April 24, 2023

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

Submitted via Regulations.gov to Docket No. FTC 2022-0077-0001

Re: Carbon Offsets and Climate Change

Dear Secretary Tabor:

The Environmental Working Group (EWG) respectfully submits our comments on the Federal Trade Commission (FTC) request for public comment on FTC's Guides for the Use of Environmental Marketing Claims ("Green Guides" or "Guides").

In particular, EWG urges FTC to:

- Prohibit "Low-Carbon Beef" claims.
- Require third-party verification for similar carbon claims.
- Require a numerical on-pack carbon disclosure when such claims are made.

Thank you for your consideration of these comments. Replies and other communication can be directed to sfaber@ewg.org.

Sincerely,

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Summary

Consumers are increasingly seeking to use their buying power to reduce greenhouse gas emissions. Misleading climate claims, including the "Low-Carbon Beef" claim recently approved by the USDA, undermine these efforts by confusing consumers. Many of these claims are not verified by independent, qualified third parties.

To address misleading climate claims, we urge the FTC to reject misleading claims, such as the Low-Carbon Beef claim, and modernize FTC's verification requirements for climate claims to require independent third-party verification of claims. We further urge FTC to require a numerical carbon disclosure whenever such claims are made.

Allowing misleading climate claims, such as a Low-Carbon Beef claim, or allowing climate claims without sufficient verification, violates federal laws which prohibit false and misleading claims.

A. Low-Carbon Beef Claims are Inherently Misleading

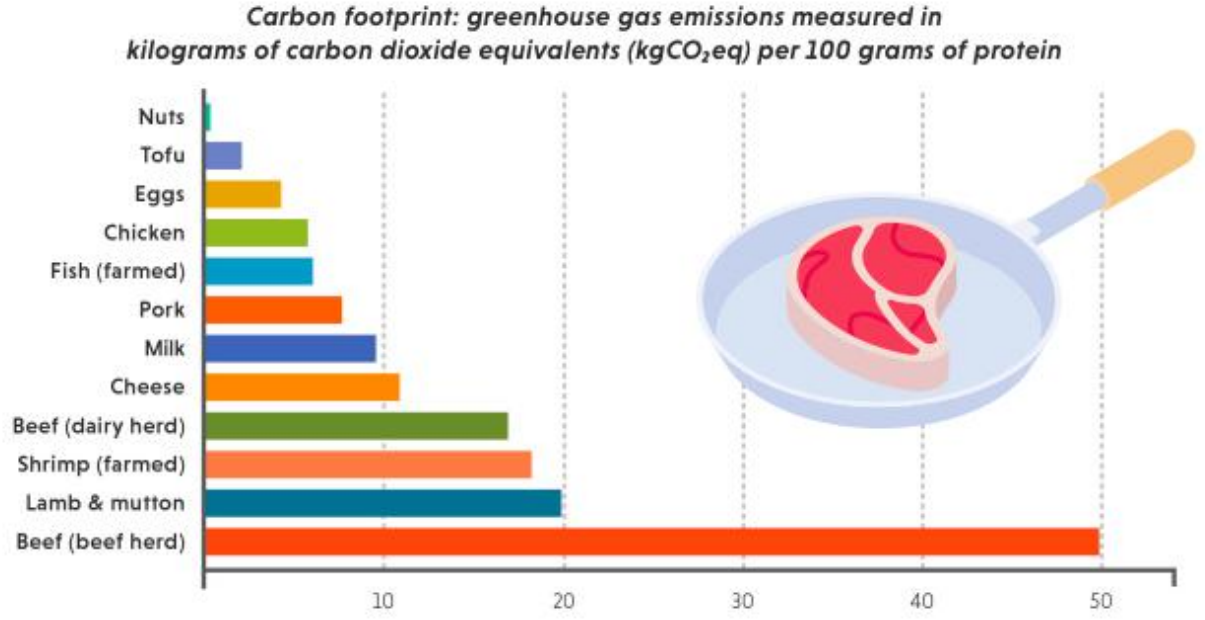
There is no such thing as "Low-Carbon Beef." In fact, no food choice results in more greenhouse gas emissions than choosing beef.[3] However, many consumers viewing the Low-Carbon beef label are likely to assume that beef bearing such a label will help reduce greenhouse gas emissions.

Even the beef which meets the "Low-Carbon" beef standard approved by USDA still results in more greenhouse gas emissions than any other food choice, including any other meat or poultry choice. Making matters worse, beef meeting USDA's "Low-Carbon" beef standard would still result in more emissions than much of the beef produced elsewhere in the U.S. or Canada.[4] By any measure, choosing beef is a bad choice for the climate. Per gram of protein, beef production

[3] Xiaoming Xu et al., *Global Greenhouse Gas Emissions From Animal-Based Foods are Twice Those of Plant-Based Foods*, 2 Nature Food 724 (2021), https://www.nature.com/articles/s43016-021-00358-x.

[4] To meet USDA's "Low Carbon" Beef standard, beef production must reduce emissions by 10% of 26.3 kilograms of carbon dioxide equivalents per kilogram of carcass weight. Matt Reynolds, *Is There Really Such a Thing as Low-Carbon Beef?*, Wired (Jan. 17, 2022), https://www.wired.com/story/low-carbon-beef/. However, a recent study of beef production in the U.S. found beef production resulted, on average, of 21.3 kilograms of carbon dioxide equivalents per kilogram of carcass weight. *Id.* (citing C. Alan Rotz, *Environmental Footprints of Beef Cattle Production in the United States*, 169 Agricultural Systems 1 (2019), https://www.sciencedirect.com/science/article/pii/S0308521X18305675). In Canada, the average is approximately 19 kilograms of carbon dioxide equivalents per kilogram of carcass weight. *Id.* (quoting Karen Beauchemin, an expert on cattle nutrition at Canada's Department of Agriculture and Agri-Food).

results in approximately nine times more greenhouse gas emissions than poultry, six-and-half times more than pork, and 25 times more than soybeans.[5]



Source: EWG analysis of GHG data based on global averages of all production types.[6]

B. Many Carbon Claims are Inherently Misleading.

Consumers are deeply confused by similar carbon claims, including but not limited to Net-Zero, Carbon Neutral, Carbon Negative, Climate Neutral, Net-Zero Carbon, Climate Positive, Climate Neutral, and Carbon Positive. Nearly 6 in 10 consumers either don't know what the term "carbon neutral" means or incorrectly define the term.[7] Among self-identified environmentalists, less than half (45%) correctly identified the meaning of carbon neutrality.[8] Many of these claims are already appearing on products subject to USDA, FTC, and FDA regulation, such as:

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[5] *Id.* (citing J. Poore & T. Nemecek, *Reducing Food's Environmental Impacts Through Producers and Consumers*, 360 Science Journal 987 (2018), https://www.science.org/doi/abs/10.1126/science.aaq0216), https://www.wired.com/story/low-carbon-beef/.

[6] Environmental Working Group, *EWG's Quick Tips for Reducing Your Diet's Climate Footprint* (2022), https://www.ewg.org/sites/default/files/2022-04/EWG_TipSheet_Meat-Climate_C02.pdf.

[7] Eliza Carter, *Most U.S. Consumers Don't Know What 'Carbon Neutral' Means*, Morning Consult (Aug. 2, 2022), https://morningconsult.com/2022/08/02/carbon-neutral-consumer-awareness/.

[8] *Id.*

Silver Fern Farms Net Carbon Zero Angus Beef.[9]

Maple Leaf Carbon Neutral Label on Products.[10]

[9] Silver Fern Farms, https://silverfernfarms.com/us/en/our-range/net-carbon-zero-beef-range (last visited Apr. 23, 2023).

[10] Maple Leaf Foods, https://www.mapleleaffoods.com/sustainability-report/better-food/ (last visited Apr. 23, 2023).

Congra Evol Brand Carbon Neutral Label.[11]

Purely Organic Carbon Neutral Label.[12]

[11] Conagra Brands, https://www.conagrabrands.com/news-room/news-evolr-becomes-first-frozen-brand-to-offer-carbonfreer-certified-carbon-neutral-meals-prn-122805 (last visited Apr. 23, 2023).

[12] Purely Organic, https://www.noblefoods.co.uk/purely-organic-certified-carbon-neutral/ (last visited Apr. 23, 2023).

To avoid misleading or confusing consumers, claims should be measurable and substantiated with verified and well-accepted scientific methods. An effective and trustworthy sustainability claim should include reliability, transparency, relevance, accessibility, and clarity.[13] However, more than half (53%) of American consumers "sometimes" or "never" believe environmental claims.[14] Consumers face hundreds of eco-labels, covering products on dozens of industry categories,[15] but lack the ability to differentiate between these competing claims. Almost 90% of consumers report they are struggling to interpret and understand labels.[16]

In particular, studies show that consumers are often misled by carbon claims. Most consumers believe these claims reflect reductions in actual greenhouse gas emissions, not offsets of these emissions through changes in farming practices.[17] When consumers are told that claims could be made by reliance on offsets in lieu of actual emissions reductions, most consumers report feeling misled.[18] Experts have found the lack of a standard definition for terms like "net zero" and "carbon neutral" contributes to consumer confusion. In the absence of a standard definition, consumers report wanting more information on offsets, including verification measures.[19]

C. Carbon Claims Should be Subject to Third-Party Verification

All carbon claims, including claims which rely on carbon offsets, should be subject to independent third-party verification.

Experts agree that federal regulators currently lack reliable measurement, monitoring, reporting, and verification protocols, or MMRV protocols, for farm stewardship practices. In addition, consumers, NGOs, and academics also do not have access to the data which supports these protocols, sowing doubt with regards to promised environmental benefits.[20] One recent report

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[13] KellyAnn Tsai, *5 Fundamental Guidelines for Product Sustainability Claims*, Transparency-One (Mar. 29, 2018), https://www.transparency-one.com/5-fundamental-guidelines-product-sustainability-claims/

[14] Carlyann Edwards, *What is Greenwashing?*, Bus. News Daily, (Jan. 23, 2023), (citing GreenPrint, *Business of Sustainability Index*, (Mar. 2021), https://greenprint.eco/wp-content/uploads/2021/03/GreenPrint-Business-of-Sustainability-Index_3.2021.pdf), https://www.businessnewsdaily.com/10946-greenwashing.html).

[15] *Ecolabel Index*, Big Room Inc., https://www.ecolabelindex.com/ (last visited Apr. 23, 2023).

[16] Paolo Feser, *Eco-Labels: Why They Matter and What Lies Ahead*, Impakter (Oct. 16, 2022), (citing Czarnezki et al., *Creating Order Amidst Food Eco-Label Chaos*, 25 Duke Envt'l Law and Policy Forum 281 (2015).

[17] The Advertising Standards Authority (ASA) found that in making [carbon neutral and net zero] claims, businesses were not taking an offsetting-first approach – instead, they were believed to have been reducing their absolute emissions in-house. Sarah George, *Consumers Confused Over Net-Zero Claims in Ads, ASA warns*, Edie (Oct. 20, 2022), https://www.edie.net/consumers-confused-over-net-zero-claims-in-ads-asa-warns/ (citing Advert. Standards Auth., *Environmental Claims in Advertising: Qualitative Research Report*, Jigsaw Research (Oct. 2022)).

[18] *Id.* When the ASA explained that brands could technically claim carbon neutrality by offsetting alone, a majority said that they would feel misled.

[19] *Id.* The ASA found that members of the public would like more information on offsetting and emissions reductions, with time frames, from the brands that they shop with.

[20] Kim Novick et al. *The Science Needed for Robust, Scalable, and Credible Nature-Based Climate Solutions in the United States,* (Ind. Univ. O'Neill School of Public and Environmental Affairs, 2022), https://scholarworks.iu.edu/dspace/handle/2022/28264.

concluded, "[T]here are major questions regarding the validity of agricultural-based carbon offset emanating from voluntary carbon markets . . . Simply put, the lack of practical and scientifically sound approaches for confirming specified practices generate claimed benefits, and the lack of access to confirmatory data, pose major systemic impediments to rewarding farmers and ranchers for deploying climate-smart practices."[21]

Companies making carbon claims often rely on models that do not provide a "sound basis for quantifying or monetizing increases in carbon sequestration in soils or decreases in methane and nitrous oxide emissions."[22] In particular, measuring and monitoring soil carbon presents unique challenges, as different regions have widely different soil types, and carbon concentration can vary significantly within a particular field. What's more, soil carbon can take many years to accumulate.[23] These limitations "have eliminated or severely limited the availability of reliable baseline data against which changes in soil concentrations due to good soil management practices can be measured and monitored. Unmoored from baseline conditions, subsequent soil carbon sampling activities using traditional methods arguably offer only random data points that cannot support meaningful conclusions about sequestered carbon quantities or trends."[24] The American Society of Agronomy, in recent comments to the USDA, concluded that "the scientific community currently lacks consensus" on the best approaches to measure soil carbon sequestration, citing the need for better data.[25]

As result, experts recently called on USDA's Natural Resources Conservation Service to rescind the agency's soil carbon protocols.[26] Similar concerns have been raised regarding USDA protocols to assess reductions in nitrous oxide[27] and methane emissions.[28] More data is needed from a more representative set of samples to quantify the benefits of climate-smart practices, whether implemented alone or in combination with other practices.[29] In particular, nitrous oxide emissions vary significantly, and efforts to increase soil carbon can result in increases in nitrous oxide emissions.[30]

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[21] David J. Hayes et al., *Data Progress Need for Climate-Smart Agriculture*, Stanford Law School, Law and Policy Lab, (Apr. 2023) [Hereinafter "Stanford Report"]
[22] *Id.*
[23] Emily Oldfield et al., *Agricultural Soil Carbon Credits: Making Sense of Protocols for Carbon Sequestration and Net Greenhouse Gas Removals* (2021), https://www.edf.org/sites/default/files/content/agricultural-soil-carbon-credits-protocol-synthesis.pdf.
[24] Stanford Report, *supra* note 21, at 13.
[25] American Society of Agronomy et al., *Comment Letter on Request for Public Input About Implementation of the Inflation Reduction Act Funding*, (2022).
[26] Environmental Defense Fund et al., *Joint Comment in Response to Request for Public Input About Implementation of the Inflation Reduction Act Funding,* (Dec. 21, 2022)
[27] Stanford Report, *supra* note 21, at 9.
[28] *Id.*
[29] Novick, *supra* note 20, at 9.
[30] *Id.*

A growing body of evidence has demonstrated that land- and forest-based carbon offsets have produced few emissions reductions and inconsistent forest protection.[31] While methane and nitrous oxide emissions produce most of the emissions from agriculture, few of the offsets issued between 1996 and 2021 reduced emissions of these powerful greenhouse gases.[32] As a result, many offsets used to support carbon claims fail to produce promised benefits. A recent analysis of more than 215,000 offsets over the past decade found that global brands routinely relied on suspect offsets.[33] As a result, many products that carry claims like "climate neutral" or "climate positive" likely result in increases, not decreases, in greenhouse gas emissions.[34]

Consumers are willing to choose or even pay more for products that reduce greenhouse gas emissions. For example, one study of tomatoes and apples found that consumers were willing to pay a premium for products which reduced their carbon footprint.[35] Many younger consumers

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[31] *E.g.*, Shane Coffield and James Randerson, *Satellites Detect No Real Climate Benefit from 10 Years of Forest Carbon Offsets in California*, The Conversation (Dec. 01, 2022), https://theconversation.com/satellites-detect-no-real-climate-benefit-from-10-years-of-forest-carbon-offsets-in-california-193943.
See also Kate Dooley et al., *Carbon Removals from Nature Restoration are No Substitute for Steep Emission Reductions*, 5 One Earth 812 (2022), https://www.cell.com/one-earth/fulltext/S2590-3322(22)00323-2?_returnURL=https%3A%2F%2Flinkinghub.elsevier.com%2Fretrieve%2Fpii%2FS2590332222003232%3Fshowall%3Dtrue. Thales A. P. West et al., *Overstated Carbon Emission Reductions from Voluntarily REDD+ Projects in the Brazilian Amazon*, 117 Proceedings of the Nat'l Academy of Sciences 24188 (2020), https://www.pnas.org/doi/full/10.1073/pnas.2004334117. Thiago Chagas et al., *A Close Look at the Quality of REDD+ Carbon Credits*, Climate Focus, (Mar. 20, 2020), https://climatefocus.com/publications/close-look-quality-redd-carbon-credits/. Grayson Badgley et al., *Systematic over-crediting of forest offsets*, (carbon)plan, (Apr. 29, 2021), https://carbonplan.org/research/forest-offsets-explainer. Lisa Song and Paula Moura, *An Even More Inconvenient Truth: Why Carbon Credits For Forest Preservation May be Worse Than Nothing*, ProPublica (May 22, 2019), https://features.propublica.org/brazil-carbon-offsets/inconvenient-truth-carbon-credits-dont-work-deforestation-redd-acre-cambodia/. Dr. Martin Cames et al., *How Additional is the Clean Development Mechanism: Analysis of the Application of Current Tools and Proposed Alternatives*, Öko-Institut e.V., 11 (Mar. 2016), https://climate.ec.europa.eu/system/files/2017-04/clean_dev_mechanism_en.pdf; Raphael Calel et al., *Do Carbon Offsets Offset Carbon?*, Grantham Rsch. Inst. on Climate Change & the Env't, Ctr. for Climate Change Econ. & Policy, (Nov. 2021), https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/11/working-paper-371-Calel-et-al..pdf. Derik Broekhoff, *Expert Report on CO2 Compensation*, Stockholm Env't Inst., (July 2022), https://www.clientearth.org/media/exyfip2p/productie-4-broekhoff-expert-report-v2-2-final.pdf.

[32] Ruth DeFries et al. *Land Management Can Contribute to Net Zero,* 376 Sci. 1163, 1164 (2022).

[33] Akshat Rathi et al., *Junk Carbon Offsets Are What Make These Big Companies 'Carbon Neutral'*, Bloomberg (Nov. 21, 2022),https://www.bloomberg.com/graphics/2022-carbon-offsets-renewable-energy/#xj4y7vzkg

[34] *See* Joe Sandler Clarke and Luke Barratt, *Top Airlines 'Promises to Offset Flights Rely on 'Phantom Credits'*, Unearthed Greenpeace UK (Apr. 2021), https://unearthed.greenpeace.org/2021/05/04/carbon-offsetting-british-airways-easyjet-verra/.

[35] A significant proportion of consumers are willing to pay a premium for reducing their carbon footprint by choice or requested a discounted price for products with a higher carbon footprint. Christina Lampert, *Will Carbon-Labeled Products Sell More? Here's What We Know*, Sustainable Brands (Feb. 2022), (citing *Id.* (citing Onozaka et al., *Defining Sustainable Food Market Segments: Do Motivations and Values Cary by Shopping Locale?*, 93 Am. J. Agric. Econ. 583-589 (2011)).)

report changing buying behavior to reflect concern about the environment.[36] Other studies found similar results.[37]

Consumers expect that these carbon claims have been verified by an independent third party. However, USDA relies on affidavits by farmers and food companies that are not subject to verification by USDA or a qualified third-party.[38] The FDA does not require any substantiation for carbon claims. In other words, both USDA and FDA currently rely upon the honor system. Fortunately, third-party verification is familiar to USDA and FDA. For example, qualified third parties must certify that organic food meets USDA standards. Experts have identified measurement and monitoring protocols that feature sampling and analytical tools designed to measure changes in carbon, methane, or nitrous oxide levels.[39]

USDA also recognizes that better measurement, monitoring, and verification tools are badly needed before offsets should be permitted to support carbon claims. Indeed, one purpose of the USDA's Partnership for Climate Smart Commodities is to "quantify, monitor, report and verify climate results."[40] In particular, USDA itself finds[41] in the following barriers to the use of carbon claims:

- The lack of standard definitions of climate-smart commodities
- Lack of clear standards for the measurement of climate benefits
- Potential for double counting of benefits.

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[36] 64% of Gen X consumers will spend more on a product if it comes from a sustainable brand, and it jumps to 75% among millennials. GreenPrint, *Business of Sustainability Index*, (Mar. 2021), https://greenprint.eco/wp-content/uploads/2021/03/GreenPrint-Business-of-Sustainability-Index_3.2021.pdf), https://www.businessnewsdaily.com/10946-greenwashing.html.

[37] Most consumers are willing to pay more for food products that exhibit a lower carbon footprint. Maurizio Canavari et al., *Consumer Stated Preferences for Dairy Products With Carbon Footprint Labels in Italy*, 8 Agric. & Food Econ. (2020), https://doi.org/10.1186/s40100-019-0149-1).
See also Mengmeng Xu et al., *Towards Low-Carbon Economy by Carbon Label?: Survey Evidence From First-Tier Cities in China*, 97 Env't Impact Assessment Rev. 106902 (Nov. 2022), https://doi.org/10.1016/j.eiar.2022.106902.
Julia A. Wolfson et al., *Effect of Climate Change Impact Menu Labels on Fast Food Ordering Choices Among US Adults: A Randomized Clinical Trial*, 5 JAMA Netw. Open. 2248320 (2022), doi:10.1001/jamanetworkopen.2022.48320.

[38] Under FSIS Guidelines, the only documentation needed to support such climate-smart claims are written descriptions from the farmers explaining how their process supports their claim. Food Safety and Inspection Service, *Animal Raising Claims Labeling Guidelines Update*, (Sep. 2021), PowerPoint. https://www.fsis.usda.gov/sites/default/files/media_file/2021-09/Animal-Raising-Claims-labeling-and-Non-GMO-slides-2021-09-01.pdf.

[39] Stanford Report, *supra* note 21, at 6.

[40] USDA, *Partnership for Climate Smart Commodities*, https://www.usda.gov/climate-solutions/climate-smart-commodities (last visited on Apr. 4, 2023).

[41] USDA, *Programmatic Environmental Assessment for Climate-Smart Commodities,* (Aug. 26, 2022), https://www.usda.gov/sites/default/files/documents/partnerships-climate-smart-commodities-pea.pdf (last visited on Apr. 4, 2023).

USDA further recognizes that the effects of climate-smart practices vary depending upon the location, landscape position, methods of installation, and the type of activity.[42] To address these uncertainties, USDA is currently creating a "learning network" to incorporate the lessons learned from individual projects. One of the purposes of the program is to "learn from different approaches . . . in deploying climate smart practices [and] innovation in greenhouse gas quantification, monitoring, and verification."[43] Congress also provided $300 million in the Inflation Reduction Act (IRA) to "quantify" and "monitor and track" emissions by collecting "field-based data" to measure the benefits of climate-smart practices funded by the IRA.[44]

D. Any Carbon Claim Should be Accompanied by a Numerical Disclosure.

To avoid consumer confusion and address uncertainties in measurement, any carbon claims should be accompanied by an on-pack numerical carbon disclosure.

Many products already feature an on-pack numerical disclosure, including:

Quron Carbon Footprint Label.[45]

[42] *Id.* at 34.
[43] USDA, *Partnerships for Climate-Smart Commodities FAQs* (Jan. 2023) https://www.usda.gov/climate-solutions/climate-smart-commodities/faqs.
[44] Inflation Reduction Act of 2022 § 21001(a)(1)(B)(iii), 136 Stat. 1818.
[45] Quorn, https://www.quorn.co.uk/company/press/quorn-unveils-carbon-footprint-labelling-of-its-products-and-calls-on-other (last visited Apr. 24, 2023).

Oatly Carbon Footprint Label.[46]

Ty Ling Carbon Label.[47]

[46] Carbon Cloud, https://carboncloud.com/2021/10/07/oatly/ (last visited Apr. 24, 2023).
[47] Ty Ling, https://tyling.com/carbon-label-packaging/ (last visited Apr. 24, 2023).

On-pack numerical disclosures are based upon complex Life Cycle Assessments (LCAs), [48] which should also be carefully reviewed and approved by USDA. Different types of LCAs include ISO Compliant[49], PEF Compliant[50], and a Screening LCAs.[51]

Conclusion

Consumers are increasingly seeking to use their buying power to reduce greenhouse gas emissions. Misleading climate claims, including the "Low-Carbon Beef" claim recently approved by the USDA, undermine these efforts by confusing consumers. Many of these claims are not verified by independent, qualified third parties.

To address misleading climate claims, we urge FTC to reject misleading claims, such as the Low-Carbon Beef claim, and modernize FTC's requirements for climate claims to require independent third-party verification of claims. We further urge FTC to require a numerical carbon disclosure whenever such claims are made.

Allowing misleading climate claims, such as a Low-Carbon Beef claim, or allowing climate claims without sufficient verification, violates federal laws which prohibit false and misleading claims, including section 5 of the FTC Act.

[48] Eco Matters, *What is an LCA Process?*, https://www.ecomatters.nl/services/lca-epd/life-cycle-assessment/ (last visited Apr. 23, 2023).
[49] An ISO-Compliant LCA follows all the steps recommended by ISO standards 14040 and 14044 and is grounded in a detailed LCA report. Quantis, *Guidelines for Credible, Science-driven Environmental Footprint Claims*, (2022), https://quantis.com/wp-content/uploads/2022/10/environmental-footprint-claims-guidance-reportquantis2022.pdf.
[50] *Id.*
[51] *Id.*