September 26, 2008

Country of Origin Labeling (COOL)
Frequently Asked Questions

COOL Implementation: Legislative History and Status of Rulemaking

Q. *What are the basic requirements of COOL?*

A. The 2002 and 2008 Farm Bills amended the Agricultural Marketing Act of 1946 to require retailers to notify their customers of the country of origin of beef (including veal), lamb, pork, chicken, goat, wild and farm-raised fish and shellfish, perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts. The implementation of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish was delayed until September 30, 2008. The law defines the terms "retailer" and "perishable agricultural commodity" as having the meanings given those terms in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (PACA)(7 U.S.C. 499 et seq.). 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.

Food service establishments are specifically exempted as are covered commodities that are ingredients in a processed food item. In addition, the law specifically outlines the criteria a covered commodity must meet to bear a "United States country of origin" designation.

Q. *What commodities require country of origin labeling?*

A. Covered commodities include muscle cuts of beef (including veal), lamb, pork, goat, and chicken; ground beef, ground lamb, ground pork, ground goat, and ground chicken; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; peanuts; ginseng, pecans and macadamia nuts.

Q. *When does COOL go into effect?*

A. The interim final rule for mandatory COOL for fish and shellfish became effective on April 4, 2005. The interim final rule for mandatory COOL for the remaining covered commodities that was published on August 1, 2008, will take effect on September 30, 2008, as directed by the statute. The requirements of this rule do not apply to covered commodities produced or packaged before September 30, 2008. In addition, during the six month period following the effective date of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule.

Q. *What legislation established and governs COOL?*

A. The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill; P.L. 107-171) and the 2002 Supplemental Appropriations Act (P.L. 107-206) established COOL. Section 10816 of the 2002 Farm Bill (7 U.S.C. 1638-1638d) amended the Agricultural Marketing Act of 1946 to require retailers to notify their customers of the origin of covered

commodities. Covered commodities included muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts.

With passage of the FY 2004 Consolidated Appropriations Act (P.L. 108-199), Congress delayed the implementation of mandatory country of origin labeling (COOL) for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. Congress once again delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2008, with passage of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006 (P.L. 109-97).

The recently enacted Food, Conservation and Energy Act of 2008 (2008 Farm Bill) further amended the COOL program by expanding the list of covered commodities to include chicken, goat meat, ginseng, pecans and macadamia nuts as well as making a host of other changes.

Q. *What rulemaking activities has USDA completed for COOL?*

A. AMS published "Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts" in the Federal Register on October 11, 2002 (67 FR 63367).

During 2003, AMS held several "listening sessions" that provided interested parties and the public with an opportunity to make oral statements, to receive information about all aspects of COOL policy contained in the law, and to offer suggestions about how AMS might best go about implementing the program.

Following a review and analysis of the comments received on the voluntary guidelines, and taking into consideration the policy requirements contained in the law, AMS published the proposed rule for mandatory COOL of all covered commodities (68 FR 61944) on October 30, 2003.

On October 5, 2004, AMS published an interim final rule for fish and shellfish (69 FR 59708) that went into effect on April 5, 2005. On November 27, 2006, AMS reopened the comment period on the costs and benefit aspects of the interim final rule for fish and shellfish.

On June 20, 2007, AMS reopened a 60-day comment period on both the 2004 interim final rule for fish and shellfish and the 2003 proposed rule for a mandatory COOL program for all covered commodities.

On August 1, 2008, AMS published an interim final rule for the remaining covered commodities. The interim final rule contains definitions, labeling requirements for domestically produced and imported products, and recordkeeping responsibilities of retailers and suppliers. The rule also provides for a 60-day public comment period,

which closes September 30, 2008. Comments may be submitted via http://www.regulations.gov.

Processed Food Item Definition

Q. *What is the definition of a "processed food item"?*
A. AMS has defined a processed food item as a retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, or tomato sauce). Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding).

Q. *Do processed food items require country of origin labels?*
A. The COOL law contains an express exclusion for an ingredient in a processed food item. Thus, retail items that meet the definition of a processed food item do not require labeling under the COOL interim final rule. However, many imported items are still required to be marked with country of origin information under the Tariff Act of 1930 (Tariff Act). For example, while a bag of frozen peas and carrots is considered a processed food item under the COOL interim final rule, if the peas and carrots are of foreign origin, the Tariff Act requires that the country of origin be marked on the bag. Likewise, while roasted peanuts, pecans, and macadamia nuts are also considered processed food items under the COOL interim final rule, under the Tariff Act, if the nuts are of foreign origin, the country of origin must be indicated to the ultimate purchaser. This also holds true for a variety of fish and shellfish items. For example, salmon imported from Chile that is smoked in the United States as well as shrimp imported from Thailand that is cooked in the United States are also required to be labeled with country of origin information under the Tariff Act. In addition, items such as marinated lamb loins that are imported in consumer-ready packages would also be required to be labeled with country of origin information as both Customs and Border Protection (CBP) and Food Safety and Inspection Service regulations require meat that is imported in consumer-ready packages to be labeled with origin information on the package.

Q. *What are some examples of a "processed food item"?*
A. Examples of processed food items excluded from COOL labeling requirements are: teriyaki flavored pork loin, roasted peanuts, breaded chicken tenders, marinated chicken breasts, a salad mix that contains lettuce and carrots, and a fruit cup that contains melons, pineapples, and strawberries.

Q. *Would a frozen vegetable medley that is packaged in the United States and contains both foreign and domestic produce have to bear country of origin information since it is a combination of different commodities?*
A. Yes. While this product is considered a processed food item and is therefore excluded from COOL labeling requirements, according to CBP rules and regulations, the process

of blanching, cutting, freezing, and combining and packaging different vegetables (or fruits) does not result in the item being excluded from CBP marking requirements.

Q. *Does cutting or slicing vegetables count as processing? What about dried fruit or mushrooms, are they covered commodities?*

A. A processed food item is a retail item derived from a covered commodity that has undergone processing resulting in a change in the character of the commodity or that has been combined with at least one other covered commodity or other substantive food components (e.g. breading, chocolate, salad dressing, and tomato sauce). Trimming, cutting, chopping, and slicing are activities that do not change the character of the product. Dried fruit is not subject to COOL labeling requirements since the drying process changes the character of the fruit. Mushrooms, if fresh, are covered. Dried mushrooms are not covered.

Q. *Why did USDA choose to define the term "processed food item" in this manner when in seems to result in many products being excluded from labeling?*

A. The definition of a processed food item developed for this rule has taken into account comments from affected entities and has resulted in excluding products that would be more costly and troublesome for retailers and suppliers to provide country of origin information. This definition is based on the definition for this term that was published in the interim final rule for fish and shellfish on October 5, 2004. Because the rule for the remaining covered commodities was also issued as an interim final rule and gave regulated parties only 60 days to implement it, USDA felt the best approach was to maintain the same definition that was used in the fish and shellfish program, which has been operating in retail stores for three years and provides retailers with a clear line as to what items require labeling. There is a 60-day comment period for the interim final rule, which closes on September 30, 2008. USDA will consider all comments received as it drafts a final rule for all covered commodities.

Retail Store Definition

Q. *What stores are required to comply with COOL?*

A. The COOL legislation defines "retailer" as having the meaning given that term in section 499a (b) of the Perishable Agricultural Commodities Act of 1930 (PACA). 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.

For purposes of COOL, the definition of "retailer" generally includes most grocery stores and supermarkets. Retail stores such as fish markets and butcher shops as well as other stores that do not invoice the threshold amount of fresh produce (fruits and vegetables) are exempt from this regulation. Restaurants and other food service establishments (cafeterias, lunchrooms) are also exempt.

Food Service Establishments

Q. *Are "Food Service Establishments" required to label the items they sell for country of origin?*

A. No, food service establishments are exempt from COOL requirements. The term "food service establishment" means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Similar food service facilities include salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

Country of Origin Notifications

Q. *What information is a supplier required to provide to a retailer?*

A. Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country(ies) of origin of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale.

Q. *What requirements does a product have to meet in order to be labeled as having a U.S. origin?*

A. A covered commodity may bear a declaration that identifies the United States as the sole country of origin at retail only if it meets the definition of United States country of origin. Under the interim final rule, beef, pork, lamb, chicken, and goat must be derived from animals exclusively born, raised, and slaughtered in the United States; from animals born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and slaughtered in the United States; or from animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States. For perishable agricultural commodities, peanuts, ginseng, pecans, and macadamia nuts, products must be grown in the United States.

Q. *When labeling imported covered commodities, the regulation states that such declarations must be "consistent with other applicable Federal legal requirements". What are those "other Federal legal requirements?"*

A. In addition to the labeling requirements under the COOL regulation, other government agencies also have requirements for labeling the origin of imported products, including U.S. Customs and Border Protection (CBP) and USDA's Food Safety and Inspection Service (for meat products only) (FSIS). Thus, you should contact CBP (or FSIS if applicable) about consumer-ready, pre-labeled packages originating from a foreign country. CBP is authorized by provisions of Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). The country of origin for marking purposes is defined at section 134.1(b) of the Customs Regulations (19 CFR 134.1(b)). You can contact CBP either electronically through their website (http://www.cbp.gov/) or by the mailing address provided on their website:

U.S. Department of Homeland Security
1300 Pennsylvania Avenue, NW
Washington, D.C. 20229

You may also contact the Tariff Classification and Marking Branch of CBP by phone at the following number: General Inquiries (202) 572-8813.

The FSIS Labeling and Consumer Protection staff can be reached on (202) 205-0623 or (202) 205-0279.

Marking the Country of Origin Designation

Q. *Are we required to state the country of origin on our packages?*
A. Retailers are required to notify the final consumer of the country of origin of covered commodities. The COOL statute provides suppliers and retailers with considerable flexibility in marking items offered for sale. The law allows country of origin information to be provided to consumers by means of a label, stamp, mark, placard, 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. Suppliers are required to make country of origin information available to their buyers. Such notification can be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale.

Q. *What marking methods does the law allow retailers to use in declaring the country of origin of covered commodities (and method of production, in the case of fish and shellfish)?*
A. The law provides retailers with a flexible variety of options for marking commodities, including a placard, sign, label, sticker, band, twist tie, pin tag, or other format. Country of origin declarations may also be in the form of a checkbox on the master container. Anecdotal evidence indicates that many retailers are asking or requiring their suppliers to pre-label products. When stickers are used on individual items, USDA encourages retailers to supplement stickers with point-of-purchase placards and other signage as a way to more clearly indicate information to consumers, because the efficacy of stickers is not 100%. USDA will address the issue of preponderance of stickers in its compliance and enforcement procedures to ensure uniform guidance is provided to compliance and enforcement personnel.

Q. *Do the rules specify font size, typeface, color or location of country of origin claims?*
A. No, the rules do not contain prescriptions for font size, typeface, color or location of country of origin claims. However, declarations must be legible and must be placed in a conspicuous location, which renders it likely to be read and understood by a customer under normal conditions of purchase.

Q. *What is "Method of Production" labeling?*
A. "Method of production" refers to the distinction between wild-caught or farm-raised fish and shellfish. COOL legislation also requires the country of origin notice to distinguish between wild and farm-raised fish.

Meats (Beef - including veal, Lamb, Pork, Goat Meat and Chicken)

Q. *When can muscle cuts of meat be labeled as "Product of the U.S.?*
A. Covered commodities may bear a US origin declaration if they are derived from animals born, raised and slaughtered in the US, from animals born in Alaska or Hawaii, and transported through Canada for less than 60 days and slaughtered in US, or from animals present in the US on or before July 15, 2008.

Q. *How do I label imported muscle cuts of meat?*
A. Imported commodities for which no production steps occur in the US retain the origin as declared to U.S. Customs and Border Protection.

Q. *How do I label muscle cuts of meat from animals raised in "Country X" but imported for immediate slaughter in the U.S.?*
A. Meat from animals imported for immediate slaughter in the U.S. shall be designated as Product of Country X and the U.S.

Q. ***Can a packer or intermediary supplier that processes whole muscle meat products derived from both mixed origin animals (e.g., Product of U.S., Canada and Mexico) and U.S. origin animals commingle and label these products with a mixed origin label?***
A. If meat covered commodities derived from U.S. and mixed origin animals are commingled during a production day, the resulting product may carry the mixed origin claim (e.g., Product of U.S., Canada, and Mexico). Thus, it is not permissible to label meat derived from livestock of U.S. origin with a mixed origin label if solely U.S. origin meat was produced during the production day.

Q. *How do I label muscle cuts of meat from animals that are in "Category B" (animals that were born, raised and/or slaughtered in the U.S. and not imported for immediate slaughter)?*
A. Meat from these animals should be labeled as, Product of the U.S., Canada, and Mexico or Product of the U.S., Canada, Mexico. To provide consistency in the labels and to avoid consumer confusion, the terms "or" and "and/or" in the country of origin designation declaration shall <u>not</u> be used (e.g., retailers should not label their products Product of the U.S., Canada, or Mexico or Product of the U.S., Canada, and/or Mexico).

In addition, more specific information can also be provided. For example, meat derived from hogs that may have been born in Canada but raised and processed in the United States can be labeled as, Product of the U.S. and Canada; From hogs born in Canada or Product of the U.S. and Canada; Processed in the United States.

Q. ***Can a retailer, like a meat packer, label meat products derived from livestock born, raised, and slaughtered in the United States (i.e., Product of USA) as having a mixed origin (e.g., Product of the United States, Canada, and Mexico)?***

A. Similar to packers and intermediary suppliers, retailers are permitted to market U.S. produced meat products under a mixed origin label *(e.g., Product of U.S., Canada and Mexico)* if they are commingled with meat of mixed origin. That is, if a retailer further processes meat at the store and the resulting package includes meat of both U.S. origin and mixed origin (e.g., Product of U.S., Canada and Mexico), the origin declaration can read Product of U.S., Canada and Mexico.

Q. *If a packer, intermediary supplier or retailer handles whole muscle meat products derived from both mixed origin animals (e.g., Product of U.S., Canada and Mexico) and direct for slaughter animals (e.g., Product of Canada and U.S.), can the product be commingled and labeled using the direct for slaughter label with all applicable countries of origin listed (i.e., Product of Country X, U.S. and Country Y)?*

A. Yes. If meat covered commodities derived from mixed origin and direct for slaughter animals are commingled, the resulting product may carry the direct for slaughter origin claim (i.e., Product of Country X and U.S.) with other countries of origin as applicable.

Q. *What should be stated on the origin declaration for ground meat covered commodities if raw materials from several different countries are used during the manufacturing process?*

A. In accordance with the interim final rule, all actual or reasonably possible countries of origin must be listed on the origin declaration, in any order. In determining what is considered reasonable, when a raw material from a specific origin is not in the processor's inventory for more than 60 days, that country shall no longer be included as a possible country of origin.\

Q. *Do non-muscle carcass components such as cheek meat, hearts, and added beef fat have to be identified with origin information when used in the manufacture of ground meat in accordance with the COOL interim final rule?*

A. In general, muscle cuts of meat derived from the Institutional Meat Purchase Specifications (IMPS) Series100 (beef), 200 (lamb), 300 (veal), 400 (pork) and 11 (goat) are all covered commodities. Products derived from Series 700 for Varietal Meats and Edible By-Products are excluded from COOL labeling requirements if sold at retail as a variety meat.

Thus, if a packer is using imported ("D" category) varietal meats in the manufacture of ground beef, that imported origin must be conveyed in the final product's COOL declaration. For example, the origin declaration for ground beef that contains cheek meat imported from Canada must include Canada. If those packers producing ground meats intend on marketing ground meat as "Product of the United States" ("A" category), then the supplier of that ground meat must ensure that all meat components are from livestock exclusively born, raised and slaughtered in the United States. For example, if marketed as "Product of the United States", ground beef containing cheek meat would require that

both the beef trimmings and the cheek meat be from cattle that were exclusively born, raised and slaughtered in the United States.

Meat Origin Categories	
A –	U.S. Origin
B –	Multiple Countries of Origin
C –	Imported for Immediate Slaughter
D –	Foreign Origin

Perishable Agricultural Commodities

Q. *Do fresh apples, strawberries, raspberries, blackberries and blueberries fall under COOL Regulations?*

A. The term "perishable agricultural commodity" has the meaning given in the Perishable Agricultural Commodities Act of 1930 (PACA), as amended (7 USC 499a (b)). "Perishable agricultural commodity:

(A) means any of the following, whether or not frozen or packed in ice: fresh fruits and fresh vegetables of every kind and character; and

(B) includes cherries in brine as defined by the Secretary in accordance with trade usages."

Items such as apples, strawberries, raspberries, blackberries and blueberries are covered under PACA regulations and are subject to COOL labeling requirements.

Q. *We are a certified organic fresh herb producer who sells packaged and bunched culinary herbs to local stores. Will our products be subject to COOL labeling requirements as of September 2008?*

A. Fresh herbs are covered under PACA regulations and are subject to COOL labeling requirements.

Q. *Can a producer list multiple countries as potential origins for the product inside? Currently we use packaging that says "may contain" product from Mexico, Honduras or Chile.*

A. The origin designation must be specific. If the container contains product of multiple countries then all countries must be on the label. For example: "Contains Product of Mexico and Chile." The law does allow for comingling of product in retail bins as long as all possible countries of origin are listed. §65.300(g) and §65.400(d)

Q. *If a product is grown in the U.S. but packaged, cut and prepared outside the U.S., how should it be labeled?*

A. Product that has been grown in the United States then exported to another country for processing then returned to the U.S. for retail sale may retain the designation of being labeled "Product of U.S." provided a verifiable audit trail is maintained. §65.300(d)(2) Imported covered commodities that have been grown in the United States then exported to another country for processing and then returned to the U.S. for retail sale without a verifiable audit trail, shall retain their origin, as declared to U.S. Customs and Border

Protection (CBP) at the time the product entered the United States, through retail sale. §65.300(f))

Q. *What terminology is acceptable for marking imported perishable agricultural commodities?*

A. The declaration of the country of origin may be in the form of a statement such as: "Product of Country X," "Grown in Country X," "Produce of Country X," may only include the name of the country "Country X" or may be in the form of a checkbox provided it conforms with other Federal labeling regulations (i.e., CBP, FDA).

Q. *Our current invoices identify our business address. Do we need to provide any further information?*

A. A distributor's business location is insufficient to provide the country of origin of the products they sell. The country of origin of each commodity needs to be declared and provided to the subsequent recipient of that product.

Q. *What state, region or locality designations are acceptable?*

A. The 2008 Farm Bill allows labeling of the state, region or locality of the U.S. where the perishable agricultural commodity (or nut) was produced to be sufficient to identify the U.S. as the country of origin. The regulation expands this provision to also allow state, regional, or locality labels for imported products. Examples of acceptable U.S. State labeling designations include: Pride of New York, Jersey Fresh, Vermont Seal of Quality, Massachusetts Grown, Ohio Proud, Kentucky Proud, and New Mexico Grown with Tradition.

Q. *Are retail items such as salad mixes and fruit cups/fruit salads required to be labeled with country of origin information?*

A. Under the August 1, 2008, interim final rule, a covered commodity that has been combined with at least one other covered commodity is considered a processed food item and is therefore exempt from country of origin labeling requirements.

We have received numerous inquiries in the last few weeks, primarily from members of the produce industry, requesting clarification on exactly what is meant by "other covered commodity". Examples of the types of produce mixes include:

1. Fruit salads with different melons (watermelon, honeydew and/or cantaloupe)
2. Packages of different colored sweet peppers (green, yellow and/or red)
3. Salads mixes (iceberg lettuce, romaine lettuce)

In determining whether these types of products or other similar products that contain combined covered commodities are covered by COOL, the Agency will rely on U.S. Grade Standards for fruits and vegetables to make the distinction of whether or not the retail item is a combination of "other covered commodities".

Applying this policy to the first example of a fruit salad that contains watermelon, honeydew, and cantaloupe, each of these melon types have a separate U.S. Grade

Standard. Therefore, when they are mixed together in a fruit salad, fruit platter, etc., they will not be subject to country of origin labeling requirements.

In the second example, the different colored sweet peppers combined in a package will require country of origin notification because there is one U.S. Grade Standard for sweet peppers, regardless of the color.

The third example is similar to the melon mix. Because there are separate U.S. Grade Standards for iceberg lettuce and romaine lettuce, this type of salad mix will not be required to be labeled with country of origin information. While the Agency previously used this example in the preamble of the August 1, 2008, interim final rule and concluded that such a salad mix would be subject to COOL, based on questions received during recent outreach sessions, the Agency now believes the use of U.S. Grade Standards in determining when a perishable retail item is considered a processed food item provides a bright line to the industry.

There are limited exceptions to this policy. This exception occurs when there are different grade standards for the same commodity based on the region of production. For example, although there are separate grade standards for oranges from Florida, Texas, and California/Arizona, combining oranges from these different regions would not be considered combining "other covered commodities" and therefore, a container with oranges from Texas and Florida will have to be labeled with country of origin information.

Finally, there are many fruits and vegetables for which no grade standards have been developed. If you are uncertain whether the combination of commodities you are selling will be considered a processed food item we encourage you to contact AMS for guidance.

The USDA Grade Standards for fruits and vegetables can be found on the web at www.ams.usda.gov/AMSv1.0.

Peanuts, Pecans, Macadamia Nuts and Ginseng

Q. *Is peanut butter, or other prepared foods containing peanuts, pecans, macadamia nuts or ginseng subject to COOL regulations?*

A. The legislation excludes processed food items from labeling requirements. The definition of processed food items is contained in the interim final rule for the remaining covered commodities. Peanuts, pecans, macadamia nuts and ginseng in the raw state are subject to COOL requirements. Peanuts, pecans, macadamia nuts or ginseng combined with other substantive food ingredients, such as in a candy bar or a trail mix, are considered processed food items and therefore excluded from labeling requirements. Likewise, roasted peanuts, pecans or macadamia nuts are considered processed food items. They also are excluded from labeling requirements.

Recordkeeping

Q. *What are the recordkeeping requirements for COOL?*

A. In general, 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 1 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 5 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 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.

Retail suppliers must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction. Upon request, these records must be provided to any duly authorized representatives of USDA within 5 business days of the request and may be maintained in any location.

The supplier of a covered commodity that is responsible for initiating a country of origin declaration, which in the case of beef, lamb, pork, chicken, and goat is the slaughter facility, must possess or have legal access to records that are necessary to substantiate that claim. In the case of beef, lamb, chicken, goat, and pork, 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.

For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: provide clear product tracking from the United States port of entry to the immediate subsequent recipient and accurately reflect the country(ies) of origin of the item as identified in relevant CBP entry documents and information systems; and maintain such records for a period of 1 year from the date of the transaction.

Q. *Can we use a National Animal ID system on our livestock for COOL verification purposes?*

A. USDA continues to look for ways to minimize the recordkeeping burden associated with this rule. With that in mind, producers and feedlots with animals that are part of a National Animal Identification System (NAIS) compliant system may rely on the presence of an official ear tag and/or the presence of any accompanying animal markings on which origin claims can be based. In addition, animals that are part of another recognized official identification system (such as a Canadian official system or a Mexican official system) may also rely on the presence of an official ear tag and/or any

accompanying animal markings (i.e., “Can”, “M”) to base origin claims. This provision also applies to such animals officially identified as a group lot. Participation in a NAIS program is voluntary, but does provide a livestock producer “safe harbor” for COOL compliance.

Q. *What information must be on an affidavit for it to be considered acceptable for origin verification purposes for livestock?*

A. A producer affidavit shall be considered acceptable evidence for the slaughter facility or the livestock supply chain to use to initiate or transmit an 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. Evidence that identifies the animal(s) unique to a transaction can include a tag ID system, information such as the type and sex of the animal(s), number of head involved, the date of the transaction, and the name of the buyer.

Q. *Can a backgrounder, feedlot or other producer (after ownership has transferred from the farm or ranch of birth) use affidavits as first-hand knowledge of the origin information to then complete an affidavit affirming origin information to a subsequent purchaser of the livestock?*

A. Yes, provided the affidavits on which they are relying were from persons having first-hand knowledge of the origin of the animals and the identity of the animals were maintained. These types of affidavits are sometimes called “consolidated” affidavits and are an acceptable method of transferring origin information. The party preparing the consolidated affidavit would retain the original affidavits or other appropriate records to substantiate the claims.

Q. *Is the use of “continuous” affidavits an acceptable means to transmit origin information for livestock? (Continuous affidavits are those affidavits issued by a producer or other livestock handler that are valid for an indefinite period of time until cancelled by the party issuing the affidavit.)*

A. Yes, provided the continuous affidavits are linked to some record or other form of documentary evidence that identifies the animals unique to a transaction.

Q. *If a producer visually inspects their livestock and determines that there are no markings or other identification that would indicate that the animals are of foreign origin, can the producer issue an affidavit affirming firsthand knowledge that the animals are of U.S. origin?*

A. For the period July 16, 2008, through July 15, 2009, producers may issue affidavits based upon a visual inspection at or near the time of sale that identifies the origin of livestock for a specific transaction. However, affidavits of this kind may only be issued by the producer or owner prior to, and including, the sale of the livestock for slaughter (i.e., meat packers are not permitted to use visual inspection for origin verification). This provision is necessary to permit livestock currently in production without origin information to clear the channels of commerce.