

July 19, 2007

Martin E. O'Connor, Chief
Standards, Analysis and Technology Branch
Livestock and Seed Program
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Room 2607 – South Building
Washington, DC 20250

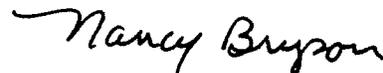
Re: Naturally Raised Marketing Claim Comment

Dear Mr. O'Connor:

Enclosed for filing in the above-captioned docket please find a comment submitted on behalf of Hormel Foods, Inc. The comment is entitled "Potential Adverse Impacts of the Adoption of a "Naturally Raised" Marketing Claim by the USDA Agricultural Marketing Service: A U.S. and WTO Legal Analysis."

Several additional copies are included for your convenience.

Respectfully submitted,



Nancy S. Bryson

cc: Randall D. Jones, Associate Deputy Administrator, AMS
James W. Cavanaugh, General Counsel, Hormel Foods, Inc.

July 23, 2007

Martin E. O'Connor, Chief
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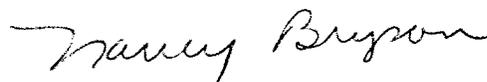
Re: Naturally Raised Marketing Claim Comment

Dear Mr. O'Connor:

In the comment filed July 19, 2007, an inadvertent error was made in the reference to Hormel Foods. The correct corporate name is Hormel Foods Corporation, not Hormel Foods, Inc. We respectfully request that you substitute this copy.

Several additional copies are included for your convenience.

Respectfully submitted,



Nancy S. Bryson

cc: Randall D. Jones, Associate Deputy Administrator, AMS
James W. Cavanaugh, General Counsel, Hormel Foods, Inc.

DC1#248613

**Potential Adverse Impacts of the Adoption of a “Naturally Raised”
Marketing Claim by the USDA Agricultural Marketing Service:
A U.S. and WTO Legal Analysis**

**Submitted on Behalf of
Hormel Foods Corporation**

Nancy S. Bryson
nsbryson@venable.com

Michael T. Roberts
mroberts@venable.com

Venable, LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601

July 23, 2007

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I. PROPOSED AMENDMENT TO STATEMENT OF POSITION

The power of a “naturally raised” livestock claim for product labeling is immediately apparent, as is the potential desire of some market participants for such a marketing claim. What may be less apparent but equally powerful is the potential adverse effect on U.S. agriculture of executive branch development and approval of such a claim in the absence of an express Congressional definition of the practices that support such a term. A “naturally raised” livestock claim of the type would divide current U.S. animal production processes into two systems. One of these would be natural - a term generally associated with living creatures. The other is artificial - not produced in nature. No other country in the world, or in the global marketplace, has adopted such a divisive classification, and the USDA Agricultural Marketing Service (“AMS”) should not do so either.

The United States has been steadfast in its support for science-based food safety, both at home and in the global marketplace. Under this system, it is the end-use product that is the focus of regulation and marketing claims, and not the method by which it was produced. The sole marketing claim based upon a collection of production processes that is recognized in the U.S. is the organic claim. This claim is specifically authorized by the Organic Food Production Act of 1990, in which Congress identifies the practices to be included – including specific requirements for the composition of livestock feed, livestock health care practices and livestock living conditions.

In the international marketplace, the U.S. has consistently supported regulation based on safety and quality of the end-use product, not the process through which it was produced. These principles have defined U.S. positions in the World Trade Organization (“WTO”), and in the Sanitary and Phytosanitary Standards (“SPS”) Agreement and the Technical Barriers to Trade (“TBT”) Agreement, both of which address food labeling. The labeling standards of the Codex Alimentarius Commission (“CODEX”), the internationally recognized standards body under the WTO, provide for objective, science-based criteria. As in the U.S., the only recognized CODEX production standard is the standard for organic.

Accordingly, AMS should not adopt a “naturally raised” livestock claim for the following reasons:

- AMS does not have the legal authority to adopt such a claim because it is not an objective standard of “quality, condition, quantity, grade, and packaging.”¹
- A unilateral introduction by the U.S. government of a “naturally raised” claim may segment the U.S. and world markets to the detriment of American agriculture as a whole.
- The incorporation of a “naturally raised” criteria into the existing U.S. Food Safety and Inspection Service (“FSIS”) definition of “natural” unreasonably restricts a well-understood national and international claim definition that provides meaningful information to consumers looking for products that do not contain artificial ingredients or chemical preservatives and are minimally processed.

¹ 7 U.S.C. § 1622(c).

There is no rational scientific basis for dividing current animal production methods into “natural” and “artificial” categories. Methods of animal production are constantly evolving. This is a very positive development as it fosters sufficient sources of supply to feed the world’s growing population. While some methods might be considered more traditional than others, the animals themselves are all “natural” – in the same sense that we as individuals are “natural” physical beings. To the extent there is market demand for more definition on various production practices, this demand can be accurately and objectively addressed consistent with national and international law through vehicles such as AMS’s previously proposed standards to define for marketing purposes practices such as “grass-fed,” “grain-fed,” and “raised without antibiotics.”

II. THE AMS PROPOSAL

AMS is currently considering the possibility of developing a standard establishing requirements for a “naturally raised” animal production claim for meat and poultry items that could be certified under the regulatory authority of the Agricultural Marketing Act of 1946 “AMA”).² The concept is that consumers may view the manner in which an animal is produced as an essential element of whether a meat or poultry product purchased at retail is a “natural product.” Once defined and verified by AMS, this production process could become another element of the FSIS end-use product definition for “natural” that has existed for the past 24 years – i.e., a product that has no artificial ingredients, contains no chemical preservatives and is minimally processed.³

The precise nature of the practices that might be characterized by AMS as supporting a “naturally raised” claim is unclear. They appear to be very close to the animal production requirements of the organic production process standard – minus the requirement that the animals consume only organic feed. Thus, the idea of the standard is that it would include characteristics related to environment, ration and health (ionophores, free range, grass fed, hormones, antibiotics, pesticides, no by-products, welfare practices).

AMS has requested comment on two issues:

- What is an appropriate standard for applying/extending natural claims to livestock production?
- Should “naturally raised” be definitively classified for clarity in the marketplace and to ensure consumer’s interests are better protected?⁴

² 7 U.S.C. §§ 1621-1627, 1635-1638.

³ See, FSIS Standards and Labeling Policy Memorandum (Memo) 055, Nov. 22, 1982 and discussion at 71 Fed. Reg. 70530 (Dec. 5, 2006).

⁴ “AMS Overview of Request for Certified Naturally Raised – PDF file”, at <http://www.ams.usda.gov/lsg/stand/claim.htm>.

III. APPLICABLE U.S. AND WTO LEGAL STANDARDS

A. The Agricultural Marketing Act

The purpose of the AMA is to provide for:

An integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aids and services, and regulatory activities, to the end that marketing methods and facilities may be improved, . . . [and] . . . , that new and wider markets for American agricultural products may be developed, both in the United States and in other countries, with a view to making it possible for the full production of American farms to be disposed of usefully, economically, profitably, and in an orderly manner.⁵

In furtherance of this purpose, the AMA authorizes AMS to “develop and improve standards of quality, condition, quantity, grade, and packaging” to facilitate the differentiation and marketing of different types of products.⁶ The plain meaning of the terms “quality,” “condition,” “quantity,” “grade,” and “packaging” is to define objective features of a product, and that is the manner in which AMS has used this legal authority. All standards currently in place relating to product claims correspond to such objective product features. The beef grading standards, for example, consider physical characteristics such as marbling, color, and texture.⁷

AMS has proposed the adoption of several objective single practice production process claims under this authority. These include claims such as “grass-fed,” “grain-fed,” “antibiotic-free,” etc.⁸ These claims, initially proposed almost 5 years ago, have not yet been finalized, due to the significant differences in agricultural production based on region, climate, etc., and the difficulty of defining such practices in a geographically neutral manner.

B. The Organic Foods Production Act

The purposes of the Organic Foods Production Act (“OFPA”) of 1990 are to:

- Establish national standards governing the marketing of certain agricultural products as organically produced products;
- To assure consumers that organically produced products meet a consistent standard; and
- To facilitate interstate commerce in fresh and processed food that is organically produced.⁹

⁵ Section 202, 7 U.S.C. § 1621.

⁶ Section 203(c), 7 U.S.C. § 1622(c).

⁷ <http://www.ams.usda.gov/lsg/stand/standards/beef-car.pdf>

⁸ See *United States Standard for Livestock and Meat Marketing Claim, Grass (Forage) Fed Claim*, 71 Fed. Reg. 27662 (May 12, 2006); *United States Standards for Livestock and Meat Marketing Claims*, 67 Fed. Reg. 79552 (Dec. 30, 2002).

⁹ 7 U.S.C. §§ 6501-523.

The law establishes a national certification program for producers and handlers of organic products and regulates the labeling of organic agricultural products. Generally speaking, an organic agricultural product must be produced and handled according to an organic plan agreed upon by a certifying agent, producers and handlers, and without the use of synthetic materials (unless such materials are included by USDA on the National List of Approved and Prohibited Substances, and are not commercially available in organic form).¹⁰

The OFPA and the National Organic Program (“NOP”) implementing regulations contain specific requirements for animal production practices and materials in this category, including requirements with respect to origin. For example, animals must be fed organically-produced feed meeting the requirements of the act. Growth promoters, hormones, and antibiotics are prohibited. Producers must establish and maintain preventive livestock health care practices such as selecting livestock suited for site-specific conditions and resistance to disease. Living conditions must allow for “exercise, freedom of movement and reduction of stress” and accommodate health and natural behaviors (including access to fresh air, the outdoors, clean and dry bedding, and access to pasture for ruminants).¹¹

Compliance with these requirements must be certified by an accredited certifying agent. Violations of the Act are punishable by civil and criminal penalties, and loss of eligibility for the claim for up to 5 years.¹²

C. The SPS and TBT Agreements

There are two important WTO Agreements that relate to food product labeling. The first is the SPS Agreement. In general, an SPS measure is one that is applied to protect human, animal or plant life or health from risks of disease or other damage.¹³ WTO signatories commit that SPS measures, including measures related to processes and production methods, and packaging and labeling requirements directly related to food safety, will be science-based and supported by risk assessments. The U.S. has been a strong proponent of the view that this means the end product that is moving in trade should be the focus of the SPS measure. This can be clearly seen in the U.S. positions on the products of agricultural biotechnology.

The second relevant agreement is the Agreement on Technical Barriers to Trade (“TBT”). The purpose of the TBT is to “ensure that technical regulations and standards, including packaging,

¹⁰ 7 U.S.C. § 6504.

¹¹ OFPA Section 2110, 7 U.S.C. § 6509; 7 C.F.R. §205.238(a).

¹² OFPA Section 2120, 7 U.S.C. § 6519; Although not a process production claim per se, a second label claim relating to location of livestock production is exemplified by the Country-of-Origin labeling (“COOL”) requirements of the 2002 Farm Bill, and codified at 7 U.S.C. 1638. These requirements define the elements of both a voluntary and mandatory country-of-origin labeling program to be implemented through regulations adopted by USDA. AMS has the delegated responsibility for implementing this program. The COOL program is similar to the organic program in that it applies to a production characteristic unrelated to the quality of the product being sold..

¹³ SPS Agreement Annex A.1.

marking and labeling requirements . . . do not create unnecessary obstacles to international trade.”¹⁴ A technical regulation is defined as a:

Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.¹⁵

A standard is defined as a:

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.¹⁶

The goal of the TBT Agreement is to provide government and the private sector with the tools to guard against using measures to protect domestic industry from foreign competition.¹⁷ It establishes rules and procedures that guide the development, adoption, and application of technical regulations and standards, and the procedures to be applied to determine whether a certain product meets the requisite standard.¹⁸ The rules incorporated into the TBT are aimed at detecting standards that may not be legitimate because they are protectionist.¹⁹ Most importantly, the TBT aims to harmonize standards and procedures among WTO members without reducing the level of safety or of “protection to human, animal, or plant life or health, the environment.”²⁰

In the case of technical requirements, the TBT requires use of relevant international standards except when it “would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.”²¹ In the case of standards, as well, where “international

¹⁴ The TBT Agreement is binding on the U.S. as a signatory.

¹⁵ TBT Agreement, Annex 1.1

¹⁶ TBT Agreement, Annex 1.2

¹⁷ TBT Agreement, Article 2.

¹⁸ Although both the TBT and the SPS agreement strive to ensure that product standards do not discriminately erect discriminatory barriers to trade, there are fundamental differences in the means used to determine whether a measure is protectionist. While the SPS focuses on whether the provision is based on scientific evidence, the TBT looks to whether the measure discriminates against imported products.

¹⁹ *Id.*

²⁰ *Id.*

²¹ TBT Agreement Article 2.4.

standards exist,” standardizing bodies are directed to use them as a basis for development unless for the same reason, they would be ineffective or inappropriate.²²

The sole relevant international standard for the label "natural" is established by the Codex Alimentarius Commission (“CODEX”).²³ The CODEX guidelines and requirements for the "natural" food label are consistent with the FDA's and FSIS's respective "natural" labeling policies that focus on an objective, product-based approach. Under the CODEX General Guidelines on Claims, a "natural claim" should be used in accordance with the national practices in the country where the food is sold.²⁴ FSIS's policy for “natural” claims requires that the product contain no artificial flavors, chemicals or colorings, and that the products and its ingredients are not more than minimally processed.²⁵ FDA's policy requires that a food labeled as “natural” contain no artificial flavors, added colors, or other synthetic substances that would not normally be expected to be in the food.²⁶ Additionally, the CODEX General Requirements for Natural Flavourings defines "natural flavors" and "natural flavouring substances" consistent with FDA's definition for "natural flavors."²⁷ The CODEX definition provides:

Natural flavours . . . are preparation and single substances respectively, acceptable for human consumption, obtained exclusively by physical, microbiological or enzymatic processes from material of vegetable or animal origin either in the raw state or after processing for human consumption by traditional food preparation processes (including drying, roasting and fermentation).²⁸

All three definitions – CODEX, FDA, and FSIS – focus on the source from which the food is derived (i.e., basic plant or animal components) and identify either acceptable and similar processing methods (as in the case of FDA and CODEX) or simply a “minimally processed” standard (as in the case of FSIS). All three definitions focus on the end product and employ objective, measurable criteria. The definitions do not distinguish between the basic plant or animal components of the food product based on the method of production or the manner in which the animal was raised.

IV. THE APPLICABLE U.S. AND WTO LEGAL STANDARDS DO NOT SUPPORT AN EXTENSION OF THE “NATURAL” CLAIM TO LIVESTOCK PRODUCTION

²² TBT Agreement Article 4 and Annex 3.F.

²³ CODEX is one of the three relevant international organizations identified in the SPS Agreement as authoritative international standard development bodies. The other two are the International Office of Epizootics (“OIE”) and the International Plant Protection Convention (“IPPC”).

²⁴ (CODEX General Guidelines on Claims, CAC/GL 1-1979 Rev. 1-1991; adopted by CODEX in 1979).

²⁵ See FSIS Policy Memo 055, August 2005, Food Standards Labeling Policy Book.

²⁶ 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993).

²⁷ The FDA definition of “natural” is codified in the agency’s flavor labeling regulations:

the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf, or similar plant material . . . 21 C.F.R. § 101.22(a)(3).

²⁸ General Requirements for Natural Flavourings, CAG/GL 29-1987 (adopted by CODEX in 1985).

A. AMS Does Not Have the Legal Authority to Adopt a “Naturally Raised” Livestock Standard

As noted above, the language of the AMA authorizes AMS to “develop and improve standards of quality, condition, quantity, grade, and packaging.”²⁹ It does not authorize AMS to adopt a “naturally raised” livestock production claim that classifies some subset of practices as the exclusive production practices that can be considered natural. The only situations in which Congress has authorized the development of such express production process claims are those in which specific legislative guidance has been given to the agency, as in the case of the Organic Foods Production Act and country-of-origin labeling. Any other result would violate the AMA’s overall purpose of maximizing markets for all agricultural products.

1. AMS authority is limited to development of standards of quality, condition, quantity, grade, and packaging.

The terms “quality,” “condition,” “quantity,” “grade,” and “packaging” refer to objective features of a product. For example, an inspector can evaluate the “condition” of a product sample simply by examining it—the standard applies to characteristics of the product itself. The “quantity” of a product is something that can be counted or otherwise measured. The “grade” of a product is established based on objective criteria by which product quality is measured (for example, USDA grades such as “choice” and “prime”). Each of the current beef verification programs described on the AMS website is based on a series of such objective measures.

The production process marketing claims proposed by AMS in 2002 depart from these objective product qualities somewhat by defining claims that relate to the manner in which the animal from which the product is produced was raised. However, they retain the objective, fact-based definitional characteristics of other claims – i.e. “grass-fed,” “grain-fed,” “raised without antibiotics,” etc.

2. A “Naturally Raised” Claim is Not a Standard of Quality, Condition, Quantity, Grade or Packaging.

The term “naturally raised” is not an objective, fact-based standard of quality, condition, quantity, grade or packaging. While not yet defined by AMS, the issues raised by such a term become apparent from consideration of the dictionary definitions of these two words. The term “natural” is broadly defined as “in accordance with or determined by nature; based upon the operations of the physical world.”³⁰ As applied to agriculture, it is defined as:

- planted or growing by itself,
- not cultivated or introduced artificially,
- existing in or produced by nature,

²⁹ Section 203(c) of the AMA (7 U.S.C. § 1622(c)).

³⁰ Webster’s Third New International Dictionary 2002 at 1506.

- consisting of objects so existing or produced,
- not artificial.³¹

The term “raised” means “to practice the cultivation of (plants or crops) or to bring up.”³²

It is at once apparent that something that is not natural is artificial. Thus, however “naturally raised” might be defined, all animal production that does not conform to the listed criteria would of necessity be “artificially produced.” And yet, the dictionary definitions of the term “natural” also could exclude all animal husbandry practices (growing by itself, not cultivated) or include all of them (existing in nature and the physical world).

Which practices AMS might choose to anoint as natural is not entirely clear, although presentations include criteria for how an animal is raised, what it is fed, and how it is housed. Proponents of such a standard variously describe it as an animal welfare standard,³³ a “conception to consumption” lifestyle standard,³⁴ or an organic production standard minus the requirement for all organic feed.³⁵

What is clear is that whatever the level of market or consumer interest in any such claims, AMS has only been delegated legislative rulemaking power to act in areas specified by Congress. The only two federal method of production standards in this category were both expressly authorized by Congress in their own legislative enactments. These are the organic production standards³⁶ and the country of origin standards.³⁷ The fact that Congress recognized the need for specific authorizing legislation in these two areas emphasizes that the terms of the AMA on their own do not authorize animal welfare or production process-centered standards.³⁸

B. An Extension of the Existing CODEX Definition of the Term “Natural” to Include Animal Production Practices Could Violate the TBT Agreement

U.S. domestic and international policy has consistently been to regulate the agricultural end product, not the process of its production, with the exception of the organic production standard. The reasons for this policy relate to the science-based regulatory approach of the federal government, and risk-based nature of the U.S. federal regulatory system. Methods of production are not regulated, except for purposes of assuring food safety. That is the fundamental premise of the U.S. approach to the use of biotechnology in agriculture, and it is the fundamental premise of the WTO SPS Agreement

³¹ Id.

³² Id. at 1877.

³³ See., e.g., Food Animal Concerns Trust comment of January 17, 2007; American Humane Association Comment of January 17, 2007 at <http://www.ams.usda.gov/lsg/stand/claim.htm>.

³⁴ Id.

³⁵ See., e.g. Coleman Natural Foods Comment of January 18, 2007, at <http://www.ams.usda.gov/lsg/stand/claim.htm>.

³⁶ 7 U.S.C. §§ 6501 *et seq.*

³⁷ (7 U.S.C. §§ 1638 *et seq.*).

³⁸ See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143-44 (2000) (by enacting statutes specifically granting regulatory authority to an agency in particular areas, Congress indicated that agency lacked this regulatory authority in other areas).

and the work of the international standards setting bodies - CODEX, OIE and IPPC. Even in Europe, where terms such as "traditional specialty products" are recognized, production practices for those products are not allowed to be specified, unless there is a national law defining such a production process.³⁹

As a marketing claim, an AMS definitional rule on "naturally raised" would likely fall within the boundaries of the TBT Agreement as a technical standard. While characterized by AMS as "voluntary," an AMS definitional regulation would constitute a federal government compulsory standard for anyone choosing to make a "naturally raised" livestock claim. In this arena, the TBT Agreement requires countries to look first to CODEX food labeling provisions and those regulations currently address processed foods in the same manner as the FSIS regulations. The addition of a "naturally raised" component departs from CODEX and would need to be justified by the U.S. on grounds that the CODEX standards are ineffective or inappropriate. And by extension, the U.S. would need to justify a departure from the CODEX organic standard definitions on animal production (no hormones or antibiotics, 100% organic feeds, health and natural behavior living conditions).

In the absence of U.S. law defining "naturally raised" as a distinct claim, differentiating it from organic production, it is difficult to imagine the case to be made in defense, particularly when all of the parameters under discussion can be defined individually and in an objective manner.

C. A Unilateral U.S. Definition of the Term "Naturally Raised" Livestock Could Adversely Affect Existing Export Markets of all U.S. Product Excluded from the "Naturally Raised" Definition.

To our knowledge, the current AMS initiative is the first to propose a definition of the term "naturally raised." Given the bright-line and commonly understood division between "natural" and "artificial," careful consideration should be given to how such a definition might affect the U.S. export markets that are essential to the health of the current U.S. meat and poultry production economic sectors. In 2006, for example, 15 % of U.S. production of hogs, 15 % of poultry and 5 % of beef (down from 9 % pre-BSE) were sold in international markets.⁴⁰

It should be noted that global competitors, such as Australia, have filed comments with AMS noting the potential benefits of such a livestock production claim for their herds. Meat and Livestock Australia ("MLA"), for example, notes that "the majority of Australian lamb and beef are raised under conditions that most consumers would consider "natural."⁴¹ AMS cannot, consistent with the purposes of the AMA to maximize markets for all U.S. agricultural markets, adopt a "naturally raised" livestock claim that adversely differentiates large sectors of U.S. livestock as "artificially produced."

IV. A U.S. DEFINITION OF THE TERM "NATURALLY RAISED" LIVESTOCK WILL NOT INCREASE CLARITY IN THE MARKETPLACE OR ENSURE THAT CONSUMER INTERESTS ARE BETTER PROTECTED

³⁹ Agriculture in WTO Law, Edited by Bernard O'Connor, Cameron May Ltd., 2005 at 262-263.

⁴⁰ <http://www.fas.usda.gov/export-sales/esrd1.asp>.

⁴¹ See., e.g., Meat and Livestock Australia comment of January 18, 2007 at <http://www.ams.usda.gov/lsg/stand/claim.htm>.

It is not clear from the record that a U.S. definition of the term “naturally raised” livestock will either increase clarity in the marketplace or ensure that consumer interests are better protected than would be the case by finalizing the other objective production criteria proposed by AMS, such as “grass-fed,” “grain-fed,” etc. As noted by The Center for Food Safety (“CFS”), there is significant potential for the opposite result:

CFS states that:

The development of a “naturally raised” labeling claim will only add to existing consumer confusion in the marketplace. CFS also does not believe that the development of voluntary livestock standards allowing the use of the term “naturally raised” are necessary or useful to consumers. The existing standards governing the production of organic livestock already accurately and best reflect the qualities consumers associate with the “natural” raising of livestock.⁴²

As reflected in the description of the OFPA above, CFS is correct. The existing organic production process claim, as defined in law and implementing regulation, does incorporate strict requirements for the animal production processes used. These include:

- The prohibition on administration of hormones or antibiotics;⁴³
- The National List requirements for natural substances that are allowed and synthetic substances that are prohibited;⁴⁴
- Requirements for 100% organic feeds (i.e. feeds grown without the use of synthetic pesticides, fertilizers, or genetic engineering);⁴⁵
- Provision of living conditions for animals that accommodate “the health and natural behavior” of the animal and include access to the outdoors, pasture, and shelter designed for “natural maintenance, comfort behaviors, and opportunity to exercise.”⁴⁶

There is no confusion about these requirements. They are easily ascertainable by checking the AMS website itself, or multiple other sources. The characterization of some lesser complement of production practices as “naturally raised” would be very confusing. If a cow is not eating 100% organic feeds, why does it make logical sense to put that cow nonetheless on the “naturally raised” side of the line, while putting the otherwise organic cow receiving a humane treatment for illness that disqualifies it from carrying the organic claim on the “artificially raised” side of the line? The question illustrates the difficulty of drawing lines between organic and other forms of production. It also illustrates the potential harm to producers excluded from any “partly natural” or “organic lite” definition adopted in the absence of Congressional determination of need and relevant criteria.

⁴² See., e.g., The Center for Food Safety comment of December 11, 2006 at <http://www.ams.usda.gov/lsg/stand/claim.htm>.

⁴³ See., e.g. 7 U.S.C. § 6509(c)(3).

⁴⁴ 7 U.S.C. § 6517.

⁴⁵ See 7 C.F.R. § 205.237.

⁴⁶ See 7 C.F.R. § 205.270.

VI. CONCLUSION

The “natural” policy, as established in the existing FSIS and CODEX definitions, is clear, and well-understood by consumers. It is not confusing. It means that the product contains no artificial ingredients, no chemical preservatives and is minimally processed. It describes the characteristics of the end use product itself, consistent with domestic and international law.

The incorporation of a “naturally raised” livestock claim into the existing policy will add confusion, as a kind of halfway house between organic production and all other forms of production. U.S. policy should not shackle currently successful producers and processors of end-use natural products by defining a limited subset of production measures as “naturally raised” and incorporating that production process claim in the “natural” product claim. Various alternative fact-based production process characteristics, such as “grass-fed,” “grain-fed” and “antibiotic-free” can provide market value to producers of products with those characteristics without misleading consumers and without reducing choice for consumers to whom the existing FSIS “natural” policy provides relevant and well-understood information. That is the strategy that maximizes markets for all of U.S. agriculture and that is the strategy AMS should pursue with respect to this issue.