

MANDATORY COUNTRY OF ORIGIN LABELING—INTERIM FINAL RULE

Implementation Timeframes

The interim final rule will become effective April 4, 2005. Moreover, the requirements of this rule do not apply to fish or shellfish caught or harvested before December 6, 2004. Many of these covered commodities sold at retail are in a frozen or otherwise preserved state, meaning that they were already in the chain of commerce prior to September 30, 2004, and the origin/production information may not be known. It is thus reasonable to delay the effective date of this rule to allow existing inventories to clear through the channels of commerce and allow affected industry members to conform their operations to the requirements of this rule.

During the six month period prior to the rule becoming effective, AMS will conduct industry education and outreach. AMS will also focus its resources for the six months immediately following the effective date on industry education and outreach to ensure effective and appropriate implementation of the rule's labeling requirements.

Major Points and Considerations of the Technical Requirements

Retailer - only firms licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 are subject to the law and are required to label covered commodities for country of origin and method of production. There are approximately 4,500 PACA licensees that operate 37,000 retail stores. This definition excludes butcher shops, fish markets, and exporters.

Food Service Establishment - salad bars and delis located within retail establishments that provide ready-to-eat foods are exempt from the law. Food service establishments are exempted by the statute.

Covered Commodities - covered commodities, under this interim final rule, include wild and farm-raised fish and shellfish.

Processed Food Item - processed food items are exempted from labeling by the statute.

Processed food item means:

a retail item derived from fish or shellfish 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., 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, compressing into blocks and cutting into portions).

Examples related to this exemption would be fish sticks, surimi, mussels in tomato sauce, seafood medley, coconut shrimp, soups, stews, chowders, sauces, pates, salmon that has been smoked, marinated fish fillets, canned tuna, canned sardines,

canned salmon, crab salad, shrimp cocktail, gefilte fish, sushi, and breaded shrimp.

U.S. Origin Wild Fish and Shellfish – from fish or shellfish harvested in the waters of the United States, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

U.S. Origin Farm-Raised Fish and Shellfish – from fish or shellfish hatched, raised, harvested, and processed in the United States, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

Imported Products that have not been Substantially Transformed in the United States - retain origin as declared to U.S. Customs and Border Protection at the time the product enters the United States, through retail sale, provided it has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) in the United States.

Imported Products that have been Substantially Transformed in the United States - if a covered commodity was imported from country X and subsequently substantially transformed (as established by U.S. Customs and Border Protection) in the United States or aboard a U.S. flagged vessel, such product shall be labeled at retail as “From [country X], processed in the United States.” Retail items with this type of origin would not qualify as U.S. country of origin.

Commingled and Blended Items - for imported covered commodities that have subsequently undergone substantial transformation in the United States that are commingled (either prior to or following substantial transformation in the United States) with other imported covered commodities that have subsequently undergone substantial transformation in the United States and/or U.S. origin covered commodities, the declaration shall indicate the countries of origin contained therein or that may be contained therein. For imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with other covered commodities of any other origin, the declaration shall indicate the countries of origin for covered commodities in accordance with existing Federal legal requirements. An example of a commingled covered commodity is bagged frozen shrimp.

Remotely Purchased Products (e.g., Internet sales) - retailer may provide country of origin and method of production information on the sales vehicle (e.g., Internet site) or at the time the product is delivered to the consumer.

Retail Notification to the Consumer - the label must be in a conspicuous location and legible to allow consumers to identify the country(ies) of origin and method(s) of production. Retailers may commingle covered commodities from more than one country of origin and/or method of production provided all possible origins and methods of production are listed.

Recordkeeping - retailers must make available records relied upon at the point of sale to establish a product’s country(ies) of origin and method(s) of production at the point of sale for as long as the product is on hand. For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish the product’s origin and method of production. Retailers must maintain records that identify the retail supplier, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled, the origin and method of production information, for 1 year after a label claim is made. Retailers will not be held liable for the accuracy of the information provided by suppliers. However, they will be responsible if they use erroneous information that could

reasonably be determined to be incorrect (e.g., contrary to the normal harvesting season of a particular product).

-intermediary suppliers (i.e., not suppliers responsible for initiating a country of origin or method of production declaration) will not be held liable for erroneous information if they could not have been reasonably expected to have had knowledge of the violation from the information provided by the previous supplier.

-suppliers must maintain records for 1 year after a transaction on product destined for sale by a designated retailer.

State and Regional Labeling Programs - these marketing programs (e.g., Alaskan salmon, “Go Texan”) are not affected by this rule. However, State and regional labeling programs cannot replace country of origin labeling required by this rule. State-level country of origin labeling programs that encompass commodities that are governed by this regulation are preempted.

Major Points and Considerations of Cost Estimates

Recordkeeping Burden

Interim final rule estimated recordkeeping burden is \$44.6 million in first year for development and operation; \$24.4 million in subsequent years for maintenance and operation.

Proposed rule estimated recordkeeping burden was \$582 million in first year for development and operation; \$458 million in subsequent years for maintenance and operation.

Primary reasons for the changes in recordkeeping burden estimates from the proposed rule to the interim final rule:

-Estimated number of affected entities is fewer due to omission of covered commodities other than fish and shellfish.

-Estimated wage rates are slightly higher based on more recent data.

-Estimated number of labor hours are reduced based on omission of covered commodities other than fish and shellfish

Economic Impacts

Direct costs to retailers and their suppliers include recordkeeping burden plus capital, labor and related costs to manage product flow.

Benefits: Available studies on potential benefits of mandatory COOL reviewed with conclusion that benefits likely will be small. Currently little tangible evidence found to support the view that consumers’ stated preferences for COOL information will lead to increased demands for covered commodities bearing a U.S.-origin label.

Direct Costs: Interim final rule estimated first-year implementation costs for directly affected firms total \$89 million. Estimated costs per firm (which can have multiple facilities) are from \$241 for producers, \$1,890 for intermediaries (e.g., handlers, importers, processors, and wholesalers), and \$12,600 for retailers.

Proposed rule estimated first-year implementation costs for directly affected firms ranged from \$582 million to \$3.9 billion. Estimated costs per firm (which can have multiple facilities) ranged from \$180 to \$443 for producers, \$4,048 to \$50,086 for intermediaries (e.g., handlers, importers, processors, and wholesalers), and \$49,581 to \$396,089 for retailers.

Primary reason for the changes in direct cost estimates from the proposed rule to the interim final rule is a reduction in the estimated volume of product that will be affected, due to:

- Covered commodities other than fish and shellfish are omitted.

- Canned products, fish sticks, and breaded products are excluded due to a revised definition of a processed food item.

- Revised estimates of shares of fish and shellfish products eaten at home versus away from home.

Economy Costs: Interim final rule annual costs to the U.S. economy in terms of reduced purchasing power resulting from a loss in productivity after a 10-year period of adjustment are estimated at \$6 million.

Proposed rule annual costs to the U.S. economy in terms of reduced purchasing power resulting from a loss in productivity after a 10-year period of adjustment were estimated to range from \$138 million to \$596 million.

Primary reason for the change in economy wide impact from the proposed rule to the interim final rule is lowered direct cost estimates due to lowered estimated volume of product, as previously noted.