



December 5, 2016

U.S. Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW.
Washington, DC 20250-3700

Submitted online via regulations.gov

RE: Docket No. FSIS-2016-0021; Food Safety Inspection Service Statement of Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submission

The National Sustainable Agriculture Coalition (NSAC) submits the following comments and recommendations on the recent Food Safety and Inspection Service (FSIS) labeling guidance governing animal raising claims and the documentation needed to substantiate those claims.

NSAC is an alliance of grassroots organizations that works to advance the sustainability of agriculture, food systems, natural resources and rural communities. Our members care deeply about ensuring the integrity of agricultural product labeling claims on behalf of consumers and producers. Therefore, we have a keen interest in the recent FSIS guidance regarding animals raising label claims and how they impact consumers and producers.

Consumer demand for sustainably and humanely produced meat and poultry products continues to grow throughout the country. As the market for sustainable, humane meat and poultry products grows, label claims related to animal raising and production practices are becoming increasingly prominent and important. In an attempt to capture these growing markets, farmers, ranchers, processors, and marketers have turned to labels as a way to differentiate their products and meet growing consumer demand.

It is critical that FSIS processes for overseeing animal raising labeling claims uphold the transparency, clarity, accuracy, and integrity that consumers demand and producers deserve. Failure to do so not only confuses and misleads consumers, but it places producers that adhere to sustainable and humane standards at an economic disadvantage, undercutting the markets they have built based on consumer trust and expectation. With these principles in mind, we provide the following comments to ensure that these animal raising label claims meet consumer and producer expectations and promote transparency, consistency and clarity, as well as competitive markets.

I. COMMENTS ON GRASSFED

We are pleased that FSIS has clarified through this guidance that any label claim using the term 'grassfed' must meet a 100% grassfed standard. Taking this action was necessary to preserve the label's strong reputation; meet consumer and producer expectations; and promote transparency,

consistency, and clarity. We applaud FSIS' swift response to producer and consumer concerns following AMS' withdrawal of the standard earlier this year.

We also appreciate that FSIS now requires access to pasture during the growing season as part of the grassfed definition. This was not part of the original AMS standard, but is certainly a valuable addition that we support.

The guidance is not perfect, however, and subsequent grassfed claims will require close scrutiny. Under the new guidelines FSIS can still approve lesser label claims, such as "80% grassfed." These claims are misleading for consumers and harmful to the farmers and ranchers who have built their reputations, and indeed an entire industry, on the 100% grassfed standard.

We therefore continue to urge FSIS to uphold a strong 100% grassfed label claim standard and not approve labels with lesser claims.

In addition, NSAC believes that FSIS needs an improved and augmented process that not only enforces strong, pro-farmer and pro-consumer standards, but also rejects misleading claims. This process necessarily requires that FSIS have the capacity and resources to properly verify and enforce all labeling claims (see VI below).

II. COMMENTS ON "RAISED WITHOUT ANTIBIOTICS"

In addition to our concerns that the guidance still leaves the door open for approving misleading lesser label claims such as "80% grassfed," we have concerns regarding other elements of the guidance on diet-related claims. We are specifically concerned about use of the term "Raised Without Sub-therapeutic Antibiotics."

Our concerns about the term "Raised Without Sub-therapeutic Antibiotics" stem from the fact that there is currently no agreed-upon definition of what "sub-therapeutic" means. A consumer reading this on a label will be limited in their ability to easily determine what sub-therapeutic vs. therapeutic means and how much antibiotics have been used in raising the animals that the meat comes from. Without a standard of definition in place for the meaning of sub-therapeutic antibiotic use, a label applicant can define sub-therapeutic as they see fit, creating an inconsistent set of labels in the marketplace that will only confuse and mislead consumers and undermine competitive markets.

In order to support consistent and transparent labels that do not undermine competitive markets and are not confusing for consumers NSAC urges FSIS to prohibit the use of the claim "Raised Without Sub-therapeutic Antibiotics."

III. RAISED WITHOUT HORMONES (NO HORMONES ADMINISTERED OR NO STEROIDS ADMINISTERED)

We have similar concerns about the use of the claim "Raised Without Growth Promotants (Stimulants)." Under the section of the guidance document for "Raised Without Hormones (No Hormones Administered or No Steroids Administered)," FSIS lists "Raised Without Growth Promotants (Stimulants)" as another example of a labeling claim that FSIS would approve with the proper related documentation. In context of the heading of that section of the document, specifically the phrase "no hormones administered or no steroids administered," we are concerned about the transparency and clarity behind the claim "Raised Without Growth Promotants

(Stimulants)” based on the fact that hormones and steroids are not the only growth promotant or stimulant used by producers. Producers routinely administer subtherapeutic antibiotics and beta-agonists for the purposes of growth promotion, which are non-hormone or steroid based growth stimulants. Under these guidelines, it appears FSIS would allow for the approval of a label that says “Raised Without Hormones” or “Raised Without Growth Promotants (Stimulants)” even if sub-therapeutic antibiotics and/or beta-agonists were used for the purposes of promoting and stimulating growth because they are not hormones or steroids.

In order to support consistent and transparent labels that do not undermine competitive markets and are not confusing for consumers, NSAC urges FSIS to prohibit the use of the claim “Raised without Growth Promotants (Stimulants),” or alternatively amend the guidance to make clear that “Raised without Growth Promotants (Stimulants)” must include beta-agonists and the use of antibiotics for growth promotion.

IV. CERTIFIED ORGANIC AND ANIMAL RAISING CLAIMS DOCUMENTATION

Under these guidelines, a USDA certified organic meat or poultry product would be required to define pasture-raised, humanely raised, or vegetarian diet on package labels, in addition to carrying the USDA-organic seal on their products. This requirement creates an unnecessary burden, considering the fact that all USDA certified organic products have to follow the National Organic Program (NOP) regulations. The NOP regulations directly reference and define the following animal raising claims: *no antibiotics*, *no hormones*, *pasture for ruminants*, *humanely raised* and *vegetarian diet*. Therefore, the organic certificate, and by extension the presence of the USDA-organic seal, should be sufficient in substantiating those claims on package labels.

NSAC recommends FSIS allow certified producers to rely on the organic seal, coupled with documentation to FSIS to prove organic certification and reference to the relevant Code of Federal Citations for the NOP rule, to substantiate a pasture-raised, humanely raised or vegetarian diet label raising claim.

V. COMMENTS REGARDING THE MUCH-NEEDED OVERHAUL OF THE FSIS LABEL PROGRAM

In addition, to the specific label claims and concerns expressed above NSAC continues to be concerned that the overall FSIS process for approving and verifying animal raising label claims is insufficient and lacks the necessary enforcement and verification systems needed to enforce strong, pro-farmer, pro-consumer standards and ensure that misleading label claims are swiftly identified and rejected.

FSIS has done a commendable job working with the resources and capacity they have, but that is not sufficient. FSIS should re-examine and overhaul their system for reviewing and accepting labels based on the ways animals are raised. The new system should be fair and transparent for both producers and consumers and should be based on verification or certification, not affidavits. We believe the new system should move away from case-by-case approval and instead set uniform standards, based on a solid understanding of what the farmers who pioneered the raising claim do in their systems and what consumers think about these terms.

We offer the following specific comments as input into a possible re-examination process. Should FSIS determine that they lack the legal authority to do any of our recommendations we strongly urge

them to seek the necessary authorities from Congress. NSAC would be committed to helping FSIS work with Congress to provide the necessary authority and funding to overhaul the FSIS labeling approval process.

1. Stop Case by Case Determinations.

Labeling for raising claims cannot ultimately be fair and transparent for producers and consumers if they are determined on a case-by-case basis with a multitude of resulting definitions and meanings. This is true whether the label is based on a company or producer affidavit or whether it is based on a third party certification. Animal raising claims need consistent meaning, not scores of different definitions and meanings for the same or very similar terms.

2. No Grandfathering.

By necessity, a clear, fair, and transparent system must be able to evolve over time. As labeling claim standards for raising claims are developed and adapted, a key issue will be what to do with pre-existing FSIS-approved labels. We believe that fairness for all producers dictates that once the USDA standard has been set, all pre-existing labels should either come under the new standard or cease using the label. Otherwise, even if prospectively the agency were to move away from case by case determinations, there will continue to exist multiple different definitions and meanings of the same claim, and the resulting unfair competitive disadvantage for producers and confusion for consumers.

3. Stakeholder Participation in Standards Development.

After AMS withdrew the grassfed label claim standard earlier this year, there was significant concern that the robust participatory process between AMS and stakeholders that led to the development of the 2008 grassfed label had been ignored and undermined. We therefore strongly encourage FSIS to work closely with AMS in implementing and enforcing the grassfed standard to ensure it meets the same expectation that AMS ensured stakeholders was being met. And, as new raising claims are considered, listening sessions and full public notice and comment procedures, similar to that used by AMS for the grassfed standard, should be used to allow stakeholders to participate in the development of standards.

4. Continue to Approve Label Claims based on Raising Claims through Verification or Certification.

We believe FSIS should approve label claims that are based on raising claims. These are vital to the interests of the farmers and ranchers we represent. However, we believe these should be based on a verification or certification process only and should be based on clear, strong, uniform standards. Animal raising claims are frankly either too difficult or too driven by ongoing, on-farm management decisions to be handled through the traditional FSIS pre-market approval process. A third party verification or certification system is needed to protect consumer confidence and to ensure that producers who are meeting or exceeding management based raising claims are not being undercut by those who are not.

To repeat what we said in point number 1 and 2 above, the claims being certified through third party certification should be based on a public standard. We do not want to see a mere shift from a case-

by-case approval of a label to a case-by-case approval of a certifier. Nor do we want a public standard to be set but then have labels that do not meet that standard grandfathered in.

5. Institute an Automatic Review Process.

To achieve of workable label approval system with fair, transparent, and uniform standards through a verification or certification process, there will need to be an automatic review process whereby requests from producers, companies and certifiers for raising claim labels that do not yet have accepted standards in place trigger an evaluation of whether or not a new meat label claim standard should be developed and issued. If the review process determines a new animal raising label claim standard should be developed, USDA should develop the standard and issue it for public comment

6. Do Not Issue the Naturally-Raised Label Claim Standard and Clarify the Naturally Processed Label Terminology.

We understand that USDA has still from time to time considered moving forward in whole or in part with the naturally-raised label claim standard that was withdrawn earlier this year. We submitted detailed comments opposing the proposed Naturally-Raised Label Claim Standard at the time it was originally proposed (Docket No. AMS-LS-07-0131; LS-07-16) and refer you to our comments and oral remarks for more detail on our position.

We strongly supported the agency's decision to withdraw that proposed rule and we continue to strongly object to the agency moving forward with developing such a standard. We also object, however, because the proposed label claim violates the principle that labels should be clear and distinct. This principle was developed by AMS when the grass-fed standard was first established. The agency stated its strong preference for keeping terminology separate and distinct and for issuing modular rather than bundled claims. We generally agree with the principle laid out by AMS. A naturally-raised label claim standard would violate this principle and mislead the consumer.

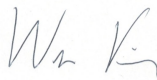
While not the immediate subject of this particular comment solicitation, we also urge FSIS, should it move forward with a rulemaking on a natural label, to use the term "naturally-processed" rather than "natural" on any labeling claim standard to eliminate any confusion that the label refers to the animal production system as is widely assumed by consumers.

We appreciate your consideration of our comments, and would be happy to meet and discuss any of these recommendations with you at your convenience.

Sincerely,



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