



Produce Marketing Association

Mail: PO Box 6036 ♦ Newark, Delaware 19714-6036 ♦ USA
Address: 1500 Casho Mill Road ♦ Newark, Delaware 19711 ♦ USA
Tel: +1 (302) 738-7100 Fax: +1 (302) 731-2409
Web: www.pma.com

PMA Analysis: USDA Interim Final Rule for Mandatory Country of Origin Labeling

Issued: August 1, 2008

Today, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service issued an interim final rule with request for comments regarding mandatory country of origin labeling (COOL) for produce and other commodities.

To help our members better understand the COOL interim final rule, PMA has developed this analysis of the new regulations – which will go into effect on September 30, 2008. However, USDA has simultaneously announced that during the first six months the agency will focus its efforts on education and outreach rather than on issuing fines. Comments on the rule are due to USDA by September 30, and the agency may make future changes to the rules in light of feedback received from industry and the public.

Retailers

According to the statute, retailers must provide origin information on covered commodities. Restaurants and foodservice are excluded from the COOL rule, as are foodservice operations within a supermarket, such as a salad bar.

Covered Commodities

COOL applies to fresh and frozen fruits and vegetables – the same items as covered by the Perishable Agricultural Commodities Act. Various meats, peanuts, macadamias, pecans and ginseng must now also carry origin information.

Exclusions

Processed commodities do not have to carry origin information, and USDA has adopted a broad definition of processing: “undergoing a specific processing to change the character of the commodity or combining it with at least one other covered commodity or substantive food component.” A review of this definition reveals distinctions between a commodity that would need to carry COOL and one that it does not. For example:

- Plain peanuts would need to carry COOL, but roasted peanuts would not (as roasting is a specific process).
- Chopped lettuce would need to carry COOL, but it would not if it is combined with another commodity or with salad dressing.
- Other examples of COOL-exempted products would be a mixed fruit cup that contains melons, bananas, and strawberries; or a bag of mixed vegetables that contains peas and carrots.

When a covered commodity like a fruit or vegetable is combined with another “substantive food component,” then USDA rules consider the food to be processed and therefore beyond the reach of COOL. If the food item is combined with something that serves only to enhance the nature of the food (such as salt or ascorbic acid), then COOL applies.

As mentioned earlier, a single chopped or sliced commodity remains under COOL – even if it is different varieties of a single commodity. To USDA, a bag of chopped romaine and iceberg lettuce or a medley of Fuji and Red Delicious apples remain a single commodity, and would therefore need to carry origin information. When a single commodity is sourced from different countries, each country must be listed.

Markings

The USDA rules permit great flexibility with regard to how the origin information can be conveyed to consumers. Whether by label, sign, band, twist tie, or other format, the information must be legible and the location conspicuous enough for an ordinary consumer to read and understand it. Only abbreviations that unmistakably indicate the name of the country are permitted (for example “U.S.” for the United States or “U.K.” for the United Kingdom). Flags or other symbols, by themselves, are insufficient to meet the COOL obligation. A shipping carton with COOL information may serve as an in-store display; a check box denoting the applicable country among several choices is also acceptable. Stickers are allowed, though USDA encourages in-store signs. However, if the majority of the bulk items carry a sticker, that is deemed sufficient to provide consumer notification.

State or Regional Claims

Labels that denote the state, region, or locality of a product satisfy the requirement of COOL. This applies not just to produce from the United States, but also to produce grown in other countries, e.g. “Florida Fresh” satisfies COOL and so does “Prince Edward Island” potatoes.

Supplier Obligations and Recordkeeping

For covered commodities, suppliers must provide, either directly or through the supply chain, origin information to the retailer. This may be done by information on the label itself, or on the master shipping container or in documents that accompany the shipment.

For pre-labeled product, the entity responsible for placing COOL information on the label must retain for one year information that backs up the COOL statement. All others in the supply chain must only retain records that permit the tracing of the product (that is, from whom did you receive the product and where did it go). Those records must be retained for one year. They permit USDA to trace the product to the supplier who is required to have the documentation to prove the claim.

If the product is not labeled, the origin information must accompany that product through the chain, and each entity in the supply chain must then retain that information for one year.

Recordkeeping for Retailers

If the product shipped to retail comes pre-labeled, the retailer may rely on the information already on the label and has no additional recordkeeping requirements as to origin. For bulk items in which the store provides the information (for example, an in-store sign), the retailer must be able to provide the records, whether paper or electronic, to USDA upon request in five days. There is no requirement to retain the records at the store.

Penalties

A retailer may rely on the information provided to it by its suppliers. Penalties may be imposed against retailers only if their actions rise to the level of “bad faith.” USDA must first notify the retailer of a violation, and then give the retailer 30 days to correct the problem. Even after the 30-day period, the statute only permits fines if the violation is in “bad faith” – and then only after providing notice of the intention to seek penalties and permitting a response to those charges. The maximum fine is \$1,000 per violation, and only USDA may impose penalties; private suits are not permitted.