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Country of Origin Labeling

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Modest Gains for Cash Rental Rates, continued from page 1

That leaves only the direct payments to supplement income from the marketplace. On the positive side, new records were set for state average yields in 2002, and many farms harvested their best crops ever. While prices are not at high levels, they have risen enough to offset the loss of loan deficiency payments in most counties. Moreover, strong competition for rented land has kept rates at historically high levels in many communities.

Rents Vary by Productivity

Average rents per bushel of expected corn yield were calculated using county average yields since 1993. These rates ranged from about \$.87 per bushel in south central Iowa to over \$1.00 per bushel in east central Iowa. Stronger grain prices near the Mississippi River and the large number of acres devoted to seed production tended to support rental rates in some areas.

The full summary of the survey is contained in the accompanying *Decision File 2003 Farmland Cash Rental Rates*, File C2-10.

Negotiating Individual Terms

Not all lease agreements will follow the trends. There are two basic approaches to negotiating rental rates. Some tenants and owners attempt to

adjust the rent yearly, to reflect near-term economic prospects or results. Other leases, especially long-term agreements between the same parties, are adjusted infrequently on the assumption that high and low profit years will even out over time.

Individual lease agreements will vary considerably from average rates. Particular farms may include areas that have poor drainage or are highly eroded, or that are low in fertility. Other farms may have small or irregular fields, or terraces to work around. The size of the USDA corn base and program yield associated with a particular farm affects the value of the direct and counter cyclical payments received. All of these factors influence the level of rent tenants are willing and able to pay.

Local grain market conditions, the availability of seed or specialty grain contracts, and the number of rental acres available also cause rental rates to be higher or lower in certain communities. The information shown in this survey can be used to benchmark rates among counties, and to indicate trends, but should not substitute for careful consideration of expected costs and returns as a basis for negotiating terms for a specific parcel of land.

Country of Origin Labeling *

by Roger A. McEowen, Associate Professor of Agricultural Economics and Extension Specialist, Agricultural Law and Policy, Kansas State University.

The Country of Origin Labeling (COOL) provisions in the 2002 Farm Bill require, beginning September 30, 2004, that retail sellers of certain food commodities inform consumers of a product's country of origin. As required by the statute, the USDA promulgated guidelines in the fall of 2002 designed to assist retailers and their suppliers in facilitating voluntary labeling. By September 30, 2004, however, the USDA is to have in place regulations implementing mandatory COOL. COOL raises important questions concerning what commodities are covered, how the labeling requirement is satisfied, and anticipated costs and benefits.

"Covered Commodities"

"Covered commodities" are defined by the statute as beef, pork and lamb in the form of whole muscle cuts and ground meat, fish (farm-raised or

wild), peanuts, fruits and vegetables. Covered commodities must be exclusively produced and processed within the United States to be deemed of U.S. origin. Retailers of these statutorily defined commodities must inform consumers as to country of origin. Farmers, ranchers, growers and fisherman are not specified as a "covered entity" by the text of the statutory language and, as a result, are not within the purview of the statute, because they do not prepare, store, handle or distribute relevant covered commodities (at least as to meats).

Satisfying the Statutory Requirement

The COOL legislation regulates private-actor conduct through an information requirement and a verification requirement. The information

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requirement mandates that retailers inform consumers as to country of origin of a covered commodity. The method by which consumers are to be notified is through a "label, stamp, mark, placard," or other type of signage that is "clear and visible" at the point of sale. Retailers are exempt if they purchase for sale at retail less than \$230,000 per year of fruits and vegetables or of all covered commodities. Food service establishments, such as restaurants and cafeterias, are exempted from the information requirement.

The statute also contains a verification requirement specifying that "any person 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." Thus, the statutory language clearly imposes a duty only on *direct suppliers* to retailers rather than on all upstream suppliers.

Importantly, the verification requirement merely vests *discretionary* authority in the Secretary of Agriculture to require handlers, processors or distributors of covered commodities to maintain a verifiable recordkeeping audit trail. The Secretary is statutorily prohibited from imposing a *mandatory* identification system to verify country of origin. However, it appears from the USDA guidelines that the Secretary fully intends to require such an audit trail. An important point is that while the Secretary may write regulations necessary to implement COOL, it remains highly questionable whether the regulations could govern livestock producers. Livestock (such as cattle and hogs) are not "covered commodities" as defined in the statute.

COOL Enforcement Mechanisms

Retailers that "willfully" violate the law are subject to a fine of up to \$10,000 per violation. However, the fine may not be assessed unless the Secretary has provided the retailer with a notice of a suspected violation and a 30 day opportunity to correct the problem. In practice, this means that a retailer is not to be held liable for negligent violations, or innocent mistakes. For covered entities that are not retailers, the enforcement provisions contained in the Livestock Mandatory Reporting Act of 1999 apply. The Secretary must consider several factors before issuing a fine including "the gravity of the offense, the size of the business involved, and the effect of the penalty on the

ability" to continue in business. Though the standard for issuing a fine differs here from the retailer standard, it is likely that the Secretary will require a finding akin to willfulness before levying a fine. There appears to be no legitimate reason to treat different (by type) covered entities in an inconsistent manner under the enforcement regime.

COOL Costs – The Recordkeeping Burden

If the USDA promulgates final rules implementing mandatory COOL that specify that the verification requirement be met via an audit trail, the lack of competitive agricultural markets (particularly in livestock) creates the potential for the COOL requirements to be pushed downstream to individual producers. Even so, it is unlikely that any additional producer recordkeeping will be needed to establish origin beyond the records that producers maintain presently. While the USDA guidelines require records to be maintained for two years, it seems unlikely that additional records would need to be maintained beyond those maintained presently for tax, animal health, livestock births, animal and feed purchases, sales, and inventory purposes.

The recordkeeping burden for handlers can also be expected to be minimal. All importers are required presently to maintain records on the country of origin of imported products pursuant to existing customs regulations. The dominant food handling firms (packers, processors, wholesalers and distributors) are the ones most likely to procure from multiple sources, including U.S. and foreign origin. It is these dominant firms that the recordkeeping burden will affect the most.

While retailers are required to provide information to consumers as to the country of origin of covered commodities, retailers currently maintain detailed records as to purchases and sales that can be expected reasonably to satisfy auditors charged with verifying labeling claims.

It appears unlikely that mandatory COOL will require an elaborate new system of recordkeeping in light of the volume of information that buyers and sellers share presently. Information concern-

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ing a product's origin can be placed on a bill of lading, invoice, affidavit or on any standardized form, and can be incorporated into information that is presently maintained for other purposes. Implementation of mandatory COOL could also be aided by the USDA utilizing a presumption of U.S. origin designed to focus a monitoring system only on products that are required to pass through customs, instead of on all products, including those of U.S. origin.

COOL Benefits

A study regarding consumer willingness to pay for beef labeled as to country of origin was conducted by researchers at Colorado State University and the University of Nebraska-Lincoln and released

on March 20, 2003. Entitled "Country of Origin Labeling of Beef Products: U.S. Consumers' Perceptions," the study surveyed consumers to determine their willingness to pay for meat labeled as U.S. origin. The researchers found that the vast majority of consumers (73 percent) in Denver and Chicago were willing to pay an 11 percent premium for steak and a 24 percent premium for hamburger that is labeled as to country of origin. An actual auction determined that consumers were willing to pay an average of 19 percent more for steak labeled "Guaranteed USA: Born and raised in the U.S." Those results indicate that COOL could bring substantial benefits to the agricultural sector in general, and the livestock sector in particular.

Quality Management Systems for Grain Markets

by Charles Hurburgh, Jr., Chair, Ag Quality Initiative, and professor of agricultural engineering

(Second in a series of two)

Recent security concerns have lead many to believe Quality Management Systems (QMS) are needed to provide trace-ability, chain-of-custody, and security against food supply threats even in basic staple commodities. There are two routes by which QMS are being introduced at the local level through normal grain markets (that are often owned by producers), and through producer-held companies created to develop markets and coordinate very specialized production.

Development Process – Grain Handler Driven
Several grain companies are developing internal quality management systems. There are examples of International Organization for Standardization (ISO) certification such as Colusa Elevator Company, Consolidated Grain and Barge, Inc., and of other systems such as American Institute of Baking Quality Systems Evaluation (AIB QSE) such as Farmers Cooperative Elevator Company, Farmland Industries.

Firms that have an audited quality management system are good candidates for direct marketing arrangements – producer to end-user. Transportation and logistics have often prevented direct sales of bulk products; the firms creating source verification are becoming large enough that coordina-

tion of source verified bulk shipments is much more feasible than in the past.

In the grain industry program, source verification was divided into nine general areas, and specific procedures/controls were created for each.

- Raw Materials
- Process Control
- Process Verification (Statistics)
- Finish Product Acceptability
- Storage and Shipping
- Instrument Accuracy and Calibration
- Personnel Training
- Plant Programs (Safety, etc)
- Quality Policies (Management Commitment)

At this time, there is not an active specialty grain market; the benefits and targets are all based on commodity corn and soybeans. However, some firms are in an excellent position to discuss specialty needs, such as non-GM or other attributes on a larger scale basis than individual producers might be able to offer.

Part of grain handling source verification is the tracking of product from receipt to resale or use. This is important if a special trait is involved, and even more so if some consumer health or safety

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