July 22, 2008

Office of Information and Regulatory Affairs
Natural Resources, Energy & Agriculture Branch
Office of Management and Budget
725 17th Street, NW,
Washington, DC 20503

Dear Sir or Madam:

We write to express our views regarding the forthcoming implementing regulations for mandatory country-of-origin labeling (COOL).

Congress first enacted mandatory COOL for beef, lamb, pork, farm-raised fish, wild fish, perishable agricultural commodities, and peanuts in 2002.[1] Only the statutory labeling provisions for farm-raised fish and wild fish have been implemented by U.S. Department of Agriculture ("USDA") regulations.[2] Among the reasons cited for the delay in implementing mandatory COOL for the other commodities was the concern that implementing the 2002 mandatory COOL law would be overly expensive and burdensome. This concern was expressed by industry stakeholders and largely based on draft COOL implementing regulations published by USDA in 2003, which contained numerous onerous record-keeping and retention requirements for suppliers and retailers.[3]

Congress revised the 2002 COOL law in the Food, Conservation, and Energy Act of 2008 ("2008 Farm Bill"), enacted on June 18, 2008.[4] Congress made several substantive amendments to the COOL law that not only addressed industry stakeholders' specific concerns, but also, expanded the scope of mandatory COOL to include additional commodities.[5] Importantly, industry stakeholders were intimately involved in the negotiations that led to the compromise COOL language that Congress ultimately adopted. In fact, the level of industry stakeholder participation in this process was so substantial that congressional leaders requested and received, from both industry stakeholder opponents and proponents, written approval for the actual compromise language.

Given the considerable delay already experienced in the implementation of mandatory COOL and the considerable involvement of both industry stakeholders and Congress in remediating stakeholder concerns, it is imperative that the new implementing regulations fully incorporate both the spirit and intent of Congress' new amendments. Of particular concern is that farmers and ranchers who raise animals from which the covered commodities are derived be

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[1] 7 U.S.C. § 1638 *et seq*.
[2] *Mandatory Country of Origin Labeling of Fish and Shellfish; Interim Final Rule*, 69 Fed. Reg. 59,708, Oct. 5, 2004 (hereinafter "*2004 Fish Rule*").
[3] *Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts; Proposed Rule*, 68 Fed. Reg. 61,944, Oct. 30, 2003 (hereinafter "*2003 Draft Rule*").
[4] *See* H.R. 2419, Sec. 11002 *et seq.*
[5] *Id*. (The amendment expanded the scope of the 2002 COOL law to include meat produced from goats, chicken in whole or in part, ginseng, pecans, and macadamia nuts).

subject to regulations no more burdensome or stringent than the statute requires. For example, the statute provides that farmers and ranchers may rely on records maintained in the course of the normal conduct of their business, including animal health papers, import or customs documents, or producer affidavits as records for which to verify compliance with mandatory COOL.[6] As a result, the COOL implementing regulations should not favor any one of the expressly authorized record options over another nor should they encourage the use of any unauthorized option, and USDA must accept any one of the authorized record options, as selected by a farmer or rancher, to definitively verify the origin of any animal subject to a verification audit.

Also included among Congress' recent amendments is the authorization to allow meat from animals present in the United States on or before July 15, 2008 to bear a United States country of origin label, regardless of where such animals were born and raised.[7] For animals in the United States on or before July 15, 2008, farmers and ranchers should be authorized, by way of affidavit or other authorized record discussed above, to attest to whether the animal was present in the United States on or before July 15, 2008, and therefore presumed domestic. For animals not in the United States on or before July 15, 2008, farmers and ranchers who sell directly to a meatpacker should be authorized, by way of affidavit, to attest to the presence or absence of any import markings on their animals as evidence of their animals' origin. For example, animals bearing foreign markings such as ear tags, tattoos, or brands would be eligible only for a multiple country-of-origin label that would include the foreign country associated with the particular marking.[8] Animals not bearing a foreign marking, however, should be presumed to have a United States country of origin unless the farmer or rancher selling directly to the meatpacker has health papers or import or customs documents to the contrary.

It is important that implementing regulations provide consumers with easily understandable labels in accordance with Congress' delineation of such labels, e.g., consumers should be able to distinguish between a product that was imported only for processing (imported for immediate slaughter) from a product derived from an animal that was at least partially subject to U.S. animal production standards prior to processing, and thus eligible for a multiple country of origin label. The implementing regulations should also not add complexity to the labeling process for any segment of the industry. For example, in a previous COOL rulemaking USDA inappropriately imposed cumbersome and unnecessary requirements on food processors for labeling blended or ground products, which requirements were not required by statute. In addition, the implementing regulations should not attempt to limit a food processors obligation to label a covered commodity by enabling the food processor to include minor additives or to apply only minimal processing to avoid the requirement to provide a country-of-origin label.

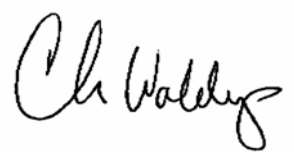
[6] *See* H.R. 2419, Sec. 11002, Subtitle D, Sec. 282 (2)(A)(iii).
[7] *See* H.R. 2419, Sec. 11002, Subtitle D, Sec. 282 (d)(2).
[8] *See* H.R. 2419, Sec. 11002, Subtitle D, Sec. 282 (2)(B).

We firmly believe that efficient and effective implementing regulations can be achieved provided USDA develops regulations that incorporate both the spirit and intent of Congressional intent as outlined in the 2008 Farm Bill.

Sincerely,

R.M. Thornsberry, D.V.M.
President, R-CALF USA Board of Directors

Tom Buis, President
National Farmers Union



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