

Thank you for your time yesterday afternoon to discuss the legal and operational reasons that retailers should not be required to maintain records at store level for country of origin labeling enforcement purposes. At one point, you asked about the different costs and processes associated with seafood vs all COOL recordkeeping systems. The information below is from a regional operator with about 150 stores. As you can see, for seafood, their costs are relatively contained -- primarily because all seafood products are delivered directly to the store with an invoice that they can keep at store level. (Of course, they still have other COOL costs for labor, signage, supplier selection, etc.) However, once you expand to the larger universe of products that are run through the distribution center, the systems necessary to get country of origin information to store level become far more complex and the costs increase exponentially. (Generally, stores may carry around 50 seafood items subject to COOL, whereas the number of all covered commodities in a store that will be subject to COOL is closer to 1000, mostly because of the large number of fresh produce items.) Coupled with clear statutory language and Congressional intent, we believe retailers should be allowed to verify country of origin labeling with records maintained off-site.

Again, thank you for time. If you need any further information, I would be glad to provide it.

Estimated cost to maintain seafood COoL information;

- 1) XXX uses a store door company to deliver seafood to our stores.
- 2) Because an invoice accompanies each deliver the COoL information is printed on each invoice.
- 3) Each invoice is maintained at each store (hard copy) in a file folder.
- 4) No backdoor receiving electronic method is utilized.
- 5) Estimated cost to manage record keeping in seafood annually;
 - a) Verify product and COoL information = \$400.00 @ Store = Total \$60,000
 - b) Store and manage compounding delivery documents = \$175.00 @ Store = Total \$26,250
 - c) Audit procedures to ensure compliance = \$23.00 @ Store = Total \$3,450
 - d) Total cost annual expense for XXX to manager COoL in seafood = \$89,700

Estimated cost to maintain all covered commodities for COoL information;

- 1) XXX would require a pass through information process which would print COoL information on store invoices.
- 2) This requires Information systems development.
- 3) This requires warehouse receiving hardware and information system.
- 4) This requires warehouse slot maintenance and new information system.
- 5) This requires picker acknowledgement system.
- 6) This requires Data storage system development.
- 7) This requires store paper document storage.
- 8) This requires compliance auditing at each level that information is recorded and passed on.
- 9) System development requirements would be a one time cost.
- 10) Annual costs reside with receiving labor, pick slot maintenance, pick operator labor, compliance audits, system documentation expense (space cost) and load reductions due to pick efficiencies slowing down and the total amount of orders that can be picked in one cycle.
- 11) Estimated costs to XXX;
 - a) One time costs \$7.65 million
 - b) Annualized reoccurring costs \$4.75 million @ year



COOL Store Level Recordkeeping: Contrary to Law and Congressional Intent; Imposes Significant Costs on Entire Food Chain

Summary

Under the current regulatory recordkeeping provisions USDA wrote for seafood COOL, retailers are required to keep records at store level to verify the country of origin of the non-prelabeled seafood items that they sell, such as bulk shrimp. Sounds simple, but it was difficult for many retailers to accomplish for seafood alone; costs would be magnified exponentially if the requirement applied to all covered commodities -- beef, pork, lamb, chicken, and hundreds of fresh produce items -- given the large number of food products involved and the different distribution channels that the products travel to the store.

Congress changed the COOL recordkeeping requirements in the 2008 Farm Bill to prohibit USDA from requiring records that are not kept in the normal conduct of business. Since store level records are not maintained in the normal course of retail business, USDA cannot require store level records for COOL without contradicting the statutory language and Congressional intent or imposing significant costs on the entire food distribution chain, from supplier to retailer. No other labeling regulations -- indeed, no true food safety program -- requires retailers to maintain records at store level. COOL should not either.

The Reality

In most cases, country of origin (CoO) information travels to the store on the product itself, e.g., on the outside of a case of tilapia or ground beef; on the PLU sticker attached to a mango. The problem facing retailers is finding a way to keep that information to meet USDA's current store level recordkeeping requirement, even if it is only until the product is sold.

Retailers can keep the box, but that leads to sanitation problems and space constraints when 600 types of produce are involved. Retailers can cut off the labels, but that is time-consuming and unwieldy. Irrelevant to distribution, CoO is not captured on invoices that travel with products from distribution centers to store level in the normal course of business; re-engineering systems would entail significant cost. (One mid-sized company estimated costs of \$7.65 million to install new systems and reconfigure their warehouse.) To avoid these costs, some retailers have asked suppliers to add a copy of the CoO information to each case so that they can keep the copy at store level, but that's very expensive for suppliers.

The Law

The 2002 Farm Bill authorized USDA to require persons that handled covered commodities to “maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance.” Based on this language, USDA requires retailers to keep records at store level to verify CoO for product that is not pre-labeled by the supplier until the product is sold.

The 2008 Farm Bill deleted the original recordkeeping language in its entirety and replaced it with 3 new prongs: (1) USDA is authorized to inspect; (2) anyone inspected is required to verify; and (3) USDA is prohibited from requiring anyone “to maintain a record of the country of origin of a covered commodity other than those *maintained in the course of the normal conduct of the business* of such person.”

Solution

Retailers have an obligation under the law to verify the country of origin of the products that they sell, but they should be allowed to rely on records maintained at corporate headquarters and given a reasonable amount of time (no less than 5 business days) to access those records and get the information to USDA.