

MEMORANDUM

From: Gary Jay Kushner
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Re: US Cattleman's Association Submits Petition Regarding Labeling of Synthetic and Lab-Grown Meat

On February 9, 2018, the U.S. Cattlemen's Association (USCA) submitted a petition requesting the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) to establish labeling requirements that would exclude synthetic products made from alternative proteins and lab-grown meat from animal cells from being marketed as "beef" and/or "meat."^{1/} The petition requests that new regulations be adopted limiting the term "beef" to describe the tissue or flesh from animals born raised, harvested, and processed in the "traditional" way, and limiting the term "meat" to the tissue or flesh of animals that have been harvested in the "traditional" manner.

Over the last several years, there has been an explosion in research and development for "meat alternative" products. Synthetic products (comprised of plants, insects, and other components not from animals) and products grown in laboratories from animal cells are being developed, with some being marketed already. USCA argues in essence that the proliferation of alternative meat products is creating confusion in the marketplace and that FSIS should develop standards for "beef" and "meat" to bring order to the marketplace.

USCA argues that several provisions in the Federal Meat Inspection Act (FMIA) give FSIS authority to define "beef" and "meat" this way. The FMIA states that meat or meat food products are misbranded if the "labeling is false or misleading in any particular."^{2/} Products are considered to be

^{1/} See USCA Petition for the Imposition of Beef and Meat Labeling Requirements: To Exclude Products not Derived from Animals Raised and Slaughtered from the Definition of "Beef" and "Meat" (Feb. 9, 2018) http://www.uscattlemen.org/Templates/pdfs_USCA/2018-PDFs/2-9-18USCA-AMS-Petition-re-definition-of-beef-and-meat.pdf.

^{2/} 21 USC § 601(n)(1).

misbranded when they: 1) are offered for sale under the name of another food; 2) are an imitation of another food, unless the label bears the word “imitation” and the name of the food imitated; or 3) purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations without conforming to the applicable definition and standard. ^{3/} FSIS regulations for the “labeling and preparation of standardized products” further provide that “[a]ny product for which there is a common or usual name must consist of ingredients and be prepared by the use of procedures common or usual to such products.” ^{4/}

The crux of the USCA petition is that labels indicating that a product is “beef” should be limited to product from cattle that have been born, raised, and harvested in the traditional manner to eliminate the likelihood of confusion and to better inform consumers. Similarly, products that are labeled as “meat” should be limited to those that are derived from the tissue or flesh of an animal harvested in the traditional manner. This request necessarily excludes man-made or artificially manufactured products that are not derived from animals born, raised, and harvested in the traditional manner from the definition of both beef and meat. This includes synthetic products from plant, insects, and other non-animal components, as well as any product grown in labs from animal cells.

In making the request for rulemaking, USCA discusses both dictionary definitions and statutory and regulatory definitions to demonstrate purported consumer understanding of “beef” and “meat,” and how inclusion of “alternative meats” under these definitions may cause the products to be misbranded under the definitions above. Moreover, the petition also references the Federal Trade Commission (FTC) Truth in Advertising Standard, where USCA alleges that marketing of a plant-based burger as “beef” or “meat” is potentially deceptive because consumers would reasonably expect products labeled as such to be derived from animals slaughtered in the traditional manner. ^{5/}

As further support, USCA points to the Food and Drug Administration (FDA) action in 2015 challenging Hampton Creek Foods’ use of the name “Just Mayo” to describe a vegan mayonnaise alternative. FDA issued a warning letter alleging that the name was inappropriate because FDA has a standard of identity for mayonnaise that requires eggs be used. USCA analogizes the mayo actions to meat product labeling requirements because, according to USCA, consumers would reasonably expect products labeled as such to be derived from animals. ^{6/}

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We will continue to monitor the petition and any follow-up from FSIS. Please do not hesitate to contact us with any questions.

^{3/} *Id.* at §§ 601(n)(2)-(3), (7).

^{4/} 9 CFR § 319.1.

^{5/} 15 UCS § 52.

^{6/} We note FDA and FSIS have long permitted other non-meat products, such as veggie burgers, to be marketed provided the names are appropriately qualified to not suggest they contain meat.