



Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

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Submitted Via Email environmentalclaims-declarationsenvironnementales@cb-bc.gc.ca

RE: Competition Bureau seeks feedback on its new guidelines regarding environmental claims (Dec 23 2024)

To Whom It May Concern:

On behalf of the Canadian Produce Marketing Association (CPMA), please find below comments to inform the Government of Canada's public consultation on the *Competition Act's* new guidelines regarding environmental claims (i.e., "greenwashing guidelines").

About CPMA

The produce nearly generates over \$15 billion annually in economic activity throughout the supply chain and supports over 185,400 jobs across Canada. Based in Ottawa, CPMA is a not-for-profit organization representing companies active in the marketing of fresh fruit and vegetables in Canada, from the farm gate to the dinner plate, spanning the entire produce industry. The Association's members include major growers, shippers, packers and marketers; importers and exporters; transportation and logistics firms; brokers, distributors and wholesalers; retailers and foodservice distributors; and fresh cut operators and processors. Founded in 1925, CPMA is proud to represent over 900 domestic and international members who are responsible for 90% of fresh fruit and vegetable sales in Canada.

CPMA is pleased to contribute to the government's discussion on greenwashing. We are committed to ensuring clarity and effectiveness in the development and application of environmental claims to avoid greenwashing. This includes supporting the fresh produce industry from a labeling perspective by providing CPMA members with label reviews and labelling guidance to encourage compliance with federal regulatory labelling requirements.

Background

Sustainability is a key focus area of focus for the fresh produce industry. Efforts to increase and enhance the sustainability of fresh produce products and operations is a historical and ongoing priority for the sector. As such, the misrepresentation or misinterpretation of environmental claims in fresh produce poses several challenges that can mislead consumers and harm the environment. One major issue is that greenwashing involves making false or unverified claims about the sustainability of products or processes, leading to a lack of transparency and credibility. This can create confusion among consumers who are trying to make environmentally conscious choices when purchasing fresh produce.



Furthermore, greenwashing can divert attention from genuine sustainability efforts and hinder progress towards more sustainable practices in the agricultural sector.

In addition to misleading consumers, greenwashing in fresh produce can also result in reputational, regulatory, and legal risks for companies engaged in deceptive marketing practices. By overstating or misrepresenting the environmental benefits of their products or processes, companies may face backlash from customers, regulators, and advocacy groups, potentially damaging their brand reputation and leading to legal consequences. It may also lead to unintended secondary impacts, such as consumers losing trust in Canada's food labelling system.

To address the challenges of greenwashing in fresh produce, it is crucial for companies to adopt transparent and verifiable sustainability practices, provide accurate information to consumers, and adhere to industry standards. By promoting genuine sustainability initiatives and avoiding deceptive marketing tactics, businesses can build trust with consumers and contribute to the promotion of truly sustainable practices in the agricultural industry and the fresh produce sector.

Leading challenges with greenwashing regulations

Key challenges with proposed greenwashing guidelines revolve around the need to ensure they are clear, comprehensive, and enforceable.

One common challenge is defining clear criteria and standards that companies must meet to avoid greenwashing. There is a need to find a balance in creating guidelines that are specific enough to be effective, without being overly restrictive or too burdensome for business compliance.

Another issue is enforcement. Without proper and clearly articulated mechanisms in place to monitor and respond to companies that engage in greenwashing, the guidelines may not have the intended impact. It is essential to establish a robust system for verifying claims and holding companies accountable for any misleading information they put forth.

Moreover, the evolving nature of sustainability practices and technologies adds another layer of complexity. Guidelines must be flexible enough to adapt to new developments while still providing a solid framework for companies to follow.

By addressing these challenges thoughtfully, greenwashing guidelines can play a crucial role in promoting transparency and authenticity in environmental claims, ultimately benefiting consumers and the environment.

Feedback on the Competition Bureau's New Guidelines for Environmental Claims

In response to the Bureau's invitation to provide feedback on the proposed new guidelines for environmental claims, please find CPMA's response below.

Potential Impacts for Fresh Produce Industry

The Competition Bureau of Canada proposes guidelines on environmental claims made by businesses to promote products or business interests, ensuring compliance with the *Competition Act*. The Act will prohibit false or misleading representations, requiring adequate testing for performance claims and environmental benefit claims about products, and require adequate substantiation based on internationally recognized methodology for environmental benefit claims about businesses or activities.

The guidelines propose six principles for compliance:

1. Environmental claims should be truthful and not false or misleading.
2. Environmental benefit and performance claims about products should be adequately and properly tested.
3. Comparative environmental claims should specify what is being compared.
4. Environmental claims should avoid exaggeration.
5. Environmental claims should be clear and specific, not vague.
6. Environmental claims about the future should be supported by substantiation and a clear plan.

Based on the above considerations and the specific Guideline text, CPMA notes key concerns raised by the fresh produce industry regarding the potential adverse impacts of the proposed greenwashing guidelines:

1. As written, the proposed Guidelines could conflict with the industry's compliance with the Safe Food for Canadians Regulation (SFCR)¹ regarding environmental-related information. These regulations already include provisions related to Method of Production claims. The introduction of business process-related requirements under the proposed Guidelines create an overlap with the SFCR regarding Method of Production claims for fresh produce and related products². Given that the SFCR was not referenced in the draft Guidelines, the industry is concerned that this overlap will increase risk to industry due to the potential for business process/Method of Production complaints being directed to either the Competition Bureau (CB) or to the Canadian Food Inspection Agency (CFIA), with the potential for very different enforcement outcomes.
2. For example, the industry could be challenged about claims of environmental benefits of products, especially when these products are claimed to be "sustainability grown", "eco-friendly" etc. – which arguably relate to method of production assessments under the SFCR. As outlined above, the overlap of the SFCR and the business-process related portion of the proposed Guidelines could lead to confusion and risk for the industry when it comes to product-related claims.
3. Similarly, the industry could be challenged about claims related to operations including those related to but not limited to Method of Production. As outlined above, this would increase risk due to the potential for complaints to be directed to either the CFIA or the CB, with potentially significantly differing outcomes. Furthermore, the lack of explicit differentiation between "method of

¹ SFCR <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2018-108/index.html>

² CFIA method of production: <https://inspection.canada.ca/en/food-labels/labelling/industry/method-production-claims>

Based on the CFIA guidance, method of production claims need to have an acceptable manner to substantiate the claim and CFIA has outlined the following as being acceptable: third party audit, valid documentation, or non-government certification programs.

production” business processes (e.g., “regenerative agriculture”, “eco-friendly farming”, etc.) vs. non-method of production business processes (e.g., “net-zero by 2030”, “carbon-free transport”, etc.) could result in significant risk to industry due to a lack of clear delineation between what is subject to the SFCR vs. what is subject to the CB Guidelines under the business-process component of the Guidelines.

Other Impacts of General Concern to the Industry

Industry stakeholders have also expressed general concerns with the proposed Guidelines, including but not limited to the following considerations:

Concerns with Methodology Definition and Recognition

- Lack of clarity on what constitutes an “internationally recognized methodology.”
- Uncertainty if Canada-only methodologies are sufficient or if another country's recognition is required.
- Concerns about context-specific agricultural methodologies being disqualified.

Due Diligence and Legal Clarity

- Need for specific examples of acceptable evidence to substantiate environmental claims for both products and business processes.
- Unclear distinction between business and criminal due diligence defenses.

Business Impact and Competitive Considerations

- Concerns about competitiveness, with timing of Guidelines being finalized given tariff threats and other evolving regulatory burdens.
- Risk of “green-hushing” (companies avoiding sustainability-related investments and/or sustainability claims due to fear of legal repercussions).
- Vague or confusing guidance may result in inconsistent enforcement and unnecessary compliance costs.

Private Right of Action and Frivolous Claims

- Significant risk of activist-driven complaints under the private right of action, which takes effect in June 2025. Given the significant number of sustainability assurance and certification schemes in play in North America and around the world, there is considerable risk that activist-driven complaints would significantly hinder or stop important sustainability investments and initiatives.
- Need strong and transparent safeguards against ideologically motivated complaints.
- Poorly defined processes and protections could lead to significant reputational harm to the brand/company before the issue is ultimately ruled upon.

Public-Facing Communication Scope

- Unclear if or how Guidelines would apply to:
 - Business-to-business (B2B) communications
 - Verbal statements at conferences/public engagements

- Government and NGO claims – the argument being that they should be held to the same standards as industry given the scope (“greenshaming”-related claims are not subject to similar evidential requirements or scrutiny).

Third-Party Verification and Practical Challenges

- Concerns about third-party verification requirements—who determines necessity, and for what types of claims (i.e., products vs. processes).
- High costs and feasibility issues for industries and producers.
- Challenges in substantiating claims over long-term sustainability goals (e.g., net-zero commitments for 2050).

In general, the proposed Guidelines exposes an already heavily regulated sector to additional scrutiny and expectation. There is a high likelihood of vexatious complaints to the Competition Bureau, and potentially even unnecessary civil action.

Furthermore, a significant concern arises from the broad range of ‘sustainable practices’ that exist within the industry, many reflective of regional differences (some practices are not suitable for some climates/regions but are the gold standard for production elsewhere). Recognition of these regional or product-specific differences are required to temper expectations.

There are also significant concerns about the cost of compliance – the production of product and/or business process-related claims - by farms themselves, and the proposed red tape required to back up claims with evidence from studies using internationally recognized methodology. This could be a significant financial and administrative barrier for small and medium growing operations. A reasonable alternative would be to allow growers to rely on best management practices that are often developed and promoted by provincial ministries of agriculture.

Lastly, the potential for a lack of greenwashing guideline alignment with major trading partners (e.g., US, EU, others) could significantly disincentivize exporters to Canada due to the risk of litigation resulting from a lack of alignment with existing greenwashing compliance in their core markets. A similar risk would exist for Canadian firms exporting to key markets such as the US, notably if US and Canadian greenwashing guidelines did not align.

Guideline Regarding Environmental Claims | Text-Specific Comments

Specific comments or issues of concerns related to select Greenwashing Guideline Text as proposed are outlined below.

GREENWASHING GUIDELINE TEXT	COMMENTS OR ISSUE OF CONCERN
Introduction However, readers are reminded that the other laws enforced by the Bureau, the Consumer Packaging and Labelling Act , the Textile Labelling Act , and the Precious Metals Marking	This should include the Safe Food For Canadians Regulations, which includes provisions for Method of Production-related claims which are arguably “business process”-related and would directly overlap with the proposed Guidelines.

[Act](#), also prohibit certain types of deceptive representations, and may be relevant to environmental claims.

<p><i>False or Misleading Representation / Implications for Environmental Claims</i></p>	<p>What is the definition or scope of “environmental attributes”? Given the wide array of environmental attributes across sustainability schemes (e.g., water, soil health, biodiversity, energy usage, packaging, etc.), it is recommended that these attributes be explicitly listed.</p>
<p><i>Further, it is not limited to false or misleading representations made about a product. It applies equally to materially false or misleading claims about other things, such as the environmental attributes of the business.</i></p>	
<p><i>False or Misleading Representation / Implications for Environmental Claims</i></p>	<p>To clarify, the greenwashing guidelines would NOT apply to business to business (B2B) communications? This needs to be explicitly outlined in any and all communication from the Bureau given the potential for environmental claims in B2B correspondence.</p>
<p><i>Bureau’s focus is on marketing and promotional representations made to the public, rather than representations made exclusively for a different purpose</i></p>	
<p><i>Product Performance Claims / Implications for environmental claims</i></p>	<p>How does the Bureau consider the difference between the existence of testing results vs. how the testing results are translated and expressed?</p> <p>The current language conflates the two into a single consideration.</p>
<p><i>If the Bureau challenges an environmental claim in court under this provision, it needs to prove that a representation was made to the public by the business, that it was a performance claim within the meaning of the Act, and that it was made for the purpose of promoting a product or any business interest. If the Bureau is able to prove this, then the business will need to show that the claim was based on adequate and proper testing.</i></p>	
<p><i>Claims about the environmental benefit of a product / Implications for environmental claims</i></p>	<p>How will the Bureau deal with claims which might be accurate in some regions, but not in others (e.g., recycling, composting, etc.) due to the lack of consistency in waste management infrastructure?</p>
<p><i>This provision deals exclusively with certain kinds of environmental claims, and not claims more broadly. It creates an obligation on businesses to ensure that any claim about the environmental benefit of a product is based on adequate and proper testing. Similar to the provision dealing with performance claims discussed above, it is expressly limited to claims about products.</i></p>	
<p><i>Claims about the environmental benefit of a product / Example</i></p>	<p>This example implies that there is testing, but that the interpretation or representation of the testing and its related claim is not appropriate. How the interpretation or representation of test results is assessed must be better defined.</p>
<p><i>A fashion apparel business claims that its sweaters do not release microplastic fibres when washed in a home washing machine, thereby helping to protect Canada’s waterways. The yarn was tested before the claim was made to consumers, but the testing conducted did not replicate washing in a washing machine.</i></p>	

In this scenario, the representations would likely be considered by the Bureau to be statements about the environmental benefit of a product that are not based on adequate and proper testing.

Claims about the environmental benefit of a business or business activity / Adequate and Proper

Often, this will require substantiation that is scientific in nature. Third party verification will be required in circumstances where it is called for by the internationally recognized methodology relied upon for adequate and proper substantiation.

Why is third party verification applied to business processes, but is not being applied to product (under Claims about the environmental benefit of a product / Adequate and Proper)

Claims about the environmental benefit of a business or business activity / Substantiation

Establishing by proof or competent evidence. While substantiation does not necessarily involve testing in a lab, businesses should ensure that the methodology selected is suitable for the claim, having regard to all the relevant circumstances.

Given the growing number of sustainability factors and environmental attributes (see above), how will this be considered when considering substantiation?

Claims about the environmental benefit of a business or business activity / Implications for environmental claims

This provision also deals exclusively with certain kinds of environmental claims, and not claims more broadly. It creates an obligation on businesses to ensure that any claim about the environmental benefit of a business is based on adequate and proper substantiation in accordance with internationally recognized methodology. This provision does not capture claims about products, but rather is limited to claims about a business or business activity.

How will method of operation-related claims, subject to the SFCR, be differentiated from other business processes which are not directly related to method of production? Insufficient differentiation of these processes may result in complaints being directed to the wrong organization.

Principles of Compliance - Principle 5: Environmental claims should be clear and specific – not vague

Businesses should avoid vague environmental claims in favour of clear and specific ones. Vague environmental claims may convey a general impression to consumers that the environmental benefit is broader or of greater magnitude than it actually is.

There is a risk of assessing what constitutes “vague” when the broad scope of sustainability and environmental attributes is not generally fully understood by the general public.

Q&A – 14 - Does my business require third party verification to make environmental claims?

The Act does not expressly require third party verification. However, the Act expressly requires that an internationally recognized methodology be used, and internationally recognized methodologies often require third party

This conflicts with the statement that third party verification may be required for business or business activities (see *Claims about the environmental benefit of a business or business activity / Adequate and Proper*)

verification. The Bureau will assess each case on its facts. Businesses are also reminded that third party verification may improve the credibility of claims for consumers.

Q&A – 19 - Does the methodology used to substantiate a claim need to be appropriate for the Canadian context?

Yes. In order to comply with the new provisions, a business would need to demonstrate that a particular internationally recognized methodology used to substantiate its claims is adequate and proper in the circumstances, including with regard to the Canadian context as appropriate, such as the geography and climate.

How will this appropriateness be determined when sustainability schemes, standards and/or methodologies may not be “Canadian”. Who will determine if it is appropriate for the Canadian context?

Q&A – 23 - What do I do if I want to make a claim regarding a new technology, but there is no internationally recognized methodology to support the claim my business wants to make?

At its simplest, a methodology is a procedure used to determine something, such as whether a new green technology actually has the claimed effect. If there is no methodology for testing the exact claim, the advertiser may be able to rely on internationally recognized methodologies that together can create substantiation for the claim, or that are used for substantiating similar claims.

Can academic research or third party auditable testing (e.g., ISO-certified laboratory) be considered a suitable alternate source or reference in the absence of an internationally recognized methodology?

CPMA is appreciative of the significant efforts made to-date to work with industry to address these important issues. However, we must emphasize that given the number of risks and industry-specific concerns and considerations outlined above, it is strongly recommended that the Competition Bureau consider undertaking a direct consultation with the fresh produce industry to ensure that the proposed Guidelines do not introduce undue risk to the industry, notably in regards to the potential overlap with the SFCR, or worse, lead to a reduced commitment and investments into sustainability-related activities.

We thank you for the opportunity to comment these comments and for your consideration.

Sincerely,



Ron Lemaire
President
Canadian Produce Marketing Association