling Partnership (“The Partnership”) is pleased to submit to the Federal Trade Commission (“FTC” or “Commission”) the following comments regarding the current Guides for the Use of Environmental Marketing Claims (“Green Guides”). The following comments include data, research, and expertise from The Partnership to inform potential revisions to the Green Guides. The Partnership thanks the Commission for the opportunity to comment and welcomes additional opportunities to engage with the Commission as it conducts its decennial review of the Green Guides. In order to provide more fulsome comments and avoid duplicative comments, some of the Commission's issues for comment are grouped together where there were common themes and/or information.

A. General Issues

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

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

7. Please provide any evidence that has become available since 2012 concerning consumer perception of environmental claims, including claims not currently covered by the Guides. Does this new information indicate the Guides should be modified? If so, why, and how? If not, why not?

As a mission-driven non-profit dedicated to improving recycling nationwide, The Partnership develops data-driven tools and solutions, conducts extensive research, and collaborates with the full spectrum of stakeholders, including local communities, companies, and policymakers to bring truth and transparency to recycling. Through The Partnership’s work in more than 3,400 communities and at the national level, the importance of clear, trustworthy, and straightforward communications about recycling is apparent. Recyclable claims, especially those printed directly on packages and products, are one of the top communication channels to inspire U.S. consumers to recycle and to recycle correctly. It is essential that marketers are provided with updated, clear guidance so they can communicate recycling information more often and with data-backed accuracy.

The Partnership knows based on evidence-based research that people, and human behavior, are at the heart of any successful recycling program.¹ The recycling information received from communities, companies, and other marketers has the potential to encourage more recycling or discourage recycling participation. Consumer-facing labels in particular are among the most important sources of recycling information.² They can even influence purchasing choices as research shows U.S. consumers are willing to pay more for sustainable products.³ The Green Guides play a vital role in setting national standards for accuracy, clarity, and accountability to help ensure recycling information is accurate. Recent research by The Partnership into consumer beliefs and perceptions about recycling information demonstrates the benefits and importance of clear, truthful, and transparent communication about recycling. Key findings from this research include the following:

- **Despite the fact that U.S. consumers support recycling, they are confused.** Eighty percent (80%) of U.S. consumers believe recycling has a positive impact⁴, yet about two-thirds of household recyclables are wasted each year⁵. One reason for this is that U.S. consumers are confused about what to recycle and lack confidence when it comes to recycling.⁶
- **Confidence in recycling matters.** The Partnership's 2022 Recycling Confidence Index, which gauged confidence in recycling habits and recycling programs, showed that only half of those surveyed believe recycled items are made into new things. The Index also showed that confidence in recycling knowledge and in the performance of recycling programs are crucial factors in encouraging recycling behavior.⁷
- **U.S. consumers rely on labels.** Seventy-eight percent (78%) of U.S. consumers say they look at recycling information on product labels, but nearly two-thirds of those who look at labels are confused by that information.⁸
- **Inaccurate recycling information engenders distrust among U.S. consumers.** Eighty-two percent (82%) of U.S. consumers feel misled if recycling is implied in a claim but not accurate because an item cannot be recycled into something new. U.S. consumers expect recycling information on product packaging to be reliable and want a consistent format.⁹

This research demonstrates why accurate recyclable claims are critical to maintaining consumer confidence and ultimately participation in recycling. In light of these findings, The Partnership urges the FTC to modify the Green Guides to provide marketers with updated, detailed guidance on making recyclable claims to improve claim accuracy. Such improvements can help to increase consumer trust. As the research shows,

¹ <https://recyclingpartnership.org/behavior-change/>

² <https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/>

³ <https://recyclingpartnership.org/americas-prefer-sustainable-companies/>

⁴ <https://recyclingpartnership.org/first-of-its-kind-recycling-confidence-index-not-surprisingly-confidence-is-heavily-impacted-by-communication-and-support/>

⁵ <https://recyclingpartnership.org/behavior-change/>

⁶ <https://recyclingpartnership.org/behavior-change/>

⁷ <https://recyclingpartnership.org/recycling-confidence-index/>

⁸ <https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/>

⁹ <https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/>

when consumers are confident that an item will be recycled, recycling performance improves, which protects the planet and strengthens the economy.

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

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

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

The Green Guides have positively impacted the flow of truthful information to U.S. consumers by providing a single consistent source of national guidance on the use of recyclable claims. This increases the likelihood that environmental messaging does not mislead consumers. Consistent guidance also empowers marketers to make recyclable claims more confidently, which helps them better inform, educate, and inspire consumers.

Since the last decennial regulatory review of the Green Guides, the recycling landscape has evolved remarkably with significant innovation in materials and packaging, and the emergence of new technologies and data sources. In addition, numerous state legislative and regulatory requirements affecting recyclable claims have emerged, and more are slated to take place in the coming years. The Green Guides need an updated approach to provide consistent national guidance for clear, accurate, and accountable claims that both reflect the current environment and adapt to future change. If the Green Guides are not updated to account for the evolving recycling system, it could lead to an increase in misleading claims. When recyclable claims are misleading, everyone loses – consumers recycle less, communities manage more contamination and waste, and it creates an unfair playing field for companies that are making genuine improvements.

Given the importance of accurate claims, The Partnership believes federal rulemaking is needed to ensure consistency, accountability, and enforcement throughout the U.S., especially when applied to an issue as locally diverse and variable as residential recycling in the U.S. To be successful, it is critical that FTC leverages expertise from other federal entities such as the Environmental Protection Agency.

B. Specific Claims

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?

a. What evidence supports your proposed revision(s)?

b. What evidence is available concerning consumer understanding of the term “recyclable”?

c. What evidence constitutes a reasonable basis to support a “recyclable” claim?

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?

The Partnership urges the Commission to revise the Green Guides to include updated guidance on recyclable claims, reflecting ongoing changes of a maturing and increasingly more sophisticated recycling system. While the current Green Guides acknowledge that a product or package should be able to be collected, separated, or recovered for reuse, the Green Guides only provide quantifiable guidance on recycling facility availability. As a result, marketers often focus on the *rate* of consumer recycling access for a product or package to substantiate recyclable claims. This results in a disconnect in some situations between what is accepted for recycling versus what is *actually* recyclable and that disconnect reduces public trust. It is the position of The Partnership that in addition to recycling access, products and packages must also: be properly designed, able to be effectively sorted, and have sufficient end markets to claim unqualified recyclability. When these other building blocks of recyclability are not considered, it can result in misleading claims and loss of consumer trust. As set out more fully in the responses to General Issues 1, 2 and 7, The Partnership’s research demonstrates consumers feel misled, sometimes even discouraged from participating in recycling at all, if they find out recycling labels are inaccurate. In fact, sixty-eight percent (68%) of consumers said they would feel disappointed, deceived, upset, angry, and/or lied to if products were marked as recyclable when they could not be made into new things.¹⁰ The common application of the current Green Guides does not sufficiently ensure that products can be made into new things to protect consumers from misleading recyclable claims.

To better prevent misleading claims, the updated Green Guides need to provide assessable guidance for design, sortation, and end markets in addition to recycling access. This will ensure packages and products have the highest likelihood of being recycled. While it is not possible for companies to know with absolute certainty that each package or product is made into something new, they can apply a rigorous, data-driven test to maximize that probability. There is data-based and expert-driven information available to assist the Commission and companies. Since 2019, The Partnership has convened industry leaders from across the value chain through the Circularity Council¹¹ leading to a five-step, data-driven approach to determine recyclability. The resulting Pathway to Circularity Framework¹² (“Framework”) builds on the access requirements set out in the Green Guides to determine if packaging is *actually* recyclable – not just accessible for recycling. The Framework provides specific criteria and recommended thresholds for each necessary

¹⁰ <https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/>

¹¹ <https://recyclingpartnership.org/circular-economy/>

¹² <https://recyclingpartnership.org/circular-economy/>

building block of recyclability, defining a five-pronged national approach¹³ to determine recyclability.

Under the Framework, in order to determine that a package is recyclable, it must be:

1. Designed for recycling following industry guidelines;
2. Accessible to be collected or accepted for recycling by a substantial majority of consumers – as defined in the Green Guides;
3. Able to be effectively sorted for recycling at a recycling sortation facility;
4. Accepted by the recycling industry for use in the production of new packages or products – meaning there are sufficient end markets; and
5. Effectively recognized as recyclable by consumers.

The Partnership encourages the Commission to incorporate similar language into the Green Guides to improve claim accuracy and increase consumer confidence. The Partnership submits that all packages should be assessed for recyclability utilizing the five-pronged standard described above and then labeled to display the results of the recyclability assessment, clearly indicating whether the item is or is not recyclable. The recyclability message should be displayed in a prominent location through a standardized on-package (i) text, (ii) recyclability label, or (iii) digital label or link.

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?

The Partnership’s Recycling Confidence Index¹⁴ shows that U.S. consumers want to recycle, and they rely on accurate information to recycle properly. However, in The Partnership’s research, U.S. consumers reported feeling misled¹⁵ when recycling information says something is recyclable, but it is not accepted for recycling in their community or their building, as is common in the difference between single- and multi-family dwellings. This can lead to those consumers recycling less frequently, which results in communities then having to manage more waste and less recycled feedstock available to manufacturers. The definition of significant majority in the Green Guides today allows for as many as forty percent (40%) of Americans to see blanket messaging that products and packages are recyclable when they may not be accepted in their local community. To better inform consumers and reflect that more things will become recyclable over time, consumer messaging should rely on technology and data to allow for “smart” claims that reflect an evolving landscape.

¹³ https://recyclingpartnership.org/wp-content/uploads/dlm_uploads/2023/02/Circular-Packaging-Assessment-Tool-1.pdf

¹⁴ <https://recyclingpartnership.org/recycling-confidence-index/>

¹⁵ <https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/>

A growing solution to address the confusion caused by varying local program acceptance is to leverage labeling technology, such as QR codes, coupled with dynamic, localized recycling information. This enables U.S. consumers to easily determine if an item is accepted for recycling wherever the consumer is located. This type of dynamic labeling will soon become even more necessary as states pass laws in the U.S. resulting in companies needing more adaptable claims. In the past, limitations on national-scale data and technology made it challenging to provide and interpret qualified recyclable claims, which contributed to the current state of consumer confusion as evidenced in the research noted in the responses to General Issues 1, 2, and 7. Fortunately, recent improvements in available data and technology, like The Partnership's National Recycling Database,¹⁶ provide real-time, local recycling information and thereby can set consumers, companies, and the Green Guides up for success going forward. The Partnership submits that the updated Green Guides should include language encouraging qualified recyclable claims to be communicated through data-backed dynamic labels. This will allow materials and package formats that are trending toward widespread recyclability to communicate recycling information for those packages in a current, geographically accurate manner without confusing consumers. The updated Green Guides should continue to allow for qualified claims via QR codes and other disclosure language when measurable, continuous progress toward recyclability can be demonstrated. By empowering marketers to make accurate, qualified claims, they are able to inform consumers to recycle items where local infrastructure provides for it, reducing waste to landfill whenever possible while mitigating confusion.

In addition to allowing marketers to continue making qualified claims, the threshold for access to collection sites for those making unqualified claims needs to increase over time to help prevent misperceptions and improve recycling. As noted above, eighty-two (82%) of U.S. consumers said it seems dishonest to have a recyclable label on a product if it really will not be recycled.¹⁷ Under today's standards, as many as 130 million Americans may not have access to recycle a product or package but will still see blanket recyclability claims. This may be a contributing factor to the decreasing confidence reflected in The Partnership's 2022 Recycling Confidence Index¹⁸. All product and packaging materials and formats trending toward recyclability should take action to improve recycling access to be on par with the most common household recyclables, such as aluminum cans, mixed paper, HDPE bottles, PET bottles, and others.¹⁹ The Green Guides should increase the current sixty percent (60%) threshold for the number of recycling facilities that are available to make an unqualified recyclable claim over time. Improved recycling access thresholds should reduce consumer confusion and mistrust while dynamic qualified claims will enable the system to continue to make the progress needed. With concerted, collaborative effort, access rates can be increased as evidenced by The Partnership's Polypropylene Recycling Coalition which increased the access rate for polypropylene by eight percentage points (8%) in just two years.

Additionally, the Green Guides need to provide clear guidance to define recycling access and ensure it is applied consistently. In the absence of that clarity, it could be interpreted that the availability of just one collection site in an area, even if it is inconvenient to consumers, could count as "access," resulting in

¹⁶ <https://recyclingpartnership.org/how-the-national-recycling-database-can-increase-consumer-confidence-in-recycling>

¹⁷ <https://recyclingpartnership.org/consumer-research-on-recycling-behavior-and-attitudes-regarding-on-pack-labeling/>

¹⁸ <https://recyclingpartnership.org/recycling-confidence-index/>

¹⁹ <https://recyclingpartnership.org/how-the-national-recycling-database-can-increase-consumer-confidence-in-recycling>

potential deception. This can be mitigated by updating the Green Guides to provide the protection needed for the consumers and companies taking steps to protect the planet.

The Partnership once again thanks the Commission for the opportunity to submit these comments. If the Commission has any questions regarding the comments or needs additional information, please contact Sarah Dearman at sdearman@recyclingpartnership.org.