

comment on the practicality of this alternative definition.

Similarly, some commenters suggested that any covered commodity that has undergone processing as defined by other existing Federal regulations (e.g., PACA, National Organic Program, and AMS Processed Fruit and Vegetable Inspection Program) should be defined as an ingredient in a processed food item, thereby being excluded from country of origin labeling under this law. Under this alternative any food item that represents additional transformation (e.g., canning, cooking, dehydration, drying, fermentation, milling, the addition of chemical substances, etc.) of a covered commodity would be considered a processed food item. In addition, a covered commodity that has been combined with other covered commodities or other ingredients would also be considered an ingredient in a processed food item and excluded from labeling. Utilizing such a definition could result in the exclusion of many retail products. Accordingly, AMS invites further comment on the practicality of this alternative definition.

As another alternative, some commenters suggested that a covered commodity that is further processed (i.e., cured, restructured, etc.) should not be excluded unless the covered commodity is mixed with other commodities to create a distinct food item such as a pizza or TV dinner. Accordingly, AMS also invites further comment on the practicality of this alternative definition.

AMS invites further comment on its preferred approach, the three identified alternatives, or any other alternative to the statutory exclusion for an ingredient in a processed food item.

#### *Muscle Cuts of Beef, Lamb, and Pork*

All muscle cuts of beef (including veal), lamb, and pork whether chilled, frozen, raw, cooked, seasoned, or breaded are covered commodities and would be subject to these regulations unless they are an ingredient in a processed food item.

In cases where a retail item is derived from a muscle cut of beef, lamb, or pork that has undergone a physical or chemical change, causing the character to be different than that of the covered commodity, that item is considered a processed food item and would be excluded from needing to bear a country of origin declaration under these regulations. For example, products such as restructured steaks and cured products like hams, corned beef briskets, and bacon would be considered processed food items as they

no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity. A consumer who desires a fresh pork leg for roasting would not substitute a cured product such as ham for the same purpose. In addition, these products also are not typically marketed with muscle meats at a retail establishment, but are generally marketed with other excluded meat products.

In cases where a retail item is derived from a covered commodity that has been combined with non-substantive components, and the character of the covered commodity is retained, the resulting product would not be considered a processed food item and would be subject to these regulations. Examples include products such as needle-tenderized steaks; fully-cooked entrees containing beef pot roast with gravy; seasoned, vacuum-packaged pork loins; and water-enhanced case ready steaks, chops, and roasts. These items would not be considered processed food items because the combination of non-substantive components and a muscle cut of beef, lamb, or pork does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner.

In cases where a retail item consists of a muscle cut of beef, lamb, and pork and another covered commodity or other substantive food components resulting in a distinct retail item that is no longer marketed as a covered commodity, such an item is considered a processed food item and would be excluded from these regulations. An example includes an item such as a shish kabob containing beef and lamb, which would not be marketed as a muscle cut of beef or lamb, but would instead be marketed as a shish kabob.

#### *Ground Beef, Lamb, and Pork*

Under the law, ground beef, ground lamb, and ground pork are required to bear a country of origin declaration. FSIS rules and regulations specifically define the requirements for products to be labeled as "ground beef," "ground pork," and "ground lamb." As such, only those products that meet FSIS requirements to be labeled as "ground beef," "ground pork," or "ground lamb," must bear a country of origin declaration in accordance with this proposed rule.

#### *Fresh and Frozen Fruits and Vegetables*

Under the law, perishable agricultural commodities as defined by PACA are required to bear a country of origin

declaration. PACA defines perishable agricultural commodities as "any of the following, whether or not frozen or packed in ice: Fresh fruits and vegetables of every kind and character; and \* \* \* includes cherries in brine as defined by the Secretary in accordance with trade usages." Therefore, frozen fruits and vegetables (e.g., a package of frozen strawberries or frozen french fried potatoes made from sliced potatoes) would be covered commodities subject to these regulations; however, cooked and canned fruits and vegetables would be exempt.

In order to maintain consistency with PACA, a frozen fruit or vegetable would be a covered commodity as long as it is not an ingredient in a processed food item and thus its "kind or character" has not been altered. For example, a retail item derived from a perishable agricultural commodity that has undergone a physical or chemical change, causing the character to be different from that of the covered commodity, is considered to be a processed food item and would be excluded from these regulations. For example, oranges that have been squeezed and made into orange juice or apples that have been mashed and made into fresh apple sauce would be considered processed food items as they no longer retain the characteristics of the covered commodity and thus consumers would not use them in the same manner as they would the covered commodity.

In cases where a retail item is derived from a perishable agricultural commodity combined with non-substantive components and the character of the covered commodity is retained, the resulting product is not considered a processed food item and would be subject to these regulations. Examples include products such as strawberries packaged with sugar, a preservative, or other flavoring. These items would not be considered processed food items because the addition of non-substantive components does not result in a retail item with characteristics that are different from that of the covered commodity and would generally be used by consumers in the same manner as the covered commodity.

In cases where a retail item is derived from a perishable agricultural commodity that has been combined with another covered commodity or other substantive food components resulting in a distinct retail item that is not marketed as a covered commodity, such an item is considered a processed food item and would be excluded from