April 4, 2023

Emilio Esteban

Undersecretary for Food Safety

Food Safety and Inspection Service

U.S. Department of Agriculture

*Submitted electronically*

**Re: Proposed Rule on Voluntary Labeling of Regulated Products with United States-Origin Claims (posted March 13, 2023)**

Dear Under Secretary Esteban:

Consumer Federation of America, Consumer Reports, Food & Water Watch, and the National Family Farm Coalition appreciate your consideration of these comments on the above-referenced U.S. Department of Agriculture Food Safety and Inspection Service (FSIS) proposed rule. The proposed rule would put a long overdue end to misleading “Product of USA” and “Made in the USA” claims on foreign foods. Indeed, these claims are so misleading as to call into the question the need for a proposed rule at all, rather than a revision of the Food Standards and Labeling Policy Book, as was done in 2003. Given the delays inherent in the rulemaking process, FSIS should finalize and implement this rule as soon as possible. In particular, to minimize the costs to consumers of misleading U.S. origin claims that run afoul of the proposed rule, the agency should pursue “Alternative 2” (the proposed rule without any “extended compliance period”), and it should reject requests for an extension of the comment period on the proposed rule.

Notably, trade associations and foreign governments appear to be the only ones willing to defend the current labeling rules. The rules allow meat from foreign animals, or even imported meat products, to be labeled “Product of USA.” In other words, a company can purchase meat that is a “Product of Brazil,” put it in a new box, and call it “Product of USA.” Only slightly less outrageous, the current rules allow a company to affix the “Product of USA” label to “meat products derived from animals that have been imported from a foreign country but slaughtered in the United States.” Thus, for example, a cow that spends its entire life in Mexico, that is nourished with feed subject to Mexican feed regulations, and that is treated with antibiotics and other medicines subject to Mexican drug regulations, can be transported across the border and slaughtered the same day to make ground beef, steaks, etc. that all qualify as “Product of USA” under the FSIS rules.

Several groups have petitioned FSIS to close these loopholes. The first of these petitions was submitted in June of 2018. FSIS signaled on March 26, 2020, nearly three years before it issued this proposed rule, that the agency intended to place meaningful restrictions on voluntary U.S. origin claims. As explained in the proposed rule, the agency “concluded that its current labeling policy, which permits meat and poultry products that were derived from animals that may have been born, raised, and slaughtered in another country but processed in the United States to be labeled as ‘Product of USA,’ may be causing confusion in the marketplace, particularly with respect to certain imported meat products, and that the Agency intended to propose that such labeling be limited to meat products derived from livestock that were slaughtered and processed in the United States.” In other words, companies making “Product of USA” claims that are not compliant with the proposed rule have been on notice for years that this change was coming.

FSIS should not drag this process out any further. The proposed rule applies to *voluntary* labeling claims. A company need not label its product “Made in the USA” if it cannot demonstrate that the product is exclusively derived from animals born, raised and slaughtered in the U.S., or in the case of multi-ingredient products, that “all the product’s ingredients having a bearing on consumer preference are of domestic origin.” Unlike mandatory country-of-origin labeling (COOL), the proposed rule imposes no recordkeeping or “product segregation” requirements on any company that does not wish to include a U.S. origin claim. For companies that do wish to make these claims, however, meaningful standards must apply. The consumer research described in the proposed rule makes clear that U.S. origin claims on products that do not meet the proposed rule’s requirements are misleading. FSIS should not delay implementation of this rule to accommodate companies making misleading claims.

Companies making “Product of USA” and “Made in the USA” claims have good reason to want to continue using them; consumers are willing to pay much more for those products. The consumer research commissioned by FSIS shows that consumers are willing to pay an average $1.69 more for ground beef; $1.71 more for pork tenderloin; and $3.21 more for NY strip steak labeled “Product of USA.” As the proposed rule indicates, this added value justifies the rule’s additional recordkeeping and other compliance expenses. The parameters set out in the proposed rule are necessary to ensure that U.S. origin claims are meaningful. To the extent that companies incur significant costs as a result of having to change labels that are not compliant with the proposed rule, these will be offset by the benefits to consumers of clearing these misleading labeling claims off the shelves.

Just how much consumers will benefit from the proposed rule is uncertain because the number of companies labeling imported foods “Product of USA” remains a mystery. According to the proposed rule, “it is difficult to estimate the number of claims that would change if the proposed rule is finalized, due to data limitations.” This is because few if any companies taking advantage of the current loopholes wish to disclose, much less defend, their misleading labeling practices. Instead, as the proposed rule points out, trade associations and foreign governments have opposed the petitions seeking to close these loopholes. The reluctance of the companies actually affected by this rule to speak out itself speaks volumes.

Large majorities of Americans favor *requiring* meat to be labeled with information about where animals were born, raised and slaughtered—88% according to a survey commissioned by Consumer Federation of America in 2017.[[1]](#footnote-1) Ultimately, Congress will have to take action to formulate a mandatory COOL regime that fully accommodates this consumer demand. In the meantime, however, FSIS should act expeditiously to enact policies that at least prevent unscrupulous companies from deceiving consumers with misleading U.S. origin claims.

Thank you for your consideration of these comments.

Sincerely,

Consumer Federation of America

Consumer Reports

Food & Water Watch

National Family Farm Coalition

1. <https://consumerfed.org/press_release/large-majority-of-americans-strongly-support-requiring-origin-information-on-fresh-meat/> [↑](#footnote-ref-1)