

# ***AG-ECO NEWS***

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## **Country of Origin Labeling Effective September 30, 2008**

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Mandatory Country of Origin Labeling (COOL) of beef, pork, lamb, chicken, goat meat, perishable agricultural commodities [fruits/vegetables], peanuts, pecans, ginseng, and macadamia nuts will take effect on September 30, 2008. COOL was mandated by Farm Bill 2002, but implementation was delayed as a result of industry pressure claiming that COOL requirements would be expensive, very difficult to implement and would not achieve the desired effects of encouraging consumer preference for domestic products. A compromise version of COOL, adding chickens, goats, macadamia nuts, pecans and ginseng as well as simplifying record keeping requirements, was re-authorized by Farm Bill 2008. On July 28, 2008, USDA released a 233 page interim final rule for mandatory country of origin labeling. The rule was published in the Federal Register for comment on August 1, 2008. A comment period until the September 30 effective date is meant to allow analysis of the rule and suggestions for any final changes before the final rule is put in place. It appears doubtful that any major changes can be made, but small changes may be possible.

As of September 30, 2008, retailers and packers who sell and/or supply the covered commodities to consumers will be required to provide a country of origin declaration. The COOL declaration may be provided to consumers by means of a label, placard, sign, stamp, band, twist tie, pin tag, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. The declaration may be in the form of a statement such as "Product of USA," "Produce of the USA", or "Grown in Mexico;" may only contain the name of the country such as "USA" or "Mexico;" or may be in the form of a check box provided it is in

conformance with other Federal labeling laws.

According to USDA-AMS June 28, 2008 interim final rule, covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities [fresh and frozen fruits and vegetables]; macadamia nuts, pecans, ginseng, and peanuts.

Live cattle are not commodities and the rule does not specifically apply to cattle producers, but since ranchers supply the live animals that become the covered commodity, COOL requirements will trickle down from the retailers and packers to the base of the production chain. In terms of labeling beef and veal as a U.S. product, muscle cuts must be derived exclusively from animals born, raised, and slaughtered in the U.S.

In the case of labeling requirements for single perishable agricultural commodities (frozen fruits and vegetables), peanuts, pecans, ginseng, and macadamia nuts that are commingled with imported commodities, the declaration shall indicate the countries of origin for all covered commodities.

During the six-month period following the Sept. 30 implementation date, USDA's Agricultural Marketing Service (AMS) will conduct an industry education and outreach program concerning the provisions and requirements of COOL. Although there is not a six-month grace period for implementation, AMS will be focusing more on education than on enforcement.

### **Record Keeping Requirements**

Retailers must maintain records or other documentary evidence for one year that permits verification of origin claims made at retail.

The supplier of a covered commodity must possess or have legal access to records that are necessary to substantiate the COOL declaration. 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).

At this time it appears that an affidavit will be all that is expected of cattle producers in making

their determination of country of origin. Keep in mind that USDA has not, and probably will not, issue a standardized affidavit and that an affidavit is simply a declaration that actual records are available. Usual business records, i.e., bills of sale/purchase can be used to verify those claims in the event of an audit.

### **Exemptions**

COOL requirements do not apply to covered commodities produced or packaged before September 30. Food service establishments, including salad bars and delis located within retail establishments that provide ready-to-eat foods, are specifically exempted as are covered commodities that are ingredients in a processed food item.

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, etc. 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.

If the retail product contains two different types of covered commodities (e.g., peas and carrots, pecans and almonds), it is considered a processed food item and is not subject to mandatory COOL.

Small retailers are also exempt from COOL. Only retailers licensed as such under the Perishable Agricultural Commodities Act (PACA) of 1930 (license required when the invoice cost of all purchases of perishable agricultural commodities exceeds \$230,000 during a calendar year) are subject to the law and are required to label covered commodities for country of origin.