

Petition
Before the United States Department of Agriculture
Food Safety and Inspection Service

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Requesting Rulemaking to Remove Animal Raising Claims
from the Agency's Label-Approval Process

Submitted by People for the Ethical Treatment of Animals

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I. Introduction

People for the Ethical Treatment of Animals (PETA) submits this petition pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 553(e), and 9 C.F.R. § 392.1, *et seq.*, requesting that the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) commence rulemaking proceedings to eliminate from its label-approval program any labels relating to claims about the conditions in which animals were raised.

FSIS has no jurisdiction to regulate the producers raising animals. The agency's authorizing statutes, the Federal Meat Inspection Act (FMIA), 21 U.S.C. §§ 601-695, and the Poultry Products Inspection Act (PPIA), 21 U.S.C. §§ 451-472, do not grant FSIS authority to regulate the on-farm treatment of animals raised for meat production. FSIS has exceeded its statutory authority by construing far too broadly its authority to ensure food labels are not misleading to encompass activities entirely outside the purview of these statutes.

Due to its lack of jurisdiction, FSIS has no way to inspect and verify the claims companies make concerning the conditions in which the animals were raised, such as "humanely raised," "raised in a stress-free environment," or "free to roam." As a result, companies may submit claims that are completely false or grossly misleading and still garner approval from the agency. By approving labels without confirming, or even the ability to confirm, the information supporting the claims on them, FSIS is allowing companies to make variable, unverifiable, and false claims, thereby also violating its statutory responsibility to ensure labels on meat products are not false or misleading. By gaining agency approval, companies can then charge a surplus for "humanely" raised products, as the public is often willing to pay more for products they are led to believe were made without harming animals.

This petition points to four of the many examples of on-farm investigations that expose FSIS's approval of false and misleading claims concerning the conditions in which animals used in a company's products have been raised. These also demonstrate the wide gap between what a company may claim is humane treatment and what the public perceives humane treatment to entail, leading to consumer deception and confusion.

In light of this disparity and the agency's lack of jurisdiction, and thus the agency's inability to remedy this problem through improved regulation, PETA urges FSIS to amend its regulations to no longer allow for the approval of animal raising claims on product labels and to rescind the guidelines for the approval of such labels.

II. Description of Petitioner

PETA entities have more than 9 million members and supporters globally, and PETA U.S. is the largest animal rights organization in the world. PETA operates, in part, to promote and further the principle that animals are not ours to eat or abuse in any other way. Since its inception in

1980, it has championed ending the mistreatment of animals, including the abuse of animals used for food.

III. Legal Framework

The FMIA, 21 U.S.C. §§ 601-695, and the PPIA, 21 U.S.C. §§ 451-472, are the statutes underpinning the USDA's label approval regulations and guidelines.¹ The FMIA and the PPIA prohibit the labeling of meat products and poultry products, respectively, that is "false or misleading in any particular."² Both of these statutes grant the USDA authority to regulate and inspect slaughterhouses, but not to regulate or inspect on-farm animal raising activities, as would be required to substantiate claims companies make concerning on-farm animal raising conditions. The FMIA requires USDA to ensure that "meat and meat food products . . . are wholesome, not adulterated, and properly marked, labeled, and packaged."³ The FMIA provides for inspection at or just prior to slaughter,⁴ post-mortem,⁵ and at slaughtering, packing, and similar establishments.⁶ Indeed, "[t]he FMIA regulates a broad range of activities *at slaughterhouses* to ensure both the safety of meat and the humane handling of animals."⁷ Along these same lines, to fulfill its Congressional purpose to prevent the sale of poultry and poultry products "which are adulterated or misbranded," the PPIA provides for inspection and other regulation regarding "processing and distribution."⁸ Specifically, the PPIA provides for "ante mortem inspection of poultry" and "post mortem inspection of the carcass of each bird processed" "in each official establishment processing poultry or poultry products."⁹ "Official establishment" is defined, in turn, to mean an establishment "at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this chapter."¹⁰ Unlike the FMIA, which addresses the humane treatment of animals during the slaughter process only, the PPIA does not address the humane treatment of birds at all.¹¹

To implement these statutes, USDA's label approval regulations, 9 C.F.R. § 412.1, specify that "[n]o final label may be used on any product unless the label has been submitted for approval to [and approved by] the FSIS Labeling and Program Delivery Staff."¹² Among the labels the regulations require companies to submit for approval are "special statements and claims,"¹³

¹ 9 C.F.R. § 412.1; Food Safety and Inspection Serv., U.S. Dep't of Agric., Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submissions ("*Labeling Guideline*"), at 6 (2019), <https://www.fsis.usda.gov/sites/default/files/import/RaisingClaims.pdf>.

² 21 U.S.C. § 601(n)(1); *id.* § 453(h)(1).

³ *Id.* § 602.

⁴ *Id.* § 603.

⁵ *Id.* § 604–606.

⁶ *Id.* § 608.

⁷ *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 455 (2012) (emphasis added).

⁸ 21 U.S.C. § 452.

⁹ *Id.* § 455(a), (b).

¹⁰ *Id.* § 453(p).

¹¹ *Treatment of Live Poultry Before Slaughter*, 70 Fed. Reg. 56624, 56625 (Sep. 28, 2005) (FSIS stating that "there is no specific federal humane handling and slaughter statute for poultry").

¹² 9 C.F.R. § 412.1(a).

¹³ *Id.* § 412.1(c)(3).

which are “claims, logos, trademarks, and other symbols on labels that are not defined in the Federal meat and poultry products inspection regulations or the Food Standards and Labeling Policy Book, (except for ‘natural’ and negative claims (e.g., ‘gluten free’)), health claims, ingredient and processing method claims (e.g., high-pressure processing), structure-function claims, *claims regarding the raising of animals*, organic claims, and instructional or disclaimer statements concerning pathogens.”¹⁴

In December 2019, FSIS released a set of guidelines (the “guidelines”) detailing the documentation required to substantiate animal raising claims for label submissions.¹⁵ The guidelines require companies to submit the following documentation for FSIS approval of labels bearing animal raising claims:

1. A detailed written description explaining the controls used for ensuring that the raising claim is valid from birth to harvest or the period of raising being referenced by the claim;
2. A signed and dated document describing how the animals are raised which may include feed formulations (e.g., vegetarian fed, raised without antibiotics, grass fed), to support that the specific claim made is truthful and not misleading;
3. A written description of the product tracing and segregation mechanism from time of slaughter or further processing through packaging and wholesale or retail distribution;
4. A written description for the identification, control, and segregation of nonconforming animals/product; and
5. If a third-party certifies a claim, a current copy of the certificate from the certifying organization.¹⁶

IV. Arguments in Support of Requested Action

FSIS lacks jurisdiction to regulate on-farm animal raising activities. Thus, FSIS’s review, approval, and allowance of animal raising labels exceeds its statutory authority. In turn, this lack of jurisdiction makes it impossible for FSIS to inspect farms, allowing producers to unilaterally make misleading or patently false claims concerning how animals are raised and have these claims blindly approved by a government agency, providing these statements with the veneer of legitimacy and confusing consumers.

A. FSIS Lacks Jurisdiction to Regulate On-Farm Activities

The statutes that charge FSIS with the responsibility to ensure that meat labels are not false or misleading—the FMIA and the PPIA—do not confer FSIS with any authority to regulate on-farm raising conduct. As explained in Section III of this petition, the FMIA and the PPIA only

¹⁴ *Id.* § 412.1(e) (emphasis added).

¹⁵ *Labeling Guideline*, *supra* note 1.

¹⁶ *Id.* at 6.

provide FSIS with jurisdiction over the slaughtering and processing portions of the meat production process—these statutes do not contemplate or authorize FSIS regulation of the animal-raising portion of meat production, as the agency has acknowledged.

Administrative agencies’ regulatory powers are circumscribed by their authorizing statutes. An agency’s regulations “cannot exceed the power granted . . . by Congress.”¹⁷ As previously discussed, neither the FMIA nor the PPIA grants FSIS the authority to regulate the raising of animals on farms. The FMIA provides for inspection at or just prior to slaughter,¹⁸ post-mortem,¹⁹ and at slaughtering, packing, and similar establishments,²⁰ while the PPIA provides for inspection and other regulation regarding “processing and distribution.”²¹

Furthermore, where Congress intended to grant authority to regulate activities relating to the raising of animals, it did so explicitly. In fact, Congress granted FSIS this authority in the FMIA pertaining exclusively to catfish, stating “the Secretary *shall take into account the conditions under which the fish is raised* and transported to a processing establishment.”²² It chose not to grant FSIS authority to regulate or consider activities relating to the conditions under which livestock and poultry are raised, and that decision must be given deference. “It is an established principle of statutory interpretation that, when ‘Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’”²³

Indeed, FSIS itself has acknowledged that it “does not regulate food animal production” and therefore “may not always have all the relevant information necessary to the proper evaluation of the animal raising practices described in a producer’s animal production protocol.”²⁴ The fact that regulation of the raising of animals falls outside of the agency’s scope is also reflected in its own regulations, which discuss at length inspection the day of slaughter and post-mortem, and none of which reference on-farm treatment.²⁵ This limited authority is also reflected in FSIS

¹⁷ See, e.g., *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 214 (1976).

¹⁸ 21 U.S.C. § 603.

¹⁹ *Id.* § 604–606.

²⁰ *Id.* § 608.

²¹ *Id.* § 452.

²² See *id.* § 606(b).

²³ *Stovic v. R.R. Ret. Bd.*, 826 F.3d 500, 503 (D.C. Cir. 2016), *cert. denied*, (U.S. Oct. 31, 2016) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

²⁴ *Product Labeling: Use of the Animal Raising Claims in the Labeling of Meat and Poultry Products*, 73 Fed. Reg. 60228, 60229 (Oct. 10, 2008).

²⁵ See, e.g., 9 C.F.R. § 300.6 (requiring access to any “establishment that slaughters livestock or otherwise prepares meat products or slaughters poultry or otherwise processes poultry products that are subject to inspection”); *id.* § 302.1 (requiring inspection at “every establishment” in which any livestock are slaughtered or products derived from their carcasses are prepared for transportation or sale); *id.* § 304.1 (requiring application for inspection only by those “conducting operations at an establishment subject to the Act”); *id.* § 309.1 (an ante-mortem examination and inspection shall be made of all livestock offered for slaughter “on the day of and before slaughter”); *id.* § 310.1 (a post-mortem examination and inspection shall be made of all carcasses “at the time of slaughter”); *id.* §§ 313.1–313.50 (humane slaughter regulations applicable only from the unloading ramps through slaughter); *id.* § 381.70 (an ante-mortem inspection shall “be made of poultry on the day of slaughter”); *id.* § 381.76 (“A post-mortem inspection shall be made on a bird-by-bird basis on all poultry eviscerated in every official establishment.”).

directives and has been recognized by the Supreme Court.²⁶ The FMIA, PPIA, and their implementing regulations make clear that FSIS does not have the authority to regulate on-farm animal care, including to access farms to inspect a producer's animal raising practices or verify claims submitted to the agency for approval.

“It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’ A court must therefore interpret the statute ‘as a symmetrical and coherent regulatory scheme,’ and ‘fit, if possible, all parts into an harmonious whole.’”²⁷ The FMIA and PPIA cannot reasonably be construed to have implicitly granted FSIS the authority to promulgate labeling standards with regard to on-farm animal raising claims while restricting the agency's authority to monitor and enforce the statutes to only “the moment a truck carrying livestock ‘enters, or is in line to enter,’ a slaughterhouse's premises.”²⁸ Rather, “read in their context and with a view to their place in the overall statutory scheme,” the provisions granting FSIS authority to regulate labeling must be limited by the areas over which the agency actually exercises oversight—immediately prior to, at, or after slaughter. As a result, the agency should amend its regulations to remove any asserted authority over reviewing and approving on-farm animal raising claims and should rescind the corresponding guidelines.

B. Animal Raising Claims Create Consumer Confusion and Violate FSIS's Legal Responsibility to Ensure Labeling Is Not False or Misleading

FSIS's extra-jurisdictional approval of animal raising claims on product labels enables consumer confusion, in light of the malleability of these terms, and consumer deception, as time and again, investigations have revealed the falsity of approved labels.

The guidelines allow companies to use terms that are not defined by law and with inconsistent definitions to make their unverifiable claims, taking advantage of consumer interest in animal welfare to increase profits without taking the requisite steps to actually achieve better on-farm conditions for animals. The guidelines allow companies to include terms on their labels such as “humanely raised,” “animal friendly,” and “raised with care” that are amorphous and have a high potential for creating consumer confusion. They can be, and are, used on products that do not exceed industry standards, despite companies' attempts to portray them as more “humane” or otherwise adhering to superior animal-welfare standards compared to other products on the market. The definitions for these terms can also vary by company, meaning that, unbeknownst to the consumer, an animal who was “humanely raised” by one company may not have been treated with a standard of care even approaching an animal “humanely raised” by another company.

²⁶ See *Nat'l Meat Ass'n*, 565 U.S. at 457 (citing FSIS Directive 6900.2, ch. II(I) (rev. Aug. 15, 2011)); FSIS Directive 6900.1, Part X.A (rev. July 24, 2014) (“All animals that are on the premises of the establishment, on vehicles that are on the premises, or animals being handled in connection with slaughter (e.g., livestock on trucks being staged for slaughter) are to be handled humanely.”).

²⁷ *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citations omitted).

²⁸ See *Nat'l Meat Ass'n*, 565 U.S. at 457.

While the guidelines require that companies define these terms on their product's packaging, the definitions are often circular or meaningless, providing little to no substantive information about the conditions in which these animals are actually raised.

FSIS explicitly acknowledged these issues in a public meeting:

Because we don't regulate food animal production, we're not on the farm, we may not always have the relevant information needed to properly evaluate the animal raising practices described in a producer's animal production protocol.

Animal producers and certifying entities may have different views on the specific types of practices that qualify a product to bear a raising claim on its label. So the result is that the same animal raising claim may reflect different animal raising practices depending on how an animal producer or a certifying entity defines the basis for the claim.

In addition, consumers also may have different views regarding the meaning of a specific animal raising claim.²⁹

FSIS also recognized these issues in a notice initiating a public process to review its animal raising claim label review process:

[W]hile FSIS' approval of an animal raising claim depends on submissions that describe how the source animals were raised, animal producers and certifying entities may have different views on the specific animal production practices that qualify a product to bare a given animal raising claim on its label. Thus, the same animal raising claim may reflect different animal raising practices, depending on how an animal producer or certifying entity defines the basis for the claim.

For example, FSIS approves "free range" raising claims on the labels of poultry products if the producer demonstrates that the birds were allowed continuous, free access to the outside for over 51% of their lives through a normal growing cycle. Under this standard, some producers or certifying organizations may support a "free range" labeling claim if the source birds for the poultry products were allowed access to a yard outside, regardless of whether the birds actually use the yard. On the other hand, other producers or certifying entities may establish stricter standards for themselves and request that FSIS approve a "free range" claim only if the source birds actually use the yard.

As with animal producers and certifying entities, consumers often have a wide variety of views regarding the meaning of specific animal raising claims.³⁰

²⁹ Transcript of Animal Raising Claims Public Meeting at 15:1–17, USDA (Oct. 14, 2008).

³⁰ *Product Labeling*, *supra* note 24, at 60229.

Compounding this consumer confusion is the fact that, because the terms lack a uniform definition, the approval of labels using them turns on the subjective determination of the label reviewer. There is no standard set of objectively measurable criteria, and consumers do not know what the label reviewer based their approval upon. In turn, it is impossible for consumers to make informed purchasing decisions based on these labels, despite the fact that research indicates consumers care about and routinely rely upon these animal raising claims when choosing products.

Consumers care about the treatment of farmed animals and have developed expectations about what particular labeling terms entail, and so claims about the conditions in which farmed animals are raised affect their purchasing decisions. Surveys show the majority of respondents report being concerned about the welfare of farmed animals.³¹ For instance, nearly ninety-five percent of participants in a national survey stated they are very concerned about farmed animal welfare.³² Seventy-one percent of frequent purchasers (i.e., those who purchase four or more times per month) of animal-derived products including meat, eggs, and poultry also stated that they consider claims on package labels when deciding what meat, dairy, or egg products to purchase.³³ Consumers rank a “humanely raised” label near the level of absolute necessity when considering its importance on their purchasing decisions.³⁴ One study found that those consumers who saw the claim “humanely raised” on a product package were sixty-seven percent more likely to purchase the item over a “conventional” product.³⁵ Studies also confirm that consumers are willing to spend more money on products carried by companies claiming to treat their animals humanely, with one survey reporting that seventy-four percent of respondents were very willing to pay more for humanely raised meat.³⁶ The increased amount consumers are willing to pay is significant—thirty-four percent of respondents to one survey stated they would be willing to pay between ten and twenty percent more for products from humanely raised animals, while twenty-eight percent stated they would pay twenty to thirty percent more.³⁷

Consumers have definite and reasonable expectations for companies that claim to treat their farmed animals humanely. They expect better treatment of those animals than the standard treatment within the industry—in fact, one survey reported that eighty-two percent of respondents agreed that producers should not be allowed to label their products as humanely

³¹ See, e.g., *Survey of Consumer Attitudes about Animal Raising Claims on Food (Part I)*, Animal Welfare Inst. (2018), at 1, <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-survey-on-animal-raising-claims-Sept-2018.pdf> (Ex. 1).

³² *2014 Humane Heartland Farm Animal Welfare Survey*, American Humane Ass’n (2014), at 9, <https://www.americanhumane.org/app/uploads/2016/08/2014-humane-heartland-farm-survey.pdf> (Ex. 2).

³³ *Survey of Consumer Attitudes*, *supra* note 31, at 2.

³⁴ *Humane Heartland Farm Animal Welfare Survey*, Am. Humane Ass’n 6 (2013), <https://www.americanhumane.org/app/uploads/2013/08/humane-heartland-farm-animals-survey-results.pdf> (Ex. 3) (reporting that survey respondents ranked “humanely raised” labels as 95% necessary, surpassing other labels, including organic, natural, and antibiotic free, in importance on their purchasing decisions).

³⁵ *Power of Meat: An In-Depth Look at Meat Through the Shoppers’ Eyes*, Food Marketing Inst. (2018), at 48, http://www.meatconference.com/sites/default/files/books/Power_of_meat_2018.pdf (Ex. 4).

³⁶ See *Humane Heartland Farm Animal Welfare Survey*, *supra* note 34 at 7.

³⁷ *Id.* at 5.

raised unless they exceeded minimum industry animal care standards.³⁸ More specifically, one survey found that, for animal products labeled “humane,” eighty-two percent of consumers thought the farm was inspected to verify the claim, seventy-seven percent believed this meant the animals had adequate living space, sixty-eight percent thought this indicated the animals went outdoors, sixty-five percent were under the impression this meant the animals were raised in houses with clean air, and fifty-seven percent believed these animals were raised without cages.³⁹ Another survey found that approximately forty percent of respondents believed that labels like “American Humane Certified” meant the animals used to make the product had not been subjected to physical mutilation, such as debeaking.⁴⁰ Furthermore, eighty-nine percent of consumer respondents in one survey agreed that the government “should require more than an unverified testimonial (e.g., taking the word of a producer) to allow a food producer to use a claim like ‘humanely raised’ on meat, poultry, egg, or dairy products.”⁴¹

There are numerous examples of companies labeling their animal-based products with claims regarding the conditions in which they raise their animals that fall far short of these consumer expectations and cause consumer confusion, either because the “humane” conditions in which these animals are raised do not exceed the industry standards, or because the company uses a definition for a term on its label that varies from other companies or reasonable consumer expectations, or both.

i. Plainville Farms’ Misleading Animal Raising Product Labels



Workers kick and stomp on turkeys at Plainville Farms. *Note: Image has been brightened to enhance clarity.*



Turkeys at Plainville Farms receive no treatment for injury or illness. Instead, they are left to die slowly and painfully. *Note: Image has been brightened to enhance clarity.*

³⁸ *Label Confusion 2.0: How the USDA Allows Producers to Use “Humane” and “Sustainable” Claims on Meat Packages and Deceive Consumers*, Animal Welfare Inst. (Sept. 2019), at 6-7, https://awionline.org/sites/default/files/publication/digital_download/19%20Label%20Confusion%20Report%20FINAL%20WEB%20II.pdf (Ex. 5).

³⁹ *Food Labels Survey: 2016 Nationally-Representative Phone Survey*, Consumer Reports Nat’l Research Ctr. (Apr. 2016), at 4, https://www.ftc.gov/system/files/documents/public_events/975753/cr_intro_and_2016_food_survey.pdf (Ex. 6).

⁴⁰ See *Humanewashing’s Effect on Consumers: Survey of Consumer Beliefs About Welfare Certifications*, Farm Forward (Dec. 2021), at 9, <https://res.cloudinary.com/hyjcexzjt/image/upload/v1639674650/resource/farm-forward-publication-consumer-advocacy-humanewashin-3e2d.pdf> (Ex. 7).

⁴¹ *Label Confusion 2.0*, *supra* note 38 at 7.

Meat products from Plainville Farms, LLC (Plainville) include labels stating the animals were “humanely raised” and define this term on the product packaging as “[m]eet[ing] Plainville Farms brand’s humane policy for raising turkey on family farms in a stress-free environment.”⁴² This definition is circular, defining “humanely raised” as being raised under a humane policy, and provides no concrete information about what exactly the standard entails. On Plainville’s website, the company goes on to claim that

All animals are raised in accordance with Plainville Farms humane policy of raising poultry and pork on family farms in a stress-free environment to our highest standards. We strictly maintain our animal welfare program which is designed to enforce humane and responsible treatment of all. We use globally-recognized animal welfare practices from farm to harvest. This is part of why our products taste so good.⁴³

Plainville’s website also states, “We do everything we can to ensure our flocks are comfortable, whether they’re at the family farm or in transport. We raise our flocks on family farms in a stress-free environment”⁴⁴ This description is, again, essentially meaningless, using the same nebulous terms repeatedly, like “humane” and “stress-free,” without providing any objective explanation of what they mean.

Plainville Farms’ application materials submitted to FSIS in support of approving its on-farm raising claim labels are similarly vague and unsupported. In the company’s affidavit in support of its application to label its products as “humanely raised” and “free range,” among other claims, Plainville simply states that its “poultry are humanely raised, cage-free in well-kept barns on family farms in a stress-free environment” with access to vegetarian feed and water “in a habitat that allows for natural expression of behavior and optimal growth.”⁴⁵ The application materials do not define any of these standards, such as “well-kept” or “stress-free,” nor do they delineate any specific measures the company takes to achieve these standards. The affidavit also specifies Plainville’s products do not contain added hormones or steroids, which the affidavit itself points out is actually required by federal regulations.⁴⁶ Plainville also included an Animal Welfare Policy Statement with its label application materials, which states as follows:

Plainville Farms will strictly maintain a program of animal welfare that is designed to eliminate unnecessary harm and suffering for the animals in the day-to-day operations.

⁴² E.g., *Natural Turkey Drumsticks*, Plainville Farms, <https://www.plainvillefarms.com/natural-parts-drumsticks> (last visited June 22, 2022) (Ex. 8).

⁴³ *Animal Welfare*, Plainville Farms, <https://www.plainvillefarms.com/animalwelfare> (last visited June 22, 2022) (Ex. 9).

⁴⁴ *Id.*

⁴⁵ First Interim Response to FOIA Request 2021-FSIS-00311-F at 18 (Ex. 10).

⁴⁶ *Id.*

Purpose:

- A. To develop a program in cooperation with our customer which will strictly maintain generally accepted standards for the welfare and humane treatment of animals in our care.
- B. To operate under “Good Manufacturing Practices” that avoid unnecessary suffering, prevent destructive behavior, prevent disease, and provide proper nutrition while promoting good animal health.
- C. To strictly maintain the guidelines for animal welfare issued by the National Turkey Federation and Global Animal Partnership with the intent to promote the humane treatment and well-being of poultry through the production process.
- D. To create a maintenance program for animal welfare that places a priority on a consistent program of humane treatment and stress-free environment within our system.⁴⁷

Not only is this policy seemingly aspirational in nature, as indicated by language such as “will strictly maintain” and “to develop,” implying that it has yet to be implemented, but it also lacks supporting details on what steps Plainville has or will take in order to treat its animals humanely in a way that exceeds average industry standards—for instance, what exactly “Good Manufacturing Practices” entail or what benchmarks a “maintenance program for animal welfare” includes. The application materials also do not provide any supporting evidence showing Plainville is complying with any of these amorphous standards.

Furthermore, a 2021 PETA undercover investigation exposed the fact that Plainville turkeys are not treated humanely under any plausible definition of the term and the environment they are raised in is far from stress free. The investigation revealed workers engaging in vicious acts of abuse against turkeys raised at several of Plainville’s suppliers’ farms. The video documented workers kicking and stomping on the turkeys; throwing birds through the air by the wing, neck, head, and snood; tying birds’ snoods together and laughing; hitting them with an iron bar; standing on their heads; choking and throttling them; wringing and breaking their necks; and using the turkeys’ bodies to mimic sex acts.⁴⁸ In addition to this affirmative abuse, every night and on every farm, PETA’s investigator documented dying turkeys who received no treatment for their illnesses or injuries.⁴⁹ The abuse PETA documented was not an isolated incident, but rather a pattern of physical abuse perpetrated by many workers, including supervisors, throughout the time of the investigation. These conditions were allowed to persist, notwithstanding Plainville’s assertions that certified animal welfare specialists visit their suppliers regularly because audits for its third-party certification occurred only once every fifteen

⁴⁷ *Id.* at 19.

⁴⁸ See *Turkeys Stomped on, Punched, and Left to Die at ‘Humane’ Farms Supplying Top Grocers: A PETA Undercover Investigation*, PETA (Aug. 19, 2021), <https://investigations.peta.org/turkey-abuse-humane-farms/> (Ex. 11).

⁴⁹ *Id.*

months.⁵⁰ Plainville’s third-party Global Animal Partnership certification was eventually revoked as a result of PETA’s investigation.⁵¹ However, Plainville continues to label its products as being made from animals who were humanely raised in a stress-free environment, reaping the economic benefits from customers who are willing to pay increased prices for meat from allegedly humanely raised animals, all with FSIS’s approval.

ii. *Butterball’s Misleading Animal Raising Product Labels*



Butterball keeps turkeys stuffed in small cages where they are piled on top of each other without room to move. Butterball turkeys are killed using a process that involves hanging live birds by their legs, shocking them in electrified water so that they become paralyzed (though they still feel pain), slitting their throats, and then running them through a tank of scalding-hot water for defeathering.

Along the same lines, Butterball, LLC (Butterball) labels its turkey products with the American Humane Certified (AHC) seal, suggesting that the animals it uses were raised humanely.⁵²

American Humane states on its website, “Our producers have committed their operations to the humane treatment of animals under the guidelines outlined in the American Humane Certified

⁵⁰ *Our Values*, Plainville Farms, <https://www.plainvillefarms.com/earthwise> (last visited June 22, 2022) (Ex. 12); *see* G.A.P. Certification, Glob. Animal P’ship, <https://globalanimalpartnership.org/certification/> (last visited June 22, 2022) (Ex. 13).

⁵¹ On August 30, 2021, the Global Animal Partnership’s (G.A.P.) website listed Plainville as a G.A.P. Turkey Partner; Plainville has subsequently been removed. *See Statement on Plainville Farms*, Glob. Animal P’ship, <https://globalanimalpartnership.org/statement-on-plainville-farms/> (last visited June 22, 2022) (Ex. 14); *see generally Turkey Standards*, Glob. Animal P’ship, <https://globalanimalpartnership.org/standards/turkey/> (last visited on June 22, 2022) (Ex. 15). The Global Animal Partnership program is an auditing and labeling program under which producers are certified according to a multi-tiered scale, where a Step 5+ certification signifies that the producer has met the program’s highest standards. The program administers standards for beef cows, bison, goats, sheep, pigs, meat chickens, laying hens, and turkeys. Plainville’s turkey producers were previously certified as Step 1 or 2. *See generally 5-Step Animal Welfare Standards for Turkeys v2.1*, Glob. Animal P’ship (May, 1, 2020), <https://globalanimalpartnership.org/wp-content/uploads/2020/05/G.A.P.s-Animal-Welfare-Standards-for-Turkeys-v2.1.pdf> (Ex. 16).

⁵² *Fresh Whole Turkey*, Butterball, <https://www.butterball.com/products/whole-turkeys/fresh> (last visited Jan. 28, 2022) (Ex. 17); *American Humane Certified Producer Spotlight: Butterball*, Am. Humane (Apr. 10, 2018), <https://www.americanhumane.org/blog/american-humane-certified-producer-spotlight-butterball/> (Ex. 18).

animal welfare standards”⁵³ and claims that these standards are based on the Five Freedoms of Animal Welfare, which are: 1) freedom from hunger and thirst; 2) freedom from discomfort; 3) freedom from pain, injury, and disease; 4) freedom to express normal behavior; and 5) freedom from fear and distress.⁵⁴ In order to have its AHC label approved by FSIS, Butterball simply had to show it had been certified by AHC. However, many of the standards AHC requires for certification are the same as general industry standards and are not what any consumer would expect from a farm obtaining a “humane” certification.

AHC’s actual requirements and undercover investigations of Butterball’s suppliers confirm the treatment of these turkeys is far from what a consumer would characterize as humane and do not fulfill the Five Freedoms. For example, AHC standards do not require that turkeys have outdoor access.⁵⁵ They also do not require producers to provide turkeys with enrichment items, such as perches, which encourage expression of natural behavior.⁵⁶ AHC standards do not require turkey housing to include sources of natural light and allow turkeys to be kept in low light, which can cause eye abnormalities and stress, since bright light is optimal for exploring their surroundings.⁵⁷ These standards do not include numerical criteria for stocking density (meaning how many turkeys by weight may occupy a certain amount of square feet), instead leaving this up to the observations and discretion of individual auditors.⁵⁸ AHC standards also allow ammonia levels to reach up to 25 parts per million in the turkey barns, which is no better than the minimum standards established in the industry,⁵⁹ and can cause health issues such as respiratory irritation, keratoconjunctivitis (ammonia-burned eyes), and destruction of the cilia that usually prevent the turkeys from inhaling harmful bacteria.⁶⁰ In addition, these standards allow for up to five percent of the turkeys to exhibit difficulty walking (meaning “walking with a limp, making awkward movements,” or not being able to walk at least five feet).⁶¹ AHC standards also allow the turkeys’ toes to be amputated, including with a hot blade, and the ends of their beaks to be cut off by a machine with a blade when “there is a risk of outbreaks of cannibalism,” which

⁵³ *American Humane Farm Program*, Am. Humane, <https://www.americanhumane.org/humane-heartland/> (last visited June 22, 2022) (Ex. 19).

⁵⁴ *Science-Based Standards*, Am. Humane, http://humaneheartland.org/index.php?option=com_content&view=article&id=3&Itemid=106&jsmallfib=1&dir=JSROOT/Animal+Welfare+Full+Standards+%2B+Supplements (last visited June 22, 2022) (Ex. 20).

⁵⁵ *Animal Welfare Standards for Turkeys*, Am. Humane 17 (2020), http://humaneheartland.org/index.php?option=com_content&view=article&id=3&Itemid=106&jsmallfib=1&dir=JSROOT/Animal+Welfare+Full+Standards+%2B+Supplements (Ex. 21).

⁵⁶ *Id.*

⁵⁷ Chris M. Sherwin, *Light Intensity Preferences of Domestic Male Turkeys*, 58 *Applied Animal Behaviour Science*, 121, 121–30 (1998) (Ex. 22); C.L. Barber et al., *Preferences of Growing Ducklings and Turkey Poults for Illuminance*, 13 *Animal Welfare*, 211, 211–24 (2004) (Ex. 23).

⁵⁸ *Animal Welfare Standards for Turkeys*, *supra* note 54, at 17.

⁵⁹ *Id.* at 12. According to the National Turkey Federation’s advisory guidelines, the recommended ammonia level is less than 25 parts per million. *Animal Care Best Management Practices*, Nat’l Turkey Fed’n 52 (2012), https://www.emslc.org/ISO_DOC/Assessments_Audits/NTF/NTF%20Production%20Welfare_2012.pdf (Ex. 24).

⁶⁰ Ian J. H. Duncan, “Welfare Problems of Meat-Type Chickens,” *Farmed Animal Well-Being Conference* at the University of California-Davis, June 28-29, 2001, https://www.upc-online.org/fall2001/well-being_conference_review.html (Ex. 25).

⁶¹ *Animal Welfare Standards for Turkeys*, *supra* note 55, at 18.

typically occurs when turkeys are confined to crowded spaces without proper environmental enrichment.⁶²

Therefore, turkeys who are confined to dark, crowded indoor spaces with ammonia-saturated air, who have difficulty walking, and who have had parts of their toes and beaks painfully sliced off may still be labeled with the AHC “humane” label, despite experiencing pain and distress for most of their lives and being kept in conditions no reasonable consumer would characterize as humane. In fact, AHC standards only require 85% audit compliance to retain certification, meaning that even these minimum industry standards need not be met entirely for turkey products to be labeled “humane.” Butterball continues to label its products with this FSIS-approved label, and FSIS lacks any power to conduct in-person inspections to determine the veracity of the company’s humane animal-raising claims.

iii. *Culver Duck Farms’ Misleading Animal Raising Product Labels*



Culver crowds too many female and male ducks close together in stressful living conditions. As a result, this female duck was mounted so many times and was so badly injured that she could no longer lift her head.



Ducklings Culver deems unprofitable are ground up alive while they are still chirping.

Culver Duck Farms’ (Culver) products also bear the AHC label, along with the claim that their ducks are raised in “free to roam barns.”⁶³ In its application for label approval submitted to FSIS, Culver simply stated “[a]ll of our ducks are raised from their placement and throughout their entire lives in climate controlled duck houses in Indiana where they are free to roam,” without

⁶² *Id.* at 13; *see, e.g.,* Sherwin, *supra* note 57.

⁶³ *All Natural Whole Duck with Orange Sauce (5-7.5 lb.)*, Culver Duck, <https://culverduck.com/product/all-natural-whole-duck-with-orange-sauce-5-7-5lb/> (last visited June 22, 2022) (Ex. 26).

providing supporting evidence or details to support this claim.⁶⁴ Culver's application also asserted "[a]ll of our ducks are able to express natural behaviors including standing, preening, turning around, spreading their wings and flapping their wings."⁶⁵ The company's website goes on to explain its AHC label and animal welfare program is based on the Five Freedoms (listed in Section IV.B.ii. above) and that Culver has a "zero-tolerance policy for animal cruelty."⁶⁶ Culver's website claims that its ducks have the opportunity to eat and drink freely; are provided "spacious shelter and a comfortable resting area"; are humanely handled; are provided enough space to express natural behavior; and are kept from feeling pain, distress, and fear.⁶⁷

Despite Culver's claims, a 2016 PETA investigation and 2022 whistleblower report reveal deplorable conditions at Culver that contradict any claims that these ducks are being humanely raised and handled. The whistleblower's recent report documented injured and dying ducks, ducks who were suffocated or buried alive, and ducklings who were ground up by machines while fully conscious and still chirping.⁶⁸ High numbers of male ducks are crowded together with female ducks in dank, dark sheds, leading the male ducks to repeatedly and violently mate with the female ducks until some females are left bloody and injured.⁶⁹ Duck feed pours out of pipes at Culver's farms, suffocating and burying some ducks alive.⁷⁰ PETA's 2016 investigation showed that workers at Culver facilities repeatedly slammed ducks against walls and other hard surfaces, wrung their necks by spinning them around by the head, ripped a duckling's head off, and violently kicked and threw ducks.⁷¹ Other ducks had raw skin and were missing feathers from filthy bedding and ammonia fumes, and hundreds of other ducks were found dead, some with prolapsed oviducts or intestines.⁷² Three grocery store chains actually stopped purchasing products from Culver after learning of these exposés.⁷³ Clearly, Culver does not protect its ducks from pain, distress, and fear, let alone provide humane treatment and conditions that meet or exceed consumer expectations. Yet FSIS approved Culver's use of the AHC label on its products.

⁶⁴ First Interim Response, *supra* note 45, at 70; Second Interim Response to FOIA Request 2021-FSIS-00311-F at 18, 42, 85, 102, 120, 139, 165, 186, 203, 219, 235, 253, 272 (Ex. 27).

⁶⁵ First Interim Response, *supra* note 45, at 70; Second Interim Response, *supra* note 64, at 18, 42, 85, 102, 120, 139, 165, 186, 203, 219, 235, 253, 272.

⁶⁶ *Our Ducks*, Culver Duck, <https://culverduck.com/our-ducks/> (last visited June 22, 2022) (Ex. 28).

⁶⁷ *Id.*

⁶⁸ *Live Ducklings Ground Up, Mother Ducks 'Gang Raped' in Crowded Sheds at Culver Duck Farms*, PETA (Mar. 15, 2022), <https://investigations.peta.org/culver-duck-whistleblower/> (Ex. 29).

⁶⁹ *Id.*

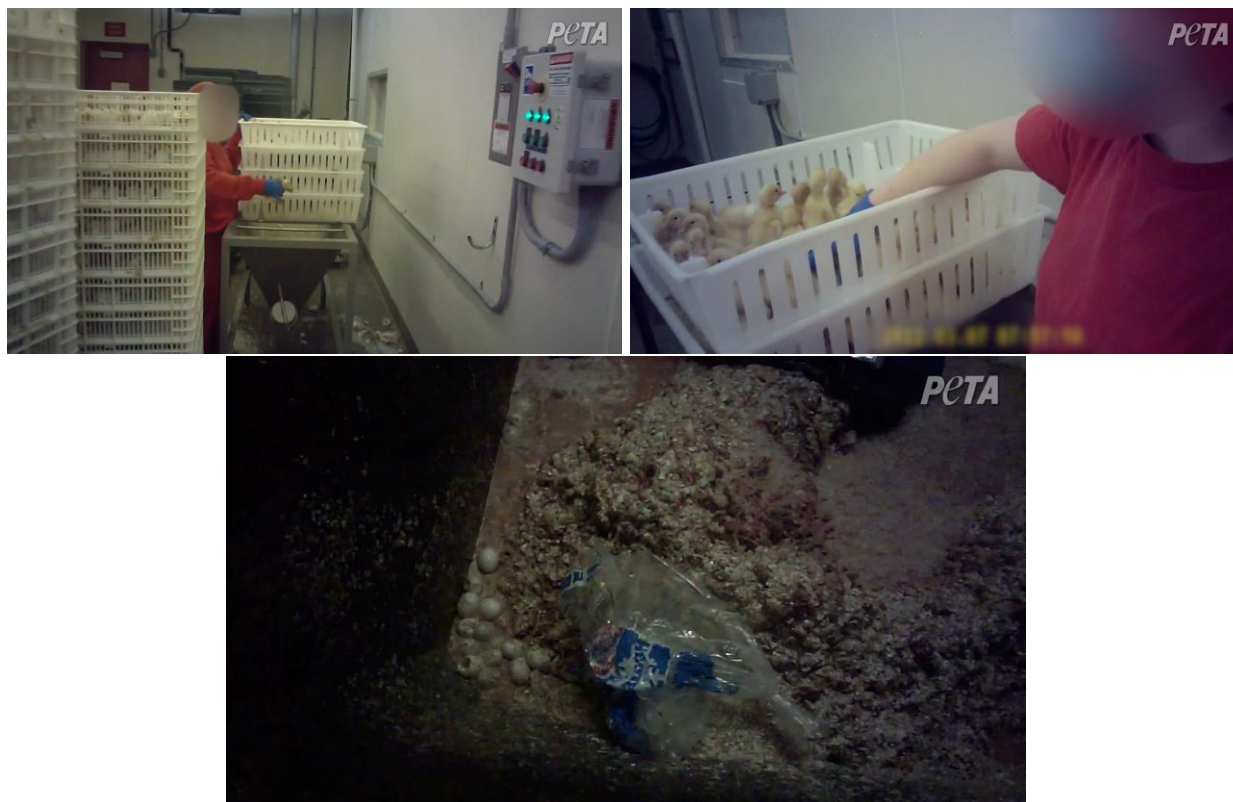
⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

iv. *Maple Leaf Farms' Misleading Animal Raising Product Labels*



Maple Leaf Farms employees grind up live one-day-old ducklings.

Maple Leaf Farms, which sells products made from ducks, is yet another company that does not live up to the claims on its product labels that the animals used for its meat products are “humanely raised.” Maple Leaf Farms defines “humanely raised” on its product labels as, “Ducks are free to roam in climate controlled barns under Duck Well-Being Guidelines.”⁷⁴ Among the farming practices it touts, Maple Leaf Farms states that its ducks have access to fresh water and feed, ducks are not given growth hormones, and the ducks are kept in climate-controlled barns with fresh air flow.⁷⁵ However, these practices constitute the bare minimum for duck care and do not surpass common industry standards. For instance, Maple Leaf Farms itself notes on this webpage that “added hormones have been banned in the U.S. for poultry since the 1950s.”⁷⁶ In addition, “[m]odern commercial total-confinement duck housing usually . . . is well insulated and mechanically ventilated.”⁷⁷ The implication that the ducks used by Maple Leaf

⁷⁴ *Maple Leaf Farms All Natural Boneless Duck Breast*, Food4less.com, https://www.food4less.com/p/maple-leaf-farms-all-natural-boneless-duck-breast/0007398134922?fulfillment=IN_STORE (last visited April 29, 2022) (Ex. 30).

⁷⁵ *Trident Stewardship Program*, Maple Leaf Farms, <https://mapleleafarms.com/farm-raised-duck/stewardship> (last visited Apr. 29, 2022) (Ex. 31).

⁷⁶ *Id.*

⁷⁷ *Duck Housing and Management*, Cornell Univ. Coll. of Veterinary Med., <https://www.vet.cornell.edu/animal-health-diagnostic-center/programs/duck-research-lab/housing-and-management> (last visited June 22, 2022) (Ex. 32).

Farms in its products are raised humanely—i.e., in a way that exceeds common industry standards—is unsupported and misleading to consumers.

In addition, on the company’s website, on a page explaining its “Duck Care Core Beliefs,” Maple Leaf Farms states, “We do not condone the mistreatment or abuse of ducks.”⁷⁸ However, a recent PETA investigation proves otherwise. An undercover investigator working at Maple Leaf Farms’ hatchery found that newly hatched ducklings were dropped or tossed onto conveyor belts and into bins.⁷⁹ Those ducklings who were deemed unlikely to bring in a profit because they were injured or sick were dumped into a macerator while they were still fully conscious, and then chopped and ground up alive.⁸⁰ It is implausible that a reasonable consumer would deem animals subjected to these practices as being humanely raised, and yet FSIS approved Maple Leaf Farms’ product label claiming as much.

V. Proposed Rule Change

FSIS should revise its rules to no longer allow for its review and approval of animal raising claims on food products. Specifically, FSIS should amend 9 C.F.R. § 412.1 to no longer allow for approval of claims regarding the raising of animals on product labels, as follows:

(e) “Special statements and claims” are claims, logos, trademarks, and other symbols on labels that are not defined in the Federal meat and poultry products inspection regulations or the Food Standards and Labeling Policy Book, (except for “natural” and negative claims (e.g., “gluten free”)), health claims, ingredient and processing method claims (e.g., high-pressure processing), structure-function claims, ~~claims regarding the raising of animals~~, organic claims, and instructional or disclaimer statements concerning pathogens (e.g., “for cooking only” or “not tested for E. coli O157:H7”). Examples of logos and symbols include graphic representations of hearts and geographic landmarks. Special statements and claims do not include allergen statements (e.g., “contains soy”) applied in accordance with the Food Allergen Labeling and Consumer Protection Act, ~~or claims regarding the raising of animals~~.

9 C.F.R. § 412.1. FSIS should also rescind its guidelines regarding the agency’s approval of animal raising claims on labels.

⁷⁸ *Duck Care Core Beliefs*, Maple Leaf Farms, <https://s3.us-east-1.amazonaws.com/assets.mapleleafarms.com/content/Pages/4-Farm-raised-Duck/Trident-Stewardship-Program/Maple-Leaf-Farms-Duck-Care-Core-Beliefs.pdf> (last visited June 22, 2022) (Ex. 33).

⁷⁹ *1-Day-Old Ducklings Ground Up Alive at America’s Largest Duck Company*, PETA Investigates, <https://investigations.peta.org/maple-leaf-farms-ducklings-ground-up/> (last visited June 22, 2022) (Ex. 34).

⁸⁰ *Id.*