



September 14, 2020

Docket Clerk
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW
Suite CC-5610 (Annex C)
Washington, DC 20580

**RE: Comments on the Federal Trade Commission MUSA Notice of Proposed Rulemaking
Matter No. P074204; submitted online via www.regulations.gov**

Introduction

Family Farm Action Alliance (FFAA) welcomes the opportunity to provide comments on the Federal Trade Commission (FTC or the Commission) “Made in USA” (MUSA) Notice of Proposed Rulemaking (NPRM).

FFAA is a national research, policy development, market innovator, and advocacy organization working to build a sustainable, inclusive economy in which everyone has the right to share in the prosperity they help build while respecting our land, natural resources, and neighbors around the world. We focus our efforts on: 1) anti-monopoly reform, 2) regenerative agriculture, 3) resilient local and regional food systems, and 4) market innovation. The MUSA NPRM sits squarely within the interest of our supporters comprised of farmers, small business owners, and rural constituencies.

Our supporters were aligned with the 2002 Farm Bill authorization of Mandatory Country of Origin Labeling (COOL), and harmed by the repeal of COOL for beef and pork in 2015. The United States Department of Agriculture (USDA) Food Safety and Inspection Services’ (FSIS) Standards and Labeling Policy Book (FSIS Policy Book)¹ currently allows beef and pork meat and meat products that are “processed” in the United States to bear the label of “Product of the USA.” The limited USDA definition of “processing” allows foreign meat to be imported into the United States and undergo minor processing to include simply rewrapping the product or transferring it from a large box to a smaller box. This minimalist approach to imported foreign meat and meat products under a USDA “Product of the USA” label harms America’s independent farmers and ranchers and deceives U.S. consumers.

We applaud the Commission’s proposal to codify their current MUSA Labeling Rule pursuant to its rulemaking authority under 15 U.S.C. § 45a, and thus enforce civil penalty to entities that make intentionally fraudulent MUSA label claims. This rulemaking is imperative to deter

¹ “Standards and Labeling Policy Book.” U.S. Department of Agriculture Food Safety and Inspection Service. Office Policy, Program and Employee Development. Aug. 2005.
<https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES>. Accessed 8 September 2020.

deceptive claims currently made in meat and meat product labeling in an already complex food labeling landscape. We provide our below comments for consideration.

Requested Action

FFAA is in full support of this FTC rulemaking to incorporate a MUSA Labeling Rule pursuant to its rulemaking authority under 15 U.S.C. § 45a. This rule would allow for strong deterrence of unlawful and deceptive "Made in the U.S.A." or "Made in America" label, or the equivalent thereof claims and labels by allowing the Commission to seek civil penalties for first-time offenses and for those who intentionally violate the law. We are confident the proposed rule would not impose new or burdensome restrictions on law-abiding entities. In fact, we know that transparent meat and meat product labeling will benefit agricultural business entities and consumers alike as we work toward an inclusive, non-extractive US economy.

We offer further recommendations for the Commission to consider including in a final MUSA rule.

Recommendation: The Commission should seek alternative compliance for entities processing and marketing meat and meat products in which all meat and meat products under a MUSA label comply with 100% US “born, raised, and harvested” instead of “sourced.”

With the current NPRM, a beef or pork animal born and raised in a country outside of the US could be imported and harvested in the US, satisfying a “sourced” standard, and be in compliance under a MUSA label. FFAA strongly recommends this language be replaced with “born, raised, and harvested” for all meat and meat products under jurisdiction of the Commission.

Recommendation: FTC should employ a per ingredient basis for MUSA labeling items regarding the 1997 “all or virtually all” guidance. This would allow for compliance with the significant alternative outlined above for meat and meat products in the proposed rule.

MUSA labeled meat and meat product items such as ready-to-eat frozen meals or pre-seasoned meals would likely utilize the “all or virtually all” standard to comply, as some ingredients such as spices may need to be sourced non-domestically. By employing a per ingredient basis on these items, meat and meat products may be analyzed separately, and their compliance determined by the previously recommended 100% US “born, raised, and harvested” standard.

Recommendation: FFAA strongly supports FTC setting a civil penalty appropriate for deterrence in the first instance to be applied to entities knowingly using fraudulent and deceptive MUSA labeling claims. FTC should not apply a civil penalty to unintentional violators, and should continue their practice of informal staff counseling for those wishing to return to good standing.

Considering a significantly increased profit margin for entities marketing under a MUSA label claim, as consumers are willing to pay at times up to 28% more for MUSA labeled products² an appropriate civil penalty amount must be applied. Depending on the business entity and product marketed, intentional mis-labeling could be worth the risk, especially if they can only be reprimanded with an injunction, as is currently practiced by FTC.

1. Small Entities To Which the Rule Will Apply

Recommendation: FFAA does not anticipate any negative impact to come to small business entities by complying with the NPRM. FFAA does, however, anticipate positive significant economic outcomes for small business entities, specifically by leveling the competitive playing field for independent farms, small and mid-size food processors, and food retailers utilizing the MUSA label to market meat and meat products under FTC jurisdiction.

Between available survey and census data, there is no conclusive way to determine the exact figure of small farms marketing meat and meat products to local and regional markets, and of those, which are utilizing a MUSA label; however, a vast majority of smaller, specialty producers (including MUSA livestock and meat products) rely on direct marketing to local and regional markets. According to the 2017 Census of Agriculture, USDA reported that farm level value of US local food sales rang in at about \$11.8 billion, representing about 8% of US farms and 3% of the value of total US production in 2017. Of all farms producing for local food sales in 2017, 85% made less than \$75,000 in annual gross income.³ Recent months have seen drastically increased demand for locally and regionally produced animal protein products, a consumer preference that may persist.⁴ This signals that smaller agricultural entities are finding opportunities in increased local food demand, and would economically benefit from a MUSA label to bolster both their profits, in addition to their competitive standing against larger meat and meat product processors.

Markets are considered under monopolistic control when four firms control 40% of a market sector (40% CR4). The 2015 repeal of mandatory COOL was fueled by large beef and pork meatpackers held respective concentration ratios in 2015 of 84% CR4 and 66% CR4 (GIPSA, "Packers and Stockyards Program Annual Report."⁵ Also rallying the repeal of COOL were commodity groups such as National Cattleman's Beef Association and National Pork Board who impose mandatory fees on producers for every animal harvested to lobby the interests of large agriculture, as opposed to the wishes of their producers.⁶ COOL's repeal can largely be traced to

² "Made in the USA: An FTC Workshop." Federal Trade Commission. Staff Report of the Bureau of Consumer Protection. June 2020. *Xinyao Kong, FTC-2019-0063-0014, FTC-2019-0063-0023*. https://www.ftc.gov/system/files/documents/reports/made-usa-ftc-workshop/p074204_-_musa_workshop_report_-_final.pdf Accessed 8 September 2020.

³ "2018 Farm Bill Primer: Support for Local Food Systems." Congressional Research Service. June 2019. <https://fas.org/sgp/crs/misc/IF11252.pdf>. Accessed 8 Sep. 2020.

⁴ Kolodinsky, J., Sitaker, M., Chase, L., Smith, D., & Wang, W. (2020). Food systems disruptions: Turning a threat into an opportunity for local food systems. *Journal of Agriculture, Food Systems, and Community Development*, 9(3), 5–8. doi: <https://doi.org/10.5304/jafscd.2020.093.013>. Accessed 8 Sep. 2020.

⁵ "2016 Annual Report." US Department of Agriculture Grain Inspection, Packers and Stockyards Administration. 2016. https://www.gipsa.usda.gov/psp/publication/ar/2016_psp_annual_report.pdf. Accessed 8 Sep. 2020.

⁶ "Checkoff Programs." *Food & Power*. Accessed 8 Sep. 2020. <http://www.foodandpower.net/checkoff-programs/#:~:text=The%20programs%20that%20collect%20these,beef%2C%20eggs%2C%20and%20milk>

the economic interests of large agricultural firms, and not small to medium sized business entities in the agricultural sector.

Implementation of this rule would be an important tool in aiding the development of prosperous local and regional meat and meat product markets that benefit all agriculture and food business entities and meet consumer demand. The proposed rulemaking could further shore up consumer trust and understanding of MUSA claims, and empower consumer purchasing choice of meat and meat products.

2. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

Recommendation: FFAA finds USDA-FSIS’s country of origin MUSA guidelines to be inconsistent with this proposed rule.

In addition to UDA-FSIS’s inconsistency with the Commission’s proposed rule, it is also in conflict with congressional intent of truthful product labeling. Congressional intent is evident as it has granted protection authority regarding food product labeling the US Customs and Border Protection (CBP) and the Food and Drug Administration (FDA).

The Tariff Act of 1930 directed the CBP to ensure transparent product country of origin be available to a domestic purchaser.⁷ The CBP definition of “Country of Origin” requires the product must have the country of origin clearly labeled with where it was manufactured, produced, or grown barring “substantial transformation” of the product. Code goes further stating, “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.’”⁸

Included in the Federal Drug, Food and Cosmetic (FDCA), a similar policy to the above is directed to the FDA. Under the FDCA, a food product is found unlawful if “(a) False and misleading label if (1) its labeling is false or misleading in any particular.”⁹ Even further, congressional mandate codified in the FDCA states that food is falsely labeled if a label implies geographic origin of the food, or ingredient of the food product, is not “A truthful representation of the geographical origin.”¹⁰

Most importantly, Congress specifically grants authority to the Commission under 15 U.S.C. § 45a to regulate MUSA labeling and its equivalents. FFAA’s recommendations, drawing special attention to USDA-FSIS non-compliance, are based on the specific grant of authority to FTC under 15 U.S.C. § 45a. It is imperative of the Commission to exercise its authority in the labeling of meat and meat products, and we urge you to pursue our recommendations of the language as it relates to meat and meat product specific labeling.

⁷ 19 U.S.C. § 1304(a)

⁸ 19 CFR §134.1(b)

⁹ 21 U.S.C. § 343(a)(1)

¹⁰ 21 CFR §101.18(c)(1)

3. Discussion of Significant Alternatives

Recommendation: FFAA does not see a need to grant alternative compliance methods or special provisions.

We appreciate your consideration of these recommendations, and look forward to working with you as you finalize the FTC MUSA rule.

Sincerely,

A handwritten signature in cursive script that reads "Joe Maxwell".

Joe Maxwell
President & CEO
Family Farm Action Alliance