Fighting for the U.S. Cattle Producer!

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Re: R-CALF USA's Complaint Regarding the USDA's COOL Report: Request for Correction of Information Submitted Under USDA's Information Quality Guidelines

Dear Secretary Vilsack, General Fong, Robert Johansson, and Erin Morris:

In April 2015 the U.S. Department of Agriculture ("USDA") Office of the Chief Economist ("OCE") issued a report to Congress titled, "Economic Analysis of Country of Origin Labeling (COOL)" that both summarized and included in full a January 26, 2015 study commissioned by the USDA titled "Economic Impacts of 2009 and 2013 U.S. Country-of-Origin Labeling Rules on U.S. Beef and Pork Markets" (collectively, "the COOL Report").[1] The COOL Report was purportedly issued pursuant to Section 12104 of the Agricultural Act of 2014 ("2014 Farm Bill") that, as

[1] Economic Analysis of Country of Origin Labeling (COOL), Office of the Chief Economist, April 2015, hereafter "COOL Report," attached hereto as Attachment 1.

reprinted from the COOL Report below, prescribes the scope of an economic analysis that Congress directed the USDA to conduct.

> **SEC. 12104. COUNTRY OF ORIGIN LABELING.**
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> (a) ECONOMIC ANALYSIS.—
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> (1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Agriculture, acting through the Office of the Chief Economist, shall conduct an economic analysis of the final rule entitled ''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'' published by the Department of Agriculture on May 24, 2013 (78 Fed. Reg. 31367) that makes certain amendments to parts 60 and 65 of title 7, Code of Federal Regulations.
>
> (2) CONTENTS.—The economic analysis described in subsection (a) shall include, with respect to the labeling of beef, pork, and chicken, an analysis of the impact on consumers, producers, and packers in the United States of—
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> (A) the implementation of subtitle D of the Agricultural Marketing Act of 1946 (7 U.S.C. 1638 et seq.); and
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> (B) the final rule referred to in subsection (a).

As discussed below, however, the COOL Report does not conform to Congress' clear and unambiguous directive and, instead, it exceeds the scope of that directive by analyzing externalities that Congress did not contemplate, request or otherwise desire and it presumptively did so for the purpose of, and with the effect of, grossly overstating the economic costs of country of origin labeling ("COOL"). In addition and as also described below, the COOL Report lacks objectivity, utility and credibility.

For the reasons mentioned above and more fully described below, R-CALF USA hereby requests a correction of information regarding the COOL Report under Section 515 of Public law 106-554 (codified at 44 U.S.C. §3516 and commonly referred to as the "Data Quality Act") and under the U.S. Office of Management and Budget's ("OMB's") implementing guidelines for the Data Quality Act and USDA's Information Quality Guidelines (collectively "Information Quality Guidelines"). In addition, R-CALF USA requests that when an investigation into the allegations contained herein is initiated, the USDA issue a formal notice to each recipient of the April 2015 COOL Report as well as to the general public informing them that the COOL Report is being withdrawn pending a review of a complaint filed under the Data Quality Act and related Information Quality Guidelines.

R-CALF USA's request for information correction is based on the fact that the COOL Report fails to meet the minimum standards set forth in the Data Quality Act and the Information Quality Guidelines. Consequently, the COOL Report, which is a highly influential document, misleads Congress and the general public. United States farmers and ranchers who want the beef produced from their U.S. born and raised cattle differentiated from beef produced from foreign born and raised cattle with a country of origin label are particularly harmed by the COOL Report as are consumers who want to know from which country or countries the beef they purchase was born, raised and slaughtered. This is because the inappropriate COOL Report is already being used by COOL detractors to repeal COOL. Governmental integrity and accountability dictate that the errors, omissions, biases and falsehoods contained in the COOL Report, as identified and documented herein, must be immediately corrected.

I. THE COOL REPORT IS INFLUENTIAL INFORMATION AND SHOULD BE SUBJECTED TO AN ADDED LEVEL OF SCRUTINY UNDER USDA'S INFORMATION QUALITY GUIDELINES

As a preliminary matter, the COOL Report meets and exceeds the USDA's Information Quality Guidelines definition of *influential information*. The USDA defines *influential information* as "information that the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or important private sector decision."[2] The COOL Report meets and exceeds the USDA's two-factor test of breadth and intensity for determining

[2] USDA's definition of *Influential* Scientific, Financial or Statistical Information, Background, Office of the Chief Information Officer, available at http://www.ocio.usda.gov/policy-directives-records-forms/guidelines-quality-information/background.

whether information is influential.[3] First, the COOL Report impacts a broad range of parties because COOL has a clear and substantial impact on the entire U.S. cattle and beef industries, U.S. hog and pork industries, U.S. sheep and lamb and mutton industries, and U.S. poultry industries. Together these industries include hundreds of thousands of U.S. livestock and poultry producers. In addition, the COOL Report impacts every consumer of muscle cuts of meat and ground meat purchased at U.S. retail establishments and those consumers likely number in the hundreds of millions. The COOL Report, therefore, affects a broad range of parties.

Evidence that the COOL Report meets or exceeds both the breadth and intensity test for *influential information* is provided by the unprecedented lobbying action by the U.S. House of Representatives Committee on Agriculture that issued a news release advocating the repeal of COOL.[4] In its news release, the committee attributes the COOL Report to the USDA's Agricultural Marketing Service ("AMS") and describes the intensity of the COOL Report by its conclusion that livestock and meat industry participants would incur $2.6 billion in costs and the U.S. economy would be negatively impacted by as much as $211.9 million as a result of COOL.

Therefore, the COOL Report will have an intense impact on a broad range of parties and should be considered *influential*. The USDA's Office of Inspector General formally acknowledges on its website that "influential information is subject to an added level of scrutiny,"[5] and R-CALF USA presumes that this is the case for all influential information disseminated by the USDA, including the COOL Report.

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[3] *See id.*
[4] 10 COOL Things to Know, U.S. House of Representatives Committee on Agriculture, (undated but received by this author via e-mail from the House Agriculture Committee on May 12, 2015), attached hereto as Attachment 2.
[5] Office of Inspector General Information Quality Guidelines, Standards for Disseminated Information, available at http://www.usda.gov/oig/qltyguidelinesrev.htm.

The highly influential nature of the COOL Report is manifest by the widespread controversy surrounding the COOL law. It is common knowledge that Canada and Mexico filed a complaint against COOL at the World Trade Organization ("WTO") in 2008 and that the U.S. is currently appealing the WTO's third attempt to coerce the United States into changing its COOL law. It is also common knowledge that the trade associations representing multinational meatpackers, along with their domestic and foreign allies, attempted unsuccessfully to derail COOL in a federal lawsuit filed in 2013. Finally, the fact that Congress specifically directed the USDA to conduct an analysis of COOL for its edification demonstrates that the COOL Report contains highly influential information. Given the U.S. House Agriculture Committee's aforementioned news release, it is clear that certain members of Congress intend to use the COOL Report as a controlling factor to justify legislation to repeal the United States' widely popular COOL law.

As demonstrated below, the highly influential COOL Report fails in every respect to meet even the most rudimentary of quality standards, let alone the standards of quality established by Congress under the Data Quality Act and by the OMB and the USDA in their respective quality guidelines, and it most certainly fails to meet the added scrutiny required due to its influential nature.

II. THE COOL REPORT FAILS TO MEET EVEN THE MOST LENIENT INTERPRETATION OF OBJECTIVITY UNDER THE USDA'S INFORMATION QUALITY GUIDELINES

As herein described, the COOL Report fails in every respect to meet even the most lenient interpretation of the USDA's objectivity standard that unambiguously requires disseminated information to be "substantially accurate, reliable, and unbiased and presented in an accurate, clear, complete, and unbiased manner."[6]

[6] USDA Office of Chief Information Officer, Information Quality Activities, General Information, available at http://www.ocio.usda.gov/policy-directives-records-forms/information-quality-activities.

A. The COOL Report Ignores Congress' Explicit Directive for an Analysis of the Impacts of COOL on a Finite List of Industry Participants.

As stated above, Congress unambiguously directed the USDA to conduct an economic analysis of the impact of COOL on "consumers, producers, and packers in the United States. . ."[7] Importantly, Congress did not direct, instruct, or otherwise authorize the USDA to analyze the impact of COOL on retailers. Congress' omission of retailers is significant because the COOL law imposes a direct duty *only* on retailers to affix COOL labels on meat.[8]

By its purposeful omission of retailers, whom Congress knew would bear a substantial share of the costs of COOL, Congress ensured that the USDA would provide an economic analysis of the impact of COOL on upstream producers and packers and downstream consumers, but not on retailers that serve as the fulcrum point when weighing costs borne by upstream producers and packers against the benefits flowing both to downstream consumers and to upstream producers. Such an analysis would enable Congress to assess and compare the costs and benefits of COOL on upstream supply-chain participants that have a duty only to "provide information to the retailer indicating the country of origin[,]"[9] and on downstream consumers that ultimately receive the information passed on by producers and packers in the form of retail labels, without regard to whatever costs may be incurred at the interface (or fulcrum point) between those that supply COOL information to the retailer and those that receive information from the retailer.

Indeed, this is the heart of the COOL controversy, both in U.S. federal court and at the WTO. Neither retailers nor their trade associations joined as plaintiffs in the U.S. federal court challenge against COOL. Instead, it was the meatpackers and their foreign and domestic allies that complained that they were being harmed by COOL's requirement to pass information to retailers. Likewise, the

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[7] *Supra*, at 2.
[8] *See* 7 U.S.C. § 1638a(a)(1).
[9] 7 U.S.C. § 1638a(e).

WTO's repeated rulings against COOL do not cite costs or burdens on retailers as violative of U.S. trade obligations; but rather, it cites the costs and burdens associated with transmitting origin information to retailers as the basis for its adverse rulings.

Clearly, if Congress wanted the USDA to include the economic impact that COOL has on retailers it would have said so. The fact that it did not demonstrates definitively that Congress demanded an economic analysis on the impact that COOL has only on consumers, producers, and packers.

The USDA, however, ignored Congress' directive and included impacts on retailers in its COOL analysis,[10] thus skewing the analysis Congress sought and unobjectively and deceptively tipping the scales for the cost/benefit balance in favor of COOL detractors – principally foreign governments, multinational meatpackers and their foreign and domestic allies, such as the National Cattlemen's Beef Association ("NCBA") that has multinational meatpackers seated on its governing board. The biased, scale-tipping effect accomplished by the USDA's defiance of Congress' explicit directive occurred because, as Congress already knew, a large share of any costs associated with COOL would be borne by retailers.[11]

Also, in one of the two methodologies deployed by the USDA to analyze the impacts of COOL, producers, packers and retailers were mingled into a single, undifferentiated basket for the purpose of measuring "producer surplus."[12] As a result, the USDA rendered Congress' and the public's ability to assess producer surpluses ascribed to producers and packers from those surpluses ascribed to retailers.

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[10] COOL Report, at 2.
[11] *See, e.g., id.*, at 11 (describing that retailers experience the majority of the decline in producer surplus); at 13 (describing that "most of the reduction in producer surplus fell on retailers at a total of $297 million); at 30 (describing that retailers absorb the most costs).
[12] *See* COOL Report, at 8.

By improperly including cost impacts on industry participants that Congress did not authorize (*i.e.*, retailers), and then by subsequently ascribing some if not most of those unauthorized cost impacts to producers (from improper mingling), the USDA has skewed the results of the analysis that Congress authorized by its statutory mandate. The effect of the USDA's error is that the COOL Report grossly overstates the specific cost impacts that Congress demanded. Consequently, the USDA has handed over to COOL detractors the leverage they need to repeal of COOL.

The USDA can correct this error that demonstrates the USDA's bias against COOL by making a public pronouncement that it is retracting the COOL Report pending the completion of a new analysis on the impacts of COOL that will comport to Congress' explicit mandate.

B. The COOL Report Ignores Congress' Mandate to Analyze the Economic Impact on Specific Industry Participants With Respect to the Labeling of Meats.

As established above, Section 12104 of the 2014 Farm Bill required the USDA to, "with respect to the labeling of beef, pork, and chicken," conduct an analysis of the impact on specific industry participants. To support its contention that there is no evidence that consumer demand for beef or pork has increased because of COOL, the COOL Report compares and contrasts labeled commodities to exempt commodities.[13] By definition, however, exempt commodities are not covered commodities subject to labeling under COOL and, therefore, are outside the scope of Congress' "with respect to the labeling of beef. . ." mandate. Indeed, according to the COOL Report's own definitions, labeled commodities and exempt commodities are not even like/kind products as covered commodities are muscle cuts of meat and ground meat while exempt commodities are processed meats that have "altered the covered commodity's character."[14] Thus, to compare and contrast covered commodities with exempt commodities to demonstrate a lack of demand increase is

[13] *See* COOL Report, Appendix A, at vii.
[14] COOL Report, Appendix A, at 3.

akin to the metaphor of comparing apples to oranges. Clearly, Congress directed the USDA to conduct its demand calculations on labeled commodities, which would necessitate an analysis of the differing labels associated with COOL, *e.g*., "Born, Raised and Slaughtered in the U.S.;" "Born in Canada, Raised and Slaughtered in the U.S.;" "Born and Raised in Canada and Slaughtered in the U.S.;" "Product of Canada;" "Product of Mexico;" and "Product of Brazil," to name a few. This is so fundamental to any meaningful analysis of COOL that it is shocking that the USDA avoided it. As will be discussed below, Oklahoma State University understood this fundamental relationship of demand between meat products exclusively of U.S. origin and meat products of imported origin in its 2014 Food Demand Survey.[15] The demand-related analysis conducted by the USDA is meaningless in the context of determining the impacts of COOL and violative of Congress' mandate. As a result of the USDA's error, neither Congress nor the public is apprised of any meaningful analysis regarding the impact that COOL has had and will likely have on commodities bearing the various labels required under the COOL law.

C. The COOL Report Was Authored by Blatantly Biased Researchers.

At least two of the authors of the COOL Report, Glynn T. Tonsor, PhD, and Ted C. Schroeder, PhD, are widely known, longtime critics of the U.S. mandatory COOL law and their work has been repeatedly cited by COOL detractors as justification for repealing COOL. For example, the duo's November 2012 study titled "Mandatory Country of Origin Labeling: Consumer Demand Impact" published by Kansas State University was *Exhibit 1, Attachment B* to the 2013 lawsuit filed by the American Meat Institute ("AMI"), the National Cattlemen's Beef Association ("NCBA") and seven other COOL opponents that sought an injunction against COOL in the U.S.

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[15] *See infra*, at 16-17.

District Court for the District of Columbia.[16] In its Exhibit 1, the AMI characterized the Tonsor, Schroeder, et al. study as finding, *inter alia*, that benefits attendant to COOL were "virtually nonexistent," that COOL did not impact demand, that consumers did not value a product with a U.S. label more than they valued a product with a North America label, and it quoted the finding that the researchers' results 'suggest an aggregate economic loss for the U.S. meat and livestock supply chain spanning from producers to consumers.'[17] Expectedly, these are essentially the same conclusions the same researchers drew in the 2015 COOL Report.

In addition to Tonsor's and Schroeder's anti-COOL sentiments and opinions formulated at least as early as 2012 and then formally and publicly expressed by them long before the USDA commissioned them to fulfill the 2014 mandate that Congress had directed the USDA to fulfil, Tonsor also expressed his personal bias against COOL in an interview with his own university's extension service.[18] Tonsor reportedly stated that COOL was negatively affecting U.S. trading partners and he subtlety criticized Congress for passing mandatory COOL: 'Moreover, I don't know if it has to be a mandatory COOL policy,' [Tonsor] said. 'Perhaps we could have developed (COOL) in a voluntary sense.'[19] Tonsor formally expressed similar views, namely that there likely is no significant impact from COOL and that COOL would result in an aggregate welfare loss both within the U.S. and with key trading partners, in another published study that he had coauthored.[20] It is unremarkable that Tonsor's and Schroeder's conclusions in the instant COOL Report are nearly identical in scope and content as were their conclusions in their 2012 study. In fact, given the

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[16] *See* AMI et al.'s Memorandum of Law in Support of Plaintiff's Motion for a Preliminary Injunction (citing Exhibit 1 in fn. 1), attached hereto as Attachment 3.
[17] *See* Exhibit 1, pp. 17-18 of 89, attached hereto as Attachment 4. *See also* Attachment B to Exhibit 1, pp. 81-86 of 89.
[18] *See* Mandatory COOL: Still Detrimental to Trade, No Easy Solution, Katie Allen, Kansas State University Extension, Drovers Cattle Network, Oct. 29, 2014, attached hereto as Attachment 5.
[19] *Ibid.*
[20] *See* Revealed Demand for Country-of-Origin Labeling of Meat in the United States, Mykel R. Taylor and Glenn Tonsor, Journal of Agricultural and Resource Economics, 38(2):235-247, at 245, attached hereto as Attachment 6.

significant promotion and outreach efforts undertaken by Tonsor and Schroeder to publicly disseminate and tout their anti-COOL findings in their 2012 study,[21] it would be highly improbable that they would, just three years later, design and complete a research project with a different outcome. In other words, the USDA ensured that the analysis mandated by Congress in 2014 would be similar to, if not identical to, the 2012 Tonsor, Schroeder, et al.'s anti-COOL study. This is because it commissioned Tonsor and Schroeder to conduct the new study concerning the same subject matter contained in their previous study. It would be beyond naiveté to expect any other outcome from such manifestly biased researchers.

Further support of this allegation is found in the numerous instances in the COOL Report where prior studies by Tonsor and/or Schroeder are cited as the exclusive authority to support the researchers' purportedly new claims. For example, the COOL Report relies on supply and demand elasticity estimates "employed by Schoreder and Tonsor (2011)," [22] and on the magnitude of demand increases identified by Tonsor.[23] Also, some of the citations for authority crediting Schroeder and Tonsor is to work they have not yet completed or that has not yet been published, *e.g*., a 5% discount rate,[24] and a new approach to measuring demand.[25] In these particular instances, Congress and the public are relegated to having to "trust" them.

Livestock producers, consumers and Congress have been harmed by the USDA's employment of researchers who were already invested in their positions of faulting COOL and who were predisposed to continue faulting COOL because their previous, widely promoted and

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[21] *See, e.g.,* Ex Post Impact of MCOOL: Extensive Assessment Comparing Novel Demand Estimation. . ., Kansas State University (explaining that Tonsor made over 30 in-person presentations in the U.S. and Canada, including to the inaugural Beef-Cattle Economics webinar with an audience of 185 people from 5 countries), attached hereto as Attachment 7.
[22] COOL Report, Appendix A, at 40, 43 (Exhibit 4.1).
[23] *See id*., at 73.
[24] *Id*., at 58, fn. 10.
[25] *See id*., at 72.

publicized experiences had caused them to already conclude that there was insufficient demand for COOL, that COOL was too costly, or that COOL would adversely impact U.S. trading partners. Livestock producers, consumers and Congress have been denied an objective analysis of COOL due to the USDA's error and a logical remedy to this error would be to direct the USDA to make a public pronouncement that it is retracting the COOL Report pending the completion of a new analysis on the impacts of COOL that will be conducted by a balanced team of researchers as a minimum, if not by an exclusively impartial team of researchers.

D. The COOL Report Relies Exclusively on Cost Data Provided by a Blatantly Biased Private Firm that has Long Catered to COOL and Competition Reform Detractors.

The COOL Report relies exclusively on Sparks Companies, Inc., which was recently rebranded as Informa Economics, Inc. (hereafter, "Sparks/Informa"), for all of the cost estimates used in the study.[26] The Sparks/Informa cost estimates are based on proprietary information, indicating the estimates cannot be independently verified.[27] Sparks/Informa has been for well over a decade, and is today, blatantly biased against COOL as evidenced by the 2003 cover letter the company sent to then Agriculture Secretary Ann Veneman when it submitted its COOL cost estimates on behalf of itself and beef industry publicist Steve Kay. The cover letter clearly reveals the Sparks/Informa anti-COOL bias by revealing its predisposed opinion regarding COOL. It states that Sparks/Informa and Steve Kay "are concerned about the costs, impacts <u>and potential unintended consequences</u> that County of Origin Labeling will have on the industries producing covered products (emphasis added)."[28] In its cost estimate for COOL, Sparks/Informa additionally revealed its bias against COOL by making highly embellished claims of harms. Before the COOL rules were even promulgated, Sparks/Inform claimed that meeting COOL requirements would be difficult, that all

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[26] *See* COOL Report, at 6; *see also id*, Attachment A, at 29.
[27] *See* Sparks/Informa cover letter to Agriculture Secretary Ann Veneman and Sparks/Informa's COOL Cost Assessment, April 2003, at 11, attached hereto as Attachment 8.
[28] *Id.*

cattle and beef production stages would experience "significant" cost burdens, that packers will incur "huge" costs, that an individual animal identification system will be needed, that the beef industry will be competitively disadvantaged, and that "the red meat sectors will suffer competitive disadvantages."[29]

Sparks/Informa has a long and sordid history of providing grossly exaggerated, sky-is-falling-type economic studies to benefit the self-interests of industrialized agriculture conglomerates comprised of vertically integrated poultry and hog operations, multinational meatpackers and their allies (which include pseudo-producer groups such as the NCBA and the National Pork Producers Council ("NPPC") that are each governed in whole or in part by the multinational meatpackers seated on their governing boards). For example, in 2002 Sparks/Informa warned Congress in an NCBA- and NPPC-commissioned study[30] that if large meatpackers could not continue owning and feeding their own cattle, the U.S. pork and beef industry would suffer "immediate and long-term negative impacts. . . [and] [n]o segment [of the pork and beef supply chains] can expect to benefit, and each would likely face significant losses."[31] Then in yet another study commissioned again by the NCBA and the NPPC, joined this time by the meatpacker trade association National Meat Association and another packer-led producer group, the National Turkey Federation, Sparks/Informa warned the USDA and Congress that if a rule was finalized that protected U.S. livestock producers from such anticompetitive meatpacker actions as granting undue preferences, retaliation, discrimination and deception that caused financial and other harms to a livestock producer, then the United States would suffer nearly 23,000 job losses, $1.5 billion in lost GDP each year, and $359

[29] *Id*., at 3, 4, 8.
[30] Potential Impacts of the Proposed Ban on Packer Ownership and Feeding of Livestock: A Special Study, Sparks Companies, Inc., March 18, 2002, at "Forward," attached hereto as Attachment 9.
[31] *Id*., at i.

million in tax revenue losses.[32] No reasonable person would believe for a moment that the U.S. agricultural economy would suffer such great harm if meatpackers were prohibited from engaging in the heinous acts described above. This incredulous Sparks/Informa study was replete with non-economic warnings to members of Congress. For example, without any foundation it asserted that industry participants are nearly unanimous is assessing the rules as being poorly defined and that the rules would foster such uncertainty as to predispose industry participants to take extreme measures.[33] The evidence shows that Sparks/Informa is an advocacy group for, and it functions as a lobbying arm of, the multinational meatpackers. It provides the industrialized sectors of the livestock and meat production chain with biased and exaggerated studies and opinions intended to block efforts by independent livestock producers to obtain the tools they need to compete in the global marketplace (*e.g.*, COOL) and to restore market competition to their industry.

A clear example of the researchers' blind acceptance of the proprietary cost information provided by Sparks/Informa is that the researchers are confounded by, and uncertain of, the significant increased COOL implementation costs that Sparks/Informa had assigned to retailers:

> However, the percentage increases in costs (relative to total value) applied in our study are substantially larger than those used by Brester, Marsh, and Atwood (2004b) at the retail beef level and slightly higher at the retail pork level. This is because Informa (2010) increased their estimates of retailer costs of compliance relative to their earlier estimates used by Brester, Marsh, and Atwood (2004b). A much larger share of implementation costs, especially for the beef industry, appears to have occurred at the retail level than expected prior to MCOOL becoming law in 2009 (emphasis added).[34]

By relying exclusively on cost estimates provided by Sparks/Informa, a known, aggressive advocate of the industrialized meat sector, the USDA was absolutely guaranteed that the outcome of

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[32] *See* An Estimate of the Economic Impact of GIPSA's Proposed Rules, Executive Summary, Informa Economics, Nov. 8, 2010, attached hereto as Attachment 10.
[33] *See id*., at 1.
[34] COOL Report, Appendix A, at 50.

the COOL Report would be strongly biased in favor of COOL detractors at the expense of independent U.S. livestock producers and consumers. And it was.

The harm to livestock producers, consumers and to Congress is obvious. They all have been deprived of an impartial, accurate and independent analysis of COOL that relies on impartial and accurate and uninflated cost estimates that can be independently verified and confirmed. The USDA can correct this error by making a public pronouncement that it is retracting the COOL Report pending the completion of a new analysis on the impacts of COOL that will contain accurate, reliable and verifiable data and cost estimates from an impartial source.

III. THE COOL REPORT FAILS TO MEET EVEN THE MOST LENIENT INTERPRETATION OF THE TERM INTEGRITY UNDER INFORMATION QUALITY GUIDELINES

R-CALF USA incorporates by reference all of the foregoing allegations as if fully restated here. Further, R-CALF USA asserts that each of the following errors constitute a lack of objectivity in addition to demonstrating a lack of integrity.

A. The COOL Report Conveniently Omits Major Studies that Are Widely Known Throughout the Livestock Industry and That Contradict the Researchers' Findings.

One of the first and perhaps most prominent studies that assessed the consumers' willingness to pay for COOL was completed in 2003 by M.L. Loureiro and W.J. Umberger who found, *inter alia*, that consumers in Chicago were willing to pay a premium of 23% for a U.S. labeled steak.[35] COOL Report researcher Schroeder acknowledged the importance of this earlier study in a report he co-authored and in which he stated that the Loureiro and Umberger study was among a "large body" of literature that reports that consumers are willing to pay higher premiums to COOL.[36] However, neither the Loureiro and Umberger study, nor any of the other studies cited by Schroeder et al. in

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[35] Consumer Willingness-To-Pay for Cue Attributes: the Value beyond its Own, Gao Z., T. Schroeder and X. Yu., Journal of International Food and Agribusiness Marketing, Vol.22(1): 108-124, at 11 of 64, attached hereto as Attachment 11.

[36] *Id*, at 5 of 64.

that earlier report, including another study by Umberger and a 2005 study by Mabiso et al., are referenced in the COOL Report. In fact, despite Schroeder's assertion that a large body of literature reports that consumers are willing to pay higher premiums, the only referenced source specifically for willingness to pay cited in the COOL Report is a 2014 survey by Oklahoma State University. And, as discussed in more detail below, that survey was referenced in the COOL Report without even mentioning the statistically different values that respondents assigned to exclusively domestic meat versus imported meat.

Similarly, COOL Report researcher Pascell had previously co-authored a study published in the *Journal of Food Distribution Research* in which he cited several studies that he stated show that consumers are willing to pay a premium for domestic food over imported food and that COOL was an important factor.[37] In support of this contention, Pascell and his colleague cited the following recent studies: Peterson and Burbidge 2012; Xie, House, Hyeyoung 2012; Han et al. 2012; Xie et al. 2011; Krystallis and Chryssochoidis 2006. However, not a single one of these recent studies that, according to Pascell, demonstrate that consumers are willing to pay a premium for domestic food and COOL is an important factor was included in the COOL Report.

B. The COOL Report Inexplicitly Misrepresents Important Findings Concerning COOL.

The COOL Report misrepresents important findings of previous studies concerning COOL. For example, Although the COOL Report acknowledges that the November 2014 Food Demand Survey completed by Oklahoma State University provides the "only known" academic study on consumer reaction to the most recent, 2013 COOL Rules,[38] the COOL Report mischaracterizes the survey's finding that respondents valued steaks labeled as to where the animal from which it was

[37] Variations of Consumer Preferences Between Domestic and Imported Food: The Case of Artisan Cheese, Haluk Gedikoglu and Joe L. Parcell, Journal of Food Distribution Research, July 2014, Volume 45, Issue 2, at 175, attached hereto as Attachment 12.
[38] Food Demand Survey, Oklahoma State University, November 17, 2014, at 5, attached hereto as Attachment 13.

derived was born, raised, and slaughtered under the new, 2013 COOL rule higher than steaks labeled under the 2009 rule with a "Product of Canada and the U.S. Label." The COOL Report unequivocally states that the survey found that respondents "did not place different values (emphasis added)" on the steaks labeled under the 2013 rule versus those labeled under the 2009 rule.[39] This is demonstrably false as the survey actually found that respondents valued a 12 oz. boneless rib eye beef steak with the label "Born, Raised and Slaughtered in the U.S." at $7.00 and the same steak labeled "Product of Canada and the U.S." at $6.45, which is $0.45 less. While the survey's authors stated that the $0.45 difference was not statistically different, they did not attempt to mislead reader, as did the authors of the COOL Report, by denying that respondents had, in fact, assigned a higher value to the domestic product.

In another slight-of-hand-type deception, COOL Report researchers explicitly state that what is most important regarding the Food Demand Survey is an assessment of whether the willingness to pay across labels was statistically different.[40] Then, the researchers inexplicitly omitted the survey's most profound and statistically significant finding, *i.e.*, that "[r]esults indicate consumers valued beef that was born or born and raised in Canada $0.89 and $1.05 less, respectively, than beef that was born, raised, and slaughtered in the U.S."[41]

A report that misrepresents basic facts contained in an important and influential source citation while simultaneously omitting key findings disclosed by that source, as does the COOL Report, exemplifies information that is misleading, unreliable, and fundamentally lacking in credibility and integrity. Therefore, the COOL Report harms everyone that expects federal agencies to issue only objective, accurate information, not sophomoric propaganda. Farmers and ranchers and consumers who want the beef produced from their cattle labeled as to its origin, and consumers who

[39] COOL Report, Appendix A, at 34.
[40] *See id*.
[41] Food Demand Survey, Oklahoma State University, November 17, 2014, at 5, attached hereto as Attachment 13.

want to know where their beef was produced, are particularly harmed by the USDA's egregious error as it provides COOL detractors with unwarranted leverage with which to repeal COOL.

C. The COOL Report Directly Contradicts Previous Investigative Findings by the USDA.

Among the many preconceived, anti-COOL biases held by the COOL Report researchers is their pre-established belief that the general public does not use origin information when making beef and pork purchases.[42] The USDA then adopts and incorporates this predetermined premise when it formulated its conclusions that consumers are unlikely to increase purchases of food items bearing the U.S.-origin label, and that there is no measurable increase to consumer demand.[43]

These USDA conclusions are directly contradicted by USDA's own investigation completed in 2010 wherein the agency concluded that, "Packers were not able to sell beef with 'Canada' or 'Mexico' labels for the same price as beef produced entirely within the United States."[44] In addition, the USDA stated:

> Packers also insisted that they could not sell B and C label beef, which was beef produced from cattle originating in Canada or Mexico, for the same prices as they could sell A label beef, which was beef produced entirely within the United States.[45]

Nowhere in the COOL Report does the USDA offer any explanation to reconcile the fact that the USDA's recent, real-world investigation found that consumers are willing to pay more for beef produced entirely within the United States.

Livestock producers and consumers are both harmed by the USDA's failure to accurately characterize the differences in consumer demand for beef that originated from various sources. This is because the USDA's failure has already empowered COOL detractors into initiating a

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[42] *See, e.g.*, COOL Report, Appendix A, at 33.
[43] *See* COOL Report, at 2.
[44] USDAS-GIPSA Investigative Report on COOL, at 1, attached hereto as Attachment 14.
[45] *Id.*, at 347.

congressional-sponsored campaign to repeal COOL.[46] This failure must be corrected by an official recall of the COOL Report and a re-initiation of an unbiased analysis of COOL that will include credible information.

IV. THE COOL REPORT LACKS ANY SEMBLANCE OF UTILITY

R-CALF USA incorporates by reference all of the foregoing allegations as if fully restated here. Further, R-CALF USA asserts that each of the following errors constitute a lack of objectivity and a lack of integrity, in addition to demonstrating a lack of utility.

A. The COOL Report Overstates the Costs of COOL.

The COOL Report grossly overstates the costs associated with COOL in at least three ways: First, the USDA admits that the costs contained in its COOL Report are overstated:

> In neither the EDMs developed by Tonsor, Schroeder, and Parcell, nor the approaches used by USDA have the exemptions for the labeling requirements been modeled explicitly. For example, one might expect that if labeling requirements were greater for meat derived from certain livestock supplies, those supplies would be used in the marketing chain for restaurants or small grocery stores, where the labeling requirements are not applied. Similarly, in neither the work of Tonsor, Schroeder, and Parcell, nor USDA's regulatory impact analyses have improvements in livestock production or processing technologies been incorporated into the economic models. Over time, one would expect producers, processors, and retailers to adapt to and adjust to the costs associated with any particular regulation. For example, it would be expected that the labeling costs associated with the COOL regulation would be higher initially and dissipate over time. Similarly, processors would be expected to adjust to the non-commingling requirement for livestock of mixed origin, and the cost of that requirement would fall over time. By not including those factors, the cost accounting method, as well as the PE and CGE methods described above, will overestimate costs.[47]

After the USDA admits that the costs contained in the COOL Report are overstated, it nevertheless provides no estimate whatsoever regarding how much those costs are or are likely to be overstated, which renders an accurate assessment of the COOL Report's costs untenable. In fact,

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[46] *See supra*, at 4.
[47] COOL Report, at 5.

given the USDA's admission and abject failure to state any estimate of its overstatement, the costs of COOL are just as likely to be zero as they are to be the amounts stated in the COOL Report.

B. The COOL Report Fails to Incorporate Industry Adoption of Known, Cost-Saving Technologies.

Second, while the COOL Report admits that one of the assumptions underpinning the COOL Report – the assumption that "the same assumed cost increases would persist over the duration of the 10-year periods examined in the study" – would actually diminish over time as more efficient ways to reduce costs are found.[48] In fact, in its 2003 study Sparks/Informa unequivocally stated that, "It is important to note that large processors already have some type of scanning or tracking technology in place, thus implementation of COOL will not be excessively costly."[49] Also, Sparks/Informa unequivocally stated in 2003 that, "Bottom line, the technology exists to provide supply chain compliance with the labeling law. Processes and procedures can be developed and put into place to provide full verification of the labeling claims that will be put on the product."[50] And, it stated that, "At the time of slaughter, [] [origin] information can be transferred to a bar code on the boxed beef so that country of origin will follow beef products right to the retail meat case."[51] If the foregoing statements by Sparks/Informa were true in 2003, just one-year after the passage of COOL, and since COOL was implemented for meat in 2009, it would be highly unlikely that the meatpackers and meat retailers referenced in 2003 have not already put such cost saving technology to work or that the technology already implemented has not significantly reduced their costs since 2009. This calls into question how the COOL Report has nevertheless concluded that there will be high costs for

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48 COOL Report, at 15.
49 Sparks/Informa cover letter to Agriculture Secretary Ann Veneman and Sparks/Informa's COOL Cost Assessment, April 2003, at 11, at 33, attached hereto as Attachment 8.
50 *Id,* at 13.
51 *Id*, at 20.

COOL compliance, including its claim that retailers suffered a cumulative loss of $6 billion in "producer" surplus.[52]

C. The COOL Report Relies on a Nonsensical Assumption that Deceptively Assigns Costs to Beef.

Finally, and related to the above claims of large losses to retailers, the COOL Report states:

> Finally, while the 2009 regulatory impact analysis assumed zero implementation costs for chicken at the farm supply level, small implementation costs were assumed at the intermediary and retailer levels. In contrast, the EDM approach did not impose COOL implementation costs for poultry at any level of the supply chain.[53]

This is bizarre. If retailers, as so asserted by the COOL Report and as established above, incur the majority of the costs of COOL implementation even though they merely pass origin information received from suppliers to consumers by way of a placard or label, and if retailers are required to pass the same information to consumers regarding the origins of poultry, then assigning a zero cost of implementing COOL for poultry means all of the costs assigned to the retailers for labeling beef, pork and poultry are assigned only to beef and pork, which would greatly overstate the actual costs ascribed to beef and pork products.

Odd, too, is the bare fact that the researchers appear to believe that the poultry industry is exempt from COOL costs.[54] Nowhere do the researchers clarify why they have excluded any costs associated with implementing COOL for chickens and yet they nevertheless purport to have analyzed the impact of COOL on chickens as Congress directed.

V. CONCLUSION

The foregoing discussion demonstrates that the USDA's highly influential COOL Report is a sham. It violates the Data Quality Act and both the OMB's and the USDA's Quality Information Guidelines because it is demonstrably inaccurate, unreliable and biased. These deficiencies render

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[52] *See, e.g.*, COOL Report at 11.
[53] COOL Report, at 5; *see also id*., at 8.
[54] COOL Report, Appendix A, at 58.

the report useless for its intended purpose. It is relegated as useless because it includes costs analyses not requested or authorized by Congress with the effect of overstating the impacts that Congress explicitly intended to assess; it conducts a misdirected and non-compliant demand analysis for labeled meats; it was conducted by blatantly biased researchers who used blatantly biased cost estimates that cannot be confirmed or verified; it omits major studies by some researchers and misrepresents findings of others while directly contradicting the USDA's first-hand findings resulting from its own 2010 COOL investigation; and, it grossly overstates COOL costs by being designed in a manner that forced the USDA to admit that its costs are overstated, by failing to incorporate known cost-saving technologies, and by employing nonsensical assumptions that improperly assign costs to beef and pork that should have been assigned to poultry.

Because of the foregoing deficiencies plaguing the COOL Report, it is more likely that the true cost of COOL is closer to zero than it is to the overly inflated costs highlighted in the COOL Report.

Unfortunately, COOL detractors are now wringing their hands in anticipation of using this work of fiction to leverage their congressionally-focused efforts to repeal COOL. This at the expense of the far more numerous COOL supporters, which consist of consumers who want to know where their food is born, raised and slaughtered and U.S. farmers and ranchers who want to differentiate their U.S.-origin product from among the growing tide of imported products.

Honesty, integrity and accountability demand that the COOL Report be corrected to accurately reflect the actual impacts of COOL on consumers, producers and packers – the entities explicitly identified in Congress' mandate. The general public and U.S. livestock farmers and ranchers are being irreparably harmed by this biased COOL Report as is the credibility of the USDA.

R-CALF USA recommends that the COOL Report be corrected by the issuance of an official notice that the COOL Report is being withdrawn pending the initiation of a new analysis that meets the Data Quality Act's standards for accuracy, reliability, objectivity, integrity and utility.

Time is of the essences regarding this Request for Correction of Information.

Sincerely,

Bill Bullard

Bill Bullard, CEO

Attachments: Attachments 1-14