

What Will the New FTC Do With the Green Guides?

Article By:

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The incoming administration will change the Federal Trade Commission leadership. Chair Lina Khan, whose term has expired, is leaving, making way for a new majority of three Republican Commissioners. Andrew Ferguson will become the new Chair and Melissa Holyoak will stay on as a Republican Commissioner. President-Elect Trump has stated that he intends to nominate Mark Meador to occupy the seat of the departing Chair Khan. If confirmed, Meador will become the third Republican Commissioner. Expected to stay on are Democratic Commissioners Slaughter and Bedoya. Thus, following the expected confirmation of Mr. Meador, a Republican majority will control the FTC.

The FTC [proposed revisions to its well-known Green Guides](#) two years ago. It subsequently held a workshop on [Recycling Claims](#) and an informal hearing regarding the [Energy Labeling Rule](#). Most commentators had expected to see final revisions to the Guides released in 2024. But, this has not happened, begging the questions of “what’s the holdup,” “what changes, if any, to the current draft will Republicans seek,” and “what is the new timetable for release?”

The holdup is most likely a result of the changing administration. Commissioner Ferguson notably [dissented from the new, narrowed Junk Fees Rule](#) solely because he did not believe the outgoing Commission should issue new rules. Therefore, we certainly do not believe we will see a revision to the Green Guides before the Inauguration.

One would also not expect to see revised Guides until Commissioner Meador (or whoever takes that seat) assumes office and has an opportunity to review the draft. Assuming he agrees with the proposed Guides, one might expect to see revisions issued in mid-2025. If he or others demand changes, however, that could take longer.

The Guides will probably remain as Guides. Although speculation had circulated that recycling claims might be broken off into a new rule, the change in the composition of the Commission makes new rules less likely in general.

For these reasons, the Guides are likely to be issued in 2025. They provide much-needed clarity to marketers that is welcomed irrespective of political affiliation. However, are there adjustments one might expect from the direction that had been conjectured for the Guides?

Although FTC Staff, who work across administrations, are tight-lipped regarding the Guides' content,

a few areas seem to be more politically fraught than others.

Recycling claims are one of those areas. Although there had been considerable chatter from activists regarding the use of the term “recycling” to refer to thermal reprocessing of plastics, a firm stance in the Guides on the issue now seems less likely. Case law had generally interpreted the term “recyclable” to refer to any material that *can* be recycled, regardless of whether it is *actually recycled*, and it seems less likely that the newly constituted Commission would issue guidance attempting to influence the courts' stance.

Moreover, many states have begun to pass their own recycling laws – often referred to as “Extended Producer Responsibility” (or “EPR”) laws. Therefore, one would expect softer language from the FTC here (or less change to the existing guidance) in favor of allowing states to implement their own rules.

"Carbon claims" is another prominent area in which many had urged the Commission to take action. [The GOP has signaled mistrust of collaborations to promote “ESG”](#), and it seems that mistrust might carry over at the FTC to enhanced scrutiny of non-governmental efforts to promote collective actions regarding carbon emissions reduction. Carbon offsets often fall into this bucket, so we do not believe the new Commission will be particularly friendly to voluntary carbon markets. Thus, one might expect to see a new section of the Guides setting out stringent requirements regarding making carbon neutrality claims. One would also expect the Guides to require rigorous support for aspirational environmental claims relating to carbon reduction and energy savings.

Consistent with the GOP skepticism regarding the efficacy of human efforts to combat climate change, the new Guides will likely spell out the need for competent and reliable scientific evidence to bolster any corporate activity claimed to reduce climate change. That could be a tall order for many companies, so one would expect to see a softer approach to such claims going forward. I have been informed by prominent consultants that the acronym “ESG” is on shaky ground, as it has been frequently invoked to include diversity, equity and inclusion programs. As the pendulum swings back, expect to see the term “environmental” more often used in place of “ESG.”

Claims of "sustainability" are also likely to come in for enhanced scrutiny in any Guide revision. Some activities that had been touted for sustainable features may be questioned by the majority, so the use of the term could be constrained more substantially than originally contemplated. One can expect the new guides to treat “sustainability” claims as general environmental benefit claims, which must be qualified. That has already been the practice among most reputable corporations.

Given the importance of the Green Guides, revisions are long overdue. Canada and the EU have already passed new restrictions on environmental claims, so the United States lags internationally. There is likely to be pressure on the U.S. government to update these “rules for the road,” lest the international standards become the *de facto* rules by which corporate America must live.

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