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THE “FOWL” PRACTICE OF HUMANE LABELING: PROPOSED AMENDMENTS TO FEDERAL STANDARDS GOVERNING CHICKEN WELFARE AND POULTRY LABELING PRACTICES

By LaTravia Smith

ABSTRACT

Chickens raised specifically for meat production are the world’s most intensively farmed land animals. Yet, the existing legal frameworks that regulate the production and labeling of poultry products in the United States allow poultry producers to mistreat chickens, falsely distinguish poultry products, and defraud conscious consumers. This article proposes unique opportunities to improve poultry welfare in the United States’ agricultural industry and offers methods to ensure the accurate labeling of poultry products.

I. INTRODUCTION

“Chickens, whether intelligent or stupid, individual or identical, are sentient beings. They feel pain and experience fear. This, in itself, is enough to make it wrong to cause them pain and suffering.”

Called “broilers” in the poultry industry, chickens raised specifically for meat production are the world’s most intensively farmed land animals. Around 9 billion broilers are raised for slaughter yearly. Broilers are “fed for abnormally fast growth without consideration for their well-being.” For instance, a broiler weighing 5.7 pounds can be produced in just forty-seven days.

Studies have shown that chickens possess significant cognitive skills parallel to the abilities of some mammals. Contrary to popular belief, chickens are intelligent, brave, and sentient beings capable of emotion, numeracy, and self-control. Chickens possess more than twenty vocalizations to communicate, including: predator alerts; mother/baby calls; mating calls; and even calls to communicate the discovery of food.

In the past fifty years, farming operations in the United States have shifted away from small family farms and individualized production to mass production, commonly known as factory farming. These massive, mechanized “megafarms,” also referred to as concentrated animal feeding operations (CAFOs), are more concerned with profit and efficiency to the detriment of an animal’s welfare. Living conditions for chickens in CAFOs are unnatural and inhumane. The minimum size threshold for broiler chickens in a large CAFO consists of “125,000 or more” chickens. According to the Council for Agricultural Science and Technology (CAST), the minimum space required for a broiler is one-half square-foot per bird. The National Chicken Council (NCC) requires a mere eight-tenths of a square-foot of space per bird. NCC’s guidelines are indeed in excess of the minimum requirement by CAST, which requires one-half of a square-foot to maneuver, however, confined chickens under either requirement spend their lives packed wing-to-wing on floors covered in waste. With little room to spread their wings, it is difficult for chickens to engage in natural behaviors, resulting in physical and mental distress, including crippling bodily injuries.

The conditions in CAFOs have significant impacts on animal welfare and human health. As consumers become aware of the modern husbandry practices of some of today’s farmers, there has been an increase in demand for improved animal welfare. To help lessen the impact of the inhumane practices of the animal agricultural industry, some consumers are willing to pay premium prices for “humane” meats. Some consumers feel that if they pay just a little more they can “have their meat and eat it too.” The leading animal welfare regulations (i.e., Animal Welfare Act, Humane Slaughter Act, and Twenty-Eight Hour Law) do not provide legal definitions for terms like “welfare” or “humane.” There is no specific set of animal welfare standards to substantiate welfare-related labeling claims. Furthermore, the Animal Welfare Act definition of “animal” does not include animals raised for food.

Some companies have exploited the increase in consumer demand for the humane treatment of animals to increase their profits. By simply labeling their products as “humanely raised,” some companies are able to falsely distinguish their products and charge consumers premium prices. There have been instances when “humanely raised” chickens have endured

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the same deplorable treatment as the average factory farmed chicken.\textsuperscript{30} Meanwhile, purchasers of these so-called “humanely raised” chickens are being deceived by packaging labels and led to believe “all is well in the mythical world of humane animal agriculture.”\textsuperscript{31} False labeling is not only a problem for the poultry industry, but also for consumers and organizations that buy and sell organic products.\textsuperscript{32}

Food labels are of great importance to consumers and producers because the information on food labels helps consumers make educated and informed decisions.\textsuperscript{33} Labels allow companies to advertise the benefits of their products to their target market. For some companies, food labels are the sole method to connect and engage with consumers.\textsuperscript{34} The use of value-added animal welfare claims on products produced from animals raised under conventional factory farming animal welfare standards exploits the time, money, and resources of companies that actually exercise humane care for their animals and properly label their products.\textsuperscript{35} Dishonest companies profit at the expense of the animals, consumers, and to the detriment of the humane farming industry.\textsuperscript{36}

Class action lawsuits have been filed on behalf of consumers against poultry producers for deceptively advertising their poultry products as “humanely raised.”\textsuperscript{37} However, instead of implementing humane reforms, some producers simply agreed to remove the deceptive labeling from their product packaging.\textsuperscript{38} Consumers prevailed in the sense that they are no longer being deceived by some companies, yet the paramount problems at the heart of the “humanely raised” movement still exist.\textsuperscript{39} Farm animals continue to live and die in deplorable conditions. The United States Department of Agriculture (USDA) has yet to promulgate laws protecting poultry from inhumane treatment, and the labeling laws governing poultry products remain inadequate.\textsuperscript{40} In order to truly resolve this issue, there must be federal regulatory reform regarding animal welfare, specifically the implementation of poultry labeling laws and independent oversight.

Section I of this article provides a glimpse into the inhumane life and death of a Perdue Farms’ broiler chicken. It also offers evidence of a company’s willingness to remove misleading labeling without resolving the underlying problem of its inhumane factory farming practices.\textsuperscript{41} Although this article focuses solely on one chicken producer, Perdue Farms, Perdue’s poultry husbandry practices are common throughout the broiler chicken industry.\textsuperscript{42} Section II addresses the lack of poultry protection under existing federal legislation. It also examines the loopholes in the current regulation of labels on poultry products.\textsuperscript{43} Section III of this article examines the deficiencies of the early years of the “organic movement” in relation to the “humane movement.” Next, it briefly discusses how the organic industry regulated industry-wide organic standards resulting in a more accurate and unified certification process. Additionally, it explores the benefits derived from being “certified” organic.

Section IV proposes three potential solutions to improve poultry welfare in the agricultural industry: first, amending existing federal animal welfare laws to include poultry; second, establishing methods to ensure the accurate labeling of poultry products including specific guidelines and third-party verification of animal welfare related labeling claims; and third, encouraging voluntary compliance with poultry welfare and labeling laws through incentives.

\section*{II. “Humanely Raised” Labels Can Deceive Consumers}

This section explores the unveiled truth behind Perdue Farms’ misleading “humane” labeling. The need for increased poultry welfare standards is demonstrated through an examination of the life and death of Perdue chickens advertised as “humanely raised.” Although this discusses Perdue’s agreement to remove “humanely raised” from its poultry products, it also shows the company’s petition to replace the phrase with another deceptive phrase—indicating the need for a more stringent poultry labeling process. Finally, this section unveils Perdue’s upcoming proposal to improve their animal welfare practices and briefly examines the effectiveness of their voluntary pledge.

\section*{A. The Truth About Perdue’s “Humanely Raised” Chickens Exposed}

Perdue Farms is a top international food and agricultural producer, providing products and services in over seventy countries.\textsuperscript{44} With annual sales in excess of $6 billion,\textsuperscript{45} Perdue ranks third in poultry industry sales.\textsuperscript{46} Perdue advertised its Harvestland brand of chicken as “humanely raised” and “USDA process verified” when it charged consumers premium prices for the purportedly humane meat.\textsuperscript{47} Perdue Farms’ “humanely raised” claims were based on The National Chicken Council’s guidelines, a trade group for the chicken industry,\textsuperscript{48} whose members consist of chicken producers and processors, fowl processors, distributors, and allied industry firms.\textsuperscript{49} According to the NCC, proper treatment of animals is an ethical obligation.\textsuperscript{50}

Poultry packaging stamped with the USDA’s approval and enhanced with phrases such as “humanely raised” would lead a reasonable consumer to believe that a Perdue Farms’ Harvestland “humanely raised” chickens lived a “comfortable avian middle-class” lifestyle.\textsuperscript{51} “Doing the right thing is things like treating your chickens humanely,” says Jim Perdue, the Chairman of Perdue Farms, in a promotional video for the company.\textsuperscript{52} In the promotion, Jim Perdue is featured taking a stroll through an immaculate chicken farm.\textsuperscript{53} The advertisement displayed healthy-looking, active, unsoiled chickens, walking around, eating and drinking in a spacious facility with lots of room to move about.\textsuperscript{54} After almost twenty-two years of raising broiler flocks for Perdue, Craig Watts—a former farmer for Perdue Farms—became frustrated at Perdue’s lack of interest in the welfare of the chickens.\textsuperscript{55} He decided to expose the truth behind Perdue’s “humane” labeling claims by allowing Compassion in World Farming, a farm animal advocacy group, to film inside his North Carolina farm, where he raised approximately 720,000 chickens for Perdue every year.\textsuperscript{56} Perdue claimed that the farmer was negligent in caring for his flocks; however, the director of Compassion in World Farming performed an independent analysis and determined Watts was following Perdue’s guidelines “to the letter.”\textsuperscript{57}
1. THE INHUMANE LIFE OF “HUMANELY RAISED” CHICKENS

Watts’ farm contained over 30,000 chickens crammed wing-to-wing on the floor of a dark, windowless grow-out house.59 According to Watts, sometimes years will pass before the barn floor is cleaned for a new flock.60 Processed at only eight to ten weeks of age,61 broilers are genetically manipulated to rapidly produce large pieces of meat,52 which results in numerous health and welfare problems.63 Fast growth has been referred to “in both magnitude and severity, the single most severe, systematic example of man’s inhumanity to another sentient animal.”64

At the time of hatch, a broiler chicken weighs an average of forty grams, and can weigh about 4,000 grams by the time they are only eight weeks old.55 “If humans grew at a similar rate, a 3 [kilogram] (6.6 [pounds]) newborn baby would weigh 300 [kilograms] (660 [pounds]) after 2 [months].”65 Unfortunately, the skeletal structure of a broiler is unable to support this hasty growth.67 Many suffer from skeletal abnormalities, including leg deformities, which cause lameness and make it difficult to stand and walk, thereby making it often impossible for these creatures to access food and water.68 They spend an inordinate amount of time squatting to alleviate the strain on their debilitated legs.69 As a result, the bellies and chests of almost all the chickens on Watts’ farm feature raw, featherless flesh resembling bedsores, presumably due to ammonia burns from continuous squatting in their own waste.70

In addition to skeletal abnormalities, accelerated growth contributes largely to a vast number of health conditions including: cardiovascular disease, respiratory disease,71 and big liver spleen disease.72 Acute death syndrome is also common in fast-growing broiler chickens.73 Broilers frequently die suddenly of heart attacks or collapsed lungs due to ascites, a condition in which the heart and lungs cannot sufficiently support an overgrown body.74 The poultry industry casually refers to this condition as “flip over disease,”75 because after wing-flapping convulsions, chickens “flip over” and die.76 These health conditions are rarely experienced by chickens living in a natural environment.77 Based on a study by the University of Georgia, poultry farmers typically experience a 3% death rate per flock.78 Thus, a farm that has 30,000 chickens per flock will experience a death rate of about 900 chickens per flock.79

The pain and discomfort chickens endure because of their genetic makeup is compounded by the inhumane living conditions in which Watts’ broilers were raised.80 When crammed together, chickens relentlessly peck each other out of boredom and frustration, resulting in loss of feathers, injuries, and even death.81 Dead chicken carcasses are often left among the living, adding to the stressful and unsanitary living conditions.82 The high ammonia levels from the waste irritate and burn their eyes, skin, and throat.83 To reduce the effects of confinement, chickens are often forced to undergo a series of mutilations, including the partial removal of beaks and toes.84 These painful procedures are typically performed without anesthesia.85

2. DEATH OF A BROILER

In the United States, approximately nine billion chickens and other poultry are slaughtered for consumption each year.86 The journey from the chicken farm to the slaughterhouse can be hundreds of miles long.87 The Twenty-Eight Hour Law Regulating the Interstate Transportation of Livestock prohibits the confinement of animals in vehicles of vessels for more than twenty-eight consecutive hours without food, water, and rest when being transported across state lines for slaughter.88 However, the Twenty-Eight Hour Law excludes poultry.89 Thus, chickens on their way to slaughter could remain cramped in their crates through extreme temperatures without food, water, or rest.90

Upon arrival at the slaughterhouse, the broilers are often stunned to incapacitate them in an Electric Immobilization System, a low electricity water bath.91 Sadly, many birds remain conscious due to inadequate stunning.92 After being dipped in the stunning tank, the birds’ throats are cut by a mechanical blade.93 Finally, broilers are dipped into scalding-hot water to remove their feathers.94 These birds often defecate in the scalding tanks, contaminating the birds that follow, which are then condemned due to adulteration and cannot be sold.95 As previously mentioned, Perdue based its “humanely raised” claims based on the animal welfare guidelines established by the NCC.96 However, as evidenced by Watts’ farm, these conditions are not quite what the reasonable consumers would consider to be humane.97

B. DECEPTIVE ADVERTISEMENT SUITS LEADS TO REMOVAL OF LABELS

In response to Perdue falsely advertising its chickens as “humanely raised,” two class action lawsuits were filed by The Humane Society of the United States (HSUS) on behalf of New Jersey and Florida customers who purchased Perdue Farms’ Harvestland chicken.86 The plaintiffs alleged that Perdue preyed on consumers’ increasing sensitivity to animal cruelty and charged premium prices for so-called “humanely raised” chickens that were in reality subjected to extreme pain and harsh living conditions.99 Perdue rejected the allegations and insisted its labels were not misleading.100 Nevertheless, Perdue agreed to remove the labels from its packaging.101 In exchange, the HSUS agreed to dismiss with prejudice the Complaint alleging misleading labeling claims.102

In a similar class action lawsuit, consumers alleged Kroger, one of the world’s largest supermarket chains, misled consumers and violated California consumer protection laws by ironically falsely labeling it Simple Truth brand chicken.103 Kroger labeled its Simple Truth chicken as cage-free, insinuating their chickens were superior to competitors even though broiler chickens raised for meat are not raised in cages.104 Perdue Farms is the chicken supplier for Kroger.105

After much unfavorable media coverage, Perdue unveiled it will begin overhauling its animal welfare practices.106 Accordingly, Perdue plans to improve the conditions on its broiler farms to allow their chickens to live higher quality lives.107 Perdue will install windows in their grow-out houses,
provide more space in their barns, and put their chickens to sleep before slaughter.\textsuperscript{108} In addition, Perdue “may tinker with breeding to decrease the speed at which birds grow or to reduce their breast size, steps that could decrease the number and severity of leg injuries.”\textsuperscript{109} Unfortunately, there are no regulations to guide the poultry producer, thus they are left to regulate themselves in accordance with their own volition.\textsuperscript{110}

### III. The Lack Of Existing Legal Protection For Poultry

In the United States, chickens are raised and slaughtered for food more than all other farm animals combined,\textsuperscript{111} yet they lack protection under federal and state laws.\textsuperscript{112} For instance, a veterinarian from the USDA allowed the owners of Ward Egg Range, an egg farm in San Diego County, California, to dispose of over 30,000 live spent egg-laying hens by tossing them into a wood-chipper.\textsuperscript{113} The District Attorney referred to the use of a wood-chipper to dispose of live spent hens as “following professional advice” and refused to prosecute the owners.\textsuperscript{114} Tossing live chickens into a wood chipper did not violate any federal or state laws; therefore, no crime was committed.\textsuperscript{115}

This section examines the lack of coverage for poultry under existing federal animal welfare legislation and poultry labeling laws. It then discusses the relevant regulatory agencies and the roles they play in the regulation of poultry products. Finally, it examines federal initiatives that have been taken to improve poultry production and labeling practices.

#### A. Lack of Coverage Under the Animal Welfare Act

The Animal Welfare Act (AWA) provides that “minimum standards of care and treatment be provided for certain animals bred for commercial sale, used in research, transported commercially, or exhibited to the public.”\textsuperscript{116} It authorizes the Secretary of Agriculture to regulate “transport, sale, and handling” of specific covered animals.\textsuperscript{117} The AWA's definition of “animal” was amended in 1970 to “include warm-blooded animals generally used for research, testing, experimentation or exhibition, or as pets . . . .”\textsuperscript{118} However, despite being warm-blooded,\textsuperscript{119} chickens and other animals farmed for food and fiber lack protection under this law.\textsuperscript{120}

#### B. The USDA’s Failure to Require the Humane Slaughter of Poultry

The Humane Slaughter Act of 1958 (HMSA or “Act”) was designed to decrease the suffering of livestock during slaughter.\textsuperscript{121} In drafting the HMSA of 1958, Congress declared:

\begin{quote}
[T]he use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce.\textsuperscript{122}
\end{quote}

The HMSA of 1958 contains three principal provisions. First, the Act specifies that “cattle, calves, horses, mules, sheep, swine, and other livestock . . . are rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut.”\textsuperscript{123} The HMSA of 1958 did not define the phrase “other livestock.”\textsuperscript{124} Second, the HMSA authorized the Secretary of Agriculture “to designate methods of slaughter and of handling . . . with respect to each species of livestock.”\textsuperscript{125} Third, in an enforcement provision that was later repealed and replaced in 1978, the HMSA of 1958 prohibited the federal government from purchasing inhumanely slaughtered livestock.\textsuperscript{126} Congress amended the HMSA of 1958 with a more general, yet stronger enforcement mechanism, the HMSA of 1978.\textsuperscript{127} The amendment, a separate and distinct law from the HMSA of 1958,\textsuperscript{128} required “that meat inspected and approved be produced only from livestock slaughtered in accordance with [the Act].”\textsuperscript{129}

In 1978, provisions of the HMSA of 1958 were incorporated into the Federal Meat Inspection Act (FMIA) making humane slaughter of livestock mandatory for all federally inspected slaughterhouses engaged in interstate commerce.\textsuperscript{130} The HMSA of 1978 eliminated the reference to “other livestock” and instead provided a list of animals to which the humane standards applied.\textsuperscript{131} The list was limited to “cattle, sheep, swine, goats, horses, mules, and other equines,” explicitly excluding poultry.\textsuperscript{132} The incorporation of the HMSA of 1958 provisions into the FMIA made FMIA's criminal penalties applicable to facilities that failed to comply with humane slaughter requirements.\textsuperscript{133}

In 2005, the Food Safety and Inspection Service (FSIS), the public health agency within USDA, issued a Federal Register Notice titled “Treatment of Live Poultry Before Slaughter.”\textsuperscript{134} In the Notice, the FSIS acknowledged that employing humane methods of handling and slaughtering poultry decreases the likelihood of adulteration.\textsuperscript{135} Nevertheless, the FSIS announced, “there is no specific federal humane handling and slaughter statute for poultry” thus declaring that the HMSA did not require the humane handling and slaughtering of poultry.\textsuperscript{136} It simply recommended that poultry be treated humanely to avoid “adulteration.”\textsuperscript{137}

In response to the Notice issuance, the HSUS filed suit against the USDA.\textsuperscript{138} The HSUS alleged that the Notice was erroneous because the 1958 HMSA, as applied to “other livestock,” was valid and included poultry.\textsuperscript{139} The HSUS alleged, as a result of the Notice, the majority of animals slaughtered for consumption in USDA-inspected slaughterhouses lacked federal protection. Consequently, poultry processors were granted permission to slaughter poultry inhumanely without violating federal law.\textsuperscript{140} The USDA denied having the legal authority to protect poultry under the HMSA.\textsuperscript{141} The agency asserted that the meaning of “other livestock,” was ambiguous as to both the statutory text and the legislative history.\textsuperscript{142} In vacating the
district court’s decision due to lack of standing, the Ninth Circuit noted that “[c]ongressional debate revealed views favoring both interpretations . . . one that would include chickens, turkeys, and other domestic fowl within its expanse and one that would preclude such inclusiveness.” This language indicates the USDA may indeed have the authority to include poultry under the HMSA.

C. LEGAL LOOPHOLES IN POULTRY LABELING LAWS

The USDA is responsible for ensuring that “poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged.” The FSIS is charged with inspecting poultry products capable for human consumption, and establishing the poultry product labeling policy to ensure that products are not mislabeled. The FSIS derives its authority to regulate poultry product labeling under the Poultry Products Inspection Act (PPIA), implemented by the Secretary of Agriculture.

Congress enacted the PPIA of 1957 in response to the significant growth in the poultry industry. Modeled after the FMIA, the PPIA expressly recognized that as a fundamental source of the nation’s food supply, it is necessary to the health and welfare of consumers to ensure poultry products that enter or substantially affect commerce are “wholesome, not adulterated, and properly marked, labeled, and packaged.” Congress acknowledged the effects that mislabeled poultry products have on the market; the potential to undermine the regulation of interstate commerce; and the resulting harm to consumers and public welfare alike. As a result, poultry product labels must be approved before being applied to poultry products and offered for sale. Like the FMIA, violators of the PPIA face suspension of mandatory inspection, imprisonment of up to one year, or a fine of up to $1,000. The PPIA also allows for imprisonment up to three years, and/or a fine of up to $10,000 if there is “intent to defraud” or adulterated products are involved.

One of the key provisions of the statute states, “no person shall . . . sell, transport, offer for sale . . . in commerce . . . any poultry products which are capable of use as human food and are adulterated or misbranded . . . ” According to the PPIA, a poultry product is considered adulterated:

if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food; if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; if it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter.

For example, poultry that arrives at the slaughterhouse post-mortem would be considered adulterated and thus condemned. Bruising may also result in condemnation. According to the FSIS, bruises are more likely to occur when birds are treated inhumanely.
the FSIS Statement of Interim Labeling Guidance Documentation Needed to Substantiate Animal Production Claims for Label Submission (“The Interim Guidance”) elaborates on the labeling approval process. In accordance with The Interim Guidance, the FSIS requires a producer to show:

(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) [p]roducts tracing and segregation mechanism from time of slaughter through further processing for wholesale or retail distribution; and (4) [a] protocol for the identification, control, and segregation of non-conforming animals/products.

When a producer submits an application to use the phrase “humanely raised” (or a derivative term), the FSIS determines whether the description of the producer’s conditions on its farm qualify as humane. Again, there are no set guidelines to verify whether a producer’s declarations constitute a “humane” claim. The Guidance merely states, “[t]he documentation must support the claims.” The Interim Guidance allows the company or producer to define animal welfare claims according to guidelines established by the NCC. FSIS agents do not visit farms to ensure that humane labeling claims are aligned with on-farm practices. The approval is based solely on the documentation provided by the producer. The lack of oversight contributes to inhumane on-farm conditions.

IV. LESSONS FROM THE ORGANIC INDUSTRY

This section explores how the humane farming industry can learn from the organic farming industry. It discusses the similarities between the early years of the “organic movement” and the deficiencies of the current “humane movement.” Next, it will briefly discuss how the organic industry unified the standards among producers, handlers, and state and private certification organizations. Additionally, it explores the benefits derived from being “certified organic.”

Much like the “humane movement,” the “organic movement” was a response to industrialized farming practices. As consumers became aware of environmental and health concerns associated with modern agriculture, the demand for safer and more natural foods increased. Initially, each state or certifying agency established its own “organic” standards. Similar to the chicken industry, this decentralized self-regulating approach caused a lack of clarity and inconsistency among organic products. The organic industry petitioned Congress—requesting a definitive definition for the term “organic.” After evaluating the problems associated with organic food regulation, Congress acknowledged that the inconsistencies caused consumer confusion and recognized the need for federal action. Congress further recognized that the premium prices producers could charge for organic products provided an incentive for false or misleading labeling. As a result, Congress passed the Organic Foods Production Act (OFPA), which mandated the USDA to develop and write regulations that unified the differing standards among producers, handlers, and state and private certification organizations. The USDA implemented the National Organic Program (NOP), a verification process responsible for overseeing organic farmers and businesses to assure consumers that organically certified products meet a consistent standard. NOP established the requirements for how organic products are grown, processed, handled, and also labeled.

Unlike “humane care standards,” the USDA organic standards describe in detail the means by which organic farmers may grow crops and raise livestock. To become certified, organic farmers, ranchers, and food processors must adopt and adhere to a specific set of guidelines. These standards cover the product from farm to table, including soil and water quality, pest control, livestock practices, and rules for food additives. To become “certified organic,” the operation submits an application, which is then reviewed by certifying agents, consisting of state, private, or foreign entities accredited by the USDA. The application must include: (1) a detailed description of operation to be certified; (2) a history of substances applied to the land in the previous three years; (3) the organic products grown, raised, or processed; and (4) a written organic plan describing the practices and substances to be used.

The costs for organic certification vary depending on the type, size, and complexity of the organic operation and the cost for the certifying agent. For example, California Certified Organic Farmers (CCOF), an organic certifying agency, collects fees for first-time certification. The fees are derived from three main areas: (1) a one-time application fee; (2) an annual inspection fee; (3) and an annual certification fee based on the “Gross Organic Production Value (GOPV)” of the operation. Organic operations can recover the cost of organic certification in several ways. First, the Agricultural Marketing Service Organic Certification Cost Share Programs such as the National Organic Certification Cost Share Program (NOCCSP) help defray the costs associated with organic certification. Once certified, eligible organic operations can be reimbursed up to 75% of the cost of certification. Organic operations are also able to factor in the costs of production, enhanced environmental protection, and animal welfare standards into organic price premiums to supplement the cost of production.

V. PROPOSAL TO ENHANCE POULTRY WELFARE AND LABELING LAWS

The inhumane treatment of poultry in the agricultural industry is facilitated by the lack of protection under federal legislation. To ensure comprehensive results that will protect the farmers who follow humane husbandry practices, consumers who purchase humane products, and the birds—there needs to be reform of animal welfare laws, poultry labeling laws, and also an implementation of third party verification programs. This section proposes three potential remedies to improve poultry welfare in the agricultural industry. First, amending
existing federal animal welfare laws to include poultry; second, adopting methods to ensure the accurate labeling of poultry products including establishing specific guidelines and third-party verification of animal welfare related labeling claims; and third, developing incentives to promote voluntary compliance with poultry welfare and labeling laws.

A. AMEND EXISTING ANIMAL WELFARE LAWS TO INCLUDE POULTRY

In 2014, broiler sales in the U.S. rose 6% from the previous year with sales totaling $32.7 billion, and a per capita consumption of 83.48 pounds. These figures reflect the substantial effect poultry has on interstate commerce. Based on the vast quantities of chickens used for food, chickens arguably suffer more abuse than any other animal. Yet, chickens are not deemed to be animals under the definition of the AWA. The abuse endured by these innocent birds as well as the substantial effect that poultry and other warm-blooded farm animals have on interstate commerce warrant, at the very least, the minimum protections provided by the AWA.

Expanding the definition of “animal” under the AWA to include poultry and animals raised for food is imperative to the improvement of poultry and animal welfare. To officially declare a chicken as an “animal” deserving of respect and protection under the AWA would help mitigate the abuse of broilers in the farming industry. As it stands, continued omission of poultry (and other animals raised for food) under the AWA permits farmers to continue to abuse chickens without consequence.

Additionally, requiring GCP compliance to reduce product adulteration is an inadequate attempt to improve poultry welfare standards without amending the HMSA. To ensure poultry receive sufficient coverage under federal legislation, the USDA must use its statutory authority to promulgate regulations to amend the HMSA to include poultry under “other livestock.” Further, requiring poultry be rendered unconscious prior to slaughter would reduce the unnecessary suffering of broilers during the slaughtering process, decrease the likelihood of adulteration associated with inhumane handling, improve working conditions for slaughterhouse employees as well as increase the overall finished product.

Considering the HMSA was designed in part to protect animals used for food from inhumane slaughter, improve worker health and safety, and enhance products and economies in slaughtering—omitting poultry from its coverage is inherently contradictory and undermines its very purpose.

Focusing solely on the regulation of poultry through an advertisement-based approach to improve poultry welfare will not help to enhance the treatment of chickens used for food production. Advertisement-based challenges can be applied against producers who falsely market their poultry products or mislead consumers by failing to disclose information. Meanwhile, producers who make no such welfare related claims remain free to treat their chickens cruelly.

An animal welfare-based approach protects the animals through established federal welfare standards. This is not to say that an advertisement-based regulatory approach will not prove beneficial in the improvement of poultry welfare. When used in conjunction with a welfare-based approach, advertisement-based regulations can serve as a supplemental safeguard to protect consumers and discourage companies from deceptive labeling.

B. PROMULGATE POULTRY WELFARE STANDARDS UNDER PROVISIONS OF THE POULTRY PRODUCTS INSPECTION ACT

Though the USDA’s authority to include poultry under the HMSA has yet to be determined, the USDA nevertheless, possesses the authority to regulate inhumane handling and the slaughter of poultry under provisions of the PPIA. The PPIA grants the USDA the authority to promulgate regulations not only to improve the way chickens are raised and slaughtered, but also to improve poultry product labeling. To assist in preventing future poultry abuses, there are a few areas in the validation process where if precautionary measures are taken, the purposes of the PPIA would be fulfilled, and poultry welfare would be enhanced. Pursuant to the PPIA, “no person shall . . . sell, transport, offer for sale . . . in commerce . . . any poultry products which are capable of use as human food and are adulterated or misbranded.” The USDA has expressly acknowledged, through issuances of official notices and directives, the causal connection between inhumane handling of poultry and adulterated poultry products.

The conventional electric immobilization system has proven to be inadequate in rendering broilers unconscious prior to slaughter, thus resulting in the unnecessary condemnation of millions of birds. To reduce the probability of adulteration and the needless suffering of broiler chickens, the USDA, through its regulatory authority granted by the PPIA, should require a more humane slaughter method rather than allow for the continued use of the conventional immobilization system.

One alternative USDA-approved method of slaughter is “controlled-atmosphere killing” (CAK). CAK can diminish numerous animal welfare problems such as adulteration and work-related injuries and health risks associated with the handling and processing of live birds. With CAK, birds remain in their transport crates while oxygen is slowly eliminated from the atmosphere and replaced with a nonpoisonous gas. Birds are dead prior to being removed from their crate; therefore, the birds are already dead when handled by workers. CAK can improve the quality of the meat because there is less bruising and hemorrhaging, thus lowering the chance of adulteration.

One objection to using CAK is the cost associated with its implementation. However, return on investment (ROI) can be reached and surpassed within a few years. Accordingly, considering the minimization of the animal suffering, the reduction of the probability of adulteration, and minimal ROI, the USDA should require the use of CAK or comparable methods to be used in substitution of conventional immobilization slaughter methods.

According to the PPIA, poultry products are considered to be misbranded “if its labeling is false or misleading.” Based on the conditions of J. Craig Watts’ farm, consumers felt Perdue
Farms’ Harvestland “humanely raised” chicken labeling was clearly false and misleading.\(^{235}\) Despite the factory farm’s conditions, the USDA gave it the “USDA Process Verified Label.”\(^{236}\)

Animal welfare-related labels are routinely approved by the FSIS, even though terms such as “humane” or “welfare” remain undefined.\(^{237}\) As demonstrated, the lack of definitive legal definitions have sometimes resulted in deceptive labeling practices, varying industry standards, and inconsistencies among third-party certification programs.\(^{238}\) It is imperative that the USDA provide producers and consumers with a legal definition for the term “humane.” In considering legally defining terms such as humane and welfare, the USDA should take into consideration the various means of measuring animal welfare.\(^{239}\) According to The World Organization for Animal Health (OIE), “[a]n animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress.”\(^{240}\) The definition of “humane” should reinforce the improvement of health and welfare of the animal; require methods that involve the least degree of pain associated with living conditions and slaughtering practices; address disease prevention and veterinary treatment; and provide for a more natural life with living conditions conducive to the species’ natural environment, access to adequate food, water, shelter, rest, and sanitation.\(^{241}\)

The FSIS must establish specific guidelines to be used by producers, handlers, federal, state, and private certification organizations. The guidelines must serve as a universal minimum standard as to what farming practices are considered not only humane, but also inhumane. In addition, the USDA should disallow not only the term “humane,” but all similar humane labeling claims from CAFOs, as conditions in CAFOs have been proven to be inhumane to say the least.

The implementation of the NOP helped ensure organic products met a consistent standard.\(^{242}\) To help ensure consistency among humane products, the USDA needs to implement a similar program, possibly the National “Humane” Program (NHP). The NHP would formally establish the conditions that qualify as humane as well as establish the requirements for how humane products are handled, processed, and labeled.

Developing national uniformity for humane farming and labeling would prove beneficial to consumers and producers alike.\(^{243}\) As demonstrated with the USDA’s “Certified Organic” label, requiring definitive definitions for animal welfare claims would minimize inconsistencies between what producers, FSIS, and consumers believe the terms actually mean.\(^{244}\) Establishing legal definitions for poultry producers to adhere to will assist in substantiating labeling claims, eliminating conflicting industry standards, and helping to restore consumer confidence in purchasing “humane” products.\(^{245}\)

Moreover, the USDA needs to develop an animal welfare rating system that classifies welfare-related claims based on farming conditions. For example, The Global Animal Partnership (GAP) developed a five-step animal welfare-rating program that informs consumers about the “animal farming systems they choose to support.”\(^{246}\) Each step classifies animal welfare standards based on varying levels of animal welfare. For instance, Step One prohibits cages, crates, and crowding; while Step Five, the highest level of welfare standards, requires that the animal’s entire life is spent on one farm and prohibits physical alterations of the animal.\(^{247}\) Application of these criteria would help discourage misleading labeling terminology because it would not matter what ambiguous terms poultry producers elected to use; instead, the welfare rating would inform consumers precisely how humane their on-farm conditions actually are.

C. IMPLEMENT THIRD-PARTY CERTIFICATION AND VERIFICATION

Animal welfare labeling claims continue to deceive consumers—primarily because of the FSIS’s inadequate certification and verification process.\(^{248}\) The USDA’s endorsement of Perdue’s chickens demonstrated a lack of oversight in the verification process and exposed weaknesses within the agency—causing hesitation in some consumers to trust the USDA’s stamp of approval.\(^{249}\) The current certification system is based on varying standards, and the verification system is based on an honor code of producers attesting to the truth of their claims.\(^{250}\) The absence of oversight permits for the use of deceptive labels that can ultimately result in not only misleading consumers, but also to harming farmers who have earned the right to label their packages with “humane” labels.\(^{251}\) The key to restoring consumer confidence and trust in USDA’s process verified label is proper oversight of the certification and verification process to ensure farms are following a unified humane standard and that they remain in compliance through ongoing verification of animal welfare labeling claims. The USDA should require proof in the form of random and unannounced on-farm visits to determine the truth of the producer’s affidavit. Since the USDA does not have the resources or the manpower to authenticate each welfare claim,\(^{252}\) independent third-party verification of animal welfare claims is imperative.\(^{253}\)

Third-party certification and verification for the approval of animal welfare claims are necessary to provide: “(1) meaningful, verifiable standards; (2) consistency of meaning and of the verification process; (3) transparency, including the public availability of standards; (4) independence from users of the label; (5) opportunity for public comment.”\(^{254}\) Unlike the self-regulating standards imposed by the NCC, true third-party programs are independent of the companies they are certifying, which produce less biased results.\(^{255}\)

An example of successful third-party verification is the Marine Stewardship Council (MSC).\(^{256}\) Illegal fishing and unsustainable harvesting has resulted in concealing the reality of overfishing and distorting the true retail availability of certain species from consumers.\(^{257}\) This phenomenon results in the mislabeling of fish and seafood products.\(^{258}\) MSC, an international third-party certification and verification organization, collaborates with scientists, fisheries, seafood producers, and brands to promote sustainable fishing and safeguard seafood supplies.
for the future. The MSC has made significant progress in their attempts to address the problem of unsustainable fishing to ensure the proper labeling of fish and seafood products. Through sustainable fishery management techniques that emphasize oversight, control, surveillance, and enforcement—the MSC has been able to significantly reduce the amount of falsely labeled seafood, while promoting the sustainability of wildlife fisheries.

To be MSC certified, companies must meet the MSC Standard, which consists of three core principles: (1) sustainable fish stocks; (2) minimizing environmental impact; and (3) effective management. Fisheries must be managed to maintain the structure, productivity, and diversity of the ecosystem. Fisheries must also have a system in place to ensure they can respond to declining fish populations. The MSC manages a second standard called the Chain of Custody for traceability. A certification body independent of both the fishery and the MSC performs a traceability audit for each business along every link in the supply chain to ensure they meet the MSC Chain of Custody standard. The Chain of Custody team performs various trace back exercises to make sure that a product sold as certified can be demonstrated to come from a certified source. They follow a product through the supply chain from point of sale to the consumer and then back to the fishery. To ensure businesses remain in compliance with MSC standards, a certification body conducts random, unannounced, and short-notice audits. In addition, third-party consultants perform DNA testing which has shown that less than 1% of MSC eco-labeled product samples have been found to be incorrectly labeled. By comparison, a survey of 1,200 seafood products throughout the United States showed that 33% were mislabeled. Seafood products can only display the blue MSC eco-label if the product can be traced back through the supply chain to a fishery that has been certified under the MSC standard.

The FSIS can develop a model similar to that of the MSC’s model of certification and verification to ensure that products that are labeled as “humanely raised” are independently certified and continuously verified to ensure they live up to their animal welfare claims. The USDA must improve oversight by requiring unannounced, random audits at farms and processing plants. This would minimize inconsistencies, fraud, and discourage retailers from falsely labeling poultry products. In addition, the FSIS should perform unannounced audits on independent third-party certifiers by accompanying certifiers onsite and monitoring the certification and verification process as well as reviewing certification applications to ensure third-party certifiers are enforcing federal standards.

The FSIS’s current process for approving animal welfare and environmental label claims lacks transparency—both in the manner that information travels from producers to the FSIS and how information travels from the FSIS to consumers. Transparency would promote accountability within the poultry farming industry. However, ag-gag laws (laws that criminalize whistleblowers by prohibiting the making of undercover videos) can make it difficult to establish liability and trust within the industry. Third-party verification can facilitate transparency between interested parties and poultry producers asserting animal welfare claims on their label. For example, consumers can evaluate the details of The Global Animal Partnership’s five-step animal welfare rating program on their website or that of any partnering third-party certifier. Compliance can be promoted when companies are evaluated on and rewarded for their positive compliance performances. When coupled with strict governmental enforcement of penalties, compliance incentives would further reinforce the USDA’s effort to require the humane handling of live birds. Corporate Social Responsibility (CSR) based on sound ethics and core values can be a valuable tool in helping companies gain a competitive advantage. Food companies are prime targets for public concern over perceived CSR deficiencies, particularly regarding animal welfare, health, safety, and labor. As demonstrated by the substantial growth in the humane farming industry, the social behavior of companies influences consumer purchasing decisions, which can directly affect a company’s bottom-line. Consumers often exercise their economic vote by refusing to purchase items from companies that have a poor reputation. Whereas conscious companies that have a reputation for being socially responsible attract conscious consumers.

Poultry producers are essentially agents of trust. Trust reassures consumers that the premium prices paid for “humanely” labeled poultry products reflect the cost of operating a humane farm and contribute to the improved welfare of animals. Consumers expect that labels are truthful and reliable. A breach of trust often results in lawsuits, consumer protests, and product boycotts. CSR helps establish, or in some cases re-establish, trust in a company and their products.

Poultry farmers are able to revamp their reputations through reforming farming practices that result in the humane treatment of birds. This beneficial measure is capable of increasing a company’s popularity while establishing a positive relationship with the public. For example, Tyson Foods, Inc., a world leading poultry producer, received an “A” from the Global Reporting Initiative, a world-recognized organization that promotes economic, environmental, and social sustainability. As a result, there has been a positive correlation between the company’s CSR efforts and the public’s perception of the company. The company has since experienced an increase in profits and an improvement in the company’s reputation.

Implementing a Cost Share Program similar to the National Organic Certification Cost Share Program (NOCCSP) and the Agricultural Management Assistance (AMA) to reimburse farmers for the cost to become “Certified Humane” is a great way to encourage poultry producers to implement more humane farming practices. Many producers are not “Certified Humane” because of the associated cost with becoming certified, which consists of: an application fee, the cost to make the necessary changes to...
enhance the farm to qualify as humane, and the cost of annual inspections.289 Once certified, eligible humane operations can be reimbursed a percentage of the certification cost.290 Since there are costs associated with operating a certified humane farm, certified humane producers, like certified organic producers, are justified in charging premium prices to recuperate the cost of enhanced animal welfare standards.291 For example, conventional chicken can cost around $2.48 per pound, while the cost of organic chicken can range around $4.42, a 78% price increase.292

The existing procedure for evaluating and penalizing companies for GCP violations does not effectively deter inhumane handling of poultry during processing.293 Although the FSIS’s policy is to review all processing plants, “oversight of GCP in plants that handle birds is infrequent and uneven among [the] USDA field offices.”294 The USDA must take major enforcement actions demanding that food companies comply with GCP or, otherwise, be penalized for noncompliance.295

One of the key problems in determining whether a facility is following GCP results from the lack of clear and precise GCP guidelines.296 The FSIS never officially recognized a set of clear-cut guidelines to assess whether a producer’s GCP records or actions throughout the predetermined areas of the plant coincide with GCP standards.297 Per the directive, processors are required to handle all live birds humanely.298 The directive requires that poultry slaughter be done in accordance with good commercial practices (GCP).299 Because of this deficiency, producers are left to simply comply with discretionary industry standards set by the NCC.300 The FSIS simply addressed the verification process.301 Moreover, not requiring establishments to keep or maintain accurate GCP records is detrimental to the verification process and indicative of the insignificance of poultry welfare in the food industry.302 Establishing clear criteria specifying precisely what GCP entails will not only aid in accurately verifying a producer’s claims, it will also formally establish a minimum standard for the humane handling of live birds throughout the agricultural process.303

In recognition of the causal connection between humane handling and adulterated products, the FSIS must use its regulatory authority to revise the directive to first specify what GCP entails and then require establishments to keep and accurately maintain GCP records for proper verification. In addition, inspectors should also be required to observe the predetermined areas of the plant to reinforce compliance.304 The PPIA reinforces the purpose behind enacting GCP, which is to eliminate adulterated poultry products from entering interstate commerce.305

The directive requires poultry processors to handle chickens humanely, suggesting that even if the FSIS did not have the authority to include chickens under the term “other livestock,” it nonetheless had the authority to require the humane handling of chickens during processing derived from the authority granted by the PPIA.306

Based on the conditions of J. Craig Watts’ farm, Perdue Farms’ Harvestland chickens were not “humanely raised.”307 This label was false, deceiving, and misleading, yet the FSIS has not imposed any of PPIA’s penalties against Perdue Farms.308 In order to effectively deter the use of misleading labels, the FSIS must utilize the enforcement provisions of the PPIA to deter the use of misleading labels and protect consumers from misbranded poultry products.

VI. CONCLUSION

The lack of existing legal protections for poultry under current animal welfare legislation facilitates the abuse of birds used in food production. Loopholes in existing poultry labeling laws along with inadequate oversight of the certification and verification of “humane” labeling allows companies to mislead consumers with little consequence. It is necessary to first define an animal welfare standard and then implement specific guidelines for producers to abide by.

The USDA must exercise its authority to prevent adulterated poultry products from entering interstate commerce by establishing clear animal welfare standards for poultry. The establishment of separate and distinct laws specifically designed to enhance poultry welfare would be ideal. However, the USDA could utilize existing federal laws to advance the treatment of poultry while protecting consumers. By reforming the AWA and the HMSA, along with the application of the PPIA, the USDA can improve the welfare of chickens used in agriculture and also protect consumers from companies that choose to falsely advertise their products as humane.

ENDNOTES


4 Chicken Production on Factory Farms, Farm Sanctuary, https://www.farmsanctuary.org/learn/factory-farming/chickens [last visited Dec. 13, 2017] [hereinafter Chicken Production]; see Sonia Faruqi, Project Animal Farm: An Accidental Journey into the Secret World of Farming and the Truth About Our Food 100 (2015) (“Chickens and turkeys today are, in a sense, like balloons, except that they expand not with air but light. If they enlarge too fast, they explode—or, rather, implode, collapsing on painful, broken legs. Extreme genetic selection, accelerated by artificial insemination, has created farm animal breeds today that yield far more meat, milk, and eggs—while eating continued on page 49

far less—than they ever have. The most astounding genetic changes have been those of chickens. In 1925, chickens reached a weight of two and a half pounds in sixteen weeks; today, they reach a weight of almost six pounds in six weeks (while consuming less than half the feed per pound of weight gained). It’s miraculous but torturous.”.


6 See Lesley J. Rogers, The Development of Brain and Behavior in the Chicken 184 (1995) (explaining that the certain brain structures of chickens are similar to mammals).


8 See Sentence in Farm Animals, supra note 7, at 138-39.

9 See id. at 131-34.

10 See Thinking Chickens, supra note 7; Robert Grillo, Chicken Behavior: An Overview of Recent Science, FREE FROM HARM (Feb. 7, 2014), http://freefrom-harm.org/chicken-behavior-an-overview-of-recent-science/ (noting that chicken communication skills may be comparable to some primates).

11 See Amy J. Fitzgerald, Animals As Food: (Re)Connecting Production, PROCESSING, CONSUMPTION, AND IMPACTS 16 (2015) (emphasizing that 97% of U.S. livestock are CAFO raised); Daniel Imhoff, CAFO: THE TRAGEDY OF INDUSTRIAL ANIMAL FACTORIES xiii (2010) (stating that the purpose of factory farming is to breed animals for rapid growth and high outputs of animal products such as meat and milk).

12 See Imhoff, supra note 11, at xii-xv (explaining that animals in CAFOs exist in unnatural conditions without fresh-air or sunlight and are reduced to units of production by corporate agribusiness); see also Putting Meat on the Table: Industrial Farm Animal Production in America, PEW COMM’N ON INDUS. FARM ANIMAL PROD. 22 (2008), http://www.pewtrusts.org/~/media/assets/2008/pcfiap_exec-summary.pdf.

13 See Imhoff, supra note 11, at xii-xv.


16 Id.

17 See id. (“Traditionally, a flock of broilers consist of about 20,000 birds in a growout house that measures 400 feet long and 40 feet wide, thus providing an area of about 16,000 square feet, or eight-tenths of a square foot per bird. As the birds age, they grow into this space.”).


19 See Cheryl L. Leahy, Large-Scale Farmed Animal Abuse and Neglect: Law and Its Enforcement, 4 J. ANIMAL. L. & ETHIC 63, 64 (2011) (arguing that factory farm conditions also impact the environment and resource consumption).


22 See Mark Essel, LESSER BEASTS: A SNOUT-TO-TAIL HISTORY OF THE HUMBLE PIG 253 (2015) (noting that the world of humane farming has produced a “new tribe” of consumers willing to pay a great deal as long as the animal is treated well before dying at a welfare certified slaughterhouse); see also Memorandum from Bob Meadow & Joshua Ulibarri, Lake Research Partners, to Interested Parties, Broiler Chicken—Online Survey Public Memo 1 (Apr. 2017), https://www.aspca.org/sites/default/files/publicmemo.aspca_broilerchicken2013.pdf (“Once consumers learned more about these conditions, concern about chicken...
welfare increased dramatically, as did consumers' desire to purchase humanely raised chickens (including purchasing chicken at a higher price)."

23. See, e.g., AM. HUMANE ASS’N., 2014 HUMANE HEARTLAND FARM ANIMAL WELFARE SURVEY 7 (2014) (reporting that 75% of survey participants are willing to pay more for “humanely raised” products); see also Lindsay Walton & Kristen King Jaiven, Regulating Concentrated Animal Feeding Operations for the Well-Being of Farm Animals, Consumers, and the Environment, WHAT CAN ANIMAL LAW LEARN FROM ENVIRONMENTAL LAW? 95 (Randall S. Abate ed., 2015) (“[H]umanely raised animal products . . . are often more expensive than their factory-farmed counterparts, partly because their prices more accurately reflect the “true cost” of the product.”).

24. See Animal Welfare Act, 7 U.S.C. § 2132 (2012); Humane Methods of Livestock Slaughter Act of 1978, 7 U.S.C. § 1901 (2012); 7 U.S.C. § 80502 (1994) (transportation of animals); see generally Labeling Guideline on Documentation Needed to Substantiate Animal Raising Claims for Label Submissions, U.S. DEP’T OF AGRIC. FOOD SAFETY & INSPECTION SER. 8 (2016), https://www.fsis.usda.gov/wps/wcm/connect/6f6c3d56-6809-4239-b7a2-bcc8b2a30588/RaisingClaims.pdf?MOD=AJPERES ("FSIS has not defined these claims in regulations or policy guidelines. For animal welfare claims, such as ‘Raised with Care’ or ‘Humanely Raised’ FSIS will only approve a claim if a statement is provided on the label showing ownership and including an explanation of the meaning of the claim for consumers.").

25. FSIS Compliance Guideline for Label Approval, FOOD SAFETY & INSPECTION SER. 3-15, https://www.fsis.usda.gov/wps/wcm/connect/6f6c3d56-6809-4239-b7a2-bcc8b2a30588/RaisingClaims.pdf?MOD=AJPERES (last visited Dec. 12, 2017) (detailing the guidelines to document the humane practice, but not providing a standard for which to grade those practices), 7 U.S.C. § 2132(g)(1) (2012) (“this term excludes birds, rats of the genus Rattus, and mice of the genus Mus, bred for use in research; horses not used for research purposes; and other farm animals, such as, but not limited to, livestock or poultry used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.").

26. See Henny v. Perdue Farms, Inc., No. 11-888, 2013 WL 1338199, at *1 (Mar. 31, 2013) (noting that the company utilized misleading marketing practices by advertising its products as “Humanely Raised” and using the phrase “USDA Process Verified” to charge premium prices for chickens that were raised under the same conditions as non-“Humanely Raised” chickens); see also Frequently Asked Questions, CERTIFIED HUMANE, http://certifiedhumane.org/how-we-work/frequently-asked-questions/#15 (last visited Dec. 13, 2017) (“[i]t is more expensive to raise farm animals humanely, and so it usually does cost a little more to buy Certified Humane® foods”).

27. See Henny, No. 11-888, 2013 WL 1338199 at *1 (discussing that Perdue Farms falsely labeled certain products as “humanely” and charged higher prices).


29. See Nicolas Kristof, Abusing Chickens We Eat, N.Y. TIMES (Dec. 3, 2014), https://www.nytimes.com/2014/12/04/opinion/nicholas-kristof-abusing-chickens-we-eat.html?r=0 (discussing the conditions at Perdue’s “Humanely” farms); Chicken Production supra note 4 (overviewing the conditions of farm factory chickens).


35. 21 U.S.C. § 602 (2012) (stating that the unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles to the detriment of consumers and the public generally).


37. Id.

38. Id.


40. See infra Part I.

41. See generally The Business of Broilers, supra note 5; Chickens Used for Meat, FARM SANCTUARY, https://www.farmsancuary.org/learn/factory-farming/chickens/ (last visited Dec. 13, 2017) (noting typical chickens in the meat industry rapidly grow to “market weight” with lights constantly kept on to stimulate eating, causing them to suffer from deformities, and the chickens, spend their lives confined in overcrowded factories on floors covered in feces and urine).

42. See infra Part IIC.


46. Field, supra note 37.


49. Id.

50. See Warner, supra note 48.

51. See Kristof, supra note 30.


53. Id.

54. Id.

55. Id.


57. Meat Chickens, Homestead Organics (2003), http://www.homesteadorganics.ca/meat-chickens.aspx (noting that breeds such as Meat King and White Cornish Crosses are marketed as broilers at 8-10 weeks of age).

58. The Business of Broilers, supra note 5; Jacqueline Howard, ‘Chickens Look Way Different Today, And Here’s the Reason Why’, HUFFINGTON POST (Oct. 21, 2014), http://www.huffingtonpost.com/2014/10/21/chickens-bred-bigger_n_5983142.html (citing a study by the University of Alberta demonstrating that broiler chicken breeds are four times larger today than the industry standard breeds in 1957).


60. Id.


7 U.S.C. § 2132(g) (”The term ‘animal’ . . . excludes . . . farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.”).


Id.

Id. § 1902(a).

Levine v. Vilsack, 587 F.3d 986, 989 (9th Cir. 2009).

Id. § 1904(b).


Id.

See id.

See id. § 2(b) (extending humane slaughter to “cattle, sheep, swine, goats, horses, mules, and other equines”).

Id.


Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56,624, 56,624 (Sept. 28, 2015) (reminding the public that “poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely”).

Id.

Id.

Id. (”poultry products are more likely to be adulterated if, among other circumstances, they are produced from birds that have not been treated humanely, because such birds are more likely to be bruised or to die other than by slaughter”).

See Levine v. Vilsack, 587 F.3d 986, 990-91 (9th Cir. 2009) (holding that Levine lacked standing due to the repeal of the legislation that made USDA responsible for the Plaintiff’s injury).

See id. at 991.


Friedrich, supra note 140, at 263.

Levine, 587 F.3d at 988.


See id. § 454.


See 21 U.S.C. § 457 (stating that the Secretary delegates the ability to regulate poultry product labeling under the Act).
producer’s standard” to clearly state to consumers how animals were raised and what the terms mean.  

179 Id.

180 Id. at 10.

181 Id. at 22.

182 Id. at 8-9.

183 Id. at 9; see also Treatment of Live Poultry Before Slaughter Notice, 70 Fed. Reg. 187, (Sept. 28, 2005) (referring to the compliance of the NCC Animal Welfare Guidelines and Audit Checklist which has been widely used and is consistently revised).


185 Id. at 13.


188 Id. at 5.

189 Id. at 6.

190 Id. at 5-6.

191 Id. at 6.

192 Id. (noting that producers were motivated to mislabel food as organic because consumers were likely to pay more for organic products).


196 Id. at 23 (stating that the term “organic” will no longer be questioned and that the national organic standards will protect the integrity of the organic product including the prohibited use of irradiation, sewage sludge, or genetic engineering in anything labeled organic).

197 Id. at 7.


203 Id.

204 Organic Certification Cost Share Programs, U.S. Dep’t of Agric., Agric. Mkgt. Serv., http://www.ams.usda.gov/services/grants/occsp (last visited Dec. 13, 2017) (demonstrating how producers often compare the cost of production divided by the area used to grow then dividing that number by pounds harvested of that item).

205 Id.


209 7 U.S.C. § 2132(g) (2012) (“Animals covered under this Act include any live or dead cat, dog, hamster, rabbit, nonhuman primate, guinea pig, and any other warm-blooded animal determined by the Secretary of Agriculture for research, pet use or exhibition.”).

210 See generally, Animal Welfare Act, Pub. L. No 91-579, 84 Stat. 1560 § 2(g) (1970) (amending the 1966 original to expressly exclude poultry). the Act was amended to include psychological enrichment, and In 2002. If chicken were added to these protections they could be covered under mandatory federal regulations, and although it the Act is not guarantee humane treatment for all chickens, it can help to mitigate some of the abuse they endure).

211 Id. (noting the amendments to the AWDA added warm-blooded animals to its protections to help eliminate the suffering endured by warm-blooded animals).

212 Farmed Animals and the Law, supra note 89.

213 See U.S. Dep’t of Agric., Food Safety & Inspection Serv., Humane Handling of Livestock and Good Commercial Practices in Poultry 1, 22 (Jan. 2015) (recognizing that GCP approaches are currently voluntary on the part of the industry).


216 Mary L. Azcuenaga, The Role of Advertising and Advertising Regulation in the Free Market, Turkish Association of Advertising Agencies, (Apr. 8, 1997), (“Advertising that distorts the market by disseminating false or deceptive claims These claims may induce consumers to purchase goods or services that, had the consumers not been misled by the deceptive advertising, they would not have chosen to buy. When this happens, the government may need to step in to restore the integrity of the market. It may take various steps, including case-by-case law enforcement to prevent false and deceptive advertising and issuance of regulations to address particular practices that mislead consumers about material attributes of goods and services in the market.”).


220 See generally Pet Adoptions Rise, Shelter Deaths Fall as Ad Council Launches Second Wave of Historic Pet Adoption Campaign, Ad Council (Nov. 15, 2011), https://www.adcouncil.org/News-Events/Press-Releases/Pet-Adoptions-Rise-Shelter-Deaths-Fall-as-Ad-Council-Launches-Second-Wave-of-Historic-Pet-Adoption-Campaign (noting the effectiveness of the Shelter Pet Project, a series of advertisements released by The Ad Council in conjunction with The Humane Society of the United States and Maddie’s Fund, in reducing euthanasia of shelter pets by 10% since its promotion in 2009 “Despite a bleak economy, the percentage of pets in homes that were adopted from animal shelters and rescue groups has risen from 27 percent to 29 percent in the last two years, with the number of healthy and treatable pets losing their lives for lack of a home dropping from 3 million to 2.7 million.”).  

221 Azcuenaga, supra note 216.

222 Levine v. Vilsack, 587 F.3d 816, 899 (9th Cir. 2009) (“[The [PPLA] . . . among other things, gave USDA authority to inspect poultry producers for compliance with health and sanitary requirements, required inspection of poultry after slaughter, established labeling requirements for poultry products, and allowed for withdrawal of inspections for noncompliance and the imposition of civil and criminal penalties for the sale of adulterated products.”).


225 See U.S. Dep’t of Agric. Food Safety & Inspection Serv., Guidebook Humane Handling of Livestock and Poultry 12 (2009) (stating that poultry be slaughtered with good commercial practices, in a manner that ensures that poultry are treated humanely).
Controlled Atmosphere Killing [contrasting controlled-atmosphere killing with electric immobilization].

227. Kimberly Kindy, USDAs plan to speed up poultry-processing lines could increase risk of bird abuse, WASH. POST (Oct. 29, 2013), https://www.washingtonpost.com/politics/usda-plan-to-speed-up-poultry-processing-lines-could-increase-risk-of-bird-abuse/2013/10/29/aeeef1e4-3b2e-11e3-bf4a-da62e264f40e_story.html?utm_term=.f6d96e02d705 ("the [USDA] considers electrocuted and gas stunning to be humane provided the systems are properly run and maintained.").


Controlled Atmosphere Killing, supra note 226, at 1 ("Controlled Atmosphere Killing is carried out by passing birds in their transport crates through a chamber containing gas. This gas is not poisonous, but causes death by anoxia.").

230. Id. at 1-2.

231. Id. at 2.

232. See Neuman, supra note 228 ("The gas technology is expensive. Each company said it would cost about $3 million to convert their operations and more over time to run the systems. That makes it a hard sell in a commodity-oriented industry that relies on huge volumes and low costs to turn narrow margins into profits.").

Controlled Atmosphere Killing, supra note 226, at 2 (discussing cost-savings associated with controlled-atmosphere killing).


236. Id.

237. See generally SERVICE LABELING GUIDELINE, supra note 218 (discussing the requirements for obtaining the necessary label but not defining the terms).


Animal Welfare: What Is It, supra note 239 (detailing the AVMA definition of what a good state of welfare for an animal entails).


Id. (commenting on the importance of improving the AWAs definitions of important terms).

Id. (including record keeping, unannounced audits, and DNA testing in the traceability standard).

Id.

Id. (requiring each certifier to carry out unannounced audits for at least 1% of their clients).

Id. at 3 (portraying the success the MSC labelling efforts have had).


What Does the Blue MSC Label Mean?, MARINE STEWARDSHIP COUNCIL (Aug. 15, 2011), https://20.msc.org/what-we-are-doing/our-approach/what-does-the-blue-msc-label-mean (explaining the blue label is based on a scientific set of requirements and is only applied to wild fish or seafood from fisheries that have been independently assessed and separated from non-certified seafood).

Petition to Amend Labeling, supra note 177, at 19.


The 5-step Animal Welfare Program, supra note 246 (providing a third-party verification of traceability through a rigorous process of setting and approving standards).


See 7 C.F.R. Part 205 (2000) (codifying that making false statements or knowingly selling or labeling products as organic that are non-compliant with the Organic Foods Production Act of 1990 may be subject to criminal prosecution and fines); EQIP Organic Initiative, U.S. Dep’t of Agric., https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1047337.pdf (last visited Dec. 13, 2017) (discussing how EQIP Organic Initiative offers financial aid and helps producers implement conservation practices to support the environmental sustainability of their organic operations).


Michael J. Maloni & Michael E. Brown, Corporate Social Responsibility in the Supply Chain: An Application in the Food Industry, 68 J. BUS. ETHICS 1, 44 (2006) (discussing the importance of larger food companies backing up their CSR claims).

Id.

Id.


Sandro Castaldo, The Missing Link Between Corporate Social Responsibility and Consumer Trust: The Case of Fair Trade Products, 84 J. BUS. ETHICS 1, 7 (2009) (investigating the link between consumer perception and intention regarding a company’s CSR).

Perdue Farms Announces Animal Care Improvements and Commits to Future Advancements, Perdue Farms, FOOD MGR. (July 17, 2017), https://www.foodmanufacturing.com/news/2017/07/perdue-farms-announces-animal-care-improvements-and-commits-future-advancements (“We know that trust is earned by responding to consumers and other stakeholders, and that includes a willingness to make significant changes,” said Jim Perdue, chairman of Perdue Farms. “It’s not easy, and it requires commitment, resources and time. But people expect more from Perdue, and we have to keep improving”).

Gary Mickelson, Tyson Foods Receives an ‘A’ for New Corporate Responsibility Report, GLOBE NEWSWIRE (Feb. 5, 2013, 16:00 AM), https://globenewswire.com/news-release/2013/02/05/529078/10020599/en/Tyson Foods Receives an ‘A’ for New Corporate Responsibility Report (referencing Tyson’s history of poor environmental performances and their efforts to improve through new initiatives such as the program “Farmcheck,” which is aimed at improving the well-being of animals on their independent farms).

Id.

Id.

Fee Schedule, CERTIFIED HUMANE 2 (June 1, 2013), http://certifiedhumane.org/wp-content/uploads/pdfs/Fee%20Schedule.13.2E.pdf (showing the prices and details of the improvements needed to become certified as humane).

Id. at 1.

DANIEL BRENNAN, CORPORATE SOCIAL RESPONSIBILITY: THE CORPORATE GOVERNANCE OF THE 21ST CENTURY 121 (2005) ("[C]orporations with the highest public profiles are the most vulnerable to bad publicity and disaffected consumer reaction.").


AWI, Working, supra note 141.

See Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56624, 56625 (Sept. 28, 2005); Jones, supra note 293 (noting that the USDA encouraged the poultry industry to adhere to Good Commercial Practices (GCP), which it defined as the poultry industry’s voluntary, minimal animal handling guidelines).

See Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. at 56,624-25 (stating that the PPIA claims a bird is more likely to become adulterated if it is slaughtered inhumanely, despite the fact that the FSIS provided no related statutes).

See Instructions, supra note 165 (providing notice of instructions of inspection standards for poultry GCP).

Id.

Jones, supra note 293 (discussing the lower-than-expected standards of the poultry industry and their negative effects on chickens and the consumer).

See Instructions, supra note 165.

Id.

Id.

See id. (providing instructions of inspection standards for poultry GCP).

Id.


Idols, supra note 56.

See 21 U.S.C. § 461(a); see also 21 U.S.C. § 676 (stating that distribution of adulterated chickens subject the culprit to imprisonment and/or fines).