



MEMORANDUM

TO: FMI Members

FROM: Deborah White

DATE: October 29, 2009

RE: Country of Origin Labeling Update

The purpose of this memorandum is to report on the information learned during today's tours of several grocery stores with a representative of the U.S. Department of Agriculture to discuss various country of origin labeling implementation issues. Below are the top 22 tips and facts that we learned today. If you have any questions on these, please let us know.

1. USDA will be conducting an additional 7,000 store inspections with FY09 budget and will conduct 12,000 store inspections per year for as long as they receive the appropriations to do so.

2. USDA is building a database that will allow greater transparency for retailers and greater data analysis for USDA. The system is under development now and expected to be available in the spring. Retailers will be able to access and track reports regarding their stores on-line. The system will be secured to limit access. USDA is already using it to run reports to look for anomalous inspection results. For example, they noticed a spike of a particular type of finding in a particular state. Upon investigation, they found that the inspectors were misinterpreting a regulatory requirement and were able to correct the issue before it progressed.

3. If you have a corporate contact and USDA has not recognized it, re-send the information to cool@ams.usda.gov and put "COOL Corporate Contact" in the subject line.

4. USDA is currently about 3-4 weeks behind in reviewing store inspection reports, so if you are aware that a store was inspected earlier than mid-September but have not received a follow up letter from USDA, you may want to investigate.

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5. USDA will be conducting more training for state inspectors in January. Many of you commented that the inspectors were making mistakes in terms of covered commodities. Hopefully, additional training will help correct these problems. We also advised USDA that not all inspectors left the complete set of information at store level at the conclusion of the inspection; USDA agreed to send out a reminder on this point.

6. USDA will reverse a "finding" if the retailer responds to a letter with sufficient evidence. For example, if you can explain to USDA that a particular covered commodity without labeling was packed or harvested prior to September 30, 2008, USDA will remove the finding from your record.

7. USDA did complete a survey to determine whether retailers were labeling meat products in accordance with Secretary Vilsack's letter from earlier this year (e.g., with information on where the livestock was born, raised and slaughtered). We do not expect it to show that retailers are using this type of labeling. The results of the survey are awaiting approval for release.

8. USDA's YouTube COOL video is expected to be released in the next week or so.

9. Frozen products packaged prior to September 30, 2008. Although USDA does not require these products to bear country of origin labeling, proving which products were produced prior to September 30, 2008 is still proving challenging to retailers. USDA does not have and cannot create a centralized list of these products. Fortunately, the problem does have an expiration date and at some point -- hopefully soon -- these products will be out of the distribution chain. In the interim, work with your suppliers and send information to USDA to demonstrate the true date of production to get any erroneous findings removed from your record.

10. Frozen potatoes. USDA's interpretation of the type of activity that constitutes processing for frozen potatoes is evolving. If the potatoes have been processed with only salt, sugar or annatto, the agency does NOT consider them to be processed (so COL applies); if the potatoes have been treated with oil or other substantive ingredients, the agency DOES consider them to be processed (so COL does NOT apply). Most of the frozen potato items that we checked today were processed with oil. So, if you receive a letter indicating that your frozen potato products failed to display country of origin information, check the ingredient line on the package. If oil is in the ingredient line, advise USDA and the finding should be removed.

11. State, local & regional labeling. Under the 2008 Farm Bill amendments to the country of origin labeling requirements, state, region or locality can be used to identify

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the country of origin of covered produce, nuts and ginseng. USDA's final rule notes that some state promotional programs can be used to satisfy this requirement. USDA cautions, though, that not all such programs require that the product be produced entirely in the state. According to USDA, the "Go Texan!" program can apply to products that are sourced from Mexico.

12. Please remember that state, local and regional labeling is NOT sufficient for covered meat, poultry or fish items -- *country* of origin must be displayed for these products.

13. "Locally grown." With the growing emphasis on locally grown products, more retailers are using the phrase to describe the origin of their produce. USDA does not consider this phrase alone to be sufficient to satisfy the regulatory origin labeling requirements. Indicating the farm or city and state along with "locally grown" will satisfy USDA. Alternatively, defining the term in such a way that consumers can understand it (e.g., within 100 miles of our store) is also acceptable, provided that the area described does not cover more than one country.

14. Percentage of stickered produce items in a bulk bin. USDA can't (and probably shouldn't) provide a definitive number, however, in reviewing and discussing many bulk bins today, my impression was that anything that looked like about 50% or more would be sufficient. If an inspector issues a "finding" for an insufficient number of PLU stickers, you could ask your store clerk to make an educated guess regarding the percentage of stickering in the bin and report that to USDA in the follow up.

15. Signs in the meat department. Over the past year, we have had much discussion about signage in the meat department. A sign that identifies the country of origin of meat products may be used in lieu of pin tags or individual package labels, but the store should have a sufficient number to ensure that consumers can find the information. For example, one sign with all products and countries of origin at the far end of a meat counter would not be deemed sufficient in a meat department with a 30 foot service case and 50 more feet of self-service cases. Consider a separate sign for each covered commodity. If you choose to have one sign that lists all covered commodities and their countries of origin, consider posting it in multiple locations. Consider having one sign for every 15 or 20 feet of the meat case.

16. Meat country of origin designations. Please note that USDA no longer considers it acceptable to post a sign indicating that your beef is from multiple countries unless you are actually receiving product from multiple countries and can document as much with appropriate records. As much of the beef supply today is labeled "product of

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the US,” we caution against posting signs that state “product of US, Canada, Mexico” unless that is, in fact, the country of origin declaration provided by your supplier.

17. Lot code numbers. We have received mixed information from you on lot code numbers. Some times inspectors do not pick up lot numbers and we wish they would (e.g., frozen produce) and other times the inspectors insist on lot numbers and the information isn’t available (e.g., bulk produce). USDA will ask inspectors to pick up lot code numbers for packaged products but remind them that lot code numbers usually are not available for bulk products.

18. We received a report that a COL inspector told a store that they needed to keep logs in meat departments with USDA plant and lot numbers. This information is not required for COL, although the Food Safety & Inspection Service within USDA is looking closely at requiring these under the Federal Meat Inspection Act. This is, however, an entirely different legal and regulatory construct and should have no bearing on inspections for COL purposes.

19. Nuts. Peanuts, pecans and macadamia nuts are all covered commodities that require origin labeling, unless, of course, they are processed. Although heat may be applied to assist in shelling pecans or macadamia nuts, it is not sufficient to render the nuts “processed.” Roasted peanuts are not covered, but many packages don’t currently say whether the enclosed product is roasted or not. You may consider encouraging your suppliers to label roasted peanuts accordingly. If the products do not bear labeling and you receive notice from USDA, consider contacting your supplier to find out whether or not the nuts were actually roasted (or otherwise processed). Reporting this information to USDA would be a sufficient basis to “remove” a finding.

20. Cornish game hens are chickens and, therefore, are subject to the country of origin labeling requirements.

21. Packaged fresh herbs are covered commodities. We saw a fair number of packaged herbs that did not bear labeling. You might want to doublecheck the herbs that you sell in your stores.

22. Loose mushrooms. We saw some examples today of bulk mushrooms without labeling. Check your stores.

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