

Mandatory Country of Origin Labeling

112 Days and Counting...

Mark Dopp
Senior VP & General Counsel



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is only 112 days away

- COOL is here to stay
- Everyone is subject to recordkeeping and will incur costs
- Market forces will respond
- We are all in this together

Implementation?

- 2002 Farm Bill provisions
- 2008 Farm Bill amendments
- July 2008 expected IFR

“Is it relevant?”

- Professor Edward H. Hunvald, Jr.
Professor Emeritus of Law

Is it relevant?

- Is the product sold at retail?
- Is the product a covered commodity?

Step One: Retail Labeling

- Retailers must inform consumers of the country of origin of all “covered commodities” Sec. 282(a)(1)
- COOL is a retail labeling law
- PACA licensed retailer – excludes butcher shops

Food Service Exemption

- COOL does not apply to a product prepared or served at a food service establishment. Sec. 282(b)
 - USDA interprets the exemption to apply to foods prepared in food service applications at retail, e.g., salad bars, delis

Step Two: Covered Commodity

- Covered commodities
 - Meat
 - Beef, pork, lamb, chicken (not turkey), goat
 - Muscle cuts AND ground product
 - Not organs
 - Not livestock*

Exclusion for “Processed”

- “Ingredient in a processed food item”
 - Processing: cooking, canning, curing, smoking, restructuring (emulsified, extruded)
- OR
- Combining
 - Food or ingredients
 - Fish Interim Final Rule includes breading and seasoning, but not addition of only salt or water

Fish Interim Final Rule

- Fish sticks
- Surimi
- Mussels in tomato sauce
- Seafood medley
- Soups, stews, chowders
- Smoked salmon
- Marinated fish fillets
- Breaded shrimp
- Gefilte fish

“Processed” Examples

- Cooked sausages
- Bratwurst
- Smoked ham
- Marinated pork loin
- Breaded veal cutlets
- Meatloaf
- Meatballs
- Fabricated steak

The Question to Ask

Is it a covered commodity sold at retail?

2008 Farm Bill

Four Origin Categories

- Product of the U.S.
- Multiple Countries of Origin
- Imported for Immediate Slaughter
- Foreign Country of Origin

United States Origin

- United States country of origin only if “exclusively from an animal that is exclusively born, raised, and slaughtered in the United States”
- Grandfather exception – July 15, 2008

“Product of the United States”

Multiple Countries of Origin

- Most complex category: production steps - born, raised, slaughtered – involve more than one country
- Hogs born in Canada and finished and slaughtered in the U.S.
- Feeder cattle from Canada or Mexico and finished and slaughtered in the U.S.

- Category I and II labeling flexibility
- “Product of the U.S.; from hogs from the U.S. or Canada”
- “Product of the U.S.; from cattle from the U.S. or Canada (Mexico)”

- Other multiple country variations
- Born in Canada, raised in the U.S., slaughtered in Canada
- “Product of Canada” or “Product of Canada, from cattle (hogs) born in Canada and raised in the U.S.”

**Imported for Immediate
Slaughter**

- Livestock born and raised in Country X and slaughtered in the U.S.
- In the U.S. for less than 14 days
- “Product of the U.S.; from cattle (hogs) from Canada”

Foreign Origin

- Imported covered commodity with no production steps in U.S.
- Product retains the origin declared to Customs and Border Protection (even if minimal handling done in U.S.)

Ground Product Labeling

- Beef -- 319.15(a)-(c)
- Flexible Labeling Options
- “all reasonably possible countries of origin”
- Input used within 30 days

Markings

- Markings can be conveyed in many ways
 - Labels
 - Signs
 - Placards
 - Sticker
 - Pin
 - Twist tie
 - Other

Markings

- Conspicuous
- Location and font size not prescribed
- Principal Display Panel, Information Panel (Safe Food Handling)
- Abbreviations -- U.S., U.K, Luxemb, Others?

Recordkeeping

- 2008 Farm Bill allows USDA to conduct “audit of any person that prepares, stores, handles, or distributes a covered commodity for retail sale.” Sec. 282(d)(1)
- Who is affected?
 - o Packers
 - o Retailers
 - o Others
 - o Producers?

- Those persons “shall provide the Secretary with verification of the country of origin of covered commodities.” Sec. 282(d)(2)
- Records maintained in the “normal conduct of the business” – animal health papers, import documents, **producer affidavits**
Sec. 282(d)(2)

- USDA “may not require a person ... to maintain a record of the country of origin of a covered commodity other than those maintained in the course of the normal conduct of the business” Sec. 282(d)(2)(B)

- “Any person engaged in the business of supplying a covered commodity to a retailer shall provide information indicating the country of origin of the covered commodity.” Sec. 282(e).

- Statutory tension?
- Affidavits
 - First hand knowledge
 - Self certification

- Packer is the “initiating supplier”
 - Possess or have access to records needed to substantiate the claim
 - Market versus statutory requirements
 - Earlier GIPSA position -- “Packers will likely require others in the supply chain to keep records.”

- Records should show immediate previous source and subsequent recipient
- Identify product unique transaction by lot number or other identifier
- One (1) year retention

Enforcement

Enforcement

- Audits set by USDA HQ
 - Sites picked
 - Forms
- Executed by states under MOU's
- Results sent back to USDA
- Action taken only by USDA

Liability Harmonized

- Single standard applicable to all
- Notice + 30 day opportunity to cure
- Secretary must find:
 - No good faith effort to comply and
 - “continues to willfully violate” statute regarding violation for which received notice
- \$1,000 fine

“Liability Shield”

- Proposed rule and Fish IFR include provision that allows retailer and intermediary supplier to rely on the reasonable representations of their suppliers
- Expect similar concept in IFR

Implementation Timing

- Effective September 30, 2008
- Products produced and packaged before September 30 not subject
- Industry education/outreach – 6 months

Preparation

- Pull together an inter-disciplinary corporate team
- Identify all covered commodities that you sell
- What other origin programs do you use?
- How do you want to identify COOL for your customers?

Preparation

- Gather a list of suppliers
- What do you need from your suppliers to comply?
- Communicate with your suppliers and customers.

Resources

- www.countryoforiginlabel.org
- www.ams.usda.gov
- cool@usda.gov

Questions....???

Mark Dopp
202.587.4229
mdopp@meatami.com