



June 10, 2021

FSIS Docket Clerk
U.S. Department of Agriculture
Food Safety and Inspection Service
Room 2534, South Building
1400 Independence Ave SW
Washington, DC 20250

Re: Petition for Notice and Comment Rulemaking on “Product of USA” Labels

The National Cattlemen's Beef Association (NCBA) respectfully submits the following Petition to amend regulations implementing the Federal Meat Inspection Act to facilitate more informative labeling of beef products bearing “Product of USA” and related labeling claims. Such an update to the regulatory scheme will serve to eliminate potentially misleading, ambiguous source of origin labeling practices, ensure that the consumer is accurately informed, and facilitate marketing innovation throughout the beef industry.

As discussed in detail below, NCBA requests the U.S. Department of Agriculture (USDA) eliminate broadly applicable Product of USA labeling claims but continue to allow for more appropriately descriptive generic claims such as “Processed in the USA.” Beyond precluding a specific misleading practice NCBA believes this can be accomplished voluntarily without the imposition of new regulatory requirements on the beef supply chain. Further, USDA through the Agricultural Marketing Service (AMS) should proactively work with beef producers, processors, and retailers to develop voluntary, verifiable origin marketing claims that deliver tangible benefits to cattle producers without violating rules of trade.

I. Statement of Interest

The National Cattlemen's Beef Association (NCBA) is the oldest and largest national trade association representing U.S. cattle producers, with more than 25,000 direct members and over 250,000 producers represented through its 46 state affiliate associations. NCBA works to advance the economic, political, and social interests of the U.S. cattle business and to be an advocate for the cattle industry's policy positions and economic interests.

U.S. cattle producers sustainably produce the most trusted, highest quality and consistently satisfying animal protein for consumers worldwide. While stringent federal oversight standards set an appropriate baseline, U.S. producers continue to voluntarily invest in and adopt new technologies and innovative practices in pursuit of continuous improvement in cattle health, economic productivity, and environmental stewardship.

The U.S. beef industry has done a tremendous job improving everything from genetics to feeding and management protocols, to value-added processing. NCBA is committed to providing greater opportunities for cattle producers to more fully participate in value creation and capture relative to the



beef products they work so hard to produce. To that end, USDA can play an important leadership role in providing producers with more robust opportunities to utilize true marketing claims to further differentiate their products and gain more leverage in the supply chain. The voluntary nature of such programs will further benefit producers as this approach will not disrupt ongoing export activity or jeopardize future opportunities for expanded foreign market access.

II. Requested Action

NCBA requests that USDA Food Safety and Inspection Service's (FSIS or the Agency) initiate notice and comment rulemaking to amend 9 CFR § 317.8(b) by establishing a new section (2) (and renumbering subsequent sections) as follows:

Single ingredient beef product or ground beef product may be labeled as "Processed in the USA", provided that such label displays all mandatory features in a prominent manner in compliance with part 317 and is not otherwise false or misleading in any particular manner. All other claims relating to U.S. origin, production or processing of product are not eligible for generic approval, and FSIS acceptance of all such claims must be supported by adequate documentation. The requirements of this paragraph are not applicable to product authorized for export by FSIS.

NCBA requests the promulgation of a rule to update current labeling standards in a way that will more accurately inform consumers. The recommended change continues to allow, without the need for any particular documentation or agency prior review, the voluntary use of the claim "Processed in the USA" on any federally inspected product. More specific voluntary claims, such as "Raised and Harvested in the USA" would continue to require appropriate review, verification, and oversight within the FSIS label approval system. Interested parties would also remain free to explore the development of related Process Verified Programs (PVPs) through AMS or alternative third-party certification mechanisms.

III. Discussion

Current FSIS Policy

FSIS has adopted and sustained broadly permissive labeling standards that allow imported beef to be labeled as a "Product of the USA," if it undergoes minimal processing or repackaging in the United States. The current standard allows a federally inspected beef product to bear a "Product of the USA" label under the following conditions:¹

1. If the country to which the product is exported requires this phrase, and the product is processed in the U.S., or
2. The product is processed in the U.S. (i.e., is of domestic origin).

This policy, published in 2003, rescinded FSIS Policy Memo 080, dated April 1985, (Addendum 1) which permitted "Product of USA" claims if "it can be demonstrated that significant ingredients...such

¹ See FSIS Food Standards and Labeling Policy Book, available at <https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES>.

as meat...are of domestic origin.” In a subsequently withdrawn 2001 advance notice of proposed rulemaking, the Agency made the following statement:²

“Product of the U.S.A.” has been applied to products that, at minimum, have been prepared in the United States. It has never been construed by FSIS to mean that the product is derived only from animals that were born, raised, slaughtered in the United States. The only requirement for products bearing this labeling statement is that the product has been prepared (i.e., slaughtered, canned, salted, rendered, boned, etc.). No further distinction is required. In addition, there is nothing to preclude the use of this label statement in the domestic market, which occurs, to some degree.”

More generally and independent of this policy, FSIS allows for various claims of geographical origin, such as “Product of Nebraska” on the labels of federally inspected product, so long as the accuracy of such claims can be appropriately verified. In line with existing Agency policy, verifiable claims regarding U.S. origin, such as “Raised and Harvested in the US” can be made today, but any incentive to do so is effectively eliminated by FSIS’ longstanding allowance of open-ended “Product of USA” claims on the label of any product processed in a federal facility.

FSIS’s Statutory Mandate

One of FSIS’s fundamental responsibilities is to ensure that the meat, poultry, egg, and catfish products under its jurisdiction are accurately labeled and do not contain false or misleading information. FSIS is primarily responsible for the regulation of meat product labeling under the Federal Meat Inspection Act (FMIA).³ The FMIA requires that no meat product label bear any false or misleading statement of origin or quality.⁴ In addition to its inspection workforce, the Agency ensures that this is accomplished through its ongoing maintenance of a prior label approval program that places particular emphasis upon the review of specialized claims.⁵ This is a dynamic process that generates policy and precedent through case-by-case determinations, the issuance of guidance materials, and, when appropriate, the promulgation of new or amended agency regulations.

Federal Labeling Policy

General country of origin labeling (COOL) was originally established under the Tariff Act of 1930⁶ which required that, “unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked with its country of origin.” The requirement was further extended under the Agricultural Marketing Act of 1946 and the Farm Security and Rural Investment Act of 2002.⁷ The law originally required that the labeling for fresh beef, pork, and lamb products bear a statement that clearly identified the product’s origin unless it underwent a substantial transformation in the United States – commonly referred to as mandatory country-of-origin labeling (MCOOL). On December 18, 2015 Congress repealed the Agricultural Marketing Act’s application to beef and pork products following a series of World Trade Organization (WTO) rulings found that MCOOL treated imported

² 66 Fed. Reg. at 41160 (August 7, 2001).

³ 21 U.S.C. § 601 *et seq.*; 9 CFR § 302(b).

⁴ 21 U.S.C. § 601(n); 9 CFR § 317.8(a).

⁵ 9 CFR § 412.1.

⁶ 19 U.S.C. ch. 4.

⁷ 7 U.S.C. § 1638a.

livestock less favorably than U.S. livestock, and did not meet its objective to provide complete information to consumers on the origin of meat products. The repeal of MCOOL was necessary to avoid over \$1 billion of WTO-sanctioned retaliatory tariffs from Canada and Mexico.

This Petition is not a request for USDA to reinstate any form of MCOOL. Rather, NCBA requests that USDA update current labeling practices to more effectively balance regulated stakeholder burden and necessary consumer disclosure. By limiting generic labels to “Processed in the U.S.”, retailers and processors can label their products accurately without the added burden of tracing the product’s origin. Not only would such a change increase the accuracy of labels, but likely grow the value of voluntary origin labeling programs. Producers who choose to trace their cattle through the supply chain should be fairly compensated for their effort.

It is the general policy of the Federal government to ensure that food offered for sale in interstate commerce does not bear false or misleading labels. As with the FMIA, Congress has granted enforcement and review powers against false and misleading labeling for food to the Federal Trade Commission (FTC), the U.S. Food and Drug Administration (FDA), and the U.S. Customs and Border Protection (CBP). The Federal Trade Commission Act prohibits statements that are materially misleading in the advertising of food products.⁸ Similarly the Federal Food, Drug and Cosmetic Act deems food products to be misbranded if their labeling is false or misleading in any respect.⁹ Among representations in the labeling of a food which render such food misbranded under FDA regulation is any false representation that expresses or implies a geographical origin of the food.¹⁰

Under the Tariff Act of 1930, CBP is tasked with ensuring that every article of foreign origin imported into the United States bears a statement of country of origin.¹¹ CBP defines “Country of Origin” as:¹²

“[T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin...”

Outside of the FSIS arena, the “substantial transformation” required to change a product’s country or origin requires more than simple repackaging in a U.S. facility. Rather, a substantial transformation requires a process that results in a new and different article of commerce, having a new name, character and use that is different from that which existed prior to the processing. Given the present state of the agency’s statutory mandate, it is clear that FSIS’ approach to country-of-origin labeling fails to align with this or any other legal and regulatory scheme established by Congress.

Proposed Solution

FSIS’ existing labeling policy, mentioned above, differs significantly from labeling policies applied to virtually all other imported product. It is also clear that FSIS has the authority to modify its regulations to enhance the accuracy of information provided to the consumer. The Agency has long recognized

⁸ 15 U.S.C. §§ 55(a)(1) and 52.

⁹ 21 U.S.C. § 343(a).

¹⁰ 21 CFR § 101.18(c).

¹¹ 19 U.S.C. § 11304(a).

¹² 19 CFR § 134.1(b).

that the authority of additional qualifying language on product labels is an effective mechanism for accomplishing this goal. For example, when controversies arose in the 1980's regarding the potential for consumers to be misled by product named "Turkey Ham" the Agency established a standard that required contiguous disclosure of the phrase "Cured Turkey Thigh Meat."¹³ In 2014, FSIS established new requirements for the prominent disclosure of the inclusion of added substances in so-called enhanced meat and poultry products.¹⁴ The Petition's requested relief aligns squarely with Agency precedent.

It is critical to emphasize that the proposed update would not impose any new mandate on the domestic or international supply chain. Nor would it impose any new burden upon anyone who does not choose to make a verified origin claim. This necessary update would simply increase the beef industry's ability to respond to growing consumer demand for genuine American product.

As consumers become increasingly mindful of the social and environmental impact of their purchasing decisions, U.S. beef producers have an unprecedented opportunity to capitalize on consumer demand. Direct emissions from cattle account for just two percent of our country's overall Greenhouse Gas emissions, a contribution level 10-50 times lower than other regions around the world. FSIS's current guidelines, which permit the generic labeling of beef products that are simply processed in the U.S. as "Product of the USA" could easily mislead consumers.¹⁵ The attached product label (Addendum 2) provides just one illustration of this pervasive issue. In this image, the "Produced in the USA" claim is accompanied by the American flag symbol to encourage a "Buy-America" sentiment. As shown in the addendum, FSIS permits application of a "Product of the USA" claim to a product that may lead consumers to believe the animal was born, raised, and/or harvested in the U.S.

The Agency and American beef producers understand the economic, environmental, and social benefits of purchasing beef produced in the United States, but the Agency's long-standing application of Product of USA may undermine the consumer's faith in American-produced beef. While FSIS allows and permits verifiable U.S. origin claims such as "Born, Raised and Harvested in the US," any incentive to maintain verification is eliminated by the Agency's longstanding policy which allows use of open-ended "Product of USA" claims on the label of any product processed in a federal facility.

FSIS labeling policy in this area is minimally informative and unintentionally misleading. Current standards are clearly inconsistent with our country's overall policy regarding the substantial transformation of imported goods. It also fails to recognize or accommodate the growing desire of consumers for accurate information regarding the foods that they purchase. Action by FSIS to update its regulations in this area would align with the Agency's work to ensure that labeling of all inspected product fully and accurately informs the consumer.

As a matter of process, NCBA recommends that suggested updates be formalized through notice-and-comment rulemaking. In this context we fully recognize the Agency's ongoing authority to make labeling policy on a case-by-case basis, as well as the fact that the rulemaking process is inevitably time consuming. Nevertheless, this is the most sustainable approach given the existence of longstanding policy and the diversity of viewpoints on this issue. The completion of a process through

¹³ 9 CFR § 381.171.

¹⁴ 9 CFR §§ 317.2(e)(2), 381.117(h).

¹⁵ See, e.g., Addendum 2.

which all interested parties can participate will ultimately provide the best foundation for improved public policy on this issue. During the pendency of this process, voluntary compliance with the policies recommended in this Petition should be actively encouraged.

The approach NCBA advocates here – the establishment of a “Processed in USA” claim – is preferable to the alternative of attempting to define, through regulation, the suitability of all other origin claims. The validity of all generically approved claims can and should be carefully vetted by FSIS on a case-by-case basis, consistent with its application of the false and misleading standard and supported as appropriate with adequate documentation. This approach will allow for appropriate innovation and flexibility on the part of the food supply chain.

Conclusion

NCBA requests FSIS’ careful evaluation and favorable response to this Petition. Modifying its regulations accordingly will serve to eliminate misleading labeling practices and provide more accurate information to the American consumer while generating new marketing opportunities for the beef industry. This can be accomplished through an open public process which will not generate any new controversies surrounding country of origin labeling or otherwise disrupt international trade in beef products.

CC: The Honorable Tom Vilsack, Secretary of Agriculture
Mr. Paul Kiecker, Administrator, USDA Food Safety and Inspection Service



United States
Department of
Agriculture

Food Safety
and Inspection
Service

APR 16 1985

To: Branch Chiefs, SLD

Policy Memo 080

From: Margaret O'K. Glavin, Acting Director
SLD

Subject: Labeling Bearing Phrase "Product of U.S.A."

ISSUE: When can the phrase "Product of U.S.A." be shown on labeling?

POLICY: This Policy Memo replaces Policy Memo 009. Labeling may bear the phrase "Product of U.S.A." under one of the following conditions:

1. If the country to which the product is exported requires this phrase and the product is processed in the USA; or
2. If it can be demonstrated that significant ingredients having a bearing on consumer preference such as meat, vegetables, fruits, dairy products, etc., are of domestic origin (minor ingredients such as spices and flavorings are not included). In this case, the labels should be approved with the understanding that such ingredients are of domestic origin. (This notation should be made on the label transmittal form.)

RATIONALE: Products for export must bear labeling acceptable to the country of destination. In some cases the country of origin must be stated on the label as "Product of U.S.A.". This is similar to our requirement that the labeling of imported products must bear the name of the country of origin such as "Product of Canada". (The Meat and Poultry Inspection Manual indicates which countries require this phrase).

However, in other cases, the labeling "Product of U.S.A." would be misleading unless major ingredients such as the meat, vegetables, etc., are of domestic origin. In these cases, it is necessary that plant management adequately assure inspectional personnel that such ingredients are of domestic origin.



09:59 AM
PLU 16050
Kroger 580, 2671
Elm Pkwy



BEEF CH T-BONE STEAK

PRODUCT OF URUGUAY

NET WT
1.45 lb

UNIT PRICE EACH
\$14.99/lb

SAFE HANDLING INSTRUCTIONS
THIS PRODUCT WAS PREPARED FROM INSPECTED AND PASSED MEAT AND/OR POULTRY. PRODUCTS MAY CONTAIN BACTERIA THAT COULD CAUSE ILLNESS IF THE PRODUCT IS NOT COOKED PROPERLY. FOR YOUR PROTECTION, FOLLOW THESE SAFE HANDLING INSTRUCTIONS:
KEEP REFRIGERATED OR FROZEN
THAW IN REFRIGERATOR OR MICROWAVE
KEEP RAW MEAT AND POULTRY SEPARATE FROM OTHER FOODS. WASH WORKING SURFACES (INCLUDING CUTTING BOARDS), UTENSILS, AND HANDS AFTER TOUCHING RAW MEAT OR POULTRY.
COOK TO RECOMMENDED TEMPERATURE
KEEP HANDS REFRIGERATED IMMEDIATELY

SELL BY
11/11/19

**TOTAL PRICE
\$21.70

\$8.99/lb
YOU SAVE
\$8.70

PRICE W/CARD
\$13.04