

Understanding mandatory COOL documentation

By Allie Devine, KLA Vice President & General Counsel

USDA will begin enforcing provisions of the mandatory country-of-origin labeling (mCOOL) law September 30, 2008. This will affect livestock producers and purchasers. Retailers are required to label covered commodities, including meat products, with information about the item's country of origin. Packers and processors who sell to supermarkets must maintain documentation to prove the country of origin of meat. This can come in the form of producer statements, participation in programs compliant with the National Animal Identification System or import markings on the animals.

KLA was part of a group of 70 individuals representing more than 30 livestock organizations and companies that met in Kansas City August 26 to develop universal procedures for implementing mCOOL. The principal goal of the meeting was to develop documents that efficiently move origin claims along the chain of livestock ownership from the producer to the processing plant. Members of the group worked to create the most effective and least burdensome system of meeting the requirements spelled out in the mCOOL law.

The documents developed and agreed upon by the group appear on the opposite page. Producers should take these documents seriously as each is enforceable by law. False statements may be punishable under perjury laws. Truthfulness always is a provision of sales contracts. If false statements are made, the contract provisions may be breached, resulting in potential liability for damages.

Each of the documents references "firsthand knowledge." Although this term is not defined in the interim final regulation, a reasonable interpretation would be someone who specifically knows the origin of the livestock because the animals were born on their premises or the person has actual knowledge of where the animals originated. USDA has stated "composite affidavits" are acceptable. This means an auction market, feedyard or other point where animals from multiple suppliers are combined could use the affidavits of many producers to support its own affidavit of origin to pass along to the next buyer in the chain.

The following documents apply to different transactions. Copy and use the one most appropriate for your situation. Copies also are available on www.kla.org or by calling the KLA office.

Document 1 is a "continuous affidavit" intended for use by feedyards and others supplying cattle directly to packers. Conceptually, feedyards and other direct suppliers will need to reference the origin of specific livestock shipments on showlists or through other communications that offer livestock for sale to the packer. By regulation, records on country of origin must be available for review.

This particular affidavit includes language verifying records will be maintained for one year from the date the livestock are delivered to the packer. The document authorizes USDA to access the records of a feedyard in the case of an audit. Technically, USDA doesn't have authority to review the records of feedyards or other packer suppliers. However, USDA does have authority to audit packer records. Packers, in accordance with the mCOOL regulation, need access to feedyard documentation to support origin claims. This affidavit authorizes that access.

Document 2 is the "continuous affidavit" intended for use by cow-calf and stocker operators supplying cattle to auction markets, feedyards or other buyers. This document is intended to remain on file with the buyer to verify all livestock from a particular seller is of the specified origin unless otherwise indicated. For example, Joe Local raises his own calves. He normally sells the calves at the local auction market. Joe, therefore, would sign this continuous affidavit to remain on file with the auction. The local auction can use Joe's affidavit, combined with sales records, to verify the U.S. origin of Joe's livestock. This assures the local auction it has documentation to pass along to purchasers of Joe's calves.

For the cow-calf or stocker operator, filing a continuous affidavit with primary purchasers may be the simplest way to provide origin information.

Document 3 is intended for use by cow-calf and stocker operators making an individual transaction. This is another method of documenting origin. It can accompany, or be printed directly on, sales documents that go with the cattle.

Document 4 is a declaration of visual livestock inspection to be kept on file by the seller. The industry has agreed visual inspection for the presence or absence of foreign origin markings constitutes firsthand knowledge of the origin of those

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animals. Such inspections may be used to support an affidavit of origin.

Given USDA's long-term success monitoring, inspecting and marking foreign origin livestock, especially cattle entering this country, the industry believes this system provides a reliable basis for origin verification. Visual inspection for markings to support affidavits of origin builds upon accepted and known industry practices; avoids burdensome paperwork and traceback; and is immediately available.

Visual inspection is especially important to the trade for the transition period between July 15, 2008, (all livestock in the U.S. on or before that date are considered U.S. origin) and the date the final regulation is published. It would be difficult, if not impossible, to recreate the paper trail on some animals in the U.S. To avoid livestock being unmarketable due to the lack of a paper trail on animals sold after July 15, sellers, particularly those selling directly to packers, should inspect animals for import markings such as brands, tattoos or ear tags. The person inspecting the animals should complete Document 4 and retain it to support origin claims.

Various firms not agreeing to the universal terms contained in these four documents may seek a unique version of these affidavits. KLA encourages producers at all levels to carefully examine the documents and fully understand all the provisions before signing. Members should not hesitate to call the KLA office with questions.