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October 9, 2001

Via Facsimile and First Class Mail

FSIS Docket Clerk
 Docket No. 00-036A
 Department of Agriculture
 Food Safety and Inspection Service
 Room 102 Cotton Annex Building
 300 12th Street, SW
 Washington, DC 20250-3700

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OCT 11 2001

Re: ANPR for Defining United States Cattle and United States Fresh Beef Products; Docket No. 00-036A

Dear Sir or Madam,

The Food Marketing Institute (FMI)¹ is pleased to respond to the United States Department of Agriculture (USDA) Food Safety and Inspection Service's (FSIS's) request for comments on the advance notice of proposed rulemaking on the need for regulations to clarify the definition of "United States cattle" and "United States fresh beef products." 66 Fed. Reg. 41160 (Aug. 7, 2001). As discussed more fully below, FMI and others in the allied industries are working with FSIS's sister agency the Agricultural Marketing Service (AMS) to develop a voluntary "Beef: Made in the USA" program; the claim will be accompanied by a qualifying description, such as "raised in the United States for at least 100 days." We understand that the FSIS rulemaking will not impact the voluntary AMS program.

In response to the Conference Committee report that accompanied the Agriculture Appropriations Act of 2000, USDA, through FSIS, is beginning the administrative process to promulgate regulations to define which cattle and fresh beef products are "Products of the U.S.A." and to determine the terminology that would best reflect in labeling those beef products that are U.S. products. 66 Fed. Reg. at 41160. As the preamble notes, FSIS has been delegated the responsibility to ensure that labeling on meat products is truthful and not misleading as required by the Federal Meat Inspection Act (FMIA). In this regard, several FSIS regulations set forth conditions under which

¹ FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

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various geographic labeling may be used under the current rules. See, e.g., 9 CFR §§ 317.8, 327.14.

Separately, AMS has authority to establish voluntary marketing programs under the Agricultural Marketing Act (AMA). In this regard, FMI and a coalition of allied associations submitted a petition to AMS seeking the establishment of a voluntary certification program for domestic beef. After extensive negotiations, the coalition agreed to a standard of raised for 100 days in the United States as a basis for a "Beef: Made in the USA" claim; both the claim and the description would appear on the label. The precise definition is not critical to the retail community, provided that it is not deceptive to consumers and the claim can be properly verified and substantiated.

Although USDA initially indicated that the AMS program could not proceed until the FSIS rulemaking had been completed, we now understand that FSIS has generally accepted the parameters of the program outlined by industry – provided that the claim and description are properly substantiated – and that AMS is now willing to proceed with the industry program, despite the fact that the FSIS rulemaking has not yet been completed. See, e.g., Letter from Bill Hawks, USDA, to Tim Hammonds, FMI (July 26, 2001) (voluntary certification program does not require a change in the current FSIS rules and AMS will begin action on petition). We understand that the presence of descriptive language defining the meaning of the claim to the consumer (e.g., "raised for 100 days in the United States") sets the AMS program apart from the FSIS labeling regulations.

Indeed, on September 10, 2001, members of the industry coalition met with the AMS Administrator Barry Carpenter who provided us with the information regarding the substantiation that will need to be developed by industry for the program to proceed. See, e.g., Letter from Barry Carpenter, USDA, to Tim Hammonds, FMI (September 21, 2001) (describing process verified requirements). We at FMI are working with our members and industry partners to develop the requisite information for a process verified program and support from the food chain. We hope to bring a proposal to AMS shortly.

We appreciate the opportunity to work with USDA on the beef labeling program. If we may be of assistance in any way, please do not hesitate to call on us.

Sincerely,



Tim Hammonds
President and CEO