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NORTH AMERICAN GUIDELINES FOR THE SETTLEMENT OF FAT CLAIMS

The following *Guidelines* contain all amendments through March 15, 2012. This supersedes all prior versions, including that of January 2007

1. Preamble

Conditions of trade should be understood between buyer and seller. The following *Guidelines* are suggested as a pattern for the settlement of fat claims relating to Imported Meat sold on a guaranteed chemical lean basis, where no prior understanding between buyer and seller exists. These *Guidelines,* however, are not intended to replace or supersede any other method agreed to by, or acceptable to, buyer and seller with respect to the settlement of fat claims.

2. Notification of Claims

a. The following minimum standards are to apply in notifying exporters/sellers initially of any proposed claim.

- The exact location of product is to be advised to the exporter/seller so that a laboratory can be mutually agreed. If the exact location can not be provided, the laboratory once selected must guarantee that the product is located at an end-users plant.
- Where confidentiality is an issue the general location of the product is to be advised to the exporter/seller so that a laboratory can be mutually agreed. When confidentiality is not an issue the location of the load is to be advised. The independent lab should certify that the sample pallet is in an end users plant.
- Container No. and/or Port Mark supplied.
- If a CL test has been undertaken by the claimant the CL claim must be supported in written form.
- Nomination of a minimum of two laboratories, where possible that can sample and test promptly.

b. The export/seller must select a lab within two working days of notification pursuant to these guidelines, otherwise the importer may arrange for testing by an independent laboratory of his choice. Alternately the exporter/seller may advise acceptance of the end-user's tests. (Two working days means that notification on Friday in the US means that the exporter has until the following Tuesday to respond except that in the event of a holiday on Monday, in the exporter's country, it would be Wednesday).

The importer/buyer should notify the exporter/seller of the results of the independent lab's test within two business days of the date the importer receives written notification of the results from the lab. The 10 day time period referred to in these guidelines, in relation to control samples and barcode information retention, also applies from the date the importer receives written notification of the results from the lab.

c. The I house is to advise the exporter via the importer of the barcodes of the selected sample pallet at the time of its creation. It is this sample pallet that must have its integrity preserved to validate a claim. Once the barcode composition of the sample pallet is known, a packer shall provide the end user via the importer with the individual chemical lean composition of the cartons forming the sample pallet, on request, if that information is known.

d. In the event that the buyer wishes to maintain confidentiality as to the identity of the customer, said buyer must advise the importer of the general location of the meat so that a laboratory can be nominated. In this case the importer will contact the laboratory and advise them of the shipping marks and MICA testing procedures. The importer will advise the buyer of the identity of the agreed laboratory and the buyer will then call the laboratory advising the specific location of the meat to be tested.

e. If the exporter/seller nominates a replacement laboratory and that laboratory cannot perform testing within 7 days, then the exporter/seller must authorize the importer to arrange for testing by a laboratory of his choice.

f. If the exporter/seller does not act under the above the importer may arrange for testing by an independent laboratory of his choice.

g. Claims are only valid under these Guidelines if the meat is located in an end-users plant. The laboratory representative is required to verify and attest to the location of the meat on the sampling certificate. The laboratory representative is also required to attest that the original pallet selected by the I house as identified by the barcodes is available for retest. The lab is required to certify that this is the pallet presented for sampling and in fact the pallet that the labs samples are drawn from. These Guidelines are intended to settle a dispute between a packer and an end-user ,

An exception may be made if all parties to the claim prior to the test being undertaken, agree in writing to a specific exemption to test in a warehouse but still wish to use the remaining requirements of the Guidelines. Should agreement not be made between all parties then these guidelines will apply. Any other situations that arise are not subject to these Guidelines and must be settled on a commercial basis and are subject to express agreement by the parties

3. **Time Limitation**

a. All claims due to excessive fat shall be submitted to the seller within 150 days from release and passage of product by the U.S. Department of Agriculture. However, extenuating circumstances may make an extension of time reasonable and proper. Examples of such extenuating circumstances might be stoppage of trade or the necessity of placing product in bond when a TRQ is filled.

b. In the case of bonded product, the 150 day period would normally begin to run when released from bond and no later than January 31st of the succeeding year.

4. **Method of Sampling**

4.1 *Selection of Cartons*

a. Selection of the cartons for the sample pallet is to be made by the I house when product is devanned from the container. From the load, select 42 cartons at random. Samples must be drawn from the whole load. All cartons to be sampled are to be hard frozen in original unopened cartons.

b. Where imported loads are separated by port marks for certification / E. coli testing purposes then the following is a guide and product from separate port marks MUST BE kept separate. Where there is more than one lot in the container the selection of the sample cartons from each lot are to be placed on a separate pallet.

c. The sample cartons are to be selected as follows; after 35 cartons have been unloaded the next 2 cartons are placed on the sample pallet, 35 more cartons are then unloaded and the next 2 cartons are again placed on the sample pallet. This pattern is to continue until the container is unloaded. The sample pallet or pallets are to be shrink wrapped and clearly identified and the bar codes recorded for each of the selected cartons. The following example indicates the expected sample pallet result if there are more than one equal sized lots in the container.

2 x marks in a container = 21 cartons from each mark
3 x marks in a container = 14 cartons from each mark
4 x marks in a container = 11 cartons from each mark

d. The sample pallet must not be used for an in-house sample if one is being taken. However the remainder of the load can be utilized by the end-user providing the sample pallet remains intact. Any independent sampling by any other party other than the end user must be done using another pallet. The selection process ensures that the sample pallet represents at least 6% of the total number of cartons in the lot.

e. Sampling only, or both sampling and testing must be carried out by a mutually acceptable independent laboratory or a representative of the laboratory. Sampling may be undertaken by in house staff who are trained in and abide by the procedures required under these Guidelines if acceptance is gained in writing from the exporter before sampling or drilling takes place.

f. The barcode of each carton on the sample pallet must be recorded by the sampler/end-user before sampling takes place, for the information of the supplier. The lab/sampler is to be instructed by the importer that if the barcodes are not available at time of sampling the lab/sampler is not to proceed with sampling subject to further advice from the importer after consultation with the supplier and claimant. The Independent Laboratory is to retain an accurate duplicate copy of the barcodes in conjunction with the control sample, i.e. a minimum of 10 days after the lab provides the results in writing to the claimant.

4.2 *Sampling of Meat*

Sampling shall be undertaken by a representative of an independent laboratory or an independent sampler who is trained in, and abides by, the procedures required by these Guidelines. Sampling may be undertaken by in-house staff, if acceptance is gained in writing from the exporter. The sampling procedures are as follows:

a. The meat is to be sampled in a frozen state. The technique for sampling cartons is to remove all the meat shavings resulting from randomly drilling at least 12 drill holes with a minimum 3/4" auger bit. The drill bit used should be sufficiently long enough to drill to the depth of the carton, ensuring that it does not pass through the plastic liner but in fact samples the total depth of the carton., A good way of doing this is to have a plastic container with a hole in the bottom equivalent to the size of the drill bit and drag up the shavings with each hole made. A template containing 12 holes must be used, so that the carton being drilled cannot be seen by the sampler. This ensures that random and unbiased sampling takes place.

   Drillings from each 60 lb carton or box will weight a minimum of 1 lb.

b. Samples shall be transported and stored in such a way as to prevent loss of moisture, e.g. in a sealed plastic bag (the bag should be drawn lightly around the sample to eliminate large volumes of air in the bag) or glass container. The sample should be relevantly marked to ensure that the certification can be filled out on completion of the process and that the sample can be identified at all times.

   For short term storage (2-48 hours) the sample should be held at 0 to 2 degrees C. For longer storage, the sample should be frozen at 0 degrees C.

When samples are taken out of long or short term storage, care must be taken to incorporate any moisture loss inside the sample bag back into the sample, and to avoid any condensation on the sample.

4.3 Preparation for Analysis

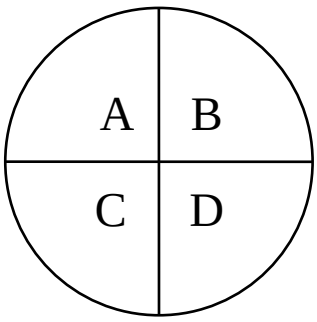
(to be undertaken at the laboratory that will perform the analysis)

a. Preparation must be carried out by the approved laboratory.

b. A control sample is to be kept for 10 days and made available for retesting at another laboratory (at requestor's cost) should one of the parties wish to compare results as a control measure. (see also 4.4g).

c. The quantity taken by above sampling procedure has to be reduced to a much smaller quantity for analysis. The sample is mixed and ground through a 1/8" plate. It is to be mixed and formed on a pan or bench into a large circular patty. The sample is to be reduced in half by taking quadrants A and D or B and C. The half sample is then to be reground through a 1/16" plate and mixed again and a second patty formed, similarly taking one-half the sample, A and D or B and C. The quarter sample is to be ground a third time through a rain 1/16" plate and a sample sufficient for laboratory analysis taken.

Care should be taken to ensure that all material is removed from the grinder after each pass through the mincer including any fatty material adhering to the knives, plate, barrel or the worm. This material should be included in the sample for reduction and regrinding. Make a small patty of the material, divided into quarters A and D or B and C and incorporate into the selected half of the larger patty. for regrinding. Spread the fat as evenly as possible.



Samples may be prepared by blending in a food processor until they are reduced to the uniform paste. For large samples, *e.g.* 2 lbs, it is possible that the food processor will not have the capacity to blend this quantity of meat. In this case, the sample should be mixed, divided into halves or suitable portions, depending on the capacity of the food processor.

Each portion should be blended separately and the blended portions thoroughly mixed, reduced in size by coning and quartering and blended again.

Take approximately 40 ozs, immediately test or place into a watertight container, *e.g. a* tightly screwed, capped glass jar, or into a plastic bag, which can be tightly sealed (preferably heat sealed).

4.4 *Precautions to be Observed in the Preparation*

a. To avoid serious error due to loss of moisture during preparation and subsequent handling do not attempt to prepare small samples.

b. Immediately after grinding and reduction to size, place in a watertight container and seal.

c. Do not allow the sample to come in contact with paper of any kind.

d. Label the sample completely for identification and inclusion of this information on the analysis certificate, *using tie-on labels.*

Packers Name:
Product description- (incl. CL): Establishment Number(s):
Lot Identification on carton or box:
Bar code numbers unless otherwise requested
Date of sampling:
Number of cartons or boxes in lot:
Total number of cartons sampled:
By whom sampled:
Where sampled where confidentiality is not an issue:
Number cartons by Establishment Number(s):
Number cartons by production date(s):

The parties will be reasonable in making allowance for clerical errors.

e. Keep the sample refrigerated during grinding and reduction (below 7° C, but preferably lower). For preference maintain the samples in frozen state between sampling and reduction and between reduction and analysis.

f. It is important to avoid condensation when the sample is removed from the refrigerator to a warm room.

Allow the sample to equilibrate to room temperature before opening. When the sample has equilibrated to room temperature, care must be taken to see that all "thaw juice" is thoroughly reincorporated into the sample.

g. A control sample is to be kept by the laboratory for 10 days from the time the results are supplied to the claimant and be made available for retesting by an alternate laboratory (at requestor's cost) if requested. However, any retest is for information purposes only and the original test remains the basis for any claim.

5. **Analysis**

a. The analysis shall be performed by an independent laboratory mutually acceptable to both parties, or by the end user if mutually acceptable to both parties.

The laboratory performing the analysis must agree to work within these *Guidelines* and perform sampling with a qualified sampler as per 4.1.b. above. If the buyer does not make timely objection to the seller's selection of such independent laboratory, buyer shall be deemed to have agreed to such selection.

b. The method of analysis will be that published by the Association of Official Analytical Chemists (AOAC's most current edition).

c. Although the AOAC method is the analytical method of choice, other methods of analysis of equivalent or approximately equivalent precision will be considered by both parties at future times. This present document does not preclude future consideration of other methods acceptable to both parties.

d. Analysis for fat is to consist of four (4) individual readings taken from samples submitted to the laboratory. The average fat content determined from these four (4) readings shall be the final and binding result.

6. **Expenses**

All charges and costs of any initial test conducted by the buyer's representative shall be paid by the buyer. If any test is performed by the seller's representative, costs shall be borne by the seller if the lean content is established to be lower than the contracted percentage. If the test establishes that the lean content is within, or higher than, the contracted percentage the cost of testing shall be borne by the buyer. If the product is tested by a laboratory nominated by the exporter/seller which is located more than 250 miles (402 kilometers) from the product to be tested, all expenses caused by excess distance above 250 miles shall be for the account of the exporter/seller regardless of the outcome of the test. These rules are subject to the *Tolerance* provision of paragraph 7.2.

7**. Method of Settlement of Claims**

7.1. Any claim for excessive fat shall be based on "cost in formulation", namely the additional cost the end user would incur as a result of varying the percentage of domestic 90% chemically lean meat and the percentage of domestic 50% chemically lean meat to obtain an end product that complies with the required specification.

The calculation of the "cost in formulation" is based on the prices for domestic fresh 90% chemically lean meat and domestic fresh 50% chemically lean meat. The base price series is the national daily average weighted prices as reported by the USDA. Using these daily prices, a monthly average price is calculated for both Domestic 50"s and for Domestic 90's.

The monthly average prices are used in the formula to arrive at The Price Adjustment Factor, namely the "adjustment price per 1% point of lean." which is posted on the MICA website and will also be posted on the AMIC website. The daily USDA prices that provide the basis for the month's calculation will also be posted on the MICA and AMIC websites.

The Price Adjustment Factor to operate in any one month will be the factor calculated from the previous months prices. Therefore the factor for the start of the trial in February 2012 was the Price Adjustment factor calculated from January 2012 prices and so on.

The calculation of the claim then becomes a simple procedure and can be calculated as follow;

The % Out of Specification x *The Price Adjustment Factor for the Month* x *The Amount of Product Involved in the Claim.*

By way of example, if a shipment of 36,000 lbs. of 85% chemically lean meat, after following proper testing procedures was found to be only 83% chemically lean, the resultant settlement would be computed as follows based on a calculated Price Adjustment Factor for the month of 2.28 c/lb:

2.28 x 2 x 36,000 = $1641.60

The Adjustment Factor used will be the one applying in the month the claim is lodged, not the month when the product is delivered.

Laboratories are required to keep barcode information under the same conditions as the control sample requirements of this agreement for the review of all parties as required. Whilst any inadvertent loss or human error in barcode recording or transcribing will not invalidate a claim, any other circumstance resulting in inaccurate barcode information being presented that identifies compromise of the system may require the claim to be settled on a commercial basis using these guidelines as a framework for negotiation.

7.2 Tolerances

A tolerance will be permitted to allow for possible variations in sampling and analysis. For product purchased as guaranteed 80% chemically lean and higher, the tolerance is 1%. For product purchased as guaranteed 79% chemically lean and below, the tolerance is 2%. Example: Product purchased as 85% chemically lean which tests at 84% shall be deemed to be within the contracted percentage and to be good delivery.

(SPECIMEN)
SAMPLING CERTIFICATE

CERTIFICATE NUMBER 90-1843

TO: XYZ Laboratories, Umpalumpa Texas

DATE SAMPLED: 20th March, 1990

SAMPLED AT: Yumie, Inc., Toothache, Texas

LOCATION IS:
- ☐ **An end-user**
- ☐ **A warehouse under end-user control**
- ☐ **A warehouse**

TAKEN BY: William Sampletaker

SHIPMENT:
- Lot Number/s 140069321
- Marks: 73597 A/B
- Product: B/Beef C/Trmg 80CL

SAMPLE:
- Total cartons in dispute: ☐
- Total cartons available for sampling: (minimum 6 percent). ☐

Number of cartons/production date:
4 x 9 October, 1989, 6x 11 October, 1989,
10 x 15 October, 1989

Bar code numbers for each box sampled

PACKED BY: Perrier LTD., Brigadoon, Australia

ESTABLISHMENT NUMBER/S: 905A

NO. OF DRILL HOLES: 12

SIZE OF AUGER BIT: ¾" minimum

TEMPLATE PATTERN or standard diagram:

I hereby certify that I am fully conversant with the sampling procedures laid down in the 2007 MICA *Guidelines* and that the above samples were taken in accordance with those *Guidelines*. In particular:

THE LABORATORY/CLAIMANT HAS CONFIRMED THAT:

- DRILL BIT PASSED THROUGH THE MEAT IN A HARDFROZEN STATE THE FULL DEPTH OF THE CARTON BUT NOT THROUGH THE PLASTIC LINER. ☐
- SAMPLES WERE TRANPORTED AND STORED AS PRESCRIBED. ☐

SIGNED: W. Sampletaker
Qualified Officer