



March 16, 2017

Mary Lou Chapman  
President  
Rocky Mountain Food Industry Assn  
P.O. Box 1083  
Arvada, CO 80001-1083

**Re: Colorado House Bill 17-1234 – Mandatory Country of Origin Labeling:  
Display of Beef Products.**

Dear Ms. Chapman:

You have asked the North American Meat Institute (NAMI or the Meat Institute) to provide information concerning a bill pending before the Colorado General Assembly, Colorado House Bill 17-1234 (HB 17-1234), which would require mandatory country of origin labeling on certain beef products offered for retail sale in Colorado. NAMI is the nation's oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products and some NAMI members produce beef products that are sold in Colorado. The Meat Institute and its constituents have a keen interest in the labeling requirements applicable to meat products sold at retail in Colorado and for that reason NAMI is providing this perspective concerning HB 17-1234. I hope you find it useful.

HB 17-1234, if enacted, would require a "retailer who sells beef or offers beef for sale" to "use a conspicuous placard that is readily viewable by the public and placed where the beef is located to designate and display the beef" as either "USA beef," as that term is defined or as "imported beef," as that term is defined.<sup>1</sup> As explained in more detail below, if HB 17-1234 is enacted it would be preempted by federal law, at least with respect to beef products processed under federal inspection and offered for retail sale in Colorado.<sup>2</sup>

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<sup>1</sup> HB 17-1234, proposed section 25-5-419.5.(2). Display of beef products - rules – definitions. The bill has an exception for certain prepared foods. See 25-5-419.5.(1)(b).

<sup>2</sup> Because Colorado is a designated state there are no state inspected facilities that might be subject to the bill should it become law.

**The Federal Meat Inspection Act Contains Explicit Preemption Language Precluding State Labeling and Other Requirements.**

The Federal Meat Inspection Act (FMIA or the Act) regulates the processing and distribution of meat products in interstate commerce.<sup>3</sup> Among the Act's requirements is that labels on meat products be approved by the Secretary of Agriculture to ensure they are not false or misleading.<sup>4</sup> The FMIA also contains an explicit preemption provision with respect to meat products prepared at any establishment under inspection pursuant to Title I of the FMIA.<sup>5</sup> That provision provides, in pertinent part, that

... Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter, ...<sup>6</sup>

In addition, the FMIA broadly defines the term "label" to mean "a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article" and it defines the term "labeling" to mean "all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article."<sup>7</sup>

Through the FMIA and its regulations, Congress and USDA have occupied the field concerning labeling and packaging for meat products. In this regard, although the Act enables states to exercise concurrent jurisdiction over meat products not in federally inspected establishments, the FMIA does not permit states to impose different or additional requirements.<sup>8</sup>

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<sup>3</sup> 21 U.S.C. 601 *et. seq.*

<sup>4</sup> 21 U.S.C. 607, 611

<sup>5</sup> 21 U.S.C. 678. The Poultry Products Inspection Act (PPIA) contains an almost identical preemption provision, 21 U.S.C. 467e.

<sup>6</sup> 21 U.S.C. 678. (Emphasis added).

<sup>7</sup> 21 U.S.C. 601(o), (p)(emphasis added).

<sup>8</sup> *Id.*

The federal courts repeatedly have confirmed the broad scope of the preemption authority provided by the Act. Most notably, in 2012 the United States Supreme Court, in a 9-0 decision, stated

The FMIA's preemption clause sweeps widely, and so blocks the applications of §599f challenged here. The clause prevents a State from imposing any additional or different—even if nonconflicting—requirements that fall within the FMIA's scope and concern slaughterhouse facilities or operations.<sup>9</sup>

The *Harris* case involved the explicit preemption language in section 678 regarding a federally inspected establishment's operations. That language is identical to the language in section 678 cited above, which is applicable to labeling.

In that regard, the courts have consistently found state labeling requirements to be preempted by the FMIA. See: *Jones v. Rath Packing Co.*, 430 U.S. 519, 532 (1976) (holding that the FMIA preempted a California law regarding net weight labeling that made no allowance for loss of weight resulting from moisture loss); *National Broiler Council v. Voss*, 44 F.3d 740 (9th Cir. 1994) (finding the Poultry Products Inspection Act preempts a California law prohibiting use of the word "fresh" on labels of poultry products unless poultry has been stored at temperatures at or above 26 degrees); *Armour & Co. v. Ball*, 468 F.2d 76 (6th Cir. 1972) (finding a Michigan law preempted because it established a standard of identity for sausage different than the federal standard), *cert. denied*, 411 U.S. 981 (1973); *Animal Legal Defense Fund Boston, Inc. v. Provimi Veal Corporation*, 626 F. Supp. 278, 282-85 (D. Mass.) ("Meat ingredient standards, labeling and packaging have been preempted by the FMIA"), *aff'd*, 802 F.2d 440 (1986); *Grocery Manufacturers of America v. Gerace*, 581 F. Supp. 658, 666 (S.D. N.Y. 1984) (holding the FMIA to preempt a New York law regarding labeling of meat food products containing "imitation" cheese), *aff'd in part and rev'd in part on other grounds*, 755 F.2d 993 (2d Cir. 1985).

In addition to the judicial precedent, United States Department of Agriculture officials have not hesitated to advise states of the FMIA's broad preemptive effect concerning state-imposed requirements for meat and poultry. USDA views the preemption provision as an integral part of the comprehensive regulatory scheme created by the FMIA and PPIA.<sup>10</sup> Indeed, former USDA General Counsel Nancy Bryson described the Act as creating a "comprehensive statutory

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<sup>9</sup> *NMA v. Harris*, 131 S.Ct. 3083 (2012).

<sup>10</sup> See Letter from Ann M. Veneman, Secretary of Agriculture, to the Honorable Arnold Schwarzenegger, Governor of California (Dec. 15, 2004); Letter from Mike Espy, Secretary of Agriculture, to the Honorable Pedro J. Rossello, Governor of Puerto Rico (Feb. 1, 1993); Letter from Richard E. Lyng, Secretary of Agriculture, to the Honorable George Deukmajian, Governor of California (June 12, 1987).

framework”— a framework designed to ensure, among other things, that the labeling and packaging of meat and poultry products is truthful and not misleading. Ms. Bryson underscored USDA’s long-standing position that state requirements affecting meat and poultry labeling that are “in addition to, or different than, the federal requirements” are preempted.<sup>11</sup> The same conclusion applies to any labeling requirement Colorado might attempt to impose on meat products processed and labeled in a federally inspected establishment.

Here, HB 17-1234 would require a retailer to “use a conspicuous placard that is readily viewable by the public and placed where the beef is located to designate and display the beef as” USA beef or imported beef. The required placard is labeling as that term is defined in the FMIA. Because USDA does not require country of origin labeling of federally inspected meat products the labeling requirement HB 17-1234 would impose is “in addition to, or different than” the federal requirements and therefore it would be preempted. This conclusion is applicable whether the product offered for sale at retail is in case ready packing or labels are the labels that are applied at retail.

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Thank you for the opportunity to provide this perspective regarding HB 17-1234. I would be happy to discuss this issue in more detail if you have questions regarding this letter or the preemptive effect of the FMIA.

Respectfully submitted,



Mark Dopp  
Senior Vice President, Regulatory &  
Scientific Affairs, and General Counsel

cc: Barry Carpenter  
Pete Thomson  
Nathan Fretz

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<sup>11</sup> See Letter from Nancy Bryson, USDA General Counsel, to the Honorable Bill Lockyer, Attorney General, State of California (Feb. 10, 2005).