

MANDATORY COUNTRY OF ORIGIN LABELING—INTERIM FINAL RULE For Meat, Perishable Agricultural Commodities, Peanuts, Macadamia Nuts, Pecans, and Ginseng

Implementation Timeframes

The interim final rule will become effective September 30, 2008, as directed by the statute. The requirements of this rule do not apply to covered commodities produced or packaged before September 30, 2008. Because some of the affected industries (goat, chicken, pecans, ginseng, and macadamia nuts) did not have prior opportunities to comment on this rulemaking and because the 2008 Farm Bill made changes to several of the labeling provisions for meat covered commodities, it is reasonable to allow time for covered commodities that are already in the chain of commerce and for which no origin information is known or been provided to clear the system.

During the six month period following the effective date of the regulation, AMS will conduct an industry education and outreach program concerning the provisions and requirements of this rule. This AMS plan of outreach and education should significantly aid the industry in achieving compliance with the requirements of this rule.

Comments on this rulemaking must be submitted on or before September 30, 2008, to be considered. Comments should be submitted through the internet at <http://www.regulations.gov>. For more information on the mandatory COOL program, please visit the COOL website at <http://www.ams.usda.gov/cool>. Questions on the interim final rule may be submitted to cool@usda.gov.

Major Points and Considerations of the Technical Requirements

Retailer - Only firms licensed as a retailer under the Perishable Agricultural Commodities Act of 1930 are subject to the law and are required to label covered commodities for country of origin and method of production. 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. There are approximately 4,000 PACA licensees that operate about 36,000 retail stores. This definition excludes butcher shops and exporters.

Food Service Establishment - Salad bars and delis located within retail establishments that provide ready-to-eat foods are exempt from the law. Food service establishments are exempted by the statute.

Covered Commodities - Covered commodities included in this rulemaking are 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.

Processed Food Item - Processed food items are exempted from labeling by the statute.

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 related to this exemption would be 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; breaded okra; and roasted peanuts.

U.S. Origin – Perishable agricultural commodities, pecans, ginseng, peanuts, and macadamia nuts must be produced (grown) in the United States; beef, lamb, pork, chicken, and goat must be derived exclusively from animals (1) born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period of time not more than 60 days through Canada to the United States and slaughtered in the United States); or (2) present in the United States on or before July 15, 2008, and once present in the United States, remained continuously in the United States.

Labeling Muscle Cut Covered Commodities of Multiple Countries of Origin that include the United States – 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 Country Y where Country X and Country Y represent the actual or possible countries of foreign origin.

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.

In both of the cases 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.

Labeling Imported Covered Commodities - 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.

Labeling Commingled Covered Commodities - In the interim final rule, a commingled covered commodity is defined as a single type of covered commodity (e.g., frozen peas), presented for retail sale in a consumer package, that has been prepared from raw material sources having different origins. Further, a commingled covered commodity does not include ground meat products. If the retail product contains two different types of covered commodities (e.g., peas and carrots), it is considered a processed food item and is not subject to mandatory COOL.

In the case of perishable agricultural commodities, 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 imported and/or United States origin commodities, the declaration shall indicate the countries of origin for all covered commodities in accordance with CBP marking regulations (19 CFR part 134).

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.

Remotely Purchased Products (e.g., Internet sales) - Retailer may provide country of origin information on the sales vehicle (e.g., Internet site) or at the time the product is delivered to the consumer.

Retail Notification to the Consumer - The label must be in a conspicuous location and legible to allow consumers to identify the country(ies) of origin. Retailers may commingle covered commodities from more than one country of origin provided all possible origins are listed.

Recordkeeping - In general, retailers must maintain records or other documentary evidence that permits verification of origin claims made at retail. These records may be maintained in any location and, unless specified otherwise, must be maintained for a period of 1 year from the date the declaration was made at retail. Upon request, these records must be provided to any duly authorized representatives of USDA within 5 business days of the request.

For covered commodities sold in pre-labeled consumer-ready packages, the record must identify the covered commodity and the retail supplier. For products that are pre-labeled with the origin information on the shipping container (or other type of outer container), the label itself is sufficient evidence on which the retailer may rely to establish the product's origin at the point of sale. In this case, retailers must still maintain a record identifying the covered commodity and the retail supplier. In addition, to allow substantiation of the origin claim, the retailer must either maintain the pre-labeled shipping container at the retail store for as long as the product is on hand, or ensure the origin information is included in the record identifying the covered commodity and the retail supplier. For products that are not pre-labeled, the retailer must maintain records that identify the covered commodity, the retail supplier, and the origin information.

Retail suppliers 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. Upon request, these records must be provided to any duly authorized representatives of USDA within 5 business days of the request and may be maintained in any location.

The supplier of a covered commodity that is responsible for initiating a country of origin declaration, which in the case of beef, lamb, pork, chicken, and goat is the slaughter facility, must possess or have legal access to records that are necessary to substantiate that claim. 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. In addition, slaughter facilities that slaughter animals that are part of a National Animal Identification System (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” brand, “M” brand), as applicable, on which to base their origin claims. This would also include such animals officially identified as a group lot.

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

State and Regional Labeling Programs - These marketing programs (e.g., “California Grown”, “Go Texan”) are not affected by this rule. For domestic and imported perishable agricultural commodities, macadamia nuts, peanuts, pecans, and ginseng, State, regional, or locality label designations are acceptable in lieu of country of origin labeling. State-level country of origin labeling programs that encompass commodities that are governed by this regulation are preempted.

Major Points and Considerations of Cost Estimates

Recordkeeping Burden

The proposed rule published on October 30, 2003, estimated the recordkeeping burden at \$124 million in first year for development and operation; \$458 million in subsequent years for maintenance and operation.

Presently under the interim final rule, the recordkeeping burden for the first year is estimated at \$126 million for development and operation and \$499 million for maintenance and operation. Thus, the total recordkeeping cost for all participants in the supply chain for covered commodities is estimated at \$624 million for the first year, with subsequent maintenance costs of \$499 million per year.

Primary reasons for the increases in recordkeeping burden estimates:

- While firms and establishments have decreased, costs increased due to increases in the costs of labor (wage rates are higher based on more recent data).
- The addition of new covered commodities; chicken, goat meat, macadamia nuts, pecans, and ginseng.

Economic Impacts

The direct cost to retailers and their suppliers include the recordkeeping burden plus capital, labor, and other related costs to manage product flow at the producer, intermediary, and retailer levels.

Benefits: The expected benefits from implementation of this rule remain difficult to quantify. Available studies on the potential benefits of mandatory COOL suggest that benefits will likely be small. There is still little tangible evidence found to support that consumers’ stated preferences for COOL information will lead to increased demand for commodities bearing a U.S.-origin label. Comments and new studies were of the same type identified in the PRIA—namely, consumer surveys and willingness-to-pay studies.

Direct Costs: In the initial proposed rule, first-year implementation costs for directly impacted firms were estimated to range from \$582 to \$3,882 million.

Taking into account comments, it was concluded that costs would likely fall in the upper range of estimated costs. Therefore, only a single set of costs are developed for the new regulation. The first-year implementation costs for directly affected firms are now estimated at \$2,517 million. Compared to the upper range estimate of the proposed rule, this is a reduction in the estimated costs of \$1,365 million, even with the addition of 5 new covered commodities.

Costs per firm are estimated at \$376 for producers, \$53,948 for intermediaries, and \$235,551 for retailers. The new costs estimates per firm for producers and retailers are lower than the PRIA estimates due to lower estimated costs per unit. Costs for intermediaries are higher due to the lower number of affected firms.

Economy Costs: The estimated cost to the U.S. economy in higher food prices and reduced food production in the tenth year after implementation of the rule is \$211.9 million.

Under the earlier PRIA the upper range of these costs were estimated at \$596 million.

The primary reason for the lower economy wide costs are due to lowered estimated increases in operating costs for producers and the lower estimated increases in operating costs for intermediaries and retailers, especially for pork, fish, and fresh produce.