

# CRS Report for Congress

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## Country-of-Origin Labeling for Foods

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### Summary

H.R. 2744, USDA's FY2006 appropriation, again postpones rules requiring many retailers to provide country-of-origin labeling (COOL) for fresh produce, red meats, and peanuts — until September 30, 2008. Mandatory COOL for seafood was finalized on September 30, 2004. Some in Congress still strongly support mandatory COOL, and say they voted against final passage of H.R. 2744 because of the delay. Others counter that COOL should be voluntary. Several pending bills would alter the program including H.R. 2068, H.R. 2744, S. 135, S. 1300, S. 1331, and S. 1333. This report will be updated if events warrant.

### Background

**Tariff Act Provisions.** Under §304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), every imported item must be conspicuously and indelibly marked in English to indicate to the “ultimate purchaser” its country of origin. The U.S. Customs Service generally defines the “ultimate purchaser” as the last U.S. person who will receive the article in the form in which it was imported. So, articles arriving at the U.S. border in retail-ready packages — including food products, such as a can of Danish ham, or a bottle of Italian olive oil — must carry such a mark. However, if the article is destined for a U.S. processor where it will undergo “substantial transformation” (as determined by Customs), then that processor or manufacturer is considered the ultimate purchaser.

The law authorizes exceptions to labeling requirements, such as for articles incapable of being marked or where the cost would be “economically prohibitive.” One important set of exceptions has been the “J List,” so named for §1304(a)(3)(J) of the statute, which empowered the Secretary of the Treasury to exempt classes of items that were “imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin.”

Among the items placed on the J List were specified agricultural products including “natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.” (See 19 C.F.R. 134.33.) Although

J List items themselves have been exempt from the labeling requirements, §304 of the 1930 Act has required that their “immediate containers” have country-of-origin labels. For example, when Mexican tomatoes or Chilean grapes are sold loosely from a store bin, country labeling has not been required.

**Meat and Poultry Inspection Provisions.** USDA’s Food Safety and Inspection Service (FSIS) is responsible for ensuring the safety and proper labeling of most meat and poultry products, including imports, under the Federal Meat Inspection Act as amended (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq.*). Regulations issued under these laws have required that the country of origin appear in English on the immediate containers of all meat and poultry products entering the United States (9 C.F.R. 327.14 and 9 C.F.R. 381.205, respectively). Only plants in countries certified by USDA to have inspection systems equivalent to those of the United States are eligible to export products to the United States.

All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry destined for U.S. plants for further processing, also have had to bear country-of-origin marks. However, once these non-retail items enter the country the federal meat inspection law deems them to be domestic products. When they are further processed in a domestic, USDA-inspected meat or poultry establishment — which has been considered the ultimate purchaser for purposes of country-of-origin labeling — USDA no longer has required such labeling on either the new product or its container. USDA has considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.

Although country-of-origin labeling has not been *required* by USDA after an import leaves the U.S. processing plant, the Department (which must *preapprove all* meat labels) has the discretion to *permit* labels to cite the country of origin, if the processor requests it. This includes labels citing the United States as the country of origin. Efforts to create, administratively, a more explicit voluntary program at USDA effectively ended with passage of the 2002 farm bill and the start of rulemaking for mandatory COOL.

Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules but also with Tariff Act labeling regulations. Because Customs generally requires that imports undergo more extensive changes (i.e., “substantial transformation”) than required by USDA to avoid the need for labeling, a potential for conflict has existed between the two requirements, Administration officials acknowledge.

## Requirements of the 2002 Farm Bill, As Amended

Various bills were introduced in the 107<sup>th</sup> Congress to impose more prescriptive country-of-origin requirements for a variety of commodities. Ultimately, the House-passed farm bill (H.R. 2646) included language requiring retail-level COOL for fresh produce. The Senate version extended coverage to red meats, peanuts, and fish. The final conference language (Section 10816 of P.L. 107-171) amended the Agricultural Marketing Act of 1946 to:

- Cover ground and muscle cuts of beef, lamb and pork, farm-raised and wild fish and shellfish, peanuts, and “perishable agricultural commodities” as defined by the Perishable Agricultural Commodities Act (PACA), ( i.e., fresh and fresh frozen fruits and vegetables);
- Exempt these products if they are ingredients of processed foods, generally as defined by USDA — for example, USDA has proposed that cooked roast beef be labeled but not bacon, and that canned roasted and salted peanuts be labeled but not mixed nuts;
- Require PACA-regulated retailers (those selling at least \$230,000 a year in fruits and vegetables) to inform consumers of these products’ origin “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”;
- Exempt “food service establishments” such as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public.

**Effective Dates.** The 2002 farm bill required USDA to issue voluntary guidelines for labeling by September 30, 2002, and mandatory rules by September 30, 2004. Congress has twice postponed full implementation. The FY2004 omnibus money bill (H.R. 2673, P.L. 108-199), which incorporated the USDA appropriation, delayed mandatory implementation for all covered commodities, except farmed fish and wild fish, until September 30, 2006. The FY2006 USDA appropriation (H.R. 2744, H.Rept. 109-255) postponed the date for two more years, until September 30, 2008.

## Implementation and Selected Issues

USDA’s Agricultural Marketing Service (AMS) published guidelines for the voluntary phase in the October 11, 2002 *Federal Register*. Few if any retailers opted for it. AMS published a proposed rule for mandatory COOL on October 30, 2003; the final rule is pending.<sup>1</sup> Meanwhile, debate continues on a number of policy and implementation issues, such as how rigorous industry compliance requirements must be, their cost, and whether a mandatory program is even desirable.

**Industry Costs and Benefits.** Some contend that U.S. consumers, if offered a clear choice, would choose fresh foods of domestic origin, strengthening demand and prices for them. COOL supporters argue that a number of studies show that consumers want such labeling and would pay extra for it. Analysis accompanying USDA’s October 2003 proposed rule found “little evidence that consumers are willing to pay a price premium” for such information. A Colorado State University economist suggests that consumers might be willing to pay a premium for “COOL meat” from the United States, but only if they perceive U.S. meat to be safer and of higher quality than foreign meat.<sup>2</sup>

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<sup>1</sup> However, the agency did publish an interim final rule on covered fish and shellfish on October 5, 2004, to take effect April 4, 2005 (69 *Federal Register* pp. 59708-59750). AMS maintains an extensive website on COOL at [<http://www.ams.usda.gov/cool/>], with links to the voluntary guidelines, the seafood rule, the proposed mandatory rule, and a cost-benefit analysis.

<sup>2</sup> Wendy J. Umberger, “Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?” *Choices*, 4<sup>th</sup> Quarter 2004, published online at [<http://www.choicesmagazine.org>].

USDA did estimate that purchases of (i.e., demand for) covered commodities would have to increase by between 1% and 5% for benefits to cover COOL costs, but added that such increases were not anticipated. Data from several recently reported economic modeling studies of COOL impacts appear to fall within this range.<sup>3</sup>

Potential costs include recordkeeping plus capital and related expenses to manage product flow. USDA estimated that total first-year implementation costs for all affected industries could range from \$582 million to \$3.9 billion, of which \$582 million might be for recordkeeping and related costs. (Subsequent recordkeeping costs were estimated at \$458 million per year.) USDA estimated first-year costs per firm at between \$180 to \$443 for producers, \$4,048 to \$50,086 for intermediate suppliers, and \$49,581 to \$396,089 for retailers. Critics of mandatory COOL view these estimates as evidence of the huge burden industry is facing; some of them had developed higher estimates.

COOL supporters counter that USDA grossly exaggerated costs, partly because it is opposed to the program and relied heavily upon critics' estimates. COOL supporters note that even USDA's own figures break down to a fraction of a percentage point on a per-unit basis — at most a penny or two per pound. A study published by the University of Florida provides an alternative analysis suggesting first-year recordkeeping costs of \$70 million-\$193 million — which, authors contend, are substantially outweighed by the benefits, including consumers' willingness to pay for country of origin information.<sup>4</sup>

**Consumer Choice and Food Safety.** Proponents of mandatory COOL argue that U.S. consumers have a right to know the origin of their food, particularly during a period when food imports are increasing, and whenever particular health and safety problems arise. They cite as one prominent example concerns about the safety of some foreign beef arising from the discoveries of bovine spongiform encephalopathy (BSE, or “mad cow disease” in four Canadian-born cows in 2003 and 2004 (one imported earlier to the United States). Most foreign markets suspended imports of both countries' beef and cattle. After briefly suspending all Canadian beef imports, U.S. authorities have since granted entry to large quantities of some types of Canadian beef, making it more important that U.S. consumers know where their meat is from, COOL supporters argue. (See CRS Issue Brief IB10127.)

Critics (and some proponents) of COOL assert that such labeling does not increase food safety or public health by telling consumers which foods are safer than others. They argue that all food imports already must meet equivalent U.S. safety standards, which are enforced vigorously by U.S. officials at the border and overseas. Scientific principles, not geography, must be the arbiter of safety, they argue, adding that recent Canadian beef imports have posed virtually no risk to consumers or U.S. agriculture.

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<sup>3</sup> Gary W. Brewster et al., “Who Will Bear the Costs of Country-of-Origin Labeling?” and Daniel D. Hanselka et al., “Demand Shifts in Beef Associated with Country-of-Origin Labeling to Minimize Losses in Social Welfare,” both in *Choices*. Brewster argues that the “poultry industry is the only unequivocal winner” because it is not subject to the COOL law.

<sup>4</sup> VanSickle, McEowen, Taylor, Harl, and Connor, *Country of Origin Labeling: A Legal and Economic Analysis*, International Agricultural Trade and Policy Center, Univ. of Florida, May 2003. Costs also are discussed in GAO's *Country-of-Origin Labeling: Opportunities for USDA and Industry to Implement Challenging Aspects of the New Law* (GAO-03-780), Aug. 2003.

**Recordkeeping and Verification.** The law prohibits USDA from using a mandatory identification (ID) system, but states that the Secretary “may require that 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...” USDA’s proposed mandatory rule states that upon request, affected retailers and suppliers must make available “records and other documentary evidence that will permit substantiation of an origin claim” at a reasonable time and place. Suppliers “must make available information to the buyer about the country of origin;” and those who initiate an origin declaration (e.g., a meat packer or produce packer) “must possess or have legal access to records that substantiate that claim,” the proposed rule states.

Suppliers must maintain records for two years that identify the immediate previous source and subsequent recipient of a covered commodity, the proposal states. Retailers would have similar responsibilities. The law subjects retailers to \$10,000 fines for willful violations, although the proposed rule would not hold them or suppliers liable if they could not reasonably have known that a previous supplier had provided false information. Though animals are not considered covered commodities, some believe that meat packers still will demand origin records from livestock producers to back their own claims.

Verification may be among the most controversial program issues, because of the potential complications and costs to affected industries of tracking animals (or plants) from birth (harvest) through retail sale. Producers and processors may have to segregate these relatively fungible commodities when they come from different sources. Failure to maintain acceptable records could result in the product being forced off retail markets and into either export or restaurant outlets. Program proponents do not agree that record-keeping difficulties will be as difficult as critics contend. Modern production methods already incorporate many aspects of animal tracking for purposes of improved nutrition, animal health, and quality control, providing opportunities for rules that are minimally burdensome.<sup>5</sup> Some COOL supporters have charged that the Administration deliberately wrote complicated, costly rules in order to discredit mandatory COOL, which it opposes.

**Defining “Origin”.** To claim a product is entirely of U.S. origin, these criteria must be met: for beef, lamb, and pork, and for farm-raised fish and shellfish, the product must be derived exclusively from animals born (for fish and shellfish, hatched), raised, and slaughtered (processed) in the United States; wild fish and shellfish must be derived exclusively from those either harvested in U.S. waters or by a U.S. flagged vessel, and processed in the United States or on a U.S. vessel (wild and farm-raised seafood must be differentiated); fresh and frozen fruits and vegetables and peanuts must be exclusively from products grown, packed, and if applicable, processed in the United States. Difficulties arise when products — particularly meats — are produced in multiple countries. For example, beef may be from an animal that was born in the United States, fed and slaughtered in Canada, and its meat reimported for processing — now more common, as the two countries become more dependent on each’s economic strengths in those production phases. All such information would have to be noted at the retail level.

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<sup>5</sup> Many analysts believe U.S. animal ID will be demanded in the near future, initially for animal health reasons. See CRS Report RL32012, *Animal Identification and Meat Traceability*, by Geoffrey S. Becker.

Likewise, products from several different countries often are mixed, such as ground beef. The proposed rule would require the label to list all the countries of origin alphabetically.

**Trade.** Supporters of the COOL law argue that it is unfair to exempt meats and produce from country labeling requirements when almost all other imported consumer products, from automobiles to most other foods, must comply. They note that many foreign countries already impose their own country-of-origin labeling, at retail and/or import sites, for various perishable commodities. (The GAO report examines COOL in 57 countries that account for most U.S. agricultural trade.) Critics counter that COOL is a thinly disguised trade barrier intended to increase importers' costs and to foster the unfounded perception that imports may be inherently less safe (or of lower quality) than U.S. products. Mandatory COOL undermines U.S. efforts to break down other countries' trade barriers and to expand international markets for U.S. products, critics contend.

## Recent Congressional Activity

**108<sup>th</sup> Congress.** The House Agriculture Committee in July 2004 approved a bill (H.R. 4576) that would have abolished the current, single mandatory program. In its place, H.R. 4576 would have required USDA to implement separate, voluntary COOL programs for red meats, for produce, and for seafood (but not peanuts). Some 350 trade groups and firms, including the National Cattlemen's Beef Association, Food Marketing Institute, National Pork Producers Council, American Meat Institute, United Fresh Fruit and Vegetable Association, and National Fisheries Institute, expressed support for H.R. 4576. Other groups, including the National Farmers Union, R-CALF USA, and some consumer organizations, voiced support for mandatory COOL. Other bills (H.R. 3732; H.R. 3993; S. 2451) to implement mandatory COOL sooner did not pass. During its September 2004 markup of the FY2005 USDA appropriation, the Senate Appropriations Committee defeated, on a tie vote of 14 to 14, an amendment to start mandatory COOL on January 1, 2005.

**109<sup>th</sup> Congress.** Continuing differences have propelled COOL into the 109<sup>th</sup> Congress. On June 8, 2005, the House cleared its version of the USDA FY2006 appropriation (H.R. 2744, H.Rept. 109-102) with a provision prohibiting use of funds to implement COOL for meat and meat products only. A floor amendment (H.Amdt. 232) to strike this provision was defeated, 187 to 240. COOL was not addressed in the Senate-passed version of H.R. 2744. The final conference agreement (H.Rept. 109-255) expanded the two-year postponement to cover produce (fresh fruits and vegetables) and peanuts as well as meats.

Pending in the House Agriculture Committee is legislation (H.R. 2068) introduced by its chairman that would replace the mandatory program for meats with a voluntary program. The Senate companion bill is S. 1333; another Senate bill (S. 1300) would make COOL voluntary for all of the covered commodities. COOL debate was fueled partly by a USDA rule, published January 4, 2005, permitting younger live cattle to enter the United States from Canada. Among pending bills to modify this rule are bills (H.R. 384, S. 108) that would prohibit its implementation in any year unless retail COOL for meat was in effect (see CRS Issue Brief IB10127). Other COOL-related bills include S. 135 and S. 1331.