

April 23, 2023

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610
Washington, DC 20580

Submitted to Regulations.gov, Docket FTC-2022-0077-0001

Re: Green Guides Review, Matter No. P954501

Food & Water Watch and the 59 undersigned organizations (collectively, “Commenters”) respectfully submit these comments to the Federal Trade Commission (“FTC”) regarding its decennial review of the Guides for the Use of Environmental Marketing Claims (“Green Guides”).¹ It is increasingly important to consumers that their purchasing decisions do not support negative environmental and social impacts, and conversely that their decisions support positive ones. As such, consumer attitudes and expectations regarding the environmental impacts of the products they purchase are evolving. Many consumers now seek out products with environmental attributes communicated through sustainability, climate, and recyclability claims. Unfortunately, recognizing these changing attitudes, two of the most polluting industries in the United States—the industrial agriculture and fossil fuel sectors—have opted to invest in deceptive marketing instead of meaningfully changing their practices to reduce their environmental footprints. The result is a flood of false and misleading claims from these industries. Given the sharp rise in these unfair and deceptive practices, updated Green Guides and rigorous enforcement of the Federal Trade Commission Act (“FTCA” or “the Act”) are more important than ever.

As Chair Khan’s statement accompanying the FTC’s request for public comment aptly recognizes, when environmental marketing does not match the actual climate and sustainability attributes of the marketed product or brand, it “puts honest companies, who bear the costs of green business practices, at a competitive disadvantage [and] harms consumers who want to make conscientious decisions about what products to buy and what businesses to support.”² And because this type of marketing involves claims regarding credence attributes, consumers are largely unable to independently verify them when investigating options, making purchasing decisions, or using the products after purchase.³ This makes FTC oversight especially critical to protect consumers and hold deceptive marketers accountable.

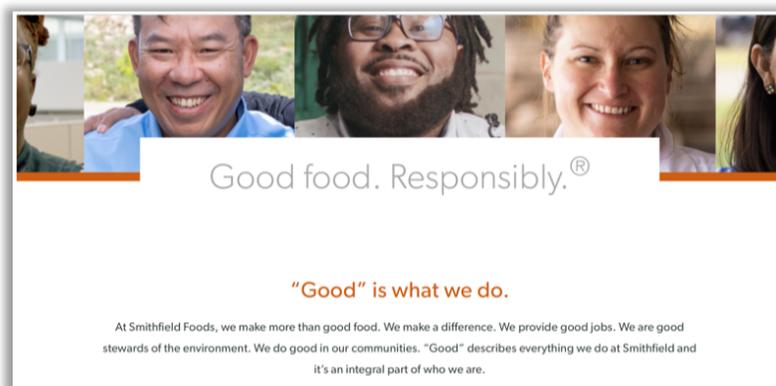
¹ FTC, Guides for the Use of Environmental Marketing Claims, 87 Fed. Reg. 77,766 (Dec. 20, 2022), <https://www.federalregister.gov/documents/2022/12/20/2022-27558/guides-for-the-use-of-environmental-marketing-claims>.

² *Id.* at 77,770.

³ See Peggy Schrobback et al., *Food Credence Attributes: A Conceptual Framework of Supply Chain Stakeholders, Their Motives, and Mechanisms to Address Information Asymmetry*, 12(3) FOODS 538 (2023), <https://www.mdpi.com/2304-8158/12/3/538>.

Commenters request that the FTC revise and update the Green Guides to include a sustainability for food products section, discourage misleading climate claims that lack real benefits, and refocus recyclable claims on where products actually end up. Additionally, Commenters emphasize that these environmental marketing claims are made across various media and platforms including internet webpages, social media, and blogs. Oftentimes these claims are not about a specific product but are intended to communicate brand attributes to consumers with the intent that it will induce specific purchasing decisions. Marketing in these ways can be material to consumers.⁴ In fact, building brand image, awareness, and loyalty are widely accepted as important aspects to successful consumer engagement and to driving consumers towards particular products.⁵

The behavior of large companies with sophisticated marketing strategies further indicates that making environmental claims in this way is effective at driving consumer behavior. For example, Smithfield Foods' internet homepage (shown below) does not emphasize any of its particular products or a product's concrete attributes such as price or quality—instead it displays its tagline “Good food. Responsibly.®” followed by environmental marketing claims: “We are good stewards of the environment. We do good in our communities.”⁶



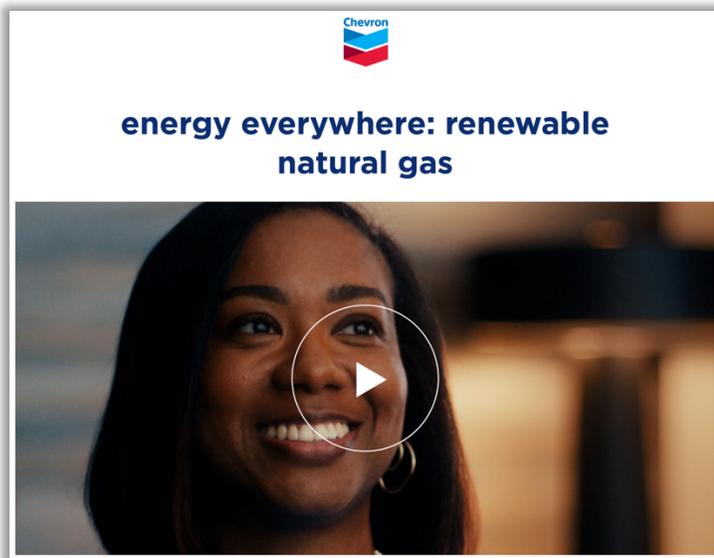
⁴ A.N. Schiano et al., *Consumer Perception of the Sustainability of Dairy Products and Plant-Based Dairy Alternatives*, 103(12) J. DAIRY SCI. 11228 (Dec. 2020),

<https://www.sciencedirect.com/science/article/pii/S0022030220308225> (finding that consumers look for sustainability information across different media: product labels (82.3%), websites not affiliated with food companies (49.2%), company websites (48.9%), word of mouth (45.3%), newspapers or magazines (43.7%), government websites (36.7%), blogs (28.3%), social media accounts of organizations not affiliated with food companies (24.1%), and company social media profiles (19.9%)).

⁵ E.g., Sean Peek, *The Science of Persuasion: How to Influence Consumer Choice*, BUS. NEWS DAILY (updated Feb. 21, 2023), <https://www.businessnewsdaily.com/10151-how-to-influence-consumer-decisions.html>.

⁶ Smithfield Foods, <https://www.smithfieldfoods.com/> (last visited Apr. 19, 2023 and on file with Food & Water Watch). For a litany of similar, misleading environmental claims made by Smithfield, see Complaint for Action to Stop False or Deceptive Advertising made by Smithfield Foods (filed Feb. 3, 2021) (hereinafter “Smithfield Complaint”), https://www.foodandwaterwatch.org/wp-content/uploads/2021/08/2021.02.03_Smithfield-FTC-complaint-filed.pdf.

Likewise, fossil fuel companies are engaged in aggressive brand marketing designed to convince consumers of their brand’s environmental attributes. For example, Chevron’s internet homepage is designed to convey positive environmental messages to consumers, recently beginning with: “energy everywhere: renewable natural gas.”⁷ Further down the page, Chevron touted its “methane reduction manager” and its efforts to “explore carbon capture and storage projects.”⁸ Again, Chevron does not bother to market its primary products or services (fossil fuel production and distribution), instead opting to push environmental claims that greenwash its brand image.



The FTC’s authority extends to these brand greenwashing campaigns designed to induce environmentally minded consumers to choose their brand’s products or services,⁹ and the FTCA specifically extends the Act’s prohibitions to “any means” of false advertisement.¹⁰ The existing Green Guides appear to acknowledge this.¹¹ Therefore, the FTC should make clear that the Green Guides extend to such claims whether they are linked to specific products or are used to greenwash a brand’s image to manipulate consumer perception and therefore drive purchasing decisions. This reality also should inform the FTC’s enforcement efforts.

Commenters’ Responses to Specific Types of Environmental Claims

Aggressive greenwashing campaigns are on the rise and in response the FTC needs to strengthen the Green Guides to keep pace. Commenters request the following revisions to the

⁷ Chevron, <https://www.chevron.com/> (last visited Apr. 10, 2023, and on file with Food & Water Watch).

⁸ *Id.*

⁹ 15 U.S.C. §§ 52–53; *see FTC v. Neovi, Inc.*, 604 F.3d 1150, 1152 (9th Cir. 2010) (“[FTC] has broad powers under the FTC Act to prevent businesses from engaging in unfair or deceptive practices.”); *FTC v. Brown Shoe Co.*, 384 U.S. 316, 320–21 (1966) (“the Commission has broad powers to declare trade practices unfair”).

¹⁰ 15 U.S.C. § 52(a)(2) (prohibiting any false advertisement “[b]y any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.”).

¹¹ 16 C.F.R. § 260.1(c).

Green Guides to help rein in some of the most environmentally harmful industries and their products and practices from being marketed as sustainable, climate friendly, or recyclable.

I. The FTC should not allow greenwashing through misleading sustainability claims by industrial agriculture companies.

Consumers are very concerned about the environmental footprint of the food they purchase, and this is especially true for meat, poultry, and dairy products. As industrial animal agriculture—commonly known as factory farming—has become dominant in the U.S. food system, the environmental, climate, and public welfare impacts associated with that mode of production also have become major issues of public concern. For example, a national survey conducted by the Johns Hopkins Bloomberg School of Public Health’s Center for a Livable Future found that 8 out of 10 respondents expressed concern about air and water pollution, worker safety issues, and health problems caused by factory farms.¹² These concerns have manifested as consumer sentiments and a rise in consumers seeking out food brands and products with greater “sustainability” attributes.¹³ Large agribusiness companies have taken note and are increasingly using sustainability marketing to appeal to these consumers. Unfortunately, too often this marketing does not match reality. Instead of producing products with the sustainability attributes consumers are seeking out, companies are flooding the marketplace with false and misleading claims.

The FTC requests comments on whether it should include “sustainable” claims in the Green Guides, and if so, what specific guidance should it provide.¹⁴ Commenters answer yes—including sustainability claims in the Green Guides is critical. Industrial agriculture companies like Smithfield Foods are some of the worst polluters in the United States, but they are also some of the most prolific disseminators of false and misleading greenwashing. To address this, the FTC should provide guidance with a new sustainability of food claims section in the Green Guides as explained below.

¹² Johns Hopkins Center for a Livable Future, *National Survey on Concentrated Animal Feeding Operations (CAFOs)* (Dec. 10, 2019), <https://clf.jhsph.edu/sites/default/files/2019-12/CAFO-moratorium-survey-results.pdf>.

¹³ See, e.g., McKinsey & Co., *Consumers Care About Sustainability – and Back It Up with Their Wallets* (Feb. 6, 2023), <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets>; Shanshan Li & Zein Kallas, *Meta-Analysis of Consumers’ Willingness to Pay for Sustainable Food Products*, 163 *APPETITE* 105,239 (Aug. 2021), <https://www.sciencedirect.com/science/article/abs/pii/S019566632100146X> (Aug. 2021); Kyungsoo Nam et al., *Analysis of Consumer Preference for Milk Produced through Sustainable Farming: The Case of Mountainous Dairy Farming*, 12(7) *SUSTAINABILITY* 3039 (Apr. 2020), <https://www.mdpi.com/2071-1050/12/7/3039>; Jay J. Duckworth et al., *Do Front-of-Pack ‘Green Labels’ Increase Sustainable Food Choice and Willingness-to-Pay in U.K. Consumers?*, 371 *J. CLEANER PRODUCTION* 133,466 (Oct. 2022), <https://www.sciencedirect.com/science/article/pii/S0959652622030475>; Ellen J. Van Loo et al., *Consumers’ Valuation of Sustainability Labels on Meat*, 49(1) *FOOD POLICY* 137 (Dec. 2014), <https://www.sciencedirect.com/science/article/abs/pii/S0306919214001092>; Ildiko Kovacs & Eva Reka Keresztes, *Perceived Consumer Effectiveness and Willingness to Pay for Credence Product Attributes of Sustainable Foods*, 14(7) *SUSTAINABILITY* 4338 (2022), <https://www.mdpi.com/2071-1050/14/7/4338>.

¹⁴ *Guides for the Use of Environmental Marketing Claims*, 87 Fed. Reg. at 77,769.

A. *Industrial agriculture companies aggressively market environmentally harmful products and brands with “sustainability” claims that are material to consumers.*

Consumer sentiment regarding sustainability has shifted since 2012 when the FTC last considered this issue, with more consumers concerned about the sustainability attributes of products they buy, especially when it comes to food products.¹⁵ Research shows that consumers are willing to pay more for products they perceive as having sustainability attributes,¹⁶ meaning that when a company engages in false or misleading sustainability claims it harms both consumers and competitors. To take advantage of this shift, some of the most polluting industrial agriculture companies in the United States are using aggressive sustainability marketing campaigns to dupe consumers. This combination of rising consumer interest, claims that are material to how many consumers behave, and dominant agribusinesses using false or misleading claims to capitalize on those changing consumer expectations compels the FTC to act.

Decades of research shows that industrial agriculture, and factory farming specifically, is a major source of air and water pollution.¹⁷ Products produced from factory farmed animals are inextricably linked to these pervasive environmental and public health harms. Factory farming also contributes to the decline of rural economies, causes pervasive nuisances for neighbors, and leads to the decimation of smaller-scale, family farmers.¹⁸ In other words, producing meat, poultry, and dairy products from factory farms is the opposite of any plausible consumer understanding of “sustainable.”

Nonetheless, some of the largest factory farming companies are disseminating a steady stream of false and misleading advertising designed to convince consumers otherwise with a variety of sustainability claims. Smithfield Foods is an excellent example of this aggressive

¹⁵ See *supra* note 13.

¹⁶ Shanshan Li & Zein Kallas, *supra* note 13 (finding an overall willingness-to-pay (WTP) 29.5% more for sustainable products); *Consumers Care About Sustainability – and Back It Up with Their Wallets*, *supra* note 13.

¹⁷ E.g., JoAnn Burkholder et al., *Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality*, 115(2) ENV'T HEALTH PERSPS. 308 (Feb. 2007), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1817674/>; Carrie Hribar, Nat'l Assn. of Local Boards of Health, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities* (2010), https://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf; Sarah Kaplan, *Air Pollution from Farms Leads to 17,900 U.S. Deaths Per Year, Study Finds*, WASH. POST (May 10, 2021), <https://www.washingtonpost.com/climate-environment/2021/05/10/farm-pollution-deaths/>; Env't Integrity Project, *Raising a Stink: Air Emissions from Factory Farms*, http://environmentalintegrity.org/pdf/publications/CAFOAirEmissions_white_paper.pdf; Nat'l Cancer Institute, Division of Cancer Epidemiology & Genetics, *Outdoor Air Pollution from Intensive Animal Agriculture*, <https://dceg.cancer.gov/research/what-we-study/pollution-animal-ag>; Doug Gurian-Sherman, Union of Concerned Scientists, *CAFOs Uncovered: The Untold Cost of Confined Animal Feeding Operations* (Apr. 2008), <https://www.ucsusa.org/sites/default/files/2019-10/cafos-uncovered-full-report.pdf>; Jonathan Hall et al., *Environmental Injustice and Industrial Chicken Farming in Maryland*, 18(21) INT. J. ENV'T RSCH. PUB. HEALTH (2021), <https://pubmed.ncbi.nlm.nih.gov/34769558/>.

¹⁸ See Food & Water Watch, *The Economic Cost of Food Monopolies: The Hog Bosses* (May 2022), <https://www.foodandwaterwatch.org/2022/05/05/food-monopolies-hog-factory-farms/>; *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937 (4th Cir. 2020) (recognizing an “abundance of evidence . . . that [Smithfield Foods’ subsidiary] persisted in its chosen farming practices despite its knowledge of the harms to its neighbors, exhibiting wanton or willful disregard of the neighbors’ rights to enjoyment of their property”); Chris McGreal, *How America’s Food Giants Swallowed the Family Farms*, GUARDIAN (Mar. 9, 2019), <https://www.theguardian.com/environment/2019/mar/09/american-food-giants-swallow-the-family-farms-iowa>.

greenwashing. As explained in detail in a complaint for FTC action to stop false or deceptive advertising filed in February 2021, Smithfield Foods is violating section 5 of the FTCA with myriad misleading and counterfactual claims, such as that its products “were produced in an environmentally responsible” way and that the brand is “living [its] commitment to sustainability.”¹⁹ Throughout its marketing materials, Smithfield tells consumers about its supposed environmental stewardship and sustainability. Smithfield has continued to make these bogus sustainability claims consistently since that still-pending complaint was filed with the FTC, as exemplified above by its internet homepage and claim of being a “good steward[] of the environment.”²⁰ These claims are false or misleading given the environmental and social toll of Smithfield’s production practices.

One of the most pervasive forms of false or misleading advertising made by Smithfield is regarding its production of “biogas” at its factory farms, also known as factory farm gas. Despite being a significant climate polluter due to how it has chosen to construct and operate its factory farms (its greenhouse gas emissions are primarily a result of how it stores and handles its manure and are avoidable with actually sustainable practices), it now promotes that pollution as a central pillar of its greenwashing campaign with sustainability claims like “renewable natural gas,” “carbon negative,” and “bold climate action.”²¹ As explained in the pending Smithfield complaint filed with the FTC and by several other sources, factory farm gas is environmentally harmful and presents environmental justice problems.²² This misleading marketing scheme—posturing itself as a climate steward for producing supposedly “clean” and “renewable” energy from a fraction of its readily avoidable climate pollution instead of just not polluting in the first place—exemplifies the depth of the problem in environmental advertising today. It also underscores the deepening relationship between Big Oil & Gas and Big Ag and their increasingly intertwined greenwashing efforts around offsets, “renewable” gas, and related climate claims.

But Smithfield is not alone. Many of the largest factory farming companies are adopting false or misleading “sustainability” advertising to dupe consumers and obfuscate their products’

¹⁹ See Smithfield Complaint, *supra* note 6, at 3. See also, Scott Dye, Socially Responsible Agriculture Project, The Rap Sheet: On Smithfield’s Industrial Hog Facilities in Missouri (Mar. 2022), https://sraproject.org/wp-content/uploads/SRAP_Smithfield_MO_Rap_Sheet.pdf (documenting Smithfield Foods’ extensive record of environmental violations at its factory farms in Missouri).

²⁰ See *supra* note 6.

²¹ For a detailed explanation of this misleading advertising scheme, see Smithfield Complaint, *supra* note 6 at IV.B.2. See also, Smithfield Foods, *Smithfield Foods to Become Carbon Negative by 2030: Company Commits to Bold Climate Action with Industry-Leading Pledge* (Sept. 3, 2020), <https://www.smithfieldfoods.com/press-room/2020-09-03-Smithfield-Foods-to-Become-Carbon-Negative-by-2030>.

²² See Smithfield Complaint, *supra* note 6; Mia DiFelice, Food & Water Watch, *We Can’t Let This Gas Greenwash Polluting Factory Farms*, Food & Water Watch (Apr. 12, 2023), <https://www.foodandwaterwatch.org/2023/04/12/we-cant-let-this-gas-greenwash-polluting-factory-farms/>; Phoebe Gittelson et al., *The False Promise of Biogas: Why Biogas Is an Environmental Justice Issue*, 15(6) ENV’T’L JUSTICE (Dec. 2022), <https://www.liebertpub.com/doi/10.1089/env.2021.0025>; Ruthie Lazenby, Center for Agriculture & Food Systems, *Rethinking Manure Biogas: Policy Considerations to Promote Equity and Protect the Climate and Environment* (Aug. 2022), https://www.vermontlaw.edu/sites/default/files/2022-08/Rethinking_Manure_Biogas.pdf; Complaint under Title VI of the Civil Rights Act of 1964 filed by the Southern Environmental Law Center with the U.S. Environmental Protection Agency (Sept. 27, 2021), <https://www.southernenvironment.org/wp-content/uploads/2021/09/2021-09-27-Title-VI-Complaint-Index-DEQ-Biogas-Permits.pdf>.

enormous environmental and social costs.²³ As these companies adopt these greenwashing campaigns, they do so knowing that consumers increasingly want to support products with these attributes and have invested in slick marketing to convince them that their brands and products are meeting those expectations. In reality, these companies continue to operate and expand as some of the biggest polluters in the United States. This disconnect between marketing claims and actual product attributes harms consumers and more responsible producers and is exactly what the FTCA was intended to prohibit.

B. The FTC should include a “sustainability of food products” section in the Green Guides

Commenters request that the FTC include a sustainability of food products claims section in the Green Guides to address these harms. The general concept of “sustainability” is complex and can encompass a broad range of environmental, economic, socio-cultural considerations.²⁴ That said, research indicates that when it comes to food products, “environmental impact” is a common consumer association with sustainability.²⁵ Yet, consumers are confused about food sustainability claims and lack awareness “of the actual impact of food production, and in particular livestock production.”²⁶ As one group of researchers concluded, “Although consumers desired greater transparency from companies, they did not always trust or understand information currently provided by companies. These results demonstrate a need for genuine, easily understandable sustainability messaging from industry to consumers, including on product packaging.”²⁷ As discussed above, large industrial agriculture companies are aggressively using sustainability marketing, which is likely taking advantage of this confusion and lack of understanding among consumers.

²³ See, e.g., Tyson, *Sustainability*, <https://www.tysonfoods.com/sustainability>; Hormel Foods, *Our Approach to Issues that Matter: Environment*, <https://www.hormelfoods.com/responsibility/our-approach-to-issues-that-matter/environment/>; JBS Foods, *Sustainability: Responsibly Meeting Today’s Tastes for a More Sustainable Tomorrow*, <https://jbsfoodsgroup.com/our-purpose/sustainability/>; Mountaire Farms, *Sustainability*, <https://mountaire.com/about-us/sustainability/>. In its advocacy to hold meat companies accountable, Food & Water Watch has identified numerous claims made by Tyson Foods. *Food & Water Watch v. Tyson Foods, Inc.*, 2020 U.S. Dist. LEXIS 38232 at *9, 2020 WL 1065553 (D.C. Dist. Ct. Mar. 5, 2020) (denying motion to dismiss and noting the complaint explains that “consumers are willing to pay more for environmentally responsible poultry products and/or products from animals raised humanely, and that Defendant is aware that these representations are material to consumers. The Complaint further avers that Defendant advertised and marketed [its products] with terms such as environmental stewardship, sustainability, protecting and respecting natural resources, committed to compliance with environment laws, and safe for the environment,—when, in fact, [Defendant] is [the] second largest polluter in the United States and routinely emits hazardous pollutants in violation of environmental laws.” (citation and internal quotation marks omitted)).

²⁴ See Cristiana Peano et al., *Sustainability for Food Consumers: Which Perception?*, 11(21) SUSTAINABILITY 5955 (2019), <https://www.mdpi.com/2071-1050/11/21/5955>; Ellen J. Van Loo et al., *supra* note 13.

²⁵ L.M. van Bussel et al., *Consumers’ Perceptions on Food-Related Sustainability: A Systemic Review*, 341 J. CLEANER PRODUCTION 130,904 (Mar. 2022), <https://www.sciencedirect.com/science/article/pii/S095965262200542X>.

²⁶ *Id.*; see also, e.g., Jamie Ann Picardy et al., *Uncommon Alternative: Consumers’ Willingness to Pay for Niche Pork Tenderloin in New England*, 51(2) J. FOOD DISTRIBUTION RSCH. 61 (July 2020), <https://econpapers.repec.org/article/agsjlofdr/305483.htm> (finding that consumers struggle to understand the complexities of agricultural practices).

²⁷ See A.N. Schiano et al., *supra* note 4.

To begin to address the existing information asymmetry and rein in false and misleading sustainability claims, especially by companies like Smithfield and Tyson that produce and sell factory farmed food products, the FTC needs to include “sustainability” in the Green Guides. Commenters suggest that, given the breadth of the potential claims that can act as misleading sustainability indicators, the FTC take a broad approach. Commenters suggest the following additions to the Green Guides:

§ Sustainability of food product claims.

- (a) It is deceptive to misrepresent, directly or by implication, that a food product or brand is sustainable.
- (b) Because marketers of food produced using intensive production methods, including but not limited to medium or large Concentrated Animal Feeding Operations as defined at 40 C.F.R. § 122.23(b)(4) & (6), cannot substantiate consumers’ reasonable interpretations of sustainability claims, marketers should refrain from making sustainability claims for such products or to describe brands that produce and sell such products.

Further, sustainability claims on food products may or may not include the specific term “sustainable” or “sustainability,” but are designed to communicate similar attributes, such as low environmental impact. Commenters suggest that FTC consider the following claims as representative of what is encompassed within the definition of sustainability in a new sustainability of food products claims section: environmentally friendly, environmentally responsible, safer for the environment, commitment to sustainability, responsibly produced, high environmental standards, environmental stewardship, environmental protection, protecting natural resources, clean energy, carbon-negative, carbon-neutral, and protecting the climate.

II. The FTC should not allow industry greenwashing through misleading climate claims.

In addition to sustainability generally, the public increasingly cares about climate change specifically. To that end, a significant number of people will change their consumption habits because of climate change and encourage others to do the same.²⁸ According to a Deloitte study, when asked to rank several topics related to climate change in order of importance, reducing carbon emissions came in first, with 38% of total respondents and 44% of U.S. respondents identifying it as most important to them.²⁹ Moreover, 75% of respondents expect corporate leadership to do more to reduce carbon emissions and 45% of respondents expect businesses to lead the way in “improving responsible supply chains and resources usage.”³⁰

Rather than meet consumer expectations with real climate action, the fossil fuel and factory farming industries deceive consumers by using environmental claims to greenwash

²⁸ Deloitte, #GetOutInFront at 31 (Dec. 2020), <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Risk/gx-get-out-infront-final.pdf?id=us:2el:3dp:wsjspon:awa:WSJCMO:2021:WSJFY21>.

²⁹ *Id.* at 20, 22.

³⁰ *Id.* at 36–37.

harmful products and practices. In recent years, climate claims have increasingly become part of industry greenwashing efforts,³¹ as with the Smithfield example discussed above. To combat this trend, and to hold these industries accountable to the public, the FTC should instruct marketers to avoid misleading and often meaningless claims that benefit corporations, not the climate or consumers.

Among the deceptive and misleading climate claims the FTC should direct marketers to avoid are those related to carbon offset schemes. In its response to comments on the last iteration of the Green Guides, the FTC stated, “[w]hen consumers purchase carbon offsets, they expect that they are supporting a reduction in greenhouse gas emissions.”³² In reality, carbon offset schemes allow polluters to continue polluting and perpetuate environmental injustices,³³ while evidence shows that the supposed offsets are largely ineffectual. For example, a recent nine-month investigation into forest carbon offsets approved by Verra—“the world’s leading carbon standard” in the voluntary offsets market—revealed that “more than 90% of their rainforest offset credits . . . are likely to be ‘phantom credits’ and do not represent genuine carbon reductions.”³⁴ Additional analysis “indicat[ed] that 94% of the credits had no benefit to climate.”³⁵ Another study of hundreds of carbon offset projects revealed that “[m]ajor registries in the carbon offset market are systemically over-crediting projects and delivering dubious carbon offsets, a practice that allows some companies to make unjustified claims of climate progress.”³⁶ Given the documented flaws in carbon offset schemes, the FTC should recognize that such claims are false or misleading and revise the Green Guides accordingly.

The FTC asks whether it should provide additional guidance regarding other deceptive climate claims prevalent in the market, and seeks specific evidence related to “net zero,” “carbon neutral,” “low carbon,” and “carbon negative” claims.³⁷ Unfortunately, these claims are similarly flawed.³⁸ For example, corporations—including BP, Shell, and JBS—have pledged “net zero”

³¹ See, e.g., Damian Carrington, *Oil Firms’ Climate Claims Are Greenwashing, Study Concludes*, GUARDIAN (Feb. 16, 2022), <https://www.theguardian.com/environment/2022/feb/16/oil-firms-climate-claims-are-greenwashing-study-concludes>; Mei Li, Gregory Trencher, & Jusen Asuka, *The Clean Energy Claims of BP, Chevron, ExxonMobil and Shell: A Mismatch Between Discourse, Actions and Investments*, PLOS ONE (Feb. 16, 2022), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0263596>.

³² FTC, *Guides for the Use of Environmental Marketing Claims*, 75 Fed. Reg. 63,552, 63,597 (Oct. 15, 2010), <https://www.federalregister.gov/documents/2010/10/15/2010-25000/guides-for-the-use-of-environmental-marketing-claims>.

³³ See, e.g., Kassie Kometani, *The Polluter Pays, but So Do Communities: Environmental Justice Concerns with California’s Forest Carbon Offsets*, AM. BAR ASSN. (Nov. 9, 2022), https://www.americanbar.org/groups/environment_energy_resources/publications/fr/the-polluter-pays/.

³⁴ Patrick Greenfield, *Revealed: More than 90% of Rainforest Carbon Offsets by Biggest Certifier Are Worthless, Analysis Shows*, GUARDIAN (Jan. 18, 2023), <https://www.theguardian.com/environment/2023/jan/18/revealed-forest-carbon-offsets-biggest-provider-worthless-verra-aoe>.

³⁵ *Id.*

³⁶ Emma Newburger, *Major Registries in the Carbon Offset Market Are Allowing Dubious Credits, Report Says*, CNBC (Mar. 21, 2023), <https://www.cnbc.com/2023/03/21/registries-in-carbon-offset-market-allowing-dubious-credits-report.html>.

³⁷ *Guides for the Use of Environmental Marketing Claims*, 87 Fed. Reg. at 77,768.

³⁸ See, e.g., Tina Gerhardt, *To Solve the Climate Crisis We Need Real Zero, Not ‘Net Zero’*, PROGRESSIVE MAG. (June 26, 2021), <https://progressive.org/latest/climate-crisis-need-real-zero-gerhardt-210626/> (recognizing that net zero focuses on offsets, that it allows continued emissions, and that it is a “delay tactic that the fossil fuel industries have mastered.”); BEUC, *Climate-Neutral Claims on Food Must Be Banned, Shows Consumer Groups Report* (Mar.

emissions; yet these vague promises often mask plans to continue the status quo while participating in offset schemes or relying on false solutions like expensive, energy-intensive, and risky carbon capture and storage (“CCS”).³⁹

Companies promoting false solutions like CCS use misleading climate claims as well. The ethanol industry exacerbates the climate crisis, harms the environment, and props up factory farming;⁴⁰ yet ethanol producers like Archer Daniels Midland greenwash their image by claiming they are “building a more sustainable value chain” and “supporting a low-carbon future” with CCS.⁴¹ And while the Midwest is under threat from harmful carbon pipeline proposals,⁴² developers are using the same greenwashing strategy to promote their projects. For example, Summit Carbon Solutions claims its CCS project “will put the ethanol produced at our 32 partner facilities on track to become a net-zero fuel by 2030,”⁴³ and Navigator Heartland Greenway claims its carbon pipeline “will reduce carbon intensity and further the goal of carbon neutrality.”⁴⁴

Additional deceptive climate claims exploited by fossil fuel industry giants like Exxon Mobil, BP, Shell, and Chevron include clean and renewable energy claims that tout paltry investments in other energy sources while masking the industry’s continued overwhelming reliance on fossil fuels, along with claims that greenwash products derived from fossil fuels themselves.⁴⁵ The FTC should recognize that, absent real climate action by polluters to meet the expectations of consumers, these claims are misleading and revise the Green Guides accordingly.

9, 2023), <https://www.beuc.eu/press-releases/climate-neutral-claims-food-must-be-banned-shows-consumer-groups-report> (calling for a ban on climate- and carbon-neutrality claims on food products in the European Union because, *inter alia*, they are scientifically inaccurate and mislead consumers.).

³⁹ Jesse Bragg et al., Corporate Accountability, *The Big Con: How Big Polluters Are Advancing a “Net Zero” Climate Agenda to Delay, Deceive, and Deny* at 20 (June 2021), <https://corporateaccountability.org/resources/the-big-con-net-zero/>; see also, Committee on Oversight and Accountability, *Oversight Committee Releases New Documents Showing Big Oil’s Greenwashing Campaign and Failure to Reduce Emissions* (Dec. 9, 2022), <https://oversightdemocrats.house.gov/news/press-releases/oversight-committee-releases-new-documents-showing-big-oil-s-greenwashing>; Food & Water Watch, *Carbon Capture and Sequestration: Fossil Fuels’ Billion-Dollar Bailout* (Aug. 2022), https://www.foodandwaterwatch.org/wp-content/uploads/2022/08/FSW_2208_CCS_Subsidies.pdf; Peter Hart & Mark Schlosberg, Food & Water Watch, *Top 5 Reasons Carbon Capture and Storage (CCS) Is Bogus* (July 20, 2021), <https://www.foodandwaterwatch.org/2021/07/20/top-5-reasons-carbon-capture-and-storage-ccs-is-bogus/>.

⁴⁰ See, e.g., Tyler J. Lark et al., *Environmental Outcomes of the US Renewable Fuel Standard*, 119(9) PNAS (Feb. 14, 2022), <https://www.pnas.org/doi/full/10.1073/pnas.2101084119>; Food & Water Watch, *Carbon Capture Is Iowa’s New Problem Pipe Dream* at 3 (Apr. 2022), https://www.foodandwaterwatch.org/wp-content/uploads/2022/03/FSW_2204_IACCS-FINAL.pdf.

⁴¹ ADM, *Scaling Impact: 2021 Corporate Sustainability Report* at 10, 37, https://www.adm.com/4ac97d/globalassets/sustainability/sustainability-reports/pdfs/4019111_11_archer-daniels-midland_esg_clean-compressed2.pdf.

⁴² *Carbon Capture Is Iowa’s New Problem Pipe Dream*, *supra* note 40.

⁴³ Summit Carbon Solutions, *Project Benefits*, <https://summitcarbonsolutions.com/project-benefits/> (last visited Apr. 19, 2023 and on file with Food & Water Watch).

⁴⁴ Heartland Greenway, <https://heartlandgreenway.com/> (last visited Apr. 19, 2023 and on file with Food & Water Watch).

⁴⁵ See, e.g., *Beyond Pesticides*, *Beyond Pesticides Lawsuit Challenges Exxon for Deceptive Claims of Significant Investments in Solving the Climate Crisis*, Cites Petrochemical Pesticides (May 18, 2020), <https://beyondpesticides.org/dailynewsblog/2020/05/lawsuit-challenges-exxon-for-deceptive-claims-of-significant-investments-in-solving-the-climate-crisis/>; Office of the Attorney General for the District of Columbia, AG Racine

III. The FTC should not allow plastics greenwashing with misleading recyclable claims.

Plastic waste recycling is not working for people or the planet. The fossil fuel industry has known this for decades, misleading the public and promoting the myth of plastic recycling because “selling recycling sold plastic.”⁴⁶ In reality, the U.S. recycles a woefully small percentage of plastic waste each year. According to an analysis of data from the Environmental Protection Agency, “from 1980 through 2018, plastic waste generation has increased five-fold in the U.S. from 7.4 to 35.7 million tons per year while the plastic recycling rate has never reached 10%. The peak recycling rate reported by the U.S. EPA was 9.5% in 2014.”⁴⁷ In 2021, less than 6% of plastic waste was recycled.⁴⁸ The vast majority of plastic waste—nearly 85%—ends up in landfills, and more plastic waste is incinerated than recycled.⁴⁹ Moreover, the recycling symbol is not a reliable indicator of whether plastic waste is recycled. Even the most “recyclable” plastic waste—PET plastic bottles and HDPE milk jugs, numbered 1 and 2, respectively—are actually recycled at a rate of less than 30%,⁵⁰ whereas plastic waste numbered 3 through 7 has “negligible value” and “cannot be legitimately labeled as recyclable” at all.⁵¹

The FTC is aware of the disconnect between recyclable claims and recycling rates and should address it in the Green Guides. In her statement accompanying this request for public comment, Chair Khan recognizes that “recent reports suggest that many plastics that consumers believe they’re recycling actually end up in landfills. One question, then, is whether claims that a product is recyclable should reflect where a product ultimately ends up, not just whether it gets picked up from the curb.”⁵² The FTC specifically asks whether the Green Guides should be revised to address “recyclable” claims for items that are not actually recycled.⁵³ They should. The FTC should no longer allow the plastics and fossil fuel industries—which are inextricably

Sues Exxon Mobil, BP, Chevron, and Shell for Misleading Consumers About the Role Fossil Fuels Play in Climate Change (June 25, 2020), <https://oag.dc.gov/release/ag-racine-sues-exxon-mobil-bp-chevron-and-shell>; Earthworks, Accountability Groups File First of Its Kind FTC Complaint Against Chevron for Misleading Consumers on Climate Action (Mar. 16, 2021), <https://earthworks.org/releases/accountability-groups-file-first-of-its-kind-ftc-complaint-against-chevron-for-misleading-consumers-on-climate-action/>.

⁴⁶ Laura Sullivan, *How Big Oil Misled the Public Into Believing Plastic Would Be Recycled*, NPR (Sept. 11, 2020), <https://www.npr.org/2020/09/11/897692090/how-big-oil-misled-the-public-into-believing-plastic-would-be-recycled>.

⁴⁷ Beyond Plastics, *The Real Truth About the U.S. Plastics Recycling Rate at 3* (May 2022), <https://static1.squarespace.com/static/5eda91260bbb7e7a4bf528d8/t/62b2238152acae761414d698/1655841666913/The-Real-Truth-about-the-US-Plastic-Recycling-Rate-2021-Facts-and-Figures-5-4-22.pdf>.

⁴⁸ *Id.* at 2–3.

⁴⁹ *Id.* at 7; *see also*, Anelia Milbrandt et al., *Quantification and Evaluation of Plastic Waste in the United States*, 183 RES., CONSERVATION AND RECYCLING 106,363 (Aug. 2022), <https://www.sciencedirect.com/science/article/abs/pii/S0921344922002087?via%3Dihub> (finding that 86% of plastic waste was landfilled, 9% was combusted, and only 5% was recycled.).

⁵⁰ Kevin Loria, *The Big Problem With Plastics*, CONSUMER REPORTS (Sept. 8, 2021), <https://www.consumerreports.org/environment-sustainability/the-big-problem-with-plastic/>; *see also*, Greenpeace, *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability at 4–5* (Feb. 18, 2020), <https://www.greenpeace.org/usa/wp-content/uploads/2020/02/Greenpeace-Report-Circular-Claims-Fall-Flat.pdf>.

⁵¹ *Circular Claims Fall Flat: Comprehensive U.S. Survey of Plastics Recyclability*, *supra* note 50, at 13, 27.

⁵² *Guides for the Use of Environmental Marketing Claims*, 87 Fed. Reg. at 77,770.

⁵³ *Id.* at 77,769.

linked⁵⁴—to benefit from misleading recyclable claims when the vast majority of items displaying those claims are not recycled. Instead, the FTC should revise its guidance on recyclable claims, focusing on where products bearing those claims ultimately end up.

Conclusion

Thank you for the opportunity to provide input on the FTC’s revision of the Green Guides. As some of the largest polluters in our economy increasingly use aggressive greenwashing campaigns riddled with false and misleading sustainability, climate, and recycling claims, the FTC and the Green Guides must adapt. These revisions are necessary to protect consumers and responsible companies that have invested in better practices and products to meet shifting consumer expectations but must compete with companies unfairly benefiting from false and misleading environmental claims.

Sincerely,

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On behalf of the undersigned 60 organizations

350 Conejo / San Fernando Valley
350 Mass
350 Seattle
7 Directions of Service
Action for the Climate Emergency
American Society for the Prevention of Cruelty to Animals (ASPCA)
Animal Legal Defense Fund
Animal Partisan
Animal Welfare Institute
Between the Waters
Bold Alliance
Carrizo Comecrudo Tribe of Texas
Center for Biological Diversity
Center for Food Safety
Center for International Environmental Law
CleanAirNow
CWA Local 1081
Dharma Voices for Animals

⁵⁴ See, e.g., *How Big Oil Misled the Public Into Believing Plastic Would Be Recycled*, *supra* note 46; Center for International Environmental Law, *Fossil Fuels & Plastic*, <https://www.ciel.org/issue/fossil-fuels-plastic/>; Mia DiFelice, Food & Water Watch, *Big Oil’s Bet on Plastic Is Gambling With Our Future* (July 13, 2022), <https://www.foodandwaterwatch.org/2022/07/13/big-oils-bet-on-plastic-is-gambling-with-our-future/>.

Don't Gas the Meadowlands Coalition
Don't Waste Durham
Earth Action, Inc.
Earthworks
Eco-Cycle
Ethical Seafood Research Ltd.
Family Farm Defenders
Farm Action
Farm Forward
Farmworker Association of Florida
Food & Water Watch
Food Animal Concerns Trust (FACT)
Fox Valley Citizens for Peace & Justice
Friends of the Earth
Great Plains Action Society
Inland Ocean Coalition
Institute for Agriculture and Trade Policy
LAGERI, University of Brasília
Landelijk Netwerk Bos- en Bomenbescherming
National Family Farm Bill
NOFA NH
North American Climate, Conservation and Environment(NACCE)
Oil Change International
OrganicEye
People for a Healthy Environment
Progressive Democrats of America
Public Justice Food Project
San Luis Valley Ecosystem Council
Seneca Lake Guardian
Sister of St. Dominic of Blauvelt,NY
Socially Responsible Agriculture Project
SOMA Action
Southern Environmental Law Center
The Humane League
Thrive at Life: Working Solutions
Toxic Free NC
Turtle Island Restoration Network
Unitarian Universalists for Social Justice
United Native Americans
Wall of Women
Waterspirit
World Animal Protection