UNITED STATES DEPARTMENT OF AGRICULTURE

FOOD SAFETY AND INSPECTION SERVICES

Petition for Rulemaking or Policy Change

Submitted to: FSIS Docket Clerk

Department of Agriculture
Food Safety and Inspection Service
Patriots Plaza 3
1400 Independence Avenue SW
Mailstop 3782, Room 8-163A
Washington, DC 20250-3700

Petition: To Amend Labeling Regulations under the *Poultry Products Inspection Act* to Define "Free Range" and Amend the Approval Process for the Free Range Claim

Submitted by:

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Table of Contents

Exhibits

I. Introduction

The Animal Welfare Institute (AWI) submits this petition for rulemaking in compliance with United States Department of Agriculture (USDA) regulation 9 C.F.R. § 392 and the Administrative Procedure Act (APA) 5 U.S.C. § 551 *et seq*. AWI respectively requests that USDA's Food Safety and Inspection Service (FSIS) promulgate labeling regulations under the Poultry Products Inspection Act (PPIA) to define "free range" (and the equivalent "range grown" and "free roaming" claims) for use on poultry products. This request includes specific requirements for the outdoor living conditions of birds raised for the free range label claim, as well as requirements for the FSIS approval process for the claim.

Alternatively, AWI requests that FSIS update its current free range guidance documents to reflect the changes requested here. Appropriate action by FSIS, whether through regulation or guidance, is necessary to (1) prevent consumer confusion about animal welfare labels, (2) prevent misleading and deceptive free range claims from entering the marketplace, and to (3) protect farmers who raise their birds according to meaningful free range standards and are harmed by producers that put inaccurate labels on their products.

Animal welfare is increasingly important to consumers. Public opinion surveys indicate that a majority of American consumers are concerned about the welfare of animals used in agriculture.[1] The free range label is an important tool consumers use to determine if birds were allowed outdoors where they are able to perform natural behaviors such as foraging in soil or vegetation.

AWI recently evaluated the FSIS definition and approval process for the free range label claim. The evaluation included a review of FSIS premarket label approval files for 23 poultry brands offering approximately 90 different free range poultry products. The review revealed that the free range label may lead to misbranded products in the marketplace. This is because the current free range definition and label approval process allow for misuse of the claim. The free range definition is vague and ambiguous, and the approval process allows for insufficient proof of the claim.

Because the agency has not properly defined free range or set adequate approval standards for this label claim, misbranded and mislabeled poultry products are entering the marketplace—in clear violation of FSIS's statutory mandate. FSIS has a duty to define free range either through regulation or, at the very least, through guidance, strengthen the approval process for this label claim, and thereby protect the American consumer.

[1] *See* Exhibit 1, *Consumer Perceptions of Farm Animal Welfare.*

II. Interests of the Petitioner

Petitioner, AWI, is a nonprofit organization dedicated to reducing the sum total of pain and fear inflicted on animals by people. AWI aims to improve the welfare of animals used in agriculture through engagement with policymakers, scientists, industry, non-governmental organizations, farmers, veterinarians, teachers, and the public. Specifically, AWI seeks to eliminate factory farms, support high-welfare family farms, achieve humane slaughter, and improve transport conditions for all animals raised for food. AWI also works to educate consumers, government officials, and the food industry about animal production and raising claims used to market food products. The organization is headquartered in Washington D.C., and has supporters throughout the United States.

III. Requested Action

Pursuant to APA 5 U.S.C. § 553(e), and USDA regulation 9 C.F.R. § 392 *et seq.*, AWI respectfully requests that FSIS initiate rulemaking and promulgate regulations to define free range and equivalent claims, and to establish substantiation requirements for approval of the claim. Petitioner specifically requests that FSIS:

- Require that birds are provided with outdoor access during daylight hours on a daily basis for at least 51 percent of the their lives
- Require that birds are provided with outdoor space where at least half of the area has vegetative cover
- Require that birds are provided with multiple, large access points to the outdoors
- Require that birds are provided with natural and/or artificial shelter in the outdoor areas as protection against adverse weather conditions, overhead predators, and to provide shade
- Require that applications for free range, free roaming, and range grown labels provide a signed affidavit, accompanied by a detailed animal care protocol and photographs that illustrate that the birds are raised in compliance with the previous conditions

Alternatively, AWI requests that FSIS amend current guidance documents to reflect the above requirements.

IV. Legal Background

A. Poultry Products Inspection Act

The Poultry Products Inspection Act (PPIA) is the federal statute that gives USDA authority over poultry products and the labeling of these products. The purpose of this statute is to provide consumers with “poultry products [that] are wholesome, not adulterated, and properly marked,

labeled and packaged."[2] The PPIA prohibits any "labeling which is false or misleading."[3] Any person selling a poultry product is prohibited from selling a product with a false or misleading label.[4] Congress has prohibited misleading labels because misbranded poultry products are considered injurious to the public and to the market for properly labeled and packaged poultry products.[5]

It is the responsibility of the Secretary of Agriculture ("Secretary") to prevent these burdens from reaching the consumer and the market.[6] In order for the Secretary to fulfill this responsibility, the PPIA provides the Secretary with the authority to define the standards or compositions of each label for a poultry product.[7] The statute also provides the Secretary the power to withhold a false or misleading label until the label is no longer false.[8] The Secretary, or a representative of the Secretary, may also detain any misbranded poultry product.[9]

B. PPIA Implementing Regulations and Guidance Documents

FSIS is the agency within USDA that has authority over the PPIA.[10] While there are no regulations that define free range, FSIS has promulgated several regulations regarding the labeling of poultry products. These regulations stipulate that FSIS has final approval on "sketch labeling" unless the label is considered a "generically approved label."[11] Animal production claims are not included under the generically approved label and, therefore, each poultry product statement related to how animals are raised must be approved by FSIS on a case-by-case basis.[12] The regulations state that no product or packaging may have any misleading label or any statement "which conveys any false impression… of origin or quality."[13] The regulations prohibit any person from applying a label to a product that is not in compliance with these regulations.[14] If a label is misleading, FSIS has the authority to rescind its approval of the label.[15]

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[2] 21 U.S.C. § 451.

[3] 21 U.S.C. § 457(c).

[4] 21 U.S.C. § 458(a)(2).

[5] 21 U.S.C. § 451.

[6] *Id*.

[7] 21 U.S.C. § 457(b)(2).

[8] 21 U.S.C. § 457(d).

[9] 21 U.S.C. § 467(a).

[10] 9 C.F.R. § 300.2(b)(2).

[11] 9 C.F.R. § 317.4(a).

[12] Generic Label Approval, 78 Fed. Reg. 66826, 66829 (Nov. 7, 2013).

[13] 9 C.F.R. § 317.8(a).

[14] 9 C.F.R. § 317.11(a).

In addition to the regulations, FSIS has produced guidance documents regarding free range label claims for poultry. One guidance document, *Meat and Poultry Labeling Terms*, provides a general definition for free range and free roaming ("range grown" is not included).[16] FSIS writes that if producers desire to use the free range or free roaming label claim on their product, "producers must demonstrate to the Agency that the poultry has been allowed access to the outside."[17]

Another FSIS guidance document, *Turkey Raised by the Rules* ("Rules"), provides a slightly more detailed definition of the claim and approval requirements for its use. First, the poultry producer must "provide a brief description of the bird's housing conditions."[18] The producer's description should then be evaluated to ensure that the birds have "continuous, free access to the out-of-doors for over 51% of their lives."[19] If the animals are raised in a northern climate, they are not considered free range if they are kept indoors all winter.[20] The producers should provide information that will state how the birds are raised during the winter that will ensure they are still free range.[21]

A final guidance document, *Animal Production Claims: Outline of Current Process*, explains the validation process that FSIS inspectors are expected to use when reviewing animal production claims. [22] FSIS agents should review the testimonial and ensure that the documentation supports the claim.[23] They are expected to ensure that "the protocol describes practices that support the accuracy of the claims that are made."[24] If there is any lack of information, FSIS staff is to directly contact the producer and request the additional information needed to make the evidence sufficient.[25]

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[15] 9 C.F.R. § 500.8(a).

[16] *Meat and Poultry Labeling Terms*, UNITED STATES DEPARTMENT OF AGRICULTURE (USDA), FOOD SAFETY AND INSPECTION SERVICE (FSIS), http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/meat-and-poultry-labeling-terms/meat-and-poultry-labeling-terms (last visited Dec. 21, 2015).

[17] *Id*.

[18] *Turkey Raised by the Rules*, USDA, FSIS, (Sept. 2011), available at http://www.fsis.usda.gov/wps/wcm/connect/2a9bcae8-ae1e-4248-9ce7-4e752f2f91fc/Turkey_Raised_by_the_Rules.pdf?MOD=AJPERES.

[19] *Id*.

[20] *Id*.

[21] *Id.*

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

This document also lists the different documents that FSIS will accept from the poultry producer as evidence of the labeling claim. FSIS will accept: "(a) Operational protocols, describing in detail the production practices employed; (b) Affidavits and testimonials; (c) Feed formulas; (d) Certificates, e.g., certified organic ingredients."[26]

In 2013, FSIS created another guidance document, *FSIS Statement of Interim Labeling Guidance Documentation Needed to Substantiate Animal Production Claims for Label Submissions* ("Interim Guidance").[27] This document attempts to further explain the evidence needed to substantiate animal production labeling claims. According to the document the following are needed to support the free range claim:

> (1) A detailed written protocol explaining controls for assuring the production claim from birth to harvest. If purchased, include protocol information from the supplier; (2) A signed affidavit declaring the specifics of the animal production claim(s) and that the claims are not false or misleading; (3) Product tracing and segregation mechanism from time of slaughter through further processing for wholesale or retail distribution; (4) A protocol for the identification, control, and segregation of non-conforming animals/product.[28]

However, as of the submission of this petition, the Interim Guidance has not been published on the FSIS "Claims Guidance" webpage. Therefore, it is unclear whether poultry producers have been made aware of the requirements included in the document.

To receive additional clarification related to the ill-defined area of animal raising claims, AWI has asked FSIS a number of questions through its webpage, AskFSIS. Five years ago, when AWI was initiating its research into the free range claim, it asked FSIS what requirements are needed for a producer to label a poultry product as free range.[29] The agency stated that producers may label their product as free range if it can be shown that the birds had "continuous, free access to the out-of-doors for over 50 percent of their lives," and the producers provide a description of the birds' housing conditions.[30] FSIS further explained that birds are not free range if they are kept indoors all winter, and therefore producers in northern climates must include in their testimonials how they raise birds in the winter in order to conform to the meaning of free range.[31]

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[26] *Animal Production Claims Outline of Current Process*, FSIS, OFFICE OF POLICY, PROGRAM, AND EMPLOYEE DEVELOPMENT, available at http://www.fsis.usda.gov/wps/wcm/connect/6fe3cd56-6809-4239-b7a2-bccb82a30588/RaisingClaims.pdf?MOD=AJPERES (last visited Dec. 21, 2015).

[27] *See* Exhibit 2, *FSIS Statement of Interim Labeling Guidance Documentation Needed to Substantiate Animal Production Claims for Label Submissions*.

[28] *Id*. at 33–34.

[29] *See* Exhibit 3, *Email Exchanges between Animal Welfare Institute and AskFSIS, 38.*

[30] *See id.*

[31] *See id.* at 45–46.

In September 2015, AWI again asked FSIS what evidence poultry producers must provide to have a free range (or range grown) label approved, and the agency again responded that producers must provide a written description of the birds' housing conditions.[32] FSIS explained that the agency reviews this information to ensure that birds have continuous, free access to the out-of-doors for over 50 percent of their lives. However, FSIS acknowledged that there is no requirement that the birds are actually outside, only that the birds have the ability to go outdoors, and that there are no requirements for the number of doors, minimum door size, amount of outdoor space, or vegetation in the outdoor space.[33] FSIS also acknowledged that it does not define the term "continuous, free access."[34] Finally, the agency said that a "screened, covered (roofed) porch that is attached to a barn" is not considered continuous outdoor access.[35]

AWI also asked whether FSIS requires producers to remove the free range claim from products when birds are confined indoors during the winter months.[36] The agency responded that producers in northern climates must include on the label the number of days birds do have free access to the outdoors,[37] a detail that was not included in the response AWI received from FSIS in 2011. When AWI again asked whether producers that house birds indoors during the winter may use the claim free range, the agency replied that farmers can use this claim "with the number of days on the label."[38] In this response, however, FSIS also provided an example of the type of information that should be on the label: "Birds raised Free Range 19 days prior to Harvest."[39]

V. Factual Background

In 2014, 8.9 billion birds were raised and slaughtered for food in the United States.[40] Nearly all of these animals were confined to crowded, windowless enclosures for the entirety of their lives.[41] Birds raised for meat are often packed by the tens of thousands into these enclosures.[42] In

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[32] *See id*. at 41–42.

[33] *See id.* at 42–43.

[34] *See id.* at 44–45.

[35] *See id.* at 45.

[36] *See id*. at 45–46.

[37] *See id.*

[38] *See id*.

[39] *See id*.

[40] *Poultry Slaughter: 2014 Summary*, USDA, NATIONAL AGRICULTURAL STATISTICS SERVICE, (Feb. 2015) available at http://usda.mannlib.cornell.edu/usda/current/PoulSlauSu/PoulSlauSu-02-25-2015.pdf.

[41] Leah Garces, Op-Ed, *Why we Haven't Seen Inside a Broiler Chicken Factory Farm in a Decade*, FOOD SAFETY NEWS, Jan. 24, 2014, *available at* http://www.foodsafetynews.com/2013/01/why-we-havent-seen-inside-a-broiler-chicken-factory-farm-in-a-decade/#.Vh1Ci2p0yM8.

the beginning, the small chicks have room to move, but by the end of their lives each bird has just one-half square foot of space.[43] During their short lives the birds never breathe fresh air, see the sun, or forage in soil or vegetation.

In recent years Americans have become increasingly concerned about how agricultural animals are raised. In fact, a recent survey showed that 95 percent of respondents were "very concerned" about the welfare of farmed animals.[44] The public's concern also extends to the welfare of poultry specifically. A 2013 survey conducted by poultry producer Foster Farms found that 74 percent of consumers believe that large producers should raise their birds in a humane way.[45]

Because consumers believe animal raising claims indicate that animals are raised to a higher standard, they are willing to pay a premium price when claims such as free range are affixed to a label.[46] Multiple surveys have revealed that respondents are willing to pay anywhere from 1 to 12 percent more for products bearing animal welfare claims.[47]

When consumers see a free range claim on a poultry product they have certain expectations for how producers raised their birds. They expect the birds to have been raised with the ability to be outdoors, on vegetation, during daylight hours.[48] Consumers want these birds to be able to move freely between the indoors and outside, have access to shade, and protection from weather or predators while they are outdoors.[49]

At the same time, consumer protection and animal welfare groups have a low opinion of the free range claim. These groups warn consumers to be wary of products labeled as free range because the claim does not always meet consumer expectations. For example, Consumer Report's *Label Report Card* assesses the free range claim as "not meaningful" because it is inconsistently applied and not verified.[50]

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[42] BERNARD E. ROLLING, FARM ANIMAL WELFARE: SOCIAL, BIOETHICAL, AND RESEARCH ISSUES 133 (1995).

[43] *Animal Welfare for Broiler Chickens*, NATIONAL CHICKEN COUNCIL, http://www.nationalchickencouncil.org/industry-issues/animal-welfare-for-broiler-chickens/ (last visited Dec. 21, 2015).

[44] *See* Exhibit 1, *supra* note 1, at 10.

[45] *See id.*

[46] *See id.* at 27–28 (showing that consumers are willing to pay more for products that are labeled "humanely raised").

[47] *See id.*

[48] *See* Exhibit 4, *Survey On Free Range and Humanely Raised Label Claims.*

[49] *See id.*

[50] *See Free Range*, CONSUMER REPORTS, http://www.greenerchoices.org/eco-labels/label.cfm?LabelID=111 (last visited Dec. 21, 2015). According to Greener Choices, "free range (or free roaming) is a general claim that implies that a meat or poultry product, including eggs, comes from an animal that was raised in the open air or was free to

In addition, the non-profit organization Farm Forward has launched a consumer resource, BuyingPoultry.com, which assigns a "D" rating to the free range claim.[51] A "D" rating, the second-to-lowest rating on BuyingPoultry's 7-step scale, indicates that the claim is of "very limited or questionable benefit [to animals] over standard industry practices."[52] Farm Forward emphasizes that free range poultry products are either not verified by any on-farm audit or rely solely on ambiguous certifications,[53] and the label is "potentially misleading."[54] Finally, the news service MarketWatch warns consumers to "be skeptical" of the free range label claim because it is "loosely regulated" and "not third-party verified."[55]

Appreciating consumer interest in animal welfare claims, in 2011 AWI initiated research into the FSIS label approval process for the free range label claim. Through the Freedom of Information Act (FOIA), AWI requested FSIS label approval files for 20 different brands of poultry that use free range or range grown claims on product packaging. (In reviewing poultry labels on the market in 2011, AWI did not locate any "free roaming" claims.) By 2014 FSIS had not provided the requested free range and range grown files, and AWI brought a lawsuit for undue delay. The files were eventually received in early 2015 through settlement negotiations.

AWI was provided more than 2,000 pages of records associated with 23 poultry brands that offer a total of 88 poultry products labeled as free range or range grown.[56] A vast majority of the products were chicken or turkey meat, but a few of the companies represented in the files also produced other free range poultry products including duck, capon, poussin, and goose.[57]

According to the files received, FSIS approved 44 (or half) of the products with a free range label claim after producers provided only brief affidavits of two general types. The first affidavit

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roam. Its use on beef is unregulated and there is no standard definition of this term. Free range is regulated by the USDA for use on poultry only (not eggs) and USDA requires that birds have been given access to the outdoors but for an undetermined period each day. USDA considers *five minutes* of open-air access each day to be adequate for it to approve use of the free range claim on a poultry product. Free range claims on eggs are *not regulated at all*." (emphasis added).

[51] *Label Guide*, BUYING POULTRY BETA, http://buyingpoultry.com/labelguide (last visited Dec. 21, 2015). Buying Poultry rates poultry label claims according to levels of animal welfare and slots the products into one of seven tiers, A, A-, B, C+, C, D, and F. *What the Grades Mean*, BUYING POULTRY BETA, http://buyingpoultry.com/blog/grades (last visited Dec. 21, 2015).

[52] *What the Grades Mean*, BUYING POULTRY BETA, http://buyingpoultry.com/blog/grades (last visited Dec. 21, 2015).

[53] *Id.*

[54] *Label Guide*, *supra* note 51.

[55] *The Easy Guide to 'Humane' Meat Labels*, MARKET WATCH, http://www.marketwatch.com/story/what-you-really-get-for-the-high-price-of-humanely-raised-meat-2015-11-19 (last visited Dec. 21, 2015).

[56] *See* Exhibit 5, *Free Range Label Files Reviewed by the Animal Welfare Institute.*

[57] *Id*.

type asserted how long the birds were raised indoors and when the barn doors were opened to allow birds outdoor access.[58] The second type explained that the birds were not confined in barns, but rather were kept in outdoor pens that provided the birds with grass or vegetation.[59]

The files also showed that producers did not submit any evidence for 17 of the 88 products, yet FSIS still approved their use of the free range claim.[60]

AWI found that 25 of the 88 poultry products received certification from the third-party animal welfare organization, Global Animal Partnership (GAP). GAP is a nonprofit organization that administers a tiered, 6-step program to inform consumers about animal raising practices.[61] Most of the products received GAP certification at Step 3 or 4, which mandates that birds be given continuous access to the outdoors during daylight hours, with either 25 or 50 percent of the outdoor area being covered by vegetation, respectively.[62]

However, AWI discovered that some products had been certified at lower GAP levels. For example, Diestel Turkey Ranch had received Step 1 for three of its products, Black Forest Turkey,[63] Ground Turkey,[64] and Naturally Roasted Young Turkey.[65] Diestel also submitted a GAP Step 2 certification for its Natural Young Turkey. This is significant because under the GAP program birds are not required to have outdoor access at Steps 1 and 2.

On the other hand, a few products using the free range claim had received the highest GAP ratings of 5 and 5+. For these levels, birds must be provided an outdoor area with 75 percent vegetative covering.[66] The birds must be given continuous access to the outdoors starting at four weeks for chickens[67] and seven weeks for turkeys.[68] Mary's Heritage Turkey[69] and Mary's

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[58] *See* Exhibit 5, *supra* note 56.

[59] *See id*.

[60] *See* Exhibit 6, *Letter from Arianne M. Perkins, FSIS, to Michelle Pawliger, AWI* (showing that AWI did not receive records for D'Artagnan, Maverick Ranch, Ranger: the Free Range Chicken, Rocky: the Free Range Chicken, and Shelton's Chicken and Turkey products).

[61] *About*, GLOBAL ANIMAL PARTNERSHIP, http://www.globalanimalpartnership.org/about (last visited Dec. 21, 2015).

[62] *Global Animal Partnership's 5-Step Animal Welfare Rating Standards for Chickens Raised for Meat*, GLOBAL ANIMAL PARTNERSHIP, 17 (Oct. 1, 2012), *available at* http://glblanimalpartnership.blob.core.windows.net/standards/Chicken%20Welfare%20Standards.pdf [hereinafter Chickens Raised for Meat].

[63] *See* Exhibit 7, *Diestel Black Forest Turkey Breast Label and GAP Step 1 Certificate*.

[64] *See* Exhibit 8, *Diestel Ground Turkey Label and GAP Step 1 Certificate*.

[65] *See* Exhibit 9, *Diestel Naturally Roasted Young Turkey Label and GAP Step 1 Certificate*.

[66] *Chickens Raised for Meat, supra* note 62.

[67] *Id*.

California Bronze Chicken[70] received Step 5 ratings, while Diestel's Premium Young Turkey was the only product to receive a GAP Step 5+ rating.[71]

Producers also submitted USDA Organic certificates as evidence of compliance with the free range standard. Products from Bristol Farms Organic Chicken,[72] Mary's Organic Turkey,[73] and Northwest Farms' chicken[74] all received organic certification from USDA-accredited certifying agents. Additionally, Diestel Turkey Ranch had two products with a USDA Organic certificate: American Heirloom Collection Organic Young Turkey[75] and Naturally Roasted Young Turkey.[76] For USDA Organic certification, animals are required to have year-round access to the outdoors.[77] However, the USDA's National Organic Program has determined that enclosed porches attached to barns qualify as outdoor access, while its advisory body, the National Organic Standards Board, has opined that porches are inadequate as outdoor access.[78]

VI. Arguments Supporting the Requested Action

A. FSIS's Free Range Definition May Lead to Misbranding

The purpose of a label is to inform consumers about the products they are considering for purchase. A good label will provide the consumer with accurate information that he or she needs, and the consumer may then rely on the label in making a purchasing decision. It is important for the free range label claim to be accurate and reliable, as the product label is usually the only line of communication between producer and consumer. Consumers rely on FSIS to ensure that the

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[68] *Global Animal Partnership's 5-Step Animal Welfare Rating Pilot Standards for Turkeys*, GLOBAL ANIMAL PARTNERSHIP, 17 (Aug. 30, 2011), *available at* http://glblanimalpartnership.blob.core.windows.net/standards/Turkey%20Welfare%20Standards%20V1.1.pdf.

[69] *See* Exhibit 10, *Mary's Free Range Turkey Label and GAP Step 5 Certificate.*

[70] *See* Exhibit 11, *Mary's California Bronze Chicken Label, GAP Step 5 Certificate, and Photographic Evidence*.

[71] *See* Exhibit 12, *Diestel Premium Young Turkey Label and Gap Step 5+ Certificate*.

[72] *See* Exhibit 13, *Bristol Farms Organic Chicken Label and Certificate of Organic Production*.

[73] *See* Exhibit 14, *Mary's Organic Ground Turkey Label and Certificate of Organic Production*.

[74] *See* Exhibit 15, *Northwest Farms Chicken Label and Certificate of Organic Production*.

[75] *See* Exhibit 16, *Diestel American Heirloom Collection Young Turkey Label and Certificate of Organic Production.*

[76] *See* Exhibit 17, *Diestel Naturally Roasted Young Turkey Label and Certificate of Organic Production*.

[77] 7 C.F.R. § 205.239(a)(1).

[78] *See* Exhibit 18, *Economic Impact of Proposed Regulations for Living Conditions for Organic Poultry*, 110.

free range label claim is dependable, and that misbranded or mislabeled free range products are not allowed to enter the market.[79]

Survey results suggest that consumers believe the free range claim means more than the current FSIS definition. Stating simply that birds have outdoor access does not paint a clear enough picture of the birds' living conditions. As an example, outdoor access could mean that birds have large grassy fields to roam. Conversely, it could mean that they are crammed indoors with a small exit to a patch of outdoor concrete devoid of vegetation.

Outdoor access should not be the sole defining factor of the free range claim. In order for a producer to properly illustrate that their birds are free range, they should be required to address several living conditions in addition to outdoor access. Producers should provide evidence that birds have easy, continuous access to vegetation, shade, and soil; protection against predators and adverse weather; and an outdoor space that is at least as large as the indoor space. Only when producers are required to provide this information does this claim become valuable for consumers.

After examining FSIS's label files for the free range label claim, AWI determined that a majority of producers submitted some form of evidence of outdoor access. In fact, 80 percent of products had some form of evidence that birds had outdoor access. In several cases producers showed that their animal husbandry practices exceed FSIS requirements. For example, in one instance, Mary's provided the agency with photographic evidence to verify that the birds were raised on pasture.[80] As mentioned above, many producers also provided third-party certifications from GAP and/or USDA Organic. Such evidence provides a certain degree of authenticity, since third-party certification requires on-site verification by an independent auditing entity.[81]

However, while certain individual producers demonstrated that the free range claim can hold value, FSIS's very limited definition allows for misuse of the claim. The label approval records received by AWI reveal that a wide range of living conditions currently qualify for the free range claim. As noted above, while several producers demonstrated a detailed picture of how their birds live, producers of 17 of the 88 products provided the agency with no evidence whatsoever to verify their free range claim.[82] Despite the lack of evidence, FSIS still allowed the free range

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[79] *See About FSIS*, UNITED STATES DEPARTMENT OF AGRICULTURE, (last visited Dec. 21, 2015) (FSIS is **"**responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and *correctly labeled* and packaged.") (emphasis added).

[80] Exhibit 11, *supra* note 70.

[81] *5-Step Certification*, GLOBAL ANIMAL PARTNERSHIP, *available at* http://www.globalanimalpartnership.org/5-step-program/certification (last visited Dec. 21, 2015).

[82] *See* Exhibit 6, *supra* note 60.

label to be placed on these products.[83] In other cases, producers submitted contradictory evidence—demonstrating that birds have outdoor access, while also providing evidence that suggested birds only live indoors. The records did not show any attempts by FSIS to reconcile this conflicting information.[84]

As noted previously, FSIS guidance documents provide unclear and inconsistent guidelines. One guidance document requires that birds be provided "continuous access to the out-of-doors for over 51% of their lives."[85] Another simply requires "access to the outside."[86] Because these guidance documents do not set specific requirements, producers can raise their birds in a variety of ways (many of which do not meet consumer expectations), but still affix the free range claim to poultry packaging. For example, FSIS guidance allows a producer to raise birds in a barn with a single, small door that provides access to a small, barren lot, and the door need only be open for a few minutes each day. Under these circumstances most birds would not be able to go outdoors, and even if they could, it is likely that the birds would not even be interested in going out.

Lack of a detailed definition for free range creates inconsistency and makes the claim ripe for misuse, but worse yet, according to FSIS, producers do not even have to meet the agency's minimal requirements. AWI found that FSIS employees allow producers to confine birds inside for more than half of their lives and still use the free range claim, as long as the producer states on the label how many days the birds had outdoor access.[87]

While researching free range claims over a five year period—and examining hundreds of different free range labels in the process—AWI did not encounter a single label that contained

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[83] *Our Brands*, PETALUMA, http://www.petalumapoultry.com/our-brands/rocky-free-range-chicken/ (last visited Dec. 21, 2015); *Free Range Birds*, SHELTON'S http://www.sheltons.com/cgi-bin/sheltons/scan/fi=products.txt/sf=subcat/se=freerange/sf=category/se=chicken/va=catname=freerange/sp=hitlist.html (last visited Dec. 21, 2015); *Poussin*, D'ARTAGNAN, http://www.dartagnan.com/buy/poussin/ (last visited Dec. 21, 2015); *Free-Range Heritage Turkey*, D'ARTAGNAN, http://www.dartagnan.com/free-range-heritage-turkey/product/FTUHE040-1.html?cgid=heritage-organic-turkey&dwvar_FTUHE040-1_freshFrozenWeight=Frozen%20%2F%2016-20%20lbs%20avg.#start=2 (last visited Dec. 21, 2015); *All-Natural Free-Range Goose*, D'ARTAGNAN, http://www.dartagnan.com/all-natural-free-range-goose/product/FGORE004-1.html?cgid=goose&dwvar_FGORE004-1_freshFrozenWeight=Frozen%20%2F%2012-14%20lbs%20avg.%20-%20start=1 (last visited Dec. 21, 2015); *All-Natural Free-Range Capon*, D'ARTAGNAN, http://www.dartagnan.com/all-natural-free-range-capon/product/FCAPO002-1.html?cgid=capon&dwvar_FCAPO002-1_freshFrozenWeight=Frozen%20%2F%208-11%20lbs%20avg#start=1 (last visited Dec. 21, 2015).

[84] Exhibit 2, *supra* note 27.

[85] *Turkey Raised by the Rules*, *supra* note 18.

[86] *Meat and Poultry Labeling Terms*, *supra* note 16.

[87] Exhibit 3, *supra* note 29.

this information. One producer represented in the label files, Misty Knoll in Vermont,[88] raises its birds in a northern climate, but the label contained in the files did not state the number of days that birds were outdoors during the winter months.[89] In any case, if Misty Knoll or any other producer did state on the label the number of days birds have outdoor access, it is unlikely that consumers would be able to grasp the significance of this number.

A recent investigation of a major range grown turkey producer further illustrates how FSIS's inadequate free range definition may allow misbranded poultry products to enter the marketplace. A 2015 undercover investigation by the organization Direct Action Everywhere revealed that Diestel's Gap Step 3 operation in Jamestown, California, which produces range grown labeled products, was not allowing turkeys outdoor access due to the threat of avian influenza.[90] According to FSIS requirements for the free range label, Diestel should not have been allowed to affix the claim to at least some products from the Jamestown farm, because these turkeys were not given access to the outdoors at any point in their lives. However, it is not known whether any Diestel products from birds confined indoors were sold as "free range." AWI asked the FSIS labeling office, via AskFSIS, whether producers are required to remove the free range claim if the birds were confined indoors for their entire lives. While the labeling office responded to the query, it did not provide an answer to the question.[91]

B. FSIS's Insufficient Substantiation Requirements May Lead to Misbranding

In addition to FSIS's ambiguous free range definition, the agency maintains insufficient substantiation requirements, which allows for misuse of the claim. According to the records AWI received, FSIS approved 17 products with a free range label claim even though the label approval files showed no substantiation whatsoever for the claim.

Approving a claim based solely on a simple affidavit is only marginally better than approving a claim without any evidence. In a 2014 survey commissioned by AWI, a majority of respondents expressed the belief that a brief statement signed by the producer is insufficient evidence to substantiate claims similar to free range. According to the records AWI reviewed, FSIS approved the free range claim on 44 of 88 products after producers submitted only a short affidavit. While some producers provided certain details of their husbandry practices in the affidavits, AWI maintains that affidavits alone are insufficient to substantiate animal raising claims.

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[88] *Vermont Free Range Turkeys and Chickens Naturally Raised* Poultry, MISTY KNOLL FARMS, http://www.mistyknollfarms.com/ (last visited Dec. 21, 2015).

[89] *See* Exhibit 19, *Misty Knoll Farms Label*.

[90] Claire Gorden, *Activists Alleges 'Horrific Conditions" at Whole Foods Turkey Supplier*, FORTUNE, Nov. 24, 2015, *available at* http://fortune.com/2015/11/24/activists-alleges-horrific-conditions-at-whole-foods-turkey-supplier/.

[91] Exhibit 3, *supra* note 29 at 46–47.

As an alternative to—or in addition to—affidavits, many producers provided evidence of third-party certification. Third-party certification, such as GAP and USDA Organic, can provide a valuable window into how producers raise their animals. Unfortunately, however, some of the certifications supplied as evidence do not necessarily indicate that the birds were free range, even according to FSIS's meager definition.

In the label files reviewed by AWI, producers sent in GAP certification as evidence of outdoor access for 25 of 88 products. The most common GAP level offered as evidence for free range products was Step 3.[92] For this level, GAP requires that producers provide birds "continuous access to the outdoors during daylight hours if climatic conditions do not pose a welfare risk."[93] However, GAP only requires producers give chickens a quarter of their indoor space in the outdoor area.[94] Consequently not all birds are able to access the outdoors in a continuous, free manner and, therefore, the FSIS free range definition is not met. While it is possible that producers applying for the free range claim provided more space than required by the GAP standard, there is no evidence in the label files that FSIS staff questioned producers on this point.

FSIS also approved producers who submitted certification at GAP Steps 1 and 2. At these levels, birds are not required to have any access to the outdoors.[95] For example, Diestel provided GAP Step 1 for its Black Forest Turkey.[96] At the same time, applications for eight products were accompanied by certificates for multiple GAP levels. Diestel, for instance, submitted certificates of both GAP Step 1 and GAP Step 3 for its Naturally Roasted Young Turkey and Ground Turkey.[97] The company also submitted certificates of both GAP Step 2 and GAP Step 3 for its Natural Young Turkey.[98] Multiple GAP step certificates may indicate that Diestel farms were providing birds different levels of access to the outdoors. Or, it may indicate that all Diestel farms provided outdoor access in the same manner, but some failed to meet other requirements of the higher GAP level. There is no evidence in the files that FSIS staff questioned producers about their GAP Steps 1 and 2 ratings.

AWI also found that FSIS approved five products that used organic certification as evidence for the free range claim. According to organic regulations, organic poultry farmers are required to

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[92] *See* Exhibit 5, *supra* note 56.

[93] *Chickens Raised for Meat*, *supra* note 62, at 17.

[94] *Id*.

[95] *The 5-Step Animal Welfare Rating Program*, GLOBAL ANIMAL PARTNERSHIP, *available at* http://www.globalanimalpartnership.org/5-step-program (last visited Dec. 21, 2015).

[96] Exhibit 7, *supra* note 63.

[97] Exhibits 8–9 *supra* notes 64–65; Exhibit 20, *Diestel Naturally Roasted Young Turkey Label and GAP Step 3 Certificate*; Exhibit 21, *Diestel Ground Turkey Label and GAP Step 3 Certificate*.

[98] *See* Exhibit 22, *Diestel Young Turkey Label and GAP Step 2 Certificate*. *See also* Exhibit 23, *Diestel Young Turkey Label and GAP Step 3 Certificates.*

provide birds with "year-round access… to the outdoors."[99] The Agriculture Marketing Service, the agency that administers organic certification, currently permits porches attached to barns to qualify as outdoor access.[100] Yet, FSIS has indicated to AWI that it does not allow porches as evidence of free range because they do not constitute continuous access to the outdoors. Therefore, organic certification alone is not confirmation that FSIS free range requirements have been met. There is no evidence in the files that FSIS staff questioned organic producers about whether they use porches for outdoor access.

There is also the question of what percentage of farms participate in USDA Organic and GAP certification programs. Producers often use hundreds of farms to supply a single brand-name product. The label approval records were unclear as to whether all farms supplying birds for a free range product met a particular free range standard. It is possible that only a small percentage of farms were actually third-party certified. However, there is no evidence in the files that FSIS staff questioned producers regarding the number of farms that were participating in the certification programs being offered as evidence of compliance with the FSIS definition.

C. FSIS's Inadequate Definition and Label Approval Process May Harm Farmers

Along with misleading consumers, the agency's current inadequate definition for the free range claim has a direct, negative effect on farmers whose practices meet consumer expectations. Providing birds with more space and authentic access to a high-quality outdoor environment requires additional resources from the farmer, and eventually consumers must compensate for these opportunities by paying a higher price for products.

When FSIS approves free range labels for producers that do not provide birds with an authentic free range environment, the agency is immediately disadvantaging farmers who do. Farmers who expend additional resources to raise their birds with ample space and a quality outdoor environment cannot compete with farmers who circumvent this cost by providing small enclosed spaces but still receive a premium price for their product.

FSIS's inadequate definition and approval process may also harm farmers by causing consumers to become frustrated and disillusioned with the free range label. Consumers do not want to pay premium prices for free range products when the birds were not raised to their expectations.[101]

Consumers expect free range meat to derive from animals raised to a certain standard,[102] and if FSIS continues to allow farmers not meeting this standard to be granted use of the free range

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[99] 7 C.F.R § 205.239(a)(1).

[100] *See* Exhibit 18, *supra* note 78.

[101] *See* Exhibit 7–9, *supra* notes 63–65.

label, consumers may stop purchasing free range products. If and when this occurs, farmers who meet consumer expectations will suffer the greatest harm.

VII. Proposal

It is evident that FSIS's lack of a proper definition for the free range claim, and lenient approval process, allow improperly labeled products to enter the market. The free range label can be used in false, misleading ways, and is therefore injurious to both individual consumers and the wider market for properly packaged poultry products.

It is the Secretary's obligation to protect consumers and the marketplace from fraudulent labels and, in the case at hand, this would be accomplished most effectively through rulemaking. At a minimum, FSIS has a duty to better define free range in its current guidance documents.

AWI proposes the following regulatory or policy language to achieve this goal:

1. All poultry products labeled with a free range, free roaming, or range grown marketing claim must be derived from birds that have been raised in a manner that meets the following conditions:

(a.) Birds must be provided the continuous opportunity to go outdoors during daylight hours for at least 51 percent of their lives.

(b.) The number and size of exits must be sufficient to allow all birds ready, unhindered access to the outdoors.

(c.) Outdoor areas must provide natural and/or artificial shelter as protection against adverse weather conditions and overhead predators, and provide shade.

(d.) The areas to which birds have access must be mainly covered with living, palatable vegetation.

(e.) The minimum outdoor space allowance per bird shall be 5 sq. ft. for chickens and 20 sq. ft. for turkeys, ducks, and geese.

2. Meat from a bird having access to the outdoors for less than 51 percent of their life, due to adverse weather or any other condition, shall not be labeled free range, free roaming, or range grown.

3. Applications for free range, free roaming, and range grown labels must be accompanied by a signed affidavit, along with an animal care protocol and photographs that a) apply to all operations where birds are raised and (b) document compliance with all conditions described in 1 (a) – (e).

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[102] *See* Exhibit 4, *supra* note 48.

VIII. Conclusion

AWI's investigation of the free range label claim revealed that FSIS is offering consumers inadequate and inconsistent information about how poultry products are produced. The investigation found that some producers use the claim in a meaningful way and provide their birds with quality outdoor access. Information from other producers, however, indicated that birds were provided with little or no outdoor access. Worse yet, some producers failed to provide the agency with any information about how they raised their birds. Despite these failings, all producers reviewed by AWI were permitted to affix the free range label to their products.

There is a clear need for FSIS to improve the free range label claim. As it currently stands, FSIS's inadequate definition and lax approval process for the claim do not provide the consumer with an adequate picture of how the birds used to produce poultry products were raised. In fact, at this point in time, it is possible for the free range claim to appear on products from birds who never stepped outside. FSIS should find this reality unacceptable.

AWI recommends that FSIS change its definition for the free range claim and the process by which producers are allowed to substantiate the claim. While these changes should be made through the rulemaking process, FSIS must, at the very least, provide these changes through a guidance document. If FSIS makes these changes, there will be more consistency among poultry products, and producers and consumers will be able to have an honest dialogue through the free range label claim.

Exhibit 1
Consumer Perceptions of Farm Animal Welfare

Animal Welfare Institute
900 Pennsylvania Avenue, SE, Washington, DC 20003

Consumer Perceptions of Farm Animal Welfare

American consumers are increasingly aware of, and concerned about, how animals raised for food are treated. Below are brief summaries of recent research conducted on consumer perceptions of farm animals and their welfare.

Americans care about how farm animals are raised

- In a survey conducted by market researcher The Hartman Group, 44% of respondents said they wanted to know more about how food companies treat the animals used in their products. Almost half of consumers (47%) said they support companies that avoid inhumane treatment of animals, a 6 point increase from a similar survey conducted in 2013. In addition, 65% of respondents indicated they want animals raised in as natural environment as possible.
  —*Animal Proteins: The Consumer-Driven Demand for Transparency*, The Hartman Group, Aug. 18, 2015. http://hartbeat.hartman-group.com/article/613/Animal-Proteins-The-Consumer-Driven-Demand-For-Transparency.

- Nearly 95% of participants in a national survey conducted by American Humane said they are "very concerned" about the welfare of farm animals.
  —*2014 Humane Heartland Farm Animal Welfare Survey*, American Humane Association, Nov. 2014. http://www.americanhumane.org/humane-heartland/2014-humane-heartland-farm-survey.pdf.

- In a study conducted by Kansas State University, 65% of consumers reported they were concerned about the welfare of beef cattle in the United States. Only 39% of the public said they believed that U.S. farms and ranches provide appropriate overall care to their cattle.
  —Day C, *Cattle Welfare Perceptions*, Feedstuffs FoodLink, Sept. 11, 2014. http://feedstuffsfoodlink.com/story-cattle-welfare-perceptions-0-117598.

- Eighty percent (80%) of respondents to a survey conducted by Consumers Reports said they want good living conditions for animals raised for food.
  —Bopp S, *It's Only Natural, But What Does That Mean?,* Drovers CattleNetwork, Aug. 27, 2014. http://www.cattlenetwork.com/cattle-news/Its-only-natural-but-what-does-that-mean--272860091.html.

- Roughly two-thirds (69%) of a sample of 1,003 American adults said they prioritize animal welfare as a significant factor in deciding what foods to buy. The survey was conducted by ORC International in February 2014 for the 2014 Cone Communications Food Issues Trend Tracker.
  —Fielding M, *Consumers Want Companies to Provide More Sustainable Food Options*, Meatingplace, Mar. 17, 2014. http://www.meatingplace.com/Industry/News/Details/48824.

- In a survey conducted by Texas A&M University, 36% of consumers said that animal welfare was somewhat important to them, while another 22% said it was very important, and 11% said extremely important (for a total of 69%).
  —Grimshaw K et al, *Consumer Perception of Beef, Pork, Lamb, Chicken, and Fish*, Meat Science, Vol. 96 (Jan. 2014), pp. 443-444.

- A survey of west coast consumers commissioned by the poultry company Foster Farms found that 49% completely agreed that they are more concerned about animal welfare and how animals are raised for food than they were 5 years ago. Also, 74% completely agreed that they would like more large producers to raise animals for food in a humane way.
  —*Foster Farms First Major Poultry Producer in the West to Earn Humane Certification from American Humane Association Meats Increasing Consumer Demand for Humanely Raised Foods* (press release), Foster Farms, March 11, 2013.
  http://www.fosterfarms.com/about/press/press_release.asp?press_release_id=138.

- In a survey conducted by the University of Nebraska, 70% of rural Nebraskans agreed or strongly agreed with the statement: "Animal welfare means more than providing adequate food, water and shelter; it also includes adequate exercise, space, and social activities for the animals." Seventy percent of respondents thought that the welfare of animals is better protected on family farms than on large, corporate farms, and 77% agreed or strongly agreed that food safety is largely dependent on the care farm animals receive.
  —Vogt R et al, *Animal Welfare: Perceptions of Nonmetropolitan Nebraskans*, University of Nebraska—Lincoln, Center for Applied Rural Innovation, July 2011.

- Technomic's food industry trend tracking survey has documented that humane animal treatment is of increasing importance to consumers, with more than 50% now saying this is an important issue to them.
  —*Center of the Plate: Poultry Consumer Trend Report*, Technomic, May 2011.
  http://www.technomic.com/Reports_and_Newsletters/Consumer_Trend_Reports/dyn_PubLoad.php?pID=21.

- In an aided question, consumers responding to a survey conducted for Demeter Communications' SegmenTrak study were asked to consider what they would like to know from farmers about food production that they currently do not know. More than two-thirds (68%) indicated they wanted to know more about ways farmers "ensure animal care."
  —*What "Indicator Consumers" Want to Know Most About How U.S. Foods are Produced*, Demeter Communications, Apr. 2010. http://demetercommunications/com/wp-content/uploads/2011/05FINAL.Demeter.SegemenTrak.Full_Report.June2010.pdf.

- Animal welfare was cited as an issue of concern by a majority of respondents to a survey on restaurant social responsibility conducted in 2007. It was noted that animal welfare was the highest rated food-related issue, above locally-sourced foods and the offering of organic foods.
  —*Market Brief: Tracking and Interpreting Chain Restaurant Trends*, Technomic Inc., July 2007.
  http://www.customerconnectireland.com/resources/amexMarketbrief_9-07%5B1%5D%20Copy.pdf.

- Ninety-five percent of respondents to a nationwide telephone survey conducted by Oklahoma State University agreed with the statement, "It is important to me that animals on farms are well cared for."
  —Prickett RW et al, *Consumer Perceptions for Farm Animal Welfare: Results of a Nationwide Telephone Survey,* Oklahoma State University, Department of Agricultural Economics, 2007. http://asp.okstate.edu/baileynorwood/Survey4/files/InitialReporttoAFB.pdf.

- In a 2004 survey conducted by researchers at The Ohio State University, 92% of Ohioans agreed that it is important that farm animals are well-cared for, and 81% said the well-being of farm animals is just as important as the well-being of pets.
  —Rauch A & Sharp JS, *Ohioans Attitudes about Animal Welfare*, The Ohio State University, Social Responsibility Initiative, January 2005. http://ohiosurvey.osu.edu/pdf/2004_Animal_report.pdf.

<u>Consumers support regulating farm animal care</u>

- According to a 2014 survey for the Center for Food Integrity, 53% of consumers strongly agreed with the statement, "I would support a law in my state to ensure humane treatment of farm animals." The Center indicated that strong agreement with this statement was at a 7-year high. The survey also reported that only 24% of respondents strongly agreed that meat in the U.S. is derived from humanely raised animals.
  —The Center for Food Integrity, *Cracking the Code on Food Issues: Insights from Moms, Millennials and Foodies,* 2014, http://www.foodintegrity.org.

- Research on mandatory labeling of animal welfare practices, conducted by university professors from Kansas State University and Michigan State University, found that 61.7% of survey respondents favored mandatory labeling of pork produced on farms using gestation crates, and 62.0% said they supported mandatory labeling of eggs produced using cages for laying hens. The researchers estimated that the typical U.S. shopper was willing to pay 20% higher prices for pork and egg products to obtain this type of mandatory labeling information.
  —Tonsor GT & Wolf CA, *Mandatory Labeling of Animal Welfare Attributes*, Kansas State University, Department of Agricultural Economics, July 2011. http://www.agmanager.info/livestock/marketing/animalwelfare/AW-Labeling_FactSheet_07-19-11.pdf.

- In a survey conducted by agricultural economists at Oklahoma State University, approximately half of the respondents said they believe government should "force all food companies to indicate the level of animal care on their product labels." More than half of the respondents said companies should be allowed to label their food "animal compassionate" if they adhere to high welfare standards. Also, of those with an opinion, 69% favored governmental bans on eggs produced under lower standards of animal care, even if they could easily find egg products that met their personal standards of care.
  —Norwood FB & Lusk JL, *Compassion by the Pound: The Economics of Farm Animal Welfare*, Oxford University Press, 2011, pp. 341-343.

- The welfare and protection of animals raised for food was seen as very or somewhat important by 79% of respondents to a survey managed by the Humane Research Council in June 2008. A large majority (73%) would support a law requiring that farm animals, including pigs, cows and chickens, are provided with enough space to behave naturally.
  —*Animal Tracker – Wave 1, An HRC-Managed Research Study*, Humane Research Council, June 2008.

http://www.humanespot.org.

- Fifty-eight percent of Americans said they were very or somewhat concerned about the treatment of farm animals in a 2003 poll by Zogby International. Enacting laws to protect farm animals from cruelty was supported by 82% of those surveyed.
  —*Nationwide Views on the Treatment of Farm Animals*, Zogby International for the Animal Welfare Trust, 2003. http://civileats.com/wp-content/uploads/2009/09/AWT-final-poll-report-10-22.pdf.

"Humanely raised" is an important food claim

- Packaged Facts online survey of 2,000 U.S. adults in April and May 2014 found that over 40% of respondents reported that they seek out meat from animals who were raised more humanely. A little over a third said they regularly buy natural and organic meat products.
  —*57% of Consumers Buy Meat with Special Labels*, Science 2.0, Aug. 3, 2015. http://www.science20.com/news_articles/57_of_consumers_buy_meat_with_special_labels-156665.

- A public opinion survey conducted by Edge Research for the American Society for the Prevention of Cruelty to Animals (ASPCA) found that more than 80% of respondents felt it's important that the chicken they eat is humanely raised. Yet less than a third of respondents trust the companies that make chicken products to treat their chickens in a humane manner. More than 75% of chicken consumers said they would like more humanely-raised chicken options at their local grocery stores.
  —*Treat My Chicken Right: ASPCA Survey Shows Consumers Want More Humanely Raised Chicken, Feel it Leads to Safer Chicken Products* (press release), ASPCA, Sept. 2, 2014. http://www.aspca.org/about-us/press-releases/treat-my-chicken-right-aspca-survey-shows-consumers-want-more-humanely.

- In a survey conducted for the Animal Welfare Institute, 86% of respondents said the government should require meat and poultry producers to prove claims like "humanely raised" and that the claims should not be allowed on product labels unless they have been verified by an independent third party. Also, 86% of respondents to the survey agreed with the statement, "Producers should not be allowed to use the claim 'humanely raised' on their product labels unless they exceed minimum industry animal care standards."
  —Animal Welfare Institute, Oct. 2013. (Available from AWI upon request.)

- The label claim "humanely raised" was ranked as the highest in importance over "organic," "natural," and "antibiotic free" among respondents to the 2013 Humane Heartland Farm Animal Welfare Survey conducted by American Humane. Ninety-five percent of the respondents indicated that a humanely raised certified label signified "better treatment of animals."
  —*Humane Heartland Farm Animal Welfare Survey*, American Humane Association, 2013, http://www.americanhumane.org/assets/humane-assets/humane-heartland-farm-animals-survey-results.pdf.

- In a survey of west coast consumers commissioned by the poultry company Foster Farms, 74% of respondents completely agreed that humane-certified foods should be more widely available for consumers.
  —*Foster Farms First Major Poultry Producer in the West to Earn Humane Certification from American Humane Association Meats Increasing Consumer Demand for Humanely Raised Foods* (press release),

Foster Farms, March 11, 2013.
http://www.fosterfarms.com/about/press/press_release.asp?press_release_id=138.

- An overwhelming majority (91%) of consumers of Just Bare chicken said third-party humane certification of animal products is extremely or very important in an October 2010 survey. When these consumers were asked about how much trust they place in various levels of animal welfare claims, nearly two-thirds (62%) said they placed a high degree of trust in certification by a third-party animal welfare organization. Far fewer consumers indicated trust in certification by a government or industry association or trust in a company's own records.
  —*Common Questions*, Just Bare Chicken, Sept. 12, 2012. http://www.justbarechicken.com/faqs.cfm.

- In a survey on the welfare of chickens raised for meat commissioned by the Animal Welfare Institute, 70% of all respondents, and 77% of frequent chicken meat shoppers, indicated they thought the claim "humanely raised" on a package of chicken meant that the animal was raised under a standard of care <u>better than</u> typical industry practice.
  —*U.S. Poll on the Welfare of Chickens Raised for Meat*, Animal Welfare Institute, April 2010.
  http://awionline.org/sites/default/files/uploads/legacy-uploads/documents/FA-HumanelyRaisedCagedFreeSurvey-081110-1281725036-document-23248.pdf.

- Fifty-one percent of consumers said the claim "humanely raised" was very important or important in causing them to believe a food is ethically produced. Of the 29 food claims studied, "humanely raised" ranked fourth highest, above "no antibiotics," "produced in the USA," "natural," and "sustainably produced."
  —*Ethical Food: A Research Report on the Ethical Claims that Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases*, Context Marketing, March 2010.
  http://www.contextmarketing.com/sources/feb28-2010/ethicalfoodreport.pdf.

- When asked to identify their top three reasons for purchasing "natural" or "organic" meat, 38% of respondents to an online poll conducted by the American Meat Institute and the Food Marketing Institute chose "better health and treatment of the animal." Animal treatment ranked third highest among nine meat selection criteria, above "freshness," "better taste," and "environmental impact."
  —Top 3 Reasons for Purchasing Natural or Organic Meat, *Beyond the Farm Gate*, Whole Foods Market, Issue 4, June 2010.

- In a national poll conducted by Harris Interactive for the World Society for the Protection of Animals, 58% of respondents indicated it is important to them to be able to purchase humanely labeled meat and eggs in their local supermarket, and approximately one-quarter of the sample said they had bought "organic" or "free range" animal products in the previous year.
  —*Finding Animal Friendly Food: The Availability of Humanely Labeled Foods in U.S. Grocery Stores*, World Society for the Protection of Animals, Boston, MA, 2009.

- In a survey conducted for the International Dairy-Deli-Bakery Association, 55% of American consumers who were aware of the "humane treatment" food claim felt that the claim was very or somewhat important. Of 19 claims studied, only two ("locally raised or grown" and "antioxidants") were seen by aware shoppers as being more important than "humane treatment certified."

—*Health & Wellness: The Purpose-Driven Consumer* (Executive Summary), International Dairy-Deli-Bakery Association.

- Consumers responding to a 2007 Public Opinion Strategies survey ranked the "humanely raised" label as the most important food label, over "organic" and "natural."
  —*Frequently Asked Questions*, The Humane Touch, American Humane Association. http://humaneheartland.org/faqs.

- Of more than 1,000 respondents to a 2007 Oklahoma State University survey, 52% said personal food choices have a large impact on the well-being of farm animals, and 49% said they consider the well-being of farm animals when they make food purchasing decisions.
  —Prickett RW et al, *Consumer Perceptions for Farm Animal Welfare: Results of a Nationwide Telephone Survey,* Oklahoma State University, Department of Agricultural Economics, 2007. http://asp.okstate.edu/baileynorwood/Survey4/files/InitialReporttoAFB.pdf.

- In a 2005 survey of Michigan residents conducted by researchers at Michigan State University, 92% of respondents rated "humane animal treatment" as "very important" or "somewhat important" as a factor when purchasing animal products. Humane treatment was rated as significantly more important than factors having to do with where the animal was raised or by whom.
  —Conner DS et al, Consumer Preferences for Pasture-Raised Animal Products: Results from Michigan, *Journal of Food Distribution Research*, July 2008, pp. 12-25.

- When University of California, Santa Cruz, researchers asked central California shoppers to evaluate five potential food label claims, "humane" was most often the top-ranked choice, above "locally grown," "living wage," "U.S. grown," and "small-scale farm." Product labels were a preferred source of food information for 81% of the consumers.
  —*What Do People Want to Know About Their Food?,* University of California, Santa Cruz, Research Brief #5, Winter 2005. http://escholarship.org/uc/item/75s222dm.

Consumers are willing to pay more for food that is "humanely raised"

- In the 2014 Humane Heartland national survey, participants identified lack of availability as the biggest factor keeping them from buying humanely raised products. Less than one out of five participants identified cost as the biggest factor.
  —*2014 Humane Heartland Farm Animal Welfare Survey*, American Humane Association, Nov. 2014. http://www.americanhumane.org/humane-heartland/2014-humane-heartland-farm-survey.pdf.

- When asked, "what is the most you are willing to pay for high quality, humanely raised products," 34% of respondents to a 2013 survey conducted by American Humane said 10-20% more, while 28% of respondents said they would pay 20-30% more.
  —*Humane Heartland Farm Animal Welfare Survey*, American Humane Association, 2013, http://www.americanhumane.org/assets/humane-assets/humane-heartland-farm-animals-survey-results.pdf.

- In a survey of poultry consumers conducted by Technomic, 38% indicated they are more likely to purchase and be willing to pay more for "humane" meats. Thirty-seven percent were more likely to purchase and pay more "organic" meats.
  —*Custom Poultry Consumer Survey*, Technomic, Sept. 2012.

- One in four (24%) of respondents to a consumer survey commissioned by Whole Foods Market said they are willing to pay more for meats from animals raised under humane animal husbandry standards.
  —*Americans Willing to Pay More for Food Without Artificial Ingredients, Meats Without Antibiotics/Added Growth Hormones* (press release), Whole Foods Market, Sept. 27, 2012. http://media.wholefoodsmarket.com/.

- Fifty-seven percent of consumers responding to a Context Marketing survey said they would be willing to pay 1% to 10% more "for food that promises to be produced to higher ethical standards." Twelve percent were willing to pay 10% more.
  —*Ethical Food: A Research Report on the Ethical Claims that Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases*, Context Marketing, March 2010. http://www.contextmarketing.com/sources/feb28-2010/ethicalfoodreport.pdf.

- A 2007 survey by Public Opinion Strategies found that 58% of consumers would spend an additional 10% or more for meat, poultry, eggs, or dairy products labeled as "humanely raised."
  —*Frequently Asked Questions*, The Humane Touch, American Humane Association. http://humaneheartland.org/faqs.

- In a survey by The Ohio State University, 59% of Ohioans said they would be willing to pay more for meat, poultry, or dairy labeled as coming from humanely treated animals. Among those, 43% said they would pay 10% more, and 12% said they would pay 25% more.
  —Rauch A & Sharp JS, *Ohioans Attitudes about Animal Welfare*, The Ohio State University, Social Responsibility Initiative, January 2005. http://ohiosurvey.osu.edu/pdf/2004_Animal_report.pdf.

- Consumer surveys by the Animal Agriculture Alliance in 1993, 1998, and 2004 demonstrated that American shoppers are willing to pay more for food labeled "humanely raised." In 2004, 31% of respondents were willing to pay 5% more, while 23% were willing to pay 10% more.
  —*Consumer Attitudes about Animal Welfare: 2004 National Public Opinion Survey*, Animal Agriculture Alliance and National Corn Growers Association, April 2004. http://www.animalagalliance.org/images/ag_insert/2004_Pub_Op_PR.ppt.

- Eighty-one percent of U.S. respondents to a Zogby International poll would be willing to pay more for eggs from chickens raised in a humane manner.
  —*U.S. Public Supports Humane Treatment for Hens*, Zogby International for Farm Sanctuary, September 2000. http://www.isecruelty.com/poll.php.

- Forty-four percent of a sample of 1,000 Americans, surveyed in 1998, said they would try a "humanely raised" product if the cost was 5% more, while 20% would try the product if it was 10% more.
  —*American Attitudes towards Farmers and Farm Animal Issues*, Opinion Dynamics for the Animal Industry Foundation, Arlington, VA, 1998.

Certain food labels confuse and mislead shoppers

- The Organic and Natural Health Association reports that 36% of consumers do not believe there is a difference between natural and organic foods, according to a survey

conducted by Natural Marketing Institute in January 2015. The survey also revealed that 46% of consumers believe the U.S. government regulates foods labeled as "natural" and only 61% believe the government regulates food labeled as "organic."
—Crane M, *What's the Difference between Natural and Organic Foods? Don't Ask Consumers*, Nutritional Outlook, Nov. 6, 2015.

- According to a survey commissioned by egg producer Vital Farms, fewer than half of consumers are familiar with the term "pasture raised," and the majority thought that "cage free" and "free range" mean the birds have been raised outdoors. (While the USDA's definition of free range is that the birds have access to the outdoors, cage free merely means that birds are not regularly confined to a cage.
—Black J, *Scratching out a Market Eager for 'Pasture-Raised' Eggs*, The Washington Post, Apr. 8, 2015, E2.

- When a sample of health-conscious Iowans was asked about food labels, their support for labels such as "hormone-free" and "antibiotic-free" declined significantly after being provided facts about how the government defines and enforces the claim.
—*Food Labels Helpful but Their Claims Raise Skepticism, Food & Family Project Survey Finds,* Food & Family Project, Jan. 21, 2015. http://iowafoodandfamily.com/news/2015/food-labels-helpful-their-claims-raise-skepticism-food-family-project-study-finds-poll.

- A large majority of respondents to a survey conducted by *Consumer Reports* incorrectly identified the meaning of the claim "natural" when used on meat and poultry products: 89% believed the claim indicated the animals did not receive growth hormones; 81% said no antibiotics or other drugs; and 85% said the animals' feed did not contain genetically engineered organisms. None of these criteria are present in USDA's current definition of the claim.
—Bopp S, *It's Only Natural, But What Does That Mean?,* Drovers CattleNetwork, Aug. 27, 2014. http://www.cattlenetwork.com/cattle-news/Its-only-natural-but-what-does-that-mean--272860091.html.

- In a survey commissioned by *Consumer Reports*, a large majority of respondents exhibited false expectations of the claim "humanely raised." For example: 92% of consumers said the claim should mean the farm was inspected to verify the claim; 90% said the term should mean the animals had adequate living space; 88% said the term should mean animals were humanely slaughtered; and 79% said the claim should mean the animals went outdoors—none of which are necessarily true, as USDA has no definition for the claim and allows producers to determine what the claim means to them.
—*Survey Reveals Consumers Have Different Expectations for 'Natural' Food Products*, MeatPoultry.com, June 16, 2014.
http://www.meatpoultry.com/articles/news_home/Trends/2014/06/Consumer_Reports_aims_to_ban_n.aspx?ID=%7BC49A9FD4-0039-4C4A-B9F3-F45492ECE987%7D.

- In a survey commissioned by CommonGround, more than half of moms agreed it is important to feed their families "hormone-free" poultry and pork even though it may cost more to do so. But in fact, USDA prohibits the use of hormones to raise chickens and pigs, and consequently there is no value to paying more for "hormone-free" labeled pork or chicken products.
—*Know Before You Buy: 5 Things Moms Get Wrong at the Grocery Stores,* CommonGround, http://www.findourcommonground.com.

- More than half (53%) of moms surveyed by CommonGround agreed it is important to purchase food labeled "all natural," whenever possible because it is a more nutritious choice for their family. However, the natural label does not include any standards regarding farm practices or the nutritional content of food.
  —*Know Before You Buy: 5 Things Moms Get Wrong at the Grocery Stores,* CommonGround, http://www.findourcommonground.com.

- Only two percent of more than 2,000 Americans responding to a Harris Interactive Poll conducted for the Animal Welfare Institute were able to correctly identify the definition of "natural" when used on meat and poultry. Fifty-one percent mistakenly thought "natural" meant the product came from animals who were not administered hormones or antibiotics. (The "natural" claim indicates a product is minimally processed and has no artificial ingredients; the claim has no relevance to how the animals were raised or treated.) Seventy-one percent of the sample strongly or somewhat agreed that having both a "natural" and a "naturally-raised" label, where the labels have different meanings, could be confusing to consumers.
  —*Natural Labeling Poll*, Harris Interactive QuickQuery for the Animal Welfare Institute, October 2009.

- When Consumer Reports asked what consumers thought a "naturally raised" label on a meat product should mean, 85% said that the product came from an animal raised in a natural environment, 77% said it came from an animal that had access to the outdoors, and 76% said the label meant the animal had been treated humanely. ("Naturally raised" actually means the animal was not given antibiotics or hormones and was fed a vegetarian diet. The claim does not describe the housing or treatment of animals.)
  —*Food-Labeling Poll 2008*, Consumer Reports, November 2008. http://www.greenerchoices.org/pdf/foodpoll2008.pdf.

- Eighty-three percent of respondents to a 2007 food labeling poll by Consumer Reports said that the "natural" label on meat should mean "it came from an animal that was raised in a natural environment."
  —*Food Labeling Poll*, Consumer Reports, July 2007. http://greenerchoices.org/pdf/Food%20Labeling%20Poll-final_rev.pdf.

- In a 2007 national telephone survey conducted by Zogby International, 73% of respondents indicated that they felt it is inappropriate for meat, milk, and eggs from animals who are kept indoors, crowded in cages, and standing on metal and concrete floors, to be labeled as "natural." When asked where "natural" meat, dairy, and eggs come from, 48% said from animals raised with free access to the outdoors, while 29% said from animals confined indoors, and 23% of respondents said they were unsure.
  —*USDA Natural Label Called Meaningless and Misleading to Consumers* (press release), PR Newswire, Jan. 11, 2007. http://www.prnewswire.com/news-releases/usda-natural-label-called-meaningless-and-misleading-to-consumers-53400512.html.

(11/15)

Exhibit 2
FSIS Statement of Interim Labeling Guidance Documentation Needed to Substantiate Animal Production Claims for Label Submissions

FSIS Statement of Interim Labeling Guidance
Documentation Needed
to Substantiate Animal Production Claims
for Label Submissions

[This is an interim policy statement and may be withdrawn or modified if information is received by FSIS that shows significant consumer confusion exists in this subject area.]

Background

The Food Safety and Inspection Service (FSIS) is the agency in USDA with the responsibility for assuring that the labeling of meat and poultry products is truthful and not misleading. Labeling bearing claims referring to the way that the source animal for a meat or poultry product was raised are evaluated by FSIS prior to use.

For the past 25 years FSIS has evaluated animal production claims by considering information on animal production practices submitted by companies as part of their label approval requests. The Agency approved these claims if the animal production information submitted with the label application supported the claim being made and the claim was truthful and not misleading.

Product Labeling: Use of the Animal Production Claims in the Labeling of Meat and Poultry Products

The Federal establishment is responsible for ensuring that labels are in compliance with the Federal Meat Inspection Act (FMIA; 21 U.S.C. § 601, 607), the Poultry Products Inspection Act (PPIA; 21 U.S.C. § 451, 457) and the implementing regulations, this includes all mandatory labeling requirements as prescribed in Part 317 (subsection 2) and 381 (Subpart N) of Title 9 of the Code of Federal Regulations (9 CFR 317.2 and 381 Subpart N).

Point of purchase materials used in conjunction with products bearing animal production claims, while they generally are not reviewed by this office, should meet the requirements of Policy Memo 114A for Point of Purchase Materials.

Labels bearing animal production claims are required to be approved prior to use in commerce. Labels are approved with the understanding that inspectors can be assured as to the source of the product. Inspectors monitor labels being applied to meat and meat products at the establishment.

Labels bearing animal production claims are submitted to the Food Safety Inspection Service (FSIS), Labeling Program Delivery Division (LPDD) with specific documentation to support all animal production claims on the label as well as any other claims that appear on that label. Examples of animal production claims include but are

not limited to *Raised Without Antibiotics, Organic, Free-Range, Natural and Angus.* For most animal production claims, the documentation needed to support these claims are:

1. A detailed written protocol explaining controls for assuring the production claim from birth to harvest. If purchased, include protocol information from the supplier;

2. A signed affidavit declaring the specifics of the animal production claim(s) and that the claims are not false or misleading;

3. Product tracing and segregation mechanism from time of slaughter through further processing for wholesale or retail distribution;

4. A protocol for the identification, control, and segregation of non-conforming animals/product;

5. A complete, current feed formulation using common and usual language or copies of the feed tags; and

6. A copy of the purchased product label bearing the claims for your label

7. If a third-party certifies/verifies a claim, a current copy of the certification/verification should be provided.

Below are examples of types of animal production claims and the further documentation needed to support these claims, in addition to the documentation numbered above.

Examples of Types of Animal Production Claims and Guidance on the Documentation Needed to Substantiate the Claims

Age of Animal
Examples of this type of claim: 30 Months of Age or Less, Young, and Mature.

Documentation needed: Documents 1 – 4, live animal production records demonstrating how individual animals or a group of animals are identifiable and traceable to their farm or ranch of birth records. Records should indicate the actual date of birth of the individual animal or the actual date of birth of the first (oldest) animal born within the group.

Age of animal claims should meet the applicable requirements of 9 CFR 317.8 (b) (4) and 9 CFR 381.170 (a).

Animal Welfare and Environmental Stewardship
Examples of this type of claim: Humanely Raised, Sustainably Farmed, and Raised with Environmental Stewardship.

Documentation needed: Documents 1 – 4.

These terms should be defined according to the company's or producer's standard and the label should clearly state for the consumer the condition under which the animal is raised or what the term means, for example, Humanely Raised on Family Farms, without Confinement. Document 1 (above) should clearly describe the living/raising conditions of the animals throughout its lifespan (including the various seasons).

Breed
Examples of this type of claim: Angus, Wagyu (American Kobe), Hereford, Berkshire, Duroc, Muscovy, Silkie, and Heritage Poultry, Pork or Beef Breeds.

Documentation needed: Documents 2-4, and a detailed written protocol explaining controls for assuring the phenotype (for example, hide color) or genotype (traceable to one registered parent or two registered grandparents with a breed association) for the breed.

Diet Claims
Examples of this type of claim: Grass (Forage) Fed, Grain Fed, Vegetarian Feed, and Fed No Animal By-Products.

Documentation needed: Documents 1 – 5. When applicable, provide the feed tag or ingredient listing from the feed supplier for all rations and supplements.

Living/Raising/Production Conditions
Examples of this type of claim: Cage or Crate Free, Free Range, Not Confined, and Pasture Raised.

Documentation needed: Documents 1 – 4.

Raised Without Antibiotics – Livestock/Red Meat
Other examples of this type of claim: No Antibiotics Administered, No Antibiotics Administered the last 150 days, and Raised Without Sub-therapeutic Antibiotics.

Documentation needed: Documents 1 – 5. When applicable, provide the feed tag or ingredient listing from the feed supplier for all rations and supplements.

Raised Without Antibiotics – Poultry

Other examples of this type of claim: No Antibiotics Administered, Raised Without Antibiotics and No Added Antibiotics Ever.

Documentation needed: Documents 1 – 5. Also, company letter (signed and on company letterhead) answering the following questions or the FSIS-approval letter for raised without antibiotics claims:

1. Do you use antibiotics pre-hatch in any way with respect to the eggs that you hatch for the poultry that will bear the claim? If so, please describe how you use antibiotics?

2. Do you inject any vaccines *in ovo*? If so, please state whether any of the vaccines includes an antibiotic? If any of them does, please state what antibiotics are used, what the antibiotics are used for, and in what amount they are used.

3. Do you inject any antibiotics *in ovo*? If so, please state what antibiotics are used, what the antibiotics are used for, and in what amount they are used. What is the withdrawal time for the antibiotics?

4. Have you verified that the poultry that you use to produce your products was not derived from eggs or poultry that were injected or otherwise treated in any way with antibiotics? If so, how have you verified these conclusions?

Raised Without Hormones (No Hormones Administered or No Steroids Administered)

Other examples of this type of claim: Raised Without Growth Promotants (Stimulants) Hormones are only approved for use in beef cattle and sheep production. They are not approved for use in poultry, swine, veal calves, or exotic, non-amenable species (e.g., bison and goats). Therefore, the phrase "no hormones administered" on poultry, pork, veal, or exotic, non-amenable meat products labels cannot be approved unless it is immediately (directly) followed with the statement "Federal regulations prohibit the use of hormones in poultry (or pork, veal, or exotic, non-amenable meat products)."

Documentation needed: Documents 1 – 4.

Source/Traceability

Examples of this type of claim: Source Verified and Traceable to Farm of Origin.

Documentation needed: Documents 1 – 4, live animal production records demonstrating how individual animals or a group of animals are identifiable and traceable to their farm or ranch of birth, and if verified, who is verifying the claim.

Third Party Certification

Third Party Certification examples of this claim: Agricultural Marketing Service (AMS) Process Verified Program (PVP), or Certified Organic by National Organic Program (NOP).

Documentation needed: Document 6. Also, provide standards for acceptance of the third party certifier.

NOTE: If used in conjunction with any other animal raising claim(s), refer to the documentation needed for the particular claim(s).

Exhibit 3
Email Exchanges between Animal Welfare Institute and AskFSIS

Email Exchanges between Animal Welfare Institute and AskFSIS

Email exchange between Dorothea Ottesen and AskFSIS
February 4, 2011 to March 4, 2011
Docket Number 110204-000087

Question from Dorothea Ottesen to AskFSIS
February 04, 2011

Hello,
I was wondering what is necessary to be able to label chicken as "free range" according to FSIS. I understand that 'outdoor access' for 'free range' chickens means that if there is a door in the chicken house that the birds can use to go in and out, that is enough. But I was wondering what the ratio of indoor/outdoor space must be and If I wish to be able to label my chicken as "free range", are there any requirements I must meet - do I have to show pictures, submit affidavits, ect, of the door to the chicken house? Also, are there any plans to further define the 'free range' definition in the future?
Thanks!! D

Response from AskFSIS to Dorothea Ottesen
February 10, 2011

You would need to provide the following:
-Raising protocol from birth to slaughter describing the bird's access to the outdoors, including segregation protocol if there are any birds not raised in the same manner. (Pictures are optional, but encouraged)
-A signed affidavit validating all claims made on the label.
As of now, there are no changes to be made to “free range”.

-Kristen Goodwin
Labeling and Program Delivery Staff

Question from Dorothea Ottesen to AskFSIS
February 11, 2011

Hi Kristin,
Thanks for your answer. I do have a few more questions though.

1. Could you please send me an example of a filled out application for approval of labels (FSIS FORM 7234-1) with regard to "Free Range" or "Range Grown" for chicken or turkey.

2. What is the difference between "range grown" and "free range"? Are there different requirements that must be met by the producers to be able to label a chicken or turkey as one or the other?

3. I would like to know more information about what kind of details must be included in the "Free Range" and "Range Grown" raising protocols to enable chicken or turkey to be labeled as such.

Many Thanks,
Dorothea

Response from AskFSIS to Dorothea Ottesen
March 04, 2011

1. Could you please send me an example of a filled out application for approval of labels (FSIS FORM 7234-1) with regard to "Free Range" or "Range Grown" for chicken or turkey.

   Response: The application is to be filled out as usual. The instructions are on the second or third page of the FSIS Form 7234-1.

2. What is the difference between "range grown" and "free range"? Are there different requirements that must be met by the producers to be able to label a chicken or turkey as one or the other?

3. I would like to know more information about what kind of details must be included in the "Free Range" and "Range Grown" raising protocols to enable chicken or turkey to be labeled as such.

   Response to questions 2 and 3: Currently, there are no regulatory definitions for the claim “Free Range,” as it applies to poultry products, or the synonymous claims “Free Roaming,” “Pasture Raised,” “Pasture Grown,” “Meadow Raised,” and similar terms, as they apply to

livestock (i.e., meat) products. As a matter of policy, the Food Safety and Inspection Service (FSIS), however, permits the use of these claims on labels for meat and poultry products under certain circumstances. In order to obtain label approval for labels bearing the claim "Free Range," poultry producers must provide a brief description of the bird's housing conditions with the label when it is submitted to Labeling and Program Delivery Division (LPDD) for approval. The written description of the housing conditions is reviewed to ensure the birds have continuous, free access to the out-of-doors for over 51% of their lives, i.e., through their normal growing cycle. During the winter months in a northern climate, birds are not "free range," if they stay in coops all winter. Producer testimonials that support the use of the claim must state how the birds are raised in a northern climate in winter in order to conform to the meaning of "free range" during the winter months.

In order to obtain label approval for labels bearing the claims "Free Roaming," "Pasture Raised," "Pasture Grown," "Meadow Raised," etc., it must also be shown that the livestock from which the products are derived had continuous, free access to the out-of-doors for a significant portion of their lives. Thus, feedlot-raised livestock or any livestock that were confined and fed for any portion of their lives are not amenable to the meaning of these terms.

Concerning the processing of male birds in the poultry industry we have no information referencing the disposal of male birds. This is not in direct connection with the labeling of poultry. You are welcome to contact the National Advisory Committee for Meat and Poultry Inspection or National Chickens Counsel

-Kristen Goodwin
Labeling and Program Delivery Staff

Email exchanges between Michelle Pawliger and AskFSIS
August 27, 2015 to December 17, 2015
Docket number 150827-00018

Questions from Michelle Pawliger to AskFSIS
August 27, 2015

Thank you in advance for helping me with my questions. I have a few:

1. Is there a difference between the claims "free range" and "range grown" for poultry products, either in definition or evidence require for approval of the claims?

2. Is there a difference between the claims "free range" and "pasture raised" for poultry products, either in definition or evidence require for approval of the claims? (I have read other answers to this question, but found the answer a little confusing because it seemed to discuss livestock (and I was not sure if poultry was included in the term in this instance.)

3. One of the definitions FSIS uses in its publications for the claim "free range" includes: "During the winter months in a northern climate, birds are not "free range," if they stay in coops all winter. Producer testimonials that support the use of the claim must state how the birds are raised in a northern climate in winter in order to conform to the meaning of "free range" during the winter months." Does FSIS require producer to remove the claim "free range" from products that contain meat from birds who were confined indoors during the winter months?

4. In order for a producer to use the claim "free range" do birds actually have to go outside, or do they just have to have access to the outside (even if conditions discourage outside use)?

5. Are there any outdoor space requirements for "free range" birds? If so, does FSIS require that the outside space be able to hold a certain number of birds at any given time?

6. Regarding doors leading from inside to outside enclosures, does FSIS require a specific number of doors or a minimum door size? Are there any vegetation requirements for the outside space? If not, does FSIS require any type of encouragement to birds to use the outdoor space?

Thank you again for your time.

Response from AskFSIS to Michelle Pawliger
September 18, 2015

Hi Michelle,
Please see the response below.
Currently, there are no regulatory definitions for many of the animal productions claims on meat and poultry product labels. As a matter of policy, the Food Safety and Inspection Service (FSIS), however, permits the use of these claims on labels for meat and poultry products under certain circumstances.

Guidance on Free Range, Free Grown, Free Roaming, Cage Free, and similar animal production claims:

In order to obtain label approval for labels bearing the claim “Free Range” "Free Grown," "Free Roaming" or “Cage Free,” poultry producers must provide a brief description of the bird’s housing conditions with the label when it is submitted to the Labeling Program and Delivery Staff (LPDS) for approval. The written description of the housing conditions is reviewed to ensure the birds have continuous, free access to the out-of-doors for over 50% of their lives, i.e., through their normal growing cycle. During the winter months in a northern climate, birds are not “free range,” if they stay in coops all winter. Producer testimonials that support the use of the claim must state how the birds are raised in a northern climate in winter in order to conform to the meaning of “free range” during the winter months.

In order to obtain label approval for labels bearing the claims “Free Roaming,” “Pasture Raised,” "Free Grown," “Pasture Grown,” “Meadow Raised,” etc., it must also be shown that the livestock from which the products are derived had continuous, free access to the out-of-doors for a significant portion of their lives. Thus, feedlot-raised livestock or any livestock that were confined and fed for any portion of their lives are not amenable to the meaning of these terms. For red meat the claim must be followed by “never confined to a feedlot.”

1. Is there a difference between the claims “free range” and “range grown” for poultry products, either in definition or evidence require for approval of the claims?

   Response: No see definition above.

2. Is there a difference between the claims “free range” and “pasture raised” for poultry products, either in definition or evidence require for approval of the claims? (I have read other answers to this question, but found the answer a little confusing because it seemed to discuss livestock (and I was not sure if poultry was included in the term in this instance.)

   Response: That depends on whether the claim is for a poultry or red meat product. See above.

3. One of the definitions FSIS uses in its publications for the claim “free range” includes: “During the winter months in a northern climate, birds are not “free range,” if they stay in coops all winter. Producer testimonials that support the use of the claim must state how the birds are raised in a northern climate in winter in order to conform to the meaning of “free range” during the winter months.” Does FSIS require producer to remove the claim “free range” from products that contain meat from birds who were confined indoors during the winter months?

Response: Yes, if producers wish to make the claim and they are in a northern climate they have to make the statement "Free Range" for the number days the birds do not have free access to outdoors, i.e. "Free Range 90 days of their life span prior to harvest."

4. In order for a producer to use the claim “free range” do birds actually have to go outside, or do they just have to have access to the outside (even if conditions discourage outside use)?

   Response: They must have access to the outdoors.

5. Are there any outdoor space requirements for “free range” birds? If so, does FSIS require that the outside space be able to hold a certain number of birds at any given time?

   Response: No, see above requirements.

6. Regarding doors leading from inside to outside enclosures, does FSIS require a specific number of doors or a minimum door size? Are there any vegetation requirements for the outside space?

   Response: No, see above requirements.

-Tammie Ballard
Labeling and Program Delivery Staff

Questions from Michelle Pawliger to AskFSIS
September 28, 2015

Thank you for your response to my several questions. I have follow-up questions that I would appreciate you answering so I can have a better understanding of the claims. (Note: all of my questions relate to poultry products and not to meat products.)

1. I was confused by your answer to my question #2. I have clarified my question in hopes of receiving a more elaborate response. In your requirements below, "pasture raised" is not included in the claims listed for poultry products. Does this mean FSIS does not have requirements for "pasture raised" claims on poultry products?
   - If there is no "pasture raised" requirements can the claim be used?
   - If the agency does maintain requirements for "pasture raised" claims on poultry products are the requirements the same as the "free range" requirements?

2. In the requirements you state that there is a "free grown" claim. Did you mean "range grown?"

3. I was confused by your response to my question number 3. Just to be clear:
    - If a producer provides access to the out-of-doors for less than 50 percent of the birds life (due to cold weather) they are able to use the "free range" claim so long as they state on the packaging how many days the birds were allowed outdoors?
    - If this is correct, does this mean that the producer is supposed to provide a label to the processing facility that maintains the number of days each flock had free access to outdoors in addition to the "free range" claim?
    - I have a real life example regarding winter months and the use of the "free range" claim: A producer currently provides birds with access to the out-of-doors for the months March through December. They do not provide birds access to the out-of-doors for the months January and February. Does this mean the producer is not allowed to use the "free range" claim on packages containing birds who were raised in January and February (and did not have access to the outdoors)?

4. In the requirements for poultry producers using a "free range" claim, birds are to have continuous, free access to the out-of-doors. Does FSIS define "continuous, free access?"

5. Does FSIS consider a screened, covered (roofed) porch that is attached to a barn as "outdoor access"?

Thank you for your time.

Response from AskFSIS to Michelle Pawliger
September 29, 2015

1. I was confused by your answer to my question #2. I have clarified my question in hopes of receiving a more elaborate response. In your requirements below, "pasture raised" is not included in the claims listed for poultry products. Does this mean FSIS does not have requirements for "pasture raised" claims on poultry products?
    - If there is no "pasture raised" requirements can the claim be used?
    - If the agency does maintain requirements for "pasture raised" claims on poultry products are the requirements the same as the "free range" requirements?

    Response: Yes, however for pasture raised the company must describe what their definition is for pasture raised on the label.

2. In the requirements below you state that there is a "free grown" claim. Did you mean "range grown"?

    Response: Correction: "Range Grown."

3. I was confused by your response to my question number 3. Just to be clear:
    - If a producer provides access to the out-of-doors for less than 50 percent of the birds life (due to cold weather) they are able to use the "free range" claim so long as they state on the packaging how many days the birds were allowed outdoors?

    Response: That's correct, they have to state on the label the number of days birds have access to out-of-doors.

    - If this is correct, does this mean that the producer is supposed to provide a label to the processing facility that maintains the number of days each flock had free access to outdoors in addition to the "free range" claim?

    Response: Yes, the processor should be provided a copy of the approved label including documents prior approved by LPDS.

    - I have a real life example regarding winter months and the use of the "free range" claim: A producer currently provides birds with access to the out-of-doors for the months March through December. They do not provide birds access to the out-of-doors for the months January and February. Does this mean the producer is not allowed to use the "free range" claim on packages containing birds who were raised in January and February (and did not have access to the outdoors)?

    Response: They can make the claim "Free Range for number of days" on the label. This lets the consumer know the birds are not totally Free Range.

5. In the requirements for poultry producers using a "free range" claim, birds are to have continuous, free access to the out-of-doors. Does FSIS define "continuous, free access"?

    Response: No, FSIS does not define continuous free access.

6. Does FSIS consider a screened, covered (roofed) porch that is attached to a barn as "outdoor access"?

    Response: No, that's not continuous access.

-Tammie Ballard
Labeling and Program Delivery Staff

Questions from Michelle Pawliger to AskFSIS
September 30, 2015

Thank you for responding to me so quickly. I have one follow up question. I now understand that during winter months producers are able to keep birds indoors for a certain amount of time and still use the "free range" claim, so long as they state on the label how many days the birds had access to the outside. Question: Can producers provide outdoor access for less than 50 percent of the birds' lives for any reason (not just winter climates) and still use the "free range" claim, so long as they state on the label how many days the birds had access to the outdoors?

Response from AskFSIS to Michelle Pawliger
September 30, 2015

Yes, they can make the claim as long as they provide the number of days the label, e.g. "Birds raised Free Range 19 days prior to Harvest"

-Tammie Ballard
Labeling and Program Delivery Staff

Questions from Michelle Pawliger to AskFSIS
December 15, 2015

I recently read a news article discussing poultry products made by Diestel Family Turkey Ranch. The article stated that the USDA advised Diestel to keep their birds—which are normally able to go outdoors—inside because of avian flu (HPAI). Many of Diestel's products have a "range grown" claim affixed to package labels. Here is the link to that article: http://www.sfgate.com/news/article/Animal-rights-activists-slam-Diestel-turkey-6655405.php.

I have a few questions about this:

1. When a producer who uses a "free range" (or equivalent) label claim on a poultry product is advised to keep their birds indoors (due to HPAI), are they expected to remove the free range claim from their packaging?

2. If a producer does keep their birds indoors due to avian flu, how does the USDA monitor the use of the "free range" claim?

Thank you in advance for your help.

Response from AskFSIS to Michelle Pawliger
December 17, 2015

Guidance on Free Range, Free Roaming, Cage Free, and similar animal production claims:

In order to obtain label approval for labels bearing the claim "Free Range" or "Cage Free," poultry producers must provide a brief description of the bird's housing conditions with the label when it is submitted to the Labeling Program and Delivery Staff (LPDS) for approval. The written description of the housing conditions is reviewed to ensure the birds have continuous, free access to the out-of-doors for over 50% of their lives, i.e., through their normal growing cycle. During the winter months in a northern climate, birds are not "free range," if they stay in coops all winter. Producer testimonials that support the use of the claim must state how the birds are raised in a northern climate in winter in order to conform to the meaning of "free range" during the winter months.

In order to obtain label approval for labels bearing the claims "Free Roaming," "Pasture Raised," "Pasture Grown," "Meadow Raised," etc., it must also be shown that the livestock from which the products are derived had continuous, free access to the out-of-doors for a significant portion of their lives. Thus, feedlot-raised livestock or any livestock that were confined and fed for any portion of their lives are not amenable to the meaning of these terms. For red meat the claim must be followed by "never confined to a feedlot." For Swine "Never confined to gestation crates."

-Kristin Goodwin
Labeling and Program Delivery Staff

Exhibit 4
Survey on Free Range and Humanely Raised Label Claims

Animal Welfare Institute
900 Pennsylvania Avenue, SE, Washington, DC 20003

Survey on Free Range and Humanely Raised Label Claims

In November 2015, the Animal Welfare Institute (AWI) commissioned a national web-based survey* of adult American attitudes toward animal raising claims on meat and poultry products. Specifically, the survey gathered data on consumer attitudes towards government regulation of the marketing label claims "humanely raised" and "free range."

1. How important, if at all, are each of the following to you?
   a. ***Farm animals are raised humanely***

Very important	44%
Somewhat important	37%
Total	**81%**
Not at all important	12%
Not very important	7%
Total	**19%**

   b. ***The availability of humanely raised meat and poultry options at local grocery stores***

Very important	35%
Somewhat important	38%
Total:	**73%**
Not very important	17%
Not at all important	9%
Total:	**27%**

   c. ***Humane labeling in deciding what meat and poultry products I buy***

Very important	34%
Somewhat important	36%
Total:	**69%**
Not very important	19%
Not at all important	11%
Total:	**31%**

2. In your opinion, what should a “humanely raised” label on meat (beef, pork, chicken, turkey) mean? Please select all that apply.

Farm is inspected to verify that the animals are raised humanely	71%
Animals have access to grass or other vegetation outdoors	65%
Animals have sufficient indoor living space to move about freely	60%
Animals are given pain relief for any physical alterations, such as castration or cutting off tails or horns	44%
None of these	4%
Not at all sure	12%

3. Which of the following, if any, do you think are acceptable? Please select all that apply.

Producers of “free range” labeled chicken and turkey products that provide screened and covered porches for the birds instead of outdoor space	19%
“Humanely raised” labeled beef products made from cattle kept in a dirt lot for one-third or more of their lives	12%
“Humanely raised” labeled pork products made from pigs that are kept indoors for their entire lives	10%
Producers of “free range” labeled chicken and turkey products that provide a dirt lot that does not have sufficient space to accommodate all birds at one time	10%
None of these	46%
Not at all sure	26%

4. In your opinion, what should a “free range” label on poultry (chicken, turkey) mean? Please select all that apply.

Farm is inspected to verify that the birds are raised free range	70%
All birds have the opportunity to go outside during daylight hours on a regular basis	70%
There is enough space outside for each bird to be out during daylight hours every day	65%
The outdoor space is at least partially covered with grass or other vegetation	61%
When outdoors, all birds have access to shade and protection from weather or predators	60%
None of these	10%

*From Harris Poll: “This survey was conducted online within the United States between October 23-27, 2015 among 2013 adults (aged 18 and over) by Harris Poll on behalf of AWI via its Quick Query omnibus product. Figures for age, sex, race/ethnicity, education, region and household income were weighted where necessary to bring them into line with their actual proportions in the population. Propensity score weighting was used to adjust for respondents’ propensity to be online. Respondents for this survey were selected from among those who have agreed to participate in our surveys. The data have been weighted to reflect the composition of the adult population. Because the sample is based on those who agreed to participate in the online panel, no estimates of theoretical sampling error can be calculated.”

Exhibit 5
Free Range Label Files Reviewed by the Animal Welfare Institute

Free Range Label Files Reviewed by AWI

COMPANY/ BRAND NAME	LABEL CLAIM	DEFINITION	EVIDENCE
Andronico's Chicken and Turkey	Free Range	A, B	Affidavit asserting the definition
BN Ranch Turkey[1]	Free Range	D	Affidavit asserting the definition
Bristol Farms Chicken and Turkey	Free Range	A, B	Affidavit asserting the definition
Bristol Farms Organic Chicken	Free Range	B	Affidavit asserting the definition; Certificate of Organic Production
D'Artagnan Capon Chicken, Goose, and Turkey[2]	Free Range	No definition provided	No records located
Diestel Turkey Ranch Turkey[3]	Range Grown	H	Affidavit asserting the definition
Diestel Turkey Ranch AHC Young Turkey[4]	Range Grown	H	Affidavit asserting the definition
Diestel Turkey Ranch Black Forest Turkey	Range Grown	H	Affidavit asserting the definition; GAP Certificate of Compliance: Step 1
Diestel Turkey Ranch Ground Turkey	Range Grown	H	Affidavit asserting the definition; GAP Certificate of Compliance: Step 1 & 3
Diestel Turkey Ranch Natural Young Turkey	Range Grown	H	Affidavit asserting the definition; GAP Certificate of Compliance: Steps 2 & 3
Diestel Turkey Ranch Naturally Roasted Young Turkey	Range Grown	H	Affidavit asserting the definition; Certificate of Organic Operation; GAP Certificate of Compliance: Steps 1 & 3
Diestel Turkey Ranch AHC Organic Young Turkey	Range Grown	H	Affidavit asserting the definition; Certificate of Organic Operation
Diestel Turkey Ranch Petite Young Turkey	Range Grown	H	Affidavit asserting the definition
Diestel Turkey Ranch Premium Young Turkey	Range Grown	H	Affidavit asserting the definition; GAP Certificate of Compliance: Step 5+
Fulton Valley Farms Chicken and Turkey	Range	A, B	Affidavit asserting the definition
Fulton Valley Farms Non-GMO Chicken	Range	B	Affidavit asserting the definition; GAP Certificate of Compliance: Steps 3 & 4
Gelson's Finest Young Turkey[5]	Free Range	A	Affidavit asserting the definition; GAP Certificate of Compliance: Steps 3 & 4
Golden Sierra Farms Turkey	Range Grown	H	Affidavit asserting the definition
Mary's Chicken	Free Range	B	Affidavit asserting the definition; GAP Certificate of Compliance: Steps 3 & 4
Mary's California Bronze Chicken	Free Range	B	Affidavit asserting the definition; on-farm pictures; GAP Certificate of Compliance: Step 5
Mary's Duck[6]	Free Range	C	Affidavit asserting the definition
Mary's Heritage Turkey	Free Range	A	Affidavit asserting the definition; GAP Certificate of Compliance: Step 5
Mary's Non-GMO and Cornish Chicken	Free Range	B	Affidavit asserting the definition; GAP Certificate of Compliance: Step 3
Mary's Organic Turkey	Free Range	A	Affidavit asserting the definition; GAP Certificate of Compliance: Step 3; Certificate of Organic Production
Mary's Turducken	Free Range	A, B, C	Affidavit asserting the definition
Mary's Turkey[7]	Free Range	A	Affidavit asserting the definition; GAP Certificate of Compliance: Step 3
Mary's Project Chicken	Free Range	B	Affidavit asserting the definition; GAP Certificate of Compliance: Step 3
Maverick Ranch Chicken and Turkey	Free Range	No definition provided	No records located

Melani Chicken	Free Range	B	Affidavit asserting the definition
Misty Knoll Farm Turkey	Free Range	No definition provided	GAP Certificate of Compliance: Step 3
Nature Ranchers Turkey	Free Range	A	Affidavit asserting the definition
Norbest Turkey	Free Range	E	Affidavit asserting the definition
Northwest Farms Chicken	Free Range	F	Affidavit asserting the definition; Certificate of Organic Production; GAP Certificate of Compliance: Steps 3 & 4
Pitman Family Farms Chicken and Duck[8]	Free Range	B, C	Affidavit asserting the definition
Ranger: The Free Range Chicken	Free Range	No definition provided	No records located
Rocky The Free Range Chicken	Free Range	No definition provided	No records located
Shelton's Chicken and Turkey[9]	Free Range	No definition provided	No records located
Shelton's Young Turkey	Free Range	G	Affidavit asserting the definition
Snackmasters Turkey Jerky[10]	Range Grown	H	Affidavit asserting the definition
Sweet Water Creek Chicken, Duck, and Turkey[11]	Free Range	A, B, C	Affidavit asserting the definition
Sweet Water Creek Non-GMO Turkey	Free Range	A	Affidavit asserting the definition; GAP Certificate of Compliance: Step 3
Whole Foods Turkey[12]	Free Range	A	Affidavit asserting the definition; GAP Certificate of Compliance: Step 3

KEY	DEFINITION
A	"The first three weeks the birds are kept inside, at approximately three weeks of age, the barns are opened up by using bird doors or side doors on the side of the barns. The turkeys are allowed to roam freely in the open yards attached to the barns. The turkeys are moved to range pens at six to seven weeks of age. This will help the turkeys have lots of room to roam around as they grow larger. This will give each bird about eight square feet per turkey." (Turkey provided by Pitman Farms.)
B	"The first three weeks the birds are kept inside, at approximately three weeks of age, the barns are opened up by using bird doors or side doors on the side of the barns. The chickens are allowed to roam freely in the open yards attached to the barns. The chickens stay in these houses until market." (Chicken provided by Pitman Farms.)
C	"The first three weeks the birds are kept inside, at approximately three weeks of age, the barns are opened up by using bird doors or side doors on the side of the barns. The ducks stay in these houses until market." Alternatively, "the ducks are moved to range pens at six to seven weeks of age. This will help the ducks have lots of room to roam around as they grow larger. This will give each bird about eight square feet per duck." (Duck provided by Pitman Farms.)
D	"Unlimited access to the outdoors is allowed once the birds are fully feathered and brooding stage is over. This occurs at approximately 35 days of age." On label definition: "Once [turkeys] are old enough—at 8 weeks [56 days] of age—they are free range with unrestricted access to outdoors." Note: the two definitions have different age of first access to the outdoors. (Birds provided by Grimaud Farms.)
E	"Turkeys… have been raised in barns which allow the birds free access to the outdoors in the months of March through December."
F	"The chickens… will have access to outside yards during their growth. Letters of assurance stating the methods of the growout operation and the feed formulation will be on file at Draper Valley Farms, Inc." (Chicken provided by Draper Valley Farms.)
G	"All the turkeys that we supply to you are free-range turkeys. After a short brooding period (for the birds' protection) of four to six weeks, the turkeys are raised in outdoor pens and are never confined in any buildings."
H	"All turkeys past the age of approximately 35 days are allowed out doors access to range areas (range environment)." (Turkey provided by Diestel Turkey Ranch.)

[1] Two products: Young White Turkey and Young Heritage Turkey.
[2] Six products: American Wild Turkey, Heritage Turkey, Capon, Goose, Poussin, semi- boneless Poussin.
[3] Twelve products: barbecue seasoned smoked, naturally oven roasted, uncured pastrami seasoned, chipotle peppered, herb oven roasted, peppered oven roasted, honey roasted, southwestern Cajun style, naturally smoked, Natural Young Turkey, Young Turkey breast with ribs, and Young Turkey.
[4] American Heirloom Collection.
[5] Two products: Turkey and Non-GMO Turkey.
[6] Five products: Smoked Duck, Ground Duck, Duck Fat, Duck Leg Confit, and Non-GMO Duck.
[7] Five products: Turkey Breast, Brined Turkey, Non-GMO Turkey, Turkey injected with seasoning, and Ground Turkey.
[8] Four products: Halal Zabiha Chicken, Silkie Chicken, Boneless Skinless Duck, and Pekin Duck.
[9] Seven products: Chicken Breast, Chicken Thigh, Whole Chicken, Ground Turkey, Turkey Breast, Turkey Drumsticks, and Boneless Turkey Breast.
[10] Two products: Hot and Spicy Turkey Jerky and Original Turkey Jerky.
[11] Five products: Duck, Non-GMO Duck, Country Style Duck, Turkey, and Chicken.
[12] Two products: Turkey and Non-GMO Turkey.

Exhibit 6
Letter from Arianne M. Perkins, FSIS, to Michelle Pawliger, AWI

USDA

United States Department of Agriculture

Food Safety and Inspection Service

1400 Independence Avenue, SW.
Washington, D.C. 20250

Michelle Pawliger
Animal Welfare Institute
900 Pennsylvania Ave, SE
Washington, D.C. 20003

JUN 24 2015

RE: Label Records Search

Dear Ms. Pawliger:

The Animal Welfare Institute ("AWI") submitted a Freedom of Information Act ("FOIA") request to FSIS seeking "all documents and material related to the pre-market label approval process for the claims 'Free Range' and 'Range Grown' (not made in combination with 'Organic')" for certain brands of chicken and turkey. FSIS assigned AWI's FOIA request tracking number FOIA-2014-00076 after it had been formerly assigned tracking number FOIA-2011-00102. This FOIA request is, among certain additional FOIA requests made by AWI to FSIS, the subject matter of *Animal Welfare Institute v. U.S. Dept. of Agriculture, Food Safety and Inspection Service lawsuit,* Case No. 14-1787 (D.D.C.).

After conducting repeated searches for records responsive to AWI's request seeking "all documents and material related to the pre-market label approval process for the claims 'Free Range' and 'Range Grown' (not made in combination with 'Organic')" for certain brands of chicken and turkey, FSIS found no responsive records, and thus produced no responsive records, in conjunction with the following brands:

1. *Maverick Ranch Free-Range Chicken - 21148 M and M18852-P18852-V1885*
2. *Maverick Ranch Free Range Turkey - 21 148 M and M18852-P18852-V1885*
3. *Petaluma Poultry Rocky the Range Chicken - 02882 P (FSIS provided documents for Petaluma's "Rocky Jr." brand, but none found for the Rocky the Range brand identified in the request)*
4. *Shelton's Free-Range Chicken Thighs - 18951 M-18951 P and M4153-P415*
5. *Shelton's Free-Range Chicken Breasts - 18951 M-18951 P and M4153-P415*
6. *Shelton's Free-Range Ground Turkey - 18951 M-18951 P and M4153-P415*
7. *Shelton's Free-Range Turkey Breasts - 18951 M-1 8951 P and M41 53-P415*
8. *Shelton's Free-Range Turkey Drumsticks - 18951 M-18951 P and M4153-P415*
9. *Shelton's Free-Range Boneless Turkey Breasts - 18951 M-18951 P and M4153-P415*
10. *Shelton's Free-Range Boneless Skinless Turkey Breast Fillets - 18951 M-18951 P and M4153-P415*
11. *D'Artagnan Free-Range American Wild Turkey - M18438-P 18438*
12. *D'Artagnan Free-Range Heritage Turkey - M18438-P18438*
13. *D'Artagnan All-Natural Free-Range Goose - M18438-P18438*
14. *D'Artagnan All-Natural Free-Range Capon - M18438-P18438*
15. *D'Artagnan Whole Free-Range Poussin - M18438-P18438*

16. D'Artagnan Whole Semi-Boneless Free-Range Poussin - MI 8438-P 18438

If there are further questions regarding the above search effort carried out by FSIS, please let us know.

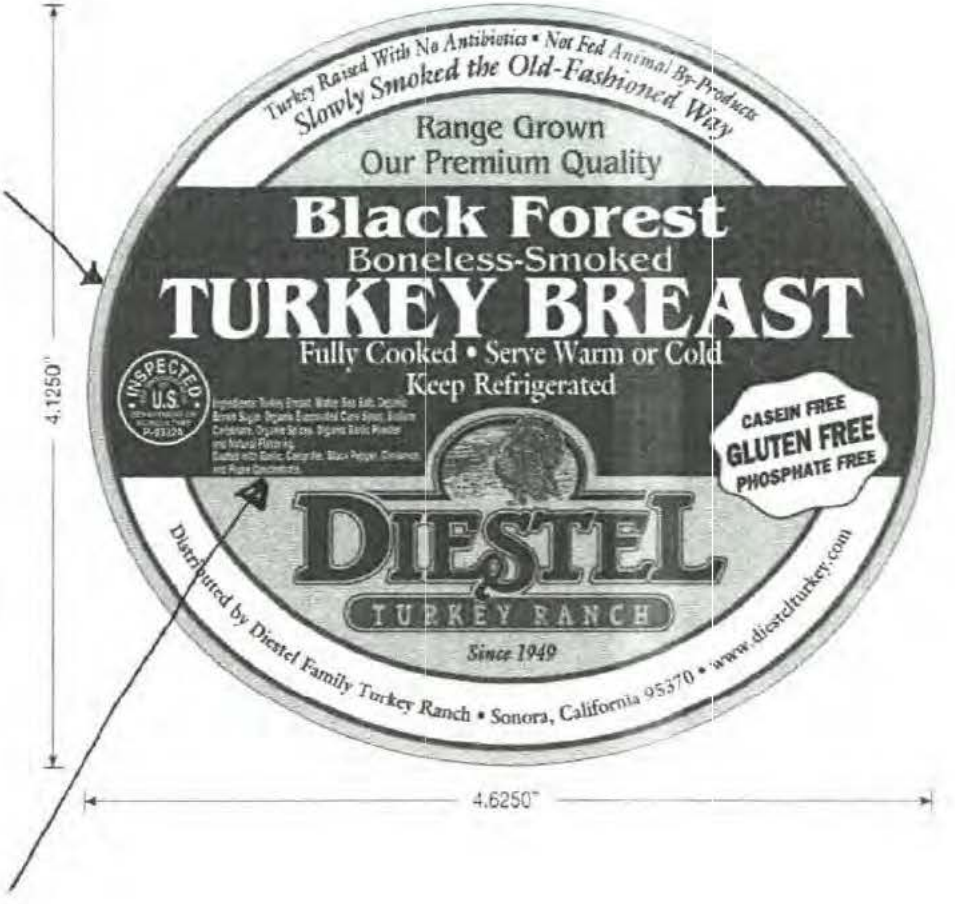
Sincerely,

Arianne M. Perkins
Director, Freedom of Information Act Office
Food Safety and Inspection Service

Exhibit 7
Diestel Black Forest Turkey Breast Label
and GAP Step 1 Certificate

FSIS0147

Actual Size 4.1250" x 4.6250"



Ingredients: Turkey Breast, Water, Sea Salt, Organic Brown Sugar, Organic Evaporated Cane Syrup, Sodium Carbonate, Organic Spices, Organic Garlic Powder and Natural Flavoring. Coated with Garlic, Coriander, Black Pepper, Cinnamon and Prune Concentrate.

INSPECTED FOR WHOLESOMENESS BY U.S. DEPARTMENT OF AGRICULTURE P-9332A

• cyan lines are for size reference only - will not print

MASTER#: 401NA

PROOF

Customer: **Diestel Turkey Ranch** Date: 01.07.13 Job No: 45890 Artist: SS Proofer:

Please proof-read thoroughly before signing. Use this proof for approving layout, 4-color process images, color breakdown and text accuracy. It does not accurately represent PMS colors. If you have received this proof via e-mail, the actual color of finished product may be significantly different than that of your monitor or color printer. Please refer to the Pantone Matching System for exact PMS match.

Labeltechnology
2050 Wardrobe Avenue
Merced, CA 95341
PHONE 800-388-1990
FAX 209-384-0329
graphics@labeltech.com

THIS WAY
Wind 3

Gloss Lam

Gold Wash Light GL3030 | Opaque White | PMS 541 | PMS 155 | PMS 201

CONTENT CORRECT?							
	Y	N	N/A		Y	N	N/A
PMS COLORS				NET WTS			
COPY				NUT. FACTS			
BARCODE				OTHER			

After you have reviewed your proof carefully, please check the appropriate box below, sign and return.

○ Approved as shown ○ Approved with changes noted ○ Not Approved. Revise as noted and re-proof

Signed Date

EARTHCLAIMS LLC

CERTIFICATE OF COMPLIANCE

Certificate Number (b)(4)

(b)(4)

meets the minimum compliance requirements, as designated by the Global Animal Partnership, of the

5 STEP ANIMAL WELFARE RATING STANDARDS FOR TURKEYS

and is awarded a

STEP LEVEL 1 RATING

This certificate is effective on April 10, 2012 and expires on July 10, 2013 and is not transferable.

The operation listed may designate only turkeys from the production system certified as meeting the requirements of the awarded Step Level Rating. No other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

The standards for the Global Animal Partnership 5 Step Animal Welfare Rating program can be found at www.globalanimalpartnership.org.

EARTH CLAIMS

ISSUED BY EARTHCLAIMS LLC
WWW.EARTHCLAIMS.COM • INFO@EARTHCLAIMS.COM • 202.596.5592

Exhibit 8
Diestel Ground Turkey Label
and GAP Step 1 Certificate

Use in any recipe
calling for ground meat-
Spahgetti Sauce, Lasagna,
Tacos, Chili, Pizza

INSPECTED FOR WHOLESOMENESS BY U.S. DEPARTMENT OF AGRICULTURE P-9332A

Producing Quality Naturally Since 1949
Grown, Processed and Distributed by
Diestel Family Turkey Ranch • Sonora, CA 95370

EARTHCLAIMS LLC

CERTIFICATE OF COMPLIANCE

Certificate Number (b)(4)

(b)(4)

meets the minimum compliance requirements, as designated by the Global Animal Partnership, of the

5 STEP ANIMAL WELFARE RATING STANDARDS FOR TURKEYS

and is awarded a

STEP LEVEL 1 RATING

This certificate is effective on April 10, 2012 and expires on July 10, 2013 and is not transferable.

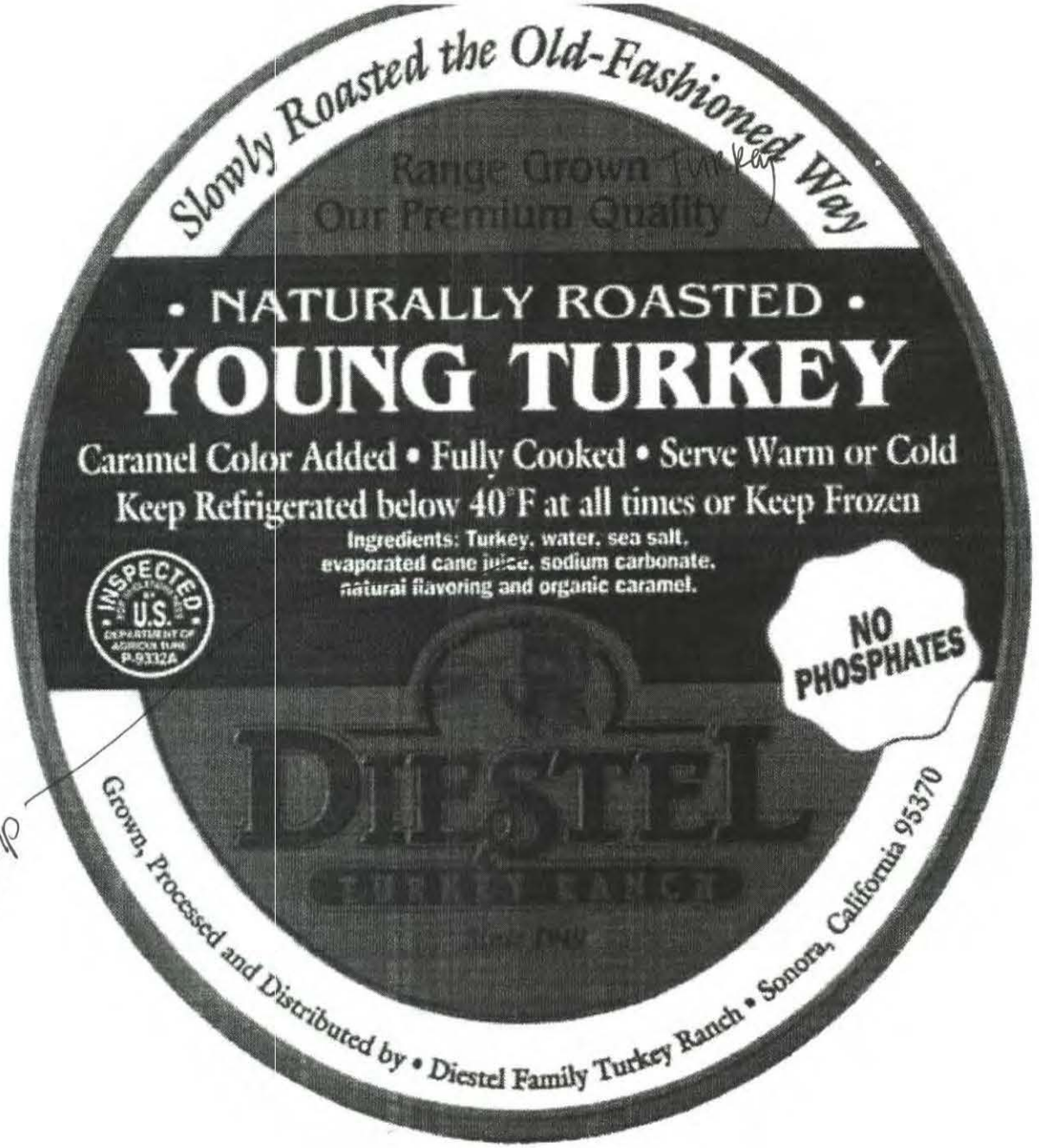
The operation listed may designate only **turkeys** from the production system certified as meeting the requirements of the awarded Step Level Rating. No other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

The standards for the Global Animal Partnership 5 Step Animal Welfare Rating program can be found at www.globalanimalpartnership.org.

EARTH CLAIMS

ISSUED BY EARTHCLAIMS LLC
WWW.EARTHCLAIMS.COM • INFO@EARTHCLAIMS.COM • 202.596.5592

Exhibit 9
Diestel Naturally Roasted Young Turkey Label
and GAP Step 1 Certificate


Slowly Roasted the Old-Fashioned Way
Range Grown Turkey
Our Premium Quality
• NATURALLY ROASTED •
YOUNG TURKEY
Caramel Color Added • Fully Cooked • Serve Warm or Cold
Keep Refrigerated below 40°F at all times or Keep Frozen
Ingredients: Turkey, water, sea salt,
evaporated cane juice, sodium carbonate,
natural flavoring and organic caramel.
INSPECTED
U.S.
P-9332A
NO PHOSPHATES
DIESTEL
Grown, Processed and Distributed by • Diestel Family Turkey Ranch • Sonora, California 95370


INSPECTED
FOR WHOLESOMENESS
BY
U.S.
DEPARTMENT OF
AGRICULTURE
P-9332A

EARTHCLAIMS LLC

CERTIFICATE OF COMPLIANCE

Certificate Number (b)(4)

(b)(4)

meets the minimum compliance requirements, as designated by the Global Animal Partnership, of the

5 STEP ANIMAL WELFARE RATING STANDARDS FOR TURKEYS

and is awarded a

STEP LEVEL 1 RATING

This certificate is effective on April 10, 2012 and expires on July 10, 2013 and is not transferable.

The operation listed may designate only turkeys from the production system certified as meeting the requirements of the awarded Step Level Rating. No other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

The standards for the Global Animal Partnership 5 Step Animal Welfare Rating program can be found at www.globalanimalpartnership.org.

EARTH CLAIMS

ISSUED BY EARTHCLAIMS LLC

WWW.EARTHCLAIMS.COM • INFO@EARTHCLAIMS.COM • 202.596.5592

Exhibit 10
Mary's Free Range Turkey Label
and GAP Step 5 Certificate

Mary's Air Chilled Heritage
Free Range Turkey
Whole Body • Gluten Free
Vegetarian Fed Diet or No Animal By Products
Raised without Antibiotics • No Added Hormones*

15000

NET WT/LBS.
0.00

Packed Date/Time
2131 **11:16**

(1)10640654O 065 1065 01601 031320 3130 32

Ingredients: Turkey / Keep Refrigerated or Frozen
Complete Traceability to Farm by Pitman Family Farms
May contain up to 6% retained Water
*Federal regulations do not permit the use of hormones in poultry

INSPECTED FOR WHOLESOMENESS BY U.S. DEPARTMENT OF AGRICULTURE P-27389

5-Step
Animal Welfare Rating
STEP 5
Animal Centered
No Physical Alterations

Certified to Global Partnership Standards by EarthClaims LLC
www.globalanimalpartnership.org

Product of U.S.A.

Product of U.S.A.

2 954682 398680

global animal PARTNERSHIP

Animal Welfare Rating 5
Animal Centered
No Physical Alterations

Total Price
$ 39.99

Sell By or Freeze By	Price Per Lb.	Net Wt Lbs.
6/31/2012	$3.99	9.99

Corrected SH1 Per 9CFR 317.2

SAFE HANDLING INSTRUCTIONS

THIS PRODUCT WAS PREPARED FROM INSPECTED AND PASSED MEAT AND/OR POULTRY. SOME FOOD PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PRODUCT IS MISHANDLED OR COOKED IMPROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDLING INSTRUCTIONS.

KEEP REFRIGERATED OR FROZEN. THAW IN REFRIGERATOR OR MICROWAVE.

KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES (INCLUDING CUTTING BOARDS), UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.

COOK THOROUGHLY.

KEEP HOT FOODS HOT. REFRIGERATE LEFT-OVERS IMMEDIATELY OR DISCARD.

Exhibit 11
Mary's California Bronze Chicken Label,
GAP Step 5 Certificate, and Photographic Evidence


Mary's
FREE RANGE
CALIFORNIA BRONZE CHICKEN
In accordance with Global Animal Partnership Standards
www.globalpartnership.org
global animal
ANIMAL WELFARE RATING: 5
Sticker that would be placed on individual tray next to label
PASTURE RAISED
CALIFORNIA GROWN
SLOWER GROWING
INSPECTED U.S. DEPARTMENT OF AGRICULTURE
PLANT NO. ON BAG CLIP
AIR CHILLED

EARTHCLAIMS LLC

CERTIFICATE OF COMPLIANCE

Certificate Number C (b)(4)

(b)(4)

Meets the minimum compliance requirements, as designated by the Global Animal Partnership, of the:

5-STEP ANIMAL WELFARE RATING STANDARD FOR BROILER CHICKENS

And is awarded a:

STEP LEVEL 5 RATING

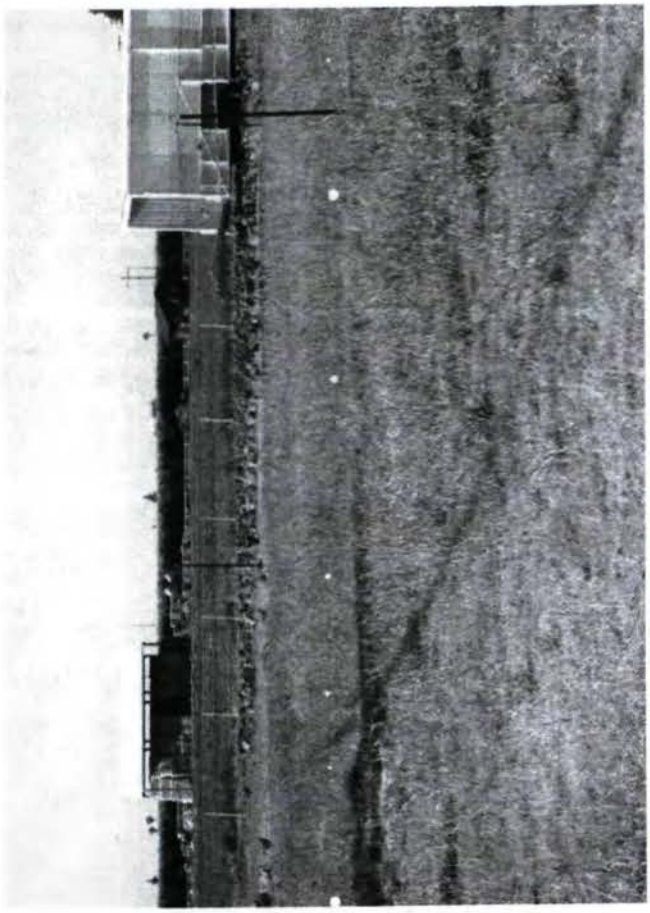
This certificate is effective on 09 July 2010 and expires on 09 October 2011 and is not transferable.

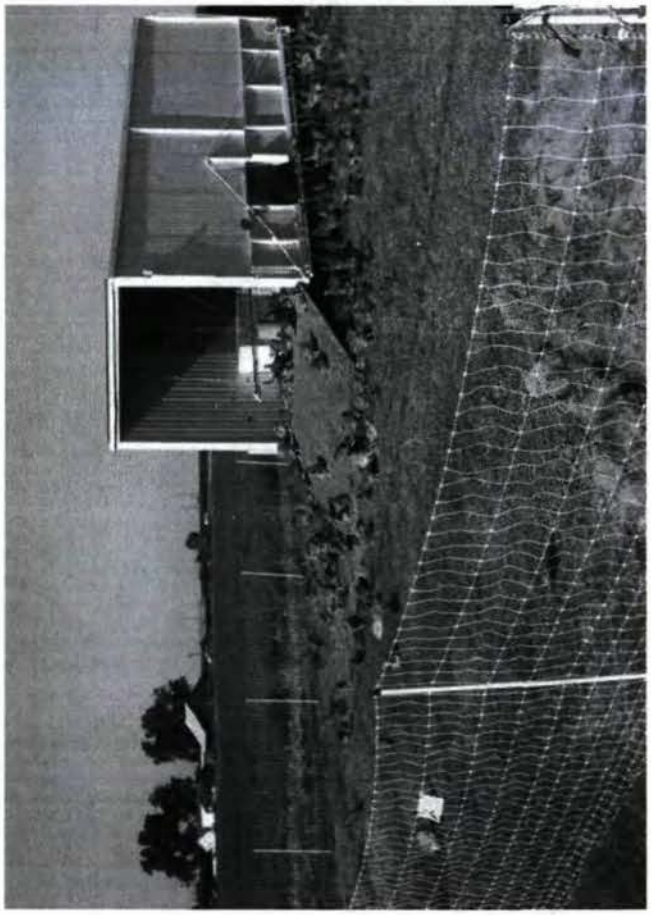
The holder of this certificate is authorized to designate only **broiler chickens** that it produces under the standards applicable to the awarded Step Level rating at the listed address, as eligible to be transacted under a GAP 5-Step welfare rating claim. No other animal type or animal product is eligible to carry or imply the claim authorized by this certificate.

The standards for the GAP 5-Step Program can be found at www.globalpartnership.org

Andrea M. Caroe
Chief Operating Officer
EarthClaims, LLC

ISSUED BY EARTHCLAIMS LLC
ALEXANDRIA, VIRGINIA
INFO@EARTHCLAIMS.COM
ACCREDITED BY USDA UNDER ISO 65





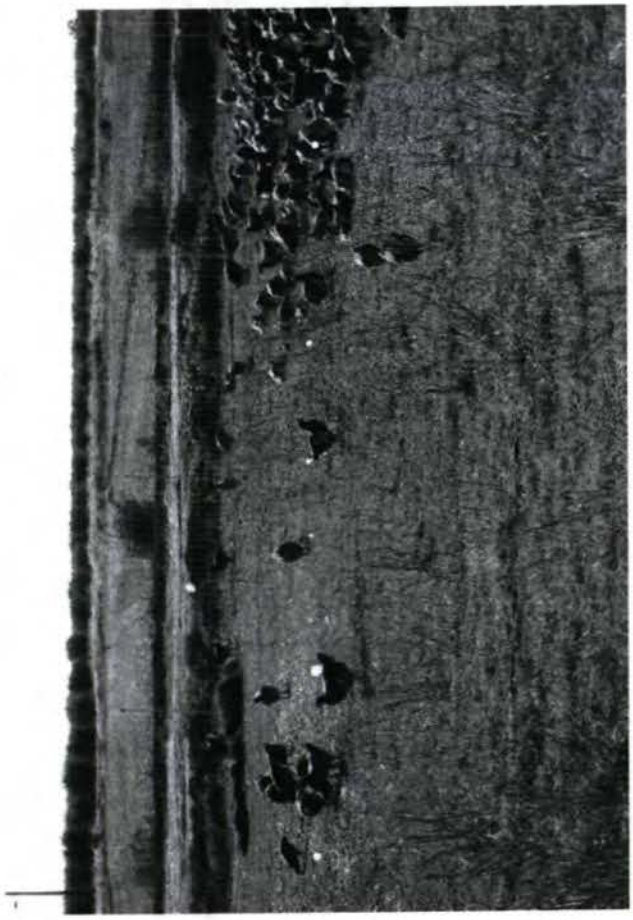


Exhibit 12
Diestel Premium Young Turkey Label
and GAP Step 5+ Certificate

Front Label package

Inquiries should be directed to
info@imiglobal.com or 866-395-5883
221 N. Wilcox St., Castle Rock, CO 80104
www.imiglobal.com

CERTIFICATE OF COMPLIANCE - ALLIANCE

This document certifies that

Diestel Turkey Ranch
Jason Diestel
22200 Lyons Bald Mt. Rd., Sonora, CA 95370

has been audited by IMI Global, Inc. and found to be in compliance with **Global Animal Partnership's 5-Step™ Animal Welfare Rating Standard for Turkey**

Current Rating:
Step 5+ ~ Turkey Operation

Approval Date: 9/19/2013

Expiration Date: 12/31/2014

Approval for the Global Animal Partnership 5 Step Animal Welfare Rating Standards is contingent upon your adherence to these standards. If your operation implements any changes prior to the expiration of the GAP certificate that are outside of the approved step rated standard requirements, IMI Global must be notified of the changes immediately.

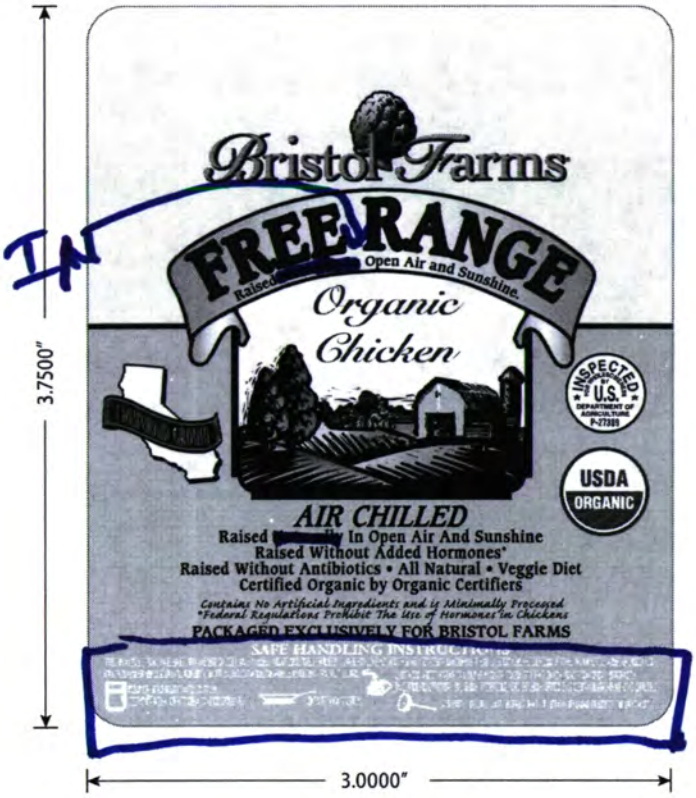
This CERTIFICATE OF COMPLIANCE authorizes the certified location to market **Turkey** under the awarded 5-Step Animal Welfare Rating Standards Step Level exclusively to **Diestel Turkey Ranch**, (co-distributor(s)), as per the 5-Step™ UMBRELLA approval status.

A complete description of Global Animal Partnership's 5-Step™ Animal Welfare Rating Standards for **Turkey** can be seen at http://globalanimalpartnership.org.

Certificate #: **GAP14128**

Leann Saunders, President
IMI Global, Inc.

Exhibit 13
Bristol Farms Organic Chicken Label
and Certificates of Organic Production


Bristol Farms
FREE RANGE
Raised [redacted] Open Air and Sunshine.
Organic
Chicken
INSPECTED U.S. DEPARTMENT OF AGRICULTURE P-17388
USDA ORGANIC
AIR CHILLED
Raised [redacted] In Open Air And Sunshine
Raised Without Added Hormones*
Raised Without Antibiotics • All Natural • Veggie Diet
Certified Organic by Organic Certifiers
Contains No Artificial Ingredients and is Minimally Processed
*Federal Regulations Prohibit The Use of Hormones in Chickens
PACKAGED EXCLUSIVELY FOR BRISTOL FARMS
SAFE HANDLING INSTRUCTIONS
3.7500"
3.0000"

6500 Casitas Pass Road
Ventura, CA 93001
E-Mail: info@organiccertifiers.com
Web: organiccertifiers.com
Phone (805) 684-6494 Fax (805) 684-2767

USDA Accredited

California Registration No. 99-0008

CERTIFICATE OF ORGANIC PRODUCTION

Pitman Farms - Livestock
1489 K Street
Sanger, CA 93657 United States

has been certified by Organic Certifiers
in accordance with the USDA-NOP National Organic Standards.

Organic Production Category: **Livestock / Crops**
Product(s): **Poultry: Chickens, Ducks, Turkeys**
Location(s): (b)(4) [redacted]

Acreage: **Pasture**

Certificate Number:	10-650
Initial Effective Date:	12/20/07
Annual Updated Plan Date:	12/20/11

Certification continues in effect until surrendered by the organic operation or suspended or revoked by Organic Certifiers, the State organic program's governing State official, or the AMS Administrator.

Issued Date: 1/22/11

Susan O Eyler
Executive Director

Document Name: NOP CERTIFICATE OF ORGANIC PRODUCTION
Document Number: C05-09
Effective/Revised Date: 04-01-10, V3,R1

5119-Pitman Farms - Livestock-2010-749-01-Out-22-Jan-11

ORGANIC CERTIFIERS

6500 Casitas Pass Road
Ventura, CA 93001
E-Mail: info@organiccertifiers.com
Web: organiccertifiers.com
Phone (805) 684-6494 Fax (805) 684-2767

USDA Accredited

California Registration No. 99-0008

CERTIFICATE OF ORGANIC PRODUCTION

Pitman Farms - Handling
1489 K Street
Sanger, CA 93657 United States

has been certified by Organic Certifiers
in accordance with the USDA-NOP National Organic Standards.

Organic Production Category: **Handling / Processing**

Product(s): **Organic Poultry: Chicken, Chicken Seasoned With Organic Pepper, Duck, Turkey**

Location(s): **1489 K Street, Sanger, CA, United States**

Certificate Number:	10-651
Initial Effective Date:	12/20/07
Annual Updated Plan Date:	12/20/11

Certification continues in effect until surrendered by the organic operation or suspended or revoked by Organic Certifiers, the State organic program's governing State official, or the AMS Administrator.

Issued Date: 1/22/11

Susan O Sjolie

Executive Director

ORGANIC CERTIFIERS

6500 Casitas Pass Road
Ventura, CA 93001
E-Mail: info@organiccertifiers.com
Web: organiccertifiers.com
Phone (805) 684-6494 Fax (805) 684-2767

USDA Accredited

California Registration No. 99-0008

CERTIFICATE OF ORGANIC PRODUCTION

Pitman Farms - Handling
1489 K Street
Sanger, CA 93657 United States

has been certified by Organic Certifiers
in accordance with the USDA-NOP National Organic Standards.

Organic Production Category: **Handling / Processing**

Product(s): **Organic Poultry: Chicken, Chicken Seasoned With Organic Pepper, Duck, Turkey**

Location(s): **1489 K Street, Sanger, CA, United States**

Certificate Number:	10-651
Initial Effective Date:	12/20/07
Annual Updated Plan Date:	12/20/11

Certification continues in effect until surrendered by the organic operation or suspended or revoked by Organic Certifiers, the State organic program's governing State official, or the AMS Administrator.

Issued Date: 1/22/11

Susan O Spike

Executive Director

Exhibit 14
Mary's Organic Ground Turkey Label
and Certificates of Organic Production


Mary's Free Range
Organic Ground Turkey
Raised without Antibiotics
Vegetarian Fed Diet or No Animal By Products
No Added Hormones* • Gluten Free
00110
NET WT/LBS.
0.00
Packed Date/Time
2065 11:16
Use By
03/12/2012
* 5-Step *
Animal Welfare Rating
STEP 3
Enriched Outdoor Access
Certified to Global Partnership Standards by EarthClaims LLC
www.globalanimalpartnership.org
(1)10040654006510651015013313203130 32
Ingredients: Turkey / Keep Refrigerated or Frozen
Complete Traceability to Farm by Pitman Family Farms. / May contain up to 6% retained Water
Organic Certified by Organic Certifiers
*Federal regulations do not permit the use of hormones in poultry
Product of U.S.A.
INSPECTED U.S. DEPARTMENT OF AGRICULTURE P-27585


Product of U.S.A.
2 954682 398680
global animal
Animal Welfare Rating 3
Enriched Outdoor Access
Total Price
$ 39.99
Sell By or Freeze By
2/31/2012
Price Per Lb
$3.99
Net Wt Lbs
9.99


SAFE HANDLING INSTRUCTIONS
THIS PRODUCT WAS PREPARED FROM INSPECTED AND PASSED MEAT AND/OR POULTRY. SOME FOOD PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PRODUCT IS MISHANDLED OR COOKED IMPROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDLING INSTRUCTIONS.
KEEP REFRIGERATED OR FROZEN. THAW IN REFRIGERATOR OR MICROWAVE.
KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES (INCLUDING CUTTING BOARDS), UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.
COOK THOROUGHLY.
KEEP HOT FOODS HOT. REFRIGERATE LEFTOVERS IMMEDIATELY OR DISCARD.

6500 Casitas Pass Road
Ventura, CA 93001
E-Mail: info@organiccertifiers.com
Web: organiccertifiers.com
Phone (805) 684-6494 Fax (805) 684-2767

USDA Accredited

California Registration No. 99-0008

CERTIFICATE OF ORGANIC PRODUCTION

Pitman Family Farms
1489 K Street
Sanger, CA 93657 United States

has been certified by Organic Certifiers
in accordance with the USDA-NOP National Organic Standards.

Organic Production Category: **Handling / Processing**

Product(s): **See Attached List**

Location(s): [redacted] (b)(4)

Certificate Number:	-12-160
Initial Effective Date:	3/7/11
Annual Updated Plan Date:	3/7/13

Certification continues in effect until surrendered by the organic operation or suspended or revoked by Organic Certifiers, the State organic program's governing State official, or the AMS Administrator.

Issued Date: March 29,2013

Susan C Spike

Executive Director

6500 Casitas Pass Road
Ventura, CA 93001
E-Mail: info@organiccertifiers.com
Web: organiccertifiers.com
Phone (805) 684-6494 Fax (805) 684-2767

USDA Accredited

California Registration No. 99-0008

CERTIFICATE OF ORGANIC PRODUCTION

Pitman Farms - Handling
1489 K Street
Sanger, CA 93657 United States

has been certified by Organic Certifiers
in accordance with the USDA-NOP National Organic Standards.

Organic Production Category: **Handling / Processing**

Product(s): **Organic Poultry: Chicken, Chicken Seasoned With Organic Pepper, Chicken Seasoned With Organic BBQ W/Lemon and Smoke Seasoning, Chicken Seasoned With Organic Chimichurri Rub, Duck, Turkey**
Organic Private Label
Organic Chicken Eggs

Location(s): **1489 K Street, Sanger, CA, 93657**

Certificate Number:	12-781
Initial Effective Date:	12/20/07
Annual Updated Plan Date:	1/1/14

Certification continues in effect until surrendered by the organic operation or suspended or revoked by Organic Certifiers, the State organic program's governing State official, or the AMS Administrator.

Issued Date: February 11, 2013

Susan C Eyler

Executive Director

Exhibit 15
Northwest Farms Chicken Label
and Certificates of Organic Production

Safe Environmental Practices
by Stewardship Partners

4.625" X 3.25"

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049667-NOPLPO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 228 30337 Walberg Road Sedro Woolley, WA 98284 USA
House IDs	228-1, 228-2, 228-3, 228-4, 228-5, 228-6
Effective Date	17-Jul-2010

Quality Assurance International, upon providing this certification, states that it has received the Certified Entity's application, renewal to exempt, inspected its facility and/or facilities, and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. To the knowledge of this certification, the certified entity warrants that it is in, and will remain in, full compliance with the Terms and Conditions of the Certification Agreement and in accordance with general guidelines established by the USDA's National Organic Program. Certification may only be terminated, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3531 · Fax: (858) 792-8665

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049670-NOPLPO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 123 1042 Ten Mile Road Everson, WA 98247 USA
House IDs	123-1, 123-2, 123-3, 123-4, 123-5, 123-6
Effective Date	17-Jul-2010

Quality Assurance International, upon providing this certification, states that it has received the Certified Entity's application, reviewed its records, inspected its fields and/or facility, and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In the acceptance of this certification, the certified entity warrants, that it is, and will remain in, full compliance with the Terms and Conditions of the Certification Agreement, and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3531 • Fax: (858) 792-8665

National Organic Program Certificate of Compliance

Certified Organic

Number C0049658-NOPLPO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 322 29210-B 88th Avenue NW Stanwood, WA 98292 USA
House IDs	322-1, 322-2, 322-3, 322-4, 322-5, 322-6, 322-7
Effective Date	19-Jul-2010

Quality Assurance International, upon providing this certification, states that it has received the Certified Entity's application, reviewed its records, inspected its fields and/or facilities, and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In its acceptance of this certification, the certified entity warrants that it is in, and will remain in, full compliance with the Terms and Conditions of the Certification Agent; and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3532 • Fax: (858) 792-8665

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049666-NOPLPO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 229 9088 District Line Road Burlington, WA 98233 USA
House IDs	229-1, 229-2, 229-3, 229-4, 229-5, 229-6
Effective Date	17-Jul-2010

Quality Assurance International, upon providing this certification, since then it has received the Certified Entity's application, reviewed its records, inspected its fields and/or facilities; and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In the acceptance of this certification, the certified entity warrants, that it is in, and will comply in, full compliance with the Terms and Conditions of the Certification Agreement and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92121, USA
Tel: (858) 792-3531 - Fax: (858) 792-8665

Page 1 of 1

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049669-NOPLPO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 224 14251 River Bend Road Mt. Vernon, WA 98273 USA
House IDs	224-1, 224-2, 224-3, 224-4, 224-5, 224-6, 224-7
Effective Date	17-Jul-2010

Quality Assurance International, upon providing this certification, states that it has received the Certified Entity's application, reviewed its records, inspected its fields and/or facilities; and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In its acceptance of this certification, the certified entity has stated, that it is in, and will remain in, full compliance with the Terms and Conditions of the Certification Agent; and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc.

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3531 • Fax: (858) 792-8665

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049657-NOPLPO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 326 32816 76th Avenue NW Stanwood, WA 98292 USA
House IDs	326-1, 326-2, 326-3, 326-4, 326-5, 326-6
Effective Date	17-Jul-2010

Quality Assurance International, upon providing this certification, states that it has received the Certified Entity's application, reviewed its records, inspected its fields and/or facilities, and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In its acceptance of this certification, the certified entity warrants, that it is in, and will remain in, full compliance with the Terms and Conditions of the Certification Agent and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3531 • Fax: (858) 792-8665

Page 1 of 17

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049664-NOPLPO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 230 8971 Harrison Road Sedro Woolley, WA 98284 USA
House IDs	230-1, 230-2, 230-3, 230-4, 230-5, 230-6
Effective Date	19-Jul-2010

Quality Assurance International, upon providing this certificate, states that it has received the Certified Entity's application, reviewed its records, inspected its [illegible] facilities, and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In its acceptance of the certification, the certified entity warrants, that it is in, and will remain in, full compliance with the Terms and Conditions of the Certification Agent; and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3531 • Fax: (858) 792-8665

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049668-NOP1,PO-4

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 227 25304 Minkler Road Sedro Woolley, WA 98284 USA
House IDs	227-1, 227-2, 227-3, 227-4, 227-5, 227-6
Effective Date	17-Jul-2010

Quality Assurance International, upon granting this certification, states that it has received the Certified Entity's application, reviewed its records, inspected its fields and/or facilities, and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In its acceptance of this certification, the certified entity warrants that it is in, and will remain in, full compliance with the Terms and Conditions of the Certification Agreement and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3531 • Fax: (858) 792-8665

National Organic Program Certificate of Compliance

Certified Organic

Number: C0049663-NOPLPO-5

Certified Entity	Draper Valley Holdings, LLC 1000 Jason Lane P.O. Box 838 Mount Vernon, WA 98273 USA
Type of Operation	Livestock (Poultry)
Certified Products	Per Attached NOP Organic System Plan Summary
Identification Marks	Per Attached NOP Organic System Plan Summary
Location Inspected	DVF 321 31332 68th Avenue NW Stanwood, WA 98292 USA
House IDs	321-1, 321-2, 321-3, 321-4, 321-5, 321-6
Effective Date	17-Jul-2010

Quality Assurance International, upon providing this certification, states that it has received the Certified Entity's application, reviewed its records, inspected its fields and/or facilities, and has determined that the certified entity identified above is operating in accordance with the Organic Foods Production Act of 1990 and 7 CFR Part 205. In its acceptance of this certification, the certified entity warrants that it is in, and will remain in, full compliance with the Terms and Conditions of the Certification Agent, and in accordance with general guidelines established by the USDA's National Organic Program. Certification valid until surrendered, suspended or revoked.

Signed on behalf of QAI Inc

Alexis Randolph
October 14, 2011

Quality Assurance International
9191 Towne Centre Drive, Suite 200, San Diego, California 92122, USA
Tel: (858) 792-3531 • Fax: (858) 792-3665

Exhibit 16
Diestel American Heirloom Collection Young Turkey Label and Certificate of Organic Production

CRYOVAC
FLEXOGRAPHIC SPECIFICATIONS
A SCREEN AREA
D REVERSE LINE BELOW MIN. SPEC.

DIESTEL

TURKEY RANCH®

Since 1949

Range Grown · Broad-Breasted

No Artificial Ingredients

Raised With No Antibiotics • Not Fed Animal By-Products

Old-Fashioned <A>

CERTIFIED ORGANIC

AMERICAN HEIRLOOM COLLECTION

YOUNG TURKEY <A>

Keep Refrigerated or Frozen

Humanely Raised On Sustainable Family Farms
No Artificial Ingredients • Just Pure Turkey
Gluten-Free

Weight	Per Lb.	Total Price
Lbs.		

May contain up to 3% retained water

Distributed by
Diestel Family Turkey Ranch
Sonora, CA 95370 • (209) 532-4950
Visit www.diestelturkey.com for recipe ideas and roasting instructions.
Certified Organic By Oregon Tilth

INSPECTED BY THE U.S. DEPARTMENT OF AGRICULTURE
EST. NO. ON BACK CLIP

USDA ORGANIC <B>

Nutrition Facts
Serving Size 4 oz. (113g)
Servings Per Container Varied

Amount Per Serving	
Calories 200 Calories from Fat 100	
	% Daily Value*
Total Fat 11g	17%
Saturated Fat 3g	16%
Trans Fat 0g	
Cholesterol 80mg	27%
Sodium 70mg	3%
Total Carbohydrate 0g	0%
Dietary Fiber 0g	0%
Sugars 0g	
Protein 22g	

Vitamin A 0% • Vitamin C 0%
Calcium 2% • Iron 10%
*Percent Daily Values are based on a 2,000 calorie diet.

SAFE HANDLING INSTRUCTIONS
THIS PRODUCT WAS PREPARED FROM INSPECTED AND PASSED MEAT AND/OR POULTRY. SOME FOOD PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PRODUCT IS MISHANDLED OR COOKED IMPROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDLING INSTRUCTIONS.

KEEP REFRIGERATED OR FROZEN. THAW IN REFRIGERATOR OR MICROWAVE.

KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES (INCLUDING CUTTING BOARDS), UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.

COOK THOROUGHLY.

KEEP HOT FOODS HOT. REFRIGERATE LEFTOVERS IMMEDIATELY OR DISCARD.

ZDD-COMPOSITE 16392-01	CUSTOMER - DIESTEL TURKEY RANCH ORIG DATE - 8/22/2005 CUST CODE -	GC - Nancy Stiles GIT - April Ashburn REV DATE - 5/25/2011

P001	P158	P174	P174
400873524	400873525	400873526	400873527

Sealed Air
CRYOVAC
Food Packaging Systems

The colors represented on this proof may not match those used in the final printing and thus should not be used as matches to the printed inks. Please use this proof for color **break** and refer to the Pantone Matching System® swatches or roll-outs for color **match**.

PLEASE CHECK THIS DRAWING!

THIS LABEL MUST BE FILLED OUT BEFORE CRYOVAC CAN PROCEED.

ALL PRINTING, ART WORK AND COMPOSITION ARE DONE ON YOUR INSTRUCTIONS AND ARE SUBJECT TO OUR CONDITIONS OF SALE.
CRYOVAC, SEALED AIR CORPORATION.

☐ O.K. AS IS, PROCEED TO PRINTING PLATES.
☐ CORRECTION-SEND REVISED CONTRACT PROOF.
☐ CORRECTION-PROCEED TO PRINTING PLATES, NO REVISED CONTRACT PROOF REQUIRED.

Return This Document By:_____

CUSTOMER SIGNATURE _____ DATE _____

Oregon Tilth Certified Organic

260 SW Madison Ave. Ste, 106, Corvallis, OR 97333
(503) 378-0690, fax (541) 753-4924

Certification Acknowledgement

This is to certify that

Diestel Turkey Ranch
PO Box 576
Sonora, CA 95370
United States of America

Please see addendum for facility locations

is certified organic by Oregon Tilth Certified Organic (OTCO)

Scope: Handling
Class OP - Organic Processor

Certification Number CA-OTCO-CO-99-00387

The certified operation has complied with the Organic Foods Production Act of 1990 and the applicable organic production and handling standards established by the USDA National Organic Program under 7 CFR Part 205.
The organic products processed are:

100% Organic Products:
Chicken and Chicken Parts, Dark Meat Ground Turkey, Heritage Whole Turkey, Turkey Meat Birds, Turkey Meat, Turkey Burgers, Ground Turkey, Boneless Young Turkey Roast, Young Turkey Breast with Ribs.

Organic Products:
Honey Roasted Turkey Breast, Naturally Oven Roasted Turkey Breast, Naturally Smoked Turkey Breast, Naturally Roasted Young Turkey.

The certified operation has been inspected annually by an agent of the OTCO program to verify to the best of our knowledge the standards have been met. Certification remains valid until surrendered, suspended, or revoked.

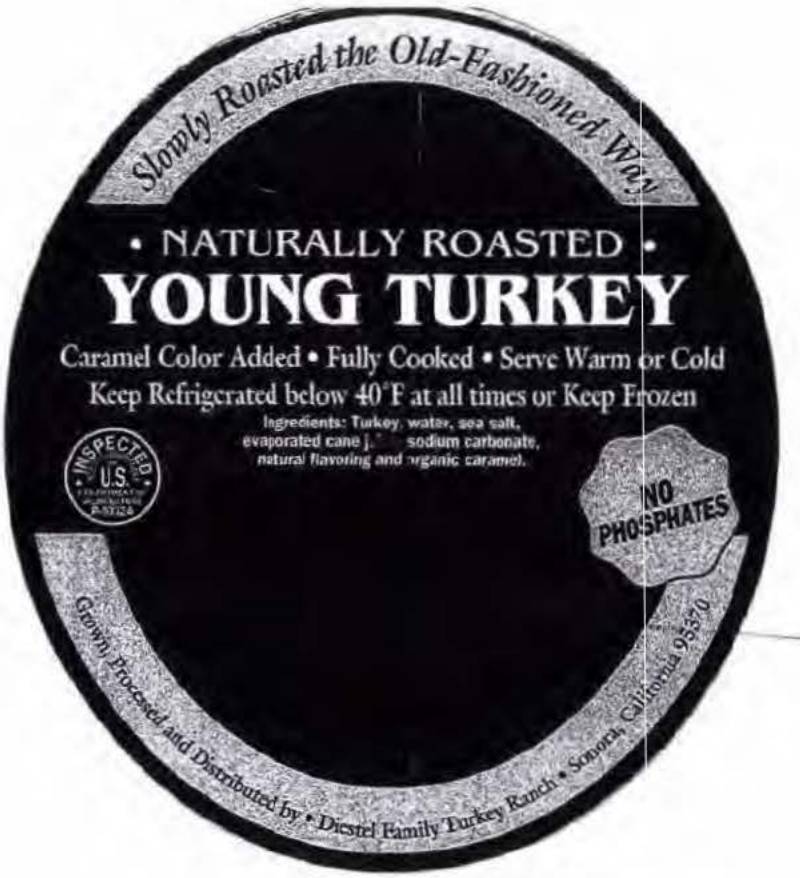
Kristy Kohl Sept 10, 2010
signed and dated Certification Director

Certified by OTCO since: 5/11/2001
NOP effective date: 4/29/2002

Class of Year

Litho in U.S.A.

Exhibit 17
Diestel's Naturally Roasted Young Turkey Label
and Certificate of Organic Production



syrup

Naturally Oven Roasted Diestel Turkey

To enjoy a moist and tender turkey, just remove chilled (not frozen) bird from bag, then heat by following these simple directions:

The Diestel Family has been making quality a tradition since 1949.

We are proud to bring you the natural quality of a range grown Diestel turkey, now fully cooked.

Slowly roasted in our own ovens, all you need to do is heat-to-taste.

Tender and juicy, your oven roasted Diestel turkey will delight you and your family with that old fashioned turkey flavor - a difference you can taste!

Enjoy the ease of heat n' serve!

Tim and Jean Diestel

The Basic
Leave nylon truss on legs as truss is oven safe and can withstand oven temperatures of up to 450°F. Place in a roasting pan and heat at 325°F. (See chart below for approximate heating times.) Turkey will brown naturally.

The Paste or Rub
Spread exterior of turkey with a blend of your favorite herbs and spices or with a paste made of the following:
4 Tbsp olive oil
2 tsp salt, or to taste
2 tsp garlic powder
2 tsp paprika
Heat as directed below.

Heating Times (Approx)

The Diestel Paste	
5 - 9 lbs.	1 hour
Diestel Turkeys	
10-12 lbs.	1 to 1 ¼ hours
12-14 lbs.	1 ¼ to 1 ½ hours
14-16 lbs.	1 ½ to 1 ¾ hours
16-18 lbs.	1 ¾ to 2 hours

NOTE: While the oven roasted turkey is fully cooked, we recommend heating-to-taste. When using a meat thermometer heat to a suggested internal temperature of 140°F. Let stand for 15 minutes before carving.

Nutrition Facts
Serving Size 3oz (85g)
Servings Per Container Varied

Amount Per Serving	
Calories 130	Calories from Fat 50
	% Daily Value*
Total Fat 6g	9%
Saturated Fat 1.5g	8%
Trans Fat 0g	
Cholesterol 50mg	17%
Sodium 300mg	12%
Total Carb 0g	0%
Dietary Fiber 0g	0%
Sugars 0g	
Protein 18g	
Vitamin A 0% • Vitamin C 0%	
Calcium 2% • Iron 6%	

*Percent Daily Values are based on a 2,000 calorie diet.

Diestel Family Turkey Ranch
Sonora, CA • (209) 532-4950 • www.diestelturkey.com

International Certification Services, Inc ®

Certificate of Organic Operation

Global Organics, LTD
339 Massachusetts Ave
Arlington, MA 02474
UNITED STATES
Tel: 781-648-8844
lisa.white@global-organics.com

Client ID Number: 0199085
Certificate Number: ICS-05641-2010
Certified since: 10/20/2005
Date Issued: 11/27/2012
Date of last inspection: 10/09/2012

Certified Products: Processed Products

Certified Organic to the **USDA National Organic Program**

USDA ORGANIC

Certification good until surrendered, suspended, or revoked according to USDA regulations 205.404(c) Granting Certification and 205.405 Denial of Certification.

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Exhibit 18
Economic Impact Analysis of Proposed Regulations for Living Conditions for Organic Poultry

August 2012

Economic Impact Analysis of Proposed Regulations for Living Conditions for Organic Poultry

Phase 3 Report

Prepared for

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Table of Contents

Chapter **Page**

List of Tables

Number **Page**

Preface

In September 2011, the U.S. Department of Agriculture's (USDA's) Agricultural Marketing Service (AMS) contracted with Vukina et al. Consulting to conduct a regulatory impact analysis on proposed changes to living standards for organic poultry. Vukina et al. Consulting completed three major steps (or phases) to conduct work under this contract:

- **Phase 1:** Evaluate and Document a Baseline Scope of the Industry
- **Phase 2:** Conduct Economic Impact Analysis of the Proposed Rule
- **Phase 3:** Prepare the Economic Analysis for Inclusion in Proposed Regulations

This document contains the Phase 3 report with relevant data and results from the earlier phases.

1 Background

The USDA Agricultural Marketing Service includes the National Organic Program (NOP). As part of the rulemaking process, the AMS conducts economic impact analyses of amendments to the national standards for production and handling of organic agricultural products. With potential changes in the requirements for living conditions for organic poultry, the NOP must consider the economic effects of these changes on the regulated industry.

The USDA NOP regulations at 7 CFR Part 205 set forth the national standards for production and handling of organic agricultural products. The NOP regulations were first published in 2000. In February 2010, AMS amended these regulations to include a substantial practice standard amendment regarding access to pasture for livestock. Poultry living conditions are regulated by § 205.238 (Livestock Health Care Practice Standard) and § 205.239 (Livestock Living Conditions).

The NOP regulations do not set specific stocking rates for either inside housing or the outside access areas, and further elaboration may be needed to ensure consistent regulatory implementation and enforcement. The NOP issued a general policy memo in October 2002 (NOP Policy Memo 11-5: reissued January 31, 2011) affirming that outside access areas are required, but it did not specify size or other details. In October 2002, an AMS appeal decision found that outdoor access could be provided by a fenced, roofed, and floored outside area (a "porch" attached to a poultry house) for the operation involved in the appeal. The NOP subsequently provided a memo regarding exemption to outside access for purposes of biosecurity (NOP Policy Memo 11-12, issued November 2005, reissued January 2011).

The National Organic Standards Board (NOSB), the NOP's federal advisory committee, made recommendations in April 2002, November 2009, and December 2011 on animal welfare issues. The NOSB also completed additional changes concerning appropriate living conditions for poultry at their December 2011 public meeting. The NOP requested an economic analysis of two options for regulations

regarding outdoor access for poultry based on NOSB recommendations and independent animal welfare standards, compared to existing regulations. The NOP may pursue a regulatory amendment to § 205.239 in accordance with NOSB final recommendations, which would clarify requirements for outside access and other living conditions for poultry.

2 Objectives

The objective of this project was to provide an independent economic impact analysis of possible regulatory changes for the living conditions for organic poultry, including a justification of the methodology. The complete analysis estimates the costs and benefits of implementing the proposed rule, compared with alternatives (as per Executive Order 12866). Alternatives include (1) no change to existing rule, (2) regulatory Option 2, and (3) regulatory Option 3. All work was conducted to comply with the USDA Information Quality Activities Regulatory Guidelines. The objective of this Phase 3 report was to provide the regulatory impact assessment and regulatory flexibility analysis based on the earlier phases of the project.

Regulatory Impact Assessment for Proposed Changes in Living Conditions for Organic Poultry (Executive Order 12866 and Executive Order 13563)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated an "economically significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the rule will be reviewed by the Office of Management and Budget.

The benefits and costs are summarized in Table I-1 and described in detail in this section.

Table I-1. Summary of Costs and Benefits

Costs	Benefits
Option 2	
▪ Organic broilers: negligible ▪ Organic eggs: negligible	▪ Fosters transparency of standards for living conditions for organic poultry ▪ Facilitates enforcement of animal welfare standards for organic poultry
Option 3	
▪ Organic broilers: $2.4 million annually ▪ Organic eggs: $68 million annually	▪ Fosters transparency of standards for living conditions for organic poultry ▪ Facilitates enforcement of animal welfare standards for organic poultry ▪ Increases consumer willingness to pay for organic poultry and eggs resulting from improved living conditions

A. Baseline

Based on data obtained by USDA-AMS from 36 USDA-accredited state and private organic certifiers in 2011, approximately 580 producers produce organic eggs, 138 produce organic pullets as inputs into layer operations, 288 produce organic broilers, and 111 produce organic turkeys. Table I-2 shows the number of birds on farms, number of producers, and number of operations for each type of

Table I-2. Number of Certified Organic Poultry and Egg Producers and Operations, 2011

Stock or Species	Number of Birds	Number of Producers	Number of Operations
Layer hens (inventory)	7,673,085	580	499
Pullets	4,785,493	138	112
Broilers	30,049,372	288	192
Turkeys	785,561	111	103

Source: Based on information collected by USDA-AMS from 36 USDA-accredited state and private organic certifiers.

product as calculated in Vukina et al. (2012a). Producers are contract operators of farms that produce organic products. In contrast, operations are the certified entities through which producers contract for the sale of their products. The nature of this relationship means that each operation can have multiple producers; thus, the number of operations is somewhat less than the number of producers for each type of product.

Based on the information collected by USDA-AMS from the USDA-accredited certifiers, organic producers range in size from fewer than 100 birds to several hundred thousand birds. The average size of organic producers is as follows: 17,000 birds for organic eggs, 50,000 birds for organic pullets, 61,000 birds for organic broilers, and 6,000 birds for organic turkeys. According to the USDA National Agricultural Statistics Service 2008 Organic Production Survey, the top-producing states for organic eggs, broilers, and turkey were California and Pennsylvania. Specifically, California comprised 18%, Pennsylvania comprised 15%, and Iowa comprised 6% of organic egg production. For organic broiler production, California comprised 67%, Pennsylvania comprised 8%, and Iowa comprised 7%. For organic turkey production, California comprised 49%, Pennsylvania comprised 14%, and Wisconsin comprised 2%.

Since 2000, the production of certified organic eggs has increased steadily from 21.6 million dozen to 148.9 million dozen in 2011, a sevenfold increase. Although certified organic egg production comprised less than 0.3% of total egg production in 2000, it comprised more than 2.1% of total egg production in 2011. As shown in Table I-3, the total value of organic egg production totaled $400.4 million in 2011. Because of the higher average farm price of organic eggs, $2.69 per dozen, compared with conventional eggs, $1.07 per dozen, the total value of organic egg production was 5.4% of the total value of egg production.

Inventories of organic broilers and organic turkeys on farms are substantially larger than in 2011 compared with 2000, but the inventories have fluctuated substantially year to year. Inventories of organic broilers were 1.9 million birds in 2000, increased to a peak of 10.4 million birds in 2005, and were 6.0 million birds in 2011. As shown in Table I-3, in 2011, organic broiler production was approximately 93.6 million pounds valued at $220.0 million, which is less than 1% of the total value of all broiler production.

Inventories of organic turkeys were 9,000 birds in 2000, increased to a peak of 399,000 birds in 2008, and declined to 224,000 birds in 2011. As shown in Table I-3, in 2011, organic turkey production was

Table I-3. Production Volumes and Values for Organic Eggs, Organic Broilers, and Organic Turkeys in 2011

	Production Volume	Total Production Value	% of Organic to Total Value
Organic eggs	148.9 million dozen	$400.4 million	5.4%
Organic broilers	93.6 million pounds	$220.0 million	0.8%
Organic turkeys	16.4 million pounds	$44.5 million	0.8%

approximately 16.4 million pounds valued at $44.5 million, which is less than 1% of the total value of all turkey production.

B. Alternatives Considered

Alternatives to this proposed rulemaking are to (1) make no substantial changes to the existing regulation, (2) adopt modified animal welfare standards similar to existing standards, and (3) adopt animal welfare standards that differ substantially from existing standards. The implementation period for Options 2 and 3 is 5 years.

Option 1 provides for no substantial changes to existing regulations. Living conditions under 205.239 do not specify indoor or outdoor stocking rates but require maintaining year-round living conditions that accommodate the health and natural behavior of animals. All animals must have year-round access to the outdoors, shade, shelter exercise areas, fresh air, clean water, and direct sunlight suitable to the species, stage of life, and climate. Use of covered porches or runs is acceptable and soil contact is not required. Pullets may be confined until 20 weeks of age if necessary (per 205.239(b)).

Option 2 is similar to existing animal welfare standards. In indoor housing, birds must be able to move freely and engage in natural behaviors (turn around, flap wings, scratch, and dust bathe). Scratch areas and dust baths must be provided. Houses with slatted floors must have a minimum of 15% of available floor space as dust bathing areas. For layers, perches are required with a minimum of 6 inches per bird, rails may be included in front of nest boxes, and the floor may be slatted or mesh. Layers in single level houses must have 1.5 square feet, layers in raised roost type houses must have 1.2 square feet, and layers in multitier houses must have 1.0 square feet provided that overhead perches and platforms provide for at least 55% of hens to perch. Broilers must have no more than 7 pounds liveweight per square foot, and turkeys must have no more than 7.5 pounds liveweight per square foot. Natural light is required such that reading is possible on a sunny day with the lights turned off. With artificial lighting, a dark period of at least 8 hours must be provided each day. Ventilation must be sufficient to ensure less than 25 ppm ammonia.

Under Option 2, exit doors must be distributed around the building and provide ready access to the outdoors such that more than one bird can exit at a time. Exit doors must be at least 16 inches wide by 14 inches high for layers, 2 feet wide by 18 inches high for broilers, and 3.3 feet high by 5 feet wide for turkeys. For outdoor access, pullets must be outside by 16 weeks, broilers by 4 weeks, and turkeys by 12 weeks. Outdoor access must be available when temperatures are over 50°F and provide direct sunlight although solid roofs are allowed. The surface of the run can be concrete but must have a well-maintained substrate of sawdust and wood chips, and scratch areas and dust baths in soil or suitable substrate must be available. Layers and broilers must have a minimum of 2.0 square feet per bird for a minimum of 5% of the total flock population, and turkeys must have a maximum of 7.5 pounds per square foot. Mobile outdoor pen units must provide a minimum of 2 square feet per bird and be moved to provide vegetative cover at all times.

Option 3 modifies the indoor living conditions (205.239) under Option 2 to provide more indoor space, minimum requirements for scratch areas and dust baths, and more exit door area and modifies outdoor living conditions to eliminate solid roofs, specify stocking rates, require soil scratching areas, and required year-round vegetative cover.

Under Option 3, stocking rates, which are calculated by the floor perimeter of the building not including nest boxes or perch areas, must provide a minimum of 2 square feet per period, a maximum of 5 pounds liveweight per square foot for broilers, 5.3 pounds liveweight for turkeys, and 3 pounds liveweight for pullets. For layers, perches are required with 6 linear inches per bird with at least 35 cm elevation. Pullets must have perches at 4 weeks of age. Scratch areas and dust baths must be available for at least 30% of available floor space. Houses with slatted floors are permitted if scratch areas are provided.

For Option 3, exit doors must provide ready access to the outdoors with a minimum of 6 linear feet per 1,000 birds and a minimum height of 14 inches. For the outdoor area, no solid roofs are permitted except for shade structures, a shaded area must be provided in warm weather, and birds must have soil contact. In addition, 50% vegetative cover must be provided year-round. Layers must have a minimum of 2 square feet per bird, broilers must have a maximum of 5 pounds liveweight per square foot, and turkeys must have a maximum of 3.5 pounds liveweight per square foot.

C. Benefits of the Regulation

The proposed options will result in nonmonetary benefits and monetary benefits reflected in the marketplace. For both Options 2 and 3, the nonmonetary benefits include fostering transparency of standards for living conditions for organic poultry and facilitating enforcement of animal welfare standards for organic poultry. Because the majority of operations of all sizes currently operate under conditions similar to Option 2, monetary benefits in the marketplace are negligible. Furthermore, the smallest size operations also currently operate under conditions similar to Option 3; thus, monetary benefits in the marketplace are negligible. However, monetary benefits will occur for larger size operations under Option 3.

Estimation of the monetary benefits of the regulatory options relies on the benefits transfer approach, which consists of a systematic review of the economic literature to determine if benefits estimates can be transferred from other similar studies and adjusted to reflect the regulatory options. The most important part of the proposed regulations for living conditions for organic poultry relates to reducing stocking densities, both indoors and outdoors; thus, studies addressing this particular aspect of animal welfare improvement are most relevant. The economics literature shows that consumers value improvements in animal welfare and the hypothetical willingness to pay for increased animal space could be quite substantial.

For the organic broilers industry segment, as shown later, the representative organic broiler producers already satisfy the regulatory requirements related to stocking rates proposed in Option 2; hence, the willingness to pay for the reduction in animal density to below 7 pounds per square foot has been already incorporated into the price of organic poultry. Therefore, no additional benefits are associated with Option 2. In contrast, Option 3 should generate additional benefits in the 30% range. This estimate is obtained by taking the lower bounds of the obtained intervals of peoples' stated preferences for increased animal space found in the related literature (McVittie, Moran, and Nevison, 2006) as the upper bounds for our regulatory benefit estimates. Therefore, even with this conservative approach, the shifts in consumer preferences associated with the perceived improvement in animal welfare will amount to an outward shift in the demand curve by 30%.

For the organic egg industry segment, the literature does not contain any consumer preference studies of animal welfare (living conditions) that are similar to the regulatory options. As with broilers, the representative organic egg producer already satisfies the regulatory requirements related to stocking rates proposed in Option 2. Therefore, the willingness to pay for the reduction in animal density has been already incorporated into the price of organic eggs, so no additional benefits are associated with Option 2. For Option 3, the benefits are likely similar across poultry species, such that in percentage terms, the demand shift of 30% is the same for organically produced eggs as it is for broilers.

D. Costs of Proposed Options

The cost estimation methodology involves two steps: estimating the baseline cost structure and break-even price and analyzing whether the regulatory options will have an impact on the established baseline cost structure. All regulatory requirements that could have an effect on a representative operation's baseline costs were quantified to obtain the new (post-regulation) cost structure and the new break-even price. The comparison of the new (post-regulation) and old (baseline) break-even prices is expressed as a percentage increase in the break-even price relative to the baseline and represents the cost increase due to regulation.

All baseline and cost-shifting scenarios are based on the assumption of a representative producer. To the extent that the entire industry (eggs or broilers) is fairly homogenous with respect to its cost structure within each size category, the representative agent approach is adequate. However, if the production technologies used in the industry vary substantially, then the representative agent approach might not capture all specific details of the different production processes. All cost-shift scenarios are based on the intermediate length of the run (5-year horizon) in which changes in variable costs through

inputs and output adjustments are possible together with some changes in fixed costs through small adjustments in land, buildings, and equipment. However, potential entry and exit of firms, as well as new construction of large-scale production facilities by existing firms as the result of regulation, is assumed not to occur.

The proposed regulation regarding the indoor and outdoor stocking rates was analyzed by first adjusting the indoor stocking rates by reducing the number of animals until the stocking rate is achieved. Thus, it was assumed that producers would not opt to construct a brand new housing facility to satisfy the indoor stocking rate constraint to keep the production at the original preregulation level. After this adjustment took place, the new proposed outdoor stocking rate might require a producer to purchase additional land at the prevailing market land prices. In some cases, the stocking rate regulation requirements are so restrictive that the reduction in revenue associated with the required reduction in the number of animals and the corresponding increase in average total cost will likely force some producers to exit.

Analysis of the costs of the regulatory options focuses on the following types of operations:

- organic layers: small flock (fewer than 16,000 layers), midsize flock (between 16,000 and 100,000 layers), and large flock (more than 100,000 layers)
- organic broilers: small flock (fewer than 100,000 birds per year) and large flock (more than 100,000 birds per year)

Organic turkeys comprise a much smaller portion of the market and likely have cost increases similar to organic broilers.

D.1 Regulatory Costs for Organic Egg Production

The representative typical organic egg producers regardless of size currently operate under the requirements proposed under Option 2; hence, the impact of proposed regulation on the break-even price is negligible. In contrast, the regulatory proposal summarized in Option 3 will have effects on the cost structure of representative medium- and large-scale organic egg producers through the following:

- a one-time (fixed) cost associated with retrofitting the house to install more exit holes;
- an increased requirement for more outdoor access, which will be reflected in fencing costs and the increased cost of land;
- increased mortality and reduced feed conversion associated with a substantially increased outdoor area; and
- additional heating costs to maintain the indoor environment within the thermal neutral zone of the chickens.

The majority of small-scale organic egg producers already meet the requirements of both regulatory options, so estimated costs are negligible.

For large producers, the most significant effect of the Option 3 regulation will be reflected in the requirement to significantly reduce the population density on the established farms in response to the proposed regulation regarding the indoor density with a large effect on the revenue reduction that could cause some of the large producers to exit the organic industry and convert their operations into conventional egg production. Based on the analysis in Vukina et al. (2012b), the combined effect of the Option 3 proposed regulation is estimated to be a 6.7% increase in the break-even price for midsize producers and a 96% increase in the break-even price relative to the baseline cost scenario for large producers as shown in Table I-4.

Table I-4. Comparison of Baseline and Option 3 Costs for Producing Organic Eggs, Midsize and Large Operations, 2011

	Midsize Operations (16,000–100,000 layers)		Large Operations (>100,000 layers)	
	Baseline	**Option 3**	**Baseline**	**Option 3**
Production volume				
Birds per operation	16,000	14,000	100,000	13,500
Organic eggs (dozen)	314,899	261,595	1,968,120	265,696
Breaker market eggs (dozen)	78,725	65,399	492,030	66,424
Costs per farm				
Total fixed costs	$518,225	$523,900	$3,986,200	$3,986,200
Annualized fixed costs	$58,210	$58,454	$418,234	$414,184
Variable costs	$779,345	$680,717	$4,661,742	$882,758
Total annual costs	$837,555	$739,172	$5,079,975	$1,296,943
Breaker market eggs revenue adjustment [a]	$58,256	$48,395	$364,102	$49,154
Costs per dozen eggs				
Break-even revenue per bird	$48.71	$49.34	$47.16	$92.43
Break-even price per dozen organic eggs	$2.47	$2.64	$2.40	$4.70
Percentage increase over baseline	—	6.7%	—	96.0%

[a] Breaker market egg price assumes $0.74 per dozen.

D.2 Regulatory Costs for Organic Broiler Production

The organic broiler producers regardless of size currently operate under the requirements proposed under Option 2. In contrast, the regulatory proposal summarized in Option 3 will have multiple effects on the cost structure of a representative large-scale organic broiler producer through the following:

- a one-time (fixed) cost associated with retrofitting the house to install more exit holes;

- an increased requirement for more outdoor access, which will be reflected in the increased cost of land; and
- increased mortality associated with a substantially increased outdoor area.

The majority of small-scale organic broiler producers already meet the requirements of both regulatory options; therefore, estimated costs are negligible.

Based on the analysis in Vukina et al. (2012b), the combined effect of all three effects on the cost structure for large producers is estimated to be a 2.3 % increase in the break-even price relative to the baseline scenario as shown in Table I-5.

Table I-5. Comparison of Baseline and Option 3 Costs for Producing Organic Broilers, Large Operations (Greater than 100,000 Birds Annually), 2011

	Baseline	Option 3
Production volume		
Birds per operation	300,000	300,000
Pounds per operation (live)	1,282,500	1,242,000
Costs per farm		
Total fixed costs	$589,600	$594,400
Annualized fixed costs	$59,303	$59,689
Variable costs	$1,274,588	$1,261,200
Total annual costs	$1,333,890	$1,320,889
Costs per pound		
Break-even price per pound (live)	$1.04	$1.06
Break-even price per pound (dressed)[a]	$0.81	$0.83
Percentage increase over baseline		2.3%

[a] Break-even price per pound based on an average liveweight of 4.5 pounds per bird and a dressing percentage of 78%.

D.3 Estimated Total Industry Costs

Using information collected by USDA-AMS from the USDA-accredited certifiers, an estimated 30% of organic eggs are produced by "small" producers, 54% by "medium" producers, and 16% by "large" producers. For broilers, only 1% of production is produced by "small" producers, and the remaining 99% is produced by "large" producers. The distribution of producers by size shows that 74% of egg producers are estimated to be small, 25% are estimated to be medium, and only 1% is estimated to be large. For broilers, 68% of producers are estimated to be small and 32% are estimated to be large.

The total estimated industry costs due to the proposed regulation under Option 2 are negligible. As shown in Table I-6, the total annual regulatory costs under Option 3 are estimated to be $68.1 million for organic eggs and $2.4 million for organic broilers for a total of $70.6 million. These estimates

Table I-6. Total Estimated Annual Industry Regulatory Costs under Option 3

	% of Production	Baseline No. of Units[a] (000s)	Units	2011 Total Industry Revenue[a] ($000s)	Regulatory Cost per Unit	Total Industry Costs
Total Organic Egg Production[b]	**100%**	**148,858**	**Dozen eggs**	**$400,366**	**$0.09**	**$68,118**
Eggs, small operations (inventory fewer than 16,000 birds)	30%	44,657	Dozen eggs	$120,110	Negligible	$0
Eggs, midsize operations (inventory of 16,000–100,000 birds)	54%	80,383	Dozen eggs	$216,197	$0.17	$13,334
Eggs, large operations (inventory greater than 100,000 birds)	16%	23,817	Dozen eggs	$64,058	$2.30	$54,784
Total Organic Broiler Production[c]	**100%**	**105,473**	**Pounds, dressed**	**$247,862**	**$0.02**	**$2,448**
Broilers, small operations (annual production fewer than 100,000 birds)	1%	1,055	Pounds, dressed	$2,479	Negligible	$0
Broilers, large operations (annual production greater than 100,000 birds)	99%	104,419	Pounds, dressed	$245,384	$0.02	$2,448
Total for Organic Eggs and Broilers				**$648,228**		**$70,566**

[a] Source: Revenue derived from production estimates obtained by USDA-AMS from 36 USDA-accredited state and private organic certifiers (2011) and prices based on simple averages of monthly prices provided by Lawrence Haller, Chief Economist, USDA-AMS, Poultry Programs.

[b] Total estimated dozens of organic eggs are based on laying hen counts published by USDA-NASS (2012a, 2012b), assuming 19.4 dozens of eggs per laying hen.

[c] Total estimated ready-to-cook organic chicken based on organic broiler numbers from USDA-NASS (2010) and data obtained by USDA-AMS (2011), an average weight of 4.5 live pounds per bird, and a dressing percentage of 78%.

represent 17% of estimated total industry revenue for organic eggs and 1% of estimated total revenue for organic broilers.

D.4 Estimated Market Effects of the Proposed Regulation

In response to the increased costs of the proposed regulation and consumer perceptions of the benefits of the proposed regulation in terms of improved living conditions, the markets for organic eggs and poultry will adjust. Because most producers are currently operating under conditions similar to Option 2, no further market adjustments are anticipated. If Option 3 is implemented, the increased costs of the proposed regulation will shift the supply curve upward for organic eggs and poultry. To the extent

that consumers may be willing to pay more for organic eggs and poultry as a result of the regulation, the demand curve for organic eggs or poultry will also shift upward.

Using an equilibrium displacement modeling approach, which assumes that organic and conventional poultry and egg products are substitutes in consumption and production and markets are perfectly competitive, the market impacts of Option 3 were estimated for the egg and broiler markets (Vukina et al., 2012b). The supply shifts were calculated as weighted averages of the per-unit regulatory costs across the different size categories resulting in the following estimates: 19.0% for organic eggs and 2.3% for organic broilers. The market effects were estimated with and without an estimated 30% increase in consumer willingness to pay for organic eggs and organic broilers.

The results of the egg market model show an increase in the price of organic eggs of 17.9% and a reduction in the quantity of organic eggs of 16.0%, assuming no changes in consumer willingness to pay. In the case of a 30% increase in consumer willingness to pay, the results of the egg market model show an increase in the price of organic eggs of 19.6% along with a 9.4% increase in the quantity of organic eggs.

The results of the broiler market show an increase in the price of organic broilers of 2.1% and a reduction in the quantity of organic broilers of 2.1%, assuming no changes in consumer willingness to pay. In the case of a 30% increase in consumer willingness to pay, the results of the broiler market model show a 4.0% increase in the price of organic broilers along with a 26.0% increase in the quantity of organic broilers.

In both the organic egg and broiler markets, total revenue will be relatively unchanged from the baseline assuming no change in consumer willingness to pay; therefore, profits will decline as a result of the increased costs of production. However, if consumer willingness to pay increases, increases in revenue may partially or fully offset the costs of the regulation. In all cases, some substitution will occur from the organic to the conventional product market as a result of increased prices in the organic market.

Regulatory Flexibility Analysis (5 U.S.C. et seq.)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant impact on a substantial number of small entities.

Pursuant to the requirements set forth in the RFA, AMS performed an economic impact analysis on small entities in the final rule published in the *Federal Register* on December 21, 2000 (65 FR 80548). AMS has also considered the economic impact of this proposed action on small entities. Small entities include producers engaged in crop and animal production and handlers that process organic products or develop, market, and sell organic products. AMS has determined that this proposed rule will have a significant impact on a substantial number of small entities.

A. Affected Entities

The Small Business Administration (SBA) defines small agricultural firms based on annual sales receipts (13 CFR 121.201). The size standard is $12.5 million in annual receipts for North American Industry Classification System (NAICS) code 112310 for chicken egg production. For agricultural firms producing broilers and other meat-type chickens (NAICS code 112310), turkeys (NAICS code 112330), and other poultry (NAICS code 112390) and operating poultry hatcheries (NAICS code 112340), the size standard is $0.75 million in annual receipts. Although some organic chicken egg and organic broiler producers are considered large according to these standards, all organic turkey producers, other organic poultry producers, and organic poultry hatcheries are assumed to be classified as small.

The available data on the size of organic egg and broiler firms are based on production capacity of producers. Thus, production capacity data are converted to approximate annual sales receipts using baseline break-even prices. Some producers operate under multi-establishment operations, but data are unavailable on the sizes of the operations and the nature of ownership of the operations. Therefore, the analysis is based on the size of producers and thus may overestimate the number of small businesses.

The three size classifications used in the analysis for organic egg producers are as follows: small producers with fewer than 16,000 birds (74% of producers), midsize producers with 16,000 to 100,000 birds (25% of producers), and large producers (1% of producers) with greater than 100,000 birds. All three sizes of organic egg producers classified on the basis of the production capacity (number of layers) completely or partially fit into the SBA category of small businesses because the cut-off revenue is $12.5 million. According to the production capacity classification, a large producer with 100,000 birds has estimated break-even revenue of slightly over $5 million (see Appendix Table C-3 in Vukina et al. [2012b]). However, there are two caveats.

First, the production capacity interval for large organic egg producers used in the analysis does not have an upper limit because the technological characteristics, the cost structure, and hence the break-even price of all large producers with 100,000 layers or more are similar, but the total revenue (gross receipts) is different based on production volume. Large egg producers with approximately 250,000 layers or more would not fit the SBA small business category because their gross receipts would exceed the $12.5 million limit. However, it is currently unknown how many organic egg producers operate with more than 250,000 layers.

Second, the production capacity classification is based on the capacity of individual producers, but individual producers could operate under contract with an integrator company. To the extent that the sum of the production capacities of several contract producers that produce eggs under contract for an integrator company exceeds 250,000 or more layers, that company would be classified as a large business. However, data are currently unavailable on the contracting relationships in the organic egg industry. In summary, all of the 430 small organic egg producers are likely small businesses, nearly all of the 145 midsize egg producers are likely single-establishment small businesses or owned by multi-establishment small businesses, and some if not all of the five large egg producers are likely single-establishment large businesses or owned by multi-establishment large businesses.

The two size classifications used in the analysis for organic broiler producers are as follows: small producers producing fewer than 100,000 birds per year (68% of producers) and large producers (32% of producers) producing more than 100,000 birds per year. All small organic broiler producers would be classified as small businesses with annual receipts of less than $0.75 million. The baseline cost scenario for large organic broiler producers assumes 50,000 birds per flock and six flocks per year (total of 300,000 birds per year), which results in an estimated break-even revenue of $1.34 million per year, which is greater than the $0.75 million size standard. Thus, organic broiler producers operating under these assumptions would be classified as large businesses. In contrast, those with total annual placement of 150,000 birds or fewer would be classified as small business even if they are categorized as “large” according to the production capacity classification. However, some of those producers that would individually be classified as small businesses would not meet the size standard if they are part of the vertically integrated poultry company that contracts the production of organic broilers with individual producers.

In summary, all of the 195 small organic broiler producers are likely small businesses, and many of the 93 large organic broiler producers are likely single-establishment large businesses or owned by multi-establishment large businesses.

B. Applicability

The requirements under Options 2 and 3 would apply to all sizes of organic egg and poultry producers. However, nearly all organic egg and broiler producers operate under conditions similar to Option 2 and thus would likely not need to make substantial changes to comply with the requirements.

Under Option 3, all small organic egg producers operate under conditions similar to the proposed living standards, while some of the midsize and all of the large producers will be required to make

changes to comply with the regulation. Thus, the midsize organic egg producers that are classified as small businesses will incur costs to implement the Option 3 requirements; however, it is uncertain what proportion of the midsize organic egg producers are classified as small businesses.

Furthermore, under Option 3, all small organic broiler producers operate under conditions similar to the proposed living standards, but most large organic broiler producers will be required to make changes to comply with the regulation. The large organic broiler producers that are classified as small businesses will incur costs to comply with the regulation; however, it is uncertain what proportion of the large organic broiler producers are classified as small businesses.

C. Direct Costs

The direct costs of Option 2 for small businesses are anticipated to be negligible because nearly all small producers currently operate under conditions similar to the proposed living standards under Option 2. However, they will incur some costs to review the requirements of the regulation and determine whether their farms are currently satisfying the living standards specified under Option 2. Similarly, the direct costs of Option 3 for the small organic egg producers and small organic broiler producers are also anticipated to be negligible because they operate under conditions similar to the proposed living standards under Option 3.

A portion of the midsize organic egg producers would be classified as small businesses. Under Option 3, midsize organic egg producers would incur an estimated 6.7% increase in costs including annualized fixed costs, annual variable costs, and reduced revenue due to changes in production volumes estimated. Furthermore, a portion of the large organic broiler producers would be classified as small businesses. Under Option 3, large organic broiler producers would incur an estimated 2.3% increase in costs including annualized fixed costs and annual variable costs.

D. Indirect Costs

In addition to the direct costs of regulation addressed above, the proposed regulatory action could create other kinds of costs to the organic poultry industry and possibly also to closely affiliated industries such as the conventional poultry industry and the organic feed industry.

First, related to Option 3 is the problem of entry and exit of firms that the regulation could induce, which cannot be addressed within the structure of the market modeling approach. As mentioned before, large organic eggs producers, if faced with the Option 3 regulation, will likely exit the organic industry and become conventional egg producers. In the modeling approach, the implicit assumption is that they will not exit but instead would respond to the regulation with a substantial reduction in output. However, if large egg producers exit organic production and continue supplying the same number of eggs but to the conventional market, the conventional eggs market price would likely decrease substantially because of the large increase in quantity supplied. The extent of these adjustments in the conventional market is difficult to forecast. At the same time, the departure of large organic egg producers from organic production would cause a temporary sharp increase in the organic egg price because of the substantial reduction in quantity supplied. In the long run, this would attract new producers into the organic industry

and the price would return to a level similar to the baseline price (that is, the long-run equilibrium price) unless some other changes in technology or production factor prices occur.

Second, the departure of organic producers from the organic industry or even a sharp reduction in the volume of output as predicted by the market model could have potentially important impacts on the organic feed industry. The issue is best illustrated using the organic egg industry. Option 3 would result in no reduction in the number of layers for small producers, a 12.5% reduction for the midsize producers, and an 86.5% reduction for the large organic producers. Based on the estimates of the number of organic layers in 2011 of 7.7 million hens, which produced 148.9 million dozens of organic eggs, and the assumption that 80% of total egg production qualifies as organic eggs, whereas the remaining 20% goes into the breaker market, the estimated total number of eggs (organic and regular) produced is 186 million dozen or 24.24 dozen per hen per year. Furthermore, estimates of the size distribution of producers classify 54% of producers as midsize and 16% as large. Based on these estimates, the total industry-wide reduction in the number of laying hens due to the Option 3 regulation would amount to 1,579,888 million hens. Taking into account a preregulation feed conversion ratio of 3.8 pounds of feed per 1 dozen eggs and a worsened postregulation feed conversion ratio of 4.0, the total industry preregulation feed consumption at 706.8 million pounds would decline to a postregulation feed consumption at 591.0 million pounds. Assuming a typical layer feed ration consists of 70% corn and 30% soybeans and the fact that there are 56 pounds of corn in a bushel and 60 pounds of soybeans in a bushel, corn consumption by the organic egg production industry would decline from 8.8 million bushels preregulation to 7.4 million bushels postregulation, and soybean consumption would decline from 3.5 million bushels preregulation to 2.95 million bushels postregulation.

Calculating the indirect effect of Option 3 on the market for organic grains (corn and soybeans) requires information on average prices and total quantities of organically produced grains. Based on AMS market reporting data for 2011, the average price of organic corn was $10.50 per bushel and the average price of organic soybeans was $18.86 per bushel. Using the most recent data available from the Agricultural Census, 15.75 million bushels of organic corn and 2.58 million bushels of organic soybeans were harvested in 2008.

Taking the above data as reference points and assuming that demand for organic corn and soybeans is inelastic with an assumed price elasticity of −0.8 for each product, using the standard demand elasticity formula shows that the price of organic corn would drop by an estimated $1.20 per bushel (11.5% decline), and the price of organic soybeans would drop by an estimated $5.30 per bushel (28% decline). The estimated effects would be somewhat smaller if the organic grain production has increased since 2008, which is the most recent year for which data are available. Under the same set of assumptions, for every 10% increase in the organic grain production relative to the 2008 levels, the price decline would be mitigated by about 10 cents per bushel for corn and about 50 cents per bushel for soybeans.

E. Conclusion

Overall, the impact of the proposed changes under Option 2 on the organic poultry and egg industry are negligible because most producers are operating under conditions similar to the proposed living standards. Under Option 3, the impact of the proposed changes on small organic poultry and egg

producers are also negligible because most small producers are operating under conditions similar to the proposed living standards. However, costs will increase substantially under Option 3 for large organic egg producers and likely cause a substantial number of producers to exit organic production and switch to conventional production. The switch from organic to conventional production for large organic egg producers would also affect the markets for organic corn and soybean used as feed and cause a substantial decline in the price of organic feed. A portion of the midsize organic egg producers is small businesses, and they would incur a modest increase in costs of production under Option 3. In the organic broiler industry, costs would increase modestly under Option 3 for large organic broiler producers. A portion of the large organic broiler producers is small businesses, and they would similarly incur a modest increase in the costs of production under Option 3.

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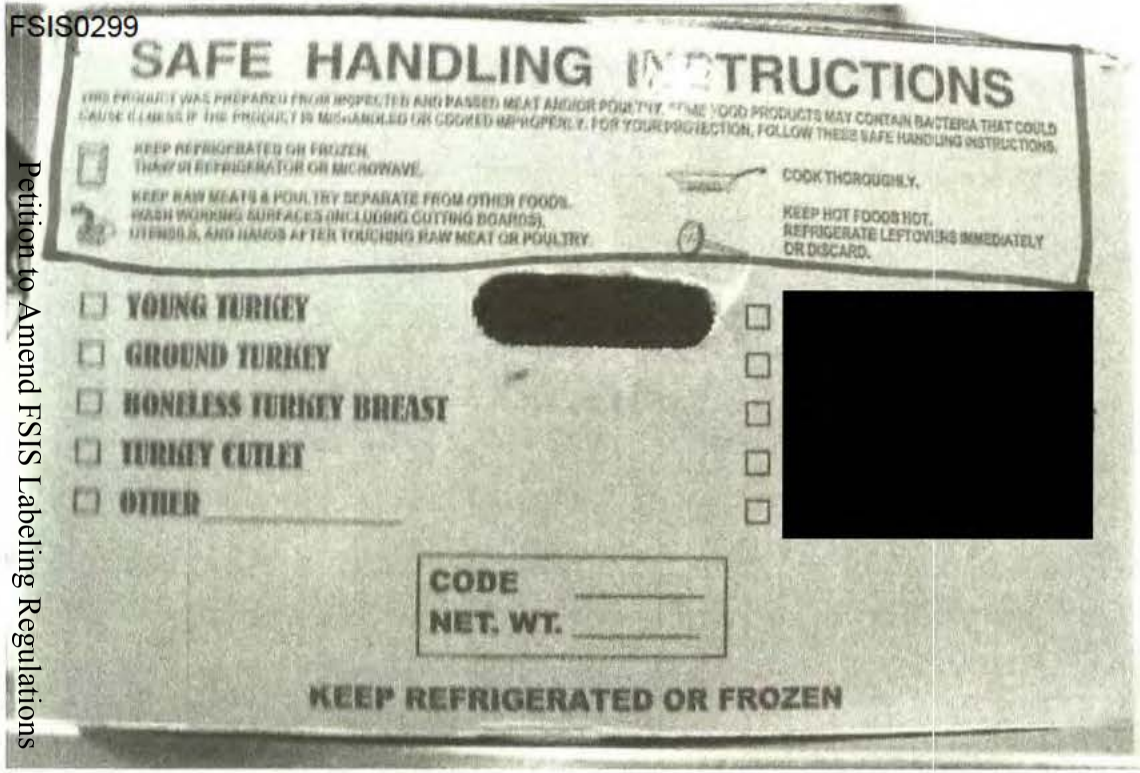
Exhibit 19
Misty Knoll Farms Label



Cuts of cooking
Box, shipping container -
- Both ends printed -
- other 2 sides and top
are blank -
RB.

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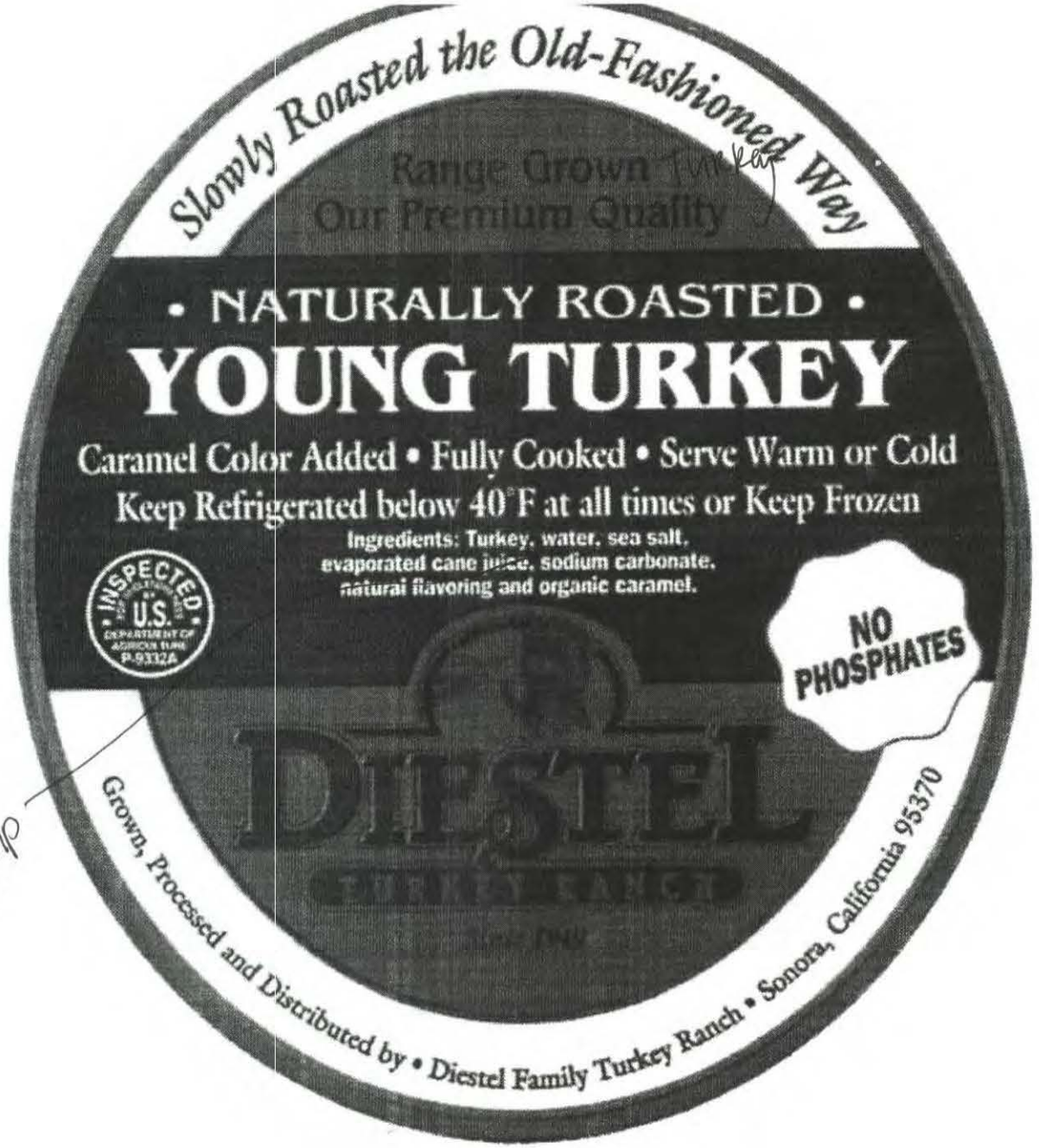
Exhibit 20
Diestel Naturally Roasted Young Turkey
Label and GAP Step 3 Certificate


Slowly Roasted the Old-Fashioned Way
Range Grown Turkey
Our Premium Quality
• NATURALLY ROASTED •
YOUNG TURKEY
Caramel Color Added • Fully Cooked • Serve Warm or Cold
Keep Refrigerated below 40°F at all times or Keep Frozen
Ingredients: Turkey, water, sea salt,
evaporated cane juice, sodium carbonate,
natural flavoring and organic caramel.
INSPECTED U.S. DEPARTMENT OF AGRICULTURE P-9332A
NO PHOSPHATES
DIESTEL
FAMILY RANCH
Grown, Processed and Distributed by • Diestel Family Turkey Ranch • Sonora, California 95370


INSPECTED
FOR WHOLESOMENESS
BY
U.S.
DEPARTMENT OF
AGRICULTURE
P-9332A

EARTHCLAIMS LLC

CERTIFICATE OF COMPLIANCE

Certificate Number 01646

Diestel Turkey Ranch - Lookout
11171 Highway 108
Jamestown, CA 95327

meets the minimum compliance requirements, as designated by the Global Animal Partnership, of the

5 STEP ANIMAL WELFARE RATING STANDARDS FOR TURKEYS

and is awarded a

STEP LEVEL 3 RATING

This certificate is effective on October 5, 2011 and expires on January 5, 2013 and is not transferable.

The operation listed may designate only **turkeys** from the production system certified as meeting the requirements of the awarded Step Level Rating. No other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

The standards for the Global Animal Partnership 5 Step Animal Welfare Rating program can be found at www.globalanimalpartnership.org.

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Exhibit 21
Diestel Ground Turkey Label
and GAP Step 3 Certificate

INSPECTED FOR WHOLESOMENESS BY U.S. DEPARTMENT OF AGRICULTURE P-9332A

Producing Quality Naturally Since 1949
Grown, Processed and Distributed by
Diestel Family Turkey Ranch • Sonora, CA 95370

EARTHCLAIMS LLC

CERTIFICATE OF COMPLIANCE

Certificate Number 01647

Diestel Turkey Ranch - GSF
13630 Highway 108
Jamestown, CA 95329

meets the minimum compliance requirements, as designated by the Global Animal Partnership, of the

5 STEP ANIMAL WELFARE RATING STANDARDS FOR TURKEYS

and is awarded a

STEP LEVEL 3 RATING

This certificate is effective on October 5, 2011 and expires on January 5, 2013 and is not transferable.

The operation listed may designate only **turkeys** from the production system certified as meeting the requirements of the awarded Step Level Rating. No other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

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Exhibit 22
Diestel Young Turkey Label
and GAP Step 2 Certificate

ZDD-COMPOSITE 43382-01	CUSTOMER - DIESTEL TURKEY RANCH ORIG DATE - 9/13/2011 CUST CODE -	GC - Nancy Stiles GIT - Robert Krueger REV DATE - 9/13/2011

C280 400916837 P541 400916838 P201 400916839

Sealed Air
CRYOVAC
Food Packaging Systems

The colors represented on this proof may not match those used in the final printing and thus should not be used as matches to the printed inks. Please use this proof for color **break** and refer to the Pantone Matching System® swatches or roll-outs for color **match**.

PLEASE CHECK THIS DRAWING!

THIS LABEL MUST BE FILLED OUT BEFORE CRYOVAC CAN PROCEED.

ALL PRINTING, ART WORK AND COMPOSITION ARE DONE ON YOUR INSTRUCTIONS AND ARE SUBJECT TO OUR CONDITIONS OF SALE.
CRYOVAC, SEALED AIR CORPORATION.

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- ☐ CORRECTION-SEND REVISED CONTRACT PROOF.
- ☐ CORRECTION-PROCEED TO PRINTING PLATES, NO REVISED CONTRACT PROOF REQUIRED.

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CERTIFICATE OF COMPLIANCE

Certificate Number 02645

(b)(4)

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5 STEP ANIMAL WELFARE RATING STANDARDS FOR TURKEYS

and is awarded a

STEP LEVEL 2 RATING

This certificate is effective on September 27, 2012 and expires on December 27, 2013 and is not transferable.

The operation listed may designate only turkeys from the production system certified as meeting the requirements of the awarded Step Level Rating. No other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

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Exhibit 23
Diestel Young Turkey Label
and GAP Step 3 Certificates

ZDD-COMPOSITE 43382-01	CUSTOMER - DIESTEL TURKEY RANCH ORIG DATE - 9/13/2011 CUST CODE -	GC - Nancy Stiles GIT - Robert Krueger REV DATE - 9/13/2011

C280 400916837 P541 400916838 P201 400916839

Sealed Air
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Meeting All Requirements of

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STEP LEVEL 3 RATING

Effective on: January 5, 2013 and Expires on: April 5, 2014
Non-Transferable

Animals and animal products must be marketed solely under USDA-approved labels of **Diestel Turkey** and no other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

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Jamestown, CA 95327

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5 STEP ANIMAL WELFARE RATING STANDARDS FOR TURKEYS

STEP LEVEL 3 RATING

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Non-Transferable

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STEP LEVEL 3 RATING

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Non-Transferable

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La Grange, CA 95329

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STEP LEVEL 3 RATING

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Non-Transferable

Animals and animal products must be marketed solely under USDA-approved labels of **Diestel Turkey** and no other product is eligible to carry or imply the Step Level Rating authorized by this certificate.

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