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April 23, 2023

The Honorable Lina M. Khan
Chair
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J)
Washington, DC 20580

RE: Green Guides Review, Matter No. P954501

Dear Chair Khan:

Ocean Conservancy is grateful for the opportunity to provide comments on the Federal Trade Commission's (FTC) Green Guides Review to recommend updates and changes to the Guides to ensure marketers avoid unfair or deceptive claims that would impact consumer trust and use of products.

Ocean Conservancy works to protect the ocean from today's greatest global challenges. Together with our partners, we create evidence-based solutions for a healthy ocean and the wildlife and communities that depend on it. One of the challenges we have been working to address throughout our 50-year history is plastic pollution. As plastic *production* has continued to rise, so has plastic *pollution*, resulting in over 11 million metric pounds of plastics entering our ocean each year from land-based sources alone.¹ Left unchecked, rates of ocean plastic pollution are expected to triple to 29 million metric tons per year by 2040.¹

The science is clear - to address our plastic pollution crisis and the climate crisis it is fueling, we need a comprehensive approach that includes making less plastic, better reusing and recycling the plastics we do need, and continuing effective cleanups of plastics that are leaked into the environment. As public concern about the plastic pollution crisis has grown over the last decade, so too have misleading and confusing marketing claims on plastics, and the need for revisions to the Green Guides to protect consumers from deceptive and unfair business practices. However, current labeling of plastic products remains inconsistent and unreliable, leading to an abundance of false or misleading claims. These confusing claims limit informed consumer choices and enable "greenwashing" by companies. Accurate labeling standards are critical in holding producers accountable for their upstream design decisions and protecting consumers from deceptive or misleading in ensuring better reuse and recycling of plastics, which in turn leads to less plastics ending up in our ocean and waterways. If the Biden administration wants the U.S. to be a leader in the reduction of plastics consumption, the transition to more reusable products

¹ Lau, W.W. et al. [Evaluating scenarios toward zero plastic pollution](#). *Science* (2020).

must start with increased transparency and accountability, and updating requirements for on-product labeling represents a critical step in the right direction.

The FTC has requested public comments on general issues relating to the Green Guides (“Guides”), addressed in Section III.A of the Federal Register Notice, as well as specific issues relating to environmental claims, addressed in Section III.B of the Federal Register Notice. Through the below comments, Ocean Conservancy is responding to questions in both sections.

We encourage the FTC to initiate a rulemaking under the FTC Act as a means to strengthen the enforcement of the Green Guides, which will ensure that the goals of the Guides to protect consumers from misleading claims are realized. We also encourage the FTC to update its guidance on specific claims. Importantly for “recyclable” claims, we urge the FTC to align its updated guidance with California’s recent Truth in Labeling law SB 343, which takes into account upstream design requirements in assessing recyclability. Further, we urge the FTC to prohibit the use of plastic conversion technologies like pyrolysis and gasification (sometimes called “chemical” recycling or “advanced” recycling) to count as recycled content for on-pack labeling claims through mass balance or other methods. These technologies are harmful to human health and the environment and have no place in the Green Guides.

Ocean Conservancy stands ready to assist or provide further comment. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anja Brandon', written in a cursive style.

Dr. Anja Brandon
Associate Director, U.S. Plastics Policy
Ocean Conservancy

Section III. A - General Issues

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

Update guidance more frequently (at least every 5 years): To increase their benefits to consumers, the Guides should be updated more frequently, at least every five years. This is critical to ensure the Guides remain responsive to the large number of environmental policies being proposed and enacted and to account for the ways businesses adapt via material and packaging changes.

More prescriptive guidance on recyclability and recycled content claims: Consumers are at risk from deceptive claims on recyclability and recycled content. For example, in 2021, The International Consumer Protection Enforcement Network (ICPEN) conducted a survey of 500 websites and found that 40% of the green claims made online could be misleading consumers.² More prescriptive guidance on recyclability and recycled content claims, including examples of acceptable and non-acceptable claims, will help ensure compliance with the Guides and increase their benefit to consumers.

Increase enforcement: Increased enforcement of confusing and misleading claims will ensure consumers see the benefits from the Guides and are protected from deceptive environmental claims. Increased enforcement action, including the issuance of cease and desist letters for products and packaging making deceptive claims, will also ensure the goal to protect consumers is realized.

Question 7. 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? If not, why not?

There is strong and growing evidence that consumers are motivated by taking action to help protect our ocean and our environment for themselves and future generations and are interested in using their purchasing power to support more sustainable packaging and products. There is also evidence that consumers look to labeling on products when making purchasing and disposal decisions and that labeling can lead to consumer confusion and ultimately, contamination in waste and recycling streams.

For example, a 2021 Ocean Conservancy survey³ of Americans' food delivery and takeout habits found that 60% of Americans make incorrect assumptions about the recyclability of plastic delivery food containers, and that nearly 90% of Americans thought it was important to increase the use of recyclable takeout containers and phase out non-recyclable containers. This research indicates a strong desire for change and a willingness to participate in more sustainable practices.

² Competition and Markets Authority. [Global sweep finds 40% of firms' green claims could be misleading](#). GOV.UK. (2021).

³ Ocean Conservancy. [We Clean On: International Coastal Cleanup 2020 Report](#). (2021).

In Oregon, labeling issues were such a concern that the Oregon legislature created a task force in 2022 to study the issue and develop recommendations to address confusing and misleading product and packaging labeling. The Truth in Labeling Report,⁴ a consensus report submitted to the Oregon legislature by the task force, highlights the confusion and waste stream contamination caused by false or misleading recyclability claims on labels.

- The report cites a national survey⁵ conducted in 2020 that found 67% of consumers polled looked at the recycling label before discarding an item. This suggests that consumers look to labeling for guidance on disposal decisions and highlights the importance of ensuring these labels are accurate.
- The report also cites a 2018 survey⁶ in the Portland Metro region that found that the majority (ranging from 55%-89% depending on the item) of people surveyed believed they could recycle materials that the local recycling program does not accept, such as frozen food boxes and paper coffee cups, in part driven by misleading labels. This shows that there is still a significant need for improved labeling to enable consumers to route materials appropriately.

It also specifically calls out the role of the FTC Green Guides in addressing this challenge and the potential benefits that would arise from updating the Guides.

Taken together, these findings indicate that there is a critical need to update the Guides to better support consumers in their purchasing and disposal habits, which in turn can reduce environmental pollution and contamination in waste and recycling systems. Updates to the Guides should reflect the state-level legislation put in place since 2012 (explained in detail below) to help address many of the same concerns tackled in the Guides.

Question 8. Please provide any evidence that has become available since 2012 concerning consumer interest in particular environmental issues. Does this new information indicate the Guides should be modified? If so, why, and how? If not, why not?

Since 2012, there has been a significant increase in consumer interest in environmental issues, particularly in relation to plastic pollution, marine debris, and climate change. Numerous public opinion surveys have found that a majority of Americans (80%⁷) are concerned with plastic pollution. Many Americans also see recycling as a part of the solution - 81% agree with wanting to recycle more plastics and cite plastics either not being accepted or confusion around what is accepted in their local recycling system as the top barrier to recycling more.⁸

Consumers want the ability to make informed choices and better choices that will lead to less plastic pollution. Ocean Conservancy's own survey found that 90% of Americans think it is important to increase the use of recyclable takeout containers and phase out non-recyclable containers. Further, 60% of Americans would support local ordinances to improve recyclability

⁴ Oregon Truth In Labeling Task Force. [Truth in Labeling Final Report and Recommendations](#). (2022).

⁵ Shelton Group. [Recycling Pulse 2020: Engaging Middle America in Recycling Solutions](#). (2020).

⁶ DHM Research. [Metro Recycling Resident Survey](#). (2018).

⁷ Oceana. [National Plastic Pollution Survey](#). (2023).

⁸ Corona Insights. [Public Opinion Surrounding Plastic Consumption and Waste Management of Consumer Packaging](#). (2021).

standards for takeout containers.⁹

This increased consumer awareness and concern has led to a number of state-level laws and national action to address plastic pollution:

- Since 2012, 13 states, along with the District of Columbia, have taken decisive action by implementing bans on commonly polluted³ single-use plastic items, such as bags, straws, utensils, and foam containers. These policy actions reflect the public's increasing concern for the environment and their collective desire to address our plastic pollution crisis.
- At the federal level, the Break Free From Plastic Pollution Act¹⁰ was introduced in 2020, and reintroduced in 2021 with more Congressional support, with the aim to reduce plastic pollution through a range of measures, including extended producer responsibility, a national bottle deposit scheme, bans on certain single-use plastics, and national labeling standards for packaging.

The Guides should be modified to reflect this increased consumer concern and legislative action at the state-level to address this issue.

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

There is increased interest in tackling this issue across all levels of government, there are increasing instances where the Guides overlap or even conflict with federal, state or local laws and regulations. While the Federal Trade Commission Act prohibits unfair or deceptive acts or practices in commerce, including false or misleading environmental claims, other federal agencies such as the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA) also have responsibilities to regulate environmental claims for certain products, such as pesticides or agricultural products. The FTC can and should engage these other agencies in updating the Guides.

In recent years, states have been actively pursuing their own environmental protection and consumer transparency measures. California, a leader in environmental policy, has implemented various laws and regulations to promote sustainable practices and responsible marketing claims. Most relevant for the Guides are California's SB 343 and AB 1201, both laws passed in 2021 to address recycling and compostability claims, respectively.

California's SB 343¹¹ establishes specific criteria for recyclability claims, including that material must be collected for recycling in an area that represents at least 60% of the state's population and that material must be sorted into defined streams for recycling in at least 60% of statewide recycling programs. Additionally, the legislation outlines material and chemical restrictions for plastics based on the Association of Plastics Recyclers (APR) Design Guide¹² and other restrictions across all material types, such as prohibiting components (e.g., inks, adhesives, or

⁹ Ocean Conservancy. [We Clean On: International Coastal Cleanup 2020 Report](#). (2021).

¹⁰ [S.984 - Break Free From Plastic Pollution Act of 2021](#).

¹¹ CA [S.B. 343 \(Allen\) - Environmental advertising: recycling symbol: recyclability: products and packaging](#). (2021).

¹² Association of Plastic Recyclers. [APR Design® Guide](#).

labels) that prevent recycling or the inclusion of intentionally added per- and polyfluoroalkyl substances (PFAS). While the 60% threshold for access to recycling facilities is shared, this law is more comprehensive than the Guides recyclability guidance at the moment, which could allow products sold in California versus adjoining states to have different on product labeling. The result of this conflict is confusion among consumers and additional burdens on businesses trying to comply. We therefore recommend that the recyclable guidance of the Guides be updated to match the criteria laid out in CA SB 343 (explained in-depth below, Section III, Q5 a, b).

Another example is CA AB 1201,¹³ which requires that products labeled as "compostable," "home compostable," or "soil biodegradable" meet specific ASTM International standards.^{14,15} While the Guides do address compostability claims, they lack the evidence-based requirements outlined in AB 1201, which could create inconsistencies in how compostability claims are regulated and communicated across jurisdictions. We therefore recommend that the compostable guidance of the Guides be updated to match the criteria laid out in CA AB 1201 (explained in-depth below, Section III, Q2).

The discrepancies between these laws and regulations can create confusion for consumers and add challenges for businesses trying to comply. For example, under new recyclability labeling requirements in California based on SB 343, the resin identification code (RIC) must be displayed within an equilateral triangle,¹⁶ whereas in 36 other states¹⁷ the RIC is required to be placed within the "chasing arrows" symbol. While this is outside the scope of the Guides, it is a clear demonstration of the need for nationally harmonized labeling standards in addition to timely updates to the Guides.

Given the increased action at the state and local level, the Guides should be updated more regularly (at least every 5 years) to remain a helpful tool in protecting consumers from misleading claims and help businesses comply with the changing local, state, and federal policy landscape.

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

Yes, the FTC should initiate a rulemaking under the FTC Act as a means to strengthen the enforcement of the Green Guides, which will ensure the goals of the Guides to protect consumers from misleading claims are realized. The FTC should focus the rulemaking on the development of enforceable requirements related to deceptive or unfair environmental claims about whether a product is recyclable, compostable, or made of recycled content. In addition to misleading consumers, deceptive or unfair claims on recyclability and compostability lead to confusion for consumers in purchasing and end-of-life decisions, which in turn can result in contamination

¹³ CA [A.B. 1201 \(Ting\) - Solid waste: products: labeling: compostability and biodegradability](#). (2021)

¹⁴ ASTM [D6868-21](#) - Standard Specification for Labeling of End Items that Incorporate Plastics and Polymers as Coatings or Additives with Paper and Other Substrates Designed to be Aerobically Composted in Municipal or Industrial Facilities. (2021).

¹⁵ ASTM [D6400-21](#) - Standard Specification for Labeling of Plastics Designed to be Aerobically Composted in Municipal or Industrial Facilities. (2021)

¹⁶ CA [S.B. 343 \(Allen\)](#) §42355.51(c)(4)

¹⁷ PLASTICS Industry Alliance. [State Resin Identification Regulation Survey](#). (2022).

across waste streams, which is not the intent of consumers trying to make more environmentally conscious choices.

A critical area for enforcement is ensuring that recycled content claims are accurate and truthful by ensuring that recycled content claims are only made on products or packaging that physically contain recycled content. As industry tries to push for plastic conversion technologies like pyrolysis and gasification (sometimes called “chemical” recycling or “advanced” recycling) to count as “recycling,” despite not recovering any plastic material, claims on recycled content need to be carefully regulated and enforced to ensure that consumers looking to purchase more sustainable options are not misled by labeling into buying products that are actually made from virgin plastic.

The FTC has sufficient legal authority to promulgate rules regarding environmental marketing claims and there is a significant need for enhanced enforcement against the many deceptive and unfair claims that are currently on the market.

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.

Ocean Conservancy recommends initiating a rulemaking proceeding under the FTC Act specifically related to deceptive or unfair environmental claims on recyclability, compostability, and recycled content. A rulemaking would provide clearer guidelines and enforcement for marketers, ensuring consistency and transparency in environmental claims. The general principles laid out in §260.3 should all be incorporated into a rulemaking, in particular:

- Encourage use of specific terms: Marketers should use specific and clear terms such as "recyclable," "recycled content," or "compostable" to describe the environmental attribute of a product.
- Require substantiation: The FTC has taken enforcement actions¹⁸ against companies for making unsubstantiated environmental claims. Requiring marketers to provide complete and reliable evidence ensures that claims are accurate and trustworthy protects consumers from deception.
- Discourage general environmental benefit claims: Marketers should be cautious when making general environmental benefit claims such as "green" or "eco-friendly." These claims are difficult to substantiate and can be misleading to consumers. The TerraChoice "Sins of Greenwashing" report¹⁹ found that 95% of "green" products committed at least one "sin of greenwashing," such as making vague or misleading claims. By discouraging the use of general environmental benefit claims, marketers will be encouraged to provide substantiated claims, reducing the risk of greenwashing.

These principles, among the others laid out in §260.3, should be incorporated into a rulemaking with clear examples of acceptable and non-acceptable claims. The rulemaking should focus on

¹⁸ Fair, Lesley. [\\$5.5 Million in Total FTC Settlements with Kohl's and Walmart Challenge Bamboo and Eco Claims, Shed Light on Textile Import Violations](#). FTC Business Guidance Blog. (2022).

¹⁹ TerraChoice. [The Sins of Greenwashing: Home and Family Edition 2010](#). (2010).

offering more prescriptive guidance, and enforcement criteria, for labeling claims around “recyclable,” “recycled content,” and “compostable.” As these are among the most common claims on packaging and products, a rulemaking focused on these claims will help ensure more accurate claims on the majority of packaging, which will benefit consumers.

Question 2. Compostable, [16 CFR 260.7](#). 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?

Define “substantial majority:” The Guides should revise the guidance on "compostable" claims to define "substantial majority" consistently with the "recyclable" section, as outlined in §260.12 of the Green Guides. This would provide greater clarity and consistency in the guidance and would help consumers make more informed purchasing and disposal decisions by ensuring consumers are not misled into purchasing compostable products without realizing their community lacks adequate infrastructure. The definition of "substantial majority" should be based on the percentage of consumers or communities where the item is sold that have access to facilities capable of composting the product or access to collection programs that will accept the product for composting. The 60% threshold as laid out in the recyclable section has been used as precedent for other legislation and regulations (e.g., CA SB 343²⁰) and should be used as the minimum for defining a “substantial majority.”

Unless products are compostable in a safe and timely manner in a home compost pile or device, the ability to make marketing claims around compostability will be limited to whether there are appropriate facilities and collection infrastructure for that product. Thus, more clearly defining a “substantial majority” will ensure that the marketing claims around compostability are accurately communicated and that consumers are not misled by ambiguous claims.

Require specific evidence-based testing for “compostable” claims: It is critical that the composting claims be evidence-based and accurate. The current guidance on surrounding the “safe and timely” break down of products is not evidence-based nor specific enough to ensure products labeled “compostable” are actually able to break down in home compost piles or industrial compost facilities. California’s AB 1201,²¹ passed in 2021, mandates that products labeled as "compostable" or "home compostable" must meet specific ASTM International standard specifications or have OK compost HOME certification at the time of sale. The Guides should require specific evidence-based requirements, like those laid out in AB 1201, for products to be labeled compostable.

Question 3. Degradable, [16 CFR 260.8](#). The Guides provide that an unqualified claim indicating a product or package is degradable, biodegradable, oxo-degradable, oxo-biodegradable, or photodegradable should be substantiated by competent and reliable

²⁰ CA [S.B. 343 \(Allen\) - Environmental advertising: recycling symbol: recyclability: products and packaging](#). (2021).

²¹ CA [A.B. 1201 \(Ting\) - Solid waste: products: labeling: compostability and biodegradability](#). (2021)

scientific evidence demonstrating the entire item will completely break down and return to nature within a reasonably short period of time after customary disposal. For products customarily disposed in a landfill, “reasonably short period of time” is defined as one year.

Prohibit labeling claims of oxo-degradable, oxo-biodegradable, degradable and photodegradable:

The FTC should not allow any labeling claims indicating a product or packaging is oxo-degradable, oxo-biodegradable, or photodegradable. The plastic materials labeled with those claims include additives (typically heavy metals or other catalysts) designed to help the plastic break down. However, there is compelling evidence that these plastics fragment into smaller pieces and contribute to microplastic pollution rather than actually degrading and returning to nature as they claim.²² The most pervasive, mobile, and easily distributed type of plastic pollution, microplastics (defined as plastics less than 5mm in size) are known to be ingested by humans through the food we eat, water, and other beverages we drink, and the air we breathe. Moreover, these microplastics are known to act as vectors for absorbing potentially harmful chemicals. For this reason, the European Union commissioned a report and announced it will be taking action to restrict the use of oxo-degradable and oxo-biodegradable plastics.²³

Consumers have access to a waste bin (for landfilling), a recycling bin, and (if they’re in a select few places with access to curbside composting) a composting bin when it comes to making end-of-life decisions for their products or packaging. Labels such as oxo-degradable, oxo-biodegradable, photodegradable, or degradable are not compatible with the end-of-life decisions that customers are making and thus can lead to consumer confusion and contamination across waste streams.

We urge the FTC to not allow any environmental marketing claims on oxo-degradable, oxo-biodegradable, degradable, or photodegradable plastics, which we know are only contributing to our growing plastic pollution crisis.

a. Should the FTC revise the Guides to provide an alternative timeframe for product decomposition for all or any category of products? Does the timeframe differ for liquid products?

We urge the FTC to not allow any environmental marketing claims on oxo-degradable, oxo-biodegradable, degradable, or photodegradable plastics, regardless of the timeframe reported.

c. Should the FTC clarify or change existing guidance on degradable claims in light of its decision in the *ECM Biofilms* matter? ^[4] If so, how?

We urge the FTC to not allow any environmental marketing claims on oxo-degradable, oxo-biodegradable, degradable, or photodegradable plastics, especially in light of the false and misleading claims made by ECM Biofilms and the potential for other similarly deceptive

²² Napper, I.E. and R.C. Thompson. [Environmental deterioration of biodegradable, oxo-biodegradable, compostable, and conventional plastic carrier bags in the sea, soil, and open-air over a 3-year period.](#) *Environ. Sci. Technol.* (2019).

²³ European Commission. [Report from the European Commission to the European Parliament and the Council on the impact of the use of oxo-degradable plastic, including oxo-degradable carrier bags, on the environment.](#) (2018).

environmental claims. These labels are incompatible with our end-of-life waste streams and can lead to contamination across waste streams and the environment.

Question 5. *Recyclable*, [16 CFR 260.12](#). Should the FTC revise the Guides to include updated guidance on “recyclable” claims?

Update guidance to align with CA SB 343: The FTC should revise the guidance on “recyclable” claims to align with the guidance in California’s “Truth in Labeling” law: CA SB 343. Truth in labeling for recyclability is critical to enabling consumers to use their purchasing power and to decrease contamination in the waste stream. The chasing arrows symbol and other recyclability claims currently used on packaging material are misleading to the public, which is why we recommend the recyclable guidance be updated to match the criteria laid out in CA SB 343 and why we recommend the FTC undergo a rulemaking process to ensure the updated guidance can be enforced.

a. What evidence supports your proposed revision(s)?

The FTC should update the guidance to comply with the language and approach adopted in California Senate Bill 343 (CA SB 343).²⁴ This legislation provides a comprehensive framework for determining when a product can be considered recyclable, taking into account factors such as access to recycling programs as well as upstream design decisions that impact recyclability.

California’s SB 343 only permits a product or packaging to be labeled as recyclable (including using the “chasing arrows” recycling symbol) if the product or packaging is:

1. Designed to be recyclable (based on APR Design Guide²⁵) and does not include any components (e.g., inks, adhesives, or labels) that prevent recyclability,
2. Does not contain PFAS (per- and polyfluoroalkyl substances),
3. Is collected through curbside recycling programs that collectively encompass at least 60% of the state, and
4. Is sorted into defined streams in at least 60% of statewide recycling programs for purchase by reprocessing facilities consistent with the requirements of the Basel Convention.

By incorporating elements of CA SB 343 into the Guides, the FTC can establish clearer criteria and standards for “recyclable” claims, ensuring that such assertions are better aligned with actual design and production decisions that influence the recyclability of a product. As the state with the largest population and market-share, many businesses will already have to comply with this new law, which is likely to impact labeling nationally. Therefore, updating the Guides to incorporate the standards laid out in SB 343 will help ensure consumers across the country have equal access to accurate and truthful labeling.

c. What evidence constitutes a reasonable basis to support a “recyclable” claim?

²⁴ CA [S.B. 343 \(Allen\) - Environmental advertising: recycling symbol: recyclability: products and packaging](#). (2021).

²⁵ Association of Plastic Recyclers. [APR Design® Guide](#).

Per California Senate Bill 343 (CA SB 343), the following criteria constitute a reasonable basis for a labeling claim on “recyclable” and should be the basis for the Guides updated guidance:

1. Designed to be recyclable (based on APR Design Guide²⁶) and does not include any components (e.g., inks, adhesives, or labels) that prevent recyclability,
2. Does not contain PFAS (per- and polyfluoroalkyl substances),
3. Is collected through curbside recycling programs that collectively encompass at least 60% of the state, and
4. Is sorted into defined streams in at least 60% of statewide recycling programs for purchase by reprocessing facilities consistent with the requirements of the Basel Convention.

Question 6. *Recyclable*, [16 CFR 260.12](#). 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%.

The substantial majority threshold defined as 60% has been used as precedent in law (e.g., CA SB 343) and in other guidelines (e.g., APR Design Guide). Therefore, the 60% threshold should remain the minimum for consumer access to a recycling facility for a claim of “recyclable.”

b. 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?

Include more prescriptive guidance on unqualified recyclable claims: The Guides should be updated to include more specific guidance on unqualified “recyclable” claims. More prescriptive guidance on recyclability, including examples of acceptable and unacceptable claims, will help ensure compliance and ultimately, enforcement action if needed.

Limit recyclable claims (qualified or unqualified) on the following items: The Guides should be updated to prevent the following items from making a “recyclable” claim given that they are not ultimately recycled. The following items were identified by the U.S. Plastics Pact, a consortium of more than 100 businesses, government bodies, and nonprofits, as priority problematic and unnecessary plastic items to be phased out in packaging by 2025.²⁷ The first criteria in determining whether an item should be added to this list was recyclability, meaning all items on the list were deemed by a diverse set of stakeholders as not-recyclable. We therefore encourage the FTC to reevaluate these items and update the guidance to ensure that these items cannot make a “recyclable” labeling claim as it would be untrue and misleading:

- Polyethylene glycol (PETG) - a polymer that contaminates the PET recycling waste stream
- Polyvinyl chloride (PVC) - a polymer that is produced from vinyl chloride, a known

²⁶ Association of Plastic Recyclers. [APR Design[®] Guide](#).

²⁷ Ocean Conservancy. [The U.S. Plastics Pact’s List of Problematic Items to be Eliminated](#). (2022).

human carcinogen. In addition to health concerns, it makes up such a small proportion of the recycling stream that it cannot be recycled at scale.

- Polystyrene (PS) - a polymer most commonly used in foodware as either foam or thermoformed clamshells. These materials are not economically feasible to recycle and expanded polystyrene (EPS) foam products are already banned in nine states and the District of Columbia, as well as many more cities and municipalities.
- Undetectable pigments - certain product or packaging colorants that cannot be identified or sorted using common recycling sorting technology lead to contamination and lower quality recycled content.
- Opaque or pigmented polyethylene terephthalate (PET) - highly pigmented PET products and packaging result in stained recycled content, limiting their quality and use.
- Problematic labels-certain label constructs make them difficult to remove in the recycling process and can render materials unrecyclable.
- Oxo-degradable additives - intentionally added chemicals that make plastics break up more easily. These chemicals do not lead to actual biodegradation, rather they weaken the plastic, lead to greater microplastic contamination, and lower quality recycled content if they enter the waste stream.
- Per-and polyfluoroalkyl substances (PFAS) - these forever chemicals are associated with human health impacts and because they do not break down, they can contaminate resulting recycled content.

Question 7. *Recycled Content*, [16 CFR 260.13](#). 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?

Limit recycled content claims to post-consumer recycled content: There is a need for more specificity and transparency in guidance for recycled content claims to ensure truthful and understandable labeling. The FTC needs to ensure that general or unqualified recycled content claims are only made for post-consumer recycled (PCR) content. Further, the FTC should prohibit the use of mass balance claims to justify on-pack labeling of recycled content as it is highly deceptive. The FTC should prohibit the use of plastic conversion technologies like pyrolysis and gasification (sometimes called “chemical” recycling or “advanced” recycling) to count as recycled content for on-pack labeling claims through mass balance or other methods. These technologies are harmful to human health and the environment and have no place in the Green Guides.

Maintain requirement for including specific percentage of PCR: The FTC should uphold its current guidance that requires any product that has less than 100% recycled content states the actual percentage of recycled content to reduce the potential for consumer deception. However, the guidance should be updated to ensure that recycled content claims do not include the independent use of the chasing arrow recycling symbol as that can mislead consumers into believing the product itself is recyclable. In §260.13 of the current guidance states “by itself, the [chasing arrow recycling] symbol likely conveys that the packaging is both recyclable and made entirely from recycled material. Unless the marketer has substantiation for both messages, the claim should be qualified.” Given the high likelihood of confusion associated with this symbol, the FTC should update the guidance on recycled content claims to prohibit the use of the chasing

arrow recycling symbol unless the product or packaging meets the criteria for a recyclability claim.

Question 8. *Recycled Content*, [16 CFR 260.13](#). 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?

Do not allow claims based on mass balance or other methods: Recycled content derived using mass balance calculations, certification systems, or other methods should not be permitted on consumer-facing labels. Mass balance accounting could enable marketers to make recycled content claims on products that do not contain any recycled content - this is inherently deceptive to consumers and should not be permitted. This is significantly different from the annual weighted average of recycled material currently allowed under the guidance, which enables marketers to manage fluctuations between production runs by reporting the average of those runs.

Do not allow claims based on chemical recycling: Recycled content claims based on mass balance calculations, certifications, or other methods should not be permitted for recycled content derived from plastic conversion technologies like pyrolysis and gasification (sometimes called “chemical” recycling or “advanced” recycling). These technologies do not recover plastics, have significant air and water emissions that are associated with human health and environmental impacts, and are incredibly energy intensive, which perpetuates our climate crisis. These types of conversion technologies have no place in the Green Guides, meant to ensure accurate environmental claims, as these technologies are not compatible with a sustainable circular economy nor a healthier future for our environment.

It is misleading to consumers to permit processes that do not result in any physical plastic recycled content to be part of a recycled content claim. Moreover, most consumers are not familiar with chemical recycling or mass balance accounting,²⁸ they purchase a product with recycled content with the understanding that there is recycled materials in the actual product. To not be misleading or deceptive, all claims of recycled content should match this consumer intention.

Ocean Conservancy opposes the use of mass balance claims to justify on-pack labeling of recycled content and opposes the use of mass balance or other methods to claim recycled content from harmful chemical recycling technologies that do not recover plastics.

Question 9. *Recycled Content*, [16 CFR 260.13](#). What changes, if any, should the FTC 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.

²⁸ Association of Plastic Recyclers. [Recycling Terms Survey](#). (2021).

Limit recycled content claims to post-consumer recycled content: The FTC should ensure that general or unqualified recycled content claims are only made for post-consumer recycled (PCR) content. Consumers purchase products made from recycled content with the belief that the recycled materials come from items that they themselves might recycle in their local recycling program, and that by using their purchasing power to buy recycled content, they are helping to support recycling programs. Pre-consumer content does not come from local recycling programs and therefore does not support these same programs. Therefore only products with post-consumer recycled content are aligned with the intentions and understanding of the consumer in purchasing that product, thus it would be deceptive to allow recycled content labeling claims with pre-consumer content.

One survey²⁹ of American adults found that nearly all of those surveyed (97%) did not understand the meaning of post-consumer and post-industrial (pre-consumer) recycled content, and are unlikely to be able to differentiate between them. These findings support the need for recycled content claims to be focused on post-consumer recycled content to accurately reflect consumer understanding and intent when purchasing products or packaging.

Several states, including California³⁰ and Maryland,³¹ have legislation that incentivize or require the use of recycled content, with a focus on use and accurate disclosure of post-consumer, thus updating the Guides to align with these existing policies will prevent consumer confusion and increase harmonization throughout the national market.

²⁹ Association of Plastic Recyclers. [Recycling Terms Survey](#). (2021).

³⁰ CA [A.B. 793 \(Ting\) - Recycling: plastic beverage containers: minimum recycled content](#). (2020).

³¹ M.D. [H.B. 164 \(Stein and Leirman\) - Department of the Environment- Office of Recycling- Recycling Market Development](#). (2021).