

July 21, 2017

To: USDA FSIS Docket Clerk, Washington, DC

From Import Export Associates, 2034 Coast Guard Dr, Stafford, VA 22554

Len.Lang@yahoo.com

Dear Sir or Madam:

Enclosed please find a Petition for Rulemaking, directed to the United States Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS). As detailed in the Petition, Petitioner request that the agency review the current policies related to the use of Safe handling Labels. We are requesting a change that allows Safe Handling Instruction (SHI) on any regulated product that needs cooking, no matter if the product is fully labeled or not.

Please note that Petitioner request expedited review of this Petition, because the action requested by Petitioner is intended to provide uniform rules and regulations governing equivalent countries as well as domestic product and the publics safety. Based on the foregoing, Petitioners request that FSIS review this Petition ahead of other pending petition.

Based on the as **per 9 CFR 392.5 c-**

Once a petition is submitted in accordance with this part, it will be filed by the FSIS Docket Clerk, stamped with the date of filing, and assigned a petition number. Once a petition has been filed, FSIS will notify the petitioner in writing and provide the petitioner with the number assigned to the petition and the Agency contact for the petition. The petition numbers should be referenced by the petitioner in all contacts with the Agency regarding the petition.

The petitioner is not looking to have all products needing cooking to have SHI but is requesting that products that have the SHI are not forced to remove them because the other required labeling attributes are not on the label. The importers are looking at the public's safety. The petitioner represents many importers who have had to remove SHI because an incomplete label on packages in a shipping carton that meets the immediate container definition are refused entry.

As an example, a foreign country uses a carton that has the following label;

- 1. The name of the country of origin preceded by "Product of;"*
- 2. The establishment number assigned by the foreign inspection system;*
- 3. The name of the product;*
- 4. The name and address of the foreign establishment, distributor, or importer, unless it appears on the labels of the immediate containers, if applicable.*
- 5. A shipping mark. This unique mark is used to link the product to the foreign health certificate;*

6. A special handling statement, where applicable, such as "Keep Refrigerated," "Keep Frozen," "Perishable, Keep Under Refrigeration," or such other statement as FSIS's Labeling and Program Delivery Staff (LPDS) may approve in specific cases (9 CFR 317.2);

7. Sufficient space on the main display panel for the USDA mark of import inspection (not applicable for products from Canada) to ensure that the USDA stamp is legible and does not cover any label features or other required markings; and

8. Production dates are present and within the range certified by the foreign inspection system, when the production dates are required by PHIS (e.g., period of ineligibility of country, establishment, product) at the time the application was submitted, or when the lot was received.

9. Safe Handling Instruction.

The interior product is packaged in a protective covering has these label attributes;

1. Producing Establishment Inspection Legend,

2. Foreign Country Name, and

3. Safe Handling Instructions

The product is refused entry by USDA FSIS due the Safe Handling Instructions being on the protective covering (which help protect the public). The Safe Handling Instructions must be removed to allow the product to be considered US Inspected and Passed.

We are asking USDA FSIS to allow the Safe Handling Instructions on packages inside a completely labeled shipping carton even when there is not a complete label (as in the example above)? Why refuse entry when the exporter and importer have taken an extra step to protect the public?

We look forward to an expedited response so that the public obtains an extra level of protection through the application of the Safe Handling Instructions.

PETITION

**Uniform Rules and Regulations Governing Safe Handling Instructions - 9 CFR 9 CFR 317.2 and
the policy interpretations"
Before the United States Department of Agriculture, Food Safety Inspection Service**

To:

**U.S. Department of Agriculture (USDA) , Food Safety and Inspection Service (FSIS), Docket Clerk,
Patriots Plaza III, 1400 Independence Avenue, S.W., Room 8-163A, Mailstop 3782, Washington,
DC 20250-3700**

SUBJECT: PETITION CLARIFICATION OF PROTECTIVE COVERINGS – SHI (SHI)

Based on a review of the labeling policies we are asking USDA FSIS to consider allowing SHI on Protective Coverings and any packaging that encloses raw meat or poultry products? Since SHI only enhance food safety it seems that removing them due to an import refused entry or domestic label issue does the opposite (decreases food safety).

The import policy for protective coverings is identified in FSIS Directive 9900.5. Based on that directive inspectors review the labeling of packages inside a shipping container to verify labeling. A decision is then made to accept or reject the shipment based on the verification of a missing label attribute. Many of the rejections are because of SHI being on product without a full complete label.

Importers of record are left with correcting the label on the shipment through an appeal process that permits relabeling. This is a costly process. Especially when the United States Food safety Agency does not permit Safe Handling Labeling on any product as a safety measure.

We are petitioning the agency to clarify the policy as it relates to Safe Handling Labels. It appears that refusing shipments because the Safe Handling Label is on the product is contrary to what a Food Safety Agency stands for to the public.

9 CFR 317.2 identifies;

(1)(i) SHI shall accompany every meat or meat product, specified in this paragraph (l) destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Based on a review of the policy of Safe Handling Instruction (SHI) Labels and their application we are asking USDA FSIS to consider allowing SHI on any product that requires further cooking. Since SHI only enhance food safety it seems that removing them may do the opposite.

FSIS Directive 7235.1 (<https://www.fsis.usda.gov/wps/wcm/connect/03b235dc-c527-489a-a385-cb17c3b07e71/7235.1.pdf?MOD=AJPERES>) identifies the process in the use and verification of SHI. Domestically the verification is periodic while for imports the verification is 100%. There are also multiple variations in the enforcement as per the directives and policies available on the FSIS website. The unequal enforcement, plus varying degrees how the SHI can be used, causes issues with imports versus domestic products.

There is no economic advantage to a company adding these to every label (shipping carton, immediate label, protective covering, interior package inside a shipping carton). In fact, the addition of the label enhances safety.

Removing them is contrary to what the Food Safety and Inspection Service Mission Statement: The Food Safety and Inspection Service (FSIS) is the public health agency in the U.S. Department of Agriculture

responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and correctly labeled and packaged.

We are asking for an expedited review of this petition since it affects not only industry but the public's safety.

We look forward to a response as soon as possible.

POLICY BACKGROUND

IMPORT POLICY

<https://www.fsis.usda.gov/wps/wcm/connect/0955b514-551f-4373-ab17-bd72e9993f7a/9900.5.pdf?MOD=AJPERES>

9900.5 LABEL VERIFICATION OF IMPORTED MEAT, POULTRY, AND EGG PRODUCTS-

E. Protective Coverings - If shipping containers contain product wrapped in protective coverings, import inspection personnel are to verify that the protective coverings meet the regulatory requirements in 9 CFR 317.1(a),

1. Import inspection personnel are to verify that protective coverings on unprocessed meat products:

- a. Bear the name of the country of origin (the words "Product of" are not required); and
- b. Bear the foreign establishment number.

NOTE: Protective coverings do not need to be marked with an official mark of inspection if the product is marked with an official mark of inspection that is clearly visible through the transparent protective covering.

2. Optional information is allowed on protective coverings, including:

- a. Company brand names;
- b. Trademarks; and
- c. Code numbers.

3. When any other mandatory labeling feature appears on a protective covering for primal parts or other product, import inspection personnel are to consider the protective covering an immediate container and thus verify all regulatory requirements for labels on immediate containers are met (see paragraph C of this section).

NOTE: This causes a refused entry and a potential removal of the Safe Handling Label.

DOMESTIC POLICY

https://www.fsis.usda.gov/wps/wcm/connect/f4af7c74-2b9f-4484-bb16-fd8f9820012d/Labeling_Requirements_Guide.pdf?MOD=AJPERES

Immediate containers (e.g., bags, cardboard cartons, tray packs, and film bags enclosing processed or prepared meat products) can be considered “protective coverings” and exempt from marking and labeling requirements if placed within a shipping container that meets all mandatory labeling requirements (product name, handling statement, legend, establishment number, net weight, ingredients statement, signature line, nutrition facts, and SHI when required). This exemption does not include the mandatory identification and marking required for the inner container of the meat food product. The shipping container that contains exempt immediate containers must be marked “Packed for Institutional Use Only” or with an equivalent statement of intended limited distribution from one federal establishment to another. The unlabeled product within the shipping container may not be removed for further distribution nor displayed or offered for sale at retail.

PROTECTIVE COVERINGS (MEAT):

<https://www.fsis.usda.gov/wps/wcm/connect/7c48be3e-e516-4ccf-a2d5-b95a128f04ae/Labeling-Policy-Book.pdf?MOD=AJPERES>

Processed or Prepared Product - Immediate containers, e.g., bags, cardboard cartons, tray packs, and film bags enclosing processed or prepared product can be considered protective coverings and exempt from the marking and labeling requirements if placed in a shipping container which meets all mandatory labeling requirements of an immediate container. This does not exempt the mandatory identification and marking which is specifically required on the immediate container of cooked beef (9 CFR 318.17). In addition, the shipping container must be clearly marked “Packed for Institutional Use” or an equally descriptive statement of intended limited distribution. Unlabeled product may not be removed from shipping containers for further distribution nor displayed or offered for sale.

Unprocessed Meat Cuts - Transparent film bags enclosing individual meat cuts in an unprocessed state can be considered protective coverings and exempt from the marking and labeling requirements if placed in a shipping container which meets all mandatory labeling of an immediate container. These unlabeled meat cuts may only be removed from the shipping container for resale and further distribution to retailers, hotels, restaurants, and similar institutions if the product itself or the film bag bears a clearly legible official mark of inspection and the establishment number.

See: Policy Memo 090B dated December 18, 1990

PROTECTIVE COVERINGS (POULTRY):

Under provision of the Poultry Products Inspection Act, protective coverings may be exempt from labeling requirements for immediate containers. Under certain circumstances, some protective coverings are considered immediate containers; under different circumstances, they are regarded only as protective product coverings.

When plastic film bags, cardboard cartons, etc., are used for protecting poultry sold for export or to institutions, e.g., hotels, restaurants, and hospitals (where the contents are consumed on the premises), they are exempt from the mandatory labeling of immediate containers, provided the shipping container meets all the labeling requirements for an immediate container. Such product may not be diverted to retail channels and displayed for sale or be sold to household consumers unless they bear all labeling features required for immediate containers.

See: 9 CFR 381.65(p)

To: Branch Chiefs, SLD Policy Memo 090B

https://www.fsis.usda.gov/OPPDE/larc/Policies/Policy_Memos_082005.pdf

December 18, 1990

From: Ashland Clemons, Director Standards and Labeling Division Regulatory Programs

Subject: Protective Coverings

This replaces Policy Memo O90A.

ISSUE: Under what circumstances can immediate containers be considered protective coverings?

POLICY: Processed or Prepared Product - Immediate containers such as bags, cardboard cartons, tray packs, and film bags enclosing processed or Prepared product can be considered protective coverings and exempt from the marking and labeling requirements if placed in a shipping container which meets all mandatory labeling requirements of an immediate container. This does not exempt the mandatory identification and marking which is specifically required on the immediate container of cooked beef (9 CFR 318.17). In addition, the shipping container must be clearly marked "Packed for Institutional Use" or an equally descriptive statement of intended limited distribution, i.e., locations where the entire contents are consumed on the premises. Unlabeled product may not be removed from shipping containers for further distribution nor displayed or offered for sale.

Unprocessed Meat Cuts - Transparent film bags enclosing individual meat cuts in an unprocessed state can be considered protective coverings and exempt from the marking and labeling requirements if placed in a shipping container which meets all mandatory labeling of an immediate container. These unlabeled meat cuts may only be removed from the shipping container for resale and further distribution to retailers, hotels, restaurants, and similar institutions if the product itself or the film bag bears a clearly legible official mark of inspection and the establishment number. If these products are repackaged or reboxed at another establishment, the official mark of inspection and the corresponding establishment number of the repackaging or reboxing company must be used unless the original producing establishment has officially, using FSIS Form 7227-1 (Permit to Ship Labels between Establishments), provided their labels to the repackaging establishment.

RATIONALE: The subdividing of unpackaged processed or prepared product into smaller units such as vacuum bags, cardboard cartons, and tray packs has become a popular practice to promote sanitary product handling and to protect product quality. This practice, however, raises the question of whether these smaller units are immediate containers subject to the labeling or marking requirements of the Act

and the regulations or are intended solely to protect the product against soiling or excessive drying during transportation and storage. Since this policy memo restricts the use of these smaller units to circumstances where they will be contained in fully labeled or marked shipping containers, these smaller units can be considered protective coverings. Cooked beef is specifically required to bear certain identification and marking on their immediate container (9 CFR 318.17). These containers must continue to bear the required information because of the trace back concerns associated with cooked beef product.

Unprocessed Individual Meat Cuts in transparent containers may be distributed in protective wrappings or transparent coverings if the official mark of inspection is clearly legible on the product or protective covering.

This parallels the regulatory authority given in 9 CFR 317.1 for the use of protective coverings on dressed carcasses and primal parts. This policy memo clarifies that any repackaging or reboxing and labeling that occurs at a location other than the producing establishment is acceptable.

Policy Memo 090 originally stated that the product or the film bag needed to bear a legible mark of inspection and the establishment number of the producing plant. Policy Memo 090 was not clear about which establishment number (i.e., producing or repackaging) was to be used on repackaged or reboxed products. The new phrasing of this section clarifies that it is acceptable for the establishment number of the repackaging or reboxing establishment to appear on bags of unprocessed meat cuts, or that, with the use of FSIS Form 7227-1, the labels of the original producing establishment may be used. Policy Memo 090A added a requirement, to provide consistency with processed or prepared products, that the shipping container would need a statement of limited distribution. This requirement is deleted because it is believed to be unnecessary for unprocessed meat cuts.