

06/11/2003 Entry: "R-CALF USA Member Alert - USDA Continues Lobbying Against Proper COOL Implementation"

The following document titled Questions and Answers on Country of Origin Labeling was downloaded from the official Agricultural Marketing Service-USDA (AMS) website on June 5, 2003. R-CALF USA has added its responses to each of the questions posed by AMS (language in blue). This "USDA Position Paper" underscores the need for all our members to contact their Congressional Members asking them to urge USDA to begin implementing COOL as we have suggested and as Congress intended. Congress needs to be told that the COOL law does not need to be changed, it simply needs to be implemented properly.

Feel free to use this information in any letters to the editor or to Congress and as testimony if you are able to attend any of the remaining USDA listening sessions on COOL.

Questions and Answers on Country of Origin Labeling

Why can't USDA use the same system to verify compliance with Country of Origin Labeling that they use for meat products under USDA's commodity procurement program?

Answer Posted by USDA:

There are several reasons why the systems will be different.

The requirements for origin are not the same. The COOL law for U.S. origin requires the meat products to be from cattle, hogs, and sheep born, raised, and slaughtered in the United States. The USDA commodity procurement program requires meat products to come from U.S.-produced livestock. The definition of U.S.-produced livestock excludes only imported meat and meat from livestock imported for direct slaughter.

The system for verifying compliance with the USDA commodity procurement program is a "command and control" type system. USDA, through various certification or audit programs, confirms the applicable claim at the beginning of the process, then tracks and controls the movement of the product throughout the rest of the marketing chain.

A similar system for COOL would require USDA to verify that the livestock was born in the United States, then track and control the movement of the livestock and resulting meat products through the marketing chain to retail. The law specifically precludes USDA from imposing this type of control. In fact, maintaining the identity of the livestock and resulting product is a key component of a system like this and is specifically precluded. The law states "The Secretary

shall not use a mandatory identification system to verify the country of origin of a covered commodity.”

Answer by R-CALF USA:

USDA is missing the point.

The fact that the Commodity Procurement Program (Program) defines domestic product differently than the COOL law is irrelevant. The fact that the Program has a verifiable system in place to achieve compliance with a definition of origin without requiring a record keeping system from producers makes the program an excellent model for use in implementing COOL.

The fact that the USDA uses a “Command and Control” type system is also irrelevant. It is the acknowledged system in which “USDA, through various certification and audit programs, confirms the applicable claim at the beginning of the process. . .” that makes the Program a meaningful model for COOL implementation.

Particularly relevant is the fact that USDA achieves compliance with the definition of origin and it verifies claims of origin by starting at the point of slaughter (this is the USDA’s “beginning of the process”). USDA achieves compliance at the point of slaughter without asking for a single record from domestic livestock producers. Instead, USDA uses a “presumption of domestic origin” as the system for verifying whether live cattle meet the definition of “Domestic Product.” USDA affirmatively identifies the products that are not eligible, and, by default, presumes that all livestock not excluded are deemed compliant with the definition.

This is precisely what USDA should do to implement COOL. USDA acknowledges that it “confirms the applicable claim at the beginning of the process.” Clearly the Commodity Procurement Program provides a perfect model for implementing COOL as it allows USDA to verify claims of origin of live animals without requiring records from producers.

Importantly, USDA designed this “presumption of domestic origin” system to achieve compliance with the Richard B. Russell National School Lunch Act which defines domestic commodities as “an agricultural commodity that is produced in the United States.” USDA can and should verify that livestock are born and raised in the United States using the same system it uses to verify that livestock is produced in the United States.

There is no justification to use a more burdensome and complicated system for verifying origin under the COOL law. In fact, the penalties for violation under the National School Lunch Act are more severe than the penalties under the COOL law. Violators of the National School Lunch Act are subject to a \$10,000 fine or

imprisonment for up to five years for a willful violation. The COOL law does not subject retailers to imprisonment, only a monetary fine. Thus, there is no justification for USDA's claim that they have any heightened duty to verify origin under the COOL Act than they have under the National School Lunch Act.

Finally, USDA's assertion that using this system for implementing COOL constitutes a prohibited mandatory identification system is ridiculous. Neither the COOL Act nor the National School Lunch Act requires anything more than the identification as to origin. USDA is mandated by Congress to develop a mandatory system to identify livestock as to their origin and then to ensure that the resulting product is identified as to its origin. To claim that the very system that identifies the origin of livestock at the point of slaughter and then identifies the origin of the meat products throughout the marketing chain to retail is a mandatory identification system prohibited by the COOL law is a gross misrepresentation of the COOL law. If USDA were sincere regarding this ridiculous assertion, it, better than anyone else, knows that it has the authority to define what a mandatory identification system is. The fact that USDA chose not to define a mandatory identification system, but rather, uses the mere phraseology to support the packing industry's desires to place an undue burden on producers speaks volumes.

How will the mandatory Country of Origin Labeling requirements impact the existing U.S. cow and bull herds?

Answer Posted by USDA:

The law requires country of origin labeling for all covered commodities sold at retail beginning September 30, 2004, and does not contain a grandfathering provision that would exclude meat from these animals from the mandatory labeling requirements. If records as to where these animals were born, raised, and slaughtered do not exist, retailers could not substantiate a country of origin claim that would comply with the law. Labeling for country of origin that cannot be substantiated would not provide consumers with credible information.

Answer by R-CALF USA:

USDA is ignoring the fact that not only does the law require retailers to label covered commodities beginning September 30, 2004, but also, the law requires USDA to design a system to verify the origin of livestock. Whatever system USDA designs will be used to label covered commodities and it will be used to determine if a violation occurred. USDA's rules will have the force of law. Thus, USDA must consider this issue as an evidentiary burden issue for compliance purposes. USDA can reduce the likelihood of objections or problems by working with the Department of the Treasury as R-CALF USA has requested to start requiring that all imported livestock be marked with their country of origin. On or before September 30, 2004, USDA should promulgate rules that say the

markings on imported livestock or lack thereof shall be the means of determining the origins of livestock.

USDA can already use the foreign markings now branded on Mexican cattle, including the 816,000 head of Mexican Cattle imported in 2002, and it doesn't need to mark the over one million head of cattle imported directly for slaughter as their origins are already known to the packer. This leaves a very small percentage of livestock in the U.S. where the foreign country of origin is not already known. The recently released Legal and Economic Analysis of COOL completed by the International Agricultural Trade and Policy Center estimates this number at a mere five-tenths of one percent of the total livestock inventory of the United States.

In addition, the NCBA made a public claim as recently as May 21, 2003, that cattle shipped into the U.S. from Canada or other countries are identified with ear tags and can be quickly tracked down. Given this information, USDA should immediately begin the process of tracking down all imported cattle in the U.S., thus ensuring that on September 30, 2004, all imported cattle are accounted for thereby ensuring that United States producers will not suffer financial harm because of the minimal number of commingled imported livestock residing in the United States. After all, potential financial loss to producers is precisely what USDA is inferring in its response to this important issue and USDA has a duty to mitigate such potential.

U.S. producers are becoming increasingly disappointed with USDA's apparent unwillingness and inability to work to solve the very real problems faced by independent producers.

Why can't USDA track only the imported products and all other products be considered of "U.S. Origin"?

Answer Posted by USDA:

The COOL provision of the Farm Bill applies to all covered commodities. Moreover, the law specifically identifies the criteria that products of U.S. origin must meet. For beef, pork, and lamb, for example, U.S. origin can only be claimed if from animals that are born, raised, and slaughtered in the United States. The law further states that "Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity." And, the law does not provide authority to control the movement of product, imported or domestic. In fact, the use of a mandatory identification system which would be required to track controlled product through the entire chain of commerce is specifically prohibited.

In addition, applying rules only to imports could potentially violate the “national treatment” requirements of existing trade agreements between the United States and various other countries.

Answer by R-CALF USA:

USDA has deliberately asked itself the wrong question, effectively shielding itself from the real issue and creating unnecessary confusion regarding what cattle producers are requesting. R-CALF USA is not aware of any organization that has asked USDA to only track the “imported products and all other products be considered of U.S. origin.” R-CALF USA agrees that only tracking imported products beyond the point of slaughter is not practical or allowable under existing laws.

However, USDA is misleading the public by not addressing the real question brought to it repeatedly by R-CALF USA and many other U.S. organizations. The real question is this:

Why can't USDA permanently mark only imported livestock with a country of origin marking and all unmarked livestock be considered of “U.S. Origin”?

The request to mark only imported livestock was made only to enable USDA to identify the origins of live animals at the point of slaughter recognizing that Congress purposely avoided giving USDA jurisdiction over live cattle or live cattle producers. This request does not apply to the covered commodities that result from the slaughtering process as it is clearly understood by everyone that Congress did give USDA authority to require an auditable recordkeeping system for persons who prepare, store, handle, and distribute covered commodities (those who handle covered commodities resulting from the slaughtering process and continuing throughout the marketing chain to the retailer).

In written comments to USDA, all the national and regional cattle associations including R-CALF USA, NCBA, TCFA, and KLA recommended that USDA adopt this methodology for determining the origins of live cattle when they reach the point of slaughter.

With respect to USDA's response, despite being a response to the wrong question, the identification of all imported livestock as to their country of origin does not violate or interfere with the fact that “[T]he COOL provision of the Farm Bill applies to all covered commodities.” In fact, livestock as acknowledged by USDA are not covered commodities.

For determining the eligibility of live cattle for the United States label, the only applicable criteria is the determination of whether the cattle were born and raised in the United States prior to being slaughtered. Thus, USDA must specifically identify the origins of each live animal at the point of slaughter. R-CALF USA

disagrees with USDA assertion that cattle producers are subject to USDA's jurisdiction because the law states that "Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity." USDA acknowledges that cattle are not covered commodities. Because cattle producers supply only live cattle and cattle are not covered commodities, suppliers of live cattle are not persons engaged in the business of supplying a covered commodity to a retailer.

Requiring only imported livestock to be marked with a mark of origin does not result in control of the movement of livestock. Marked and unmarked livestock would move freely within the United States and the only point in their life cycle where the mark would be required to be read under the COOL law would be at the point of slaughter.

A foreign marking on imported livestock could not be considered a mandatory identification system because such a marking is already defined under Article IX of GATT 1994 as a "mark of origin." No mandatory identification system would be needed to determine the origins of livestock at the point of slaughter if all foreign livestock were marked with their respective mark of origin and all unmarked livestock were considered of U.S. origin (it is impossible for cattle to be anything but born and raised in the United States if the cattle did not physically cross the United States border).

Regarding the "national treatment" requirements of existing trade agreements, USDA, which has at its immediate disposal the necessary resources to provide the public with a definitive determination as to whether a mark of origin on only imported cattle constitutes a violation of the "national treatment" requirements of existing trade agreements, chooses instead to cast dispersions upon this recommendation by stating in the vaguest of terms, that such a practice "could potentially violate." If USDA is going to summarily reject the recommendations of the public, it should at least provide credible and supportable justifications for its actions rather than simply assert the political position of the American Meat Institute and other COOL opponents.

R-CALF USA has provided USDA with its legal research regarding this matter and such research concludes that the United States, and every other member of the World Trade Organization has the right and authority to require marks of origin on all imported goods, products, and livestock. Moreover, Article IX of the GATT 1994 even specifies that countries should permit marks of origin to be affixed at the time of importation and it makes it clear that while countries have a right to affix marks of origin, they may not affix additional information beyond the origin of the product or livestock, such as the name of the producer. Finally U.S. law defines marking requirements under title 19 of the United States Code.

R-CALF USA has suggested that USDA work with the Department of the Treasury to remove livestock from current list of products excluded from the general requirement that all imported products be labeled as to their country of origin.

Are cattle, hogs, and sheep covered commodities?

Answer Posted by USDA:

No. However, the law requires suppliers to provide country of origin information to retailers, including the “born, raised, and slaughtered” information required to make U.S. origin claims for the covered commodities beef, pork, and lamb. The records needed to substantiate this information can only be created by persons having first-hand knowledge of the country designation for each production step declared in the country of origin claim. Thus, livestock producers will need to create these records to enable retail suppliers to provide retailers with correct country of origin information.

Answer by R-CALF USA:

No. However, USDA has omitted essential language in the COOL law in order to justify its attempt to regulate U.S. producers. The law does not require all suppliers to provide country of origin information to retailers as USDA suggests. Instead, the law requires that “any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail. . .” Because, as USDA acknowledges, cattle are not covered commodities, cattle producers do not prepare, store, handle, or distribute a covered commodity. Further, the law states that “Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity.” Again, cattle producers do not supply a covered commodity. Thus, USDA has no authority to require livestock producers to create records to enable suppliers of covered commodities to provide retailers with correct country of origin information.

The COOL law was carefully crafted by Congress to prevent USDA from imposing the very kind of burden USDA is attempting to impose on producers. Congress left USDA with minimal discretion and only by misrepresenting the COOL law itself can USDA hope to be successful in overly burdening U.S. producers. Congress left USDA with only the system of verification USDA presently uses in the National School Lunch Program, known as the “presumption of domestic origin,” along with the United State’s authority to mark all imported livestock, as the means of confirming the applicable claim at the beginning of the process. In other words, USDA’s jurisdiction starts at the point of slaughter and the claim of origin is to be determined by the person who transforms live cattle into covered commodities. The determination is to be made

by the slaughterer who notes the foreign marking on the cattle and identifies all the meat derived from that animal with its respective country of origin, and, in the case of cattle with no markings, the slaughterer identifies all meat derived from the animal as born, raised, and slaughtered in the United States.

Doesn't the finding of BSE in Canada make the need for Country of Origin Labeling more imperative?

Response Posted by USDA:

No. COOL will encompass products that have already been determined to be safe and appropriate for human consumption. There are other existing USDA programs responsible for food safety and animal disease that preclude noncompliant products from being included in the marketplace. The purpose of COOL is to provide consumers with country of origin information; it is not intended to be a food safety measure. Because COOL only covers certain commodities sold at certain retail establishments, it does not provide the type of universal assurance of food safety that food consumers have a right to expect.

Response by R-CALF USA:

Yes. COOL will greatly enhance the United State's ability to identify, segregate, and recall meat and other commodities within the food supply chain if the need arises to do so. COOL also affords consumers with additional information that they can use to avoid certain products originating from certain countries if they choose to do so. In effect, COOL will add an additional level of protection beyond the safety standards and inspections performed by USDA and other governmental agencies. While the COOL law does not cover all commodities sold at certain retail establishments, USDA can hardly argue that consumers could not choose to buy only those commodities that were labeled as to country of origin if a food borne illness were discovered within the products of any of any United States' trading partner. If COOL were in place when Canada announced it had BSE, USDA can hardly argue that consumers could not have chosen to avoid muscle cuts of beef and ground beef containing Canadian beef. Moreover, COOL could insulate the U.S. cattle industry from financial losses if another BSE case were discovered in Canada as consumers could choose to buy muscle cuts of beef and ground beef produced exclusively in the United States. .

In light of the discovery of BSE in Canada, shouldn't mandatory Country of Origin Labeling be implemented immediately?

Response Posted by USDA:

To the extent that consumers begin to demand COOL, the guidelines for voluntary country of origin labeling currently in place already address this issue.

The law provides that regulations governing mandatory country of origin labeling shall be issued not later than September 30, 2004.

Response by R-CALF USA:

Major consumer groups were actively involved in the passage of COOL. Major consumer groups continue to work side-by-side with commodity organizations representing every single commodity covered by the COOL law for the proper implementation of COOL. Major consumer groups have submitted oral and written comments to USDA urging USDA to implement COOL using the "presumption of domestic origin." For USDA to say, "To the extent that consumers begin to demand COOL. . ." is a disregard for the fact that consumers have been aggressively demanding COOL. Moreover, because the voluntary guidelines are unenforceable, a producer who wants the muscle cuts of beef and ground beef produced from his or her cattle to be labeled has no way to force the packer to transfer origin information to the retailer. In light of the BSE situation, the sooner COOL is implemented, the better.