FEDERAL TRADE COMMISSION

16 CFR Part 260

Guides for the Use of Environmental Marketing Claims; Carbon Offsets and Renewable Energy Certificates; Public Workshop

AGENCY: Federal Trade Commission.

ACTION: Announcement of public workshop; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is planning to host a public workshop on January 8, 2008 to examine the emerging market for carbon offsets (*i.e.*, greenhouse gas emission reduction products) and renewable energy certificates, and related advertising claims. The workshop is a component of the Commission's regulatory review of the Guides for the Use of Environmental Marketing Claims, which is being announced in a separate **Federal Register** notice published concurrently.

DATES: The workshop will be held on Tuesday, January 8, 2008, from 9 a.m. to 5 p.m. at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue, NW., Washington, DC. Any written comments related to the workshop must be received by January 25, 2008.

ADDRESSES: *Registration Information:* The workshop is open to the public, and there is no fee for attendance. The FTC also plans to make this workshop available via a webcast (see *http://www.ftc.gov/bcp/workshops/carbonoffsets/index.shtml*). For admittance to the Conference Center, all attendees will be required to show a valid photo identification, such as a driver's license. The FTC will accept pre-registration for this workshop. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please e-mail your name and affiliation to *carbonworkshop@ftc.gov*. When you pre-register, we will collect your name, affiliation, and your e-mail address. This information will be used to estimate how many people will attend. We may use your e-mail address to contact you with information about the workshop.

Under the Freedom of Information Act (''FOIA'') or other laws, we may be required to disclose to outside organizations the information you provide. For additional information, including routine uses permitted by the Privacy Act, see the Commission's Privacy Policy at *http://www.ftc.gov/ftc/privacy.htm*. The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

Written and Electronic Comments: The submission of comments is not required for attendance at the workshop. If you wish to submit written or electronic comments about the topics to be discussed at the workshop, such comments must be received by January 25, 2008. Such comments may be submitted before or after the workshop at the discretion of the commenter. Comments should refer to ''Carbon Offset Workshop—Comment, Project No. P074207,'' to facilitate organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex O), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form; must be clearly labeled ''Confidential;'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by following the instructions on the web-based form at *http://secure.commentworks.com/ftc-carbonworkshop*. To ensure that the Commission considers an electronic comment, you must file it on that web-based form. You may also visit *http://www.regulations.gov* to read this notice, and may file an electronic comment through that Web site. The Commission will consider all comments that *http://www.regulations.gov* forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. To read our policy on how we handle the information you submit—including routine uses permitted by the Privacy Act—please review the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, 202–326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Introduction

The FTC staff is planning to conduct a one-day workshop on January 8, 2008 related to the marketing of greenhouse gas reduction credits (commonly referred to as ''carbon offsets'') and renewable energy certificates (''RECs''). The workshop will focus on consumer protection issues in these markets, such as consumer perception of carbon offset and REC advertising claims and substantiation for such claims. This workshop is one component of the Commission's regulatory review of the Guides for the Use of Environmental Marketing Claims (16 CFR Part 260), which the FTC is announcing in a separate, concurrent **Federal Register** notice.[2] The FTC is seeking comment on the issues that will be addressed at this workshop. Comments may be submitted before or after the workshop provided they are received by January 25, 2008 as explained in the ''WRITTEN AND ELECTRONIC COMMENTS'' section of this notice.

This notice addresses several issues related to the upcoming workshop. It provides background on carbon offsets and RECs. It briefly discusses the existing regulatory framework in this area, including the FTC's consumer protection authority. In addition, the notice discusses consumer protection issues raised by the marketing of offsets and RECs, as well as marketing and advertising claims based on the purchase of these products. The notice concludes with a short description of possible issues for discussion at the workshop and questions for comment.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

[2] The Commission reviews all of its rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's existing rules and guides and their regulatory and economic impact. The information obtained during these reviews assists the Commission in identifying rules and guides that warrant modification or rescission.

II. Background

A. Carbon Offsets and RECs

The market for the sale of carbon offsets in the United States has experienced significant growth in the last two years.[3] The FTC's workshop, therefore, will focus primarily on consumer protection issues involving the newly-emerging carbon offset market. Because the REC market is closely associated with the sale of carbon offsets, the workshop also will address REC marketing.[4] This notice briefly describes these products, as well as the current regulatory framework in which these activities take place.

Carbon Offsets: In general, carbon offsets are credits or certificates that represent the right to claim responsibility for greenhouse gas emission reductions. For example, a carbon offset provider might use offset proceeds to pay for landfill methane collection activities or tree planting in an effort to reduce greenhouse gasses. In some cases, carbon offset sellers use the proceeds to purchase RECs (discussed below). By acquiring these greenhouse gas reduction credits, purchasers, including individuals and businesses, seek to reduce their ''carbon footprints'' or to make themselves ''carbon neutral.'' For example, a consumer who flies across the country is ''responsible'' for a percentage of the carbon emitted from the fossil fuel burned by the plane. That consumer can purchase a certificate that funds activities that purport to reduce carbon emissions elsewhere, in quantities equal to all, or a portion, of the carbon for which that consumer is ''responsible.'' Additionally, some businesses purchase offsets to provide a basis for their advertising claims (*e.g.*, ''our coffee is carbon neutral'').

Renewable Energy Certificates (''RECs''): Generally, retail electricity customers can support renewable energy [5] through one of two methods: by purchasing renewable electricity or by purchasing renewable energy certificates.[6] Under the first approach, consumers purchase renewable energy through traditional electricity contracts with their local utility or power provider, in areas in which such energy is sold.[7] This energy is often more expensive to produce than conventional energy; consequently, consumers usually pay a premium.[8] Some generators who cannot sell all of their renewable energy at a sufficient premium in their ''home'' market, therefore, may find it advantageous to split their output into two products: The electricity itself and certificates (RECs) representing the renewable attributes of that electricity. Under this second approach, generators sell their electricity at market prices applicable to conventionally-produced power. Generators then charge for the electricity's renewable attribute separately by selling certificates to individuals and business purchasers across the country who use them to characterize the conventional electricity they buy as renewable.[9] The REC market, therefore, helps renewable energy generators by significantly expanding the number of potential renewable energy purchasers, possibly avoiding transmission costs associated with traditional contracts, and helping to ameliorate supply and demand problems associated with the intermittent operation of some renewable energy facilities (*e.g.*, solar power facilities).[10]

B. Regulatory Framework

Offset and REC sales can generally occur in two types of markets: (1) Markets that facilitate compliance with regulatory targets (so called ''mandatory'' or ''compliance'' markets), and (2) markets unrelated to existing regulatory programs (so called ''voluntary'' markets).

RECs currently play a role in mandatory markets. For example, some states require certain electricity providers to purchase a minimum percentage of their electricity from renewable sources. Purchasing renewable energy directly, however, is not always practical. Thus, some states allow providers to meet their quotas, usually called ''renewable portfolio standards,'' through the purchase of RECs. Although there are no current mandatory markets for carbon offsets in the United States, there are ongoing efforts at the state level to develop greenhouse gas reduction programs that may impact carbon offset sales in the future.[11] Because the sale of RECs to meet regulatory targets already involves ongoing state oversight, and there are no current, mandatory markets for carbon offsets, the workshop will concentrate on marketing in the voluntary market.

Where offsets and RECs are not generated to meet regulatory targets, they are bought and sold in a voluntary market to meet demand. In this voluntary market, no federal agency currently has a comprehensive environmental regulatory program.[12] In the absence of national regulation, voluntary third-party certification programs have arisen, and more are under development, to help reduce inappropriate practices and to provide guidance to marketers through the development of industry standards.

The FTC, however, has an important role to play in combating unfair and deceptive practices in this market. In carrying out this mission, the Commission enforces the FTC Act, which states that unfair or deceptive trade practices are unlawful.[13] In interpreting the FTC Act, the Commission has determined that a representation, omission, or practice is deceptive if it is likely to mislead

[3] *See, e.g.*, Hamilton, Katherine, *et al.*, ''State of the Voluntary Carbon Market 2007: Picking Up Steam,'' New Carbon Finance and The Ecosystem Marketplace (July 17, 2007) (*http://ecosystemmarketplace.com/documents/acrobat/StateoftheVoluntaryCarbonMarket-18July_Final.pdf*).

[4] RECs are known also as green certificates, green tags, or tradable renewable certificates.

[5] Renewable energy, such as wind and solar power, is energy derived from sources that are constantly replenished. *See, e.g.*, *http://www.nrel.gov/learning/re_basics.html* and *http://www.epa.gov/greenpower/whatis/renewableenergy.htm*.

[6] Some consumers may also have the option of producing their own electricity.

[7] Electricity generated from renewable sources is physically indistinguishable from conventional electricity once it is introduced into the power grid. Therefore, it is impossible for consumers to determine that the electricity that flows into their homes is generated by renewable energy. By purchasing a certain amount of renewable electricity through their utility, consumers simply buy the right to call the electricity they use ''renewable'' and ensure that an equivalent amount of renewable electricity is supplied to the power grid.

[8] While some generators may be able to sell renewable energy at the same price as, or even lower prices than, conventional electricity, they nonetheless may be able to charge premium prices—either through direct sales or the marketing of certificates.

[9] The certificate represents a property right in the technological and environmental attributes of renewable energy. The precise nature of the attributes represented by a REC, however, continues to be a matter of discussion. Generally, one REC represents the right to describe one megawatt of electricity as ''renewable.'' Currently, there is no uniform or mandatory definition of a REC.

[10] *See* Holt, Ed and Bird, Lori, ''Emerging Markets for Renewable Energy Certificates: Opportunities and Challenges,'' National Renewable Energy Laboratory (Jan. 2005) at 8–9.

[11] *See, e.g.*, Regional Greenhouse Gas Initiative, *http://www.rggi.org/*.

[12] The Environmental Protection Agency has established the Green Power Partnership, a voluntary program to encourage organizations in the United States to purchase renewable power through RECs and other renewable energy products (*http://www.epa.gov/grnpower/*).

[13] 15 U.S.C. 45. An act or practice is unfair if the injury it causes, or is likely to cause, is substantial, not outweighed by other benefits, and not reasonably avoidable. *See* Section 5(n) of the FTC Act, 15 U.S.C. 5(n); *see also* FTC Policy Statement on Unfairness, appended to *International Harvester Co.*, 104 F.T.C. 949, 1070 (1984) (*http://www.ftc.gov/bcp/policystmt/ad-unfair.htm*).

consumers acting reasonably in the circumstances and is material.[14]

Under the FTC Act, all marketers making express or implied claims about the attributes of their product or service must have a reasonable basis for their claims at the time they make them. In the realm of environmental advertising, a reasonable basis often requires competent and reliable scientific evidence. Such evidence includes tests, research, studies, or other evidence, based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

In exercising its authority under the FTC Act or other statutes, the FTC has developed a variety of rules and guides related to energy and environmental marketing practices.[15] One of these, the Guides for the Use of Environmental Marketing Claims (''Green Guides''), addresses the application of Section 5 of the FTC Act to environmental advertising and marketing practices.[16] The Green Guides provide information on consumer interpretation of certain environmental marketing claims so that marketers can avoid making false or misleading claims. The Guides focus on the way in which consumers understand environmental claims and not necessarily the technical or scientific definition of various terms.

While the FTC has often addressed consumer protection issues related to energy and environmental issues, the FTC does not have the authority or expertise to establish environmental performance standards. Accordingly, we do not plan to develop environmental standards for carbon offsets and RECs. Instead, the FTC's efforts in this area will focus on our traditional consumer protection role, addressing deceptive and unfair practices under the FTC Act.

C. Consumer Protection Issues

Carbon offset and REC marketing activities raise several consumer protection issues. These issues stem both from claims for offset and REC products themselves and from claims for other products based on offset and REC purchases (*e.g.*, ''our snacks are made with green electricity''). As discussed in more detail below, the nature of these products, consumer understanding of claims, and substantiation of claims all raise consumer protection challenges for offset and REC marketers.

The nature of offset and REC claims raises particular challenges because consumers cannot easily verify that they are receiving that for which they paid. For example, most consumers would have great difficulty confirming that their payments actually fund projects that may take place in a distant location. Moreover, even if a consumer could verify a project's existence, it likely would be impossible for the average consumer to determine whether the scientifically complex project actually reduces atmospheric carbon in the amount claimed, or how much the consumer's offset purchase actually contributes to the project.[17] As a result, the potential for deception is greater than with more tangible products for which consumers more easily can confirm most advertising claims.

In addition, consumer interpretation of offset and REC-related claims is an essential factor in addressing consumer protection questions in these markets. We are not aware of any research that addresses consumer understanding of advertising claims related to carbon offsets and RECs. As a result, there appear to be many open questions. For example, when consumers buy these products, do they know what they are buying? How do consumers interpret express or implied claims about environmental benefits from offsets and RECs? Do consumers assume that their offset purchases are creating reductions in greenhouse gas emissions beyond what would have otherwise occurred without offset sales? How quickly do they believe reductions occur? Should marketers consider consumer understanding about the incidental benefits of renewable energy, such as air pollutant reductions or regional environmental improvements? Do consumers interpret REC and offset claims to include implied claims of broader (or narrower) environmental benefit? Questions of consumer interpretation are important because marketers must ensure that all reasonable interpretations of their claims are truthful, not misleading, and substantiated.

Substantiation in particular can pose challenges in the REC and offset markets. For example, bringing RECs and offsets to market may involve multiple transactions and a large number of entities; consequently, the methods used to track RECs and offsets through the market are often complicated. In addition, efforts to verify the validity of these products can be difficult because the underlying activities may take place in remote locations or over an extended time period. Inadequate tracking and verification systems could lead to substantiation problems, even for marketers acting in good faith, and create opportunities for bad actors to deceive consumers. For example, marketers could inadvertently, or intentionally, sell multiple certificates based on the same carbon reduction or renewable energy activities (*i.e.*, ''double counting'').

One carbon offset issue, commonly referred to as ''additionality,'' has generated significant discussion.[18] ''Additionality'' addresses whether carbon offset consumers are paying for a project that would have occurred without the offset market. In the view of many involved with this market,[19] offset sellers have a duty to demonstrate that their underlying greenhouse gas reduction projects would not have occurred but for the sale of the offset; otherwise, they argue, sellers are not really reducing greenhouse gas

[14] *See* FTC Policy Statement on Deception, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984) (*http://www.ftc.gov/bcp/policystmt/ad-decept.htm*).

[15] *See* Guide Concerning Fuel Economy Advertising for New Automobiles (16 CFR part 259), Guides for the Use of Environmental Marketing Claims (16 CFR part 260), Appliance Labeling Rule (16 CFR part 305), Fuel Rating Rule (16 CFR part 306), Alternative Fuel Vehicles Rule (16 CFR part 309), Recycled Oil Rule (16 CFR part 311), and Labeling and Advertising of Home Insulation Rule (the ''R-Value'' Rule) (16 CFR part 460).

[16] FTC guides ''are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements.'' 16 CFR part 17. Conduct that is inconsistent with the guides may result in corrective action by the Commission, if after investigation, the Commission has reason to believe that the conduct is unfair or deceptive to consumers.

[17] Similarly, it is difficult for consumers to determine for themselves whether the RECs they purchase actually represent the environmental attributes of renewable energy generation.

[18] ''Additionality'' is a term generally associated with mandatory carbon reduction programs implemented pursuant to the Kyoto Protocol, an international agreement under the United Nations Framework Convention on Climate Change (*http://unfccc.int/resource/docs/convkp/kpeng.pdf*). While no such mandatory program exists in the United States, many offset marketers and other interested parties here have looked to the Kyoto framework in developing practices in the voluntary offset market in the United States.

[19] *See, e.g.*, ''A Consumers' '' Guide to Retail Carbon Offset Providers,'' Clean Air-Cool Planet (2006) (*http://www.cleanair-coolplanet.org/ConsumersGuidetoCarbonOffsets.pdf*); Kollmus, A., ''Voluntary Offsets For Air-Travel Carbon Emissions: Evaluations and Recommendations of Thirteen Offset Companies,'' Tufts Climate Initiative (Dec. 2006) (*http://www.tufts.edu/tie/tci/pdf/TCI_Carbon_Offsets_Paper_April-2-07.pdf*); and ''The Green-e Greenhouse Gas Emission Reduction Product Certification Program Standard,'' Center for Resource Solutions (June 2007) (*http://resource-solutions.org/mv/docs/Ge_GHG_Product_Standard_V1.pdf*).

emissions. Under this view, for example, it would not be appropriate to sell offsets based on a project (*e.g.*, capturing methane from a landfill) implemented to comply with existing environmental regulations because any greenhouse gas reductions would have occurred without the sale of the offsets. The practical application of the ''additionality'' concept to specific fact scenarios has raised a large number of questions and produced a variety of opinions among industry members and other stakeholders.

III. Issues and Questions for Discussion at the Workshop

As discussed above, the Commission's public workshop will explore advertising claims for carbon offsets and RECs, as well as advertising claims based on the purchase of those products. We have identified several possible issues for discussion at the workshop: (1) Trends in marketing carbon offsets and RECs, (2) the nature of the commodities in question (*i.e.*, the property rights transferred from seller to buyer through the sale of offsets and RECs), (3) product marketing based on offset or REC purchases, (4) consumer perception of carbon offset and REC claims, (5) potential market problems such as double-counting and other forms of fraud, (6) third-party certification and other standard-setting programs, (7) the issue of ''additionality'' for carbon offsets and its relationship to potential consumer deception, (8) the use of RECs as a basis for carbon offset claims, (9) the state of substantiation for offsets and REC claims, and (10) the need for additional FTC guidance in these areas.

In addition to considering these possible topics, the Commission invites written comments on any or all of the following questions regarding the consumer protection aspects of the carbon offset and REC market. The Commission requests that responses to these questions be as specific as possible, including a reference to the question being answered, and reference to empirical data or other evidence wherever available and appropriate.

(1) What express claims are sellers making for carbon offsets and RECs? What claims, if any, are implied by that advertising? How do consumers interpret these claims? Please provide any supporting evidence. What evidence constitutes a reasonable basis to support these claims? What challenges do offset and REC sellers face in substantiating their claims? Is there evidence that any claims in the current marketplace are unsubstantiated or otherwise deceptive?

(2) What express claims are companies making for their products and services based on their purchase of carbon offsets or RECs (*e.g.*, ''our product is made with renewable energy'')? What claims, if any, are implied by that advertising? How do consumers interpret these claims? Please provide any supporting evidence. What evidence constitutes a reasonable basis to support these claims? Is there evidence that any claims in the current marketplace are unsubstantiated or otherwise deceptive?

(3) When consumers purchase carbon offsets or RECs, what property rights do they acquire?

(4) When consumers purchase carbon offsets or RECs, what do they think they are buying? Please provide any supporting evidence.

(5) What impact do consumers believe their carbon offset purchases will have on the future quantities of greenhouse gasses in the atmosphere? Please provide any supporting evidence.

(6) Do consumers understand that some activities supported by carbon offset programs do not result in immediate carbon emission reductions? If so, when do consumers expect such offset programs will have an impact? Please provide any supporting evidence.

(7) What is the relationship between the concept of ''additionality'' in carbon offset markets and the FTC's standard for deception under the FTC Act?

(8) Please identify state laws that specifically address consumer protection issues in the carbon offset and REC markets. Please explain how the laws address these issues and whether they are effective.

(9) Please identify third-party and self-regulatory programs that address consumer protection issues in the carbon offset and REC markets. Please explain how the programs address these issues and whether they are effective.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–23006 Filed 11–26–07; 8:45 am]

BILLING CODE 6750–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

RIN 3038–AC40

Risk Management Exemption From Federal Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 150.2 of the Commodity Futures Trading Commission's (''Commission'') regulations imposes limits on the size of speculative positions that traders may hold or control in futures and futures equivalent option contracts on certain designated agricultural commodities named therein. Section 150.3 lists certain types of positions that may be exempted from these Federal speculative position limits. The Commission is proposing to provide an additional exemption for ''risk management positions.'' A risk management position would be defined as a futures or futures equivalent position, held as part of a broadly diversified portfolio of long-only or short-only futures or futures equivalent positions, that is based upon either: A fiduciary obligation to match or track the results of a broadly diversified index that includes the same commodity markets in fundamentally the same proportions as the futures or futures equivalent position; or a portfolio diversification plan that has, among other substantial asset classes, an exposure to a broadly diversified index that includes the same commodity markets in fundamentally the same proportions as the futures or futures equivalent position. The exemption would be subject to conditions, including that the positions must be passively managed, must be unleveraged, and may not be carried into the spot month.

DATES: Comments must be received on or before January 28, 2008.

ADDRESSES: Comments should be submitted to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to ''Proposed Risk Management Exemption from Federal Speculative Position Limits.'' Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone (202) 418–5041, facsimile number (202) 418–5507, electronic mail *dheitman@cftc.gov*; or John Fenton, Director of Surveillance, Division of Market Oversight, telephone (202) 418–5298, facsimile number (202) 418–5507, electronic mail *jfenton@cftc.gov*.

SUPPLEMENTARY INFORMATION: