



February 11, 2009

The Honorable Tom Vilsack  
Secretary of Agriculture  
1400 Independence Avenue SW  
Washington, DC 202050  
Submitted via: facsimile and email

Dear Secretary Vilsack:

We are writing to you to express our deep concern about a variety of meat marketing labeling efforts being undertaken at USDA. Consumers Union, the non-profit publisher of *Consumer Reports*, has been rating, reporting and informing consumers about product claims for years. In the last seven years, we have met several times with the Agriculture Marketing Service (AMS) to help lend our expertise, including consumer survey data, to help USDA in providing the most meaningful label standards that meet consumer expectations. However, we have immediate and long term concerns about the standards behind many of the labels overseen by USDA and the lack of harmonization across Agencies within the Department in the oversight of current labeling terms.

**1. "Naturally raised" label should be withdrawn**

Our most immediate labeling concern pertains to January 16, 2009 publication of a Federal Register notice regarding the "naturally raised" standard [Doc. No. AMS-LS-07-0131; LS-07-16]. While this was issued as a final notice, it has not been approved by Office of Management and Budget to meet the Paperwork Reduction Act. In this notice, issued in the very final days of the previous Administration, USDA finalized a very limited standard for "naturally raised": per the notice, the standard would mean only that the meat or poultry in question was raised without certain antibiotics, animal byproducts and growth promotants.

The standards behind this claim fall significantly short of consumer expectations as revealed in a national telephone poll conducted by Consumer Reports' National Research Center. The poll, released in November 2008<sup>1</sup> showed American consumers want the "naturally raised" meat claim to mean more than USDA's proposed standard, including that it came from an animal that:

---

<sup>1</sup> <http://www.greenerchoices.org/pdf/foodpoll2008.pdf>

- Had a diet free of chemicals, drugs and animal byproducts (**86%**)
- Was raised in a natural environment (**85%**)
- Ate a natural diet (**85%**)
- Was not cloned or genetically engineered (**78%**)
- Had access to the outdoors (**77%**)
- Was treated humanely (**76%**)
- Was not confined (**68%**)

Earlier in the rulemaking process, more than 36,000 comments received from USDA on the proposed standards rejected this label outright. And the final standards are even weaker than the proposed ones published November 2007, by allowing ionophores, known antimicrobials, to be used as an exception to ban on antibiotics used under this labeling term. In 2008, the USDA instructed Tyson to halt the use of "raised without antibiotics" because ionophores were being administered to animals. We urge USDA to develop specific standards for this discreet practice (see #5 below).

**We urge you to immediately withdraw the "naturally raised" label standard.** This midnight ruling was not complete and the standards were published last-minute, even though the administrative part of meeting the Paperwork Reduction Act and OMB approval, had not been done. Moreover, the standards fall significantly short of consumer expectations and only add to marketplace confusion. Consumers would much prefer to have discreet labeling terms that are meaningful, instead of generalized and vague terms that encompass a few specific practices (and one with a gross exemption).

## **2. Close loopholes in Country of Origin Labeling (COOL)**

While you are evaluating the COOL rule, we urge you to address two key problems. The first has to do with the definition of processed food. The Farm Bill explicitly states that "processed foods" are exempt from the rules. However, the USDA definition of "processing" is overly broad, resulting in the exclusion of many foods from COOL labeling. USDA currently defines "smoked", "roasted" or "cooked" food as "processed," which excludes many foods from Country of Origin Labeling. For example, roasted peanuts are excluded from COOL, but 95 percent of the peanuts sold in the US are roasted. Moreover, an overwhelming majority of consumers (95 percent) agree that processed or packaged foods should be labeled as to their country of origin, according to our 2008, food labeling poll. We also urge that mixtures not be exempt from COOL labeling.

The second problem has to do with labeling of meat with multiple countries of origin. In the proposed final rule, the multiple-country label could not include meat that was from animals exclusively born, raised and slaughtered in the U.S. The final rule expanded the definition of the multiple-country label to include muscle cuts from U.S animals that are that are processed at a facility on the same day as foreign animals, as well as ground meat

if the facility had processed some meat from U.S animals within the past 60 days. We urge you to restrict the multiple-country label to meat from animals not exclusively born, raised, and slaughtered in the U.S. Meat that comes from animals that are exclusively born, raised and slaughtered in the United States should always be labeled to indicate that the U.S. is the country of origin. We encourage you to read our full recommendations for how USDA can address these COOL issues which can be found at [www.consumersunion.org/pdf/COOLFinal-0908.pdf](http://www.consumersunion.org/pdf/COOLFinal-0908.pdf).

### **3. Close loopholes in "grass fed" standard**

Consumers Union applauded the AMS for issuing a credible standard for the "grass fed" label that went into effect in November 2007. However, in November 2007, we learned that companies who had already been using a "grass fed" claim, approved through FSIS, were exempt from having to comply with the new AMS standard. We believe this undermining of the new standard through exemptions is misleading to consumers who cannot distinguish between two (or many) standards for the very same claim in the marketplace.

In January 2008, Consumers Union filed a Freedom of Information Act request to obtain the names of the companies currently using a "grass fed" claim that was approved by FSIS. We still have not received an answer to our request. In a recent phone communication with AMS, we learned that the Agency has in fact decided to continue to allow FSIS to grant "grass fed" claims to companies arbitrarily and without having to meet the AMS standard. This dichotomy in labeling oversight and standards needs correction. We urge you to take action by mandating the AMS standard for the companies wishing to make a "grass fed" claim so that all companies wishing to use "grass fed" will have to comply with the same standard.

### **4. Harmonize meat marketing claims across meat, poultry and dairy items**

It is increasingly confusing to consumers and the marketplace to sort through which USDA label standards apply to which products on the market. For example, the "grass fed" standard only applies to meat from ruminant animals, and yet consumers are presented with the very same claim on poultry products, milk and eggs. The current standards for "naturally raised" would apply to meat products from livestock but not from poultry. We strongly urge the USDA to develop labeling standards that apply to all meat and poultry products that could, would, or do use similar label claims, and to work with the FDA to harmonize the meaning of those label terms on eggs and dairy products.

### **5. Define "raised without antibiotics" label claim**

The "raised without antibiotics" label claim has been misused in the marketplace and USDA made several contradictory statements about its interpretation. The recent case of

Tyson using the "raised without antibiotics" claim on chicken for years while using ionophores until the USDA reversed its approval of that practice highlights the problem of lacking a defined, transparent standard. While most consumers believe that this claim means no antibiotics or antimicrobial drugs were administered, there is in fact no standard for the term.

Moreover, while the USDA had proposed, and then withdrawn, a poor standard for this claim in 2002-3, the Agency never proposed a new standard. Instead, the term has been rolled into the new "naturally raised" standard with an allowance for ionophores. We strongly urge the USDA to create a transparent, consistent and meaningful standard for this term that means no antibiotics, no antimicrobial drugs, no ionophores, and no antibiotics injected into eggs ("raised" should include egg incubation).

#### **6. Ensure consistency of "organic" label to scope of products covered**

The Organic Food Production Act of 1990 (OFPA) charges the USDA with establishing uniform national standards for the production and handling of foods labeled as "organic." This includes enforcement against companies who market their food as "organic" that are not produced and handled in accordance with National Organic Program's regulations.<sup>2</sup>

However, while National Organic Program has been developing standards for aquaculture for several years, it has continued to allow companies to market their products as "organic." Consumers Union, along with many other groups, has opposed this action. We believe that it is in violation of the OFPA and that it undermines the integrity of the organic label. We urge the USDA to prohibit the "organic" label on seafood and fish until standards are established.

We also are very concerned that the current recommendations from the National Organic Standards Board for organic aquaculture are severely flawed. These recommendations would undermine the 100% organic feed requirement already in place for other organic animals and allow the use of open-net pens in the ocean which can release and absorb waste freely and directly conflicts with having a controlled production system.

Further, personal care products have been added to the scope of the National Organic Program, but they do not meet the same uniform standards for food. Specifically, the non-organic portion of personal care products does not have to adhere to the materials review process or the National List. This inconsistent application of the organic regulations violates the intent of the law to provide uniform meaning to the term, "organic." Ultimately, it may cheapen the meaning and integrity of the "organic" label. It is misleading make an organic claim on a personal care product that does not have to be held to the same standard as food. At the very least, consumers should be made fully aware of this difference in labeling perhaps with a mandatory disclaimer about the non-

---

<sup>2</sup> <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELDEV3004446&acct=nopgeninfo>

organic portion of "organic" and "made with organic" personal care products. Ideally, the standards for the non-organic portion of personal care products should be the same as for food.

**7. Maintain "treated with irradiation" labeling for meat from irradiated surface cuts**

FSIS is currently considering a petition from the American Meat Institute (AMI) calling for the use of low-penetration and low-dose electron beam irradiation to reduce levels of bacteria such as E. coli O157:h7 on of the surface of chilled beef carcasses as a "processing aid" rather than its current defined use as an "antimicrobial food additive." This shift in classification would permit this kind of irradiation to be used without being labeled, and is based on a false rationale that this application would not result in a technical or organoleptic change to the food. Even by the limited data submitted by AMI, which did not address the potential formation of 2-alkylcyclobutanones, there would in fact be organoleptic changes to the meat. CU does not believe that this application of irradiation should be defined as a "processing aid" and that specific labeling should still be required.

We appreciate your time and consideration of these important labeling issues. We look forward to speaking with and meeting you or your staff in the near future to discuss these concerns. We also encourage you to read through the entirety of our November 2008 food labeling poll which contains even more information about consumers' expectations around truthful and misleading labeling terms. For your reference, we refer you to [www.greenerchoices.org/pdf/foodpoll2008.pdf](http://www.greenerchoices.org/pdf/foodpoll2008.pdf), where the entire poll can be found.

Sincerely,

Urvashi Rangan, Ph.D  
Senior Scientist and Policy Analyst  
914-378-2211

Michael Hansen, Ph.D..  
Senior Scientist and Policy Analyst

cc: Ron Hicks, Acting Deputy Under Secretary, Food Safety  
Cindy Smith, Acting Under Secretary, Marketing and Regulatory Programs  
William Sessions, Associate Deputy Administrator, Livestock and Seed, AMS  
Mark Bradley, Manager, National Organic Program, AMS

**Consumers Union  
Headquarters Office**  
101 Truman Avenue  
Yonkers, New York 10703-1057  
(914) 378-2029  
(914) 378-2992 (fax)

**Washington Office**  
1666 Connecticut Avenue, NW,  
Washington, DC 20009-1039  
(202) 462-6262 Suite 310  
(202) 265-9548 (fax)

**West Coast Regional Office**  
1535 Mission Street  
San Francisco, CA 94103-2512  
(415) 431-6747  
(415) 431-0906 (fax)

**South West Regional Office**  
1300 Guadalupe, Suite 100  
Austin, TX 78701-1643  
(512) 477-4431  
(512) 477-8934 (fax)