

Mandatory Country of Origin Labeling

Mark Dopp
Senior VP & General Counsel



September 30, 2008 is only 20 days away

- Obligations throughout the chain
 - Retailers obligated to consumers
 - Suppliers obligated to retailers
- Everyone will be subject to
 - Recordkeeping
 - Penalties
 - Costs

Market forces will respond

Implementation

- 2002 Farm Bill provisions + 2008 Farm Bill amendments
- Interim Final Rule (August 1, 2008)
 - Comments due September 30, 2008
 - Effective September 30, 2008
 - Applies to covered commodities produced or packaged after September 30, 2008
 - USDA: 6 months of education and outreach

Basic Requirements

Statute

- Requires retailers to inform consumers of the country of origin of all “covered commodities” [Section 282(a)(1)]
- Requires anyone “engaged in the business” of supplying a covered commodity to a retailer to provide CoO [Section 282(e)]

Does the law apply?

- Is the product sold by a “retailer”?
- Is the product a “covered commodity”?

Step 1: Retail Labeling

- “Retailer” as defined by PACA
 - Invoice cost of perishable agricultural commodities greater than \$230,000 per calendar year
 - Does not include the “McLean Organic Butcher Store”
- “Food Service” exemption
 - Rule exempts restaurants, cafeterias, saloons, taverns, ... salad bars, delis, and “other food service enterprises located within retail establishments that provide ready to eat foods that are consumed either on or outside the retailer’s premises.”

Step 2: Covered Commodities

■ Meat

- Beef, pork, lamb, chicken (not turkey), goat
- Whole muscle cuts AND ground product
 - Not livestock
 - “Ground beef” includes items defined in 9 CFR 319.15(a)-(c), *i.e.*, ground beef, hamburger, and beef patties

■ Also...

- Seafood (fresh and frozen)
- Fruits and vegetables (fresh and frozen)
- Peanuts, macadamia nuts, pecans [no other nuts]
- Ginseng

“Processed” Exclusion

- “Ingredient in a processed food item” is excluded from the requirement for country of origin labeling
- Two-pronged definition: either
 - “Specific processing resulting in change of character” such as:
 - Cooking (frying, broiling, grilling, boiling, steaming, baking, roasting)
 - Curing (salt- or sugar-curing, drying)
 - Smoking (hot or cold)
 - Restructuring (emulsified, extruded)

 - OR
 - Combining with at least one other covered commodity or substantive food component
 - Addition of water, salt or sugar to prepare for consumption NOT sufficient

Examples of “Processed” Meat Products

- Sausages
- Bratwurst
- Smoked ham
- Teriyaki flavored pork loin
- Breaded veal cutlets
- Meatloaf
- Meatballs
- Fabricated steak

“Processed” Products cont.

- Ground beef, hamburger, or beef patties that “contain seasonings and/or other ingredients such as binders or extenders would meet the definition of processed food item and would therefore not be covered....” (Emphasis added)

Country of Origin Designations

Country of Origin Designation

- Four Origin Categories for Meat (2008 Farm Bill)
 - A. Product of the U.S.
 - B. Multiple Countries of Origin
 - C. Imported for Immediate Slaughter
 - D. Foreign Country of Origin

A. 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”
 - Alaska/Hawaii – 60 days via Canada
- Grandfather exception: July 15, 2008

B. Multiple Countries of Origin that include the U.S.

- Production steps – born/raised/slaughtered – involve more than one country, one of which is the United States
- Examples
 - Hogs born in Canada and finished/harvested in U.S.
 - Feeder cattle from Canada or Mexico, finished/slaughtered in the U.S.

Multiple Countries of Origin

- If:
 - From an animal “born, raised, and/or slaughtered in the United States” AND
 - Not imported for immediate slaughter
- Then:
 - Meat covered commodity may be designated as “Product of the United States, Country X [and] (as applicable) Country Y”
 - Countries X and Y represent “actual or possible countries of origin.”

Sample Labels for Multiple Countries Products

- Application:

- Hogs from the U.S. and Canada → “Product of the U.S. and Canada”

- Cattle from the U.S., Canada, and Mexico → “Product of the U.S., Canada, Mexico”

- More descriptive declarations can be added, provided adequate substantiation is available

Multiple Countries of Origin

- One label can be used for meat from animals eligible for Category A and animals qualifying for Category B

C. "Imported for Immediate Slaughter"

- Livestock born and raised in Country X and slaughtered in U.S.
- "Imported for immediate slaughter"
 - 9 CFR 93.400
 - "Consignment directly from port of entry to recognized slaughtering establishment and slaughtered within 2 weeks of entry."
- Hogs imported from Canada
 - "Product of Canada and U.S."
 - Can they be designated "Product of U.S. and Canada"?

D. Imported Meat Products

- Imported meat product with origin already established – no production steps in the U.S.
- Product retains origin declared to CBP, assuming no “substantial transformation” in U.S.

Ground Product Labeling

- Beef: 9 CFR 319.15(a)-(c)
- Labeling options
 - Countries of origin in the product OR
 - All “reasonably possible” countries of origin
- Not a “possible country of origin” if raw material not in inventory for more than 60 days

Mechanics

Markings

- Wide range of labeling alternatives
 - Label, placard, sign, stamp, band, twist tie, pin tag
 - Single sign?
- “Conspicuous” location
- Legible, but no prescribed fonts
- Abbreviations rarely accepted
 - Only US, UK and “Luxemb”
- Symbols and flags alone are NOT sufficient

Declaration

- Three options
 - Statement
 - “Product of US, Canada and Mexico”
 - Country name only
 - Checkbox (that conforms with other labeling requirements)

Remotely Purchased Product

- Internet sales or home delivery
- Retailer can provide origin information on sales or delivery vehicle

Recordkeeping

2008 Amendments

- 2008 Farm Bill deleted 2002 Farm Bill record provisions and replaced with following
 1. USDA may audit “any person that prepares, stores, handles, or distributes a covered commodity for retail sale”
 2. Anyone audited required to verify CoO declaration. Sec. 282(d)(1), (2)
 3. USDA prohibited from requiring records “other than those maintained in the course of the normal conduct of business”
- Records maintained in the “normal conduct of the business”
 - Deemed sufficient for verification
 - E.g., animal health papers, import documents, producer affidavits

General

■ Who is affected?

- Retailers
- Wholesalers
- Packers
- Producers (?)

■ General requirements

- Legible
- Electronic or hard copy
- Maintained at any location, provided can be retrieved within 5 business days
- One year retention period for records identifying suppliers

Retailers

■ Two types of records

- Records to substantiate claims made at retail
 - For pre-labeled, consumer-ready products, no additional store level record required
 - Ex. Branded package of boneless chicken breasts
 - For products that aren't pre-labeled by the supplier:
 - Need record that identifies supplier, covered commodity and CoO
 - May be kept at any location
 - Must be produced within 5 business days of request
 - Challenge:
 - Maintain the case or have supplier include additional record?
- Records to identify supplier must be maintained for 1 year from date of origin declaration at retail
 - Covered commodity + Supplier + CoO (for products not “pre-labeled”)

Intermediary Suppliers (such as Wholesalers)

- Obligation to inform recipient of CoO of covered commodity
 - On product, master shipping container or document that accompanies the product thru retail sale
- Record to establish and identify immediate previous source and immediate subsequent recipient
 - Maintain for 1 year from date of transaction
 - Issues
 - Degree of accuracy
 - Traceback vs trace forward

Packer as “Initiating Supplier”

- “Must possess or have legal access to the records that are necessary to substantiate that claim.”
- Producer affidavit if “first hand knowledge”
- “Subsequent producer-buyer that commingles cattle 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.” AMS
- Model documents available

NAIS

- “[P]ackers 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 also rely on the presence of an official ear tag and/or the presence of any accompanying animal (*i.e.*, ‘Can’, ‘M’), as applicable, on which to base their origin claims.”

Enforcement

Audits

- Set by USDA HQ
 - Sites picked
 - Forms (samples from seafood on FMI's website)
- Conducted by states under MOU's
- Results sent back to USDA HQ
- 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
 - Continue to willfully violate statute with respect to violation about which received notice
- \$1,000 fine

Implementation Timing

- IFR effective September 30, 2008
- Products produced or packaged before September 30, 2008, not subject to IFR
- Comments due September
- Industry education/outreach – 6 months
- Practicalities of USDA enforcement apparatus

Questions...

Contact Info:

Ag Marketing Service, USDA
cool@usda.gov

Mark Dopp
202.587.4229
mdopp@meatami.com