



**R-CALF**  
**USA**

P.O. Box 30715  
Billings, MT 59107  
Phone: 406-252-2516  
Fax: 406-252-3176  
E-mail: [r-calfusa@r-calfusa.com](mailto:r-calfusa@r-calfusa.com)  
Website: [www.rcalf.com](http://www.rcalf.com)

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**C.E.O.**

Bill Bullard  
Billings, MT

February 21, 2003

Country of Origin Labeling Program  
Agricultural Marketing Service  
USDA Stop 0249  
Room 2092-S  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-0249

Desk Officer  
Office of Management and Budget  
New Executive Office Building  
725 17th Street, N.W.  
Room 725  
Washington, D.C. 20503

Clearance Officer  
USDA-OCIO  
Room 404-W  
Jamie L. Whitten Building  
Stop 7602  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-7602

Via E-Mail: [cool@usda.gov](mailto:cool@usda.gov) and Facsimile: 202-720-3499

**Re: Notice of Request for Emergency Approval of a New Information  
Collection**

Dear Sir or Madam:

The Ranchers-Cattlemen Action Legal Fund – United Stockgrowers of America (R-CALF USA) is pleased to have the opportunity to submit comments in response to the Agricultural Marketing Service's (AMS) November 21, 2002, Federal Register notice announcing that the agency is requesting emergency approval from the Office of Management and Budget for the new information collection, "Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the Agricultural Marketing Act of 1946."

R-CALF USA is a non-profit association that represents approximately 8000 U.S. cattle producers on issues concerning national and international trade and marketing.

R-CALF USA is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and independent feedlot owners. Its members are located in 42 states, and the organization has 36 local and state cattle association affiliates. Various main street businesses are associate members of R-CALF USA.

## **Background**

In the Farm Security and Rural Investment Act of 2002, Congress amended the Agricultural Marketing Act of 1946 to require retailers to inform consumers of the country of origin of certain food products.<sup>2</sup> Congress required a two-part implementation procedure. First, Congress mandated the United States Department of Agriculture (USDA) to issue *Guidelines* for the voluntary implementation of country of origin labeling no later than September 30, 2002.<sup>3</sup> Second, Congress mandated USDA to promulgate regulations for mandatory labeling not later than September 30, 2004.<sup>4</sup> Voluntary Country of Origin Labeling Guidelines were issued by the USDA Agriculture Marketing Service (AMS) as published in the October 11, 2002, Federal Register.<sup>5</sup>

On November 21, 2002, AMS published the Notice of Request for Emergency Approval of a New Information Collection, which estimates industry compliance costs for the record-keeping requirements AMS contends are necessary to implement voluntary country of origin. In its instant notice, AMS specifically seeks comments on: (1) Whether the record-keeping is necessary for the proper operation of this voluntary program, including whether the information would have practical utility; (2) the accuracy of USDA's estimate of the burden of the record-keeping requirements, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the records to be maintained; and (4) ways to minimize the burden of the record-keeping on those who are to maintain and/or make the records available, including the use of appropriate automated, electronic, mechanical, or other technological record-keeping techniques or other forms of information technology.<sup>6</sup>

Because the AMS cost estimate notice is based on AMS's Voluntary Country of Origin Labeling Guidelines, R-CALF USA's comments will necessarily address both notices.

### **I. Are the Proposed Record-keeping Requirements Necessary for the Proper Operation of the Voluntary Program, and Would the Information have Practical Utility?**

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<sup>2</sup> Subtitle D-Country of Origin Labeling, Sec. 282(a)(1).

<sup>3</sup> *Id.* Sec. 284(a).

<sup>4</sup> *Id.* Sec. 284(b).

<sup>5</sup> Federal Register, Vol. 67, No. 198 (Friday, October 11, 2002).

<sup>6</sup> Federal Register, Vol. 67, No. 225 (Thursday, November 21, 2002).

## **A. Applicability of Proposed Record-keeping Requirements on Live Cattle Producers**

### **1. USDA Has Overreached Its Statutory Authority**

Not only are the record-keeping requirements unnecessary for the proper implementation of the voluntary program, but USDA has overreached its statutory authority by imposing such a requirement on cattle producers. The Country of Origin Labeling provisions of the Farm Security and Rural Investment Act of 2002 (Act) compel retailers of a covered commodity to provide country of origin information to consumers.<sup>7</sup> Further, it compels persons engaged in the business of supplying a covered commodity to a retailer to provide information to the retailer indicating the country of origin of the covered commodity.<sup>8</sup> Finally, it expressly prohibits USDA from using a mandatory identification system to verify country of origin of a covered commodity<sup>9</sup>

The Act does not direct USDA to establish an audit verification system, but USDA is given discretionary authority to require any person that prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable record-keeping audit trail.<sup>10</sup> Congress was explicit with respect to which activities within the food supply chain could be subject to an audit verification system. Congress explicitly listed the following activities as subject to an audit verification system if the USDA chooses to establish such a system at all: “. . . any person that prepares, stores, handles, or distributes a covered commodity for retail. . .”<sup>11</sup> However, if the USDA chooses to establish a verifiable record-keeping system, USDA is expressly prohibited from using a mandatory identification system for purposes of verifying the country of origin of a covered commodity.<sup>12</sup>

The Act separately defines beef as meat produced from cattle (including veal).<sup>13</sup> With respect to beef, the Act only includes muscle cuts of beef and ground beef as covered commodities.<sup>14</sup> Thus, the Act clearly does not include cattle as a covered commodity. Because cattle are not a covered commodity as defined by the Act, and because Congress excluded either “cattle producers,” or “cattle or animals used to produce beef” or even “producers” or “growers” from the list of persons subject to any discretionary audit verification system, USDA has no statutory authority to impose a record keeping system for cattle.

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<sup>7</sup> Subtitle D-Country of Origin Labeling, Sec. 282 (a)(1)

<sup>8</sup> *Id.* Sec. 282(e).

<sup>9</sup> *Id.* Sec. 282(f)(1).

<sup>10</sup> *Id.* Sec. 282(d).

<sup>11</sup> *Id.* Sec. 282(d).

<sup>12</sup> *Id.* Sec. 282(f)(1).

<sup>13</sup> *Id.* Sec. 281(1).

<sup>14</sup> *Id.* Sec.281(2)(A)(i) and (ii).

Congress's explicit exception of "cattle" is reinforced by Congress's prohibition on using a mandatory identification system to verify the country of origin of a covered commodity.<sup>15</sup> Although Congress does not specifically define a "mandatory identification system," it is nonsensical to conclude that the AMS requirement that producers and growers ". . . maintain auditable records documenting the origin of covered commodities,"<sup>16</sup> and further by rejecting self-certification as a means of documenting said origin<sup>17</sup> is not, in fact, the very mandatory identification system expressly prohibited by Congress.

## **2. Congress Has Narrowly Defined USDA's Role**

Congress limited USDA's authority to that of first establishing guidelines and then of promulgating rules for the express purpose of ensuring that persons who supply a covered commodity to a retailer can provide accurate information to the retailer indicating the country of origin of the covered commodity.<sup>18</sup> Congress narrowly defined the persons who supply covered commodities to retailers as those who prepare, store, handle, or distribute covered commodities.<sup>19</sup> And, Congress subjects only these specific persons to an audit verification system if the USDA chooses to establish such a system.<sup>20</sup>

Congress does not include cattle producers, growers or live cattle importers as among those persons subject to the USDA's discretionary authority to establish a record-keeping requirement and reinforces this exception by expressly prohibiting any form of mandatory identification system.

Moreover, Congress established the criteria wherein covered commodities would be eligible for a label denoting a United States country of origin. In the case of beef, a United States country of origin may only be used if the beef is "exclusively from an animal that is exclusively born, raised, and slaughtered in the United States (including from an animal exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States)."<sup>21</sup>

Thus, for those who prepare, store, handle, and distribute covered commodities, USDA may require an auditable record keeping system. For all others, USDA may not require such record-keeping.

USDA's charge, then, is to establish guidelines that will enable the conveyance of country of origin information associated with the live animals that will subsequently be

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<sup>15</sup> *Id.* Sec. 282(f)(1).

<sup>16</sup> Federal Register, Vol. 67, No.198 (Friday, October 11, 2002) at 63374.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* Sec. 282(e).

<sup>19</sup> *Id.* Sec. 282(d)

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* Sec. 282(a)(2)(A).

delivered to those who will transform the live animals into covered commodities. This is not a daunting task.

Although comments regarding proper rules with which to achieve the objective of accurately conveying country of origin information for live animals to the persons who will transform the live animals into covered commodities is more applicable to the comments USDA is soliciting on its *Voluntary Guidelines* and due by April 9, 2003, R-CALF USA believes it would be irresponsible not to address such implementation rules after asserting that the present guidelines are contrary to statute. Therefore, R-CALF USA offers the following options with which to achieve this important objective:

## **B. IDENTIFYING LIVE ANIMALS THAT WILL BE SUBSEQUENTLY TRANSFORMED INTO A COVERED COMODITIY**

### **1. Background**

According to a recent report by the Congressional Research Service to Congress, “Federal law requires most imports, including many food items, to bear labels informing the ‘ultimate purchaser’ of their country of origin.”<sup>22</sup> The report goes on to explain that “Under Section 304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), every imported item must be “conspicuously and indelibly” marked in English to indicate to the “ultimate purchaser” its country of origin.”<sup>23</sup> Excluded from this requirement are items that are incapable of being marked or where the cost would be “economically prohibitive.”<sup>24</sup> The report states that the Secretary of the Treasury is empowered to exempt certain classes of imports under Section 1304(a)(3)(J).<sup>25</sup> Among the items exempted by the Secretary is livestock.<sup>26</sup> Finally, the report stated with regard to treatment of imported beef products, “[O]nce these non-retail items entered the country, they have been considered (under the federal meat inspection law, see 21 U.S.C. 620(a)) to be domestic products.”<sup>27</sup>

Another report completed by the USDA Food Safety and Inspection Service (FSIS) addresses the issue of labeling requirements for imported meat.<sup>28</sup> This report states that, “Pursuant to the Federal Meat Inspection Act (FMIA), imported meat and meat food products that are accepted for import are to be deemed and treated as “domestic” products subject to the FMIA and its implementing regulations.”<sup>29</sup> Moreover, the report states, “All meat products imported into the United States are required to bear the country of origin on the labeling of the container in which the products are shipped,

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<sup>22</sup> CRS Report for Congress, Country-of-Origin Labeling for Foods, 97-508 ENR, January 28, 2003, at 1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at CRS-2.

<sup>27</sup> *Id.* at CRS-2.

<sup>28</sup> Food Safety and Inspection Service-USDA, Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb, January 2000, at 1.

<sup>29</sup> *Id.*

as well as the establishment number assigned by the foreign meat inspection system and certified to USDA.”<sup>30</sup>

The FSIS report further states that, “Article IX, Marks of Origin, of the General Agreement on Tariffs and Trade (GATT) (1994) allows imported products to be labeled with their specific country of origin at the time of import so long as the marking requirement does not seriously damage the imported products, materially reduce their value, or unreasonably increase their costs.”<sup>31</sup> The report goes on to state that, “Whenever administratively practicable WTO member countries should permit required marks of origin to be affixed at the time of importation.”<sup>32</sup>

## **2. Implications of Existing Requirements**

It is, therefore, quite clear that the United States can and does require labeling of imported beef products without requiring comparable domestic products to be similarly labeled. This despite the requirement that imported meat accepted for import is to be treated as “domestic product.” Obviously, requiring a country of origin label on imported products as a prerequisite to importation is a common practice and the fact that domestic products are not similarly labeled does not violate the requirement that imported products are to be treated as “domestic product.” Therefore, R-CALF USA asserts that the United States has the authority to require all imported live animals to be marked in a manner that identifies their country of origin, without imposing a similar requirement on domestic livestock.

The United States has the authority to require country of origin markings on livestock as a prerequisite to importation into the United States. By requiring such markings, persons who will subsequently transform the livestock into a covered commodity will know with certainty the country of origin of the livestock. USDA can, therefore, promulgate rules to require the retention of such marking and, further, establish that the lack or omission of said markings is proof that livestock are both born and raised in the United States. Upon the transformation of the livestock into a covered commodity, all persons who subsequently prepare, store, handle and distribute the resulting covered commodity to retailers would be subject to the USDA’s audit verification system.

## **3. Options for Affixing Country of Origin Markings on Livestock**

### **a. Physical Markings**

USDA can require any one or more of the livestock industry’s common marking methods for marking imported livestock with their country of origin. Such common marking methods include:

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 3.

<sup>32</sup> *Id.*

1. A metal ear tag as is commonly used to identify domestic livestock vaccinated for Brucellosis.
2. A blue metal ear tag as is presently used to identify imported Mexican feeder cattle, including slaughter cattle.
3. A USDA ear tag or a Canadian Food Inspection Agency approved ear tag as is presently required for United States cattle imported to Canada under the Restricted Feeder Program.<sup>33</sup>
4. A brand as is commonly used on cattle imported from Mexico (it is R-CALF USA's understanding that cattle imported from Mexico are branded with an "M" on their hip and a blue metal identifier ear tag used for purposes of managing Tuberculosis or other forms of animal disease).
5. Either a hot or freeze brand denoting a letter or numeric code that denotes a specific country, e.g., "M" for Mexico, "C" for Canada, "A" for Australia.
6. An ear tattoo denoting a letter or numeric code associated with a specific country.

As criteria for determining the correct markings for live animals accepted for importation into the United States, the USDA may want to adopt the conditions the USDA-Animal Plant Health and Inspection Service (APHIS) has proposed to impose on Uruguayan beef. As recently as February 10, 2003, APHIS proposed that Uruguayan beef be certified by an authorized veterinarian that the meat is from bovines that have been born, raised, and slaughtered in Uruguay.<sup>34</sup> APHIS imposed a similar condition on Argentina in 2000.<sup>35</sup> If USDA were to adopt the condition that imported livestock must be identified with all the countries in which the livestock resided prior to importation, the information could prove beneficial for purposes of better protecting the United States cattle-herd health.

According to the latest U.S. commercial cattle slaughter data available from the Economic Research Service's Red Meat Yearbook, the United States slaughtered just over 36 million head of cattle in 1999.<sup>36</sup> During that year, the United States imported approximately 1.9 million head of live cattle from Canada and Mexico.<sup>37</sup> Thus, only about 5 percent of all live cattle slaughtered in 1999 would have been ineligible for the United States label and, necessarily, eligible for either a Mexico or Canada label. From a standpoint of efficiency, cost-effectiveness, and practicality, USDA should focus its rulemaking efforts on accurately marking the minority of cattle ineligible for the United

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<sup>33</sup> Canadian Food Inspection Agency-Health of Animals-Restricted Feeder Cattle from the United States, Client Services Information Sheet No. 14, Obtained from the Internet on May 29, 2002, at <http://www.inspection.gc.ca/english/anima/heasan/import/bovine.shtml>.

<sup>34</sup> Federal Register, Vol. 68, No. 27, Monday, February 10, 2002, at 6675.

<sup>35</sup> Federal Register, Vol. 65, at 82894.

<sup>36</sup> Economic Research Service-USDA, Red Meat Yearbook (94006), Commercial Livestock Slaughter, obtained from the Internet at <http://www.ers.usda.gov/data/sdp/view.asp?f=livestock/94006/>, on February 16, 2003.

<sup>37</sup> Economic Research Service-USDA, Livestock, Dairy and Poultry Situation and Outlook, LDP-M-73, July 26, 2000, obtained from the Internet on February 16, 2003, at <http://jan.mannlib.cornell.edu/reports/erssor/livestock/ldp-mbb/2000/ldp-m73.pdf>.

States label and requiring another country's label. Such a system would remove any burden upon United States cattle producers who do not handle imported products.

Under this system, there would be no need for any new record-keeping system by either domestic producers or importers of live cattle. In the event of lost markings, USDA could additionally require that the original import documentation be presented to determine the proper origin of live cattle, much in the same manner as R-CALF USA previously suggested in its August 9, 2002, comments to AMS.<sup>38</sup>

It is noteworthy that even cattle associations that opposed the Act agree, at least conceptually, with the proposal contained herein. In its August 7, 2002, comments to USDA regarding the issuance of guidelines for voluntary country of origin labeling, the National Cattlemen's Beef Association (NCBA) stated:

*NCBA contends that the least complicated and least costly system is for the identification already required on imported cattle and calves to remain with those animals until point of slaughter, at which time they will be marked to indicate that beef from these cattle does not qualify for the born, raised and processed in the USA label. . . For the purpose of identifying U.S. cattle—since Mexico and Canada are currently the only sources for imported cattle, and since Mexican and Canadian cattle are already required to be identified when they enter the U.S.—is for U.S. cattle to be defined as cattle not labeled, branded, tagged or identified as originating from Mexico or Canada. By virtue of not being identified as Mexican or Canadian cattle, all other cattle essentially become U.S. cattle by default. This system will minimize the cost of identification and process verification for U.S. producers and will ensure consumers that this beef is exclusively from cattle that are exclusively born, raised and processed in the U.S.*<sup>39</sup>

The Kansas Livestock Association (KLA) also agreed as indicated by their comments on the issuance of guidelines for voluntary country of origin labeling. The KLA stated:

*KLA proposed that the least costly system of identification would be to utilize the already required identification of imported cattle. This identification would remain with those animals until slaughter, at which time they would be marked to indicate that the beef from these cattle would not be eligible for the "born, raised and processed in the U.S. label.*

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<sup>38</sup> Comments of R-CALF United Stockgrowers of America on the Issuance of Guidelines for Voluntary Country of Origin Labeling, August 9, 2002, available on the Internet at [http://rcalf.com/COOL/voluntary\\_cool\\_guideline\\_comments.htm](http://rcalf.com/COOL/voluntary_cool_guideline_comments.htm).

<sup>39</sup> National Cattlemen's Beef Association, Country-of-Origin Labeling Guidelines Comments, August 7, 2002.

*By default, those cattle not identified as imported cattle would be considered of U.S. origin.<sup>40</sup>*

The Texas Cattle Feeders Association (TCFA) also agreed as indicated by their comments on the issuance of guidelines for voluntary country of origin labeling. The TCFA stated:

*TCFA contends that the least complicated and least costly system is for identification already required on imported cattle and calves to remain with those animals until point of slaughter, at which time they will be marked to indicate that beef from these cattle does not qualify for the born, raised and processed in the USA label. Beef from these cattle could be identified as coming from the country from which the cattle originated, or USDA should develop some alternative type of domestic content or multiple labeling system.<sup>41</sup>*

In addition to R-CALF USA, another national association that supported the Act and that represents the U.S. live cattle industry, the Livestock Marketing Association, stated in its comments:

*. . . Consideration should however be given to having livestock producers and feeders certify as to the origins of the animals they sell for finishing or slaughter if those animals are born, raised or slaughtered outside the United States. . . Also, the current system of animal health and meat import certificates should provide an excellent means of identifying and segregating animals and meat originating from other countries. . .<sup>42</sup>*

The United States cattle industry appears to be in full agreement with the recommendation that the USDA should establish rules that require only the identification of imported live animals and that further establishes that the lack of foreign markings or import documentation shall be proof of domestic origin.

#### **4. Summary**

In summary, the proposed record-keeping requirements imposed on live cattle producers and live cattle importers are unnecessary. In addition, the imposition of such a record-keeping system is not authorized by the Act as live cattle producers and live cattle importers do not produce a commodity covered by the Act. Congress certainly did not intend for USDA to saddle producers with such an unnecessary record-keeping burden when the objective of first identifying and then segregating imported livestock from wholly domestic livestock can be readily accomplished under existing authorities.

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<sup>40</sup> Kansas Livestock Association, Voluntary Country of Origin Labeling Guidelines, August 8, 2002.

<sup>41</sup> Texas Cattle Feeders Association, Country of Origin Labeling, August 9, 2002.

<sup>42</sup> Livestock Marketing Association, Country-of-Origin Labeling, August 8, 2002.

**C. Applicability of Proposed Record-keeping Requirements on Persons Who Prepare, Store, Handle, or Distribute Covered Commodities**

As herein discussed, Congress afforded the USDA with the discretionary authority to establish a verifiable record-keeping audit trail for any person that prepares, stores, handles, or distributes a covered commodity for retail that will permit the Secretary to verify compliance with the Act.<sup>43</sup> Congress expressly listed five models that USDA could use in designing such a system to certify country of origin labeling.<sup>44</sup> USDA should review the record-keeping requirements of these specific programs, as well as other preexisting programs that currently address the segregation of covered commodities such as the programs allowing for labels associated with “Hormone Free and/or Antibiotic Free Beef,” “All Natural Beef,” “Certified Angus Beef,” or “Certified Hereford Beef.”

The authority to establish a verifiable record keeping trail begins at the point that the covered commodities are produced. For meat, this point begins at the processor level of the food production chain. Therefore, USDA should determine the present segregation systems employed by processors that participate in the abovementioned programs and design a system that complements rather than replicates such preexisting segregation systems. R-CALF USA does not understand why USDA would elect to ignore some of the very segregation systems it presently administers by concluding that an entirely new system would be required to implement country of origin labeling. The verification procedure for labeling covered commodities according to their country of origin should be analogous to changes commonly made in U.S. tax forms when Congress decides that additional information is required—new fields are routinely added to preexisting forms to accommodate the new information requirements.

To the extent that USDA assumed that all persons who handle covered commodities do not presently transfer invoices or otherwise keep records that could be easily modified to accommodate a new line or field denoting country of origin, or that USDA will require an entirely new record-keeping system despite the fact that certain records and documents are already maintained by industry participants who handle covered commodities, the USDA record-keeping requirements are unnecessarily duplicative. R-CALF USA foresees no benefits for requiring an entirely new layer of records for those who prepare, store, handle, or distribute a covered commodity and, therefore, submit that such a requirement lacks utility.

**II. The Accuracy of USDA's Estimate of the Burden of the Record-Keeping Requirements, Including the Validity of the Methodology and Assumptions Used**

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<sup>43</sup> Subtitle D-Country of Origin Labeling, Sec. 282 (d).

<sup>44</sup> *Id.* Sec. 282 (f) (2) (A-E).

USDA's estimate is based on unsupportable assumptions, making it unworkable as a starting point for determining any additional costs that may be associated with country of origin labeling. A list of USDA's unsupportable assumptions includes:

1. USDA made no effort to determine the number of U.S. producers who either produce or handle covered commodities. As herein stated, cattle producers do not handle a covered commodity unless they are involved in a retained ownership-type program. Therefore, the number of producers who do handle the specific commodities covered by the Act should have been ascertained prior to making any calculations regarding producer-related costs. R-CALF USA does not know the true number of producers who actually produce the covered commodities listed in the Act, but it is certain the number is much lower than the total number of U.S. producers, of all crops and livestock, used by USDA.<sup>45</sup>
2. USDA ignores the highly concentrated and vertically integrated structure of the United States food processing, food importing, and food retailing industries, as well as the integrated structure of the nation's hog production and pork processing industries. USDA wrongly assumed there is no relationship between importers of covered commodities, processors of covered commodities, and retailers of covered commodities. However, it is common knowledge that many of the major importers are also processors. Instead, USDA assumed each segment of the food industry is independent of the next, thus necessitating independent records.<sup>46</sup>
3. USDA ignored the documentation that presently accompanies food products from one segment of the food processing chain to the next, e.g., the transfer of invoices, the use of bar codes on boxed beef, and other documentation that currently aides USDA in effecting recalls of food products.
4. USDA did not consider a "least-cost" method of verifying the origin of covered commodities. Instead, it used a "green-field" approach commonly used to develop a worst case scenario. However, USDA provided only a "point" estimate rather than a more appropriate "range" estimate, thereby giving the impression that the estimate is without any uncertainty and is, instead, substantially definitive.
5. The USDA ignored the fact that producers of many of the covered commodities are already required to maintain records for purposes of verifying chemical and pesticide use as well as to verify environmental compliance. No recognition is given for the existing record keeping systems that could be easily modified to accommodate a new line or field for denoting origin.
6. USDA did not rely on any existing studies to determine the hours necessary to complete the proposed records.
7. As stated previously, USDA ignored the preexisting programs, including those expressly included in the Act, and wrongly assumed there are no tracking or

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<sup>45</sup> Federal Register, Vol. 67, No. 225, USDA estimated that all 2 million commercial farms, ranches, and fisherman in the United States would implement a system of voluntary labeling even after acknowledging that "... a number of these farms, ranches, and fisherman may not produce products that are covered by these guidelines. . ." at 70205.

<sup>46</sup> *Id.* at 70206.

record-keeping systems in place within the food processing and retailing industry that could be used to accommodate a new line or field denoting country of origin.

Based on the foregoing and major deficiencies, the USDA cost estimate cannot be relied upon even as a starting point for determining any additional costs that may be associated with the labeling of covered commodities. Therefore, USDA should withdraw its estimate and endeavor to establish a more meaningful estimate reflective of current industry practices and consistent with the Act. Consistent with the Act, and as herein discussed, the costs to U.S. cattle producers and live cattle importers associated with delivering live animals, replete with an accurate means of identifying the origin of those animals, to persons who will transform the cattle into covered commodities will be zero.

Further, given the recent announcement that no person has yet voluntarily agreed to follow the October 11, 2002, *Voluntary Guidelines* to effect a country of origin label on covered commodities, there is a high probability that there will be no cost associated with the *Voluntary Guidelines*. This conclusion is consistent with R-CALF USA's initial comments to AMS on August 9, 2002, in which R-CALF USA stated:

*The USDA has had a voluntary geographic labeling program since at least the early 70s, though the program was not widely used. The reason for this appears to be that unless all segments of the beef industry jointly participate to effect a geographic label, any one of the distinct industry segments can disqualify a product's eligibility by simply declining to participate in the program. In other words, labeling under the program would only occur if the live cattle producer voluntarily substantiated that the animal's origin was a specific geographic region; the processor voluntarily agreed to segregate the product to maintain the integrity of the geographic substantiation throughout the processing phase; and the retailer voluntarily agreed to affix the appropriate geographic label on the product. The new voluntary labeling program will require this degree of inter-industry cooperation in order to be successful.*

*To accomplish this heightened level of cooperation, USDA must provide an incentive to encourage each of the three industry segments to participate in the voluntary program. Lacking a more creative solution to impart such needed incentives within the present industry structure, and given the fact that country of origin labeling is scheduled to become mandatory in two years, R-CALF USA recommends that USDA adopt interim rules with which to implement mandatory labeling from the outset. However, pending the September 30, 2004, implementation date for mandatory labeling, the retailer's decision regarding whether to retain the country of origin label upon final sale of the product would be left voluntary. In support of this recommendation, it should be noted that the*

*mandate for labeling is a mandate on the retailer of the covered commodity, but the retailer is necessarily dependent upon the product's origin identification and segregation by the two principle upstream suppliers – packers and producers.*<sup>47</sup>

The current non-participation under the new *Voluntary Guidelines* reveals the inherent problem with a voluntary labeling program, i.e., retailers and packers, are able to place arbitrary conditions upon producers under the guise of protecting themselves from liability in the event that a covered commodity is mislabeled. Several packers have circulated letters to producers in an attempt to impose such arbitrary conditions and this is clearly creating unnecessary and unwelcome confusion and fear among U.S. cattle producers.<sup>48</sup> It will be incumbent upon USDA, whether for a voluntary or mandatory program, to establish federal rules that mandate origin related verification standards that all segments of the food industry must accept for purposes of verifying origin.

### **III. Ways to Enhance the Quality, Validity, and Clarity of the Records to be Maintained**

R-CALF USA encourages USDA to first determine the nature and scope of current records, documentation, and labeling already used by persons who prepare, store, handle or distribute covered commodities to retailers, and used by retailers. Once this information is collected, USDA should determine the least-costly, least-intrusive means of adding a field, line, box, or other area on such existing records to accommodate the listing of origin for covered commodities. In the unlikely event that no such records, documentation, or labels are available among or between the various persons who handle covered commodities, USDA should adopt the least-cost, least-intrusive system presently employed within the various verification models listed in the Act, or those mentioned in Section II above.

### **IV. Ways to Minimize the Burden of the Record-Keeping on Those Who are to Maintain and/or Make the Records Available, Including the Use of Appropriate Automated, Electronic, Mechanical, or Other Technological Record-Keeping Techniques or Other Forms of Information Technology**

R-CALF USA believes it has sufficiently addressed this issue in Sections I through III above. R-CALF USA urges USDA to endeavor to use existing information systems wherever possible to include the origin of covered commodities as this will

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<sup>47</sup> Comments of R-CALF United Stockgrowers of America on the Issuance of Guidelines for Voluntary Country of Origin Labeling, August 9, 2002, available on the Internet at [http://rcalf.com/COOL/voluntary\\_cool\\_guideline\\_comments.htm](http://rcalf.com/COOL/voluntary_cool_guideline_comments.htm).

<sup>48</sup> Swift & Company, Letter to Producers, February 3, 2003; San Angelo Packing Company, Inc., Letter to Customers, February 6, 2003; Swift & Company and EA Miller, Inc., Blue Ribbon Beef, Letter to producers, February 6, 2003; IBP Feedback, Helpful Facts for Cattle and Hog Producer, undated; KC Olson, University of Missouri, State Beef Nutrition and Management Specialist, Letter to Specialists, February 13, 2003.

minimize the burden on persons who prepare, store, handle, or distribute covered commodities to retailers and on retailers.

### **Conclusion**

R-CALF USA appreciates the opportunity to comment on this important matter and pledges its willingness to work with USDA to effect workable country of origin labeling rules that will maximize benefits to both producers and consumers while minimizing any associated burden upon the food processing and retailing industries. R-CALF USA would look forward to a request to provide addition information or assistance. R-CALF USA can be reached at 406-252-2516.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leo R. McDonnell, Jr.", written in black ink.

Leo R. McDonnell, Jr.  
President, R-CALF USA