



**NATIONAL
FARMERS
UNION**

August 9, 2007

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, D.C. 20250-0254

Desk Officer for Agriculture
Office of Information and Regulatory Affairs
Office of Management and Budget (OMB)
New Executive Office Building
725 17th Street, NW
Room 725
Docket No. AMS-LS-06-0081; LS-04-04
Washington, D.C. 20503

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

Dear Sirs:

On behalf of the farming and ranching members of National Farmers Union (NFU), I am pleased to respond to the Federal Register (FR) (Volume 72, Number 118, pages 33917-33918) notice and request for comment on the proposed rule of mandatory country of origin labeling (COOL), taking into account changes made by the Agency in the interim final rule for fish and shellfish.

NFU has been steadfast in its support of mandatory COOL, as a marketing tool for U.S. producers and an opportunity for consumers to make informed choices in the retail marketplace. American consumers and producers have repeatedly expressed strong support for this program. Given a choice, NFU believes consumers will choose to purchase U.S. products; without mandatory COOL, consumers continue to be denied the ability to differentiate between American and imported food products.

Since the June 20, 2007 publication of the Federal Register notice, the U.S. House of Representatives approved the Farm, Nutrition and Bioenergy Act of 2007 (H.R. 2419). Included in the legislation are modifications to the original COOL statute to clarify four of the five areas highlighted in the FR notice. In addition to the legislative text included in H.R. 2419 relative to COOL, the House Agriculture Committee inserted report language in order to clarify the intent of the legislation. NFU hopes the Agency will move forward in preparing a proposed rule, bearing in mind the legislative text and report language approved in H.R. 2419.

PROCESSED FOOD ITEM –

The interim final rule for fish and shellfish overstepped its bounds by exempting an overwhelming amount of product that had been intended to be covered under the original COOL statute. Alaska's salmon fishermen have generally received higher ex-vessel prices for salmon following COOL's April 2005 implementation. Pink and sockeye salmon showed the least price improvement, as these are two species primarily sold in the canned product form, and thereby exempt from COOL requirements according to the interim final rule. Unless a product is substantially altered from its original state, all food items should be labeled under the proposed rule for beef, pork, lamb, perishable agricultural products and peanuts. I urge you to include a limited list of activities that would result in the exemption from labeling and revise the existing definition of a "processed" product, within the interim final rule for fish and shellfish.

COUNTRY OF ORIGIN NOTIFICATION -

The language included in H.R. 2419, specifies the requirements and procedures for labeling a covered commodity. In general, NFU supports applying some of the changes made in the 2004 interim final rule for fish and shellfish to the new proposed rule for beef, pork, lamb, perishable agricultural commodities and peanuts. The labeling requirements for products entering the United States during the production process can be simplified and products incorporating animals of different countries of origin should be allowed to be labeled with a list of countries of origin that may be contained in the final product. Both of these simplifications are outlined in the statutory language of H.R. 2419.

H.R. 2419 text relative to “Country of Origin Notification”

‘(2) DESIGNATION OF COUNTRY OF ORIGIN FOR BEEF, LAMB, PORK, AND GOAT.—

‘(A) UNITED STATES COUNTRY OF ORIGIN.—A retailer of a covered commodity that is beef, lamb, pork, or goat may designate the covered commodity as exclusively having a United States country of origin only if the covered commodity is derived from an animal that was—

- (i) exclusively born, raised, and slaughtered in the United States; or*
- (ii) born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and slaughtered in the United States.*
- (iii) present in the United States on or before January 1, 2008*

(B) MULTIPLE COUNTRIES OF ORIGIN.—A retailer of a covered commodity that is beef, lamb, pork, or goat that is derived from an animal that is—

- (i) not exclusively born, raised, and slaughtered in the United States,*
- (ii) born, raised, or slaughtered in the United States, and*
- (iii) not imported into the United States for immediate slaughter, may designate the country of origin of such covered commodity as all of the countries in which the animal may have been born, raised, or slaughtered.*

(C) IMPORTED FOR IMMEDIATE SLAUGHTER.—A retailer of a covered commodity that is beef, lamb, pork, or goat that is derived from an animal that is imported into the United States for immediate slaughter must designate the origin of such covered commodity as—

- (i) the country from which the animal was imported; and*
- (ii) the United States.*

(D) FOREIGN COUNTRY OF ORIGIN.—A retailer of a covered commodity that is beef, lamb, pork, or goat that is derived from an animal that is not born, raised, or slaughtered in the United States must designate a country other than the United States as the country of origin of such commodity.

(E) GROUND BEEF, PORK, AND LAMB.—The notice of country of origin for ground beef, 8 ground pork, or ground lamb shall include—

- (i) a list of all countries of origin of such ground beef, ground pork, or ground lamb; or*
- (ii) a list of all reasonably possible countries of origin of such ground beef, ground pork, or ground lamb.*

MARKINGS -

Under the original 2002 statute, the method of notification allows for retailers to provide consumers country of origin information by means of a label, stamp, mark, placard or other clear and visible sign on the covered commodity or on the package, display, holding unit or bin containing the commodity. It would be appropriate to include a list of example markings to give retailers and suppliers an idea of

what is permissible to comply with the statute. Furthermore, H.R. 2419 included a provision that permits the designation of a state, region or locality of the United States where a commodity was produced to be sufficient in meeting the requirements of COOL. This is a common-sense provision to avoid duplicative requirements or burden on producers and retailers. Consumers would know an apple labeled as “Washington Apple” or potatoes as “Idaho Potatoes” are products of the United States.

H.R. 2419 text relative to “Markings”

(B) STATE, REGION, LOCALITY OF THE UNITED STATES. – With respect to a covered commodity that is a perishable agricultural commodity produced exclusively in the United States, designation by a retailer of the State, region, or locality of the United States where such commodity was produced shall be sufficient to identify the United States as the country of origin,”; and

(B) by striking subsection (d) and inserting the following:

RECORDKEEPING REQUIREMENTS –

One of the most significant concerns among producers was the potential expense associated with creating a new recordkeeping system to comply with COOL requirements. The 2002 law never intended producers, suppliers or retailers to maintain a separate system or establish new records. Legislative language included in H.R. 2419 addresses this concern by detailing what types of records would be required and specifies the Secretary cannot require additional records for the purposes of an audit. I encourage the Agency to include an example list of “normal conduct of business records” within the proposed rule in order to eliminate speculation among parties responsible for supplying COOL information. As part of NFU’s official comments in February 2004, we offered a number of provisions to simplify the recordkeeping process. Those provisions included:

- Allow U.S. producers to self-verify where their livestock were born and/or raised;
- Allow producers, processors and retailers to maintain records in a manner of their choosing as long as the information is readily available, maintained throughout the required period of time and can be transferred to a standardized form in the event of an audit by USDA. The length of time required to maintain such records should be in accordance with the Food and Drug Administration recordkeeping rule for the Bioterrorism Act of 2002.
- Require the country-of-origin information on imported products to be maintained and provided to subsequent purchases of those commodities through permanent marking, certification or other acceptable methods.
- Require importers of designated commodities to maintain adequate records to reconcile purchases, inventories and sales of imported and domestic commodities.

H.R. 2419 text relative to “Recordkeeping Requirements”

(2) RECORD REQUIREMENTS.—

(A) IN GENERAL.—A person subject to an audit under paragraph (1) shall provide the Secretary with verification of the country of origin of covered commodities. Records maintained in the course of the normal conduct of the business of such person, including animal health papers, import or customs documents, or producer affidavits, may serve as such verification.

(B) PROHIBITION ON REQUIREMENT OF ADDITIONAL RECORDS.—The Secretary may not require a person that prepares, stores, handles, or distributes a covered commodity to maintain a record of the country of origin of a covered commodity other than those maintained in the course of the normal conduct of the business of such person.”;

TIMEFRAMES FOR PRODUCTS PRODUCED PRIOR TO THE IMPLEMENTATION DATE TO CLEAR THE CHANNELS OF COMMERCE -

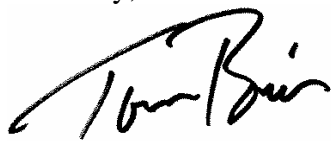
A grandfather clause was included in the text of H.R. 2419 to address this specific concern. The committee selected the date of January 1, 2008 to address the concern of transition. NFU applauds the Agency for allowing a period of time after the implementation date of the interim final rule on fish and shellfish to further educate retailers and suppliers of responsibilities to ensure compliance. An extended education and outreach period should be included in the new proposed rule for meat, perishable agricultural commodities and peanuts so that all involved in the process know how to comply. Concerns had been raised throughout some sectors that not enough time will lapse between the release of the final rule and the September 30, 2008 implementation date. An extended education and outreach period will address this concern and was successful under the seafood rule.

CLOSING -

In 2002, more than 150 organizations, from coast-to-coast, supported mandatory COOL. Since that time, the number of organizations and American consumers supporting the statute has only grown. In February 2007, more than 200 organizations sent a letter to Congress urging an immediate implementation of the original statute. Bottom line, the support for mandatory COOL is strong throughout the country and many are waiting in anticipation of labeling to actually begin. I urge you to utilize the experience gained from the interim final rule on fish and shellfish when drafting a new proposed rule for beef, pork, lamb, perishable agricultural commodities and peanuts.

Thank you for consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Tom Buis". The signature is written in a cursive, flowing style.

Tom Buis, President
National Farmers Union

H.R. 2419 Report Language on COOL

COUNTRY OF ORIGIN LABELING FOR MEAT AGREEMENT

The Committee recognizes that the issue of Country of Origin Labeling for meat has become increasingly contentious. With implementation of the statute enacted in the Farm Security and Rural Investment Act of 2002 looming, the Committee leadership requested that representatives of the various interested parties discuss opportunities to resolve issues of division. These discussions resulted in general agreement on aspects of the law which could be modified to achieve the goals of: improving marketability of meat products; providing consumers the information they may seek with regard to the origin of meat products; and, doing so in a manner which minimizes the cost of compliance on livestock producers and the meat trade.

During consideration of H.R. 2419, the Committee was presented with a list of items that were agreed upon by the various interested parties. The list included suggestions to improve the statute with regard to issues including product labels, records, and recordkeeping.

With regard to product labeling, the Committee adopted amendments to Section 281 of the Agricultural Marketing Act of 1946 that would establish four categories of country of origin labels for meat. The legislative language outlining these categories is self-explanatory.

Another area of concern was labeling of ground meat products. The amendment adopted by the Committee provides that the label will include a narrative list of reasonably possible countries from which the product may have been derived. While the Committee recognizes the interest in providing consumers with information regarding the origin of their meat products, the Committee also recognizes the potential cost associated with complying with any label mandate. As such, the Committee has adopted a grandfather provision to address concerns about the transition.

With regard to requirements for records and recordkeeping, the Committee has adopted provisions that will enable less burdensome verification requirements. Specifically, the Committee has adopted an amendment that will place limits on the authority of the United States Department of Agriculture (USDA) to audit covered entities. To further shield all parties from liability, the amendment limits the records upon which these USDA audits may rely. By limiting these records to those kept as part of a normal business practice, it is the intent of the Committee that retailers and other covered entities will not impose unnecessary or burdensome obligations on their suppliers.

The final item of agreement dealt with the issues of liability and enforcement. The amendment adopted by the Committee will limit the applicability of civil penalties to a covered entity that has not made an effort to comply and continues to willfully violate this section. The Committee specifically intends that violations resulting from a good faith effort to come into compliance shall not be subject to civil penalties.