



## Consumer Protection/FTC ADVISORY ■

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# FTC Looks to Update Its Green Guides for Environmental Marketing Claims

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On December 14, 2022, the Federal Trade Commission (FTC) unanimously voted to approve the publication of a [request for public comment](#) in the *Federal Register* to commence a regulatory review of the *Guides for the Use of Environmental Marketing Claims*, known as the “[Green Guides](#).” The Green Guides establish the FTC’s “current views about environmental claims” and describe situations when claims may or may not be consistent with the FTC Act, helping marketers avoid making claims that are unfair or deceptive under Section 5 of the FTC Act. The Green Guides themselves are not enforceable but are nevertheless an important tool that industry can use to ensure claims conform to federal guidance. The FTC can take action—and has taken action—“if a marketer makes an environmental claim inconsistent” with the Green Guides.

The Green Guides were last updated in 2012, and since then, marketers have increasingly been making use of environmental marketing claims to meet consumer demand for products and services with environmentally friendly attributes. In its notice, the FTC points to increased attention to environmental concerns, such as climate change and issues driven by the COVID-19 pandemic, as fueling the proliferation of these type of claims. As we covered in our advisory, “[Making Environmental Marketing Claims: A Balancing Act](#),” marketers are under increased scrutiny in balancing their desire to relay the environmental impact of goods and services while at the same time avoiding increasing regulatory enforcement and litigation risk.

The FTC requests public comment on a number of general issues, such as whether there is a continuing need for the Green Guides, as well as evidence since 2012 relating to consumer perception of environmental claims and interest in particular environmental issues, evidence concerning the degree of industry compliance with the Green Guides, any potential unfair or deceptive environmental marketing claims not covered by the Green Guides, and whether the FTC should initiate a rulemaking relating to deceptive or unfair environmental claims, among other issues. This last point is important because unlike the Green Guides, FTC regulations are separately enforceable and allow for civil penalties of up to \$46,517 per violation.

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In addition, the FTC requests comments on specific issues and claims that it says has generated increased attention and interest over the last several years, including:

- Carbon offsets and climate change
- Compostable
- Degradable
- Ozone-safe / ozone-friendly
- Recyclable
- Recycled content
- Energy use / energy efficiency
- Organic
- Sustainable

We expect significant comment on claims such as recyclable, recycled content, carbon offsets and climate change, and sustainable given their proliferation in the marketplace, the myriad ways these terms are used, and potential changes in consumer perception since 2012.

The request for comment is expected to be published in the *Federal Register* in mid-January 2023. Once published, the FTC will accept comments for 60 days. Given the public interest in these issues, before issuing revised Green Guides, it's likely the FTC will hold a workshop or other public event to discuss issues raised in comments.

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