



## ALERTS

### FTC Seeks Public Comment On Green Guides – A Once In A Decade Opportunity

December 28, 2022

#### Highlights

As part of its 10-year review cycle, the FTC has issued notice requesting comments on its Green Guides, last updated in 2012. Comments are due Feb. 21, 2023

To keep up with developments in science and consumer perception, the FTC has asked for comments on more than 30 questions with multiple subparts

As part of the review, the agency is seeking feedback on whether it should initiate a rulemaking under the FTC Act related to deceptive or unfair environmental claims

The Federal Trade Commission's (FTC) Green Guides for the Use of Environmental Claims are intended to help marketers ensure the claims they make about the environmental attributes of their products are truthful and not misleading. The Green Guides provide guidance on how to make environmental marketing claims such as “recyclable,” “biodegradable,” and “ozone-friendly” in a way that is clear and accurate to consumers.

The Green Guides were first issued in 1992 and were revised in 1996, 1998, and 2012. The direction they provide includes: 1) general principles

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that apply to all environmental marketing claims, 2) how consumers are likely to interpret particular claims and how marketers can substantiate these claims, and 3) how marketers can qualify their claims to avoid deceiving consumers.

On Dec. 14, 2022, as part of a 10-year review schedule, the FTC announced that it is [seeking public comment](#) on potential updates and changes to the Green Guides. The most recent [update of the Green Guides](#) in 2012 added guidance on marketers' use of product certifications and seals of approval, claims about materials and energy sources that are "renewable," and "carbon offset" claims.

The FTC is requesting "general comments on the continuing need for the guides, their economic impact, their effect on the accuracy of various environmental claims, and their interaction with other environmental marketing regulations."

Comments are due by Feb. 21, 2023, within 60 days of the Dec. 20, 2022, publication in the Federal Register.

[In its press release](#), the FTC identified the following issues on which it expects public comment and the type of feedback it is seeking:

- **Carbon Offsets and Climate Change:** The FTC is inviting comments on whether the revised Green Guides should provide additional information on related carbon offsets and climate change claims and issues.
- **The Term "Recyclable:"** Among other topics, the FTC is seeking 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 being sought 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 Need for Additional Guidance:** The FTC also is seeking comment "on the need for additional guidance regarding claims such as 'compostable,' 'degradable,' 'ozone-friendly,' 'organic,' and 'sustainable,' as well as those regarding energy use and energy efficiency."

In the published notice, the FTC was far more granular, [asking for comment on more than 30 specific questions](#) (not including sub-parts). The 19 general questions (each with sub-parts) start with the broad inquiry "Is there a continuing need for the Guides?" and move to a key question "Should the Commission initiate a proceeding to consider a rulemaking under the FTC Act related to deceptive or unfair environmental claims?"

As noted by FTC Chair Lina M. Khan [in her statement](#) in support of the

regulatory review of the Green Guides, “To be effective, the Green Guides have to keep up with developments in both science and consumer perception. That’s why the Commission is commencing a regulatory review of the guides.”

The FTC’s review of the Green Guides offers a ‘once in a decade’ opportunity (literally) to comment on the need for and clarity and specificity of the guidelines, the scope of the guidelines (e.g., which types of claims are covered), the impact of the guidelines on businesses and consumers, and the FTC’s approach to enforcement. Of particular importance, stakeholders can also suggest changes or additions to the guidelines to better reflect the current state of environmental marketing practices and to address emerging issues.

For more information, please contact the Barnes & Thornburg attorney with whom you work or Bruce White at 312-214-4584 or [bwhite@btlaw.com](mailto:bwhite@btlaw.com).

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