

PUBLICATION

Country of Origin Labeling Law Takes Effect

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Thinking about adding a little grocery area to your business to cash in on the "green" movement, or to leverage space freed up by the economic slowdown? Consider the recent change in Federal law governing the sale of perishables. Country of origin labeling (COOL) requirements first were enacted in 2002 with the passage of Title X of the Farm Security and Rural Investment Act of 2002 (known as the 2002 Farm Bill). Retailers, meaning any person engaged in the business of selling any perishable agricultural commodity at retail, must inform their customers of the origin of certain commodities, including muscle cuts of beef (including veal), lamb and pork; ground beef, ground lamb and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; and peanuts. Food service establishments are specifically exempted. "Perishable agricultural commodity" refers to fresh or frozen fruits and vegetables. Thus, a butcher shop would not be subject to the COOL requirements as it does not engage in the business of selling any perishable agricultural commodities.

Mandatory labeling, though initially enacted in 2002, was delayed until September 30, 2008. The Food, Conservation and Energy Act of 2008 (the 2008 Farm Bill) extends the definition of covered commodities to include chicken, goat, macadamia nuts, pecans and ginseng. The 2008 Farm Bill further provides for labeling products of multiple origins. With the passage of the 2008 Farm Bill, Congress left unchanged the September 30, 2008 implementation date decreed by the 2002 Farm Bill. The United States Department of Agriculture (USDA) has stated, however, that COOL requirements do not apply to covered commodities produced or packaged prior to September 30, 2008.

Proponents of COOL requirements argue that such labeling will provide customers with accurate and readily-available information as to the source of the products they are consuming. The requirements, they argue, advance the broad-spectrum goal of affording consumers the knowledge of whether their food is imported or originates from domestic sources. Knowledge of food source is increasingly of concern to consumers as news of contaminated food spreads and fears of bioterrorism rise. As different countries have different regulatory schemes and cultures about food safety, and thus varying levels of food safety regulations, knowledge of a product's origin has become of vital importance to some consumers.

Critics of COOL argue that the regulations are both confusing and expensive to implement. Many critics argue that the definition of "covered commodities" is at best, illogical, and at worst, incoherent. For example, the 2002 and 2008 Farm Bills exempt "processed" foods from labeling requirements. The USDA has defined "processed foods" as retail items derived from a covered commodity that have 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, except that the addition of a component 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. Thus, salad mixes containing more than one type of lettuce, meatloaf, meatballs, sausage, breaded chicken tenders and mixed fruits or vegetables are not covered. Creating more confusion, peanuts are covered while roasted peanuts are not. The definition of "retailer" and "perishable agricultural commodity" excludes some businesses that might otherwise, and logically, be subject to labeling requirements. Furthermore, the costs of implementation, though currently unknown, may potentially further increase the ever-rising costs of food.

Despite the arguably confusing definition of "covered commodities" and risk of increased costs, retailers can find a silver lining in the cloud of COOL requirements. As consumers are interested in both locally-grown and exotic food products, retailers may use the labeling requirements for marketing purposes. Further, labeling can potentially foster a retail culture of shared information as increasingly sophisticated consumers are given more facts about where the food they consume originates.