UNITED STATES CATTLEMEN'S association
P.O. Box 339 San Lucas, CA 93954 email: usca@uscattlemen.org

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Country of Origin Labeling Program
Room 2607-S
Agricultural Marketing Service (AMS)
USDA
Docket No. AMS-LS-06-0081; LS-04-04
1400 Independence Avenue, SW
Washington, DC 20250-0254

Desk Officer for Agriculture
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building
725 17th St., N.W.
Room 725
Washington, DC 20503

Re: Docket No. AMS-LS-06-0081; LS-04-04
Proposed Rules: Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts

Dear Sirs:

The United States Cattlemen's Association (USCA) is pleased to offer comments on the proposed rule requiring mandatory country of origin labeling (COOL) for beef, lamb, pork, perishable agricultural commodities, and peanuts. These comments are submitted in response to the USDA's request for comments for this rule prior to the adoption of the final rules, published at 72 Fed Reg. 33,917 (June 20,2007).

USCA is a national non-profit organization dedicated to furthering the interests and preserving the economic viability of cattle producers.

I. Introduction

In 2002, Congress amended the Agricultural Marketing Act of 1946 by adding a provision for country of origin labeling (COOL) to the Farm Security and Rural Investment Act (Farm Bill).[1] Specifically, this law required retailers of red meats (beef, lamb and pork), fish and shellfish, fresh and frozen fruits and vegetables, and peanuts (covered commodities) to inform consumers of the country of origin of that covered commodity. In this first iteration of what would become years of contentious debate over the viability of, and need for, labeling agricultural products, the law mandated that a beef product could only be labeled "Product of the U.S." if the animal was born, raised, and

[1] 7 U.S.C. § 1638 *et. seq.* and H.R. 2646

slaughtered in the U.S. Five years later, in July of 2007, Congress again amended the Agricultural Marketing Act of 1946 by adding conciliatory language regarding different allowable categories for labeling beef products.[2]

The current law maintains the language of the 2002 Farm Bill with respect to U.S. products: a beef product may only be labeled as a product of the United States if i) the beef is from an animal that is born, raised, and slaughtered in the United States, or ii) the beef is from an animal that was born and raised in Alaska or Hawaii and transported for a period of no more than 60 days through Canada to the United States and slaughtered in the United States.[3] The current law amends the Agricultural Marketing Act of 1946 by requiring retailers of covered commodities to label products with a Multiple Country of Origin Meat Label if the product is derived from an animal that is i.) not exclusively born, raised, and slaughtered in the U.S. ii.) born, raised, or slaughtered in the United States and iii.) not imported into the US for immediate slaughter.[4] The current law further amends the Agricultural Marketing Act of 1946 by requiring retailers of covered commodities to label beef products with an Imported Meat label if the product is imported into the US for immediate slaughter.[5] USCA accepts this categorical labeling and hopes for immediate implementation.

USCA acknowledges that AMS requests comments considering the Interim Final Rule for Fish and Shellfish and whether the requirements in the interim final rule can also be applied to country of origin labeling for beef and other covered commodities. The comments below address the interim final rule as well as other questions asked by AMS.

II. Comments on Processed Food Items

A. Interim Final Rule Processing Changes Not Necessary For 2007 Proposed Rule

The 2003 Proposed Rule states that because the law excludes products from bearing a country of origin label if that item is a part of a processed food item and does not define what constitutes a processed food item, AMS must then define these characteristics. AMS proceeds to define a processed food item as an item that undergoes a significant physical or chemical change, or one that is combined with other covered commodities or other substantive food components. [6] The Interim Final Rule proceeds to give specific examples of a processed food item, as well as changes that would constitute exclusion from the labeling requirement (e.g., items that are breaded, cooked, cured, marinated, etc.).[7] This reduction in covered commodities was expected to lead to lower

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[2] H.R. 2419
[3] 7 U.S.C. § 1638 282 (2) (A)
[4] 7 U.S.C. § 1638 (2) (B)
[5] 7 U.S.C. § 1638 (2) (C)
[6] *Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts; Proposed Rule, 68 Fed Register 61,946, October 30,2003; hereafter referred to as the 2003 Proposed Rule.*
[7] *Mandatory Country of Origin Labeling for Fish and Shellfish; Interim Rule; 69 Fed Register 59,794, October 5, 2004; hereafter referred to as the 2004 Interim Final Rule.*

implementation costs for affected industries and lower the burden on retailers since breaded shrimp alone constitutes nearly half of all shrimp sold. USCA recommends that such exclusions are not maintained in the 2007 Proposed Rule, as the majority of beef products sold at the retail level are not marinated or breaded, and thus such an exclusion would not significantly reduce implementation costs.

The Interim Final Rule further excluded items that are cooked, as a cooked product has a character that is different than that of a covered commodity and a limited functionality.[8] USCA recommends that these inclusions are also not included in the 2007 Proposed Rule, as the origin information, and the consumer's right to that information, is not altered by a mere character change.

III. Country of Origin Notification

A. Labeling Requirements for Imported Covered Commodities

Prior to the Interim Final Rule, the law explicitly defined labeling regarding a US label for products exclusively born, raised, and slaughtered, but did not specify how products not exclusive to the US should be labeled.[9] The interim final rule for fish and shellfish greatly simplified the labeling process for products entering the United States during the production process. This is the same type of labeling requirement accepted by Congress and amended to the 2007 Farm Bill.[10] USCA supports the three-tiered categorical labeling system for US products, Multiple Country of Origin products, and Foreign Import Meat product.

Imported Covered Commodities Not Substantially Transformed in the US

The Interim Final Rule mandates that imported covered commodities should retain the country of origin information as declared to the US Customs and Border Protection at the time the product enters the United States through the final point of sale, so long as the item does not undergo transformation.[11] USCA accepts this mandate, but does not accept that a character change (e.g., dividing into portions, marinating, breading, etc.) constitutes "transformation."

The Tariff Act of 1930 already required covered commodities imported into the US in ready-made consumer packages to identify country of origin information.[12] The Interim Final Rule did not alter or change this requirement.[13] This requirement should likewise remain unaltered in the 2007 Proposed Rule.

Imported Covered Commodities Substantially Transformed in the US

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[8] See 2003 Interim Final Rule at 59,742
[9] 7 U.S.C. § 1638 (a) (2) (A-D)
[10] H.R. 2419
[11] See 2004 Interim Final Rule 59,711
[12] 19 U.S.C. § 1202 *et. seq.*
[13] See 2004 Interim Final Rule 59,711

Imported covered commodities that undergo a transformation (as established by the U.S. Customs and Border Protection Guidelines) in the US or aboard a flagged vessel are required to be labeled "From Country X, processed in the US," according to the Interim Final Rule.[14] The language for Multiple Origin Products as accepted by the House for 2007 Farm Bill states that these products would bear a label, "Product of the US and Country X, or Y, or Z."[15] The 2007 Proposed Rule should maintain this language as adopted into law.

Imported Covered Commodities for Blended Products

The law requires that retailers provide country of origin information at the final point of sale, but it does not address how to label blended products of different origins. The Interim Final Rule further requires that blended products must indicate the countries of origin for covered commodities when the commodities included have not been substantially transformed in the United States.[16] When the commingled product containing covered commodities has undergone substantial transformation within the United States, the interim rule mandates that the label must indicate the countries of origin contained therein, or a listing of the countries of origin which may be contained therein.[17]

The law as amended in 2007 addresses this issue in the same manner as did the Interim Final Rule. Ground products may be labeled with a narrative list of countries from which the product might have originated. The law states that the label may include the phrase "May Contain" on any of these blended products. This simplification allows processors to list all the countries from which the product may include portions, without causing the processor to verify that each product necessarily includes portions from each listed country. This labeling also allows the consumer the opportunity to see the countries from which the blended product likely originated, as a processor is less likely to include countries not applicable to the product. USCA accepts this language for blended products for the 2007 Proposed Rule.

B. Option of Deriving Information Solely From Pre-labeled Products

According to the COOL law, suppliers of covered commodities are required to provide retailers with necessary information regarding country of origin for their supplied covered commodities. Following this, retailers were then required to maintain the recordkeeping trail used to establish origin for up to seven days from the point of sale, while maintaining records identifying the supplier and origin information for up to two years. [18] Predicted compliance costs were assumed substantial, forcing AMS to seek alternative methods to decreasing verification compliance costs. The Interim Final Rule

[14] See 2004 Interim Final Rule 59,711
[15] 7 U.S.C. § 1638 282 (2) (B)
[16] See 2004 Interim Final Rule at 59,745 (§ 60.200(h)(1))
[17] See 2004 Interim Final Rule at 59,745 (§ 60.200(h)(2))
[18] See 2003 Proposed Rule at 61,984 (§ 60.400(c))

significantly reduced these compliance costs by allowing the origin label on a pre-labeled product to serve as the sole source of documentation, rather than separate documents substantiating origin.[19] The Interim Final Rule further reduced these compliance costs by requiring supporting documentation be maintained for only as long as the product is on the shelf, and while the retailer must maintain documents identifying the supplier for up to a year, said records need not identify origin if already included on the pre-labeled product. USCA suggests this same type of requirement is adopted in the 2007 Proposed Rule.

C. Using Import Markings to Identify Country of Origin

In an attempt to maintain a verifiable record-keeping trail, the 2003 draft COOL rule stated that meat packers are entitled to "legal access to records" that substantiate their product's origin claims and that importers as well must substantiate their origin claims.[20] This created a great deal of concern among producers as personally maintained records contain proprietary business information which, when made available to packers would create rampant opportunities for exploitation. The interim final rule addressed these concerns by eliminating that processors must have "legal access" to origin claims, and instead merely states that they "must possess records to substantiate" [claims].[21] Additionally, the interim final rule only required that importers must ensure that their records "accurately reflect" the country of origin as established in Customs import documents, rather than that they should "substantiate" their origin claims.[22] Given that existing Custom import records already contain the most accurate origin information, additional substantiating documentation is not required. For mandatory country of origin labeling on cattle and beef, the same should be allowed with one improvement: import markings on the cattle should contain the same weight as any other Customs import documents. If these import markings on cattle do carry the same weight, this would allow packers to rely on import markings on cattle as the sole source of identifying country of origin.

Already the law requires that all meat imports must bear, in English, the country from which they originated.[23] Additionally, preexisting health and safety laws exist to ensure that imported cattle from Canada and Mexico are legibly branded with a "CAN" or "M," or arrive in a conveyance sealed with the seals of the originating government.[24] Further health laws exist to ensure that all breeding stock imported from Mexico, and not intended for immediate slaughter, are additionally marked with a permanent, metal blue ear tag.[25] Removing cattle from the "J-list" (§ 1304(a) (3) (J)) would ensure that these identifying markings are made permanent and universally applicable. Using these origin markings would continually maintain a verifiable source of information, while serving to significantly reduce compliance costs for producers.

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[19] See 2004 Interim Final Rule at 59,746 (§ 60.400(c)(1))
[20] 2003 Proposed Rule at 61,984 (§ 60.400(b)(1)) and *Id.* at § 60.400(b)(4)
[21] See 2004 Interim Final Rule at 59,712
[22] See 2004 Interim Final Rule at 59,712 (§ 60.400(b)(4))
[23] See 21 U.S.C. 601 et seq. and 9 C.F.R. 327.14
[24] See 9 C.F.R. §§ 93.420, 93.427 (c)(1)
[25] See 9 C.F.R. § 93.427 (d)

IV. Markings

USCA accepts the USDA required and approved markings for fish and shellfish products as likewise acceptable for country of labeling markings for beef products.

V. Recordkeeping Requirements

A. Recordkeeping Requirements Simplified in Interim Final Rule

Initially, the 2003 Proposed Rule required that suppliers and retailers maintain records to identify the previous source and immediate subsequent recipient for each product for a period of two years following the transaction.[26] Due to concerns of excessive compliance burdens, the Interim Final Rule reduced the time necessary to maintain such documents from two years to one.[27] The Agency stated that this amount of time is consistent with the record-keeping retention time as proposed by the FDA under the Bioterrorism Act, while still providing "ample time" for Agency compliance reviews to verify compliance with the rule.[28] For the 2007 Proposed Rule, USCA recommends suppliers and retailers of beef and other covered commodities also maintain records for one year following the point of sale. USCA supports that this amount of time is adequate to ensure compliance without ensuing in unnecessary additional burdens. An added benefit of maintaining this language is a decreased compliance cost for suppliers and retailers of multiple covered products, as they would only have to follow one set of guidelines rather than maintain accurate records for two separate sets of rules for different products.

B. Interim Final Rule Eliminated Requirement to Document the Chain of Custody

In addition to maintaining personal records identifying the previous source and subsequent sub-source for a period of two years, the 2003 Proposed Rule further mandates that retailers and suppliers must maintain records to prove the entire chain of custody of the covered commodity.[29] Comments to the proposed rule suggested that this requirement is higher than the standard set forth in the FDA's record-keeping authority and suggested the immediate removal of this additional and unnecessary burden.[30] In the Interim Final Rule the Agency accepted this suggestion, removed the language requiring this chain of custody, and acknowledged that accurately maintained records identifying the source and subsequent sub-source were sufficient documentation to track a product back through the marketing chain.[31] This information should further be sufficient to allow USDA to trace back a product to the original producer, and would produce no

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[26] See 2003 Proposed Rule at 61,951
[27] See 2004 Interim Final Rule at 59,712
[28] See 2004 Interim Final Rule at 50,716
[29] See 2003 Proposed Rule at 61,984 (§ 60.400 (a)(1))
[30] See 2004 Interim Final Rule at 59,716
[31] See 2004 Interim Final Rule at 59,716

additional burden on suppliers and retailers as it is information they must already maintain. Furthermore, USDA has already stated that "in almost all cases, routine business documents will be sufficient record to document chain of custody information."[32]

The term 'one forward and one back' has been used to describe what business documents would be necessary in the event of an audit for country of origin information. USCA agrees with the use of these types of documents as verification of country of origin in the event of an audit. USCA maintains that the lack of a verifiable import marking on live cattle verifies a claim that the animal has never been outside the US.

C. Interim Final Rule Eliminated Supplier's Duty to Demonstrate Separate Tracking

The 2003 Proposed Rule required suppliers of similar covered commodities from more than one country to document that the origin of a product was separately tracked while in their control to verify that the identity of a product is maintained.[33] The interim final rule eliminated this requirement due to the condition that suppliers must already provide country of origin and method of production information for each covered commodity. The new rule for country of origin for beef should likewise not include this requirement, but should allow producers, processors, and retailers to maintain records in the most efficient way for their particular operation, so long as their system allows them to provide accurate country of origin information to the retailer as required by the law, that can be transferred to a standardized format in the event of an audit by USDA.

D. Affidavits and Verification Audits Deemed Unnecessary Due to Established Limited Liability

The 2003 Proposed Rule explicitly stated that an intermediary supplier of a covered commodity found to be mislabeled for country of origin shall not be held liable for reason of another's conduct if said intermediary supplier "could not have been reasonably expected to have had knowledge" of the previous supplier's violation.[34] Meanwhile, as additional insurance for certification claims, AMS considered requiring affidavits and third-party verification audits to further protect intermediary participants in the supply chain. This consideration was ultimately excluded from the interim final rule, as comments were predominately negative and AMS predicted it would be an unjustifiable increase in costs for an already established limitation on liability. USCA supports the decisions to expunge this requirement for affidavits and private audits and suggests that AMS expound upon these limitations in the 2007 Proposed Rule for Beef. In particular, as predicted by AMS, the compliance costs would be unjustifiable and substantial as liability is already limited. Additionally, these compliance costs would almost certainly

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[32] See Notice to the Trade: Mandatory Country of Origin Labeling for Fish and Shellfish, USDA Marketing Service, March 2005

[33] See 2003 Proposed Rule at 61,984 (§ 60.400 (b)(4))

[34] See 2003 Proposed Rule at 61,984 (§ 60.400 (b)(2))

be borne entirely by cattle producers, as packers and processors pass the costs up the supply chain to the original supplier.

VI. Timeframe for Products Produced Prior to Implementation Date

Yes a specific time frame should be established. The labeling of covered commodities must be implemented no later than October 1, 2008 and effective no later than January 1, 2009. Furthermore, animals in the United States and born before January 1, 2008 are exempt from the Rule. Animals imported into the United States after January 1, 2008, regardless of age, must be labeled according to the import documents. However, due to the increased value of labeled commodities, producers, processors, and retailers may label any exempt covered commodity if the origin of the animal can be determined and verified under the definitions of the Final Rule established by USDA

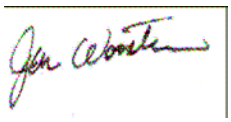
CONCLUSION

The U.S. House of Representatives has approved H.R. 2419. Included in this legislation are modifications to the original COOL statute included in the 2002 Farm Bill. In addition to the text of H.R. 2419, the House Agriculture Committee included report language intended to clarify the intent of the legislation. USCA urges the USDA to move forward in preparing the proposed rule while being mindful of the legislative text and report language in H.R. 2419.

We are confident, that with input from cattle producers, the USDA will successfully implement Country of Origin Labeling for beef, as they did for fish and shellfish.

Thank you in advance for your consideration of our comment.

Sincerely,



Jon Wooster
President
United States Cattlemen's Association