

September 18, 2008



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Country of Origin Labeling Program  
Room 2607-S  
Agricultural Marketing Service (AMS)  
United States Department of Agriculture  
STOP 0254

1400 Independence Avenue, SW.  
Washington, DC 20250-0254  
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AND  
Officer for Agriculture  
Office of Information and Regulatory Affairs,  
Office of Management and Budget  
New Executive Office Building  
725 17th Street, NW., Room 725  
Washington, DC 20503

Dear Reviewing Officer:

The following comments are filed on behalf of Texas Cattle Feeders Association (TCFA), a trade association representing cattle feeders and feedyards in New Mexico, Oklahoma and Texas – the largest cattle feeding region in the United States. Our members market approximately 7 million head of fed cattle each year, constituting about 30% of the nation's fed beef.

TCFA joined with over 30 industry groups representing all sectors of the meat production industry – from producer to packer to retail marketer – to develop documents necessary to verify country of origin claims on meat products. On September 5, 2008, USDA Under Secretary for Marketing and Regulatory Programs Bruce Knight and his staff were provided with copies of those documents for review. During that meeting, Secretary Knight gave approval to the use of the concepts and documents outlined in the attached letter. We believe these documents represent the most effective, cost efficient method of implementing the Country of Origin Labeling (COOL) requirements for our industry. We are grateful for Secretary Knight's timely review and approval of these concepts. His approval has greatly expedited implementation while reducing the overall costs associated with implementation.

The primary focus of our comments is a discussion of recordkeeping associated with suppliers of live animals to processors. Our comments will focus on three main points: (1) limitations on USDA's jurisdiction over recordkeeping of producers and live animals; (2) reasons why recordkeeping documents and interpretations adopted by the industry should be (and have been) recognized by USDA to meet audit requirements under COOL; and (3) clarification that violations of COOL will not trigger recall provisions.

The laws, the Farm Security and Rural Investment Act of 2002, (2002 Farm Bill); the 2002 Supplemental Appropriations Act (2002 Appropriations), and the Food Conservation and Energy Act of 2008 (2008 Farm Bill) amend the Agricultural Marketing Act of 1946 (Act), cumulative hereinafter referred to as “COOL”, establish that the requirements of labeling apply only to “retailers of covered commodities” (7 USCA 1638a (a)(1)). Covered commodity is defined in 7 USC 1638 and Section 65.135 of the regulation (73 FR 45149, Aug. 1, 2008) to mean “(i) muscle cuts of beef, lamb, and pork; (ii) ground beef, ground lamb, and ground pork;” (text omitted for brevity).

Live animals by definition are not “covered commodities” but many meat products are “covered commodities.” In the meat industry, live animals are converted to “covered commodities” during harvest and processing at processing/packing facilities. This conversion point is also the point at which USDA’s jurisdiction is defined. Pursuant to COOL, the Secretary of USDA has authority to audit “any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance with the act (7 USCA 1638a, 1638b as amended by P.L. 110-246, 2008 HR 6124). By the definition of “covered commodity,” of which live animals are not, any USDA audit trail would end with the processor as the party initiating the retail label claim.

Our organization has joined with others in the meat industry to develop documents to provide livestock origin information to processors/purchasers of livestock. However, we object to any attempt to classify livestock producers as “persons engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly,” as outlined in section 65.500(b)(1) (73 FR 45151, Aug. 1, 2008). Nothing in the law authorizes USDA to regulate “indirect” suppliers. The term “indirect suppliers” is not included in the law but used and not defined in the interim final rule(IFR). To avoid further confusion, we strongly encourage USDA to strike this reference in the final rule.

The law further provides, “that a person subject to an audit shall provide the Secretary with verification of country of origin of covered commodities. Records maintained in the course of the normal conduct of the business of such person, including animal health papers, import or customs documents, or producer affidavits, may serve as such verification.” (7 USCA 1638a, 1638b as amended by P.L. 110-246, 2008 HR 6124.) The law envisions that persons may rely upon the statements of their suppliers. The law specifically recognizes normal business records, animal health papers, import or customs documents, or producer’s affidavits as evidence of origin. If the processor has any of this information in their possession, no further inquiry is required or authorized by law. In fact the law PROHIBITS the Secretary from requiring additional documents other than those offered in the normal course of the business. The law does not require suppliers to go beyond the face of those documents to meet some unknown level of proof. The duty of suppliers of covered commodities is to act in “good faith” to comply with the statute. In crafting documents, the industry has adopted that same standard for producers.

We are concerned with USDA’s assertion in the regulation that “the supplier of a covered commodity that is responsible for initiating a country of origin claim...must possess or have legal access to records that are necessary to substantiate that claim.”(text omitted for brevity )(73 FR 45151) We agree that suppliers should possess documentation to support their claims. However, we object to USDA’s attempt to assert jurisdiction to private transactions between buyers and sellers. We submit that USDA has no authority to access the records of sellers of livestock. USDA’s jurisdiction stops with the initiator of the origin claim of a covered commodity. In the case of meat products, that point is the slaughter facility. If the slaughter facility has animal health papers, import or customs documents, or producer affidavits, all USDA inquiry should cease at that point.

Nothing in the law authorizes USDA to dictate that suppliers of covered commodities “have legal access to records that are necessary to substantiate that claim.” Legal access may only be granted by the holders of the documentation or specifically by law. Language referencing “legal access” in the IFR should be deleted from the final rule as it is not authorized by law.

We object to USDA’s attempts to prescribe evidentiary standards for producer affidavits. The IFR provides that “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 animals and identifies the animals unique to the transaction.” Again, the law allows for the use of “producer affidavits”. The law does not require “first-hand knowledge or identification of animals unique to the transaction”. The addition of these terms has caused a great deal of confusion in the trade and should be deleted from the final regulation.

The industry has agreed that producers may use visual inspection of animals for the presence or absence of import markings to support affidavits. The industry strongly supports this position for several reasons. Visual inspection provides flexibility in the trade which will reduce costs to producers, processors, retailers, and ultimately consumers. The industry has recognized visual inspection to support affidavits of origin because there is no other viable, and in some cases, possible, cost effective means of verification of origin.

The industry’s adoption of this approach builds upon IFR statements indicating that processors “slaughtering animals that are part of a NAIS compliant system or other recognized official identification system (e.g. Canadian official system, Mexico official system) may also rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e. “Can” “M”) as applicable on which to base their origin claims.” The industry strongly supports USDA’s position to allow slaughtering facilities to rely upon the presence or absence of these markings. The industry recognizes this approach for all persons in the chain from producer to processor.

The industry’s confidence in the reliability of visual inspection to support an affidavit of origin is based upon USDA’s long-term success with monitoring, inspecting and marking foreign origin livestock entering the United States. It is our understanding that under current law, no livestock can lawfully enter the United States without inspection and marking/tracking indications. Actual inspection of livestock for foreign markings, including brands, tattoos, or ear tags is very reliable as it is a review of the animal itself and not a reliance upon paper transferred from one party to another. Given USDA’s strict enforcement of imported livestock, the industry believes that reliance on the presence or absence of markings is also appropriate to determine US origin.

The use of visual inspection is particularly important during the time between publication of the IFR and publication of the final regulation. Thousands of animals, commonly known as gap animals, have entered the marketing chain since July 15, 2008. The origin of those animals may or may not have been conveyed to subsequent purchasers. Without the use of visual inspection to support affidavits of claims of origin, those animals may be unmarketable. In addition, visual inspection avoids conflicts with our trading partners as all classes are treated similarly.

While we appreciate USDA’s recognition of this situation and agreement that visual inspection may be utilized to support country of origin claims for gap animals, we strongly believe that the use of visual inspection is a cost effective and reliable means of meeting the requirements of the law and therefore should be allowed even after July 15, 2009.

We strongly support USDA’s adoption of the concepts of “composite affidavits” and “continuous affidavits/declarations” as a means of verification of origin. It is our understanding that “composite affidavits” mean documents that are derived from knowledge gained by review of

other affidavits. It is our understanding that the term “continuous affidavit” means a document that asserts the origin of a particular sellers' present and future livestock deliveries until such time as the document is revoked by either party or modified for a specific transaction. Both of these concepts were discussed with Secretary Knight on September 5, 2005. We applaud USDA’s acceptance of these concepts to reduce paperwork and cost burdens.

We believe the documents and concepts adopted by the livestock industry represent the most efficient cost effective means of implementation of the recordkeeping requirements of COOL and encourage USDA to incorporate these concepts into the final rule and adopt the documents agreed upon and supplied by the industry for all segments to utilize.

Likewise, we encourage USDA to allow the use of all recognized official identification systems to support country of origin claims. TCFA has been assured by USDA that PVP and QSA programs that require origin information are recognized official identification systems and can be utilized to comply with COOL. We appreciate USDA’s clarification; however, to avoid future confusion, we believe that it is necessary to specifically list PVP and QSA programs prior to “or recognized official identification programs” in the final rule.

To further reduce costs throughout the production and marketing system associated with COOL implementation and compliance, TCFA urges USDA to provide processors and retailers with maximum labeling flexibility.

We also ask that USDA make clear that violations of COOL will not result in an assertion of mislabeling constituting a federal recall of meat products. The IFR notes that “COOL is a retail labeling program and as such does not provide a basis for addressing food safety” (73 FR 45123). We agree. However, to avoid confusion in the marketplace as to what does and does not justify a product recall; we encourage USDA to make clear in the final regulation that a violation of COOL will not justify any type of product recall.

Sincerely,

A handwritten signature in black ink that reads "Ross Wilson". The signature is written in a cursive, flowing style.

Ross Wilson  
President & CEO  
Texas Cattle Feeders Association