

COOL: WHAT DOES IT MEAN FOR YOU?

By Cari Rincker



After a decade of dialogue and controversy, country-of-origin labeling ("COOL") is finally in full force. Economists and policy experts can hypothesize about the long-term effects on the beef business and cattle prices, but what are the implications for you and your beef operation?

Background

For many years, voluntary COOL regulations have been in place for beef, lamb, pork, and perishable agriculture commodities and peanuts. Recently, the 2008 Farm Bill amended the Agricultural Marketing Act of 1946 ("AMA") once more by finally making COOL mandatory. See 7 U.S.C. § 1638 et seq. The 2008 provisions added chicken, goat, ginseng, pecans, and macadamia nuts to the list of "covered commodities" under COOL. The interim final rule and request for final public comments was published by the USDA in the Federal Register on September 30, 2008. See 7 C.F.R. Part 65.

Put simply, excluded from COOL are "processed foods" and "mixed foods." For example, raw pork chops will be labeled, but not ham or bacon. Also, COOL is applicable at the retail level only—not the food service industry or butcher shops. See 7 C.F.R. § 65.300. In other words, the menus at your favorite steak restaurant or local tavern are not required to have COOL. Even so, the hope is that U.S. cattle producers will be able to reap the rewards of this country's reputation with safety and quality.

Labeling Categories

Pursuant to 7 C.F.R. § 65.400(a), "[c]ountry of origin declarations can either be in the form of a placard, sign, label, sticker, band, twist tie, [or] pin tag" labeling that the retail unit is a "Product of USA," "Produce of the USA," "Grown in Mexico," or the labeling may simply be in check box form. That said, there are four major categories for COOL designation for beef, lamb, pork, chicken, and goat meat:

- 1) **United States Only ("Category A"):** This category includes meat derived from animals "exclusively born, raised and slaughtered in the United States" (emphasis added). 7 U.S.C. § 1638a(a)(2)(A). As a general rule, to be labeled as a "Product of the U.S.," the animal product needs to have been on U.S. soil from birth to retail. The only exception is meat derived from an animal "born in Alaska and Hawaii and transported through Canada for no more than 60 days." 7 C.F.R. § 65.260.

- 2) **Multiple Countries of Origin ("Category B"):** This category includes meat derived from animals "not exclusively born, raised, and slaughtered in the United States [but] born, raised, or slaughtered in the United States, and not imported into the United States for immediate slaughter" (emphasis added). 7 U.S.C. § 1638a(a)(2)(B). Stated differently, the beef animal spent at least one phase of their life in the U.S. and one phase outside the U.S. (e.g., "Product of U.S. and/or Canada"). See 7 C.F.R. § 65.300(e)(1)(i).
- 3) **Imported for immediate slaughter ("Category C"):** This category includes "meat that is derived from an animal that is imported into the United States for immediate slaughter." 7 U.S.C. § 1638a(a)(2)(C). More specifically, this category is for livestock imported to the U.S. less than two weeks before they are harvested (e.g., "Product of Mexico and the U.S."). See 7 C.F.R. § 65.300(e)(1)(ii). Please note that the U.S. is listed last on the label in this instance because countries are listed in descending order of prominence.
- 4) **Foreign ("Category D"):** Finally, this category includes "meat derived from an animal that is not born, raised, or slaughtered in the United States." 7 U.S.C. § 1638a(a)(2)(D). Imported meat products will be labeled according to its origin, "as declared to U.S. Customs and Border Protection (CBP) at the time the product entered the United States, through retail sale." 7 C.F.R. § 65.300(f) (e.g., "Product of Canada").

Interestingly, Congress did not create an "unknown origin" label. From a cattle producer's perspective, if you have cattle whose origin is not verifiable, then those cattle will never be eligible for a Category A "Product of U.S." label. If the cattle can be proved to be contained within U.S., Canada, and Mexico during their life but harvested in the U.S., such beef will likely be labeled under Category B or C, depending on time in the U.S. before harvest.

Affidavit

A self-certifying affidavit is considered sufficient evidence to prove the origin of livestock. There are three types of affidavits, each used in different circumstances: (i) producer, (ii) consolidated, and (iii) continuous. Each should be used in different circumstances. If your local salebarn does not voluntarily offer any of these affidavits make sure to ask them for a copy.

Producer Affidavit. Under the promulgated regulations, a "producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the origin claim, provided it is made by someone having first-hand knowledge of the origin of the animal(s) and identifies the animal(s) unique to the transaction" (emphasis added). 7 C.F.R. § 65.500(b)(1). This provi-

CONTINUED ON PAGE 48

COOL WHAT DOES IT MEAN TO YOU?

CONTINUED FROM PAGE 46

sion does not require that the person signing the affidavit be an owner or a ranch representative; however, this person must have personal knowledge and be able to identify animals "unique to the transaction" by way of eartag, number of head, breed and sex, the date of the transaction, and the name of the buyer. To more sharply define, "first-hand knowledge" is knowledge gained from personal observation or experience as distinguished from what someone else has verbally told you. That said, a recently hired ranch hand will likely be precluded from signing the producer affidavit.

Consolidated Affidavit. This type of affidavit is used when transferring the cattle to another rancher. To illustrate, a consolidated affidavit would be used if you are a first-level producer raising feeder cattle to sell at weaning or when selling terminal cattle to the feedyard for finishing.

Continuous Affidavit. Some facilities are offering "continuous affidavits" for producers or livestock handlers. After signed once, continuous affidavits are valid into perpetuity until canceled. In other words, if you know you will only be selling cattle born and raised in the United States (or you know you will always be importing cattle from Canada), then you only have to sign this affidavit once instead of signing a producer affidavit every trip to the sale barn. A small caveat, if you sign a continuous affidavit and anomalously have a calf that was born or raised outside your "norm," you must sign a separate producer affidavit for that particular head if your continuous affidavit is still valid. Encourage your local facilities to offer continuous affidavits as they should help with efficiency. The National Cattlemen's Beef Association ("NCBA") has an electronic version of the affidavit online at www.beefusa.org.

Record Keeping

Typically, a self-certifying affidavit will be sufficient evidence to prove the origin of your animal; however, the regulations provide that the USDA will perform tracebacks and random audits. Because of this, all livestock producers must implement an accurate, efficient record-keeping system if one is not already in place. If audited, a livestock producer only has five business days to produce said documentation so requested information must be readily available. The regulations currently allow for either hard or electronic records and only require that the records are "legible." See 7 C.F.R. § 65.500(a). A failure to comply may result up to a \$1,000 fine. See 7 U.S.C. § 1638b(b). Cattlemen are responsible for records for up to one year from the date of the transaction. See 7 C.F.R. § 65.500(b)(3).

The 2008 Farm Bill changed COOL's record-keeping mandate: it states that "[r]ecords maintained in the course of the normal conduct of the business of such person, including animal health papers, import and customs documents, or producer affidavits" will serve as sufficient origin verification. 7 U.S.C. § 1638a(d)(2)(A). The Agricultural Marketing Service ("AMS") has been asked by commentators to provide an enumerated list of required records; yet in the interim final rule, AMS maintained that producers only need such records normally kept in the course of business. Given the current ambi-

guity of the regulation, it is suggested in that cattle producers be prepared to present the following paperwork to ensure compliance with the industry standard:

- (i) health and vaccination records;
- (ii) birth and death records as well as records of missing cattle;
- (iii) production records including feed documents and Beef Quality Assurance ("BQA") certification, if applicable;
- (iv) brand inspection documentation or ear tag (visual or electronic) records;
- (v) all transaction records such as purchase receipts, lease records, scale tickets, bills of sale, and closeout records;
- (vi) transportation and trucker records;
- (vii) breed association registration papers, if available;
- (viii) financial records such as balance sheets and income statements;
- (ix) pen and pasture information including a site map with capacities; and,
- (x) beginning and ending inventory records (e.g., number of bulls, virgin or bred heifers, open or bred cows, calves on cows, weaned calves, steers, etc.).

Under 7 C.F.R. § 65.500(b)(1), those cattle producers participating in the National Animal Identification System ("NAIS") may "rely on the presence of an official ear tag and/or the presence of any accompanying animal markings . . ." in lieu of above listed records. In other words, participating in NAIS could ease your record keeping burden.

Furthermore, a grandfather clause was included in the statutory language so that all livestock residing in the U.S. as of July 15, 2008 that stay in the U.S. will be considered U.S. born and raised; thus, the meat from those animals is eligible under Category A. Documentation is preferred to prove the animals were on U.S. soil before this threshold date. Further, any cattle entering feedlot or finishing units after July 15, 2008 will need some type of record of origin (e.g., health papers, production records, affidavit) to be eligible for sale by U.S. retailers.

Final Thoughts

Only time will tell what the long-term impacts of COOL will be on the beef business, especially at the production level. It is critical that cattle farmers and ranchers implement an economical yet thorough record-keeping system in their production program. Some states have implemented additional regulations such as specific tag or branding requirements or health provisions. To ensure compliance with both federal and state law, you should contact your Department of Agriculture, state affiliate livestock groups, or visit www.ams.usda.gov/COOL.

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Editor's Note: *Cari Rincker is an associate in the Budd-Falen Law Offices, L.L.C. in Cheyenne, WY. She received her Juris Doctor degree from Pace University, White Plains, NY. She grew up on her family's Simmental farm at Shelbyville, IL, and remains actively involved in the cattle industry.*