



July 30, 2008

USDA Issues Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Chicken, Goat Meat, Perishable Agricultural Commodities, Ginseng, Pecans, Macadamia Nuts, and Peanuts

The United States Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) has issued an interim final rule for the mandatory country of origin labeling (COOL) of beef, lamb, pork, chicken, goat meat, perishable agricultural commodities, ginseng, pecans, macadamia nuts and peanuts to be effective **September 30, 2008**. **The requirements of this rule do not apply to covered commodities produced or packaged before September 30, 2008.** USDA also stated that it will conduct a six month educational and outreach period until about **April 1, 2009** to assist the industry to implement the rule. Similar as it did with implementation of the seafood regulations, USDA is expected to use this educational period to encourage voluntary industry compliance.

The current seafood rule requiring retailers to disclose to consumers the country of origin and method of production (wild caught or farm raised) for fish and shellfish has been in effect since October 2004 and compliance is being monitored by USDA and 42 state agencies.

This N.G.A. Special Report summarizes for retailers and wholesalers the requirements of the new interim rule for meat and produce. More details and information will be forthcoming as N.G.A. completes more analysis and USDA conducts educational sessions and provides answers to questions.

The rule will be published in the federal register of August 1, 2008. But it can be accessed by going to <http://www.ams.usda.gov/cool>. The industry will have 60 days from August 1 to submit comments on the rule to USDA. N.G.A. will file comments as it has on numerous occasions on country of origin regulations during the last six years. Members needing more information on the rule may contact Tom Wenning, Senior Vice President and General Counsel at twenning@nationalgrocers.org or call 703-516-0700.

N.G.A. recommended in August 2007 the following principles to USDA:

1. Requirements for markings of country of origin declaration and method of production should be flexible.
2. Recordkeeping requirements should be minimal and based upon records that are kept in the normal course of business.

3. USDA should only require retailers to maintain the country of origin for covered products in the retail store for as long as the product is on hand.
4. USDA should require the original suppliers of covered products to substantiate the chain of custody and the accuracy of country of origin information.
5. Processed food items should be exempt.
6. Time needs to be allotted for products produced prior to the specified implementation date to clear the channels of trade.

A number of these recommendations were adopted by Congress in the recently passed Farm Bill that was signed into law, and after N.G.A. met with representatives of USDA and the Office and Management and Budget (OMB) to explain the need for regulatory flexibility.

Retailers, Wholesalers, and Suppliers Covered

- The law requires licensed retailers under the Perishable Agricultural Commodities Act (PACA) to inform consumers of the country of origin of covered commodities.
- A covered retailer is one who has an invoice cost for fresh and frozen fruits and vegetables that exceed \$230,000 annually.
- Wholesale grocers are covered because of the need to assure that information on country of origin is passed along from suppliers, and in addition help their retailers comply. Any person, such as suppliers, 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. Records must be maintained to establish the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity for a period of 1 year from the date of transaction. Retailers and wholesalers should contact their suppliers to be sure the appropriate information will be provided.
- Food service establishments are excluded. This includes retail grocers' food service facilities such as 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. It also excludes restaurants, cafeterias, lunch rooms, saloons, taverns, bars, lounges, or other similar facility operated as an enterprise engaged in the business of selling food to the public.

Covered Commodities

Newly covered commodities required to have country of origin labeling, effective September 30, 2008, include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; perishable agricultural commodities (fresh and frozen fruits and vegetables), macadamia nuts, pecans, ginseng, and peanuts.

Wild and farm-raised fish and shellfish remain covered by the rule that went into effect April 4, 2005.

United States Country of Origin

In the case of beef, pork, lamb, chicken, and goat, the United States country of origin can only be used for: (1) animals exclusively born, raised, and slaughtered in the United States; (2) 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) 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.

For perishable agricultural commodities (fresh and frozen fruits and vegetables), peanuts, ginseng, pecans, and macadamia nuts, the products must be produced (grown) in the United States to be labeled with only the United States country of origin.

Foreign and Multiple Countries of Origin

- **Labeling muscle cut covered commodities of multiple countries of origin that include the United States.**

(i) If an animal was born, raised, and/or slaughtered in the United States and was not imported for immediate slaughter, 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.

(ii) If an animal was imported into the United States for immediate slaughter, the origin of the resulting meat products derived from that animal shall be designated as:

Product of Country X and the United States.

- **Labeling imported covered commodities.**

Imported covered commodities for which origin has already been established as defined by 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.

- **Labeling commingled covered commodities.**

In the case of perishable agricultural commodities (fresh and frozen fruits and vegetables); peanuts; pecans; ginseng; and macadamia nuts: for imported covered commodities that have not subsequently been substantially transformed in the United States that are commingled with covered commodities sourced from a different origin that have not been substantially transformed (as established by CBP) in the United States, and/or covered commodities of United States origin, the declaration shall

indicate the countries of origin in accordance with existing Federal legal requirements.

- **Labeling GROUND BEEF, GROUND PORK, GROUND LAMB, GROUND GOAT, AND GROUND CHICKEN.**

The declaration for ground beef, ground pork, ground lamb, ground goat, and ground chicken covered commodities shall 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.

Standards for Country of Origin Labeling Markings

Disclosure and the declarations for country of origin to consumers can be made in a variety of formats, so long as it can be readily understood by the consumer and is in conformance with other federal labeling laws. 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 Mexico," may only contain the name of the country such as "USA" or "Mexico," or may be in the form of a check box provided it is in conformance with other Federal labeling laws.

- The only abbreviations allowed are: "U.S." or "U.S.A" for United States, "U.K." for The United Kingdom of Great Britain and Northern Ireland, and "Luxemb" for Luxembourg. Symbols or flags along are also not acceptable for identifying the country of origin.
- Designations can be either in the form of a placard, sign, label, sticker, band, twist-tie, pin-tag or other format. Labeling of covered commodities offered for sale whether individually, in a bulk bin, carton, crate, barrel, cluster, or consumer package must contain the country of origin.
- Retailers have the flexibility to adapt their disclosures of the country of origin to formats that are best suited to their operations, as well as minimize labeling costs for the benefit of consumers. The information can be in either a typed, printed, or handwritten format.
- Retailers may display commingled product in a bulk container that must contain a covered commodity from more than one country of origin. Retailers may list all of the possible country of origins that may be contained in the bulk containers. Covered commingled commodities do not have to be individually labeled. Ground meat products are not commingled products.
- Labeling of ground beef, ground lamb, ground pork, ground goat and ground chicken allows for disclosure by providing that the notice for covered ground products may either be a list of all the countries or a list of all reasonably possible countries.
- For fruits, vegetables, ginseng, peanuts, pecans and macadamia nuts produced exclusively in the United States, a designation of the State, region or locality is sufficient for United States Country of Origin, such as Washington apples.

Recordkeeping Requirements

Retailers must provide records maintained in the normal course of business and other documentary evidence relied upon at the point of sale to establish a covered commodity's country(ies) of origin upon request to any duly authorized representative of USDA within 5 business days, and must 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.

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.

Suppliers 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.

Processed Food Items Are Exempt

- A processed food item is a retail item that has undergone specific processing to result in a change in the character of the covered commodity or has been combined with at least one other covered commodity or substantive food component (such as chocolate, breading or tomato sauce). However, the addition of a component, such as water, salt, or sugar that enhances or represents a further step in the preparations of products for consumption is not in itself considered a processed food item.
- The rule recognizes that a change in character of a covered food item includes cooking (such as frying, broiling, grilling, boiling, steaming, baking, and roasting), curing (such as salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (emulsifying, extruding, compressing into parts and cutting into portions) is sufficient processing to exempt a product from COOL labeling requirements.

Examples of items excluded by USDA in the rule include teriyaki flavored pork loin, roasted peanuts, breaded chicken tenders, and fruit medley. USDA also cited examples in its introductory comments of items that are excluded: meatloaf,

meatballs, fabricated steak, breaded veal cutlets, corned beef, sausage, breaded chicken tenders, and teriyaki flavored pork loin; a salad mix that contains lettuce and a dressing packet, a salad mix that contains lettuce and carrots, a fruit cup that contains melons, bananas, and strawberries; a bag of mixed vegetables that contains peas and carrots; and roasted peanuts.

N.G.A. recommended the exclusion of other items like: flank steak with portabella stuffing, steakhouse sirloin kabobs with vegetables, meatloaf, meatballs with penne pasta, pot roast with roasted vegetables, cooked and smoked meats, blue cheese angus burgers, cured hams, bacon, sugar cured bacon, dry cured meats, corned beef briskets, marinated pork loin, marinated pork chops, marinated London broil, prosciutto rolled in mozzarella cheese, fruit salad, cooked and canned fruits and vegetables, orange juice, fresh apple sauce, peanut butter, candy coated peanuts, peanut brittle etc. Further examples, like these will have to await USDA clarification.

Enforcement and Penalties

- USDA can only take enforcement action after giving retailers and other industry members 30 days notice to take corrective action. Retailers and suppliers can only be fined for not making a good faith effort to comply and continuing to willfully violate the law after receiving notification. The fines were reduced from \$10,000 to \$1,000 per violation.

Effective Date:

- The effective date of the new rules for beef, lamb, pork, poultry, goat meat, chicken, perishable agricultural commodities, ginseng, pecans macadamia nuts and peanuts is September 30, 2008. USDA will engage in an education period for six months to assist implementation by the food industry.