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June 9, 2023

Docket No. FSIS 2022–0015
Department of Agriculture, Food Safety
and Inspection Service, 1400
Independence Avenue SW, Mailstop
3758, Washington, DC 20250–3700.

Sent via regulations.gov

Re: R-CALF USA's Comments in Docket No. FSIS 2022–0015: Voluntary Labeling of FSIS-Regulated Products With U.S.-Origin Claims, Proposed Rule.

Dear Sir or Madam:

The Ranchers Cattlemen Action Legal Fund United Stockgrowers of America (R-CALF USA) appreciates this opportunity to comment to the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) regarding the above captioned proposed rule, *Voluntary Labeling of FSIS-Regulated Products With U.S.-Origin Claims* (proposed rule), available at 88 Fed. Reg., 15,290-306 (March 13, 2023).

R-CALF USA is the largest trade association that exclusively represents United States cattle farmers and ranchers within the multi-segmented beef supply chain. Its thousands of members reside in 44 states and include cow-calf operators, cattle backgrounders and stockers, and feedlot owners, as well as sheep producers.

As explained in more detail below, R-CALF USA generally supports FSIS's efforts to at least partially comply with the Tariff Act of 1930 and the Federal Meat Inspection Act. As also explained below, the only way to even begin remediating the injuries the USDA has caused in the U.S. beef market – to suppliers and consumers, as a result of the decades-old policy the proposed rule partially reverses, is for the USDA to champion before Congress the reinstatement of mandatory country of origin labeling (MCOOL) for beef so all beef sold at retail – both foreign and domestic – is labeled as to its country of origin.

A. The Proposed Rule Only Partially Corrects a Decades Old Mistake that Has Caused Irreparable Injury to Domestic Cattle Producers and Consumers.

a. Executive summary of R-CALF USA's position relative to the proposed rule

As acknowledged in the proposed rule, the FSIS promulgated a rule in 1989 that deprived domestic cattle producers and consumers alike the ability to distinguish lower cost foreign beef from domestic beef by proclaiming that foreign beef was the "regulatory equivalent of domestic product" once it

had entered the United States and received the official mark of inspection.[1] It is this proclamation that authorized the FSIS to publish a deceptive policy allowing for the mislabeling of foreign beef with a "Product of USA" label.[2] This egregious action empowered multinational beef packers and other beef importers to lawfully undermine the integrity of the U.S. beef market by masking the identity of foreign beef offered to unsuspecting consumers as direct substitutes for domestic beef in retail grocery stores. The injury caused to domestic cattle producers and consumers alike as a result of this deceptive action is unquantifiable today, but substantial.

Over two decades ago, Congress attempted to reverse FSIS' deceptive action by enacting mandatory country of origin labeling (MCOOL) for beef and other commodities.[3] Consistent with the 2002 MCOOL statute, the USDA Agricultural Marketing Service (AMS) promulgated rules requiring imported beef, for which no production steps have occurred in the United States, to retain its foreign-origin designation through retail sale, thus ensuring that consumers buying beef at retail could accurately determine the beef's country of origin.[4]

But Congress and the USDA stumbled in 2015, reneging on their promise to ensure U.S. cattle producers could distinguish their superior beef in domestic retail stores and consumers could differentiate the superior U.S.-produced beef from foreign beef. Congress repealed MCOOL for beef without any meaningful objection from the USDA and did so only because an international tribunal's dispute resolution system – a system the U.S. no longer recognizes as a legitimate dispute arbitrator – said it should.[5]

And, so, for the past eight years the United States was thrown back to the Dark Ages with the USDA reauthorizing the deceptive 1989 rule and subsequent policy guidance to once again empower multinational beef packers and other beef importers to lawfully undermine the integrity of the U.S. beef market by masking the identity of foreign beef offered to unsuspecting consumers as direct substitutes for domestic beef in retail grocery stores. And the injuries to domestic cattle producers and consumers alike resumed.

The proposed rule, while appreciated, is but a small Band Aid to the injuries accumulating to domestic cattle producers and consumers who will receive no assurance under the proposed rule that any beef from cattle born, raised, slaughtered, and processed in the United States will be labeled as a "Product of USA." This is because the proposed rule is purely voluntary and does not require anyone to label anything. The proposed rule's redeeming feature is that it will make unlawful the practice of

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[1] 88 Fed. Reg., at 15,292, fn. 11.
[2] 88 Fed. Reg., at 15,292.
[3] 7 U.S.C. 1638(a).
[4] *See, e.g.*, 74 Fed. Reg. (Jan. 15, 2009), at 2,706, col. 2 (production steps are defined therein as born, raised, and slaughtered or produced).
[5] *See, e.g.*, Ending the WTO Dispute Settlement Crisis: Where to from here? Simon Lester, International Institute for Sustainable Development, March 2, 2022, available at https://www.iisd.org/articles/united-states-must-propose-solutions-end-wto-dispute-settlement-crisis#:~:text=By%20Simon%20Lester%20on%20March%202%2C%202022%20World,%E2%80%9Cinto%20the%20void%E2%80%9D%20and%20leaving%20the%20dispute%20unresolved; *see also* Report on the Appellate Body of the World Trade Organization, Ambassador Robert Lighthizer, Office of the United States Trade Representative, February 2020, available at https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf.

affixing a "Product of USA" label on beef not from cattle born, raised, slaughtered, and processed in the United States.

For the foregoing reason, R-CALF USA urges FSIS and it's USDA parent department to mobilize its available resources to champion before Congress the reinstatement of MCOOL for beef, as this is the only meaningful way the irreparable injuries suffered by producers and consumers alike can even begin to be mitigated.

b. Analysis of regulatory failure underpinning the proposed rule

The Tariff Act of 1930 (Tariff Act) states the foreign-origin designation of imported products, which include meat and poultry, must be retained to the ultimate purchaser.[6] The Federal Meat Inspection Act (FMIA) implements the labeling requirements of the Tariff Act with respect to meat and poultry.[7] It establishes that imported meat must comply with the labeling requirements set forth in the Tariff Act by stating that imported meat "shall be marked and labeled as required by such regulations for imported articles[.]"[8]

The regulations implementing the Tariff Act state the ultimate purchaser is generally considered the last person to purchase the product in the same form in which it was imported.[9] A processor, even if considered the ultimate purchaser, cannot change the country of origin designation of the beef, pork, or non-chicken poultry meat unless they subject the imported meat product to a process which results in the substantial transformation of the meat product.[10] If the imported meat is subject only to minor processing, the Tariff Act requires the foreign-origin designation must be retained by the person purchasing the meat from the processor, who is then deemed to be the ultimate purchaser.[11]

However, the FMIA, which incorporates by reference the Tariff Act's labeling requirements, omit from its regulations the requirement that imported meat shall be subject to the labeling requirements of the Tariff Act and, instead, the regulations declare that all meat in the United States is domestic.[12]

Specifically, in 1989 the USDA issued the Foreign Products Rule, 9 C.F.R. § 327.18(a), to implement Section 620 of the FMIA. Though the FMIA required USDA to comply with the labeling requirements of the Tariff Act of 1930, 19 U.S.C. § 1304(a), the 1989 Foreign Products Rule failed to do so. Instead, the USDA deemed all imported beef to be domestic beef after it entered U.S. commerce. The USDA made clear that "[o]nce product offered for entry has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been 'entered' into the United States, and therefore, is the regulatory equivalent of domestic product."[13]

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[6] *See* 19 U.S.C. § 1304(a).
[7] *See* 21 U.S.C. § 620(a).
[8] *Id.*
[9] *See* 19 C.F.R. § 134.1(d).
[10] *See id.*
[11] *See id.* § 134.1(d)(2).
[12] *See* 9 C.F.R. § 327.18(a).
[13] 54 Fed. Reg., at 41,045, (October 5, 1989).

Thus, USDA-FSIS current regulations regarding the labeling of imported beef are in direct conflict with the labeling requirements of the Tariff Act of 1930.

The U.S. Congressional Research Service (CRS) has long recognized the conflict between the labeling requirements of the Tariff Act and the regulations of the FSIS and stated in 2016:

> All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry destined for U.S. plants for further processing also have had to bear country-of-origin marks. However, once these non-retail items have entered the country, the federal meat inspection law has deemed them to be domestic products. When they are further processed in a domestic, FSIS-inspected meat or poultry establishment—which has been considered the ultimate purchaser for purposes of country-of-origin labeling—FSIS no longer requires such labeling on either the new product or its container. FSIS has considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.
>
> Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules but also with Tariff Act labeling regulations. Because Customs generally requires that imports undergo more extensive changes (i.e., "substantial transformation") than required by USDA to avoid the need for labeling, a potential for conflict has existed between the two requirements.[14]

From 2009 into 2016, under the then requirements of the mandatory country-of-origin labeling law,[15] USDA required that imported beef and pork be labeled through retail sale, so that consumers buying those goods at retail could accurately determine the meat's country of origin.[16] This temporarily corrected the decades-long conflict between the Meat Inspection Act's statutory text (which mandates such labels in certain circumstances) and the agency's Meat Inspection Act regulations (which had not required such labeling).[17]

However, in 2016, acting on a bill that removed *other* country-of origin labeling requirements, USDA removed the regulations that had brought its application of the Meat Inspection Act into compliance with the statutory text.[18] The agency then reinstituted its original 1989 Foreign Products Rule, once again allowing beef and pork from animals slaughtered abroad to be reclassified as domestic goods without substantial transformation, and the mislabeling of foreign beef with a USA label resumed. This occurred despite the fact that the agency itself had previously recognized those rules conflict with the Meat Inspection Act's text.[19]

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[14] Joel L. Greene, Cong. Research Serv., Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling, 31 (Mar. 8, 2016).
[15] 7 U.S.C. 1638(a).
[16] 78 Fed. Reg. (May 24, 2013), at 31,385, col. 3.
[17] *See* 21 U.S.C. § 601 et seq.
[18] *See* the Consolidated Appropriations Act, 2016 (Pub. L. 114-113) (amending the COOL law's requirements for muscle cuts of beef and pork, and ground beef and pork).
[19] *See* Geoffrey S. Becker, Cong. Research Serv. Country-of-Origin Labeling for Foods, 2 (June 3, 2005).

Under USDA's FMIA regulations, a domestic processing plant merely needs to unwrap and rewrap an imported piece of meat in order to remove the Tariff Act's required label because the rules only require the country-of-origin label to be retained if the product is sold in the same package in which it was imported.[20]

The FSIS affirmed this assertion in its letter to petitioners dated March 26, 2020. The FSIS stated:

> FSIS's meat import regulations require that the immediate container of meat products offered for import into the United States bear, among other things, the name of the country-of-origin preceded by the words "product of," immediately under the name or descriptive designation of the product (9 CFR 327.14(b)(1)). If such imported meat or meat products are intended to be sold at retail, the original packaging with the "product of country" labeling must remain with the product. However, if these products are repackaged or otherwise reprocessed in a federally inspected facility, they are deemed and treated as domestic product for voluntary "Product of USA" labeling purposes. In a 2001 Advance Notice of Proposed Rulemaking (ANPR) on product labeling for United States cattle and fresh beef, FSIS explained that "[Product of USA] has never been construed by FSIS to mean that the product is derived only from animals that were born, raised, slaughtered, and prepared in the United States.[21]

To make matters worse, the USDA-FSIS' Food Standards and Labeling Policy Book (Policy Book) authorizes the use of the "Product of U.S.A." label if "[t]he product is processed in the U.S. (*i.e.*, is of domestic origin)."[22] This means that imported products that unlawfully escape the Tariff Act's requirements for the retention of a foreign label simply by undergoing the minor process of unwrapping and rewrapping can be sold to unsuspecting U.S. consumers bearing the new label "Product of the USA," or a "Made in the USA" label.

In 2017, R-CALF USA sought a judicial remedy to correct this newly resurfaced problem in the U.S. District Court for the Eastern District of Washington.[23] However, the court determined the effort to correct the 1989 Foreign Products Rule was time barred due to the applicable six-year statute of limitation. The court disagreed that the time limit should be reset as a result of the country-of-origin labeling law's enactment correcting the problem and its subsequent repeal.

The U.S. imports approximately three billion pounds of beef (packaged beef) each year. The harm to U.S. cattle farmers and ranchers and to American consumers is obvious. The USDA facilitates the multinational beef packers' practice of indiscriminately importing cheaper, undifferentiated beef as direct substitutes for U.S.-produced beef, and labeling that imported beef as a USA product, thus commandeering the good names and reputation of America's ranchers and reducing both the demand for and price of their U.S.A. cattle.

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[20] *See* 68 Fed. Reg. at 61948.
[21] Letter from Rachel A. Edelstein, USDA-FSIS, to petitioners, March 26, 2020, attached hereto as Attachment 1 (citation omitted).
[22] Standards and Labeling Policy Book. U.S. Department of Agriculture Food Safety and Inspection Service. Office Policy, Program and Employee Development, at 155-156 (August 2005).
[23] *See R-CALF USA et al. v. USDA.*

Although the court ruled R-CALF USA was time-barred from obtaining a remedy, it did find that U.S. cattle producers were financially harmed by the lack of country-of-origin labels.[24]

B. Improvements Needed in the Proposed Rule to Bring FSIS Regulations Into Compliance with the Tariff Act and Federal Meat Inspection Act and End Consumer Deception

a. <u>All U.S.-origin qualified claims should include a label that leads with the country of origin of the product itself, not the country in which ancillary preparations or processing steps occurred.</u>

The proposed rule repeatedly states that a foreign meat product that is subjected to ancillary preparations or processing steps can be eligible for a U.S.-origin qualified label that leads with the country in which the preparations or processing steps occurred and follows with the origin of the actual product.[25] The specific example the FSIS includes in the proposed rule as a U.S.-origin qualified claim the Agency would approve is, ''Sliced and packaged in the United States using imported pork.''[26]

We disagree with the Agency's suggestion that preparations and processing such as slicing and packaging are actual "components" of FSIS-regulated meat products as they are merely features or applications applied to the FSIS-regulated product. Indeed, while it is true that the meat product itself is a stand-alone FSIS-regulated product, neither slicing nor packaging can be considered stand-alone FSIS-regulated products. These preparations and processes only become relevant to FSIS-regulated products when they are applied to the actual meat product.

Further, the Agency makes clear that the proposed rule is intended to prevent or decrease false impressions about the origin of FSIS-regulated products.[27] In other words, it is the meat product that FSIS regulates to which the origin designation is supreme. Any additional preparations or processes subsequently applied to the FSIS-regulated product are ancillary in nature and are, therefore, a subordinate concern to the Agency when preventing or decreasing false impressions about the origin of FSIS-regulated products.

However, the construction of such a label that leads with the country in which ancillary preparations and processing steps occurred and follows with the origin of the actual product reverses this hierarchy and will likely mislead busy consumers who may be seeking a U.S. product and initially see the "United States" designation because it is the lead country on the qualified claim. The Agency's survey findings further suggest that consumers desire first to know the origins of the meat product in a package as indicated by 47 percent of them having expected that the current origin claim denotes where the animal from which the meat product was derived was born, raised, slaughtered, and the meat then processed.[28] Only 16 percent of them reversed that hierarchy having expected the current origin claim to mean the meat was only processed in the United States.[29]

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[24] *See R-CALF USA et al. v. USDA.*
[25] 88 Fed. Reg., at 15,295.
[26] *Ibid.*
[27] 88 Fed. Reg., at 15,292, 295.
[28] See 88 Fed. Reg., at 15,295.
[29] *See id.*

Moreover, a September 2022 nationwide poll of 2005 registered voters by Morning Consult found that 77% of voters believe it is important that the beef they purchase was born, raised, and harvested in the United States, and 45% of them said it was very important.[30] This poll reinforces the fact that consumers want to know the true origins of the actual beef products they purchase.

To be consistent with the Agency's findings of hierarchical priority designations between a meat product's origin and the applied preparations or processing the product was subsequently subjected to, and because any logical hierarchical order would naturally place the actual meat product supreme and any ancillary preparations or processes subordinate, the Agency should require that all qualified labels lead with origin of the actual meat product itself and follow with the country in which ancillary preparation or processing steps took place. For example, the construction of a label the Agency would approve should be required to lead with the meat product's origin, e.g., "Country X pork sliced and packaged in the United States." This suggested label construction will be less likely to mislead consumers and will reduce consumer confusion regarding the actual origin of the FSIS-regulated meat product.

Note that we substituted "Country X" for "Imported" in our preferred qualified label example. As stated above, if imported meat is subject only to minor processing, the Tariff Act requires the foreign-origin designation must be retained by the person purchasing the meat from the processor, who is then deemed to be the ultimate purchaser.[31] We believe the Agency should bring the proposed rule into compliance with both the spirit and text of the Tariff Act and FMIA by retaining the foreign-origin designation of imported meat products on qualified claims by requiring the inclusion of the actual country from which the imported beef was sourced, not just a generic reference to "Imported."

b. <u>All U.S.-origin qualified claims should include the same production step declarations as are included as origin criteria in the FSIS authorized claims.</u>

The Agency indicates that it would approve the qualified claim, "Raised and Slaughtered in the USA," presumably for meat from livestock born in a foreign country and subsequently imported into the United States to be raised and slaughtered. However, this label would be misleading and confusing to consumers whom the FSIS has not informed or otherwise explained that the term "raised" does not include birth. It is highly likely that consumers would construe such a label on a FSIS-regulated meat product as denoting an exclusive United States origin.

The Agency's survey finding that 47 percent of participants expected the current origin claim to denote where the animal from which the meat product was derived was born, raised, slaughtered, and the meat then processed, suggests that the production step as to where an animal was born is of equal concern as to where it was raised, slaughtered, and processed. The Morning Consult poll cited above further substantiates that knowing each production step is important to consumers.

To prevent consumers from being misled and to minimize confusion, we recommend that FSIS maintain consistency in its qualified labels by not only denoting the origin of each feature or application applied to a FSIS-regulated meat product; but also, by denoting the origin of each production step to which the FSIS-regulated meat product was subjected to. Indeed, to the extent it is relevant to denote the origins of where such ancillary applications as preparations and processing

[30] The full Morning Consult MCOOL poll is available at Label Our Beef - R-CALF USA under the heading, "New Poll."
[31] *See* 19 CFR § 134.1(d)(2).

occurred, as in the Agency's "Sliced and packaged in the United States using imported pork'' example mentioned in (a) above, it is equally relevant if not more so to denote the origins of each of the production steps to which the FSIS-regulated product was subjected to.

To accomplish this, we urge the FSIS to require a qualified label for a FSIS-regulated meat product derived from an animal not born in the United States to disclose this important information to consumers. Using the example provided by the Agency, we suggest that such a label include, "Born in country X and raised and slaughtered in the USA." Only by including each of the production steps that 47% of the Agency's surveyed consumers and 77% of the Morning Consult's surveyed voters already consider essential criteria for determining origin will qualified labels convey accurate and meaningful information to consumers.

In addition, the Agency should in the final rule provide guidance regarding the definition of the term "raised" to ensure that it does not mislead or confuse consumers. Current country of origin labeling regulations promulgated by AMS provides a definition of "raised" that should be expressly stated and adopted in the FSIS' final rule. That definition states:

> Raised means, in the case of beef, pork, chicken, goat, and lamb, the period of time from birth to slaughter or in the case of animals imported for immediate slaughter as defined in § 65.180, the period of time from birth until date of entry into the United States."[32]

c. <u>All additional ingredients in multi-ingredient products should be derived from animals born, raised, slaughtered, and processed in the United States</u>.

The proposed rule would allow multi-ingredient products to bear the authorized label claims ''Product of USA'' or ''Made in the USA'' if:

> (1) All FSIS-regulated components of the product are derived from animals born, raised, slaughtered, and processed in the United States; and (2) All additional ingredients, other than spices and flavorings, are of domestic origin (i.e., all preparation and processing steps of the ingredients are completed in the United States).[33]

While we agree with the first criterion, the second raises a concern regarding the definition of "domestic" as the parenthetical reference suggests so long as any other additional ingredient is prepared or processed in the United States, then whatever the actual additional ingredient is would be deemed domestic (spices and flavoring excepted). Our concern is that if the additional ingredient is a FSIS-regulated product (e.g., eggs) or another type of meat product, then those additional ingredients should be subject to the same criteria for determining U.S. origin of the additional ingredient (e.g., eggs) and the same criteria for determining the origin of the other type of meat product (i.e., born, raised, slaughtered, and processed).

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[32] 7 CFR § 65.235.
[33] 88 Fed. Reg., at 15,296.

d. The Agency should expressly state that the only documentation required for verifying an authorized labeling claim for beef is a declaration that the live animal bore no import markings when presented for slaughter at a U.S. slaughter plant.

> FSIS requests comments on whether the Agency should require, or provide guidance on, specific types of documentation that companies using a voluntary label claim of U.S. origin would need to maintain to demonstrate that the product complies with criteria of the proposed regulatory requirements. Further, FSIS requests comments on whether the Agency should allow or require third party certification for the use of authorized and qualified voluntary U.S.- origin label claims.[34]

Mandatory country of origin labeling was implemented for beef from March 2009 through late December 2015. A traceability system was not needed during this entire period for determining whether cattle presented for slaughter were born and raised in the United States, nor is it needed for the proposed rule.

This is because all cattle imported into the United States are required to be permanently marked and/or permanently identified as to their country of origin.[35] Thus, the imported cattle themselves bear their respective foreign country of origin brand, tattoo, and/or eartag throughout their entire lifespans while in the United States. Consequently, when imported cattle are presented for slaughter, the packer responsible for initiating an origin claim can visually determine the foreign origins of foreign cattle (the country in which the cattle were born and raised). Therefore, for purposes of excluding beef from foreign cattle from the authorized "Product of USA" or "Made in the USA" labels, there is no need for any additional record-keeping or controls for tracing or segregation as the needed records are already permanently applied to the animal.[36]

In contrast, cattle that are exclusively born and raised in the United States when presented for slaughter will bear no permanent foreign marking or foreign identification. Those cattle also require no additional record-keeping as the person responsible for initiating an origin claim can visibly inspect the animal for any foreign markings/identification and if none exist, can accurately declare the resulting beef from those animals meets the criteria of born, raised, slaughtered, and processed (provided the person slaughtering the animal also processes the beef from the animal) in the USA.

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[34] 88 Fed. Reg., at 15,297.

[35] The U.S. Department of Agriculture requires: 1) cattle imported from Australia to be permanently identified with an official Australian eartag (*see* USDA, APHIS, Veterinary Services National Import and Export Services Protocol for the Importation of Feeder Cattle (Steers and Spayed Heifers) from Australia, February 2016, Update May 2018, at para. 3.4 at 4, available at https://www.aphis.usda.gov/regulations/vs/iregs/animals/downloads/aus-us-feeder-cattle-protocol.pdf); 2) cattle imported from Canada and Mexico to be permanently marked with a brand denoting their respective country of origin and/or identified with a permanent eartag from their respective country (*See* USDA, APHIS, Veterinary Services National Import and Export Services Protocol for the Importation of Cattle or Bison from Canada to the United States, at para. 2 at 2-3, available at https://www.aphis.usda.gov/regulations/vs/iregs/animals/downloads/ca-protocol-imp-cattle-bison.pdf; *see also* Protocol for the Import of Steers and Spayed Heifers Cattle and Bison (Feeders) from Mexico, National Import Export Services, VS, APHIS, USDA, at para. 2 at 2-3, available at https://www.aphis.usda.gov/import_export/downloads/pro_imp_bo_feeders_mx.pdf).

[36] *See* 88 Fed. Reg., at 15,296-297.

This methodology, known as the presumption of domestic origin, is all that is needed for verifying the origins of all cattle presented for slaughter in the United States and eliminates the need for any additional description of controls used to trace and segregate, from the time of birth through slaughter. In fact, current COOL regulations already allow this methodology for foreign livestock (which currently applies only to sheep and goats): "Packers that slaughter animals that are part of another country's recognized official system (e.g. Canadian official system, Mexico official system) may also rely on the presence of an official ear tag or other approved device on which to base their origin claims." 7 C.F.R. §65.500(b).[37] And, the regulations acknowledge the superiority of foreign markings over U.S.-based eartags for determining the origins of livestock as evidenced by its directive to inspect animals for foreign markings before relying on domestic animal identification eartags: "[P]ackers that slaughter animals that are tagged with an 840 Animal Identification Number device *without the presence of any additional accompanying marking (i.e., "CAN" or "M")* may use that information as a basis for a U.S. origin claim (emphasis added). *Id.*

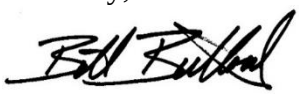
Therefore, with respect to verifying any beef product eligibility for the authorized labels, "Product of USA" or "Made in the USA," the FSIS can rely exclusively on the absence of any official foreign markings on cattle presented for slaughter as so attested by the packer without the need for any additional recordkeeping or additional documentation of controls for tracing and segregating by cattle sellers.

Importantly, no third-party certification for the use of authorized voluntary U.S.- origin label claims is needed or desired for the live cattle production steps born, raised, and slaughtered. Conversely, no third-party certification for the use of qualified voluntary U.S.-origin label claims is needed to determine whether the beef derived from an animal may only qualify for a qualified U.S.-origin label claim, and the presenter of the imported animal at slaughter can attest to whether the animal meets the definition of "raised" as discussed above in (b).

C. Conclusion

While R-CALF USA appreciates that the proposed rule will finally put an end to the long-standing, egregious practice of mislabeling foreign beef as a Product of the USA, we encourage the FSIS to take the additional steps recommended above to bring the Agency's regulations and policies into full compliance with the text and spirit of the Tariff Act and Federal Meat Inspection Act and to provide more accurate and understandable labels for consumers. In addition, we strongly urge FSIS and its parent department, the USDA, to mobilize their resources to persuade Congress to fully reinstate MCOOL for beef so all beef sold at retail will be labeled as to its country of origin.

Sincerely,



Bill Bullard, CEO

[37] *See* 74 Fed. Reg., at 2,707 (showing that the past and present COOL regulations also allow packers to rely on producer affidavits to verifying the origins of live cattle presented for slaughter: "Producer affidavits shall also be considered acceptable records that suppliers may utilize to initiate origin claims.).