J. Carlton Courter, III
Commissioner

COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services
PO Box 1163, Richmond, Virginia 23218
Phone: 804/786-3501 • Fax: 804/371-2945 • Hearing Impaired: 800/828-1120
www.vdacs.state.va.us

March 6, 2003

Country of Origin Labeling Program
Agricultural Marketing Service, USDA
Stop 0249, Room 2092-S, 1400
Independence Avenue, SW
Washington, D.C. 20250-0249

Re: Docket Number LS-02-13

After reviewing the voluntary guidelines for country of origin labeling (COOL) published in the Federal Register on October 11, 2002, the Virginia Department of Agriculture and Consumer Services offers the following comments:

- The Agricultural Marketing Act requires suppliers to provide retailers country of origin information. The majority of the burden and cost for compliance with country of origin labeling is placed upon the retailer, and according to the law, all enforcement actions will be against the retailer. We agree that the retailer should share the responsibility for country of origin labeling; however, the burden should be distributed throughout the industry.

- With respect to verification and enforcement, it is stated in the voluntary guidelines that "...as a preparatory measure, retailers and...others...may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system." This statement may cause concern to the food industry since a great deal of funding for the AMS is provided through the collection of user fees. This regulation will provide AMS another opportunity to charge user-fees to the industry.

- Section 284(c) of the law states "In promulgating the regulation, the Secretary shall, to the maximum extent possible, enter into partnerships with States with enforcement infrastructure to assist in the administration of this subtitle." We believe that this effort needs to be coordinated between AMS and the states. AMS traditionally deals with marketing programs, has limited knowledge about food safety requirements, and does not have the manpower to perform surveillance activities, investigate complaints and violations, or otherwise enforce this law. We assume the states will be expected to handle the surveillance and enforcement activities without additional resources or assistance from AMS. Virginia's "enforcement infrastructure" for retail food operations rests with the Virginia Department of Agriculture and Consumer Services' food safety program, which is inadequately staffed for current responsibilities.

The following comments are offered in support of Virginia's agricultural producers and produce retailers:

- In general, there is support for the record keeping requirements as outlined in the interim voluntary guidelines for the COOL program. The Virginia seafood, peanut, vegetable and lamb sectors support COOL guidelines as presented and have nothing to offer on the cost of implementation and maintenance of a COOL program. They believe that a country of origin label will enhance markets for their product. Most feel record keeping systems are in place that can be refined to comply with COOL guidelines.

- Produce retailers, however, believe the costs of implementing and maintaining a COOL program are underestimated.

- The beef and pork sectors in Virginia believe USDA/AMS cost estimates for implementing and maintaining COOL are too low for their industries, and that unintended consequences resulting from an aggressive, mandatory COOL program will eventually erode their competitiveness.

Below are more specific comments from each sector.

- **Produce retailers:** Producer retailers in Virginia generally oppose the COOL law record keeping requirements, as they believe it will be difficult and expensive to comply with the COOL law. Once imported produce gets to the store for retail sale it is difficult and costly for the produce manager to keep imported produce separate from domestic produce. The produce will lose its identity in the store cooler once removed from the original container. ID cards or labels fall off and, in many instances, consumers often misplace product on store shelves. Retailers believe that the record keeping requirement in the COOL law will increase costs to the store and, concurrently, to the consumer.

- **Peanut Producers:** Peanut growers in Virginia ***strongly*** support the COOL legislation as presented. *They oppose any delay in the legislation and oppose any country being exempt from this legislation.* They believe efforts are underway to exempt Canada and Mexico, both of which are counties that create major problems for the American peanut farmer today. Record keeping systems can be refined to accommodate COOL requirements within USDA/AMS cost projections. Peanut growers who have been surveyed at meetings *absolutely support and encourage* a mandated COOL law for all food products. The Virginia peanut industry believes that with a mandatory COOL law consumers and farmers will be better protected.

- **Peanut Shellers:** Peanut shellers go on record stating they have not taken a position on the record keeping requirement for COOL.

- **Produce/Vegetables:** Virginia produce growers and packers ***strongly*** support COOL legislation. *They oppose any delay in the legislation and oppose any country being exempt from this legislation.* They noted that it has taken years and the events of 9/11 to get this legislation passed and any attempt to weaken or delay its implementation should be vigorously opposed. The Association of Virginia Potato and Vegetable Growers has long considered this a critical issue and has voted to ***absolutely support and encourage*** a mandated COOL law for all food products. Given current labeling

requirements already mandated by wholesalers and retailers, the Virginia produce industry believes that record keeping systems can be refined to accommodate COOL requirements within USDA/AMS cost projections.

- **Produce/Fruit:** Virginia fruit growers have already instituted mandatory labeling programs for individual fruit sales to grocery and wholesale buyers. The general consensus from Virginia fruit growers is they are already required by wholesalers and retailers to place identity stickers on their products. Accordingly, the record keeping requirements proposed by COOL law can be accommodated within the cost projections used by USDA/AMS.

- **Marine Products:** The Virginia marine products industry, while they support COOL, has no comments to offer on the need for or cost of a record keeping system to comply with COOL. They believe the business lost to imported seafood versus domestic sources will justify the costs of establishing and maintaining the program. This is a top priority issue for Virginia watermen and seafood processors.

- **Sheep:** The sheep industry in Virginia does not foresee a problem in dealing with the record keeping requirements as outlined in COOL. The industry has an identification program in place for scrapie eradication. The scrapie identification program will facilitate verification of birthplace. There is a significant importation of Canadian lambs into the U.S. for finishing. Unlike the hog industry, the sheep industry does not foresee a segregation/identity preservation issue with these lambs, as the volume of imported lambs is substantially lower (approximately 20,000/year); therefore, costs to establish and maintain a COOL program for sheep will be in line with AMS projections.

- **Pork:** The official position of the pork industry in Virginia is that they do not support any measures that interfere with free trade. Virginia pork producers generally agree with the position taken by the National Pork Producers Council (NPPC) regarding the accuracy of AMS projections on costs of establishing and maintaining a record keeping system. They share NPPC's concern that the increased costs of record keeping, however minimal, will create a greater incentive for feeder hogs that are currently shipped to the United States from Canada to remain in Canada for finishing. In turn, it has been predicted that the U.S. will lose critical export market share to Canada due to this increased cost of record keeping. Further, pork producers believe the trace-back system proposed under the COOL law would raise the cost of pork and provide no benefit to the consumer. COOL would also significantly raise liability costs for the producer. Given the complicated nature of pork production in the United States, pork producers feel the labeling system mandated under COOL will be more expensive to set up than described by AMS. They believe the program will be difficult to manage and maintain and passes too much liability back to the producer to maintain a verifiable audit trail. They also believe COOL provides no benefit to the consumer for pork.

- **Cattle:** The official position of the U.S. cattle industry, and endorsed by cow/calf states (Virginia being a major cow/calf state) is that they **only support a voluntary COOL program**. Cattle producers are increasingly concerned about the cost and potential liability for producers of a mandatory COOL program. They also believe COOL will decrease the competitiveness of U.S. beef production as compared to imported beef and when compared to U.S. poultry production, which is exempt from COOL.

Virginia cattle producers are concerned that the projected costs for implementing and maintaining a COOL program are underestimated. Cattle producers stress that the unintended consequence of the COOL record keeping provision is that in order to follow the labeling requirements of the law there will need to be a certification/identification program that will reach down through the supply chain to the cow/calf producer. Under the voluntary program, the retailer will require documentation from the processor. The processor, in turn, will demand documentation from the producer. A Virginia calf could end up with many stamps in that calf's passport (producer, stocker, backgrounder, feed lot, packer, breaker, and retailer). Record keeping at these levels could prove to be a nightmare, and will be costly to both the producer and the consumer.

The Virginia cattle industry believes it would be better if USDA would accept official grading and other brand/certification programs as meeting the identification requirement of the law.

Lastly, the cattle industry feels under the proposed legislation, livestock producers will have to create and maintain auditable records identifying the origin of every animal they own. These records will have to be maintained for a minimum of two years. When mandatory regulations are issued, it will take years before retailers will be able to obtain accurate information to support their country-of-origin labels. Birth dates of most dairy and beef bovines in milking and breeding stocks and even feed lot bovines will precede the effective date of the law. The bottom line is that the new COOL provisions will force producers to implement livestock ID and audit trail requirements substantially before label information can be supported at the retail counter for consumers.

Thank you for the opportunity to comment on the federal guidelines. Please let me know if you have any questions.

J. Carlton Courter, III, Commissioner
Virginia Department of Agriculture and
Consumer Services