



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

The Interim Final Rule (IFR) 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. The Interim Final Rule may be modified following the receipt of comments which must be submitted by September 30 2008.

Implementation and Enforcement of Country of Origin Requirements

The documentation that accompanies the Interim Final Rule indicate that at least for the first six months following the implementation date of **September 30, 2008** the focus will be on education and outreach to industry. It is however possible that enforcement action could be taken for serious violations of country of origin labeling requirements in this 6 month period.

IMPORTANT NOTICE: *The information in this document is intended to provide a summary of the Interim Final Rule on Country of Origin Labeling produced by the U.S. Agricultural Marketing Service. Readers should consult with appropriate regulatory authorities and the official text available on the Internet at http://federalregister.gov/OFRUUpload/OFRData/2008-17562_PL.pdf before taking any action related to Country of Origin Labeling. For official 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 Interim 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 Interim Final Rule defines as “covered commodities”. For meat a covered commodity includes;

Muscle cuts of beef, lamb, chicken, goat, and pork Ground beef, ground lamb, ground chicken, ground goat, and ground pork

It is important to note that the Interim Final rule defines ground beef as below;

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) and “beef patties” in 9 CFR 319.15(c).

■ 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;

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.

Country of Origin Labeling Categories for Covered Commodities

The interim 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 Interim Final Rule states that;

If an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter as defined in §65.180, the origin of the resulting meat products derived from that animal may be designated as **Product of the United States, Country X, and/or (as applicable) Country Y** where Country X and Country Y represent the actual or possible countries of foreign origin.*

** 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 interim 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

In a guidance issued on September 26th the U.S. Agriculture Marketing Service indicated the following:

If meat covered commodities derived from U.S. and mixed origin animals are commingled during a production day, the resulting product may carry the mixed origin claim (e.g., Product of U.S., Canada, and Mexico). Thus, it is not permissible to label meat derived from livestock of U.S. origin with a mixed origin label if solely U.S. origin meat was produced during the production day.

Similar to packers and intermediary suppliers, retailers are permitted to market U.S. produced meat products under a mixed origin label (e.g., Product of U.S., Canada and Mexico) if they are commingled with meat of mixed origin. That is, if a retailer further processes meat at the store and the resulting package includes meat of both U.S. origin and mixed origin (e.g., Product of U.S., Canada and Mexico), the origin declaration can read Product of U.S., Canada and Mexico.

If meat covered commodities derived from mixed origin and direct for slaughter animals are commingled, the resulting product may carry the direct for slaughter origin claim (i.e., Product of Country X and U.S.) with other countries of origin as applicable.

Labeling Ground Beef and other Ground Meats

The interim 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. For that purpose, in the

case of beef, lamb, chicken, goat, and pork, a producer affidavit shall be considered acceptable evidence on which the slaughter facility may rely to initiate the origin claim, provided it is made by someone having first-hand knowledge of the origin of the animal(s) and identifies the animal(s) unique to the transaction. **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.

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

Records and other documentary evidence relied upon at the point of sale to establish a covered commodity’s country(ies) of origin must be provided to any duly authorized representative of USDA and be maintained for a period of 1 year from the date the origin declaration is made at retail. **For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish the product’s origin.**

Records that identify the covered commodity, the retail supplier, and for products that are not pre-labeled, the country of origin information, must be maintained for a period of 1 year from the date the origin declaration is made at retail.



Appendix

OFFICIAL DEFINITIONS

(as cited in the Interim Final Rule with the publication date Aug 1st 2008)

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) and "beef patties" in 9 CFR 319.15(c).

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, breadings, 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.

Note: The Interim final rule also notes that “covered commodities further processed or handled in a foreign country after meeting the requirements to be labeled as United States origin as defined in §65.260 (e.g., born, raised, and slaughtered or produced) may bear a declaration that identifies the United States as the sole country of origin at retail provided the identity of the product is maintained along with records to substantiate the origin claims and the claim is consistent with other applicable Federal legal requirements.”