

Congress of the United States

Washington, DC 20510

November 13, 2024

Mrs. Sandra Eskin
Deputy Under Secretary for Food Safety
Food Safety and Inspection Service
United States Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Deputy Under Secretary Eskin:

We write to express our support for strengthening the “Guideline on Substantiating Animal-Raising or Environment-Related Labeling Claims” (“Labeling Guideline”) and to urge the Food Safety and Inspection Service (FSIS) to consider our recommendations for improving this guideline to better protect the public’s interest in honest food labels. Verifying the accuracy of marketing claims on food labels is essential not only to empower consumers to make informed purchasing choices, but also to ensure a fair and competitive market for farmers.

We appreciate that FSIS has recently taken steps to update the Labeling Guideline in accordance with its authority, under the Federal Meat Inspection Act and the Poultry Products Inspection Act, to deny companies the use of false or misleading labels.¹ Unfortunately, the updated Labeling Guideline falls short of what is needed to protect producers and consumers from the unfair misuse of animal welfare and animal-raising claims. We agree with your findings in Objective 1.1.3 of your Strategic Plan 2023-2026 that “consumers rely on the information on the label” to select food products for purchase, and that the presence of inaccurate labels in the marketplace harms both consumers and the producers who use truthful labels.² Research shows that 78% of consumers have paid more for animal products bearing labels they believe indicate higher-welfare practices, and 85% believe the government should set and enforce clear definitions for animal welfare claims on food labels.³

Independent farmers using higher-welfare practices need clear labels in order to differentiate themselves to consumers and successfully compete against the handful of megacorporations that dominate the meat and poultry industries. As explained by an Indiana turkey farmer who spoke to the New York Times about how higher-welfare producers like him are disadvantaged by the prevalence of misleading labels: “Big Ag has co-opted and bastardized every one of our messages...When they use a fancy label with absolutely meaningless adjectives,

¹ Federal Meat Inspection Act of 1906, U.S. Code 21, §607(e); Poultry Products Inspection Act of 1957, U.S. Code 21, §457(d).

² United States Department of Agriculture, Food Safety and Inspection Service, Strategic Plan 2023-2026, p. 14, https://www.fsis.usda.gov/sites/default/files/media_file/documents/Strategic%20Plan%202023-2026.pdf.

³ Melissa Thibault, Sharon Pailler, and Daisy Freund, “Why Are They Buying It?: United States Consumers’ Intentions When Purchasing Meat, Eggs, and Dairy with Welfare-related Labels,” *Food Ethics* 7, 12 (2022), <https://doi.org/10.1007/s41055-022-00105-3>.

there's just no way we can compete.”⁴ At a time when our nation is losing independent farms at a troubling rate,⁵ we cannot allow mislabeled products to continue to tip the scales in favor of further consolidation and undermine the independent farmers who invest in truly implementing the animal-raising practices they advertise.

The current widespread use of deceptive labels proves that major agricultural corporations cannot be relied upon to police themselves, yet this is what the voluntary recommendations in the updated Labeling Guideline lean upon. To ensure the Labeling Guideline fulfills the agency's mission of ensuring meat and poultry products are properly labeled, we offer the following recommendations.

1. Require third-party certifications to substantiate holistic animal welfare claims, including “humane” and “humanely raised”

We agree with the agency that third-party certification provides much-needed accountability to ensure the veracity of animal-raising claims. Unfortunately, the Labeling Guideline only “strongly encourages,” and does not require, third-party certifications to substantiate animal welfare claims. Meaningful animal welfare certification programs establish husbandry standards that exceed minimum industry standards, prohibit the cruelest practices (like extreme confinement), and ensure animals have the space and enrichments to carry out their natural behaviors. Third-party animal welfare certifications also require regular on-farm audits of certified farms to verify they are meeting those asserted husbandry standards, which are critical both for accountability and transparency. Surveys consistently show that consumers expect more of holistic animal welfare claims like “humanely raised” than is currently required by FSIS, and that they already assume such claims are backed by some kind of on-farm audit.⁶ FSIS must require third-party certifications to substantiate these claims.

We appreciate the agency's consideration of potential barriers to achieving third-party certification, as expressed in the Federal Register.⁷ It is critical to the integrity of the agency's labeling oversight mission that those barriers be addressed in a targeted way rather than by lowering the standards for all producers seeking to use animal welfare label claims on their products. For example, USDA should provide smaller farms with technical assistance and

⁴ Andrew Jacobs, “Lawsuits Over ‘Misleading’ Food Labels Surge as Groups Cite Lax U.S. Oversight,” *New York Times*, September 7, 2021, <https://www.nytimes.com/2021/09/07/science/food-labels-lawsuits.html>.

⁵ United States Department of Agriculture, National Agricultural Statistics Service, *2022 Census of Agriculture*, February 2024, https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf.

⁶ Trisha Calvo, “Decoding the Labels on Meat Packages,” *Consumer Reports*, June 22, 2016, <https://www.consumerreports.org/food/decoding-the-labels-on-meat-packages>; Animal Welfare Institute, “Survey of Consumer Attitudes About Chicken Welfare,” 2020, <https://awionline.org/sites/default/files/uploads/documents/SurveyConsumerAttitudesChickenWelfare.pdf>; Thibault et al. 2022; Animal Welfare Institute, “Deceptive Consumer Labels: How the USDA's Failure to Oversee Its Label Approval Program Allows the Meat Industry to Co-opt Humane and Sustainable Claims,” updated 2021, https://awionline.org/sites/default/files/publication/digital_download/Deceptive-Consumer-Labels-2023.pdf.

⁷ Availability of FSIS Guideline on Substantiating Animal-Raising or Environment-Related Labeling Claims, 89 Fed. Reg. 73253, September 10, 2024, <https://www.federalregister.gov/documents/2024/09/10/2024-19696/availability-of-fsis-guideline-on-substantiating-animal-raising-or-environment-related-labeling>.

financial support to help them obtain certification. We stand ready to work with you on ensuring that holistic animal welfare claims better match consumer expectations and that meaningful animal welfare certification is accessible to all interested farmers.

2. Further define animal-raising claims like “free-range,” “grassfed,” and “pasture-raised” to ensure they better match consumer expectations, and require additional substantiation for these and other singular animal-raising claims

FSIS declined to codify definitions for animal-raising claims in its regulations, claiming that to do so would be “impractical.”⁸ However, the agency has the well-established authority to implement clear requirements for the use of animal-raising claims and it has the responsibility to do so to ensure misleading claims do not negatively impact farmers, consumers, and animals. Allowing producers to apply their own interpretations of animal-raising claims like “free-range,” “grassfed,” and “pasture-raised” undermines the clarity and consistency that both producers and consumers need. It invites scenarios where vastly different systems are all allowed to use the same label claims. This disadvantages farmers who are providing truly higher-welfare systems, fleeces consumers who may be paying more for products that don’t actually meet their expectations, and harms animals who might otherwise be in higher-welfare systems if the market appropriately signaled and rewarded those systems. We encourage FSIS to strengthen the definitions it has already established for claims like “free-range,” “grassfed,” and “pasture-raised” to provide the detail required to ensure precision and consistency in both application and enforcement of these claims. We also urge FSIS to require, rather than “strongly encourage,” producers to provide sufficient documentation to substantiate “pasture-raised” claims.

Singular animal-raising claims that refer to a specific animal housing or husbandry standard should be verified by producers with more than a written description and affidavit, which is all that is required in the updated Labeling Guideline. Written descriptions do not provide sufficient verification that producers are meeting animal-raising claim criteria and, in the absence of on-farm audits, the agency should at least require visual documentation via photos and video. Given the ubiquity of cell phone cameras, this requirement is not a burden and is indeed quite practical to ensure producers are adequately complying with the Labeling Guideline.

3. Halt the approval of inherently misleading negative labeling claims

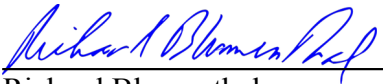
Certain label claims that are inherently deceptive should not be permitted under any circumstances. Negative claims that are necessarily true of *all* comparable products on the market fall into this category and should be prohibited. For example, poultry and egg products should never be labeled as “hormone free” or “raised without hormones” because it is illegal for hormones to be added to any such product in the United States, and thus such a claim does not constitute a true distinction from any other product. Similarly, poultry products labeled as “cage-free” are inherently misleading because they imply to consumers that such products are more humane than competing products without such a label, even though chickens and turkeys are never raised in cages. Major meat and poultry corporations already raking in record profits

⁸ Ibid.

should not be able to artificially inflate their prices based on their misleading use of these meaningless claims. FSIS should prohibit such claims.

We appreciate your attention to these comments and look forward to working with you on implementing a strengthened Labeling Guideline to protect American farmers and consumers from deceptively labeled products.

Sincerely,



Richard Blumenthal
United States Senator



Cory A. Booker
United States Senator



Sheldon Whitehouse
United States Senator