

August 3, 2021

Joela Qose  
Senior Policy Coordinator  
Attorney General's Office  
1 Ashburton Place  
Boston, MA 02108

**Re – 940 CMR 36.00: Regulations Implementing the Act to Prevent Cruelty to Farm Animals; “Farm Animal Confinement Regulations.”**

Dear Ms. Qose:

The North American Meat Institute (NAMI or the Meat Institute) submits comments regarding the proposed Regulations Implementing the Act to Prevent Cruelty to Farm Animals (proposal) to the above-referenced docket, as provided on the Massachusetts Attorney General's (AG or the agency) Act to Prevent Cruelty to Farm Animals (Act) website. The Meat Institute is the nation's oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat and poultry products. NAMI member companies account for more than 95 percent of the United States' output of these products. Many NAMI members sell pork and veal to customers in Massachusetts and several NAMI members own and raise hogs and veal calves in various states across the country. For those reasons the Meat Institute has a substantial interest in how the AG implements the Act and, as discussed below in greater detail, several sections of the rules should be substantially revised.

Before addressing the problems attendant with the proposed rules, the “elephant in the room” needs addressing. The Act provides that the “The Attorney General shall promulgate rules and regulations for the implementation of this Act on or before January 1, 2020.” The AG is 19 months late and counting in meeting that deadline. Simple equity demands that the agency delay enforcement of the Act so veal calf producers, hog farmers, packer/processors and the rest of the supply chain have time to understand and comply with yet to be published final regulations.

Regulatory compliance will require the veal and pork industry to divert resources from maintaining a critical food supply and reallocate personnel to prepare for the compliance deadline. For example, packer/processors will need to

examine their operations and supply chains to ensure only compliant pork and veal is sold in to Massachusetts – should they decide to continue supplying that market. To implement those changes in the absence of final rules is impracticable, if not impossible. For these reasons, NAMI respectfully requests that, at a minimum, the agency delay for two years after publication of final rules enforcement of the Act and regulations.

### **36.01: Purpose**

The proposal provides, in part, that its intent is

to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of Massachusetts consumers, increase the risk of food borne illness, and have negative fiscal impacts on the Commonwealth of Massachusetts.<sup>1</sup>

Although Massachusetts provides no economic analysis regarding the Act or the proposal, an analysis of a similar law and set of regulations in California found that the California law and rules will cause consumers to pay more for pork and veal, with no identified benefit to California citizens.<sup>2</sup>

### **36.03: Definitions**

The proposal defines “sale” as a

commercial sale by a business that sells any item covered by Section 3, but does not include any sale undertaken at an establishment at which inspection is provided under the Federal Meat Inspection Act. For purposes of this section, a sale occurs at the location where the buyer takes physical possession of an item covered by Section 3.<sup>3</sup>

The agency should follow California’s lead and make clear that donations to religious, charitable, scientific, educational, or other nonprofit organizations with a tax exemption under section 501(c)(3) of the Internal Revenue Code (26 U.S.C.) are exempt from this definition. And the agency should take the additional step of exempting sales to a government entity, *e.g.*, federal prisons and military bases, and any school or university. The proposed “sale” definition also should clarify that pork and veal that enters and exits Massachusetts exclusively for transshipment or export for human consumption outside of the state is not subject to the rules.

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<sup>1</sup> See Proposed 36.01

<sup>2</sup> See California Department of Food and Agriculture Initial Statement of Reasons, p. 146-147, [http://www.cdffa.ca.gov/ahfss/pdfs/regulations/AnimalConfinementISOR\\_05252021.pdf](http://www.cdffa.ca.gov/ahfss/pdfs/regulations/AnimalConfinementISOR_05252021.pdf)

<sup>3</sup> Proposal section 36.03

The proposal's definitions of "whole pork meat" and "whole veal meat" track the Act, which could lead to some uncertainty. For clarification, the agency should either define "cut" or find another mechanism to indicate that fresh ground product (*e.g.*, breakfast sausage) and other comminuted products are not "cuts" and therefore not subject to the Act.

#### **36.04: Prohibition on the Confinement of Covered Animals**

The exceptions in subsection 36.04(2) are appropriate but the agency should state that the exception in 36.04(2)(e) need not require the veterinarian be present in every circumstance. Just as a doctor can provide instruction and direction to a physical therapist about the exercises and treatment a patient should receive, so too should the proposal allow a veterinarian to provide direction or instruction to treat a veal calf or sow. Such an approach would satisfy the direct supervision component of that exception.

#### **36.05: Prohibition on the Sale of Products**

The agency should amend section 36.05(1) to clarify that the exemptions outlined in section 36.04(2) regarding when an animal is confined in a cruel manner apply equally to livestock producers not in Massachusetts. Section 36.04(1) is specific to farmers in Massachusetts and 36.04(2) provides the list actions that do not violate the confined in a cruel manner of exemptions. Although Massachusetts does not have jurisdiction over farmers in other states, the agency should clarify that the exceptions articulated in 36.04(2) apply equally regarding the prohibition on the sale of products derived from animals in other states.

#### **36.06: Certifications**

The proposed certification process for entities outside Massachusetts will be unduly burdensome. Specifically, section 36.06(5) provides an entity will comply with the applicable certification requirements in 36.06 (1) or (2) if the information includes:

- the name and address of the entity or operation;
- the type of covered animal raised, covered animal product produced, or covered animal product sold or supplied by the entity or operation;
- the date;
- a written statement signed under "pains and penalties of perjury," that the entity does not knowingly cause any covered animal to be confined in a cruel manner or that the covered animal product(s) sold or supplied by the entity or operation were not derived from a covered animal confined in a cruel manner as prohibited by the Act; and

- if applicable, the name of the entity or operation to which the covered animal product(s) were sold or supplied and the date of such sale or transaction.<sup>4</sup> (Emphasis added)

The proposal would require a packer that harvests hogs, processes those hogs and produces bacon and pork tenderloins, and sells those products to customers in Massachusetts to create and keep for three years a “certification” for every single transaction.<sup>5</sup> Interestingly, the proposal uses language that implies a requirement without explicitly stating it. The regulations should be clear on what information, if any, is required.

The recordkeeping-burden the proposed certification rules would impose is unworkable and overly burdensome. Large packer processors could have thousands of transactions a year in Massachusetts. Plus, they undoubtedly sell covered pork or veal products to third parties who, in turn, sell the covered products in Massachusetts but the packer often will not know when it sells the product whether that product will be sold in Massachusetts. Indeed, the distributor may not know when it purchases from the packer to whom the product will be sold.

For example, a packer may sell bacon to a distributor in New Hampshire. That distributor may, or may not, sell that bacon in Massachusetts, depending on the vagaries of the marketplace. This uncertainty would require a packer to do one of two things: certify every sale, which is impossible because not every producer from whom the packer buys hogs will comply with the proposal’s requirements; or segregate hogs and products derived from them based on Question 3 compliance. As the industry learned with mandatory country of origin labeling (COOL) and as California identified in its economic analysis, segregation leads to higher costs borne by consumers in Massachusetts.

Instead of mandating individual certifications for every transaction, the agency should implement a simple outcome-based requirement. The seller would supply the purchaser with a guarantee, certification, or other information to demonstrate the animals or products are compliant. The businesses could then utilize existing processes to handle the information, minimizing the record-keeping burden. For example, some business may utilize annual affidavits while other may provide attestations on shipping documents. Many supply chains can provide this data in electronic form. In providing a sample form, the agency sets a perceived minimum based on antiquated and cumbersome information sharing practices. Also, the agency should reconsider the three-year recordkeeping provision, requiring instead records be kept for at most one year.

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<sup>4</sup> Proposed section 36.06(5)(e) ( emphasis added).

<sup>5</sup> The three-year requirement is found in proposed section 36.06(7).

**The AG must affirm that product in inventory and meat derived from livestock born before January 1, 2022, complies with or not subject to the Act.**

The Act's effective date is January 1, 2022. It is imperative that the AG, either by regulation or other guidance, affirm that meat derived from veal calves, sows, or the offspring of sows, born before that date either comply with the Act or are not subject to it. Massachusetts should follow the lead provided by California posted on the California Department of Food and Agriculture's (CDFA).

CDFA, which is charged with administering California's Proposition 12, posted the following question and answer.

7. For covered pork product to be compliant after Jan 1, 2022, does the farm of origin have to house breeding pigs with a minimum of twenty-four square feet per pig at the time of breeding (February 2021)?

Per the Proposition 12 statutes, the definition of "confined in a cruel manner" changes at the end of the day on December 31, 2021 for breeding pigs. Therefore, covered product and animals in inventory would be considered compliant if born before this effective date.<sup>6</sup>

The AG should follow this approach. Covered products derived from market hogs, sows, and veal calves born before January 1, 2022, must be considered either compliant with, or not subject to, the Act. To interpret the Act any other way impermissibly advances the effective date and does so in a way in which it will be impossible to know whether a particular product complies. Setting a hard date, January 1, provides a clear, bright line everyone can understand, *i.e.* the meat from a hog born on December 30 either is exempt from the Act because the animal was born the Act's effective date or it complies with the Act. Likewise, the AG should affirm, by regulation or by guidance, that any pork or veal product in inventory on January 1, 2022, also either complies with or is not subject to the Act.

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<sup>6</sup> [https://www.cdfa.ca.gov/AHFSS/pdfs/prop\\_12\\_faq.pdf](https://www.cdfa.ca.gov/AHFSS/pdfs/prop_12_faq.pdf)

The Meat Institute appreciates the opportunity to submit these comments. NAMI wishes to repeat its request that Massachusetts postpone implementing the Act for at least two years and longer as necessary to ensure conversations and a common understanding among the agency, the industry, and consumers about the law's economic impact and the alleged rationales underlying the Act.

Please contact me if you have questions about this request or anything else regarding this matter. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Dopp', with a long horizontal flourish extending to the right.

Mark Dopp  
Chief Operating Officer

Cc: Julie Anna Potts  
Sarah Little  
Susan Backus  
Casey Gallimore