

# **COUNTRY OF ORIGIN LABELING (COOL)**

## **Current Status**

The final rule on COOL was published in the *Federal Register* on January 15, 2009. On January 20, 2009, the Obama administration made an executive decision to review all of the federal rules proposed by the Bush administration that had not yet gone into effect. COOL was one of those rules. On February 20, 2009, Secretary of Agriculture Vilsack announced that COOL would go into effect on March 16, 2009 as planned under the January 15<sup>th</sup> rule.

On March 31, 2009, the six-month education and outreach program operated by the Agricultural Marketing Service (AMS) will come to an end, and COOL will be actively enforced by AMS under the January 15<sup>th</sup> rule. The Fiscal Year 2009 omnibus appropriations bill includes \$9.6 million for COOL enforcement.

## **Who Is Covered?**

This rule covers retailers and packers who sell and/or supply the covered commodities to consumers. The covered commodities include muscle cuts of beef (including veal) and ground beef.

Live cattle are not covered commodities and the rule does not specifically cover cattle producers. However, since information on the origin of cattle is needed to make a determination on how the resulting beef will be labeled, this rule impacts cattle producers by requiring producer affidavits to be used during the buying/selling of cattle.

## **Who Is NOT Covered?**

COOL does not apply to covered commodities produced or packaged before September 30, 2008.

Small retailers are also exempt from COOL. Only retailers licensed as such under the Perishable Agricultural Commodities Act (PACA) of 1930 are subject to the law and are required to label covered commodities for country of origin. Under PACA, a retailer is any person engaged in the business of selling any perishable agricultural commodity at retail. Retailers are required to be licensed when the invoice cost of all purchases of perishable agricultural commodities exceeds \$230,000 during a calendar year. The term “perishable agricultural commodity” means fresh and frozen fruits and vegetables. There are approximately 4,000 PACA licensees that operate about 36,000 retail stores. This definition excludes butcher shops and exporters. Many small “mom and pop” type retailers will not be covered.

Food service (restaurants, hotels, caterers, etc) are exempt from COOL. Salad bars and delis located within retail establishments that provide ready-to-eat foods are also exempt from the law.

Processed food items are exempted from labeling and include any muscle cut of beef or veal that has undergone a change in character, or that has been combined with at least one other covered commodity or food component. Processing includes cooking, curing, smoking, extruding, breading, and/or the addition of sauce. These are just a few examples. The simple addition of water, salt, or sugar does not constitute processing when it is only added to the meat as a simple step to prepare for cooking and consumption.

Some examples of excluded products include meatloaf, meatballs, fabricated steak, breaded veal cutlets, corned beef, sausage, and marinated/flavored beef.

## **The Four Labeling Categories for Muscle Cuts of Beef and Veal**

**Category A - U.S. Origin (Product of the U.S.)** – Muscle cuts of beef and veal must be derived exclusively from animals (1) born, raised, and slaughtered in the U.S. (including animals born and raised in Alaska and Hawaii and transported for a period of time not more than 60 days through Canada to the U.S. and slaughtered in the U.S.); or (2) present in the U.S. on or before July 15, 2008, and once present in the U.S., remained continuously in the U.S.. This product can be labeled “Product of the U.S.”

**Category B - Multiple Countries of Origin that include the U.S.** – If an animal was born, raised, and/or slaughtered in the U.S., and was not imported for immediate slaughter, the origin of the resulting meat products derived from that animal may be designated as Product of the U.S., Country X, and (as applicable) Country Y. Country X (and, as applicable Y) may represent the country the animal was born in and/or raised for a portion, but not all, of its life). An example of that label would be “Product of the U.S. and Mexico.” Labels can add more details about origin of production steps if there is information to substantiate the claim. The country names on the label can be in any order. In addition, the final rule gives the flexibility to allow category A cattle to be comingled with category B cattle during processing. This flexibility was intended to be used at the end of a production day shift to finish the shift out and ensure efficiency of the line. The beef from this comingled A and B shift would be labeled as described above for multiple countries of origin.

**Category C - Imported Direct for Slaughter** – If an animal is imported into the U.S. for immediate slaughter (spends less than two weeks in the U.S. before being processed), the origin of the resulting meat products derived from that animal shall be designated as Product of Country X and the U.S.. An example of that label would be “Product of Canada and the U.S..” There is no flexibility in the order in which the country is placed on the label. However, category C cattle may be comingled with category B cattle during processing. This flexibility was also intended to be used at the end of a production day shift to finish out the shift and ensure efficiency of the line. In this instance of comingling with category B beef, the product may be labeled as Product of the U.S., Country X, and (as applicable) Country Y. This is the same labeling method used for Category B and the placement order of the countries on the label may be in any order desired by the retailer.

**Category D - Imported Beef** – Boxed beef imported into the U.S. must be labeled with its country of origin before it comes into the U.S. as required by U.S. Customs and Border Protection. An example of that label would be “Product of Australia”

## Labeling of Ground Beef

Ground beef is defined in the final rule using the definition found in the Code of Federal Regulations noted here:

*TITLE 9--ANIMALS AND ANIMAL PRODUCTS*

*CHAPTER III--FOOD SAFETY AND INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE*

*PART 319--DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION--Table of Contents*

*Subpart B--Raw Meat Products*

*Sec. 319.15 Miscellaneous beef products.*

*(a) Chopped beef, ground beef. "Chopped Beef" or "Ground Beef" shall consist of chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, shall not contain more than 30 percent fat, and shall not contain added water, phosphates, binders, or extenders. When beef cheek meat (trimmed beef cheeks) is used in the preparation of chopped or ground beef, the amount of such cheek meat shall be limited to 25 percent; and if in excess of natural proportions, its presence shall be declared on the label, in the ingredient statement required by Sec. 317.2 of this subchapter, if any, and otherwise contiguous to the name of the product.*

*(b) Hamburger. "Hamburger" shall consist of chopped fresh and/or frozen beef with or without the addition of beef fat as such and/or seasoning, shall not contain more than 30 percent fat, and shall not contain added water, phosphates, binders, or extenders. Beef cheek meat (trimmed beef cheeks) may be used in the preparation of hamburger only in accordance with the conditions prescribed in paragraph (a) of this section.*

Ground beef shall list all countries of origin contained within that batch, or that may be reasonably contained in that batch. In determining what is considered reasonable, when a raw material from a specific country is not in a processor's inventory for more than 60 days, that country shall no longer be included as a possible country of origin.

## **Other Provisions**

**Remotely Purchased Products** (e.g., Internet sales) - Retailers may provide country of origin information on the sales vehicle (e.g., Internet site) or at the time the product is delivered to the consumer.

**State and Regional Labeling Programs** – State, regional, or local labeling programs such as “Pennsylvania Proud” are NOT authorized to be used in lieu of COOL for beef. Local labeling programs must also include the country-of-origin declaration as well. This rule also replaces any State country-of-origin law that may be in place.

## **Labeling of the Product**

**Retail Notification to the Consumer** - The label must be in a conspicuous location and legible to allow consumers to identify the country(ies) of origin. Retailers may commingle covered commodities from more than one country of origin provided all possible origins are listed. The COOL notification can be on the individual package of beef or on a placard or sign as long as it is conspicuous and noticeable to the consumer.

## **Recordkeeping for Retailers and Packers**

Retailers must maintain records or other documentary evidence that permits verification of origin claims made at retail. These records may be maintained in any location and, unless specified otherwise, must be maintained for a period of one year from the date the declaration was made at retail. Upon request, these records must be provided to any duly authorized representatives of USDA within five business days of the request.

For covered commodities sold in pre-labeled consumer-ready packages, the record must identify the covered commodity and the retail supplier. For products that are pre-labeled with the origin information on the shipping container (or other type of outer container), the label itself is sufficient evidence on which the retailer may rely to establish the product's origin at the point of sale. In this case, retailers must still maintain a record identifying the covered commodity and the retail supplier. In addition, to allow substantiation of the origin claim, the retailer must either maintain the pre-labeled shipping container at the retail store, or an off-site facility, for as long as the product is on hand, or ensure the origin information is included in the record identifying the covered commodity and the retail supplier. For products that are not pre-labeled, the retailer must maintain records that identify the covered commodity, the retail supplier, and the origin information.

The supplier of a covered commodity that is responsible for initiating a country of origin declaration (the packer) must possess or have legal access to records that are necessary to substantiate that claim. In the case of beef or veal, 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).

## **Recordkeeping for Producers**

NCBA worked with other industry partners to develop a standardized producer affidavit that has been widely accepted and used since COOL went into effect on September 30, 2008. The affidavit is a simple way to declare origin of cattle. Usual business records can be used to verify the origin claim made on the affidavit.

The final rule also allows for visual inspection to be used to make an origin claim. Because of Federal regulations, live cattle imported into the U.S. must be marked with a “CAN” if they are coming from Canada, or an “M” if they are coming from Mexico. In addition, Canadian animals will also have a Canadian animal ID tag and Mexican animals will have metal animal disease tags. The presence of these markings will allow you to determine if an animal is from Mexico or Canada if there is no other information in regards to their origin. The absence of these markings can also be used to make a determination that the animal is from the U.S. The visual inspection now constitutes first-hand knowledge.

Given this new ability to make visual inspection claims, NCBA still recommends that producers utilize the affidavits. NCBA also recommends that producers ensure they have some sort of record on hand (import documents, calf book, health records, or other typical business record) to further verify the origin of your cattle. Country-of-origin claims can be made for an individual animal or a group lot of animals. “Evergreen” affidavits may also be used that allow sellers to notify the buyer that unless they are notified otherwise, the animals being sold to them are from country X.

Packers that process animals tagged with an 840 Animal Identification Number device, without the presence of any foreign animal marks, may use that tag alone to make a claim of U.S. origin. This does not mean that producers who sell animals with 840 tags will not be required to provide an affidavit.