



The Final Rule for Mandatory Country of Origin Labeling (MCOOL)

The Final Rule outlines requirements for retailers to notify their customers of the country of origin of beef (including veal), lamb, pork, chicken, goat, wild and farm-raised fish and shellfish, perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts.

Implementation and Enforcement of Country of Origin Requirements

The Final Rule for Mandatory Country of Origin Labeling (MCOOL) came into effect on March 16th, 2009. The Agricultural Marketing Service (AMS) provided for a six month education and outreach period following the effective date of its interim final rule and this period ended in March 2009. Accordingly, more active enforcement will occur from April 2009 and into the future. AMS will begin audits of firms that supply retailers with covered commodities in July 2009.

IMPORTANT NOTICE: The information in this document is intended to provide a summary of the Final Rule on Country of Origin Labeling produced by the U.S. Agricultural Marketing Service. Readers should consult with appropriate regulatory authorities and the information available on the Internet at www.ams.usda.gov/cool before taking any action related to Country of Origin Labeling. While this summary has been produced using whenever possible the official regulatory text and summaries produced by the AMS it is not guaranteed to be accurate. Questions on country of origin requirements should be emailed to COOL@usda.gov. For definitions of terms used in this summary please see the appendix.

Types of Operations that must provide Country of Origin Information

RETAIL OPERATIONS MUST MEET COOL REQUIREMENTS

The Final Rule outlines requirements for retailers where a retailer is defined as “any person licensed as a retailer under the Perishable Agricultural Commodities Act (PACA) of 1930 (7 U.S.C. 499a(b)). Retailers are required to be licensed when the invoice cost of all purchases of perishable agricultural commodities exceeds \$230,000 during a calendar year.”

FOOD SERVICE IS EXEMPT

Food service establishments are exempted(see appendix for definition of a food service establishment).

Types of Meat Products that Require Country of Origin Labeling

COVERED COMMODITIES MUST HAVE COOL NOTIFICATION

MCOOL applies to what the Final Rule defines as “covered commodities”. For meat a covered commodity includes;

Muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork.

It is important to note that the Final Rule defines "ground beef" as in 9 CFR §319.15(a);

Chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders. The definition of ground beef also includes products defined by the term “hamburger” in 9 CFR §319.15(b).

PROCESSED PRODUCTS ARE EXEMPTED FROM COOL REQUIREMENTS

MCOOL exempts processed meat products. This means that the requirements would not apply to a “covered commodity” such as beef if the commodity is an ingredient in a processed food item as defined below;

A retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding).

Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding).

Examples of excluded items include teriyaki flavored pork loin, roasted peanuts, breaded chicken tenders, and fruit medley.

Country of Origin Labeling Categories for Covered Commodities

The Final Rule places covered meat commodities into three categories.

PRODUCT OF THE UNITED STATES (ALL PRODUCTION STEPS IN THE US)

Meat qualifying for labeling as “Product of the United States” would need to satisfy at least one of the three criteria outlined below for beef, pork, lamb, chicken, and goat:

- (i) From animals exclusively born, raised, and slaughtered in the United States;
- (ii) From animals born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through Canada to the United States and slaughtered in the United States; or
- (iii) From animals present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States.

MULTIPLE COUNTRIES OF ORIGIN INCLUDING US (AT LEAST ONE US PRODUCTION STEP)

i) Animals NOT Imported for Immediate Slaughter

The Final Rule states that;

For muscle cut covered commodities derived from animals that were born in Country X or (as applicable) Country Y, raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter as defined in §65.180, the origin may be designated as “Product of the U.S., Country X, and (as applicable) Country Y”.

Note: Immediate slaughter is defined as “consignment directly from the port of entry to a recognized slaughtering establishment and slaughtered within 2 weeks from the date of entry.”

ii) Animal Imported for Immediate Slaughter

For animals imported for immediate slaughter (as defined above) the Final Rule states that “the origin of the resulting meat products derived from that animal shall be designated as Product of Country X and the United States.”

Note: In both i) and ii) above the origin declaration may 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.

IMPORTED MEAT AND PORK PRODUCTS (NO PRODUCTION STEPS IN THE US)

Imported covered commodities for which origin has already been established as defined by this law (e.g., born, raised, slaughtered or grown) and for which no production steps have occurred in the United States, shall retain their origin, as declared to U.S. Customs and Border Protection (CBP) at the time the product entered the United States, through retail sale.

Commingled Country of Origin Categories

For muscle cut covered commodities derived from *animals born, raised, and slaughtered in the U.S.* that are commingled during a production day with muscle cut covered commodities derived from animals that were raised and slaughtered in the United States, and were not derived from animals imported for immediate slaughter as defined in §65.180, the origin may be designated, for example, as “Product of the United States, Country X, and (as applicable) Country Y”.

For muscle cut covered commodities derived from animals that are *born in Country X or Country Y, raised and slaughtered in the United States*, that are commingled during a production day with muscle cut covered commodities that are derived from animals that are imported into the United States for immediate slaughter as defined in §65.180, the origin may be designated as “Product of the United States, Country X, and (as applicable) Country Y”.

In all of the cases above, the countries of origin may be listed in any order. In addition, if animals are raised in another country and the United States, provided the animals are not imported for immediate slaughter as defined in §65.180, the raising that occurs in the United States takes precedence over the minimal raising that occurred in the animal’s country of birth.

Retailers are to convey the origin and method of production information provided to them by their suppliers. Only if the retailer physically commingles a covered commodity of different origins and/or methods of production in preparation for retail sale, whether in a consumer-ready package or in a bulk display (and not discretely packaged) (i.e., full service fish case), can the retailer initiate a multiple country of origin and/or method of production designation.

Labeling Ground Beef and other Ground Meats

The Final Rule states that ground meat covered commodities must list all countries of origin contained therein or that may be reasonably contained therein. In determining what is considered reasonable, when a raw material from a specific origin is not in a processor’s inventory for more than 60 days, that country shall no longer be included as a possible country of origin.

Country of Origin Declarations and Formats

Country of origin declarations can either be in the form of a placard, sign, label, sticker, band, twist tie, pin tag, or other format that allows consumers to identify the country of origin. The declaration of the country of origin of a product may be in the form of a statement such as “Product of USA,” “Produce of the USA”, or “Grown in Canada,” may only contain the name of the country such as “USA” or “Canada,” or may be in the form of a check box provided it is in conformance with other Federal labeling laws.

Additional requirements for the declaration include;

- The declaration must be legible and placed in a conspicuous location, so as to render it likely to be read and understood by a customer under normal conditions of purchase.
- The declaration of country of origin may be typed, printed, or handwritten provided it is in conformance with other Federal labeling laws and does not obscure other labeling information required by other Federal regulations.
- A bulk container (e.g., display case, shipper, bin, carton, and barrel), used at the retail level to present product to consumers, may contain a covered commodity from more than one country of origin provided all possible origins are listed.
- In general, abbreviations are not acceptable. Only those abbreviations approved for use under CBP rules, regulations, and policies, such as “U.K.” for “The United Kingdom of Great Britain and Northern Ireland”, “Luxemb” for Luxembourg, and “U.S.” for the “United States” are acceptable.
- The adjectival form of the name of a country (e.g. Canadian) may be used as proper notification of the country of origin of imported commodities provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. Symbols or flags alone may not be used to denote country of origin.
- With the exception of perishable agricultural commodities, peanuts, pecans, and ginseng, State or regional label designations are not acceptable in lieu of country of origin labeling.

Record Keeping Requirements for Country of Origin Labeling

GENERAL REQUIREMENTS

All records must be legible and may be maintained in either electronic or hard copy formats. Various forms of documentation and records will be acceptable. Upon request by USDA representatives, suppliers and retailers subject to this subpart shall make available to USDA representatives, records maintained in the normal course of business that verify an origin claim. Records shall be provided within 5 business days of the request and may be maintained in any location.

RESPONSIBILITIES OF SUPPLIERS

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country(ies) of origin of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim, which in the case of beef, lamb, chicken, goat, and pork is the slaughter facility, must possess or have legal access to records that are necessary to substantiate that claim.

Under the final rule, *producer affidavits* shall also be considered acceptable records that suppliers may utilize to initiate origin claims for all covered commodities, provided it is made by someone having first-hand knowledge of the origin of the covered commodity and identifies the covered commodity unique to the transaction. In the case of cattle, producer affidavits may be based on a visual inspection of the animal to verify its origin. If no markings are found that would indicate that the animal is of foreign origin (i.e., “CAN” or “M”), the animal may be considered to be of U.S. origin.

Packers that slaughter animals that are part of a NAIS compliant system or other recognized official identification system (e.g., Canadian official system, Mexico official system) may also rely on the presence of an official ear tag and/or the presence of any accompanying animal markings (i.e., “Can”, “M”), as applicable, on which to base their origin claims. This provision also applies to such animals officially identified as a group lot. The Agency has clarified that packers who slaughter animals that are tagged with an 840 Animal Identification Number device without the presence of any additional accompanying marking indicating the origin as being a country other than the U.S. (i.e., “CAN” or “M”) may use that information as a basis for a U.S. origin claim.

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly (i.e., including but not limited to growers, distributors, handlers, packers, and processors), must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of the transaction.

For an imported covered commodity, the importer of record as determined by CBP, must ensure that records: provide clear product tracking from the port of entry into the United States to the immediate subsequent recipient and accurately reflect the country of origin of the item as identified in relevant CBP entry documents and information systems; and must maintain such records for a period of 1 year from the date of the transaction.

RESPONSIBILITIES OF RETAILERS

For retailers, the rule requires records and other documentary evidence relied upon at the point of sale by the retailer to establish a covered commodity’s country(ies) of origin and method of production (wild and/or farm-raised), as applicable, to be either maintained at the retail facility or at another location for as long as the product is on hand and provided to any duly authorized representative of USDA, upon request, within 5 business days of the request. The records may be kept in any location.

For pre-labeled products, the label itself is sufficient information on which the retailer may rely to establish the product’s origin and method of production, as applicable, and no additional records documenting origin and method of production information are necessary.

LIMITATIONS ON LIABILITY (SAFE HARBOR PROVISIONS)

Any intermediary supplier handling a covered commodity that is found to be designated incorrectly as to the country of origin shall not be held liable for a violation of the Act by reason of the conduct of another if the intermediary supplier relied on the designation provided by the initiating supplier or other intermediary supplier, unless the intermediary supplier willfully disregarded information establishing that the country of origin declaration was false.

Any retailer handling a covered commodity that is found to be designated incorrectly as to the country of origin shall not be held liable for a violation of the Act by reason of the conduct of another if the retailer relied on the designation provided by the supplier, unless the retailer willfully disregarded information establishing that the country of origin declaration was false.

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Appendix

OFFICIAL DEFINITIONS

(as cited in the Final Rule)

BEEF (65.110)

Beef means meat produced from cattle, including veal.

COMMINGLED COVERED COMMODITIES (65.125)

Commingled covered commodities means covered commodities (of the same type) presented for retail sale in a consumer package that have been prepared from raw material sources having different origins (e.g., bag of frozen strawberries).

COVERED COMMODITY (65.135)

(a) Covered commodity means:

- (1) Muscle cuts of beef, lamb, chicken, goat, and pork;
- (2) Ground beef, ground lamb, ground chicken, ground goat, and ground pork;
- (3) Perishable agricultural commodities;
- (4) Peanuts;
- (5) Macadamia nuts;
- (6) Pecans; and
- (7) Ginseng.

(b) Covered commodities are excluded from this part if the commodity is an ingredient in a processed food item as defined in §65.220.

FOOD SERVICE ESTABLISHMENT (65.140)

Food service establishment means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Similar food service facilities include salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

GROUND BEEF (65.155)

Ground beef has the meaning given that term in 9 CFR 319.15(a), i.e., chopped fresh and/or frozen beef with or without seasoning and without the addition of beef fat as such, and containing no more than 30 percent fat, and containing no added water, phosphates, binders, or extenders, and also includes products defined by the terms "hamburger" in 9 CFR 319.15(b).

GROUND PORK (§ 65.175)

Ground pork means comminuted pork of skeletal origin that is produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines.

IMPORTED FOR IMMEDIATE SLAUGHTER (65.180)

Imported for immediate slaughter means imported into the United States for "immediate slaughter" as that term is defined in 9 CFR 93.400, i.e., consignment directly from the port of entry to a recognized slaughtering establishment and slaughtered within 2 weeks from the date of entry.

PORK (§ 65.215)

Pork means meat produced from hogs.

PROCESSED FOOD ITEM (65.220)

Processed food item means a retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item.

Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding). Examples of items excluded include teriyaki flavored pork loin, roasted peanuts, breaded chicken tenders, and fruit medley.

RAISED (65.235)

Raised means, in the case of beef, pork, chicken, goat, and lamb, the period of time from birth until slaughter or in the case of animals imported for immediate slaughter as defined in §65.180, the period of time from birth until date of entry into the United States.

RETAILER (65.240)

Retailer means any person licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)).

Note: Under PACA, a retailer is any person engaged in the business of selling any perishable agricultural commodity at retail. Retailers are required to be licensed when the invoice cost of all purchases of perishable agricultural commodities exceeds \$230,000 during a calendar year. The term perishable agricultural commodity means fresh and frozen fruits and vegetables.

SLAUGHTER (65.250)

Slaughter means the point in which a livestock animal (including chicken) is prepared into meat products (covered commodities) for human consumption. For purposes of labeling under this part, the word harvested may be used in lieu of slaughtered.

UNITED STATES COUNTRY OF ORIGIN (65.260)

United States country of origin means in the case of:

(a) Beef, pork, lamb, chicken, and goat:

(1) From animals exclusively born, raised, and slaughtered in the United States;

(2) From animals born and raised in Alaska or Hawaii and transported for a period of not more than 60 days through

Canada to the United States and slaughtered in the United States; or

(3) From animals present in the United States on or before July 15, 2008, and

once present in the United States, remained continuously in the United States.

(4) Perishable agricultural commodities, peanuts, ginseng, pecans, and macadamia nuts: from products produced in the United States.