Environmental Markets Association
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## FTC Green Guides Review, Matter No. P954501

***VIA ELECTRONIC DELIVERY*** April 24, 2023

Federal Trade Commission,
Office of the Secretary, 600
Pennsylvania Avenue NW, Suite CC–
5610 (Annex J), Washington, DC 20580

***Re: EMA Comments on Federal Trade Commission ("FTC") RIN 3084—AB15 Regulatory review, request for public comment: Guides for the Use of Environmental Marketing Claims ("Green Guides")***

Dear FTC Commissioners:

The Environmental Markets Association ("EMA") appreciates this opportunity to provide input on the Green Guides related to the importance of maintaining integrity behind environmental attribute claims. Celebrating the 25th anniversary of our founding, the EMA is an industry trade association focused on promoting market-based solutions that utilize environmental instruments to solve environmental challenges. The EMA represents a diverse membership including large energy companies, renewable energy and carbon offset project developers, and environmental commodity market participants. **EMA's mission is to foster open, competitive, and tradable markets that deliver sustainable economic development in a cost-effective manner. In many ways, EMA's recommended principles for market-based solutions, such as the importance of market oversight, closely align with the intent of FTC's Green Guides. Whether it be in voluntary or compliance-driven environmental markets, it is essential to market stability and investor confidence that environmental marketing claims are not deceptive or fraudulent and do not undermine public trust.** While our comments generally pertain to § 260.5 Carbon Offsets and § 260.15 Renewable energy claims, questions 1, 2, 9, 13, 17, 18, and 19 in Part A. General Issues and question 1 in Part B. Specific Claims are also addressed.

The 2012 version of the Green Guides was an important step forward in the evolution of the carbon offset and renewable energy certificate ("REC") markets. By providing guidance to sellers and purchasers on how to avoid misleading environmental marketing claims in relation to the sale, procurement, and retirement of these environmental credits, a straightforward framework was set that resulted in increased market confidence. This helped cultivate broader market participation on both the buy-side and sell-side, which has had a real-world positive economic development impact by supporting deployment of emission reduction and renewable energy projects through the creation of larger capital markets that finance sustainable infrastructure assets. **Accordingly, the EMA strongly supports the continued use of the Green Guides and specifically, their support of market-based accounting when making environmental attribute claims. EMA suggests that only minor modifications are necessary to improve their effectiveness and decision usefulness. EMA further believes that it is not necessary to establish a rulemaking that creates independently enforceable requirements as this would place the FTC in the inappropriate role of setting environmental policy.**

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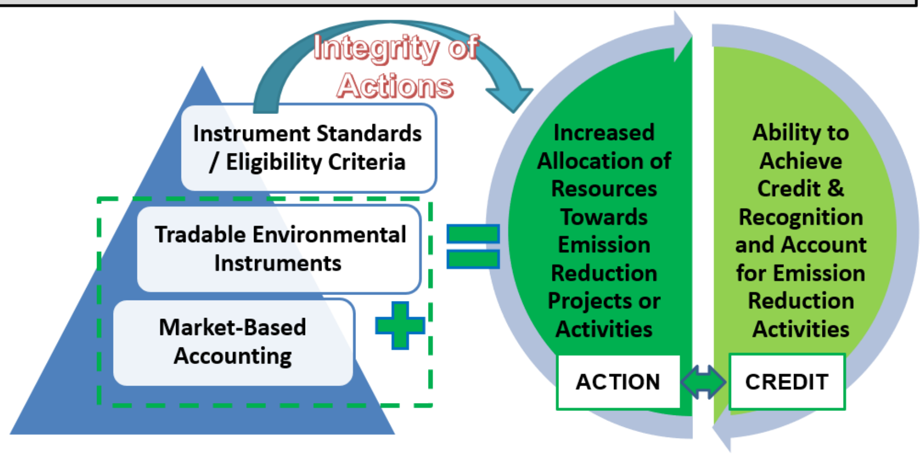
Tradable environmental credits unlock market efficiency and cost-effective decarbonization opportunities that give market participants flexibility to pursue a combination of physical and environmental investment strategies to cost-effectively achieve environmental, social, and governance targets. This flexibility is enabled by market-based accounting, which the FTC Green Guides currently support and adhere to.

**Market-Based Accounting combined with the use of Tradable Environmental Instruments Is Essential to Facilitating and Encouraging Climate Action**




**Market-Based Accounting:** Methodologies and protocols that allow an entity to report greenhouse gas emissions based on contractual purchases.

**Tradable Environmental Instruments:** Defined and standardized market-based instruments / environmental commodities that enable the issuance, transfer, and retirement of environmental attributes through electronic environmental registries (e.g., 1 ton of $CO_2e$ = 1 carbon offset or 1 carbon allowance).

**Instrument Standards / Eligibility Criteria:** Standard-setting bodies and/or regulatory agencies that issue rules and set the eligibility criteria for instrument use in various programs and enforce monitoring, reporting, and verification of instruments to ensure environmental integrity (e.g., no double counting) behind purchases and claims.

Providing a framework for making non-deceptive environmental marketing claims and encouraging the disclosure of information that qualifies carbon offsetting and renewable energy claims is not only reasonable but also serves to increase the integrity behind the underlying actions in the creation and use of environmental credits. **The reason why the EMA does not believe the FTC needs to promulgate a formal rulemaking for the enforcement of environmental marketing claims is because of the regulatory redundancy, confusion, and potential conflicts of interest it might create with instrument standards and eligibility criteria established by compliance-market regulatory bodies (e.g., legislatures and public utility commissions) and voluntary market standard-setting bodies (e.g., carbon offset methodology providers / verifiers and renewable energy certification / leadership programs).** Since these groups monitor market conditions and interact with market participants on a continuous basis, they are in a better position to update and evolve environmental credit standards. Industry groups are constantly at work on promulgating and improving standards to increase the transparency and credibility associated with these credits, combining enhanced data reporting with science-based practices to provide ever increasing levels of transparency and assurance in the attributes being transferred. **That said, the FTC Green Guides are an essential part of the marketplace and serve an important role in supporting a market-based accounting framework that does not tolerate deceptive or fraudulent environmental marketing claims. The following page provides the FTC some specific feedback on how the Green Guides can be maintained or updated to ensure carbon offset and REC market integrity.**

| § 260.5 Carbon Offsets | EMA Position / Feedback | Discussion |
|---|---|---|
| Provision A | Support. No changes recommended. | EMA agrees that carbon offsets must employ competent and reliable scientific or well-recognized baseline accounting methodologies to ensure emission reductions claimed are real and verifiable and that double counting must be avoided. |
| Provision B | Modify or clarify. | Emission reduction claims should be accompanied by a carbon offset credit that is already minted by a credible standard / agency and verifiably retired (i.e., electronic environmental registry or attestation proof) so that it cannot be claimed again. It is not best practice to allow for “forward crediting,” which mints carbon offset credits today for emission reductions that will occur in the future. This creates risk that emission reductions are overstated or do not end up occurring. Forward crediting is also unnecessary as markets have already fully developed investment products / commodity forward contracts that make the concept of forward crediting completely unnecessary for project finance / development. |
| Provision C | Support. No changes recommended. | EMA agrees that carbon offsets must demonstrate regulatory additionality. |
| **§ 260.15 Renewable energy claims** | **EMA Position / Feedback** | **Discussion** |
| Provision A | Support. No changes recommended. | Agree with the guidance to use renewable energy or match non-renewable energy with REC purchases. Under any procurement method used (bundled or unbundled), it is best practice for renewable energy claims to be accompanied by a REC that is retired. |
| Provision B | Support. No changes recommended. | Agree with the guidance to qualify or disclose as much detail as practical in regard to the source / characteristics of the renewable energy or RECs purchased behind the claim. |
| Provision C | Support. No changes recommended. | Agree with the guidance to use renewable energy or match non-renewable energy with REC purchases. Under any procurement method used (bundled or unbundled), it is best practice for renewable energy claims to be accompanied by a REC that is retired. |
| Provision D | Support. Clarify or update. | Agree that it is deceptive to claim renewable energy that is sold to another party without retaining the RECs and that “hosting” renewable energy is not the same as purchasing renewable energy or RECs and should not be claimable. The FTC may also want to consider adding clarifying language that equally applies this provision to governmental authorities or programs that claim carbon offsets or RECs generated in their jurisdictional boundary yet were sold to other jurisdictional boundaries for their own claims (e.g., Vermont’s renewable portfolio standard REC sales to other states circa 2014 / 2015) since this leads to double counting. |

The EMA was formed in 1997, the same year that the Kyoto Protocol was adopted, and three years before the first voluntary REC transaction was completed. Our membership has a long history with the use of environmental instruments, which have been well defined by both various state and federal laws as well as stakeholder associations that have crafted voluntary standards widely in use for carbon offsets and RECs. The environmental credit markets have succeeded in directing tremendous amounts of capital into sustainable projects and technologies and have been a major contributor to the rapid decline of low-carbon technology cost curves. **The EMA strongly encourages the FTC to continue to publish the Green Guides and support the precedent that makes it permissible to use environmental instruments to claim emission reductions via carbon offsets and renewable energy through RECs. This will support high integrity market transactions and encourage market confidence. Even if more information is ultimately required to be disclosed, <u>the structure of environmental market claims should allow entities to report net emissions / renewable energy use via the purchase of environmental credits in a market-based accounting framework</u>.**

The EMA strongly supports the utilization of markets that incorporate environmental instruments. Well-designed markets yield many benefits including, but not limited to, transparent price signals determined through competition, risk mitigation opportunities, incentives for technological innovation, efficient allocation of capital and resources, investor certainty, and consumer protection. **The Green Guides have helped develop environmental markets with integrity. Therefore, the EMA kindly requests that the FTC maintain the Green Guides in a manner that achieves high integrity environmental marketing claims while simultaneously supporting the orderly development of carbon offset and REC markets.**

Thank you for your consideration of our comments. The EMA is ready to offer any additional assistance or analysis as needed by the FTC.

Sincerely,

*Lauren LeMunyan*

Lauren LeMunyan

Executive Director
Environmental Markets Association
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