

# United States Senate

WASHINGTON, DC 20510

September 25, 2008

The Honorable Ed Schafer  
Secretary of Agriculture  
200-A Jamie L. Whitten Building  
Washington, D.C. 20250

Dear Secretary Schafer:

We are pleased the United States Department of Agriculture (USDA) promulgated the interim final rule for mandatory Country of Origin Labeling (COOL), to take effect on September 30, 2008. This rule is a step forward after years of effort to provide clear, accurate and truthful information to consumers as well as a marketing tool for farmers and ranchers across the nation. It is important to note that although we do find improvements in the interim final rule, there is still a good deal of room for improving the rule to reflect Congressional intent and ensuring the program operates as intended. We ask for your immediate attention to these issues to modify the interim final rule so that the COOL statute is implemented correctly.

Section 282 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1638a) was intended to provide distinct labeling categories such as product of U.S. origin, product of mixed origin, product from animals imported for immediate slaughter, and product that is foreign product. It is the intent of Congress that meat product that is exclusively born, raised and slaughtered in the United States will have its own label, such as "Product of the U.S.," so that consumers could easily determine U.S. product apart from product that is from other countries.

USDA's interim final rule appears to allow product from animals exclusively born, raised and slaughtered in the United States to instead be combined with the other labeling category, which is intended for product that is from animals from multiple countries; that is, U.S. product would be labeled jointly with other countries. It is not the intent of Congress that all U.S. product or such product from large segments of the industry be combined with the multiple countries of origin category nor was it dictated by statute. The purpose of COOL is to clearly identify the origin of meat products, providing consumers the most precise information available. This interim final rule, if left without clarification and proper guidance on this issue, has the real possibility of undermining the program, defying Congressional intent and the agreement between producers and the packing industry. Consumers and producers are expecting to see exclusively U.S. origin product labeled as such.

Recently, you indicated that the Department agrees with Congress that product exclusively born, raised and slaughtered in the United States should be labeled as "Product of U.S." On September 19, you were quoted while speaking to the National Association of State Departments of Agriculture in Bismarck, North Dakota that it "was not the intent of the law, [and] not the intent of all of you when you started this many years ago" to allow U.S. product to be labeled jointly with other countries. Additionally, you stated that the Department has "found a way to deal with that." We ask that you clarify this issue before September 30<sup>th</sup>, providing details of how you intend to

Secretary Ed Schafer  
September 25, 2008  
Page two

ensure exclusively U.S. product is labeled correctly in its own category, ensuring consumers are afforded choice in the grocery store aisle.

Another issue of concern is USDA's move to categorize as processed food items which are exempted under the statute, many food products that consumers would expect to be labeled. For example, USDA's interim final rule exempts products that are fried, broiled, grilled, boiled, steamed, baked, roasted, cured, smoked or restructured. So, cooked items, such as a whole chicken, would be considered processed and not required to be labeled. But a whole raw chicken would be required to be labeled. A jar of roasted peanuts would not need to be labeled, but a jar of unroasted peanuts would require labeling. Additionally, broadly exempting all mixed vegetables as a processed food item is an excessive exclusion. Most consumers would expect to have frozen mixed vegetables, whether it is frozen peas or both frozen peas and carrots, to be labeled. We ask that you develop a system that will allow these products, such as mixed vegetables to be labeled as Congress intended.

Section 282 of the Agricultural Marketing Act of 1946 (7 U.S.C 1638 (a)(2)(E)) provides guidance for labeling of ground meat. The notice of country of origin for ground beef, ground pork, ground lamb, ground chicken, or ground goat shall list all countries of origin or a list of all reasonably possible countries of origin for the ground meat. USDA's Interim final rule "provides that when a raw material from a specific origin has not been present in a processor's inventory for more than 60 days, that country shall no longer be included as a possible country of origin." In practical terms, this appears to allow a processor to have 60 days to correct the label of a product to delete specific country(s), even though that country's product may no longer exist in its inventory. For example, a processor on day one could have product from the U.S. and Canada, and then on day 7 run out of product from the U.S., yet this processor could continue using the "Product of U.S. and Canada" label for another 53 days. All the processor would have to do is keep product from the U.S. or any other country just once every 60 days, and remain in full compliance. This is a loophole and can be easily abused, yet USDA provided no discussion on how it would prevent such abuse or mislabeling or why this should even be allowed. What is USDA's rationale for using 60 days, as opposed to any other number of days or any at all?

Another area that deserves further clarification in the interim final rule involves the labeling of covered commodities of United States origin that are further processed or handled in a foreign country. The interim final rule would allow a label that "identifies the United States as the sole country of origin at retail provided the identity of the product is maintained along with records to substantiate the origin claims and the claim is consistent with other applicable Federal legal requirements." What does USDA mean by the words "handled" or "processed"? Does USDA intend to include meat products in this section of the interim final rule? The law seems clear that meat product processed in another country would need to list that particular country on the label. The interim final rule appears to have no discussion or rationale why a U.S. product should be processed in another country but maintain the label intended for U.S. product only. This appears to be a loophole, and there is no justification for allowing this to occur.

The farm bill required that records maintained in the course of the normal conduct of business be acceptable to verify an origin claim. Additionally, the farm bill provided examples such as animal health papers, import or customs documents, or producer affidavits. We are encouraged that agreement has been achieved on an industry-wide standard affidavit from both producer organizations and processing entities and ask that these agreed-upon documents be incorporated in the rulemaking process.

It is important that origin information be maintained by all segments of the industry to verify origin claims and to ensure the integrity of the labeling program. But it is also important that producers not be asked for unreasonable information which goes beyond what would be considered acceptable or the lack of which is a pretext for penalties against a producer or producers. USDA's interim final rule requires that:

“any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of transaction.”

The interim final rule also states that:

“the supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim, which in the case of beef, lamb, chicken, goat, and pork is the slaughter facility, must possess or have legal access to records that are necessary to substantiate the claim.”

We ask that USDA provide a safe harbor of reasonable or acceptable information that can be asked of a producer to help avoid the possibility of unreasonable requests for information that would be considered unfair or an effort to single out a particular producer.

Animals that are present in the United States on or before July 15, 2008, and remained continuously in the United States after that date, are allowed to be labeled as product from the United States, per the modifications that were made in the farm bill. This was mainly done to address concerns that not all producers would know where some of their animals came from before July 15, 2008. There has been some discussion by producers that there could be difficulties determining origin for purchased animals between July 15, 2008 and the implementation date of September 30, 2008. Recognized industry practices for verification are acceptable in situations where an affidavit or declaration of origin is not available, so long as such a practice is appropriately documented and would not jeopardize the integrity of the label. We ask that the Department evaluate this issue, and provide guidance on how producers can verify origin during this time period.



Secretary Ed Schafer  
September 25, 2008  
Page four

We do appreciate modifications in the interim final rule from what was proposed in 2003 for the following issues:

- The interim final rule provides for additional ground meat products to be labeled, such as hamburger and beef patties.
- The interim final rule ensures that state marketing programs are sufficient for compliance with mandatory COOL requirements and cites "Washington apples" or "Idaho potatoes" as examples of those programs. This accomplishes the goal of incorporating existing infrastructure into a national, mandatory food labeling program.
- The interim final rule eliminates the "chain of custody" requirement for retailers to verify product origin. Records to verify origin claims must be retained for 1 year from the transaction, which substantially reduces the original 2 year record retention requirement under the proposed rule.

We ask that you work in good faith to ensure the rule reflects Congressional intent and the agreement between producers and packers. Producers and consumers have waited long enough and deserve a common sense rule that accomplishes the goal of letting them know where their food products come from. Forty-eight other industrialized nations have an origin labeling program for one or more commodities, and farmers, ranchers, and consumers across the United States support country of origin labeling. As the USDA's Agriculture Marketing Service (AMS) itself noted regarding COOL's popularity in the published interim final rule, the majority of comments received regarding the proposed rule "were from consumers expressing support for mandatory COOL for the remaining covered commodities."

Sincerely,

  
Tim Johnson  
United States Senator

  
Mike Enzi  
United States Senator

  
Tom Harkin  
United States Senator

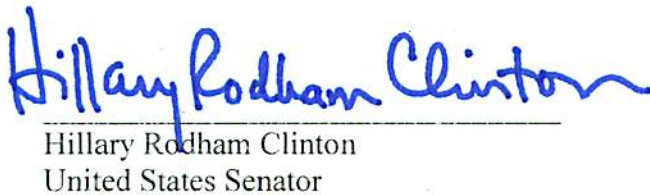
  
Charles E. Grassley  
United States Senator

  
Byron L. Dorgan  
United States Senator

  
Jeff Bingaman  
United States Senator

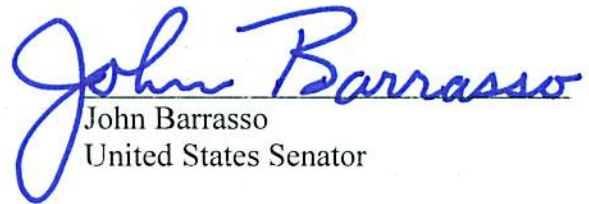
  
Claire McCaskill  
United States Senator

  
E. Benjamin Nelson  
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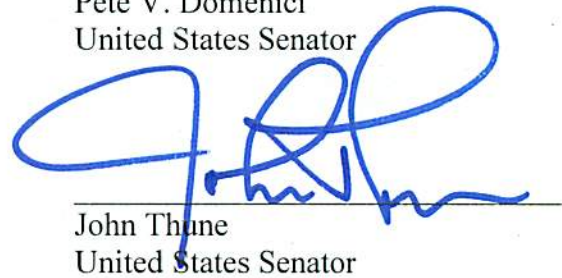
  
Hillary Rodham Clinton  
United States Senator

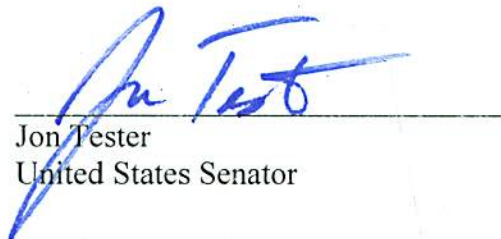
  
Ken Salazar  
United States Senator

  
Barack Obama  
United States Senator

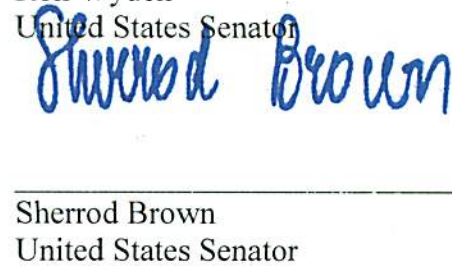
  
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Secretary Ed Schafer  
September 25, 2008  
Page six


  
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John F. Kerry  
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Barbara Boxer  
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Patty Murray  
United States Senator

  
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Secretary Ed Schafer  
September 25, 2008  
Page seven



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