Country of Origin Labeling (COOL): Implications of Policy on Cow/Calf Producers

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Introduction

The Country of Origin Labeling (COOL) provision, in the 2002 Farm Bill, requires retail sellers of several food commodities to inform consumers of the country of origin. There has been considerable debate and several competing claims regarding costs and benefits of this program despite the fact that USDA has not yet designed the regulations to implement labeling. The basic provision of COOL is that retailers must provide country of origin information for beef, pork, lamb, fish, peanuts, fruits, and vegetables.[1] These commodities are termed "covered commodities" in the law. Food service establishments, such as restaurants and cafeterias, are exempted.[2] The method by which consumers are to be notified is through a "label, stamp, mark, placard," or other type of signage that is "clear and visible" at the point of sale.[3] The law does not distinguish between countries in the consumer information requirement. Covered commodities must be exclusively produced and processed within the United States to be deemed of U.S. origin.

The program will not be mandatory until September 30, 2004.[4] Retailers will have to comply at that time. Until then, labeling will be voluntary. The United States Department of Agriculture (USDA) was required to propound guidelines (not regulations) for voluntary labeling by September 30, 2002, and did so on October 11, 2002. By September 30, 2004, the USDA is to have regulations in place to implement this law.

The labeling legislation contains several provisions governing how one verifies the country of origin of a covered commodity. The Secretary of Agriculture is allowed, but not forced, to require those handling, processing, or distributing covered commodities maintain a verifiable record keeping audit trail.[5] The definition of what constitutes a "verifiable record keeping audit trail" has been left to the discretion of the USDA. However, the Secretary of Agriculture is prohibited from using a mandatory identification system to verify country of origin.[6]

The law is enforceable against retailers if they "willfully" violate the law up to $10,000 per violation[7]. There are no enforcement penalties for packers, processors, or others that handle food.

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[1] Farm Security and Rural Investment Act of 2002, Subtitle D-Country of Origin Labeling (hereafter Farm Bill Labeling Subtitle), Sec. 282(a)(1).
[2] Id. at §282(b).
[3] Id. at §282(c).
[4] Id. at §285.
[5] Id. at §282(d).
[6] Id. at §282(f)(1).
[7] Id. at §283(c).

USDA Guidelines and Implementing Regulations

There are no binding regulations currently in effect for COOL. The USDA issued "guidelines" for voluntary labeling on October 11, 2002.[8] These guidelines are designed to assist retailers and their suppliers to facilitate voluntary labeling. However, no person or entity is required to enter into a voluntary labeling program until September 2004.

Cost Analysis

The methods of estimating costs of labeling are very different from the methods of estimating benefits. For example, in the early 1990's, federal legislation was passed requiring added nutritional labeling on foods covering over ⅔ of the U.S. food system, a far greater swath of the food economy than is covered by the labeling law. That legislation, in contrast with the present labeling law, required third party verification of nutritional claims by outside laboratories.

A major study was performed by two teams of economists. One team studied the estimated costs of nutritional labeling while the other team worked independently to estimate the benefits of the program. The two teams were required because the methods of studying benefits generally differ from those methods for estimating costs. Further, it was determined beneficial if the teams were unable to coordinate results in any way. The resulting study has been praised as a model for future studies of the same type.

USDA Estimate of Record Keeping Burden

The USDA published an estimate of record keeping costs (hereinafter "Cost Estimate") in the Federal Register in November 2002.[9] This notice was published pursuant to the Paperwork Reduction Act that requires federal agencies to estimate the record keeping burdens of new regulations.[10] The total cost calculated was $1,967,759,000 for all groups affected by the legislation.

- **Cost to producers.**

The Cost Estimate stated that the producer record keeping burden would be $1 billion.[11] It assumed that there were two million farms, ranches and fishermen (production entities) and that all would implement a system for voluntary labeling.[12] It further assumed that the time required to develop a record keeping system to comply with the voluntary guidelines is one day.[13] USDA also estimated that the time required to generate and maintain the records is one hour per month. Lastly, the USDA applied a labor cost of $25/hour. This resulted in a cost estimate of $400 million to establish a record keeping system, $600 million/year to maintain records, for a total first year cost of $1 billion.

- **Cost to handlers.**

USDA estimates that there are 100,000 food handlers (including packers, processors, importers, wholesalers, and distributors) in the country. Though it concedes that many do not handle covered commodities, USDA goes on to assume all will choose to comply with the Voluntary Guidelines. Further, USDA

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[8]Federal Register, "Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946," Vol. 67, No. 198, pp. 63367-63375, October 11, 2002 (hereinafter Voluntary Guidelines).
[9]Cost Estimate, supra at note 1.
[10]See generally, 44 U.S.C. 3501.
[11]Cost Estimate, supra at pg. 70205.
[12]Id.
[13]Id.

presumes that food handlers require two days of labor to create a record keeping system and an additional one hour per week to maintain the system. Lastly, USDA establishes a value of $50/hour for labor to generate a $340 million record keeping burden.[14]

- **Cost to retailers.**

USDA estimates that there are 31,000 retailers that could potentially adopt the voluntary guidelines. USDA further claims that each retailer will require five days for one person to establish a record keeping system and one hour per day to maintain the records. Lastly, USDA presumes that the wage rate for such duties is $50/hour. Thus, their total cost estimate is $625.75 million for retail record keeping.

Alternative Cost Estimates

There have been other groups who have estimated the cost of implementing and maintaining COOL legislation. Sparks Companies, Inc. estimates the cost of the COOL legislation to be somewhere between $3.6 billion and $5.6 billion, with the cattle and beef industry supply chain absorbing between $1.55 billion and $1.725 billion. They estimate these costs to be $198 million to cow/calf producers and backgrounders, between $109 million and $167 million for feedlot operators, between $435 million and $522 million for packers/processors and $805 million for the retail distribution and retail store sector.[15]

Other groups have estimated the actual cost of implementing COOL could be as little as $36.8 million if the USDA chooses the least cost alternative for implementing the legislation. There are three basic types of verification systems that may be implemented: (1) third party verification of all product; (2) self verification of all product; and (3) a regulatory presumption that all product is of U.S. origin with an accompanying duty to self verify product of foreign or mixed origin. It is important to note again that mandatory identification systems are prohibited by the labeling legislation itself.[16] In sum, the least cost alternative among the basic types of possible "verifiable audit trail" systems is probably the "presumption of U.S." self verification system. The primary advantage is one of cost in that fewer entities will be affected, and the record keeping affirmatively required is largely in place.

Cost Estimate Summary and Bearer of Burden

A review of the estimate provided by USDA indicates that the cost to producers may be overstated. The USDA estimate assumes no record keeping system is in place and that all required procedures will be new to producers and handlers. Secondly, it assumes that the time required to implement the requirements will cost producers $25/hour and handlers $50/hour, both well above the $7.76/hour for the published estimate for value of farm labor and $13.60/hour estimate for value of closest category for laborer in food handling establishments (meat inspectors). A second issue is whether the USDA overstates the number of producers to be impacted by the provisions that could result from the COOL legislation. USDA estimates that 2 million producers will be affected by this legislation, however, estimates from other Agencies within USDA indicate that there are 1.03 million cattle producers, 75,350 hog producers, 64,170 sheep and goat producers, 106,069 fruit and nut farms, and 53,717 vegetable farms. The total number of

[14]Cost Estimate, supra at 70206.
[15]Sparks Companies, Inc. "COOL Cost Estimate." April 2003, @4.
[16]Farm Bill Labeling Subtitle, §282(d).

producers affected by the legislation should therefore be no more than 1,169,520. Obviously, the actual cost to implement will be dependent on the provisions required by USDA for verification.

The debate over labeling has not only given rise to competing claims about cost, but also about who will bear the ultimate cost. From an economic perspective, in a perfectly competitive market, all additional costs incurred by suppliers are passed on to consumers. “Costs” in this sense refers to the net burden, including the benefits. If absolute costs outweigh the absolute benefits, the difference is net cost. If benefits outweigh costs, then the net benefits will be passed to the consumer.

Those that claim the costs will be borne by the producers are unintentionally arguing the market is not competitive and that handlers and retailers have market power that allows them to pass the cost to producers. This assumption may be true in many food categories, but even monopolists tend to pass half the burden on to consumers, while suppliers bear the other half. Thus half, if not all of the cost should be passed on to consumers.

Benefits to COOL

Consumers are becoming increasingly concerned with the quality and safety of their food. Consumers’ concern with safety and origin of beef is especially true in light of the recent European and Japanese BSE outbreaks and occurrences of E-coli 0157:H7 in U.S. beef. Visual inspection of beef and produce do not generally reveal origin and processes used to produce these products. Without labeling, consumers are not able to differentiate origin or processes used to produce products in the retail store.

Opponents to COOL argue that COOL holds no real benefit to the industry and that mandatory COOL could impose a trade barrier and fuel trade wars. Proponents express concern about the safety of imported food and argue that “consumers have a right to know” where their food comes from. Supporters also contend that COOL could provide a competitive advantage in the supermarket for U.S. producers whose production practices are better known and generally more regulated. Labeling provides a distinguishable characteristic that will give consumers choice. It also provides a characteristic to distinguish products when quality or food safety issues arise around a certain supplier of a product.

Several studies have been completed to assess the consumers’ view on labeling. Quagrainie et al. (1998) found that consumers in western Canada preferred beef products originating from Alberta to products originating from other locations in Canada or the U.S. Roosen et al. (2003) found that consumers in France and Germany indicate that origin of beef was more important than other product attributes like brand, price, marbling, or fat content. They found that UK consumers ranked origin more important than brand, but less important than steak color, price or fat content.

Loureiro and Umberger (2003) assessed the view of Colorado consumers toward labeling and found that they were willing to pay $184/year for a mandatory COOL program. The same consumers indicated that they would be willing to pay 38% and 58% more for “U.S. Certified Steak” and “U.S. Certified Hamburger,” respectively. A more recent study by Umberger et al. (2003) found that consumers in Denver and Chicago preferred to purchase beef with COOL. They found that consumers were willing to pay 11% and 24% premiums for COOL on steak and hamburger, respectively. The most commonly cited reasons for preferring COOL in that study were: food safety concerns; a preference for labeling source and origin information, a strong desire to support U.S. producers; and beliefs that U.S. beef was higher quality.

Summary and Conclusions

Implementation of COOL legislation will not come without cost. USDA estimates that cost to be $1,967,750 in the first year. Opponents to the legislation have estimated those costs to be as high as $5.6 billion while supporters argue that choosing the least cost system for verification could bring the cost down to $36.8 million.

Opponents argue that there is no real benefit to COOL, while proponents argue that consumers have a right to know where their food comes from and are willing to pay for that right. Studies estimate that consumers prefer food with COOL and are willing to pay as much as 58% more for “U.S. Certified Hamburger.”

The U.S. produce industry has been working for several years to implement a mandatory COOL. The State of Florida has required COOL for produce for many years. The 2002 Farm Bill puts in place the process that will lead to COOL for beef, pork, lamb, fish, peanuts, fruits, and vegetables. Mandatory COOL will bear out the accuracy in the estimates of costs and benefits if it is implemented on schedule in 2004. Studies suggest that the cost of COOL to U.S. cow/calf producers who handle U.S. born and raised calves should be minor, but that they could reap significant potential benefits in additional returns.

References

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