



March 5, 2007

(Via Electronic Mail (Robert.Post@fsis.usda.gov)
and Overnight Mail)

Dr. Robert C. Post
Director, Labeling and Consumer Protection Staff
Food Safety and Inspection Service, USDA
1400 Independence Ave. SW
Suite 602, Annex
Washington, D.C. 20250

RE: Petition for Rulemaking Regarding Natural Label Claims

Dear Dr. Post:

The United States Department of Agriculture (“USDA”) Food Safety and Inspection Service (“FSIS”) Natural Policy, both before and after the August 2005 change, results in drastic consumer confusion with respect to the meaning of the “natural” label claim on meat and poultry products. Because labels are used as a means of communicating truthfully with the public, Farm Sanctuary Inc. (“Farm Sanctuary”) hereby submits this Petition under 7 CFR 1.28 and 5 USC 553(e), for the Issuance of a Rule Regarding Natural Label Claims.

As a preliminary matter, Farm Sanctuary is aware that Hormel Foods Corporate Services, LLC (“Hormel”) submitted a Petition for Rulemaking to this Agency on October 9, 2006, Docket No. FSIS 2006-0040 (the “Hormel petition”). The Hormel petition requested that FSIS codify the definition of “natural” and clarify the circumstances under which it may be used on the label of a meat or poultry product. Farm Sanctuary disagrees with the primary action requested by the Hormel petition (codification of the term) and believes that Hormel’s request for clarification does not have any meaningful impact in the goal of assisting consumers in making informed purchasing decisions.

I. Action Requested

Farm Sanctuary submits this Petition to request that FSIS decline to codify a definition of “natural” at this time because the use of that term on meat and poultry product labels is confusing and misleading and, therefore, should be prohibited. It should further abandon its existing guidance, and, if FSIS deems it necessary, issue an interim guidance to this effect. In the alternative, if FSIS decides to codify a definition, Farm Sanctuary requests that FSIS initiate rulemaking procedures to amend 9 CFR 317 *et seq.* and 9 CFR 381.129 to codify an expanded definition of “natural” that addresses the treatment and living conditions of animals raised for food before their slaughter, in addition to post-slaughter processing. (The interplay between this

Petition and the recent "Listening Sessions" conducted by the USDA Agricultural Marketing Service ("AMS") regarding the term "naturally raised" is discussed later in this Petition.)

II. Background

Each year, consumer interest in "green" living is increasing.¹ This interest ranges from sustainable development and renewable energy, to healthy and ethically-aware eating. It is also evidenced by a growth in the healthful foods market.² Consumers turn to labels to inform them about the products they choose to consume. Although FSIS has not yet codified a definition of "natural" in the labeling regulations, it has set forth "guidance" in Policy Memoranda. A more detailed background of the evolution of the Natural Policy is set forth in the Hormel petition; however, a brief summary of related events to date is set forth below.

On November 22, 1982, the USDA issued a Policy Memorandum (Policy Memo 055), providing guidance as to the term "natural" and its use on labels for meat and poultry products (the "Natural Policy"). Generally, the Natural Policy provided that "natural" products could not contain any artificial flavor or flavoring, coloring ingredient, chemical preservative, or other artificial or synthetic ingredient, and the product and its ingredients could not be more than "minimally processed." This definition did not address the raising conditions of the animals; just their post-slaughter processing conditions.

In August 2005, the USDA changed the Natural Policy, providing additional guidance with respect to the use of ingredients that have been more than minimally processed. Hormel believed that this August 2005 change rendered the guidance internally inconsistent, and created confusion regarding whether a meat or poultry product bearing a "natural" claim may contain chemical preservatives and synthetic ingredients. Therefore, Hormel submitted the Hormel petition, requesting that the USDA FSIS initiate rulemaking to codify the original definition of "natural" (as set forth in Policy Memo 055) and clarify the circumstances under which it could be used on the label of a meat or poultry product.

FSIS requested comments on the Hormel petition, and stated that after the close of the comment period, it would initiate rulemaking on the claim "natural." *See* 71 Fed. Reg. 70503-

¹ This is evidenced, in part, by the number of popular books, articles and films addressing ethical eating and living that have been released in the recent past. *See, e.g.*, Matthew Scully, *DOMINION: THE POWER OF MAN, THE SUFFERING OF ANIMALS, AND THE CALL TO MERCY* (St. Martins Press 2002) (written by President Bush's former speechwriter); Michael Pollan, *THE OMNIVORE'S DILEMMA: A NATURAL HISTORY OF FOUR MEALS* (Penguin 2006); Eric Schlosser, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL* (Houghton Mifflin 2001); Al Gore's documentary film, *AN INCONVENIENT TRUTH* (Paramount Classics 2006); the documentary film, *SUPERSIZE ME* (Morgan Spurlock and The Con 2004); and numerous others.

² For example, Whole Foods Market, which operates 191 stores and generated \$5.6 billion in sales in 2006, just purchased smaller rival Wild Oats Markets for \$565 million "in the face of growing competition from supermarket giants that are stocking up on everything from organic frozen peas to whole wheat pasta." Jesus Sanchez, *Whole Foods agrees to purchase Wild Oats Markets*, L.A. TIMES, Feb. 21, 2007, available at <http://www.latimes.com/business/la-ex-wholefoods21feb22,1,3117117.story?track=rss> (last visited March 4, 2007). Whole Foods Chairman and co-founder John Mackey spoke to the growth of the natural foods market among mainstream retailers, stating, "[t]he growth opportunity in this category has led to increased competition from many players, most of whom are not dedicated natural and organic foods supermarkets, but are considerably larger than we are." *Id.*

Dr. Robert C. Post
March 5, 2007
Page Three

505. The Agency specifically sought comments and information on (1) whether a definition of “natural” should incorporate a “no more than minimally processed” criterion; (2) the implications and conflicts arising from current and new food processing methods and technologies (*e.g.*, steam pasteurization of carcasses, high pressure processing, and modified atmosphere packaging); (3) data from consumer studies on views, perceptions, and beliefs about the meaning of terms such as “natural,” “minimal processing,” “artificial and synthetic,” and “preservatives”; and (4) whether food safety and consumer protection / public health interests outweigh conflicts with the meaning of “natural.” 71 Fed. Reg. 70504-505. Although some comments addressed the fact that a definition of “natural” should cover pre-slaughter living conditions of animals as well, this did not appear to be a focus of FSIS’s inquiry.

Concurrently, on November 21, 2006, the USDA AMS announced that it was considering the development of a voluntary standard to address production practices associated with the term “naturally raised” for livestock. AMS held three “Listening Sessions” between December 11, 2006, and January 18, 2007, to obtain public input regarding this issue. Representatives from FSIS were present at these Listening Sessions to discuss the FSIS label approval program.³

On December 12, 2006, FSIS held a public meeting on the Hormel petition. At that meeting and thereafter, FSIS received comments requesting that it extend the comment period by an additional sixty days from the initial closing date of January 11, 2007, given the complexity of the issues surrounding the “natural” claim. FSIS agreed, and re-opened and extended the comment period until March 5, 2007.⁴

In response to the Hormel petition and certain comments thereto, FSIS also issued a “correction” to its August 2005 Policy Memo, removing a reference to “sodium lactate (from a corn source),” but stating that it would judge claims that foods to which a lactate has been added can be characterized as “natural” on a case-by-case basis, pending the outcome of the rulemaking on the use of the term “natural.” The correction also removed the statement in the August 2005 Policy Memo that referred to 7 CFR NOP Final Report, Part 205.601 through 205.606 for acceptable ingredients allowed for all natural claims. *See* USDA Food Standards and Labeling Policy Book, August 2005, *available at*

³ A slideshow prepared by Dr. Robert C. Post (to whom this Petition is addressed) and Tammie Myrick of the FSIS Labeling and Consumer Protection Staff was presented at these Listening Sessions. *See* Slideshow, AMS Listening Sessions on Marketing Claim for Naturally Raised Livestock: The FSIS Labeling Approval Program and Marketing Claims, *available at* <http://www.ams.usda.gov/lsg/stand/DecSession/FSISPresentationDenverSeattle.pdf> (last visited March 3, 2007). Further, it appears that either Dr. Post or Ms. Myrick was present at each of the Listening Sessions. *See* Listening Session Agendas, *available at* <http://www.ams.usda.gov/lsg/stand/claim.htm> (last visited March 3, 2007). Thus, it is clear that FSIS and AMS are already interacting at some level with respect to the “natural” and “naturally raised” claims. Although Farm Sanctuary does not know how closely FSIS and AMS are working together, based on these past interactions, it seems that the concept Farm Sanctuary presents of these two agencies working together on these issues, instead of on parallel tracks, is feasible as well as practical.

⁴ Farm Sanctuary submitted comments on Hormel’s petition. *See* document ID FSIS-2006-0040-0003, -0003.1. Typically, such comments would be sufficient to raise issues of concern, so a separate petition would not be necessary. However, because this is such an important issue, and because Farm Sanctuary is requesting very different action by FSIS on the subject than did Hormel, we have submitted this Petition, with the hope that it will prompt a broader and more comprehensive approach to the issue.

http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last visited March 1, 2007).

III. Argument

By this Petition, Farm Sanctuary presents two key points. First, consistent with existing regulations, products and their packaging cannot bear any “false or misleading” label that conveys “any false impression or gives any false indication of origin or quality or is otherwise false or misleading.” 9 CFR 317.8(a). Because consumers are confused by the current use of the natural label on meat and poultry products, and further believe that “natural” relates to treatment of the animals while alive, the use of the term “natural” on labels, at least as it has been and is currently defined, should be prohibited and discontinued.⁵

In the alternative, if the USDA FSIS decides to codify a definition of “natural” in the regulations and allow its use on meat and poultry labels, that definition must include provisions for the treatment and raising conditions of the animals pre-slaughter.⁶ As noted above, Farm Sanctuary is aware that the USDA AMS is considering the development of a “naturally raised” claim. To minimize or avoid further consumer confusion, it is imperative that, to the extent possible, these two arms of the USDA—FSIS and AMS—work together to create one comprehensive term and definition. Having one definition for “natural,” applicable only to post-slaughter processing conditions, and another for “naturally raised,” applicable to raising conditions, can only serve to further mislead and confuse consumers trying to make informed purchasing decisions.

A. As currently defined, the term “natural” should not be permitted on labeling of meat and poultry products.

FSIS should abandon or amend its existing policy guidance on labeling for meat and poultry products to state that the “natural” label, both as originally constituted and now, is effectively meaningless and, therefore, should be discontinued.⁷ Further, the Agency should expressly refuse to codify any definition of “natural,” at least at this time. As stated in the Hormel petition, “[a]gencies and citizens alike have long recognized the necessity of a clear definition of the word ‘natural’ used on labeling claims.” Hormel petition, at 4. Indeed, FSIS has strict regulations in place that govern false and misleading labeling. Specifically, 9 CFR 317.8(a) states:

⁵ Farm Sanctuary believes Hormel’s request for codification of a definition of “natural” is premature, unless and until FSIS and AMS are able to work cohesively to address both implications of the term—raising conditions (including, but not limited to, chemicals such as antibiotics given to the animals during their lives) as well as post-slaughter additives.

⁶ In contrast, Hormel’s petition seeks codification of the original definition of “natural,” which contains no provisions for animal raising practices. This does not fully address the problem; nor would it serve to alleviate existing consumer confusion regarding the meaning of “natural” on meat and poultry products.

⁷ Indeed, a recent *Consumer Reports* article warns consumers of food labeling that is persuasive but “meaningless” because of the lack of government standardization to back up the terms. See *Food labels can be misleading*, CONSUMER REPORTS, Feb. 2006, <http://www.consumerreports.org/cro/food/organic-products-206/food-labels-can-be-misleading/> (last visited March 1, 2007).

No product or any of its wrappers, packaging, or other containers shall bear any false or misleading marking, label, or other labeling and no statement, word, picture, design, or device which conveys any false impression or gives any false indication of origin or quality or is otherwise false or misleading shall appear in any marking or other labeling. (Emphasis added.)

As it now stands, and as it was set forth in the original Policy Memo 055, the guidance provides for “natural” product labels, which convey precisely the false impression that the regulations expressly prohibit and violate the fundamental public policy concerns that underlie the regulations.

Further, “natural” labels fail to reveal to consumers certain material facts that may substantially influence their purchasing decisions. For example, a Zogby International nationwide survey, conducted between January 5 and January 9, 2007, (the “Zogby Poll”) reveals that 48% of respondents believe that meat, dairy, and eggs labeled as “natural” come from animals who are raised with free access to the outdoors where they can exercise and move about. (See Exhibit A attached hereto).⁸ Moreover, 73% of respondents think it is not appropriate to label as “natural” meat, milk, and eggs from animals who are kept indoors, in crowded cages, and standing on metal and concrete floors. Plainly, such consumer confusion and misunderstanding is precisely what was intended to be prevented by the prohibitions against false and misleading labeling, as set forth in 9 CFR 317.8.⁹

In passing the Federal Meat Inspection Act (“FMIA”), Congress determined that “[i]t is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are . . . properly marked, labeled, and packaged.” 21 USC 602. Congress made this same finding for poultry products in the Poultry Products Inspection Act (“PPIA”). 21 USC 451. Section 1(n)(1) of the FMIA and section 4(h)(1) of the PPIA each provide that a food is misbranded “if its labeling is false or misleading in *any particular*.” 21 USC 601(n)(1) and 21 U.S.C. 453(h)(1) (emphasis added). Further, section 7(d) of the FMIA and section 9(a)(2)(A) of the PPIA prohibit the sale of any food with a false or misleading label. 21 USC 607(d) and 21 USC 458(a)(2)(A).

⁸ It appears that, in addition to consumer confusion, many of those selling natural products are also confused. Consumers Union Southwest Regional Office, *Animal Factories: Pollution and Health Threats to Rural Texas*, CONSUMERS UNION, Natural Meat Side Bar, May 2000, <http://www.consumersunion.org/other/animal/natural.htm> (last visited March 4, 2007). Consumers Union Southwest Regional Office conducted a phone survey of grocery stores and specialty food stores in Texas, and found that “most supermarket employees were misinformed about organic and natural meat products. Several meat department clerks incorrectly informed us that they sold ‘natural’ meats in their stores When asked if these products were truly natural and produced without antibiotics or hormones, we were told that they were. In fact, [the brands at issue] . . . do not make any antibiotic or hormone claims for their products.” *Id.*

⁹ See also Golin/Harris International, *Laying Out the Facts*TM (2004), <http://www.meatami.com/Content/PressCenter/AnimalCarePresentations/Head.pdf> (last visited March 1, 2007) (a recent study on behalf of the United Egg Producers revealed that while half of those polled consider production methods important when making food purchasing decisions, 51% admit they have little knowledge of actual production practices).

There is currently no way to define “natural” so that it comports with consumer understanding and provides a common-sense meaning. The current (and past) use of the term “natural” on meat and poultry product labels gives both a false impression to consumers that animals have access to the outdoors, and a false indication of the origin and quality of those products. As such, the statutes above, combined with the regulations in section 317, mandate prohibiting the use of the term “natural” on meat and poultry products unless and until clear standards that *actually reflect* consumer expectations can be created. Accordingly, FSIS should amend its Natural Policy to state that the use of the term “natural” is prohibited as misleading and false, and should refuse to codify a permissible definition of that term, at least at this time.

B. If FSIS elects to permit and define the term “natural,” the term must include provisions for the pre-slaughter treatment and living conditions of the animals.

In light of increasing consumer interest and concern regarding how farmed animals are raised, if FSIS is going to codify or adopt a definition of “natural” for labeling purposes, FSIS must expand the parameters of that definition to include the animals’ living conditions.

1. *The terms “natural” and “naturally raised” on meat and poultry products must be combined to avoid further confusion.*

As noted above, the USDA AMS is currently considering whether to permit a “naturally raised” marketing claim. Farm Sanctuary strongly urges the two USDA agencies—FSIS and AMS—to work together to develop one consistent, comprehensive definition of “natural” that would encompass AMS’s contemplated “naturally raised” term, and apply to both pre- and post-slaughter treatment and conditions. Farm Sanctuary is not alone in urging this approach. *See, e.g.,* comments of American Association of Meat Processors re: Docket No. FSIS 2006-0040, Jan. 11, 2007 (“FSIS should also foster relationships with other agencies within the U.S. Department of Agriculture (USDA), like the Agricultural Marketing Service (AMS), to develop a consistent policy on the term ‘natural’ that can be accepted across the board.”) Indeed, any other approach would necessarily lead to even further consumer confusion. It would make no sense to have the term “natural” apply only to post-slaughter treatment of the meat products, and the term “naturally raised” (which uses the same anchor word, “natural”) apply to pre-slaughter living conditions. Basic principles of grammar and construction require that the base term (here, “natural”) be broader, so that it can be modified by other words, such as “raised,” “processed,” or “ingredients.”

2. *The term “natural” must reflect what consumers understand to be “natural” conditions.*

Growing societal concern and opposition to housing farmed animals in cruel, intensive confinement was apparent last November, when 62% of Arizona voters approved Proposition 204 (codified at A.R.S. § 13-2910.07) to prohibit the use of veal crates and sow gestation crates, two-foot-wide enclosures that confine calves raised for veal and sows who are used for breeding. *See also* Fla. Const. Art. X, § 21 (by voter initiative to ban gestation crates).

Similarly, many of those who commented at the December 12, 2006 public meeting regarding Hormel's petition, including those from within the meat production industry, stated that they too believe that the "natural" standards should include animal "production," or living conditions, and that consumers expect as much. *See, e.g.*, December 12, 2006, public meeting comments of Collette Kaster, representative of Premium Standard Farms (described by commenter as "a pork company that raises both natural and conventional pork and processes pork products"), transcript page 74, *available at* http://www.fsis.usda.gov/PDF/Natural_Claims_Transcripts.pdf (last visited March 1, 2007) ("consumers expect a product labeled as natural to come from livestock that is produced in a natural fashion.").

The following sample of comments from meat industry representatives, in support of a definition of "natural" that encompasses the animals' living and raising conditions, were taken verbatim from the December 12, 2006 meeting:

Comments of Rex Moore, representative of the National Meat Association and Maverick Ranch Natural Meats, transcript pages 55-56:

But we need to go beyond what's in the [Hormel] petition, and if we're going to open up rulemaking on this whole process about natural, we need to go back to the original intent and why the original Policy Memo was done, and that is for *production claim, antibiotics, growth hormones, and how the animals are raised*. . . Let's go to production claims. . . . We should be prohibiting the use of pesticides as well in those livestock production practices. . . . We need to first define natural by its production claims and secondly by its ingredients. (Emphasis added);

Comments of Deborah O'Donnell, representative of Kayem Foods (described by commenter as producers of an "all natural" chicken sausage), transcript pages 53-54:

Because of the overwhelming response we get, e-mail and phone calls from the consumers, I mean literally we have probably 10,000 in our database, I noticed one of the Hormel petitions specifically excluded talking about the source of meat but consumers will get their food hopefully --They do not separate the chicken from the added ingredients and flavors. *The consumers want to know what goes into their chicken. Are there antibiotics? You know, what's in the feed of the chicken? Are there growth hormones* . . . we have consumers totally confused because other, you know, companies can put this on their labels. (Emphasis added);

Comments of Mack Graves, representative of Western Grass (described by commenter as a marketer of "natural and organic grass-fed beef"), transcript pages 61, 64:

[H]ow do you take meat or poultry raised from animals raised unnaturally, meaning with growth stimulants, antibodies, questionable inhumane practices, poor environmental stewardship, *et cetera*, that make the meat natural by minimally processing it with no artificial ingredients. *Separating livestock, raising for processing and marketing and developing a definition of natural will only add to the consumer confusion that current [sic] surrounds the term. Use of natural must be clearly defined for meat and poultry I say again from conception to consumption. . . . the definition of natural must stretch from the livestock's lifestyle to the diet, to the processing and marketing of meat and poultry.* (Emphasis added.)

As the industrial animal farming system continues to proliferate, public concern continues to mount for the welfare of animals subjected to factory farming. The public's growing interest in such matters, and the need for labels to present truthful information that is not misleading to consumers, dictates that post-slaughter meat processing simply cannot reasonably remain as the sole basis for considering what defines "natural." This is not an unreachable standard. Indeed, while we note that consumers do not necessarily equate the terms "natural" and "organic," it is significant that the National Organic Program requires producers labeling their products as "Organic" to adhere to qualitative animal rearing standards. *See* 7 CFR 205.239 (including "living conditions which accommodate the health and natural behavior of animals," access to the outdoors, and shelter designed to allow for natural maintenance, comfort behaviors, and opportunity to exercise).

Certainly, meat from animals that are raised completely indoors, deprived of living space and stimulation appropriate to the species, does not fit most consumers' expectations of a "natural" product, regardless of how the meat from the animal is processed after slaughter. *See, e.g.,* Comments of Collette Kaster, transcript page 72 ("focus groups indicate that [consumers'] interpretation of natural is far more tied to production practices than the ingredients that are incorporated into the label and fully disclosed as part of that labeling"); comments of Mack Graves, transcript page 62 ("Minimal processing is a part of the natural definition that begins with the animal raising practices and concludes with a finished product."); consumer comment on Hormel Petition, Docket No. FSIS 2006-0040-0005 ("Dairy or meat products labled [sic] natural should: be raised on pasture without antibiotics or hormones; . . . animals' feed should be non-GMO and should not contain animal proteins"). To this end, the aforementioned Zogby Poll—a nationwide poll of more than 1,013 likely voters—found more than 70% of respondents consider it "inappropriate" to label meat, milk, or eggs from animals raised in intensive confinement systems as "natural." The poll also showed that a majority of consumers prefer to purchase foods labeled as "natural" over those without such a label.

Large scale, industrialized production systems subject animals raised for food to severely crowded, barren, and unhygienic conditions that prevent them from engaging in basic "natural" behaviors and precipitate various physical and psychological ailments. Out of ethical concerns, and in consideration of the ever-growing number of consumers who choose meat labeled "natural" for humane reasons, the term "natural" should not be defined in a manner that permits the products of animals raised in such a way to be marketed and labeled as "natural." To the vast

majority of consumers, the “natural” label implies higher standards of raising animals, and FSIS should ensure that these standards are met if the product is to be labeled as “natural.”

Currently, many chickens and turkeys sold as “natural” have been genetically altered to grow twice as fast and twice as large as normal,¹⁰ which causes the birds to suffer health problems related to the inability of their hearts and lungs to support their extreme growth rates.¹¹ They also suffer leg and joint disorders because their legs are unable to support their abnormal weight.¹² In the case of turkeys, the birds have been so profoundly altered that they cannot even mount and reproduce naturally, and must be artificially inseminated.¹³ The birds are also packed by the thousands in warehouse like factories, unable to experience natural outdoor environments or to fulfill their basic instincts.¹⁴ Most consumers would agree that meat from a genetically altered animal, who is then forced to suffer these consequences, is not “natural.”

Like genetic modification, animal cloning and its relationship to food is a controversial topic of concern to consumers. On December 28, 2006, the U.S. Food and Drug Administration (“FDA”) issued three documents on the safety of animal cloning: a draft risk assessment, a proposed risk management plan, and a draft guidance for industry. *See* FDA News press release, *available at* <http://www.fda.gov/bbs/topics/NEWS/2006/NEW01541.html> (last visited March 3, 2007); *see also* Draft Risk Assessment, *available at* http://www.fda.gov/cvm/Documents/Cloning_Risk_Assessment.pdf (last visited March 3, 2007). These documents are the first step in allowing cloned food to be sold to America’s consumers, *likely without labels denoting it as cloned*. As it is now drafted, there is nothing in the policy guidance that would prohibit meat from a cloned animal from being sold under the “natural” label. This would certainly be misleading to consumers.

Even if “naturally” birthed, animals such as pigs are often crowded into unnatural indoor environments for the duration of their lives.¹⁵ They stand on slatted metal or concrete floors in

¹⁰ “If a seven pound (human) baby grew at the same rate that today’s turkey grows, when the baby reached 18 weeks of age, it would weigh 1,500 pounds.” A. Andrews, *Chicks Become “Superbirds” If Critical Needs are Met*, LANCASTER FARMING, 1992, at A1.

¹¹ *See, e.g., New Jersey Soc. for Prevention of Cruelty to Animals v. New Jersey Dept. of Agriculture*, 2007 WL 486764, *14 (N.J. Super. A.D., Feb. 16, 2007) (unpublished) (“According to this article [the European Commission’s Scientific Committee on Animal Health and Animal Welfare’s 2000 Report entitled *The Welfare of Chickens Kept for Meat Production (Broilers)*], ‘a wide range of metabolic and behavioral traits in broilers have been changed by selection practices. Major concerns for animal welfare are the metabolic disorders resulting in leg problems, ascites and sudden death syndrome and other health problems.’”).

¹² *See, e.g., R. Smith, Cutting edge poultry researchers doing what birds tell them to do*, FEEDSTUFFS, 1992, at 22 (“Turkeys have been bred to grow faster and heavier but their skeletons haven’t kept pace, which causes . . . problems standing and fall and [the birds] are trampled on or seek refuge under feeders, leading to bruises and downgradings as well as culled or killed birds.”).

¹³ “Essentially 100 percent of the nearly 300 million turkeys produced annually in the United States for consumption are the result of artificial insemination.” *Spotting Top-Notch Toms*, USDA’s Agricultural Research, *available at* <http://www.ars.usda.gov/is/AR/archive/jul98/toms0798.htm> (last visited March 4, 2007).

¹⁴ “Today’s industrial farms may pen thousands of turkeys at one time.” J. Raloff, *Talking Turkey*, 164 SCIENCE NEWS 22 (2003).

¹⁵ The intensification of livestock farming has resulted in an increase in stocking densities and less space per animal, which has led to the development of intensive confinement housing systems for farm animals. J.N. Marchant &

warehouse-like factory farms.¹⁶ Cattle raised for beef also spend much of their lives confined in overcrowded feedlots. Cattle, poultry and pigs are all given unnaturally rich diets designed to maximize production and economic profitability, and they are routinely given antibiotics to ward off disease, as well as to increase growth rates. Calves raised for veal are purposely denied solid food, which prevents their digestive systems from developing normally,¹⁷ and cattle raised for beef are routinely given hormones to expedite their growth. Ducks and geese raised for foie gras (French for “fatty liver”) are force-fed with a pipe that is shoved down their throats, which causes their livers to expand ten times their normal size. (At least one state has, in fact, enacted a statute to ban this practice. *See* Cal. Health & Safety Code §§ 25980-25982.)

Animals subjected to these crowded and unnatural living conditions are prevented from developing a natural social order.¹⁸ In the absence of appropriate, healthful living conditions and social interactions, animals can be driven to engage in abnormal, frustration-induced, aggression. To stave off the resulting injuries, cattle are dehorned, chickens and turkeys have parts of their beaks cut off, turkeys also have parts of their toes cut off, and pigs have their tails docked. These mutilations are performed without anesthetics. Male mammals, including cattle and pigs, are routinely castrated without pain killers to maximize production-related goals with no regard for the animals’ welfare. In the case of pigs, the procedure is supposed to prevent what is called “boar taint,” a pungent, natural odor that the pork industry prefers not be in the meat. *See, e.g., New Jersey Soc. for Prevention of Cruelty to Animals*, 2007 WL 486764.

While the above-referenced conditions may be considered customary or routine animal husbandry practices within the industry, they do not constitute what most consumers consider to be “natural” conditions by any means. Allowing products from animals raised under these conditions to be labeled as “natural,” which is now the case or soon could be (in the case of cloning), clearly does not comport with the average consumer’s expectation of what is behind the “natural” label.

IV. Rulemaking Is Necessary to Prohibit Use of the Term “Natural,” As It Is Currently and Has in the Past Been Defined.

As demonstrated above, the past and currently constituted definitions of “natural” for labeling purposes fail to reveal to consumers certain material facts that may substantially influence their purchasing decisions. For FSIS to protect consumer expectations, and prevent misleading labeling and the resulting inadequacy of the “natural” claim, it must either: (1) refuse to codify a definition of “natural,” because use of that term on a label is confusing and

D.M. Broom, *Factors affecting posture-changing in loose-housed and confined gestating sows*, 63 ANIMAL SCIENCE 477-485 (1996).

¹⁶ *See, e.g.,* F.C. Leonard, J.M. O’Connell & P.B. Lynch, *Behaviour, skin and foot lesions in sows and piglets on different farrowing house floors*, 1 LIVESTOCK V, 242-249 (1997).

¹⁷ *See, e.g.,* P. Stevenson, *The need to prohibit the veal crate system*, COMPASSION IN WORLD FARMING REPORT (Nov. 1999).

¹⁸ It is estimated that a minimum of two to three times the amount of space allowed by U.S. crates is necessary for the normal expression of sow behavior. *See* R.C. Weng, S.A. Edwards & P.R. English, *Behaviour, social interactions and lesion scores of group-housed sows in relation to floor space allowance*, 59 APPL. ANIM. BEHAV. SCI. 307-316 (1998).

misleading and, therefore, should be prohibited; or, in the alternative (2) amend 9 CFR 317 *et seq.* and 9 CFR 381.129 to codify an expanded definition of “natural” that addresses the treatment and living conditions of animals raised for food prior to their slaughter, in addition to post-slaughter processing.

A. Proposed Action

- 1. *Refuse to codify language defining “natural,” and instead prohibit the use of that term on meat and poultry labels.***

As demonstrated above, the current (and prior) definition of “natural” on meat and poultry product labels is misleading to the public, and is effectively meaningless. Current regulations state that products and their packaging cannot bear any “false or misleading” label that conveys “any false impression or gives any false indication of origin or quality or is otherwise false or misleading.” 9 CFR 317.8(a). However, data reveals that consumers are *in fact* confused and misled by the current use of the “natural” label on meat and poultry products. Unless and until a definition of “natural” is created that comports with consumer understanding and expectation, as well as with the true meaning of natural living conditions for animals, that term should be prohibited on labels for meat and poultry products. The existing guidance should be abandoned, or amended to so state.

- 2. *Amend 9 CFR 317.8 and 381.129 to codify a definition of “natural” that addresses the treatment and living conditions of animals raised for food before their slaughter, in addition to post-slaughter processing conditions.***

In the alternative, if FSIS decides to codify a definition of “natural” in the regulations and to continue to permit its use on meat and poultry labels, it must avoid misleading consumers and comply with existing regulations. Therefore, in the interest of upholding truth-in-labeling standards and protecting consumer confidence in labeling, Farm Sanctuary requests that meat and poultry products derived from any animals raised under conditions inconsistent with consumer expectations regarding their natures to be excluded from the “natural” label; the newly codified definition of “natural” must include provisions for the treatment and living conditions of the animals before they are slaughtered. Further, FSIS should work with its sister USDA agency, AMS, to arrive at one consistent and comprehensive definition of “natural” on meat and poultry products that comports with consumer expectations.

Data such as that presented herein reveal that consumers currently believe “natural” (as it is used on a label) relates to the treatment of an animal while alive. If FSIS were to codify the prior, or current, Natural Policy, consumers’ expectations would not be met, and they would continue to be misled—in violation of the law. Therefore, a newly codified definition must take into account treatment and “production” of those animals pre-slaughter, as well as their processing post-slaughter. To be meaningful to consumers, “natural” should not be used to label the meat of slaughtered pigs, cattle, and birds who were raised in systems that prevented the

expression of behaviors innate to the species, or who were forced to consume diets inconsistent with the animals' natural biological functions.

Additionally, the routine use of hormones, and the dosing of animals with antibiotics, both as a means to ward off diseases that run rampant in intensive confinement facilities and to accelerate the animals' growth rates,¹⁹ is inconsistent with the average consumer's understanding of "natural." This widespread, non-therapeutic antibiotic administration not only threatens the health of the human population by giving rise to antibiotic-resistant bacteria,²⁰ but it also represents a betrayal of consumer expectations regarding the "natural" label, since the routine ingestion of large amounts of antibiotics would never occur in a natural setting.

Farm Sanctuary requests these stipulations be included in any newly codified definition of "natural," because to do otherwise would define the term in a manner that differs from public perception and will mislead consumers.

V. Environmental Impact

Neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

It is clear that consumers are concerned with animal welfare, and take it into consideration when they shop.²¹ Further, if given a choice, 61% of the respondents in the Zogby Poll, discussed above, would prefer to purchase foods that are labeled "natural" over those without such a label (assuming it has a clear and commonly understood meaning). However, those same consumers are currently confused as to what the "natural" label means, which may cause them to purchase items they would not otherwise have purchased if they had known what the label actually meant (and what it did not mean). An increase in consumer confidence regarding food labeling will have no apparent detrimental economic impact and, rather, will result in a significant *benefit* by providing transparency and clarity in labeling, and regulatory and public policy standards.²²

It is unlikely that Farm Sanctuary's requested changes to FSIS's labeling regulations would require a risk assessment and cost-benefit analysis by the Office of Risk Assessment and Cost-Benefit Analysis. The Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 2204e(b)(1), requires that the Secretary's Office of Risk Assessment and Cost-Benefit Analysis complete a risk assessment and cost-benefit analysis for each proposed major USDA regulation

¹⁹ USDA, Feedlot '99, *Part III: Health Management and Biosecurity in U.S. Feedlots*, Veterinary Services, National Animal Health Monitoring System, Dec. 2000.

²⁰ See, e.g., Sean Crowley, *Medical groups' petition FDA to ban antibiotics as feed additives citing noncompliance with FDA guidance to protect human health*, US NEWSWIRE, Apr. 7, 2005.

²¹ See Golin/Harris International, *Laying Out the Facts*TM (2004), <http://www.meatami.com/Content/PressCenter/AnimalCarePresentations/Head.pdf> (last visited March 1, 2007) (50% of respondents stated that animal care was "important" when deciding which food to buy, brand preference, and in which grocery stores to shop).

²² For additional detail on the economic impacts of a newly codified definition of "natural," please refer to the Hormel petition at 15-20.

Dr. Robert C. Post
March 5, 2007
Page Thirteen

that relates to human health, safety, or the environment. The statute defines a “major regulation” as one that is likely to have an annual impact on the United States economy of at least \$100 million in 1994 dollars. 7 USC 2204e(c). The only cost to the food industry of complying with our requested action is the possible printing of new labels, which are periodically reprinted in any event.

VI. Conclusion

The evidence presented in this Petition demonstrates that natural products are important to consumers, but even more so, that consumers deserve to be informed truthfully, and according to expectations. Consumers currently are confused about the definition of “natural” and are becoming distrustful of “natural” labeling claims. Therefore, FSIS should, in the first instance, refuse to codify a definition of “natural,” and abandon its existing Natural Policy or issue an interim guidance prohibiting the use of that term on labels unless and until a definition can be derived that is truthful, is not misleading, and meets consumer expectations. In the alternative, FSIS should codify a definition of “natural” (working with AMS to the extent possible to assure there is not a competing or inconsistent definition of “naturally raised”) that includes treatment and living conditions of animals raised for food before their slaughter, in addition to post-slaughter processing.

VII. Certification

The undersigned certifies that, to the best of his knowledge, this Petition includes all information and views on which the Petition relies and that it includes representative data and information known to the petitioner which are unfavorable to the Petition.

Respectfully submitted,
Farm Sanctuary, Inc.



Gene Baur, President
P.O. Box 150
Watkins Glen, NY 14891
(607) 583-2225

cc: The Honorable Richard Raymond, Under Secretary of Food Safety, U.S. Department of Agriculture (*via electronic mail only to Dick.Raymond@usda.gov*)
Barry L. Carpenter, Livestock and Seed Programs, Agricultural Marketing Service (*via electronic mail only to Barry.Carpenter@usda.gov*)
Mary Porretta, Petitions Manager, Food Safety and Inspection Service, USDA, 300 12th Street WS, Room 112 Annex, Washington, D.C. 20250 (*via electronic mail (Mary.Porretta@fsis.usda.gov) and overnight delivery*)

Exhibit A

Exhibit A



Date: January 10, 2007

To: Gene Baur
gbauston@farmsanctuary.org

From: Rebecca Wittman
rebecca@zogby.com

RE: Results from nationwide poll

Methodology

January 5 through January 9, 2007

This is a telephone survey of likely voters nationwide conducted by Zogby International. The target sample is 1013 interviews with approximately 98 questions asked. Samples are randomly drawn from telephone cd's of national listed sample. Zogby International surveys employ sampling strategies in which selection probabilities are proportional to population size within area codes and exchanges. Up to six calls are made to reach a sampled phone number. Cooperation rates are calculated using one of AAPOR's approved methodologies¹ and are comparable to other professional public-opinion surveys conducted using similar sampling strategies.² Weighting by region, party, age, race, religion, gender is used to adjust for non-response. The margin of error is +/- 3.1 percentage points. Margins of error are higher in sub-groups.

Zogby International's sampling and weighting procedures also have been validated through its political polling: more than 95% of the firm's polls have come within 1% of actual election-day outcomes.

¹ See COOP4 (p.38) in *Standard Definitions: Final Dispositions of Case Codes and Outcome Rates of Surveys*. The American Association for Public Opinion Research, (2000).

² *Cooperation Tracking Study: April 2003 Update*, Jane M. Sheppard and Shelly Haas. The Council for Marketing & Opinion Research (CMOR). Cincinnati, Ohio (2003).

Narrative Summary

201. *Given a choice, would you prefer to purchase foods that are labeled “natural” over those without a label that says “natural”?*

Yes	61%
No	27
Not sure	12

More than three in five (61%) voters say they prefer to purchase foods that are labeled “natural” over those with no such label. More than one in four (27%) do not prefer to purchase products labeled “natural” and 12% are not sure.

A majority in every sub-group say they prefer purchasing food products labeled “natural” over those without that label. Respondents living in the south and the west (64% each) are the most likely to say they prefer products labeled “natural,” while those living in the east (55%) are the least likely to say they prefer to purchase such labeled products. Among the age groups, those under 30 are by far the most likely to say they prefer purchasing products labeled “natural.”

Hispanics (71%) and African Americans (66%) are more likely than whites (59%) to say they prefer to purchase products labeled “natural,” and women (64%) are more likely than men (59%) to prefer that.

202. *Do you believe that meat, dairy, and eggs labeled as “natural” come from animals who are raised with free access to the outdoors where they can exercise and move about, or from animals who are confined indoors?*

Access to outdoors	48%
Confined indoors	29
Not sure	23

Respondents are not clear on what the term “natural” implies. Just under half (48%) say they believe that meat, milk, and eggs labeled “natural” means that the animals used to create those products have free access to the outdoors. Twenty-nine percent believe that the term means those animals are confined indoors, and 23% are not sure.

A plurality or majority in every sub-group believes that the term “natural” means that animals used for these products have access to the outdoors. Most likely to believe this are those in the south (52%), 30 to 49 year olds (51%), respondents with some college (56%), and whites

(49%). Women are slightly more likely than men (50% vs. 46%) to believe that “natural” labeling means that animals have access to the outdoors.

Hispanics (42%) are the most likely to believe that “natural” means animals are confined indoors.

203. Do you think it is appropriate or inappropriate for meat, milk, and eggs from animals who are kept indoors, crowded in cages, and standing on metal and concrete floors, to be labeled as “natural”?

Appropriate	18%
Inappropriate	73
Not sure	9

Voters overwhelmingly (73%) say it is inappropriate for meat, milk, and eggs from animals who are kept indoors, crowded in cages, and forced to stand on metal and concrete floors to be labeled “natural.” Less than one in five (18%) say it is appropriate and 9% are not sure.

Seventy percent or more in nearly every sub-group says that it is inappropriate to label foods “natural” if the animals used to make those foods are kept indoors, crowded in cages, or forced to stand on metal or concrete floors.

Most likely to agree that such labeling is inappropriate are resident of the south and west (76% each), 50 to 64 year olds (76%), African Americans (83%), and women (79%).