



April 24, 2023

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

Green Guides Review, Matter No. P954501

Dear Ms. Tabor:

The National Retail Federation (NRF) welcomes the opportunity to submit these comments in response to the Commission’s request for public comment on the Guides for the Use of Environmental Marketing Claims (“Green Guides” or “Guides”).

The NRF is the world’s largest retail trade association. Retail is the nation’s largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

NRF strongly supports the FTC’s mission and the role of the Guides in promoting clarity around environmental claims and messaging. It is essential for all businesses along a supply chain – from providers of raw materials to manufacturers to retailers – to share accurate and meaningful information to the best of their ability, consistent with their diverse and individual goals.

Retailers also depend on receiving accurate information from suppliers. Retailers use this information, in turn, to support corporate sustainability goals, and to report progress towards achieving those goals in accurate and meaningful ways to consumers, employees, investors and other interested parties.

Since the FTC last updated its Guides in 2012, interest in the environmental impacts of all aspects of business and consumer practices has increased. The number and variety of environmental issues is growing and so is the availability of associated environmental data. Consumers increasingly rely on mobile devices and electronic communications including apps

and social media to access information about environmental impacts, and businesses continue to explore various sustainability initiatives in response to consumer demand including the development of new metrics and tools for collecting relevant data. Because different issues matter to different consumer segments and there are varying degrees of expectations, it follows that companies face challenges in accurately communicating product-specific information. By providing clear, flexible guidance, FTC helps facilitate a level playing field for companies.

Retailers and suppliers provide accurate and meaningful information on product packaging, on in-store displays, and online to help consumers make informed decisions. However, without clear, flexible guidance on environmental claims, retailers and suppliers face a challenge in assessing the appropriate level of evidentiary support necessary to substantiate advertising claims.

NRF is concerned about this uncertainty. Responsible retailers make their best efforts to convey information about environmental attributes. However, overly prescriptive guidance or regulation and growing litigation alleging false sustainability advertising may discourage companies from sharing important sustainability information, a concern within the broader sustainability community known as “green muting” or “green hushing.” Flexible, balanced FTC guidance could provide clarity and help companies convey information of environmental attributes to consumers.

It is within this rapidly evolving and increasingly complex context that NRF offers the following overview of retailers’ perspectives followed by more detailed responses to select questions that the FTC raises in its request for comments.

The Retailer Perspective

NRF offers the following context for our more detailed responses to the FTC’s questions:

- (1) It is important to retailers that all parties within retail supply networks communicate environmental and related sustainability information accurately and consistently so that retailers can (a) confidently share it with consumers in order to allow them to make more informed decisions and (b) use it internally to meet and report progress towards their own corporate sustainability goals.
- (2) The Green Guides provide valuable guidance and offer clarity around the kinds of environmental claims that can be made and the types of validation necessary to support the claims. They should be further updated, however, to account for the evolution of new claims and technological advances in reporting methods. We encourage the FTC, in so doing, to continue to maintain needed flexibility and remain consistent with the FTC’s mission to prevent consumer deception.
- (3) There is value in ensuring that the FTC’s guidance does not conflict with state-level and international requirements, especially with those in the EU, where a directive on substantiation of voluntary green claims is forthcoming. Retail, like other industries, is

global. It relies on global supply chains that stretch across multiple regions, countries, states and municipalities and that are subject to different rules affecting some parts of those supply chains. These rules can potentially conflict. A product sold and marketed in one region as “recyclable” might be unable to garner the same claim in another region even when the likelihood of the product’s being recycled and its environmental footprint are identical across regions. Requiring companies to market the same product differently because of conflicting requirements, rather than actual differences, can create confusion and mistrust with consumers around all sustainability claims. It can also lead to “green hushing” by discouraging retailers from communicating environmental product benefits. Flexible guidance from FTC permits companies operating internationally to share relevant information with their consumers.

- (4) The FTC should, where possible, provide safe-harbor provisions for retailers and others making accurate environmental and related sustainability claims and offer guidance in the following areas:
- a. Reliance on reputable, third-party certifications to validate and enhance environmental and related sustainability claims. Retailers often lack the expertise and/or ability to determine the accuracy and validity of specific claims. Indeed, some companies do not have the internal resources necessary to do so and must rely on third parties to advise and audit the more technical claims and support. In these cases, the FTC should, when reasonable, permit retailers to rely on recognized outside, independent expertise to validate and substantiate the accuracy of claims, including the use of single-attribute claims such as “carbon-neutral” and broader third-party certifications that address multiple attributes.
 - b. Circumstances in which retailers may aggregate products meeting a wide variety of specific sustainability criteria under a common category such as “Sustainably Focused,” “Greener Offerings,” or related categories. These aggregated product categories might appear in-store in designated aisles or departments, online in designated sections of a website, or be identified by a retailer-specific icon such as “Retailer X Sustainability Selection.” To avoid making unqualified claims of general environmental benefit, retailers that adopt this approach should make clear which sustainability attributes (e.g., recycled content, energy- or water-efficient, organic, compostable, etc.) determine whether a product is eligible for designation and clarify that products may not include every attribute in order to be listed. This approach, if adopted in a reasonable manner, allows retailers to consolidate all the “greener” or more sustainable offerings, making it easier for consumers to quickly identify such products for their further consideration. The FTC should clarify that identifying such groups of products in this manner may be permitted under its current guidance for general environmental benefit claims. **(16 CFR 260.4)**
 - c. Use of QR codes or other references to web-based information to provide additional sustainability information for products. It is impossible for retailers to provide all potentially relevant information on product packaging, in-store or on the initial online

landing page for specific products, particularly with the increased number of disclosures often required for more technical claims. While all material information necessary to prevent deception must be clearly and conspicuously communicated at the point of sale, FTC should recognize the role of digital tools that allow retailers to refer consumers to online sources of additional information that some consumers consider relevant. Without this option, retailers often resort to using more paper by attaching additional hangtags to items to disclose all relevant information relating to the environmental claim. This runs counter to the goal of reducing material use.

- (5) To allow retailers to continue providing a wider range of information to consumers, there is value in providing further clarification, which we describe in greater detail later, for terms and concepts such as:
- a. Aspirational claims (e.g., “striving to become carbon-neutral” or “working to become powered by 100% renewable energy”)
 - b. Carbon neutral, net-zero (i.e., expanding beyond the current 16 CFR 260.5 discussion of carbon offsets)
 - c. Degradable (i.e., specifically for liquid products such as detergents that might be disposed of in sewer systems)
 - d. Recyclable (i.e., given competing regional definitions for the term)
 - e. Regenerative (i.e., ensuring clarity around the meaning of the term and efforts to validate such claims)

NRF Response to Select FTC Questions:

NRF provides the following comments in response to select questions identified by FTC in its request for comments provided in the Federal Register:

1. Is there a continuing need for the Guides?

Yes. The FTC Green Guides help achieve transparency in the marketplace, promote consumer choice and provide practical, flexible guidance to help retailers deliver products with the environmental attributes that consumers desire or expect. Retailers can continue supporting the transition towards a more sustainable, circular, clean and climate neutral global economy by enabling consumers to make informed purchasing decisions with the support of a level-playing field for retailers and their suppliers making sustainable and “green” claims.

2. *What benefits have the Guides provided to consumers?*

By offering practical guidance, defining certain terminology and offering examples, the FTC Green Guides can help provide clarity for brands seeking to provide information about environmental initiatives and thereby reduce consumer confusion. It is important for all companies to know they can make environmental claims as long as they are substantiated. The Guides will contribute to fighting greenwashing and thereby help build consumer trust in sustainability claims. It is important that consumers reliably trust such claims because consumer behavior plays a vital role in achieving broader society-wide sustainability goals.

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

In addition to updating guidance on specific claims (below), FTC should “modernize” the guides to clarify newer terminology while maintaining sufficient flexibility and accounting for evolving technology. NRF highlights the role of digital information tools for assisting consumers in the evaluation of environmental claims. For example:

- ***Multiple Attributes Beyond Those Stated on Product Packaging.*** The FTC should clarify that companies can make qualified claims of a general environmental benefit if the claims are tied to multiple attributes that may or may not be specified on the product packaging. For example:
 - *A product’s packaging identifies the product as “Greener Choice, manufactured with X% renewable energy and additional environmental benefits. Learn more at: <insert website>.” This claim is not deceptive, if the renewable energy claim is accurate, because it provides a basis for the ‘greener choice’ designation and the website provides additional and sufficient information for the consumer.*
 - *A product’s packaging includes the phrase “Learn about this product’s sustainability profile at <insert website>.” The website includes a series of accurate environmental and broader sustainability statements with supporting evidence. This general environmental benefit claim is appropriately qualified and, therefore, is not deceptive.*
- ***Aspirational Claims.*** The FTC should clarify the appropriate use of aspirational statements for achieving carbon neutrality and other environmental initiatives. For example:
 - *Product packaging or online communication states, “Company A plans to eliminate plastic packaging by 2035. Learn more at <insert website>.” This statement is not deceptive if the company has developed a strategy to reduce its*

plastic use, has identified key milestones and metrics supporting the goal, and publicly reports progress towards its goal.

- *Product packaging or online communication states, “Company A will be powered by 100% renewable energy by 2030.” This statement is not deceptive if the company has developed a strategy to increase its renewable energy use and has identified key milestones and metrics supporting the goal, and publicly reports progress towards its goal at reasonable intervals.*
- **Reliance on Third Parties.** Because retailers are not always capable of validating the environmental impact of products that they sell, they must, in some cases, rely upon the representations, certifications, and/or evidence of environmental impact provided by third parties. Retailers should be entitled to rely upon reputable third-party certifications where they exist and upon environmental evaluations that are provided by others in the supply chain, including manufacturers. Retailers cannot be expected to have the kinds of scientific expertise it takes to confirm the accuracy of claims that other credible bodies are making. The FTC should clarify that retailers can rely upon certifications and/or third-party representations that provide reasonable due diligence. For example:
 - *A product is sold at retail with the claim “Green Line: Biodegradable.” The manufacturer provides a third-party certification representing that the product undergoes accelerated degradation under landfill conditions. Based on the certification, the retailer promotes the product online and in-store along with other biodegradable products in a manner that is consistent with the information conveyed in the certification. If subsequent evidence unknown to the retailer later reveals that the product does not biodegrade, any deceptive communication should not be the fault of the retailer (provided the retailer takes reasonable measures to remove the claim upon becoming aware of the potential deception), because the deception occurred in spite of the retailer’s reasonable efforts and not because of them.*
- **Aggregated Claims.** The FTC should clarify that retailers can aggregate products meeting a wide variety of sustainability criteria under a common category such as “Sustainably Focused,” “Greener Offerings,” or related categories. Such aggregated product categories might appear together in-store in designated aisles or departments, online in designated sections of a website, or be identified by a retailer-specific icon such as “Retailer X Sustainability Selection.” To avoid making unqualified claims of general environmental benefit, retailers that adopt this approach should make clear which sustainability attributes (e.g., recycled content, energy- or water-efficient, organic, compostable, etc.) determine whether a product is eligible for designation and clarify that products may not include every attribute to be listed. This approach, if adopted in a reasonable manner, allows retailers to consolidate all the “greener” or more sustainable offerings, making it

easier for consumers to quickly identify such products for their further consideration. The FTC should clarify that calling additional consumer attention to such groups of products is permitted under its current guidance for general environmental benefit claims. (**16 CFR 260.4**)

- *A retailer develops and publishes a list of three dozen independently verified sustainability-focused claims or certifications. The retailer then groups all products meeting at least one of the claims or certifications under a section of its website labeled “Sustainability-Focused Options.” The product description for every product included in that portion of the website states which claim(s) or certification(s) applies to the product. As long as (a) the retailer has reasonable assurance that the claims provided by the manufacturer are accurate, (b) the listed products meet the retailer’s criteria for being listed as a “Sustainability-Focused Option,” and (c) the product descriptions include information about why the products are included, the retailer’s “Sustainability-Focused Options” program is not deceptive.*
- *A retailer develops and publishes a list of independently verified sustainability-focused product attributes, claims or certifications. The retailer determines that all products meeting at least one of the attributes, claims or certifications can be identified in its stores with a “Greener Option” sticker on the product, on the store shelf, or in a designated section of its store. Product packaging makes it clear that the product meets at least one of the retailer’s criteria for designation. Additional information for each product might be available online using a QR code. If the retailer has reasonable assurance that the claims provided by the manufacturer are accurate, the designated products meet the retailer’s criteria for being identified as a “Greener Option,” and product packaging makes it clear that at least one of its attributes, claims or certifications meets the store’s “Greener Option” criteria, the retailer’s “Greener Option” program is not deceptive.*

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

The Guides have a positive effect on the flow of truthful information to the extent they promote clarity and set flexible, uniform criteria, thereby enabling brands to communicate freely about meaningful environmental attributes and initiatives. The FTC should continue to take a flexible approach and avoid imposing an overly rigorous standard that would discourage retailers from communicating environmental initiatives that represent meaningful improvements.

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

It will be beneficial to consumers and to the retailers that serve them if the FTC provides guidance on using certain terms appropriately. The FTC should ensure that guidance related to these terms is sufficiently flexible and focused on ensuring that claims appropriately specify their scope and supporting substantiation. Such terms include:

- **Carbon-Neutral.** Claims of carbon neutrality, including climate-related claims such as “climate positive” or “100% CO₂ compensated,” should include qualifying language specifying the scope of the claim and the ways in which carbon neutrality is achieved, including clarifying direct carbon reduction activities and the use of carbon-offsets. Claims should be clear so that consumers know which phases of the product’s lifecycle are being addressed by the claim from the generation or collection of raw materials through manufacture, use, and disposal of the product, transportation and packaging, and the impacts of consumer use and disposal. For example:
 - *An organic-cotton apparel item is manufactured by a company in a factory powered by renewable energy and for which appropriate carbon offsets have been generated to address other carbon emissions from the manufacturing and distribution process. The item includes a tag claiming that the product is “carbon-neutral.” The claim may be deceptive because a carbon-neutral claim might also suggest to some consumers that the carbon impacts of washing and drying the item and ultimately disposing of the item are also carbon-neutral. It would be more specific for the tag on the item to state “Carbon-neutral, including use of carbon offsets, at point of sale.” Alternatively, the packaging could accurately state “Carbon-neutral, including use of carbon offsets. Learn how to reduce your carbon footprint here” accompanied by a reference to a website address or QR code. The latter statement clearly indicates that consumers have a role to play in further reducing their carbon footprint. The company also must possess independent verification of the carbon offset.*
- **Designed for the Circular Economy.** Retailers are implementing strategies to increase the longevity and durability of specific products. They are doing their part, along with others, to create systems for consumers or other actors to return, reuse, refurbish, resell and recycle products so the raw materials continue to circulate in the economy rather than being landfilled or incinerated. Such systems go beyond statements about the ability to refill a product (see CFR 260.14) or about recycling and recyclability (see CFR 260.12). Absent a clear explanation, references to “circular economy” may be vague or overly broad. Marketers should clearly qualify circular economy claims to the extent necessary to avoid confusion.
 - *A product that includes a statement such as “Designed for the Circular Economy. Learn more at <insert website>” is accurate when the referenced website explains how a consumer can repurpose, resell, recycle or otherwise explains*

how the product's attributes facilitate the emergence of a circular economy when also remaining consistent with existing FTC guidance on recyclable (CFR 260.12) and refillable (CFR 260.14) claims.

- **Net-Zero.** This term is being used in a variety of different contexts to mean different things. Some references to net-zero are actually zero-waste to landfill claims. Others are references to net-zero carbon emissions. The phrase net-zero should always be used with qualifying language that explains the environmental attribute.
- **Recycled Content Claims.** The FTC should clarify its provision on recycled content claims to reflect the evolution of markets for recycled materials. The FTC should recognize, however, that access to recycling and, therefore, the availability of recycled materials is not always co-located proximate to manufacturing facilities. This challenge is not dissimilar to that faced in the procurement of other third party certified sustainable commodities such as cotton or renewable energy, which utilize market-based mechanisms and/or chain of custody models to ensure that the sustainable attribute is appropriately accounted for in the final product or disclosure.

The FTC should approach this issue concerning recycled content claims in the same manner the Guides treat renewable energy claims. When companies make renewable energy claims, the FTC acknowledges and permits the use of renewable energy certificates. With a renewable energy certificate, a company can buy renewable energy credits from one part of the country. The credits represent the clean energy attribute of renewable electricity. The company and owner of the certificate company can retire the credit and adjust the electricity and emissions of a factory in another part of the country to support renewable energy claims.

The use of certificates and credits is used to support other environmental claims as well. For example, for cotton products, many brands around the world use the Better Cotton Initiative (BCI) standards that allows for mass balance allocation – a common and acceptable form of chain of custody – to attest to the percentage of more sustainable materials in a product by ensuring the traceability of the environmental impacts of material feedstocks throughout the value chain.

The ability of retailers to rely on such market-based mechanisms and mass balance calculations to measure the sustainability benefits of specific materials, including recycled content percentages, are critical to support the transition to the circular economy. It is now possible, for example, to take recovered textile fibers and turn them into new fibers by depolymerizing the recovered fiber and turning it into new material.

The resulting materials can be considered recycled-content materials because the source of the raw materials used to make the material is recovered material that would have been otherwise landfilled or incinerated. While the manufacturing process to convert the recovered materials into new products is different from traditional mechanical recycling processes, it offers the same environmental benefits of preventing the landfilling or incineration of the materials.

The FTC should clarify that it is not deceptive for manufacturers to make recycled-content claims if the manufacturer can demonstrate that the sustainability characteristics of the circular and/or bio-based and/or recycled content in the value chain can be attributed to the product based on verifiable bookkeeping consistent with the kind of accounting used to track renewable energy credits.

- *A fashion company uses an auditable chain-of-custody for credit accounting of recycled-content and allocates the sustainability attributes in whole or part to their product content. The company advertises its product as “Made with XX% recycled material.” The claim is not deceptive if the marketer uses a mass balance approach and chain of custody traceability for credit accounting and product claims and then uses a certification process with third-party audits that produce verifiable claims that will be credible to consumers.*
- **Regenerative.** Some marketers are using the term “regenerative” synonymously with terms like bio-based or renewable, both of which refer to products made from plants or other organic material. The term regenerative, when used within sustainability conversations, refers to a broad set of practices that work to restore, renew and replenish natural resources and local communities. In this context, a product could be made from a renewable resource such as corn or wheat, but the product might not be considered a regenerative product unless the growing practices for the renewable resource are also measurably improving soil health, water tables and local communities. A regenerative claim suggests more than the use of renewable materials (CFR 260.16). Marketers using the term should distinguish between regenerative products and regenerative processes (i.e., regenerative agriculture).
 - *A product that includes a statement such as “Regenerative Choice. Learn more at <insert website>” is not misleading if the referenced website explains how the product attributes facilitate the emergence of a regenerative economy while remaining consistent with existing FTC guidance on renewable materials (CFR 260.16). A statement that an ingredient is derived from “regenerative agriculture” would not be deceptive if there is independent substantiation.*

- **Zero Waste.** A claim that a product or service is zero-waste could imply that any waste that occurs throughout any phase of its lifecycle – from the generation or collection of the raw materials through manufacture, use, and ultimate disposal of the product – are completely eliminated. The likelihood of this occurring is exceedingly rare. As a result, it is best practice to avoid unqualified claims of zero waste. Claims of zero-waste should include qualifying language specifying the scope of the claim unless it is clear that the zero-waste claim is consistent with U.S. Environmental Protection Agency definitions of the zero-waste term. For example:
 - *A product that claims to be “made in a zero-waste to landfill facility,” with appropriate validation of the claim and explanation of the landfill facility is not deceptive. Similarly, the claim is not deceptive if the claim is supported by an independent, third-party audit to a recognized zero-waste standard.*

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?

- **Use of QR Codes.** Increasingly, consumers are using QR codes and other digital tools to obtain immediate information about environmental attributes at the point of purchase. These developments can provide valuable information and foster competition and consumer choice. The FTC should clarify that QR codes and other digital tools that enable consumers to obtain information about the environmental attributes of products at the point of sale can be used to enhance and substantiate the environmental and broader sustainability claims on product packaging. For example:
 - 1) *A product’s packaging states that the product is a “Greener Choice made from 30% recycled content” and includes a QR code to “learn more.” The information referenced by the QR code includes additional information about the environmental impacts of the product, including information that might not otherwise be known and that might lead some small percentage of consumers to determine that the product does not meet their definition of a “greener choice.” Additional information, for example, might state that the factory is powered by 30% renewable energy. Some consumers might not consider that a greener choice because the factory is not 100% powered by renewable energy. The packaging claim, however, is not deceptive because it is accurate. The provision of additional factual information through QR codes or other digital means should be encouraged.*
 - 2) *A product’s plastic packaging states, “How to Recycle this Package” with a QR Code that identifies recycling programs in the area (by allowing location access) where the package may be recycled. The database powering the system is regularly updated so that consumers will have the latest information in real time about the recyclability of the product. Although the plastic packaging is not generally recyclable through*

curbside programs, the claim is not deceptive because it provides consumers with accurate information about how and where the product can be recycled.

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

There is the potential for conflict and/or overlap between the Guides and state laws. NRF encourages the FTC to limit the potential for conflict by ensuring that FTC guidance is sufficiently flexible. For example, the California Truth in Labeling for Recyclable Materials law appears to be more restrictive than current FTC guidance. The California legislation prohibits the unqualified use of a Mobius loop (i.e., “chasing arrows”) recycling symbol on items that are not generally recyclable through municipal curbside recycling. The FTC can clarify, and help avoid conflict, by recognizing that appropriate qualifying information may be provided through QR codes or other electronic means. This enables retailers and manufacturers to update environmental information when it becomes available or relevant for consumers. The ability to provide consumers with needed information electronically also permits consumers to receive information specific to their current geographic location (by allowing location access).

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

Yes, there are international regulations that are relevant to the FTC’s review process. The European Union’s Proposal for a Directive on Green Claims (published March 22, 2023), the European Union’s Unfair Commercial Practices Directive, guidance issued by the United Kingdom, Dutch, and Norwegian Competition and Markets Authorities, guidance being considered by the Competition Bureau of Canada, and others should be considered by the FTC. NRF encourages the FTC to avoid conflict with international requirements or creation of barriers that would disrupt supply chains and make it difficult for retailers to comply with multiple jurisdictions.

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

No. There is no need for more formal FTC rulemaking at this time. Given the expanding interest in sustainability-related information, the emergence of new communication tools that retailers and others can use to share information with consumers, and the speed in which new sustainability related manufacturing and material technologies are evolving, it is important to maintain the flexibility that current FTC guidance permits rather than regulating practices and limiting them to specific approaches.

NRF Response to Specific Claims Identified by the FTC:

NRF offers the following comments on some of the specific claims for which the FTC requested input:

- ***Carbon Neutral, Carbon Zero. 16 CFR 260.5.*** A claim that a product or service is carbon-neutral broadly implies that any carbon emissions that occur throughout any phase of its lifecycle – from the generation or collection of the raw materials through manufacture, use, and ultimate disposal of the product, including all associated transportation and packaging – are completely eliminated or offset. The likelihood of this occurring is exceedingly rare. As a result, all claims of carbon neutrality should include qualifying language specifying the scope of the claim and the ways in which carbon neutrality is achieved, including clarifying direct carbon reduction activities and the use of carbon-offsets. Claims should be clear so that consumers know which phases of the product’s lifecycle are being addressed by the claim from the generation or collection of raw materials through manufacture, use, and disposal of the product, transportation and packaging, and the impacts of consumer use and disposal. For example:
 - *An organic-cotton apparel item manufactured in a factory powered by renewable energy and for which appropriate carbon offsets have been generated to address other carbon emissions from the manufacturing and distribution process includes a tag claiming that the product is “carbon-neutral.” The claim may be deceptive because a carbon-neutral claim might also suggest that the carbon impacts of consumers washing and drying the item and ultimately disposing of the item are also carbon-neutral. It would be more accurately descriptive for the tag on the item to state “Carbon-neutral, including use of carbon offsets, at point of sale.” Alternatively, the packaging could accurately state “Carbon-neutral, including use of carbon offsets. Learn how to reduce your carbon footprint at <website>.” The latter statement clearly indicates that consumers have a role to play in further reducing their carbon footprint. The company also must possess independent substantiation in support of the effectiveness of the carbon offset.*
- ***Degradable. 16 CFR 260.8.*** The Guides should include an additional example to clarify that liquid products such as soaps, detergents and shampoos can make degradability claims based on the assumption that such products are typically disposed of in public sewer systems.
- ***Definition of Recyclable. 16 CFR 260.12.*** The Guides should provide additional clarity on the guidance for claiming “recyclable” considering the variety of thin film plastics (HDPE or LDPE) that are recyclable at some retail locations but may not be widely recyclable at the municipal level. For example:

- *A retailer that voluntarily offers to collect and recycle its own plastic bags that contain the store logo and the phrase “Recyclable at the store” is not deceptive if the retailer has systems in place to ensure that the bags are properly recycled.*
- **Recycled Content Claims. 16 CFR 260.13.** The Guides should provide additional clarity that products containing recycled polyester, such as a recycled-polyester apparel items, can make sustainability claims based on its environmental attributes, assuming such claims are accurate and capable of being substantiated.
- **Sustainable.** As suggested earlier, consumers and other economic actors have different interpretations for what can and cannot be considered sustainable. Some might only consider the recycled-content percentage of product packaging. Others might seek details about chemical use, labor practices, or use of renewable energy during specific parts of the manufacturing process. Some consumers ask about the carbon impact of delivering products, others are more concerned about the carbon impacts that result from using the products. The information consumers seek varies by consumer and by product type. As a result, an unqualified claim that something is sustainable may be considered deceptive without qualifying language. Such claims should always be qualified. For example:
 - *A generic claim that a product is “sustainable” is misleading without qualifying language.*
 - *A product that includes a statement such as “Product is more sustainable than before because it contains XX% recycled content” or “Product is more sustainable than before because it was manufactured in a factory powered by renewable energy” are not deceptive, assuming such claims are accurate, because they provide appropriate qualifying language.*
 - *A product includes the phrase “Review the Sustainability Story for this product” and includes a QR code that connects consumers with accurate information addressing the environmental, social and community-focused aspects of the product’s manufacture, use and disposal. This claim is not deceptive because it provides consumers with information they can use to determine if the product meets their own unique requirements to be considered a more sustainable product.*

Conclusion

Retailers recognize that it is essential for all business along a supply chain – from providers of raw materials, to manufacturers to retailers – to share accurate and meaningful sustainability information so that information can be shared with consumers to enable them to make their own decisions in support of their own personal sustainability goals and to empower

them to participate in the transition to a more sustainable economy. The FTC's existing Green Guides provide the flexibility retailers need to provide consumers with information to make better, more informed choices. The recommendations that we shared seek to maintain the needed flexibility while enhancing the overall quality of the information consumers seek and enable them to act on reliable information about the sustainability of products.

Thank you for the opportunity to provide the retailer perspective on these important issues. NRF is available to provide additional information or answer any questions that the FTC may have. We greatly appreciate the efforts of the Commission in revising the Guides and promoting trust and transparency in the marketplace.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie A. Martz".

Stephanie A. Martz
Chief Administrative Officer and
General Counsel