



February 26, 2008

Office of Federal Procurement Policy
Office of Management and Budget
Room 9013
725 17th St. NW
Washington, DC 20503

Re: Proposed OFPP Policy Letter on the Acquisition of Green Products and Services
(72 Fed. Reg. 73904 (December 28, 2007))

Dear Madame or Sir:

The American Chemistry Council (ACC) represents the leading companies in the business of chemistry¹, and we appreciate the opportunity to comment on the Office of Federal Procurement Policy's (OFPP) Proposed Policy Letter on the acquisition of green products and services.

Our comments focus on two key areas: (1) the need for OFPP to coordinate with the Federal Trade Commission (FTC) regarding FTC's pending issuance of revised Guides for the Use of Environmental Marketing Claims (Green Guides), and (2) the need for OFPP to better define "low or no toxic or hazardous chemicals or materials or products", as included in the list of proposed examples of green products and services in the Proposed Policy Letter. Both of these issues are addressed in greater detail below.

I. OFPP's Final Policy Letter Must Be Consistent With FTC's Green Guides

OFPP's Proposed Policy Letter addresses acquisition of green products and services, and it is therefore essential that OFPP's final policy letter be consistent with the FTC's Green Guides. The Guides provide useful guidance to those parties making environmental marketing claims. Importantly, the Guides are currently undergoing review to better address new

¹ ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care[®], common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$635 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.



technologies and science, new environmental marketing claims, and advances in “green” products that have come on the market since the FTC last revised the Guides in 1998, including use of renewable resources, biobased products, and recycled/remanufactured products. *See* 72 Fed. Reg. 66091 (Nov. 27, 2007). We strongly encourage OFPP to review the latest proposal by FTC to revise its Green Guides to ensure consistency between OFPP’s policy letter on green acquisitions and FTC’s guidance for proper marketing claims related to green products and services. A copy of FTC’s recent proposal and ACC’s comments on same are attached for your reference.

II. OFPP Must Define What Constitutes “Low or No Toxic or Hazardous Chemicals or Materials or Products”

In its Proposed Policy Letter, OFPP includes an example list of green products and services. 72 Fed. Reg 73904 and 73906. Among the examples included in the list are “...(6) low or no toxic or hazardous chemicals or materials or products.” *Id.* No definition or criteria, however, are provided for these terms. ACC strongly encourages OFPP to explain what constitutes a “low or no toxic or hazardous” chemical, material, product.

More specifically, ACC suggests that OFPP focus not solely on toxicity or hazard of a chemical, material, or product, but rather the *risk* of a chemical, material, or product. Risk reflects consideration of *both* hazard/toxicity *and* exposure, and this combination is essential when determining which chemical, material, or product is appropriate for a specific use. Any substance, whether natural or man-made, can become a high risk to health and/or the environment at a substantial exposure level. For example, natural water is of low hazard/toxicity, but if ingested in significant quantities (high exposure), it can become fatal. It is therefore important for OFPP to consider the hazard/toxicity *and* exposure of a chemical, material, or product in its recommendations for acquisition of green products and services.

Finally, OFPP should make available for public notice and comment whatever criteria it believes best for determining “low or no toxic hazardous chemicals or materials or products”, or, as ACC suggests above, “low or no *risk* chemicals or materials or products.” It is imperative that stakeholders have the opportunity to comment on the definitions of these terms before they become final.

III. OFPP Should Clarify that Requirements for “Environmentally Preferable Cleaning Products” Do Not Apply to EPA-Registered Disinfectants and Sanitizers

In order to provide maximum public health protection, OFPP requirements for Janitorial services should not extend to disinfectants and sanitizers. ACC suggests the following language be added to Section F (4):

For purposes of this policy letter, "cleaning product" does not include any disinfectant, disinfecting cleaner, sanitizer or any other antimicrobial product regulated by the Federal Insecticide, Fungicide and Rodenticide Act (7 USC 136).



Unlike standard “cleaning products,” disinfectants and sanitizers are used to kill disease-causing germs. These products must be registered with US EPA and be shown to meet safety and efficacy requirements. There is currently no accepted basis for claiming that any registered product is “environmentally preferable” to others.

Microbial contaminants such as Noroviruses, *Staph* bacteria, *Salmonella* and *E. Coli* can pose serious health risks in public buildings. To prevent any uncertainty about the accepted use of disinfectants and sanitizers, OFPP should clarify that requirements for “environmentally preferable cleaning products” do not apply to EPA-registered products.

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Thank you for the opportunity to comment on the OFPP’s Proposed Policy Letter on the acquisition of green products and services. We look forward to working with OFPP and other stakeholders as the Proposed Policy Letter is finalized. If you have any questions about our comments, please contact me at mike_walls@americanchemistry.com or 703-741-5167.

Sincerely,



Michael P. Walls
Managing Director
Regulatory and Technical Affairs

Attachments:

FTC Guides for the Use of Environmental Claims, Request for Public Comment (Nov. 27, 2007)
ACC Comments on FTC Green Guides Regulatory Review (Feb. 11, 2008)



FEDERAL TRADE COMMISSION
GUIDES FOR THE USE OF ENVIRONMENTAL MARKETING CLAIMS
72 Fed.Reg. 66091 (November 27, 2007)

COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL
February 11, 2008

EXECUTIVE SUMMARY

The American Chemistry Council (ACC) represents the leading companies in the business of chemistry¹. We believe there is a continuing need for the Guides, which provide useful guidance to those making environmental claims. An update at this time is both appropriate and needed because green marketing claims have proliferated in the time since the last update in 1998. In addition, environmental concerns today focus on a number of areas that are not addressed by the Guides, such as claims about contributions to global warming (e.g., “carbon footprint”), sustainability, and use of renewable resources.

We provide comments here first on the general issues set out for comment, followed by the specific issues. While our comments are more detailed, we note four key points.

- The Guides and the core analytical processes to be applied to environmental marketing claims remain fundamentally sound.
- We are increasingly concerned with express or implied health claims that accompany environmental claims, and ask the Commission to provide greater clarity with respect to such claims.
- We note the need for new examples and analysis with respect to new environmental claims, such as “reduced carbon footprint.”
- We believe that the current Guides provide an appropriate framework for sustainability claims.

We look forward to working with the FTC and other stakeholders as the Guides are revised.

¹ The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care[®], common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$635 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

A. General Issues

ACC has a number of comments in response to the FTC's questions on general issues raised by the Guides (72 Fed.Reg. at 66092).

1. Is there a continuing need for the Guides? (FTC Question 1)

ACC believes there is a continuing need for the Guides. Specifically, ACC believes that the Guides provide a mechanism to help reduce unfair or deceptive environmental marketing claims at a time when these types of claims are increasing. Society's growing environmental awareness has placed an increased importance on the environmental, health and safety (EHS) aspects of products. In a nationwide survey, respondents stated that although they may not consider themselves environmentalists, 90 percent stated that they base their buying decisions in part on the effect their choices will have on the environment.²

The demand for EHS excellence brings new opportunities to consumers and producers as innovative new products are developed, but it also brings the potential for consumer confusion where unsubstantiated or exaggerated claims of benefits (or risks from competing products) are made. ACC believes that there is considerable value in claims related to environmental benefit, sustainability, and renewable energy, among others, because appropriately qualified claims can confer important consumer benefits. As FTC Commissioner Deborah Platte Majoras said in her opening remarks at the January 8, 2008 workshop, "From the sun belt to the rust belt to the beltway, consumers are showing increasing interest in environmental issues. And importantly this is influencing their purchasing decisions."

The Guides have provided useful guidance for marketing claims and advertising since their release in 1991 by promoting uniformity and consistency. While providing marketers with a "safe harbor" and certainty about how to make claims, the Guides also continue to offer protection for consumers. Therefore, ACC urges the FTC to revise the Guides and to carefully consider the comments outlined in this submission.

2. What benefits have the Guides provided to consumers? What evidence supports the asserted benefits? (FTC Question 2)

The Guides offer protection for consumers against unfair or deceptive acts marketing claims. The basic principles outlined in the Guides help ensure that advertising, labeling or marketing is conducted in such a manner that the claims are clear and readily understood by consumers.

In light of ever changing science and technology in the EHS area, it is difficult for consumers to find accurate information about all the risks and benefits associated with a product. We live in a society that is largely informed and influenced by what is broadcast on the nightly news, published in local newspaper or presented on the Internet. Often these stories are affiliated with

² Guest, Jim. "Have You Heard." www.consumerreports.org , July 2005. Page 5.

incomplete and/or misleading science and scare tactics. Stories are written to emphasize what is unknown without disclosing adequately what is known. Knight Science Journalism Tracker³ writes “scary sells more newspapers than does reassurance. . .” It is more important than ever that consumers have confidence that a manufacturer’s representations about the environmental attributes of its product are clear, accurate, and not deceptive. They expect that there is a governmental oversight process in which action will be taken as needed.

3. What modifications, if any, should be made to the Guides to increase their benefits to consumers? (FTC Question 3)

Human Health Impacts

ACC believes that many “environmental claims” are accompanied by express or implied claims with respect to human health impacts, and these human health claims may require additional attention in the Guides. Marketing claims that solely address human health impacts, however, and have no environmental component, should be considered outside the scope of these Guides.

The FTC does provide an example in its discussion about general environmental benefit claims (Example 4, Section 260.7 (a)), where it is noted that consumers would likely interpret an advertised claim of “practically non-toxic” in the context of “applying not only to human health effects but also to the product’s environmental effects.” Additional examples of such “hybrid” health/environmental claims with detailed illustration and analysis would be extremely helpful, and we recommend that the FTC consider such examples in the revision.⁴

ACC continues to support the FTC’s Division of Advertising Practices’ current enforcement priority of monitoring and stopping deceptive internet marketing practices that develop in response to public health issues.

ACC is concerned with marketing claims that assert a product is “free of” a particular chemical or that the product contains “no” such chemical. It is insufficient to make such a claim relying on the fact that the product does not actually contain that substance. The implied claim is for a consumer to understand the advertised product to be safer for the environment and/or safer for human health than a product with chemical ‘X’.

Given the prevalence of such claims, we request clarification that where such statements are being made to communicate a general claim of environmental benefit, they should comply with the fundamental principle of the Guides that there should be a reasonable basis for qualifying the

³ <http://ksjtracker.mit.edu/?p=5133>

⁴ This approach – recognizing that human health impacts can be part of a product’s claimed environmental performance – is consistent with the Office of the Federal Environmental Executive’s [Instructions for Implementing Executive Order 13423](#).⁴ The order states: “Environmentally preferable means “products or services that have a lesser or reduced effect *on human health and the environment* when compared with competing products or services that serve the same purpose.” [emphasis added]. EPA’s final guidance on Environmentally Preferable Purchasing and other EPA guidance documents also adopt this definition.

claim(s). To the extent “free” and “no” claims are often intended as comparative claims between competing products or materials, such claims should provide a basis for comparison.

Production Process

The Guides currently set out the general principle that “[a]n environmental marketing claim should be presented in a way that makes clear whether the environmental attribute or benefit being asserted refers to the product, package or service.”⁵ In some cases, the environmental claim being made does not directly inure to the product, package or service, but the production method or practice or another environmental practice of the manufacturer. A claim that coffee is “sustainably grown,” for example, speaks to the production process for growing the coffee, rather than making a direct claim about the coffee product itself. To avoid consumer confusion, this section should be revised to add production process as an additional descriptive category.

a) What evidence supports your proposed modifications?

Life cycle assessment (LCA) studies recognize that there are multiple environmental attributes of a particular product throughout its complete value chain – from raw material extraction through to disposal and reuse, if applicable. An environmental marketing claim could be made with respect to a product during its progress along the value chain, and LCA studies can be a good tool to consider what type of claims are likely to occur throughout a product’s life cycle and what type of substantiation or qualification is necessary. To be clear, ACC is not recommending that a LCA is a necessary precondition to making an environmental marketing claim.

The recently updated ISO 14044, “Environmental Management Standards for Life Cycle Assessment,” provide the principles and framework for conducting and reporting LCA studies, and includes certain minimal requirements. LCA is a technique for assessing the environmental aspects and potential impacts associated with a product by (1) compiling an inventory of relevant inputs and outputs of a product system; (2) evaluating the potential environmental impacts associated with those inputs and outputs; and (3) interpreting the results of the inventory analysis and impact assessment phases in relation to the objectives of the study. LCA can assist in

- identifying opportunities to improve the environmental aspects of products at various points in their life cycle;
- supporting decision-making in industry, government or non-governmental organizations (e.g., strategic planning, priority setting, product or process design or redesign);
- selecting of relevant indicators of environmental performance, including measurement techniques; and
- marketing (e.g., an environmental claim, eco-labeling scheme or environmental product declaration).

⁵ 16 C.F.R. § 260.6.

4. What potentially unfair or deceptive environmental marketing claims, if any, are not covered by the Guides? (FTC Question 15)

ACC encourages the FTC to conduct a comprehensive review of existing environmental claims and consumer perceptions regarding those claims to help inform the review process. It may be appropriate to add additional examples of comparative human health claims to the comparative claims section at § 260.6(d). We also suggest that the Commission may wish to explore the use of claims with respect to “biobased,” “green,” and “natural.”

The term “green” has seen increased use in marketing claims, particularly as a synonym for “environmentally friendly” as described in the current Guide. ACC believes that the term has also been associated with specific policies and programs, such as state government purchasing policies. Additional guidance on the use of the term would be helpful in assisting the business community in developing and deploying marketing materials.

In addition, ACC believes that guidance on the terms “carbon neutral” or “carbon neutrality” should be considered. Companies that make claims related to carbon neutrality must be able to substantiate those claims. Widely recognized international standards exist, and should be considered in guidance to help make such claims meaningful and not deceptive.

5. What modifications, if any, should be made to the Guides to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications? (FTC Question 16)

ACC recognizes that the Guides apply to marketing claims made through digital or electronic means, including the Internet and electronic mail. The FTC was careful to provide this explanation in the scope section on the first page of the Guides.

Nevertheless, we are concerned about an apparent proliferation of marketing claims being made on the Internet (e.g., websites, blogs, online videos, and online forums) and we urge the Commission to be clear that the Guides continue to apply in full force to marketing conducted through these media. Given the proliferation of claims, we believe the FTC should step up its educational outreach to advertisers, particularly on the internet. Likewise, the FTC should more prominently publicize enforcement proceedings and decisions on the Internet. In addition, we believe there is value in the FTC enhancing its consumer education programs to promote greater awareness at the purchasing level, and encourage the use of web-based tools to do so.

6. Are there are other international laws, regulations and standards with respect to environmental marketing claims that the Commission should consider as it reviews the Guides, including ISO 14021? (FTC Question 18)

As noted in the Statement of purpose, the Guides represent administrative interpretations of U.S. laws administered by the Federal Trade Commission. U.S. law and regulations must be the underpinning for any administrative guidance. We recognize, however, that other international standards may provide useful guidance with respect to the conclusions of all stakeholders in a standard development process that can help inform the FTC’s inquiry. Various international

standards may contain evidence of how consumers interpret environmental marketing claims that could be instructive to the FTC's review.

While the FTC could also review certain international standards with respect to seeking to harmonize its guidance with them, most notably with respect to ISO 14020, this would involve careful examination of the standard for variances with existing U.S. laws and regulations. We believe that the need to update the Guides is acute, and that an exercise to explore harmonization with the ISO standard would unduly delay issuance of an update to the Guides.

Examination of ISO 14021 is nevertheless worthwhile for more limited purposes. First, ISO 14021 prohibits all claims of sustainability – a clear inconsistency with current practices, particularly since such claims can be appropriately qualified. ACC believes that the Guides should cover sustainable claims.

Second, ISO 14021 sets out definitions for other environmental claims that are not currently covered by the Guides. The Commission should consider adding specific discussion and illustrations with respect to each of these terms: "design for disassembly," "extended life product," "recovered energy," "reduced energy consumption," "reduced resource use," "reduced water consumption," and "waste reduction."

ISO 14021 may also provide helpful guidance with respect to the use of the "Moebius Loop" symbol (i.e., the three chasing arrows symbol in a triangular shape). FTC's *Complying with the Environmental Marketing Guides* suggests that this image is "likely to convey" that the packaging is both "recyclable" and "recycled," and thus "[u]nless both messages can be substantiated, the claim should make clear whether the reference is to the package's recyclability or its recycled content."

B. Specific Issues

The FTC has also raised a number of specific issues for comment (72 Fed.Reg. at 66093). ACC agrees that these matters should be addressed in a revision of the Guides, and we provide brief comment here.

1. Should the Guides be revised to include guidance regarding renewable energy or carbon offset claims? If so, why, and what guidance should be provided? (FTC Specific Question 1)

ACC believes that the FTC should address claims relating to "renewable energy" or "carbon offsets." The U.S. business of chemistry is unique in that we use energy to make products that save energy. We are the principal supplier of materials that make the U.S. economy more energy-efficient. From insulation materials, roof coatings, lightweight vehicle parts and energy-saving tires to appliances, light bulbs and materials for wind and solar power, our industry is essential to the nation's efforts to save energy and reduce greenhouse gas emissions. As one of America's most energy-intensive sectors, we're improving energy efficiency and reducing greenhouse gas emissions in our own operations.

ACC is not currently aware of marketing claims that promote one product over another on the basis of alleged impacts on carbon or other greenhouse gas emissions (either from the product or the production process). However, we believe there is potential producer and consumer benefit in appropriate guidance on claims related to renewable energy and carbon claims in the revised Guides.

2. Should the Guides be revised to include guidance regarding “sustainable” claims? If so, why, and what guidance should be provided? If not, why not? (FTC Specific Question 2)

ACC encourages the FTC to revise the Guides to address marketing claims related to the sustainability of a company and/or its products, as well as claims related to the sustainability of a manufacturing process, design, use, or disposal method. Sustainability is a key priority for the business of chemistry and is essential to the long-term health of our industry, manufacturing in general, and the global economy overall. All businesses should consider sustainability as they make decisions regarding resource utilization, including material selection and energy usage. In addition, organizations should be encouraged to disclose their sustainability performance in meaningful, credible, and comparable ways.

We recognize that the general environmental benefit claims discussion at § 260.7(a) would apply to “sustainable” claims. This section notes that “[u]nqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers.” ACC agrees with this approach.

In the guidance that the FTC ultimately provides on “sustainable” claims, ACC suggests clarifying that claims of a product *being* “sustainable” are more properly characterized as that a product or process *promotes* or *contributes to* sustainability and/or sustainable outcomes, since sustainability is a process or goal. As the Commission has repeatedly noted in its current Guides, substantiation and qualification are essential to truthful promotion of products and processes and maintaining credibility in the marketplace—misleading or untruthful statements as to sustainability must be avoided.

Most definitions of the term “sustainable” recognize a broad range of factors, including environmental, social, and economic considerations. Because these definitions address overarching societal goals, they do not provide specific guidance for what makes an individual organization, process, or product sustainable. Of course, the Guides do not establish definitions, and reflect that it is the consumer interpretation, not necessarily the technical or scientific definition, that influences environmental claims.⁶

ACC encourages the FTC to not adopt a *specific* definition of “sustainable” for all marketing claims. Rather, individual companies should determine what sustainability factors are the most appropriate for their company or the product or process in question, and marketers should clarify what aspect or aspects of sustainability are addressed by the claim.

⁶ *Complying with the Environmental Marketing Guides* at 3.

Additionally, the Guides should discourage unqualified claims that a product or process is “more sustainable” than a competing product, or that a competing product is “not sustainable.” All comparative claims should have a clear basis, and the advertiser should be able to substantiate the comparison. This approach is consistent with the comparative claims guidance set out at the current § 260.6(d) of the Guides.

In its current Guides, the FTC frequently provides examples of deceptive and non-deceptive marketing claims. ACC offers the following three examples as “sustainable” claims that would not be deceptive, with appropriate substantiation:

- *“Company A is working to be more sustainable, through its X, Y, and Z initiatives.”*
- *“Product B helps make communities more sustainable by providing X, Y, and Z benefits.”*
- *“Process C promotes sustainability by reducing air pollution of [particular air pollutant], using X, Y, and Z approaches.”*

In each of these three examples, the claimant should be able to clarify its definition of sustainable or sustainability.

Earlier in these comments ACC suggested that the FTC consider including several definitions and examples for terms used in ISO 14021, including reduced energy consumption. Energy conservation or savings are very much related to sustainability, and we again encourage the FTC to cover claims of energy savings as an element of the revised Guides.

Energy loss through walls, roofs, and windows is the largest single waste of energy in most buildings. The products of chemistry confer many energy saving qualities. For example, rigid polyurethane foams are some of the most efficient thermal insulating products for buildings and for improving the efficiency of the building envelope. Innovative material design and advancement have resulted in high quality closed cell insulating products that reduce energy loss. In a one year study, plastic building and construction materials saved 467.2 trillion BTU’s of energy over alternative construction materials. Additionally, the energy saved by using plastic building and construction material in one year is enough to meet the average annual energy needs in 4.6 million U.S. households.⁷ Polyurethanes are also used in automobile seats, bumpers, interior headliner ceiling sections, and body work. The increased use of polyurethanes in cars (up 9 percent since 1998 alone) enables manufacturers to reduce the weight of cars and increase fuel economy.⁸ Appropriate product claims around energy savings – claims that are clear, substantiated, and not overstated – should be encouraged in the revised Guides.

⁷ Polyurethane and Polyisocyanurate Foams, www.polyurethane.org, 2004.

⁸ Center for the Polyurethanes Industry’s website: www.polyurethane.org.

a) What evidence supports making your proposed revisions?

Due to the broad range of factors found in many definitions of “sustainable,” claims of sustainability could create additional difficulties in interpretation compared to general claims of environmental benefits which are already addressed in the Guides.

Executive Order 13423 outlines the broad factors involved in sustainability as the “conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations of Americans.”⁹ Given the broad range of elements affecting sustainability, it is important that claims of sustainability clarify what facet is being addressed. The FTC should consider providing guidance to companies on the data, information, and materials necessary to substantiate claims of sustainability.

b) What evidence is available concerning consumers’ understanding of the term “sustainable”?

Although it is clear that consumers have different understandings of what the term “sustainable” means, it is also clear that there are a significant number of consumers with an interest in sustainability and related concepts. For example, in 2006, it was estimated there is a \$91 million market for voluntary carbon offset sales, sales which notionally can be attributed to interests in carbon emissions reduction as an effort to promote sustainability.¹⁰ This again points to why the commission should not adopt a specific definition of “sustainable” and should instead encourage companies to clarify their claims of sustainability to identify the particular aspects of sustainability being addressed. The lack of a definition of “sustainable” has not stopped the development of organizations defining sustainable products or sustainable concepts. For instance, the Sustainable Packaging Coalition¹¹ boasts over one hundred member organizations. While the Coalition has not defined “sustainability,” it has defined “sustainable packaging” based on specific criteria.

c) What evidence constitutes a reasonable basis to support a sustainable claim?

In general, ACC believes that a reasonable basis for supporting a “sustainable” claim is substantiation of environmental, social, and/or economic improvements or enhancements, as well as balancing current needs with needs of future generations. As noted earlier in the context of multiple environmental claims, ACC also believes that a life cycle approach can provide appropriate support to claims of sustainability.

⁹ 72 Fed.Reg. 3919, 3922-23 (Jan. 26, 2007).

¹⁰ See “Scrutiny Rises Over Carbon-Offset Sales Process”, Jeffrey Ball and Ian Talley, *Wall Street Journal*, Jan. 9, 2008 at A13.

¹¹ www.sustainablepackaging.org

3. Should the Guides be revised to include guidance regarding “renewable” claims? If so, why, and what guidance should be provided? If not, why not? (FTC Question 3)

The Guides should be revised to include guidance regarding “renewable” claims. “Green Chemistry” initiatives are driving attention to renewables,¹² and consumers are interested in purchasing products that have this attribute. Renewability could describe products that are made of and manufactured with renewable resources.

We believe the existing guidance with respect to recyclability claims provides an excellent template for analyzing renewable claims. Section 260.7(d) states that “unqualified claims of recyclability for a product or package may be made if the entire product or package, excluding minor incidental components, is recyclable.” We would extend that analysis to product, package, service, and production process.

a) What evidence supports making your proposed revisions?

Companies across the chemical industry are increasing their use of renewable materials as alternatives to traditional feedstocks. In the polyurethane industry, for example, producing polyols from natural oils such as soy has increased considerably, and is seen as a viable alternative to other feedstocks.¹³

c) What evidence constitutes a reasonable basis to support a renewable claim?

ACC offers the following examples as “renewable” claims that would and would not be deceptive:

- A product is labeled with an unqualified claim “renewable,” without further elaboration. The claim would be deceptive as it does not provide the public with information that can be used to evaluate it.
- A second product is labeled, “uses 20% renewable feedstock,” where the feedstock is derived from natural oils. This claim is not deceptive.

4. The Guides suggest that recycled content be calculated on the annual weighted average of a product. Should the Guides be revised to include alternative methods of calculating recycled content used by a manufacturer across many or all of its product lines? If so, why and what is the appropriate methods of calculation? If not, why not? What evidence supports making your proposed revisions? (FTC Question 5)

Recycled content should continue to be calculated on the annual weighted average of the actual product (or packaging) because it is the most accurate and fair method of determining recycled

¹² Green Chemistry initiatives are underway in a number of academic and research institutions, and under consideration by a number of State government bodies. Many are predicated on a view of Green Chemistry first articulated by Dr. Paul Anastas and Dr. John Warner, in *Green Chemistry: Theory and Practice* (Oxford University Press: New York, 1998). It is important to note that the Twelve Principles addressed by Anastas and Warner are intended as guidance only, and not a list of mandatory requirements for Green Chemistry approaches.

¹³ 2006 End Use Market Survey on the Polyurethane Industry, 2007.

content. Calculating recycled content by this method does not deceive consumers into believing a product or package has more recycled content than it does.

Further, ACC continues to support current FTC guidelines whereby material from the product or packaging manufacturing process (pre-consumer material) and post-consumer material are both counted as recycled content in products or packaging. Allowing pre-consumer material to count as recycled content supports better environmental practices. It will help ensure that these materials, which would otherwise be destined for disposal, be returned to the original manufacturer for processing, thus keeping more materials out of landfills.

Lastly, ACC continues to support current FTC guidelines whereby original manufacturer industrial scrap should not be considered recycled content, since that material is typically re-used in the original manufacturing process and requires minimal processing.

5. The Guides provide that an unqualified claim that a product or package is degradable, biodegradable or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature within a “reasonably short period of time after customary disposal.” Should the Guides be revised to provide more specificity with respect to the time frame for product decomposition? If so, why and what should the time frame be? If not, why not? What evidence supports making your proposed revision? (FTC Question 6)

ACC believes that claims of degradability and biodegradability provide important information to consumers, subject to appropriate qualification and definition. The Guides currently contains a lengthy discussion of the terms “degradable/biodegradable/photodegradable.” The current text provides that an “unqualified claim that a product or package is degradable, biodegradable or photodegradable should be substantiated by competent and reliable scientific evidence that the entire product or package will completely break down and return to nature...within a reasonably short period of time after customary disposal.” The Guides appropriately recognize that such claims should be qualified to avoid consumer deception about (1) the product or package’s ability to degrade in the environment where it is customarily disposed; and (2) the rate and extent of degradation.

ACC continues to support the FTC’s requirement that the entire product or package will completely break down and return to nature. The Commission might include an example that distinguishes between the mere demonstration that a product or package has the “ability to” degrade, as opposed to providing competent and reliable scientific evidence specific to the area of customary disposal (e.g., a specific type of landfill). The former should be inadequate under the Guides.

In addition, since there is no single time period relevant to all products and conditions, it will be very difficult to define with specificity what constitutes a “reasonably short period of time.” A number of resources, such as those available from the Biodegradable Products Institute,¹⁴ address this fundamental issue.

¹⁴ See <http://www.bipworld.org>

The current Guide provides some guidance on claims concerning waste reduction, of course. Given the breadth of claims related to waste reduction, however, ACC believes that the FTC should consider expanding the guidance to address waste issues that arise all along the value chain from manufacturing to disposal. This includes guidance related to claims of waste reduction due to:

- Reduced raw material requirements.
- Reduced use of hazardous materials, including reductions through substitution in a process or through an alternative material.
- Reduced disposal rates due to extensions in product life.

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,

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).

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.

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 energy⁵ 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

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/grmpower/>).

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>).

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.

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

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.

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

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/TCL_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://resourcesolutions.org/mv/docs/Ge_GHG_Product_Standard_V1.pdf).

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.

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: