



United States Department of Agriculture

Food Safety and
Inspection Service
1400 Independence
Avenue, SW,
Washington, D.C.
20250

Scott Faber
Senior Vice President
Environmental Working Group
1250 Eye St., NW, Suite 1000
Washington, DC 20005

August 28, 2024

Dear Mr. Faber:

The Food Safety and Inspection Service (FSIS) has completed its review of the Environmental Working Group's (EWG) April 27, 2023, petition (Petition #23-04) and the supplemental information you provided on July 11, 2023. The April 2023 petition requested that FSIS prohibit the "Low-Carbon Beef" claim recently approved by USDA, require third-party verification for similar carbon claims, and require a numerical on-pack carbon disclosure when such claims are made. The July 2023 submission requested that FSIS prohibit "climate-friendly" or similar claims on beef products, require third-party verification of any such claims, and require a numerical on-pack carbon disclosure when such claims are made. EWG argued that many carbon or climate-related claims are inherently misleading because, according to the petition, there is no such thing as "low-carbon" or "climate-friendly" beef. Further, EWG stated that many consumers erroneously assume such claims reflect reductions in actual greenhouse gas emissions through changes in farming practices, rather than carbon offsets. EWG also stated that a lack of a standard definitions for such claims contributes to consumer confusion and that third-party verification is necessary for such claims, given USDA lacks the ability to verify on-farm stewardship practices.

FSIS also received two public comments in response to the petition. First, FSIS received a comment from a company that provides third-party verification services to certify beef cattle that are produced with reduced greenhouse gas emissions.¹ The commenter opposed EWG's request that FSIS require a numerical on-pack carbon disclosure to accompany a reduced emissions label claim. Second, FSIS received a comment from an animal welfare protection organization.² The commenter supported EWG's request that FSIS prohibit the use of "climate-friendly" or similar claims on beef products. The commenter also supported EWG's request that, in the alternative, FSIS require independent third-party verification and a numerical carbon disclosure whenever such claims are made on beef product packaging. As discussed below, after careful consideration of the petition and comments, FSIS has decided to deny the petition.

¹ Comment posted to FSIS Petitions webpage and available at: https://www.fsis.usda.gov/sites/default/files/media_file/documents/23-04-Comments-Submitted-by-Low-Carbon-Technologies.pdf.

² Comment posted to FSIS Petitions webpage and available at: https://www.fsis.usda.gov/sites/default/files/media_file/documents/23-04-ALDF-Comments-01252024.pdf.

1. FSIS will not prohibit the “Low-Carbon Beef” claim recently approved by USDA.

EWG requested FSIS prohibit the “Low-Carbon Beef” claim recently approved by USDA. However, FSIS has never approved a “Low-Carbon Beef” claim for use on a meat product label intended for commerce. The Agency consulted with the USDA Agricultural Marketing Service (AMS) and confirmed that, in 2021, AMS approved a “Low-Carbon Beef” Process Verified Program (PVP) service provider.³ That said, to date, no establishment has used the PVP program to substantiate a “Low-Carbon Beef” claim on an FSIS-regulated product. FSIS will continue to evaluate environment-related claims and approve labeling of products under FSIS jurisdiction that are truthful, not misleading, and otherwise comply with the Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), Egg Products Inspection Act (EPIA) (21 U.S.C. 601–695; 21 U.S.C 451–470; 21 U.S.C. 1031-1056 (hereinafter, “the Acts”) and implementing regulations.

2. FSIS will not prohibit all carbon or climate-related labeling claims.

EWG requested that FSIS prohibit all carbon or climate-related labeling claims, particularly for beef products, given they are inherently misleading. FSIS acknowledges that it has approved certain carbon or climate-related claims (e.g., “climate-friendly” and “carbon neutral”.) These claims describe how the producer maintains or improves the land or otherwise implements environmentally sustainable agricultural practices. FSIS is not aware of any evidence to support the position that all such claims, including those on beef products, are inherently misleading. FSIS notes that, to support its argument that many carbon or climate-related claims are inherently misleading, EWG cited a consumer research study in its July 2023 submission. However, the research did not examine U.S. consumer perceptions of these claims as applied to FSIS-regulated meat, poultry, or egg product labels. The cited study was conducted by the Advertising Standards Authority, which regulates advertising in the United Kingdom (U.K.) to ensure U.K. ads are not misleading, harmful, offensive, or otherwise irresponsible under U.K. law. The study examined U.K. consumer perceptions of carbon or climate-related claims in advertisements (e.g., TV and radio ads) for a variety of products and companies (e.g., cars, energy providers, and airlines). The study did not specifically evaluate consumer perceptions of these claims as applied to food labeling. As such, FSIS is not convinced that the cited research adequately supports the argument that such claims are inherently misleading to U.S. consumers when displayed on FSIS-regulated meat, poultry, or egg product labels.

Moreover, FSIS has a legal obligation to approve any carbon or climate-related claims that are truthful, not misleading, and otherwise comply with the Acts. Under the Acts, the Secretary of Agriculture, who has delegated this authority to FSIS, must approve the labels of meat, poultry, and egg products before they can enter commerce (21 U.S.C. 607(d); 21 U.S.C. 457(c)); 21

³ The USDA PVP is a verification service that offers applicants a means to market their products to customers. Information on the USDA PVP, including a directory of service providers, is available at: <https://www.ams.usda.gov/services/auditing/process-verified-programs>.
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U.S.C. 1036(b)). FSIS evaluates all special statements and claims,⁴ including carbon and climate-related claims, and approves those that provide sufficient information to substantiate that the claims are truthful, not misleading, and otherwise in compliance with the Acts and their implementing regulations. Thus, FSIS will not prohibit claims like “low-carbon beef,” “climate friendly,” or similar claims. Instead, it would review any labels with such claims and supporting documentation to determine whether the claims are used in a manner that is truthful, not misleading, and that comply with the Acts. FSIS also notes that the prohibition of such claims could raise significant free speech issues and could be considered unconstitutional.

EWG also included in the petition some examples (i.e., “net carbon zero,” “carbon neutral,” and “climate-friendly”) of label claims that FSIS has approved for use on specific products under its jurisdiction and that, according to EWG, may be confusing to consumers. FSIS acknowledges that it has previously approved these claims for the specific product labels referenced in the petition. Prior to approval, the Agency reviewed these claims and their substantiating documentation, which included environmental studies and data, and determined that the claims were truthful and not misleading. As stated above, the Agency reviews all environment-related label claims and only approves those that provide adequate substantiating information. FSIS field inspectors also routinely verify that establishments maintain compliant label records on file. The Agency will continue to investigate allegations of product misbranding at federally inspected establishments and, when warranted, take enforcement action.

Although FSIS has decided not to prohibit the use of carbon or climate-related claims as requested, the Agency has updated its guidance on environment-related label claims in response to the specific concerns that consumers may be confused or misled by some of these related claims. On August 28, 2024, FSIS posted a *Federal Register* notice announcing an updated version of the *FSIS Guideline on Substantiating Animal-Raising or Environment-Related Labeling Claims*.⁵ The notice also discussed EWG’s petition. The Agency’s updated guideline now strongly encourages establishments to provide additional documentation, such as environmental data or studies, to FSIS to substantiate their environment-related claims. This change to the environment-related claims guidance will help ensure that claims are truthful and not misleading. As stated in the notice, FSIS recommends that establishments contact the Agency’s Labeling and Program Delivery Staff (LPDS) to discuss potential environment-related claims and the documentation needed to support such claims before submitting a label application for prior approval. Moreover, under current FSIS policy, establishments define their environment-related claims directly on the label. Alternatively, if the establishment has a website where the claim is defined, it may provide the website address (where the relevant standards are

4 9 CFR 412.1(c) requires establishments to submit all labels that include “special statements and claims” to FSIS for review approval prior to use in commerce. “Special statements and claims” are statements, claims, logos, trademarks, and other symbols on labels as defined in 9 CFR 412.1(e). Environment-related claims, including carbon or climate-related claims, are considered “special statements and claims” and, thus, must be reviewed and approved by FSIS prior to use in commerce.

5 <https://www.fsis.usda.gov/policy/federal-register-rulemaking/federal-register-notice>.

posted) on the label rather than directly define the claim. This policy helps ensure that consumers are not confused or misled by such claims.

3. FSIS will not require third party certification of carbon or climate-related claims.

EWG requested that FSIS require third-party verification of carbon or climate-related claims. However, it would not be economically feasible for many small and very small establishments to incur the additional costs of independent third-party certification because of their low sales volumes. FSIS also believes that revising its regulations to require third-party certification would limit adoption of these claims by producers, which would limit the types of products available to consumers. FSIS' current procedure, which provides for label-by-label review of the producer's environmental stewardship protocol, is effective in ensuring that labels bearing carbon or climate-related claims are truthful, not misleading, and otherwise in compliance with the Acts.

While the Agency has determined that it will not revise the FSIS inspection regulations to *require* independent third-party certification for environment-related claims, it recognizes the utility of third-party certifying organizations. In fact, the Agency has updated the *Guideline on Substantiating Animal-Raising or Environment-Related Labeling Claims* to strongly encourage establishments to use a third-party organization to certify and routinely substantiate environment-related claims. The guideline also identifies criteria that ensures a third-party certification organization is credible and reliable. When label claims are certified by a qualified third-party organization, which posts the standards used to define the claim conspicuously on its website, establishments do not need to include statements that fully explain their claims on their labels.

4. FSIS will not require numerical on-pack carbon disclosure when carbon or climate-related claims are made.

EWG requested that FSIS require labels to display a numerical carbon disclosure whenever carbon or climate-related claims are made. However, FSIS has decided not to revise its regulations to require such a disclosure. FSIS believes that its current procedure, which requires FSIS review and approval of any environment-related labeling claims, is effective in ensuring that labels bearing such claims are truthful, not misleading, and otherwise in compliance with the Acts. As discussed above, the updated guideline also now strongly encourages establishments to provide FSIS with additional documentation to substantiate environment-related claims. It also recommends that establishments coordinate with LPDS to discuss potential environment-related claims and the documentation needed to support such claims before submitting a label application for prior approval. This policy will help reduce consumer confusion and ensure that carbon and climate-related claims are adequately substantiated.

Mr. Faber
Page 5

For the reasons discussed above and in the *Federal Register* notice, FSIS has decided to deny your petition. In accordance with our petition regulations, we have posted your petition on the FSIS website (9 CFR 392.6). We intend to post this response as well.

Sincerely,

A handwritten signature in cursive script, reading "Rachel A. Edelstein".

Rachel Edelstein
Assistant Administrator
Office of Policy and Program Development