

# FTC Releases Revised Green Guides

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Claims made by marketers about products or services being "environmentally friendly" will likely have a great impact on consumers, as many consumers have a preference for "green," or environmentally friendly products. On Oct. 1, 2012, the Federal Trade Commission (FTC) released its revised [Guides for the Use of Environmental Marketing Claims \(Green Guides\)](#). In their update in 14 years, because environmentally friendly claims have become prevalent in today's green-conscious society, the FTC's revised guidelines were written to protect consumers by keeping advertisers and marketers from making broad, sweeping claims that their products are green or environmentally friendly.

A preliminary overview of the revised "Green Guides" will be familiar to those who have used the prior guidelines, as the revisions are generally consistent with prior FTC advice. Broad, unqualified claims are not recommended and may need to be qualified and substantiated. If environmental claims are asserted, qualifications should be provided to identify the specific type, form, and degree of environmental benefit. For example, broad sweeping claims including "green" or "eco-friendly" would be difficult for a marketer to substantiate. While a marketer could qualify general claims by identifying a specific benefit, they should be cautious against highlighting trivial or unimportant benefits.

Of note, new sections have been added to the Green Guides which include:

- certifications and seals of approval
- carbon offset
- free-of claims
- non-toxic claims
- made with renewable energy claims, and
- made with renewable materials claims.

Some of these new sections generally coincide to examples from the prior Green Guides.

The use of certifications and seals of approval can be an effective way to provide demonstrable green credibility but are considered "endorsements" covered by the FTC's Endorsement Guides. Such certifications and seals might convey general environmental benefits and should clearly convey the basis for certification. However, the FTC does not provide a list of approved certifications and seals. As such, adopters of certifications and seals are cautioned to apply the guidance of the Endorsement Guides as well as an appropriate review of the Green Guides and accompanying Statement of Basis and Purpose to avoid FTC scrutiny and to support any statements in the event of such scrutiny.

The section relating to free-of claims requires a marketer to take into account whether the statement is factually true but nonetheless deceptive. As an example, many products do not contain substances of concern to consumers. As such, marketers need to consider whether the substance has ever been "associated with that product category." As an example, while it might be true and useful for a manufacturer of plastic drinking cups to identify a product as being "BPA Free," the same statement may be deceptive if it is associated with a breakfast cereal.

Similarly, claims about a product being ozone safe and ozone-friendly need to be carefully reviewed. Such claims require a review of the chemicals in the product against those listed in Title VI of the [Clean Air Act](#), as well as, any other subsequently designated [EPA](#) ozone-depleting substances.

Statements regarding recyclability and recycled content might require enhanced qualifications. The new Green Guides, while generally following the established 60 percent rule for recyclability, tightens up some of the qualification language. Similarly, the recycled content claims recommend differentiating such claims for materials that are diverted from or recovered from the manufacturing process or consumer waste streams. The Guides recommend that marketers of used, reconditioned, or remanufactured components appropriately qualify their "recycled content" claims.

Claims relating to refillable products or packaging must be supported by the means or systems for refilling the product. As such, it would be advisable to market refillable products along side of the refilling source, service, or product.

Source reduction claims generally should not be broadly made and should provide some qualifications, generally identifying the quantification of the source reduction in relation to a prior product. The source reduction statements may relate to the volume, weight, toxicity as well as other characteristics of the product, packaging or other features.

Finally, clarification has been provided with regard to renewable energy claims and renewable material claims. Generally, marketers should not make any unqualified "renewable" statements. The FTC's research suggests that reasonable consumers are likely to interpret "renewable" claims differently from what the marketers intend. In both "renewable" situations, marketers should clearly and prominently qualify their "renewable" statements. Specifying the source of the renewable energy or material will help minimize the risk of deception. It is expected that if a marketer truly uses a "renewable" they will likely incorporate this message on their packaging or other statements. The content of these statements should be closely reviewed to make sure that the claims comply with the FTC Green Guides.

With regard to some of these claims, marketers will need to provide substantiation, or support, for claims made. In the context of environmental marketing claims, such substantiation will often require competent and reliable scientific evidence, defined as tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. The substantiation is required for claims relating to carbon offsets, and whether a product is compostable, and/or recyclable.

A claim that a product or packaging is degradable can be made without qualification under certain circumstances. Marketers can make this claim only if they can prove that the "whole product or package will completely break down and return to nature within a reasonably short period of time after customary disposal." The "reasonably short period of time" for complete decomposition of solid waste products is one year.

Notably absent, however, is guidance regarding the terms "sustainable," "natural," and "organic." The FTC found that there was not enough information on these terms to issue cogent advice. These terms are not likely to be clarified by the FTC any time soon. As a result, marketers need to default to FTC general guidelines. Marketers should view these statements from the perspective of the "reasonable consumer", substantiate all express and implied general statements, provide qualifiers if there are limiting circumstances supporting the claim, and carefully screen the claim to prevent intentional and unintentional deception.

The complete text of the new Green Guides is located at <https://www.ftc.gov/2022/03/green-guides.pdf>

A complete listing of the 340 unique comments from the more than 5,000 comments received can also be found on the FTC website <https://www.ftc.gov>

Additionally, a detailed Statement of Basis and Purpose can be found at <https://www.ftc.gov/2022/03/green-guides-statement-of-basis-and-purpose.pdf>

The new Green Guides are somewhat tougher, but provide more clarification, guidance, and add new sections of regulated claims. While the new Green Guides will likely require marketers to provide more qualifications to support their "green" or "eco-friendly" statements, ultimately, the new Green Guides should help consumers make more informed choices and help reduce deceptive marketing practices.

Though the new guidelines are not law, they are a roadmap signaling how the FTC might interpret an advertiser's environmental claims, and how consumers might view and be deceived by an ad touting a product's or service's green benefits. Advertisers and marketers are now on notice as to what the FTC might consider deceptive and what could lead the FTC to bring a deceptive advertising claim as part of its statutory authority.

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