IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN MEAT INSTITUTE,
1150 Connecticut Avenue NW, 12th Floor,
Washington, DC 20036;

AMERICAN ASSOCIATION OF
MEAT PROCESSORS,
One Meating Place,
Elizabethtown, PA 17022;

CANADIAN CATTLEMEN'S ASSOCIATION,
6715 8th Street NE, Suite 310,
Calgary, Alberta, T2E 7H7;

CANADIAN PORK COUNCIL,
900-220 Laurier Avenue W.
Ottawa, Ontario, K1P 5Z9;

CONFEDERACIÓN NACIONAL DE
ORGANIZACIONES GANADERAS,
Mariano Escobedo 714, Nueva Anzures,
11590 Miguel Hidalgo,
Federal District, México

NATIONAL CATTLEMEN'S BEEF
ASSOCIATION,
9110 E. Nichols Avenue #300,
Centennial, CO 80112;

NATIONAL PORK PRODUCERS COUNCIL,
122 C Street NW, Suite 875,
Washington, DC 20001;

NORTH AMERICAN MEAT ASSOCIATION,
1970 Broadway, Suite 825,
Oakland, CA 94612; and

SOUTHWEST MEAT ASSOCIATION,
505 University Drive E, Suite 701,
College Station, TX 77840,

Plaintiffs,

v.

(caption continued on next page)

Case No. 1:13-cv-1033-KBJ

FIRST AMENDED COMPLAINT

(caption continued from preceding page) UNITED STATES DEPARTMENT OF AGRICULTURE, 1400 Independence Avenue, SW Washington, DC 20250; AGRICULTURAL MARKETING SERVICE 1400 Independence Avenue, SW Washington, DC 20250; TOM VILSACK, in his official capacity as Secretary of the United States Department of Agriculture, 1400 Independence Avenue, SW Washington, DC 20250; and ANNE L. ALONZO, in her official capacity as the Administrator of the Agricultural Marketing Service, United States Department of Agriculture 1400 Independence Avenue, SW Washington, DC 20250, Defendants.	Case No. 1:13-cv-1033-KBJ **FIRST AMENDED COMPLAINT**

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their undersigned counsel, file this First Amended Complaint adding the Confederación Nacional de Organizaciones Ganaderas as a Plaintiff.

PRELIMINARY STATEMENT

1. For decades, the North American meat industry has depended upon the two-way trade in livestock and meat products across national borders. Throughout the year, animals born in Canada and Mexico are shipped to the United States and raised alongside animals born here. Other mature livestock ready for slaughter are shipped directly to American meat processing plants, particularly from Canada. Imported livestock are a critical supply for American processing plants, particularly those near the Canadian and Mexican borders. These processing

plants produce meat products for domestic consumption and for export to a number of countries, including Canada and Mexico.

2. Until recently, processing plants have permissibly processed together animals born or raised in different countries—a longstanding practice called "commingling." Retailers, too, have permissibly commingled meat from animals with different origins together when packaging meat products for retail sale. Under regulations Defendants adopted in 2009, processors and retailers designated the meat derived from these animals as the "product of" multiple countries of origin.

3. Effective May 23, 2013, Defendants changed that. Under Defendants' new regulations for country of origin labeling ("COOL"), it is no longer sufficient to name the countries involved in the production of the product. Now, labels on covered meat products must list separately, in sequence, the specific country where the animal was "born," the country where it was "raised," and the country where it was "slaughtered." And for the first time in the history of the American meat industry, it will be unlawful to combine meats with different "Born, Raised, and Slaughtered" combinations in the same package at retail: Defendants' new COOL regulations ban commingling.

4. The new mandatory "Born, Raised, and Slaughtered" labels will require the transmission of extensive detail and paperwork about individual animals and the meat products derived from them as they make their way through the supply chain. And in the name of including unnecessarily detailed information about each animal's heritage, Defendants are prohibiting producers from processing animals with different "Born, Raised, and Slaughtered" configurations during a single production run. Defendants are also barring retailers from

combining muscle cuts with different designations into the same package under a general label showing all countries of origin together.

5. Defendants concede that there is no health or safety reason to distinguish among meat from animals born or raised in Canada, or the United States, or Mexico. The COOL *statute* reflects that same judgment: It requires origin labeling only for "covered commodities" at retail and exempts significant categories of meat products from any labeling requirements at all. Meats sold at restaurants are exempt from COOL labeling requirements, for example, as are processed meat products.

6. There also is no consumer-protection interest warranting the detailed and onerous new COOL regulations. The government has never suggested that the current meat labeling regime is deceptive.

7. Defendants have also conceded that the new COOL requirements will impose greater costs—although they downplay the severity of the costs the requirements will impose. But the new labeling requirements will do far more than that. The ban on commingling will choke the supply chain at the point of importation. Under the new rule, once animals arrive in the United States from Canada or Mexico, United States producers and processors will be required to segregate animals first according to where they were born and then again according to where they were raised. The meat from those animals must remain segregated as it is produced, stored, packaged, and labeled. The costs associated with this new inefficient process will drive some processors dependent on imports out of business and destroy the market for meat from imported livestock.

8. Because there is no legitimate justification for the new "Born, Raised, and Slaughtered" regime, and because these new rules will impose significant burdens on and

radically restructure the way meat is produced and packaged in this country, Defendants' new COOL regulations violate the First Amendment, which prohibits compelled-speech regimes in the absence of a substantial governmental interest. The "Born, Raised, and Slaughtered" regime and the bar on commingling also violate the COOL statute, which does not authorize country-of-origin labeling broken out by individual production steps or permit Defendants to restructure the industry's longstanding supply chain in the name of enforcing a labeling requirement. And they violate the Administrative Procedure Act, which requires courts to overturn agency action that is unjustified, unreasoned, or otherwise arbitrary and capricious.

9. Because Plaintiffs are likely to succeed in their challenges to the new COOL regulations and because they shortly will face irreparable harm from the implementation of those regulations, Plaintiffs intend to move for preliminary injunctive relief against implementation and enforcement of the COOL regulations.

PARTIES

Plaintiffs

10. Plaintiffs are trade associations representing American meatpackers, feedlots, cattlemen, and pork producers, and their foreign suppliers.

11. Founded in 1906, Plaintiff American Meat Institute ("AMI") is the nation's oldest and largest meat trade association. AMI currently has about 450 members throughout the country, including packers, processors, and their suppliers. AMI's member companies process 95 percent of the red meat in the United States. AMI is dedicated to increasing the efficiency, profitability, and safety of meat trade worldwide through legislative and regulatory advocacy, as well as litigation. AMI has previously brought suit in this Court on behalf of its members. *See Am. Meat Inst. v. DeHaven*, D.D.C. No. 04-2262 (filed Dec. 30, 2004; closed Oct. 13, 2007);

Am. Meat Inst. v. Bergland, 459 F. Supp. 1308 (D.D.C. 1978); *see also Nat'l Meat Ass'n v. Harris*, 680 F.3d 1193 (9th Cir. 2012) (as co-plaintiff).

12. Plaintiff American Association of Meat Processors ("AAMP") is North America's largest meat trade organization, representing more than 1,300 small and mid-sized meat, poultry, and seafood processors located in the United States, Canada, and other countries. AAMP's members also include suppliers, wholesalers, retailers, and other service providers. AAMP's mission is to advance and improve the meat and related food industry. AAMP has previously brought suit on behalf of its members in this Court and elsewhere. *See, e.g.*, *Am. Ass'n of Meat Processors v. Bergland*, 460 F. Supp. 279 (D.D.C. 1978); *Am. Ass'n of Meat Processors v. Costle*, 556 F.2d 875 (8th Cir. 1977).

13. Plaintiff Canadian Cattlemen's Association ("CCA") is a federation of eight provincial member organizations, with 27 producers from those eight provinces making up the Association's board of directors, representing Canada's 63,500 beef farms. CCA has previously participated as an amicus in litigation on behalf of its members. *See Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. USDA*, 415 F.3d 1078 (9th Cir. 2005).

14. Plaintiff Canadian Pork Council ("CPC") is a federation of nine provincial pork industry associations representing the interests of Canada's 7,000 hog producers. CPC plays a leadership role in achieving and maintaining a dynamic and prosperous Canadian pork sector.

15. Plaintiff Confederación Nacional de Organizaciones Ganaderas ("CNOG") was founded in 1936 and is known in English as the National Confederation of Livestock Organizations. CNOG is composed of Mexico's 46 regional cattle unions, which in turn encompass more than 2,000 local cattle associations, covering nearly 800,000 cattle-producing

herds in Mexico. CNOG represents all Mexican cow-calf operators that produce cattle for export to the United States.

16. Plaintiff National Cattlemen's Beef Association ("NCBA") is the national trade association representing U.S. cattle producers, with more than 28,000 individual members and 64 state affiliate, breed, and industry organization members. In all, NCBA represents more than 230,000 cattle breeders, producers, and feeders. NCBA works to advance the economic, political and social interests of the U.S. cattle business and to be an advocate for the cattle industry's policy positions and economic interests. NCBA has previously brought suit in this Court on behalf of its members. *See, e.g., Fed. Forest Res. Coal. v. Vilsack*, D.D.C. No. 12-1333 (filed Aug. 13, 2012) (as co-plaintiff); *Am. Forest & Paper Ass'n v. Veneman*, No. 01-1871 (filed Apr. 23, 2001; closed Feb. 14, 2005) (as co-plaintiff).

17. Plaintiff National Pork Producers Council ("NPPC") is a national organization that conducts public-policy outreach on behalf of its 43 affiliated state associations. NPPC's mission is to advocate for legislation, regulations, and trade initiatives and to develop revenue and market opportunities to protect the livelihoods of America's 67,000 pork producers. NPPC has also filed litigation on behalf of its members in the courts. *See, e.g, Nat'l Pork Producers Council v. EPA,* 635 F.3d 738 (5th Cir. 2011); *Am. Farm. Bureau Found. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) (as co-petitioner) .

18. Plaintiff North American Meat Association ("NAMA"), formerly known as the National Meat Association, is a trade association with more than 600 member companies in the United States, Canada, and Mexico, representing every segment of the meat industry. NAMA provides its members with regulatory advocacy, educational opportunities, and informational resources. NAMA has previously brought suit on behalf of its members in other federal courts.

See, e.g., *Nat'l Meat Ass'n v. Harris*, 132 S. Ct. 965 (2012); *Nat'l Meat Ass'n v. Deukmejian*, 743 F.2d 656 (9th Cir. 1984).

19. Plaintiff Southwest Meat Association ("SMA") is a trade association representing over 200 meat packers and processors, suppliers, producers, and other service providers in the meat industry. SMA provides regulatory advocacy, educational opportunities, and information to its members to help them solve problems and find new opportunities.

Defendants

20. Defendant United States Department of Agriculture ("USDA") is a cabinet department of the United States government.

21. Defendant Tom Vilsack is the Secretary of USDA and is sued solely in his official capacity ("the Secretary"). Congress has charged the Secretary with implementing COOL requirements pursuant to the Agricultural Marketing Act, 7 U.S.C. §§ 1621, 1638a-1638d.

22. Defendant Agricultural Marketing Service ("AMS") is an agency of USDA. The Secretary has tasked AMS with implementing the provisions of the Agricultural Marketing Act, including the mandatory COOL provision in 7 U.S.C. § 1638a.

23. Defendant Anne L. Alonzo is the Administrator of AMS and is sued solely in her official capacity.

JURISDICTION AND VENUE

24. This action arises under the U.S. Constitution; the Agricultural Marketing Act, 7 U.S.C. §§ 1621-1638d; and the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

25. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this case arises under federal law.

26. This Court also has jurisdiction under 28 U.S.C. § 1361, which grants district courts "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff[s]."

27. This Court may issue a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2202.

28. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Defendants reside in this district and a substantial part of the events or omissions giving rise to this action occurred in this district.

BACKGROUND

Livestock Trade Flows

29. The market for livestock and meat in the United States, Canada, and Mexico is highly integrated, particularly with respect to cattle and hogs.

30. The United States imports cattle from both Canada and Mexico. Cattle imported from Canada are either "feeder" cattle, which are born in Canada but imported to be raised in the United States, or "fed" cattle that are born and raised in Canada and imported for immediate slaughter. Most Mexican cattle imported into the United States are "feeders," meaning they are born in Mexico and imported to be raised in the United States prior to slaughter. The United States also imports fed and feeder hogs from Canada.

31. Beef and pork from foreign source animals account for an estimated 4-7% of the overall beef and pork production in the United States. Once in the supply chain, meat from livestock imported from Canada and Mexico becomes interchangeable with meat from domestic animals.

32. Imported livestock are essential to the survival of the meat-packing industry in some areas of the country. For example, in states such as Texas, New Mexico, Arizona, and California, producers import feeder cattle from Mexico, which are then raised in the United States and sold to processors. Similarly, in the Northwest, feeder cattle are imported from Canada and finished and sold to processors. In addition, processors also import fed cattle from Canadian producers for immediate slaughter to augment the supply of U.S. fed cattle, which can vary for seasonal and environmental (e.g., drought) reasons.

33. Due to these supply variations, imported livestock can sometimes account for a much higher proportion of production in some parts of the country—as much as 50% —and commingling occurs at much higher rates in these regions.

34. All livestock and meat processed at federally inspected establishments in the United States and sold in interstate commerce are subject to the same health and safety requirements, as prescribed by the Federal Meat Inspection Act and the Poultry Products Inspection Act. Those products are also graded for quality according to a system administered by AMS without variation based on where an animal was born or raised. In short, beef is beef, whether the cattle were born in Montana, Manitoba, or Mazatlán. The same goes for hogs, chickens, and other livestock.

35. All meat products derived from animals processed elsewhere and then imported into the United States as finished products are subject to health and safety requirements overseen by USDA's Food Safety and Inspection Service.

COOL Legislation

36. In 2002, Congress passed the Farm Security and Rural Investment Act, which amended the Agricultural Marketing Act of 1946 to require retailers of covered commodities to

affix labels at the final point of sale informing consumers of the product's country of origin. With respect to meat products, this provision did not require retailers to provide specific information concerning where the source animals were "born," "raised," and "slaughtered."

37. AMS proposed regulations to implement this provision in 2003. AMS's proposed regulations would have required labels for meat products to include detailed "Born, Raised, and Slaughtered" information. However, in light of controversy over the new requirements, Congress delayed implementation of the statute, and by extension AMS's proposed regulations. The proposed regulations never went into effect.

38. In 2008, Congress passed the Food, Conservation, and Energy Act ("Farm Bill"), which included a number of amendments to the COOL provisions. *See* 7 U.S.C. §§ 1638-1638d (the "COOL statute"). The COOL statute still required retailers to "inform consumers of the country of origin" for covered commodities at the final point of sale—but Congress defined what the "country of origin" would be for each conceivable category of meat, rather than leave it to AMS's proposed "Born, Raised, and Slaughtered" labels.

39. For covered commodity muscle-cut meats sold at retail, the statute defines "the country of origin" as follows:

> (A) The United States, for animals either born, raised, and slaughtered in the United States, or present in the United States on or before July 15, 2008;
>
> (B) The United States and "all of the countries in which the animal may have been born, raised, or slaughtered," as applicable, unless the animal is imported for immediate slaughter;
>
> (C) The United States and "the country from which the animal was imported," for an animal imported for immediate slaughter; and
>
> (D) "[A] country other than the United States," for an animal that was not born, raised, or slaughtered in the United States.

40. For ground meats, the COOL statute requires notice of all countries of origin, or "all reasonably possible countries of origin," of the meats included.

41. Congress exempted meats sold at food-service establishments and processed food items from any COOL labeling at all.

42. The statute authorizes the Secretary to enforce the notice requirement and to conduct audits of retailers, distributors, suppliers, and producers to verify compliance. However, the statute specifies that records "maintained in the course of the normal conduct of the business" are sufficient to provide the required verification, and it restricts the Secretary from prescribing additional record-keeping requirements.

43. Each of the 2008 COOL statute's provisions represented a rejection of the more onerous burdens AMS had proposed in 2003—including the requirement to separately designate where an animal was born, raised, and slaughtered.

The 2009 COOL Regulations

44. To implement the COOL statute, AMS issued a final rule containing mandatory COOL regulations on January 15, 2009 ("the 2009 Regulations").

45. The 2009 Regulations adopted the following labeling system:

(A) "**Product of the United States**" for meat derived from an animal born, raised, and slaughtered in the United States, or present in the United States on or before July 15, 2008;

(B) "**Product of the United States, Country X, and (as applicable) Country Y**" for meat derived from an animal born and raised in Country X and (as applicable) Country Y and imported into the United States more than two weeks before slaughter (including, for example, feeders finished in the United States);

(C) "**Product of Country X and the United States**" for meat derived from an animal imported from Country X to be slaughtered within two weeks;

(D) "**Product of Country X**" for meat derived from animals slaughtered outside the United States and imported as finished meat products from Country X.

46. The 2009 Regulations also authorized the designation "**Product of the United States, Country X, and (as applicable) Country Y**" if the processor or retailer had processed or packaged meats from different categories together—i.e., commingled them.

47. In addition to these labeling rules, the 2009 Regulations contained recordkeeping requirements. These required each supplier of a covered meat product to transmit country-of-origin information to the subsequent purchaser and to maintain records sufficient to identify the immediate prior source and immediate subsequent recipient of the animal.

48. Based on the 2009 Regulations, businesses in the U.S. meat industry developed trading relationships, production and distribution practices, and recordkeeping infrastructure to ensure that they fulfilled their statutory obligations in the most efficient manner possible.

The 2012 World Trade Organization Ruling

49. In response to the 2009 Regulations, Canada and Mexico filed a complaint before the World Trade Organization ("WTO") alleging that the COOL program violated the WTO Agreement on Technical Barriers to Trade ("TBT Agreement") and other international obligations. According to Canada and Mexico, COOL requirements imposed burdens up the supply chain that discriminated against their livestock exports.

50. The WTO panel agreed, and the finding was affirmed with modifications by the WTO Appellate Body. In its report, the Appellate Body affirmed the panel's finding that the COOL measure violated Article 2.1 of the TBT Agreement because it discriminated against imported livestock by creating an incentive in favor of processing exclusively domestic livestock

and because this detrimental impact on imported livestock did not stem exclusively from a legitimate regulatory distinction.

51. The Appellate Body noted that the United States had not invoked health or safety as a basis for COOL and that the consumer benefit from COOL was "limited." The Appellate Body also emphasized that the COOL program imposed a disproportionate burden on upstream producers and processors given the limited information conveyed to consumers. In particular, the Appellate Body observed that COOL labels do not always provide accurate information to consumers, and that upstream producers are required to keep detailed origin records even though the exemptions to COOL for processed meat and meat sold in food-service establishments means that "a considerable proportion" of meat products "will ultimately . . . carry no COOL label at all."

52. The Appellate Body declined to resolve Canada's and Mexico's additional arguments that the COOL program violates Article 2.2 of the TBT Agreement and Article III:4 of the General Agreement on Tariffs and Trade.

53. The WTO's Dispute Settlement Body adopted the Appellate Body's ruling in July 2012 and subsequently gave the United States until May 23, 2013, to bring the COOL system into compliance.

The Revised Regulations and Final Rule

54. On May 23, 2013, AMS approved revisions to the 2009 Regulations (the "Revised Regulations"), which it made effective immediately and published in a Final Rule the following day. *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*, 78 Fed. Reg. 31,367 (May 24, 2013) (the "Final Rule").

55. In the Final Rule, AMS implemented the point-of-processing labeling requirements it had initially tried to push through in 2003. As the Final Rule explained, labels on all covered muscle-cut meats derived from animals slaughtered in the United States must now "specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation."

56. In contrast to the labeling contemplated in the COOL statute and the prior "Product of" labels under the 2009 Regulations, the Final Rule prescribed the following labels for covered commodities:

(A) "**Born, Raised, and Slaughtered in the United States**" for animals exclusively born, raised, and slaughtered here or present in the United States on or before July 15, 2008, even if born and raised elsewhere.

(B) "**Born in Country X, Raised and Slaughtered in the United States**" for livestock imported more than two weeks before slaughter;

(C) "**Born and Raised in Country X, Slaughtered in the United States**" for livestock imported from Country X for immediate slaughter; or variations of the same if the animal was born in a third country.

(D) "**Product of Country X**" for meat derived from animals slaughtered outside the United States and imported as finished meat products from Country X.

57. For the sake of enabling this new, detailed labeling regime, the Final Rule also forced a restructuring of the way the industry imports and manages its stock by banning the longstanding practice of commingling animals with different born-and-raised heritages together for processing during a single production run, or commingling the meat from these animals together in a single retail package. Consequently, under the Final Rule, and for the first time in history, meats with different production-step combinations can no longer be processed, distributed, or packaged together, as they were before.

58. Plaintiffs strenuously opposed these changes through comment letters submitted to AMS during the rulemaking process. For example:

59. AMI and other commenters alerted AMS that the Revised Regulations compelled speech but did not serve any governmental interest and thus violated the First Amendment.

60. AMI and other commenters also emphasized that the COOL statute did not authorize AMS to adopt "Born, Raised, and Slaughtered" labels because those production steps are not relevant to the statutorily defined country of origin for each and every category of meat. To give one example, AMI explained that the statute defined the country of origin for meat imported for immediate slaughter as the country from which the animal was imported and the United States—with no reference to where the animal was born or raised.

61. AMI and other commenters also challenged AMS's proposal to eliminate commingling, which commenters emphasized would radically restructure how meat is processed, distributed, and packaged in the United States. Commenters questioned AMS's authority to regulate processors' and retailers' primary conduct in preparing food for retail, given that the COOL program is merely a marketing program and not a food-safety program.

62. AMI and other commenters also questioned AMS's assessment of costs and benefits. For example, AMI explained that, for retailers to verify COOL designations, meats will have to be segregated up the entire supply chain, from the moment livestock are put in a pen on U.S. soil, throughout the production, storage, and distribution process, until the meat is placed on store shelves for sale. AMI's letter detailed the costs faced by small packers and processors, and pointed out that several small packing plants would likely close because they would not be able to commingle imported livestock and the meat therefrom.

63. Retailer associations explained in their comments that the costs of complying with the labeling requirement would force retailers to reject meat sourced from Canada or Mexico and stock only meat with the designation "Born, Raised, and Slaughtered in the United States." That is because the new labels would need to be larger, and many grocers would have to acquire new weighing and labeling machines to handle the complex sorting of packages for each possible label. The capital costs associated with buying and implementing this detailed labeling system would be substantial and drive demand away from meat from imported livestock.

64. In its comment, Plaintiff CCA explained that, because of the shift in retailer demand, Canadian livestock producers would have to accept steep discounts to make up for the downstream production costs faced by processors and retailers. CCA observed that while this discriminatory impact was also threatened under the 2009 Regulations, the point-of-processing designations required under the Revised Regulations would have an even more destructive impact because "the costs to maintain sales of import-origin livestock and meat are even higher."

65. AMI and other commenters—including the Government of Canada and the Government of Mexico—pointed to this detrimental impact on imported livestock to demonstrate that the Revised Regulations would not bring the United States into compliance with its international trade obligations. Rather, commenters explained that the Final Rule would exacerbate the United States' WTO violations.

66. AMI and other commenters also urged AMS to delay implementation of the Final Rule until the WTO reviewed it, to avoid burdening regulated entities with a second round of compliance costs in the event the WTO determined that the new COOL regulations do not bring the United States into compliance with its trade obligations.

67. In the Final Rule, AMS acknowledged that the new labeling requirement would impose substantial costs—perhaps as high as $192.1 million—on meat-industry participants.

68. When it came to justifying those millions upon millions of dollars in costs, AMS offered an anemic defense. It pointed to *no* health, safety, or consumer-protection interest served by either the new "Born, Raised, and Slaughtered" labeling requirement or the ban on commingling. Instead, AMS stated that comments it received on the proposed regulations "demonstrate that there is interest by certain U.S. consumers in information disclosing the countries of birth, raising, and slaughter on muscle cut product labels," and that the Revised Regulations "will benefit consumers by providing them with more specific information on which to base their purchasing decisions." AMS did not explain how production-step information influences those purchasing decisions, and it did not endorse the notion that the information should have an influence at all. To the contrary, AMS found that the "incremental economic benefit" of these changes over the 2009 Regulations was "comparatively small" and the consumer benefit "difficult to quantify." As it happens, the final rule implementing the 2009 Regulations had characterized the benefits of transitioning to even that mandatory COOL regime as "small"—meaning the Final Rule layered a "comparatively small" benefit atop an already "small" one, and at comparatively vast cost.

69. AMS dismissed commenters' concerns that the Final Rule violated the United States' trade obligations. The agency did not acknowledge that Canada and Mexico, the complaining parties in the WTO dispute, had submitted comments to AMS during the rulemaking stating that the Revised Regulations exacerbated rather than cured the WTO violation.

70. AMS also explained that if the Final Rule was not implemented immediately Canada and Mexico could seek WTO-sanctioned penalties and retaliation. But the agency did not acknowledge that Canada and Mexico had submitted comments stating that the Revised Regulations increased discrimination against imported livestock and so would be even more likely to prompt retaliation.

71. Finally, in the Final Rule's "Statement of Need" section, AMS explained that the "evidence suggests that market mechanisms could ensure that the optimal level of country of origin information would be provided to the degree valued by consumers"—but that it nevertheless was required to carry out its "statutory obligation[]" to implement the COOL statute. In other words, AMS concluded that, absent what it thought to be its "statutory obligation[]," there was no need at all for COOL labeling in general or for "Born, Raised, and Slaughtered" information in particular.

COUNT ONE
VIOLATION OF THE U.S. CONSTITUTION
The Revised Regulations Compel Speech In Violation of the First Amendment.

72. Plaintiffs reassert and incorporate by reference each of the above paragraphs.

73. "[T]he First Amendment freedom of speech 'includes both the right to speak freely and the right to refrain from speaking at all.'" *Nat'l Ass'n of Mfrs. v. NLRB*, __ F.3d __, 2013 WL 1876234 (D.C. Cir. May 7, 2013) (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)).

74. The First Amendment prohibits the federal government from compelling commercial speech unless that regulation directly advances a substantial government interest and is no more extensive than necessary. *R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205, 1217 (D.C. Cir. 2012). It also requires that "the fit between the government's ends and the means

chosen to accomplish those ends is . . . reasonable." *Board of Trustees of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989). Government action warrants this heightened constitutional scrutiny when it is targeted at an interest other than the prevention of consumer deception. *See id.* at 1211; *Nat'l Ass'n of Mfrs.*, 2013 WL 1876234, at *9 n.18.

75. The Revised Regulations do not serve any governmental interest, let alone a substantial one.

76. Defendants do not claim the Revised Regulations are justified for any health or safety reason. Indeed, Defendants have repeatedly stated that there is no food-safety aspect to COOL labeling because it is just a "marketing" program. But "consumer curiosity" is not a substantial government interest. *See Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67 (2d Cir. 1996).

77. The uncertain and speculative consumer benefit from mandating production-step disclosures, whatever that benefit might be, pales in comparison to the burdens on the meat industry as a whole, and in particular on smaller businesses.

78. Accordingly, the Revised Regulations violate the First Amendment.

79. Further, to the extent Defendants purported to interpret and apply the COOL statute by adopting the Revised Regulations, the COOL statute as so interpreted and applied violates the First Amendment.

80. Accordingly, the Revised Regulations and/or the COOL statute as implemented through the Revised Regulations should be declared invalid and permanently enjoined.

COUNT TWO
VIOLATION OF THE AGRICULTURAL MARKETING ACT
The Final Rule Exceeds the Authority Granted by Statute.

81. Plaintiffs reassert and incorporate by reference each of the above paragraphs.

82. The COOL statute does not permit labels specifying the country or countries where the animal was "Born, Raised, and Slaughtered." Indeed, Congress specifically rejected point-of-processing labels in the 2008 Farm Bill and instead defined the "country of origin" for several categories of meat to turn on factors other than where the source animal was born and raised.

83. The COOL statute also does not authorize AMS to restructure the production, distribution, and packaging systems in the agriculture industry in the name of enforcing a labeling requirement.

84. By adopting a "Born, Raised, and Slaughtered" labeling regime and by barring commingling, the Final Rule exceeds AMS's statutory authority.

85. For this independent reason, the Final Rule should be set aside and the Revised Regulations should be declared invalid and permanently enjoined.

COUNT THREE
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT
The Final Rule Is Arbitrary and Capricious.

86. Plaintiffs reassert and incorporate by reference each of the above paragraphs.

87. The Administrative Procedure Act requires a court to set aside agency action that is "arbitrary [and] capricious." 5 U.S.C. § 706(2).

88. AMS's justifications for the Final Rule run counter to the evidence before the agency. First, the Revised Regulations will not provide consumers with accurate information on which to base their purchasing decisions because the new "Born, Raised, and Slaughtered" labels will in many cases affirmatively mislead consumers about the true origin of meat products. Second, the Revised Regulations will exacerbate, not cure, the United States' WTO violations by increasing discrimination against imported livestock without legitimate justification.

89. AMS's inability to identify a benefit from the Final Rule that is consistent with the evidence before the agency demonstrates that serious flaws undermined the agency's cost-benefit analysis. In effect, AMS has imposed hundreds of millions of costs on regulated entities for no reason at all.

90. AMS also arbitrarily refused to delay implementation of the Final Rule until the WTO reviews it. AMS unreasonably dismissed commenters' concerns that the agency will have to promulgate an entirely different regulatory regime that imposes a second round of compliance costs in the likely event the WTO determines that the Revised Regulations violate the United States' trade obligations.

91. For these reasons as well, the Final Rule is arbitrary and capricious and the Revised Regulations should be enjoined and declared invalid on this basis.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request an Order from this Court:

A. Declaring the Revised Regulations invalid under the First Amendment; the Agricultural Marketing Act, as amended by the 2008 Farm Bill; and the Administrative Procedure Act;

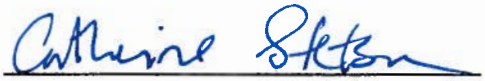
B. Enjoining the enforcement of the Revised Regulations;

C. Vacating the Final Rule and remanding the matter to AMS;

D. Granting attorneys' fees and costs; and

E. Awarding any other relief the Court deems just and proper.

Respectfully submitted,



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