



United States
Department of
Agriculture

Food Safety
and Inspection
Service

Washington, D.C.
20250

JUL 11 2011

Mr. Robert George
V.P. & Associate General Counsel
Tyson Foods, Inc.
Legal Department
2200 W. Don Tyson Parkway
Springdale, AR 72762

Dear Mr. George:

The Food Safety and Inspection Service (FSIS), in consultation with USDA's Agricultural Marketing Service (AMS), has completed its review of the petition submitted by you on behalf of Tyson Foods, Inc., dated March 18, 2011. Your petition requests that FSIS rescind approval of the Process Verified Label Claims approved for Perdue Brand Chicken Products and Perdue's associated point of sale material. The petition states that these labels and materials are misleading and confusing to consumers because they contain several animal raising claims that suggest that Perdue's raising practices are unique from and superior to the practices of its competitors. The petition also asserts that Perdue's Process Verified Label Claims improperly imply that USDA has endorsed Perdue's product as superior, giving Perdue an unfair competitive advantage. After careful consideration of the issues raised in the petition, we have concluded that Perdue's Process Verified Label Claims are truthful and not misleading. Therefore, for the reasons discussed below, we are denying your petition.

The USDA, AMS Process Verified Program (PVP) provides companies that supply agricultural products or services the opportunity to develop a program based on specific process controls and to have AMS verify that the company is meeting the requirements of the program. It is limited to programs or portions of programs where specified process verified points are supported by a documented quality management system. The specified process verified points and controls are identified by the company participating in the program and reviewed by AMS to ensure conformance to the Program requirements. If, based on its audit, AMS determines that a company is meeting the requirements of its PVP, AMS provides the company with a certification that allows the company to use the USDA PVP shield and term on marketing materials, including product labels.

FSIS considers the PVP shield and statement to be a special labeling claim and, as such, labels that contain the USDA PVP seal must be evaluated and approved by the FSIS Labeling and Program Delivery Division (LPDD). To qualify to use a PVP claim in its marketing materials, Perdue established a PVP program that provides requirements for the raising of its poultry. AMS has audited Perdue's PVP and has verified that Perdue is complying with the poultry raising

requirements of its program. When Perdue submitted its PVP labels to FSIS for approval, Perdue included a copy of the certificate issued by AMS.

LPDD carefully considered Perdue's PVP claim, along with the supporting documentation, and concluded that the claim accurately represents the fact that Perdue has an AMS-approved PVP for raising poultry and that AMS has certified that Perdue is meeting the requirements of its PVP. Therefore, FSIS approved the PVP claim because it found that the claim was truthful and not misleading.

In its petition, Tyson asserts that the statements in Perdue's PVP claim that identify the animal raising components of the PVP are misleading to consumers because they suggest that Perdue's raising practices are unique from and superior to the practices of its competitors when, in fact, they are not. First, the petition argues that the verified "raised cage free" claim on the process verified label is misleading and confusing because broiler chickens are not raised in cages. The petition asserts that the claim is intended to mislead consumers by implying that Perdue's chickens are raised on a farm setting that is materially different from its competitors when it comes to the confinement of chickens. To support this argument, Tyson conducted a survey of consumers' understanding of the Perdue's PVP labels. The survey found that 50 % of surveyed consumers presented with the PVP labels interpreted the claim to mean that only Perdue brand chickens that carry the USDA process verified logo are raised cage free.

FSIS disagrees that the "raised cage free" statement in the PVP claim suggests that all of Perdue's competitors cage their chickens. Rather, this is a true and accurate statement about Perdue's raising practices, which it has chosen to communicate to consumers on its product labels. Additionally, AMS verifies through the PVP that Perdue's chickens are not raised in cages and therefore Perdue is allowed to use the USDA process verified shield in conjunction with the claim that its chickens are verified "raised cage free."

Second, the petition argues that the verified "humanely raised" claim on the process verified label is misleading and confusing because the term is subjective and because humane practices are employed on farms throughout the industry. To support this argument, Tyson presented results from its consumer survey that found that 50 % of surveyed consumers presented with the PVP labels interpreted the claim to mean that only Perdue brand chickens that carry the USDA process verified logo are "humanely raised."

FSIS agrees that the term "humanely raised" may mean different things to different consumers, and that FSIS has not established humane raising standards for poultry farmers. As noted in your petition, Perdue has based its humane raising standards on the principals outlined by the National Chicken Council's Animal Welfare Guidelines, which have been recognized by the industry. FSIS has reviewed the NCC guidelines for humane raising standards and determined that the

practices and standards outlined, if followed, would not render a “humanely raised” claim false or misleading. Additionally, AMS verifies through Perdue’s approved PVP that Perdue does follow the humane raising standards as outlined by the NCC. As such, Perdue is permitted to use the USDA process verified shield in conjunction with the claim that the USDA has verified that Perdue’s chickens are humanely raised in accordance with the NCC standards.

As with the “raised cage free” claim, we disagree that the “humanely raised” statement in Perdue’s PVP claim implies that other companies use inhumane practices to raise their chickens. Rather, the statement in Perdue’s PVP claim is communicating to consumers that the company does follow the humane raising standards required under its PVP. Additionally, consumers can see what humane raising standards Perdue follows by accessing AMS’s Process Verified website through a link posted on Perdue’s Verifiably Good website. Those consumers that do not agree that the NCC guidelines constitute humane raising standards can choose to purchase a different product if they base their purchasing decision on the conditions under which the source animals were raised.

Finally, the petition argues that Perdue’s labels improperly imply that the USDA has endorsed Perdue’s product as superior in quality, giving it an unfair competitive advantage. AMS’ Poultry Programs has confirmed and approved the effective implementation of Perdue’s Process Verified Program claims—raised cage free and humanely raised—using the International Organization for Standardization’s ISO 9000 series standards for documented quality management systems as a format for evaluating program documentation, ensuring consistent auditing practices, and promoting recognition of audit results. Companies that participate in the USDA Process Verified Program are entitled to use the USDA Process Verified shield and term on labels and promotional materials. AMS must approve the use of the shield and term and requires that companies have a defined process for ensuring that the shield and term are not used inappropriately. Perdue has submitted its labels and promotional materials to AMS, which has reviewed and approved the use of the shield and term for these materials. AMS further requires that the use of the shield or term in promotional materials be used in direct association with a clear description of the specified process verified points. FSIS has determined that Perdue has not misused the USDA Process Verified shield or term on its product labels, which, as noted above have been reviewed and approved by FSIS’s LPPD.

USDA’s Process Verified Program is a voluntary, user-fee program that is open to all companies. Companies that invest the resources to participate in the USDA PVP typically do so to gain a marketing advantage for their products. Perdue’s competitors are free to participate in the program and obtain the same marketing advantage.

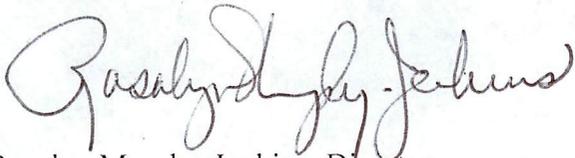
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For these reasons, FSIS disagrees that Perdue's Process Verified Labels and associated point of sale materials are misleading or confusing to customers or that these materials improperly imply that the USDA has endorsed Perdue's product as superior in quality.

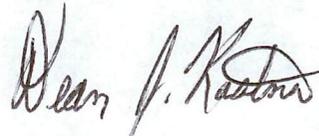
In accordance with our regulations, please be advised that we have posted your petition on the FSIS website and we intend to post this response as well. If you have any questions regarding your petition, you may contact Mary Porretta, Petitions Manager, Policy Issuances Division, at (202) 720-5625.

Sincerely,



Rosalyn Murphy-Jenkins, Director
Labeling and Program Delivery Division
Office of Policy and Program Development

Sincerely,



Dean Kastner, Director
Poultry Programs, Grading Division
Agricultural Marketing Service

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RAE 6/14/11