

Challenge to USDA Authority to Regulate Animal Welfare Label Claims

PUBLISHED ON
July 19, 2022

Protein companies that are regulated by the U.S. Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) are accustomed to providing supporting documentation to FSIS's labeling program under 9 CFR 412.1 to substantiate claims made regarding the humane treatment of animals. On June 27, 2022, [the People for the Ethical Treatment of Animals \(PETA\) submitted a petition to the FSIS](#) requesting the agency to remove animal raising claims from the agency's label-approval process.

In large part, PETA argues that the USDA lacks the authority to approve in advance animal raising claims included on product labels because the Poultry Product Inspection Act and Federal Meat Inspection Act limit USDA jurisdiction to processing facilities/slaughterhouses and packing facilities rather than the inspection of farms and transportation facilities. PETA argues in its petition that many of the animal welfare claims that FSIS has approved are untruthful or misleading. It also argues that because of those claims, it could cause the public to pay a premium for products that consumers believe are supported by the humane treatment of animals.

If the relief in the petition were to be granted by the USDA, the USDA would simply rescind the portion of its rule requiring approval of "special statements and claims" on labels pertaining to the raising of animals. FSIS would also presumably rescind its "guidelines" on the subject.

Nevertheless, meat and poultry companies would likely continue to see the commercial value in making such claims. In doing so, they would no longer have the benefit of the USDA's "approval" of the label.

We suggest that meat and poultry producers carefully revisit both the information provided to the USDA in order to obtain approval of those aspects of their product labeling which address animal welfare, as well as the nature and extent of information received from any outside, third-party certification firms, such as Global Animal Partnership and the companies' records and policies.

PETA's Petition to the USDA may or may not succeed. However, it certainly serves the purpose of alerting both consumers and the plaintiff's bar that the USDA approval of animal rights claims on a label might be erroneous or mistaken and, therefore, welfare claims made by producers could be subject to challenge through class action litigation. In particular, revisiting a comparison of the actual animal welfare claims made on the label, including "humanely raised," "outdoor access," and other welfare claims, with your supporting documentation, is advisable. Doing so could assure that the claims are supported by existing documented evidence.

If you have any questions regarding PETA's petition to the USDA or any other related matters, please contact

Timothy G. Dietrich, EmmaRose Strohl or anyone in the Food & Agribusiness Industry Group.

DISCLAIMER: The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

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