



# RETAIL INDUSTRY LEADERS ASSOCIATION

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*Via regulations.gov (FTC-2020-0056)*

ATTN: Secretary April J. Tabor  
Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Avenue NW  
Suite CC-5610 (Annex C)  
Washington, DC 20580

**Re: MUSA Rulemaking, Matter No. P074204, 85 Fed. Register 43162 (July 16, 2020), Docket ID: FTC-2020-0056**

Dear Secretary Tabor:

The Retail Industry Leaders Association (RILA) appreciates the opportunity to submit comments on the Federal Trade Commission's (FTC or Commission) Notice of Proposed Rulemaking related to Made in USA (MUSA) Labeling Rule (hereinafter "Proposed Rule").

By way of background, RILA's members include the largest and most innovative retailers. The retail industry employs over 42 million Americans and accounts for \$1.5 trillion in annual sales. RILA and its member companies strongly support the mission and goals of the FTC to protect consumers from unfair, deceptive and fraudulent claims and business practices in the marketplace. RILA members have robust compliance programs in place and work closely with trusted suppliers to ensure that all products that they sell meet or exceed all applicable U.S. standards and legal requirements. RILA members also support federal efforts to incentivize growth in U.S. manufacturing and proudly sell products carrying the "Made in the USA" label.

The Commission's July 16, 2020 Proposed Rule purports to codify previous MUSA Orders and Decisions issued in alignment with its 1997 "Enforcement Policy Statement on U.S. Origin Claims." Accordingly, the Proposed Rule would prohibit MUSA claims on labels unless all of the following requirements are met:

- 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. (emphasis added)

As a preliminary matter, we wish to highlight that the 24 administrative orders and four court settlements for MUSA violations issued since 1997 averages to just 1.2 actions a year over the past 23 years. This suggests that violations are relatively rare, and therefore a rule codifying existing enforcement policy may not be necessary.

However, if the Commission moves forward with promulgating a MUSA regulation, RILA makes the following recommendations for the FTC on the Proposed Rule.

The Commission should:

- Include an exception or safe harbor for retailers and marketplaces who rely on MUSA representations from suppliers/vendors;
- Impose a uniform national standard that preempts existing state country-of-origin labeling requirements as applied to U.S. origin claims; and
- Establish clear metrics for establishing MUSA claims based on input, manufacturing and processing costs.

Each of these recommendations is discussed in more detail below.

#### **1. Retailers and Marketplaces That Rely in Good Faith on MUSA Representations from Suppliers/Vendors Should be Exempted from Enforcement Violations**

The Proposed Rule does not account for the complexity of supply chains, which creates transparency challenges, and the limited information available to retailers and marketplaces regarding the sources of all the raw materials and components within finished consumer products.

Retailers typically do not manufacture the finished consumer products they sell and have limited visibility into the manufacturing process and sourcing of raw materials and components. Instead, retailers have global supply chains and depend on a vast number of suppliers to provide the range and volume of products that U.S. consumers need and rely on. Retailers typically do not receive information from suppliers on product composition with the level of detail that would allow them to readily discern and verify the origin of the raw materials or location of processing, manufacture or assembly of all the myriad components in a finished product. This information resides with suppliers, who obtain country of origin information for raw materials and component parts from their suppliers, who in turn obtain this information from their suppliers and so on until finally reaching the source of raw materials used to make each component part within a final product. In sum it would be difficult, if not impossible, for retailers to directly verify a MUSA labeling claim meets the Proposed Rule's requirements. Given the complexity of global supply chains and the challenges of supply chain transparency, retailers rely on suppliers' testing, inspection, and certifications that a product meets all applicable legal and regulatory requirements, including labeling claims.



For this reason, RILA recommends that the Commission include an express statement in the Final Rule that allows retailers and marketplaces that have exercised reasonable due diligence to rely on documented supplier and vendor certifications to substantiate MUSA labeling claims. Absent this exception, the Final Rule could actually have the perverse result of deterring retailers and marketplaces from carrying products bearing MUSA labeling claims due to perceived potential risks of FTC enforcement with accompanying significant monetary penalties (*i.e.*, up to \$43,000 per violation) and damage to brand reputation.

## **2. The Final Rule Should Preempt States Country-of-Origin Labeling Laws and Regulations Where They Are Inconsistent with Federal Requirements**

In the Notice for the Proposed Rule, the Commission states that:

[I]t does not supersede, alter, or affect any other federal or state statute or regulation relating to country-of-origin labels, *except to the extent that a state country-of-origin statute, regulation, order, or interpretation is inconsistent with the [Proposed Rule].* (emphasis added)<sup>1</sup>

RILA supports the Final Rule preemption of applicable state laws and regulations where there are inconsistencies with the requirements of the Final Rule. It is appropriate for the U.S. federal government to set standards around claims of U.S. origin rather than for states to dictate separate and unique standards. Such action is necessary to ensure regulatory certainty and consistency of product U.S. origin labels nationwide.

## **3. The Final Rule Should Establish Clear Metrics for Substantiating MUSA Claims**

The Proposed Rule's includes threshold requirements that "all significant processing" takes place in the United States and that "all or virtually all components" are made and sourced in United States. These thresholds are vague, lack clarity, and are subject to wide interpretation. Absent more clarity and clear metrics for the "all or virtually all" and "all significant processing" thresholds, manufacturers may be deterred from pursuing MUSA distinctions and likewise suppliers and retailers downstream would lack clear guidance for verifying MUSA claims.

RILA recommends that the Commission establish clear metrics in the Final Rule that retailers and their suppliers/vendors can rely on to substantiate whether a consumer product bearing a MUSA claim meets these thresholds. Specifically, RILA recommends that the Commission set a specific percentage of overall input, manufacturing and processing costs for a finished product to meet MUSA labeling requirements. In determining an appropriate percentage, consistent with existing requirement, the FTC should incorporate a de minimis exception for non-U.S. origin raw materials, components or processing. In doing so, the FTC should consider analogous federal regulations that incentivize U.S. manufacturing and account for materials that can be feasibly sourced in the U.S. For example, the federal procurement "Buy America" requirements had set domestic content requirements for many federal construction contracts and purchase agreements

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<sup>1</sup> [85 Fed. Reg. at 43163.](#)



for fiscal year 2020 and beyond at 70 percent (e.g., vehicle content, construction materials).<sup>2</sup> RILA also recommends the Commission consider percentage thresholds proposed by the manufacturing industry as they have greater visibility into the feasibility of processing and sourcing materials in the U.S.

### Closing

RILA appreciates the opportunity to provide these brief comments to the FTC on the Proposed Rule. RILA and its members look forward to further engagement with the Commission during its rulemaking process, and its many efforts that serve to protect consumers from deceptive and fraudulent practices.

If you have any questions or need any additional information, please contact me at [susan.kirsch@rila.org](mailto:susan.kirsch@rila.org) or (202) 866-7477.

Sincerely,

Susan Kirsch  
Director, Regulatory Affairs and Compliance

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<sup>2</sup> See e.g., U.S. Dept. of Transportation, Federal Transit Administration, Fact Sheet: Buy America 5323(j) *available at* [https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Buy\\_America\\_Fact\\_Sheet.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Buy_America_Fact_Sheet.pdf).

