Consumer Federation of America

September 15, 2008

Country of Origin Labeling Program (MS-0254)
Agricultural Marketing Service
1400 Independence Avenue SW
Room 2607-S
Washington, DC 2025-0254

RE: **Docket No. AMS-LS-07-0081**

To Whom It May Concern:

Consumer Federation of America (CFA) is pleased to submit the following comments on the mandatory country of origin labeling interim final rule (**Docket No. AMS-LS-07-0081**). 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.

CFA has long supported a mandatory country of origin labeling (COOL) program as a means of providing consumers with important information about the source of their food. Consumers have a basic right to know where their food originated and numerous polls have shown that consumers want information about the country of origin of foods they purchase. CFA supported the language included in the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) that further clarified Congress' intent in establishing a mandatory country of origin labeling program. The language in the 2008 Farm Bill was agreed to by a cross-section of COOL stakeholders and was instrumental in setting the stage so that mandatory COOL could be finally implemented after a six year delay.

CFA appreciates AMS' efforts to assure that mandatory COOL will be implemented by September 30, 2008 as required by the law. Consumers have waited far too long for the implementation of this important program. For the most part, the interim final rule closely reflects the language in the 2008 Farm Bill. However, CFA objects to the way AMS has used its interpretative prerogative to specifically weaken a key element of the law.

AMS Should Narrow its Definition of a "Processed Food Item"
In particular, AMS takes an unacceptably broad approach to its definition of a processed food item. In the interim final rule AMS states:

> [A] 'processed food item' is defined as: 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.

AMS provides examples of specific processing that would result in a "change in character" of the covered commodity, including cooking, curing, smoking, and restructuring.

CFA strongly objects to the way AMS has defined a "processed food item" in this interim final rule. The definition is sweeping and general and does not account for differences in commodities. For example, roasting does not apply to meat products the same way that it applies to peanuts, pecans and macadamia nuts. The result of such a broad definition means that 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.

This broad definition of a "processed food item" is unacceptable, but not unexpected. USDA has been clear from the beginning that it is not in favor of a mandatory COOL program. AMS states its opposition to mandatory COOL throughout the interim final rule and is clearly prejudiced in favor of reducing the burden of COOL regulations to the industry: "The Department believes that the statutory language makes clear that the purpose of the COOL law is to provide for a retail labeling program for covered commodities—not to impose economic inefficiencies and disrupt the orderly production, processing, and retailing of covered commodities." Despite AMS' predisposition, the Agency should not abuse its authority by exempting large amounts of commodities from the final regulations.

Commodity That Are Not Substantially Altered Should Be Covered

According to the interim final rule, almost all peanuts, pecans and macadamia nuts that consumers purchase would be exempt from the rule. Only green or raw nuts would be covered. As AMS states above, the purpose of the COOL law is to provide for a retail labeling program for the covered commodities. The purpose of including these products as covered under the law is to provide consumers with information about their country of origin. Exempting most of the peanuts, pecans and macadamia nuts that are purchased by consumers because of an overly broad definition of "processing" does not sufficiently address the spirit or the intent of the law.

In its August 2007 comments, CFA urged AMS to require labeling for all beef, pork, lamb, perishable agricultural products and peanuts unless the food product was *substantially altered* from its original state. CFA does not believe that "roasting" substantially alters a peanut, pecan or macadamia nut; nor does it result in a change in character of the item unless one applies a very rigid definition of "change in character." Rather roasting represents a further step in the preparation of that food item to prepare it for consumption. Consumers do not regularly consume raw or green nuts. They do frequently consume roasted nuts, as the roasting makes the nuts palatable. The same principle should be applied to pork products that are cured or smoked as those processes represent further preparation steps and do not substantially alter the product itself.

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 these commodities are covered under the law.

Combing Covered Commodities Should Not Be Considered "Processing"
Furthermore, CFA strongly disagrees with AMS' contention that combining two or more covered commodities constitutes "processing." In considering a change in the definition of ground beef, AMS agreed with comments the Agency received that noted the definition in the proposed rule "would have excluded products such as hamburger and potentially beef patties. **Consumers likely would have been confused as to why certain ground beef products were labeled with country of origin while others were not"** (emphasis added).

Similarly, consumers are likely to be confused as to why frozen peas will be labeled and frozen carrots will be labeled, while frozen peas and carrots mixed together will not be labeled. The determination that combining two or more covered commodities constitutes "processing" is nonsensical. This applies to both frozen produce and ready-to-eat produce items like salad mixes that contain carrots. If those commodities are covered and are not being processed in a manner that substantially changes their character, then combining those commodities should not be grounds for exemption from the labeling rule. AMS should revise its definition of processing so that if covered commodities are combined, the resulting food item is still covered under the law.

Consumers expect that the products covered under the law will be labeled. They do not expect to find some products covered while others are not because of an unnecessarily broad definition of "processing." AMS needs to revise its definition of "processed food item" as indicated above so that it meets the intent, not just the letter, of the law.

Sincerely,

Chris Waldrop
Director, Food Policy Institute