June 11, 2023

Rachel Edelstein
Assistant Administrator
Office of Policy and Program Development
Food Safety and Inspection Service
1400 Independence Avenue, SW
Washington, DC 20250

Docket Clerk
U.S. Department of Agriculture
Food Safety and Inspection Service
1400 Independence Avenue SW
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Room 6065
Washington, DC 20250-3700

Re: *Voluntary Labeling of FSIS-Regulated Products with U.S.-Origin Claims* -- Proposed rule; Docket No. FSIS-2022-0015; RIN 0583–AD87; (March 13, 2023)

Dear Ms. Edelstein:

The North American Meat Institute (NAMI or the Meat Institute) submits these comments concerning the above-referenced proposed rule regarding voluntary U.S. origin claims (proposed rule or proposal). The Meat Institute is the nation's oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products and NAMI member companies account for more than 95 percent of United States output of these products. The Meat Institute provides regulatory, scientific, legislative, public relations, and educational services to the meat and poultry packing and processing industry. NAMI member companies have made "Product of the USA," or similar, claims for many years.

As discussed in the preamble, many meat and poultry products make a voluntary "Product of the USA" or similar claim. The proposed rule is a marked change regarding products making those claims today and differs significantly from the approach the Food Safety and Inspection Service (FSIS or the agency) said it planned to pursue in 2020 when it denied petitions regarding the claim. The Meat Institute respects the agency's desire to adapt to consumer expectations, but several aspects of the proposal require clarification or consideration and the industry will need ample time to implement a final rule, presuming one is published.

The agency should highlight that export products are exempt, and a process should be in place to handle exceptions from the export process.

The proposed change in policy cannot reasonably be applied to products destined for export. Countries receiving exports from the U.S. have their own requirements and expectations for country-of-origin claims that U.S. companies must adhere to in order to sustain export business. According to the Export Library, there are five importing countries that require the phrase "Product of USA" on product labels, but do not require product to be derived from animals that were born, raised, harvested and processed in the United States. Requiring packers to apply a "born, raised, harvested, and processed" standard to exported products requiring a U.S. origin claim would unnecessarily increase costs and potentially put U.S. products at a competitive disadvantage. The agency has communicated its understanding of the concept, but it must be explicitly stated in the rule, if finalized, and the agency should consider whether it warrants clarification in the regulations.

Whether the product is destined for export may not be known at the time of production. Also, there are times when product destined for export is returned or must be rerouted to domestic locations before being exported. It is critical that FSIS work with stakeholders to develop a process with clear expectations for these rare exceptions, so that product can be sold domestically to minimize the cost of relabeling and food waste. NAMI is willing and able to work with the agency on a process.

The agency should adopt an alternate authorized claim in lieu of the overly complex qualified claim option.

The qualified claim option provided in the proposal is burdensome and complex, which will make it difficult for the industry to utilize and the agency to evaluate, and will likely confuse consumers. It also seemingly does not account for mixed processes. For example, a further processor may utilize domestic and imported raw materials for a finished product. A claim such as one of the examples in the proposal "sliced and packaged in the USA from imported pork" would not be wholly truthful, because not all the pork was imported. It is unclear how a company would account for this without further confusion. The agency should consider an alternate authorized claim, such as "Processed in the U.S.A." that could be utilized for products that are:

1. Produced from animals slaughtered in the U.S.; or
2. Were otherwise substantially transformed in the U.S.

This option would be distinct from the "Product of U.S.A." claim but would allow an alternative that is consistent with the internationally recognized legal principle of substantial transformation. Slaughter and processing that turns a live animal into a variety of products that have undergone a fundamental change, including boxed

product (beef, pork), trimmings, offal, *etc*. is the ultimate substantial transformation, as that concept is contemplated in the Tariff Act of 1930 (as amended), *i.e*., a change in tariff classification, which is evidenced in the example above, by moving from Chapter 1 (Live animals) to Chapter 2 (Meat and edible meat offal) in the tariff schedule. This option would also follow the example provided on the International Trade Administration website regarding further processed products: *e.g*., "Sugar from country A, flour from country B, dairy products from country C, and nuts from country D are taken to country E and undergo manufacturing to result in cookies. (The inputs were substantially transformed into a product of country E, in that a new type of goods resulted from processing)." Allowing the "Processed in the U.S.A." option may also help avoid unintended consequences of the proposal, such as retaliation from trading partners, should implementation drive a shift in sourcing that undermines the U.S.'s trade obligations and commitments.

Supporting documentation requirements should be simple, consistent with existing practices, and outlined in guidance, not regulation.

Regulations are intended to prescribe requirements under the law. The Federal Meat Inspection Act and Poultry Products Inspection Act require labels to be truthful and not misleading. The proposed regulations should be limited solely to prescribing requirements to meet the truthful and not misleading standard. Guidance and other policy documents can then be utilized to demonstrate how an establishment can support its compliance through documentation. Even the Hazard Analysis Critical Control Points regulations specify only that supporting documentation must be maintained for the hazard analysis and do not detail what that documentation must entail. Indeed, given that the existing U.S. origin claim policy has been implemented through guidance and other policy means for more than 30 years, it begs the question whether the proposal need be in regulation. Labeling claims are typically defined through guidance and other policy. It may be prudent for the agency to be consistent and make any changes to the U.S. origin claim policy in the same manner.

Documentation requirements should be reasonable and consistent with current practices and similar claims. Slaughter establishments using the claim must maintain documentation from every supplier within the program but the burden of that requirement should be reasonable. As with other animal raising claims, establishments should be allowed to rely in good faith on assurances provided by their immediate supplier. As product flows through the supply chain, the same concept should apply. A further processor should not be expected to maintain documentation of the live animal controls but should be able to rely on an assurance provided by the supplier that the product meets the claim.

The agency requested comments on whether it should require third party certification for these claims. The simple answer is no. The agency does not currently require third-party certification for the vast majority of claims. Doing so for this claim, especially when it is a simple claim on its face, would result in an overly burdensome and expensive process, which was not evaluated in the cost-benefit analysis.

Industry will need ample time to implement the required changes.

Companies will need time to consider the implication of the final rule and decide whether to continue using the authorized claim (and implement any changes needed in the process to do so, *i.e.,* segregation), transition to a qualified claim, or stop using the claim. The Meat Institute supports the current plan for the agency to utilize the predetermined uniform compliance date schedule for implementation if the proposal is finalized. The uniform compliance date process generally provides adequate time for companies to make the fewest number of changes to labels and packaging possible and use up existing inventory to allow the smoothest and most cost-effective transition. However, the agency should consider that this claim reflects the entire life cycle of the animal produced, and therefore, it may be prudent to allow a longer transition period.

Also, additional clarification will be needed through guidance or other means on nuances of the policy. The Meat Institute has identified questions and aspects to consider, but others will arise, depending on the final rule.

- How is the agency defining "spices and flavorings" in this context? The agency should consider existing definitions and the value of consistency with similar policies, along with the need for clear and simple guidance to enable compliance.
- What about ingredients such as enzymes or those with multiple purposes, one of which might be flavoring?
- There are ingredients, such as phosphates, that may not be considered "spice or flavoring" but are used in very small amounts, necessary for food safety and functionality, and not easy to source domestically. It would be overly burdensome for such ingredients to exempt a product from a U.S. origin claim.
- The consumer research conducted to inform the proposal demonstrated that the image or icon strongly influenced recall of the claims. Does the agency plan to incorporate guidance or restrictions around American flag imagery for the proposed authorized and/or qualified claims?
- Will the agency's position on this claim impact other origin claims, such as state and local claims?
- How does the agency intend to enforce the policy for labels that do not comply?

- Products made from offspring that were born, raised and slaughtered in the U.S. should be eligible for a U.S. origin claim even if the parents were imported.

The cost-benefit analysis should be reevaluated.

The agency requested comments on costs it may have omitted in the cost benefit analysis (CBA). The Meat Institute has identified the following issues, though there may be others.

- The CBA only covered retail labeling costs, but the proposal affects all labels, including those along the supply chain to support retail labels.
- In its evaluation, the agency assumed brands with fewer than 50 UPCs associated with FSIS-regulated products were small businesses. This is an unsupported assumption on both extremes. The number of UPCs associated with a brand is not necessarily indicative of business size. Small businesses may co-pack for other brands and supply to other companies. Large businesses may not produce many directly branded products but may supply numerous other companies that, in turn, have many UPCs. The number of UPCs also gives no indication about the volume of product sold for each UPC. Also, this consideration ignores the fact that the rule applies to all labeling, not just retail labeling.
- Though the agency considered the cost of relabeling, the CBA did not evaluate the lost margin cost of no longer using the claim. The agency's consumer data demonstrates the claim has value, but the agency did not evaluate lost value for those that will no longer be able to use the claim.
- The agency recognized that it may take substantially more time to document some U.S. origin claims and requested comments on how the proposal may affect recordkeeping costs for establishments. The agency must first recognize that recordkeeping, though significant, is only a portion of the cost. Companies that elect to use the proposed authorized claims will likely need to adopt changes in their production, slaughter, and processing practices to segregate animals and products through the supply chain. Segregation programs and the associated recordkeeping required are expensive and typically only done if the resulting cost can be justified by an increased value to the customer. The agency's consumer data shows consumers may be willing to pay more for products with an authorized claim. However, consumer research consistently shows that what consumers truly care about most is price. Though consumers say they are interested or willing to pay more for certain claims or characteristics, the reality is that very few consumers follow through at the register. Industry may need more time and data to accurately evaluate the cost of segregation, recordkeeping, and relabeling when weighed against the product value.
- As mentioned in a previous section, the CBA did not evaluate the cost of third-party certification of claims.

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The Meat Institute appreciates the opportunity to provide these comments and requests the agency consider the points discussed in the rulemaking process. Please contact us if you have questions about these comments or anything else regarding this matter. Thank you for your consideration.

Respectfully submitted,

Casey Lynn Gallimore
Director, Regulatory Policy

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