

Federal Trade Commission Proposes New “Made in the USA” Labeling Rule

The Bottom Line

- *Marketers who use “Made in the USA” claims on any labels or marketing materials should review those claims in light of the proposed new standards, and be sure to watch for any new developments from the FTC.*
- *The FTC is accepting public comments on the Proposed Rule until August 21, 2020.*

The Federal Trade Commission (FTC) recently issued a staff report and proposed a Made in USA Labeling Rule (Proposed Rule) in an effort to strengthen the FTC’s enforcement program and make it easier for businesses to understand and comply with the law.

The Proposed Rule

The Proposed Rule incorporates guidance in prior FTC decisions and orders and seeks to codify concepts from its 1997 Enforcement Policy Statement on U.S. Origin Claims. Specifically, marketers would generally be prohibited from including unqualified Made in USA claims on labels unless:

1. Final assembly or processing of the product occurs in the United States;
2. All significant processing that goes into the product occurs in the United States; and
3. All or virtually all ingredients or components of the product are made and sourced in the United States.

Additionally, the Proposed Rule covers labels making unqualified Made in USA claims appearing in mail order catalogs and mail order promotional material, defined as “any materials, used in the direct sale or direct offering for sale of any product or service, that are disseminated in print or by electronic means, and that solicit the purchase of such product or service by mail, telephone, electronic mail, or some other method without examining the actual product purchased.” This would significantly broaden the scope of what is covered.

The Proposed Rule will not change or affect any other existing federal or state law or regulation relating to country-of-origin labels, except to the extent a state country-of-origin labeling statute or regulation is inconsistent with the Proposed Rule.

Penalties

Currently, the FTC’s Made in USA enforcement program involves compliance monitoring, counseling, and targeted enforcement by the FTC’s staff, who, under the authority of Section 5 of the FTC Act, primarily work collaboratively with companies to ensure compliance and before sending closing letters, avoiding litigation altogether.

Under the Proposed Rule, the FTC could pursue orders against those who violate the new labeling rule, which may not only include injunctive relief, but also the possibility of a civil action pursued in order to obtain civil penalties in the first instance of up to \$43,280 per violation.

The Proposed Rule will remain open for comments until August 21, 2020.

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