



National Pork Producers Council

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April 9, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
U.S. Department of Agriculture
STOP 0249
Room 2092-S
1400 Independence Avenue, S.W.
Washington, DC 20250-0249

RE: Notice of Request for Comments; 67 Fed. Reg. 198 63367, Docket Number LS-02-13, October 11, 2002, on the Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Authority of the Agricultural Marketing Act of 1946.

Dear Country of Origin Labeling Program Officer:

The National Pork Producers Council (NPPC) submits these comments on behalf of its members in response to the proposed rule published in the Federal Register on February 10, 2003. NPPC is a federation of 44 state pork producer organizations and represents the federal interests of about 85,000 U.S. pork producers. The U.S. pork industry represents a major value-added activity in the agricultural economy and a major contributor to the overall U.S. economy.

We realize that these are guidelines for the voluntary Country of Origin program; however, USDA has repeatedly stated that these guidelines will serve as the model for the rules governing the mandatory program, beginning in September 2004. NPPC strongly believes that these interim guidelines provide little “guidance” for America’s pork producers regarding what will be required for either a voluntary or a mandatory program. As evidence, one needs only to read the press reports on the raging debate about mandatory Country of Origin Labeling (MCOOL.) It is apparent that producers, processors, packers nor the agricultural press understand what will and will not be required. The Department must bring some clarity to the discussion so that actions and costs can be accurately determined.

For perspective, we offer **Figures 1** and **2** at the end of these comments. They represent the quantity and the shares, respectively, of pork consumed in the U.S. from 1988 through 2002, by origin of that pork. We would urge the Department to keep these figures in mind as they write

rules for the mandatory program. We realize that the law excludes certain processed products and product sold through foodservice establishments. However, the product that moves through these outlets is not identified until well after it leaves a farm and, therefore, at least the on-farm costs of this mandatory program will be applied to every pound of pork consumed in the United States even though only ten percent of that pork consumed in the U.S. has anything to do with another country. Accordingly, we urge the Department to pay careful attention so as to **MINIMIZE** the costs of this mandatory program to America's pork producers.

Two areas of particular concern to America's pork producers are:

1. The continuing possibility that retailers may impose an extremely costly animal identification and trace-back system in order to more certainly protect themselves from the penalties of this law.
2. The brevity and lack of clarity contained in Parts 3 (Recordkeeping) and 4 (Enforcement) of the guidelines.

Animal Identification and Traceback

No retailer has, to date, indicated that they will require animal identification and traceback. The law, however, prohibits only the Secretary of Agriculture (Secretary) from imposing such a system. We urge the Secretary to explore the possibility of prohibiting retailers from doing so as well. Experience in Europe suggests that a full trace-back system could impose costs of over \$10 per pig on the U.S. pork industry. At present, there are no market-driven economic incentives to impose such a system or one would be in place. The Department should do everything within its power to ensure that any retailer does not impose such a costly solution upon producers and the pork chain in order to meet the requirements of the MCOOL law.

Recordkeeping and Enforcement

Our concerns about these issues are interdependent because of their effect on verification requirements and the potential for levying of penalties, under the law. NPPC's understanding of the law and experience with packers, to date, indicate that, in order to meet the "verifiable recordkeeping audit trail" standard set in the law, any certification and audit system must have the following three components:

1. Detailed records regarding the source of the pigs in question or clearly establishing that the farm had the productive capacity to produce that many pigs.
2. A legal document with each load that states the origin of the pigs and that records are kept and available to verify this origin. Periodic audits to verify the veracity of legal documentation. The law directs the retailer to have a certifiable audit trail available. The retailer will require the packer/suppliers to have a similarly auditable trail available.
3. The packer/supplier will also require the producer to have a similarly auditable trail. It now appears that packers/suppliers will require these audits to be performed by a third-party to the livestock sale transaction.

It is unclear how much each of these components will cost due to the lack of clarity in the Department's guidance. The magnitude of the costs will depend upon, among other things, the starting point of the producer regarding records systems, the frequency of audits, and the particulars of the requirements for legal documentation.

? **Current Records System**

The costs dictated by MCOOL regarding production records will be largely a function of a producer's current records system. Some producers have extensive records systems, which with minor modification or manipulation would provide sufficient information to satisfy a MCOOL audit under current ill-defined expectations of such an audit. However, some producers have very few records available from which to develop such an audit trail in order to remain an acceptable supplier to virtually any packer. These producers must establish a system now, since MCOOL goes into effect September 30, 2004. This means that pigs born on/about April 1, 2004 will be subject to the new mandatory law. So, sows bred in late November 2003 must be clearly accounted for. The main component of this cost will be manpower; a burden which will be more onerous for smaller producers who generally do not have additional labor to tap for such activities. One industry analyst told NPPC that he believed that 80 percent of the "large" producers' (he did not define "large") record systems were ready for the new law. Those companies will incur only minimal costs for the recordkeeping component of MCOOL.

? **Legal Documentation Requirements of Packers**

The Department has made it clear that self-certification is not sufficient. Hormel, Swift and IBP have also already made it clear that they will require legal affidavits that state the origin of the animals in each load of pigs. The definition of an affidavit states that it is a sworn statement in writing made especially under oath or on affirmation before an authorized magistrate or officer of the court. The specific requirements for affidavits will vary from state to state. Using this definition, though, would require producers to appear before an officer of the court (a Notary Public will usually suffice) for each load of animals sold. In practice, this would be an extreme hardship for pork producers of all sizes.

? **Periodic Audits**

The Department's guidelines clearly have periodic audits in mind when they required a "verifiable recordkeeping audit trail". To date, no one has specified how frequently or how in-depth such audits will have to be to satisfy either the Department's enforcement or the supplier requirements set forth by retailers, processors and packers. The frequency of audits is of major consequence because they will not be free, producers will be required to pay for audits of their own records and there will be a minimum charge regardless of the size of the operation. This minimum will mean that smaller producers will incur larger costs per unit of output than larger producers. If producers are not billed individually, packers will incur the cost but will not accept it. They will deduct an amount from the bids for all of the hogs they buy sufficient to pay for these added costs. In this case, the audit costs will be evenly distributed across all hogs.

Further, the cost of audits in the pork industry will be increased by biosecurity requirements that prevent outsiders from entering a farm within a certain time period (usually 24-72 hours) of having been on another farm. While these timeframes vary by operation, they have become industry-wide standard practice in order to prevent the introduction of diseases such as Porcine

Respiratory and Reproductive Syndrome (PRRS), Transmissible Gastro-Enteritis (TGE) and others. This limits the number of audits that an auditor can perform per unit of time and will drive up the cost of the audits.

? **Consequences of an Audit Failure**

NPPC is aware of no Departmental effort to explain the actions that the Department may take in the event that a violation is discovered and is traced back to a pork producer. Retailers, processors and packers have been very clear about what they will contractually require, passing the liability for such an event back to the producer. But what happens if the Department or a third-party auditor declares that a producer's records are inadequate to prove the origin of a particular animal or group of animals? If this happens a packer (or even processors and retailers) may have a supply of carcasses and products that may not be labeled, with certainty, as to their country of origin. This "uncertain" product may be a tiny percentage of a day's production but may cast doubt over the entire days production or the entire load of animals coming from certain producers. Does the Department intend to recall or impound such product? How can the industry utilize such product? Will there be an allowance for one-time events?

Obviously, if a producer is legally liable for the vast potential consequences of a "failure", the results could be catastrophic. The Department should endeavor to work with pork producers, packers, processors and retailers to design a plan of action for such cases to minimize the costs to the pork industry. While such an action plan would have several features NPPC strongly opposes any features that involve product impoundment or recall because a producers' inadvertent violation of the MCOOL recordkeeping practices is not an issue of food safety. Impoundments and recalls imply that product has been contaminated or tainted.

Fairness in Timing of the Mandatory Program

MCOOL goes into effect September 30, 2004. While many feel that "ample" time has been given to prepare for this program, NPPC believes that the timing of publication of the mandatory program rules creates an undue hardship for producers. There are millions of breeding animals on farms today that will be subject to MCOOL requirements in October 2004. While origin records may exist for most of these animals, records certainly don't exist for all of them. The Department must consider allowances for such animals when the mandatory program goes into effect. NPPC urges a "phase-in" of the MCOOL rules over agreed-upon time periods for market hogs and cull breeding stock.

Effect of Certification and Audit on Different Types of Producers

The discussion above implies that the effects of a certification and audit system will be vastly different across producer structures.

? **Integrated Production and Slaughter**

Certification and audit will be comparatively easy for the integrated producer, especially as the level of integration approaches 100 percent. A totally integrated producer will have few problems verifying the source of its pigs and probably already has records systems in place. The

producer might have to provide some legal documentation but will not likely have to do so for every load since there is no possibility of a sourcing mix-up. If totally integrated, the company will incur no segregation costs in its plant or plants. Audits would probably be less costly here because all records will be in-house and easily accessible. Retail customers will favor buying from a system such as this because there would be less risk that a labeling problem will occur. All of these add up to a competitive advantage over any non-integrated producer/packer systems. These advantages lessen as the degree of vertical integration falls below 100 percent but they don't likely disappear until that percentage is far lower.

? **Contract-Coordinated Systems**

This type of system will gain some advantages over spot-market purchases but not nearly as much as vertically integrated systems. Suppliers here will still have to have sufficient records systems. Many of them already have those in place. They will likely have to provide legal documentation and incur costs, either directly or indirectly, for audits. The only real gain for the contract-coordinated system versus spot-market purchases from independent suppliers is that the packers know which producers they need to work with and probably already have an established communication process with these producers.

? **Packers and Producers Independent of Each Other**

The independent packer and producer scenario probably presents the highest cost system to get into compliance. Packers will have to audit everyone they might do business with, not just those they actually do business with. This would mean that a producer may have a single set of records, but may be required to bear the cost of multiple audits. In this scenario, everyone will gain by devising a system to forego this costly replication. Regardless, there is by definition less dependence upon each other in this system than in a contract-coordinated or integrated system and thus making everything work to meet the "standards" set by the Department and retailers will be inherently more difficult. Independent producers tend to be smaller, so the cost per unit of records systems, affidavits and audits may well be larger for them. It is quite possible that a higher percentage of the producers who sell in spot markets will currently have inadequate records systems.

Regulations Must Minimize the "Price Wedge"

While important, the cost of a certification and audit system for America's pork producers is not the most important factor in the economic impact of MCOOL. NPPC believes the most important factor will be the costs of SEGREGATING "CANADIAN" SOURCED PIGS AND THE PRODUCTS DERIVED FROM THEM throughout the packing and processing stage. The difficulty of this segregation and the costs it will impose on U.S. packers and processors will cause a substantial price wedge to be driven between U.S. and Canadian sourced pigs. This price wedge will arise from U.S. packers' discounting Canadian-sourced pigs and from some U.S. packers simply withdrawing from the market for all Canadian-sourced pigs. Both actions will drive down the prices of Canadian-sourced pigs.

Enormous economic pressure will be exerted on the Canadian pork industry. Profits at the farm level will fall. Costs of hogs to Canadian packers will also fall as competition from U.S. packers wanes. Lower hog prices will increase incentives for Canada to expand its packing capacity by

adding shifts or building plants and will allow these plants to pay higher wages and possibly overcome a key limiting factor, the availability of labor. Canadian born and fed hogs will eventually stay in Canada for slaughter and processing.

Dr. Dermot Hayes of Iowa State University and Dr. Steve Meyer of Paragon Economics, Inc. (a consultant to NPPC) stated in their recently completed study (a copy of which is attached to these comments) that they do not believe the Government of Canada will stand by and allow the Canadian pork sector to dramatically contract. While a few people have argued this point, none (including Canadian pork producers, we might point out) have done so with much rigor or rancor.

NPPC believes that the evidence presented in the Hayes/ Meyer report is convincing Canada already has whole-farm income support programs in place that will supplement the incomes of pork producers when Canadian pig and hog prices fall in reaction to MCOOL. There is too much at stake and the industry is far too important to Canada. Canadian governments (both federal and provincial) have invested a great deal of time and resources to develop their pork industry. The Prairie Provinces have seen the development of the pork industry as a method to alleviate the negative effects of the federal government's cessation of grain transportation subsidies. Ontario and Quebec have had a vibrant, economically important pork industry for many years and enjoy the most political clout in Ottawa. If Canadian government assistance emerges, it is likely to be aimed at keeping Canadian sows in production thus maintaining pig numbers close to present levels. Higher Canadian slaughter will increase Canadian pork output. The U.S. door will still be open for equally high quality and more competitively priced Canadian pork products. Further, today Canada is the world's largest exporter of pork and is a formidable competitor in Mexico and the Asian markets so critical to the future of the U.S. pork industry. The Department must avoid jeopardizing U.S. pork producers' hard won export gains.

There is not evidence that U.S. retailers will shy away from putting "Canadian" labeled pork in the retail meat case. Furthermore, it is likely that U.S. consumers will find "Canadian" pork to be equal in quality to U.S. product. Canadian producers and packers are very good at what they do. Canadian food safety programs are equal to those of the U.S. The odds are at least even that the "Canadian" label will be made into a positive marketing tool instead of being a negative moniker. No one should overlook U.S. consumers' propensity to view imported products as superior to domestic products – a viewpoint very different from that of consumers in many other countries.

The Department should do everything within its power to minimize the price wedge driven between the U.S. and Canadian pig markets. Keeping certification and audit costs low is one component of that effort. Minimizing segregation costs will also help.

In closing, NPPC appreciates the opportunity to comment on the voluntary Country of Origin Guidelines and the Department's efforts to implement this deeply flawed legislation. NPPC is not aware of a single pork producer that is participating in the current voluntary program. We believe that this is evidence that, as currently configured, the costs (including liability issues) of participating in this program far outweigh any benefit that may accrue to a participating pork producer.

We appreciate the opportunity to present comments on behalf of America's pork producers. If you have any additional questions, please contact Ms. Audrey Adamson, Director, Government Relations at (202) 347-3600.

Sincerely,

A handwritten signature in black ink that reads "Jon Caspers". The signature is written in a cursive, flowing style.

Jon Caspers
President
National Pork Producers Council

cc: Attachments

Figure 1: U.S. Pork Consumption by Country of Origin, 1988–2002

(Source: USDA Foreign Agricultural Service and Paragon Economics, Inc.)

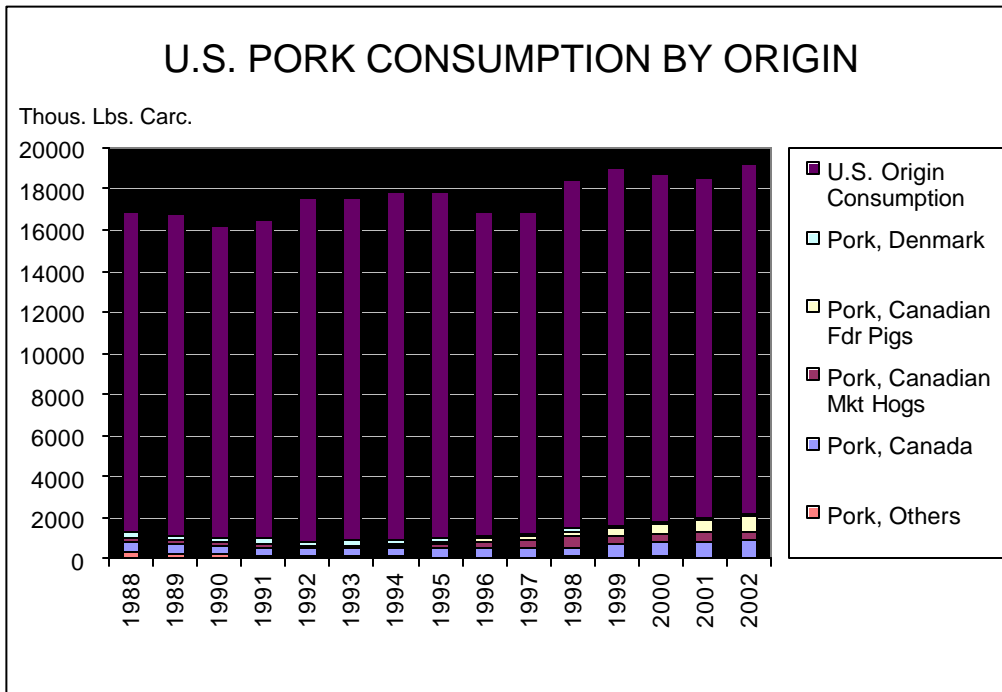


Figure 2: U.S. Pork Consumption Shares by Origin, 1988-2002

(Source: USDA Foreign Agricultural Service and Paragon Economics, Inc.)

