



*Via email*

April 9, 2018

Roberta Wagner, Assistant Administrator  
Mary Porretta, Petitions Manager  
Office of Policy and Program Development  
Department of Agriculture, Food Safety and Inspection Service  
1400 Independence Avenue, SW  
Washington, D.C. 20250-3700

**Re: Petition 18-01, United States Cattlemen's Association Petition for the Imposition of Beef and Meat Labeling Requirements**

Dear Ms. Wagner and Ms. Porretta:

The Animal Legal Defense Fund (ALDF), Compassion Over Killing (COK), and Mercy For Animals (MFA), on behalf of their hundreds of thousands of members and supporters, respectfully submit these comments in response to the United States Cattlemen's Association's (USCA) Petition for the Imposition of Beef and Meat Labeling Requirements: To Exclude Products Not Derived Directly from Animals Raised and Slaughtered from the Definition of "Beef" and "Meat" (Petition) pursuant to 9 C.F.R. § 392.7. The Food Safety and Inspection Service should deny USCA's Petition in its entirety.

USCA's Petition would require FSIS to take action that goes beyond its jurisdictional authority; FSIS does not regulate food that is entirely plant-based and contains no part of an animal. The Petition is further flawed because plant-based foods do not mislead consumers. Finally, as to pre-market foods like "clean" or "cultured" meat, USCA's Petition should be denied as unnecessary and premature.

**Statement of Interest.**

The Animal Legal Defense Fund is a national non-profit organization founded in 1979 dedicated to protecting the lives and advancing the interests of animals through the legal system. ALDF's membership comprises thousands of dedicated attorneys and more than 200,000 members and supporters throughout the United States.

Compassion Over Killing is a national nonprofit animal protection organization which has been on the front lines exposing farmed animal abuse and creating meaningful changes for 20 years.

Mercy For Animals is an international non-profit charity, dedicated to preventing cruelty to farmed animals and promoting compassionate food choices and policies. MFA represents over 800,000 members and supporters throughout the United States.

ALDF, COK, and MFA all work to ensure fair treatment of plant-based food products in the marketplace. A large part of the work we do aims to prevent consumer confusion and the spread of misinformation by the animal agriculture industry. As such, ALDF, COK, and MFA are deeply invested in the responsible marketing and labeling of plant-based alternative products. It is in the interest of the undersigned groups as well as plant-based food companies to guarantee honest and accurate labels and labeling standards for plant-based foods.

**FSIS must deny USCA’s petition in its entirety.**

**I. FSIS has no jurisdiction over plant-based foods.**

**A. FDA regulations govern plant-based foods.**

Plant-based food products are subject to regulation by the Food and Drug Administration. FDA regulates any articles used for food or drink for humans or other animals.<sup>1</sup> FDA regulations address the labeling of food, when food is misbranded,<sup>2</sup> and food safety requirements. Plant-based foods fall wholly within FDA’s inspection and labeling authority.

FSIS’s jurisdiction over labeling is limited to regulatory authority under the Federal Meat Inspection Act (FMIA), Poultry Products Inspection Act (PPIA), and Egg Products Inspection Act (EPIA).<sup>3</sup> Plant-based products are not subject to FSIS’s labeling oversight. FSIS has no jurisdiction over products that do not contain animal parts, no matter how they may be labeled.<sup>4</sup>

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<sup>1</sup> 21 U.S.C. § 321(f)(2017).

<sup>2</sup> 21 U.S.C. § 343(a) (addressing labeling that is “false or misleading in any particular.”).

<sup>3</sup> FMIA, 21 U.S.C. §§ 601 *et seq.*; PPIA, 21 U.S.C. §§ 451 *et seq.*

<sup>4</sup> *See* 21 U.S.C. § 601(j) & (w) (FMIA); 21 U.S.C. § 453(e) & (f) (PPIA); 21 U.S.C. § 1033(f) & (g) (EPIA) (Amenable species are cattle, sheep, swine, goats, equines, exotic species used for human food, fish of the order Siluriformes, and “any additional species of livestock that the Secretary considers appropriate.” 21 U.S.C. § 601(w). “Poultry” refers to “any domesticated bird.” 21 U.S.C. § 453(e). “Egg” means “the shell egg of the domesticated chicken, turkey, duck, goose, or

**B. FDA’s regulatory oversight sufficiently protects against potential consumer deception.**

FDA is empowered to regulate all labeling of food shipped in interstate commerce. Accordingly, FDA has authority over any plant-based foods that may be misleading to consumers.

The Federal Food, Drug and Cosmetic Act prohibits food from being “misbranded” —or labeled in a manner that is “false or misleading in any particular.”<sup>5</sup> FDA has a vast array of enforcement remedies at its disposal, and when it determines that a food product misleads consumers it can send warning letters, seize misleading products, pursue criminal prosecution, or seek court injunction. FDA is well-versed at determining when a food product is misleading and what subsequent action is appropriate.

Although FSIS has the authority to find food products covered by the FMIA, PPIA, or EPIA “misbranded,” FSIS can make that determination only *for food products that contain some amount of animal-derived ingredients*.<sup>6</sup> The Policy Book at issue in USCA’s Petition is “intended to be guidance to help manufacturers and prepare product labels that are truthful and not misleading”<sup>7</sup> for products covered under the FMIA and the PPIA. It does not purport to cover plant-based foods.

Moreover, even though the FTC does regulate unfair or deceptive acts in the marketing of foods, the FTC defers to FDA’s determination on whether the labels or labeling of a food is misleading.<sup>8</sup> Again, FDA—not FSIS or the FTC—is responsible for

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guinea.” 21 U.S.C. § 1033(g). Food products that do not contain one of these animal-derived products are not under USDA jurisdiction. This would include foods made from insects).

<sup>5</sup> 21 U.S.C. § 343(a).

<sup>6</sup> 21 U.S.C. § 601(n)(1) (defining “misbranded” under the FMIA); 21 U.S.C. § 453(h) (PPIA)); 9 C.F.R. 317.8 (false or misleading labeling only applies to “product” which is defined as meat or meat food product at 9 C.F.R. § 301.2).

<sup>7</sup> USDA FSIS FOOD STANDARDS AND LABELING POLICY BOOK (Aug. 2005) [https://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling\\_Policy\\_Book\\_082005.pdf](https://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf)

<sup>8</sup> Memorandum of Understanding Between the Federal Trade Commission and the Food and Drug Administration (MOU 225-71-8003) “The Food and Drug Administration has primary responsibility for preventing misbranding of foods, drugs, devices, and cosmetics shipped in interstate commerce. . . . In the absence of express agreement between the two agencies to the

(1) how plant-based foods are labeled, and (2) whether consumers are misled by those labels. To our knowledge, FDA has never determined a plant-based food to be mislabeled for using the terms “beef” or “meat.”

## **II. Plant-based foods do not mislead consumers.**

USCA’s petition should further be denied because, even if FSIS had jurisdiction over plant-based products (which it does not), such foods’ labeling does not mislead consumers. Plant-based foods recently have grown in popularity, but such products have used the terms “beef” or “meat” — accompanied by obvious disclaimers that make their origins clear — for decades.<sup>9</sup> Indeed, not only is there no evidence of consumer confusion in all this time, plant-based food companies have every incentive to differentiate their products from animal-derived products. Consumers seek out plant-based foods because animal meat negatively impacts their health, the environment, and animal welfare.<sup>10</sup>

USCA fails to cite a single consumer survey or any other evidence that consumers are being misled. Instead, USCA cites news articles and plant-based products *it* finds misleading. The news titles cited in the Petition, “The Impossible Burger: Inside the Strange Science of the Fake Meat that ‘Bleeds’” and “TGI Fridays to Run Meatless Monday Campaign After Vegan Burger Launch,” distinguish plant-based meat from traditional beef on their face. And the products that USCA cites, The Impossible Burger and the Beyond Meat Burger (both plant-based burgers), similarly evince no mislabeling or consumer confusion.

The Petition points to the phrase “For the Love of Meat” on the Impossible Burger’s website,<sup>11</sup> but conveniently fails to include the immediately successive text (in the same font and size), which reads “The Burger Formerly Known as Plants” above a

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contrary, the Food and Drug Administration will exercise primary jurisdiction over all matters regulating the labeling of foods, drugs, devices, and cosmetics”).

<sup>9</sup> William Shurtleff & Akiko Aoyagi, History of Meat Alternatives, SOYINFO CENTER (2014) <http://www.soyinfocenter.com/pdf/179/MAL.pdf>

<sup>10</sup> Mintel Press Office, Food and Drink, <http://www.mintel.com/press-centre/food-and-drink/taste-is-the-top-reason-us-consumers-eat-plant-based-proteins> (last visited Mar. 30, 2018).

<sup>11</sup> Petition 18-01 at 9.

picture of plant leaves and roots.<sup>12</sup> Similarly, Beyond Meat immediately identifies its Beyond Burger as a “plant-based burger,”<sup>13</sup> and throughout its marketing campaign strategically positions its product as different from and superior to traditional animal-derived beef for environmental, human health, and animal welfare reasons.<sup>14</sup>

The success of plant-based foods in effectively replicating the organoleptic characteristics of traditional beef does not make the products’ labeling misleading. And the fact that they are desirable for consumers who enjoy traditional beef but wish to avoid beef’s negative health, environmental, and animal welfare implications undermines USCA’s argument that plant-based food companies are out to confuse consumers.

Plant-based food producers are heavily invested in distinguishing their products’ origin and reduced environmental footprint by highlighting the fact that they are not derived from animal ingredients. That these products are successfully competing with traditional beef in terms of market share does not make them deceptive or misleading—as much as beef’s trade association contends otherwise. In the absence of any consumer confusion, USCA’s has no basis to request FSIS action, and the agency must deny its petition.

### **III. FSIS should not act prematurely as to pre-market “clean” and “cultured” meat.**

USCA’s petition also takes aim at so-called “clean” and “cultured” meat. As to these pre-market foods, USCA’s Petition is premature and attempts to circumvent proper public procedures and regulatory requirements. “Clean” meat, a form of cellular agriculture that produces meat grown in cell culture instead of through the slaughter of live animals, is still in the development stages and not yet a consumer product, let alone one featuring labeling over which FDA and/or USDA would exercise authority.<sup>15</sup> Thus,

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<sup>12</sup> Impossible Foods, <https://www.impossiblefoods.com/burger/> (last visited Mar. 23, 2018). In the text adjacent to this phrase, Impossible Foods says that “we use 0% cows” while touting its reduced environmental footprint as compared with traditional beef.

<sup>13</sup> Beyond Meat, <http://beyondmeat.com/> (last visited Mar. 23, 2018).

<sup>14</sup> See, e.g., Beyond Meat website, About, <http://beyondmeat.com/about> (“We are dedicated to improving human health, positively impacting climate change, conserving natural resources and respecting animal welfare.”).

<sup>15</sup> A recent letter from U.S. Rep. Rosa DeLauro, D-CT, highlights the still-to-be-determined regulatory status of “clean” meat and other cell-cultured foods. See Letter to Gene L. Dodaro, Comptroller General of the United States, U.S. Government Accountability Office, Mar. 28,

no FSIS determination over the theoretical future labeling of “clean” and “cultured” meat is warranted at this time, and the agency should deny USCA’s petition for this reason as well.

#### IV. Conclusion

USCA’s petition is a solution in search of a problem. It has no foundation in the facts or in federal labeling law. FSIS should deny the petition in its entirety.

Sincerely,

Animal Legal Defense Fund  
Compassion Over Killing  
Mercy For Animals



By:

A handwritten signature in blue ink, appearing to read "Amanda Howell", is written over a horizontal line.

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2018,

[https://delauero.house.gov/sites/delauro.house.gov/files/Cell\\_Cultured\\_Foods\\_GAO\\_Letter.pdf](https://delauero.house.gov/sites/delauro.house.gov/files/Cell_Cultured_Foods_GAO_Letter.pdf)  
(last visited Mar. 30, 2018).

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