

National Meat Association

1970 Broadway, Suite 825, Oakland, CA 94612

Ph. (510) 763-1533 or (202) 667-2108 Fax (510) 763-6186

Staff@nmaonline.org <http://www.nmaonline.org>

August 20, 2007

Country of Origin Labeling Program, Room 2607-S
Agricultural Marketing Service (AMS), USDA
1400 Independence Avenue, SW.
Washington D.C. 20250-0254

Re: Docket No. AMS-LS-06-0081; LS-04-04
RIN 0581-AC26
Federal Register, Wednesday, June 20, 2007
Vol. 72, No. 118
Pages 33917-33918

Gentlemen:

On behalf of the members of National Meat Association (NMA), we respectfully submit the following comments in response to the *Federal Register* Proposed Rule entitled, "Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Perishable Agricultural Commodities, and Peanuts."

Organized in 1946, NMA represents the interests of meat packers and processors throughout the United States. With approximately 300 general member companies, all of which could feel the ramifications of a Mandatory Country of Origin Labeling for beef, lamb, pork, ground beef, ground pork and ground lamb, NMA has a great interest in this *Federal Register* Proposed Rule.

NMA continues to believe that Country of Origin Labeling should be voluntary and not mandatory. This law places a huge financial burden on the industry without any evidence of adding value in the marketplace. As stated in the Interim Final Rule for Fish and Shellfish, "COOL is a retail labeling program and as such does not provide a basis for addressing food safety." As COOL does not have to do with food safety, there is no compelling justification for COOL to be mandatory and not voluntary.

In regards to costs, the added costs to meat packers and grinders to source known origin raw materials, segregate product and alter production practices are incalculably excessive.

In addition, it is entirely possible that slaughter facilities will be forced to restrict the acceptance of livestock to meet their labeling capability. This consequence could seriously impact producers who would have fewer outlets for the processing of their livestock. Mandatory COOL assumes that the seller of livestock for slaughter has records documenting the country of origin and other countries in which each animal has lived up to the point of sale for slaughter. Given that the life of a fed slaughter steer or heifer is approximately two years, many producers may not be able to provide the necessary information for animals brought to slaughter.

Given that the life of dairy cattle or breeding cattle is several times that of a fed slaughter steer or heifer, it is even more unlikely that the last seller of a dairy or breeding animal will be able to provide this information. The unintended consequence will be a very large supply of livestock with unknown origin.

Another major unintended consequence of mandatory COOL will be the relative ease for imported product to enter the distribution stream, and a clear benefit to retailers under the law to commit to the acceptance of such imported product. Since imported covered commodities of meat have no complicated COOL requirements other than to continue under existing law to identify product as: *Product of Country X*, it is entirely conceivable that retailers could consider making a substantial commitment to accepting entire categories of imported product, for this would considerably simplify their labeling burden and minimize the risk of civil penalties. Furthermore, imported meat would only have to come from animals slaughtered there, regardless of where the animal was born. Thus, the unintended consequence could benefit imported meat and will be detrimental to U.S. meat, especially U.S. meat produced from livestock born or raised outside the U.S. In this connection, there are serious concerns regarding the impact of this law on international trade. As the Agency proceeds to a Final Rule, there should be considerable care taken to assure past gains in international trade do not face a setback as a result of a regulation that is not compliant with NAFTA and WTO.

Fortunately, the law gives the Agency the flexibility to determine the actual label verbiage to clearly convey to the retail purchaser the requirements of the law.

This law is exclusively a retail labeling law to inform retail purchasers of certain information. As such, the final regulation should govern how the product is labeled and not attempt to dictate how it is produced. For example, the regulation should not prohibit the commingling of meat from livestock of different origin as long as that information is provided to the retail purchaser. The implementation of this law should be done in the most cost effective manner, while providing clear accurate information to retail purchasers. Accordingly, we make the following suggestions:

In the case of the covered commodities beef, pork, lamb, ground beef, ground pork, and ground lamb, the retail product should be labeled as a "Product of the U.S.," if in fact that product was produced in the U.S. Any other representation would be misleading to the retail purchaser.

For covered commodities produced outside the U.S., the retail product should be labeled as “Product of Country X”. Further, to provide retail purchasers with the additional information required by this law, the retail product should also contain information about the source of the livestock used to make the covered commodities. This could be clearly communicated by requiring a statement like, “beef from cattle of U.S. origin,” or if the origin includes multiple countries a statement like, “beef from cattle of U.S., Canadian or Mexican origin” or “beef from cattle of Canadian origin.” This method of labeling would be informative and consistent with the concept used in the Interim Final Regulation for Fish and Shellfish for blended product.

Further, this would allow the meat industry to produce the covered commodities in the most cost efficient manner, while clearly providing the information required by the law. If the market place is willing to pay a premium for a covered commodity produced from livestock of a specific origin, then the industry will have the flexibility to change its manufacturing practices to meet the demand and capture any additional value.

In addition to the general comments provided above, AMS sought specific comments and answers to questions in the following areas:

PROCESSED FOOD ITEM

“Should the Agency provide specific examples of the types of processing that would result in beef, lamb, pork, perishable agricultural commodity and peanut covered commodities being considered processed food items and excluded from coverage?”

The Agency should provide specific examples of the types of processing that would result in beef, lamb, pork, ground beef, ground pork and ground lamb being considered processed food items and thereby excluded from coverage. Further, providing clear and concise examples of processed products will minimize any confusion.

“Are there significant differences in the preparation of beef, lamb, pork, perishable agricultural commodities and peanuts for retail sale, compared to fish and shellfish, which the Agency should consider?”

In general, the preparation of beef, pork and lamb is similar to fish and shellfish. Specifically for beef, pork, lamb, ground beef, ground pork, and ground lamb the following processes change the character; cooking, canning, breading, flavoring, curing, smoking, drying, and restructuring. In addition, since ground fish and ground shellfish are not covered commodities, the interim final rule for fish and shellfish does not address processed food items made from ground product. Therefore, a Final regulation should specifically address processed food items resulting from the processing of the covered commodities: ground beef, ground pork and ground lamb. Processing these commodities into processed food items such as meatballs, meatloaves, and patties is clearly a change in character and no longer has

the functionality of the covered commodity. Further, the covered commodities: ground beef, ground pork and ground lamb, are ingredients in the above listed processed food items (meatballs, meat loaves and patties) and as stated in the law should be excluded from labeling. This approach is consistent with the rationale followed in the interim final rule for fish and shellfish.

“Are the major components of the definition of a processed food item set forth in the interim final rule for fish and shellfish (i.e., change in character and/or combined with other substantive components) also applicable to beef, lamb, pork, perishable agricultural commodities and peanuts?”

The Agency’s definition of a processed food item set forth in the interim final rule for fish and shellfish effectively captures the concept of a processed food item and is appropriate for beef, pork, lamb, ground beef, ground pork and ground lamb. As we have stated above, we are aware that there is a significant cost associated with the labeling of beef, pork, lamb, ground beef, ground pork and ground lamb products. Since these products are competing with fish and shellfish for market share, it is important that the definition of a processed food item be the same for all of these commodities. Specifically, we agree with USDA’s definition in the interim final for fish and shellfish that a change in character and/or combination with other substantive components results in a processed food item and should be excluded from coverage

Based on the USDA’s initial economic impact analysis and the actual economic impact of the implementation of the Interim Final Rule for Fish and Shellfish, it is clear that the law creates a substantial financial burden on the market place with no apparent benefit. Accordingly, it is critical that USDA make every effort to minimize the negative impact on the beef, pork and lamb industries by carefully exempting products that do not meet the strictest interpretation of the law.

COUNTRY OF ORIGIN NOTIFICATION

“Can the requirements contained in the interim final rule for fish and shellfish for determining the origin of imported products and products partially produced in a foreign country and imported into and further processed in the United States be used in whole or part?”

The rules for determining the country of origin for beef, pork, lamb, ground beef, ground pork and ground lamb will be substantially more complicated, since the definition of U.S. country of origin involves information that is applicable to a live animal from which the covered commodity is produced. This requirement in the law will necessitate a "Mixed Origin" category that is not included in the Interim Final Rule for Fish and Shellfish.

The following comments are specific to subparagraphs in the Interim Final Rule for Fish and Shellfish.

The categories of origin definitions listed below can be labeled consistent with the requirements in the Interim Final Rule for Fish and Shellfish:

Covered Commodities of United States Origin

Imported Products That Have Not Undergone Substantial Transformation in the United States

Imported Products That Have Subsequently Been Substantially Transformed in the United States

Blended Products (Commingling of the same covered commodity)

Since the definition of U.S. country of origin for beef, pork, lamb, ground beef, ground pork, and ground lamb has requirements that involve the live animals that are used to produce the covered commodity, there are two other categories of origin that must be described.

Mixed Origin

Born in country X, raised in the U.S., and harvested in the U.S.

Born and raised in country X, and harvested in the U.S.

“What would be the impact of applying the same or similar requirements for beef, lamb, pork, perishable agricultural commodity and peanut covered commodities?”

The impact on beef, pork, lamb, ground beef, ground pork and ground lamb will be more onerous, since the origin definitions are more complicated. However, the Agency can minimize this burden by focusing the regulation on labeling the covered commodity, as it is produced and not reinventing the manufacturing process to comply with a “one size fits all” labeling concept.

MARKINGS

“AMS seeks comment on the established requirements for markings for all covered commodities which includes the type of labels allowed, placement, font, design, signs, location, and allowable abbreviation.”

As it states in the interim final rule “Mandatory Country of Origin Labeling of Fish and Shellfish,” Country of Origin labeling notification can be provided to consumers by means of a label, stamp, mark, placard, band, twist tie, pin tag, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to

consumers. Since COOL will be mandatory, it is useful to see that the Agency is being reasonably flexible with regards to the markings.

Given the likelihood that multiple countries will be combined on retail labels, we encourage the Agency to be flexible on the use of country abbreviations. For example, abbreviations such as US, UK, AUS, NZ and MX are generally understood and will adequately inform retail purchasers of the countries of origin.

RECORDKEEPING REQUIREMENTS

“Comments on the impact of applying the recordkeeping requirements of the interim final rule for this proposed rule for beef, lamb, pork, perishable agricultural commodity and peanut covered commodities. Of particular interest are comments on internal recordkeeping systems that beef, lamb, pork, perishable agricultural commodity and peanut covered commodity suppliers may use to comply with requirements for providing accurate country of origin information to retailers.”

The records necessary to verify the origin of the livestock used to produce the covered commodities, beef, pork, lamb, ground beef, ground pork and ground lamb will be much more involved than those necessary for fish and shellfish. Since most of those records will not be generated by the supplier of the covered commodity, they may not reside with the supplier. Accordingly, it is important that the regulation allow the supplier to either have the records or have access to the records. In many cases, the records to verify the birth country of the livestock will reside with the livestock producer that sold the livestock months or years earlier, and the animal may have changed ownership several times before harvest.

“Are the retention periods established for records to substantiate claims in the interim final rule for fish and shellfish reasonable for this proposed rule given the nature of covered commodities?”

The record retention period of one year for the interim final rule for fish and shellfish seems excessive for beef, lamb, pork, ground beef, ground pork and ground lamb. From the time of production to retail sales for the vast majority of these covered commodities is less than 2 months. Even for the minimal amount of these covered commodities that are frozen for retail sales (unlike fish and shellfish), the time from production would be less than 6 months.

“How will the recordkeeping requirements set for in the interim final rule for fish and shellfish impact the initial and intermediary suppliers of beef, lamb, pork, perishable agricultural commodity and peanut covered commodities in the supply chain?”

The added recordkeeping requirements of the interim final rule will pose substantial additional costs. Costs will be incurred by supplier and retailers of products, as they will require documentation of the Country of Origin of product. Suppliers’ costs will be passed down to retailers, and retailers will, in turn, pass

those costs and their own to the consumer in the form of a higher price. In the case of initial and intermediary suppliers, costs will be increased with each level of the supply chain, as each level will have to maintain records of the supplier that sold them the product and who they sold to. The American consumer will be the one who eventually pays.

TIMEFRAMES FOR PRODUCTS PRODUCED PRIOR TO THE IMPLEMENTATION DATE TO CLEAR THE CHANNELS OF COMMERCE

“Should specific timeframes for exempting beef, lamb, pork, perishable agricultural commodity and peanut covered commodities without verifiable records produced prior to an implementation date be established in this proposed rule? If so, what should be the specific timeframe for each covered commodity?”

As with fish and shellfish, it is essential that the appropriate time be provided to clear the channels of commerce. However, unlike fish and shellfish, the channels of commerce for beef, pork, lamb, ground beef, ground pork and ground lamb begin when the animal used to produce the covered commodity is born.

We support the concept used for fish and shellfish, and we make the following recommendations that are consistent with the Interim Final Rule for Fish and Shellfish.

Allow a 90-day period of time after the Final Rule is published to enable the involved industry to become aware of the new rule and implement the necessary systems to comply.

For imported beef, pork, lamb, ground beef, ground pork and ground lamb, delay the effective date by at least six months, for the supply chain takes longer to complete.

For beef, pork, lamb, ground beef, ground pork and ground lamb produced from animals imported for direct harvest (mixed origin, From Country X and Harvested in the U.S.), delay the effective date by at least six months

For beef produced from animals harvested from the U.S. herd, allow at least 30 months. For ground beef which is traditionally produced from cull dairy and breeding stock, allow at least 8 years. These timeframes are based on the average age of animals at time of harvest, and the fact that as they arrive for harvesting they will not bring with them source identification.

For pork produced from animals harvested from the U.S. herd allow at least 6 months. For ground pork which is traditionally produced from cull breeding stock, allow at least 2 years. These timeframes are based on the average age of animals at time of harvest.

For lamb and ground lamb produced from animals harvested from the U.S. herd, allow at least 12 months. These timeframes are based on the average age of animals at time of harvest.

During the time allowed to clear the channels of commerce, the Agency could encourage retailers to voluntarily label products when the necessary information is available.

CONCLUSION

NMA still feels strongly that Country of Origin Labeling should be voluntary and not mandatory. We feel that retailers should have the choice of labeling their products with the Country of Origin. Thus, American consumers would then make the choice for the value they place on having Country of Origin information on their labels by where they make their purchase.

Since Mandatory COOL is not related to food safety, justification for a mandatory rule's costs needs to be calculated and published through the Office of Risk Assessment and Cost-Benefit Analysis before proceeding with a final rule. Costs affiliated with Mandatory COOL will be incurred by government, retailers, suppliers, consumers, and taxpayers. With such an expansive impact to be felt by so many parties, it is essential that the Agency provide rationalization for such a costly proposal before proceeding with a final rule, notwithstanding the mandate of Congress in a law that was passed without public hearing and input.

Thank you for providing this opportunity to comment.

Sincerely,

Rosemary Mucklow
Director Emeritus

Ken Mastracchio
Associate Director Regulatory

Satbir Bal
Regulatory Analyst