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Eco-Labeling: An Argument for Regulation and Reform

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Introduction

I never thought that I would find inspiration for my thesis topic while doing something as mundane as grocery shopping, but as I was walking through the store reading all of the different labels claiming products were “all natural,” “eco-friendly,” “cruelty-free,” and “green,” I realized I had absolutely no idea what most of the labels actually meant. I try to be a responsible consumer, but I could not decide on the best way to choose between so many different products making so many different claims. There was just too much guesswork involved. I had a lot of questions about eco-labeling: When did all of this eco-labeling start? What do these labels even mean? Who is providing the labels? Who is regulating them? After spending a semester researching eco-labeling, I have discovered that the first question is the only one with a quick answer. The other answers are much more complicated.

Eco-labeling started in 1978, when Germany introduced ‘Blue Angel,’ the first nationwide eco-labeling program. Since then there have been hundreds of eco-labeling schemes created all over the world by governments, NGOs, and companies. Some of the best-known labeling programs in the United States include the Forest Stewardship Council for wood products, Energy Star for appliances, and the Marine Stewardship Council for seafood (Stevens 2010).

In theory, eco-labeling seems like an excellent way for producers and consumers to mutually benefit while reducing their environmental impacts. The idea is that eco-labels allow manufacturers to advertise the reduced environmental impacts of their products, which may be difficult for shoppers to otherwise determine, giving them an

edge over the competition. The argument continues that by differentiating their products as environmentally superior, manufacturers will be able to charge a price premium. This price premium rewards producers with environmentally superior practices and encourages other companies to improve their practices so that they too can join the eco-labeling market. In addition, producers may want to use eco-labels to avoid losing business to their competitors. As Boström and Klintman (2008: 29) note, “green labelling essentially relies on *symbolic differentiation*... The label says implicitly that this product is *different* from other products.” Eco-labeling allows manufacturers to distinguish their product from the average product.

On the consumer side, eco-labels allow people to make more informed purchasing decisions that reflect their environmental values. When looking at a product, consumers have no way of knowing how it was produced or what inputs were required. Eco-labels are supposed to provide consumers with some of this missing environmental information. Consumers can ‘vote with their dollar’ to make consumption decisions that they feel good about. According to Koos (2011: 131):

Product labels are informational devices that signal a specific quality of a product, which in most cases cannot be directly observed by the consumer. In doing so, environmental labels reduce the complexities surrounding the production and distribution of goods and transpose them into a dichotomous claim of meeting a standard or not. The underlying rationale in labelling is the governance of consumer behaviour through information provision.

Eco-labeling aims to influence consumer behavior by providing information. It is a unique policy tool because rather than being top-down, it is “a market-based *and* consumer-orientated approach to dealing with various environmental issues” (Boström and Klintman 2008: 28).

As nice as eco-labeling sounds on paper, there are numerous practical problems associated with it. One of the largest problems is the abundance of vague and misleading environmental product claims. Ham and Forjan (2008: 297) argue:

There is a proliferation of various labels, claims and additions to the name of the product like: “eco,” “bio,” “natural,” “organic,” “recyclable,” etc.

These kinds of claims are usually used arbitrarily and it is often unknown on which criteria they are based. Therefore they are frequently under criticism and attack by different interest groups.

If eco-labels do not provide accurate information, but instead are based on arbitrary claims, they are more likely to confuse consumers than to help them make more informed decisions. Horne (2009: 180) raises similar complaints to Ham and Forjan during his discussion of eco-labels:

The adoption of eco-labels is seen variously as an opportunity for increased sales through product differentiation, increased accountability, or increased choice for consumers in a greening retail environment. The reality often is too many products, too much information, too little time, and a paucity of independent, accessible, readily accessible and understandable information about environmental performance.

From personal shopping experience, I know that the ‘labeling-overload’ described in this quote can be stressful, which leads to ignoring the labels entirely. It is almost impossible to compare different eco-labels making different claims about different attributes of products to determine which one is ‘best’ for the environment. These quotes also emphasize that people are rightfully concerned about eco-labeling being used for greenwashing, or marketing deceptively to spin ordinary products as environmentally-friendly for a profit. Adding prefixes that sound environmental onto various terms does not provide consumers with substantiated information or reduce the environmental impacts of production. Vague environmental claims just give products a superficial appearance of reduced environmental impacts.

In this thesis, I will be arguing that many of the problems with eco-labeling, such as undefined terminology, an abundance of vague claims, and greenwashing concerns, could be addressed by improving regulation. Before discussing regulatory issues, I will devote the first chapter of this thesis to defining and discussing the various types of eco-labels, especially focusing on the tradeoffs between mandatory and voluntary labeling programs. After identifying strengths and weaknesses of different types of eco-labeling programs, I will spend the rest of my thesis discussing regulation. I will analyze the current regulation in the United States, with an emphasis on the Federal Trade Commission’s Green Guides. My final chapter contains recommendations for improving eco-labeling regulation, using examples from several well-known labeling programs as support.

Chapter 1. What Are Eco-Labels?

Ecolabel is a fuzzy and ill-defined term that may encompass different meanings. At one extreme, ecolabels are “labels issued by independent organizations and displayed voluntarily by manufacturers who submit to inspection or in some other way meet the organization environmental or advertising standards.” At the other extreme, ecolabels are just on product claims or logos related to some extent to environmental friendliness. Such claims may be vague, undefined, unverified and unverifiable.

- Ibanez and Grolleau 2008: 55, quoted Wayne 1994

Eco-labels, which are sometimes referred to as green or environmental labels, are not easy to define. According to the EPA, “environmental labeling is defined as making relevant environmental information available to the appropriate consumers” (1998: 5). The “environmental information” is presented in a variety of formats. Some eco-labels are simply a word or phrase, commonly printed and circled in green, like “eco-friendly.” Other labels contain a picture and text, such as the Forest Stewardship Council’s eco-label, which features a symbol that combines a checkmark and a tree above the initials “FSC.” Eco-labels, such as those for energy rating, contain numerical data, such as estimated annual energy cost or kWh used. Additionally, though rare in the United States, using a nutrition label format for environmental impacts is another eco-labeling possibility.

In the literature, rather than categorizing labels by format, eco-labels are generally discussed by other characteristics. The most basic distinction can be made between the systems by which eco-labels are produced, or whether the labels are the result of mandatory or voluntary labeling programs. Mandatory labels are legally required due to concerns about health, safety, or specific performance issues, such as energy or water

consumption of devices (Horne 2009). One of the benefits of mandatory programs is that they force producers to disclose information that they would be unlikely to provide voluntarily. For example, a company trying to sell an energy-inefficient refrigerator would not choose to display this information because it could make the product less desirable to consumers. Therefore, when it is mandated that all refrigerators have a label providing energy consumption information, consumers are able to compare the energy consumption of all refrigerators to make a more informed choice. Because mandatory labels force all manufacturers of a given product category to display the same information, a “level playing field” is created for producers (Horne 2009). Mandatory labels also provide the benefit of allowing consumers to easily compare specific qualities of all products in a given category. A final major benefit of mandatory labels is that they generally enjoy broad recognition and support from consumers (Horne 2009). Forcing all producers to disclose specific information, allowing consumers to easily compare products, and being broadly recognizable are all strengths of mandatory labels.

Yet some of the strengths of mandatory labels can be seen as weakness. One problem with mandatory labels is that they tend to focus only on one specific aspect of the product, like energy consumption, rather than providing information about the overall environmental impacts of the product. Specific information about energy or water consumption could certainly benefit consumers by helping them minimize their electricity bill or reduce their water consumption in drought-prone areas, but it does not necessarily mean that the product has fewer environmental impacts overall. For instance, a highly energy efficient appliance could be made from a metal that releases huge amounts of pollution in ecologically sensitive areas when mined. If shoppers are only

trying to maximize energy efficiency then a mandatory energy label meets their needs; however, if they are trying to reduce overall environmental impacts, they could be making a poor decision by purchasing the energy efficient appliance.

To provide information about all of the environmental impacts of a product, mandatory programs could theoretically be created that summarize a variety of environmental information, similar to a nutrition label on food. Information disclosure programs like this would be considered neutral programs because they are not making any value judgments or qualitative claims about the environmental attributes of the product (EPA 1998: xiii). Despite the fact that no value judgments are directly being made, “information disclosure programs are usually mandatory, since the facts disclosed are not always positive selling features and may not otherwise be reported by marketers” (EPA 1998: 13). I would expect many businesses to oppose this neutral information disclosure label, just as they would a negative eco-label. Past experiences implementing the Federal Nutrition Labeling and Education Act of 1990 suggest that lawsuits would be a likely outcome of a similar comprehensive mandatory environmental labeling act (Israel 1993: 326). In the next chapter I will go into greater depth about past cases of companies challenging labeling regulations, but to summarize my findings, the courts have generally sided with regulators, which suggests that business opposition alone is not an insurmountable obstacle for mandatory environmental labels.

Overcoming opposition from businesses is just one problem that must be addressed when creating a mandatory environmental impacts label. In order to be effective, any information disclosure program needs information to be simplified and comparable across products (EPA 1998: 13). Simple and comparable information across

products may sound reasonably easy to provide, but in reality there are numerous intractable problems involved (Morris 1997). The first problem is that producers all need to include the same information in a common format. Deciding what information should be included, how that information should be measured, and how the information is ultimately simplified and presented to consumers, is likely to be a highly subjective process. There is not one right set of information to include, so when deciding the content of an environmental information disclosure label, there is going to be an imperfect attempt to balance the interests of manufacturers, consumer groups, environmental organizations, scientists, and many other stakeholders. The issue of balancing interests while deciding labeling content is raised in Morris' book (1997: 8), "because there are no purely objective ways of awarding ecolabels, these programmes are subject to influence by various individuals and organisations."

Assuming all of the stakeholders could reach a compromise about what information should be included in the environmental label, there is not a scientific consensus about how environmental impacts are best measured (Morris 1997). Using a product life-cycle analysis¹ (PLCA) to determine the environmental impacts is a possible solution, but there are still many issues with PLCA. As Morris (1997: 38-9) explains, "first, it is not clear where one should draw the boundary of the life-cycle: should it be at the point where the primary materials are introduced into the production process, or should it include the environmental costs of extracting the raw materials themselves, or,

¹ Product life-cycle analysis—taking into account all the impacts of the product on the environment at each stage in its life, from the use of natural resources as inputs, through emissions during the production, distribution and use stages, to the use of natural resources and/or emissions during the disposal stage. (Morris 1997: 35)

going one stage further back, should it include the environmental costs associated with producing the machinery which was used to extract the raw materials?” Creating boundaries for a PLCA is always going to result in guidelines that are somewhat arbitrary.

Secondly, when conducting a PLCA, scientists cannot determine how consumers will use the product, which affects environmental impacts (Morris 1997). This problem can be illustrated by considering a simple case of two possible types of to-go coffee cups. One cup is made of polystyrene and the other of paper. Although comparing the PLCA of a paper and a polystyrene cup might favor the paper cup, this does not take into consideration that two paper cups might be required to avoid burning your fingers while drinking coffee (Portney 1993: 72). If a single unit of a product has fewer environmental impacts, but using more of the product is required to achieve a task, it becomes unclear if it is actually environmentally beneficial. Another problem is that distribution of the product, which can create significant greenhouse gas emissions, cannot be included in PLCA because products are shipped to various locations from various locations (Morris 1997). Though there are other criticisms of PLCA, these three major problems illustrate the challenges of measuring all of a product’s environmental impacts.

There is also a larger question that needs to be addressed, which is would consumers actually use a detailed environmental impacts label to made decisions when shopping? A study conducted by Lloyd (2006) found that consumers feel overloaded with information: 97% of those surveyed indicated that there ‘was more stuff to read than I could ever dream of reading’ and 92% indicated that they felt ‘surrounded’ by information. Though there is a temptation to believe that more information is always

better, more information can be overwhelming to consumers. These results suggest that consumers might prefer for experts to decide which products are environmentally superior so they only have to glance at a simple seal of approval label when shopping, rather than analyzing the information themselves.

The arguments for mandatory report card environmental labels and the arguments for simple seals of approval are premised on vastly different views of consumers. The EPA (1998: 64) explains the varying consumer views underlying each type of label:

One important difference among programs, however, is their differing expectations regarding the ability of labeling information to inform and educate consumers and to change consumer purchasing decisions. The seal of approval programs (ISO Type I) assume that the information needed to accurately describe numerous environmental attributes and LCA results is too complex and too extensive to present on a label. Consequently, the labeling organization synthesizes this information and establishes what it hopes to be a credible judgment of preferability (the licensing of the logo for qualifying products). On the other hand, report card programs (ISO Type III) believe that individual consumers can themselves prioritize across environmental burden (or stressor effect) categories (e.g., water consumption and air pollutants released) and that the consumer needs no interpretation. In that respect, the report cards (e.g., nutritional labeling) standardize and present environmental information.

The fact that too much information can be overwhelming for consumers supports an argument for simpler eco-labels, such as seal of approval or single-attribute claims. Seal

of approval and single-attribute claims are the most common types of voluntary labels. Voluntary eco-labels are labels companies choose to place on their products that focus only on positive environmental information. According to the EPA, “positive labeling programs typically certify that labeled products possess one or more environmentally preferable attributes” (1998: xiii). Only focusing on positive attributes is one of the biggest weaknesses of voluntary eco-labels. Single-attribute claims can be especially misleading because they can make a product appear environmentally preferable, when in reality it has worse overall impacts on the environment than the average substitutable product. Additionally, single-attribute claims can be impossible to compare because they cover completely different attributes. As an example: how should a shopper decide between three different products labeled “recyclable,” “environmentally safe,” and “biodegradable?” Mandatory labels are more conducive for comparison than voluntary labels because they provide the same information in the same format for all products in a given category.

Voluntary programs provide some key benefits, however. Rather than forcing manufacturers to provide information like mandatory programs, voluntary labels are incentive-based programs. Manufacturers are encouraged to add eco-labels to their products “in hopes of capturing more market share and improving corporate goodwill” (EPA 1998: 16). The fact that manufacturers perceive voluntary eco-labeling programs to be beneficial is one of their biggest strengths. Another strength is that seal of approval labels can consider overall environmental impacts of products and provide consumers with recommendations, making choices easier for shoppers. It is important to remember that determining overall environmental impacts for seals of approval is an imperfect

process that faces the same product life-cycle analysis issues mentioned for information disclosure labels.

Voluntary labels can be divided into independent certifications and self-declarations. Independent certifications are provided by a third-party, while self-declarations are claims manufacturers make about their own products. The International Standards Organization (ISO) classification of voluntary eco-labels, which distinguishes between labels by the type of certifier, is commonly used in the literature. Independent or third-party certified labels that provide the use of a logo, like the Marine Stewardship Council's program, are called Type I labels (Horne 2009). Type II labels are based on self-declarations of manufacturers, importers, distributors or retailers, such as Whole Foods (Horne 2009).

When discussing voluntary labels it is crucial to consider what group or organization is providing the certification because certifiers may be truly dedicated to promoting more sustainable consumption or they be motivated by profits. Type I labels generally have more credibility than Type II labels. Intuitively, it seems certifications provided by independent organizations are more likely to be objective, while self-declarations tend to be more lax because advertisers just want to appeal to green consumers. A survey conducted by Lloyd (2006) shows that many consumers have the same intuition. Lloyd found that over two-thirds of participants distrust information from large companies, and similar numbers agree that corporations have no morals or ethics. Another survey of consumer trust in eco-labeling programs conducted in Norway, Spain, Germany, and Italy found that consumer or environmental organizations were ranked first, independent bodies were ranked second, governments were ranked third, and

retailers were last (Gertz 2005). It appears that consumers assume retailers are just out to make a profit, whereas environmental organizations are legitimately concerned about the environmental impacts.

Even within the category of Type II single-attribute claims, there can be important differences. Single-attribute claims can either be factual, verifiable claims or general, unsubstantiated claims. Factual, verifiable claims would include “Made from 90% recycled material,” while general, unsubstantiated claims like “eco-friendly” are more problematic. When general self-claims are made, such as “eco-friendly,” shoppers have no idea what criteria, if any, were used. In an empirical study conducted by D’Souza *et al.* (2006: 162), “findings such as “satisfied with labels” correlated with “labels are accurate,” which suggests that businesses need to provide a clear, accurate and easily legible label design to encourage satisfaction with the accuracy of content and the communication aspects of a label.”

Although Type I labels generally enjoy more credibility than Type II labels, blindly trusting Type I labels would be a mistaken approach. Certifiers of Type I labels can be motivated by profits too. Many Type I labeling programs make money from each product they certify, therefore the more products they certify the more profits they make. Unfortunately, there have been cases of third-party certifiers maximizing their own profits by providing their seal of approval to any manufacturer who is willing to pay.

For example, in January 2011 the Federal Trade Commission reached a settlement with Tested Green, a “company that allegedly sold worthless environmental certifications for hundreds of dollars, and falsely told more than 100 customers that its certifications were endorsed by two independent firms – which it actually owned” (FTC 2011). Jeremy

Ryan Claeys, the owner of Tested Green, is barred from making misleading environmental claims for the next twenty years, but is not facing any fines or jail time (FTC 2011). Essentially, his company profited for over a year by making false claims and he is walking away unpunished. While it is a good thing that Tested Green is shut down, the lack of serious consequences does not exactly discourage other individuals from scamming consumers in a similar fashion.

The Tested Green case demonstrates the importance of transparency, another major eco-labeling concern. Even when consumers tried to research the Tested Green certification program they were provided with false endorsements from supposedly independent organizations, the National Green Business Association and the National Association of Government Contractors, which sound like legitimate organizations. Consumers had no way of knowing that the same man was running all three organizations (FTC 2011). People should be able to easily access honest information about eco-labels, such as information about the organization providing the labels, the criteria for the labels, the testing performed, and any endorsing organizations. Companies like Tested Green can make shoppers skeptical of all eco-labels, which can reduce the effectiveness of labels from legitimate organizations. Dealing with issues of trust and mistrust is at the heart of green labeling, so cases of particular eco-labels scamming consumers can undermine trust in all eco-labels (Boström and Klintmann 2008). Furthermore, confidence in the information conveyed through environmental labels is crucial for consumer willingness to consider labels in purchasing decisions (Thøgersen 2002).

In summary, there are major tradeoffs made when choosing between mandatory and voluntary labels. Mandatory eco-labeling programs require manufacturers to provide information, while voluntary programs allow manufacturers to choose to participate. Voluntary programs focus only on positive claims, while mandatory labels provide neutral information, such as energy consumption values, or negative labels warning consumers about health and safety issues. Mandatory labels are all in the same format and provide the same information, making them easier to compare than voluntary labels, which come in a wide variety of formats. Both single-attribute voluntary labels and mandatory labels focusing on a specific issue, such as water consumption, can be misleading to consumers who are concerned about overall environmental impacts. Finally, mandatory report card labels and voluntary seal of approval labels try to help consumers choose products with the least overall environment impacts, however, the mandatory report card labels assume consumers can interpret complex information on their own, while the seal of approval labels make judgments for consumers.

Although this chapter was very critical of some of the shortcomings of eco-labeling, it was not because I think eco-labeling has no potential as an environmental policy tool. I believe that it is important to identify and understand the major problems with eco-labeling in order to create regulations that address as many of these problems as possible.

Chapter 2: The Regulation of Eco-Labels

Considering that eco-labels have been used in the United States for more than twenty years, there is surprisingly little regulation of their use. Initially, the federal government avoided creating specific laws to regulate eco-labels because agencies, such as the FTC, thought that existing antifraud and truth-in-advertising laws were sufficient regulations (Lathrop and Centner 1998). I agree with Lathrop and Centner's analysis, "this approach, however, fails to regulate the field sufficiently to avoid improper claims and ensure that consumers receive accurate environmental information about the products they buy" (1998: 165). Additionally, existing laws do not adequately protect consumers from an abundance of vague and misleading eco-labels; "consumers still have no reliable definitions of environmental terms, no assurance that claims have been reviewed and approved, and no assurance that differing state laws have been harmonized for similar products sold in interstate commerce" (Lathrop and Centner 1998: 165, cites Wynne 1991).

More than a decade after Lathrop and Centner's analysis, the development of specific standards is still incomplete. There have been proposals for national legislation to regulate environmental marketing claims for almost as long as there have been environmental claims, but legislative progress has not been made. Many interested parties such as manufacturers, consumer groups, environmental organizations, and attorneys have expressed concern over the lack of regulations, but the government appears hesitant to take substantive action (Israel 1993; Stevens 2010; Lathrop and Centner 1998; White

2010). To provide some context, I am going to briefly explain the history of environmental marketing regulation in the United States. Next, I will analyze the Federal Trade Commission's role in the regulation of environmental claims. Finally, I will discuss how the Lanham Act of 1946 has been used to regulate environmental claims, though it was not created for that purpose.

Early Attempts at Regulation

In March 1991, the attorneys general of New York and Minnesota worked with environmental and consumer groups to create the Federal Environmental Marketing Claims Act of 1991. This act would have established a national regulatory scheme for environmental marketing claims, however, after the bill was introduced to the Senate, it never passed (Israel 1993). In 1991, Senator Lautenberg (D-NJ) and Representative Swift (D-WA) each introduced new environmental marketing regulatory schemes that would create uniform national standards for green marketing claims (Israel 1993). Although there were differences between the acts, they were based on the same central tenets. Both acts would have involved the EPA in setting minimum national standards for environmental claims. Both texts also included a section on consumer education. The education program “would inform consumers of the types of green marketing claims regulated, the method of regulation, and the benefits of green consumerism” (Israel 1993). Finally, the Lautenberg and Swift Acts each contained requirements for periodically reviewing and updating the EPA's green-marketing regulations. Regularly updating the regulations would help ensure that the latest environmental technology was taken into consideration and would encourage manufacturers to use the latest technology to reduce the environmental impacts of their products (Israel 1993). Like the 1991

legislative initiative, neither the Lautenberg Act nor the Swift Act secured congressional sanction.

The major disadvantage of creating new federal laws, like the Lautenberg Act or Swift Act is time (Israel 1993). When these acts were proposed, the challenges of passing the Federal Nutrition Labeling and Education Act of 1990 were still fresh in the minds of legislators and manufacturers; its passage had involved two-and-a-half years of intense congressional debate, as well as several lawsuits (Israel 1993: 326). Manufacturers did not want to have to wait for years of debates and legal battles before receiving guidelines about environmental claims. They thought that more immediate action was necessary to clear up the confusion surrounding green marketing (Israel 1993).

The Federal Trade Commission

The pressure for more immediate guidance resulted in the Federal Trade Commission (FTC) creating green marketing guidelines. The FTC seems like a strange choice to regulate environmental product claims, like eco-labels, especially if you think of them of as environmental policy tools. It appears, however, that the government and manufacturers viewed environmental claims primarily as advertisements, not market-based policy tools, and regulated them as they would any other form of advertisement. When viewing environmental claims as advertisements, choosing the FTC to create regulations is a logical choice, although I will argue that regulating environmental claims solely as advertisements is a mistaken approach. If environmental claims, like eco-labels, are going to achieve their potential as market-based policy tools then they should be regulated as policy tools, not just advertisements.

The FTC has not always been involved in regulating advertisements. Congress initially passed the FTC Act in 1914 to supplement the Sherman Act and the Clayton Antitrust Act. In 1938 the FTC Act was expanded to include the power to prevent “unfair or deceptive acts or practices” (White 2010: 327). Although the FTC has no expertise in environmental issues, its power to prevent unfair methods of competition and deceptive acts in interstate commerce has been interpreted to include misleading advertising for the last seventy years (Israel 1993). The FTC did not consider environmental advertising until the early 1990s when issues surrounding unclear environmental claims first gained national attention.

In July of 1991, during the same period when the Lautenberg Act and Swift Act were being proposed, the FTC hosted its first meetings to discuss environmental marketing. One year later, in July of 1992, the FTC released its Green Guides.² The Green Guides suggest how to avoid making false or misleading environmental claims and provide examples of such claims. Its suggestions are only that, suggestions: the FTC explains in section two of the Green Guides that, “because the guides are not legislative rules under Section 18 of the FTC Act, they are not themselves enforceable regulations, nor do they have the force and effect of law” (§ 260.2). The Green Guides are supposed to provide general principles to help advertisers avoid making false, misleading, or unsubstantiated claims, but are not used for actual enforcement. In the FTC’s (2007) own words, the “guidance” they provide includes: “1) general principles that apply to all environmental marketing claims; 2) how consumers are likely to interpret particular claims and how marketers can substantiate these claims; and 3) how marketers can

² Green Guides is the common name for “Guides for the Use of Environmental Marketing Claims”

qualify their claims to avoid deceiving consumers.” The language the FTC uses emphasizes that these guides provide advice, not strictly enforced regulations.

In addition to being criticized by legal scholars, including Glenn Israel, Robert White, and Lauren Avallone, for not setting enforceable regulations, the usefulness of the Green Guides has been questioned because they “only offer broad definitions, general principles, and few examples” (Avallone 2006: 686). Unclear definitions of environmental terms not only lead to consumer confusion, but also can be detrimental to manufacturers. Unclear definitions provide loopholes for manufacturers with average practices and products to apply eco-labels, which prevents manufacturers with environmentally superior practices from successfully differentiating their products (Koos 2011). Manufacturers may also find the unclear definitions confusing and choose not to make environmental claims to avoid false or misleading advertising (Avallone 2006: 686). To the FTC’s credit, they have acknowledged many of these criticisms and are in the process of reviewing the Green Guides. The review process began in 2007 and, four years later, they are still requesting public comments about the Green Guides and environmental marketing claims. I was unable to find any explanation as to why it was taking so long to update the Green Guides, which leaves me to assume that they are not a top priority. While improving the Green Guides by adding more examples and terminology is an admirable goal, the expanded Green Guides still will not be legally enforceable. If the guidelines are not enforceable, then there is no guarantee that they will actually benefit consumers or manufacturers.

The fact that the Green Guides are not enforceable law does not mean that the FTC has never charged manufacturers making false environmental claims, which it has

handled just like any other false marketing claims. When the FTC learns of false advertising claims, they are addressed on a case-by-case basis. The Commission first charges the manufacturer making the false claim and then settles the matter either by entering into an agreement with the manufacturer or by issuing a cease-and-desist order (Israel 1993: 311). Generally, consent agreements are reached in which manufacturers promise to alter their advertising to comply with the FTC's suggestions, but the manufacturers do not admit to any wrongdoing (Israel 1993: 312).

The first problem with this system is that there are “no direct costs to making false claims so manufacturers have little incentive to be truthful” (Avallone 2006: 690). Manufacturers can make false environmental claims on their products and profit by misleading consumers without fearing any serious consequences. If manufacturers did face serious consequences, such as hefty fines, it would discourage making false environmental claims. The current guidelines, however, do not lend themselves to serious consequences because the definitions of environmental terms are still vague. If manufacturers are going to be punished, there should be clear rules and criteria for environmental claims, making it simple to objectively determine if a violation has occurred. Additionally, the FTC defines “deceptive” as “a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.” Determining how a reasonable consumer would or would not interpret an environmental label involves some guesswork, meaning each manufacturer could have a very different idea of how a reasonable consumer thinks (White 2010: 327). Given the room for interpretation within the current guidelines, legitimate misunderstandings are possible. National legislation with a list of acceptable

environmental terminology and clear criteria needs to be created so the line between what is acceptable and unacceptable is well defined. Instead of having guidelines that are used flexibly on a case-by-case basis, regulations should be created that provide “bright line rules” for environmental advertisements, such as eco-labels (Avallone 2006: 686).

Concerns have been raised that strict regulation of environmental claims could violate First Amendment rights. Although there have not been many cases specifically dealing with First Amendment rights and environmental claims, looking at rulings in several labeling cases suggests that environmental claims could be strictly regulated without violating First Amendment rights. The major legal challenges to date against labels involve the First Amendment implications of requiring food producers to display nutrition information labels on their products (Alves and Edwards 2008). Examining two well-known cases concerning allegations of violations of commercial free speech demonstrates why the courts have found that such violations did not actually occur. *Nutritional Health Alliance v. Shalala* addressed the question of the authority of the FDA to limit the health claims that may be made on dietary supplements under the NLEA (Alves and Edwards 2008). In this case, “the plaintiff contended that: (1) the NLEA imposed an impermissible ban on truthful, non-misleading constitutional speech, and (2) that the preauthorization scheme to label the products was an unconstitutional prior restraint on commercial speech” (Alves and Edwards 2008: 55). In a similar case, *Association of National Advertisers v. Lungren*, the plaintiff also alleged violations of commercial speech when forced to comply with California state statutes setting standards for environmental advertisements. To reach a ruling in both of these cases, the courts used a test from *Central Hudson Gas & Electric Corp. v. Public Service Commission* to

determine if the commercial speech could be subject to regulation (Alves and Edwards 2008). According to Alves and Edwards (2008: 53) the test for determination considers the four following factors:

- 1) Whether the speech is misleading or does not “concern lawful activity,” in which case no further inquiry is needed and the speech may be restricted;
- 2) Whether the government’s asserted interest in regulating the speech is substantial;
- 3) Whether the restraint directly advances the government’s interest; and
- 4) Whether the legislation is no more extensive than necessary to serve the government’s interest.

The courts found that in *Shalala* and *Lungren* that the speech both qualified as commercial and was subject to regulation based on the criteria in the above test (Alves and Edwards 2008). If environmental claims regulations were created, there would likely be cases arguing these regulations deny free speech. Therefore, when creating environmental claims regulations, it is crucial to make sure that the government’s interest in regulation is clearly explained and the regulation of environmental claims is linked to promoting the government’s interests in a reasonable way.

The second major problem with the FTC’s case-by-case approach is that it is very time consuming. Considering each case individually makes it impossible to regulate all of the manufacturers making environmental claims about hundreds of types of products (Avallone 2006: 691). Furthermore, looking at past cases for guidance about environmental claims is of limited use for manufacturers because each type of product has different considerations:

Although case-by-case prosecution gives some guidance to future green marketers as to what the FTC considers deceptive, it does not establish discernable marketing standards upon which green marketers can dependably rely when marketing their own environmentally friendly products. Green-marketing claims are unique in that each claim is made about a specific product with distinctive properties, and each claim is judged by the effect it would have on a "reasonable consumer." (White 2010: 327-328)

As of January 2010, the FTC had only prosecuted thirty-seven green marketing claims (White 2010: 336). This relevant handful of cases is not nearly enough to cover all of the environmental claims a product could make, never mind all of the possible types of products. Furthermore, prosecuting less than forty cases in a period of nearly twenty years, which averages out to less than two cases annually, suggests two possibilities; (1) few false or misleading environmental claims are made or (2) many manufacturers are getting away with making false or misleading environmental claims. Evidence, unfortunately, points to the possibility that many manufacturers are making misleading claims that have yet to be regulated. In their 2009 Greenwashing Report, TerraChoice, a sustainability and marketing consultancy firm, found that 98% of products examined committed at least one of their seven sins of greenwashing.³ Additionally, almost one-fourth of the 2,219 products studied used false labels, or labels which "through either words or images, give the impression of third-party endorsement where no such

³ The seven sins include The Hidden Tradeoff, No Proof, Vagueness, Irrelevance, Lesser of Two Evils, Fibbing, and False Labels.

endorsement actually exists” (TerraChoice 2009: 9). The FTC’s case-by-case approach is allowing far too many false environmental claims to flood the market.

A third problem with its incremental approach is that the FTC waits until after the false claims have been made before taking action, rather than preventing false claims from being made in the first place. Waiting until after environmental claims have already misled many consumers before taking action is a bad regulatory strategy because it creates consumer cynicism, takes market share away from eco-labels making legitimate claims, and prevents the potential environmental benefits of purchasing eco-labeled products (TerraChoice 2009: 6). Congress should write legislation that provides clear definitions and national standards so individual interpretation and guesswork is removed from making environmental claims.

Writing this new environmental claims legislation would be unusual because most environmental legislation in the United States is reactive legislation. Reactive legislation addresses harmful practices after they have already proven themselves to be damaging to human health and the environment. For example, reactive legislation might require mitigating pollution after it has been created using end-of-pipe technologies (Dvořáková and Kadlecová). On the other hand, creating policies that attempt to prevent harmful practices from occurring in the first place would be proactive environmental legislation. Encouraging people to adopt more sustainable consumption habits through information-based policies, like eco-labels, is an example of a proactive strategy. Even within the realm of proactive environmental policies eco-labeling is rather unique because “in contrast to the majority of preventive strategies focusing on systematic examination of

manufacturing processes, eco-labeling makes use of market mechanisms outside the company which are based on supply and demand” (Dvořáková and Kadlecová).

The largest problem that contributes to all of the other issues with the Green Guides is that refusing to strictly define environmental terminology has prevented the FTC from effectively regulating environmental claims. Applying the FTC’s “standards for deception, substantiation, and unfairness to green claims without first defining the terms used in making those green claims” is nearly impossible in cases when claims are not obviously egregious (Israel 1993: 328). For example, the FTC has trouble arguing that a manufacturer’s claim that a product is biodegradable is deceptive until the FTC actually defines the term biodegradable. Biodegradable could be defined as applying only to a product with a “proven capability to decompose in less than one year in the most common environment where the material is usually disposed through natural biological processes into nontoxic carbonaceous soil, water, or carbon dioxide” (White 2010: 338). Under a less strict definition, a product could be called biodegradable if it will “completely decompose into elements found in nature within a reasonably short period of time” (White 2010: 338). To apply these definitions to a common household item, like garbage bags, assume two different brands of garbage bags claim to be biodegradable. One type of bag follows the first definition and will decompose in one year in a landfill, while the other bag would decompose in two years with exposure to sunlight. Clearly, there is a significant difference between the products and both should not be allowed to make the same environmental claim. Without strictly defined national terminology, there is a large grey area that results in misleading environmental claims.

The FTC is unable to create national definitions, however, because the FTC has decided that it would be outside of its powers to set environmental policy by defining green marketing terms (Israel 1993: 328). Glenn Israel (1993: 328) explains the problem particularly well:

The Commission's decision to promulgate environmental marketing guidelines without specifically defining green marketing terms, however, ignores the fact that poorly defined green marketing terms are a principal cause of misleading green marketing. Until federal legislation requires specific definitions for green marketing terms, the Commission's case-by-case enforcement efforts cannot be fully effective or consistent.

Successfully regulating environmental marketing, like eco-labels, is impossible without defined terminology. If the federal agency charged with regulating environmental marketing, the FTC, is unable to define environmental terms, then that would suggest that other federal and state agencies with more expertise in environmental issues should be involved in the process. Additionally, to function successfully as environmental policy tools, environmental product claims should be factually true as well as aligning with larger environmental policy goals. For example, having an eco-label for products manufactured using only renewable energy would align with the larger policy goal of reducing greenhouse gas emissions.

The Lanham Act

Although the FTC is the federal agency in charge of regulating environmental advertising, there is another piece of federal legislation, the Lanham Act, which has been used to regulate environmental advertisements. The Lanham Act was passed in 1946 and

is best known for containing the federal statutes of trademark law. As would be expected, the act prohibits trademark infringement and dilution, but Subchapter III also addresses false and misleading statements in commercial advertising and promotion. Though the Lanham Act does not specifically discuss environmental claims, Section 43(a) has been used to challenge false environmental advertising (White 2010). Section 43(a) allows for limited private action against false advertising as evidenced by this quote, "any person who... uses in commerce any word, term, name, symbol, or device... which, in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of... goods, services, or commercial activities, shall be liable in a civil action" (White 2010: 329). The definition for false advertising in the Lanham Act is very similar to the definition of deceptive that the FTC employs. White (2010) argues that the Lanham Act and section 5 of the FTC Act function similarly by containing broad definitions of deception and misrepresentation that allow advertisers to be prosecuted. There are major differences between the Acts, such as under the Lanham Act litigants do not have an equivalent of the Green Guides to help them determine if an advertisement is deceptive. Another key difference is that the FTC Act is only enforceable by the FTC, whereas private groups can use the Lanham Act (White 2010).

Yet, in general, consumers' attempts to use the Lanham Act have been unsuccessful, despite the fact that the act gives standing in Section 43(a) to "any person who believes that he or she is or is likely to be damaged" by false advertising (White 2010: 330). Many judges have denied standing to consumers under the act and "hold that the section was enacted to provide relief to competitive or commercial interests, and not consumer interests" (White 2010: 330). It seems problematic that consumers, who are the

ones being deceived by false environmental claims, have no national legislation empowering them to protect their own interests. An ideal national regulation of environmental claims would give consumers and consumer groups the power to sue companies that have been profiting by misleading them.

Though this act provides little help to consumers frustrated by deceptive environmental claims, some businesses have used it successfully to sue their competitors for making false environmental claims. The Lanham Act was not created with environmental advertising in mind, but it is nonetheless noteworthy because it has been used by businesses to challenge their competitors green claims. Incorporating businesses into the regulation of eco-labeling is a wise decision because they have financial incentives to monitor their competition and bring claims against greenwashing behaviors (White 2010). Instead of expecting the government to take sole responsibility for monitoring the thousands of environmental claims made each year, it would be more effective to create provisions in national regulations that allow manufacturers to monitor and challenge their competitors' environmental claims.

One potential problem with this provision is that larger companies could use it to shut down the environmental claims of their smaller competitors by threatening a lawsuit. The threat of lawsuits could then decrease the ability of small green companies to make environmental claims about their products because they have fewer resources to devote to legal battles. However, I believe this problem could be avoided by keeping it in mind when writing the lawsuit provision. Furthermore, if the small company is making an accurate claim, they should have nothing to worry about. The provision would only allow lawsuits in cases when companies cannot substantiate their environmental claims. If

smaller companies are threatened with a lawsuit, they can submit evidence substantiating their environmental claims to the court, proving that their competitor has no basis for a case.

If Congress creates national legislation regulating environmental claims, it should include a section specifically allowing manufacturers to challenge their competitors' environmental claims. The Lanham Act provides a general framework in Section 43(a) that could be built upon and adapted in new environmental legislation to specifically facilitate manufacturers challenging misleading environmental claims of their competitors.

Chapter 3: Regulatory Recommendations

My analysis of the current regulation of eco-labels has shown that there are numerous regulatory issues that need to be addressed. The general guidelines provided by the FTC's Green Guides are not sufficient to regulate the hundreds of different eco-labels on the market. We need enforceable national environmental marketing regulations to ensure that consumers are receiving accurate information. Congress should immediately begin working on this new legislation. National legislation regulating environment claims should be created that includes involvement of key stakeholders, a list of acceptable environmental claims, enforceable national definitions of environmental terms, an avenue for manufacturers and consumers to challenge environmental claims, consumer education, and periodic review and revision. In this chapter, I will discuss each of these components in detail.

1. Involvement of Key Stakeholders

Congress should create national environmental claims legislation with the help of a panel composed of representatives from relevant federal agencies and the major stakeholder groups. I believe that using a panel, opposed to one federal agency, is the best option because using a panel for the regulation of eco-labeling has been successful in other countries. For example, Germany's national Blue Angel program uses a panel with a variety of stakeholders to award their eco-label. The Blue Angel program is arguably one of the most successful eco-labeling programs in the world, and was recognized by 80% of German households just ten years after its initial implementation (Salzman 1991).

While there are significant cultural differences between Germany and the United States, I still believe that a stakeholder model is the best way to approach this national environmental regulation. Although stakeholder models are more commonly used for regulation in Germany than in the United States, regulating eco-labels is such a complex task that there is no single agency or group that has enough expertise in enough issues to successfully regulate environmental claims alone. Furthermore, despite the fact that industry in the U.S. generally tends to undermine or avoid regulations, rather than collaborate on the creation of new regulations, I think it is important for manufacturers have input into the creation of national environmental claims regulations. However, even assuming the worst-case scenario, in which the manufacturing representative does nothing but attempt to undermine the new regulations, his or her vote would just be one of many on the panel.

Having a panel composed of different stakeholders will provide a variety of perspectives on key issues, allow lessons from previous regulatory legislation to be applied to environmental claims, and ensure that eco-labels are user-friendly for both consumers and manufacturers. I believe the panel should include, at a minimum, representatives from the major stakeholders in this process including the FTC, the FDA, the EPA, consumer groups, and manufacturers (Avallone 2006). Each of these stakeholders can make a unique and crucial contribution to the creation of national legislation regulating environmental claims.

The FTC should continue being involved with the regulation of environmental claims because of its years of experience regulating advertisements and experience with

the Green Guides. The FTC could apply the feedback and criticisms received about the Green Guides to avoid repeating its shortcomings in national legislation.

The second federal agency that should be involved is the FDA. The FDA would provide valuable insights to the panel for several reasons. The first reason is that the FDA is in charge of food labels, which is one of the major categories of eco-labeled products. The FDA's expertise in food issues means that it should be involved in defining eco-labeling terms used on food and beverages. Secondly, the FDA was involved with the creation of nutrition labels (Avallone 2006). Lessons learned during the process of creating and implementing nutrition labels could be applied to improving the regulation of eco-labels.

The final federal agency I believe should be involved with creating new environmental claims regulations is the EPA. The EPA has the most environmental expertise of any government agency, and therefore should play a key role in defining environmental terminology (Lathrop and Centner 1998). Through its Consumer Labeling Initiative (CLI), the EPA has worked with industry to try to improve consumer comprehension of labels on household cleaners, indoor insecticides, and outdoor pesticides (EPA 1998). The general principles the EPA learned about increasing consumer comprehension of labels during CLI could be applied to increasing consumer comprehension of eco-labels. The EPA also has the power to set environmental policy and would be instrumental in regulating eco-labels as environmental policy tools, not just advertisements. The EPA involvement could help connect eco-labels to broader U.S. environmental policy goals.

The EPA has successfully connected eco-labels to environmental policy goals through its Energy Star label. Energy Star was introduced in 1992 as a voluntary labeling program designed to further the environmental policy goal of reducing greenhouse gas emissions by promoting energy-efficient products (Brown et al. 2002). The Energy Star program has expanded significantly since its initial creation and partnered with the U.S. Department of Energy to cover nearly the entire buildings sector, spanning new homes, commercial buildings, residential heating and cooling equipment, major appliances, office equipment, commercial and residential lighting, and home electronics (Brown et al. 2002). Unlike many eco-labels, which just suggest potential environmental benefits, there have been some studies conducted that suggest Energy Star actually has reduced greenhouse gas emissions. One study found that from 1993 to 2000, when Energy Star-labeled computers, monitors and printers were available, the program saved an estimated 1.5 exajoules (exaJ), resulting in an energy bill savings of \$10 billion and carbon emissions reduction of 26 million metric tons (Brown et al. 2002: 514). Another strength of the Energy Star program is its broad consumer recognition, even in a market flooded with hundreds of different eco-labels. In 2008, Energy Star enjoyed a consumer recognition rate of nearly 75% of the U.S. population (Murray and Mills 2011).

Despite the fact that the Energy Star program has the strengths of high consumer recognition and acts as an advertisement of the energy efficiency of the product while promoting larger environmental policy goals, the program does have one major weakness; a vulnerability to fraud. In March of 2010, articles ran about the shocking results of a Government Accountability Office audit of the Energy Star program in publications such as *The New York Times* and *Popular Mechanics*. During the audit, more than a dozen

fake products from fake companies received approval, including a gasoline-powered alarm clock (Wald 2010). Congressional auditors said that they were told by Energy Star officials “that some of the approvals, including the one for the gasoline alarm clock, had been issued by an automated system and that the details had probably never been reviewed by a human being” (Wald 2010).

The EPA’s Energy Star label is an example of a good idea suffering from poor regulation. The lack of live human beings actually reviewing environmental claims at federal agencies, like the EPA, makes the consumer and manufacturer lawsuit provision I recommend even more important. Relying on the government alone to catch false claims does not appear to be a realistic option. The EPA’s successes and failures with the Energy Star program provide important lessons that should be considered by the panel when creating new environmental claims regulations.

In addition to the three federal agencies mentioned, it is important to have at least one representative from a consumer group, such as Consumer Reports, on the panel. In the literature I was surprised by the lack of discussion of the importance of consumer involvement in improving eco-labels. At the most basic level, eco-labels are meant to convey information about the environmental impacts of products to consumers. In my opinion, if the majority of consumers cannot understand eco-labels, then they are failing as a policy tool. Having a panel member focused specifically on making sure the regulations create eco-labels that are clear, accessible, and transparent for consumers is crucial for the creation of effective environmental claims regulations (D’Souza 2006).

Finally, the panel should include at least one manufacturing representative. This seems like an obvious point, but eco-labels need to be used to be effective. Eco-labels

should be based on criteria that are economically feasible for manufacturers to meet. Although setting criteria that would require manufacturers to improve their practices or upgrade to greener technologies might be reasonable in many cases, it is also possible that criteria could be set unreasonably high. If manufacturers would have to make massive investments to meet new eco-labeling criteria they might be unwilling or unable to tolerate such a financial burden. Having at least one representative of manufacturers on the panel will help create legislation that balances out promoting environmental objectives with economic realities.

2. A List of Acceptable Environmental Claims

One of the major problems with eco-labeling regulation stems from the fact that there are so many environmental terms used on eco-labels that it is difficult to even make a comprehensive list of them, never mind actually attempting to define all of the terms. Essentially, having more terms creates more confusion. Therefore, I would recommend creating a list of acceptable environmental terms to use on eco-labels. Twenty well-defined terms will be more useful to consumers than being overwhelmed by hundreds of slightly different claims. Additionally, explicitly stating which terms are acceptable for eco-labels will prevent advertisers from making up new terms by slapping prefixes like “eco” onto words whenever they feel like it. I would recommend vague, blanket terms like “Eco-Friendly,” “Earth-Friendly,” “Eco-Safe,” and “Earth Smart” not be included on this list because they are difficult to substantiate and likely to mislead consumers. These blanket terms are suggestive of environmental benefits, without actually providing any useful information. Furthermore, many of these terms imply that these products are

actually beneficial for the environment in some way, when in reality, these products have fewer environmental impacts than the average product, assuming their claims of environmental friendliness are even substantiated. The list of acceptable terms should instead include claims that can be substantiated like “Recyclable,” “Biodegradable,” and “Made with Renewable Energy.”

3. Enforceable National Definitions of Environmental Terminology

Once the list of acceptable environmental claims has been established, these environmental terms should be strictly defined. Creating a checklist of minimum criteria that products must meet to use each environmental claim would take the guesswork out of interpreting environmental claims. For example, to use the term “biodegradable” the panel would specify a maximum timeframe to be considered biodegradable, the environment the product degrades in, and the elements that the product biodegrades into. Consumers would then know that all products making a given environmental claim, such as biodegradable, are using the same definition, rather than having to wonder if each manufacturer is using different criteria. A strict definition with specific criteria would also make distinguishing between accurate and false environmental claims an easy process; products that do not meet the national minimum criteria for a given environmental claim cannot use that environmental claim. In addition to making labels easier for consumers to compare, these national definitions would make charging manufacturers for false environmental claims a more straightforward process.

4. An Avenue for Manufacturers and Consumers to Challenge Environmental Claims

Consumers should be able to demand evidence supporting environmental claims on products they purchase, just as manufacturers should be able to demand proof from their competitors that a product using an eco-label meets the national criteria. If the manufacturer in question cannot provide that proof, then the consumer or manufacturer questioning their claims should be able to take them to court to sue for damages.

Including a legal avenue for consumers to protect their interest in not being deceived and manufacturers to protect their interest in not losing business to competitors making false claims would promote compliance with the new regulations. The small number of cases the FTC has brought against false environmental claims shows that government agencies do not have the time or the resources to devote to challenging and verifying every single case of environmental claims. Allowing consumers and manufacturers to challenge environmental claims would reduce the regulatory burden on the government. Another potential benefit of allowing manufacturers and consumers to challenge false environmental claims is that fear of a legal battle would discourage manufacturers from making claims they cannot substantiate.

5. Consumer Education

In order to be successful, eco-labels not only need to make accurate environmental claims, but also need consumers to care about environmental issues. In the EPA's 1998 report *Environmental Labeling Issues, Policies, and Practices Worldwide*, they conclude, "one of the primary limitations in environmental labeling programs to date has been a lack of awareness on the part of consumers. Increased consumer awareness

about environmental issues and the existence and purpose of environmental labeling could significantly affect the success of programs” (67). National legislation for environmental claims should include a section on consumer education. If consumers are unaware of the environmental issues associated with consumption, they are unlikely to give eco-labels much consideration, even if the labels are clear and accurate. Ideally, this consumer education would teach consumers about the environmental impacts of consumption, educate consumers about environmental terminology, and connect eco-labeling with the larger environmental problems it is attempting to address.

6. Periodic Review and Revision

To be successful in the long term, the regulation of environmental claims needs to be periodically reviewed and updated. Although federal regulatory approaches are not exactly known for their ability to quickly adjust with the times, the Nutrition Labeling and Education Act (NLEA) of 1990 included a provision that the guidelines be re-examination every five years “to ensure that they reflect the current knowledge and values in the American diet” (Alves and Edwards 2008). The NLEA guidelines have been successfully updated and altered to include new values, such as trans fats, which suggests that national regulations of environmental claims could also be updated regularly (Alves and Edwards 2008).

One reason frequent updates are necessary is because of technological advances. Technological advancements can make previously impossible goals possible and older technologies generally decrease in price over time. Due to technological changes, it is important to continually re-evaluate the minimum criteria a product must meet to qualify

for an eco-label. Environmental standards should be gradually tightened over time to ensure manufacturers continue improving their practices.

Another reason regular updates are necessary is because new environmental terminology is introduced all of the time, which means new terms may need to be added to the regulation or old terms may become obsolete. There should be time for public comment and input from relevant stakeholders during these review and revision processes. Regularly reviewing and updating regulation allows for learning from past mistakes, addressing new problems as they emerge, and adjusting regulations to meet current needs.

Regulatory Conclusions

Creating national legislation specifically regulating environmental claims would address many of the current problems with eco-labeling and other methods of environmental advertising. The process of creating this national legislation should include input from a panel of key stakeholders, instead of being created by just one government agency. One of the first tasks of this panel should be to limit the number of environmental claims manufacturers can make about their products and strictly define those environmental terms. If all products using the same term are also using the same definition it will make it easier for consumers to compare products. Additionally, consumers or business competitors that are skeptical about a manufacturer's environmental claims should be able to ask for proof that the product bearing the eco-label actually meets national standards. When manufacturers are found to be making unsubstantiated claims, consumers and other manufacturers should be able to take them

to court to demand the false label be removed and potentially recover damages for this false advertising. Another key component of successful environmental claims legislation would be consumer education about environmental issues, environmental terminology, and the potential of eco-labeled products to contribute to addressing environmental problems. Finally, the legislation of environmental claims should be reviewed and updated periodically to ensure the legislation is keeping up with technological advancements and gradually increasing environmental standards.

Conclusions

Eco-labeling was initially created to promote more sustainable consumption by encouraging consumers to consider the environmental impacts of consumption and by encouraging producers to improve their environmental practices. Furthermore, eco-labels were intended to provide consumers with information about the relative environmental impacts of products, something impossible to determine just by looking at a final product. The practical realities of actually implementing eco-labeling have proven to be far from simple. Unfortunately, eco-labeling has become incredibly complicated and confusing for everyone involved.

Like any policy tool, eco-labeling is imperfect. Despite the many faults discussed in this thesis, I still believe that eco-labeling is a valuable policy idea that has suffered as a result of poor regulation in the United States. Inadequate regulation has resulted in the creation of hundreds of eco-labels making different claims, using varying definitions of terminology, and displaying a plethora of stereotypically environmental symbols. Furthermore, consumers have trouble distinguishing between labels that are certified by a legitimate third party, labels that are certified by third parties out to make a quick profit, and claims manufacturers place on their own products.

Improving regulations to increase the clarity and transparency of labels should be a top priority. Creating a national list of acceptable environmental product claims and strictly defining those environmental terms will help alleviate much of the confusion surrounding eco-labels. My analysis suggests that many of the problems with eco-labeling have developed because eco-labeling is regulated like any other advertisement, rather than as an environmental policy tool. If we want eco-labels to act as a policy tool

that contributes to more sustainable consumption, we should regulate eco-labels as a policy tool. Eco-labels should be connected to larger environmental policy goals, to ensure that eco-labels are more than just some marketing scheme. Despite its faults, programs like the EPA's Energy Star prove that eco-labels can enjoy broad consumer recognition while still connecting to larger environmental goals.

It is also crucial that eco-labeling is combined with consumer education about the environmental issues associated with consumption. Americans need to understand environmental issues to fully appreciate the importance of reducing the environmental impacts of their consumption. Additionally, if new national regulations are created, consumers should be informed about how environmental terminology is defined and how eco-labels are regulated. It appears there already is some consumer demand for more information about eco-labeling, especially considering Consumer Reports just released an Eco-Label iPhone App so shoppers can research unfamiliar labels from the store.

Finally, it is important that we maintain realistic expectations about what eco-labeling can and cannot achieve. It would be far too much to expect eco-labeling to solve all of the complex environmental problems associated with consumption. However, if regulated properly, eco-labeling can be used in conjunction with other policy tools to address the many challenging environmental problems we currently face.

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