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Summary of CRS Comments on Proposed Revisions to the FTC Green Guides

Note: this document is only a summary of select comments and should not be considered complete. To review the full text after December 10, 2010, see www.resource-solutions.org/publications.

1. Carbon Offsets – § 260.5

Defining Carbon Offsets and Requiring Disclosures. CRS supports the Commission's proposals not to create definitions or standards for environmental terms like "carbon offset," "carbon footprint," or "carbon neutral," given the rapidly evolving market and a lack of perceived confusion, and not to issue guidance on allowable project types and uniform methodologies for calculating reductions, because this would place the Commission in the role of setting environmental policy.

Timing of Emissions Reductions. CRS supports the Commission's proposed guidance that marketers should qualify their offset claims regarding the timing of reductions, including the proposed language: "to avoid deception, marketers should clearly and prominently disclose if the carbon offset represents emissions reductions that will not occur for two years or longer." Two years is an appropriate threshold.

Substantiating Claims – Tracking - § 260.5(a). CRS supports the proposed guidance that sellers employ reliable accounting methods, and suggests that the Commission add language endorsing the use of third-party GHG project certification programs, electronic registries that track ownership of emissions reductions, and third-party consumer-protection programs that ensure against double selling.

Substantiating Claims – Additionality. CRS supports the Commission's proposals not to establish a specific additionality test or tests, and not to issue guidance on which specific additionality tests sellers must meet to substantiate offset claims, given that there is no consensus on which tests are most appropriate. CRS also agrees that "it is deceptive to claim...that a carbon offset represents an emissions reduction if the reduction, or the activity that caused the reduction, was required by law."

Substantiating Claims – Use of RECs. CRS urges the Commission to refrain from providing guidance on "the use of RECs as a basis for (carbon) offset claims" or "carbon offsets [that] are based on the purchase of RECs," as described by the Commission in § VI.E.2.d and VI.E.4.e of the Notice. Renewable energy is an important source of carbon offsets internationally and in the U.S. While RECs and carbon offsets are two distinct commodities, it is important to distinguish between selling a REC as a carbon offset and using RECs to track and substantiate carbon claims from qualifying renewable energy carbon offset projects.

2. Certifications and Seals of Approval – § 260.6

While some environmental seals are provided by independent certification organizations, many environmental seals do not originate with legitimate independent certifiers. The proposed guidance on the use of such seals will improve the overall value to consumers of certification marks.

Disclosure of Material Connections. The Commission is recommending additional disclosure for seals granted to members of membership-based industry organizations, articulated in § 260.6(b). **CRS does not believe this additional disclosure is necessary with third-party certifications.** As most certification organizations charge for certification services, CRS believes it is not deceptive to display a legitimate certification mark without disclosing that a fee was charged for certification.

Coordination with International Certification Organizations. CRS urges the Commission to look to the International Social and Environmental Accreditation and Labeling (ISEAL) Alliance (www.isealalliance.org) to help define the best practices for certifying organizations.

Substantiation Beyond Certification. CRS agrees with § 260.6(c) that third-party certification does not eliminate a marketer's obligation to ensure that it has substantiation for all claims reasonably communicated by the certification.

Qualification of Environmental Seals. CRS agrees with the Commission's guidance articulated in § 260.6(d) and § 260.6(e), and Example 5, that an unqualified certification likely covers a general benefit claim that is impossible to substantiate.

Self Certification. Self-certification is inherently deceptive and consumers likely assume that all certifications have been conducted by an independent third party with expertise in evaluating the environmental attributes of the product. At a minimum, disclosure language should be included to clarify that the seal was not granted by an independent third party. In particular, companies that sell renewable energy products are not independent certifiers, and should not create an environmental seal resembling a certification mark for the products they sell.

Unverified Claims Scheduled for Subsequent Verification. CRS believes that it is unnecessary to tell customers that a product has not yet been evaluated by the certification organization in cases where the seller is contractually required to comply with the certification organization's standards and the product will be evaluated when possible. Electricity use and delivery are real time events that can't be verified until after the fact and it is logistically impossible to audit supply sales balance of marketers every time a sale is made. Such a requirement would place tremendous burdens on marketers due to the variability of electricity or offset generation and customer sales.

3. Renewable Energy Claims - § 260.14

"Made with Renewable Energy" Claims. The Commission should clarify that the word "power" in § 260.14(a) is intended to refer to electricity only and not to any other energy input. CRS requests the Commission consider allowing more-specific language, such as "assembled with renewable energy" or "manufactured with renewable energy." If the Commission determines that consumers perceive the word "energy" to include both electricity and other fuel inputs, then CRS requests the Commission specifically allow use of the phrases "assembled with 100% renewable electricity" or "manufactured with 100% renewable electricity" for products that use only electricity in their manufacturing process. Specifying the source of the renewable energy, as articulated in § 260.14(b), would be overly burdensome as frequently REC purchases are made from a portfolio of generation sources. **CRS agrees with the proposed addition of § 260.14(d) that it would be deceptive for a marketer to represent or imply that it**

uses renewable energy if the marketer has sold all of the renewable attributes of its generation. By selling RECs a company transfers the right to characterize its electricity as renewable.

Businesses That Also Host Renewable Energy and Sell the RECs. CRS believes “host” is the most accurate and descriptive term for this type of arrangement, and by barring its use, the Commission invites companies to substitute less-desirable synonyms. That said, if a business advertises that it “hosts a renewable power facility” without further explanation, consumers might conclude that company is still using renewable energy. Therefore, CRS suggests that qualifying language be added to host claims explaining that the RECs have been sold and therefore the “host” does not use the renewable energy, such as “company X does not use the renewable energy from the renewable energy project it hosts on its site.”

Large scale generators selling electricity to one purchaser and RECs to another. CRS recommends that information about generation from large-scale renewable generators when the RECs are being sold separately be matched with qualifying statements explaining the amount of non-renewable (or “null”) electricity actually provided to customers, as well as information about the sale of the RECs to a separate organization.

We encourage all stakeholders to participate in the Commission’s review process. The comment period closes on December 10, 2010, after which the Commission will review all comments and prepare a final version of the Guides. For more information, see <http://www.ftc.gov/opa/2010/10/greenguide.shtml>. Comments can be submitted electronically at: <https://ftcpublishcommentworks.com/ftc/revisedgreenguides>.

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