Fighting for the U.S. Cattle Producer!
R-CALF USA

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Julie Henderson, Director
COOL Division, Livestock, Poultry, and Seed Program
Agricultural Marketing Service
U.S. Department of Agriculture (USDA)
STOP 0216
1400 Independence Avenue SW., Room 2620–S
Washington, DC 20250–0216.

Via Federal eRulemaking Portal: ***http://www.regulations.gov***

Re: **R-CALF USA Comments in Document No. AMS–LS–13–0004 (RIN 0581-AD29): Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts**

Dear Director Henderson,

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to comment on the U.S. Department of Agriculture (USDA) Agricultural Marketing Service's (AMS') proposed rule: *Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts* (proposed COOL rule), published at 78 Fed. Reg., 15645-653 (March 12, 2013).

R-CALF USA is the largest producer-only cattle trade association in the United States. It is a non-profit association that represents thousands of U.S. cattle farmers and ranchers in 45 states. R-CALF USA works to sustain the profitability and viability of the U.S. cattle industry, a vital component of U.S. agriculture. Its membership consists primarily of cow-calf operators, cattle backgrounders and feedlot owners. Various main street businesses are associate members of R-CALF USA.

I. INTRODUCTION

The proposed COOL rule is necessary to begin rectifying the fundamentally flawed COOL regulations that went into effect on March 16, 2009. Those regulations were improperly and unlawfully adopted, are contrary to the intent of Congress, and impose recordkeeping

requirements on cattle producers that are not needed to accurately inform consumers as to the origins of beef.

A. Current COOL Regulations Were Improperly and Unlawfully Adopted

The public comment period for the Aug. 1, 2008 interim final COOL rule was Sept. 30, 2008. *See* 73 Fed. Reg., 45,106. Although U.S. citizens and all other interested parties were expressly barred from influencing USDA's final COOL rule after the Sept. 30, 2008 public comment period deadline (*see id*.)[1], the government of Canada, by and through John Gero, Canadian Ambassador to the WTO, did nevertheless, between December 1, 2008 and Jan. 7, 2009, improperly and unlawfully blackmail the United States into granting Canada certain concessions in the final COOL rule under threat of retaliatory action by Canada that was to take the form of an immediate request for a WTO dispute panel against U.S. COOL.[2]

The concessions made by USDA pursuant to its improper and unlawful negotiations with the government of Canada that had occurred after the close of the public comment period for the interim final COOL rule include the provisions contained at 7 CFR § 65.300(e)(2 and 4) that allow muscle cuts of meat derived exclusively from animals exclusively born, raised, and slaughtered in the United States to nevertheless be mislabeled as a product of mixed origin if the meat was produced during a meatpacker's production day when muscle cuts derived from imported animals were comingled by the meatpacker.[3]

In July 2009 R-CALF USA formally urged the Agriculture Secretary to initiate a rulemaking to reverse the inappropriate concessions that allowed the mislabeling of meat derived exclusively from animals exclusively born, raised, and slaughtered in the United States.[4] For reasons unknown to R-CALF USA, for longer than three years Secretary Vilsack refused R-CALF USA's request to initiate a rulemaking to redress the improper and unlawful concession made by USDA to the final COOL rule.

It is an absolute travesty that USDA knowingly allowed this mislabeling of USA beef to continue for longer than three years. That is why R-CALF USA, Made in the USA Foundation, Melonhead, LLC, Organization for Competitive Markets, Inc., South Dakota Stockgrowers

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[1] It is R-CALF USA's understanding that the Administrative Procedures Act (APA), Pub.L. 79-404, 60 Stat. 237, 5 U.S.C. et seq. prohibits any negotiation or discussion regarding the merits of a rulemaking between the USDA and any person or persons after the close of a rulemaking's public comment period and before the agency's publication of a final rule.

[2] *See* R-CALF USA letter to Agriculture Secretary Vilsack with attached communications between the U.S. and Canadian ambassadors to the WTO, July 22, 2009, (R-CALF USA wrote regarding the communications: "[T]hese correspondences indicate that USDA had granted a *foreign country* – Canada – the opportunity to dictate the final contents of the Final COOL Rule, while U.S. consumers and producers were afforded no such opportunity."), attached hereto as Exhibit 1.

[3] *See id*., (Canada had specifically requested the use of a mixed-origin label when foreign animals are comingled during a single production day.).

[4] *See id.*, R-CALF USA wrote in July 2009: "[W]e urge you to immediately reverse the inappropriate concessions accorded to Canada during the previous Administration and to promulgate a new final COOL rule that conforms to Congress' clear intent to accurately inform consumers as to the origins of food covered under COOL."

Association, Independent Cattlemen of Wyoming, and Chad, Tyler and Stanley Scott, filed an amended complaint in the federal district court in Denver, Colorado, alleging, *inter alia*, that:

> The regulations of the U.S. Department of Agriculture that allow labeling meat as from "Canada, Mexico and the United States," when such meat is exclusively of United States origin, violates the Administrative Procedure Act because the defendants' actions under the program exceed statutory authority and limitations imposed by Congress by the Country of Origin Labeling Act and are not otherwise in accordance with law, and are taken without observance of procedures required by law.[5]

However, in direct response to, and as a demonstration of support for, the proposed COOL rule that finally rectifies USDA's improper and unlawful authorization granted to U.S. meatpackers so they could mislabel meat exclusively derived from animal exclusively born, raised, and slaughtered in the United States with a mixed-origin label, R-CALF USA and the other parties to the complaint voluntarily dismissed their complaint without prejudice against Secretary Vilsack and others on March 28, 2013.[6] If Secretary Vilsack finalizes the proposed COOL rule without substantive changes, many, if not all, of the concerns R-CALF USA and others expressed in the lawsuit will be addressed.

B. Current COOL Regulations Are Contrary to the Intent of Congress

In numerous joint letters sent by members of Congress, USDA was duly informed that its prior COOL rulemakings contained provisions that were contrary to Congress' intent and, hence, the COOL statute. On September 28, 2008, a bipartisan group of 32 U.S. Senators articulated Congress' intent regarding COOL in response to USDA's interim final COOL rule. The Senators wrote:

> Section 282 of the Agriculture 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. . . 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. . . Consumers and producers are expecting to see exclusively U.S. origin product labeled as such.[7]

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[5] Complaint for Declaratory and Injunctive Relief, *Made in the USA Foundation, et al. v. World Trade Organization et al*., attached hereto as Exhibit 2.
[6] *See* Notice of Voluntary Dismissal Without Prejudice, *Made in the USA Foundation, et al. v. World Trade Organization et al*., attached hereto as Exhibit 3.
[7] Letter from U.S. Senators to Agriculture Secretary Ed Schafer, Sept. 28, 2008, attached hereto as Exhibit 4.

This large group of Senators even quoted then Agriculture Secretary Ed Schafer to demonstrate that USDA was fully aware of Congress' intent regarding the labeling of exclusively USA beef. The Senators wrote:

> Recently, you [then Secretary Schafer] indicated that the Department [USDA] 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 [Congress and the public] when you started this many years ago' to allow U.S. product to be labeled jointly with other countries.[8]

However, as was discussed in Sect. I A above, despite Congress' effort to explicitly convey Congress' intent to USDA, and despite USDA's presumptive acknowledgement that it fully understood Congress' intent, USDA's final COOL rule issued Jan. 15, 2009 nevertheless defied Congress' intent, and hence the COOL statute, by authorizing meatpackers to label U.S. product jointly with other countries.

Soon after the Jan. 15, 2009 publication of the final COOL rule, a bipartisan group of 7 U.S. Senators wrote Secretary Tom Vilsack to highlight their concern that the final COOL rule contains loopholes that allow meatpackers to put a multiple country of origin label on products that are exclusively U.S. product and to request that Secretary Vilsack revise the rule.[9] The Senators wrote, "The USDA regulations defeat the primary purpose of COOL – providing clear, accurate and truthful information to American Consumers."[10]

On Feb. 20, 2009, Secretary Vilsack wrote a letter to the industry stating that he had legitimate concerns with certain components of the final COOL rule, including its treatment of product from multiple countries.[11] To address his concern, the Secretary asked industry representatives to, *inter alia*, "include information about what production step occurred in each country when multiple countries appear on the label."[12]

The Secretary's request for voluntary action by industry representatives presumable was for the purpose of correcting the final COOL rule's inexplicable authorization to mislabel U.S. product with a mixed-origin label, particularly since a voluntary label denoting in what country each production step occurred would effectively nullify the rule's authorization to affix a label containing only the names of multiple countries. In other words, if industry representatives were to have complied literally with the Secretary's request, even product produced during a production day when foreign product was comingled with USA product would bear labels denoting in which country the various production steps occurred for each product.

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[8] *Ibid*.
[9] Letter from U.S. Senators to Agriculture Secretary Tom Vilsack, Feb. 3, 2009, attached hereto as Exhibit 5.
[10] *Ibid*.
[11] Letter from Secretary Vilsack to Industry Representatives, Feb. 20, 2009, attached hereto as Exhibit 6.
[12] *Ibid*.

The Secretary stated he would evaluate the industry's performance in relation to his suggestions for voluntary action and, "Depending on this performance, I will carefully consider whether modifications to the rule will be necessary to achieve the intent of Congress."[13]

R-CALF USA is unaware of any evidence indicating that industry representatives initiated any of the voluntary actions suggested by Secretary Vilsack. Nevertheless, for longer than three years the Secretary took no action to remedy the fundamentally flawed final COOL rule that inexplicably defied Congress' intent.

The Secretary had summarily dismissed the concerns of Congress, R-CALF USA and others by taking no action to correct the fundamentally flawed final COOL rule until a panel of foreign nationals convened by a WTO tribunal forced his hand by ruling that U.S. COOL regulations discriminated against Canadian and Mexican livestock.

The proposed COOL rule is an exceedingly dilatory remedy that finally, albeit partially, begins to achieve Congress' intent by overturning USDA's inexplicable authorization to U.S. meatpackers to mislabel U.S. product with a mixed country of origin label. The proposed COOL rule accomplished this by requiring labels to specify in which country each of the products' three production steps occurred and by disallowing the meatpackers' ongoing practice of using a mixed-country label on exclusively U.S. product whenever a foreign product is comingled with domestic product during the meatpacker's production day.

C. Current COOL Regulations Impose Record Keeping Requirements on Cattle Producers that Are Not Needed to Accurately Inform Consumers as to the Origin of Beef

Throughout USDA's protracted and numerous rulemaking processes for COOL that first began in October 2002, R-CALF USA has suggested that USDA does not need to require live cattle producers to maintain *any* origin-related records or affidavits to accurately communicate origin information to consumers.[14] Instead, R-CALF USA posited that Congress did not authorize USDA to impose record-keeping requirements on producers and, instead, imposed a duty on meatpackers to initiate origin claims based on a presumption of domestic origin methodology whereby all cattle presented to a packer without any import markings would be declared a wholly U.S. animal and those with import markings would have necessarily been born in the country indicated by the respective import marking.[15]

In a 2003 research paper published by the University of Florida titled, *Country of Origin Labeling: A Legal and Economic Analysis*, legal and economic scholars agreed that the presumption of domestic origin methodology deployed at the point of slaughter was the preferred means of accurately determining the origins of live cattle as it "is most likely to comply with the

[13] *Ibid*.
[14] *See, e.g*., R-CALF USA comments to USDA, Feb. 21, 2003 (R-CALF USA explains in detail how cattle import markings or lack thereof is all that is necessary for meatpackers to initiate an accurate origin determination at the point of slaughter), attached hereto as Exhibit 7.
[15] *See id*.

law, lessens the burden on industry and government, and sufficiently deters potential label misrepresentation."[16] The scholars wrote:

> The Presumption of U.S. Origin Rule is a shorthand title for a regulatory reporting scheme in which all products are presumed to be of U.S. origin unless they carry a mark from another country. The corollary to this presumption is a duty to maintain the mark of origin that is currently required on most imported products as a condition of entry into this country. This scheme avoids the problem of lack of jurisdiction over U.S. producers, complies with international trade norms, and minimizes the regulatory burden caused by the program.
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> First, the regulatory burden is significantly reduced by the Presumption of U.S. Origin Rule by eliminating a large number of affected entities. U.S. producers are a whole category of entities left untouched, except for the few that import young animals to grow for later sale. Many small processors, packers and other handlers would be *de facto* exempt because they do not engage in the trade of imported product (though statistics are not available to quantify this number).
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> Second, the problem of lack of jurisdiction over U.S. producers is eliminated because this regime does not rely upon the producer as the trigger point to input the first information as to country of origin that follows the product to the consumer. Rather, the trigger point relied upon is the passage of covered commodity over the border, through customs. The USDA acknowledged in the Voluntary Guidelines that several current federal laws require most imports, including food items, to bear labels or other information designating the country of origin.
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> Third, the Presumption of U.S. Origin Rule complies with international trade rules. The relevant rule arises from the membership of the United States in the World Trade Organization (WTO). Though some have argued that a Presumption of U.S. Origin Rule would violate the general proposition that a WTO member must afford the same treatment to foreign goods that it does to domestic product, Article IX of the General Agreement on Tariffs and Trade (GATT) allows member nations to require marks of origin on goods imported from any other WTO Member. (citations omitted)[17]

USDA has refused to release cattle producers from the unnecessary burden of maintaining origin records even though adopting the presumption of domestic origin methodology that relies exclusively on the meatpacker to initiate origin claims is the least burdensome, least costly and most efficient means of ascertaining the origins of live cattle, including identification of the country where each production step occurred. Instead, USDA's final COOL rule allows

[16] Country of Origin Labeling: A Legal and Economic Analysis, J. VanSickle, R. McEowen, N. Harl, R. Taylor, and J. Connor, International Agricultural Trade and Policy Center, University of Florida, PBTC 03-5, May 2003, at 6, attached hereto as Exhibit 8.
[17] *Id*, at 8.

producers to provide producer affidavits to meatpackers (and authorizes meatpackers to require such affidavits from producers) based on a presumption of domestic origin methodology.[18] Unfortunately, however, USDA appears to not recognize that requiring producers to generate affidavits based on a presumption of domestic origin creates an inessential redundancy that adds unnecessary costs and complexity to COOL implementation that could be avoided completely if the meatpackers were required to initiate origin claims as Congress had intended.

Evidence supports R-CALF USA's contention that USDA's purpose in unnecessarily requiring live cattle producers to provide origin-related records to meatpackers is to purposefully add costs and complexity to COOL regulations in an effort to generate opposition against the COOL statute. As an evidentiary example that USDA was motivated to derail COOL, the former Deputy Under Secretary for USDA's Marketing and Regulatory Programs, Dr. Charles "Chuck" Lambert, told Congress during the COOL rulemaking process:

> Mr. Chairman, as you may know, the Office of Management and Budget's Statement of Administration Policy on S.1731, the *Agriculture, Conservation, and Rural Enhancement Act of 2001*, found the provision requiring mandatory country of origin labeling highly objectionable. The Administration's position and the reasons for that position have not changed. We feel these new requirements will not have a positive effect overall and that the unintended consequences on producers and the distribution chain could be significant.[19]

With such a documented motive to derail COOL, it is manifest that USDA also has both the means and opportunity to generate opposition to derail COOL through its action of promulgating unnecessarily costly and complex rules that effectively undermine COOL by masking the true origins of meat derived exclusively from animals born, raised and slaughtered in the United States and through its inaction reflected by its failure to timely correct inessential redundancies and provisions that undermine the fundamental purpose of COOL.

Indeed, it is for that very reason, *i.e.*, USDA's failure to timely correct inessential redundancies and provisions that have long undermined the fundamental purpose of COOL, and for that reason alone, that USDA has even proposed its March 12, 2013 proposed COOL rule.[20] USDA's inaction had welcomed, if not facilitated, Canada's and Mexico's WTO COOL complaints that resulted in a WTO finding that the recordkeeping burden on upstream cattle producers was superfluous based on the very limited amount of information actually conveyed to consumers via

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[18] *See, e.g.*, 7 CFR § 60.500 (b)(1) "Producer affidavits shall also be considered acceptable records that suppliers may utilize to initiate origin claims, provided it is made by someone having first-hand knowledge of the origin of the covered commodity and identifies the covered commodity unique to the transaction. In the case of cattle, producer affidavits may be based on a visual inspection of the animal to verify its origin. If no markings are found that would indicate that the animal is of foreign origin (i.e., ''CAN'' or ''M''), the animal may be considered to be of U.S. origin."

[19] Statement of Dr. Charles "Chuck" Lambert, Deputy Under Secretary for Marketing and Regulatory Programs, U.S. Department of Agriculture, before the House Committee on Agriculture, June 26, 2003, attached hereto as Exhibit 9.

[20] *See* 78 Fed. Reg., 15,645 (USDA states it initiated this rulemaking as a result of the WTO's action that gave the U.S. until May 23, 2013 to bring COOL into compliance with the WTO's ruling.).

origin labels.[21] Further, the WTO found that USDA's authorization to allow meatpackers to label exclusively U.S. product with a mixed-origin label when foreign product is commingled during the packers' production day resulted in the communication of inaccurate information to consumers.[22]

USDA's long-term recalcitrance to Congress', R-CALF USA's, and other group's requests to correct the obvious deficiencies in the COOL regulations have now resulted in those deficiencies being highlighted by foreign nationals seated by the WTO and who are now threatening the U.S. with sanctions.

II. PROPRIETY OF THE PROPOSED RULE

As stated above, R-CALF USA believes USDA is exceedingly dilatory in its offering of the proposed COOL rule and further believes the proposed COOL rule is absolutely necessary to finally correct at least some of the fundamental flaws and deficiencies manifest in current COOL regulations. However, R-CALF USA has specific suggestions for improving the proposed COOL rule and discussed below.

A. The Proposed COOL Rule Appropriately Disallows Mixed Labels for USA Meat

The most important provision in the proposed COOL rule is the elimination of the loophole that has allowed U.S. meatpackers to mislabel meat derived from animals that are exclusively born, raised and slaughtered in the United States with a mixed label if the meatpacker comingles foreign product with domestic product during a production day.

More specifically, R-CALF USA fully supports the provision in the proposed COOL rule that eliminates the allowance of any commingling of muscle cut covered commodities of different origins and encourages USDA to adopt this provision as quickly as possible and without change.

B. The Proposed COOL Rule Solves the Challenge of Disproportionate Upstream Recordkeeping Compared to Downstream Information Conveyance but Additional Remedies Are Warranted that Would Further Reduce Costs and Provide Alternatives

The proposed COOL rule effectively resolves the criticism leveled by the WTO tribunal that current COOL regulations require more detailed recordkeeping from upstream cattle producers

[21] *See* Appellate Body Report, United States – Certain Country of Origin Labelling (COOL) Requirements, WT/DS384/AB/R, WT/DS386/AB/R, adopted 23 July 2012, at ¶ 349 ("In sum, our examination of the COOL measure under Article 2.1 reveals that its recordkeeping and verification requirements impose a disproportionate burden on upstream producers and processors, because the level of information conveyed to consumers through the mandatory labelling requirements is far less detailed and accurate than the information required to be tracked and transmitted by these producers and processors."), attached hereto as Exhibit 10.

[22] *See id.*, at ¶ 343 ("Furthermore, due to the additional labeling flexibilities allowed for commingled meat, a retail label may indicate that meat is of mixed origin when in fact it is of exclusively US origin, or that it has three countries of origin when in fact it has only one or two." (citations omitted)).

than is ultimately transmitted to consumers through origin labels.[23] The proposed COOL rule accomplishes this not be reducing the recordkeeping requirements imposed on upstream producers, but rather, by requiring more information to be transmitted to consumers through origin labels. Specifically, the proposed COOL rule would require labels to specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation.

While R-CALF USA supports this change, it believes additional revisions are warranted that would lower the overall cost of COOL compliance, eliminate inessential redundancy's, and reduce burdens on upstream cattle suppliers.

Specifically, R-CALF USA encourages USDA, when it finalizes the proposed COOL rule, to eliminate the present regulatory burden on U.S. cattle producers to provide producer affidavits to meatpackers that attest to the origins of live cattle. As was discussed in greater detail above in Section I. C., R-CALF USA encourages USDA to modify its regulation at 7 CFR § 60.500 (b)(1) that allows producers to make origin designations based on a presumption of domestic origin methodology by exclusively authorizing meatpackers to initiate origin designations on their own based on the same presumption of domestic origin methodology.

Given that the aforementioned regulation already authorizes meatpackers to initiate origin claims based on the presences and/or absence of markings or other devices, which also is based in whole or in part on a presumption of domestic origin methodology;[24] and, given that producers already are authorized to initiate origin claims based exclusively on a visual inspection of the animal to verify its origin ("[i]f no markings are found that would indicate that the animal is of foreign origin (i.e., "CAN" or "M'), the animal may be considered to be of U.S. origin"[25]), there is no discernable reason why meatpackers cannot be exclusively relied on to make the same visual inspection of the animal to verify its origin when the animal is presented for slaughter.

The largest meatpacker in the United States, Tyson, had requested that USDA simplify the process of livestock identification by allowing producers to visually identify origins based on import brands.[26] R-CALF USA now urges USDA to further simplify the processes of origin identification for cattle by eliminating producer affidavits from the regulations and exclusively authorizing meatpackers to initiate all origin claims for cattle based on import brands.

Because the proposed COOL rule does not revise 7 CFR § 60.500 (b)(1), it is presumed that the process of making origin claims based on a visual inspection for import markings is sufficient for making accurate claims as to what country each of the production steps of born, raising and

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[23] *See supra*, at 8, fn. 21.
[24] *See* 7 CFR § 60.500 (b)(1) ("[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. 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.")
[25] 7 CFR § 60.500 (b)(1).
[26] *See* Letter from Tyson to cattle suppliers, Oct. 14, 2008, attached hereto as Exhibit 11.

slaughter occurred. We agree. And, that is why our suggestion is not only compatible with the proposed COOL rule, but also, it compliments the proposed COOL rule because it would further reduce costs, recordkeeping requirements, and burdens on upstream cattle suppliers while simultaneously improving the efficiency of COOL implementation.

It is important to note that removing the burden on cattle producers to provide origin-related records, *i.e.*, producer affidavits, to meatpackers would itself address the WTO's criticism regarding disproportionate recordkeeping compared to the detail of information conveyed to consumers. In other words, the WTO's criticism would be addressed by actually reducing the amount of recordkeeping required from upstream cattle suppliers. This may be an important consideration should USDA, for whatever reason, decide that the proposed COOL rule must be materially modified.

C. The Proposed COOL Rule Should Include Additional Revisions to Address Other Widely Known Deficiencies in Current COOL Regulations.

The joint U.S. Senate letters discussed in Section I. B. above as well as the letter discussed therein written by Secretary Vilsack identify several needed changes to the proposed COOL rule that USDA has omitted. For example, both U.S. Senators and Secretary Vilsack highlighted the need to reverse current regulations that exempt covered commodities from labeling requirements when they undergo minimal processing such as curing, smoking, broiling, grilling, or steaming.[27] In addition both U.S. Senators and Secretary Vilsack highlighted the need to modify current regulations concerning ground beef. Secretary Vilsack specifically stated:

> The language in the Final Rule allows a label for ground meat product to bear the name of a country, even if product from that country was not present in a processor's inventory, for up to 60 days. This provision allows for labels to be used in a way that does not clearly indicate the product's country of origin. Reducing the time allowance to ten days would limit the amount of product with these labels and would enhance the credibility of the label.[28]

On August 22, 2012, R-CALF USA made a timely request that USDA initiate a rulemaking to, *inter alia*, address the current COOL regulation's deficiencies concerning the broad exemption for processed food items and the labeling of ground beef.[29]

R-CALF USA believes USDA must revise its current regulations to address these two glaring deficiencies if it is to achieve Congress' intent regarding COOL. R-CALF USA hereby requests that USDA include in its final rule a provision to disallow countries to be listed on a ground meat label if meat from such countries is not actually included in the ground beef product and a provision to eliminate the exemption for covered commodities that undergo minor processing from labeling requirements.

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[27] *See supra*, at 3-4, Exhibits 4 and 6.
[28] *Id.*, at 4, Exhibit 6
[29] *See* R-CALF USA letter to USDA and USTR, Aug. 22, 2012, attached hereto as Exhibit 12.

III. CONCLUSION

R-CALF USA appreciates this opportunity to comment on USDA's proposed COOL Rule and strongly encourages USDA to publish a final rule as quickly as possible that contains each of the following provisions:

1. The provision in the proposed COOL rule that eliminates the allowance of any commingling of muscle cut covered commodities of different origins.
2. The provision in the proposed COOL rule that requires labels to list the country where each of the production steps of born raising and slaughter occurred.
3. A new provision to eliminate the current requirement that cattle producers provide affidavits to meatpackers and, instead, to require meatpackers to initiate all origin claims for cattle based on their visual inspection of cattle presented for slaughter to determine the presence or absence of import markings or devices.
4. A provision to disallow countries to be listed on a ground meat label if meat from such countries is not actually included in the ground beef product.
5. A provision to eliminate the exemption for covered commodities that undergo minor processing from labeling requirements.
6. Though R-CALF USA provides no discussion on the issue of amending the definition for "retailer," we nevertheless support the provision in the proposed COOL rule to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA).

Sincerely,

Bill Bullard, CEO

Exhibits: 1-12