

## **Petition for Policy Change in FSIS’ “Product of U.S.A.” Label**

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In a petition filed with the United States Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS), two national organizations have called for a change in the policy that determines what meat products can bear the “Product of U.S.A.” label. The American Grassfed Association (AGA) and the Organization for Competitive Markets (OCM) have asked the FSIS to change its “Food Standards and Labeling Policy Book” to alter one of the two ways that a meat product can secure the “Product of U.S.A.” label.

In 1906, the Federal Meat Inspection Act (FMIA) became law, with a goal of preventing misbranding. Currently, FSIS is the agency responsible for implementing FMIA and received the AGA/OCM petition June 12, 2018. The petition relied on FMIA to argue that Congress specifically intended to provide more clarity to the methodology of meat processing and labeling and thus avoid the scenarios they argue are taking place under the current FSIS labeling guidelines.

The 2005 FSIS-published Food Standards and Labeling Policy Book is the most current version of guidelines that the USDA has published to assist manufacturers in preparing truthful labels for their products. Pursuant to the 2005 Policy Book, there are two ways in which a meat product may be labeled with a “Product of U.S.A.” label: (1) “If the country to which the product is exported requires this phrase, and the product is processed in the U.S.,” or, (2) if “[t]he product is processed in the U.S. (i.e., is of domestic origin).”

AGA and OCM’s petition focused on the issues created by the latter labeling option. The petition alleges that because there is no definition of “processed,” meat from outside of the U.S. can pass through a USDA inspection plant and be considered “processed” in the U.S., thus eligible for the “Product of U.S.A.” label. AGA and OCM

rely on a provision in FMIA to argue that Congress intended to avoid labels that may have potentially misleading information.

The language they rely on is located in FMIA's Congressional Statement of Findings, which states that "[i]t is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged." 21 U.S.C. § 602. Section 602 also discusses the negative effects that mislabeling could have on economic markets. For example, mislabeled products may be sold at lower prices, which not only misleads the consumer about what they are consuming, but also could have a largely negative effect on commerce.

Further, the petitioners rely on FMIA regulations at 9 C.F.R. 317.8, which echo the statute in saying that "[n]o product or any of its wrappers, packaging, or other containers shall bear any false or misleading marking, label, or other labeling . . . which conveys any false impression or gives any false indication of origin or quality or is otherwise false or misleading shall appear in any marking or other labeling."

The AGA and OCM petition suggested a change in language that could replace the second option to earn "Product of U.S.A." labeling which currently reads, "[t]he product is processed in the U.S. (i.e., is of domestic origin)." The AGA and OCM propose that the second option should read, "[i]f it can be determined 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."

FSIS's regulations permit interested persons to submit comments on petitions filed with the agency. A public comment period to facilitate that opened on June 19, 2018, on [regulations.gov](http://regulations.gov).

Opponents to the proposal have also made their voices heard. Some suggest that while they would also prefer stricter regulation on what meat can bear the "Product of U.S.A." label, the petitioner's suggested language is not the solution. For example, the North American Meat Institute and the Meat Importer's Council of America wrote that the petitioner's proposed language would cause greater confusion if implemented, because the petitioners did not define key terms such as "significant."

Other groups call for the passage of revised Country of Origin Labeling (COOL) legislation instead. COOL laws required that a product's country of origin be disclosed to the "ultimate purchaser," unless it met a specific exception. Opponents of AGA and OCM's petition argue that they have a right to know where their meat products originate and re-implementing COOL laws could be a solution. COOL, however, was repealed in 2015 after other countries initiated lawsuits against the United States for violations of World Trade Organization agreements.

The public comment period will be open until September 17, 2018.

SOURCES:

USDA: Food Safety and Inspection Service, Petition Submitted by Organization for Competitive Markets & the American Grassfed Association (June 12, 2018)

USDA: Food Safety and Inspection Service, Food Standards & Labeling Policy Book (8/2005)

Regulations.gov: Comment Forum for AGA and OCM Petition

STATUTES:

Federal Meat Inspection Act, 21 U.S.C. §§ 601-625, 641-645, 661, 671-680, 683, 691-695

REGULATIONS:

9 C.F.R. Chapter III, Parts 300-592

ADDITIONAL RESOURCES:

National Agricultural Law Center: Judicial Officer Decisions, Country of Origin Labeling

National Agricultural Law Center: Food Labeling

USDA: Food Safety and Inspection Service, FSIS Statutes, Mission, & Authority