MICHIGAN STATE
UNIVERSITY

To: Food Safety and Inspection Service, USDA

Re: Notice of Request for a Revision of a Currently Approved, Information Collection (Marking, Labeling, and Packaging), Notice and request for comments [Docket No. FSIS-2011-0003] [Federal Register Volume 76, Number 106 (Thursday, June 2, 2011)][Notices][Pages 31930-31932]

Date: July 31, 2011

This is a response for the Notice and request for comments from the Food Safety and Inspection Service, USDA.

To note, our research is specifically focused, and applies to, product counterfeiting including trademark, trade dress, and patent infringement. We also have research projects underway on food intentional adulteration, economically motivated adulteration, food counterfeiting and food fraud. Our focus is on detection and deterrence with an overall objective of prevention through reduction of the fraud opportunity.

Our Comments (including input from a homework assignment in our our Summer Semester on-line Food Safety and Crimiinal Justice program graduate course Anti-Counterefit Strategy and Product Protection):

Summary

- Specifically this revision to the regulation mandates that to control the printing of USDA certifications, this to require registration of the companies that manufacture the marking equipment. Those entities using the equipment to print the USDA certifications on the packages must also register their equipment. This will increase the efficiency of the USDA inspectors since the approved equipment will be in a database – this will be a positive test for the registration rather than an investigation of suspect equipment. It will now be illegal to manufacture or possess unregistered USDA certificate marking equipment. This is similar to the intellectual property rights laws where it is illegal to possess equipment or labels for manufacturing counterfeit products. This revision is another example that does address Food Fraud by making it illegal to manufacture or possess equipment that could produce a counterfeit (unauthorized) USDA mark.

General

- It should be expected that unscrupulous equipment manufacturers and food producers will try to circumvent the regulations. The fraud opportunity will include producing fake registrations or cloning genuine registrations. To address code registration fraud, often the codes are recorded by an inspector, validated from a database of approved codes, and the key step is that the database records wehre and when the code was authenticated. If two codes appear at different locations, the database will identify a

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fraudulent activity. In many applications, codes are authenticated by mobile product authentication (MPA) through cell phone SMS text.
    - To speed the authentication process and encourage inspection compliance through easy work processes, mobile product authentication using bar-codes or 2-dimensional matrices could be utilized. A machine readable code would be utilized and the code read by a mobile phone. The envelope information is immbeded in the code and the phone can automaticall record date, time and GPS location settings.This type of system is commercialized and implemented for a wide range of product including fresh produce. These sytems return an immediate “good” or ‘bad” note to the inspector.
- To be effective, market monitoring and analysis is critical to maintain compliance. Penalties for violation should be significant determined by the impact on deterring the counterfeiting. Fortunately, if MPA systems are utilized, the identification of the counterfeit marks can be real-time and immediate – our research shows that from a behavioral sciences standpoint, this immediate feedback and confrontation is a deterrent. Our research shows that alerting the marketplace of a product authentication program reduces the ignorant or casual fraudsters – and catches the sloppy.
    - An agency pursuing a trademark of the certiciation is not possible or practical as a significant deterrent against willing law breakers. The Federal Register Notice for the National Highway Traffic Safety Administration, Federal Motor Vehicle Safety Standards; Motorcycle Helmets; Final Rule [FR Doc No: 2011-11367]. “Some novelty helmet users attempt to make their helmets appear to law enforcement agencies and the courts to be compliant by misleadingly attaching labels that have the appearance of legitimate ``DOT'' certification labels.” Also regarding controlling the certification through recording the trademark of the USDA certification was not pursued by the NHTS because “the agency is not able to license a trademark for manufacturers to use at their discretion.” And, “trademarks are easily counterfeited and the agency has limited resources to enforce trademark rights against the printers, sellers and distributors of labels inappropriately bearing a trade-marked symbol.”
- This registration system will provide legitimate buyers to be able to check the authenticity and registration of the equipment the purchase.
- A system should be considered to retire registration numbers, or to at least track the re-sale or destruction of equipment. Fortunately, there are best practices from other fields that monitor and track high value capital assets and equipment.

These comments expand on previously submitted Comments on Guidance Document FD&C Act/505D – Pharmaceutical Security [Docket No. FDA-2009-D-0001], Draft Guidance for Industry on Standards for Securing the Drug Supply Chain--Standardized Numerical Identification for Prescription Drug Packages; Availability [Docket No. FDA 2009 D 0001], the public record comments for Product Tracing Systems for Food; Public Meeting; Request for

Comment [Docket No. FDA 2009 N 0523], and Recommendations for Accomplishing the Strategic Objective - Comments on the “Coordination and Strategic Planning of the Federal Effort Against Intellectual Property Infringement: Request of the Intellectual Property Enforcement Coordinator (IPEC) for Public Comments Regarding the Joint Strategic Plan. [DOCID:fr23fe10-127]

This is an extremely interdisciplinary topic that is extremely complex, and there is no magic solution. The fraudsters are intelligent, resilient, patient, well funded and very motivated. The human actors are clandestine, stealth and seeking to avoid detection. These fraudsters try to exploit the very systems we put in place to increase our own prevention, intervention, and response countermeasures. The public health and economic risk of counterfeiting and sub-standard product will still be significant even with strong global IP laws, enforcement, and prosecution. Developing efficient and effective countermeasures will require a strong public-private partnership. At Michigan State University and within the Anti-Counterfeiting and Product Protection Program (A-CAPPP), we are pleased to participate in the process and to contribute to the research.

This represents the opinion and insight of the individual authors and not of the overall Programs, Schools, Colleges, or University.

Sincerely,

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