

July 11, 2023

FSIS Docket Clerk
Department of Agriculture
Food Safety and Inspection Service
Room 2534 South Building
1400 Independence Avenue, S.W.
Washington, DC 20250-3700

Re: Petition to Prohibit “Climate-Friendly” Claims on Beef Products

The Environmental Working Group respectfully submits this petition to the U.S. Department of Agriculture (USDA) to:

- Prohibit “climate-friendly” claims or similar claims on beef products.
- Require third-party verification for “climate-friendly” and similar claims.
- Require a numerical on-pack carbon disclosure when such claims are made.

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

Sincerely,

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Summary

We urge the U.S. Department of Agriculture to reject misleading climate-related food marketing and labeling, such as “climate-friendly” claims on beef products, and to modernize the USDA’s verification system to require independent third-party verification of such claims. We further urge the USDA to require a numerical carbon disclosure whenever such claims are made.

Allowing misleading climate claims, including “climate-friendly” claims on beef products, or allowing climate claims without sufficient verification and an accompanying numerical carbon disclosure, violates federal laws which prohibit false and misleading claims.

About the Petitioner

The **Environmental Working Group** (EWG) is a public interest, nonprofit, non-partisan organization, with offices in Washington, D.C., Sacramento, California, and Minneapolis, Minnesota. EWG aims to empower people to live healthier lives in a healthier environment, and for over two decades, it has worked to protect human health and the environment through breakthrough research and education, encouraging consumer choice and civic action.

Full Statement of the Action Requested

Pursuant to 5 U.S.C. 553 (e), 7 CFR § 1.28, and 9 C.F.R. § 392.5, the Petitioner requests that the USDA agency the Food Safety and Inspection Service (FSIS) take the following actions:

- 1) Prohibit “climate-friendly” claims or similar claims on beef products;
- 2) Require independent third-party verification of any climate claims; and
- 3) Require a numerical carbon disclosure whenever such claims are made.

Basis for the Action Requested

A. Climate-Friendly Beef Claims Are Inherently Misleading

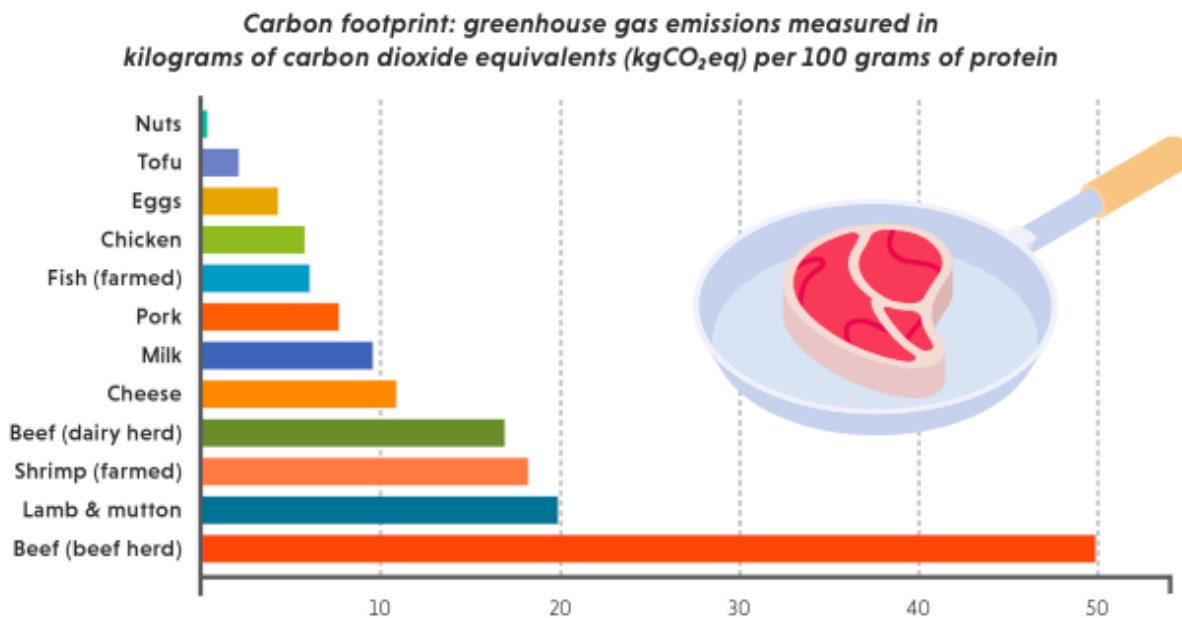
There is no such thing as “climate-friendly” beef. In fact, no food choice results in more greenhouse gas emissions than beef.² However, many consumers viewing “climate-friendly” claims, like those made by Brazen Beef,³ are likely to assume that buying beef bearing such a label will help reduce greenhouse gas emissions.

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

³ Brazen Meats, <https://brazenmeats.com/> (retrieved on July 4, 2023).

Even the beef that meets the “Low-Carbon” beef standard recently approved by the USDA still results in more greenhouse gas emissions than any other food choice, including any other meat or poultry. Making matters worse, beef meeting the USDA’s “Low-Carbon” beef standard would still result in more emissions than much of the other beef produced in the U.S. or Canada.⁴

By any measure, consuming beef is a bad choice for the climate. Per gram of protein, beef production results in approximately nine times more greenhouse gas emissions than poultry, six-and-a-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

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, 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).

⁵ *Id.* (citing J. Poore & T. Nemecek, *Reducing Food’s Environmental Impacts Through Producers and Consumers*, 360 *Science* J. 987 (2018), <https://www.science.org/doi/abs/10.1126/science.aag0216>), <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.

B. Many Carbon Claims Are Inherently Misleading

Consumers are deeply confused by similar carbon claims, including but not limited to Climate-Friendly, Net-Zero, Carbon-Neutral, Carbon-Negative, Climate-Neutral, Net-Zero Carbon, Climate-Positive, and Carbon-Positive. Many of these claims are already appearing on products subject to USDA regulation, such as:



Studies show that consumers are often misled by claims like those being made by Brazen Beef. Most consumers believe these claims reflect reductions in actual greenhouse gas emissions, not offsets of these emissions through changes in farming practices.⁷ When consumers are told that claims could be made by reliance on offsets in lieu of actual emissions reductions, most consumers report feeling misled.⁸

Experts have found the lack of standard definitions for terms like “climate-friendly,” “net-zero,” and “carbon-neutral” contributes to consumer confusion. In the absence of such guidelines, consumers report wanting more information, including verification measures.⁹

⁷ The Advertising Standards Authority (ASA) found through a survey that in making [carbon neutral and net zero] claims, businesses were not believed to be 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)).

⁸ *Id.* When the ASA explained that brands could technically claim carbon neutrality by offsetting alone, a majority said that they would feel misled.

⁹ *Id.* The ASA found that members of the public would like more information on offsetting and emissions reductions, with accompanying time frames, from the brands that they shop with.

C. Brazen Beef’s “Climate-Friendly” Claims Are Misleading

Brazen Beef’s claims “our greenhouse gas emissions are already down 10%.” In support of this claim, Brazen claims to have “built a model that backs it up”:¹⁰

We worked with researchers, technical experts, and suppliers to track and reduce emissions from pasture to production as compared to emissions for conventional beef. Animals chosen for the program are raised with emissions reduction practices in mind. Before being fully accepted into the program, the emissions of each animal are evaluated to ensure they meet the base emissions and program qualification.¹¹

Brazen Beef says it relies on “innovative, reliable farmers who raise crops using agricultural practices that can help reduce GHG emissions,” citing changes in tillage, the adoption of cover crops, and better nutrient management.¹² Its ranchers, Brazen Beef says, must also “undergo a qualification process” but can also “customize the practices based on individualized needs,” including practices such as pasture rotation.¹³

Brazen Beef’s ranchers must meet the criteria of Tyson’s Climate-Smart Beef Program, which includes an auditing process and data sharing that is “used in a model that estimates GHG emissions.”¹⁴ Tyson’s Climate-Smart Beef Program also says it aims to “work with enrolled producers...to integrate environmentally responsible agricultural practices.”¹⁵

Neither Brazen or Tyson identifies the farmers or ranchers adopting these practices, names the practices that have been adopted, or produces data demonstrating that these practices have reduced the nitrous oxide emissions caused by fertilizing animal feed or the methane emissions caused by animals and their manure.

Neither Brazen or Tyson describes how these practices have been “customized” or the effect these changes have had on GHG emissions. While Tyson claims to work with Adams Land & Cattle, the Nebraska feedlot operator provides no information on the steps taken to reduce emissions from animals and their waste, or steps taken to require change in nutrient management by animal feed suppliers.¹⁶ The model “that backs it up” is unavailable to the public.

To verify these claims, Tyson contends that the company “can now track beef emissions at the individual animal level” and that the data is collected and verified through third-party auditors, such as Where Foods Comes From, Inc. However, no information on data collection or verification is publicly available from Where Food Comes From.¹⁷

¹⁰ Brazen Beef, <https://brazenmeats.com/our-process/>, (retrieved on July 4, 2023).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tyson Foods, Climate-Smart Beef Program, <https://www.tysonfoods.com/climate-smart-beef-program>, (retrieved on July 4, 2023).

¹⁶ Adams Land and Cattle, <https://www.adamslandandcattle.com/programs/brazenbeef/> (retrieved on July 4, 2023).

¹⁷ Where Food Comes From, <https://www.wherfoodcomesfrom.com/verification>, (retrieved on July 4, 2023).

D. Carbon Claims Should Be Subject to Third-Party Verification

Experts agree that the USDA currently lacks reliable measurement, monitoring, reporting, and verification protocols, or MMRV protocols, to accurately predict the GHG impacts of different farm stewardship practices. However, neither Brazen nor Tyson address the uncertain GHG benefits associated with better pasture management or practices like conservation tillage and cover crops.

In addition, consumers, non-governmental organizations, and academics do not have access to the data supporting these protocols, sowing doubt with regard to promised environmental benefits.¹⁸

One recent report from Stanford researchers concluded, “Simply put, the lack of practical and scientifically sound approaches for confirming specified practices generates claimed benefits, and the lack of access to confirmatory data poses major systemic impediments to rewarding farmers and ranchers for deploying climate-smart practices.”¹⁹

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.”²⁰ 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.

These limitations, the Stanford report explains,

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.²¹

In comments recently submitted to the USDA, the American Society of Agronomy concluded that “the scientific community currently lacks consensus” on the best approaches to measure soil carbon sequestration, citing the need for better data.²² Similar concerns have been raised regarding USDA protocols to assess reductions in nitrous oxide²³ and methane emissions.²⁴

¹⁸ 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>.

¹⁹ David J. Hayes et al., *Data Progress Need for Climate-Smart Agriculture*, Stanford Law School, Law and Policy Lab, (Apr. 2023) [Hereinafter “Stanford Report”].

²⁰ *Id.*

²¹ Stanford Report, *supra* note 15, at 13.

²² American Society of Agronomy et al., *Comment Letter on Request for Public Input About Implementation of the Inflation Reduction Act Funding* (2022).

²³ Stanford Report, *supra* note 15, at 9.

²⁴ *Id.*

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.²⁵ Nitrous oxide emissions in particular vary significantly, and efforts to increase soil carbon can result in increases in nitrous oxide emissions.²⁶

Consumers assume that companies' carbon claims have been verified by an independent third party. However, the USDA relies on affidavits by farmers and food companies that are not subject to verification by the USDA or a qualified third-party.²⁷ In other words, the USDA currently relies upon the honor system. Proposals to “strongly encourage” farmers to use third-party audits, as the USDA recently proposed for animal raising claims, are not sufficient to earn the trust of consumers or to ensure company accountability.

Fortunately, third-party verification is familiar to the USDA. 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.²⁸ The USDA recognizes that better measurement, monitoring, and verification tools are badly needed to support carbon claims. Among others, the USDA has identified²⁹ the following barriers to the use of carbon claims:

- The lack of standard definitions of climate-smart commodities;
- The lack of clear standards for the measurement of climate benefits; and
- The potential for double counting of benefits.

The USDA recognizes that the effects of climate-smart practices vary depending upon the location, landscape position, methods of installation, and type of activity.³⁰ To address these uncertainties, the 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 in] innovation in greenhouse gas quantification, monitoring, and verification.”³¹

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.³²

²⁵ Novick, *supra* note 14 at 9.

²⁶ *Id.*

²⁷ 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.

²⁸ Stanford Report, *supra* note 15, at 6.

²⁹ 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).

³⁰ *Supra* note 33, at 34.

³¹ USDA, *Partnerships for Climate-Smart Commodities FAQs*, (Jan. 2023) <https://www.usda.gov/climate-solutions/climate-smart-commodities/faqs>.

³² Inflation Reduction Act of 2022 § 21001(a)(1)(B)(iii), 136 Stat. 1818.

E. Any Carbon Claim Should Be Accompanied by a Numerical Disclosure

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

On-pack numerical disclosures are based upon complex Life Cycle Assessments (LCAs),³³ which should be carefully reviewed and approved by both the USDA and the Environmental Protection Agency. Different types of LCAs include ISO Compliant,³⁴ PEF Compliant,³⁵ and Screening LCAs.³⁶

Legal Basis for Requested Action

U.S. citizens have the right to petition the government to add, amend, or repeal rules under the First Amendment of the U.S. Constitution and the Administrative Procedures Act (5 U.S.C. 553(e)) and may petition to amend USDA rules under 7 CFR 1.28 and 9 CFR 392.5.

Under this authority, the petitioner requests that the Secretary of Agriculture require third-party verification of carbon claims, including the “climate-friendly” claim being made by Brazen Beef, and require a numerical carbon disclosure when such claims are made.

Requiring third-party verification and a numerical carbon disclosure are permitted under the *Central Hudson* test. Under the *Central Hudson* test, a four-part assessment is used to determine to what extent commercial speech is protected by the First Amendment.³⁷

First, the court must determine whether the speech in question is protected commercial speech. Protected commercial speech must “concern lawful activity and not be misleading.”³⁸ Second, the USDA must show it has a substantial interest in controlling the speech. Protecting consumers from fraud, deception, and coercion are substantial state interests.³⁹ Third, the USDA must show that the regulation directly advances the government’s stated substantial interest.⁴⁰

³³ Eco Matters, *What is an LCA Process?*, <https://www.ecomatters.nl/services/lca-epd/life-cycle-assessment/> (last visited Apr. 23, 2023).

³⁴ 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://25337892.fs1.hubspotusercontent-eu1.net/hubfs/25337892/environmental-footprint-claims-guidance-reportquantis2022.pdf>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ The four-part test under *Central Hudson* is (1) whether the speech is protected at all, (2) whether the government has a substantial interest in controlling the speech, (3) whether the regulation advances the substantial government interest, and (4) whether the government’s regulation is necessary to serve that substantial interest.

³⁸ Mackenzie Battle & Cydnee Bence, *How Does the First Amendment Apply to Food and Supplement Labels*, Ctr. for Agric. & Food Sys., (citing *Central Hudson*, 447 U.S. at 564), <https://labelsunwrapped.org/wp-content/uploads/2021/06/First-Amendment-Food-Labeling-Issue-r5.pdf>.

³⁹ *Id.* (citing *Edenfield v. Fane* at 768; *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 484 (1995)).

⁴⁰ *Id.* (citing *Central Hudson*, 447 U.S. at 565).

Finally, the scope of the regulation must be necessary to serve the government’s interest, that is, the government must ensure that the law does not “burden substantially more speech than necessary.”⁴¹ The government need not use the *least* restrictive means.⁴² The government must show a “fit between the legislature’s ends and the means chosen to accomplish those ends, a fit that is not necessarily perfect, but reasonable.”⁴³

Requiring a mandatory numerical carbon disclosure when carbon claims are made is permitted under the *Zauderer* test. Under *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, commercial speech that is not *false* or *deceptive* and does not concern unlawful activities may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest.⁴⁴

Where an action compels disclosure of “purely factual and uncontroversial information,” the law need only be “reasonably related to the [government’s] interest in preventing deception of consumers to pass under the First Amendment.”⁴⁵ Regulators and courts can require businesses to disclose undisputedly factual and ideologically neutral information about their products, such as a numerical carbon label.

Under *American Meat Institute v. USDA*,⁴⁶ the D.C. Circuit held that *Zauderer* applies to “factual and uncontroversial” disclosure mandated by the government for *any purpose*.⁴⁷ By promoting “the robust and free flow of accurate information,” factual disclosure mandates further the interests protected by the commercial speech doctrine.⁴⁸ In particular, the court found that a compelled disclosure must be “purely factual and uncontroversial.”

Like the facts disclosed in the *American Meat Institute* case, which conveyed facts that are “directly informative of intrinsic characteristics of the product,” the disclosure we propose is not one-sided,⁴⁹ nor does a numerical carbon disclosure convey messages that are biased against or are expressly contrary to a corporation’s views.⁵⁰

⁴¹ *Id.* (citing *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 478 (1989)).

⁴² *Id.* (citing *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 479 (1989)).

⁴³ *Id.* (citing *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 478 (1989)). At 480 (quoting *Posadas de Puerto Rico Assoc. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 341 (1986), overruled by *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (internal quotations omitted)).

⁴⁴ *Zauderer v. Office of Disc. Counsel*, 471 U.S. 626, 637–638.

⁴⁵ *Id.* at 651.

⁴⁶ *Am. Meat. Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18 (D.C. Cir. 2014) (en banc).

⁴⁷ *Id.* at 22.

⁴⁸ *Id.* (quoting *AMI*, 760 F.3d at 29 (quoting *Nat’l e;ec. Mfrs. Ass’n v. Sorrel*, 272 F.3d 104, 114 (2d Cir. 2001)).

⁴⁹ *AMI*, 760 F.3d at 24–25 (citing *Nat’l Ass’n of Mfrs. v. NLRB*, 717 F.3d at 958, describing one party’s argument that disclosures were “one-sided...favoring unionization”).

⁵⁰ *AMI*, 760 F.3d at 25 (“*Zauderer* does not leave the state “free to require corporations to carry the messages of third parties, where the messages themselves are biased against or are biased against or are expressly contrary to the corporation’s views.” (citing *Pacific Gas & Electric Co. v. Public Utilities Commission*, 475 U.S. 1, 15–16 n.12, 106 S. Ct. 903, 89 L. Ed. 2d 1 (1986)).