

Fighting for the U.S. Cattle Producer!



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September 27, 2008

The Honorable Ed Schafer
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Country of Origin Labeling Program
Room 2607-S
Agricultural Marketing Service
U.S. Department of Agriculture
STOP 0254
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 Street, NW., Room 725
Washington, DC 20503

Via Facsimile and Electronic Portal: 202-354-4693

Re: Docket No. AMS-LS-07-0081, RIN 0581-AC26: R-CALF USA's Supplemental Comments on the Interim Final Rule: Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts

Dear Secretary Schafer:

Subsequent to R-CALF USA's September 25, 2008 submission of its formal comments in the above captioned docket, commonly referred to as the interim final rule for mandatory country-of-origin labeling (IFR for COOL), the U.S. Department of Agriculture posted on its website a revised *Country of Origin Labeling (COOL), Frequently Asked Questions, COOL Implementation: Legislative History and Status of Rulemaking*, dated September 26, 2008, under the general heading "New Guidance Documents" (COOL Q&A). R-CALF USA's comments concerning two specific revisions made in USDA's COOL Q&A are expressed below:

The two specific revisions contained in the COOL Q&A that are the subject of R-CALF USA's comments are the following two questions and answers:

Q. Can a packer or intermediary supplier that processes whole muscle meat products derived from both mixed origin animals (e.g., Product of U.S., Canada and Mexico) and U.S. origin animals commingle and label these products with a mixed origin label?

A. If meat covered commodities derived from U.S. and mixed origin animals are commingled during a production day, the resulting product may carry the mixed origin claim (e.g., Product of U.S., Canada, and Mexico). Thus, it is not permissible to label meat derived from livestock of U.S. origin with a mixed origin label if solely U.S. origin meat was produced during the production day.

Q. Can a retailer, like a meat packer, label meat products derived from livestock born, raised, and slaughtered in the United States (i.e., Product of USA) as having a mixed origin (e.g., Product of the United States, Canada, and Mexico)?

A. Similar to packers and intermediary suppliers, retailers are permitted to market U.S. produced meat products under a mixed origin label (e.g., Product of U.S., Canada and Mexico) if they are commingled with meat of mixed origin. That is, if a retailer further processes meat at the store and the resulting package includes meat of both U.S. origin and mixed origin (e.g., Product of U.S., Canada and Mexico), the origin declaration can read Product of U.S., Canada and Mexico.

Presumably, the above revisions (revisions) were made pursuant to concerns that the IFR for COOL disregarded Congress' intent to ensure that meat derived from animals exclusively born, raised, and slaughtered in the United States would be labeled as a product of the United States, and no other country. R-CALF USA is concerned that the revisions will serve, instead, to grant meatpackers a license to label meat that is exclusively of U.S. origin with a label denoting, e.g., "Product of the United States, Canada, and Mexico" (mixed label or North American label), in direct contravention of Congress' intent.

USDA's revisions accord meatpackers the authority to mislabel U.S.-origin beef by authorizing a mixed or North American label for meat produced each production day by the meatpacker, provided that at least one animal of foreign origin is commingled with United States-origin cattle each production day as well. The meatpackers' ability to achieve this *de minimis* precondition will not be difficult due to the large, daily influx of foreign cattle imports.

From January 1, 2008 through approximately September 20, 2008, the United States imported 1,079,308 live Canadian cattle¹ and 667,232 live Mexican cattle,² representing a total of 1,746,540 live cattle imports so far this year. Based on the approximately 227 processing days during this same period (i.e., Jan.1-Sept. 20), there were approximately 7,694 imported cattle available during each processing day in 2008. Thus, there are more than enough imported cattle to allow every major meatpacker to commingle one or more imported cattle with U.S. cattle each processing day, thus enabling them to meet your agency's *de minimis* precondition and to undermine Congress' intent.

The effect of your agency's action is to make a mockery of Congress' COOL amendment contained in the 2008 Farm Bill as well as your agency's IFR for COOL that instruct U.S. cattle producers to maintain records and to produce affidavits for the purpose of providing documentation as to the origins of cattle they sell. Your agency's action would render origin verification by U.S. cattle producers wholly unnecessary, useless, and a complete waste of time by authorizing meatpackers to circumvent or otherwise ignore such origin documentation and to label all meat products with a mixed label or North American label.

It is unconscionable that your agency would purposely grant meatpackers a blueprint describing how they can circumvent Congress' intent to not allow a mixed origin or North American label on meat produced exclusively from animals born, raised, and slaughtered in the United States, particularly after your publicly reported acknowledgement that labeling exclusively U.S. meat with a mixed label or North American label "was not the intent of the law [and] not the intent of all of you when you started this many years ago."³

R-CALF USA respectfully, but strongly, implores you to immediately issue a technical correction to the IFR for COOL to expressly prohibit the use of a mixed or North American label on meat products derived from animals that are exclusively born, raised, and slaughtered in the United States. Failure to do so would undermine the intent of the COOL law, undermine the intent of Congress, and it would make a mockery of USDA's own rule that instructs U.S. cattle producers to maintain records as to the origins of their livestock.

If R-CALF USA can be of any assistance in this important matter, please do not hesitate to contact us at 408-252-2516.

Sincerely,



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

¹ *Canadian Live Cattle Imports by State of Entry, Data for Week Ending 9/20/08*, U.S. Department of Agriculture Market News, attached hereto as Exhibit 1.

² *Mexico to U.S. Imports*, U.S. Department of Agriculture Market News, attached hereto as Exhibit 2.

³ *USDA to Clarify Country-of-Origin Labeling For U.S. Meat*, Jerry Hagstrom, CongressDailyPM/NationalJournal, September 22, 2008, attached hereto as Exhibit 3.

EXHIBIT 1

WA_LS635

Washington, DC

Wed, Sep 24, 2008

USDA Market News

Canadian Live Animal Imports by State of Entry

Data for week ending 09/20/08

Cattle State	Feeder	Sltr	Sltr	Sltr	Breeding	Breeding	Other	Total
	Strs/Hfrs		Cows	Bulls	Males	Females		
	AA	AB	AC	AD	AE	AF	AG	
Idaho	0	7213	0	174	0	0	0	7387
Maine	0	0	0	0	0	0	0	0
Michigan	0	1142	183	0	0	0	0	1325
Montana	0	0	0	0	0	0	0	0
North Dakota	7258	1085	1493	837	0	0	11	10684
New York	124	2076	195	5	0	0	1	2401
Vermont	0	0	0	0	0	0	0	0
Washington	1878	195	664	334	0	1	8	3080
Total	9260	11711	2535	1350	0	1	20	24877

Cattle totals may include interstate shipments from Hawaii.

YTD 2008	454798	479543	105785	32092	562	2598	3930	1079308
YTD 2007	306706	572065	0	0	0	0	0	878771

Hogs State	Feeder	Sltr	Sltr	Breeding	Breeding	Other	Total
	B/G		S/B	Males	Females		
	AH	AI	AJ	AK	AL	AM	
Idaho	0	2397	420	0	0	0	2817
Maine	0	0	0	0	0	0	0
Michigan	16580	9809	4759	0	160	0	31308
Montana	0	0	0	0	0	0	0
North Dakota	98751	14372	4298	22	1668	0	119111
New York	0	989	297	0	0	0	1286
Vermont	0	0	0	0	0	0	0
Washington	601	0	0	0	0	0	601
Total	115932	27567	9774	22	1828	0	155123
YTD 2008	5133177	1386836	456368	5697	31416	6899	7020393
YTD 2007	4640252	1718216	483607	6629	80293	5908	6934905

Sheep State	Feeder	Sltr	Sltr	Breeding	Breeding	Other	Total
	Lambs		Ewes	Males	Females		
	AN	AO	AP	AQ	AR	AS	
Idaho	0	0	0	0	0	0	0
Maine	0	0	0	0	0	0	0
Michigan	0	0	0	0	0	0	0
Montana	0	0	0	0	0	0	0
North Dakota	0	0	0	0	0	0	0
New York	0	0	0	0	0	0	0
Vermont	0	0	0	0	0	0	0
Washington	0	0	0	0	0	0	0
Total	0	0	0	0	0	0	0

EXHIBIT 1 CONTINUED

Dairy Cattle	Breeding	Breeding	Other	Total
	Males	Females		
	AT	AU	AV	
Idaho	0	0	0	0
Maine	0	0	0	0
Michigan	0	206	0	206
Montana	0	0	0	0
North Dakota	0	0	0	0
New York	0	31	0	31
Vermont	0	0	0	0
Washington	0	37	0	37
Total	0	274	0	274

Goats State	Angora	Spanish	Breeding	Breeding	Other	Total
			Males	Females		
	AW	AX	AY	AZ	BA	
Idaho	0	0	0	0	0	0
Maine	0	0	0	0	0	0
Michigan	0	0	0	0	0	0
Montana	0	0	0	0	0	0
North Dakota	0	0	0	0	0	0
New York	0	0	0	0	0	0
Vermont	0	0	0	0	0	0
Washington	0	0	0	0	0	0
Total	0	0	0	0	0	0

Horses State	Feeder	Sltr	Breeding	Breeding	Geldings	Other	Total
			Males	Females			
	BB	BC	BD	BE	BF	BG	
Idaho	0	0	1	1	0	0	2
Maine	0	0	0	0	0	0	0
Michigan	0	0	0	2	0	50	52
Montana	0	0	0	0	0	0	0
North Dakota	0	0	0	0	36	79	115
New York	0	0	0	1	21	54	76
Vermont	0	0	0	0	0	0	0
Washington	0	0	0	0	1	22	23
Total	0	0	1	4	58	205	268

Note: Data are based on currently available information and are subject to future revision.

Source: USDA, APHIS
 Washington, DC 202-720-7316 Email: wash.lgmn@usda.gov
 www.ams.usda.gov/mnreports/wa_ls635.txt

EXHIBIT 2

AL_LS625

Las Cruces, NM Tue, Sep 23, 2008 USDA Market News
Mexico to U.S. Imports

Species	Current Week 9/20/2008	Previous Week 9/13/2008	Current Year-to-date	Previous Year-to-date
Slaughter	0	0	0	0
Feeders	2,474	5,672	409,656	667,232
Total	2,474	5,672	409,656	667,232

Source: USDA Market News Service, Las Cruces, NM
John Langenegger, OIC (505) 527-6861 FAX (505) 527-6868
www.ams.usda.gov/mnreports/AL_LS625.txt

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EXHIBIT 3

USDA To Clarify Country-Of-Origin Labeling For U.S. Meat

Monday, Sept. 22, 2008
by Jerry Hagstrom
CongressDailyPM / NationalJournal

The Agriculture Department will require packers to label beef from cattle born, raised and slaughtered in the United States as U.S. beef rather than follow a packers' plan that would label all beef coming from the United States, Canada and Mexico as North American, according to Agriculture Secretary Schafer. This ruling is significant because most of the 2008 farm bill goes into effect Oct. 1, including a provision requiring country-of-origin labeling for red meat. The provision includes categories for U.S. meat, foreign meat and meat of mixed origin that labeling advocates and packers had agreed on.

Some packers have said recently that they intend to label all beef coming from the United States, Canada and Mexico as of North American origin -- prompting some concerns from some farm and ranch leaders and lawmakers. But Schafer told the National Association of State Departments of Agriculture in Bismarck, N.D., Friday that USDA would not allow the North American label for U.S. beef. Such mixed labeling "was not the intent of the law, [and] not the intent of all of you when you started this many years ago," Schafer told the group, as quoted in the Grand Forks Herald. Schafer acknowledged the rule does contain a provision allowing the North American label so that packers who do not have enough U.S. cattle for a full day's processing can finish with cattle from another country. Citing that language, some packers had said they were going to label all the beef as mixed. "We don't think that's the original intent of the law. We think we have found a way to deal with that. Oct. 1 we'll find out," Schafer said. Schafer noted that as governor of North Dakota he had signed the nation's first meat country-of-origin labeling law. A USDA spokesman today confirmed Schafer's statements.

North Dakota Agriculture Commissioner Roger Johnson, the outgoing president of NASDA, said he was surprised and impressed by Schafer's defense of the U.S. label. The packers' initiative "was something that ... seemed to have been OK'd within USDA in some fashion. That is not at all the message that [Schafer] sent to us," said Johnson. "He was saying he supports the country of origin labeling law. He wants to be clear that if it is all U.S. born, raised, slaughtered, [the meat] should have a U.S. label on it."

National Farmers Union President Tom Buis, who met with Schafer Thursday, said Schafer had been much less enthusiastic about U.S. labeling in that meeting than his remarks indicated on Friday. "The devil is in the details," said Buis. "[USDA's] original rule allowed this and I hope they can change it. But [if] they can't, we stand ready to introduce legislation to make the packers live up to the intent of the law." Buis also said USDA should not try to finalize the rule until a six-month trial period is complete. Meanwhile, Senate Agriculture Chairman Tom Harkin said in an e-mail Friday that USDA seemed to be "taking liberty with their interpretation" of country-of-origin labeling, which he said goes against the spirit of the law and the negotiated settlement between producer and packing industry representatives. "After all the debate on this issue, producers and consumers deserve a common sense rule that allows U.S. product to be labeled as intended," said Harkin.

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