



ATTORNEY GENERAL OF MISSOURI  
ERIC SCHMITT

November 2, 2021

Hon. Tom Vilsack  
Secretary, U.S. Department of Agriculture  
Office of the Food Safety and Inspection Service  
1400 Independence Ave. SW  
Washington, DC 20250-3700

RE: Docket No. FSIS-2020-0036/RIN 0583-AD89  
Comment – Advanced Notice of Proposed Rulemaking

Dear Secretary Vilsack:

I am writing in response to the United States Department of Agriculture's (USDA's) invitation to comment on an advanced notice of proposed rulemaking relating to "the labeling of meat and poultry products comprised of or containing cultured cells derived from animals..." 86 Fed. Reg. 49,491 (Sep. 3, 2021).

Dwight Eisenhower once remarked that "Farming looks mighty easy when your plow is a pencil, and you're a thousand miles from the corn field." There is wisdom in this statement by the nation's 34<sup>th</sup> President. Farming is an ancient and honorable vocation that requires common sense, skill and no small amount of perseverance. In particular, raising livestock for market requires constant attention and dedication as the farmer or rancher's investment in a particular animal or herd can be lost at nearly any moment by disease, theft, adverse weather, preying animals, broken fences or any number of other factors. It's a job full of long hours, at all times of the day and night. And, its hard work. It means getting up in the middle of the night, in all types of weather to birth a calf. The "lab" is the fields, and working there means dirt under nails and hay in the boots. And, there is a lot at stake ... generations of family have been working the land, but it could all be lost with one bad year.

Yet despite the long hours, the hard work and the assumption of financial risks that most citizens avoid by seeking out a more predictable "9-to-5" job, Missouri's farmers and ranchers persist and in so doing form the economic foundation of the Show-Me State. Agriculture is Missouri's number one industry, employing nearly 400,000 people and contributing \$88 billion to our economy.<sup>1</sup>

<sup>1</sup> <https://agriculture.mo.gov/abd/intmkt/pdf/missouriag.pdf>

In recent years an unexpected threat to Missouri's farmers and ranchers has arisen. This time the hazard is not from the disease or pestilence that has been part of agriculture since the beginning of time. This particular threat arises quite literally (to paraphrase President Eisenhower) from "pencil-pushing, lab coat wearing technicians thousands of miles from the corn fields of the heartland". With the rise in cultured cell technology, scientists are now able to grow in a lab edible products mimicking meat and poultry.

Missouri's farmers and ranchers are more than happy to compete on a level-playing field with any test tube creation that a lab can artificially manufacture. What they do find concerning is the possibility that the federal government might write regulations that would allow these lab-grown products to be labeled as "meat," "beef," "chicken," "pork," "poultry," "steak," "hamburger" or any number of other terms that correctly describe the product brought to market by these hard-working Americans.

In order to avoid confusion<sup>2</sup> and protect this valuable industry, Missouri led the way<sup>3</sup> with legislation in 2018 to protect our agricultural community from imposters who would try to market their lab creations as "meat."<sup>4</sup> At last count, over 15 states have followed by passing their own statutes. Section 265.494, RSMo reads as follows:

No person advertising, offering for sale or selling all or part of a carcass or food plan shall engage in any misleading or deceptive practices, including, but not limited to, any one or more of the following:

...

(7) Misrepresenting the cut, grade, brand or trade name, or weight or measure of any product, or misrepresenting a product as meat that is not derived from harvested production livestock or poultry;

In subsequent litigation, the federal district court upheld Missouri's statute against allegations that it violated commercial speech provisions.<sup>5</sup> Though the case is still proceeding, the Eighth Circuit has declined to overturn the district court's ruling that refused to grant plaintiffs' motion for injunctive relief.<sup>6</sup>

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<sup>2</sup> Laurie Bedord, *NCBA Survey Reveals Widespread Confusion Among Consumers About Plant-Based Fake Meat*. This industry survey of over 1,800 consumers demonstrated a substantial likelihood of confusion as to the contents of such products. *Successful Farming* (Feb. 10, 2020). Available at:

<https://www.agriculture.com/news/livestock/ncba-survey-reveals-widespread-confusion-among-consumers-about-plant-based-fake-meat>

<sup>3</sup> Zlati Meyer, *Missouri Becomes First State to Regulate Use of the Word 'Meat'*. *USA Today* (Aug. 31, 2018).

Available at: <https://www.usatoday.com/story/money/2018/08/28/animal-meat-missouri-law/1114285002/>

<sup>4</sup> Meat is defined in Missouri law in Section 265.300(7) as: "...any edible portion of livestock, poultry, or captive cervid carcass or part thereof;"

<sup>5</sup> *Turtle Island Foods, SPC v. Richardson*, 425 F. Supp. 3d 1131, 1142 (W.D. Mo. 2019), *aff'd sub nom. Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694 (8th Cir. 2021)

<sup>6</sup> *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694 (8th Cir. 2021).

As your request for comment makes clear, the standard that should control in any attempt to regulate on this matter is to uphold “consumer expectations”<sup>7</sup> and avoid any misbranding that might confuse a consumer, leading them to purchase and consume a product that is not truly “meat.”<sup>8</sup> Given Missouri’s leadership on this issue, I would commend our state statute to the USDA as a model for any regulations the agency might eventually promulgate.<sup>9</sup>

Very Truly Yours,



Eric S. Schmitt  
Attorney General of Missouri

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<sup>7</sup> 86 Fed. Reg. 49492 (Sep. 3, 2021).

<sup>8</sup> As USDA remarks in their request for comment, “Common or usual names are generally established by common usage but, in some cases, they may be established by regulation. In the absence of either a standard of identity or appropriate common or usual name, the product must be identified by a descriptive name (9 CFR 317.2(e) and 381.117(a)).”

I believe that USDA’s use of the term “slaughtered” meat versus “cultured” meat is ill-advised, notwithstanding the agency’s disclaimer that “The use of this term [“cultured meat”], however, is not intended to establish or suggest nomenclature for labeling purposes”, [86 Fed. Reg. 49492 (Sep. 3, 2021)]. Perception is important. In keeping with the example of Missouri statute (Section 265.300(7)), I would recommend that the traditional use of the term “meat” continue unchanged. The new non-meat lab creations might be referred to as “artificially, lab-created, edible products.”

<sup>9</sup> Missouri’s Meat Advertising Law is codified principally at Sections 265.490 - 265.499, RSMo.  
<https://revisor.mo.gov/main/OneChapter.aspx?chapter=265>