



Animal Welfare Institute

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August 15, 2023

Docket Clerk
Food Safety and Inspection Service
US Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250-3700

Submitted electronically via fsispetitions@usda.gov

RE: Support for Perdue Farms LLC Petition (#23-03) REVISED (Note: This document replaces the comment submitted by the Animal Welfare Institute on April 24, 2023.)

To Whom It May Concern:

Thank you for the opportunity to submit comments on behalf of AWI and our supporters on Petition #23-03 submitted on March 16, 2023, by Perdue Farms, LLC regarding the Food Safety and Inspection Service's (FSIS) approval of the claims "free range" and "pasture raised" for use on poultry products. These comments also address AWI's 2016 rulemaking petition (#16-01) requesting that FSIS regulate the definition and substantiation required for use of the "free range" claim on poultry. AWI encourages FSIS to approve both these petitions without further delay.

Background

AWI's Free Range Petition

In January 2016, the Animal Welfare Institute submitted a rulemaking petition to FSIS requesting regulation of "free range" and the equivalent claims "free roaming" and "range grown." (While AWI is also interested in FSIS's approval of "pasture raised," our 2016 petition did not address that claim because it is distinct from and not synonymous with the claim "free range.") The petition was based on AWI's research into the government's approval process for the free range claim. Many of the label approval files reviewed by AWI included a definition for the claim that was accompanied by a third-party certificate and/or an affidavit asserting the definition. However, serious deficiencies were also noted, including vague definitions and/or vague affidavits, outdated certificates, and certificates not relevant to the claim. (See AWI's 2016 rulemaking petition and its December 2015 report, *USDA Gives Producers Free Reign Over "Free Range" Product Labels.*)

AWI's rulemaking petition requested that FSIS define free range and equivalent claims to address: length/duration of outdoor access; access points to the outdoors; extent of vegetative cover; and availability of shelter from sun, adverse weather, and aerial predators.

The response indicated FSIS was accepting additional public comment on the "free range" claim and that the agency had considered AWI's petition as a comment on the 2016 label guideline (even though the petition had been submitted nine months before the guideline was released). AWI submitted comments in response to the December 2019 *Federal Register* notice, "FSIS Labeling Guideline on the Documentation Needed to Substantiate Animal Raising Claims for Label Submission" (Docket FSIS-2016-0021), which are attached for your information.

Perdue Farms' Free Range and Pasture Raised Petition

On March 16, 2023, Perdue Farms, LLC submitted a rulemaking petition related to FSIS approval of the claims "free range" and "pasture raised" on poultry products. Perdue requested that FSIS: 1) remove "pasture raised" from its list of "free range" synonymous claims; and 2) adopt a specific definition, beyond "access to the outdoors," for the claim "pasture raised." To document the need for these revisions, Perdue offered the results of consumer perception surveys commissioned by the poultry company in 2020 and 2021. FSIS acknowledged receipt of the petition on March 23rd and posted the petition and acknowledgement on its website.

AWI's and Perdue Farms' Petitions Should Be Granted Because "Range" and "Pasture" Are Not Synonymous Claims

Perdue offers well-reasoned arguments that consumers do not perceive "range" and "pasture" as equivalent terms and provides two consumer perception surveys as evidence. AWI agrees with this assessment, and we also agree with Perdue that neither of these claims are synonymous with the term "access to the outdoors/outside." The term "access to the outdoors" covers situations where the animals are confined to an area of limited size that does not necessarily feature any vegetation or even soil. On the other hand, "free range" indicates enough space to roam in an environment that includes soil and some vegetation during the grazing season, while "pasture raised" indicates animals spend a significant portion of their lives in an environment that provides a significant amount of vegetation during the grazing season (see next section for details).

AWI differs with Perdue on one point. Perdue is requesting that "pasture raised" be removed from the list of "free range" equivalent claims; however, it is not requesting that other "pasture" related claims, including "pasture fed," "pasture grown," and "meadow raised," be removed as well. AWI supports identifying examples of range equivalent claims as "free range," "free roaming," and "range grown," and pasture equivalent claims as "pasture raised," "pasture fed," "pasture grown," "meadow raised," and "meadow grown." However, we note that in reviewing animal-raising claims on poultry products we have seen very little use of housing claims other than "free range" and "pasture raised." If in fact these other range and pasture claims are not being used by producers and/or approved by FSIS, they should be removed from the guideline to avoid confusion.

AWI's and Perdue Farms' Petitions Should Be Granted Because These Claims Must Be More Clearly Defined to Promote Fair Competition and Avoid Consumer Confusion

The Perdue petition and AWI's 2020 comments on the free range claim (attached) both argue that the current FSIS labeling guideline on housing claims is not consistent with consumer expectations or industry practice. Perdue notes that "FSIS's conflation of the definition of free range and pasture raised has caused industry-wide confusion and has led to false and misleading interpretations of pasture raised" (p. 13), and AWI strongly agrees.

To resolve this confusion and the negative market impacts that result, Perdue is proposing the following definition for pasture raised:

- Chickens spend a majority of their lives physically on pasture [AWI recommends that “a majority of their lives” be clarified as “a majority of their lives from hatching to slaughter”]; and
- Pasture to be defined as a majority [51%] of rooted-in-soil vegetative cover.

This definition is generally consistent with AWI’s position on the pasture raised claim. However, we recommend that 1) the definition also be applied to all pasture-equivalent claims and 2) the following requirements be added:

- Minimum space allowance of 2.5 acres per 1,000 birds. This requirement may be met by either stationary housing with adjacent pasture or mobile housing with rotational pasture;
- Birds have continuous access to natural or artificial shelter to provide protection from extreme weather and predators;
- Birds may be temporarily confined indoors during weather, soil, or health conditions that would compromise their health or welfare; and
- For meat chickens, breeds are selected that thrive on pasture and show high welfare outcomes. Acceptable breeds must be either slower growing than the conventional industry standard (based on average daily weight gain) or have passed a recognized breed welfare assessment.

For free range, AWI supports the following definition and recommends that it be applied to all range-equivalent claims:

- Birds have daily access to range during daylight hours for a majority (51%) of their lives from hatching until slaughter with multiple access points to the outdoors from their housing structure;
- Range to be defined as soil with at least 25% vegetative cover during the grazing season with a minimum space allowance of 20 square feet per bird;
- Birds have continuous access to natural or artificial shelter to provide protection from extreme weather and predators; and
- Birds may be temporarily confined indoors during weather, soil, or health conditions that would compromise their health or welfare.

We appreciate the opportunity to comment on an issue of great importance to our supporters. Please contact me by phone at 202-446-2146 or via email at dena@awionline.org with any questions.

Respectfully submitted,



Dena Jones
Director, Farm Animal Program

Attachment