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LIVESTOCK PRODUCER COMPLIANCE WITH THE COOL INTERIM FINAL RULE

Livestock producers are not directly regulated by the COOL interim final rule as livestock are not considered covered commodities. However, only producers have first-hand knowledge concerning the origin of their animals. Definitive origin information must be provided to slaughter facilities so that meat covered commodities can be accurately labeled at retail. Presumption of origin by packers and other entities in the marketing chain is not permitted. For example, it is not acceptable to assume that if an animal has no ear tag and/or brands identifying that the animal was born and/or raised in Canada or Mexico, the animal is of U.S. origin.

The COOL law provides for the use of producer affidavits to provide origin information to packers. Thus, under the interim final rule, USDA will consider a producer affidavit as acceptable evidence on which a packer may rely upon to initiate an origin claim, as long as the affidavit 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 along with other information such as the type and sex of the animals, number of head involved in the transaction, the date of the transaction, and the name of the buyer.

With regard to what is considered first-hand knowledge, a subsequent producer-buyer (e.g., backgrounder, feeder) that commingles animals from several sources is authorized to rely on previous producer affidavits as a basis for formulating their own affidavit for the origin of the new lot. Such affidavits must also identify the animals unique to the transaction. In contrast, first-hand knowledge would not include an affidavit made by someone such as a truck driver whose knowledge would be limited to where he picked up the load. The driver would not have sufficient information about the chain of custody and other information needed to provide the origin declaration. The responsible party (e.g., buyer) for commingling the animals would be the attester to the origin of the newly formed group of animals and would retain the original affidavits or other appropriate records, to substantiate claims made about the newly formed group.

Other records that may be used to assist in a COOL verification audit include birth records, receiving records, purchase records, animal health papers, sales receipts, animal inventory documents, feeding records, APHIS VS forms, segregation plans, State Brand requirements, breeding stock information, and other similar documents. In addition, participation in USDA Quality System Verification Programs (QSVP), such as the USDA Process Verified Program (PVP) and the Quality Systems Assessment (QSA) Program that contain a source verification component is also considered as acceptable evidence to substantiate COOL claims. These examples are not inclusive of all documents and records that may be useful to verify compliance with COOL, but they should provide a strong basis to substantiate a claim during a supply chain audit.

Ultimately, the packer, as the first handler of the covered commodity (meat), may require from their suppliers records or access to records in order to substantiate COOL claims made by the packer. However, if the producer participates in the National Animal Identification System (NAIS), that is considered sufficient documentation of an animal's origin. Participation in the NAIS program is voluntary, but does provide a livestock producer "safe harbor" for COOL compliance. The rule specifies that packers that slaughter animals that are part of a NAIS compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e., "Can", "M") on which to base their origin claims. This provision also applies to such animals officially-identified as a group lot.