

## **Legal Lookout: FTC Reviews Environmental Marketing Guides**

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Green sells, but discerning between true environmentalism and an eco-feint for the sake of marketing is not as easy as it seems. This fact has not been lost on the Federal Trade Commission, which has updated its guide on claiming how to proclaim greenness.

The Federal Trade Commission (FTC), the agency tasked with monitoring and preventing unfair and deceptive practices in the market, recently announced its intent to review its "Green Guides," with a special focus on claims regarding carbon offsets and renewable energy certificates.

Need for updating

The FTC's Guides for the Use of Environmental Marketing Claims, commonly known as the Green Guides, provide information on consumer interpretation of certain environmental marketing claims so that marketers do not make false or misleading claims. The Green Guides are codified at 16 C.F.R. Part 260, and were last revised in 1998.

On Nov. 27, 2007, the FTC announced that it was beginning a regulatory review of the Green Guides.[1] The commission requested comments, including questions about their costs, benefits and effectiveness, and specific questions on topics such as sustainable and renewable claims.

In a related notice issued on the same day, the FTC announced that it would hold a public workshop on several green marketing topics.[2] The first workshop was convened on Jan. 8, 2008, and addressed the marketing of carbon offsets and renewable energy certificates (RECs).

According to the FTC, "in general, carbon offsets are credits or certificates that represent the right to claim responsibility for greenhouse gas emission reductions... In some cases, carbon offset sellers use the proceeds to purchase RECs ... By acquiring these greenhouse gas reduction credits, purchases, including individuals and businesses, seek to reduce their 'carbon footprints' or to make themselves 'carbon neutral.'"

RECs can be part of a mandatory or voluntary program. Where offsets and RECs are not part of a mandatory program, they are offered, bought and sold in a voluntary market. It is on these voluntary measures where the FTC review is focusing its efforts. In the absence of mandatory requirements, many voluntary third-part certification programs have arisen and many more are under development.

According to the FTC, carbon offset and REC marketing activities raise several consumer protection issues. The commission is unsure how consumers know what they are actually buying, or how consumers interpret express or implied claims about the environmental benefits from offsets and RECs. Similarly, the FTC is concerned that consumers may assume that their offset purchases are creating reductions in greenhouse gas emissions beyond those that would have occurred without offsets, and that consumers may believe that reductions occur more rapidly than they do. Finally, the commission notes that substantiation of claims in the REC and offset markets poses challenges.

Green marketing is here to stay. The FTC is committed to ensure that market practices are not false and deceptive. Given the amount of money at stake, the FTC will have its hands full.

For more information, see [www.ftc.gov/opa/2007/11/enviro.shtm](http://www.ftc.gov/opa/2007/11/enviro.shtm). PE

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#### References

2. 72 Fed. Reg. 66096 (Nov. 27, 2007).
1. 72 Fed. Reg. 66091 (Nov. 27, 2007).

#### Links

[www.ftc.gov/opa/2007/11/enviro.shtm](http://www.ftc.gov/opa/2007/11/enviro.shtm)