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THE COUNTRY OF ORIGIN LABELING PROGRAM: A Snapshot of How the Program Affects Farmers

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What is COOL? COOL is a federal law that requires retailers to inform their customers of the country of origin of certain agricultural products, called “covered commodities,” by labeling those products. COOL also requires suppliers of covered commodities to: (1) provide buyers with information verifying the country of origin of the supplier’s products, and (2) maintain records proving the country of origin of their products. Farmers are considered suppliers if they directly or indirectly supply covered commodities to retailers. For example, where a farmer sells a covered commodity to a packinghouse, and the packinghouse later sells the covered commodity to a retailer, the farmer is considered an indirect supplier and is therefore required to provide the packinghouse with information about the product’s country of origin and to maintain records substantiating that information. Therefore, although COOL does not generally require farmers to label their products, it does require them to provide country of origin information to the buyers of their covered commodities if those products will ultimately be sold to a retailer.

- The final COOL program requirements described here become effective on March 16, 2009. Until then, interim requirements are in place. Farmer’s responsibilities under the interim requirements are generally the same as their responsibilities under the final requirements described here.
- COOL is not a food safety law and does not address food safety or inspection concerns or provide any food safety or inspection requirements. There may be food safety, inspection, labeling, and processing requirements that are separate from COOL.
- The agency authorized to enforce COOL and investigate complaints of violations is the United States Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS). Farmers with questions about COOL may contact USDA’s Agricultural Marketing Service for more information by calling **202-720-4486**. Farmers may also submit e-mail inquiries about COOL to COOL@usda.gov.

Does COOL require farmers to label their products? COOL requires that “retailers” label the products they sell if those products are defined as “covered commodities.” Farmers are not considered retailers with respect to the sale of products they raised themselves. Therefore, farmers who sell only their own products are not considered as retailers under COOL and do not have to label their products.

At the same time, nothing in COOL prevents retailers from requiring a farmer to pre-label the farmer’s products as a condition to doing business with the farmer. Farmers selling covered commodities to retailers should thus expect that some retailers will ask them to pre-label their products.

Who is a retailer? USDA defines a retailer as any person whose invoice cost for purchases of perishable agricultural commodities exceeds \$230,000 during a calendar year. “Perishable agricultural commodity” generally means fresh and frozen fruits and vegetables. According to USDA, for purposes of COOL, the definition of retailer generally includes most grocery stores and supermarkets, but not fish markets, butcher shops, and other stores that do not invoice the threshold amount of fruits and vegetables.

The COOL labeling requirements do not apply to products sold or served at “food service establishments.” “Food service establishment” means restaurants, cafeterias, lunchrooms, food stands, saloons, taverns, bars, lounges, salad bars, delicatessens, or other similar facilities.

- Farmers who sell directly to consumers, including at farmers’ markets, are not subject to regulation under COOL. Likewise, farmers who sell to restaurants or butcher shops are not required to comply with COOL’s requirements.

What is a covered commodity? The regulations define covered commodities to include: (1) Muscle cuts of beef, lamb, chicken, goat, and pork; (2) Ground beef, ground lamb, ground chicken, ground goat, and ground pork; (3) Perishable agricultural commodities (generally, fruits and vegetables); (4) Peanuts; (5) Macadamia nuts; (6) Pecans; (7) Ginseng; and (8) wild and farm-raised fish and shellfish. These materials do not cover the COOL program provisions that apply to wild and farm-raised fish and shellfish.

- **“Processed food items” are excluded from COOL’s labeling requirements.** “Processed food items” means covered commodities that (1) underwent processing which resulted in a change in the character of the covered commodity or (2) were combined with at least one other covered commodity or other

substantive food component (e.g., chocolate, breadings, tomato sauce). "Processed food items" also include any covered commodity that has been cooked; cured; smoked; or restructured. Therefore, ham, bacon, and smoked cuts of meat seem to be exempt from COOL's labeling requirements. Similarly, a roasted whole chicken would be exempt from labeling requirements but a raw whole chicken would not.

- **When covered commodities of different types are mixed together, they are exempted from the labeling requirements because they are defined as "processed food items."** For example, a package of mixed frozen strawberries and blueberries or mixed vegetables would be considered processed food items under the regulations.

What does COOL require farmers to do?

1. Provide Information: Farmers who directly or indirectly supply covered commodities to retailers must provide proof of the product's country of origin by giving their buyers information about which countries the product has been in. Buyers will generally need to know what countries the product was in before the farmer got the product (if applicable) and which countries the product has been in since the farmer got the product. Farmers and other suppliers can provide the required country of origin information on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale.

2. Keep Records: COOL requires that farmers who supply covered commodities to retailers maintain records showing the previous source of the covered commodity and who the farmer sold the covered commodity to. The regulations allow farmers to keep electronic or hard copies of their records and require that the records be legible. Records must be kept for at least one year from the date of the sale to the buyer, and must be provided to USDA within five days of a request from an authorized USDA representative.

- Livestock (including poultry animals) is not a covered commodity. Technically then, COOL does not require the farmer to know and pass on country of origin information with respect to livestock. However, meat from the livestock is a covered commodity. Therefore, packers must maintain and pass country of origin information through the marketing chain with respect to meat products. At the same time, the packer can only comply with its obligations under COOL if the farmer (1) provides it with information about where the livestock was born and raised, and (2) keeps records verifying that information, and showing who the farmer sold the livestock to. Therefore, farmers must expect that packers will require them to provide and maintain information and records verifying the country of origin of their livestock as a condition to buying the livestock.
- In some cases, rather than selling livestock to a processing facility a farmer will have the livestock butchered and packaged at the facility, but sell the meat products to a retailer himself. In these cases, because the meat products are a covered commodity, the farmer would be directly regulated by COOL. Therefore, the farmer must provide the retailer with information proving the meat's country of origin and must keep records substantiating that information.

Overall, farmers should expect that they will need to provide their buyers with country of origin information and records substantiating that information anytime they sell a product that might be a covered commodity.

What types of records can farmers use to verify the country of origin of their products? Producer affidavits and other regular business records normally kept by a farmer in the course of the farmer's business can be used to verify the country of origin of their products. **USDA cannot require farmers to keep records other than those maintained in the normal course of their business to prove the country of origin of their products.**

- **Examples of the types of documents that can be used to help verify an animal's country of origin include:** animal health papers, import or customs documents, birth records, purchase records, sales receipts, and other similar documents. Other types of information that are acceptable to establish an animal's country of origin include: tags showing an 840 Animal Identification Number, without the presence of any accompanying markings indicating the animal spent time outside of the U.S.; participation in the National Animal Identification System (NAIS); or participation in any other recognized official identification system (e.g., the official system in Canada or Mexico). **USDA cannot require a farmer to participate in NAIS or any other program in order to prove the country of origin of their animals.** However, it is important to note that nothing in COOL prevents packers from insisting a farmer participate in NAIS as a condition to doing business with the farmer.

- **Examples of the types of documents that can be used to assist in verifying the country of origin for fruits and vegetables include:** official inspection certificates; sales records; harvest records; delivery tickets; purchase records; production and sales contracts; and pick tickets.
- Additional examples of the types of documents that may be used to verify a product's country of origin are available on the AMS website, at: www.ams.usda.gov/cool.

What type of information should be in a producer affidavit? The COOL regulations state that as long as an affidavit is (1) made by someone having first-hand knowledge of the origin of the animal(s) and (2) identifies the animal(s) unique to the transaction, USDA will consider the producer affidavit as acceptable evidence of an animal's origin. Although the COOL law explicitly states that producer affidavits are considered acceptable evidence of an animal's country of origin, nothing in the law prohibits buyers from requesting additional documentation from farmers to supplement producer affidavits.

- USDA has stated that evidence sufficient to identify the animal(s) unique to a transaction can include an ear tag identification and/or other animal marking system, information about the type and sex of the animals, the number of head involved in the sale, the date of the sale, and the name of the buyer.
- With respect to cattle only, producers may also issue affidavits based on their visual inspection of the cattle at or near the time of sale. For the cattle to be considered of U.S. origin, the inspection should confirm there are no markings (such as "CAN" or "M") indicating the animals are of foreign origin.
- The use of "continuous" affidavits by producers is permitted by USDA. Continuous affidavits are affidavits issued by a producer that are valid for an indefinite period of time until cancelled by the producer. For example, if a farmer knows he or she will only be selling animals born and raised in the United States, the farmer can sign a continuous affidavit stating all animals produced are of U.S. origin and were born and raised on the producer's farm. A separate continuous affidavit should exist for each of a farmer's buyers. If a farmer using a continuous affidavit has an animal that was born or raised outside of the United States, the farmer must sign a separate affidavit for that particular animal and should change their continuous affidavit(s) to note that all animals are of U.S. origin except as noted in the other affidavit.

How is the country of origin determined for fruits, vegetables, ginseng, peanuts, pecans, and macadamia nuts and what should the label say? Technically, farmers are not typically required to label their products. However, as described above, there may be instances where retailers ask farmers to pre-label their products. In such cases, farmers will need to be able to determine what the label should say.

Fruits, vegetables, ginseng, peanuts, pecans, and macadamia nuts are classified as products of the United States if they were harvested in the United States. It is sufficient for the label to designate the state, region, or locality of the United States where the commodity was grown. For example, the label is sufficient if it states "Product of Minnesota," or "Product of [insert name of city or town], Minnesota. The label may also state "Product of the U.S."

Where products from multiple countries are commingled, all countries of origin must be listed.

How is the country of origin determined for meat products and what should the label say? *United States*

Country of Origin: Beef, pork, lamb, chicken, and goat are considered to have a United States country of origin if (1) "the animals were exclusively born, raised, and slaughtered in the United States;" or (2) the animals were present in the U.S. on or before July 15, 2008, and "remained continuously in the United States" since that time; or (3) the animals were born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and were slaughtered in the United States.

- It is sufficient for the label on meat classified as a product of the United States to state "Product of the U.S." or "Born, raised, and harvested in the United States."
- State, regional, or locality labeling cannot be used alone for meat products. It can be used in combination with a label that provides the required country of origin information (e.g., a label stating the product is of United States origin or stating the product is of United States and Canadian origin).

Multiple Countries of Origin: Where an animal spent part of its life in the United States and another part of its life outside of the United States, that animal is defined as having multiple countries of origin.

Additionally, where muscle cuts of meat having a United States origin are commingled with muscle cuts of meat from animals with a different country of origin, the meat may be defined as having multiple countries of origin, including the United States.

- The product's label must identify all of the countries in which the product was born, raised, and slaughtered as countries of origin. The countries may be listed in any order.
- Labels can also contain more specific information. For example, in addition to stating the countries of origin, a label may also specify where the animal was born, raised and processed (e.g., "Product of Canada, Mexico, and the United States; Processed in the U.S." or "Product of Canada, Mexico, and the United States; From hogs born in Canada, raised in Mexico and processed in the United States.")

Imported for Immediate Slaughter: Where the product is from an animal that was imported into the United States for immediate slaughter, the countries of origin include the country from which the animal was imported and the United States. This classification applies to animals imported to the United States less than two weeks before they are slaughtered.

- The product must list the country of origin as the country from which the animal was imported and the United States. It is sufficient for the label to designate the meat as "Product of Country [insert name of country from which the animal was imported] and U.S."

Foreign Origin: Meats from animals that were born, raised, and slaughtered outside of the United States are classified with their foreign country of origin.

- Foreign meat products should be labeled with the country of origin that is declared to United States Customs and Border Protection at the time the product enters the United States.

Additional Requirements for Ground Meat: Ground meat must be labeled with a list of all actual countries of origin or a list of all reasonably possible countries of origin of the meat. Possible countries of origin are those that were in a processor's inventory for at least one day out of a 60-day period.

Does the label have to be in any particular form? No, country of origin declarations can be in many different forms, including a "placard, sign, label, sticker, band, twist tie, pin tag or other format that allows consumers to identify the country of origin." Country of origin declarations may also be in the form of a checked box on the product's container. The declaration of the country of origin must be legible and placed in a location where it is likely to be read and understood by a customer under normal conditions of purchase. No specific font size, typeface, color or location of country of origin claims is required. For remote sales, such as internet or home delivery sales, the retailer may provide the country of origin information on the sales vehicle or at the time the product is delivered to the customer.

How is COOL enforced? USDA enforces COOL through investigation, notice, hearing, and imposition of fines of up to \$1000 per offense. Before imposing penalties for violations of COOL, USDA must provide retailers and suppliers with notice of the violation and 30 days in which to correct the violation. After providing the required 30-day period, USDA can only impose a fine on a retailer or supplier if the retailer or supplier has not made a good faith effort to comply with COOL and continues to willfully violate the law.

- Since livestock (including poultry animals) is not a covered commodity, USDA is not authorized to enforce COOL with respect to farmers who sell only livestock. Therefore, USDA cannot audit or impose penalties on these livestock producers. Since meat is a covered commodity, USDA is authorized to enforce COOL with respect to producers who sell meat, as opposed to live animals. USDA is also authorized to enforce COOL against farmers who sell any other covered commodity, such as fruits and vegetables.

NOTE: These materials provide a very general overview of the requirements of the Country of Origin Labeling program (COOL). More details about COOL can be obtained through Farmers' Legal Action Group's upcoming article, *Understanding How the Country of Origin Labeling Program Affects Farmers*, which will soon be available on our website, located at www.flaginc.org. For additional information farmers may contact Farmers' Legal Action Group or consult an attorney with experience in this area of law.



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