

HUMANEWASHED:

USDA Process Verified Program
Misleads Consumers About Animal
Welfare Marketing Claims



Animal Welfare
Institute



ABOUT AWI

Since its founding in 1951, AWI has been alleviating suffering inflicted on animals by people. Major goals of the organization include abolishing factory farms and achieving humane slaughter for all animals raised for food. AWI seeks to achieve these goals through research, investigation, education, and lobbying on behalf of animals.

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Report by Rachel Mathews
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Animal Welfare Institute
900 Pennsylvania Avenue, SE
Washington, DC 20003
www.awionline.org

EXECUTIVE SUMMARY

Americans tuning in to ABC's *20/20* were shocked to see footage of the inhumane treatment of laying hens at eight separate facilities owned by Sparboe Farms. The footage captured the routine cruelties that are common husbandry practices in the egg industry, as well as acts of intentional cruelty towards hens by workers. These acts occurred even though Sparboe's husbandry practices are audited and certified as "superior" for animal welfare by the United States Department of Agriculture (USDA) Process Verified Program (PVP).

This report takes an in-depth look at the PVP's use as an animal welfare certification program by conventional producers. Based on PVP records received under the Freedom of Information Act as well as law and guidance governing the program, the Animal Welfare Institute concludes that the PVP enables companies to mislead consumers who believe that PVP products are from animals raised more humanely than those raised conventionally when, in fact, they are not. Findings of the research include:

- **The animal welfare programs currently certified by the PVP as "humane" are not materially different from conventional production methods.** They allow for intensive indoor confinement of egg-laying hens and meat chickens; ammonia reaching levels known to cause significant respiratory, skin, and eye disease in chickens; the painful debeaking of young chicks; and other inhumane conventional practices.
- **The PVP confuses the auditing and the certification roles of the Agricultural Marketing Service (AMS) such that certification of animal welfare claims is not based on substantive federal standards.** To fulfill its mission to promote agricultural products, AMS acts as an auditor of private standards and a certifier of federal standards. The PVP improperly confounds these roles by certifying private animal welfare standards. This has enabled conventional producers to market their products as more "humane" than other products, even when they are not.
- **The animal welfare claims currently certified under the PVP do not even meet the basic requirements of the program.** The purpose of the PVP is to market "value added" products. PVP guidelines require that the processes certified be different than standards under which others in the industry generally operate. The PVP animal welfare claims currently certified do not meet this requirement.

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INTRODUCTION

On November 18, 2011, ABC's *20/20* aired a shocking investigative report that exposed the cruel mistreatment of egg-laying hens at facilities owned by Sparboe Farms.¹ The footage showed appalling conditions and handling of the birds: desiccated remains left in cages with living birds, ailing hens denied proper veterinary care, male chicks thrown into trash bags to suffocate to death, the painful hot blade debeaking of chicks, and the alarmingly callous handling of birds by workers. The abuses were documented by Mercy for Animals investigators on eight separate Sparboe facilities between May 23 and August 1, 2011.² On November 16, 2011, the U.S. Food and Drug Administration (FDA) issued a warning letter to Sparboe for thirteen “serious violations” of federal food safety laws.³

As a result of the undercover footage and food safety violations, several major Sparboe customers broke ties with the company, including McDonald's and Target. Sparboe president Beth Schnell handled the fallout by issuing a letter pointing out that Sparboe's animal welfare guidelines are approved, audited, and certified by the U.S. Department of Agriculture through its Process Verified Program.⁴ In addition, Sparboe is maintaining a website to address public concern surrounding the investigation which prominently touts Sparboe's PVP certification in a section entitled “Sparboe-USDA Certified.”⁵

The PVP is a voluntary marketing program administered by the AMS, which gives companies “the opportunity to provide consistent quality products or services” based on the company's ability to meet its own standards.⁶ PVP certification entitles a producer to make marketing claims associated with PVP-certified points and to use a USDA shield logo as well as the words “USDA Process Verified” on its packaging.⁷ The PVP does not verify the truthfulness of claims against objective, substantive USDA standards, however, and conventional producers are misusing the program to claim that their products come from animals who enjoy exceptional treatment. In fact, the animal husbandry guidelines currently certified under the PVP are equivalent to conventional production methods—methods which no reasonable consumer would consider “humane.”

Under the PVP, AMS audits five Sparboe facilities in three different states for compliance with the company's “animal care” standards. By gaining PVP certification, Sparboe is entitled to market its products using claims that appeal to consumers' desire for more humane treatment of farm animals. Sparboe has expanded its customer base by claiming its products are produced under a “licensed welfare-enhanced program,” and that its guidelines are “superior in animal welfare comprehensiveness to any other eggs produced worldwide.”⁸

These claims have paid off; after certification, Sparboe gained Walmart as a customer and obtained access to the market in Arizona (which requires eggs to be certified by the United Egg Producers or an equivalent).⁹ Sparboe is the first egg producer to use the PVP to certify animal care claims, and the program is expanding; since Sparboe's certification, two additional producers have become PVP certified by using Sparboe's animal care guidelines.¹⁰



Consumers would be alarmed to realize that under the PVP, USDA has certified Sparboe for compliance with food safety procedures even though the FDA has found *major violations* of similar requirements. PVP inspection reports show that four of the five Sparboe facilities cited for food safety violations by the FDA are PVP-certified and were visited by USDA inspectors within days or weeks of visits by FDA inspectors. The same facilities cited by FDA inspectors passed their spring 2011 PVP audits without incident.¹¹ For example, the FDA cited two Sparboe PVP facilities for failing to achieve adequate rodent and fly control, yet USDA PVP audits conducted within four to six days of FDA inspections found that the facilities were in conformance with Sparboe's PVP requirement for adequate pest and vermin control. Similarly, FDA cited multiple Sparboe PVP facilities for failing to develop written *salmonella* prevention plans, failing to conduct proper *salmonella* testing, and for the presence of *salmonella* in the poultry houses, yet USDA inspectors found that Sparboe had conformed to its PVP *salmonella* testing requirements.

Moreover, at least one of Sparboe's PVP facilities appeared in Mercy for Animals' investigative footage,¹² which was also recorded within weeks of USDA auditors' visits under the PVP program. This footage showed the cruel mistreatment of birds, including workers grabbing hens by their throats, swinging a hen through the air, jamming a hen into a pocket head-first, and suffocating male chicks in garbage bags. Nevertheless, Sparboe's facilities passed their spring 2011 PVP audits—which include requirements on proper bird handling, euthanasia methods,

FDA AND USDA AUDITS OF SPARBOE FACILITIES

<i>Location</i>	<i>FDA Audit</i>	<i>USDA Audit</i>	
Goodell, IA	Apr. 25-29, 2011	May 3, 2011	Four days apart
Litchfield, MN	Apr. 25-May 5, 2011	Apr. 19, 2011	Six days apart
Hudson, CO	May 9-12, 2011	Jun. 1, 2011	Three weeks apart
Humboldt, IA	Jun. 20-22, 2011	Apr. 20, 2011	Two months apart

and employee training—with flying colors.¹³ The upsetting revelations of these on-farm investigations combined with inconsistencies in the findings of two federal agencies visiting Sparboe’s facilities within days of each other cast doubt on the efficacy and meaningfulness of the PVP program.

Sparboe is not a special case, however. In addition to certifying Sparboe, USDA currently approves, audits, and certifies the standards used at 10 broiler chicken facilities owned by Perdue Farms.¹⁴ Perdue’s Harvestland brand chicken is labeled with the USDA Process Verified logo, along with the claims “humanely raised” and “raised cage free,” among others. Perdue has relied heavily on the USDA PVP certification in marketing campaigns, releasing TV commercials, a website, and advertisements emphasizing the fact that USDA certifies its products. Perdue is currently the only poultry producer that has taken advantage of PVP certification, but a number of other producers have expressed interest in certification.¹⁵

As this report will show, the PVP allows Sparboe and Perdue to take advantage of consumer desire to purchase ethically produced, higher welfare products. American consumers increasingly identify the welfare and protection of farmed animals as a major area of concern when selecting which foods to purchase.¹⁶ For example, in a 2010 study, 51 percent of consumers responded that the claim “humanely raised” was “very important” or “important” in causing them to believe a food is ethically produced.¹⁷ The claim ranked fourth highest in importance among 29 claims examined, higher than claims such as “no antibiotics,” “made in the USA,” “natural,” and “sustainably produced.”¹⁸ Moreover, Sparboe and Perdue recognize that the public is willing to pay more for food that is labeled “humanely raised.” A 2007 survey found that 58 percent of consumers would spend an additional 10 percent or more for meat, poultry, eggs, or dairy products labeled “humanely raised.”¹⁹ Taken together, these factors mean that humane claims are ripe for exploitation by companies attempting to lure in conscientious consumers seeking an alternative to products from factory farmed animals. The PVP enables companies like Sparboe and Perdue to do exactly that, thereby undermining the viability of enterprises that are actually providing more humane care to their animals.

Sparboe and Perdue’s use of the PVP to certify animal welfare claims is deceptive to consumers and an abuse of the program. The PVP is not an animal welfare certification program, but these producers are representing it as such in order to exploit consumer desire for humane products. The PVP is merely a “quality assurance” marketing program through which USDA verifies that a company is meeting its own standards. It does not require producers to justify their claims that a product is “humane” or “animal welfare enhanced”; nor do PVP auditors have

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any substantive, objective standard against which to measure humane treatment of animals. Simply put, PVP certification has enabled Sparboe and Perdue to claim that their chickens enjoy superior treatment without actually providing it, and other producers are following suit.

For the reasons set out below, the PVP is not an appropriate federal program for the certification of animal welfare marketing claims.

I. The PVP enables producers to mislead consumers by marketing their products as USDA certified or endorsed even though certification is not based on substantive USDA standards.

The mission of AMS is to “inspect, certify, and identify the class, quality, quantity, and condition of agricultural products . . . to the end that [they] may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire.”²¹ Pursuant to this directive, AMS has developed two distinct roles: that of a third-party auditor of conformance with private standards, and that of a certifier of products meeting objective, substantive USDA standards. The PVP improperly confuses these two roles, however, by authorizing producers to use a “USDA Process Verified” seal as a certification on their products even though AMS has merely acted as an auditor of the producers’ private standards. In other words, PVP producers may market their products as USDA certified even though they do not have to comply with any substantive federal standard.

In its role as a third-party auditor, AMS verifies a producer’s compliance with private quality assurance standards through periodic audits. For example, AMS provides auditing services to producers seeking to comply with the privately-developed animal husbandry standards of the National Turkey Federation and United Egg Producers (UEP). Because AMS has no role in establishing these standards, passing an AMS audit does not entitle a producer to use a USDA seal of approval on its products. Thus, in its role as an auditor, AMS merely provides a service that has no USDA certification attached. The AMS auditing service, like any true quality assurance program, enables producers to verify uniform implementation of their own programs; it is not, however, a marketing program accompanied by a USDA seal of approval.

Producers who do affix a USDA seal to their products must qualify for it under an AMS certification program with federally-set standards. Under these programs, the USDA seal indicates to consumers that a product meets a specific standard set by USDA that is applied uniformly across all products carrying the certification. For

The PVP manual establishes no conformance baseline that producers must meet for inclusion in the program. Producers have been accepted into the program and remain certified despite multiple and sometimes repeated nonconformities with their own standards. Most notably, AMS accepted Sparboe into the PVP for its animal welfare program despite the fact that Sparboe was overcrowding its birds—a major nonconformance, and a major aspect of animal welfare.²⁰

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example, most consumers are familiar with the USDA shell egg-grading program, which allows egg producers to use a USDA shield indicating the eggs’ grade based on uniform size, weight, and quality standards. Guidelines for inspection and certification are set in regulation, and the standards for grades and weight classes of eggs are established in official guidance.²² The USDA egg-grading seal tells the consumer that the shells, air cells, whites, yolks, and sizes of eggs will all be of a specific, consistent quality.

The National Organic Program is another example of an AMS certification program from which consumers can expect products to meet substantive, uniform federal standards. USDA-certified organic production is governed by a comprehensive set of regulations and guidance developed by AMS in consultation with scientists, producers, consumers, and environmentalists.²³ The USDA Organic seal indicates to the consumer that a product or its ingredients meet substantive quality standards applied consistently to all products carrying the certification.

Common to these two programs is the fact that in order to market products as “USDA certified,” producers must meet substantive standards set by USDA in regulation and guidance. The PVP, in contrast, certifies marketing claims in the absence of any objective federal standards to substantiate those claims. A PVP certification merely indicates that AMS has audited a producer for compliance with the producer’s own standards. Thus, in essence, the “USDA Process Verified” claim only means that a facility has been audited. This is misleading to consumers who are accustomed to USDA certification programs that are based on substantive federal standards. For this reason, “USDA Process Verified” certification simply does not belong in the range of marketing programs offered by AMS to producers making animal welfare claims.

The shortcomings of the USDA PVP are particularly apparent in the context of animal welfare claims. The cases of Perdue and Sparboe make this point abundantly clear: both companies produce animal products under conventional methods, but are using the USDA PVP to “certify” that their methods somehow exceed industry standards. This allows the companies to mislead consumers who believe that the seal means that the companies are following substantive, federal standards that exceed the industry norm.

Perdue uses the “USDA Process Verified” seal directly on its packaging alongside the claim “humanely raised.” This misleads consumers by suggesting that Purdue’s practices meet some USDA standard that is unique from and superior to conventional practices. However, according to documents obtained in a 2010 Freedom of Information Act request, Perdue’s animal care standards are no

different than those of the National Chicken Council, an industry group whose membership includes most of Perdue's competitors. This fact was raised to USDA at least once before by Tyson Foods, Inc., a Perdue competitor, which petitioned AMS and FSIS to rescind Perdue's use of the PVP seal on its packaging because it is misleading.²⁴

Perdue's misuse of the "humanely raised" PVP claim is also currently the subject of a class action lawsuit brought by consumers who allege that Perdue's use of the PVP symbol caused them to believe that Perdue's Harvestland chickens "were approved and endorsed as 'Humanely Raised' by the USDA, acting as a neutral third party."²⁵ A 2012 poll demonstrates that this is a common misunderstanding of the use of the PVP shield on Perdue's products: 58 percent of consumers believe that the USDA PVP shield means that "the company meets standards for the treatment of chickens developed by the USDA itself."²⁶ The same survey found that 53 percent of consumers "believe that the USDA endorses brands of chicken with the [PVP] labels," 78 percent of consumers "believe that brands of chicken with the label are 'better than others on the market,'" and 52 percent of consumers "believe that brands of chicken with the labels are higher quality than brands without."²⁷

Similarly, Sparboe's PVP certification allows the company to claim that its eggs are produced under a "licensed welfare-enhanced program with Federal verification" whose guidelines are "superior in animal welfare comprehensiveness to any other eggs produced worldwide."²⁸ Much like Perdue, however, Sparboe's animal welfare guidelines were not written or endorsed by the USDA; in reality, Sparboe's PVP guidelines are effectively identical to the industry standard as articulated in the UEP's Animal Husbandry Guidelines.²⁹ In fact, emails from Sparboe on file with AMS indicate that Sparboe obtained PVP certification in order to compete with the UEP's program and to gain Walmart as a customer.³⁰ Additionally, the state of Arizona, which requires all eggs sold in the state to meet UEP's standards, has deemed Sparboe's PVP eggs to be "equivalent" to UEP Certified eggs.³¹

Both Perdue and Sparboe have used the PVP to mislead customers who are accustomed to USDA certification programs that actually have substantive standards. PVP certification has given these producers a competitive edge—allowing them to compete with farmers who are in fact providing a better welfare product—simply because the USDA seal is a trusted and valuable symbol of quality. The average consumer has no way of knowing that PVP certification is merely a verification that a company has met some standard that the company itself has set. The PVP is simply not appropriate for the certification of animal welfare claims.

The use of the PVP to certify animal welfare claims also devalues products marketed under private animal welfare certification programs such as Animal Welfare Approved and Certified Humane. These programs, which audit and certify higher welfare operations, demand a substantive, baseline level of care that the industry's standards do not come close to approaching. The standards of these private programs focus on benchmarks for welfare that have been identified by sound animal welfare science, as opposed to industry expedients, and each program makes their standards publicly available, allowing consumers to make informed purchasing choices.

II. The PVP fails to ensure that the animal welfare claims that it certifies actually enhance animal welfare.

The problems with the PVP are further compounded by the fact that PVP certification does not require AMS to verify whether PVP claims are truthful and scientifically justified. For animal welfare claims, auditors never even raise the question of whether a producer's procedures are actually "humane" or enhance animal welfare. The egg industry has come out against the PVP for this precise reason. As the UEP has written:

Let it be a clear understanding that USDA does not have an animal welfare PVP program. The PVP is a marketing program whereby USDA will audit an individual company's program for the marketing of products to verify that they are meeting the standards established by the company. A company could write their own animal welfare or a food safety program, etc., and have USDA conduct an audit to verify the company was meeting their own written procedures. In regard to animal welfare, those standards do not have to be standards that are recognized as humane standards by respected scientists. They simply have to be what the company says they are doing.³²

AMS's failure to make a qualitative assessment of actual animal welfare when it certifies animal welfare claims further demonstrates that the PVP is not appropriate as an animal welfare marketing tool. Moreover, because AMS does not verify whether the animal care it certifies is actually "humane," the PVP does not provide adequate quality assurance. Instead, the PVP has become a means by which conventional producers may "humanewash" their products.

Both Sparboe and Perdue have used the PVP to market their products as "humane" or "welfare enhanced," knowing well that there is no USDA standard for what those terms actually mean for laying hens and broiler chickens. In certifying these two producers, AMS never questioned whether the claims were truthful. In records obtained by the Animal Welfare Institute regarding Perdue's certification, there was not a single inquiry into whether Perdue's chickens are actually "humanely raised." In records regarding Sparboe's certification, the AMS inquiry into hen welfare was perfunctory at best; the records show that Sparboe submitted identical statements of support from three scientists of its choosing. The two-sentence statement did not even attest to the "enhanced welfare" of Sparboe's birds; it merely acknowledged that Sparboe's animal husbandry program would "adequately provide for the welfare" of Sparboe's hens.

AMS's failure to verify the truth of claims certified under the PVP is no small matter. In addition to facilitating the use of misleading claims by companies attempting to "humanewash" their products, AMS certification carries great legal heft. Under the Agricultural Marketing Act, AMS certification of a marketing claim is *prima facie* evidence of the statement's truth in a court of law.³³ By failing to require any verification of the truthfulness of animal welfare claims, the PVP falls short of AMS's directive to enable consumers "to obtain the quality product which they desire."³⁴ Because the PVP fails to substantiate the truthfulness of certified claims, and certification is not based on substantive federal standards, the PVP is a woefully inadequate quality assurance program. The PVP is therefore entirely inappropriate for certifying and marketing animal welfare claims.

III. USDA PVP certification of conventional practices as "humane" is deceptive because conventional production practices fail to meet the basic welfare needs of broiler chickens and laying hens.

Conventional farmed animal production methods have been developed to maximize efficiency and productivity of the animal. These operations confine thousands of animals in close quarters, deprive animals of the opportunity to express natural behaviors, push animals' bodies to their physical limits in the name of productivity, and routinely inflict painful invasive procedures on animals to curb the behavioral effects of close confinement. Simply put, conventional practices maximize profit at the expense of the well-being of the animals. These practices perpetuate animal suffering; they do not "enhance" animal welfare and they are not "humane."

Both Sparboe and Perdue are conventional producers, and their PVP-certified animal care guidelines do not adequately cover the basic physical and psychological needs of chickens. Animal welfare experts maintain that in order to achieve adequate animal welfare, farming systems must provide for an animal's Five Freedoms (see box at right).

The chickens raised for meat by Perdue and the hens raised for eggs by Sparboe live in conditions that would shock most Americans because they do not provide these "Five Freedoms." Birds have no access to fresh air and sunlight for the entirety of their short lives. Ammonia in the air and in litter causes chickens to suffer elevated levels of respiratory, skin, and eye disease at concentrations of 25 parts per million, yet both companies allow ammonia levels to meet (or even exceed) this threshold.³⁶ Every aspect of the birds' living conditions, from the lighting to the feed, is manipulated to increase production and decrease costs rather than maximize animal welfare.

The Five Freedoms

- 1. Freedom from hunger and thirst** by ready access to fresh water and a diet to maintain full health and vigor;
- 2. Freedom from discomfort** by providing an appropriate environment, including shelter and a comfortable resting area;
- 3. Freedom from pain, injury, and disease** by prevention or rapid diagnosis and treatment;
- 4. Freedom to express normal behavior** by providing sufficient space, proper facilities, and company of the animal's own kind; and
- 5. Freedom from fear and distress** by ensuring conditions and treatment that avoid mental suffering.³⁵

“Federal certification of these standards and use of the USDA’s shield to market these products as ‘humane’ or ‘animal welfare enhanced’ is inappropriate and deceptive.”

In Sparboe’s barren battery cage production system, egg laying hens are unable to express normal behavior. A hen’s normal behavioral range includes standing, turning, preening, flapping her wings, dust bathing, scratching, and perching. In order to perform even the most basic behaviors—standing, turning, and flapping her wings—a hen needs at least 291 square inches of space.³⁷ Sparboe’s PVP-certified “animal welfare enhanced” production guidelines fail to give hens even a quarter of that amount of space.³⁸ In fact, at the time of its certification, some of Sparboe’s facilities only gave each hen 54 square inches, despite the fact that its own PVP guidelines required 67 square inches (which is also the current industry standard).³⁹ Sparboe’s hens are consigned to a dismal life of eating, laying eggs, and pecking at one another in frustration.

Perdue’s broiler chickens, while not caged, are crowded into windowless sheds with thousands of other birds. National Chicken Council guidelines—the basis of Perdue’s PVP guidelines—provide only 0.6-0.7 square feet of space per bird, about the size of an 8.5 x 11 inch sheet of paper.⁴⁰ Intensively raised poultry grow rapidly, and as a chicken approaches market age and weight, the bird’s own body takes up most of his allotted space, which leaves no room to perform simple activities without coming in contact with other birds. A chicken’s ability to perform all behaviors is impacted by this level of crowding, and even reaching food and water can be a challenge. This hardship is compounded by the fact that broiler chickens grow so large and so fast that their legs have trouble holding up their excessive weight.

The guidelines used by Perdue and Sparboe to support their PVP animal welfare certifications are not meaningfully different from the industry standard. They fail to provide for the physical, psychological, and behavioral needs of chickens, and therefore provide an unacceptably minimal level of animal welfare. Federal certification of these standards and use of the USDA’s shield to market these products as “humane” or “animal welfare enhanced” is inappropriate and deceptive.

IV. The animal welfare programs currently certified under the PVP fail to meet the PVP’s basic requirements for inclusion in the program.

The PVP is, in essence, a quality assurance program intended to certify value-added products. A product is “value-added” when it is produced in a manner that enhances its value as demonstrated by a business plan.⁴¹ According to the PVP manual outlining the scope of the program, process verified points (or claims) must “a) Add value to the product or service b) Be substantive, verifiable, and repeatable and c) Be within the scope of the [Grading] Branch’s authority.”⁴²

The manual clarifies that “Process verified points must not be requirements of...a standard under which clients of the same industry generally operate.”⁴³ It further includes a non-exhaustive list of “allowable” process verified points, including “adherence to a recognized standard not otherwise required by industry or regulations,” or “a unique production or handling practice.”⁴⁴ Thus, in order to participate in the PVP, producers must provide some service that is distinct from common industry practice.

Sparboe’s eggs and Perdue’s chicken are not animal welfare value-added products because their animals are raised in the same manner as other animals raised in conventional production. The PVP-certified claims, were they accurate, would certainly qualify products as “value-added” because companies providing their animals with higher welfare or humane treatment exceed the current industry standard, which adds value to their product. However, as this report has demonstrated, the animal welfare claims currently certified are not truthful and the processes supporting them are not substantively different from the industry standard. AMS has therefore failed to ensure that the programs it certifies have met even the most basic requirements of the PVP itself. The PVP as applied to animal welfare claims does not achieve its own goal of quality assurance for value-added products.

CONCLUSION

The federal government’s role in promoting truth in labeling is extremely valuable, and American consumers ought to be able to trust federal regulators to properly carry out this role. The PVP, however, betrays the public’s trust by failing to establish a substantive federal baseline to ensure that certification of animal welfare claims is meaningful. The PVP allows conventional producers to define “humane” however they like, duping consumers who believe that the USDA has verified that their products come from animals raised in truly humane systems.

For the reasons outlined in this report, the USDA Process Verified Program is inadequate and inappropriate for certifying animal welfare marketing claims. The Animal Welfare Institute calls upon the USDA to eliminate use of the Process Verified Program as an animal welfare certification program.

“AMS has therefore failed to ensure that the programs it certifies have met even the most basic requirements of the PVP itself.”

ENDNOTES

¹*McDonald's Cruelty: The Rotten Truth about Egg McMuffins*, Mercy for Animals, <http://www.mcdonaldscruelty.com/>.

²Compl. before the U.S. Federal Trade Comm'n by Mercy for Animals against Sparboe Farms 4, Dec. 1, 2011.

³Warning Letter, U.S. FDA to Sparboe Farms, Inc. (Nov. 16, 2011).

⁴See Letter from Sparboe Farms President Beth Sparboe Schnell (Nov. 2011), available at <http://www.sparboeupdate.com/presidentsletter/> (stating "We are proud that Sparboe Farms was the first U.S. egg producer to receive USDA Processed Verified Program (PVP) certification for its science-based animal care production guidelines.").

⁵*Sparboe-USA Certified*, <http://www.sparboeupdate.com/usda-certification/>.

⁶*LS Process Verified Program*, AMS, <http://www.ams.usda.gov/AMSV1.0/processverified>.

⁷*Id.*

⁸*Sparboe Farms Operations Manual for Shell Eggs in the USDA/AMS Process Verified Program* 35 (undated).

⁹Email from Ken Klippen to Jeffrey Waite (Sept. 10, 2008) (on file with the Animal Welfare Institute); USDA, AMS/Poultry Programs Weekly Report (Sept. 7, 2009).

¹⁰USDA, Official Listing of Approved USDA Process Verified Programs (Oct. 13, 2011), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELP RDC5081908>.

¹¹This discrepancy is not likely due to a change in practices between the FDA inspector's visit and the USDA auditor's visit, since FDA did not notify Sparboe of the violations until November 2011, months after both inspections.

¹²P-1519 (Eagle Grove, IA).

¹³Again, Sparboe was not likely aware of any food safety violations at the time of USDA PVP audits and would not have made corrections based on the FDA findings. See *supra* note 11.

¹⁴See USDA, *supra* note 10.

¹⁵USDA, AMS/Poultry Programs Weekly Report (Feb. 18, 2010) ("Poultry Programs has since received requests for information concerning the PVP program from Maple Leaf Farms, a duck processor; Sanderson Farms, the fourth largest poultry processor; and Mountaire Farms, a large poultry processor.").

¹⁶The welfare and protection of animals raised for food was seen as "very" or "somewhat" important by 79 percent of respondents to a survey managed by the Humane Research Council. Humane Research Council, *Animal Tracker—Wave 112* (2008), available at <http://www.humanespot.org>.

¹⁷Context Mktg., *Ethical Food: A Research Report on the Ethical Claims that Matter Most to Food Shoppers and How Ethical Concerns Influence Food Purchases* 5 (2010), available at <http://www.contextmarketing.com/sources/feb28-2010/ethicalfoodreport.pdf>.

¹⁸*Id.*

¹⁹See *Frequently Asked Questions*, American Humane Certified, <http://thehumanetouch.org/faq> (last visited Oct. 13, 2011).

²⁰See AMS PVP Audit Reports for Sparboe Facilities in Hudson, CO, Goodell, IA, Litchfield, MN (Sept. 2008).

²¹U.S.C. § 1622(h)(1).

²²See 7 C.F.R. Part 56; USDA, AMS 56, *United States Standards, Grades, and Weight Classes for Shell Eggs* (2000).

²³See 7 C.F.R. Part 205; USDA, NOP 1100, *Program Handbook: Guidance and Instructions for Accredited Certifying Agents & Certified Operations* (2011).

²⁴See Petition by Tyson Foods, Inc. to USDA to Rescind the Use of Process Verified Labels on Point of Sale Materials (2011), available at http://www.fsis.usda.gov/PDF/Petition_Tyson_031811.pdf. FSIS denied Tyson's request to rescind Perdue's use of the PVP certification on the basis that Perdue satisfied all of the PVP's procedural requirements. See FSIS Response to Petition by Tyson Foods, Inc. to USDA to Rescind the

Use of Process Verified Labels on Point of Sale Materials (2011), available at http://www.fsis.usda.gov/PDF/Petition_TysonFood_Response_071111.pdf.

²⁵Second Amended Complaint, *Hemy v. Perdue Farms, Inc.*, No. 3:11-cv-00888-FLW-LHG (D. N.J. Feb. 13, 2012).

²⁶*Id.*

²⁷*Id.*

²⁸*Sparboe Farms Operations Manual for Shell Eggs in the USDA/AMS Process Verified Program 35* (undated).

²⁹*Sparboe Farms Production Guidelines for Caged, Cage-free Chickens Laying Eggs for Human Consumption* (2008); cf. UEP, *Animal Husbandry Guidelines for U.S. Egg Laying Flocks* (2010).

³⁰Email from Ken Klippen (Aug. 4, 2008) (on file with the Animal Welfare Institute); Email from Ken Klippen to Jeffrey Waite (Sept. 10, 2008) (on file with the Animal Welfare Institute).

³¹USDA, AMS/Poultry Programs Weekly Report (Sept. 7, 2009).

³²UEP, *Process Verified Program*, United Voices, Jul. 2008.

³³7 U.S.C. § 1622(h)(3).

³⁴*Id.* § 1622(h)(1).

³⁵*Five Freedoms*, Farm Animal Welfare Council, <http://www.fawc.org.uk/freedoms.htm>.

³⁶H.H. Kristensen and C.M. Wathes, *Ammonia and Poultry Welfare: A Review*, 56 *World's Poultry Sci. J.* 235 (2000).

³⁷M.S. Dawkins & S. Hardie, *Space Needs of Laying Hens*, 30 *Brit. Poultry Sci.* 413 (1989).

³⁸*Sparboe Farms Production Guidelines for Caged, Cage-free Chickens Laying Eggs for Human Consumption* (2008).

³⁹AMS PVP Audit Reports for Sparboe Facilities in Hudson, CO, Goodell, IA, Litchfield, MN (Sept. 2008). Sparboe's Hudson, CO, facility is a cage-free facility. Hens in cage-free systems have slightly better welfare than caged hens, but their welfare is negatively impacted by ammonia levels, crowding, and large flock size (much like broilers).

⁴⁰National Chicken Council guidelines recommend a range of stocking densities from 6.5 lb/ft² for "light broilers" to 8.5 lb/ft² for "roasters." In 2003, the Food Marketing Institute and National Council of Chain Restaurants recommended to NCC that stock density not exceed 6.0 lb/ft². See Food Marketing Institute & National Council of Chain Restaurants, *FMI-NCCR Animal Welfare Program* (2003).

⁴¹7 U.S.C. § 1632a(a)(5). This definition, while not directly related to the PVP, comes from the Agricultural Marketing Act of 1946.

⁴²USDA, PVP 1001 Procedure, *USDA Process Verified Program* § 2.4.3.2 (2009).

⁴³*Id.*

⁴⁴*Id.* § 2.4.3.3.



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