GUIDELINES FOR AMS OVERSIGHT OF COMMODITY RESEARCH AND PROMOTION PROGRAMS

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United States Department of Agriculture
Agricultural Marketing Service

GUIDELINES FOR AMS OVERSIGHT OF COMMODITY RESEARCH AND PROMOTION PROGRAMS

I. Overview

Congress delegated to the Department of Agriculture (USDA) the responsibility for implementation and oversight of commodity promotion, research, and consumer information programs established under freestanding legislation, commonly known as "checkoff" programs. In 1996, the Commodity Promotion, Research, and Information Act, commonly known as the "Generic Act" was enacted to allow commodity groups to create programs for their commodities under a generic statute. Prior to the Generic Act, many of today's programs overseen by USDA's Agricultural Marketing Service (AMS) were established under commodity specific legislation (see Appendix 1). The Secretary has delegated all functions to AMS for these programs except those delegated to USDA's Foreign Agricultural Service (FAS), which has been given the authority to oversee international marketing activities (Federal Register Vol. 62 No. 144).

The funding for such programs is industry specific, usually through deductions from sales by producers, marketers, and/or importers, and the programs are directed by industry boards. However, the Federal legislation which provides the authority for the collection and expenditure of funds also mandates for all of the programs that the Secretary of Agriculture appoint the board members and approve the boards' budgets, plans, projects, and contracts. USDA is committed to oversight of research and promotion (R&P) boards in ways that allow them to grow and adapt to a fast-changing marketplace, including leadership to serve on the boards that reflects a diversity of perspectives and opinions.

The boards' staff and appointed membership determine the direction of and carry out board programs and manage the boards. Every R&P program has a mission to maintain and expand the markets for its commodity. The boards are composed primarily of those in the marketing chain who pay assessments and as board members they decide how board funds are spent. Because these R&P programs use assessment money to carry out their functions,

transparency and oversight of these funds is critical. AMS' role is one of oversight – to ensure compliance with all applicable legislation, regulations, and policies.

State and regional promotion programs that have been authorized by Federal or State laws fall under those jurisdictions and as such those laws are controlling for those programs. Many of the State programs fall under the oversight of State Departments of Agriculture, Consumer Affairs, or other state agencies, which apply State guidance.

If the Federal legislation or regulations specifically require AMS oversight of State and local programs, portions of the Guidelines for AMS Oversight of Commodity Research and Promotion Programs (*Guidelines*) may apply. If not directed by statute or regulation, the *Guidelines* do not apply as a whole to State, regional, or local programs. Some State, regional, and local programs receive and expend funds from the national checkoff program. Though AMS does not have direct oversight of these State and local programs, AMS has an obligation to ensure that national checkoff funds are expended appropriately in accordance with the Federal legislation, regulations, and any applicable policies. State, regional, and local programs cannot use national checkoff funds to carry out an activity unless authorized by the national program.

These *Guidelines* are not meant to cover all aspects of AMS' day-to-day responsibilities in interacting with and supporting activities of the R&P boards. They are designed to facilitate the application of legislative and regulatory provisions of the acts and orders to promote consistency in AMS' oversight of all commodity promotion and research programs.

References to boards in this document also can mean board staff unless otherwise specified. The *Guidelines* provide information on AMS' expectations for how boards will operate and for how AMS will approach oversight of the programs. These *Guidelines* shall be reviewed and amended as necessary. However, in all cases, provisions in the authorizing legislation and order for all programs provide the legal framework for all board actions and will take precedence over the *Guidelines* in establishing parameters for board activities.

II. Budget Approval

A. USDA will review and approve all budgets. When submitting budgets to AMS for approval, boards must include detailed information regarding administrative expenses and other costs. Budget submissions must include, at a minimum, all of the following components:

1. A statement of objectives and strategy in each major program area (research, advertising, etc.), including reasons for significant changes from the preceding budget period.
2. A summary of anticipated revenue (assessments, interest, donations, etc.) and anticipated refunds, where applicable, with comparative data for at least the preceding year.
3. A summary of proposed expenditures by major program areas with comparative data for at least the preceding year. (Unless it is the initial year of the program.)
4. Staff and administrative expense breakdown, with comparative data for at least the preceding year. Boards must submit CEO and/or Executive Director salaries and compensation and for other staff as requested by AMS. This information may be supplied in a document separate from the budget.
5. Other legislative requirements as applicable to the budget process.

B. AMS will review budgets for compliance with legislative, regulatory, and policy requirements. Boards must receive AMS' approval of budgets prior to obligating any funds. AMS also will review and approve amendments or additions to approved budgets, including shifting of program funds from one major area to another. The respective program Deputy Administrator will approve initial budgets. The respective program Deputy Administrator will also approve amendments if the changes are 30 percent or more of the total budget. Otherwise, the Deputy Administrator's designee will approve the amendments.

C. Boards shall review and approve budgets and any subsequent amendments prior to submission to AMS.

D. Boards must post on their websites and make available to the public annual budget summaries by major category.

III. Donated Funds

The legislation governing the boards ranges from total prohibition to a specific authorization to accept certain donations. In cases where donations are not prohibited, AMS will allow boards to accept donated funds.

Donated funds must be clearly listed in the budget and incorporated into the budget process to be used for activities permitted under the authorizing legislation, and AMS will review and approve these budgets, including budget amendments, before funds are expended. Donated funds are subject to inclusion in AMS management reviews.

Donated funds must be free from any encumbrances by the donor and the board shall retain complete control of their use. Boards may receive funds from outside sources such as Federal or State grants, with AMS approval, for specific authorized projects. Boards must not accept contributions which create a conflict of interest or a situation which could reasonably be perceived by a third party as a conflict of interest.

Donations made by the boards are discussed in Section XI.G.

IV. Contracts

AMS recognizes that boards may enter into a variety of contracts, including for projects, consultation, services, and administration, and that boards select contractors based on a variety of factors and criteria including but not limited to cost, skills, timeliness, and experience. The funds and other funding sources must be included in the budget to carry out the obligations of the contracts. The provisions of all contracts must be compliant with the board's Act, Order, and USDA policies and guidance.

Contracting Procedures. Each board shall establish written contracting procedures and submit them to AMS for review and approval by the respective program Deputy Administrator. Each board has broad discretion on contracting procedures provided they meet the fiduciary responsibilities of the board and avoid any conflict of interest or a situation that could reasonably be perceived by a third party as a conflict of interest.

A. Contract Provision Requirements: Board contracts shall include the following:

1. Provision that the board, as well as the Secretary of Agriculture, may terminate the contract and be relieved of payment. Contract language should indicate boards will pay for all work performed under contract until date of termination.

2. Provisions that formally notify potential contractors that any work they undertake prior to contract approval by AMS is at their own risk and boards are not financially liable if the contract is not approved.

3. Provisions stating funds paid to the contractor may not be used for the purpose of influencing legislative or governmental policy or action.

4. Provisions requiring the contractor to (a) keep accurate records, books, and documents involving transactions relating to the contract; (b) retain the records, books, and documents for 3 years; and (c) that the records, books, and documents may be subject to inspection and audit by a representative of USDA and the board.

5. The EEO policy statement:

   Contractor [insert entity] agrees that, during the performance of this Agreement, [insert entity] will not discriminate against any employee or applicant for employment because of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Nothing in this section

shall require [insert entity] to comply with or become liable under any law, ordinances, regulation or rule that does not otherwise apply to the [insert entity].

Contracts *must not* include:

1. Indemnification provisions, *unless* it is clear that the indemnification will in no way obligate the U.S. government to pay on a potential claim. Any indemnification clause must include language to the following effect:

   The board and [contracting party] agree that no funds appropriated by the United States Government shall be used, made available, or sought by any party to pay any indemnification obligation or to meet any deficiency arising under or relating to this agreement.

2. Liquidated Damages

B. Contract Justification. Boards shall develop and maintain documentation in their files evidencing why a contract was awarded to a particular contractor, including justification when the lowest bid is not awarded or if the contract was awarded on a non-competitive basis. Documentation may be a short statement or checklist, as noted below, or other agreed upon notation: At a minimum, documentation must include:

   - Contract was competitively bid: Yes___ No ____
   - Reason for selecting contractor, if contract was not competitively bid or lowest bidder was not awarded contract (select all that apply):

     Contractor has unique knowledge of activities
     Unique contractor for specific purpose (i.e. science, researcher)
     Project spokesperson
     Partnership or sponsorship agreement
     Other (please describe)

C. Contract Approval. AMS will approve contracts for the development and carrying out of programs and projects, such as research, development, advertising, promotion, or education, as well as contracts for administration, services, outside legal counsel, accountants, auditors, legal assistance, and consultants. The contracts will be reviewed for conformance with provisions required by AMS including language regarding the prohibition on lobbying. Contracts must be approved by AMS before funds are expended. AMS will not require boards to submit for approval pure service contracts, such as those for janitorial services, copier repairs, hotel arrangements, maintenance, and subscription services, such as software, LexisNexis, etc. However, AMS reserves the right to review service contracts at any time. The use and amounts of contract thresholds are at the discretion of each Program area.

D. Contract Compliance. Following AMS approval, boards shall monitor all contracts to ensure that all contractors (and subcontractors, if applicable) are in compliance with the terms of the contract. Boards shall maintain documentation evidencing the monitoring of such contracts.

E. Subcontractors. Subject to the board's approval, the contractor may subcontract specific tasks to outside parties. Should the contractor elect to subcontract specific tasks, subcontractors will be subject to the same contractual terms as its contract agency in regard to:

1. Reporting and Record Keeping
2. Travel Expenses
3. Title of Property
4. Confidential Information
5. Influencing Legislation and/or Influencing Governmental Policy or Action
6. Federal Civil Rights policies.

The primary contractor agency who has a direct contract with the board will be fully responsible for the quality of all work products, including any approvals from AMS. Any such authorization in the contract must state that entering into a subcontract does not relieve the contractor of primary responsibility to carry out the terms and conditions of the underlying contract in accordance with the Act, Order, Regulations, and USDA policies,

including these Guidelines. AMS will review a sample of subcontractor contracts during management reviews.

F. Multi-Year Contracts. With AMS approval, boards may enter into multi-year contracts provided the years are severable and either, all funding is approved during the initial budget year, or performance under the contract during the second and subsequent years of the contract is contingent upon the availability of funds and approval by the board. Contracts must include clear language that the Secretary of Agriculture and the board may terminate the contract without incurring the full contract cost. Boards must annually provide a list of all active multi-year contracts with current year funding requirements for AMS review. Leases are exempt from these requirements.

G. CEO Contracts. When the board enters into a contract or agreement for employment, including at-will employment, for the Chief Executive Officer (Executive Director, President, or such other title as prescribed by the board), the board must notify AMS and provide the following information in writing:

- Term of employment;
- Employment status (e.g. at-will, agreement with automatic renewal/Evergreen clause, etc.);
- Termination clause (if any);
- When the agreement and terms were approved by the Executive Committee or the board;
- Compensation (including Base Compensation, Bonuses & Incentives, Other Compensation, Deferred Compensation, Tax Free Benefits, etc.); and
- All provisions of the Act, Order, guidelines, and other applicable regulations are adhered to in the contract

CEO contracts are subject to review by AMS during management reviews or as deemed necessary.

H. Outside Legal Counsel. Boards may enter into contracts with outside legal counsel for specific legal issues and timeframes. AMS and OGC must review and approve outside

legal counsel contracts. See Appendix 6 for Requirements for Outside Counsel Legal Services Contracts.

V. Finance, Compliance, and Program Accountability

A. Financial Statements/Reports. Boards shall submit to AMS for review financial statements or reports for each accounting period (monthly or quarterly) for proper accountability of funds collected and expended. The financial statements will consist of (1) a financial position (balance sheet), and (2) a statement of activities (i.e., assessment revenues and expenditures; budget and actual) including a comparison of actual results to budget, and (3) the overall change in net assets for the reporting period, including unexpended budget for all budget line items and operational budget expenses. For example, a budget vs. expenditures, vs. unexpended balance.

B. Refund/Reimbursement Requirements. Where refunds/reimbursements are applicable, the financial statement shall include, for the accounting period, a collection and refund/reimbursement report showing (1) year-to-date collection of assessments, number of requests for refunds/reimbursements, and total assessments refunded/reimbursed, and (2) comparative data for the preceding year, if applicable.

Refunds are also discussed in Section VI.

C. Activities and Expenditures. AMS shall review and approve program activities and expenditures for compliance with applicable legislation, regulations, and policies.

Boards, contractors, and subcontractors are accountable for how board funds are spent. When projects are contracted, boards must be aware of how the funds are to be used.

Boards must expend all funds – whether the funds are from assessments or from an outside source (e.g., donations/contributions) – in accordance with the act, order, regulations, and AMS policy. Unless otherwise directed by authorizing legislation, boards may not conduct projects with non-assessment funds that could not be conducted with assessment funds. For

example, boards may not conduct activities to influence government policy or action, even if the activities are paid for with non-assessment funds.

D. Annual Financial Audits. Boards shall have independent audits performed annually in accordance with Generally Accepted Government Auditing Standards (GAGAS). AMS staff will review and approve the board's letter of engagement with the auditor, participate in any entrance and exit conferences, and participate in the resolution of findings. AMS participation may be via conference call. AMS shall review these annual audits to determine if the auditor identified any misuse of board funds and if the audit adequately addressed whether (1) funds were discovered to be used for influencing government policy or action, (2) the board adhered to the AMS investment policy (Appendix 3), (3) internal controls over funds met auditing standards, (4) funds were used only for projects and other expenses authorized in a budget approved by USDA, and (5) funds were used in accordance with the *Guidelines*. It is acceptable for the firm, based on the results of fieldwork performed, to give a negative assurance (i.e. no audit opinion is rendered, nothing came to the attention of the auditors, etc.) on such matters.

The auditors or their designees will present the audit report to an established committee and/or the full board, for review and approval. The board will then submit a final audit report to AMS for review and approval. Once approved by AMS, the board will post the report on their website.

E. Management Reviews. AMS shall conduct a management review of each R&P board at least once every 3 years to provide assurance the board's controls (programmatic, financial, and compliance) are designed effectively and function as intended to prevent the misuse of funds. Management reviews will be conducted in accordance with these and other applicable guidelines such as the Government Accountability Office guidance and standards for internal control, to ensure boards follow policies and maintain adequate records.

AMS will: 1) give reasonable notice and clear instructions with board staff as to what is expected and items that need to be supplied and reviewed; 2) coordinate with the board for

scheduling management reviews; 3) conduct an entrance interview to discuss the management review plan and an exit interview to review findings; 4) provide a written draft of its report to board staff and provide one opportunity for review and comment; and 5) provide a written report to the board CEO and Chairperson. The report will ask for a written response from the board. AMS will establish a deadline for the board's response to the findings and will ensure the board takes any corrective actions.

Management reviews will cover, at a minimum, the following areas:

- Disbursements/Accounts Payable
- Expense Reports – Board Members
- Expense Reports – Board Employees
- Credit Card Statement Activity
- Assessments/Accounts Receivable
- Investments
- Bank Reconciliations
- Petty Cash Reconciliation
- Insurance and Fidelity Coverage
- Backup and Storage of Accounting Records
- Contract and Subcontract Compliance
- Promotional Materials
- Compliance with *Guidelines*

F. Independent Evaluation. AMS will ensure boards conduct an independent evaluation of the effectiveness of their promotion programs every 5 years, unless otherwise required by authorizing legislation. AMS must review and approve the contract/project for the independent evaluation prior to the implementation of the review. The independent evaluation must contain the following sections:

- Introduction/Background
- Objective/Scope
- Data Limitations Addressed

- Credible Methodology (Assesses the returns/benefits on promotion or other authorized activity; data driven analysis; data trends; captures structural changes where appropriate; and appropriate data sources)
- Results
- Conclusion
- Non-technical presentation
- Adequate documentation

AMS will review and approve the independent evaluation report prior to its release. Once approved, the board will make the report available to assessment payers, the public, and will post the report on the board's website.

G. Travel Expense Claims. Boards shall establish travel policies and procedures, approved by AMS, including the individual(s) designated to approve travel. Policies and procedures shall address and incorporate all of the following:

1. A process for travel pre-approval where all travel is approved by a supervisor or the board's designee. Travel may be pre-approved via e-mail. In the case of board meetings, an invitation to board members will suffice.
2. Travel rules, which shall include type of carrier (POV, rental, rail, air, etc.) and rates (non-refundable, economy, business, first-class).
3. A standard expense claim, electronic or paper, for any reimbursement from assessment funds must include claimant's name, travel dates and times (departure and return), and other applicable identifying information. The claim shall provide clear descriptions of the destination and purpose of the travel.
4. If the claimant is an employee of the board, the claim shall be approved by the supervisor or the board's designee.
5. If the claimant is a board member, the claim must be approved by the Treasurer, board Chairperson, or someone designated by the Chairperson.
6. If the claimant is a board officer, the claim must be reviewed and approved by the Chairperson of the board or the board's designee.

7. If the claimant is the board Chairperson, the claim must be reviewed and approved by the Treasurer or the board's designee (CEO, CFO or Executive Director).
8. For all modes of travel, coach fare shall be used unless the board approves otherwise. When the ticket is purchased by cash or personal credit card, the original itinerary issued by the airline, travel agent or website shall be attached to the expense claim.
9. Lodging expenses shall be reasonable and should be at rates comparable to a standard, single-occupancy room at a national business-class hotel chain unless justified by the board. Reimbursement for the cost of hotel accommodations shall be supported by an original receipt issued by the hotel which will contain the occupant's name, date the receipt is issued, the arrival and departure dates, and the rate per day.
10. Receipts for travel-related expenses must be submitted for reimbursement. It is preferable for travelers to submit original receipts. Original receipts are receipts for cash expenses or hard-copy printouts from electronic sources, such as for airfare or lodging, or electronic records of such receipts. If originals are not submitted, the traveler may submit legible and clear receipts electronically (PDF or other image file). Boards must keep receipts, in a format determined by the board, whether original, hard copies, or electronic, for at least 3 years for audit or inspection. Boards may designate a reasonable threshold below which receipts are not required.
11. Boards may establish a means of submitting expense reports electronically. Any such electronic expense reporting system must be reviewed by AMS to ensure the system satisfies the requirements of this section.

H. Credit Card Use. Boards will develop a written policy statement regarding corporate credit card use. This policy statement will be reviewed and approved by AMS. The board's credit card policy shall include the following:

1. Board staff must reimburse personal expenses within 30 days of receiving a bill for such expenses from either the board or the corporate credit card company.

2. The board's name must be printed on the card.
3. Dollar limitations or credit limit must be set unless an exception is approved by the board and documented.
4. Define permissible purchases (e.g., gas, supplies, travel).
5. A control sheet must be maintained listing, for each card, its type (e.g., Visa, MasterCard, or American Express), the sponsoring bank or company, card number, limitation, and the dates of issuance and return.
6. A single staff member shall be designated to safeguard and distribute the cards and keep the control sheet current.
7. The control sheet should be reviewed annually by the designated board staff.
8. Specific persons and staff positions eligible to use cards must be identified based on the appropriate need of the organization.
9. An individual expenditure report shall be completed to justify the appropriate use with original receipts attached to the report.
10. Credit card expenditures shall be reviewed each month by a supervisor or the board's designee.
11. The board will develop, and approve, a policy to address use of board issued credit card award points earned during the conduct of board business.

VI. Refunds (where applicable)

In the event refunds are necessary due to a referendum, AMS will develop a procedure and ensure that the board follows it. In addition to the refund requirements in the enabling legislation, it is AMS policy that:

- Boards will disseminate procedures approved by AMS for requesting refunds.
- No pressure of any kind to discourage refunds is brought by boards or staff against those seeking refunds.
- Names of individuals obtaining refunds must be kept confidential and made available only to appropriate staff personnel.

- Refund information released will be limited to the dollar amount and number of refunders by State, region, or nationwide and presented in a manner that protects the identity of individual persons or firms.

Refund reporting is discussed in Section V.B.

VII. Influencing Legislation and/or Government Policy

Whether by statute or AMS policy, boards are not able to use assessment funds to influence legislation or government policy. In the process of monitoring board activities, it is important for AMS to be aware of any actions which may conflict with prohibitions on influencing legislative and/or government policy. This prohibition on the use of checkoff funds applies equally to any trade/producer organizations funded wholly or in part by a particular board or contractor to the boards. However, this does not affect a trade/producer organization's ability to lobby with non-checkoff funds. Likewise, there are no restrictions on individual board members, except when acting in an official capacity for the board. The following definitions serve as a guide for commodity programs (see also Appendix 2).

A. "Influencing of legislation" is defined as:

1. Any attempt to affect the opinions of the general public or any segment thereof concerning current or proposed legislation; or
2. Any attempt to influence legislation through communication with any member or employee of a legislative body or with any government officials who may participate in the formulation of legislation. 'Government officials' refers to federal employees outside of USDA, foreign, and State governments/officials, legislators, and legislative staffs.

B. "Influencing of governmental policy or action" is defined as any action the principal purpose of which is to bring about a change in existing policy or regulation or affect the outcome of proposed policy or regulation, except those actions which are specifically provided for in the act, order and/or rules and regulations.

D. It has been longstanding AMS policy to allow boards to share factual information with government officials under certain conditions:

   a. Prior approval is obtained from AMS for the information to be provided to ensure that it does not influence legislation or government policy; previously approved materials do not require re-approval.
   b. For recurring or standalone educational sessions with government officials, meeting arrangements should be reviewed in advance with AMS. In exceptional cases, AMS may also consider factors such as location and timing of the meeting as part of the review process.
   c. A disclaimer is provided during discussions or on materials that outlines what boards can and cannot do. For example, "Information is provided for educational purposes and is not intended to influence legislation or government policy."
   d. Boards are not expected to request advance approval when responding to a direct and immediate request (e.g. phone call, email) for information but should remind the inquirer of their role. For example, if a board receives a phone call from a State Congressman's office asking for information about a particular research program funded by the board, the board should provide the information directly with appropriate disclaimers.

   This guidance is intended to cover the majority of routine, ongoing interactions between boards and government officials. For more significant and infrequent events – such as showcases with multiple boards – consideration will be elevated to AMS' Research and Promotion Functional Committee and the Administrator's office.

VIII. Referendum Activities

Boards and board members, when they are acting in their official capacities, are prohibited from attempting to influence the result of a referendum, and no board funds may be expended for that purpose. Boards and board members may only publicize referenda and the votable issues, explain their programs, and provide information about the voting process.

Once a referendum is announced, AMS will review and approve all board communications to industry before they are distributed to ensure their appropriateness.

IX. Policy on Review and Approval of Promotional and Educational Materials

AMS will review all promotional and educational materials (marketing communications) of boards, approving those in compliance with the *Marketing Communication Guidelines for Program Advertising, Promotional Material, Research, Social Media, and Other Publications* (*Marketing Communication Guidelines*), and applicable legislative authority. For additional information on marketing communication guidance, refer to the *Marketing Communication Guidelines* found as an appendix in these Guidelines (Appendix 7). No marketing communications should/can be released prior to AMS approval.

X. Policy on Brand Names

Concerning the boards' funding of promotion or advertising involving brand name or trade name products, AMS first requires that boards operate within their legal framework. The various legislation governing the boards provides different thresholds of acceptable brand-name advertising.

XI. Administration

A. Legal Counsel. USDA's Office of the General Counsel (OGC) acts as legal counsel to the boards.

B. Investment of Funds. AMS requires boards to follow the AMS investment policy (Appendix 3) to ensure proper investment of board funds. AMS will review the investment statement for each accounting period (monthly or quarterly) to verify that board funds were invested in accordance with this policy.

C. Bylaws, Policy Statements, Annual Reports, and Transparency. Boards are required to establish bylaws and policy statements that AMS will review and approve. The respective

program Deputy Administrator or designee will grant approval. In order to be transparent and recognizing the importance of all stakeholders being able to access regular, reliable, and comparable information, board bylaws, annual budget summaries by major category; annual reports containing detailed information on board activities, projects, and administrative expenses; the board's annual Certified Public Accountant audit report; and independent economic evaluations will be posted on the board's website.

D. Notice of Board Meetings. Boards must provide advance notification to their AMS Program area of all board meetings, including but not limited to meetings of the full board, executive committee, subcommittees, advisory committee, standing committees, ad hoc committees, task forces, and any other meetings as requested by AMS. The term "meetings" includes but is not limited to on-site meetings, conferences, conference calls, and webinars. AMS will attend board meetings and participate in conference calls, webinars, committee meetings, and any other meetings involving the boards when deemed necessary by AMS. Meetings with other Government agencies are addressed in Section XI.M.

E. Board Administrative Expenses.

1. Recognizing inherent differences in implementing laws or regulations, scope, and funding among commodity promotion and research programs, AMS expects each board and State association or other organization authorized by law to receive assessment funding, to establish and maintain the minimum level of annual administrative expenses necessary to efficiently and effectively carry out the programs mandated by law. Each board shall include its annual administrative expenses as a separate item in its annual report. Each State association or other organization may be required to report its annual administrative expenses in a similar manner.

2. The Secretary's costs for oversight of the research and promotion boards and OGC fees will not be considered an administrative expense of the boards as these charges are outside commodity boards' control and management.

3. AMS does not specify which expenses the boards must include under administration, and certain costs may be billed back as program costs as deemed appropriate by AMS. Board members should be knowledgeable of how the board calculates administrative costs and whether and how they are charged to programs. As a general rule, the items on the following list may be included in boards' administrative expenses:

staff salaries and benefits	telephone expenses
bonuses	database management
staff travel	audit fees
board member travel	insurance and bonds
meeting expenses	bank fees
equipment purchases and rentals	legal fees (excluding OGC user fees)
equipment repair and maintenance	postage and shipping
furniture purchases and rentals	consultants on administrative matters
depreciation	memberships and subscriptions
general supplies	licenses
paper	taxes
printing	some Internet-related costs
office rent and utilities	compliance activities
automobiles	

4. Administrative caps. Boards whose authorizing legislation establishes administrative caps may not conceal administration expenses in other budgets, though some costs may be considered program costs as appropriate. Questions as to whether an expense is administrative or program should be directed to AMS.

F. Prohibited Expenditures.

Boards may not spend assessment funds for:

1. Spouse/Family Expenses. Board members and alternates are not allowed a fee or compensation for board services or expenses for spouses or other family members. An exception to this is spousal participation at buffet style dinners

during board meetings. Board staff and contractors are prohibited from claiming any expenses for spouses or other family members.

2. Open Bars. Boards are prohibited from using assessment funds for open bars.
3. Influencing government policy or action, as defined in Section VII.
4. Use of funds for personal expenses.
5. Other prohibited expenditures listed in this guidance document.

G. Goodwill Board Donations. Boards will develop a written policy statement regarding goodwill donations utilizing funds derived from assessments. This policy statement will be reviewed and approved by AMS.

1. Boards are prohibited from making financial and gift contributions to any organization, even in honor or memory of an individual.
2. Boards may make donations of commodity, product, or funds (e.g., to food banks or disaster relief efforts) provided the donation is tied to a public relations or promotional effort promoting the commodity and/or the image of the industry.
3. Boards may establish policies to expend funds:
    a. Up to $200 per board member per event, for cards, flowers, plants or similar tokens for special events or occasions (e.g. birth/adoption of a child, death of a family member, celebration of marriage, etc.);
    b. Up to $300 per board member or officer per term to recognize the board member's service;
    c. Up to $200 per board employee per event, as part of regular personnel practices, to include flowers, plants or similar tokens for special events or occasions (e.g. birth/adoption of a child, death of a family member, celebration of marriage, etc.); and
    d. Up to $200 per board contractor per event, as part of regular business practices, to include flowers, plants or similar tokens for special events or occasions (e.g. birth/adoption of a child, death of a family member, celebration of marriage, etc.).

4. AMS will allow boards to provide monetary gifts, gifts that function as money, or other gifts as part of a research or promotion project (e.g., financial restitution to subjects of a research study, gift cards to survey participants) because such restitution is common practice and doing so benefits the board's collection of information or extends the reach of a promotion.

5. Nothing in this section prohibits boards from providing funds to an organization if the funds are for a direct allowable expense. As an example, a board may not make a contribution to the American Heart Association in memory of an individual, but the board may provide funds to the American Heart Association as part of the board promotion to cover exhibiting or symposium costs.

6. This section does not prohibit boards from paying membership or sponsorship fees to industry associations or other groups, but the association or group must certify that those funds were not used for the purpose of influencing government policy or action (e.g., in an agreement, letter, or other documentation).

H. Compliance. Boards are responsible for promptly identifying delinquencies in assessments. Each board shall develop written compliance procedures, reviewed and approved by AMS, that include a timetable for the referral of compliance cases to AMS for appropriate action. The board will make every attempt possible to bring delinquencies into compliance before referring a case to AMS. Boards will notify AMS of any delinquency after all efforts have been exhausted by the national board, and where applicable, State program. Before submission to AMS, boards will conduct or coordinate an audit or accounting of the alleged delinquent party. Upon receipt of compliance cases (including audit results), AMS will review the case and may:

- Contact the delinquent party either by telephone, letter with delivery confirmation (e.g., FedEx or certified mail), or other means;
- Refer violations to OGC for action; or
- Other actions as appropriate

1. Bankruptcy of an assessment payer: If the board receives a notice of a debtor (company not paying assessments) filing for bankruptcy protection, the board should forward the notice and any correspondence as soon as possible to AMS.

2. Uncollectible Debt: Only USDA can forgive assessment debt, including late fees and interest. Therefore, any uncollected debt that the boards wish to write off their books needs to be sent to AMS for appropriate action. AMS Programs shall be guided by authorities outlined in Appendix 4 for writing off uncollectible assessments and late fees.

I. Charging Research and Promotion Boards. R&P authorizing legislation requires boards to reimburse AMS for its costs in overseeing their programs. It is AMS policy that all R&P programs be charged in a fair and equitable manner and that all costs be covered. In this regard, the following costs will be billed to boards:

1. Direct Program Costs. These costs include salaries and benefits of employees directly involved in the daily workload associated with research and promotion boards. Other costs include travel to board meetings, rent, as applicable, for office space for employees directly working on the research and promotion programs, printing, supplies, equipment, and other reasonable costs needed to complete the work involved in overseeing the programs. All direct program costs should be charged to the appropriate research and promotion programs.

2. Overhead. As with all AMS programs, a percentage of the direct program costs are charged as overhead to cover other AMS and USDA expenses associated with these programs, and AMS must bill these expenses back to the boards.

3. Other Costs. The costs billed to AMS by USDA offices for authorized services provided in the support of the various boards will be charged back to the boards. These include all billed costs to AMS by other USDA agencies and outside government agencies. Also, costs billed to AMS by States for actual unemployment

claims paid to former board employees will be charged back to the boards when the bills are received by AMS.

J. Ethics. Service on and the operation of the Federal boards is a public trust, requiring members and employees to place the appropriate legislative authority and ethical principles above private gain. Each board will develop a Code of Ethics and distribute it annually to board members and staff. Each board, with the assistance of AMS, will also develop Disclosure Statements and Conflict of Interest Statements that will be signed and submitted by each board employee annually and by each board member prior to appointment to the board and annually thereafter.

Boards may add additional prohibitions to the Code of Ethics as needed; however, prohibitions cannot violate a member's personal rights. If a board believes a board member or staff employee has violated the Code of Ethics, the board should inform AMS of the allegation and provide any supporting documentation. The Code of Ethics shall include prohibitions on the following:

1. Using board time, facilities, equipment, or supplies for private purposes.
2. Using confidential information acquired by virtue of board activities.
3. Receiving or accepting money or any other consideration from anyone or any organization other than the board—not including salary derived from one's primary employment—for the performance of duties as a board member, unless approved by AMS.
4. Receiving or accepting anything of value from anyone who is doing or seeking to do business with the board under circumstances from which it reasonably could be inferred that the item was intended to influence the officer in an official action as an officer of the government.
5. Making unauthorized commitments or promises of any kind purporting to bind the board or committee.
6. Giving preferential treatment to any private organization or individual.
7. Engaging in outside employment or activities, including seeking or negotiating for employment, that conflict with board duties and responsibilities. For staff, no such

conflicting outside employment or activities are permitted; for board members, such employment or activities may be permitted provided board members recuse themselves from any conflicting board duties and responsibilities, including votes.

Reporting of Alleged Violations:

If the board receives or obtains information regarding an alleged violation of any statute that USDA administers, USDA regulations, or any Federal or state criminal law involving the board or its employees while on duty, while on the board's premises, or using or accessing board property, or the use of checkoff assessments, the board must report the information or allegation to AMS as soon as possible but no later than five business days after receiving or obtaining the information or allegation.

Boards are responsible for taking action to remedy any fraud or misuse of funds. Such action should be immediately reported to AMS. All subsequent actions should be approved by AMS. Board members and employees must report any inappropriate or misuse of funds to the board's AMS Division Director or to USDA's Office of the Inspector General at (800) 424-9121 for investigation or other appropriate action.

K. Civil Rights and Equal Opportunity. AMS requires boards to establish civil rights policies and procedures, approved by AMS, to prohibit unlawful discrimination and retaliation. Boards must comply with applicable Federal, State, and local laws regarding civil rights and equal employment opportunity.

In accordance with civil rights policies, boards must maintain an environment where:

- Employees are treated with respect and in a professional manner.
- Conflicts and complaints are resolved quickly.
- Employees and supervisors are able to discuss concerns openly without reprisal, or retaliation.
- Employees, at every level, demonstrate a commitment to civil rights and equal opportunity for everyone through their work and actions.

Board employee right to file with EEOC

Board policies and procedures should inform employees of how they may report allegations of unlawful discrimination, retaliation, sexual harassment, violence, and other misconduct, and provide a process by which the board will investigate allegations internally. Board policies and procedures should also inform employees of their right to file a complaint with the U.S. Equal Employment Opportunity Commission and applicable state Fair Employment Practice Agency.

Board employee complaint against a Board Member

AMS has the responsibility to investigate and address all allegations of civil rights or equal opportunity violations, sexual harassment, violence, and other misconduct perpetrated by a board member. However, AMS' responsibility to investigate does not confer any rights to board employees under the federal Equal Employment Opportunity statutes.

Board employee complaint of program discrimination

Under certain limited circumstances, a board employee may have the right to assert a program discrimination claim with AMS under Title VI of the of the Civil Rights Act of 1964. Board employees should contact AMS Civil Rights at 202-690-3640 for more information on filing a program discrimination complaint under Title VI of the of the Civil Rights Act of 1964.

L. Other Government Agencies. AMS serves as the boards' liaison to other Federal Government agencies, with the exception of FAS if the board is a cooperator under FAS programs. AMS requires boards to provide advance notice of meetings with any other Federal Government agencies and must pre-approve all meetings and be aware of communications with those agencies. AMS must pre-approve any correspondence, including comments on Federal rulemaking.

AMS will develop appropriate working relationships with other Government agencies that have responsibilities related to these programs. For example, FAS has oversight responsibility of the Foreign Market Development (FMD) and the Market Access Program (MAP), and checkoff funding is made available to some participants in these FAS-

supervised programs. AMS commodity programs will assure close coordination with the FAS any time checkoff funds are used for international marketing activities. However, in all cases, FAS must have the opportunity to approve the boards' budgets, plans, and projects that focus on international activities, including international travel. Approval will be subject to compliance with the checkoff legislation as well as other FAS requirements. Likewise, for programs with import checkoff provisions, it is the responsibility of AMS commodity programs to maintain a close liaison with the Customs and Border Protection of the U.S. Department of Homeland Security. Similarly, as required by section 1999T of the Food, Agriculture, Conservation, and Trade Act of 1990, AMS will inform the United States Trade Representative on any proposed new or amended research and promotion order or plan which would assess imports.

M. Unemployment Practices. On April 17, 1992, the Department of Labor (Labor) determined that employees of research and promotion boards and marketing order committees, which are under USDA's supervision, perform "Federal Service" for Unemployment Compensation for Federal Employees (UCFE) Program purposes (UCFE Program Coverage Ruling No. 92-1).
Employees of boards and committees listed in Labor's (UCFE) Instructions for Federal Agencies whose employment has been separated from the board and seek to file a claim should contact their respective AMS Commodity Program for instructions about the unemployment compensation procedures on the employee's last day.

N. Records Retention. If not established in authorizing legislation, boards will develop record retention policies, approved by AMS, for all documents and electronic mail for which AMS has not established a requirement. Individuals receiving reimbursement from a board for travel expenses must maintain original receipts (electronic copies are acceptable) for a period of 3 years.

Boards possess information that demonstrates their adherence to their authorizing Acts, Orders, the *Guidelines*, and related AMS directives. Such records must be retained and be available for AMS to conduct proper oversight of board activities. As such, the records must be maintained for a period of time of no less than 3 years to enable AMS personnel to

review necessary documents during AMS Management reviews. Maintenance of electronic records of receipts and electronic program records will comply with this requirement if the electronic system of records is approved by AMS. Note that AMS approval of record retention policies pertains solely to records subject to AMS review for purposes of the oversight responsibilities of AMS. Neither the *Guidelines* nor board policies approved by AMS supersede other record retention requirements that may apply to the boards, including Federal, State, and local laws or orders by a court of competent jurisdiction.

Appendix 1 – Authorizing Legislation

Appendix 2 – Statement of Principle for Research and Promotion Boards and Marketing Orders for Information Sharing with Government Officials

Appendix 3 – AMS Directive: Investment of Public Funds

Appendix 4 – AMS Directive: Debt Management

Appendix 5 – Research and Promotion Boards

Appendix 6 – Requirements for Outside Counsel Legal Services Contracts

Appendix 7 - Marketing Communication Guidelines for Program Advertising, Promotional Material, Research, Social Media, and Other Publications

APPENDIX 1

AUTHORIZING LEGISLATION

- **Commodity Promotion, Research, and Information Act of 1996** (7 U.S.C. 7411-7425)
    - **Blueberry**
    - **Christmas Trees**
    - **Honey**
    - **Lamb**
    - **Mangos**
    - **Paper and Packaging**
    - **Peanuts**
    - **Softwood Lumber**
    - **Sorghum**
- **Beef Research and Promotion Act** (7 U.S.C. 2901-2911)
- **Cotton Research and Promotion Act** (7 U.S.C. 2101-2118)
- **Dairy Production Stabilization Act of 1983** (7 U.S.C. 4501-4514)
- **Egg Research and Promotion Act** (7 U.S.C. 2701-2718)
- **Fluid Milk Promotion Act** (7 U.S.C. 6401-6417)
- **Hass Avocado Promotion, Research, and Information** (7 U.S.C. 7801-7813)
- **Mushroom Promotion, Research, and Consumer Information Act of 1990** (7 U.S.C. 6101-6112)
- **Popcorn Promotion, Research, and Consumer Information Act** (7 U.S.C. 7481-7491)
- **Pork Promotion, Research, and Consumer Information Act of 1985** (7 U.S.C. 4801-4819)
- **Potato Research and Promotion Act** (7 U.S.C. 2611-2627)
- **Soybean Promotion, Research, and Consumer Information Act** (7 U.S.C. 6301-6311)
- **Watermelon Research and Promotion Act (7 U.S.C. 4901-4916)**
- **Federal Agriculture Improvement and Reform Act of 1996** (7 U.S.C. 7401)
- **Other statutes and regulations, as applicable**

APPENDIX 2

Statement of Principle for Research and Promotion Boards and Marketing Orders for Information Sharing with Government Officials

This document clarifies AMS policy regarding Research and Promotion and Marketing Order Boards (Boards) communication with government officials. For the purpose of this document, 'government officials' refers to federal employees outside of USDA, foreign and State governments/officials, legislators, and legislative staffs. AMS is committed to providing consistent application of these oversight principles. While this document does provide clarification, it is also important that boards adhere to their respective Acts, Order, rules/regulations and USDA/AMS policy documents.

Boards have expressed a growing concern that many audiences do not fully understand their roles and functions, or AMS's oversight. Whether by statute or AMS policy, Boards are not able to use assessment funds to influence legislation or government policy. However, it has been longstanding AMS policy to allow Boards to share factual information with government officials under certain conditions:

- Prior approval is obtained from AMS for the information to be provided to ensure that it does not influence legislation or government policy; previously approved materials do not require re-approval.

- For recurring or standalone educational sessions with government officials, meeting arrangements should be reviewed in advance with AMS. In exceptional cases, AMS may also consider factors such as location and timing of the meeting as part of the review process.

- A disclaimer is provided during discussions or on materials that outlines what Boards can and cannot do. For example, "Information is provided for educational purposes and is not intended to influence legislation or government policy."

- Boards are not expected to request advance approval when responding to a direct and immediate request (e.g., phone call, email) for information but should remind the inquirer of their role. For example, if a Board receives a phone call from a State Congressman's office asking for information about a particular research program funded by the Board, the Board should provide the information directly with appropriate disclaimers.

This guidance is intended to cover the majority of routine, ongoing interactions between Boards and government officials. For more significant and infrequent events – such as showcases with multiple Boards – consideration will be elevated to AMS's Research and Promotion Functional Committee and the administrator's office.

(September 25, 2019)

United States Department of Agriculture
Marketing and Regulatory Programs
Agricultural Marketing Service

Directive AMS 2210.2 2/7/11

INVESTMENT OF PUBLIC FUNDS

1. PURPOSE

This Directive states the policy and responsibilities for investment of public funds maintained by the Agricultural Marketing Service (AMS).

2. REPLACEMENT HIGHLIGHTS

This Directive replaces AMS Directive 2210.2, Investment of Public Funds, dated August 2005.

3. AUTHORITIES

a. Title 31, Code of Federal Regulations (CFR), Parts 202-226, Money and Finance: Treasury.

b. Volume I, Treasury Financial Manual 6-9000, Securing Government Deposits in Federal Agency Accounts.

4. DEFINITIONS OF TERMS

a. Agency. Any department, agency, or instrumentality of the U.S. Government.

b. Designated Depositary. A financial institution designated by the Department of the Treasury as a depositary and financial agent of the Federal Government which has been selected by an agency to hold public funds.

c. Federal Reserve Districts and Banks. The Federal Reserve Bank or branch of the district within the geographic area where the agency's designated depositary is located.

d. Government Deposits. Public money, including, but not limited to, revenue and funds of the United States and deposited funds subject to the control or regulation of the United States or any of its officers, agents, or employees.

e. Recognized Insurance Coverage. The insurance provided by the Federal Deposit Insurance Corporation (FDIC), National Credit Union Share Insurance Fund, and

the insurance organizations specifically approved by the Secretary of the Treasury under Title 31, CFR, Part 226.

5. POLICY

It is AMS policy to:

a. Exercise prudent cash management of funds collected

through: (1) Fees for services,

(2) Assessments from handlers and producers to finance research and promotion efforts, and

(3) Assessments to administer marketing agreements and orders. This also applies to payments received by producer settlement funds and interest or other charges collected on overdue accounts.

b. Require that a formal agreement or Memorandum of Understanding be signed between parties before funds are deposited with a financial institution. This agreement is to state the responsibilities of both the custodial agency and the financial institution, and must conform with the policies and guidelines established by the U.S. Treasury with respect to the deposits of, and collateral for, public funds.

c. Require complete safety of invested funds. In this regard, AMS adheres to U.S. Department of the Treasury Regulations, Title 31, CFR, Parts 202-226.

6. RESPONSIBILITIES

a. The fund custodians for AMS who maintain public funds are the Budget Division, the Research and Promotion boards, Milk Market Administrators, and the Fruit and Vegetable Marketing Order Administrative Committees. When investing funds held in public trust, fund custodians must follow these guidelines:

(1) **Investments.** All investments must be short-term, risk-free, interest- bearing instruments.

(a) **Short-Term.** All investments must have a maturity period of 1 year or less to ensure availability and rapid conversion of the principal to cash.

(b) **Risk-Free.** All investments must be federally insured or fully collateralized with Federal Government securities.

(2) **Insurance Coverage.** All investments must be fully secured. Accounts are to be established at financial institutions having FDIC insurance which protects the funds

depositor's place in banks and savings associations. Accounts at individual institutions should not exceed, in the aggregate, FDIC insured thresholds in order to ensure full insurance for both account principal and interest. The standard insurance amount currently is $250,000 per depositor through December 31, 2013. On January 1, 2014, the standard insurance amount will return to $100,000 per depositor for all deposit accounts.

(3) **Collateralization.** All investments exceeding FDIC insured thresholds, within said institutions, must be fully collateralized.

(a) Before sending funds to an institution for investment, eligible collateral must be pledged to an account under the control of the investing custodian.

(b) Only those securities specified in U.S. Department of the Treasury Regulations, Title 31, CFR, Part 202, are acceptable collateral. They include securities issued, fully insured or guaranteed by U.S. Government agencies, or U.S. Government-sponsored corporations. Regulations that govern the types of acceptable collateral that may be pledged to secure deposits of public monies, as well as the valuation of that collateral are addressed in Title 31 CFR, Part 380. For a current list of acceptable classes of securities and instruments described within this Code and their valuations, see the Bureau of the Public Debt's website at www.publicdebt.treas.gov.

(c) Collateral must be pledged at face value. Financial institutions must provide the investor with quarterly inventories of pledged collateral showing both face and market value.

(d) Pledged collateral must be separately segregated in the name of the investor (i.e., AMS-Budget Division, board, Milk Market Administrator, or Administrative Committee), in order to prevent double pledging.

(e) Collateral not held by the Federal Reserve Board must be held by a financial institution authorized by Treasury as a Federal Depositary, having FDIC insurance, and approved by the Federal Reserve Board.

(f) Investment records must be maintained for 6 years and 3 months, as required by the AMS Records Management Program.

b. The Planning and Accountability Division, AMS, will conduct a biennial review of the investment decisions process for the AMS investment program. Investment authorities outside of the AMS investment program will continue to be reviewed as outlined in their investment authority. The Budget Division will issue quarterly investment letters that will apprise committee members of their investment earnings. The Budget Division will also host an annual meeting with the Investment Committee to provide an overview of the investment program activities.

c. On an annual basis, all employees authorized to conduct business with any financial institution participating in the AMS investment program must complete an AMS Investment Program Disclosure Statement Form which indicates any personal relationships with those financial institutions with which business is conducted.

d. The Budget Program and Analysis Branch Chief and the AMS Budget Officer share the responsibility of approving daily investment decisions respectively. In their absence, acting staff (GS-13 and above) assume these responsibilities provided they have signed disclosure statements and have confidential disclosure reports on file.

7. INQUIRIES

a. For further information, please contact the AMS Budget Office.

b. This Directive is available online at http://www.ams.usda.gov/amsissuances

/s/
Ellen King
Deputy Administrator
Compliance and Analysis Programs

United States Department of Agriculture
Agricultural Marketing Service

Directive

May 10, 2004

Re: **AMS Debt Management Directive 420.3**

The Agricultural Marketing Service (AMS) Debt Management Directive, 420.3 is being revised. Most of the debt management policies listed in the current version of 420.3 are still applicable. Since AMS converted to the Federal Financial Information System (FFIS) procedural references related to the Billings and Collections system (BLCO) are no longer applicable and are the major reason for the revision.

An outline summary of the revised directive is as follows:

I. PURPOSE

A. States the AMS policy on the recording, monitoring, analyzing, reporting and disposition of program and administrative accounts receivable.
B. Delegates to Program Deputy Administrators the authority to write off uncollectible accounts receivable up to $500 (threshold amount under review as part of Directive revision).

II. REPLACEMENT HIGHLIGHTS

This Directive will replace AMS Directive 420.3, Debt Management, and dated 6/29/87.

III. POLICY

Debts owed the Federal Government shall be recorded, monitored, and pursued in a manner that protects the interest of the Government and promotes the ability of AMS programs to provide services to the public.

IV. AUTHORITY

A. Federal Claims Collection Standards (Code of Federal Regulations 4, Chapter II).
B. Code of Federal Regulations 7, Part 3.

V. APPLICABILITY

This directive applies to debts or claims owed to AMS by individuals (including employees), commercial entities or corporations, and States and possessions. Amounts owed by Federal agencies are excluded.

VI. RESPONSIBILITIES

Programs and Administrative Staffs must:

1. Produce bills at least monthly.
2. Monitor and analyze the status of billings and collections.
3. Take action as necessary on billing and collection problems.

VII. DELINQUENCIES

A. Delinquencies must be aggressively and promptly pursued.
B. Deputy Administrators or their designees may write off up to $500 of a debt (amount under review) if they feel it is in their program's best interests to do so.

APPENDIX 5

Research and Promotion Boards

• Beef	Cattlemen's Beef Promotion and Research Board
• Blueberries	U.S. Highbush Blueberry Council
• Christmas Trees	Christmas Tree Promotion Board
• Cotton	Cotton Board
• Dairy	National Dairy Promotion and Research Board
• Eggs	American Egg Board
• Fluid Milk	National Fluid Milk Processor Promotion Board
• Hass Avocados	Hass Avocado Board
	Peruvian Avocado Commission
	California Avocado Commission
	Chilean Avocado Importers Association
	Mexican Hass Avocado Importers Association
• Honey	National Honey Board
• Lamb	American Lamb Board
• Mangos	National Mango Board
• Mushrooms	Mushroom Council
• Paper and Packaging	Paper and Packaging Board
• Peanuts	National Peanut Board
• Popcorn	Popcorn Board
• Pork	National Pork Board
• Potatoes	National Potato Promotion Board
• Softwood Lumber	Softwood Lumber Board

- Sorghum United Sorghum Checkoff Program
- Soybeans United Soybean Board
- Watermelons National Watermelon Promotion Board

Requirements for Outside Counsel Legal Services Contracts

Outside counsel contracts must cover legal services only. If other authorized services are to be provided, the board should enter into a separate contract, to be approved by the AMS Program area, to cover those services. The outside counsel contract must include the following provisions:

1. Duration of representation with starting and ending dates of the representation.

2. Detailed description of the legal services the outside counsel will provide, *i.e.* the scope of the representation.
    a. The contract may provide for modification of those services. Should the contract permit modification, the contract also must state that modifications must be approved by OGC in advance.

3. Billing provisions that specify:
    a. Allowable costs and expenses
    b. Billable rates for attorneys
    c. Tasks performed during the billing cycle will be included in the billing invoice

4. Oversight Provisions that provide:
    a. Contract is not valid until approved by USDA
    b. Statement of relevant statutory and regulatory oversight (the Act and the Order)
    c. Outside counsel will retain records for a minimum of three years; USDA and the board have the right to inspect the records during business hours
    d. USDA has oversight of the board; oversight is not limited by the contract for outside counsel
    e. USDA-OGC has final decision-making authority on all legal matters involving the board; attorney-client confidentiality between outside counsel and the board extends to USDA OGC
    f. Outside counsel will not commence litigation services without the written consent of OGC; contract will not contain language broadly permitting outside counsel to perform litigation services, including e-discovery.
    g. Outside counsel will ensure that potential or actual violations of law or regulations involving the checkoff of which counsel is aware, including violations *by* board members, are disclosed to AMS as soon as possible, but not later than 5 business days after counsel becomes aware of the actual or potential violation.
    h. Outside Counsel shall not engage in activities designed to influence government policy or action on behalf of the board
    i. Outside counsel agrees to abide by Federal civil rights laws and USDA civil rights regulations.

5. Termination clauses providing that USDA or the board may terminate the representation at any time; contract language may indicate boards will pay for all work performed under contract until date of termination, and if the contract is terminated, outside counsel agrees to return all information provided to counsel

Contracts *must not* include:

1. Indemnification provisions.
2. Liquidated Damages.

Examples of authorized legal services:

- Corporate governance and compliance oversight;
- Drafting and/or revising board bylaws, parliamentary procedures, and policies;
- Drafting proposed language for recommended changes to the Order;
- Assisting in coordinating the activities of regional and state organizations;
- Antitrust compliance;
- Advertising/privacy/internet law counseling and review of advertising materials and advertising and nutrition claims (however, all advertising material must be approved by AMS);
- Risk management training for board members and board employees to minimize the legal risks of actions taken by the board, including risks related to employment law, fiduciary responsibility and the Freedom of Information Act;
- Drafting statements of claim in bankruptcy;
- Contracts and addenda negotiations, drafting and administration;
- Assisting the board with developing and implementing procedures to ensure contractor legal compliance with board policies, and USDA statutes, regulations and guidelines governing the board's activities;
- Tax law counseling and preparation of tax materials;
- Preparing banking documents;
- Negotiation and drafting of commercial real estate leases;
- Employment law counseling and personnel/employment issues or procedures;
- Employment compensation arrangements/agreements;
- Business regulation and licensing;
- Legal advice on compliance with federal, state and local regulations;
- Intellectual property counseling, registration, licensing and protection;
- Pre-litigation dispute and resolution counseling, with notification to AMS if there is a likelihood of litigation or legal action.

Not authorized (non-legal/oversight services):

- Services designed to influence government policy or action
- Risk management oversight
- Manage and track approvals of materials by USDA
  Strategic planning

Marketing Communication Guidelines for Program Advertising, Promotional Material, Research, Social Media, and Other Publications

This document provides guidelines for Agricultural Marketing Service's (AMS) Research and Promotion (R&P) and Marketing Order (MO) boards, committees, and councils (Boards) for the review and approval of promotional and educational materials (marketing communications). Marketing communications include, but are not limited to, research, advertisements (print ads, web banner ads, mailed ads, television and radio spots, and advertorials), public relations materials, consumer information, social media content (Websites, Facebook, Twitter, YouTube, blogs, etc.) press releases, consumer information, articles for publication (e.g. magazines), and industry newsletters, with the exception of internal Board communications.

AMS will review all promotional and educational materials of Boards, approving those in compliance with the applicable legislative authority and USDA policy. No communication materials or campaigns can be implemented prior to AMS approval.

Note: Despite the many guides and references at AMS's disposal, marketing communications remain an area that requires much analysis. Materials are reviewed on a case-by-case basis. As much as possible, points to consider are detailed below. Questions should be referred to the designated AMS representative, as AMS is responsible for the final approval of all materials.

Boards will submit, at a minimum, the following materials for AMS review and approval:

Marketing communication materials, including advertising, public relations materials, press releases, consumer information, educational materials, industry newsletters, and social media content (Websites, Facebook, Twitter, YouTube, blog entries, etc.), hereinafter referred to as "materials." Advertising generally includes materials in print, online, or other media, web banner ads, mailed advertisements, television and radio spots, videos, and advertorials.

Regarding social media content, every Board will have a social media plan approved by AMS. The content and information in social media outlets must be pre-approved or be part of previously approved materials. Additional guidance regarding social media content is detailed in Appendix D.

When evaluating materials, AMS will consider the following:

Authority

Table 1: Federal Agencies, Statutory Authority, and Resources		
Agency	**Authority**	**Resources**
FDA	Food labeling (includes point-of-purchase materials) Reference or Daily Values (%DVs) for Nutrition Labeling Nutrient content definitions Health claims on food labels (FDA has responsibility for claims on product labeling, including packaging, inserts, and other promotional materials distributed at the point of sale. Implied health claims fall in this category). Food Safety Product Recalls	21 CFR 101 (food labeling regulations) Nutrition Labeling Education Act (NLEA) Guidelines for Voluntary Nutrition Labeling of Raw Fruits and Vegetables FDA Website for "Food Labeling and Nutrition" Food Safety Modernization Act FDA Website for product Recalls
FTC	Prohibits deceptive and unfair acts or practices in commerce All forms of marketing, for all products and services Includes environmental claims Includes claims in food marketing (traditional ads, social media, PR, Internet; generally defers to FDA on claims in food labeling) Works closely with FDA to align nutrient content and health messages No pre-market approval of nutrient or health claims	Enforcement Policy Statement on Food Advertising Generic Copy Test of Food Health Claims in Advertising FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising Dietary Supplements: An Advertising Guide for Industry Advertising and Marketing on the Internet: Rules of the Road .com Disclosures: How to Make Effective Disclosures in Digital Advertising Guides for the Use of Environmental Marketing Claims ("Green Guides"), 16 CFR Part 260

		The FTC's Endorsement Guides: What People Are Asking
USDA	Nutrient data in foods Recommended Daily Values for nutrients, Dietary Guidance for Americans U.S. dietary guidance Organic claims Food Safety How commodity was raised or grown Government speech of Boards Influencing government policy Image of President or White House Disparagement, other issues	USDA National Nutrient Database for Standard Reference Dietary Reference Intakes and Recommended Dietary Allowances Dietary Guidelines for Americans National Organic Program FSIS Fact Sheet for Meat, Poultry and Egg products Other USDA policy Statutes governing Boards *Guidelines for AMS Oversight of Commodity Research and Promotion Programs* White House policy

The Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) share jurisdiction over food marketing. By agreement, FDA has primary responsibility for claims made in food labeling and the FTC has primary responsibility for claims made in other forms of advertising and marketing.

All food claims, whether in labeling, advertising, or other marketing, must be truthful, accurate, not misleading, and substantiated. The FTC defers to FDA labeling regulations pertaining to definitions of nutrient content claims. The FTC also gives great deference to FDA determinations of adequate support for a health claim. Health claims that meet FDA's "significant scientific agreement" (Defined under Appendix C-Research Communication Guidance) standard will be presumed substantiated under FTC law. Health claims that must be qualified under FDA labeling law because of limitations or uncertainty in the supporting science will be allowed in advertising only if those limitations are clearly communicated and understood by consumers. When disclosure of qualifying information is necessary to prevent a claim from being deceptive, the disclosure must be clear and conspicuous.

Table 1 shows the Federal agencies with authority over the types of materials and/or the content of those materials that Boards might develop, along with resources that reflect those agencies'

regulations and policies. There may be other resources not listed below that AMS may allow Boards to use provided they document the source of the information and obtain AMS approval.

Questions and Considerations:

When evaluating marketing communications, AMS considers the following:

- What is it? Is it advertising or food labeling, or is it something else?
- Who is the targeted audience? How and where will it be used? How will it be distributed?
- Is a claim being made? If so, what is the claim; what type of claim (nutrient-content, health, structure-function, environmental)?
- Is the communication truthful and non-misleading?
- Does the communication include a comparison? If so, is it a factual comparison of like or competing products?
- Are appropriate disclosures noted?
- Does it mention other commodities or competitors?
- Does it mention government action or an official?
- What is the overall takeaway or net impression?

I. Usage

Key Points:

- Determine how materials will be used and what latitude is appropriate.
- Required disclosures must be clear and conspicuous, regardless of the medium. That means easily able to be read or heard and in close proximity to the claim.
- Net impression is key--What is the overall takeaway?

AMS will base its decision on how the program intends to use and distribute the materials.

AMS will evaluate advertising with the strictest eye because of its nature, which is to grab viewer attention quickly and in a short amount of time. On the other hand, consumer information publications and public relations materials (such as news releases) have more flexibility because there is more time to delve into the story. In all cases, every effort should be made to ensure the information released by Boards is not factually untrue, misleading, or deceptive.

Example:

In an ad, the claim: “Almonds contain calcium. A nutrient that helps build strong bones.” would be prohibited, because a serving of almonds is not a good source of calcium. “Contains” is a synonym for “good source.” Additionally, nutrient content claims require disclosure of risk-increasing nutrients.

The claim: “Almonds contain 8% DV of calcium. A serving of almonds has 13 grams of unsaturated fat and 1 gram of saturated fat.” would be allowed. The amount of calcium is specified; therefore, the statement does not imply that almonds are a good source of the nutrient. Also, the fat content is disclosed.

In an ad, the claim: “Avocados contain vitamin E, an antioxidant that protects the body tissue from damage and helps keep the immune system strong.” would be prohibited, because a serving of avocados is not a good source of vitamin E. Contains is a synonym for “good source.”

The claim: “Avocados contain 6% DV of vitamin E. An antioxidant that protects the body tissue from damage and helps keep the immune system strong.” would be allowed. The amount of vitamin E is specified; therefore, the statement does not imply that avocados are a good source of the nutrient.

In an ad, the claim: “Cottonseed oil is rich in antioxidants, has zero trans-fat, and zero cholesterol which places it among the heart-healthy cooking oils on the market today.” would be prohibited because to make a health claim (“heart-healthy”), any one of the four risk-increasing nutrients cannot be present in an amount that exceeds the threshold set by FDA. For cottonseed oil, the fat and saturated fat exceed the threshold. Additionally, the claim does not specify which antioxidant contributes at least 20% DV (“rich in”).

The claim: “Cottonseed oil is rich in vitamin E, has zero trans-fat and zero cholesterol.” would be allowed with disclosure of risk-increasing nutrients.

In an ad, the statement “eggs contain folate” would be prohibited, because an egg is not a good source of folate. – “Contains” is a synonym for “good source.”

The claim: “eggs are an excellent source of choline” or “eggs are rich in choline” would be allowed because eggs contain at least 20% of the recommended daily value of choline.

In a consumer publication, the following claims would be allowed: Almonds are an excellent source of vitamin E and magnesium, a good source of phosphorus, and contain 8% DV of calcium. A serving of almonds has 13 grams of unsaturated fat and 1 gram of saturated fat. [Almonds provide 35% DV vitamin E, 20%DV magnesium, 15% DV phosphorus, and the amount of calcium is specified. Therefore, the nutrient content claims made are truthful. Also, the fat content is disclosed.]

Food Packaging, Inserts, and Point-of-Purchase Materials

Under FDA food labeling regulations, food packaging, inserts, and point-of-purchase materials (including shelf talkers, hang tags, and other signage) are considered food labeling. This means a print ad placed on the shelf at the grocery store is not an ad at all; it is considered a food label and must meet all of the criteria as such. Thus, AMS will review Board’s food packaging, inserts

and point-of-purchase materials to ensure they are in compliance with FDA food labeling regulations.

Digital Media

Rules for marketing claims apply across all media, whether delivered on a desktop computer, a mobile device, or more traditional media such as television, radio, or print.

Regardless of the device or platform, a consumer may use to view an online ad, if a disclosure is needed to prevent the ad from being deceptive or unfair, the disclosure must be clear, conspicuous and placed as close as possible to the claim. If an ad without a disclosure would be deceptive or unfair, and a disclosure cannot be made clearly and conspicuously on a device or platform, then that device or platform should not be used. In the event of social media or advertisement size restrictions, disclosure will be reviewed and considered on a case-by-case basis and the communication must meet FTC requirements to be approved.

Hyperlinks

Hyperlinks that lead to disclosures or more information should be clearly labeled, and convey the importance, nature and relevance of the information to which the links lead. Hyperlinks labeled "disclaimer," "learn more," "details," "click here for more information," or similar, may not be adequate and will be reviewed on a case-by case basis. Disclosures that are an integral part of a claim, or that cannot be separated from it, should not be communicated through a hyperlink. This applies to required disclosures about health and safety issues.

Disclosures or sources presented in online ads, television ads, video clips, etc., should appear for a duration sufficient for consumers to notice, read, and reasonably understand them. FTC requires disclosures on ads be easily legible, not "mouseprint," and in close proximity to the image or statement to which it provides clarity.

Boards should consider how their hyperlinks will function on commonly used software programs and devices. Likewise, marketers should be aware of issues regarding the use of pop-ups to disclose necessary information. For example, do not use blockable pop-up disclosures to convey necessary information. Boards are responsible for using effective methods of communicating information to consumers.

For more detailed information regarding digital advertising, please refer to FTC's guidelines (e.g., .com Disclosures: How to Make Effective Disclosures in Digital Advertising). Disclosures should follow these FTC guidelines, in addition to all applicable laws and USDA policies.

II. Audience

Another factor in reviewing materials should be the intended audience. For example, materials targeted to general consumers vs. materials targeted toward health practitioners whose understanding of health issues is more advanced.

A. Consumers are generally considered the end users. They understand terms like "good fat" and "bad fat." They generally do not understand more technical nutrition/biochemistry and/or research terms like HDL/LDL.

B. Industry Customers and Trade include producers, growers, importers, manufacturers, research and development personnel, and trade (such as retailers, foodservice distributors and operators). This audience generally has technical support and research and development functions available to them. They are particularly interested in customer perception and profitability. Science is valuable to position their product.

C. Experts and Influencers include health and nutrition experts and professionals, researchers, influencers, food editors, and press. They understand scientific language (e.g. poly and mono-saturated fat) or other industry-specific terminology. Materials targeted to this audience often discuss scientific research. Materials are more detailed and should specify the source for this audience.

III. Claims

AMS will review claims made in materials and ensure they are accurate, not misleading, and not deceptive.

Key points:

- Use no false, misleading, or deceptive statements.
- Identify all expressed and implied claims. Claims that could not be made overtly and cannot be implied or suggested.
- Claims must be adequately supported.
- Net impression is key--What is the overall takeaway?

Interpretation and Substantiation

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers' decisions. See FTC Policy Statement on Deception, 103 FTC 174 (1983). To determine if an advertisement is deceptive, marketers must identify all express and implied claims that the advertisement reasonably conveys. Marketers must ensure that all reasonable interpretations of their claims are truthful, not

misleading, and supported by a reasonable basis before they make the claims. See FTC Policy Statement Regarding Advertising Substantiation, 104 FTC 839 (1984).

The types of food claims to be evaluated are:

A. Nutrient-Content Claims

Nutrient-content claims characterize the level of a nutrient in a food, through expressed or implied statements. FDA's updated Daily Reference Values (DRVs) and Reference Daily Intakes (RDIs) are used to calculate the % Daily Value per serving of nutrients. Please refer to Appendix B for definitions and additional guidance.

Key points:

- In advertising, FTC follows definitions found in the FDA food labeling regulations, but allows the use of undefined FDA terms. Claims that may be allowed in advertisements may not necessarily be permitted by FDA on a label.
- Nutrient-content claims must be accurate and supported by data from the *USDA Nutrient Database* or FDA's *Guidelines for Voluntary Nutrition Labeling of Raw Fruits and Vegetables*.
- Nutrient content claims must be based on the serving size or the Reference Amounts Customarily Consumed per eating occasion (RACC). The RACC represents one serving, and is established by FDA 21 CFR § 101.12.
- General guide for % Daily Value of nutrients of a food per RACC:
    - "good source," "contains," or "provides" means 10-19% Daily Value per RACC;
    - "excellent source," "high," or "rich in" means 20% or more Daily Value per RACC.
- For nutrients for which there is no established Daily Value (e.g., antioxidants, omega-3 fatty acids), claims must only specify the amount of the nutrient per RACC, and must not imply the level of the nutrient in the product.
- For nutrients with less than 10% Daily Value, claims must specify the amount of the nutrient per serving size or RACC.
- Ensure implied claims are not misleading.
- Good source, high, relative, implied, specified amounts, and other nutrient claims should be consistent with FDA regulations.

Expressed nutrient content claims

These claims directly state the level (or range) of a nutrient in the food.

Examples:

- Low sodium
- 100 calories
- Excellent source of fiber
- 6 g protein
- Low in fat
- Contains vitamin E

Implied nutrient content claims

These claims imply a level of a nutrient in a food without expressly stating it. These types of claims are prohibited when they wrongfully imply that a food contains or does not contain a meaningful level of a nutrient.

Examples:

- Made with oat bran

A claim that a food contains or is made with an ingredient known to contain a particular nutrient (in this case, fiber) may be made if the product is a "good source" of the nutrient associated with the claim. This claim would be allowed if the product contains enough oat bran to be a "good source" of fiber.

- No tropical oils

A product claiming to contain no tropical oils would be allowed only on foods that are "low" in saturated fat because consumers have come to equate tropical oils with high saturated fat.

- A healthy snack

A product may be referred to as healthy or related terms (e.g., ''health,'' ''healthful,'' ''healthfully,'' ''healthfulness,'' ''healthier,'' ''healthiest,'' ''healthily,'' and ''healthiness'') if it meets the FDA criteria for fat, saturated fat, cholesterol, and other nutrients.
https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm521690.htm

Other examples:

- Almonds provide 6 grams of power-packed protein

This claim would be allowed. The amount of protein is specified, and "power-packed" describes "protein."

- Nut x is packed with protein

This claim would only be allowable if the product is an excellent source of protein.

Nutrient Data:

AMS review of nutritional claims will include verification of supporting data to determine consistency with the *USDA National Nutrient Database for Standard Reference* and other pertinent Federal policies and guidance. Any other supporting data must be substantiated by the Boards.

USDA's Nutrient Database is available online.

AMS requires Boards to use the non-branded nutrient/product information contained in USDA's Nutrient Database as the Board programs are generic in nature. In certain cases, AMS may allow Boards to use USDA's branded nutrient database or nutrient data from sources outside of USDA's Nutrient Database if they document the source of the information (e.g., the laboratory) and request AMS approval. Reasons might include obtaining data not available in the USDA database or comparing products for which some data are not available in the USDA database.

USDA's Agricultural Research Service (ARS), which administers the database, is open to receiving new data from industries to facilitate keeping the database updated. There are requirements for obtaining this data, and AMS will contact ARS for those requirements if a Board wishes to fund the research.

"Use of Antioxidant Data and polyphenol research (Oxygen Radical Absorbance Capacity (ORAC) or similar values):
Boards will be allowed to cite ORAC or similar values for their individual product or commodity since the ORAC research and similar research is published literature. However, the use of these values must be accompanied by the following disclaimer:
"The data for antioxidant capacity of foods generated by test-tube methods cannot be extrapolated to human effects. Clinical trials to test benefits of dietary antioxidants have produced mixed results."
USDA will not approve communications that include:

- Any implied health benefits based on the antioxidant levels; or
- Product comparisons using ORAC or similar values since such would imply a benefit based on the antioxidant capacity level. "

Serving Sizes:

Nutrient-content claims must correlate to the serving size or RACC (Reference Amounts Customarily Consumed in one eating occasion). In other words, amounts cannot be provided for more or less than one serving, either to boost nutrient content (such as vitamins or minerals) or lower it (such as fat or sodium).

B. Health Claims

FDA regulations define health claims in 21 CFR 101.14 (a)(1) and (p). A health claim characterizes the relationship of a nutrient or food to a disease or health-related condition. Generally, the word "may" or "might" is used in discussing the relationship of the nutrient or food to a disease or health-related condition. These claims are limited to disease risk reduction, and the food must meet the requirements of the claim. Additionally, these claims cannot state the degree of risk reduction (i.e., food x may reduce the risk of cancer by 40%).

USDA AMS follows FDA and FTC policy/guidance regarding authorized health claims and qualified health claims used in marketing and nutrition related materials.

FDA regulations govern all health claims on food labels and in labeling of foods. Health claim messages that are included in point of sale communications or materials that could potentially be used as digital point of sale information must include the complete FDA approved health claim statement(s). This health claim statement advises consumers about the context and other dietary recommendations in which the health claim is made. FDA provides examples of model health claim statements for each approved health claim. Similar statements may be made as long as the requirements for that health claim are included. See 21 CFR 101.72 through 101.82 for approved health claims. For additional information, see 21 CFR 101.14 (a)(1) and (p) and Appendix B: FDA Defined Terms and Marketing Terms.

FTC allows more flexibility with health claims in marketing and other materials than FDA allows on food packaging, inserts and point-of-purchase materials. Note: Point-of-purchase materials are considered labeling, not promotional materials. AMS will review Board point-of-purchase materials to ensure they are in compliance with FDA regulations.

Key Points:

- Health claims in advertising and other marketing should comply with FTC law. Health claims should be: (1) supported by competent and reliable scientific evidence (i.e., randomized controlled human clinical testing); (2) consistent with the larger body of scientific evidence; and (3) adequately qualified as necessary to clearly communicate any significant limitations on the supporting science. Health claims authorized by FDA pursuant to the significant scientific agreement standard are presumed to comply with FTC substantiation standard.
- Disclose the amount of any risk-increasing nutrients (fat, saturated fat, cholesterol, sodium).
- Ensure materials are not misleading or deceptive.
- Watch implied claims.
- No "medical" claims portraying a commodity as a "drug" with a therapeutic effect are allowed. The words "**cure,**" "**mitigate,**" "**treat,**" "**reverse,**" or "**prevent,**" even if

modified by “may” are not permitted because these words redefine the substance as a drug. This includes “lowers cholesterol.”
- What is the overall takeaway?

Appendix C details USDA guidelines related to the communication of research.

Disclosure Nutrient Levels and Disqualifying Nutrient Levels, as defined by FDA:

For nutrient content and health claims, any one of the four risk-increasing nutrients cannot be present in an amount that exceeds the threshold set by FDA, unless FDA provides for an exception. These disclosure and disqualifying nutrient levels (which are the amounts beyond which a claim is disqualified) are:

- Fat 13 g
- Saturated fat 4 g
- Cholesterol 60 mg
- Sodium 480 mg

For foods with nutrients that exceed any of the above thresholds, nutrient content and health claims may appear on a case-by-case basis in advertising if the amount of the risk-increasing nutrient(s) is disclosed.

Examples of Acceptable Claims:

- Trans fats? Not in our house. “Nut X” has zero trans fats. In anyone's house."
  Disclosure statement: "One serving of dry roasted “Nut X” (30 grams) contains 12 grams of unsaturated fat, 2 grams of saturated fat, zero trans fats and no cholesterol."

- An ice cream label may not bear a calcium and osteoporosis health claim because the food contains fat in an amount above the threshold.

Unless otherwise required, the nutrient must be present in at least a good-source amount to make a claim. For example, a folate-neural tube defect cannot be made for a food that contains 4% of the Daily Value for folate. (An exception to this good-source rule may be when research indicates that a nutrient may be more bioavailable from one food than from a richer source. This can be discussed in non-advertising materials where there is room to tell the full story.)

Example of Unacceptable Claim:

- USA-grown “Nut x”: a healthful treat (and no tricks).
  Disclosure statement: “One serving of “nut x” contains 12 grams of unsaturated fat and 2 grams of saturated fat, zero trans fats.

Unacceptable claim because "Nut x" does not meet FDA's definition of "healthy." While the mono and polyunsaturated fats constitute the majority of the total fat content per serving, "Nut x" must still meet FDA's healthy definition requirements for saturated fat (1 gram or less per RACC serving) and cholesterol. "Nut x" also must provide at least 10% of the Daily Value per RACC for one or more of the qualifying nutrients (vitamin A, vitamin C, calcium, iron, protein, potassium, vitamin D or fiber). The term "healthful" is one of the derivatives of "healthy."

[This reflects FDA's current enforcement discretion guidance on low fat and beneficial nutrient criteria, which provides interim guidance regarding the use of the term "healthy." Thus, the criteria could change in the final rule.]

i. Authorized Health Claims

FDA has identified a number of relationships between a nutrient or food and the risk of a disease or health-related condition. FDA authorizes health claims for those relationships in its food labeling regulations.
https://www.fda.gov/Food/IngredientsPackagingLabeling/LabelingNutrition/ucm2006876.htm#approved

Examples of authorized claims:

Calcium and osteoporosis
- Adequate calcium throughout life, as part of a well-balanced diet, may reduce the risk of osteoporosis.

Potassium and the Risk of High Blood Pressure and Stroke
- "Diets containing foods that are a good source of potassium and that are low in sodium may reduce the risk of high blood pressure and stroke."

Fiber-Containing Grain Products, Fruits and Vegetables and Cancer Risk
- Low fat diets rich in fiber-containing grain products, fruits, and vegetables may reduce the risk of some types of cancer, a disease associated with many factors.

FDA has specifically not authorized several claims. For example:
- Dietary fiber and cardiovascular disease
- Zinc and immune function in the elderly

ii. Qualified Health Claims:

Due to limited scientific evidence, the FDA approved or authorized claim statement must accompany the claim, and the total fat disqualifying nutrient must be disclosed:

Example: Nuts and Coronary Heart Disease risk reduction:

- "Nut x may be good for your heart."
    - Acceptable with use of FDA qualified health claim statement, or a modified claim statement in advertisements, and fat disclosure.

Claim Statement: "Scientific evidence suggests but does not prove that eating 1.5 ounces per day of most nuts [such as *name of specific nut*] as part of a diet low in saturated fat and cholesterol may reduce the risk of heart disease."

Disclosure statement: One serving of "Nut x" contains 12 grams of unsaturated fat and 2 grams of saturated fat, zero trans fats and no cholesterol.

Unless otherwise required, the nutrient must be present in at least a good-source amount (10 % or more of the Daily Value) to make a claim. For example:

- A folate-neural tube defect cannot be made for a food that contains 4% of the Daily Value for folate. (An exception to this good-source rule may be when research indicates that a nutrient may be more bioavailable from one food than from a richer source. This can be discussed in non-advertising materials where there is room to tell the full story.)

Unallowable claim:

- Eating walnuts may lower cholesterol

This is a drug claim—food products cannot be depicted to cure, mitigate or prevent diseases.

iii. Implied Health Claims

Health claims are not necessarily overt. They can be implied as demonstrated by the following:

- Heart symbol ♥ (which implies "healthy" or "heart-healthy" is only allowed when commodity meets definition of these terms with its attributes)
- Heart symbol can be used to depict a love for the product, if no health claim is made, implied, or associated with use of the heart symbol.
    - For example: I ♥ milk!!
- Third-party reference (e.g., National Cancer Institute or American Heart Association)
- Vignettes or descriptions (e.g., "healthy, contains 3 g fat")

In ads, implied claims cannot be made when the overt claim could not be made.

Use in advertising and other materials

While FDA has strict rules for the use of health claims on food labels, FTC allows more latitude for health claims in advertising and other materials. For example, the FTC does not necessarily require a marketer to adhere to the exact wording and all required elements of an FDA-authorized health claim in advertising, as long as the claim is not deceptive and communicates any important qualifying information. For additional guidance and examples of health claim messaging, see Appendix B.

FTC closely follows FDA for health claim guidance, but it is possible for a health claim not yet authorized by FDA to appear in advertising or other materials—especially other materials. With advertising, there may not be adequate space and time to tell the full story.

When evaluating health claims in materials, points to consider are:

- **Disclosures.** Are they adequate? Is the full story presented?
- **Significant scientific agreement.** Is there significant scientific agreement? What does the larger body of scientific evidence reflect? The claim should agree with the larger body of scientific evidence.
- **Overall takeaway.** What is the overall takeaway of the ad or material? What would the average reasonable consumer take away from the piece? Even if every statement is technically true, FTC might deem a piece misleading or even deceptive because of the overall takeaway.

C. Structure-Function Claims

A structure-function claim describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, provided it is not a disease claim. Structure-function claims may be made on a conventional food provided the effects are derived from the nutritive value of the food.

Examples:
- Calcium builds strong bones.
- Fiber maintains bowel regularity.
- Walnuts help maintain normal cholesterol.

These types of claims are not pre-approved by FDA. The manufacturer/labeler is responsible for ensuring the accuracy and truthfulness of the claims. The claims must not be misleading.

D. Food Safety Claims

USDA policy must be followed for all claims about food safety for meat, poultry and eggs. FDA policy must be followed for all other claims. More detailed information is contained in Appendix E.

E. Environmental Claims

FTC provides guidance for environmental claims in its *Guides for the Use of Environmental Marketing Claims* ("Green Guides").

Some terms to note:

- Sustainability
- Recyclable
- Organic
- Natural

More detailed information on FTC standards is contained in Appendix F and: https://www.ftc.gov/news-events/press-releases/2012/10/ftc-issues-revised-green-guides.

IV. Disparaging/Comparative Advertising

AMS will not approve any advertising deemed disparaging to another agricultural commodity or competing product or in violation of the prohibition against false and misleading advertising.

Disparagement is defined as anything that depicts other commodities in a negative or unpleasant light via overt or subjective video, photography, or statements. The AMS Guidelines permit comparative advertising, as long as the presentation of those facts is truthful, objective, not misleading, and supported by a reasonable basis.

Questions and Considerations:

When evaluating comparative advertising, AMS considers the following, as part of its overall review:

- How and where will it be used? How will it be distributed? What is the takeaway?
- Are the commodities being compared interchangeable?
- Are the comparisons truthful, not misleading, and limited to fact-based information or data?
- Do any statements or images in the advertisement disparage another commodity or product, including, but not limited to, the areas of quality, use, value or sale?
- Does the advertising make any false or unsubstantiated claims against another commodity or product?
- Are appropriate disclosures noted?

AMS policy prohibits false, misleading, or deceptive information and disparagement in advertising. FTC and AMS permit comparative advertising that aids consumers in making purchase decisions. Such comparative advertising may compare the desirable qualities of a product compared to qualities of competing products. Comparative advertising (comparing facts about different commodities or products) is allowed as long as the information is factual. For food advertising, comparisons are allowed for "foods or products that are interchangeable in the diet, etc..." These product comparisons should be made clearly referencing the serving size or the RACC for each product.

Examples of comparative and disparaging statements:

- Comparative: "product X contains ____ g protein; product Y contains ____ g protein."
    - This is a factual statement, and the information is verifiable. Any nutritional comparison must be in close proximity to any claims or disclosures. (Page 4 of this document.)
- Comparative: "product X costs _$$; product y costs _$$"
    - This is a factual statement, and the information is verifiable.
- Disparaging: "X tastes better than Y."
    - The word "better" is subjective, and the claim provides no factual information or data.
- Disparaging: "Get into this Century and buy X instead of Y!"
    - The claim provides no factual information or data.

Appeal Process for Comparative Advertisements:

All comparative advertisements submitted for review featuring two or more commodities represented by an AMS commodity promotion program will be reviewed by each applicable AMS Program Area. If the Program Areas are unable to reach agreement on approval/disapproval, an appeal for resolution will be submitted to the AMS Research and Promotion Functional Committee. The AMS Administrator will issue a final resolution if necessary.

V. Attribution

Board advertising and other communications must carry an attribution identifying the Board or assessment payers as the advertiser. It could be the Board name, logo, or wording like "America's (commodity) farmers" or similar language.

VI. Government Speech

Board speech is government speech. Therefore, Board speech should be consistent with USDA policies in all areas.

All statements and depictions must be appropriate for all audiences and be appropriate for the Secretary of Agriculture and all other USDA employees to make. (Audience-appropriateness in this case does not refer to understanding. A piece targeting health practitioners, for example, would not need to be easily understood by the larger public.)
If Board materials refer to a specific office holder or individual, AMS will verify the materials are consistent with that individual's positions and will verify approval for that usage.

For example, Board guidance related to foodborne illness outbreaks should agree with the guidance issued by USDA and other Federal agencies and may not contradict any guidance provided by USDA and other government agencies. Another example would be a Board wanting to quote the Secretary of Agriculture. In that case, AMS should ensure that the quote is consistent with the Secretary's guidance and verify it is used appropriately. Yet another example would be a Board quoting a person such as the First Lady or using her image; AMS will first verify approval for that usage. Please note obtaining the approval for scenarios such as the above may require additional review time.

Linkages to Other Websites: Boards cannot point readers to a specific blog or post not consistent with government speech because those linkages imply endorsement. *Examples* would be a farmer's or individual's blog post that comments on pending legislation or a Website that gives opinions about policy (even if both sides are presented). Linkages to Websites or blogs should be addressed in each Board's social media policy and all linkages will be reviewed on a case-by-case basis by each Board's marketing specialist.

A. Influencing Government

Boards must limit their actions to those that are authorized by their respective legislation. Boards may not take positions on political issues or endorse candidates for office, and all communications must remain non-political. Boards are prohibited from engaging in any attempts to influence a decision or course of action of any governmental body (i.e., local, State, or Federal). Similarly, Boards cannot support or oppose government actions, or recommend government action. For example, if Boards write comments in response to regulatory actions, they can state only factual evidence and cannot recommend a position (and AMS must first approve the comments prior to submission).

Boards cannot provide comments on government guidance that request or recommend change. For example, Boards cannot imply that U.S. dietary guidance is outdated or should be changed. Boards are permitted to submit comments, with prior AMS approval, that provide information, including research, as consideration for comments. Boards can fund research to determine a factual outcome, such as what effect results from the intake of a certain amount of a nutrient or food. Boards can share research results; however, Boards cannot recommend that the government take a course of action as a result of that research.

B. Image or Office of the President

Consistent with White House policy, the image or office of the President of the United States may not be used at any time unless approval is specifically granted. This applies to the current President and all past Presidents of the United States.

C. Trademarks

Boards cannot unlawfully use others' trademarks, copyrights, or logos.

D. Transparency and Links to Websites

For all Board Websites, AMS requires Boards to place transition screens or other statements at all linkages to outside Websites. Specifically, the screen should indicate the viewer is leaving a Board site. Boards should not use blockable pop-up transition screens.

Boards should include the language: "You are now leaving (insert Board name) site and the Board is not responsible for the information or views expressed", or other similar language approved by AMS. This includes linkages to private companies, other industry organizations, or any other non-Board sites. In lieu of a transition screen, AMS will allow statements that indicate clicking a link will cause a person to leave a Board site.

If a Board reposts AMS-approved media from a Board funded Website to a social media site, i.e. Facebook, YouTube, etc…the Board must acknowledge sponsorship of the media. AMS understands if a media item is reposted by an outside individual or group without the Board's approval, this would be outside of the Board's ability or jurisdiction to manage.

More detailed information on Social Media Content is contained in Appendix D.

E. Branded Advertising

AMS will follow each Board's statutory framework when evaluating branded advertising.

VII. Guidance on Word Usage

There are a number of health and nutrition-related, or other terms that have been defined by the FDA or FTC; AMS has also issued its own guidance on certain terms. For terms that are not formally defined, AMS will generally default to allowing Boards to use the term, as long as there isn't a clear or obvious reason for not doing so. This will allow Boards to more freely use marketing terms that are not regulated, but are still reasonable, and not easily or readily misconstrued from a consumer perspective.

See Appendix B for a partial listing of consumer-friendly, unregulated terms and FDA Defined Terms.

Guideline Updates

AMS will review and update these Marketing Communications Guidelines as needed.

AMS Review Process

AMS will review all marketing communications. Each program has a designated marketing representative serving as the primary reviewer of all marketing communications. In addition, most programs have a designated back-up representative who assists with reviews, as needed, to ensure the timely review of all marketing communications.

Review of extensive research communications will require more time so marketing specialists, AMS nutritionists or other USDA experts, can review applicable research studies. Upon receipt of such communications, marketing specialists will advise Board staff when an extensive review is required. Boards must provide referenced research studies when they submit the communication for review.

When necessary, AMS will coordinate reviews across programs involving commodities under AMS oversight and other applicable Agencies, to ensure consistency in approvals. Marketing specialists will advise Board staff when a more extensive review is needed.

Acronyms:

- AMS Agricultural Marketing Service
- FDA Food and Drug Administration
- FTC Federal Trade Commission
- MOAD Marketing Order and Agreement Division
- POS/POP Point of Sale/ Point of Purchase
- RACC Reference Amounts Customarily Consumed
- USDA United States Department of Agriculture

List of Research and Promotion Boards

- Dairy Promotion and Research Board
- Fluid Milk Processor Promotion Board
- Cattlemen's Beef Board
- National Pork Board
- American Egg Board
- American Lamb Board
- United Soybean Board
- United Sorghum Checkoff Program
- Cotton Board
- National Watermelon Promotion Board
- Softwood Lumber Board
- National Mango Board
- National Potato Promotion Board
- Christmas Tree Promotion Board
- Mushroom Council
- National Peanut Board
- Paper and Packaging Board
- Popcorn Board
- Hass Avocado Board
- National Honey Board
- U.S. Highbush Blueberry Council

List of Marketing Order Boards and Committees

- Almond Board of California
- American Pecan Council
- California Date Administrative Committee
- California Desert Grape Administrative Committee

- California Olive Committee
- California Walnut Board
- Cherry Industry Administrative Board
- Colorado Potato Administrative Committee
- Cranberry Marketing Committee
- Far West Spearmint Oil Administrative Committee
- Florida Avocado Administrative Committee
- Florida Citrus Administrative Committee
- Florida Tomato Committee
- Fresh Pear Committee
- Hazelnut Marketing Board
- Idaho-Eastern Oregon Potato Committee
- Prune Marketing Committee
- Raisin Administrative Committee
- South Texas Onion Committee
- Texas Valley Citrus Committee
- Vidalia Onion Committee
- Walla Walla Sweet Onion Marketing Committee
- Washington Apricot Marketing Committee
- Washington Cherry Marketing Committee

List of Appendices

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Appendix C: Research Communication Guidance

Appendix D: Social Media Content

Appendix E: Food Safety

Appendix F: Environment Claims

APPENDIX A - References Used by AMS

- FDA 21 CFR 101 Food Labeling
  http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?cfrpart=101

- FDA 21 CFR 101: Subpart D--Specific Requirements for Nutrient Content Claims:
  http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=101&showFR=1&subpartNode=21:2.0.1.1.2.4

- FDA Label Claims: General Information
  (Including Health Claims; Qualified Claims; and Nutrient Content Claims)
  http://www.fda.gov/food/ingredientspackaginglabeling/labelingnutrition/ucm2006873.htm

- FDA Food Labeling Guide 2013
  http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm2006828.htm

- FDA Changes to the Nutrition Facts Label
  https://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/labelingnutrition/ucm385663.htm

- FTC Enforcement Policy Statement on Food Advertising - May 1994
  http://www.ftc.gov/enforcement-policy-statement-on-food-advertising

- FTC Advertising and Marketing; including the following:
  - Online Advertising and Marketing;
  - .com Disclosures: How to Make Effective Disclosures in Digital Advertising;
  - Advertising and Marketing on the Internet: Rules of the Road
  - The FTC Revised Endorsement Guide: What People Are Asking
  - Advertising FAQs: A Guide for Small Business

  http://www.business.ftc.gov/advertising-and-marketing

- USDA Nutrient Database for Standard Reference
  http://ndb.nal.usda.gov/

- Dietary Reference Intakes and Recommended Dietary Allowances:
  http://fnic.nal.usda.gov/dietary-guidance/dietary-reference-intakes

- Generic Copy Test of Food Health Claims in Advertising, November 1998, FTC

http://www.ftc.gov/reports/generic-copy-test-food-health-claims-advertising

- *Dietary Guidelines for Americans 2015*
  http://www.cnpp.usda.gov/dietaryguidelines.htm

Appendix B: FDA Defined Terms and Marketing Terms & Additional Guidance for Health Claim Messaging

This appendix includes a listing of terms that FDA has defined and AMS guidance on additional terms, followed by words and phrases that are marketing-related but currently undefined from a regulatory perspective.
**** The fact that the word or phrase is listed here does NOT mean that it is automatically approved for use. Each marketing term and phrase will be individually evaluated based on the context in which it is used.**

Please note, if there is any discrepancy between what is here vs. what appears in the FDA regulations, FDA regulations control.

Term	Definition
Free	This means that a product contains no amount of, or only trivial or "physiologically inconsequential" amounts of, one or more of these components: fat, saturated fat, cholesterol, sodium, sugars, and calories. For example, "calorie-free" means fewer than 5 calories per RACC, and "sugar-free" and "fat-free" mean less than 0.5 g per RACC. Synonyms for "free" include "without," "no," and "zero." A synonym for fat-free milk is "skim."
Low	This can be used on foods that can be eaten frequently without exceeding dietary guidelines for one or more of these components: fat, saturated fat, cholesterol, sodium, and calories. Synonyms are little, few, low source of, contains a small amount of, or alternative spellings like "lo." Descriptors are defined as follows: **Low-fat:** 3 g or less per RACC **Low-saturated fat:** 1 g or less per RACC **Low-sodium:** 140 mg or less per RACC **Very low sodium:** 35 mg or less per RACC **Low-cholesterol:** 20 mg or less and 2 g or less of saturated fat per RACC **Low-calorie:** 40 calories or less per RACC

Term	Definition
Lean and extra lean	These terms can describe the fat content of meat, poultry, seafood, and game meats. **Lean:** less than 10 g fat, 4.5 g or less saturated fat, and less than 95 mg cholesterol per RACC and per 100 g **Extra lean:** less than 5 g fat, less than 2 g saturated fat, and less than 95 mg cholesterol per RACC and per 100 g
Excellent source	This term means that a food contains 20% or more of the Daily Value for a particular nutrient per the RACC. Synonyms: high, rich in, packed with, or alternative spellings like "hi."
Good source	This term means that a food contains 10-19% of the Daily Value for a particular nutrient per RACC. Synonyms: contains, provides.
Reduced	This term means that a nutritionally altered product contains at least 25% less of a nutrient or of calories than the regular, or reference, product. However, a reduced claim cannot be made on a product if its reference food already meets the requirement for a "low" claim.
Less	This term means that a food, whether altered or not, contains 25% less of a nutrient or of calories than the reference food. For example, pretzels that have 25% less fat than another type of snack could carry a "less" claim with reference to that snack. Synonym: fewer.
Light	This descriptor can mean two things: • First, that a nutritionally altered product contains one-third fewer calories or one half the fat of the reference food. If the food derives 50% or more of its calories from fat, the reduction must be 50% of the fat. • Second, the sodium content of a low-calorie, low-fat food has been reduced by 50%. In addition, "light in sodium" may be used on food in which the sodium content has been reduced by at least 50%. The term "light" still can used to describe such properties as texture and color, as long as the label explains the intent—for example, "light brown sugar" and "light and fluffy."
More	This term means that a food, whether altered or not, contains at least 10% more of the Daily Value per RACC than an appropriate reference food. The claim may only be used for vitamins, minerals, protein, dietary fiber, and potassium.

<table>
<tr><th>Term</th><th>Definition</th></tr>
<tr><td></td><td>This definition also applies to the use of “fortified,” “enriched,” “added,” “extra,” and “plus” claims, but in those cases, the food must be altered.</td></tr>
<tr><td>Fresh</td><td>FDA defines “fresh” because of concern over the term’s possible misuse on some food labels.

• When “fresh” is used to suggest that a food is raw or unprocessed, it can be used only on a food that is raw, has never been frozen or heated, and contains no preservatives. Irradiation at low levels is allowed.
• “Fresh frozen,” “frozen fresh,” and “freshly frozen” can be used for foods that are quickly frozen while still fresh. Blanching (brief scalding before freezing) is allowed.

Other uses of the term “fresh,” such as in fresh milk or freshly baked bread are not affected.</td></tr>
<tr><td>Healthy</td><td>The nutrient criteria to use the “healthy” claim can vary for different food categories (e.g., fruits and vegetables, or seafood and game meat) (see 21 CFR 101.65(d)(2)). These criteria are linked to elements in the Nutrition Facts label and serving size regulations (see 21 CFR §§ 101.9 and 101.12). To be described as “healthy,” a food must meet the following criteria per RACC*, or for meal products, per labeled serving (*21 CFR §101.65):
<table>
<tr><th>If the food is…</th><th>The fat level must be…</th><th>The saturated fat level must be…</th><th>The cholesterol level must be…</th><th>The food must contain…</th></tr>
<tr><td>A raw fruit or vegetable</td><td>If not low fat as defined in §101.62(b)(2), must be predominantly poly and monounsaturated fat</td><td>Low saturated fat as defined in 101.62(c)(2) [generally 1 g or less saturated fat]</td><td>The disclosure level for cholesterol specified in 101.13(h) or less [60 mg]</td><td>N/A</td></tr>
<tr><td>A single-ingredient or a mixture of frozen or canned fruits and vegetables</td><td>If not low fat as defined in §101.62(b)(2), must be predominantly poly and monounsaturated fat</td><td>Low saturated fat as defined in 101.62(c)(2)</td><td>The disclosure level for cholesterol specified in 101.13(h) or less</td><td>N/A</td></tr>
</table>
</td></tr>
</table>

Term	Definition				
	An enriched cereal-grain product that conforms to a standard of identity in part 136, 137 or 139 of this chapter	If not low fat as defined in §101.62(b)(2), must be predominantly poly and monounsaturated fat	Low saturated fat as defined in 101.62(c)(2) *[generally 1 g or less saturated fat]*	The disclosure level for cholesterol specified in 101.13(h) or less	N/A
	A raw, single-ingredient seafood or game meat	Less than 5 g total fat per serving and per 100 g	Less than 2 g saturated fat per serving and per 100 g	Less than 95 mg cholesterol per serving and per 100 g	At least 10% of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, calcium, iron, protein, or fiber
	A meal product as defined in 101.13(1) or a main dish product as defined in 101.13(m)	If not low fat as defined in §101.62(b)(2), must be predominantly poly and monounsaturated fat	Low saturated fat as defined in 101.62(c)(2) *[generally 1 g or less saturated fat]*	90 mg or less cholesterol per serving	At least 10% of the RDI or DRV per serving of 2 nutrients (for a main dish product) or of 3 nutrients (for a meal product) of: vitamin A, vitamin D, calcium, iron, protein, or fiber
	A food not specifically listed in this table	If not low fat as defined in §101.62(b)(2), must be predominantly poly and monounsaturated fat	Low saturated fat as defined in 101.62(c)(2) *[generally 1 g or less saturated fat]*	The disclosure level for cholesterol specified in §101.13(h) or less	At least 10 percent of the RDI or the DRV per RA of one or more of vitamin A, vitamin C, vitamin D, potassium, calcium, iron, protein or fiber
	*For foods with RACC equal to or less than 30 g or 2 tablespoons, use 50 g to determine if criteria is met for total fat, cholesterol, and sodium.				
	If the food is…			**The sodium level must be…**	
	A food with a serving size greater than 30 g or 2 tablespoons			480 mg or less sodium per serving	
	A food with a serving size equal to or less than 30 g or 2 tablespoons			480 mg or less sodium per 50 g	
	A meal product as defined in 101.13(1) or a main dish product as defined in 101.13(m)			600 mg or less sodium per serving	

Unregulated Terms

The following marketing terms have not been defined from a regulatory perspective. This is NOT an exhaustive or all-inclusive list, and these terms may not apply to all commodities. Certain terms and phrases are clarified below under the heading "*AMS Guidance for Specific*

Terms."

- A must for any diet
- Alternative
- As wholesome as it gets
- Crispy
- Crunchy
- Delicious
- Delightful
- Good stuff
- Good-for-you
- Goodness
- Goodness of
- Health benefits
- Healthy naturals
- Heart-warming
- High-quality plant protein
- Low Carb
- More flavor for everyone
- Nourishing
- Real
- Robust
- Satisfying
- Sensational
- Sizzling
- Sumptuous
- Super food
- Super fruit
- Tasty
- Ultimate
- Wholesome

AMS Guidance for Specific Terms

- **Bad fat** (may be used to indicate saturated and *trans* fats)
- **Good fat** (may be used for unsaturated fats (monounsaturated and polyunsaturated)
- **Packed with** (similar language to excellent source of stated nutrient)
- **Bursting with** (implies excellent source of stated nutrient)
- **Chock full of** (implies excellent source of stated nutrient)
- **Packed with plenty of nutrients** (product should be an excellent source of two or more nutrients)
- **Deliciously packed with nutrients** (product should be an excellent source of two or more nutrients)
- **Power-packed** (The context in which phrase is used will be considered: For example, the term "power-packed" in the phrase "power-packed protein" describes the nutrient and does not imply that the food is an excellent source of protein. As another example, the phrase "product x has y grams of power-packed protein" is also approvable. Although the total amount of protein is stated, there is no implication that the food is an excellent source of protein.)
- **Premier source of** (similar language for excellent source of stated nutrient)
- **Natural; All-natural; Natural goodness; Naturally good for you.** FDA General Guidance: Product does not contain added color, artificial flavors, or synthetic substances. This term is not defined by FDA.
- **Nutrient-Dense; Nutritionally-dense.** Nutrient-Dense Foods – The Dietary Guidelines defines it as: Those foods and beverages that provide vitamins, minerals, and other substances that may have positive health effects, with relatively few calories. Nutrient-dense foods and beverages are lean or low in solid fats, and minimize or exclude added solid fats, sugars, starches, and sodium. Ideally, they also are in forms that retain naturally occurring components, such as dietary fiber. All vegetables, fruits, whole grains, seafood, eggs, beans and peas, unsalted nuts and seeds, fat-free and low-fat milk and milk products, and lean meats and poultry—when prepared without solid fats or added sugars—are nutrient-dense foods. The term and similar terms should be used as defined.
- **Antioxidants** – vitamin E, vitamin C and selenium. These antioxidants have established daily values so nutrient content claims for good and/or excellent source are allowed. For antioxidants and or nutrients for which there is no established DV, the amount of the nutrient per serving must be referenced when making a nutrient content claim.
- **Nutritious.** There are no FDA guidelines for it but the statement must be truthful and not misleading.

USDA AMS follows FDA and FTC policy/guidance regarding authorized health claims and qualified health claims used in marketing and nutrition related materials. FDA regulations define health claims in 21 CFR 101.14 (a)(1) and p.

1. Authorized Health Claims

FDA regulations govern all health claims on food labels and in labeling of foods. Health claim messages that are included in point of sale communications or materials that could potentially be used as digital **point of sale** information must include the complete FDA approved health claim statement(s). This health claim statement advises consumers about the context and other dietary recommendations in which the health claim is made. FDA provides examples of model health claim statements for each approved health claim. Similar statements made be made as long as the requirements for that health claim are included. See 21 CFR 101.72 through .82 for approved health claims.

Example: Point of Sale material with Dietary Saturated Fat and Cholesterol and Risk of Coronary Heart Disease (CHD) Health Claim

> ***Messaging:*** Avocados are heart-healthy
>
> ***Accompanying statement required, found at 21 CFR 101.75***: "While many factors affect heart disease, diets low in saturated fat and cholesterol may reduce the risk of this disease."

For other advertising and communication materials, FTC allows more flexibility regarding the use of health claims as long as the claims are truthful and not misleading. Because approved health claims are supported by significant scientific agreement (SSA), FTC permits health claims messaging without an accompanying statement when the materials showcase the food by itself and are not used as point of sale influencers. FTC acknowledges that while the educational aspect of the approved health claim statement is important, it may not be feasible to include this additional information in all materials.

Example: Print/Digital Ad with CHD Health Claim:

> ***Messaging:*** Avocados are heart-healthy
>
> No accompanying statement is required.*

Example: Digital Ad with Health Claim regarding Fruits and Vegetables and Risk of Cancer:

Messaging: *Eating more fruits and veggies, including broccoli, may reduce the risk of some cancers.*

No accompanying statement is required. Note: Broccoli meets FDA's criteria for this health claim based on vitamins A, C, and fiber content.*

*** Encourage boards to provide background at other webpages/materials regarding healthy eating patterns to provide relevant context.**

2. Qualified Health Claims

FDA qualified health claims, which are based on limited scientific evidence, must be accompanied by the FDA model statement or qualifying language about the level of scientific evidence supporting the claim and dietary restrictions (when applicable). For all point of sale information, the full statement must be included to help the consumer understand the context for building a healthful diet.

While FTC allows some flexibility for advertising and communication materials, when the qualified health claim statement includes additional information regarding saturated fat and calorie consumption, as found in the qualified health claim statements for macadamia nuts and walnuts, the full statement must be used.

Qualified health claims are based on the totality of publicly available evidence, but the scientific evidence is limited and does not reach the level of SSA. Therefore, qualified health claims must include appropriate qualifying language to help consumers understand the different levels of supporting science.

For advertising and communication materials, FTC requires a statement to help consumers understand the level of scientific agreement, but does not require general guidance for diets low in saturated fat and cholesterol.

Example: Qualified Health Claim for Risk of CHD with specific dietary guidance (for Point of Sale and marketing communications):

> ***Messaging***: Macadamia nuts are heart healthy
>
> ***Required Qualified Health Claim Statement: "***Supportive but not conclusive research shows that eating 1.5 ounces per day of macadamia nuts, as part of a diet low in saturated fat and cholesterol ***and not resulting in increased intake of saturated fat or calories*** may reduce the risk of coronary heart disease.
> A one ounce serving of macadamia nuts contains 17g unsaturated fat, 3 g saturated fat and 200 calories."

Example: Point of Sale with Qualified Health Claim for CHD:

Messaging: Peanuts are heart healthy

Required Qualified Health Claim Statement: "Supportive but not conclusive research shows that eating 1.5 ounces per day of most nuts, including peanuts, as part of a diet low in saturated fat and cholesterol, may reduce the risk of coronary heart disease.
See nutrition information for fat content."

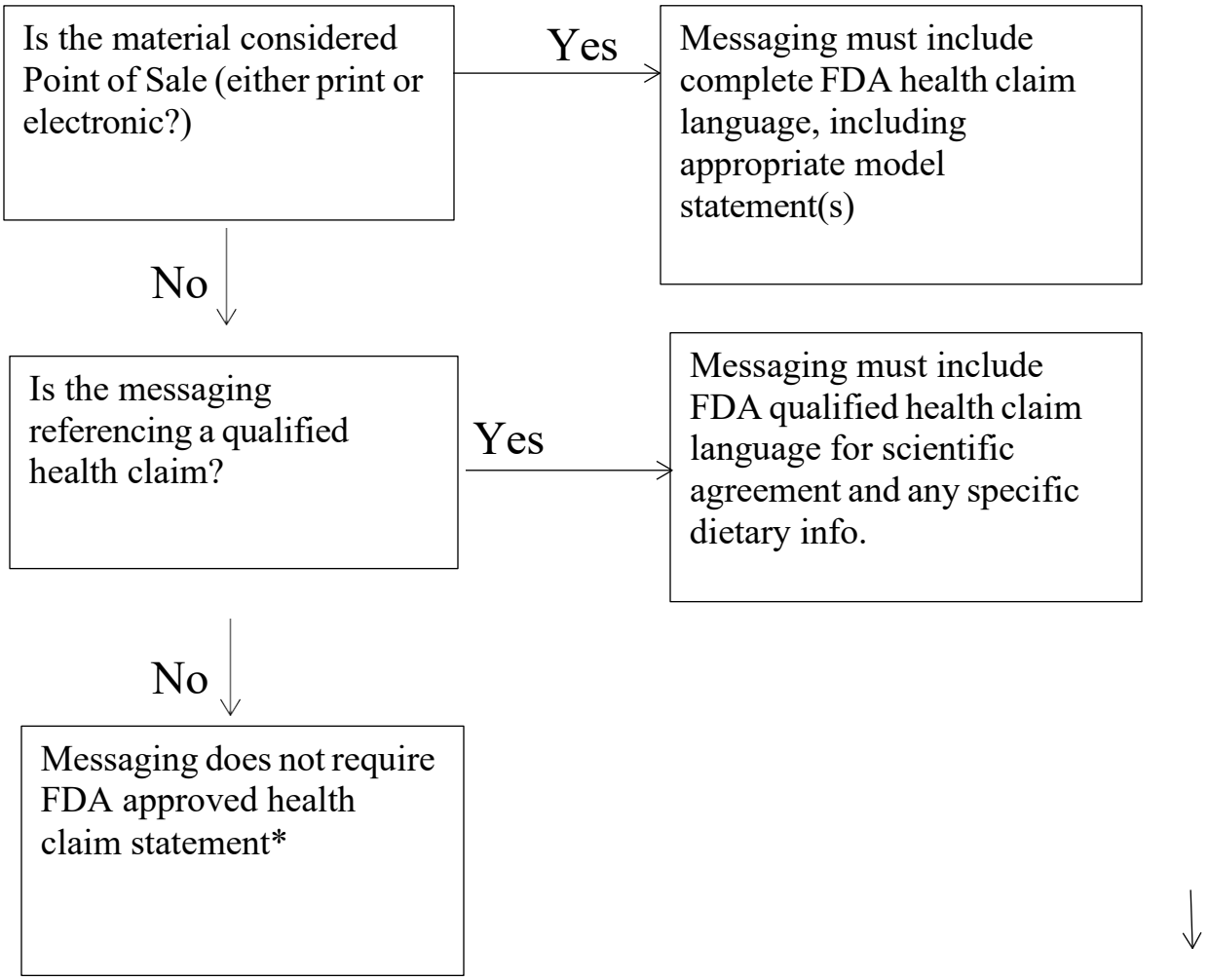
Example: Website Ad with Qualified Health Claim for CHD:

Messaging: Peanuts are heart healthy

Required Qualified Health Claim Statement: "Supportive but not conclusive research shows that eating 1.5 ounces per day of most nuts, including peanuts, may reduce the risk of coronary heart disease.
A one ounce serving contains 15 grams of fat."

AMS will continue to review and approve marketing materials on a case by case basis to ensure boards include health claim statements when appropriate.

Marketing Communications
Additional Guidance for Using Health Claims



* Encourage boards to provide background at other webpages/materials regarding healthy eating patterns to provide relevant context.

APPENDIX C: Research Communication Guidance

This appendix clarifies the criteria used by AMS to review and approve research communications. This guidance relates to the communication of research findings, including

audience/market research, human clinical trials, observational studies, animal in vitro studies, and preliminary research study findings. The guidance applies to marketing communications including, but not limited to, press releases, articles, Website content, and blogs that are generally intended for a broad array of audiences, including health professionals, industry, food service, trade, consumers, and media. Communications of other types of research, such as production, environmental or other scientific studies typically intended for an agricultural audience are not subject to this guidance.

All Board communications pertaining to research findings are limited to peer-reviewed published research. Communications should include a statement attributing the Board with funding the research, when applicable.

Human Clinical Trials/Intervention Studies:

- Communication should be factual and consistent with findings/outcomes and conclusions of the study.
- Communication should not overstate the findings and/or the body of scientific evidence. This includes the titles, headings, and sub-headings.
- The communication should not draw conclusions from the study outcomes if it is emerging research or if there is no consensus of findings based on earlier research. Statements should be limited to the findings of the study. For example: "The study found that participants experienced ……."
- The communication should include a statement that the findings are not conclusive and/or contradict earlier research, when applicable.
- The findings of studies on selected populations should not be generalized to different populations.
- Quotes from researchers must be consistent with the scientific evidence and reflect the findings of the study. Quotes should not overstate the results or imply findings apply to the general population based on a limited study.
- Include appropriate qualifiers in the communication. Such qualifiers should reflect inconsistencies found earlier research, if applicable.
- Provide PubMed link or other available link for the audience to obtain study. Provide reference information for study and other studies noted in release
- Communication reporting structure/function claims may not imply a drug effect or health claim. Structure/function claims may be appropriate if they reference **normal** structure/function. (For example; "The findings from this study suggest that substance x may help maintain normal cholesterol levels." Using terms such as "restore," "raise," "lower," "promote," "regulate," or "stimulate" might create an implied disease claim if, in the context they are used, they imply an effect on disease. Similarly, words like "prevent," "mitigate," "diagnose," "cure," "reverse," or "treat" would be disease claims if the context of their use implied an effect on a disease. (See General Guidance pg. 10.)

Observational Studies: (includes cohort, cross sectional, ecological and case reports)

- Communication should acknowledge that observational studies cannot establish cause and effect between an intervention and an outcome. Observational studies can provide useful information for identifying possible associations to be tested by intervention/clinical trial studies.
- Include appropriate disclaimers, especially for ecological studies which compare disease incidence across different populations, and case reports which describe observations of a single subject or a small number of subjects.

Disclaimers and Qualifiers for Human Research

- Disclose study limitations and other factors that affect study results. Common study limitations include, but are not limited to:
    - Unique characteristics of study participants. For example, study participants with certain medical conditions (hypercholesterolemia, diabetes, or obesity.)
    - Short study period. For example, a 2-week study-period.
    - Non-US populations with different dietary patterns.
    - Small study group. For example, study with fewer than 20 participants.
    - Study population does not reflect the broad US population. For example, study with only adult male participants.
- Study methodology. For example, study participants self-reported compliance with diet or outcomes. Include appropriate study qualifiers. Examples of qualifying statements are:
    - "Additional research is needed to examine the effects of "product X" consumption on oxidative stress in non-smokers."
    - "While these results indicate a positive benefit, other earlier studies show mixed results."
    - "Because the study participants were at high cardiovascular risk, it is not known whether the results can be generalized to persons at lower risk or to other settings. Further research is needed."
    - "Whether adding "product X" to the diet will achieve the results shown in this study or in the general population is not yet known."
    - "The results suggest that there may be an association between X and Y. However, no cause and effect can be determined."

Animal, In Vitro, and Preliminary Research Findings:

Animal and in vitro research provides important insights into the potential role that compounds in foods contribute to structure/function. However this research is not sufficient, without confirmation in human research, to support a health benefit claim. Communicating outcomes from this research may not imply an efficacy claim that has not yet been adequately substantiated.

- Communication should be consistent with the standards for human clinical studies.

- Communication should note the type of study (animal or in vitro).
- Communication should not imply similar results in human physiology or behavior based on this research.
- For animal and in vitro studies, it should be noted that the results are indicators that are used as background and to formulate hypotheses for other studies.
- For preliminary research findings, indicate that the results are part of a multi-year effort and final outcomes could show different results.

Disclaimers and Qualifiers for Animal or In Vitro Research

- Disclose relevant information about the study: The information should be placed as near as possible to the discussion of the finding(s) and should be prominently placed in the communication. Disclaimers at the bottom of a communication piece or as footnotes are not considered prominently placed. This placement could vary depending on the type of communication. For example:
    - One-page Information Sheet of several studies of various chronic diseases: It may be appropriate to place disclaimers and qualifying statements at the top of the communication.
    - Press Releases: Prominent placement in the body of the communication as near as possible to the discussion of the study finding(s) is appropriate**.**

- The communication must clearly indicate that the animal study findings are:
    - A basis for formulating a hypothesis for conducting additional studies, particularly human clinical studies; and
    - Not conclusive as to the effects on humans.

  Examples:
    - "While the results of the study show promising outcomes, these are inconclusive, and should be used as background for forming hypotheses and conducting additional research, including human clinical trials, which are needed to fully understand the effect on humans."
    - "The study provides a hypothesis to investigate through human clinical studies in order to determine what the effect would be on humans."

Abstracts, Review Articles and Editorials:

Communication may not cite abstracts, review articles or editorials as the sole justification for outcomes/findings. Critical elements such as the study population characteristics and the composition of the products used may differ widely across individual studies and must be acknowledged in the communication. Meta-Analyses will be evaluated on a case-by-case basis.

Market Research:

Audience research may be conducted to understand target audience attitudes and to measure results of marketing programs. Market research questionnaires and reports are not subject to AMS review. However, when market research is repurposed for use in communication/messages to external target audiences, those messages are subject to AMS review and approval for consistency with AMS, FTC, and FDA policy. Example: If market research references the term "healthy," AMS would review communication in context with FDA's "healthy" definition.

Definitions:

Authoritative Sources/Statements

FDAMA permits claims based on current, published authoritative statements from "a scientific body of the United States with official responsibility for public health protection or research directly related to human nutrition . . . or the National Academy of Sciences (NAS) or any of its subdivisions." The National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) are federal government agencies specifically identified as scientific bodies by FDAMA.

FDA believes that other federal agencies may also qualify as appropriate sources for such authoritative statements. Along with NAS (or any of its subdivisions), the agency currently considers that the following federal scientific bodies may be sources of authoritative statements: the CDC, the NIH, and the Surgeon General within Department of Health and Human Services; and the Food and Nutrition Service, the Food Safety and Inspection Service, and the Agricultural Research Service within the Department of Agriculture.

Emerging research/science is science or research published in peer-reviewed journal(s), for which there is some, but limited scientific evidence that supports the possible link between consumption of a product in reasonable proportion and a health benefit. Not every new study is considered emerging research.

According to the FDA Food Advisory Committee and Emerging Science Work Group, "Emerging Science" is: "one or more research findings pertaining to a food substance's consumption by humans that are judged, by a panel of appropriately qualified experts, to indicate, after consideration of all valid reports pertaining to the substance, that the general population, or some specific segment of the population, will possibly achieve a significant health benefit(s) without significant adverse effects when the substance is consumed in a reasonable amount over a reasonable period." However, there is insufficient evidence to reach a level of significant scientific agreement.

Significant scientific agreement (SSA) refers to the extent of agreement among qualified experts in the field. On the continuum of scientific evidence that extends from very limited to inconclusive evidence, SSA lies closer to consensus. FDA's determination of SSA represents the agency's best judgment as to whether qualified experts would likely agree that the scientific

evidence supports the substance/disease relationship that is the subject of a proposed health claim. The SSA standard is intended to be a strong standard that provides a high level of confidence in the validity of the substance/disease relationship. SSA means that the validity of the relationship is not likely to be reversed by new and evolving science, although the exact nature of the relationship may need to be refined. SSA occurs well after the stage of emerging science, where data and information permit an inference, but before the point of unanimous agreement within the relevant scientific community that the inference is valid.

In determining whether there is significant scientific agreement, FDA takes into account the viewpoints of qualified experts outside the agency, if evaluations by such experts have been conducted and are publicly available. For example, FDA considers:

- documentation of the opinion of an "expert panel" that is specifically convened for this purpose by a credible, independent body;
- the opinion or recommendation of a federal government scientific body such as the National Institutes of Health (NIH) or the Centers for Disease Control and Prevention (CDC); or the National Academy of Sciences (NAS);
- the opinion of an independent, expert body such as the Committee on Nutrition of the American Academy of Pediatrics (AAP), the American Heart Association (AHA), American Cancer Society (ACS), or task forces or other groups assembled by the National Institutes of Health (NIH); and,
- publications that critically summarize data and information in the secondary scientific literature.

FDA accords the greatest weight to the conclusions of federal government scientific bodies, especially when the evidence for the validity of a substance/disease relationship has been judged by such a body to be sufficient to justify dietary recommendations to the public. When the validity of a substance/disease relationship is supported by the conclusions of federal government scientific bodies, FDA typically finds that significant scientific agreement exists. Application of the significant scientific agreement standard is intended to be objective, in relying upon a body of sound and relevant scientific data; flexible, in recognizing the variability in the amount and type of data needed to support the validity of different substance/disease relationships; and responsive, in recognizing the need to re-evaluate data over time as research questions and experimental approaches are refined.

Use of Antioxidant Data and Polyphenol Research: USDA ARS has concluded there is no evidence that the beneficial effects of polyphenol-rich foods can be attributed to the antioxidant properties of these foods. The data for antioxidant capacity of foods generated by in vitro (test-tube) methods cannot be extrapolated to in vivo (human) effects and the clinical trials to test benefits of dietary antioxidants have produced mixed results.
https://www.ars.usda.gov/northeast-area/beltsville-md/beltsville-human-nutrition-research-center/nutrient-data-laboratory/docs/oxygen-radical-absorbance-capacity-orac-of-selected-foods-release-2-2010/.

Credible research for a qualified health claim is when there is scientific evidence that supports the health claim but such evidence does not meet the SSA standard. Health claims based on such research should include qualifying language that reflects the level of scientific support with specificity and accuracy.

Preliminary research findings, as defined by an AMS/industry work group, are strong indicators of the results of a multi-year study that is not yet complete. The research is generally conducted in phases and published in a peer-reviewed journal. The initial findings should be communicated using the standards for animal or in-vitro research, since the findings are considered a hypothesis and are not final.

RESOURCES:

FDA

Guidance for Industry Evidence-Based Review System for the Scientific Evaluation of Health Claims
http://www.fda.gov/food/guidanceregulation/guidancedocumentsregulatoryinformation/ucm073332.htm

https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/DietarySupplements/ucm073200.htm

Guidance for Industry: A Food Labeling Guide
http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/LabelingNutrition/ucm064908.htm

Guidance for Industry: Use of the Term "Healthy" in the Labeling of Human Food Products
https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm521690.htm

Structure /Function Claims
http://www.fda.gov/Food/IngredientsPackagingLabeling/LabelingNutrition/ucm2006881.htm

Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body
http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm056975.htm

USDA

USDA Agricultural Research Service
http://www.ars.usda.gov/Services/docs.htm?docid=15866

USDA Center for Nutrition Policy and Promotion – Nutrition Evidence Library
http://www.cnpp.usda.gov/nutritionevidencelibrary

IFIC

Improving Public Understanding: Guidelines for Communicating Emerging Science on Nutrition, Food Safety, and Health
http://jnci.oxfordjournals.org/content/90/3/194.full

Appendix D: Social Media Content

Definition: Social media is: Facebook, Twitter, Pinterest, Instagram, Snapchat, YouTube, LinkedIn, blogs, or any other social-networking Websites. Current marketing communication guidelines apply to Board created social media content. Boards are responsible for ensuring messaging, claims, and materials are in compliance with applicable Federal standards and policies.

General Guidance: Boards will be required to create a social media plan for submission to AMS for review and approval. Information generated by or on behalf of Boards for posting to social media Websites is required to be reviewed and pre-approved by USDA prior to the posting of such materials or be part of previously approved materials. Social media communication reaches many people; information spreads quickly through electronic channels, sometimes to unexpected audiences with unintended consequences. Boards are expected to consider all potential impacts of messaging into account when developing social media content.

Examples of materials requiring AMS pre-approval prior to posting:

- Blog posts prepared by a third party that has a material connection (*paid by the Board*) to promotion. The blog must comply with all applicable USDA Research and Promotion Statutes and FTC rule 16 C.F.R. 255.5 Disclosure of Material Connection.
    - Ensure bloggers are informed and aware of their roles and/or responsibilities in disclosing their connection with the Board when posting content on the Board's behalf.
- Blogs generated by the Board.
- Board sound bites, key messages, or talking points prepared for use during an interview at a live event or "Facebook Live".
- Viral video campaign developed by the Board for YouTube.
- Twitter post (Twitter handle) related to a newly published research study.

Examples of the use of pre-approved content:

- Tweet of pre-approved messages or content.
- Retweet of a pre-approved message or content.
- Real Time/Live posts:
    - If Boards anticipate using real-time posts for events, such plans should be included in their social media plan and approved by AMS.
    - The use of pre-approved talking points, key messages or soundbites during/or at a live event, such as interviews or Facebook Live.
    - Posts of a recipe at a pre-approved promotional event.
    - Snapchat of pre-approved message or content at an event.

AMS will not approve or allow use of statements that:

- Use vulgar or abusive language, personal attacks of any kind, or offensive terms targeting individuals or groups.
- Endorse political parties, candidates, or groups.
- Discuss topics unrelated to the mission.
- Fail to adhere to the posting and disclaimer requirements.

In addition, Boards should ensure they comply with "Terms of Use" agreements on any Websites or social media outlets they are accessing to ensure compliance with whether or not it is acceptable to share links or content from a given company.

To ensure compliance with Federal standards and policies, Boards should conduct regular and/or periodic reviews of information posted by other parties to their social media sites. As part of USDA's oversight, marketing specialists will also conduct periodic reviews of Boards' social media Website content to ensure compliance with applicable standards. AMS may restrict or suspend a Board's use of social media Websites for serious or continuous acts of noncompliance.

Social Media Plan:

Every board and committee is required to have a social media plan that is submitted to AMS for approval. The social media plan will, at a minimum, include the following information:

- Purpose and scope of the social media plan.
- A list of each social media category that the board or committee will utilize, including a description of events, activities or campaigns.
- A description of methods for monitoring social media websites connected to events, activities or campaigns.
- The third party roles and responsibilities, including disclosing their connection with the board or committee when posting content on behalf of the board or committee.
- Updated at least annually; inform AMS of any interim revisions.

Boards and committees should provide to the extent possible, a social media calendar as part of their social media plan, for review and approval by AMS. The calendar should include:

- The type of social media.
- The type of activity (social media posts, trade events, speaking engagements, interviews, etc.).
- When the action will take place.
- Content of the message. (See example below.)

Disclaimers:

All Board Websites and social media that contain links to other Websites or information not overseen by the Board must include a pop-up transition screen where possible, or a disclaimer, that alerts the viewer he/she is leaving a Board-funded Website, and explain that the Board is not responsible for the content and/or claims made by Websites not overseen by the Board.

Examples: To the extent possible, all social media should include a disclaimer. Below is sample language for various categories:

YouTube site: "The National Honey Board does not endorse other videos on the site, only those produced by the National Honey Board." The disclaimer language could be modified for any type of social media site.

Internet link: "You are leaving the Cranberry Marketing Committee Website. Links to third party Websites should not be considered an endorsement by the Cranberry Marketing Committee of that Website or the company that owns it.

Blogs: For consumers or other third party bloggers that have no material connection (*not paid by the Board or committee*):"The views expressed below are those of the authors and do not necessarily represent the views of the Board."

Hashtags: Hashtags must be pre-approved and in compliance with all applicable rules, trademarks, and disclosures. For example, language must be included to let the consumer know when the hashtag is for a sweeps, sweepstakes, or contest.
Example: #FriendsgivingCranberryContest

Best Practices:

Common sense plays a significant role in administering these Guidelines. Only AMS preapproved or approved content is permitted for use in social media by the Board. The Board expects those who communicate using social media channels on behalf of the Board to exercise caution and good judgment with all subject matter they address.

The Board and those who represent the Board in social media efforts will adhere to these generally accepted practices and guidelines:

- Use only factual statements or depictions and follow the FTC guidelines for advertising, internet and other marketing materials. All social media must be factually accurate.
- If the Board wants to acknowledge the promotion of other people, groups and organizations that engage with Board, this acknowledgement may include but is not limited to, retweets, tagging, post response or re-pinning. This acknowledgement will be done judiciously to adhere to the guidelines mentioned above. Example situation:

@WhatsGabyCooking tags @HassAvocados in her post about an avocado recipe. Best practice is to retweet said recipe post or reply to her thanking her for sharing this avocado usage. Engagement may also include pinning her recipe to Pinterest and/or sharing said recipe in another platform like Facebook.

- As an instrumentality of the U.S. government, Board's will not acknowledge or promote people, groups, organizations or Websites that espouse controversial or partisan views, or directly or indirectly condone illegal activity.
- Content that the Board would not otherwise be authorized to promote (such as health claims), will not be retweeted or reposted unless approved by AMS.
- The Board may repost/retweet social media content from Federal government sources with approval from AMS.
- Retweets or reposts of statements that do not comply with FDA's food labeling guidelines will be modified as necessary to be compliant. If this is not possible, the statements will not be retweeted or reposted.
- Content credit – best practice is to cite the source of a post if content was created by external source. Example: tag @myplate if Board uses a recipe or tip created by @myplate.
- The Board will delete defamatory, libelous, offensive, inflammatory, demeaning, hate or other inappropriate speech. Any posts that are considered personal, threatening, or contain obscene language will also be removed.
- The Board will review third-party comments on its social media presence in real time. Comments about commodity health benefits ("commodities helped me lower my blood pressure") or effects on diseases ("commodities can help prevent heart disease") may be removed if posted.
    - Boards may use third party comments on social media as an educational opportunity for their commodity.
- If possible, the Board will include a statement in the "About" section of its social media presence explicitly stating that the Board is not responsible for third-party comments.
- Any new claims or deviations from prior approved messaging must be vetted by AMS.
- Ensure bloggers are informed and aware of their roles and/or responsibilities in disclosing their connection with the Board when posting content on the Board's behalf.

Prohibited Uses:

Some forms of social media dialogue can be harmful to the Board. The Board and its approved spokesperson should refrain from inappropriate dialogue or content that is inconsistent with the guidelines of this policy:

- No statement or depiction is permitted that disparages another commodity or product. Any comparison to another commodity or product must be limited to the presentation of fact-based information or data.
- The Board cannot use others' trademarks, copyrights, or logos unless explicitly and/or lawfully permitted. Identify all expressed and implied claims; the Board cannot suggest claims that cannot otherwise be made directly. Claims must be adequately supported. The overall takeaway is the key. Without appropriate scientific evidence to support an underlying claim, Boards should not make claims either through consumer or expert endorsements that would be deceptive or could not be substantiated if made directly. It is not enough that a testimonial represents the honest opinion of the endorser.
- No discrimination or hate speech against any individual or industry.
- No visual misrepresentations of other commodities.
- No support or denial of one segment of the industry over another.
- Revealing the Board's confidential/proprietary information.
- Personal or sensitive information of any kind, unless authorized.

Note: the Board will monitor its own communications to these guidelines. However, social media platforms are externally owned and maintained Websites. The Board has no control over Board's content that others may "tag".

An example of a required Social Media Plan follows:

[BOARD] Social Media Plan Template

Effective Dates

Executive Summary

These are the guidelines for social media use on behalf of [BOARD]. While representing the [BOARD], the organization's approved spokespeople (i.e., Board staff, Board members, interns or contractors, etc.) contributing to any kind of social media, must adhere to these guidelines. We expect those who participate in social media on behalf of [BOARD] to be aware, to understand, and to follow these guidelines.

Execution

All content created for [BOARD] social media channels will adhere to the terms of the appropriate [ACT], [ORDER], USDA/AMS "*Guidelines for AMS Oversight of Commodity Research and Promotion Programs*" and any other applicable rules, regulations, or policies. All nutritional and factual information used should be sourced from existing approved materials and/or be sent to AMS for review. An important factor in the success of the [BOARD] social media campaign will be, to the best of our ability, controlling and directing messages. All external PR agency social media platforms will be funneled through [BOARD] for approval and

submission. This framework for social media communications and new concepts will be pre-approved by AMS.

The information, strategies and tactics contained in this plan will be continually and consistently monitored by [BOARD] and AMS. This plan should be updated at least annually and submitted to AMS for approval. The [BOARD] approved spokespersons to engage in social media activities for the [BOARD] include: (List all of the persons, organizations, etc. associated with the social media plan of the Board).

Content

In general, the content of information in social media outlets must be pre-approved or approved by AMS or be part of previously approved materials. The [BOARD] should submit a calendar every month/quarter/yearly to assist AMS with the preapproval process. If a calendar is not submitted, the content should be delivered to AMS in a plan as specified below (including, but not limited to these topics). The [BOARD]'s social media channels will be used to communicate the following information:

Describe who, what, when, where, why and how social media items will be posted to their respective platforms.

Below are examples of available platforms.

BOARD News Releases- what media will be used to communicate this?

Producer Events -what media will be used to communicate this?

BOARD Events- what media will be used to communicate this?

Marketing Events- what media will be used to communicate this?

This is an example that can serve as a guide in building social media content and/or messaging and is not mandatory.

Before creating any content or following any social media accounts, we've crafted the following questions to serve as our rubric to for achieving impact and integrity. We will also substantiate any claims via our robust message communication manual and point to credible third party sources.

	Criteria	Responses		
Users				
	What are some predicted user responses and or reactions to this content?			
	What is our prepared response should users ask questions?			
	If they're a super user, we need to ensure we are interacting in a balanced way, not too much attention.			
	Criteria	**Yes**	**No**	**Notes**
Content				
	Does the content support our communications strategy?			
	Is the source from which we are curating from reputable?		Don't Use	
	Is the source an authority on the subject and seen as credible and believable by the general public?			
	Is the source negative in nature or argumentative?	Don't Use		
	Does the source or content carry any political or controversial undertones?	Don't Use		
	Is the content timely and informative?			
	Is the content sharable and compelling?			
	Is this content evergreen or time sensitive? (if time sensitive, needs to be prioritized to get information out)			
Influencers				
	Does this source produce enough content for us to retweet, re-pin, follow etc.?			
	Is this source someone we will follow permanently or temporarily? (are they campaign call-to-action specific)			
	Is this source an influencer and or/super user, & can we expand the relationship?			
	Needs Review?	**Use**	**Don't Use**	**Notes**
Action				

Appendix E: Food Safety

USDA policy must be followed for all claims about food safety.

(i) Proper Handling.

Safe steps in food handling, cooking, and storage are essential in preventing foodborne illness. Harmful bacteria that may cause illness cannot be seen, smelled, or tasted. In every step of food preparation, the four guidelines should be followed to keep food safe:

- Clean: Wash hands and surfaces often.
- Separate: Separate raw meat from other foods.
- Cook: Cook to the right temperature.
- Chill: Refrigerate food promptly.

Food should not be kept out of refrigeration (including preparation and serving time) for more than 2 hours (1 hour when the weather is above 90 ˚F).

(i) "Safe"

a. A food that must be cooked to prevent the risk of foodborne illness cannot be described as "safe."
b. An appropriate statement would be "Thoroughly cooked means thoroughly safe."
c. It is okay to describe food safety as a goal, such as striving to create a safe product or wanting consumers to have a safe product.

(ii) Cooking guidance

a. Temperatures and guidance for thorough cooking are:

Product	Minimum Internal Temperature/Guidance and Rest Time
Beef, Pork, Veal & Lamb Steaks, chops, roasts	145 °F (62.8 °C) and allow to rest for at least 3 minutes
Ground meats	160 °F (71.1 °C)
Ham fresh or smoked (uncooked)	145 °F (60 °C) and allow to rest for at least 3 minutes

Fully Cooked Ham (to reheat)	Reheat cooked hams packaged in USDA-inspected plants to 140 °F (60 °C) and all others to 165 °F (73.9 °C).

All Poultry (breasts, whole bird, legs, thighs, and wings, ground poultry, and stuffing)	165 °F (73.9 °C)
Eggs	Cook until yolk and whites are firm (see b. below)
Egg dishes	160 °F (71.1 °C)
Fish and Shellfish	145 °F (62.8 °C)
Leftovers	165 °F (73.9 °C)
Casseroles	165 °F (73.9 °C)

b. Guidance for egg cooking is to cook until both the white and yolk are firm. For egg preparations requiring a soft yolk or raw eggs, pasteurized shell eggs or egg products should be recommended.

A. How an Animal or Commodity was Raised or Grown

As a reference, USDA's Food Safety and Inspection Service (FSIS) defines a number of labeling terms, some of which are included below. If there is any discrepancy between what is here and guidance from FSIS, FSIS guidance controls.

However, given that the guidance below is for meat and poultry labeling, AMS may allow a broader usage of these terms in R&P materials as long as the information is not misleading. *For example,* materials could describe that no eggs from hens given antibiotics will make it into consumer channels because if laying hens are given antibiotics, their eggs are diverted from human consumption.

These terms include:

- Certified
- Chemical-free
- Free Range, Free Roaming
- Halal, Zabia Halal
- Kosher
- Natural
- No Antibiotics
- No Hormones

- Organic

See the chart for definitions.

FSIS: Terms Describing How an Animal or Commodity Was Raised or Grown

Term	Guidance
Certified	In most cases, the term "certified" implies that FSIS and AMS have officially evaluated a meat product for class, grade, or other quality characteristics (e.g., "Certified Angus Beef"). When used under other circumstances, the term must be closely associated with the name of the organization responsible for the "certification" process, e.g., "XYZ Company's Certified Beef." "Certified" could also be used to describe a particular specification or process-verified claim. It should be defined.
Chemical-Free	The term is *not allowed* to be used on a label for meat or poultry.
Free Range, Free Roaming	For poultry: Producers must demonstrate that the poultry has been allowed access to the outside.
Halal, Zabia Halal	Products prepared by federally inspected meat packing plants identified with labels bearing references to "Halal" or "Zabia Halal" must be handled according to Islamic law and under Islamic authority.
Kosher	"Kosher" may be used only on the labels of meat and poultry products prepared under rabbinical supervision.
Natural	Natural means a product containing no artificial ingredient or added color and is only minimally processed. Minimal processing means that the product was processed in a manner that does not fundamentally alter the product. The label must include a statement explaining the meaning of the term natural (such as "no artificial ingredients; minimally processed").
No Hormones	**For beef:** The term "no hormones administered" may be approved for use on the label of beef products if sufficient documentation is provided by the producer showing no hormones have been used in raising the animals. **For pork or poultry:** *Hormones are not allowed in raising hogs or poultry.* Therefore, the claim "no hormones added" cannot be used on the labels of pork or poultry unless it is followed by a statement that says "Federal regulations prohibit the use of hormones."
No Antibiotics	**For red meat and poultry:** The terms "no antibiotics added" may be used on labels for meat or poultry products if sufficient documentation is provided by the producer demonstrating that the animals were raised without antibiotics.
Organic	Organic is a labeling term that indicates that the food or other agricultural product has been produced through approved methods. The organic standards describe the specific requirements that must be verified by a USDA-accredited certifying agent before products can be labeled USDA organic. Overall, organic operations must demonstrate that they are protecting natural resources, conserving biodiversity, and using only

	approved substances. Not permitted are most conventional pesticides; fertilizers made with synthetic ingredients, or sewage sludge; bioengineering; or ionizing radiation. Organic meat, poultry eggs, and dairy products come from animals that are given no antibiotics or growth hormones. The USDA National Organic Program Website has more information including inspection and certification information.

FDA: Food Drug and Cosmetic Act (FD&CA) and Food Safety Modernization Act (FSMA)

FDA regulates a broad range of items, including most foods. "Food" is specifically defined as (1) articles used for food or drink for people or animals; (2) chewing gum; and (3) articles used for components of any such article. Basically, "Food" includes almost all products except those regulated by USDA's FSIS.

FSMA is a prevention oriented law, whereby producers, importers, manufacturers, packers, shipper and others in the supply chain may be required to comply with the regulations. Most of the regulations for FSMA were issued in 2015-2016. For specific information about FSMA go to: www.fda.gov/food/guidanceregulation/fsma.

FD&CA originated in the 1930s, and among other requirements provides for labeling and adulteration of food provisions. For specific information about FD&CA go to: www.fda.gov/AboutFDA/WhatWeDo/History/ProductRegulation.

Appendix F: Environmental Claims

Environmental claims convey a relationship or benefit to the environment.

Examples:

- Natural
- Recyclable
- Sustainable
- Organic

FTC provides guidance for environmental claims in its Guides for the Use of Environmental Marketing Claims ("Green Guides," 16 CFR Part 260). This guidance applies to environmental claims in labeling, advertising, promotional materials, and all other forms of marketing in any medium, whether asserted directly or by implication, through words, symbols, logos, depictions, product brand names, or any other means.

This guidance does not preempt any Federal, State, or local laws. However, compliance with those laws does not necessarily preclude FTC from taking action for claims that are inconsistent with its environmental claims guidance.

The guidance is based on marketing to a general audience. However, when a marketer targets a particular segment of consumers, FTC will examine how reasonable members of that group interpret the advertisement. Whether a particular claim is deceptive will depend on the net impression of the advertisement, label, or other promotional material at issue.

Key Points:

- Consumers are likely to be confused about environmental claims, so marketers must take caution not to mislead.
- Provide adequate disclosures.
- Don't overstate the environmental benefit.
- Watch third-party endorsements (certifications and seals of approval).
- Follow FTC definitions for environmental claims.
- For undefined terms (e.g., sustainability), define what is intended when using this term.

Interpretation and Substantiation

Marketers must ensure all reasonable interpretations of their claims are truthful, not misleading, and supported by a reasonable basis. In the context of environmental marketing claims, a reasonable basis often requires competent and reliable scientific evidence. Such evidence consists of tests, analyses, research, or studies that have been conducted and evaluated in an

objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results. Such evidence should be sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that each of the marketing claims is true.

(i) General Principles

- Terms: Terms should be consistent with FTC's (or in some cases, another government agency's) definitions. See the Specific Claims section below.

- Qualifications and disclosures: To prevent deceptive claims, qualifications and disclosures should be clear, prominent, and understandable. To make disclosures clear and prominent, marketers should use plain language and sufficiently large type, should place disclosures in close proximity to the qualified claim and should avoid making inconsistent statements or using distracting elements that could undercut or contradict the disclosure.

- Distinction between benefits of product, package, and service: Unless it is clear from the context, an environmental marketing claim should specify whether it refers to the product, the product's packaging, a service, or just to a portion of the product, package, or service. In general, if the environmental attribute applies to all but minor, incidental components of a product or package, the marketer need not qualify the claim to identify that fact. However, there may be exceptions to this general principle. For example, if a marketer makes an unqualified recyclable claim, and the presence of the incidental component significantly limits the ability to recycle the product, the claim would be deceptive.

    - *Example*: A plastic package containing a new shower curtain is labeled "recyclable" without further elaboration. Because the context of the claim does not make clear whether it refers to the plastic package or the shower curtain, the claim is deceptive if any part of either the package or the curtain, other than minor, incidental components, cannot be recycled.

    - *Example*: A soft drink bottle is labeled "recycled." The bottle is made entirely from recycled materials, but the bottle cap is not. Because the bottle cap is a minor, incidental component of the package, the claim is not deceptive.

- Overstatement of environmental attribute: An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit. Marketers should not state or imply environmental benefits if the benefits are negligible.

- *Example:* An area rug is labeled "50% more recycled content than before." The manufacturer increased the recycled content of its rug from 2% recycled fiber to 3%. Although the claim is technically true, it likely conveys the false impression that the manufacturer has significantly increased the use of recycled fiber.

- *Example:* A trash bag is labeled "recyclable" without qualification. Because trash bags ordinarily are not separated from other trash at the landfill or incinerator for recycling, they are highly unlikely to be used again for any purpose. Even if the bag is technically capable of being recycled, the claim is deceptive since it asserts an environmental benefit where no meaningful benefit exists.

- Comparative claims. Comparative environmental marketing claims should be clear to avoid consumer confusion about the comparison. Marketers should have substantiation for the comparison.

    - *Example:* An advertiser notes that its glass bathroom tiles contain "20% more recycled content." Depending on the context, the claim could be a comparison either to the advertiser's immediately preceding product or to its competitors' products. The advertiser should have substantiation for both interpretations. Otherwise, the advertiser should make the basis for comparison clear, for example, by saying "20% more recycled content than our previous bathroom tiles."

    - *Example:* An advertiser claims that "our plastic diaper liner has the most recycled content." The diaper liner has more recycled content, calculated as a percentage of weight, than any other on the market, although it is still well under 100%. The claim likely conveys that the product contains a significant percentage of recycled content and has significantly more recycled content than its competitors. If the advertiser cannot substantiate these messages, the claim would be deceptive.

    - *Example:* An advertiser claims that its packaging creates "less waste than the leading national brand." The advertiser implemented the source reduction several years ago and supported the claim by calculating the relative solid waste contributions of the two packages. The advertiser should have substantiation that the comparison remains accurate.

    - *Example:* A product is advertised as "environmentally preferable." This claim likely conveys that the product is environmentally superior to other products. Because it is highly unlikely that the marketer can substantiate the messages conveyed by this statement, this claim is deceptive. The claim would not be deceptive if the marketer accompanied it with clear and prominent language

limiting the environmental superiority representation to the particular attributes for which the marketer has substantiation, provided the advertisement's context does not imply other deceptive claims. For example, the claim "Environmentally preferable: contains 50% recycled content compared to 20% for the leading brand" would not be deceptive.

(ii) General Environmental Benefit Claims

It is deceptive to misrepresent, directly or by implication that a product, package, or service offers a general environmental benefit. FTC cautions marketers not to make unqualified general environmental benefit claims because "it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims." Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.

Marketers may be able to qualify general environmental benefit claims to focus consumers on the specific environmental benefits that they can substantiate. In doing so, marketers should use clear and prominent qualifying language to convey that a general environmental claim refers only to a specific and limited environmental benefit(s).

In addition, FTC cautions marketers that explanations of specific attributes, even when true and substantiated, will not adequately qualify general environmental marketing claims if an advertisement's context implies other deceptive claims. Therefore, marketers should ensure that the advertisement's context does not imply deceptive environmental claims.

Moreover, FTC advises marketers not to imply that any specific benefit is significant if it is, in fact, negligible.

Finally, FTC states that if a qualified general claim conveys that a product is more environmentally beneficial overall because of the particular touted benefit, marketers should analyze trade-offs resulting from the benefit to substantiate this claim.

Example: The brand name "Eco-friendly" likely conveys that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim such as "Eco-friendly: made with recycled materials" would not be deceptive if: (1) The statement "made with recycled materials" is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and

(4) the ad's context does not imply other deceptive claims.

Example: A marketer states that its packaging is now "Greener than our previous packaging." The packaging weighs 15% less than previous packaging, but it is not recyclable nor has it been improved in any other material respect. The claim is deceptive because reasonable consumers likely would interpret "greener" in this context to mean that other significant environmental aspects of the packaging also are improved over previous packaging. A claim stating "Greener than our previous packaging" accompanied by clear and prominent language such as "We've reduced the weight of our packaging by 15%" would not be deceptive, provided that reducing the packaging's weight makes the product more environmentally beneficial overall and the advertisement's context does not imply other deceptive claims.

Example: A marketer's advertisement features a picture of a laser printer in a bird's nest balancing on a tree branch, surrounded by a dense forest. In green type, the marketer states, "Buy our printer. Make a change." Although the advertisement does not expressly claim that the product has environmental benefits, the featured images, in combination with the text, likely convey that the product has far-reaching environmental benefits and may convey that the product has no negative environmental impact. Because it is highly unlikely that the marketer can substantiate these claims, this advertisement is deceptive.

Example: A manufacturer's Website states, "Eco-smart gas-powered lawn mower with improved fuel efficiency!" The manufacturer increased the fuel efficiency by 1/10 of a percent. Although the manufacturer's claim that it has improved its fuel efficiency technically is true, it likely conveys the false impression that the manufacturer has significantly increased the mower's fuel efficiency.

Example: A marketer reduces the weight of its plastic beverage bottles. The bottles' labels state "Environmentally-friendly improvement: 25% less plastic than our previous packaging." The plastic bottles are 25 percent lighter but otherwise are no different. The advertisement conveys that the bottles are more environmentally beneficial overall because of the source reduction. To substantiate this claim, the marketer likely can analyze the impacts of the source reduction without evaluating environmental impacts throughout the packaging's life cycle. If, however, manufacturing the new bottles significantly alters environmental attributes earlier or later in the bottles' life cycle, i.e., manufacturing the bottles requires more energy or a different kind of plastic, then a more comprehensive analysis may be appropriate.

(iii) Certifications and Seals of Approval

According to FTC, it is deceptive to misrepresent that an item or service has been endorsed or certified by an independent third party.

Also, a marketer's use of the name, logo, or seal of approval of a third-party certifier or organization may be an endorsement covered by FTC's Endorsement Guides (16 CFR Part 255). Those Endorsement Guides advise that marketers disclose a "material connection" (i.e., a

connection that might materially affect the weight or credibility of an endorsement). For instance, marketers featuring certifications from third-party certifiers need not disclose their payment of a reasonable certification fee if that is their only connection to the certifier. In this situation, there is no need for disclosure because consumers likely expect that certifiers charge a reasonable fee for their services. As other examples demonstrate, whether a material connection exists depends on whether the ties between the marketer and certifier likely affect the weight or credibility of the certification. If, for example, an independent certifier administers an industry trade association certification program by objectively applying a voluntary consensus standard (i.e., a standard that has been developed and maintained by a voluntary consensus standard body), then the connection between the industry group and the marketer would not likely be material.

Third-party certification does not eliminate a marketer's obligation to ensure that it has substantiation for all claims reasonably communicated by the certification.

Voluntary consensus standards bodies are organizations which plan, develop, establish, or coordinate voluntary consensus standards using agreed-upon procedures. A voluntary consensus standards body is defined by the following attributes: (1) openness, (2) balance of interest, (3) due process, (4) an appeals process, (5) consensus, which is defined as general agreement, but not necessarily unanimity, and includes a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus members are given an opportunity to change their votes after reviewing the comments.

FTC also advises that an environmental certification or seal likely conveys a general environmental benefit claim when it does not clearly convey, either through its name or other means, the basis for the certification. Because it is highly unlikely that marketers can substantiate such a claim, they should not use environmental certifications or seals that do not convey the basis for the certification.

FTC further states that marketers should accompany such seals or certifications with clear and prominent language that effectively conveys that the certification or seal refers only to specific and limited benefits. This may be particularly challenging with certifications based on comprehensive, multi-attribute standards.

Finally, FTC states that third-party certification does not eliminate a marketer's obligation to have substantiation for all conveyed claims.

Example: An advertisement for paint features a “GreenLogo” seal and the statement “GreenLogo for Environmental Excellence.” This advertisement likely conveys that: (1) the GreenLogo seal is awarded by an independent, third-party certifier with appropriate expertise in evaluating the environmental attributes of paint; and (2) the product has far-reaching environmental benefits. If the paint manufacturer awarded the seal to its own product, and no

independent, third-party certifier objectively evaluated the paint using independent standards, the claim would be deceptive. The claim would not be deceptive if the marketer accompanied the seal with clear and prominent language: (1) indicating that the marketer awarded the GreenLogo seal to its own product; and (2) clearly conveying that the award refers only to specific and limited benefits.

Example: A manufacturer advertises its product as "certified by the American Institute of Degradable Materials." Because the advertisement does not mention that the American Institute of Degradable Materials ("AIDM") is an industry trade association, the certification likely conveys that it was awarded by an independent certifier. To be certified, marketers must meet standards that have been developed and maintained by a voluntary consensus standard body. An independent auditor applies these standards objectively. This advertisement likely is not deceptive if the manufacturer complies with FTC's Degradable definition because the certification is based on independently-developed and -maintained standards and an independent auditor applies the standards objectively.

Example: A product features a seal of approval from "The Forest Products Industry Association," an industry certifier with appropriate expertise in evaluating the environmental attributes of paper products. Because it is clear from the certifier's name that the product has been certified by an industry certifier, the certification likely does not convey that it was awarded by an independent certifier. The use of the seal likely is not deceptive provided that the advertisement does not imply other deceptive claims.

Example: A marketer's package features a seal of approval with the text "Certified Non-Toxic." The seal is awarded by a certifier with appropriate expertise in evaluating ingredient safety and potential toxicity. It applies standards developed by a voluntary consensus standard body. Although non-industry members comprise a majority of the certifier's Board, an industry veto could override any proposed changes to the standards. This certification likely conveys that the product is certified by an independent organization. This claim would be deceptive because industry members can veto any proposed changes to the standards.

Example: A marketer's industry sales brochure for overhead lighting features a seal with the text "EcoFriendly Building Association" to show that the marketer is a member of that organization. Although the lighting manufacturer is, in fact, a member, this association has not evaluated the environmental attributes of the marketer's product. This advertisement would be deceptive because it likely conveys that the EcoFriendly Building Association evaluated the product through testing or other objective standards. It also is likely to convey that the lighting has far-reaching environmental benefits. The use of the seal would not be deceptive if the manufacturer accompanies it with clear and prominent qualifying language: (1) indicating that the seal refers to the company's membership only and that the association did not evaluate the product's environmental attributes; and (2) limiting the general environmental benefit representations, both express and implied, to the particular product attributes for which the marketer has substantiation. For example, the marketer could state: "Although we are a member of the

EcoFriendly Building Association, it has not evaluated this product. Our lighting is made from 100 percent recycled metal and uses energy efficient LED technology."

Example: A product label contains an environmental seal, either in the form of a globe icon or a globe icon with the text "EarthSmart." EarthSmart is an independent, third-party certifier with appropriate expertise in evaluating chemical emissions of products. While the marketer meets EarthSmart's standards for reduced chemical emissions during product usage, the product has no other specific environmental benefits. Either seal likely conveys that the product has far-reaching environmental benefits, and that EarthSmart certified the product for all of these benefits. If the marketer cannot substantiate these claims, the use of the seal would be deceptive. The seal would not be deceptive if the marketer accompanied it with clear and prominent language clearly conveying that the certification refers only to specific and limited benefits. For example, the marketer could state next to the globe icon: "EarthSmart certifies that this product meets EarthSmart standards for reduced chemical emissions during product usage." Alternatively, the claim would not be deceptive if the EarthSmart environmental seal itself stated: "EarthSmart Certified for reduced chemical emissions during product usage."

Example: A 1-quart bottle of window cleaner features a seal with the text "Environment Approved," granted by an independent, third-party certifier with appropriate expertise. The certifier granted the seal after evaluating 35 environmental attributes. This seal likely conveys that the product has far-reaching environmental benefits and that Environment Approved certified the product for all of these benefits and therefore is likely deceptive. The seal would likely not be deceptive if the marketer accompanied it with clear and prominent language clearly conveying that the seal refers only to specific and limited benefits. For example, the seal could state: "Virtually all products impact the environment. For details on which attributes we evaluated, go to [a Website that discusses the product]." The referenced Website provides a detailed summary of the examined environmental attributes. A reference to a Website is appropriate because the additional information provided on the Website is not necessary to prevent the advertisement from being misleading. As always, the marketer also should ensure that the advertisement does not imply other deceptive claims, and that the certifier's criteria are sufficiently rigorous to substantiate all material claims reasonably communicated by the certification.

Example: Great Paper Company sells photocopy paper with packaging that has a seal of approval from the No Chlorine Products Association, a non-profit third-party association. Great Paper Company paid the No Chlorine Products Association a reasonable fee for the certification. Consumers would reasonably expect that marketers have to pay for certification. Therefore, there are no material connections between Great Paper Company and the No Chlorine Products Association. The claim would not be deceptive.

(iv) Specific Claims

Examples of specific environmental claims are:

- Carbon offsets
- Compostable
- Degradable
- Free-of
- Natural
- Non-toxic
- Organic
- Ozone-safe
- Ozone-friendly
- Recyclable
- Refillable
- Renewable energy
- Renewable materials
- Source reduction
- Sustainability

See the following charts for definitions and guidance.

FTC: Environmental Claims

FTC has issued the following specific guidance about the following terms in its Green Guides (16 CFR Part 260, Guides for the Use of Environmental Marketing Claims). However, if there is any discrepancy between what is here vs. what is in the FTC Guides, those Guides control.

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Carbon offsets	Marketers are advised to have competent and reliable scientific evidence to support their carbon offset claims, including using appropriate accounting methods to ensure they are properly quantifying emission reductions and not selling those reductions more than once. Additionally, marketers should disclose if consumers' offset purchases fund emission reductions that will not occur for 2 years or longer. Finally, FTC cautions marketers not to advertise a carbon offset if the activity that forms the basis of the offset is already required by law. More detailed guidance could quickly become obsolete given the rapidly changing nature of this market and consumers' minimal understanding of such issues. Moreover, such guidance might place the FTC in the inappropriate role of setting environmental policy.
Compostable	Marketers should possess competent and reliable scientific evidence showing that "all the materials in the product or package will break down into, or otherwise become a part of, usable compost (e.g., soil-conditioning material, mulch) in a safe and timely

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	manner in an appropriate composting program or facility, or in a home compost pile or device." A "timely manner" means "in approximately the same time as the materials with which it is composted." Marketers should clearly qualify compostable claims, if (1) the item cannot be composted safely or in a timely manner in a home compost pile or device or (2) the claim misleads reasonable consumers about the environmental benefit provided when the item is disposed of in a landfill. To avoid deception about the limited availability of municipal or institutional composting facilities, a marketer should clearly and prominently qualify compostable claims if such facilities are available to a substantial majority of the marketer's consumers where the item is sold. *Example:* A manufacturer indicates that its unbleached coffee filter is compostable. The unqualified claim is not deceptive, provided the manufacturer has substantiation that the filter can be converted safely to usable compost in a timely manner in a home compost pile or device. If so, the extent of local municipal or institutional composting facilities is irrelevant. *Example:* A garden center sells grass clipping bags labeled as "Compostable in California Municipal Yard Trimmings Composting Facilities." When the bags break down, however, they release toxins into the compost. The claim is deceptive if the presence of these toxins prevents the compost from being usable. *Example:* A manufacturer makes an unqualified claim that its package is compostable. Although municipal or institutional composting facilities exist where the product is sold, the package will not break down into usable compost in a home compost pile or device. To avoid deception, the manufacturer should clearly and prominently disclose that the package is not suitable for home composting. *Example:* Nationally marketed lawn and leaf bags state "compostable" on each bag. The bags also feature text disclosing that the bag is not designed for use in home compost piles. Yard trimmings programs in many communities compost these bags, but such programs are not available to a substantial majority of consumers or communities where the bag is sold. The claim is deceptive because it likely conveys that composting facilities are available to a substantial majority of consumers or communities. To avoid deception, the marketer should clearly and prominently indicate the limited availability of such programs. A marketer could state "Appropriate facilities may not exist in your area" or provide the approximate percentage of communities or consumers for which such programs are available. *Example:* A manufacturer sells a disposable diaper that states, "This diaper can be composted if your community is one of the 50 that have composting facilities." The claim is not deceptive if composting facilities are available as claimed and the manufacturer has substantiation that the diaper can be converted safely to usable compost in solid waste composting facilities. *Example:* A manufacturer markets yard trimmings bags only to consumers residing in particular geographic areas served by county yard trimmings composting programs. The bags meet specifications for these programs and are labeled, "Compostable Yard Trimmings Bag for County Composting Programs." The claim is not deceptive. Because

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	the bags are compostable where they are sold, a qualification is not needed to indicate the limited availability of composting facilities.
Degradable	FTC states that it is deceptive to misrepresent, directly or by implication, that a product or package is degradable, biodegradable, oxo-degradable, oxo-biodegradable, or photodegradable. The following guidance for degradable claims also applies to biodegradable, oxo-degradable, oxo-biodegradable, and photodegradable claims. Marketers should qualify a degradable claim unless it has competent and reliable scientific evidence that the "entire product or package will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal." Marketers should not make unqualified degradable claims for items destined for the solid waste stream (landfills, incinerators, or recycling facilities) because complete decomposition in those specific environments will not occur within 1 year. A marketer making an unqualified degradable claim for solid items other than those destined for landfills, incinerators, or recycling facilities should substantiate that the entire item will fully decompose within 1 year after customary disposal. Degradable claims should be qualified clearly and prominently to the extent necessary to avoid deception about: (1) The product's or package's ability to degrade in the environment where it is customarily disposed; and (2) the rate and extent of degradation. FTC's treatment of unqualified degradable claims is intended to help prevent deception and is not intended to establish performance standards to ensure the degradability of products when littered. *Example:* A marketer advertises its trash bags using an unqualified "degradable" claim. The marketer relies on soil burial tests to show that the product will decompose in the presence of water and oxygen. Consumers, however, place trash bags into the solid waste stream, which customarily terminates in incineration facilities or landfills where they will not degrade within one year. The claim is therefore deceptive. *Example:* A marketer advertises a commercial agricultural plastic mulch film as "Photodegradable" and clearly and prominently qualifies the term with the phrase "Will break down into small pieces if left uncovered in sunlight." The advertiser possesses competent and reliable scientific evidence that within 1 year, the product will break down after being exposed to sunlight into sufficiently small pieces to become part of the soil. Thus, the qualified claim is not deceptive. Because the claim is qualified to indicate the limited extent of breakdown, the advertiser need not meet the consumer expectations for an unqualified photodegradable claim (that the product will not only break down but also will decompose into elements found in nature). *Example:* A marketer advertises its shampoo as "biodegradable" without qualification. The ad makes clear that only the shampoo, and not the bottle, is biodegradable. The marketer has competent and reliable scientific evidence demonstrating that the shampoo,

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	which is customarily disposed in sewage systems, will break down and decompose into elements found in nature in a reasonably short period of time in the sewage system environment. Therefore, the claim is not deceptive. *Example:* A plastic six-pack ring carrier is marked with a small diamond. Several state laws require that the carriers be marked with this symbol to indicate that they meet certain degradability standards if the carriers are littered. The use of the diamond by itself, in an inconspicuous location, does not constitute a degradable claim. Consumers are unlikely to interpret an inconspicuous diamond symbol, without more, as an unqualified photodegradable claim. *Example:* A fiber pot containing a plant is labeled "biodegradable." The pot is customarily buried in the soil along with the plant. Once buried, the pot fully decomposes during the growing season, allowing the roots of the plant to grow into the surrounding soil. The unqualified claim is not deceptive.
Free Of	For claims that products or services have no, are free of, or do not contain certain substances: Even if true, claims that an item is free of a substance may be deceptive if: (1) The item contains substances that pose the same or similar environmental risk as the substance not present; or (2) the substance has not been associated with the product category. Such claims should be clearly and prominently qualified to the extent necessary to avoid deception. This two-part analysis prevents deception resulting from two implied claims. The first prong addresses the implied claim that a product is free of negative attributes associated with that substance. Thus, a free-of claim would still be deceptive even if a product is free of a particular substance if it has another substance that causes the same or similar environmental harm. The second prong cautions that free-of claims may deceive consumers by falsely suggesting that competing products contain the substance or that the marketer has "improved" the product by removing the substance. A free-of claim may, in some circumstances, be non-deceptive even though the product contains a "trace amount" of the substance. ("Trace contaminant" and "background level" are imprecise terms, may be defined according to the product area, and require a case-by-case analysis depending on the subject.) A marketer can make a claim for a product that still contains some amount of a substance only if: (1) The level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance's presence does not cause material harm that consumers typically associate with that substance; and (3) the substance has not been added intentionally to the product. The first prong of this test reflects consumers' likely expectations that products advertised as "free of" a substance contain no more than trace amounts that occur naturally in the environment or in product ingredients. The second prong clarifies that it is deceptive to make a free-of claim if the product contains any amount of the

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	substance that causes material harm that consumers typically associate with that substance, no matter how small. The third prong recognizes that, if added intentionally, reasonable consumers would not think that a product was free of that substance, even if that intentionally-added amount is less than a typical background level amount of that substance. *Example:* A package of t-shirts is labeled "Shirts made with a chlorine-free bleaching process." The shirts, however, are bleached with a process that releases a reduced, but still significant, amount of the same harmful byproducts associated with chlorine bleaching. The claim overstates the product's benefits because reasonable consumers likely would interpret it to mean that the product's manufacture does not cause any of the environmental risks posed by chlorine bleaching. A substantiated claim, however, that the shirts were "bleached with a process that releases 50% less of the harmful byproducts associated with chlorine bleaching" would not be deceptive. *Example:* A manufacturer advertises its insulation as "formaldehyde free." Although the manufacturer does not use formaldehyde as a binding agent to produce the insulation, tests show that the insulation still emits trace amounts of formaldehyde. The seller has substantiation that formaldehyde is present in trace amounts in virtually all indoor and (to a lesser extent) outdoor environments and that its insulation emits less formaldehyde than is typically present in outdoor environments. Further, the seller has substantiation that the trace amounts of formaldehyde emitted by the insulation do not cause material harm that consumers typically associate with formaldehyde. In this context, the trace levels of formaldehyde emissions likely are inconsequential to consumers. Therefore, the seller's free-of claim would not be deceptive.
Non-Toxic	FTC finds that it is deceptive to misrepresent that a product, package, or service is non-toxic. Non-toxic claims should be clearly and prominently qualified to the extent necessary to avoid deception. FTC also cautions that such claims likely convey that an item or service is non-toxic both for humans and for the environment. Therefore, marketers making non-toxic claims should have competent and reliable scientific evidence that the product, package, or service is non-toxic for humans and for the environment or should clearly and prominently qualify their claims to avoid deception. *Example:* A marketer advertises a cleaning product as "essentially non-toxic" and "practically non-toxic." The advertisement likely conveys that the product does not pose any risk to humans or the environment, including household pets. If the cleaning product poses no risk to humans but is toxic to the environment, the claims would be deceptive.
Ozone-Safe, Ozone-Friendly	It is deceptive to misrepresent that a product is safe for, or "friendly" to, the ozone layer or the atmosphere. A claim that a product is "ozone-friendly" is deceptive if the product contains any ozone-depleting substance, including those substances listed as Class I or Class II chemicals in Title VI of the Clean Air Act Amendments of 1990, Public Law 101-549, and others subsequently designated by EPA as ozone-depleting substances. [These chemicals include chlorofluorocarbons (CFCs), halons, carbon tetrachloride, 1,1,1-

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	trichloroethane, methyl bromide, hydrobromofluorocarbons, and hydrochlorofluorocarbons (HCFCs).] *Example:* An aerosol air freshener is labeled "ozone-friendly." Some of the product's ingredients are volatile organic compounds (VOCs) that may cause smog by contributing to ground-level ozone formation. The claim likely conveys that the product is safe for the atmosphere as a whole and is therefore deceptive.
Recyclable	A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item. Marketers should qualify recyclable claims when recycling facilities are not available to a "substantial majority" (in this context, at least 60%) of consumers or communities where a product is sold. Marketers may qualify recyclable claims by stating the percentage of consumers or communities that have access to facilities that recycle the item or use qualifications that vary in strength depending on facility availability. The lower the levels of access to appropriate facilities, the more strongly the marketer should emphasize the limited availability of recycling for the product. *Example:* If recycling facilities are available to slightly less than a substantial majority of consumers or communities where the item is sold, a marketer may qualify a recyclable claim by stating: "This product [package] may not be recyclable in your area" or "Recycling facilities for this product [package] may not exist in your area." *Example:* If recycling facilities are available only to a few consumers, marketers should use stronger clarifications. For example, a marketer in this situation may qualify its recyclable claim by stating: "This product [package] is recyclable only in the few communities that have appropriate recycling facilities." Marketers can make unqualified recyclable claims for a product or package if the entire product or package, excluding minor incidental components, is recyclable. For items that are partially made of recyclable components, marketers should clearly and prominently qualify the claim to avoid deception. If any component significantly limits the ability to recycle the item, any recyclable claim would be deceptive. An item that is made from recyclable material but—because of its shape, size, or some other attribute—is not accepted in recycling programs, should not be marketed as recyclable. Batteries labeled in accordance with the Mercury-Containing and Rechargeable Battery Management Act, 42 U.S.C. 14322(b), are deemed to be in compliance with this guidance. *Example*: A packaged product is labeled with an unqualified "recyclable" claim. It is unclear from the type of product and other context whether the claim refers to the product or its package. The unqualified claim likely conveys that both the product and its packaging, except for minor, incidental components, can be recycled. Unless the

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	manufacturer has substantiation for both messages, it should clearly and prominently qualify the claim to indicate which portions are recyclable. *Example:* A nationally marketed plastic food container displays the Resin Identification Code (RIC) (which consists of a design of arrows in a triangular shape containing a number in the center and an abbreviation identifying the component plastic resin) on the front label of the container, in close proximity to the product name and logo. This conspicuous use of the RIC constitutes a recyclable claim. Unless recycling facilities for this container are available to a substantial majority of consumers or communities, the manufacturer should qualify the claim to disclose the limited availability of recycling programs. If the manufacturer places the RIC, without more, in an inconspicuous location on the container (e.g., embedded in the bottom of the container), it would not constitute a recyclable claim. *Example:* A container can be burned in incinerator facilities to produce heat and power. It cannot, however, be recycled into another product or package. Any claim that the container is recyclable would be deceptive. *Example:* A paperBoard package is marketed nationally and labeled either "Recyclable where facilities exist" or "Recyclable. Check to see if recycling facilities exist in your area." Recycling programs for these packages are available to some consumers, but not available to a substantial majority of consumers nationwide. Both claims are deceptive because they do not adequately disclose the limited availability of recycling programs. To avoid deception, the marketer should use a clearer qualification. *Example:* Foam polystyrene cups are advertised as "Recyclable in the few communities with facilities for foam polystyrene cups." Half a dozen major metropolitan areas have established collection sites for recycling those cups. The claim is not deceptive because it clearly discloses the limited availability of recycling programs. *Example:* A package is labeled "Includes some recyclable material." The package is composed of four layers of different materials, bonded together. One of the layers is made from recyclable material, but the others are not. While programs for recycling the 25% of the package that consists of recyclable material are available to a substantial majority of consumers, only a few of those programs have the capability to separate the recyclable layer from the non-recyclable layers. The claim is deceptive for two reasons. First, it does not specify the portion of the product that is recyclable. Second, it does not disclose the limited availability of facilities that can process multi-layer products or materials. An appropriately qualified claim would be "25% of the material in this package is recyclable in the few communities that can process multi-layer products." *Example:* A product container is labeled "recyclable." The marketer advertises and distributes the product only in Missouri. Collection sites for recycling the container are available to a substantial majority of Missouri residents but are not yet available nationally. Because programs are available to a substantial majority of consumers where the product is sold, the unqualified claim is not deceptive.

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	Example: A manufacturer of one-time use cameras, with dealers in a substantial majority of communities, operates a take-back program that collects those cameras through all of its dealers. The manufacturer reconditions the cameras for resale and labels them "Recyclable through our dealership network." This claim is not deceptive, even though the cameras are not recyclable through conventional curbside or drop-off recycling programs. *Example:* A manufacturer advertises its toner cartridges for computer printers as "Recyclable. Contact your local dealer for details." Although all of the company's dealers recycle cartridges, the dealers are not located in a substantial majority of communities where cartridges are sold. Therefore, the claim is deceptive. The manufacturer should qualify the claim. *Example:* An aluminum can is labeled "Please Recycle." This statement likely conveys that the can is recyclable. If collection sites for recycling these cans are available to a substantial majority of consumers or communities, the marketer does not need to qualify the claim.
Recycled Content	FTC states that it is deceptive to misrepresent, directly or by implication, that a product or package is made of recycled content. Recycled content includes recycled raw material as well as used, reconditioned, and re-manufactured components. FTC also states that marketers should make recycled content claims only for a product or package made of materials that were recovered or otherwise diverted from the waste stream, either during the manufacturing process (pre-consumer) or after consumer use (post-consumer). If the source of recycled content includes pre-consumer material, the advertiser should have substantiation that the pre-consumer material would otherwise have entered the waste stream. Recycled content claims may--but do not have to--distinguish between pre-consumer and post-consumer materials. Where a marketer distinguishes between pre-consumer and post-consumer materials, it should have substantiation for any express or implied claim about the percentage of pre-consumer or post-consumer content in an item. Marketers can make unqualified claims of recycled content if the entire product or package, excluding minor, incidental components, is made from recycled material. For items that are partially made of recycled material, the marketer should clearly and prominently qualify the claim to avoid deception about the amount or percentage, by weight, of recycled content in the finished product or package. Additionally, marketers should qualify claims for products or packages only partially made from recycled material. (This does not include alternative auto recyclers because a recycled content claim for reused auto parts is true regardless of who sells them.) For products that contain used, reconditioned, or re-manufactured components, the marketer should clearly and prominently qualify the recycled content claim to avoid deception about the nature of such components. No such qualification is necessary where it is clear to reasonable consumers from context that a product's recycled content consists of used, reconditioned, or re-manufactured components.

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	Example: A manufacturer collects spilled raw material and scraps from the original manufacturing process. After a minimal amount of reprocessing, the manufacturer combines the spills and scraps with virgin material for use in production of the same product. A recycled content claim is deceptive since the spills and scraps are normally reused by industry within the original manufacturing process and would not normally have entered the waste stream. *Example:* Fifty percent of a greeting card's fiber weight is composed from paper that was diverted from the waste stream. Of this material, 30% is post-consumer and 20% is pre-consumer. It would not be deceptive if the marketer claimed that the card either "contains 50% recycled fiber" or "contains 50% total recycled fiber, including 30% post-consumer fiber." *Example:* A paperBoard package with 20% recycled fiber by weight is labeled "20% post-consumer recycled fiber." The recycled content was composed of overrun newspaper stock never sold to customers. Because the newspapers never reached consumers, the claim is deceptive. *Example:* A product in a multi-component package, such as a paperBoard box in a shrink-wrapped plastic cover, indicates that it has recycled packaging. The paperBoard box is made entirely of recycled material, but the plastic cover is not. The claim is deceptive because, without qualification, it suggests that both components are recycled. A claim limited to the paperBoard box would not be deceptive. *Example:* A manufacturer makes a package from laminated layers of foil, plastic, and paper, although the layers are indistinguishable to consumers. The label claims that "one of the three layers of this package is made of recycled plastic." The plastic layer is made entirely of recycled plastic. The claim is not deceptive, provided the recycled plastic layer constitutes a significant component of the entire package. *Example:* A frozen dinner package is composed of a plastic tray inside a cardBoard box. It states "package made from 30% recycled material." Each packaging component is one-half the weight of the total package. The box is 20% recycled content by weight, while the plastic tray is 40% recycled content by weight. The claim is not deceptive, since the average amount of recycled material is 30%. *Example:* A manufacturer labels a paper greeting card "50% recycled fiber." The manufacturer purchases paper stock from several sources, and the amount of recycled fiber in the stock provided by each source varies. If the 50% figure is based on the annual weighted average of recycled material purchased from the sources after accounting for fiber loss during the papermaking production process, the claim is not deceptive. *Example:* A packaged food product is labeled with a Möbius loop (symbol with three chasing arrows) without explanation. By itself, the symbol likely conveys that the packaging is both recyclable and made entirely from recycled material. Unless the marketer has substantiation for both messages, the claim should be qualified. The claim may need to

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	be further qualified, to the extent necessary, to disclose the limited availability of recycling programs and/or the percentage of recycled content used to make the package. *Example:* In an office supply catalog, a manufacturer advertises its printer toner cartridges "65% recycled." The cartridges contain 25% recycled raw materials and 40% reconditioned parts. The claim is deceptive because reasonable consumers likely would not know or expect that a cartridge's recycled content consists of reconditioned parts. It would not be deceptive if the manufacturer claimed "65% recycled content; including 40% from reconditioned parts." *Example:* A store sells both new and used sporting goods. One of the items for sale in the store is a baseball helmet that, although used, is no different in appearance than a brand new item. The helmet bears an unqualified "Recycled" label. This claim is deceptive because reasonable consumers likely would believe that the helmet is made of recycled raw materials, when it is, in fact, a used item. An acceptable claim would bear a disclosure clearly and prominently stating that the helmet is used. *Example:* An automotive dealer, automobile recycler, or other qualified entity recovers a serviceable engine from a wrecked vehicle. Without repairing, rebuilding, re-manufacturing, or in any way altering the engine or its components, the dealer attaches a "Recycled" label to the engine, and offers it for sale in its used auto parts store. In this situation, an unqualified recycled content claim likely is not deceptive because reasonable consumers in the automotive context likely would understand that the engine is used and has not undergone any rebuilding.
Refillable	It is deceptive to misrepresent, directly or by implication, that a package is refillable. A marketer should not make an unqualified refillable claim unless the marketer provides the means for refilling the package. The marketer may either provide a system for the collection and refill of the package, or offer for sale a product that consumers can purchase to refill the original package. *Example:* A container is labeled "refillable three times." The manufacturer has the capability to refill returned containers and can show that the container will withstand being refilled at least three times. The manufacturer, however, has established no collection program. The unqualified claim is deceptive because there is no means to return the container to the manufacturer for refill. *Example:* A small bottle of fabric softener states that it is in a "handy refillable container." In the same market area, the manufacturer also sells a large-sized bottle that consumers use to refill the smaller bottles. The claim is not deceptive because there is a reasonable means for the consumer to refill the smaller container.
Renewable Energy	Marketers should avoid making unqualified renewable energy claims, directly or by implication, based on energy derived from fossil fuels unless they match such claims with renewable energy certificates ("RECs"). Additionally, FTC cautions marketers that consumers likely interpret renewable energy claims differently from how marketers may intend. Accordingly, unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify

Term/Issue	Definition or Guidance
	their renewable energy claims. One way to minimize the risk of deception is to specify the renewable energy source (e.g., wind or solar energy). FTC also advises against making unqualified "made with renewable energy" claims unless all, or virtually all, of the significant manufacturing processes involved in making a product are powered with renewable energy or non-renewable energy matched with RECs. When this is not the case, marketers should clearly and prominently specify the percentage of renewable energy that powered the significant manufacturing processes involved in making the product or package. Finally, FTC finds that it would be deceptive for a marketer that represents, directly or by implication, that it uses renewable energy or uses the term "hosting" when a marketer generates renewable power but has sold all of the renewable attributes of that power. However, not all generation claims by such marketers are deceptive. *Example:* A marketer advertises its clothing line as "made with wind power." The marketer buys wind energy for 50% of the energy it uses to make the clothing in its line. The marketer's claim is deceptive because reasonable consumers likely interpret the claim to mean that the power was composed entirely of renewable energy. If the marketer stated, "We purchase wind energy for half of our manufacturing facilities," the claim would not be deceptive. *Example:* A company purchases renewable energy from a portfolio of sources that includes a mix of solar, wind, and other renewable energy sources in combinations and proportions that vary over time. The company uses renewable energy from that portfolio to power all of the significant manufacturing processes involved in making its product. The company advertises its product as "made with renewable energy." The claim would not be deceptive if the marketer clearly and prominently disclosed all renewable energy sources. Alternatively, the claim would not be deceptive if the marketer clearly and prominently stated, "made from a mix of renewable energy sources" and specified the renewable source that makes up the greatest percentage of the portfolio. The company may calculate which renewable energy source makes up the greatest percentage of the portfolio on an annual basis. *Example:* An automobile company uses 100% non-renewable energy to produce its cars. The company purchases renewable energy certificates to match the non-renewable energy that powers all of the significant manufacturing processes for the seats, but no other parts, of its cars. If the company states, "The seats of our cars are made with renewable energy," the claim would not be deceptive, as long as the company clearly and prominently qualifies the claim such as by specifying the renewable energy source. *Example:* A company uses 100% non-renewable energy to manufacture all parts of its product, but powers the assembly process entirely with renewable energy. The claim would not be deceptive if the marketer advertised its product as "assembled using renewable energy."

Term/Issue	Definition or Guidance
	Example: A toy manufacturer places solar panels on the roof of its plant to generate power, and advertises that its plant is "100% solar-powered." The manufacturer, however, sells renewable energy certificates based on the renewable attributes of all the power it generates. Even if the manufacturer uses the electricity generated by the solar panels, it has, by selling renewable energy certificates, transferred the right to characterize that electricity as renewable. The manufacturer's claim is therefore deceptive. It also would be deceptive for this manufacturer to advertise that it "hosts" a renewable power facility because reasonable consumers likely interpret this claim to mean that the manufacturer uses renewable energy. However, it would not be deceptive for the manufacturer to advertise, "We generate renewable energy but sell all of it to others."
Renewable Materials	Similar to the renewable energy guidance, FTC advises that consumers are likely to interpret renewable materials differently from how marketers may intend. Accordingly, FTC advises that unless marketers have substantiation for all their express and reasonably implied claims, they should clearly and prominently qualify renewable materials claims. For example, marketers can minimize the likelihood of unintended implied claims—such as recyclable, degradable, and made with recycled content—by specifying the material used and why the material is renewable. Additionally, marketers should further qualify these claims for products containing less than 100% renewable materials, excluding minor, incidental components. *Example:* A marketer makes the unqualified claim that its flooring is "made with renewable materials." Reasonable consumers likely interpret this claim to mean that the flooring also is made with recycled content, recyclable, and biodegradable. Unless the marketer has substantiation for these implied claims, the unqualified "made with renewable materials" claim is deceptive. The marketer could qualify the claim by stating, clearly and prominently, "Our flooring is made from 100 percent bamboo, which grows at the same rate, or faster, than we use it." The marketer still is responsible for substantiating all remaining express and reasonably implied claims. *Example:* A marketer's packaging states, "Our packaging is made from 50% plant-based renewable materials. Because we turn fast-growing plants into bio-plastics, only half of our product is made from petroleum-based materials." By identifying the material used and explaining why the material is renewable, the marketer has minimized the risk of unintended claims that the product is made with recycled content, recyclable, and biodegradable and has adequately qualified the amount of renewable materials in the product.
Source Reduction	It is deceptive to misrepresent, directly or by implication, that a product or package has been reduced or is lower in weight, volume, or toxicity. Marketers should clearly and prominently qualify source reduction claims to the extent necessary to avoid deception about the amount of the source reduction and the basis for any comparison. *Example:* An advertiser claims that disposal of its product generates "10% less waste." The marketer does not accompany this claim with a general environmental benefit claim. Because this claim could be a comparison to the advertiser's immediately preceding product or to its competitors' products, the advertiser should have substantiation for both interpretations. Otherwise, the advertiser should clarify which comparison it intends and have substantiation for that comparison. A claim of "10% less waste than our previous

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	product" would not be deceptive if the advertiser has substantiation that shows that the current product's disposal contributes 10% less waste by weight or volume to the solid waste stream when compared with the immediately preceding version of the product.

FTC has not defined the terms below but has either offered guidance or directed marketers to other sources (e.g., to USDA to vet organic claims):

Term	Guidance
Natural	FTC lacks evidence on which to base general guidance. However, USDA FSIS defines natural as this: A product containing no artificial ingredient or added color and is only minimally processed. Minimal processing means that the product was processed in a manner that does not fundamentally alter the product. The label must include a statement explaining the meaning of the term natural (such as "no artificial ingredients; minimally processed").
Organic	FTC has avoided providing advice that would be duplicative or inconsistent with the USDA's National Organic Program (NOP). Therefore, any references to organic production should be vetted by AMS NOP.
Sustainable	FTC lacks evidence on which to base general guidance. Marketers should ensure that they define the term when it is used so that consumers understand what is meant.