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

Via E-Mail: cool@usda.gov and Facsimile: 202-720-3499

Re: Notice of Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946

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 (Agency's) October 11, 2003, Federal Register notice requesting public comments regarding the Agency's voluntary guidelines for country of origin labeling.

R-CALF USA is a non-profit association that represents approximately 8400 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 43 states, and the organization has 36 local and state cattle association affiliates. Various main street businesses are associate members of R-CALF USA.

The Montana Cattlemen's Association, Missouri Stockgrower's Association, Houston County Minnesota Cattlemen's Association, and the Southeast Wyoming Cattle Feeders Association specifically join R-CALF USA in these comments.

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.[1] 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.[2] Second, Congress mandated USDA to promulgate regulations for mandatory labeling not later than September 30, 2004.[3]

The following comments pertain to the *Guidelines* for the voluntary implementation of country of origin labeling issued by the Agency, with the understanding that the *Guidelines* may form a basis for the mandatory program. R-CALF USA's comments are presented in the same order and under the same headings as contained in the Guidelines.

VOLUNTARY COUNTRY OF ORIGIN GUIDELINES

Definitions

Ground Beef

Current guidelines appear to allow ground beef to be excluded from labeling if water, salt, or other flavoring, seasoning, or extenders are added in the grinding process. This significantly reduces the products that should be covered by the Act and it provides an unjust means of circumventing the intent of the Act. The Agency should ensure that ground beef remains covered by the Act even if water, cereal, soy or other derivatives, other extenders, salt, sweetening agents, flavoring, spices or other seasoning is added. The addition of any one or more of these additives, enhancers, or extenders does not change the fact that the resulting product is ground beef.

Material Change

Current guidelines appear to greatly expand the scope of products Congress excluded from the Act. Congress said an otherwise covered commodity would be excluded from coverage only "if the item is an ingredient in a processed food item."[4] We believe this means that if a covered commodity is further processed, i.e., cooked, cured, restructured, or flavored, it will remain covered by the Act unless the covered commodity is also commingled, mixed, or incorporated with other commodities to create a distinct food item such as pizza, ravioli, soup, or TV dinners, for example. A roast remains a muscle cut of beef even if it is cooked, salted, or flavored. Therefore, a cooked, salted or flavored roast should remain covered by the Act. The Agency appropriately recognized this fact with respect to peanuts, allowing the coverage of peanuts that are shelled, roasted, salted, or flavored.[5] We believe the Agency's definition of material change should be abandoned.

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[1] Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 282(a)(1).
[2] *Id.* Sec. 284(a).
[3] *Id*. Sec. 284(b).
[4] *Id.* Sec. 281(B).
[5] Federal Register, Vol. 67, No. 198, at 63369.

Processed Food Item

R-CALF USA believes the Agency's definition of a processed food item will significantly reduce the number of food items Congress intended to be covered by the Act. R-CALF USA disagrees with the Agency's stated rational for adopting this definition. Specifically, R-CALF USA believes the Agency was mistaken when it stated that a strict interpretation of the Act vis-à-vis the National Organic Program's definition of processing would exclude a covered commodity because "slaughtering, cutting, and chilling were examples of 'processing.'"[6] The Act clearly states that the term covered commodity does not include an item "If the item is an ingredient in a processed food item."[7] The fact that an item is a processed food item does not exclude the item from coverage of the Act. In the case of covered beef commodities, for example, the precursor commodity (cattle) must first be slaughtered (processed) before the covered commodities materialize. Congress said only if the item is an ingredient in a processed food item is the item excluded.

R-CALF USA suggests the Agency abandon its definitions for "ingredient," "material change," and "processed food item." Instead, the Agency should define the phrase "processed food item ingredient," as only if an otherwise covered commodity is also a "processed food item ingredient" is it excluded from the Act.

R-CALF USA suggests the following definition: "Processed food item ingredient" means a covered commodity that is commingled, mixed, or incorporated with one or more covered or non-covered commodities to create a food item distinct from any of its separate ingredients. For example, ground beef commingled with other perishable commodities and incorporated with flour (dough) to create a separate food item like pizza, ravioli, or soup would be considered a "processed food item ingredient" and exempt from the Act. A covered commodity that is cooked, cured, roasted, restructured, salted, flavored, seasoned, breaded, or otherwise enhanced does not meet the definition of a "processed food item ingredient."

Because the additions described above could be viewed as further processing of covered commodities, the Agency may wish to consider a label such as "Product of Country X that was cooked, cured, restructured, or flavored in the United States."

Consumer Notification

C. Exclusions

The guidelines state that "[a] meal kit that includes ground beef and other ingredients" would be excluded from the Act. We believe such a meal kit should be excluded only if the other ingredients are also other commodities and the meal kit is a distinct food item. Simply adding

[6] *Id*. at 63368.
[7] Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 281(B).

water, salt, bread crumbs, or flavoring should not constitute "other ingredients," and if no other ingredients are also commodities, the food item should remain covered.

E. Labeling Covered Commodities of United States Country of Origin

The guidelines allow for a carcass derived from animals born, raised, and slaughtered in the United States to be shipped to a foreign country for further processing, i.e., to be cut into steaks, and then re-imported into the United States bearing a "Product of the United States Origin." We believe this is inconsistent with the Agency's definition of "slaughter" wherein the term "'slaughtered" is interchangeable with the term "processed."[8] We agree that the terms "slaughtered" and "processed" are interchangeable. But we believe that the cutting of steaks from a carcass in a foreign country constitutes a further slaughter/process of the carcass and the resulting steaks would not meet the criteria reserved exclusively for only products born, raised, and slaughtered/processed in the United States.

Again, the Agency may wish to consider a label such as "Product of the United States and further processed in Country X." U.S. producers are eager to begin promoting an exclusive United States product and the exclusiveness of the United States product should not be misrepresented with a liberalized label.

F. Labeling Imported Products

The guidelines allow beef and beef derived from animals born and raised in a foreign country to achieve eligibility for its respective country's label merely by exiting that country and entering the United States. Therefore, beef derived from a live animal imported from Canada is automatically eligible for a "Product of Canada" label simply by virtue of crossing the United States border from Canada—no additional paperwork is needed. We believe the Agency should adopt an equally simple standard for determining eligibility for the "Product of the United States" label for beef derived from animals born and raised in the United States. Clearly, any live animal that does not enter the United States through one of her borders can be nothing other than an animal born and raised in the United States. There simply is no way for an animal residing in the United States to be anything but born and raised in the United States if it has not crossed the United States border.

G. Labeling Covered Commodities From Multiple Countries That Include the United States

The guidelines appear to mandate that meat products derived from animals born and/or raised in a foreign country and slaughtered in the United States must bear a label that includes the "United States" in the label. We believe this mandate exceeds the authority of the Agency. The Act only requires a label denoting the country of origin. We agree with the Agency in its effort to allow multi-country labels denoting which country or countries harbored an animal before it is slaughtered in the United States when such countries can be verified. However, we do not believe the agency should mandate that the United States be included in the label. An importer

[8] Federal Register, Vol. 67, No. 198, at 63373.

may prefer to include only the country of origin specified at time of import. We believe the use of the "United States" in a label for beef with multi-origins should be voluntary.

H. Blended Products

For the reasons stated above, we do not believe that labels for blended products must denote the various countries the animal from which the constituent products were derived were born and raised. It should be sufficient that the product includes the foreign label from the country importing the animal into the United States.

For reasons also stated above, we do not believe that the mere cooking, curing, salting, or flavoring of a covered commodity changes the identity of a covered commodity and, therefore, object to the Agency's proposal to exclude covered commodities used in blended products if processing has "altered the commodity's character."

Record Keeping

Paragraph B

We believe the Agency has overreached its authority by including cattle producers, backgrounders, and feeders under its jurisdiction. Congress explicitly listed each entity that is subject to the Act. The specific entities are ". . . any person that prepares, stores, handles, or distributes a covered commodity for retail sale. . ."[9] Cattle producers, backgrounders and feeders are not among the entities covered by the Act. Further, cattle producers do not prepare, store, handle, or distribute a covered commodity for retail sale which, with respect to beef, only includes muscle cuts of beef and ground beef.[10] Cattle are not a covered commodity and, therefore, the Agency has no authority to require cattle producers to "maintain auditable records documenting the origin of covered commodities."

Further, because cattle producers are not covered entities, both because Congress did not include them as such and because they do not prepare, store, handle, or distribute covered commodities, the Agency cannot deny cattle producers the use of self-certification as a means to communicate origin to persons who subsequently transform live cattle into a covered commodity.

Paragraph C

The Agency appears to be abrogating its congressionally assigned, discretionary duty to require a verifiable record-keeping trail and to verify compliance by empowering retailers to ". . . ensure that a verifiable audit trail is maintained through contracts and other means." Congress granted only the Secretary of Agriculture the authority to require ". . . that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable audit trail that will permit the Secretary to verify compliance with this subtitle (including the regulations

[9] Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling, Sec. 282(d).
[10] *Id. Sec.*281(2)(A)(i) and (ii).

promulgated under section 284(b))"[Emphasis added.].[11] We do not believe Congress intended to the Secretary of Agriculture to delegate this authority. Therefore, the Secretary of Agriculture must reserve its exclusive authority to require a verifiable audit trail, along with its exclusive authority to conduct any audits of such a trail.

Moreover, the standard of willfulness for determining violations of the Act make any surveillance or audits between and among retailers and persons who prepare, store, handle, or distribute covered commodities unnecessary.[12] Retailers could not be held liable for a misrepresentation of a packer or distributor, for example. Under a willful violation standard, only if a retailer willfully mislabeled a covered commodity would the retailer be subject to the Agency's enforcement actions. Therefore, there is no reason for retailers to be afforded anything other than a representation of origin verification from its immediate upstream supplier.

Paragraph D

For the reasons stated in C above, retailers should not be granted the authority to audit or otherwise review the business records of their immediate or indirect upstream suppliers. Therefore, the Agency should remove any reference indicating that retailers have any authority or responsibility to access any country of origin records of its suppliers. Retailers should be entitled to only a representation of origin verification from its most immediate upstream supplier.

Paragraph E

For the reasons previously stated under Paragraphs B, C, and D above, the Agency appears to have far exceeded its authority by requiring records that "clearly identify the location of the growers and production facilities." Nowhere in the Act does Congress require any product identification other than that of the country of origin of a covered commodity. Moreover, Congress did not include producers, backgrounders, or feeders as regulated classes under the Act. Therefore, the Agency must adopt a completely different methodology for ensuring that the origin of live cattle is properly communicated to the first entity regulated by the Act. In the case of beef, the first regulated entity would be at the point of slaughter where the packer transforms live cattle into muscle cuts of beef or ground beef.

R-CALF USA recommends that the Agency consider the following methodology when developing its mandatory country of origin labeling rules:

1. The Agency should identify the critical control points where initial compliance must occur and where violations are most likely to originate.

    a. R-CALF USA believes there are only two critical control points relative to the live cattle industry.

[11] *Id*. Sec. 282 (d).
[12] Id. Sec.283(c).

i. Live cattle entering the United States from a foreign country are the only animals capable of producing beef that must be labeled with other than the USA label. Therefore, the first critical control point is the border of the United States.

ii. Only live cattle that have entered the United States from a foreign country must be specifically identified at the point of slaughter as only the beef derived from these animals must be labeled with other than the USA label. Therefore, the second critical control point is the point of slaughter.

2. With respect to live cattle, the Agency must focus its limited, regulatory resources at these two critical control points as there are no other control points within the live cattle supply chain where violations can be initiated.

    a. No U.S. farm, ranch, or feedlot can cause an animal in its possession to be eligible for any label other than the USA label unless it has passed through the first critical control point described above.

3. To identify the cattle capable of producing beef eligible for other than the USA label, the Agency should establish in rules that:

    a. All cattle imported in the United States shall be permanently marked with its country of origin with a brand, tattoo, or permanent ear tag. This requirement could not be construed as a mandatory identification system as all animals so marked would remain indistinguishable from all other animal imported from the respective foreign country from which they originated.

        i. R-CALF USA believes such a requirement is authorized under Article IX, Marks of Origin, of the General Agreement on Tariffs and Trade (GATT) (1994) that 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.[13]

        ii. R-CALF USA also believes such a requirement is authorized Under Section 304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304).

4. The Agency should establish in rules that all cattle be designated as born and raised in the United States at the point of slaughter if:

    a. The cattle bear no foreign markings such as the brand, tattoo, or permanent ear tag.

[13] See Food Safety and Inspection Service-USDA, Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb, January 2000, at 3.

5. The Agency should establish in rules that meat derived from animals marked with foreign markings shall be labeled with the country identified by the foreign markings or, in the case of multiple origins, the countries in which the animal has resided as represented by the seller of the cattle to the packer.

6. The Agency should establish in rules that packers shall rely solely on the foreign markings, or lack thereof, for establishing the origin of live cattle. However, if the immediate supplier of live cattle marked with a foreign marking voluntarily provides documentation that the foreign-marked cattle were born in the foreign country for which it is marked and raised in the United States, the packer must accept this multi-country designation and ensure that all muscle cuts of beef and ground beef derived from the animal be labeled accordingly. The maintenance and conveyance of such records to the packer, however, should be voluntary.

7. The Agency should establish in rules that it has the exclusive authority to conduct investigations and audit compliance and that packers and retailers shall impose no conditions, either through contract, agreement, or other means upon U.S. cattle producers for purposes of verifying country of origin.

8. The Agency should establish in rules that the permanent foreign marking requirement shall be the exclusive determinant of origin unless, at the discretion of the seller, a verifiable record trail denoting in which countries the animal has spent its various production phases, replete with affidavits attesting to each phase, is transferred to each buyer. Buyers shall have an affirmative duty to transfer such records until reaching the point of slaughter. The packer shall have the right to rely exclusively on such records/affidavits, as well as an affirmative duty to ensure the labeling of the resulting meat contains the origin information specified therein.

9. The Agency should establish in rules that because it is not practical or possible to determine the origin of animals presently residing in the United States, all animals not marked with a foreign marking are deemed to be born, raised, and slaughtered in the United States. Thus, the enforcement of the Act shall begin on the effective date of the Act. This will effectively constitute a grand fathering of any animals presently within the United States and of foreign origin. Animals that bear a foreign marking, such as cattle from Mexico with an "M" branded on the hip, and cattle with Canadian ear tags would be exempt from the grand fathering. R-CALF USA believes this grand fathering is prudent and necessary in order to equitably and fairly clear the livestock presently within the production system.

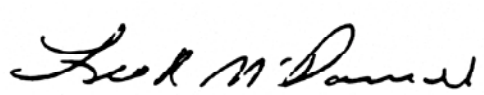
Conclusion

R-CALF USA respectfully recommends that the Agency convene a group of federal and state regulatory officials, consumer representatives, and representatives from each of the industries affected by the Act (recognizing that several industry groups have differing viewpoints and both

views should be included) to assist the Agency in formulating its proposed regulations for mandatory country of origin labeling. R-CALF USA offers its assistance in this regard.

Thank you for the opportunity to provide these comments. We are committed to working with you to ensure that mandatory country of origin labeling is implemented in a manner that maximizes benefits to producers and consumers while minimizing any burdens on any segment of the food supply chain.

Sincerely,



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