April 22, 2023

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Division of Enforcement, Bureau of Consumer Protection
United States Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Re: Guides for the Use of Environmental Marketing Claims; Docket No. FTC-2022-0077

To Whom It May Concern:

The Consumer Brands Association ("Consumer Brands") is pleased to provide comments for the record in response to the Federal Trade Commission's ("FTC" or "Commission") request for public comments on the Guides for the Use of Environmental Marketing Claims; Docket No. FTC-2022-0077.

Consumer Brands is the trade association representing the consumer packaged goods ("CPG") industry. Consumer Brands champions the industry whose products Americans depend on every day, representing more than 2,000 iconic brands. From household and personal care products to food and beverage products, the CPG industry contributes $2 trillion to U.S. GDP and supports more than 20 million American jobs. Our industry is committed to empowering consumers to make informed decisions about the products they use in their homes – on average, 42 products per day – and has long felt a unique responsibility to ensure our products align with the evolving expectations of consumers.

Consumer Brands is committed to assisting the FTC in its mission to promote competitive business practices, innovation, and truthful, nondeceptive marketing practices. As an association, we seek to enhance informed consumer choice of CPG products, which includes clearly conveying environmental benefits. The CPG industry plays a crucial role in creating a more sustainable future through its products, and in particular has prioritized packaging and recycling innovation. All of the 25 largest CPG companies in the United States have made commitments to increasing recyclable content, source reduction, or reuse of material. Eighty percent of those companies are working toward introducing fully recyclable packaging for all of their products by 2030 at the latest.

Consumer Brands commends the Commission for reviewing the Guides for Use of Environmental Marketing Claims ("Green Guides" or "Guides") and wholeheartedly supports this effort. Clear guidance on the nondeceptive use of environmental marketing claims will protect consumers and foster innovation. This review effort is timely, as research has shown that consumers are increasingly conscious about the environmental impacts of their purchasing decisions.[1] Our

[1] *See, e.g.*, *The Carbon Footprint of Retail Products: A Review of Greenhouse Gas Emissions Hotspots and Reduction Levers for Consumer Decision-Making*, Pure Strategies, Inc. (2022), https://cdn.nrf.com/sites/default/files/2023-02/The_Carbon_Footprint_of_Retail_Products.pdf.

comments below are keyed to the general and claim-specific questions listed in the Commission's public notice. At the outset, Consumer Brands acknowledges that the Green Guides have long provided helpful guidance on environmental marketing claims, which is appropriate given the Commission's mission of ensuring that claims are not deceptive and are supported by a reasonable basis. The FTC's mission relates to preventing consumer deception arising from false or misleading marketing claims in any medium. Consumer Brands shares the FTC's desire to prevent consumer deception and confusion in the marketplace.

I. General Issues

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

Update the Green Guides to Reflect Current Consumer Perceptions, Emerging Claims, and Changes in Consumer Behavior. Since its inception, the Green Guides have provided valuable guidance for industry, including general principles for making nondeceptive environmental marketing claims, specific guidance on identified claims, and the Commission's views on how reasonable consumers are likely to interpret certain environmental claims. Significant developments have occurred in the ten years since the last Green Guides update, including but not limited to greater industry action to mitigate environmental impact; an expansion in efforts to communicate environmental benefits to consumers; and growing interest among consumers, investors, and other stakeholders in the environmental impacts of products and services. Collectively, these developments counsel in favor of updating the Guides to reflect current consumer perceptions of claims previously addressed in the Guides as well as claims now commonly used but not addressed in the Guides, including "sustainable," "net zero," "carbon neutral," "organic," and other claims identified in the FTC's request for public comments.

We encourage the Commission to develop the record on the public's understanding of common environmental marketing claims by conducting robust consumer perception research and hosting public workshops focused on certain claims. In addition, as part of the FTC's efforts to modernize the Green Guides, we urge the Commission to recognize the effectiveness of providing online product information at the point of sale as a way of communicating clearly and accurately with consumers. This recognition is justified given the online nature of many marketers' interactions with consumers, as well as the increasing use of mobile devices while shopping in brick and mortar stores.

Augment the Green Guides by Including More Examples and Explanatory Text. In addition, we encourage the Commission to include additional explanatory text in the Green Guides to offer marketers a clearer, more actionable framework to help mitigate the risk of consumer deception as they continue to innovate. Providing more specific guidance will assist brands in their efforts to qualify claims and provide transparent, accurate and easy-to-understand information for consumers. More specifically, the inclusion of more examples and an expanded discussion of principles for communicating environmental claims to consumers that is specific to common claims in the market would provide marketers with valuable insight on the FTC's enforcement posture as well as much-needed context on ways of conveying environmental benefits that the FTC considers to be compliant with Section 5 of the FTC Act.

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

Since 2012, we have seen environmental benefit claims proliferate in the marketplace. Nearly 80% of consumers have become increasingly interested in purchasing products from environmentally friendly companies yet report difficulty in understanding environmental impact.[2] This interest in accounting for environmental impact spans nearly all generations with strikingly high amounts of consumers reporting that environmental impact affects purchasing: 71% of baby boomers; 71% of Generation X; 80% of millennials and 80% of Generation Z.[3] Society's increased focus on plastic waste[4] and circularity,[5] and increasing regulation of recycling and recycled content, have led to increased use of recyclable and recycled content claims by marketers.

One prominent sign of societal change regarding environmental impact and benefit issues is the establishment of The Paris Agreement,[6] a legally binding international treaty on climate change. It was adopted by 196 Parties (including the United States) at COP 21 in Paris, on 12 December 2015 and entered into force on 4 November 2016. Its goal is to limit global warming to well below 2 degrees, preferably to 1.5 degrees Celsius, compared to pre-industrial levels.

Moreover, consumer understanding of the efforts required to mitigate and adapt to climate change have changed markedly since the 2012 update to the Guides, particularly as federal and state governments have begun to deploy legislative and regulatory policies to meet these climate change goals. As consumer understanding and demand for environmentally preferable products has grown, so too has the opportunity for companies to effectively engage consumers concerning the climate impacts of products and services. The Guides should be updated to foster those communications. We discuss our recommendations for the Commission to address carbon-related claims in Parts II.A and II.B of this comment.

C. What significant costs, including costs of compliance, have the Guides imposed on businesses, particularly on small businesses? What evidence supports the asserted costs?

Typically, brands produce and label CPG products for distribution in the entire U.S. market and do not produce or label products for individual states. As states increasingly develop regulations for recyclability and compostability that differ by jurisdiction or are out of step with the Guides, the

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[2] *Business of Sustainability Index*, PDI Technologies (June 2022), https://pditechnologies.com/wp-content/uploads/2022/09/PDI-Business-of-Sustainability-Index-2022.pdf.
[3] *Id.*
[4] *Consumers Beyond Waste*, World Economic Forum, https://www.weforum.org/projects/consumers-beyond-disposability (last visited Feb. 19, 2023).
[5] *2021 Business & ESG Report*, Coca-Cola Company (2021), https://www.coca-colacompany.com/content/dam/journey/us/en/reports/coca-cola-business-environmental-social-governance-report-2021.pdf.
[6] Conference of the Parties, Adoption of the Paris Agreement, Dec. 12, 2015, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015), https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf.

associated costs of production to comply with these differing, and on some occasions conflicting, state requirements are enormous and add significant complexity to supply chain management. Businesses spend significant time and money at the beginning of product development on the marketing creation process, which includes the design, review, and substantiation of associated marketing claims. Without effective guidance from the Commission that fosters national uniformity and consistency, marketers may see increased costs associated with evaluating how to assert and appropriately qualify claims. Inconsistent standards pose additional costs related to compliance and distribution: once a manufacturer creates the product, there are limitations on both tracking the product's distribution and controlling end users' disposal practices. Lack of clarity in the Guides and failure to update the Guides to reflect modern technology and practices could also inadvertently create more opportunity for unintentionally misleading claims to reach the market, and lead to more litigation and associated costs to consumers, advocacy groups, and brands.

The alternative option for brands is the complete removal of claims from product labels, which would negatively impact consumer understanding of products' environmental impacts, consumer purchasing patterns, and disincentivize brands from creating more sustainable products. For instance, removal of recyclability claims from products and packaging would lead to lower recycling rates and higher rates of landfilling, incineration, and environmental pollution.

Given the costs and complications that arise when federal standards conflict with state rules and standards, it would be helpful for the Commission to identify third-party certification programs or verification programs or standards that it considers consistent with the Green Guides to help support industry compliance and a more uniform approach to conveying information about environmental benefits. Third parties have strived to bridge the gap between the helpful foundation of the Green Guides versus recycling instructions with programs like How2Recycle, a standardized labeling system that clearly communicates recycling instructions to the public and designed to correlate with the Guides. Doing so would also help further guard against consumer deception and confusion.

D. Are there international laws, regulations, or standards with respect to environmental marketing claims the Commission should consider as it reviews the Guides? If so, what are they? Should the Guides be modified to harmonize with these international laws, regulations, or standards? If so, why, and how? If not, why not?

Consumer Brands supports the FTC's efforts to understand consumer perception of environmental marketing claims and whether such claims have resulted in consumer deception. We encourage the FTC to take steps to harmonize the guidance in the Green Guides with international standards whenever possible, as it has done in the past.[7] When practicable, the FTC could consider reviewing regulatory and legislative developments and proposals in other parts of the world including International Chamber of Commerce's Code,[8] the European Union's Proposal

[7] *Green Guides Statement of Basis and Purpose*, Federal Trade Commission 175-76 (2012).
[8] *ICC Framework for Responsible Marketing Communications*, International Chamber of Commerce, https://iccwbo.org/news-publications/policies-reports/icc-framework-for-responsible-environmental-marketing-communications-2/.

for a Green Claims Directive[9] and Proposal for a Directive Regarding Empowering Consumers for the Green Transition, while keeping in mind the intricacies of the United States market.[10]

E. What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?

We encourage the Commission to update the Guides to reflect the dramatic changes in technology that have occurred since 2012 and leave enough flexibility to account for future changes, including technological advances and consumer preferences. Among other things, marketers now increasingly rely upon marketing on mobile devices where space is constrained, and consumers now regularly shop in person and online using mobile phones. In addition, tools such as "quick response" or QR codes have grown in accessibility and familiarity for consumers.

The last few years have illustrated how much technology can evolve in a short period and impact consumer interactions with environmental marketing claims. Specifically, as of 2021, approximately 85% of American adults owned a smartphone and up to 15% of adults rely exclusively on it for internet access.[11] During the COVID-19 pandemic, the use of QR codes grew immensely as a non-contact way to conduct business, from accessing menus and registrations to accessing product information. Given the widespread use of smartphones by American adults and the already ubiquitous use of QR codes, we urge the FTC to update the Guides to provide examples of how marketers could use on-pack digital triggers to supplement environmental marketing claims and effectively qualify claims.[12] Since the last update to the Guides, programs such as SmartLabel®[13] have launched, to provide clear, accurate, and easily accessible information to consumers via search or mobile scan. Marketers, and specifically CPG brands, have also gained familiarity with QR codes and other digital triggers to further dialogue with consumers such as through the SmartLabel® program.[14]

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[9] European Commission, Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0166&from=EN.

[10] European Commission, Proposal for a Directive of the European Parliament and of the Council on amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, https://eur-lex.europa.eu/resource.html?uri=cellar:ccf4e0b8-b0cc-11ec-83e1-01aa75ed71a1.0012.02/DOC_1&format=PDF.

[11] *See Mobile Technology and Home Broadband 2021*, Pew Research Center (June 2021), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2021/06/PI_2021.06.03_Mobile-Broadband_FINAL.pdf. By contrast, in March 2012, the Pew Research Center concluded that nearly half of all American adults had smart phones. *See* Two-thirds of young adults and those with higher income are Smartphone owners, Pew Research Center (Sept. 2012), https://www.pewresearch.org/internet/wp-content/uploads/sites/9/media/Files/Reports/2012/PIP_Smartphones_Sept12-9-10-12.pdf.

[12] For example, a product's packaging could bear a claim "recycling facilities for this product may not exist in your area" with a directive on a proximately-placed QR code to "scan here for more information on how to recycle."

[13] *SmartLabel*, Consumer Brands, https://consumerbrandsassociation.org/about-us/smartlabel/. The consumer scans a product and is automatically directed to the associated webpage to view additional information, including for a product's environmental claims and related substantiations.

[14] *SmartLabel*, Consumer Brands, https://smartlabel.org/smartlabel-faq/.

The QR code is a valuable tool that also allows brands to provide more fulsome information to consumers to better ensure they make informed purchasing decisions. The FTC has already sought comment on whether it should amend its current approaches to the energy labeling rule disclosures and specifically mentions QR codes.[15] Accordingly, the Guides should recognize QR codes as a means for marketers to provide environmental benefit terms and additional information, beyond what can be conveyed in the limited space on product packaging. Addressing this issue is important as consumers continue to seek more information about environmental impact while marketers seeking to provide such information are constrained by space limitations on labels as well a lack of certainty as to what the FTC will deem appropriate. The FTC's guidance on the use of hyperlinks in the FTC's Dot Com Disclosures guidance should be considered as a model for guidance on appropriate use of technology for conveying environmental impact, with additional explanatory provisions in the next Green Guides.

The Commission should also address labeling programs that aggregate certifications and information to facilitate consumer access to credible and robust sustainability information. The FTC should clarify that aggregator programs, badges, or other visual tools that facilitate access and comparison to verified and substantiated sustainability labels are a valid approach to communicating information holistically to consumers. Such programs are designed to highlight products that meet a robust criteria of multiple third-party sustainability certifications developed by governmental agencies, non-profit organizations, and independent laboratories, and as such are maintained with rigorous standards for assessing the various environmental attributes of the products being reviewed and graded.

F. Do the Guides overlap or conflict with other federal, state, or local laws or regulations? If so, how? A.) What evidence supports the asserted conflicts? B.) With reference to the asserted conflicts, should the Guides be modified? If so, why, and how? If not, why not?

While the Green Guides explicitly state that they do not preempt state laws, the Guides compete with a patchwork of state laws, and in some cases, present enormous practical compliance challenges for companies operating in interstate commerce. In addition to compliance hurdles, these overlapping issues present additional risk of consumer confusion, and by extension, risk of deception. Developments in California law since the last issuance of the Guides help illustrate the challenges and conflicts that arise from the interplay of the Guides with state laws and regulations.

California enacted a state-specific labelling and claims law, SB 343, that will go into effect in July 2025. As written, the law conflicts with the Guides' guidance on recyclable claims. Specifically, SB 343 requires products making "recyclable" claims to meet a state-specific test for recyclability based on state-wide collection and sortation rates. California's law outlaws manufacturers and other entities from selling products or packaging labelled as "recyclable" (including by using the chasing arrows imager) unless the items are collected and processed for recycling-by-recycling programs and processing facilities that serve at least 60% of the California population. In contrast, the Green Guides allow unqualified recyclable claims on products and packages for which

[15] Advance Notice of Proposed Rulemaking, 87 Fed. Reg. 64399, 64403 (Oct. 25, 2022), https://www.federalregister.gov/documents/2022/10/25/2022-23063/energy-labeling-rule.

recycling facilities are available to at least 60% of consumers where the item is sold, which is often nationwide. 16 CFR 260.12(a)-(b).

Another conflict between SB 343 and the Green Guides is the use of the resin identification code ("RIC"). The use of the RIC on certain types of packaging is required by law in 39 states, and the majority of these states require the RIC to appear within a chasing arrows symbol. The Guides specifically address the use of the RIC, noting that the inconspicuous use of the RIC on a container/packaging does not constitute an unqualified recyclable claim. California's SB 343, however, *prohibits* the use of the RIC within a chasing arrows symbol, even in an inconspicuous location, unless the product meets California's definition of "recyclable." Notably, the law's restrictions on use of the chasing arrow symbol may affect not only the RIC, but also use of the chasing arrows symbol to convey recycled content.

And while the Guides do not preempt state law, the Green Guides are a widely-accepted standard that states have adopted in part or wholly and certain states have supplemented with additional requirements for specific environmental claims.[16] For instance, California's SB 343 speaks to whether the consumer good conforms to the "uniform standards contained in the Federal Trade Commission Guidelines for Environmental Marketing Claims"[17] for the use of the term "recyclable." Additionally, six other states have proposed state-specific labeling and claims laws related to packaging and product recyclability.[18]

And while the Guides have long caveated that they are not law, and the Federal Trade Commission is not an environmental policy agency, there remains a primacy in the nature of the Guides that is evident in public dialogue and litigation alike, such that they have outpaced other agencies such as the EPA.[19] With this in mind, we suggest that updates to the Green Guides be undertaken as collaborative efforts with EPA, especially around quasi-definitional frameworks that accompany the various environmental benefits claims.

G. Should the Commission initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims? A.) If so, which principles set out in the Green Guides should be incorporated into a rule? For each suggested provision, explain why and provide any evidence that supports your proposal. B.) Are there additional principles related to environmental claims not currently covered by the Guides that should be incorporated into a rule? For each suggested provision, explain why and provide any evidence that supports your proposal.

No, the Commission should not pursue rulemaking. Consumer Brands submits that non-binding guidance is the correct approach for regulating deceptive or unfair environmental claims in this rapidly-changing area. This will allow flexibility for the Commission to adapt to technological

[16] *What's in a Label?*, The State Energy & Environmental Impact Center NYU School of Law, (Feb. 23, 2023), https://stateimpactcenter.org/files/Whats-in-a-Label-The-FTC-Green-Guides-Issue-Brief.pdf.
[17] California SB 343 (2021), https://legiscan.com/CA/bill/SB343/2021 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB343.
[18] The six other states are Hawaii, Maryland, New Jersey, New York, Oregon, and Washington.
[19] *See* "What's in a Label," *supra* n.6.

advances and encourage innovation in the industry with regard to new sustainable practices and solutions. Further, the Guides are already recognized as the reference for marketing and commercialization practices across different industries. A preferable alternative to rulemaking is more frequent updates to the Guides, including staff advisory guidance and business guidance.

II. Specific Claims

A. The Guides currently include guidance relating to carbon offsets. Should the Commission consider revising this section or provide additional guidance addressing other types of advertising claims related to carbon offsets and/or climate change?

Currently, the Guides address carbon offsets and renewable energy claims. The information in the Guides related to qualifying and using these claims has helped to encourage companies to make significant investments in renewable energy. The Guides currently do not offer guidance related to the majority of climate change claims. These claims, including "net zero," "carbon neutral," "low carbon," and "carbon negative," have become popular in recent years. We encourage the FTC to conduct and solicit additional consumer perception testing to identify consumers' interpretations of these claims, including through a dedicated workshop and additional round of comments. Where possible, the update to the Green Guides should identify reasonable consumers' interpretations of these claims, circumstances under which qualification would be necessary to avoid consumer deception, and examples of appropriate qualifications.

In assessing the climate change-related claims to include in the Guides, the FTC should consider the definitional frameworks of respected and recognized governmental authorities and consensus. For instance, the term "Net Zero" relates directly to The Paris Agreement. The Paris Agreement calls for a balance between sinks and sources of greenhouse emissions in order to achieve what has become known as global net zero. Put more simply, net zero refers to a state by which emissions of greenhouse gases from human activity are reduced to as close to zero as possible and any residual emissions are balanced by permanent removals from the atmosphere from activities like reforestation. The FTC also may consider net zero aligned criteria set by the United Nations' High Level Expert report as well as ISO standards[20] related to net zero emissions.

The term "carbon neutral" refers to a balance between sinks and sources of carbon emissions that can be achieved in a specific aspect of a business. There are questions about what substantiation should be required to meet consumer perception of the term, particularly given questions surrounding reliable accounting and timing considerations. ISO provides a definition[21] that could serve as a helpful basis for the FTC to emulate should it consider providing guidance on carbon neutral claims. What's more, FTC action to provide a clear, reasonable, and actionable

[20] *See* IWA 42:2022, International Organization for Standardization, https://www.iso.org/standard/85089.html (describing net zero as a "condition in which human-caused residual GHG emissions are balanced by human-led removals over a specified period and within specified boundaries").
[21] *See* ISO 6707-3:2022, https://www.iso.org/standard/80456.html (describing carbon neutrality as "achieving net zero carbon emissions by balancing carbon dioxide emissions with removals and carbon offsets").

framework for companies to approach these claims would lead to greater transparency for consumers. Additionally, more regulatory certainty on how to approach these claims would bring about more investment in carbon neutral programs, and offsets could potentially have a very positive impact on the planet. We encourage the FTC to put forth more actionable insights on appropriate, verifiable methodologies that can be used to calculate greenhouse gas emissions and assess offsets.

In our experience, the term "low carbon" typically refers to products or services that have comparatively lower emissions across their entire life cycle (i.e., from material acquisition through to product end-of-life) when compared to a baseline (business-as-usual) scenario or in reference to a product of a similar function.[22] ISO's definition of "low carbon"[23] could serve as a helpful benchmark for the FTC as it seeks to ascertain reasonable consumer interpretations of the term "low carbon."

B. What, if any, evidence is there of deceptive claims related to climate change in the market?

We have observed the increasing use of climate-related terms in the marketplace. Misuse of terms and broad, unqualified climate-related claims of this nature threaten to cause consumer confusion that can erode consumer trust in other substantiated climate change claims by the CPG industry. Over time, consumer confusion and skepticism about environmental claims could undermine the significant efforts and investments many companies are undertaking.

C. The Guides provide that marketers can make an unqualified "recyclable" claim when recycling facilities are available to a substantial majority of consumers or communities where the item is sold. "Substantial majority" is defined as 60%. Should the Guides be revised to update the 60% threshold? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision? Is there any recent consumer perception research relevant to the 60% threshold?

Consumer Brands is not aware of any consumer perception evidence supporting a change in the 60% threshold for a "substantial majority" of consumers or communities where recyclable products are sold. Consumer Brands recommends that the Commission retain the "substantial majority" standard at the 60% threshold. The FTC should maintain consistency with this well-established recyclability standard in the Guides, as brands have relied upon it for decades and have made significant investments in complying with this standard. Consumer Brands is not aware of any consumer deception arising from this 60% threshold since its adoption.

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[22] CDP Climate Change 2023 Question Level Guidance, https://guidance.cdp.net/en/guidance?cid=C4.5&ctype=ExternalRef&idtype=RecordExternalRef&incchild=1&microsite=1&otype=ORS&page=1&tags (recommending that companies "evaluate a product or service as low carbon if it is compatible with the level of decarbonization required to keep global temperature increase to 1.5°C compared to pre-industrial temperatures," consistent with existing taxonomies).
[23] *See* ISO 6707-3:2022, https://www.iso.org/standard/80456.html (describing a low carbon energy source as a "source of power which produces fewer greenhouse gases than other means of power generation").

In addition, Consumer Brands recommends that the Commission include guidance on how to calculate whether recycling facilities are available to 60% of consumers or communities where the item is sold. Additional guidance will help marketers, consumers, and other stakeholders reach a uniform understanding of what materials are recyclable for a "substantial majority" of consumers. Because the recycling infrastructure in the United States is decentralized, inconsistent, and constantly evolving, determining what materials are accepted for recycling by a substantial majority of communities across the nation can be extremely challenging. This can result in marketers, consumers, and other organizations reaching different conclusions about what products and packaging are recyclable for a "substantial majority" of consumers, leading to marketplace confusion and, by extension, the potential for unintentional deception.

Plastics are essential to the daily lives of consumers and their use will not be eliminated in the foreseeable future. They provide a clean, lightweight means for packaging beverages and food and, as the COVID-19 global pandemic clearly demonstrated, are essential to modern medical care. In order for these rates to improve, companies need to be able to innovate their packaging designs and be able to communicate that innovation to consumers, particularly in a manner that clearly informs them how to interface with their local recycling system. We provide this context to offer a glimpse into the complexity of the recycling infrastructure and to encourage the issuance of more actionable and concrete insights in the Green Guides regarding these issues.

D. Should the Guides be revised to include guidance related to unqualified "recyclable" claims for items collected by recycling programs for a substantial majority of consumers or communities but not ultimately recycled due to market demand, budgetary constraints, or other factors? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?

Consumer Brands applauds the Commission for hosting a workshop dedicated to examining the term "recyclable." We urge the FTC to consider a range of viewpoints and practical considerations when determining whether to adjust the definition of the term "recyclable." Whether a product or packaging is ultimately recycled depends on a number of factors. Some are within the control of the manufacturer including product and packaging material design, while any others are beyond a manufacturer's control or knowledge, including the actions of the consumer disposing of the product, jurisdictional and facility constraints, and the market dynamics of the recycling system, including market demand for recycled content, profit margins and other economic constraints. Given the highly fragmented and decentralized recycling system in the U.S., requiring brands to make product labeling decisions based on the future actions of multiple individuals in thousands of different locations over which manufacturers have no control could render the act of making unqualified recyclability claims entirely unworkable.

The Guides have long set forth that items labeled as "recyclable" are those which are *capable* of being recycled, such that a recyclable claim would be misleading unless the item can be collected, separated, or other otherwise removed from the waste stream through an established recycling program for reuse or use in the manufacturing or assembling of another item. This longstanding guidance is sensible and consistent with the plain meaning of "recyclable": able to be recycled. There is a slew of limiting factors that weigh against imposing additional "ultimately recycled" triggers for the use of recyclable claims.

During its review of the claim "recyclable," we urge the FTC to focus its efforts on the characteristics of the product or packaging at issue, rather than how a product is being managed downstream by the consumer, recycling facility, or end market purchaser. We encourage the FTC to evaluate the insights provided by all stakeholders in the recycling ecosystem such as the actual facilities, beyond just those of the marketer making the initial recyclable claims.

Basing the appropriateness of a recyclable claim on whether a material is ultimately recycled would further place an unreasonable, and unworkable burden on marketers to forecast market forces that can change rapidly without forewarning, including due to triggers like the recent pandemic.[24] It would be difficult to appropriately qualify recyclable claims for products sold across the country and around the world given that great variation would exist in what products are ultimately recycled or, for unique regional or local factors, are not recycled despite the subject material actually being recyclable. Changes in these factors over time would require constant claim modification, which is not feasible for products circulating in commerce and inventories turning over at vastly different rates.

Moreover, if marketers cannot highlight the recyclability of a package as an environmental attribute while the circular economy is maturing, it will harm consumers' willingness to collect the item and enter it into their local recycling system. Narrowing the circumstances under which marketers can refer to products or packaging as "recyclable" would likely result in a significant reduction in use of the claim "recyclable" and dramatically reduce recycling rates due to consumer confusion as to whether products may be placed into the recycling system.

Courts and self-regulatory organizations have also considered the appropriate scope of an unqualified recyclability claim. For instance, in the case *Duchimaza v. Niagara Bottling, LLC*, the court granted a motion to dismiss a lawsuit alleging that a recyclable claim was misleading. The Court interpreted the Green Guides section on recyclability as focused on the availability of recycling facilities and not whether a product is in fact recycled. In the end, there simply is no consumer deception in a claim that clearly identifies that a product is capable of being recycled by a substantial majority of consumers, even if an external factor several times removed from the manufacturer results in it ultimately not being recycled.

Consumer Brands recommends that the FTC recognize molecular recycling as a legitimate form of recycling technology and that marketers may nondeceptively refer to advanced recycling technologies (including molecular) as recycling. Advanced recycling technologies offer legitimate methods to process material waste for reuse. Molecular recycling, a form of chemical recycling,[25] is a new entrant on the recycling landscape that offers great promise by providing plastic-to-plastic

[24] Joe Brock, *The Plastic Pandemic: COVID-19 trashed the recycling dream*, Reuters Special Report (Oct 5, 2020), https://www.reuters.com/investigates/special-report/health-coronavirus-plastic-recycling/

[25] *Can Chemical Recycling Reduce Plastic Pollution?,* U.S. Government Accountability Office (Oct. 5, 2021), https://www.gao.gov/blog/can-chemical-recycling-reduce-plastic-pollution#:~:text=Chemical%20recycling%20technologies%20use%20heat,recycling%20is%20still%20fairly%20new; *see also Chemical Recycling: A Viable Solution to Plastic Waste or Adding to the Problem?,* National Caucus of Environmental Legislators (Jan. 31, 2030) https://www.ncelenviro.org/articles/chemical-recycling-a-viable-solution-to-plastic-waste-or-adding-to-the-problem/.

recycling options for a variety of difficult-to-recycle plastics including polyethylene terephthalate ("PET"), polyethylene ("PE"), and other types, mixtures, and challenging form factors. As with other technologies that have emerged or increased since 2012, we believe this is an example of a method that should be included in the Guides.

The FTC should also ensure that the Green Guides address the use of the term recyclable for products and packaging eligible for a take-back program.[26] Take-back programs are an important part of recycling and are essential in helping expand the set of resin and packaging types that is recycled. Given the limitations of curbside recycling, industry is investing in drop-off and take-back programs to fill the gaps. To ensure such programs are included, the FTC should describe "recycling program" as "any program that allows for the collection of materials capable of being recycled, including curbside and drop-off recycling, take-back programs and other, similar arrangements." We also encourage the FTC to consider adding an example to illustrate nondeceptive use of the term "recyclable" for products that are subject to a take-back program. Suggested example:

> Example __: A manufacturer of cosmetics, with retail cosmetics counters or other retail sellers of its products in a substantial majority of communities where its products are sold, operates a take-back program that collects empty plastic cosmetic containers at these points of sale. The manufacturer sends the collected containers to recycling facilities to be recycled into other plastic materials and labels its cosmetic containers as ''Recyclable through our point-of-sale take-back program." This claim is not deceptive, even though these cosmetic containers are not recyclable through conventional curb side or drop-off recycling programs.

E. The Guides state marketers may make ''recycled content'' claims only for materials recovered or otherwise diverted from the solid waste stream, either during the manufacturing process or after consumer use. Do the current Guides provide sufficient guidance for ''recycled content'' claims? If so, why? If not, why not, and what guidance should be provided? What evidence supports your proposed revision(s)?

The FTC's current guidance on recycled content claims is clear, provides sufficient explanatory content through examples, and matches longstanding definitions of recycled content widely accepted by industry. We have not identified any evidence that consumer understanding of recycled content deviates from this definition. We encourage the FTC to maintain the current standard for recycled content claims, which hinges on diversion from the waste stream. The term "waste diversion" goes hand-in-glove with the intent of reuse, extending the useful life of materials, and preventing their disposal in landfill, including through recycling. Nonetheless, it would be helpful to industry and consumers alike for the Guides to include additional explanatory provisions for terms and concepts used in conjunction with "recycled content" claims. These include:

[26] *See generally Take-back program*, World Business Council for Sustainable Development Circular Economy Program, https://www.ceguide.org/Strategies-and-examples/Dispose/Take-back-program (discussing take-back programs).

- "made with ocean-bound plastic" and other terms and phrases that relate to reuse of waste in the environment;
- whether chemically recycled plastics—either by depolymerization (e.g., PET), pyrolysis or other thermos-catalytic process—are counted as recycled content and what qualifications or context should be provided to consumers; and
- use of mass balance claims.

The latter two concepts are discussed in detail below.

F. The Guides suggest marketers can substantiate "recycled content" claims using per-product or annual weighted average calculation methods. Should the Guides be revised to provide guidance on making "recycled content" claims based on alternative method(s), e.g., mass balance calculations, certificate (i.e., credit or tagging) systems, or other methods? If so, why, and what guidance should be provided? If not, why not? What evidence supports your proposed revision?

Consumer Brands recommends that the guidance on recycled content should be modernized to account for developments since 2012 and specifically that the Guides:

1. Allow recycled content claims based on a mass balance allocation of materials.

2. Include specific examples of how these processes works in practice and appropriate qualifying disclosures. The latter should also provide guidance on how to provide additional transparency to consumers including via QR Codes and other real-time accessibility technologies.

Consumer Brands also encourages the FTC to consider ways to reconcile innovation in environmental technology with consumer protection, and recycled content updates to the Guides help underscore this concept. Innovation benefits consumers through the development of new and improved goods, services, and processes. Manufacturers' ability to claim credit for use of bio-mass or recycled materials in their packaging and products helps drive the marketplace toward use of such materials over fossil fuels or virgin plastic. In the case of chemical recycling technologies, this may lead to plastics being recycled that are not recyclable through traditional means, thereby diverting them from landfill waste streams.

The recycled content provisions of the current Green Guides should be developed to expressly enable the expansion of chemical recycling technologies for plastic, such as methanolysis, glycolysis and gasification, and their use of chain-of-custody processes such as mass balance for the allocation of recycled content credits. States have begun to allow for mass-balancing of post-consumer recycled plastics, and there is increasing need for federal guidance in this space.[27]

[27] For example, a 2020 California law requires "the total number of plastic beverage containers filled with a beverage sold by a beverage manufacturer, as specified, to contain, on average, specified amounts of postconsumer recycled plastic content per year pursuant to a tiered plan that would require the total number of plastic beverage containers to contain, on average, no less than 50% postconsumer recycled plastic content per year on and after January 1, 2030, except as specified." *See* California AB793 (2020),

Formally recognizing how industry undertakes these processes will enable marketers to provide more accurate, consistent, and transparent bases for substantiating recycled content claims as well as support increased post-consumer recycled content rates for packaging.

Generally, there are two types of plastic recycling technologies—mechanical recycling and molecular recycling—and both are essential to increasing recycling rates for packaging materials. Molecular recycling, a form of chemical recycling, is a new entrant on the recycling landscape that offers great promise by providing plastic-to-plastic recycling options for a variety of difficult-to-recycle plastics including PET, PE, and other types, mixtures, and challenging form factors. The technologies that fall within this category are proven effective, many are already in operation at commercial scale, and numerous companies have announced plans for additional projects.[28] There are three primary categories of chemical recycling—pyrolysis, gasification and depolymerization.[29] The first two generally result in the production of synthesis gas or an oil that can be used either as fuel or as the building block for new plastics.[30] The latter approach reduces plastic to its building block monomers that are identical to virgin monomers.

Molecular recycling is a process that breaks waste material down to its molecular building blocks (called monomers) so they can be reassembled into new materials. With molecular recycling technology, the goal is to utilize materials at the end of their life to create new materials of equal or better quality as that from which they are derived. Since the waste plastic is reduced to the

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https://calrecycle.ca.gov/bevcontainer/bevdistman/plasticcontent/. See also, https://openstates.org/ca/bills/20192020/AB793/. In addition, a new law in Washington on postconsumer recycled content states: "A producer of a beverage in a plastic beverage container must meet the following annual minimum postconsumer recycled content percentage on average for the total quantity of plastic beverage containers, by weight, that are sold, offered for sale, or distributed in or into Washington by the producer." *See* Wash. Rev. Code § 70A.245.020.

[28] *See e.g.*, Janna Brancolini, *Chemical Recycling Could Bolster Sustainable Packaging*, Bloomberg Law, (Oct. 23, 2019) https://news.bloomberglaw.com/environment-and-energy/chemical-recycling-could-bolster-sustainable-packaging (noting that chemical makers BASF, Henkel AG & CO, and Indorama are investing in molecular recycling); Stephen Moore*, Dow to source pyrolysis oil feedstock made from recycled plastic waste*, Plastics Today (Aug. 30, 2019), https://www.plasticstoday.com/sustainability/dow-source-pyrolysis-oil-feedstock-made-recycled-plastic-waste (describing Dow's investment with Fuenex Ecogy Group in the Netherlands); Adam Allington, *Could Chemical Recycling Help Solve Plastic Trash Problem?*, Bloomberg Law (Aug. 10, 2018), https://news.bloomberglaw.com/environment-and-energy/could-chemical-recycling-help-solve-plastic-trash-problem (describing LyondellBasell Industries, NV's joint venture to develop an industrial scale molecular recycling process).

[29] See Henrik Thurman, Teresa Berdugo Vilches, Martin Seeman, Jelena Maric, Isabel Canete Vela, Sebastian Pissot, Huong N.T. Nguyen, Circular use of plastics-transformation of existing petrochemical clusters into thermochemical recycling plants with 100% plastics recovery, Sustainable Materials and Technologies, July 23, 2019 (noting the importance of plastics in modern society) (https://www.sciencedirect.com/science/article/pii/S2214993719300697)*;* See also, Energy Fuels 2015, 29, 4, 2289–2298 Publication Date:April 1, 2015 https://doi.org/10.1021/ef502919f (describing in detail the different types of molecular recycling, including their benefits and limitations, and includes several tables that identify where they are in commercial use). There are three types of pyrolysis – thermal cracking (which has two sub-species, plasma pyrolysis and microwave-assisted pyrolysis), catalytic cracking and hydrocracking. There are three types of gasification – conventional gasification, plasma gasification and pyrolysis with in-line reforming.

[30] *Id.* Thurman

molecular level and built back up into new plastic, there is no plastic degradation in the new product, allowing the molecules to be reused infinitely in place of virgin raw materials.

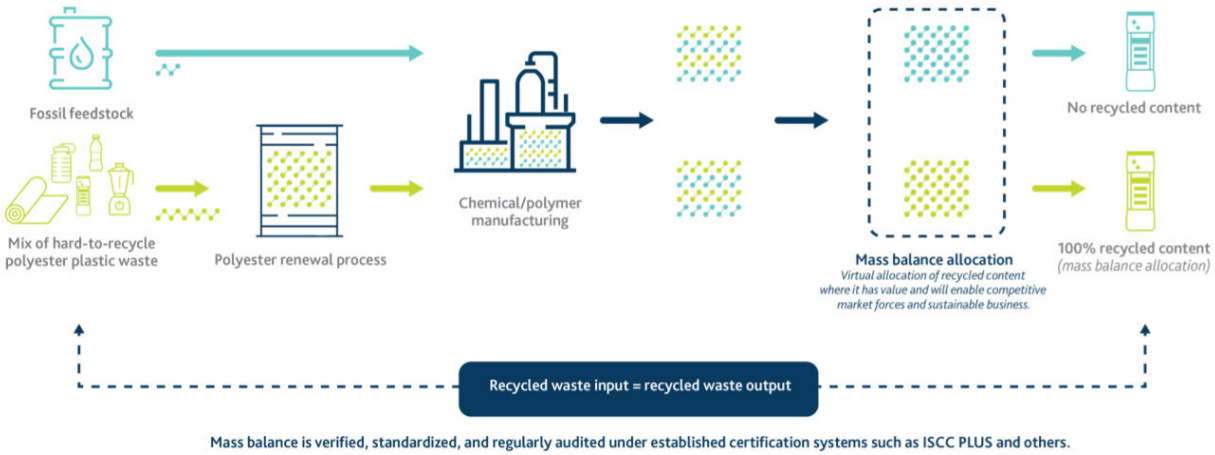
A key challenge to marketing materials produced from advanced recycling technologies such as chemical recycling is the acceptance of the accounting mechanism. The molecules created from waste plastic feedstocks are often combined with and indistinguishable from molecules from virgin feedstocks. In mechanical recycling, this is simpler, as the waste plastic feedstock is easily understood to be all or an easily tracked weight percentage of the end-product produced. To overcome this barrier, molecular recyclers rely on a chain-of-custody concept called mass balance.

Consumer Brands recommends that the FTC, in coordination with the EPA, revise the Green Guides to include not only additional guidance on mass balance but workable insights that can serve as consistent standard, with examples of third-party certification programs. We submit this is another area where the FTC needs to adopt a posture that is inclusive and forward-thinking on technology that will continue to evolve and outpace the 10-year Green Guides review cadence. Mass balance is a chain of custody process by which inputs and outputs and associated information are transferred, monitored, and controlled as they move through each step in the relevant supply chain. It is used when it is not practical to keep materials physically separated and relies on an accounting system to track and assign sustainable characteristics of materials (such as allocated recycled content) through manufacturing operations within a company and through the value chain. It enables recycled and virgin materials to be mixed and co-processed together in existing large-scale assets and ensures that the amount of sustainable material produced in a system is controlled, documented, and balanced with the amount of sustainable material input (such as plastic diverted from the waste stream). This process appropriately accounts for yield losses and manufacturing efficiencies within the system.

In the molecular recycling context, plastic material diverted from a landfill can be chemically processed back into its building blocks and mixed with and become indistinguishable from new, fossil-based feedstocks of the same type. This blend is then used to make new plastic products in existing equipment. Mass balance chain-of-custody rules are followed to track the amount of recycled material inputs, accounts for any losses, and then is the basis for allocating recycle content credits to the products produced.

MASS BALANCE—HOW IT WORKS

Process used to record how much recycled content has been used in manufacturing products with chemical recycling

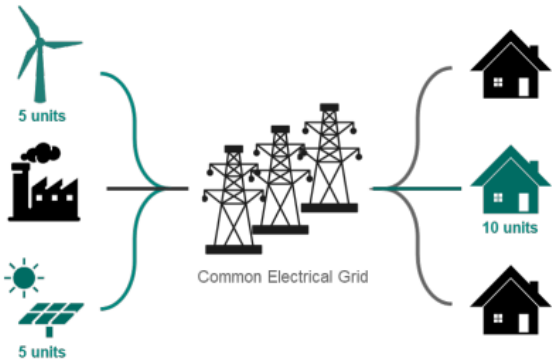


Mass balance allocation practices have been widely used in a variety of industries for decades. A few of these industries include agricultural products, biofuels, cocoa, coffee, cotton, palm oil, renewable energy, soy, sugar, tea, and timber products. Multiple third-party party certifications of the mass balance allocation processes used are available for the various applications and industries. The two most common areas are renewable energy and timber products.

At present, the Green Guides' recycled content provisions imply that a recycle content claim must start with a "product or package [that] is *made of* recycled content" or "*contains* recycled content."[31] We recommend that the FTC modify the recycled content provisions in the Green Guides to reflect acceptance of the mass balance allocation of recycle content credit. This requested modification is already arguably contemplated in Section 260.13, and updates to the Guides would further clarify this guidance. The FTC contemplated use of mass balance allocation in the current Example 7 to the recycled content provisions. Here, the FTC's example indicates that reliance on chain-of-custody concepts and the allocation of recycled content inputs into a blended weighted average is an acceptable basis for a recycle content claim. The FTC should preserve this example and ensure that it is supported by the plain text of the guides provided in Section 260.13.

The Green Guides Section 260.15 provision on renewable energy claims further supports the use of such chain-of-custody concepts. Green power purchase agreements are analogous to a "mass balance" for electrons, enabling green power to be marked through existing grid networks. This enables green power to be sold where people need/want it most through existing infrastructure that contains electricity from both renewable and non-renewable sources that is indistinguishable.

[31] 16 C.F.R. § 260.13 (emphasis added).



Just as renewable energy claims are permitted to be based on an analogous mass balance chain-of-custody allocation, so too should recycled content claims for advanced plastic recycling technologies.

Using mass balance claims is critical to ensuring that molecularly recycled plastics are not inappropriately disadvantaged compared to other materials. Also, the ability to make recycled content claims using the mass balance allocation of recycled content credit is critical to enable the success of advanced plastic recycling technologies. The absence of such a chain-of-custody process would force inefficiencies on the industry that would greatly stifle its use. More specifically, without mass balance, industry would be forced to duplicate manufacturing infrastructure to keep the recycled material separate from virgin feedstock-based materials – all to preserve the identity of the recycled material. This would be akin to requiring renewable energy sources to build an entirely new electrical grid dedicated to the transmission of green electricity. Whether it is green electricity or chemical recycling technologies, mass balance allocation allows technological advancements to work more efficiently while preserving the legitimacy of any recycled content claim.

G. The Guides currently advise marketers claiming products are "compostable" in municipal or institutional facilities that they should qualify such claims if appropriate facilities are not available to a substantial majority of consumers or communities where the item is sold. Should this guidance be revised to define "substantial majority" consistent with the "recyclable" section? If so, why, and what guidance should be provided? If not, why not?

Consumer Brands is not aware of consumer perception research or infrastructure case studies that would support extending the guidance to include substantial majority at this time. That said, there should be further articulation in the Guides of the types of facilities that can accept compostable packaging and products, as well as any potential caveats needed if the substantial majority threshold is not able to be met. Only 7% of the 1,000 largest U.S. cities have municipally-run curbside composting programs that accept some form of compostable packaging in addition to food waste.[32] Considering these market realities, guidance that allows marketers to use the

[32] *See* Mapping Urban Access to Composting Programs, Green Blue, https://greenblue.org/work/compostingaccess/ (last visited Mar. 31, 2023).

term “compostable” in a nondeceptive manner could help promote the long-term growth in composting infrastructure and acceptance of such materials in local collection programs.

The Commission should also offer guidance on how to calculate whether composting facilities are available to a substantial majority of consumers or communities where the item is sold. The Guides should ensure “compostable” materials are characterized as those which are capable of being composted either at municipal facilities or at home rather than relying on items collection. This can support marketers, consumers, and other organizations to continue to seek for expanding infrastructure in the future. Further, the Commission should address compostable claims for products that are marketed for controlling, cleaning or disposing of biowaste (urine, feces, menses, etc.), including appropriate qualifications for home compostable and industrially compostable products. Additional guidance that allows for use of compostable claims even if a minor, incidental component of the item is not compostable (similar to the guidance on recyclable claims) would also be beneficial, so long as the minor, incidental component is easily removable or does not significantly impede the ability to compost the item. We believe that the FTC needs to undertake additional research not only on consumer perception but also on the actions of consumers vis-à-vis home composting; while recycling is dependent on municipal capabilities, home composting is not. We encourage the FTC to consider whether different types of qualifying claims may be appropriate for compostable claims as compared to recyclable claims.

Finally, we submit that the FTC should define the term “break down” as used in Section 260.7(b) to make clear that it means that the material returns to elements found in nature, such as carbon dioxide and water, and does not result in the presence of microplastics or toxic substances. This represents the true break down of the material.

H. In 2012, the Commission declined to issue guidance on “organic” claims for non-agricultural products. Should the Commission revisit this determination? If so, why, and what guidance should be provided? If not, why not?

Consumer Brands encourages the Commission to offer guidance on appropriate uses of the term “organic” for non-agricultural products based on consumer perception research. Specifically, marketers would benefit from additional clarity in the Guides around the use of the term “organic” for packaging materials and other non-food items such as personal care products. Past FTC enforcement actions[33] have challenged marketers’ use of the term “organic.” If this is an area of concern for the Commission due to the risk of consumer deception, it should conduct consumer perception research as a part of this regulatory review and include in the updated Guides information on when a product’s composition qualifies as organic.

I. What changes, if any, should the Commission make to its guidance on pre-consumer or post-industrial recycled content claims? How do consumers interpret such claims? Please provide any relevant consumer perception evidence.

[33] *See, e.g.,* Truly Organic, Inc. Federal Trade Commission (2019).

Consumer Brands recommends that the FTC retain its current approach to pre-consumer and post-industrial recycled content claims. The current guidance is supported by the FTC's own 2016 consumer perception research.[34] The report found:

> After accounting for the control question, the percentage of respondents who thought recycled content claims inaccurately describe products made with pre-consumer materials slightly exceeded the percentage of respondents who had the same belief about products made with post-consumer materials, but the difference was too small to be practically significant. . . . Based on these results, FTC staff has concluded that the study provides no basis for modifying the Commission's advice on recycled content claims.

Based on these conclusions, the FTC should retain its guidance that recycled content claims are based on material diverted from the waste stream, without distinction required for pre-consumer or post-industrial streams.

In Section 260.12 Example 3, the FTC provides an important example illustrating that incineration of a material does not constitute recycling. We encourage the FTC to retain that example and add a similar example in Section 260.13 to address recycled content claims arising from the incineration of products or packaging to produce heat and power or the conversion of products or packaging into fuels for energy. Such examples might read as follows:

> Example __: A container is burned in an incineration facility to produce heat and power. The incineration facility relies on a chain-of-custody system to generate credits from this process that it allocates to other products or packages it manufactures. A claim that a product or package contains recycled content because it was manufactured at a facility that purchased recycled content credits from the incineration facility would be deceptive.
>
> Example __: A container can be converted into fuel that is ultimately burned for energy. The conversion facility relies on a chain-of-custody system to generate credit from this process that it allocates to other products or packages it manufactures. A claim that the product or package manufactured contains recycled content due to the recycled content credit from conversion of material into fuel would be deceptive.
>
> Example __: Plastic waste is recovered from the waste stream and undergoes a chemical recycling process to generate a mixture of chemical constituents. The mixture enters an integrated manufacturing process where 50% of the chemical constituents is used to manufacture fuel and the rest is used to manufacture polymers which are transformed into plastic containers. The manufacturer allocates recycled content credit from the portion of the chemical constituents used to

[34] Consumer Perception of "Recycled Content" and "Organic" Claims, Joint Staff Report of the Bureau of Economics and Bureau of Consumer Protection, Federal Trade Commission, A Report on a Study Co-funded by the U.S. Department of Agriculture (Aug. 10, 2016), https://www.ftc.gov/system/files/documents/reports/consumer-perception-recycled-content-organic-claims-joint-staff-report-federal-trade-commission/consumer_perception_of_recycled_content_and_organic_2016-08-10.pdf.

manufacture fuel to power the production of other plastic products and claims that those other products are made with recycled content. This claim is deceptive because the chemical constituents used to manufacture fuel are used for energy and cannot be allocated as recycled content.

J. In 2012, the Commission determined it lacked a basis to give specific guidance on how consumers interpret "sustainable" claims. Should the Commission revisit this determination? If so, why, and what guidance should be provided? If not, why not?

Consumer Brands recommends that the FTC revisit the term "sustainable" as well as consumer interpretations of related terms such as "sustainably sourced" and "sustainably grown" to identify how consumer perceptions of these terms have changed since 2012. Since the last update of the Guides, we have observed an uptick in usage of these terms by marketers, consumers, governments, NGOs and the scientific community. Given the significant emergence of "sustainable" claims in many product categories, we urge the FTC to conduct a dedicated workshop to gather additional stakeholder input on this and related claims claim and to evaluate additional guidance. We also encourage the Commission to conduct consumer perception research to identify how consumers' understanding of these terms and related qualifying claims may have changed since the last revision of the Guides.

Furthermore, as more companies develop Environmental, Social, and Governance ("ESG") goals and begin to market these goals to both consumers and the investment community, having additional context from the FTC regarding such aspirational statements could also be informative and helpful. Moreover, given the U.S. Securities and Exchange Commission's ("SEC") increased interest in climate-related disclosures, including the proposed Climate-Related Disclosure rule,[35] the FTC should work with the SEC to ensure a consistent approach. An absence of harmonization or worse yet, conflicting approaches, around aspirational statements would be highly disruptive.

Ultimately, we would encourage the Commission to add guidance to the Green Guides on the use of the term "sustainable" consistent with consumer perception and dictionary definitions. For example, the Guides could recognize the sustainability of manufacturing products or packaging in a way that conserves resources such as is the case when using recycled content or designing for recyclability. Given the increased use of the term across virtually all sectors of the marketplace, now is a good time for the FTC to revisit the term "sustainable."

III. Other Topics

A. Frequency of Review

We strongly urge the Commission to engage in more frequent updates of the Guides or to provide additional, non-binding business guidance so that the Commission and industry alike can keep pace with market developments and changes in consumer perceptions. In the decade since the Guides' last update, there have been significant shifts in the public discourse around companies'

[35] Proposed Rule, 87 Fed. Reg. 21334 (April 11, 2022), https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors.

environmental impacts, including changes in the scope and scale of company commitments; shifts in the terms used to describe environmental benefits; and developments in consumer expectations, which impact their interpretation of environmental claims. Although the Green Guides provide a helpful foundation for industry to communicate clearly with consumers, because of the dynamic nature and innovation at play, they have not kept pace with changes in the marketplace and in consumer perceptions.

Ensuring that the Green Guides remain current is important not only because industry relies on the document to understand the Commission's view of consumer perceptions of key environmental terms but also because compliance with the Guides serves as a defense for claims of nondeceptive commercial practices in a number of states.[36] We applaud the Commission's willingness to consider more discrete updates to individual sections of the Guides when it has reason to believe that changes are needed. We encourage the Commission to review with care any petitions filed with the agency in the coming years urging modification of specific sections of the Guides.

B. Reuse Claims

Consumer Brands encourages the Commission to supplement the Green Guides section on refillable claims to include guidance on "reusable" and "returnable" claims. In recent years, many different stakeholders including consumers, investors, and civil society organizations have encouraged CPG companies to adopt more reusable packaging models for their products. Many US marketers are making claims regarding the reusability of their packaging, and some businesses have also established long-term reusable packaging goals. We encourage the Commission to conduct consumer perception research on reuse claims with the intention of issuing guidance on nondeceptive use of these claims. The research should consider the distinctions between various business models for reusability.[37] Any updates to the Guides related to these claims should reflect business models that have developed around such products and support the ability of brands to innovate and deploy new products that are capable of reuse, refill, or return by consumers.

We believe there is an opportunity for the Guides to better reflect new business models that have developed around refillable products, including properly defining and differentiating between "reusable" and "returnable" products. In addition to including these definitions, which all still hinge on the use of product packaging, we believe the Guides should include a definition of reuse

[36] *See, e.g.*, Cal. Bus. & Prof. Code § 17580.5 ("It shall be a defense to any suit or complaint brought under this section that the person's environmental marketing claims conform to the standards or are consistent with the examples contained in the "Guides for the Use of Environmental Marketing Claims" published by the Federal Trade Commission.").

[37] The Ellen MacArthur Foundation ("EMF"), in collaboration with the UN Environment Programme, created the Global Commitment, which has united more than 500 organizations behind a common vision of a circular economy for plastics. EMF considers reusable packaging a critical part of the solution to eliminate plastic waste. In a white paper entitled Reuse – Rethinking Packaging, EMF identified four reuse models and 69 reuse examples across various consumer industries including beverages, cup solutions, grocery, home care, personal care, takeaway and ready meals and transporting packaging. Annette Lendal & Sara Lindenbald Wingstrand, Reuse: Rethinking Packaging, Ellen MacArthur Foundation, https://ellenmacarthurfoundation.org/reuse-rethinking-packaging.

systems or reuse as an operation that allow for the sale of product to drive alignment with new and emerging reuse targets. For instance, “reuse” could be defined as an operation by which packaging is either designed to be refilled or used as part of a reuse system for the same purpose for which it was conceived, with or without the support of auxiliary products present on the market enabling the packaging to be refilled.

We offer below proposed updates to the Green Guides section on refillable claims to incorporate reuse and returnable claims. The FTC may wish to consider updating the Guides in a similar manner pending confirmatory consumer perception testing.

> § 260.14 **Reuse**: Refillable and **Returnable** claims.
>
> It is deceptive to misrepresent, directly or by implication, that a package is **reusable**, refillable **or returnable**. A marketer should not make an unqualified **reusable**, refillable **or returnable** claim unless the marketer provides a means for refilling **or returning** the package **that is to be reused**. A reusable, refillable or returnable claim may be made if the consumer is provided a system for: **(1) a reusable package, container or vessel to be used to hold the product either at home or on the go, (2)** the **return or** collection, and refill of the package **that may or may not be resold to a new consumer**, or (3) refilling the original package. **To be labeled “returnable” without qualification, a system of return must be available in a substantial majority of consumers or communities where the returnable package is sold.**

Marketers would also benefit from additional examples to illustrate the Commission’s guidance on reuse clams, including refillable and returnable. Consumer Brands suggests one or more of the following proposed examples:

> Example 3:
> A beverage company sells a beverage product in a bottle labeled “returnable.” The company or community provides a system, available to a substantial majority of consumers or communities, for returning the bottle to the manufacturer, which may reuse the bottle by cleaning it and refilling it with new product to be sold again to a new consumer. The “returnable” claim is not deceptive regardless of whether the consumer actually returns the bottle to be washed and reused.
>
> Example 4:
> A cleaning product company offers liquid dish soap products in vessels that are labeled as “reusable” or “refillable.” Consumers may use these vessels when purchasing dish soap at dispensing vending machines enabled with smart technology for contactless purchases. The reusable and refillable claims are not deceptive.
>
> Example 5:
> An event organizer provides “reusable” cups at an event that are collected from consumers and cleaned for reuse at future events. The “reusable” claim is not deceptive.

IV. Environmental Benefit Claims and the Distinction of Instructions for Products/Packages that are Capable of being Recycled, Composted, Refilled

Aside from recommendations set forth above on environmental marketing claims and issues currently addressed by the Green Guides, Consumer Brands has observed a distinction that would be helpful to capture in the Guides between claims about a product and instructions for recycling, composting, or reusing a product. While the Guides largely relate to claims companies make about the environmental attributes of their products or services, brands frequently communicate with their customers in the form of instructions or calls to action, such as instructing a consumer to remove the label on a bottle before recycling the bottle. This practice is premised on consumers' desire to reduce environmental impact as well as industry's recognition in the role it plays in reducing environmental impact. Moreover, we encourage the Commission to engage with state regulators to seek recognition and reinforcement of the key role the Green Guides play to provide a framework on how to appropriately validate truthful environmental claims while encouraging innovation to expand the possibilities for sustainable practices and solutions.

V. Conclusion

We reiterate our support of the Commission's legacy and efforts on environmental marketing claims. With the benefit of additional consumer perception research, public workshops, and key updates in this and future proceedings, the Guides can better align with marketplace dynamics and consumer expectations. Since the Guides have long served as a standard for environmental marketing across industries, the FTC is uniquely positioned to serve not just consumers but the economy and the environment alike by continuing to offer an administrative interpretation of the law that is clear and responsive to changes in the marketplace.

Consumer Brands and its members are committed to advancing a vibrant economy fueled by fair competition and empowered, informed consumers, fully in line with the Federal Trade Commission's mission. We appreciate the opportunity to provide comment to the Green Guides Request for Information and look forward to continued dialogue with the agency on this topic.

Sincerely,

Joseph T. Aquilina

Joseph Aquilina
Sr. Director, Associate General Counsel

John Hewitt
Vice President, Packaging Sustainability