



April 24, 2023

*Via Electronic Submission: <https://www.regulations.gov>*

Federal Trade Commission  
Office of the Secretary  
Suite CC-5610  
600 Pennsylvania Ave., NW  
Washington, DC 20580

**Re: Proposed Revisions to the Guides for the Use of Environmental Marketing Claims  
("Green Guides") (87 FR 77766 (December 20, 2022))**

The Toy Association, Inc., on behalf of its members, welcomes the opportunity to submit these comments in response to the U.S. Federal Trade Commission's (FTC or Commission) request for comment on its Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides") related to the efficiency, costs, benefits, and regulatory impact of the Guides and specific environmental claims.

The Toy Association represents more than 800 businesses – toy manufacturers, importers and retailers, as well as toy inventors, designers and testing labs – all involved in bringing safe, fun, and educational toys and games for children to market. The U.S. toy industry contributes an annual positive economic impact of \$109.2 billion to the U.S. economy. Safety is the toy industry's number one priority. Toy manufacturers and retailers work year-round to design, produce, and deliver safe products that comply with 100+ stringent federal safety standards and tests. Toys are recognized by the U.S. Consumer Product Safety Commission as ranking among the safest consumer products found in the home.

Product safety and environmental claims are often intertwined, as consumers may be concerned about both the safety and environmental impact of the products they purchase. Nothing is more important to the toy industry than the safety of children and the trust of their parents and caregivers. Just as marketing and advertising claims related to safety should be specific and not overstated, so should environmental claims. TTA supports the FTC reviewing the Guides with the intent to provide flexible for businesses to promote environmentally friendly products and practices and improve clarity for consumers. We urge the FTC to consider product safety as paramount to any claims or modifications in their review of the Guides, while allowing businesses to communicate improvements in the environmental characteristics of their products as technology advances.

Below the Toy Association addresses a subset of the questions posed by FTC, and we look forward to providing further comments on the Commission's proposals as the regulatory review progresses.



## General Issues

### **Q#1: Is there a continuing need for the Guides?**

The Association believes there is an ongoing need for the Guides to help achieve transparency, consistency, and ultimately increased consumer confidence when choosing from the growing volume of products marketed as environmentally friendly. Through the review the FTC also has the opportunity to provide businesses with a level playing field by setting clear guidelines for advertising claims, and creating the predictability and consistency needed in the marketplace without limiting companies' abilities to communicate environmental initiatives in nondeceptive ways.

### **Q#11: What significant costs, including costs of compliance, have the Guides imposed on businesses, particularly on small businesses?**

The risk of legal action, and the increase in regulation at the state and local levels related to environmental claims and restrictions on materials use and source reduction mandates have created a complex and costly landscape for businesses to navigate. Where state, local and international laws do not align with the Guides compliance may require additional resources, including time and expense. This can be especially challenging for small businesses that may not have the resources to conduct the necessary research and analysis. Additionally, obligations to comply with retail initiatives based on the Guides can come at significant costs, particularly for small businesses.

### **Q#12: What modifications, if any, should be made to the Guides to reduce the costs imposed on businesses, particularly on small businesses?**

As the FTC works to review and update the Guides any efforts to align with general environmental principles in other jurisdictions will streamline compliance for businesses, and clarifying sections of the Guides that have led to confusion in the marketplace could help reduce costs. In some cases, conflict between the Green Guides and other laws or regulations can create confusion and may increase costs for businesses trying to comply with multiple requirements. For example, a business may be required to use a specific environmental label (or restricted in making other claims) to comply with state regulations, but the use of that label may not be consistent with the Green Guides. The issue of alignment is further discussed in our response to question 17.

Additionally, more guidance on how to comply with the Guides, including resources, such as templates or checklists would be helpful to businesses to ensure they are making truthful and accurate environmental marketing claims. We encourage the FTC to consider outreach, which could include providing resources such as webinars or one-on-one consultations to help businesses navigate the guidelines. An important task for FTC, in producing a revision of the Guides, is balancing clarity regarding when specific claims can be made without being unduly prescriptive so as to prevent claims based on innovative advances in product and packaging sustainability.



**Q#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?**

The use of a QR code or digital ID for access to more detailed information on product sustainability would be a benefit to consumers. In the FTC’s 2010 review of the guides, the Commission recognized that consumers increasingly use the Internet to check product claims and learn about products’ environmental attributes. However, it determined that websites cannot be used to qualify claims that appear at the point of sale.<sup>1</sup> The increase in consumer’s access to and reliance on the internet, including the use of QR codes, for information in 2023 make it worth reconsideration of the use of websites to qualify claims.

Additionally, we urge the FTC to support the use of advanced recycling to make sure that future technologies will not be excluded as updates to the Guides are often behind the advancement in the industry.

**Q#17: Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, how?**

As discussed in Question 11, the increase in regulation at the state and local levels related to environmental claims and restrictions on materials use and source reduction mandates have created a complex and costly landscape for businesses to navigate. In some cases, parts of the Guides have been incorporated into state consumer protection laws such as California, Maine, Minnesota, New York and Rhode Island with California recently codifying the full Guides into law.<sup>2</sup> Other states have enacted their own laws governing environmental claims, such as Washington’s and Maryland’s standards for compostable and degradable claims.<sup>3</sup>

In other cases, states are moving to restrict or eliminate the use of the “chasing arrows” symbol (CA, OR and WA)<sup>4</sup>, or have material purity regulations and disclaimers (PA, MA and OH)<sup>5</sup> which would conflict with the Guides. Because the Guides do not preempt state laws there is a growing patchwork of regulations which will overlap or conflict unless authoritative bodies adopt recommendations sufficiently flexible to enable companies to comply with both U.S. and foreign standards.

The Toy Association does not support the FTC tying its definitions to the availability of local or municipal facilities that are not relevant to the environmental attributes of the advertised product.

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<sup>1</sup> <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-issues-revised-green-guides/greenguidesstatement.pdf> (General Issues Page 15)

<sup>2</sup> For example, Calif. Bus. & Prof. Code § 17580.5.

<sup>3</sup> Washington State Chapter 70A.455: <https://app.leg.wa.gov/rcw/default.aspx?cite=70A.455&full=true>

<sup>4</sup> California SB 343: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB343](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB343)

<sup>5</sup> See for example, Pennsylvania Department of Labor & Industry: <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/bois/Pages/Stuffed-Toys-Regulations.aspx#:~:text=Toys%20shall%20be%20declared%20unfit,or%20a%20previous%20manufacturing%20process.>



However, the increasing number of state specific requirements related to environmental claims is driving the need for a clearinghouse for critical information needed to support green claims. For instance, currently the CA chasing arrows legislation proposes that recycling claims only be made if the local infrastructure for recycling is available.<sup>6</sup> This leaves the knowledge of local infrastructure to the companies to investigate and understand – an arduous and burdensome task. The FTC should consider housing or supporting a clearinghouse of information that supports substantiation of claims, particularly to assist with refining the definitions of recycling or composting that rely on local infrastructure validation. Without an authoritative body to house this information, it would otherwise place an undue burden on companies to gather and store information on local infrastructure in every market. It is also likely that the lack of data would lead to a decrease in recycling/composting practices.

**Q#18: Are there international laws, regulations, or standards with respect to environmental marketing claims the Commission should consider as it reviews the Guides?**

The Association urges harmonization with international standards wherever possible. Standards like ASTM and ISO provide consistency for businesses and can benefit consumers by bringing added transparency. For example, ISO 14021 provides a framework for assessing the validity and accuracy of environmental claims, including claims related to recyclability, recycled content, and biodegradability. The ability to rely on credible third-party certifications and/or third-party verifiers is critical to transparency and increasing consumer confidence in claims. We would caution that the FTC should not select particular third parties, metrics, or procedures when several reliable options are available.

The European Union (EU) and Canada have issued guidance on the use of environmental claims that cover many of the same claims as the Green Guides.<sup>7</sup> The FTC should consider harmonizing their guidance to EU standards for general principles where possible with the understanding that detailed implementation will not align due to varied infrastructure and existing laws. However, there are certain principles around biodegradability, for example, where alignment would be helpful (example: not calling plastic substances biodegradable). Guidelines for this type of broad definitional principles would be arduous if they are different in different regions.

Additionally, the FTC should be aware of the potential for consumer confusion created by labeling requirements of other jurisdictions beyond where the consumer purchases the product. California’s Proposition 65 labeling law has been confusing and misleading to consumers outside of California who have purchased products containing the label.<sup>8</sup> Similar situations may arise with other environmental labeling requirements, for example France’s Triman logo.<sup>9</sup>

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<sup>6</sup> California SB 343: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB343](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB343)

<sup>7</sup> See for example, EU Green Claims: [https://environment.ec.europa.eu/topics/circular-economy/green-claims\\_en](https://environment.ec.europa.eu/topics/circular-economy/green-claims_en)

<sup>8</sup> For example, *New York Times* “What is Prop 65?”: <https://www.nytimes.com/wirecutter/blog/what-is-prop-65/>

<sup>9</sup> Code de l’environnement Art. L541-9-3 and Decree no. 2021-835



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

The Toy Association finds that the Guides are useful and helpful as a tool to provide guideposts for retailers and suppliers on what they can say on the environmental attributes of their products. The Guides are most useful in their existing capacity without the need for a formal rulemaking process. Beyond the Guides, the FTC could assist businesses in clarifying and substantiating claims by either housing or supporting a clearinghouse of information that supports substantiation of claims. It is currently very difficult, particularly for small businesses, to collect local recycling infrastructure information, for example, when it varies by jurisdiction. More information on the need for clearinghouse is discussed in the response to question #17.

**Specific Claims**

**Carbon Offsets**

The Toy Association agrees that offsets are not enough evidence to validate a carbon neutral claim and should not be included in the definition of carbon neutral. However, the use of verified offsets in net zero claims should be acceptable, particularly if net zero claims are going to apply to business-to-business marketing.

**Recyclable**

The Association intends to provide comments on recyclable claims after the FTC's May 23<sup>rd</sup> workshop.

**Recycled Content**

The Toy Association urges the FTC to avoid prescriptive requirements such as minimum percentages of post-consumer recycled content to substantiate claims. Flexibility and the use of post-industrial and advanced recycling is needed until the infrastructure is in place for companies to source the grade of PCR needed.

**Organic**

As the FTC considers guidance on organic claims, we note that vendor-based claims must still be relied upon in many cases and guidelines related to chain of custody may not be achievable, particularly for small businesses. The Textile Exchange provides a process for "scope certificates" which should support organic claims.

**Sustainable**

Sustainable claims are currently too broadly used, and the Toy Association would support the ability to use the general claim of "sustainable" when followed or linked to a clarifying secondary claim.

**Eco-friendly**

The Toy Association agrees that "eco-friendly" claims can be misleading and recommends these claims be used minimally, if at all.



In closing, we appreciate the FTC's efforts to revise the Guides and urge the FTC should adopt flexible principles that provide guidance on how to avoid making deceptive environmental claims about particular products while giving companies the freedom to communicate about their products' attributes in this evolving space. We hope these comments will assist the FTC as it reviews the many important issues related to the Guides. Please contact Ed Desmond at [edesmond@toyassociation.org](mailto:edesmond@toyassociation.org) or Jennifer Gibbons at [jgibbons@toyassoiaton.org](mailto:jgibbons@toyassoiaton.org) if you would like additional information on our industry's perspective.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Pasierb". The signature is stylized and cursive.

Steve Pasierb  
President & CEO