



Animal Welfare Institute

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December 5, 2016

Docket FSIS-2016-0021

U.S. Department of Agriculture
Food Safety and Inspection Service
Patriots Plaza 3
1400 Independence Avenue SW.
Mailstop 3782, Room 8-163B
Washington, DC 20250-3700

Submitted via www.regulations.gov

RE: Documentation Needed to Substantiate Animal Raising Claims for Label Submission

To Whom It May Concern:

The Animal Welfare Institute (AWI) appreciates the opportunity to comment on the September 2016 *FSIS Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submissions* ("Labeling Guidelines"). Since its founding in 1951, AWI has been dedicated to alleviating suffering of animals raised and slaughtered each year for food in the United States. As part of this mission, AWI promotes high-welfare farming and works to ensure that label claims are aligned with consumer expectations. AWI has concerns with the FSIS label claims approval process because it significantly undermines both of these objectives.

The Labeling Guidelines allow producers to mislead and confuse consumers. Producers can use value-added claims on products from animals raised under conventional, factory-farming conditions, and yet FSIS will approve the claims. This harms farmers who make accurate claims and raise their animals to a higher standard. Per the Federal Meat Inspection Act and Poultry Products Inspection Act, it is FSIS' duty to ensure only honest label claims that do not mislead the public are used in commerce. Otherwise, according to the laws, products are "injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat... and result in sundry losses to... producers and processors..., as well as injury to consumers." Therefore, FSIS must address the concerns detailed below if it is to abide by its mandate.

Labeling Guidelines Generally

AWI has the following concerns with language found repeatedly throughout the Labeling Guidelines:

- **FSIS is putting the onus of determining the meaning and relevancy of label claims on the consumer.** According to the Labeling Guidelines, FSIS will approve (1) animal welfare, (2)

environmental stewardship, and (3) animal living/raising claims, *inter alia*, if the producer provides a statement on the label explaining the meaning of the claim. This does not help consumers understand label claims. Animal welfare and environmental stewardship claims represent complex, multi-faceted animal raising practices. A vague, one or two sentence explanation of how animals are raised does not provide consumers with adequate information to determine if the claim meets their expectations.

While standards for living and raising conditions may be less complex, FSIS should not expect consumers to be able to make product choices based on their very limited knowledge of how farm animals are raised. The typical consumer simply does not possess the tools needed to decipher whether most animal raising claims are true or not.

- **Claims may be applicable to only a portion of the animal's life (as opposed to "from birth to slaughter"), and it is unclear if this qualification is required to be disclosed on the package.** Per the Labeling Guidelines, producers may use all animal raising label claims (except breed claims) to represent the animal's life from birth to harvest, or "the period of raising being reference by the claim." AWI is unsure if this means that the claim on the package must state the portion of the animal's life that the claim applies to (i.e., "Pasture Raised for 50 days"). Without clarifying this, producers may use an animal raising claim, such as "Sustainably Raised" but employ sustainable practices for only a small percentage of the animal's life.

Even if FSIS clarifies this point, claims that provide a specific period of the animal's life on the label may still confuse consumers. Consumers likely do not possess the knowledge needed to understand what percent of an animal's life a specific period of raising represents. For instance, if a producer uses the claim "Free Range for 20 days," most consumers will not appreciate what portion of the animal's life the 20 days represents. Additionally, it is impractical to expect producers and/or processors to have a supply of various labels that would be needed to accommodate changing circumstances (i.e., weather conditions and disease outbreaks), and FSIS will not have the capacity to approve constantly-changing claims.

Recommendation: To address the first concern above, FSIS should remove the requirement of providing a brief statement explaining the label claim. Instead, the agency should ensure producers meet a minimum standard before using these types of claims. (We offer recommendations for these minimum standards in subsequent sections of this document).

To address the second concern above, FSIS should only allow producers to use animal raising claims if animals spend a majority of their lives, from birth to slaughter, in the conditions represented by the claim. For instance, a poultry producer should not be allowed to say "Free Range for 15 days." If, however, the agency does decide to allow "period of raising" claims, then it is imperative that producers be required to state on the label the portion of the animal's life that the claim represents. In addition, the period must be defined in a way that consumers can understand how it relates to the entirety of the animal's life. For instance, a producer should have to say "Free Range for 15 of 52 days."

For all animal raising claims, FSIS should improve the type of documentation needed to ensure producers meet expectations of the claim. Specifically, producers should submit a detailed animal care protocol and photographic documentation that they meet minimum standards of the claim.

Animal Welfare and Environmental Stewardship Label Claims

AWI is pleased to see that producers are required to provide FSIS with a detailed description justifying their use of the animal welfare or environmental stewardship claim. However, we take issue with key tenants of the approval process. The following describes AWI's concerns regarding animal welfare and environmental stewardship label claims:

- **FSIS approves label claims even though producers use inadequate animal welfare and environmental stewardship standards that do not meet consumer expectations.** The Labeling Guidelines allow producers to define animal welfare and environmental stewardship claims as they see fit. This allows producers to mislead consumers. According to surveys conducted by AWI and Consumer Reports, a majority of consumers believe that animals should have access to the outdoors, and adequate space to move about freely, when producers use claims such as "Humanely Raised." In the AWI-commissioned survey, only 10 percent of consumers believed that producers should be allowed to use a "Humanely Raised" claim on pig products if producers kept pigs confined indoors for their entire lives; only 12 percent thought it was acceptable to use the claim on beef products when the cattle were kept in feedlots. Yet, FSIS approves "humane" claims from producers using these practices.
- **FSIS does not have the expertise or resources to adequately approve animal welfare and environmental stewardship claims.** FSIS has stated that the agency "may not always have the relevant information needed to properly evaluate the animal raising practices described in a producer's animal production protocol." This is in part because FSIS' label department does not go onto farms or into slaughterhouses to witness production practices. While this problem is not unique to animal welfare and environmental stewardship claims, it is more problematic with these complex, holistic claims.

Recommendation: To address these concerns and better ensure only honest, not misleading label claims enter the marketplace, FSIS should require producers to submit certification from a third-party auditing program using standards that meet consumer expectations.

Third-party certification would help lessen FSIS' burden of evaluating these claims. Third-party animal welfare and environmental stewardship certification programs have expertise in establishing standards, and can go on to farms to evaluate compliance with the standards. Consumers believe this is the best way to evaluate label claims. A survey commissioned by AWI found that 87 percent of frequent meat and poultry purchasers believe that the USDA should not allow "Humanely Raised" and "Sustainably Farmed" label claims on products unless the claims are verified by an independent third party.

Additionally, FSIS should only approve third-party certified claims if the third party employs standards that align with consumer expectations for the claim in question. As demonstrated above, consumers believe that animal welfare claims represent that, at a minimum, animals have regular access to an outdoor area with vegetation. Programs that currently meet consumer expectations for animal welfare claims include Global Animal Partnership Step Level 3 and above, Animal Welfare Approved, and USDA

Certified Organic for livestock.¹ Producers could use other independent certifying agents if their standards require that all animals are provided with easy access to an outdoor space with vegetation.

Animal Living/Raising Claims

The following describes AWI's concerns regarding FSIS' approval process for animal living and raising claims:

- **The Labeling Guidelines do not differentiate between claims used on poultry products and those used on products from mammals.** For the claims "Free Roaming," "Pasture Fed," "Pasture Grown," and "Meadow Raised" the Labeling Guidelines state that the animal must have a minimum of 120 days of continuous free access to the outdoors. As chickens raised for meat typically do not live 120 days, it is unclear whether these claims can be used on poultry products.
- **FSIS allows misleading claims such as "Cage Free" on poultry products.** Use of these claims is misleading on chicken and turkey products because birds raised for meat are not typically kept in cages prior to transport to slaughter. These claims give consumers the false impression that there are poultry products sold in the store that come from caged birds.
- **FSIS does not define living/raising claims for birds.** Claims such as "Free Range," "Free Roaming," and "Meadow Raised" are not defined in the Labeling Guidelines for poultry products. AWI is aware that the agency maintains other guidance documents with definitions for some of these claims. For example, FSIS' *Meat and Poultry Labeling Terms* document defines "Free Range" and "Free Roaming" as providing birds with "access to the outside." The Labeling Guidelines do not address whether these outside definitions will continue as the minimum standard for the claims. Moreover, there is no obvious justification for defining the diet claim "Grass Fed" within the Labeling Guidelines, but not defining living condition claims.

As discussed above, the Labeling Guidelines allow producers to define certain claims on their packaging, but it is unclear whether they may define these particular claims as they wish, or if they must meet a standard set out by FSIS in other guidance documents. In any case, consumers expect the definition of these claims to cover more than just "access to the outside." An AWI commissioned survey found that a large majority of consumers believe *all* birds in a free-range flock should have the opportunity to go outside during daylight hours on a regular basis, and that the outdoor area is covered with vegetation, and the birds have shade and protection from weather and predators.

- **The definition for "Meadow Raised" and "Pasture Grown/Fed" on meat products is insufficient.** Per the Labeling Guidelines, producers can use these claims when "the animal from which the products are derived has continuous free access to the outdoors for a minimum of 120 days." This language allows producers to keep animals in feedlots year-round. While FSIS

¹ The current organic regulations are inadequate to meet consumer expectations of animal welfare claims on poultry products. If the National Organic Program's Organic Livestock and Poultry Practices rule is finalized (in a manner substantially similar to the proposed rule), the USDA Certified Organic program could also be used to approve animal welfare label claims.

has stated in private conversations that animals may not be kept in feedlots if producers are using these claims, the Labeling Guidelines do not make this apparent. The Guidelines do not actually require that “Meadow Raised” animal have access to a meadow or that “Pasture Grown” animals spend any time on pasture. Moreover, the 120-day requirement is inadequate for cattle and potentially inappropriate for lambs.

Recommendation: To avoid consumer confusion, it is imperative that FSIS clarify whether certain claims may only be used for products derived from mammals or birds, and that FSIS prohibit misleading claims such as “Cage Free” for poultry products.

It is also essential that FSIS properly define range and pasture claims for both meat and poultry products. Producers should not be allowed to set their own definitions. Instead, they must be required to meet a minimum standard—one that meets consumer expectations—in order to qualify to place these claims on their products. Interested stakeholders, including consumers, should be afforded the opportunity to participate in a process to define the claims. Moreover, standards for living/raising condition claims should be consistent with the results of surveys commissioned by FSIS or others to evaluate consumer perception of the claims.

For claims on products derived from both mammals and birds, FSIS should ensure that all animals have (1) some degree of vegetative cover, (2) a minimum amount of space per animal, and (3) protection against risks to animal welfare. The definition should also provide the conditions under which animals may be removed from range or pasture and require a minimum portion of the animal’s life that must be spent on range or pasture. AWI offers the following potential definition for claims related to living conditions on range or pasture for **birds**:

- Birds must be provided continuous free daily access to the outdoors during daylight hours.
- Breeds of birds must be chosen with consideration to their ability to thrive in an outdoor setting under the prevailing climatic conditions, and with a growth rate that allows the birds to have access to the outdoors for a majority of their lives (from birth to slaughter).
- During the growing season, the outdoor area must be covered with at least 25% vegetation and/or forage for “range” claims and at least 50% vegetation and/or forage for “pasture” or “meadow” claims.
- Birds must have access to enough space on range or pasture to maintain the required level of vegetation; in any case, no less than 5 square feet of space for each chicken, and 10 square feet for each turkey or other large bird, shall be provided.
- Birds must have continuous access to natural or artificial shelter that protects them from weather extremes and/or predators.
- Birds excluded from range or pasture for disease risk, extreme weather, or for any other reason must be provided with vegetative material to engage in foraging behavior, and adequate space (chickens: at least 2 square feet; turkeys and other large birds: at least 5 square feet).

We offer the following potential definition for claims related to living conditions on range or pasture for **mammals**:

- Animals must have continuous free daily access to the outdoors.

- Animals must spend a majority of their lives on range or pasture (from birth to slaughter).
- Pigs must have access to an outdoor area with at least 25% vegetative cover during the growing season; cattle, sheep, and other mammals must have access to an area with at least 50% vegetative cover during the growing season; animals must have access to enough space on range or pasture to maintain the required level of vegetation.
- Animals may only be removed from range or pasture when weather, soil or health conditions compromise the welfare of the animal.
- In climatic conditions where an animal's welfare may be negatively impacted, animals must have continuous access to natural or artificial shelter.
- When removed from range or pasture, each animal must have access to adequate space: lambs: at least 5-10 square feet; pigs: at least 10-20 square feet; cattle: at least 150-300 square feet (depending on size of the animal).
- Animals may not be removed from range or pasture to a pen or yard for finish feeding.

Diet Claims

AWI is pleased that the Labeling Guidelines define "Grass Fed" for consumers. However, we find the guidelines inadequate. The following describes AWI's concerns regarding FSIS' approval process for "Grass Fed" and other substantially similar claims:

- **The "Grass Fed" definition allows for intensive confinement of animals in feedlots and use of non-therapeutic antibiotics and hormones.** The definition requires animals have continuous access to pasture during the growing season. However, it does not prohibit producers from using feedlots, or other confinement mechanisms for the remainder of the year. Additionally, the definition allows producers to use antibiotics and hormones routinely. Consumer Reports found that a majority of consumers disagree with the use of a "Grass Fed" claim for meat from animals routinely treated with these drugs.
- **The Labeling Guidelines do not specify which animals are covered by the "Grass Fed" claim.** FSIS derived its definition of "Grass Fed" from the Agriculture Marketing Service's (AMS) now-withdrawn definition for the claim. However, AMS' definition refers to ruminant animals, while the Labeling Guidelines state that the "Grass Fed" claim, "may only be applied to meat and meat products labels derived from *cattle*..." It is unclear from the guidelines if products derived from ruminants other than cattle may use a "Grass Fed" claim on the label.
- **It is unclear if a producer's alternative definition for the claim can be considered "truthful and not misleading" and therefore allowed.** The Labeling Guidelines seem to provide producers an opportunity to define "Grass Fed" on their own, so long as it is verified by AMS. This allows producers to circumvent FSIS' minimum standards, which we consider unacceptable.
- **Although the guidance specifically references "Grass Fed" and "100% Grass Fed" as acceptable claims, it is unclear if "75% Grass Fed" or "80% Grass Fed" claims would be approved.** While this concern is addressed above for all claims, AWI thought attention needed to be drawn here. One section in the Labeling Guidelines suggests that producers must show that animals were grass fed for their entire lives after being weaned. However, the "Documentation Needed" section states that the producer's detailed description explaining how the claim is valid can be

from birth to harvest *or the period of raising being referenced by the claim*. In other words, the animals may be grass fed for only a portion of their lives after weaning, and it is unclear if the period of raising must be stated on the label.

Recommendation: To address these concerns and better ensure only honest, not misleading label claims enter the marketplace, FSIS should improve its “Grass Fed” definition by prohibiting the use of non-therapeutic antibiotics and hormones and clarifying that animals cannot be confined in feedlots. FSIS should also state that its definition is a minimum standard that all must meet to use the claim, and clarify that the claim only applies if standards are met after weaning until the animal is sent to slaughter.

Raised without Hormones

The following describes AWI’s concerns regarding FSIS’ approval process for “Raised without Hormones” claims:

- **Allowing use of the claim on poultry, pork, and veal products is misleading.** Federal regulations prohibit the use of hormones in birds, pigs, and calves raised for veal. These claims give consumers the false impression that there are poultry, pork, and veal products sold in the store that come from animals given hormones.

Recommendation: FSIS should prohibit the use of the claim on poultry, pork, and veal products.

In conclusion, AWI believes that the above recommendations will improve the label claims approval process. They will help alleviate FSIS’ label-approval burden, provide consumers with more honest labels, and put farmers on an even playing field.

For further analysis of FSIS’ label approval process, please review AWI’s petitions to FSIS submitted in 2014 (petition number 14-01) and 2016 (petition number 16-01). AWI is disappointed that FSIS has not taken public comment on these petitions, as they clearly demonstrate why FSIS must implement the above recommendations. In 2015, AWI received a letter from Craig Morris, deputy administrator of the AMS Livestock, Poultry, and Seed Program, which stated: “we are aware of petitions you have submitted to FSIS for similar animal welfare concerns. FSIS is evaluating the petitions submitted by AWI and intend to address them.” Yet, to date, AWI has received no response from FSIS.

AWI thanks FSIS for taking its concerns and recommendations into account as FSIS finalizes the Labeling Guidelines. We encourage FSIS to also take into action the information contained in AWI’s petitions to help ensure only honest label claims enter the marketplace.

Sincerely,



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