UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| American Meat Institute, *et al.* | § | |
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| *Plaintiffs,* | § | |
| | § | |
| v. | § | Civil Action No. 13-cv-1033 (KBJ) |
| | § | |
| United States Department of Agriculture, *et al.* | § | |
| | § | |
| *Defendants.* | § | |

**DECLARATION OF PATRICIA LOVERA**

I, Patricia Lovera declare as follows:

1. I am the current Assistant Director for Food & Water Watch, Inc. ("FWW").

2. Prior to this position with the organization, I worked as the Deputy Director with another consumer organization, Public Citizen, for its Critical Mass Energy and Environment Program ("CMEP"). In November 2005 this program left Public Citizen and became FWW.

3. FWW has over 52,896 members from 50 states. FWW includes in its membership any person that contributes $20 or more during their lifetime.

4. FWW has worked on the subject of the above-captioned lawsuit, Country of Origin Labeling ("COOL"), since its inception as an organization in November 2005. Prior to this, CMEP also worked on COOL. Attached are true and accurate copies of all of the comments that FWW submitted to the U.S. Department of Agriculture ("USDA"). (Exh. A.)

4. As can been seen from these comments, FWW has been intimately involved in the passage of COOL law and implementation of regulations, as both are germane to FWW's organizational mission. FWW is a national, non-profit, public interest consumer advocacy organization with its headquarters in Washington, D.C. One of the organization's primary

purposes is to educate the public regarding food systems that guarantee safe, wholesome food produced in a sustainable manner. The organization works to promote the practices and policies that will result in sustainable and secure food systems that provide healthy food for consumers and an economically viable living for family farmers and rural communities.

5. Part and parcel to this mission has been advocating for COOL, which provides consumers with vital information that they need to make informed choices about where their food is from, as well as giving producers an opportunity to distinguish their products in the increasingly international marketplace. (Exh. A-1.) I believe that FWW members rely on COOL to make their purchasing decisions. In fact, a 2007 Consumers Union poll found that 92 percent of consumers supported country of origin labeling. (Exh. A-1.) A 2005 study found that meat produced in the United States was a very desirable marketing attribute, tied with price and ahead of visual presentation, leanness, tenderness assurance, nutritional value, hormone-free, humane production, and premium brand. (Exh. A-14.)

6. Consumers benefit from labeled foods because they can exercise their preference for domestically produced meats and produce, whether these preferences are based on concerns about the safety of imported foods or the desire to support domestic farmers. (Exh. A-13.) Moreover, consumers increase their economic utility by being able to identify and consume U.S.-labeled beef because most U.S. consumers perceive domestically produced beef as safer than imports. (Exh. A-14.) Labels not only increase consumer confidence in the food supply and the quality of the food that they purchase, they provide consumers with information in the case of market failure, combat fraudulent labeling, and help investigators trace-back foodborne illness outbreaks. (Exh. A-15.)

7. When COOL was considered by Congress, FWW supported the language of House Bill, H.R. 2419 (Exh. A-1.), which was passed in the U.S. House of Representatives in July 2007 and adopted as the federal law over presidential veto in May 2008. FWW supported how the law addressed products from animals that spent time in multiple countries and so-called "commingled" or mixed products because the language provided a workable solution for complex labeling situations while providing consumers with vital information about the food that they purchase. (*Id.*)

8. FWW was worried about USDA's 2008 interim rules and expressed concerns that they opened the door to allowing meatpackers to circumvent the intent of COOL. FWW's worries worsened when USDA's 2009 final rule expressly allowed meat from U.S.-origin animals to be mixed with meat from livestock born in another country but raised and slaughtered in the United States and the resulting labels to state "Product of the U.S. and Country X" (and vice versa), thereby causing consumer confusion and deception. (Exh. A-15.) FWW opposed these "commingling" provisions when they were expressly incorporated into the rules that were finalized only days before the changing of the administration in January 2009. (Exh. A-15-16.)

9. On the other hand, FWW supported the USDA's most recent changes to the rules in 2013, after the WTO Appellate Body ruling, which closed these loopholes: 1) preventing commingling; and 2) requiring each significant production step to be clearly displayed on meat labels: where the livestock was born, where it was raised, and where it was slaughtered. (*Id.*) As expressed in FWW's comments to the agency, these two changes significantly improve the quality and clarity of the COOL labels and redressed the information disparity identified by the WTO between the informational recordkeeping requirements on producers, processors, distributors and retailers, and the information that is provided to consumers. (*Id.*)

10. FWW has spent years of staff time dedicated to supporting strong COOL labeling laws, including the organization's efforts to educate the public and USDA. In addition to the comments that we have submitted to the agency, we have attempted to educate the public through regular blogs, media alerts, factsheets, and reports. We have also spent extensive organizational resources communicating to and working with members of Congress, in the form of letters, phone calls, and meetings.

11. Were the 2013 COOL rules to be vacated by this Court, all of the organization's time and resources spent towards passing and implementing a strong COOL law will be wasted, since what will remain is the 2009 rulemaking scheme that did not accurately convey information to consumers.

12. This would impact the rest of FWW's work. FWW works extensively advocating for policies that ensure safe imported meat and poultry. For example, FWW has pressed USDA to immediately stop a pilot program seeking to eliminate border inspection of meat products from Canada. We have urged the agency to revoke the United States' equivalency agreement with Australia because the latter's self-policed-inspection system has led to an increase in import rejections of unsafe Australian meat.

13. FWW also advocates for other policies that protect consumers from the meat of imported cattle. For example, FWW has fought hard against USDA's 2007 change in policy that allowed the import of Canadian cattle that are older than 30 months of age and are at higher risk of Bovine Spongiform Encephalopathy ("BSE"), also known as Mad Cow disease, into the United States. Without mandatory country of labeling in place at that time, consumers had no way of knowing that they were purchasing meat from imported Canadian cattle, and FWW joined other organizations in suing the USDA for lifting its ban on the import of these cattle.

The result of the lawsuit was a federal court order requiring the agency to reexamine its lifting of the ban. But because the court did not stay the final rule, Canada is still able to import such cattle into the United States to date. With the new 2013 COOL rules, consumers will finally be able to determine whether the meat product that they are consuming is born or raised in Canada – a very important measure, given that Canada's most recent and nineteenth BSE case was only a little more than two years ago. Should these COOL rules be vacated, however, this safeguard will be eliminated. FWW will be again forced to increase the resources that it already spends on advocating for tough measures to prevent the import of disease-exposed Canadian cattle and educating consumers about the dangers that the products from these cattle pose, as well as how to use COOL labels that are more confusing than the labeling that would have been provided under the 2013 rules.

14. Likewise, FWW advocates against concentration in the meat marketplace, specifically among meatpackers. One of COOL's many benefits is that it attempts to limit one of the ways that meatpackers have been able to grow in economic power vis-à-vis cattle producers. Prior to COOL, meatpackers were able to pay less for imported than local cattle, but have been able to commingle product and prey on consumer confusion regarding labels to sell meat from imported animals at higher prices than they would otherwise warrant. The 2013 rules will likely dampen this effect, as consumers will know what countries the product is actually from, notwithstanding that it bears a USDA inspection and grade label. Were the 2013 rules to be struck down, FWW would have to spend even more resources than it already does on measures that would limit the consolidation on the meatpacking sector of the U.S. economy. Additionally, if the 2013 rules were struck down, FWW would have to spend more resources explaining to

consumers how to use COOL labels that are less clear than the labeling offered under the 2013 rules.

15. In sum, FWW has worked on strong COOL provisions because it is germane to its central mission. The 2013 COOL rules are drastic improvements on past rules and serve as vital consumer information and consumer-safety provisions. Were the Court to remand them, FWW would be forced to spend time and resources advocating for their revision in a manner that would best protect consumers (if possible). Their elimination would also force the organization to spend more time and resources than it already does on policies that promote food safety from imported meat and meatpacker competition. A remand or elimination of the 2013 COOL rules thus directly and indirectly harms FWW's interests in protecting consumers from unfair, deceptive, and unsafe practices within the food supply.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22 day of August 2013.

Patricia Lovera

# Exhibit A

August 20, 2007

Country of Origin Labeling Program
Room 2607-S
Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington DC 20250

RE: Docket No. AMS-LS-06-0081; LS-04-04

To Whom It May Concern:

Food & Water Watch is pleased to submit these comments on the proposed rule for mandatory country of origin labeling for beef, lamb, pork, perishable agricultural commodities, and peanuts and the interim final rule for mandatory country of origin labeling for fish and shellfish (Docket No. AMS-LS-06-0081; LS-04-04). Food & Water Watch is a non-profit consumer advocacy organization that has long been in support of mandatory country of origin labeling.

Food & Water Watch applauded the inclusion of country of origin labeling (COOL) in the 2002 Farm Bill but we have been frustrated and disappointed with the series of delays in its implementation and the limits applied to labeling for seafood. We believe that labeling provides consumers with vital information they need to make informed choices about where their food is from and how it was raised, in addition to giving producers an opportunity to distinguish their products in an increasingly international marketplace. Consumer support for COOL has been strong for years, with public demand for information about where food is from increasing in the wake of recent scandals about the safety of imported food.

During the 60 day comment period established by the June 20, 2007 Federal Register notice, the House of Representatives adopted H.R. 2419, their version of the 2007 Farm Bill, that included language on COOL. The House language clarifies the intent of the 2002 Farm Bill provision that established the labeling program and addresses many of the questions posed in the Federal Register notice. The language in H.R. 2419 has support from a wide range of stakeholders and we urge AMS to closely follow the bill and report language as the agency proceeds with implementing COOL.

We have the following comments on the specific questions posed in the Federal Register notice.

*Processed Food Items*

The interim final rule on fish and seafood established an inappropriately large list of processed food items, improperly exempting many products from labeling. The classification of simple procedures such as canning and cooking as creating processed items has resulted in an extremely large amount of fish and seafood being exempt from labeling. This does a disservice to consumers who are anxious to get information about the origin and method of production (farm-raised or wild caught) of *all* of the seafood they buy, not just products that happen to be minimally handled. Whether fish is cooked, canned, smoked, frozen, or raw, consumers deserve to know where it comes from and mandatory labeling should apply.

In addition to re-examining and limiting the list of processes that exempt fish and seafood from labeling, we urge AMS not to make the same mistake when establishing the definition of processing for beef, lamb, pork, perishable agricultural commodities, and peanuts. We urge AMS to require labeling of all covered commodities unless they are substantially altered from their original form – which we believe would not result in the excessive exemptions found in the interim final rule for fish and seafood.

*Country of Origin Notification*

The Federal Register notice requests comment on the applicability of the requirements of the interim final rule on fish and seafood for beef, lamb, pork, perishable agricultural commodities and peanuts. We urge AMS to follow the guidance offered by H.R. 2419 on this issue. The House language spells out how to deal with products from animals that spent time in multiple countries or blended products that contain products from more than one country. The language from H.R. 2419 offers a workable solution for more complex labeling situations that still gives consumers vital information about food they purchase.

*Recordkeeping Requirements*

The COOL language in H.R. 2419 addresses many of the questions about recordkeeping posed in the Federal Register notice. H.R. 2419 details what types of records would be required to comply with the labeling program and specifies that producers are not required to keep additional records for the purposes of an audit. We urge AMS to follow the language and intent of H.R. 2419 to ensure that producers can comply with COOL without having to establish expensive new recordkeeping systems. Throughout the rulemaking process that has taken place since the passage of the 2002 Farm Bill, many producer organizations have suggested practical, inexpensive recordkeeping methods using information that producers already keep. We urge AMS to incorporate these suggestions as well as the language of H.R. 2419 to ensure that a mandatory labeling program for beef, lamb, pork, perishable agricultural commodities, and peanuts is not burdensome on producers.

*Timeframes for Products Produced Prior to the Implementation Date to Clear the Channels of Commerce*

This issue was also addressed by H.R. 2419, which set a date of January 1, 2008 as the point at which commodities would be covered when mandatory labeling goes into effect in September 30, 2008. We urge AMS to proceed with the implementation of mandatory labeling with this timeframe in mind to ensure a smooth transition to a mandatory labeling program.

Finally, we urge AMS to ensure that mandatory COOL for beef, lamb, pork, perishable agricultural commodities, and peanuts is implemented by September 30, 2008. Consumers have waited long enough to receive information about where their food comes from and further delays in providing country of origin labeling is unacceptable.

Sincerely,

Wenonah Hauter
Executive Director

Consumer Federation of America

food&waterwatch

September 25, 2008

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

Dear Secretary Schafer:

Consumer Federation of America[1] and Food & Water Watch[2] are pleased that the U.S. Department of Agriculture will soon implement regulations for a mandatory country of origin labeling (COOL) program. Consumers have repeatedly indicated their support for mandatory COOL, yet have had to wait years for its implementation because of undue delays. The interim final rule is a good start to assure that consumers are provided important information about the source of their food. However, immediate improvements are necessary for this program to benefit consumers the way Congress intended.

We understand that members of Congress, as well as producer groups and farm groups, have communicated to you several of their concerns about the interim final rule and we are sympathetic to those concerns. You recently were quoted in a speech to the National Association of State Departments of Agriculture as recognizing the importance of some of those concerns and promising they would be addressed. We would like to highlight a concern of particular importance to consumers; namely the overly broad definition AMS has constructed for a "processed food item."

The definition of a "processed food item" in the interim final rule reads as follows:

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[1] CFA is a non-profit association of more than 300 organizations with a combined membership of over 50 million Americans nationwide. CFA was established in 1968 to advance the consumer interest through research, education and advocacy.

[2] Food & Water Watch is a nonprofit consumer rights organization based in Washington, D.C. that challenges the corporate control and abuse of our food and water resources.
Visit www.foodandwaterwatch.org

> [A] retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component, except the addition of a component that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item.

Examples of specific processing that would result in a "change of character" of the covered commodity include cooking, curing, smoking, roasting and restructuring.

This definition is entirely too broad and runs contrary to consumer expectation and Congressional intent. As a result of this definition, a significant portion of food products will be exempt from COOL requirements:

- 95% of peanuts, pecans and macadamia nuts;
- Over 60% of pork;
- A majority of frozen vegetables; and
- Multi-ingredient fresh produce items, such as salad mixes with carrots.

Congress' intent in requiring country of origin labeling was that the designated commodities would be covered. Consumer expectation is that the designated commodities will be labeled in the supermarket. Consumers do not expect to find, and Congress did not intend that, some products are covered while others are not because of an unnecessarily broad definition of processing.

According to the interim final rule almost all peanuts, pecans and macadamia nuts that consumers purchase will be exempt from the rule because AMS defines "roasting" as a form of processing. This is inappropriate and means that only green or raw nuts will be covered. Yet consumers do not regularly consume raw or green nuts. Rather, roasting represents a further step in the preparation of that food item for consumption and does not substantially alter the food from its original state. Roasting makes the nuts palatable and should not result in the exemption of almost all peanuts, pecans and macadamia nuts from country of origin labeling. The same principle should be applied to pork products that are cured or smoked, as these processes represent further preparation steps and do not substantially alter the product itself.

Similarly, the determination that combining two or more covered commodities constitutes "processing" is illogical. Consumers are likely to question why frozen peas will be labeled and frozen carrots will be labeled, but frozen peas and carrots mixed together will not be labeled. The same applies to ready-to-eat produce mixes that contain carrots or other covered commodities. In the proposed COOL rule, AMS changed its definition regarding labeling for ground beef because it stated "Consumers likely would have been confused as to why certain ground beef products were labeled with country of origin while others were not." That same logic should apply in this case. If commodities are covered and are not processed in a manner which substantially changes their character, then combining those commodities should not be grounds for exemption from the labeling rule.

We strongly urge you to significantly narrow AMS' definition of "processed food item" to address the concerns we have raised. Roasting, curing, smoking and other processes that make a raw commodity palatable for consumers should not result in those commodities being exempted from the COOL regulations. AMS should revise its definition of processing so that those commodities are covered under the law. In addition, AMS should revise the rule so that if covered commodities are combined, the resulting food item is still covered under the law. We appreciate your attention to these concerns.

Sincerely,

Chris Waldrop
Director, Food Policy Institute
Consumer Federation of America

Patty Lovera
Assistant Director
Food & Water Watch

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September 30, 2008

Country of Origin Labeling Program
Room 2607-S
Agricultural Marketing Service
USDA
STOP 0254
1400 Independence Avenue SW
Washington, DC 20250-0254

Docket # AMS-LS-07-0081

To Whom It May Concern:

Food & Water Watch is pleased to submit these comments on the interim final rule for mandatory country of origin labeling for beef, lamb, chicken, goat, pork, perishable agricultural commodities, macadamia nuts, pecans, ginseng, and peanuts (Docket # AMS-LS-07-0081). Food & Water Watch is a non-profit consumer organization that has advocated for mandatory country of origin labeling for many years.

Our members and supporters across the country are strong supporters of country of origin labeling (COOL) and applauded the inclusion of country of origin labeling in the 2002 Farm Bill. But they have been frustrated and disappointed with the series of delays in its implementation, as well as the unnecessary limitations applied to the implementation of seafood COOL. Food & Water Watch believes that labeling provides consumers with vital information they need to make informed choices about where their food is from and how it was raised, in addition to giving producers an opportunity to distinguish their products in an increasingly international marketplace. Consumer support for COOL has been strong for years, with public demand for information about where food is from increasing in the wake of recent scandals about the safety of imported food.

We were pleased to see the USDA release the interim final rule for COOL in time for the implementation date of September 30, 2008 and we were happy with several aspects of the rule which followed the clarifying language included in the 2008 Farm Bill. Specifically, we were pleased to see the interim final rule follow the intent and language of the 2008 Farm Bill on labeling for ground meat products, the inclusion of the "born, raised, and slaughtered" standard for "Product of the U.S." meat labels, and the adjustments made to recordkeeping requirements, including allowing the use of normal business records, reducing the length of time records must be kept, and allowing

participation in state or regional promotion programs to qualify as adequate recordkeeping for U.S. origin labels.

But unfortunately, there are several aspects of the interim final rule that are inadequate and will unnecessarily limit the usefulness of COOL for consumers who are seeking information about as much food as possible.

*Definition of "Processed" Commodities*

The interim final rule includes the following definition of "processed" food item:

> [A] retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component, except the addition of a component that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item.

Food & Water Watch believes that this definition is inappropriately broad and will result in too large of a quantity of food being exempt from labeling. This is contrary to what consumers expect from this labeling program as well as the intent of Congress when they included COOL in the last two Farm Bills. The broad definition amounts to a loophole in the rule that leaves large quantities of the commodities covered by the law exempt from labeling. These exemptions include:

- 95 percent of peanuts, pecans, and macadamia nuts;

- over 60 percent of pork;

- the majority of frozen vegetables; and

- the increasingly popular category of multi-ingredient fresh produce items such as salad mixes.

These major exemptions do a disservice to consumers who are anxious to know where their food is from – and they are unnecessary. The agency's position that simple procedures such as roasting, curing, and smoking classify a product as processed, and therefore exempt from labeling requirements, runs counter to the agency's own statement that the processing definition does not include "the addition of a component that enhances or represents a further step in the preparation of the product for consumption." Steps such as roasting, curing, or smoking are taken to prepare foods like nuts or pork for consumption. These steps do not significantly alter the product, make it take on a different character, or make it untraceable. The act of roasting nuts or curing muscle cuts of pork does not significantly alter the product from its original form – nor is it such a complicated process that food companies can't keep track of the origin of these products.

It is therefore unacceptable for these basic practices to be used as the trigger for classifying covered commodities as processed.

Further, we are also concerned about AMS' decision to make the addition of one other ingredient trigger the processed definition. If commingled products, such as a bag of frozen peas that contains peas from more than one source, have to be labeled with their country of origin, a bag that contains two covered commodities such as peas and carrots should also be labeled. Combining two ingredients does not change the character of these ingredients or make them unrecognizable or untraceable – and they should therefore be covered by the labeling requirement.

Food & Water Watch urges AMS to significantly narrow the definition of "processed food item" contained in the interim final rule. Roasting, curing, smoking and other steps that make raw commodities more suitable for consumer use should not be the criteria for categorizing these commodities as processed and therefore exempt from labeling. In addition, AMS should revise the provision in the processing definition that states that combining covered commodities meets the definition of processed. If covered commodities are combined and are still recognizable, they should be required to be labeled. Consumers deserve to know where their food is from whether it is fresh or frozen, raw or smoked, and sold alone or combined with another covered commodity.

*Multi-Country Labels for Muscle Cuts of Meat*

One of the driving motivations for both consumers and producers who for years have advocated for mandatory COOL has been their desire to see meat products that are labeled as products of the United States. So it is extremely disappointing that the interim final rule seems to have provided a loophole for meatpackers who wish to use a more generic North American label or mix meat from animals born, raised and slaughtered in the United States with meat from animals of other origin under a more generic multiple country label.

The interim final rule states:

> "if an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter, the origin of the resulting meat products derived from that animal may be designated as 'Product of the United States, Country X and/or (as applicable) Country Y' where Country X and Country Y represent the actual or possible countries of foreign origin."

This language opens the door for meatpackers to mix U.S. origin animals in with imported animals and reduce the amount of U.S. origin meat available to consumers. We urge AMS to revise this language in the final rule. We believe this section runs contrary to what Congress intended and to what consumers and producers expect from this labeling program.

Secretary Schafer recently told the National Association of State Departments of Agriculture that he supports a U.S. beef label. We hope that this support translates to a directive to AMS to revise this language – and agency guidance given to the meat industry – to ensure that U.S. origin animals are not mixed with meat from animals of other origins to avoid using a U.S. label. Congress, consumers, and producers have waited too long for country of origin labeling to have the USDA create loopholes for the meatpacking industry to withhold valuable information about meat that could qualify as a product of the United States.

*60 Day Inventory Allowance*

An additional provision that concerns us is the provision that "when a raw material from a specific origin is not in a processor's inventory for more than 60 days, the country shall no longer be included as a possible country of origin." This seems to allow meatpackers to take up to 60 days to adjust their labels to remove a country that is no longer a source of their products. This seems excessively long and could lead to misleading labeling. We believe this time period should be shortened in the final rule.

*Cost Benefit Analysis*

The AMS' process for calculating the cost and benefits of implementing mandatory COOL has been controversial in the past and this interim final rule contains bad assumptions and biases that are similar to the agency's previous attempts. Rather than rehash the widespread criticism of the agency's previous attempts to estimate the costs and benefits of COOL, we will simply state that the agency has once again failed miserably when it comes to calculating benefits offered to consumers by mandatory COOL.

The interim final rule states repeatedly that the benefits to consumers of mandatory COOL are so small that they cannot be quantified. We disagree with this assessment and point to the agency not only to public support for COOL documented in comments to the agency on previous rulemakings, but also public communications to Congress when they were deliberating on the Farm Bill and various appropriations bills that determined COOL's implementation schedule and numerous polls that show consistent, widespread public support for this labeling program. But in addition to these qualitative examples of public support and consumer interest in COOL, there are studies of consumers' willingness to pay for foods labeled with country of origin information. We are aware that AMS continues to dismiss all of this evidence of benefits to consumers. But we are troubled by the agency's willingness to discard potentially useful pieces of information when it comes to calculating the benefits of this rule, while it seems quite willing to rely on extrapolations and weakly justified calculations when it comes to calculating the cost of the rule. We believe the lopsided nature of the interim final rule's cost benefit assessment is just the latest example of AMS' hostility to this labeling program.

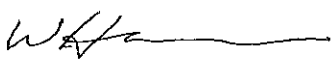
*Labeling for Remotely Purchased Products*

We believe that the interim final rule provision on remotely purchased products is too weak because it allows country of origin information to be disclosed either on the sales vehicle *or* at the time the product is delivered to the consumer. We believe that for origin information to be of use to consumers, it must be disclosed at the time they are making their purchasing decisions – which means the interim final rule should not allow the disclosure of this information at the time of delivery. The time of delivery is too late, because the product has already been purchased. We urge AMS to refine this language to require origin information to be disclosed on the sales vehicle (internet site or catalog.)

*Conclusion*

Consumers have waited far too long for mandatory country of origin labeling and we are happy to see this interim final rule going into effect at last. But we urge AMS to revisit the areas we have identified in this comment so that labeling is as accurate as possible and consumers receive this vital information for as much of their food as possible.

Sincerely,



Executive Director
Food & Water Watch

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April 11, 2013

Ms. Julie Henderson
Director, COOL Division
Livestock, Poultry and Seed Program
Agricultural Marketing Service
U.S. Department of Agriculture
STOP 0126
1400 Independence Avenue, SW
Room 2620-S
Washington, DC 20250-0216

Re: Docket No. AMS-LS-13-0004/RIN 0581-AD29

Dear Ms. Henderson:

Food & Water Watch respectfully submits these comments on the proposed U.S. Department of Agriculture (USDA) rule for 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. Food & Water Watch is a non-profit consumer organization that has advocated for mandatory country of origin labeling for many years.

Food & Water Watch members and supporters have long been strong supporters of country of origin labeling (COOL) and applauded its inclusion in the 2002 and 2008 Farm Bill. The widespread frustration with the extraordinarily long implementation period for COOL was exacerbated by the immediate challenge to COOL at the World Trade Organization in 2008. Food & Water Watch supports the USDA's approach in the proposed rule that addresses the substance of the WTO dispute, protects the integrity of COOL as enacted and ensures that consumers receive clear and more accurate information about the origin of their foods. Food & Water Watch supports applying COOL rules to more foods, including processed, manufactured and mixed food products.

Food & Water Watch believes that straightforward labeling provides consumers with the vital information they need to make informed choices about the source of food and how it was raised. It also gives the hundreds of thousands of livestock producers in the United States the opportunity to distinguish their products in an increasingly global marketplace.

Even since COOL was enacted, there has been a substantially increased consumer demand for knowing where and how their food was produced has increased. Consumers benefit from labeled foods because they can exercise their preference for domestically produced meats and produce. These preferences are based on concerns about the safety of imported foods, the desire to support domestic farmers and an interest in having more information about the foods they feed their families. Continued food safety problems involving imported food, including tens of millions of pounds of imported Canadian ground beef tainted with *E. coli* in 2012, reinforce consumers' desire for more information.

The food and agribusiness industry's opposition to clear COOL labels suggests their message to consumers is "eat what we give you." This approach obfuscates the source of the food in order to conceal the origin and production techniques of food and runs counter to the widespread consumer interest in knowing more about their food, not less. The current COOL rules provide unclear and deceptive information to consumers by muddying the distinctions between imported livestock and animals entirely sourced within the United States.

*Rationale and depth of consumer support for COOL*

There is long-standing and widespread support for the COOL labeling program. A 2007 Consumers Union poll found that 92 percent of consumers supported country of origin labeling.[1] A 2005 study found that meat produced in the United States was a very desirable marketing attribute, tied with price and ahead of visual presentation, leanness, tenderness assurance, nutritional value, hormone-free, humane production, and premium brand.[2]

Even the National Meat Association, a long-time opponent of COOL, recognizes consumer demand for attribute and origin labeling of meat, admits that most meat already has branded attributes on the label and that the future of the market is increased consumer information, not less. At the 2010 Washington, D.C., USDA/U.S. Department of Justice Workshop on Agriculture and Antitrust Enforcement Issues, the CEO of the National Meat Association stated that:

> [B]randed products [are] two-thirds of the marketplace. That's likely to continue to grow. And when I talk about branded products, we're bringing in everything from sustainably to locally produced which was discussed earlier, some of the specialty programs for natural and organic, those are all—are all going to continue and probably grow in the marketplace when we look at demand.[3]

More information provides economic benefits to consumers by allowing them to exercise their right to choose the food they eat. Country of origin labels provide consumers with information, facilitate more informed purchasing decisions and allow the exercise of consumer preferences.[4] Consumers can increase their economic utility by being able to identify and consume U.S.-labeled beef because most U.S. consumers perceive domestically produced beef as safer than imports.[5] Labels can increase consumer confidence in the food supply and the quality of the food

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[1] "Poll: 92 percent want 'country of origin" labels." *Reuters*. July 12, 2007.
[2] Loureiro, Maria L. and Wendy J. Umberger. "Assessing preferences for country-of-origin labeling." *Journal of Agricultural and Applied Economics*. Vol. 37, no. 1. April 2005 at 55.
[3] USDA/U.S. Department of Justice. Transcript. "Workshop on Agriculture and Antitrust Enforcement Issues in Our 21st Century Economy," USDA Jefferson Auditorium, Washington, D.C. December 8, 2010 at 33.
[4] VanSickle, J. et al. University of Florida Institute of Food and Agricultural Sciences. "Country of Origin Labeling: A Legal and Economic Analysis." PBTC 03-5. May 2003 at 12.
[5] Kim, Kar H. et al. "U.S. Consumers' Preference and Willingness to Pay for Country-of-Origin-Labeled Beef Steak and Food Safety Enhancements." Paper presented at the Agricultural & Applied Economics Association's 2011 AAEA & NAREA Joint Annual Meeting. Pittsburgh, PA. July 24-26, 2011 at 7.

they purchase.[6] These consumer confidence benefits can accrue just as a result of having the information available, even if the consumers do not read the labels' information.[7]

Opponents of COOL contend that if there were a legitimate benefit to country of origin labels, the meatpackers, distributers and retailers would respond to these market forces and willingly apply voluntary labels. But voluntary labels are designed to provide benefits to suppliers by providing quality assurance to consumers and improving supply-chain management.[8] Mandatory COOL labels perform functions for consumers that cannot be provided by voluntary labels. Mandatory labels provide consumers with information in the case of market failure, combat fraudulent labeling and help investigators trace-back foodborne illness outbreaks.[9] A 2005 survey found that nearly two-thirds of consumers (60 percent) preferred the country of origin labeling to be administered by a government policy rather than by the companies marketing the meat.[10]

*Proposed USDA Rule improves the clarity of the COOL disclosure*

The current COOL regime provides imperfect information about the origin of meat products in several respects. The proposed rule makes two important improvements to the quality of information provided to consumers on country of origin labels.

First, the proposed labels clearly delineate where animals were born, raised and slaughtered, closing loopholes in the current rules that provided confusing information to consumers. Currently, livestock born in another country but raised and slaughtered in the United States bears labels that read "Product of the U.S. and Country X," which imperfectly transmits the origin of the meat to consumers.[11]

The proposed rule significantly improves the labels by requiring each significant production step to be clearly displayed on meat labels: where the livestock was born, where it was raised and where it was slaughtered. This eliminates the confusion consumers experience in the supermarket when faced with a "Product of the U.S. and Country X." The new labels require each step to be clearly identified: "Born and raised in Country X, Slaughtered in the United States" or "Born in Country X, raised and slaughtered in the United States."[12] Livestock entirely from the United States would bear a "Born, raised and slaughtered in the United States," an improvement over the prior "Product of USA" because it improves consumer confidence in the COOL label.

Second, the current COOL regulatory regime allows meatpackers and processors to commingle livestock born in other countries with livestock born in the United States during a single production day. Meat from livestock commingled during slaughter also bears a vague label

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[6] Umberger, Wendy J. et al. "Country-of-origin labeling of beef products: U.S. consumers perceptions." *Journal of Food Distribution Research.*" Vol. 34, no. 3. November 2003 at 104.
[7] Connor, John M. "The benefits and costs of COOL." *Purdue Agricultural Economics Report.* December 2003 at 2.
[8] Umberger (2003) at 105.
[9] *Ibid.*
[10] Loureiro and Umberger (2005) at 56.
[11] 78 Fed. Reg. 15646. March 12, 2013.
[12] 78 Fed. Reg. 15652. §65.300 (e). March 12, 2013.

reading "Product of Country X and United States."[13] This muddled distinction between the labels for livestock commingled during processing and livestock with multiple-country production steps creates a barrier preventing consumers from truly understanding the source of meat products. The proposed rule eliminates labels for commingled livestock during slaughter and instead require all steps in production to be clearly displayed on the label.[14]

These two changes significantly improve the quality and clarity of the COOL labels. It ensures that consumers can identify the location of each significant production step and eliminates the commingling loophole that significantly diminished the quality of the current labeling regime. These two changes also redress the information disparity identified by the WTO between the informational recordkeeping requirements on producers, processors, distributors and retailers and the information that is provided to consumers. The WTO Appellate Body ruling found that the goal of COOL labels to provide information was a legitimate objective, but that the recordkeeping burden exceeded the disclosure to consumers because of the imperfect and vague information provided to consumers because of the commingling loophole and the lack of providing information on each significant production step.[15] A legal analysis by Stewart & Steward determined that the USDA's approach (improving the clarity of the label and eliminating commingling) would successfully address the issues raised in the WTO dispute (memo attached).[16]

*USDA should close the loopholes for processed meats*

The current COOL regulations exempt too many foods under the definition of "processed" and the proposed rule fails to close this loophole for meat products that have undergone only minor changes and could easily bear a COOL label. Food & Water Watch believes that the definition of processed is overly broad and that USDA should have tightened the application of the processing definition to meat products in the proposed rule.

Congress did not intend for the definition of processing to be so broad that the majority of pork products would not bear a COOL label. The current processing loophole exempts over 60 percent of pork products, a considerable portion of which could bear commonsense COOL labels. Food & Water Watch believes that the processing loophole should be significantly tightened for all categories of covered foods under COOL, but the proposed rule should have made a down payment on this approach by tightening the processing exemption for meat products.

The USDA's processing definition includes simple procedures including roasting, curing and smoking that contradict its own theoretical approach to identify processing steps. The 2008 interim final rule stated that the definition of processing did not include "the addition of a component that enhances or represents a further step in the preparation of the product for

[13] 74 Fed. Reg. 2706. §65.300 (e)(4). January 15, 2009.
[14] 78 Fed. Reg. 15646.
[15] World Trade Organization. Appellate Body Report. "U.S.—Certain Country of Labeling (COOL) Requirements." WT/DS384/R, WT/DS386/R. July 23, 2012.
[16] Stewart & Stewart. Memorandum to National Farmers Union, United States Cattlemen's Association, Food & Water Watch and Public Citizen's Global Trade Watch. February 4, 2013.

consumption" and the final rule states that "preparation steps would also be meant to include other examples of enhancements that do not fundamentally alter the character of the product."[17]

The act of curing or smoking pork does not significantly alter the product from its original form and warrants the inclusion of a COOL label. Processors can easily transmit this information to consumers as they are already maintaining this information under the current recordkeeping requirements for the cuts of meat that are cured and smoked. USDA should specifically exempt from the definition of processed any product from a single muscle cut of meat and/or a single process step including roasting, curing, smoking or other non-transformative step like marinating a cut of meat.

*USDA overestimated likely costs of complying with proposed rule*

The USDA has historically relied on industry estimates of the cost of COOL that have proven to be wildly inflated and these estimations have led the USDA to weaken the application of COOL labeling requirements to the detriment of consumers. Food & Water Watch is encouraged by the proposed rule's more rational estimation of costs for the proposed changes but believes that the USDA may have overestimated the costs of this modest change.

The proposed rule does not require the collection of additional information, recordkeeping or livestock segregation, meaning that the proposed rule does not impose additional fixed or ongoing costs to suppliers, slaughterhouses or processors.[18] The primary costs are to changing the label (by adding approximately 20 characters) to scale-printed and processor provided labels.[19] The USDA accurately notes that this change could be made "at considerably lower cost than required for initial implementation for the current COOL regulations."[20]

The original 2003 USDA cost estimates were largely based on industry projections of the cost of compliance.[21] USDA relied on the industry-aligned cost estimate for the beef baseline, even though the estimate was admittedly a worst-case scenario.[22] The meatpacking and processing industry had every incentive to over-estimate the costs, and even the pro-industry Informa Economics had to significantly reduce its cost estimates by a third for beef and by two-thirds for pork between 2003 and 2009—a cost reduction of nearly $1 billion.[23]

Moreover, the Government Accountability Office determined that the original USDA cost estimate used questionable assumptions that overestimated the cost of COOL compliance by over-counting the number of business that would need to comply, assuming that businesses were not already maintaining many or all of the necessary records, and inflating the labor time and

[17] 74 Fed. Reg. 2668.
[18] 78 Fed. Reg. 15651.
[19] 78 Fed. Reg. 15648.
[20] *Ibid.*
[21] 68 Fed. Reg. 61981, October 30, 2003 at notes 19 and 20.
[22] VanSickle et al. at 20.
[23] Informa Economics. "Update of Cost Assessment for Country of Origin Labeling—Beef & Pork (2009)." June 2010 at 9, 11, 17 and 19.

cost estimates.[24] Although the USDA reduced its cost estimates for the final 2009 rule, some of these methodological problems continue to plague the cost assessment of the current proposed rule.

For example, the overwhelming number of slaughter and processing facilities only handle U.S. livestock,[25] meaning their burden would merely be changing the label from "Product of the U.S." to "Born, Raised and Slaughtered in the U.S." This would significantly reduce the cost to the majority of processing and slaughter establishments. The USDA's estimated labor costs—$270—seems unusually high, considering most establishments (retailers and processors) will merely need to change 20 characters on labeling equipment.[26]

In total, the USDA estimates that more than 121,000 labels on muscle cuts of meat would need to be changed with an estimated cost of $32.76 million, about $982 for each of 33,350 establishments with "a relatively small economic impact on a substantial number of entities."[27] Food & Water Watch believes this estimate to be at the high end of the scale, and based on past overestimations expects that the cost of implementing the proposed rule—primarily changing the wording on the labels themselves—will be more modest than the USDA estimates.

*Benefit of proposed rule significantly larger that USDA estimates*

The USDA has consistently underestimated the benefits of COOL to consumers and the economy. In the current proposal, the USDA states that the "economic benefits from the proposed labeling of production steps will be comparatively small relative to those that were discussed in 2009 final rule."[28] But the USDA was largely dismissive of any benefits of COOL in the final 2009 rule, stating that the "benefits of mandatory COOL will be small" and are "difficult to quantify."[29] As Purdue University Agricultural Economics Professor John M. Connor noted:

> The benefits side of the COOL equation has been sorely neglected in the national debate. USDA has failed to consider any information relevant to benefits; so have the industry opponents of COOL. There is evidence that substantial benefits arise from country of origin labeling from the consumer perspective and from the perspective of industry.[30]

Several studies have found that consumers are willing to pay more for domestic beef and pork. These willingness to pay studies demonstrate that COOL could increase aggregate purchasing demand for meat products. The USDA recognizes that if consumers are willing to pay more for COOL labeled meats the rules could provide an economic benefit if the increased demand and

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[24] U.S. General Accounting Office. "Country-of-Origin Labeling: Opportunities for USDA and Industry to Implement Challenging Aspects of the New Law." GAO-03-780. August 2003 at 28.
[25] VanSickle et al. at 18.
[26] 78 Fed. Reg. 15649.
[27] 78 Fed. Reg. 15648-51.
[28] 78 Fed. Reg. 15646.
[29] 74 Fed. Reg. 2681 and 2683.
[30] Connor, John M. "The benefits and costs of COOL." *Purdue Agricultural Economics Report*. December 2003 at 1.

increased prices exceed the costs of implementing COOL.[31] A 2009 study estimated that either a 2 percent increase in demand or a 2 percent increase in willingness to pay for U.S.-origin beef or pork would provide a net economic surplus to both livestock producers and to consumers if the cost of implementing COOL was in the mid-range (below industry worst case scenarios).[32] A 2003 Purdue University study found that if processors and retailers shouldered a mid-level implementation cost (as in the proposed rule), a very small increase in demand of 0.23 percent would generate an economic surplus for farmers.[33]

The proposed COOL regulation will stimulate demand precisely because the current labeling regime is opaque and fails to transmit meaningful information to consumers. Currently, COOL labels for three different origins or mixes bear three nearly identical labels:[34]

- Livestock born in a foreign country and raised and slaughtered in the United States bear a label reading "Product of the United States, Country X;"
- Livestock born, raised and slaughtered in the United States that are commingled with livestock born in a foreign country but raised in the United States bear a label reading "Product of the United States, Country X, and (if applicable) Country Y;" and
- Livestock born and raised in a foreign country and imported for immediate slaughter bear a label reading "Product of Country X and United States."

Consumers cannot possibly make meaningful distinctions between these labels. The proposed rule would increase demand for "born, raised and slaughtered in the United States" relative to the currently undifferentiated meat labels by requiring the national location of each production stage to be clearly labeled.[35] When consumers can differentiate various attributes on competing products they are able to increase demand—and price—for those attributes they view most favorably, including the perceived higher quality of domestically born and raised meats.[36] Moreover, meatpackers and producer associations could actively stimulate demand by promoting domestically born, raised and slaughtered livestock.[37]

The willingness to pay studies suggest that the increased sales of COOL-labeled meat products could generate sufficient value for the meat production chain to outweigh potential costs. A 2003 survey found that 73 percent of consumers in Denver and Chicago were willing to pay more for beef labeled "USA: Guaranteed born and raised in the U.S." and were willing to pay 42¢ per pound more for COOL-labeled steak (an 11 percent premium) and 36¢ per pound (a 24 percent premium) more for COOL-labeled hamburger.[38] A 2005 willingness to pay survey found that

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[31] 68 Fed. Reg. 61956.
[32] Chung, Chanjn, Tong Zhang and Derrell S. Peel. "Effects of country of origin labeling in the U.S. meat industry with imperfectly competitive processors." *Agricultural and Resource Economics Review*. Vol. 38, no. 3. December 2009 at 414
[33] Lusk, Jayson L. and John D. Anderson. Purdue University Department of Agricultural Economics. "Modeling the Effects of Country of Origin Labeling on Meat Producers and Consumers." Staff Paper #03-07. June 2003 at 14.
[34] 74 Fed. Reg. 2706. §65.300 (e)(1)-(e)(4).
[35] Connor at 3.
[36] VanSickle et al. at 12.
[37] Chung, Zhang and Peel at note 6 at 413.
[38] Umberger (2003) at 107.

consumers were willing to pay 9¢ per pound more (a 2.5 percent premium) for certified U.S. pork and 20¢ per pound more for COOL beef (a 2.9 percent premium).[39]

These studies used a label that is very similar to the proposed rule and are the best available research on how consumers would respond to a "born, raised and slaughtered in the U.S." label. Importantly, these studies suggest that the increased willingness to pay would outweigh even the high-end per pound estimates of the industry-aligned implementation cost studies. The lower revised 2010 Informa Economics cost estimate for COOL was 0.75¢ per pound for U.S. born, raised and slaughtered cattle and hogs and 6.5¢ per pound for beef and 5.25¢ per pound for hogs bearing the more expensive born country X, raised and slaughtered in the United States.[40] Since the majority of meat would bear the all-U.S. origin label, the higher consumer demand for U.S. meat products would be sufficient to cover the cost of COOL and provide benefits to farmers and consumers.

* * *

Food & Water Watch supports the USDA's proposed rule that strengthens the integrity of country of origin labeling for meats. Providing this information generates tangible benefits to consumers and producers and ensures that consumers can exercise their right to make informed choices about the food that they eat. Consumer and farmer advocates have pushed for more than a decade to implement commonsense country of origin food labels. The proposed rule significantly improves the quality of the information disclosed on the labels and eliminates some of the significant loopholes and confusion under the current labeling rules.

The USDA should do more to tighten up the processing exemption for cuts of meat that can easily bear an origin label so that consumers have more information about the source of modestly processed meats such as hams and marinated steaks and chops. The USDA should promptly address these issues and promptly issue strong, sensible and final rules protecting country of origin labels.

Sincerely,

Wenonah Hauter
Executive Director

[39] Loureiro and Umberger (2005) at 59.
[40] Informa Economics at 7-8 and 18-19. Cost reported at midpoint of ranges.