Consumers Union's Comments on
US Department of Agriculture (USDA) Agricultural Marketing Service (AMS)
Proposed Rule on 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
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## Summary

Consumers Union[1] (CU) welcomes the opportunity to comment on the United States Department of Agriculture's (USDA's) proposed rule to amend the Country of Origin Labeling (COOL) regulations for muscle cut meat commodities to provide consumers with more specific information about the retail meat products they buy, and to amend the definition for "retailer" to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act (PACA). Basically, USDA is proposing to require all meat products to be labeled as to where the animals were born, raised and slaughtered and to close a potential loophole in the definition of "retailer." We wholeheartedly support these changes being recommended by USDA, as these new rules will give consumers more detailed origin information on the label to enable more informed buying decisions.

## Background

In January of 2009, USDA published a final rule on COOL that covered Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts. Almost immediately, a number of countries challenged the COOL requirements for muscle cut meat commodities, saying that the US COOL regulations discriminated against the importing country's product. In June, 2012, the World Trade Organization (WTO) Appellate Body (AB) affirmed a previous WTO Panel finding that the COOL requirements for muscle cut meat commodities violated US obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement), by giving less favorable treatment to imported products than to domestic products. The WTO Dispute Settlement Body gave the US until May 23, 2013 to comply with the WTO ruling.

[1] *Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.*

The USDA's response to the WTO AB finding is the present proposal of three amendments to the COOL regulations, which USDA believes will bring the COOL requirements into compliance with US international trade obligations.

First, USDA proposes amending the definition of "retailer" so that it "means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act [PACA] of 1930." Previously, as USDA has noted, "Under PACA, a retailer is any person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail when the invoice cost of all purchases of produce exceeds $230,000 during a calendar year. This current definition excludes butcher shops, fish markets, and small grocery stores that sell fruits and vegetables at a level below this dollar volume threshold or do not sell any fruits and vegetables at all" (68 FR 61946, October 30, 2003).

Unfortunately, the definition of retailer in the current COOL regulations does not conform to what the average consumer thinks of as a retailer. It completely excludes stores that do not sell fruits and vegetables, such as a large fish market, even though fish are supposed to be covered. It also excludes meat markets and small green grocers and convenience stores. In fact, it covers only very large supermarkets. Unfortunately, the law mandating COOL specified that the PACA definition of "retailer" was to be used. That said, the definition of "retailer" in the current COOL regulations left it unclear as to whether a "retailer" had to actually have a PACA license to be covered by the COOL regulations.

The proposed amended definition of "retailer," that is "means any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act of 1930," makes it clear that a retailer doesn't actually need to have a PACA license to be covered under the COOL regulations. We agree with the amended definition, as it closes significant gaps and leaves no ambiguity as to who is covered.

Second, USDA proposes changing COOL requirements for muscle cut covered commodities, so that all such commodities will have to include location information for each step of the production—where the animal was born, raised and slaughtered. Under the current COOL regulations, a muscle cut covered commodity that came from animals born, raised and slaughtered in the US would be labeled as "Product of the US." Under the proposed amendments, such a commodity would now be labeled as "Born, Raised and Slaughtered in the US."

The proposed change is more significant for muscle cut covered commodities that come from animals slaughtered in the US, but which have multiple countries of origin. The current regulations allow such commodities to be labeled as "Product of the US and Country X" (for animals born in another country, and raised partly or fully in US), or "Product of Country X and US" (for animals born and raised in another country and then imported for immediate slaughter in the US as defined in § 65.180). The current regulations do not require indicating which step(s) occurred in which countries. Under the proposed change, the labels would now have to list the country where each of the

production steps (i.e. born, raised, slaughtered) occurred. (The one exception is that if an animal is mostly raised in Country X but is brought to the US for some further raising (e.g., fed for a couple of weeks) before slaughter in the US, the label can say "Born in Country X, raised and slaughtered in US," omitting the country where the earlier part of the raising was done, as the raising in the US takes precedence.)

The new labels are clearer and give consumers more specific and useful information on which to make buying decision. Previously, consumers had to guess that a muscle cut covered commodity labeled as “Product of Country X and US” referred to an animal born and raised in Country X and then shipped to US for immediate slaughter, while one labeled as “Product of US and Country X) referred to an animal(s) born (and potentially partially raised) in Country X and then shipped to US for further rearing and slaughter. The new proposal is far more consumer friendly as it spells out where each step of the production process occurred.

Third, and most importantly, the proposed rule would eliminate the allowance for commingling of muscle cut covered commodities of different origins on one production day. Under the current COOL regulations, muscle cut covered commodities derived from animals born, raised and slaughtered in the US can be commingled during a production day with muscle cut covered commodities from animals born elsewhere, but raised and slaughtered in US and the resultant meat product may be labeled Product of US, Country X, and (as applicable) Country Y. The proposed rule would require origin designations to include specific information as to the place of birth, raising and slaughter from which the meat is derived. As USDA notes, “Removing the commingling allowance allows consumers to benefit from more specific labels.” We absolutely agree with USDA about this. We support this change.