

# Cleaning Up Greenwashing

Federal Trade Commission issues new guidance to prevent misleading environmental claims

By Scot Case

**G**overnment purchasers interested in buying healthier, greener and more sustainable products and services have additional support from the U.S. Federal Trade Commission (FTC). On Oct. 1, the FTC revised its “Guides for the Use of Environmental Marketing Claims,” better known as the Green Guides.

The Green Guides help government purchasers and other consumers by clarifying what kinds of environmental claims companies should make about their products and services. The revised guides help combat the increasing prevalence of “greenwashing,” including potentially false or misleading environmental claims about a company, product or service. The Green Guides will also help combat the growing proliferation of more than 400 environmental labels by providing guidance on how labels can be used appropriately and effectively.

## OVERVIEW OF THE GREEN GUIDES

The FTC issued its original Green Guides in 1992 to address concerns about misleading environmental claims. They were revised in 1996 and 1998 to clarify additional issues. The most recent revisions include modifications to certain sections of the guides and provide new guidance on environmental claims that have emerged since the last revision. The new guidance is based on findings from a consumer perception survey, three public workshops, and more than 340 unique comments from 5,000 submitted in response to the 2010 proposed revisions.

The guides reiterate the importance of abiding by U.S. truth-in-advertising laws and remind anyone making environmental marketing claims of the importance of having reliable evidence to support any such claim. The guides include numerous specific examples to clarify the requirements.

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## Guides and their implications, which include:

> **Do not make broad environmental claims.** According to the FTC, broad environmental claims such as “green” or “Earth friendly” are difficult – if not impossible – for suppliers to substantiate. Any such claims should be qualified with clear, prominent and specific information to clarify the claim. When general environmental claims are made and qualified such as “Eco-friendly: made with recycled materials,” the qualifying language must be clear and prominent, accurate and substantiated, and the recycled content must make the product more environmentally beneficial overall. The FTC notes that recycled content does not necessarily mean a product is more beneficial.

> **Use certifications and seals of approval carefully.** The FTC guidance recognizes that not all certifications and seals are equally useful and that some can be deceptive. Government purchasers should look for certifications and seals that clearly explain the basis for the certification (such as the standard or specific environmental attributes upon which the certification is based) and that are verified by an independent third-party.

> **Beware the challenges associated with specific**

**claims.** The Green Guides highlight challenges associated with a variety of environmental claims, including:

**Carbon offset claims.** Suppliers must ensure they have competent and reliable scientific evidence and appropriate accounting methods to make such claims.

**Compostable claims.** Suppliers must have evidence to prove the product can be composted safely in the same time frame as other compostable materials and clearly indicate if the product must be composted in a municipal or institutional facility or whether it can be composted at a consumer's home.

**Degradable and bio-degradable claims.** Products must completely degrade within one year with customary disposal if suppliers make an unqualified degradability claim. Items disposed of in landfills, incinerators or at recycling facilities will not degrade within one year and so unqualified degradable claims should not be made.

**Free-of claims.** Suppliers should avoid "free-of" claims if the product includes an alternate substance that poses a similar environmental risk or if the substance has never been associated with that product category.

**Non-toxic claims.** All non-toxic claims must be supported by competent and reliable scientific evidence that the product is safe for both people and the environment.

**Ozone-safe or ozone-friendly claims.** The FTC has declared it is deceptive to suggest any product or service is ozone-safe or ozone-friendly if it contains any ozone-depleting or other substances that may negatively impact the atmosphere.

**Recyclable claims.** Suppliers should qualify all recyclability claims unless recycling facilities are available for at least 60 percent of communities where the product is sold.

**Recycled-content claims.** Materials recovered from the manufacturing process (pre-consumer) or after consumer use (post-consumer) are both considered recycled content. Recycled content claims should qualify the percentage of recycled content unless the product is made from 100 percent recycled content.

#### USING THE GREEN GUIDES IN GOVERNMENT PURCHASING

The FTC Green Guides make it easier for government purchasers to continue buying healthier, greener and more sustainable products and services by establishing clear guidelines outlining what suppliers can and cannot say about the environmental benefits of their offerings.

#### **Government purchasers can leverage the Green Guides in several ways:**

> **Require suppliers to comply with the FTC Green Guides when marketing products to government purchasers or responding to requests for proposals (RFPs) or requests for quotes (RFQs).** While the FTC Green Guides clarify current federal law, many government suppliers remain unaware of the requirement to substantiate environmental claims. Government purchasers can include standard

language in the terms and conditions section requiring that "Suppliers must comply with the U.S. Federal Trade Commission 'Guides for the Use of Environmental Marketing Claims' when making any statement about the environmental benefits of their products or services."

> **Demand proof for environmental claims made by suppliers.** The FTC Green Guides require suppliers to have reliable evidence to support environmental claims. Government purchasers can require that such proof be provided as part of the associated contract submittals or include contract provisions requiring that proof be made available within seven to 14 days of a request for it. Acceptable proof could include relevant test results from an independent laboratory or independent third-party verification of the environmental claims by organizations such as UL Environment, Green Seal or other respected certifiers.

> **Continue specifying environmental standards and certifications.** Government purchasers have been relying on environmental standards and specifications such as those developed by Energy Star, Green Seal, and UL Environment (which now includes EcoLogo and GREENGUARD) for more than 20 years. The FTC Green Guides clarify that environmental claims that are verified by an independent auditor and clearly identify the environmental attributes addressed are acceptable. This means requiring products and services to meet legitimate environmental standards remains one of the easiest ways for government purchasers to buy greener products.

#### LESS UNCERTAINTY AND CONFUSION

The release of the revised FTC Green Guides makes it easier for government purchasers to continue buying healthier, greener, and more sustainable products. They remove some of the uncertainty and confusion around the ever expanding list of environmental claims being made by government suppliers. It allows government purchasers to worry less about greenwashing and more about buying the products and services that benefit the taxpayers of today and tomorrow.

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