

What's New In The Proposed AMS Rule On COOL



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In response to the determination of the World Trade Organization (WTO) Appellate Body that the US “COOL [Country of Origin Labeling] requirements were inconsistent with the [WTO Technical Barriers to Trade] Agreement’s national treatment obligation to accord imported products treatment no less favorable than that accorded to domestic products,” on March 12, 2013 the United States Department of Agriculture Agricultural Marketing Service (AMS) issued a proposed rule (read: regulation) to “bring the current mandatory COOL requirements into compliance with U.S. international trade obligations” (<http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5103078>). The U.S. was given until May 23, 2013 to come into compliance with the WTO ruling.

The first element of the proposed rule amends the definition of “retailer” in COOL regulations to “help clarify that all retailers that meet the [Perishable Agricultural Commodities Act (PACA) of 1930] definition of a retailer, whether or not they actually have a PACA license, are also covered by COOL.” The rationale for making this change is not discussed in the proposed rule, but presumably the AMS believes it will help bring the US into closer compliance with the determination of the WTO Appellate Body.

In the proposed rule the AMS “require[s] that all origin designations for muscle cut covered commodities slaughtered in the United States specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. The requirement to include this information will apply equally to all muscle cut covered commodities derived from animals slaughtered in the United States. This requirement will provide consumers with more specific information on which to base their purchasing decisions without imposing additional recordkeeping requirements on [the] industry. The [AMS] considers that these changes...are consistent with the provisions of the statute.”

This change would address the Appellate Body’s concern that the information that the industry is required to collect is greater than the information that the retailer is required to make available to the consumer by making more detailed information on the country in which each of the production steps took place. As a result, for muscle cuts that previously were designated as “Product of the U.S.” the new label would read, “Born, Raised, and Slaughtered in the United States.”

For muscle cuts that were slaughtered in the US but born and/or raised elsewhere, the AMS identifies two scenarios with respect to COOL.

“The first scenario deals with meat derived from animals that were born in another country (and thereby raised for a period of time) and were imported as feeder cattle that were further raised and slaughtered in the United States. For these products, current COOL regulations allow the origin to be designated as ‘Product of the U.S. and Country X.’ Under this proposed rule, as with U.S.-only origin products, the origin designation for these products would be required to include location information for each of the production steps.”

An exception is granted when “animals are raised in another country and the United States, [in which case] the raising that occurs

in the United States may take precedence over the minimal raising that occurred in the animal’s country of birth. Accordingly, under this proposed rule, the production step related to any raising occurring outside the United States may be omitted from the origin designation of these products (e.g., ‘Born in Country X, Raised and Slaughtered in the United States’ in lieu of ‘Born and Raised in Country X, Raised and Slaughtered in the United States’)...

“This omission is not permitted in the relatively rare situation where an animal was born in the United States, raised in another country (or countries) and then raised and slaughtered in the United States...”

In the second scenario, “the origin designation for meat derived from animals imported for immediate slaughter would be required to include information as to the production steps taking place in the countries listed on the origin designation. However, the country of raising for animals imported for immediate slaughter...shall be designated as the country from which they were imported (e.g., ‘Born and Raised in Country X, Slaughtered in the United States’).”

In addition “this proposed rule would eliminate the allowance for any commingling of muscle cut covered commodities of different origins.... All origin designations would be required to include specific information as to the place of birth, raising, and slaughter of the animal from which the meat is derived. Removing the commingling allowance allows consumers to benefit from more specific labels.”

For muscle cuts that are imported into the U.S., the label can read “Product of Country X” as under current regulations or it can “include more specific information related to production steps, provided records to substantiate the claims are maintained and the claim is consistent with other applicable Federal legal requirements.” Thus the label could read, “Born in Country X, Raised in Country Y, and Slaughtered in Country Z.”

Most of the remainder of the proposed rule deals with estimating the costs and benefits of the regulatory change. Because most of the costs related to COOL have already become a part of the current cost structure of the industry, the AMS looked only at the incremental costs associated with the proposed changes in the rule which were calculated to be “comparatively small relative to” the costs associated with the original COOL rule.

For the most part, the changes in the proposed rule are consistent with the analysis by the Stewart and Stewart that we looked at last week: the country responsible for each of the three major production steps (born, raised, and slaughtered) is required to be identified on the label of each muscle cut sold by a retailer and commingling is eliminated in a way that brings the information collected by the industry in line with the information that is available to the consumer.

Without reading a legal opinion like the one produced by Stewart and Stewart, one would not have a clue as to why the AMS was proposing the changes we have just discussed and how these changes are related to the decision of the WTO Appellate Body.

The other problem the WTO Appellate Body identified in the 2009 COOL regulation is that the 2009 regulation exempts processed food items, items sold in food service establishments, and items not sold through a “retailer” from labeling requirements. Perhaps the clarification of the term “retailer” is intended to take care of this although that rationale is not made clear in the language of the proposed rule.

Having looked at a legal opinion of the WTO Appellate Body decision in the COOL case and the proposed rule issued by the AMS in two consecutive columns, next week we will look at various reactions to the proposed rule. △

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