

November 12, 2024

Ms. Rachel Edelstein
Assistant Administrator
Office of Policy and Program Development
Food Safety and Inspection Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

RE: Guideline on Substantiating Animal-Raising or Environment-Related Labeling Claims (Docket Number FSIS-2024-0010)

Dear Ms. Edelstein,

Consumer Federation of America (CFA) appreciates the opportunity to submit these comments on the above-referenced Food Safety and Inspection Service (FSIS) guidelines. Well-regulated labeling claims can help to inform consumers and empower them to “vote with their pocketbook” for production practices that reflect their values. Without rules to hold them accountable, however, the most unscrupulous food companies will drive a race to the bottom in the quality of information presented to consumers. We applaud FSIS for taking steps with these guidelines to level the playing field for honest brokers and deter misleading and untruthful statements related to antibiotic use and other labeling claims. We urge FSIS to go further, however, in protecting consumers for claims that depart from popular understanding, both through setting substantive standards for claims such as “pasture raised,” and by requiring claim-related disclosures on the FSIS website or, in the case of claims that lack third-party certification, on the product label itself.

Poorly substantiated and misleading labeling claims rob consumers and responsible producers alike.

Numerous studies have shown that consumers pay significant premiums for otherwise indistinguishable animal products that are produced in a manner that responds to environmental, animal welfare, or other concerns. These premiums can help to drive changes in production practices. For example, according to USDA Economic Research Service researchers, consumers paid an average premium of \$2.04 per pound for chicken labeled “raised without antibiotics” between 2012 and 2017, during which time many major processors partially or entirely phased out the use of antibiotics in their



production.¹ Other labeling claims command similarly significant premiums. Researchers have found that consumers were willing to pay a \$0.79 (32%) premium for eggs, and a \$0.96 (48%) premium per pound of chicken breast for products labeled with certain animal welfare certifications. And premiums for steaks from “grass-fed” cows range from 48-193% depending on the cut.²

These premiums reflect the increased production costs associated with the underlying claims, and when a company is allowed to attach the same claims without undertaking the same production improvements, and taking on the associated costs, it effectively steals from consumers and its competitors while simultaneously degrading the marketplace. For this reason, we support the agency’s work to investigate and discourage the use of misleading claims. In particular, the revisions in the proposed guideline for “raised without antibiotics” products represent a step forward in the effort to ensure accountability and transparency in the marketplace. As noted in the Federal Register notice, these changes respond to findings of rampant fraud by George Washington University researchers, and FSIS’ own exploratory sampling, conducted by the agency in 2023, which found that 20% of cattle sold with negative antibiotic claims tested positive for residues of antibiotic drugs. The updated guideline “strongly encourages” meat producers to substantiate negative antibiotic claims by conducting routine product sampling and testing programs, a change that should reduce the incidence of inaccurate claims.

CFA also supports FSIS’ efforts to further clarify the meanings of some animal-raising claims by updating documentation that producers are “strongly encouraged” to submit to verify claims like “Pasture Raised,” “Pasture Fed,” “Pasture Grown,” and “Meadow Raised.” The additional recommended documentation would substantiate that “the majority of each animal’s life was spent on pasture,” and clarify that “meadows” and “pastures” refer to land where the “majority is rooted in vegetative cover with grass or other plants.”³ As the agency’s notice correctly observes, these definitions better conform to consumer expectations regarding animal

¹ Page, Elina T., Gianna Short, Stacy Sneeringer, and Maria Bowman. September 2021. The Market for Chicken Raised Without Antibiotics, 2012–17, EIB-224, U.S. Department of Agriculture, Economic Research Service.

² Wang, Y., Isengildina-Massa, O., & Stewart, S. (2023). US grass-fed beef premiums. *Agribusiness*, 39(3), 664–690. <https://doi.org/10.1002/agr.21790>

³ FSIS Guideline on Substantiating Animal-Raising or Environment-Related Claims, August 2024. https://www.fsis.usda.gov/sites/default/files/media_file/documents/FSIS-GD-2024-0006.pdf



welfare practices, which surveys indicate over two-thirds of consumers regard as “very or extremely important to purchasing decisions.”⁴

FSIS should post on its website a list of approved and pending labeling claims with the information submitted to FSIS in support of those claims.

Clearer standards on popular labeling claims will address many ongoing ills in the marketplace but, as the saying goes, sunlight is the best disinfectant. Simply disclosing materials submitted to FSIS in support of many claims would allow competitors, civil society groups, and even individual consumers, to shine a light on misleading claims, such as products labeled “humanely raised” from animals that were raised in accordance with prevailing industry standards and nothing more. In its federal register notice announcing the revised guideline, FSIS cites the “humanely raised” claim as an example in which flexibility is justified to accommodate “evolving consumer expectations,” and producer innovations that improve animal production practices. But flexibility should not preclude accountability. According to a 2023 Animal Welfare Institute (AWI) report, the organization requested application files for 97 claims and USDA was unable to provide *any* submission materials for 48 of the claims, and provided only irrelevant (6) or insufficient substantiation (28) for another 34 of the claims. For some products, such as Boar’s Head’s “humanely raised” turkey, the organization found that the claims signify no more than meeting the prevailing industry standards.⁵ A public, searchable database with each pending and approved claim’s application, including the materials submitted in support of those claims, would hold FSIS accountable for ensuring that companies actually substantiate their proposed claims, and reduce the temptation for companies like Boar’s Head to abuse the public’s trust with virtually meaningless, if not misleading, claims.

CFA asked for FSIS to create such a database in 2016, when FSIS previously revised this guideline.⁶ The past eight years’ technological

⁴ *Nearly 70% of Americans Say Animal Wellness Plays an Important Role in Purchasing Decisions* (2021, February 14). National Sanitation Foundation.
<https://www.nsf.org/news/nsf-reveals-americans-say-animal-wellness-important-role-purchasing-decisions>

⁵ *Deceptive Consumer Labels*. (2023). Animal Welfare Institute.
<https://awionline.org/sites/default/files/uploads/documents/Deceptive-Consumer-Labels-2023.pdf>

⁶ Letter to Dr. Daniel Engeljohn, Assistant Administrator at the Office of Policy and Program Development at FSIS from Consumer Federation of America (December 5, 2016).



advancements make this request more feasible than ever. Sharing this information with the public is particularly essential with respect to claims that are pending before the agency, in order to allow stakeholders to flag applications that lack relevant supporting materials, express objections to dubious labeling claims, and otherwise participate in the agency approval process. This participation would provide a needed incentive for companies that resist complying with the agency’s “strong encouragement” to follow the best practices set out in the guideline.

Where FSIS allows a party to make a labeling claim without third party certification, it should require companies to disclose the absence of such verification.

To further limit misleading product labeling information, FSIS should require a disclaimer statement to accompany animal raising and environmental claims that lack third-party verification. Past experience demonstrates the perils of allowing producers to self-certify these claims. Third-party certifiers, who are able to specialize in verifying certain types of product claims and develop superior expertise, play a critical role in supplementing government oversight.⁷ When a company chooses to self-certify its labeling claim, there is a heightened risk that the company has chosen to define the claim in a manner that departs from consumer expectations, or is comparatively meaningless when viewed against the broader range of products bearing the label. Self-certification also poses a higher risk of non-compliance, as the company has a built-in conflict of interest and FSIS inspectors lack the specialized expertise of auditors enforcing third-party certification standards.

A third-party disclaimer statement would offer some protection to consumers against these risks. When approving a claim from a producer who is unwilling or unable to acquire third-party certification, FSIS should require that the following statement accompany the claim: "*This claim has not been verified by any third-party certifier.*" A disclaimer requirement would incentivize more producers to use third-party certifications, preventing overstated claims and boosting compliance, while preserving flexibility and speech rights for smaller producers and others for whom third party certification is undesirable.

https://consumerfed.org/wp-content/uploads/2016/12/12-5-16-FSIS-Animal-Raising-Claims-Guideline_Comment.pdf

⁷ Lytton, Timothy D., Private Third-Party Verification of Product Claims: Lessons from Kosher Certification (November 29, 2022). Research Handbook on International Food Law, Michael Roberts (ed.), Edward Elgar 2023, Available at SSRN: <https://ssrn.com/abstract=4288941>



Consumers rely on animal raising and environmental claims inform their purchasing decisions, and they rely on FSIS to ensure these claims are meaningful and accurate. By implementing the proposed recommendations, the agency can enact safeguards against false or misleading labeling information and support a fair and transparent marketplace. In addition to the substantive standards proposed by FSIS in the new guidelines, creating a public database of claims with supporting materials and requiring a third-party certification disclaimer statement would help to better protect consumers.

Thank you for your consideration of these comments.

Sincerely,
Thomas Gremillion
Director of Food Policy
Consumer Federation of America