



# Animal Welfare Institute

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Docket Clerk  
USDA, Food Safety and Inspection Service  
1400 Independence Avenue SW  
Mailstop 3758, Room 6065  
Washington, DC 20250-3700

Submitted via Regulations.gov website

RE: FSIS Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submission; Docket No. FSIS-2016-0021

To Whom It May Concern:

Thank you for the opportunity to submit comments on behalf of the Animal Welfare Institute (AWI) and our supporters nationwide on the FSIS labeling guideline related to documentation needed to substantiate “free range” and equivalent animal-raising claims. These comments are being offered in addition to the material contained in AWI’s 2016 rulemaking petition (#16-01), which requested that FSIS regulate the definition and substantiation required for use of this claim.

## Background

In January 2016, the Animal Welfare Institute submitted a rulemaking petition to FSIS requesting regulation of “free range” and the equivalent claims “free roaming” and “range grown.” (At that time, AWI did not request regulation of “pasture raised,” because it is not an equivalent claim.) The petition was based on AWI’s research into the government’s approval process for the free range claim. AWI had submitted Freedom of Information Act (FOIA) requests for dozens of free-range labels in the early 2010s. After waiting approximately four years for the records, AWI successfully sued FSIS under FOIA, and eventually received the records.

Many of the label approval files reviewed by AWI included a definition for the claim accompanied by a third-party certificate and/or an affidavit asserting the definition. However, serious deficiencies were noted, including vague definitions and/or vague affidavits, outdated certificates, and certificates not relevant to the claim. (See AWI’s 2016 rulemaking petition and its December 2015 report, *USDA Gives Producers Free Reign Over “Free Range” Product Labels.*)

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

AWI received no response to its petition for nearly four years, until December 2019, when FSIS sent an “interim response” that neither granted nor denied the petition. The response indicated FSIS was accepting additional public comment on the “free range” claim and that the agency had considered AWI’s petition as a comment on the 2016 label guideline, even though the petition had been submitted nine months or so before the guideline was released. In 2016, FSIS failed to provide information and solicit public comment on AWI’s pending free range petition, AWI’s pending petition on humane and sustainable claims, and the Animal Legal Defense Fund’s petition on antibiotic claims, despite the fact that all three of these petitions were submitted well in advance of the label guideline publication.<sup>1</sup>

### **Comments and Recommendations on the Free Range Claim**

AWI is opposed to the manner in which the current labeling guideline addresses free range and equivalent claims for the following reasons:

#### **1. FSIS Should Not Allow Producers to Define the Claim**

FSIS should not allow producers to define these claims, as doing so leads to confusion and inconsistency that harms both consumers and producers. It was for this reason that a standard definition was established in the late 1990s for the “organic” claim. The same reasoning applies to free range and other animal-raising claims, along with animal welfare and environmental stewardship claims. Moreover, consumers are strongly opposed to approving label claims in this manner. In a September 2018 consumer survey conducted by The Harris Poll for AWI, 79 percent of respondents agreed with the statement: “Producers should not be allowed to set their own definition for claims about how farm animals are raised (e.g., “free range,” “no added hormones,” “all natural”).” (See attached AWI Survey, Part I.)

#### **2. Requiring Definitions on Packaging is Inappropriate**

Defining these claims on the package is also not appropriate, as the label offers insufficient space to contain all the relevant information needed by consumers to make informed decisions. The more comprehensive and holistic the claim, the more difficult it is to define in a few words on a product label. Over the past five years, AWI has examined dozens of label definitions, and despite our extensive expertise in animal-raising claims, we have been unable to discern the meaning of a significant number of the definitions. Many definitions appear to be overly vague, inappropriate, and/or irrelevant to the claim being made. (See AWI’s 2019 report, *Label Confusion 2.0: How the USDA Allows Producers to Use “Humane” and “Sustainable” Claims on Meat Packages and Deceive Consumer.*)

Instead of requiring on-label definitions, FSIS should establish clear standards. This is what consumers want and expect. In the September 2018 consumer survey referenced above, 88 percent of respondents agreed with the statement: “Clear, consistent standards should be established for the approval of food label claims that deal with how animals are raised.” (See attached AWI Survey, Part I.)

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<sup>1</sup> AWI believes FSIS’s treatment of its free range petition is unreasonable. In the future, FSIS should open comment on rulemaking petitions relevant to agency actions and avoid mischaracterizing stakeholder communications. These precautions would allow consideration of relevant stakeholder viewpoints and ensure compliance with the Administrative Procedure Act’s prohibition on arbitrary decision making.

### 3. Consumer Advocates View the Free Range Claim as Misleading

The living conditions claims “free range” and “pasture raised,” as currently approved by FSIS, are misleading because they require neither range nor pasture. A September 2013 article in *Consumer Reports* magazine, titled “Making Sense of Food Labels,” characterizes the free range claim on poultry as not meaning what consumers think it does. “This label is so sad,” said Urvashi Rangan, PhD, director of Consumer Reports’ Center for Consumer Safety and Sustainability. “It invokes images of happy, free-grazing animals, but in fact producers only have to allow them some access to open air for an unspecified amount of time each day—even if it’s only 5 minutes.”

The *Buying Poultry* website for consumers, administered by the non-profit organization Farm Forward, describes the free range and free roaming claims as “potentially misleading.” Poultry products that carry these claims without additional welfare certifications receive a grade of “D” on the website. In addition, AWI’s *Consumer’s Guide to Food Labels and Animal Welfare* does not endorse the claim, because the level of animal welfare can vary from very low to very high for different products with the same label, which is exactly what happens when producers are allowed to set their own standards.

### 4. A More Detailed Definition is Needed to Ensure Animal Welfare and Consistency

Inadequate outdoor access that features a limited number of small exits, lack of shade, lack of protection from predators, and little or no vegetation explains why birds either can’t or won’t take advantage of outdoor access when it is offered. These conditions are inconsistent with the concept of free range and with consumer expectations for the claim. Unfortunately, FSIS allows all of these conditions under its current labeling guideline.

In terms of providing access to soil and vegetation, FSIS’s stipulation that free range animals are never confined to a feedlot is not enough and does not prevent animals from being confined to an outdoor space containing only gravel or concrete. Many of the free range definitions reviewed by AWI for its 2016 petition referred to “yards” and “range areas,” but they did not give any details regarding the substrate/surface. At a minimum, the FSIS guideline should provide that free range animals, both livestock and poultry, are never confined to an area without soil, and vegetation during the growing season.

To help ensure animal welfare, FSIS should require that substantiation for the “free range” claim include how the producer will provide 1) adequate access to the outdoors, 2) access to soil, and vegetation during the growing season, and 3) protection for the animals from the adverse effects of weather and predators. Many producers and third-party certification programs already require these conditions for use of the free range claim. A recent review by AWI of claims being used on packages of eggs and egg products revealed that seven of seven free-range egg brands require some form of ground cover to facilitate foraging, and nine of nine pasture-raised egg brands require pasture. (See attached AWI Egg Label Table.) In addition, nearly all free-range and pasture-raised brands reviewed require outdoor protection from weather and predators.

### 5. “Not Confined,” “Free Range,” and “Pasture Raised” are NOT Equivalent Claims

The guideline treats “non confined” (which we view as equivalent to “outdoor access”), “free range/free roaming,” “pasture fed/pasture grown/pasture raised,” and “meadow raised” as equivalent or synonymous terms, when in fact they are not used interchangeably by the meat,

poultry, and egg industries. FSIS's policy of considering these claims as equivalent causes confusion and unfair competition in the marketplace that harms both producers and consumers.

AWI's review of egg claims mentioned above showed a dramatic difference between producer definitions for "free range" and "pasture raised." (See attached AWI Egg Label Table.) Of six major egg companies that offer both free-range and pasture-raised brands, all six use very different definitions for the two claims. Five of the six companies define free-range eggs as from hens having access to a minimum of **2 square feet** of outdoor space, while all six define pasture-raised eggs as from hens having access to a minimum of **108 square feet** of grass or pastureland. (It goes without saying that 2 and 108 are not equivalent.)

Although less pronounced, a difference also exists between producer definitions for free range and pasture raised for meat and poultry. It is probably not a coincidence that market consistency seems to be highest for a product (shell eggs) that is not covered by the FSIS pre-market label approval process. AWI views this finding as an indication that the FSIS process is fundamentally flawed and promotes inconsistency.

#### 6. AMS Lacks the Authority to Determine Labeling Requirements for the Claim

The 2019 label guideline and associated *Federal Register* notice make vague reference to a consultation between FSIS and the Agricultural Marketing Service (AMS) on the necessity for producers to provide additional terminology on the label for the free range claim on poultry. (Specifics regarding this consultation are not provided.) According to FSIS, the conclusion was that additional information was not necessary. By FSIS's own admission this consultation took place more than 20 years ago. However, in January 2016, AMS withdrew its standards for meat marketing claims, explaining that it had determined the program lacked authority to develop these standards (further clarifying that its authority covered organic and country-of-origin labeling only). Only FSIS can determine that no additional terminology is needed. While, as previously noted, we don't support defining animal-raising claims on the label, we see no justification for FSIS—or AMS for that matter—requiring an explanation for free range and similar claims on labels for meat but not poultry.

### Conclusion

The current FSIS labeling guideline allows for the approval of "free range" claims without any evidence of animal access to range, and the approval of "pasture raised" claims without any evidence of animal access to pasture. This inconsistency in the label approval process harms consumers, as well as the producers who are trying to sell the authentic products that consumers seek.

Higher-welfare, sustainable farmers have expressed to AWI that they view the USDA label approval process as among the greatest threats to their livelihood. They simply can't compete within a market where inaccurate, deceptive labelling claims are allowed. It is highly ironic that FSIS denied AWI's third-party certification petition on the basis of cost to the producer. In fact, hundreds—if not thousands—of farmers have been forced to spend money to participate in these programs as a means of differentiating their products from those taking advantage of deceptive label claims. These producers are paying, in a very literal way, for the failure of the FSIS label approval process.

It is evident to AWI that the current FSIS label approval process, particularly in the absence of third-party certification, does more harm than good. However, the solution is simple. FSIS should 1) establish clear,

consistent standards for animal-raising claims and 2) require third-party certification for complex, holistic claims (e.g., "humanely raised," "sustainably farmed").

We appreciate the opportunity to comment on an issue of great importance to our supporters. Please feel free contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink that reads "Dena Jones". The signature is written in a cursive style with a large, looping initial "D".

Dena Jones  
Director, Farm Animal Program

Attachments





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## Survey of Consumer Attitudes about Animal Raising Claims on Food (Part I)

In September 2018, the Animal Welfare Institute (AWI) commissioned a national web-based survey of consumer perceptions of marketing label claims related to how animals are raised for food. The survey questions and the responses received follow:

- How often do you purchase any type of meat, poultry, egg, or dairy product (e.g., milk, cheese, butter) from a store or market?

4 times or more per month	55%
2-3 times per month	33%
Once per month	8%
Less than once per month	2%
Never	2%

	<u>Total Sample</u>	<u>Frequent Purchaser*</u>
2. How concerned are you about the welfare of farm animals (e.g., cows, pigs, chickens)?		
Very/somewhat concerned	68%	70%
Not very/not at all concerned	32%	30%
3. When shopping for meat, poultry, dairy, or eggs, how often do you check the package label for information about how the animals are raised?		
At least sometimes	60%	63%
Rarely/never	40%	37%

- How much do you agree or disagree with each of the following?

- Clear, consistent standards should be established for the approval of food label claims that deal with how animals are raised.

Strongly agree	49%	54%
Somewhat agree	39%	37%
<b>Total:</b>	<b>88%</b>	<b>91%</b>

Somewhat disagree	9%	6%
Strongly disagree	3%	3%
<b>Total:</b>	<b>12%</b>	<b>9%</b>

- Producers should not be allowed to set their own definition for claims about how farm animals are raised (e.g., "free range," "no added hormones," "all natural").

Strongly agree	39%	43%
Somewhat agree	40%	38%
<b>Total:</b>	<b>79%</b>	<b>81%</b>

Somewhat disagree	16%	15%
Strongly disagree	5%	4%
<b>Total:</b>	<b>21%</b>	<b>19%</b>

- c. Farms should be inspected by the government or a qualified independent party to verify that any animal raising claims used on a label are accurate.

Strongly agree	50%	57%
Somewhat agree	38%	33%
<b>Total:</b>	<b>88%</b>	<b>90%</b>

Somewhat disagree	9%	7%
Strongly disagree	2%	2%
<b>Total:</b>	<b>12%</b>	<b>10%</b>

- d. I consider claims made on package labels when making purchasing decisions for meat, poultry, dairy or egg products.

Strongly agree	21%	23%
Somewhat agree	47%	48%
<b>Total:</b>	<b>67%</b>	<b>71%</b>

Somewhat disagree	24%	21%
Strongly disagree	9%	8%
<b>Total:</b>	<b>33%</b>	<b>29%</b>

- e. I am confused about the meaning of some food label claims that may relate to how farm animals are raised (e.g., “free range,” “no added hormones,” “all natural”).

Strongly agree	14%	16%
Somewhat agree	42%	41%
<b>Total:</b>	<b>56%</b>	<b>58%</b>

Somewhat disagree	31%	27%
Strongly disagree	13%	15%
<b>Total:</b>	<b>44%</b>	<b>42%</b>

\*Respondents purchasing any type of meat, poultry, egg, or dairy product 4 or more times per month.

#### Survey Method:

This survey was conducted online within the United States by The Harris Poll on behalf of **Animal Welfare Institute** from September 18-20, 2018 among 2,006 U.S. adults ages 18 and older, among whom 1,969 have purchased meat, poultry, egg or dairy products from a store or market. This online survey is not based on a probability sample and therefore no estimate of theoretical sampling error can be calculated. For complete survey methodology, including weighting variables and subgroup sample sizes, please contact Dena Jones (dena@awionline.org).

**AWI Egg Label Table**

Company	Products with an animal raising claim	Free range space requirement	Pasture raised space requirement	Egg products with animal raising claims?
Born Free	Free range shell eggs Pasture raised shell eggs	Hens are free to roam in spacious barns, and have access to the outdoors. (found on company website) (Certified Humane, which requires minimum <b>2 sq. ft. per bird</b> )	Pasture raised hens have a housing system that provides a more expansive outdoor area that is at least equivalent in size to the indoor space, and often considerably larger. (Certified Humane, which requires minimum <b>108 sq. ft. per bird</b> )	No
Chino Valley Ranchers	Organic free range shell eggs Pasture raised shell eggs	Eggs come from hens raised in free roaming environments with access to sunlight, premium organic feed, and plenty of fresh air and water (found on package)	Hens are raised on dedicated pastureland with at least <b>108 sq. ft. for each bird</b> (found on company website)	Yes: Organic liquid eggs with free-roaming claim
Farmer's Hen House	Free range shell eggs Pasture raised organic shell eggs	A minimum of <b>2.0 sq. ft. per hen</b> (found on company website)	<b>108 sq. ft./bird</b> guaranteed! (found on package)	No
Handsome Brook Farm	Pasture raised shell eggs	N/A	<b>108+ square feet per hen</b> (found on package)	No
Happy Egg Co.	Free range shell eggs	Hens spend their days roaming outdoors on 8 acres of land, providing a minimum of <b>21.8 sq. ft. of space per hen</b> (found on website)	N/A	No
Kroger's Simple Truth	Pasture raised shell eggs	N/A	<b>108 sq. ft. per bird</b> (found on package)	No
NestFresh	Free range shell eggs Pasture raised shell eggs	No definition on package or website (Certified Humane, which requires minimum <b>2 sq. ft. per bird</b> )	<b>108 sq. ft.</b> of grass, fresh air and sunshine per hen (found on package)	Yes: Free-range liquid egg whites
Sauder's Eggs	Free range shell eggs Pasture raised shell eggs	Hens must have <b>2 sq. ft. per bird</b> and must be outdoors, weather permitting, at least six hours per day (found on company website)	Pasture-raised eggs are laid by chickens that enjoy an outdoor lifestyle that's cleaner and less stressful than alternative environments (found on company website) (Certified Humane, which requires <b>108 sq. ft. per bird</b> )	No
Vital Farms	Pasture raised liquid whole eggs, pasture raised hard boiled eggs	N/A	<b>108 sq. ft. for every hen</b> (found on the package)	Yes
Wilcox Family Farms	Free range shell eggs Pasture raised shell eggs	Hens are housed in cage-free barns but also have outside access at least eight hours per day while temperatures are above 45 degrees (found on company website) (Certified Humane, which requires minimum <b>2 sq. ft. per bird</b> )	<b>108 sq. ft. per bird</b> (found on package)	No



Company	Products with an animal raising claim	Free-range land cover requirement	Pasture-raised land cover requirement	Egg products with animal raising claims?
Born Free	Free range shell eggs Pasture raised shell eggs	Outdoor access can vary from outdoor runs that are covered with a roof to more extensive fenced pasture area with no roof overhead (found on company website) (products are either <b>Certified Humane*</b> or <b>American Humane Certified**</b> free range)	Hens are able to forage for plants, as seasonally available (found on company website) (products are either <b>Certified Humane*</b> or <b>American Humane Certified**</b> pasture raised)	No
Chino Valley Ranchers	Organic free range shell eggs Pasture raised shell eggs	The birds have continuous access to fresh food and water and may forage for wild plants and insects (found on company website)	Hens are free to roam and forage on a maintained pasture area; they are moved to various pasture areas to maintain vegetation ( <b>American Humane Certified**</b> pasture-raised)	Yes: Organic liquid eggs with free-roaming claim
Farmer's Hen House	Free range shell eggs Pasture raised organic shell eggs	Hens are provided outside vegetation, dust bathing areas, and bushes/trees or structures for shade and shelter from predators (found on company website) ( <b>Certified Humane*</b> free range)	Hens are provided outside vegetation, dust bathing areas, and bushes/trees or structures for shade and shelter from predators (found on company website) ( <b>Certified Humane*</b> pasture-raised)	No
Handsome Brook Farm	Pasture raised shell eggs	N/A	Pastures are rotated & hens are raised on wide open hills and woodlands (found on company website) ( <b>American Humane Certified**</b> pasture raised)	No
Happy Egg Co.	Free range shell eggs	Pastures have trees and vegetation coverage (found on company website) ( <b>American Humane Certified**</b> free range)	N/A	No
Kroger's Simple Truth	Pasture raised shell eggs	N/A	Hens have ample space to forage, and safe shelter from the elements (found on company website) ( <b>American Humane Certified**</b> pasture raised)	No
NestFresh	Free range shell eggs Pasture raised shell eggs	No information on package or company website ( <b>Certified Humane*</b> free range)	No information on package or company website ( <b>Certified Humane*</b> pasture raised)	Yes: Free-range liquid egg whites
Sauder's Eggs	Free range shell eggs Pasture raised shell eggs	No information on package or company website ( <b>Certified Humane*</b> free range)	No information on package or company website ( <b>Certified Humane*</b> pasture raised)	No
Vital Farms	Pasture raised liquid whole eggs; pasture raised hard boiled eggs	N/A	Hens have the freedom to forage for local grasses, succulents and wildflowers (found on company website) ( <b>Certified Humane*</b> pasture raised)	Yes
Wilcox Family Farms	Free range shell eggs Pasture raised shell eggs	No information on package or company website ( <b>Certified Humane*</b> free range)	Hens freely roam lush and expansive premises ( <b>Certified Humane*</b> pasture raised)	No

\* **Certified Humane free range standards** require that outdoor areas consist of ground covered by living vegetation, where possible; gravel, straw, mulch or sand are examples of materials to be used when vegetation is not possible. Well-drained, shaded areas must be provided for all hens to rest outdoors without crowding and outdoor areas must provide cover, such as shrubs, trees or artificial structures, to reduce the fear reactions of hens to overhead predators. **Pasture range standards** require that pastures consist of living vegetation and must be rotated periodically. Well-drained, shaded areas must be provided for all hens to rest outdoors without crowding and outdoor areas must provide cover, such as shrubs, trees or artificial structures, to reduce the fear reactions of hens to overhead predators.

\*\* **American Humane Certified free range standards** require damaged ground to be actively managed, including by resting and reseeded ground to encourage regrowth of vegetation when the climate allows; partial overhead cover, either natural or manmade, and a sufficiently shaded area must be provided so that the hens are able to spread out to cool off. **Pasture raised standards** require pastures to have substantial cover of living vegetation and must provide partial overhead cover, either natural or manmade, and a sufficiently shaded area so that the hens are able to spread out to cool off.