A Brief History and Overview of Country of Origin Labeling Requirements

Country of Origin Labeling (COOL) laws and regulations require retailers to notify their customers of the country of origin of covered commodities, which include beef, veal, lamb, chicken, fish and shellfish, goat, pork, perishable agricultural commodities, macadamia nuts, pecans, ginseng, and peanuts. One might think that this is a simple matter, but as with most regulatory requirements, things can get complicated pretty quickly, and the labeling requirements for country of origin are no exception.

As a general matter, the Tariff Act of 1930 (Tariff Act) requires that every article of foreign origin (or its container) imported into the U.S. be marked in a manner that indicates to the ultimate purchaser the article's country of origin. Although the covered commodities listed above are exempt from labeling under the Tariff Act, they are subject to COOL requirements introduced into law by the 2002 and 2008 Farm Bills. U.S. Customs and Border Protection (CBP) enforces the marking requirements imposed under the Tariff Act, while the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is charged with implementing COOL requirements.

History

The COOL requirements have a convoluted history. The 2002 Farm Bill, and later the 2008 Farm Bill, amended the Agricultural Marketing Act of 1946 to require retailers, such as full-line grocery stores, supermarkets, and club warehouse stores, to inform consumers of the country of origin of various meats, fish, shellfish, nuts, fruits, and vegetables. Suppliers of covered commodities to retail establishments must provide the retailers with country of origin information. This information may appear on the product, on a master shipping container, or in a document that accompanies the product through retail sale. Food service establishments, such as restaurants and cafeterias, are specifically exempt from COOL requirements.

The implementation of COOL requirements has occurred in fits and starts. AMS initially published guidelines on voluntary COOL labeling for beef, lamb, pork, fish, perishable agricultural commodities, and peanuts on October 11, 2002 (67 Fed. Reg. 63367). Based on comments received on the voluntary labeling guidelines and on requirements imposed by the 2002 Farm Bill, AMS published a proposed rule for mandatory COOL of all covered commodities on October 30, 2003 (68 Fed. Reg. 61944). Although the final rule was slated to take effect no later than the statutory deadline of September 30, 2004, Congress subsequently delayed the implementation of mandatory COOL for all covered commodities, except wild and farm-raised fish and shellfish, until September 30, 2008 via the FY 2004 Consolidated Appropriations Act.

On October 5, 2004, AMS published an interim final rule on mandatory COOL for fish and shellfish (69 Fed. Reg. 59708). This rule became final on April 5, 2005, even though Congress delayed implementation of mandatory COOL for other covered commodities once again via the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006. After this second delay, mandatory COOL for the remaining covered commodities could not be implemented until September 30, 2008.
In the interim, Congress enacted the 2008 Farm Bill, which further amended the COOL program by expanding the list of covered commodities to include chicken, goat meat, ginseng, pecans, and macadamia nuts.

On August 1, 2008, AMS published an interim final rule for all covered commodities, except fish and shellfish (73 Fed. Reg. 45106). The rule prescribed definitions, labeling requirements for domestically produced and imported products, and recordkeeping responsibilities for retailers and suppliers. A final rule addressing all covered commodities, including fish and shellfish, was published on January 15, 2009 (74 Fed. Reg. 2658). The rule amended both 7 C.F.R. Part 60 (fish and shellfish) and 7 C.F.R. Part 65 (all remaining covered commodities).

The 2008 Farm Bill also imposed COOL requirements for packed honey bearing any official USDA mark or statement. AMS published an interim final rule to implement the honey COOL requirements on July 8, 2009 (74 Fed. Reg. 32389), followed by a final rule on January 4, 2011 (76 Fed. Reg. 251). The final rule took effect on February 3, 2011. The rule requires that containers of honey with a USDA grade mark or statement also be labeled with the countries of origin. The countries of origin must be printed legibly and permanently, and in close proximity and of comparable size to the USDA mark or statement. The listing must be preceded by the words, “Product of” or other words of similar meaning.

**Exclusion for Processed Items**

Processed foods do not require COOL. A processed food item is defined as: A retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding). (7 C.F.R. Part 65.220)

Examples of processed food items include teriyaki flavored pork loin, roasted peanuts, breaded chicken tenders, and fruit medley.

Notably, even certain commodities that are considered to be processed food items under the COOL regulations may still require country of origin marking under the Tariff Act. For example, while roasted peanuts, pecans, and macadamia nuts are considered processed food items under the COOL regulations, under the Tariff Act, if the nuts are of foreign origin, the country of origin must be indicated to the ultimate purchaser. Another example is an item such as marinated lamb loins imported in a consumer-ready package. Such a product also would need to bear country of origin information because both CBP and Food Safety and Inspection Service (FSIS) regulations require meat imported in consumer-ready packages to be labeled with country of origin information on the package.

**Recent Amendments to Muscle Cut COOL Requirements**

In June 2012, and in response to complaints filed by Mexico and Canada, the World Trade Organization (WTO) ruled that U.S. COOL requirements for muscle cut meat commodities were inconsistent with U.S. obligations under
the WTO Agreement on Technical Barriers to Trade. In response to the ruling, AMS amended the COOL regulations to provide consumers with more specific information about muscle cut meat from animals imported to the U.S. On May 24, 2013, AMS issued a final rule requiring COOL labels to include specific information regarding where the animal sources of the meat were born, raised, and slaughtered (78 Fed. Reg. 31367). For example, the label for meat derived from an animal born in Mexico could state: “Born in Mexico, Raised and Slaughtered in the United States.” Requirements for labels for imported meat remain unchanged under the new rule (e.g., “Product of [Country X]”).

Prior to implementation of the May 2013 final rule, industry had been permitted to affix a single label to meat from two or more countries of origin, provided that the meat was processed on the same day in the same slaughterhouse. This practice was called “commingling.” The May 2013 final rule eliminated the practice of commingling and imposed the more detailed labeling requirement described above.

General Labeling Requirements

COOL regulations give retailers a number of options for marking commodities, including via placards, signs, labels, stickers, bands, twist ties, and pin tags. The regulations do not prescribe a specific font size, typeface, color, or location for country of origin markings, but declarations must be legible and must appear in a conspicuous location. Bulk containers used at the retail level may contain a covered commodity from more than one country of origin provided that all possible countries of origin are listed.

The declaration of the country of origin of a product may take the form of a statement such as “Product of USA,” “Produce of the USA,” or “Grown in Mexico,” or it may take the form of a check box provided it is in conformance with other federal labeling laws.

Domestic and imported perishable agricultural commodities, peanuts, pecans, macadamia nuts, and ginseng may use state, regional, or locality label designations in lieu of country of origin labeling.

With respect to country abbreviations, only those abbreviations approved for use by CBP, such as “U.K.” for “The United Kingdom of Great Britain and Northern Ireland,” “Luxemb” for Luxembourg, and “U.S. or USA” for the “United States of America,” may be used.

AMS has published a user-friendly labeling guide for industry, complete with specific examples of appropriate COOL language. Particularly because the May 2013 regulatory amendments have been in effect for over six months now, it is crucial for affected entities to familiarize themselves with the updated COOL requirements and to develop appropriate compliance strategies.