

Advertising & Media Alert

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FTC Seeking Public Comment on Proposed Updates to 'Green' Marketing Guidance

The Federal Trade Commission (FTC) is currently seeking public input on the first proposed updates in 10 years to its Guides for the Use of Environmental Claims, known as the Green Guides. The Green Guides are intended to help marketers avoid making unfair or deceptive claims that products and services are environmentally friendly. The latest round of updates coincides with increasing emphasis by brands on environmental, social and corporate governance (ESG) initiatives and consumer demand for "green" products and services that are beneficial for the environment, including items made from recycled materials or with renewable energy, or that are carbon neutral.

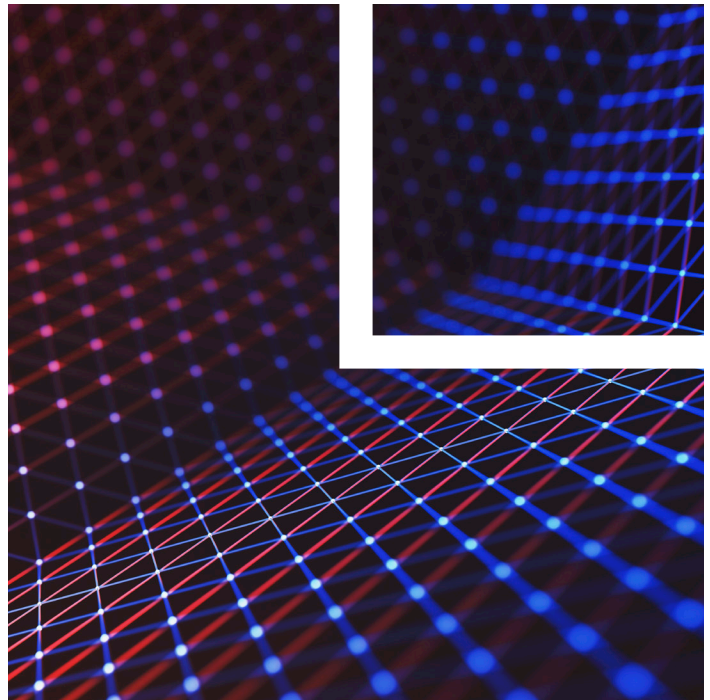
The FTC [announced](#) in December that it is seeking public comment on the Green Guides. [Last updated in 2012](#), the FTC's Green Guides aim to ensure brands comply with Section 5 of the Federal Trade Commission Act by making accurate claims about products marketed as good for the environment.

Comments must be submitted on or before Feb. 21, 2023.

The Green Guides

The Green Guides were first issued in 1992 and have been revised three times since. The guidance addresses:

1. General principles that apply to all environmental marketing claims
2. How consumers are likely to interpret various claims and how marketers can substantiate these claims
3. How marketers can qualify their claims to avoid deceiving consumers



The Green Guides cover carbon offsets, certifications and seals of approval, as well as marketing claims that products are compostable, degradable, free of a particular substance, nontoxic, ozone-safe, ozone-friendly, recyclable and refillable. The current guidance also addresses claims that products contain recycled content or renewable materials.

FTC Enforcement Actions

Failure to adhere to the FTC guidelines can result in an enforcement action filed in federal court. Typically, the FTC seeks injunctions barring a company from continuing to make false or deceptive environmental claims. Settlements may require a company to set aside millions of dollars to compensate the consumers they misled.

In May 2022, the FTC obtained a total of [\\$5.5 million in civil penalties](#) from two major retailers for their alleged false marketing of products as made from bamboo using nontoxic processes. The FTC sued the retailers, accusing both companies of deceiving consumers by failing to disclose that certain bamboo products were actually made of rayon derived from bamboo. The retailers were also accused of representing that bamboo-derived rayon

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textiles were made using eco-safe processes. In reality, the process of converting bamboo into rayon involves toxic chemicals and releases hazardous pollutants. The unrelated companies agreed to pay a civil penalty of \$2.5 million and \$3 million each, and to stop making unsubstantiated green marketing claims, to settle the FTC's action.

In 2014, a federal court ordered a light bulb manufacturer that exaggerated the efficiency of its LED bulbs on packaging and in brochures to pay \$21 million to the FTC. The FTC used most of the money to [refund consumers who bought the light bulbs](#).

Volkswagen agreed in 2016 to set aside more than \$10 billion to compensate customers who bought or leased certain models that were marketed as good for the environment. The FTC sued the auto manufacturing giant, alleging the company deceived consumers by promoting "clean diesel" Volkswagen and Audi models. Volkswagen falsely asserted in a marketing campaign that the vehicles met certain emission standards and were therefore environmentally friendly. The settlement agreement required Volkswagen to [compensate consumers through buyback, lease termination and emissions modification compensation programs](#).

Self-Regulation of ESG Marketing

The impact of the Green Guides extends beyond the FTC. The National Advertising Division (NAD) of BBB National Programs relies on the FTC guidance in determining whether certain environmental advertising claims are appropriately substantiated and have not been overstated.

In 2022 NAD reviewed and issued recommendations regarding the marketing statements of multiple organizations. NAD advised the American Beverage Association (ABA) in November to revise aspirational claims about the use of recycled materials in bottles and statements about the ABA's partnerships with environmental nonprofit organizations. NAD concluded in June that the maker of a chewing gum promoted as a healthy alternative to traditional chewing gum made unqualified claims that its gum is "natural," "all-natural," "100% natural," "plant-based" and "eco-friendly."

And in March, NAD recommended that a popular fast casual Mexican restaurant clarify claims it made about reducing greenhouse gas emissions by optimizing its

supply chain. NAD also advised the brand to modify claims related to its sustainability program and to inform consumers that its sustainability metrics shown in the restaurant's mobile app, email receipts and account profiles are based on averages and not on a customer's specific purchase.

Green Guides Public Comment

The FTC has requested comment on the following issues:

General concerns. The FTC is soliciting public opinion on whether there is a continuing need for the guides, what benefits the guides have provided consumers, how those benefits can be increased, how the guides can be modified to reduce costs imposed on consumers and how the guides can be modified to increase benefits to businesses, especially small businesses.

Carbon offsets and climate change. The guides currently address carbon offset and renewable energy claims, but the FTC would like to know if more information is needed on related claims and issues. These issues include consumer perception of climate change-related claims using the terms "net zero," "carbon neutral," "low carbon" and "carbon negative."

The term "recyclable." The FTC is seeking opinions on whether it should revise guidance for marketers on when they can make unqualified recyclable claims and whether the guides should address in more detail claims for products that are collected by recycling programs but not ultimately recycled.

The term "recycled content." The FTC is seeking comments on whether unqualified claims about recycled content, particularly those related to "pre-consumer" and "post-industrial" content, are widely understood by consumers. It would also like opinions on whether alternative methods of substantiating recycled content claims are appropriate.

Additional guidance. The FTC would also like to know whether the need exists for additional guidance on product claims using terms such as "compostable," "degradable," ozone-friendly," "organic" and "sustainable" as well as on claims related to energy use and energy efficiency.

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