

Alert | Environmental, Social & Governance (ESG)



February 2023

FTC Extends ‘Green Guides’ Comment Period to April 24

On Jan. 31, 2023, the Federal Trade Commission (FTC) announced it was extending its public comment period to discuss updates to the [Guides for the Use of Environmental Marketing Claims](#) (“Green Guides”) to April 24, 2023. The FTC extended the comment period, which was originally set to expire Feb. 21, 2023, another 60 days at the request of several interested parties. The FTC first issued the Green Guides in 1992, and subsequently revised them in 1996, 1998, and 2012.

The Green Guides provide general principles and guidance for ***all*** types environmental marketing claims, including those made “in labeling, advertising, promotional materials, and all other forms of marketing in any medium, whether asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or any other means.” Significantly, the Green Guides recently have been applied increasingly to general “sustainability” claims made by companies online, in social media, and in “sustainability” or ESG reports.

The Green Guides currently are just “guides” that lack the force of law. However, they reflect the types of claims the FTC likely would deem false or misleading in a regulatory action, and in the past the content of the guides has frequently been reflected in enforcement actions taken and consent decrees imposed by the FTC. State regulators, private plaintiffs, and courts also frequently rely on the Green Guides when evaluating the appropriateness of various environmental marketing claims. Plus, one of the questions the FTC is considering addressing is whether the Green Guides should be transformed into an actual

regulation, which would greatly increase the FTC’s ability to impose financial penalties for violations and also increase the number of states where violation of an actual “regulation” (not just a prescriptive “guide”) could establish violation of state unfair and deceptive practices laws. All these factors highlight the importance of this current public comment period.

Through this public comment period, the FTC is examining all aspects of the Green Guides, including the need for the guides, their usefulness, their impact on consumers, their impact on the accuracy of environmental claims, and their interaction with other state and federal environmental marketing regulations. Public comments on the Green Guides can also include comments on the following specific issues:

- **“Carbon Offsets and Climate Change”**: The current Green Guides provide guidance on carbon offset and renewable energy claims. The Commission invites comments on whether the revised Guides should provide additional information on related claims and issues.
- **The Term “Recyclable”**: Among other things, the FTC seeks comments on whether it should change the current threshold that guides marketers on when they can make unqualified recyclable claims, as well as whether the Guides should address in more detail claims for products that are collected (picked up curbside) by recycling programs but not ultimately recycled.
- **The Term “Recycled Content”**: Comments are requested on whether unqualified claims about recycled content – particularly claims related to “pre-consumer” and “post industrial” content – are widely understood by consumers, as well as whether alternative methods of substantiating recycled content claims may be appropriate;
- **The Terms “Sustainable” and “Sustainability”**: In 2012 the FTC declined to issue guidance on these commonly and increasingly used terms, but now it is re-visiting the issue of whether and what type of guidance it might publish regarding these terms; and
- **The Need for Additional Guidance**: The Commission also seeks comment on the need for additional guidance regarding claims such as “compostable,” “degradable,” “ozone-friendly,” and “organic,” as well as those regarding energy use and energy efficiency.”

All interested and potentially affected parties have the opportunity to submit written comments concerning the Green Guides through an [online portal](#). The comment period closes April 24, 2023.

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