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April 24, 2023

Via www.regulations.gov

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

RE: Green Guides Review, Matter No. P954501, 87 Fed. Reg. 77766 (Dec. 20, 2022)

Dear Commissioners:

Our organizations represent millions of U.S. residents who are gravely concerned about climate change. When making purchases, they expect accurate information from companies about how those companies are meaningfully reducing greenhouse gas emissions.

Unfortunately, companies are increasingly marketing products and services as climate-friendly with deceptive claims and omissions relating to carbon offsets.¹ Offsets-related deception happens in two ways. Sometimes companies deceptively market offsets to consumers striving to reduce their personal carbon footprints. More commonly, companies deceptively market products and services with claims of climate-friendliness that are linked, either explicitly or implicitly, to the company's own purchase of offsets.

In each case, consumers are frequently deceived because many carbon offsets — if not most — fail to deliver the climate benefits their proponents claim. As explained below, since the Green Guides were last updated by the Federal Trade Commission (FTC) in 2012,² this market has expanded dramatically while consistently failing to deliver on its promises. Widespread consumer deception has resulted.

Although the offsets-related provisions of the 2012 Green Guides are well-intentioned, they focus on a small number of issues without addressing most of the deceptive marketing practices now underway. To protect consumers, the FTC should move promptly to strengthen the offsets-related provisions of its Green Guides. We offer suggested amendments below to accomplish this goal.

¹ For the purpose of this letter, we use the term “offsets” to mean any environmental commodity signifying a specified amount of either greenhouse gas emission reductions or carbon removal.

² Federal Trade Commission, Guides for the Use of Environmental Marketing Claims, 77 Fed. Reg. 62,122 (October 11, 2012).

Our focus in this letter is to ensure that the FTC upholds its responsibilities under the FTC Act for policing deceptive marketing involving offsets-related claims. This requires that the FTC send clear signals to the marketplace by strengthening the Green Guides as well as taking appropriate enforcement actions informed by disclosures.

The FTC's Mandate to Address Unfair and Deceptive Acts and Practices

Section 5 of the FTC Act (15 U.S.C. § 45) prohibits “unfair or deceptive acts or practices,” and the FTC has interpreted this prohibition in its [Policy Statement on Deception](#) as prohibiting any representation, omission or practice that is:

- Likely to mislead the consumer;
- Considered from the perspective of the “reasonable” consumer; and
- Material, i.e., likely to affect the consumer's conduct or decision with regard to a product or service.

The FTC's [Enforcement policy](#) considers the “net impression” of advertisements on consumers. Thus, any qualifying information necessary to prevent deception must be “disclosed prominently and unambiguously” to overcome any misleading impression created. See also [Green Guides, 12 C.F.R. § 260.3\(a\)](#) (“to prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable”); [Digital Advertising Disclosures policy](#) (“when practical, advertisers should incorporate relevant limitations and qualifying information into the underlying claim, rather than having a separate disclosure qualifying the claim”).

Under the FTC's [Advertising Substantiation policy](#), marketers must have a reasonable basis for advertising claims before they are disseminated. Advertisements are evaluated to determine whether there is an express or implied reference to a certain level of support, or any other evidence indicating what consumer expectations would be. Otherwise, the FTC simply applies its reasonableness test; i.e., it assumes that consumers expect a "reasonable basis" for claims. In making this evaluation, the FTC relies on nonpublic requests for substantiation directed to individual companies via an informal access letter or, if necessary, a formal civil investigative demand.

Deceptive Offset-Related Marketing Claims are Rampant

As a threshold matter, it is important to observe that vanishingly few offsets actually clean up climate pollution. Climate science has shown that this is extremely challenging: carbon dioxide emissions from burning fossil fuels have effectively permanent atmospheric impacts that stretch into geologic time frames.³ Meanwhile, stabilizing planetary temperatures requires far more than clean up of climate pollution (known as carbon removal): it requires net-zero emissions, defined

³ Matthews et al. (2009), The proportionality of global warming to cumulative carbon emissions, *Nature* 549: 829-832; Archer et al. (2009), Atmospheric Lifetime of Fossil Fuel Carbon Dioxide, *Annual Review of Earth and Planetary Sciences* 37: 117-134; Pierrehumbert (2014), Short-Lived Climate Pollution, *Annual Review of Earth and Planetary Sciences* 42: 341-379.

as (1) rapid and deep reductions in greenhouse gas emissions, with (2) *any remaining pollution* counteracted by removing carbon from the atmosphere.⁴

According to [UC Berkeley Voluntary Registry Offsets Database](#), only 3% of offsets issued in 2022 were dedicated to removing carbon from the atmosphere. Instead, the vast majority of the market either claims to avoid emissions — which isn't the same thing as cleaning up pollution — or by temporarily storing carbon in natural carbon sinks like forests or soils. Temporary carbon storage is a problem because unless there is a credible commitment to maintain those carbon stocks for centuries to millennia, there is a significant risk of a re-release of carbon to the atmosphere, negating many of the climate benefits these offsets claim.⁵

Although few offsets are net-zero aligned, net-zero and related carbon-neutrality claims are made frequently in product marketing. For example, JBS, the second-largest food company and the largest animal protein producer in the world, has marketed its products with various net-zero claims. The industry-run regulatory body National Advertising Division [recommended that it discontinue these claims](#), finding that they “reasonably create consumer expectations that the advertiser’s efforts are providing environmental benefits, specifically “net zero” emissions by 2040, a measurable outcome” that it did not believe could be substantiated. The New York Times’s consumer advice website, Wirecutter, investigated the claims of companies selling offsets in connection with air travel and laptops and claims of companies marketing “carbon neutral” shipping; it recommended against all of them. [According to Wirecutter](#), “in most cases, carbon offsets do not capture or reduce real emissions, and they have a dismal record when it comes to actually averting future emissions.”

According to a [June 2022 report by Net Zero Tracker](#), more than one-third (702) of the world’s largest publicly traded companies now have net-zero, carbon-neutrality, or other climate-related pledges, including roughly half of fossil fuel companies studied.⁶ This is an increase from the 417 companies making such pledges just 18 months earlier, a reflection of growing corporate interest in demonstrating emissions reductions to consumers and other stakeholders. Similarly, [Climate Action 100+ finds](#) that 75% of its 166 focus companies have made net-zero pledges, up from 50% just a year earlier.

These bold pledges deserve support and encouragement if backed by evidence of true commitment. Unfortunately, numerous companies are using net-zero and carbon-neutrality claims to market their products without adequately substantiating their commitments.

⁴ Fankhauser et al. (2022), The meaning of net zero and how to get it right, *Nature Climate Change* 12: 15-21; Allen et al. (2022), Net Zero: Science, Origins, and Implications, *Annual Review of Earth and Planetary Sciences* 47: 849-887. These fundamental scientific insights have recently been codified by the International Organization for Standardization, [ISO IWA 42:2022 Net zero guidelines](#), § 3.3.4, note 2 (stating that “[o]nly offsets that are [carbon] removals can be used to ... achieve net zero.”).

⁵ Anderegg et al. (2020), Climate-driven risks to the climate mitigation potential of forests, *Science* 368:7005; Anderegg et al. (2022), Future climate risks from stress, insects, and fire across US forests, *Ecology Letters* 25: 1510-1520.

⁶ Net Zero Tracker analyzed all Forbes Global 2000 companies and selected those that used one of the following terms: carbon negative, carbon neutral(ity), climate neutral(ity), climate positive, greenhouse gas neutral(ity), net zero, zero carbon, zero emissions, 1.5°C compatible and science-based targets.

In November 2021, [the Financial Times reported](#) that 5 percent of offsets used that year were for fossil fuel shipments; it noted “a surge in the use of carbon credits for hydrocarbon products,” often marketed as “carbon neutral.” Among the companies engaged in this marketing is Shell Oil, which [claims on its website](#) that it compensates for emissions from its lubricants and other products with “externally-verified” offsets. Yet Verra — which issues two out of every three offsets in the global markets, and which issued Shell’s offsets in this case — [makes no attempt](#) to ensure that its customers balance their emissions with carbon removals.

Verra makes the more modest claim that greenhouse gas emissions are *reduced* (but not fully compensated for) by the offsets that it issues. However, even this more modest claim is extremely controversial and may be entirely unfounded. A [January 2023 investigation by The Guardian](#) finds that “more than 90% of [Verra’s] tropical forest offset credits – among the most commonly used by companies – are likely to be ‘phantom credits’ and do not represent genuine carbon reductions.”⁷ Similar concerns have been documented in the peer-reviewed literature concerning forest offset programs operating in North America.⁸

A [November 2022 Bloomberg investigation](#) focuses on another common type of offset: those tied to wind and solar energy projects. Analyzing 215,000 offsets purchases over the course of the past decade, investigators find that dozens of global brands, including Delta Airlines, GE, Samsung and Lyft, are basing climate-neutral claims and related climate marketing on these purchases despite the fact that these offsets do not remove carbon from the atmosphere and despite growing concerns that many of these offsets merely credit business-as-usual activities — that is, that they don’t provide any new climate benefits at all.⁹ Some companies contacted by Bloomberg acknowledged the dubious value of these offsets in reducing emissions and pointed toward their pledges to shift away from them, yet Bloomberg’s review of more than 50,000 offsets transactions in 2021 reveals that 40 percent were for renewable energy projects.

In a [February 2023 report](#), the New Climate Institute analyzed 11 carbon-neutrality claims made by global companies in 2022 and found that “the transparency and integrity of those claims remain critically low.” Moreover, companies making such claims often fail to describe which emissions were being offset; investigators found that the companies’ carbon neutrality claims cover on average just 3% of their emissions.

⁷ The Guardian’s reporting was based on two published academic studies and a scientific preprint: West et al. (2020), Overstated carbon emission reductions from voluntary REDD+ projects in the Brazilian Amazon, *Proceedings of the National Academy of Sciences* 117: 24188-24194; Guizar-Coutiño et al. (2022), A global evaluation of the effectiveness of voluntary REDD+ projects at reducing deforestation and degradation in the moist tropics, *Conservation Biology* 36: e13970; West et al. (2023), Action needed to make carbon offsets from tropical forest conservation work for climate change mitigation, arXiv, doi 10.48550/arXiv.2301.03354.

⁸ Badgley et al. (2022), Systematic over-crediting in California’s forest carbon offsets program, *Global Change Biology* 28: 1433-1445; Coffield et al. (2022), Using remote sensing to quantify the additional climate benefits of California forest carbon offset projects, *Global Change Biology* 28: 6789-6806; Randazzo et al. (2023), Improved assessment of baseline and additionality for forest carbon crediting, *Ecological Applications* (in press).

⁹ Calel et al. (2021), Do Carbon Offsets Offset Carbon? CESifo Working Paper 9368; Bjørn et al. (2022), Renewable energy certificates threaten the integrity of corporate science-based targets, *Nature Climate Change* 12: 539-546.

Numerous companies engage in climate-related marketing without resorting to deception about carbon neutrality and offsets. “We don’t call ourselves carbon neutral,” Tammy Winter of Stripe, the payments processing firm, [recently told the magazine Grist](#) in discussing the role of offsets in corporate climate communications. “We reject that framing completely. It’s basically greenwashing.” Lauren Kirby of United Airlines [voiced a similar sentiment to the New York Times](#) in explaining why the company’s climate commitments do not include offsets: “Carbon offsets have been a bone of contention for me because they’re almost all fraudulent.” The FTC should uphold its mandate to regulate unfair and deceptive advertising and ensure that firms opposed to offsets-related greenwashing are not forced to compete with those using such greenwashing to win customers.

Deceptive Offset-Related Claims are Influencing Purchasing Decisions and Therefore Meet the FTC’s Materiality Threshold

A [March 2022 Greenprint / Directions Research survey](#) finds that recent climate events have made 70% of U.S. adults more likely to purchase environmentally friendly products. The survey indicates that these climate-minded consumers are receptive to corporate marketing about offsets: 60% say they are more likely to use delivery services if carbon emissions are offset; 56% say this about rental cars, and 55% say this about rideshares. The survey also highlights consumers’ dependence on disclosures from marketers: 69% say that a company’s report on environmental friendliness impacts their purchase decisions.

Similarly, an [April 2020 survey of U.S. adults by the International Food Information Council](#) found that of the 70% who expressed concern about climate change, over half said this would influence their purchase of food and beverages. Because American consumers are likely to act on and be misled by deceptive marketing that promises climate action that is not actually occurring, the presence of widespread misinformation based on offsets-related claims undermines consumer choice as well as deprives serious corporate actors of the opportunity to win over environmentally-minded customers.

Recommended Amendments to Green Guides’ Offsets Provisions

One of the fundamental problems with offset-related environmental marketing claims is that apart from the narrowly-focused guidance of the 2012 Green Guides (discussed below), [there are no mandatory disclosure regimes for purchasers or regulatory oversight of sellers’ quality protocols in place today](#). The lack of clear information makes it difficult to ascertain the connection between offset use and environmental marketing claims, as well as to evaluate the veracity and robustness of those claims. We recommend that the FTC substantially strengthen the disclosure regime by amending its Green Guides offsets-related provisions. To help explain why that is necessary, we first show how the current standards fall short of addressing misleading marketing statements that are commonplace today. We then offer specific suggestions that the FTC should consider in its amendments.

Current Green Guides are Helpful but Insufficient

The current Green Guides contain only a single section on offsets: 16 C.F.R. § 260.5. It contains three helpful elements that we recommend be retained. For the reasons provided below, however, they must be amended and strengthened to address the rise in deceptive marketing claims since this provision was adopted more than 10 years ago.

1. Paragraph (a) requires that carbon offset sellers “should employ *competent and reliable* scientific and accounting methods” (emphasis added) but provides no guidance on what is required to achieve this outcome. This is inadequate because the most widely-documented problems with carbon offsets involve projects that [fully comply](#) with the rules set by voluntary market [standards setters](#). In other words, the most common problem isn’t the failure to abide by carbon offset methods, but the failure of those methods to ensure that projects reliably live up to the marketing claims of their proponents. Even when private standards setters acknowledge problems and sunset their use of low-quality scientific and accounting methods, other organizations emerge to [issue credits for the exact same practices](#). In addition, paragraph (a) requires that carbon offset sellers do not sell the same environmental benefit twice, also known as “double-counting” — an important requirement, but one that does not address rampant problems of consumer deception throughout the voluntary carbon markets.
2. Paragraph (b) sets limits on offsets that are based on climate benefits expected in the future, as opposed to those that are supposed to have already occurred. It requires any marketing claims that are based on emission reductions expected two or more years in the future to explicitly disclose that fact. While helpful, this requirement likewise does not address rampant offsets-related consumer deception — many of which involve claims of emission reductions in the past. (Because there is a backlog of [old offset credits that have not yet found purchasers](#) and are unlikely to represent real and additional climate benefits, we recommend below that the FTC consider requiring parallel disclosure if a marketing claim is based on climate benefits that are supposed to have occurred more than two years in the past.)
3. Paragraph (c) prohibits carbon offsets from marketing climate benefits that are separately required by law. This standard is sometimes referred to as “legal additionality,” and is generally considered a fundamental quality control requirement because it would be deceptive to sell an outcome that is already required by law as though it were induced by the buyer’s purchase. To our knowledge, this form of deception is rare. (One of those rare cases was reported in California’s forest carbon offset program [by a market participant](#).)

Recommended Additions to the Green Guides

In addition to retaining its existing offset provisions, the FTC should expand its offsets-related provision in the Green Guide with a mandatory disclosure statement and supplemental public reporting to address six material elements. These elements are designed to create a public

reporting regime that will make it possible for consumers and regulators to track the use of offsets in environmental marketing claims, in order to establish their veracity — and, if necessary, for regulators to take appropriate enforcement actions to bring companies into compliance with the law.

These supplemental reporting elements, as outlined below, would be consistent with the law and policies discussed earlier in this letter. Although it is critical that advertisements by themselves not be deceptive, the key to prevent consumer deception about complex matters such as the use of offsets is the inclusion of a hyperlink or a QR code linking to a website with key details about the offsets use. As the FTC’s digital advertisement policy makes clear, linking to a website is an appropriate measure for preventing consumer deception when disclosure of all relevant information in the advertisement itself is not practical.

In its [draft Green Claims Directive](#), the European Commission recognizes the impracticability of including all relevant information in the advertisement and offers a solution. It states that “information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim *in a physical form or in the form of a weblink, QR code or equivalent*.” It further states that this information shall include at least the following for climate-related explicit environmental claims that rely on greenhouse gas emission offsets, *information to which extent they rely on offsets and whether these relate to emissions reductions or removals*.” See Article 5 ¶ 6(f) (emphasis added).

The FTC has already recognized the importance of disclosing details about offsets to prevent deception in its 2012 Green Guides, which require disclosure about details concerning the timing of future climate benefits.¹⁰ Now that subsequent market experience has made clear that additional details are needed to prevent deception, it makes sense for the FTC to call for disclosure of that information on a website, accessible on the advertisement via a hyperlink or a QR code. We urge the FTC to require a standard disclosure for all offsets-related claims:

“This claim is based on the use of carbon offsets. For more information, see [public website.]”

The public website should disclose critical information about the offsets that are used and their connections to marketing claims. By providing clarity on the information needed for this purpose the FTC would both inform consumers and also assist marketers in fulfilling their substantiation duties. As the law firm Akin Gump states in its [analysis of potential updates to the offsets provisions of the Green Guides](#), “if the FTC requires disclosure of tenets like these [i.e., details about offsets purchase price and project type], consumers could assess these claims independently, while protecting marketers from complaints they omitted relevant information.”

The alternative to encouraging supplemental public reporting about critical offsets-related details is continuation of the current practice of relying on FTC enforcement authorities to contact individual companies and request substantiation of marketing claims. Due to significant

¹⁰ 12 C.F.R. § 260.5(b).

resource constraints at the FTC and other practical barriers, this approach is not likely to serve the interests of consumers. To protect consumers and facilitate their ability to parse offsets-related marketing claims, the FTC should instead insist upon greater transparency of the details underlying those claims.

To provide the necessary information consumers need to understand the veracity of offsets-related claims, companies making offsets-related marketing statements should publicly report six additional elements:

1. **Document the scope of the marketing claim.** Offsets-related environmental marketing statements should clearly define the scope of the emissions objective in question. For example, some claims address the emissions objectives of entire corporations, while others are specific to individual products or services. A marketer should also disclose the accounting basis on which the claim is made. For example, many corporations use a private standard called the Greenhouse Gas Protocol to report their emissions across so-called Scopes 1, 2, and/or 3; similarly, the U.S. Securities and Exchange Commission has proposed using a similar standard in its draft climate-related disclosure regulation.¹¹
2. **Document the specific marketing claim.** Offsets-related marketing claims should specify the particular claim being made, such as “net zero” or “carbon neutral.”
3. **Identify the specific offsets used to substantiate the marketing claim.** Marketing claims should clearly identify the specific offsets used to satisfy the claim in question. The Securities and Exchange Commission has proposed a useful list of disclosure requirements,¹² which should be expanded to include the number of credits by each project’s applicable vintage-years — a standard commercial term that refers to the calendar year in which the offset’s emission reduction or carbon removal outcome is supposed to occur. Expanding the SEC’s list to include credit vintage-years is necessary to establish whether offsets-related marketing claims satisfy the FTC’s current requirements in 16 C.F.R. § 260.5(b), as well as any expanded provisions that address concerns about the use of questionable offsets from old projects.
4. **Identify the duration of all offsets used.** Some carbon offsets promise to store or protect carbon for only a limited period of time. For example, forest offsets usually promise to keep carbon in trees for as little as one year to as many as 100 years. In contrast, the bulk of fossil carbon dioxide emissions remain in the atmosphere for

¹¹ Securities and Exchange Commission, The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (April 11, 2022) at 21,343 (referencing the Greenhouse Gas Protocol as a foundational reporting practice in private use). We note that the SEC has also proposed to require certain publicly traded companies to include similar disclosures. *Id.* at 21,467 (proposing offset-related disclosures to be codified at 229 C.F.R. § 229.1502(c)); see also *id.* at 21,471 (proposing offsets-related disclosures to be codified at 229 C.F.R. § 229.1506).

¹² Securities and Exchange Commission, 87 Fed. Reg. 21,334 at 21,471 (proposing offsets-related disclosures to be codified at 229 C.F.R. § 229.1506(d)).

centuries to millennia, with a fraction of emissions persisting on geologic timescales.¹³ Because the time duration (or “durability”) of carbon storage is highly relevant to offsets-related marketing claims, such as the claim that a carbon offset’s climate benefits are equivalent to the harms of the greenhouse gas emissions from a product or service,¹⁴ disclosure of the duration of carbon storage promised by offsets is highly relevant to the potential for a marketing claim to deceive consumers.

5. **Identify whether any offsets represent carbon removal.** Finally, because popular climate targets such as “net zero” emissions require balancing any remaining greenhouse gas emissions with atmospheric removals, it is important for marketing claims to disclose which offsets promise carbon removal outcomes, if any. Requiring disclosures of these details would be consistent with the approach taken by the European Commission in its [draft Green Claims Directive](#), which states (at Article 3 ¶ 1(h)) that marketers must “separate any greenhouse gas emissions offsets used from greenhouse gas emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate.”
6. **Disclose whether the climate benefits of any offsets were achieved more than two years before the marketing claim.** As discussed in the previous section, we recommend that the FTC consider requiring a disclosure parallel to its existing disclosure requirement regarding offsets with benefits to be achieved more than two years into the future. If a marketing claim is based on climate benefits that are supposed to have occurred more than two years in the past, this should be disclosed as well.

It bears emphasizing that each of these elements reflects standard industry concepts that are in widespread use today, and that none of these elements requires information that is not already available to companies based on the very offsets they procure.¹⁵ What is missing today is a standard disclosure regime, not a reporting company’s access to the necessary information.

Conclusion

We appreciate the FTC’s commitment to revising the Green Guides and believe that the FTC’s mission is best served by a robust disclosure regime that requires all offsets-related marketing

¹³ See references in footnote 3, *supra*.

¹⁴ See [ISO IWA 42:2022 Net zero guidelines](#), § 10.2 (requiring companies to “ensure [offset] credits are comparable in durability to the [greenhouse gas] emission being counterbalanced”).

¹⁵ For example, the industry-led Integrity Council for the Voluntary Carbon Markets (ICVCM) has integrated these concepts into its proposed [Core Carbon Principles and Assessment Framework](#). See ICVCM, Part 5: Terms & Definitions (defining a credit “vintage” as a standard term, as in our requested items 3 and 6); ICVCM, Part 4: Assessment Framework at Section 6, Criterion 6.1 (identifying the use of credit vintages as a requirement for “minimum information” that carbon offset registries should report); *id.* at Section 9 (addressing the durability issues in our requested item 4, also known as “permanence”); ICVCM, Part 2: Core Carbon Principles at Annex A (identifying emission reductions and carbon removals as distinct credit attributes, as indicated in our requested item 5).

claims to be substantiated with clear reporting information. This will benefit consumers, consumer advocates, and the FTC's own future enforcement decisions. As documented by an ever-growing list of academic studies and investigative reporting, offsets-related marketing claims already have the significant potential to deceive consumers, but the absence of robust disclosure requirements makes it difficult for even the most environmentally minded consumers and businesses to make sound choices today. By strengthening the Green Guides' offsets-related provisions with a sound disclosure regime, the FTC can address the serious risk of deceptive marketing and provide environmentally-minded companies with an even playing field on which they can differentiate their efforts.