

COUNTRY OF ORIGIN QUESTIONS & ANSWERS

What are the general requirements of Country of Origin Labeling?

The Farm Bill amended the Act to direct the Secretary of Agriculture to issue regulations by September 30, 2004, to require retailers to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, shellfish, perishable agricultural commodities, and peanuts beginning September 30, 2004. The 2004 Appropriations Act delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. The law defines the terms “retailer” and “perishable agricultural commodity” as having the meanings given those terms in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (PACA)(7 U.S.C. 499 et seq.). Food service establishments are specifically excluded as are covered commodities that are ingredients in a processed food item. In addition, the law specifically outlines the criteria a covered commodity must meet to bear a “United States country of origin” label.

How do I find out if my product is considered a covered commodity or if it is labeled accurately under the COOL law?

Questions regarding whether a product is considered a covered commodity or is labeled accurately under this regulation may be e-mailed to cool@usda.gov.

What is the definition of a processed food item and what types of products are considered processed food items?

Fish and shellfish covered commodities are exempt from COOL under this rule if they are an ingredient in a processed food item. An ingredient is a component either in part or in full of a finished retail food product. A processed food item is a retail item derived from fish or shellfish 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 components (e.g., 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 (cold or hot), and restructuring (e.g., emulsifying and extruding, compressing into blocks and cutting into portions). Examples of fish and shellfish combined with different covered commodities or other substantive food components include scallops and shrimp in a seafood medley, breaded shrimp, breaded fish fillets, coated shrimp, and marinated fish fillets.

What requirements must be met for a retailer to label a covered commodity as being of U.S. origin?

The law prescribes specific criteria that must be met for a covered commodity to bear a “United States country of origin” declaration. The specific requirements for fish and shellfish covered commodities are as follows: farm-raised fish and shellfish--covered commodities must be derived exclusively from fish or shellfish hatched, raised, harvested, and processed in the United States, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States; wild fish and shellfish--covered

commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel, and that has not undergone a substantial transformation (as established by U.S. Customs and Border Protection) outside of the United States.

How should I label a retail product that contains a covered commodity (such as a bag of shrimp) commingled from more than one country of origin?

For imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with other imported and/or U.S. origin commodities, the declaration shall indicate the countries of origin for covered commodities in accordance with existing Federal legal requirements. For imported covered commodities that have subsequently undergone substantial transformation in the United States that are commingled with other imported covered commodities that have subsequently undergone substantial transformation in the United States (either prior to or following substantial transformation in the United States) and/or U.S. origin covered commodities, the declaration shall indicate the countries of origin contained therein or that may be contained therein. For commingled covered commodities that bear a “may contain” declaration, suppliers responsible for initiating the claim must maintain records sufficient to substantiate both that all of the countries listed are valid and that all of the possible countries of origin have been listed.

What are the requirements for maintaining country of origin information for blended covered commodities that contain products from more than one country of origin?

The labeling requirements are consistent with other Federal legal requirements under which facilities are not required to separately track throughout the process, and ultimately into each individual retail package, the country source of the commodities that are found within each individual retail package. Rather, the declaration of the retail product can indicate the several countries of origin that are represented in the overall blending process, without being required to verify which specific countries of origin are found within each individual retail package.

Why can't the Department of Agriculture (USDA) track only imported products and consider all other products to be of "U.S. Origin?"

The COOL provision of the Farm Bill applies to all imported and domestic covered commodities. Moreover, the law specifically identifies the criteria that products of U.S. origin must meet. The law further states that “Any person engaged in the business of supplying a covered commodity to a retailer shall provide information to the retailer indicating the country of origin of the covered commodity.” And, the law does not provide authority to control the movement of product. In fact, the use of a mandatory identification system that would be required to track controlled product through the entire chain of commerce is specifically prohibited.

When will the requirements of this regulation be enforced?

The effective date of this regulation is April 4, 2005. The requirements of this rule do not apply to frozen fish or shellfish caught or harvested before December 6, 2004. The country of origin statute provides that “not later than September 30, 2004, the Secretary shall promulgate such regulations as are necessary to implement this subtitle.” Many of the covered commodities sold at retail are in a frozen or otherwise preserved state (i.e., not sold as “fresh”). Thus, many

of these products would already be in the chain of commerce prior to September 30, 2004, and the origin/production information may not be known. Therefore, it is reasonable to delay the effective date of this interim final rule for six months to allow existing inventories to clear through the channels of commerce and to allow affected industry members to conform their operations to the requirements of this rule. During this time period, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. AMS also will focus its resources for the six months immediately following the effective date of this interim final rule on industry education and outreach. After a careful review of all its implications, AMS has determined that its allocation of enforcement resources will ensure that the rule is effectively and rationally implemented. This AMS plan of outreach and education, conducted over a period of one year, should significantly aid the industry in achieving compliance with the requirements of this rule.

How will the requirements of this regulation be enforced?

USDA will seek to enter into partnerships with States having existing enforcement infrastructure to assist in the administration of this law. USDA will determine the scheduling and procedures for the compliance reviews. Only USDA will be able to initiate enforcement actions against a person found to be in violation of the law. USDA may also conduct investigations of complaints made by any person alleging violations of these regulations when the Secretary determines that reasonable grounds for such investigation exist. In addition, the Agency plans to publish a compliance guide that will provide the industry with information on compliance and the phasing in of active enforcement.

What are the recordkeeping requirements of this regulation?

Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must maintain records to establish and identify the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity, in such a way that identifies the product unique to that transaction by means of a lot number or other unique identifier, for a period of 1 year from the date of the transaction. For retailers, records and other documentary evidence relied upon at the point of sale by the retailer to establish a product's country(ies) of origin and method(s) of production (wild and/or farm-raised) must be available during normal business hours to any duly authorized representatives of USDA for as long as the product is on hand. For pre-labeled products, the label itself is sufficient evidence on which the retailer may rely to establish a product's origin and method(s) of production (wild and/or farm-raised). Records that identify the supplier, the product unique to that transaction by means of a lot number or other unique identifier, and for products that are not pre-labeled, the country of origin and method of production (wild and/or farm-raised) information must be maintained for a period of 1 year from the date the origin and production designations are made at retail.

How does this regulation impact existing State country of origin labeling programs?

To the extent that State country of origin labeling programs encompass commodities which are not governed by this regulation, the States may continue to operate them. For those State country of origin labeling programs that encompass commodities that are governed by this regulation, these programs are preempted.

Can food products that are not covered by this regulation be voluntarily labeled with

COOL information?

Yes. Such voluntary claims must be truthful and accurate and adhere to existing Federal labeling regulations.