



January 14, 2009

Final Rule Issued for Country of Origin Labeling

On Monday January 12, 2009 USDA published its final rule for Country of Origin Labeling (C.O.O.L.) covering Fish and Shellfish, muscle cuts and ground product of Beef (including Veal), Lamb, Pork, Chicken, Goat; Perishable Agriculture Commodities, Macadamia Nuts, Pecans, Ginseng, and Peanuts.

While USDA issued this final rule in the remaining days of the Bush Administration many proponents of C.O.O.L. had advocated for USDA to delay issuing the final rule until the new administration has taken office. There is a good chance that some C.O.O.L. proponents, who favor a much stricter interpretation of the law, will pressure Congress or the Obama Administration to reverse some of the regulations spelled out in the final rule, particularly with respect to the labeling of muscle cuts of beef. These advocates favor a much stricter interpretation with regards to the labeling of "Product of U.S.A." for muscle cuts of beef. No legislation has been introduced thus far.

The information contained in this document is a SUMMARY OF CHANGES or CLARIFICATIONS issued by USDA in this final rule derived from previous interim final rules. It is by no means comprehensive of all requirements for C.O.O.L.

The final rule is effective on March 16, 2009.

Additional Resources:

Additional information and resources on C.O.O.L. can be found on N.G.A.'s website <http://www.nationalgrocers.org/COOL.html>

Summary of Changes & Clarification

Labeling of Imported Items:

The final rule deleted a provision allowing U.S. origin covered commodities to be further processed or handled in a foreign country and retain their U.S. origin. If allowed under existing Custom and Border Protection (CBP) and Food Safety and Inspection Service (FSIS) regulations, U.S. origin covered commodities may still be eligible to bear a U.S. origin declaration if they are processed in another country, and that a substantial transformation (as determined by CBP) does not occur.

C.O.O.L. Notification for Muscle Cuts:

USDA has tried to alleviate some of the concerns and confusion with regards to allowing U.S. origin products to be labeled with a mixed origin label.

1. For muscle cuts 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, the origin may be designated as “Product of the U.S., Country X, and (as applicable) Country Y”. *Example:* If an animal was born in Canada, but raised and slaughtered in the U.S. the designation would read “Product of U.S., Canada”.
2. For muscle cuts derived from animals that were born, raised, and slaughtered in the U.S. that are commingled during a production day with muscle cuts derived from animals that were raised and slaughtered in the U.S., and were not derived from animals imported for immediate slaughter, the origin may be designated, for example, as “Product of the U.S., Country X, and (as applicable) Country Y”. *Example:* If muscle cuts from cattle born, raised, and slaughtered in the U.S. are commingled with muscle cuts from cattle born in Canada, but raised and slaughtered in the U.S. the designation would read “Product of U.S. and Canada”.
3. For muscle cuts derived from animals that are born in Country X or Country Y, raised and slaughtered in the U.S., that are commingled during production with muscle cuts from animals that are imported into the U.S. for immediate slaughter, the origin may be designed as “Product of the U.S., Country X, and (as applicable) Country Y”. *Example:* If muscle cuts from cattle born in Mexico, raised and slaughtered in the U.S., are commingled with cuts from cattle born and raised in Canada, but imported for immediate slaughter the designation would read “Product of U.S., Mexico, and Canada”.

In all of the cases above, the countries of origin may be listed in any order.

Markings:

State, regional, or locality label designations for perishable agriculture commodities, peanuts, pecans, ginseng, and macadamia nuts, whether domestically harvested or imported, may be used using official United State Postal Service abbreviations or other abbreviations approved by Customs Border Protection (CBP) when conveying C.O.O.L. information at the point of sale. State marketing programs such as “California Grown”, “Go TEXAN”, “Jersey Fresh”, etc. may be used for C.O.O.L. notification purposes. *For Example* “Florida Naval Oranges”, “Louisiana Grown” or “GA Peanuts” are all acceptable. In contrast, “Rio Grande Valley” would NOT be acceptable because the consumer would not know whether the country of origin was U.S. or Mexico.

There are no restrictions on abbreviations used by suppliers or wholesalers in conveying country of origin information in records or documentary systems as long as the abbreviations can be understood by the recipient.

Exemptions, Exclusions & Processed Foods:

The exemption for food service establishments remains under the final rule meaning these facilities are exempt from C.O.O.L. Food service establishments include: restaurants, cafeterias, lunch rooms, food stands, saloons, taverns, bars, lounges, or other similar facilities. Similar facilities include salad bars, delicatessens, meal preparation stations in which the retailer sets out different ingredients for the consumer to assemble into meals to take home, other food enterprises located within retail establishments that provide ready-to-eat foods that are consumer on or outside of the premises.

Processed food items continue to be excluded from C.O.O.L. A processed food item is defined as: 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 (i.e. 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 would result in an exclusion from C.O.O.L. includes: frying, broiling, grilling, boiling, steaming, baking, roasting, curing, smoking, and restructuring (emulsifying and extruding).

Meat products that have been needle-tenderized or chemically tenderized using papain or other similar additive ARE NOT considered processed and would be subject to labeling. Likewise, meat products that have been injected with sodium phosphate or other similar solution are also subject to labeling. In contrast, meat products that have been marinated with a particular flavor (i.e. lemon pepper, Cajun, etc.) have been changed in character and thus are considered processed and NOT subject to labeling.

“Other Covered Commodity”---Commingle Fruits & Vegetables

The agency realized there was much confusion surrounding the determination of what is considered an “other covered commodity” with respect to fruits and vegetables.

USDA will rely on U.S. Grade Standards for fruits and vegetables to make the distinction of whether the combination of the covered commodity with other covered commodities results in an exclusion from C.O.O.L. labeling. *For example: There are two separate U.S. Grade Standards for iceberg lettuce and romaine lettuce, therefore a package containing romaine and iceberg lettuce WOULD NOT be subject to C.O.O.L. In contrast, a package containing 3 different colored sweet peppers WOULD be subject to labeling as there is one U.S. Grade Standard for sweet peppers, regardless of the color.*

One exception occurs when there are different grade standards for the same commodity based on region of production. *As an example, there are different grade standards for Florida, Texas, and California/Arizona oranges, but combining oranges from these different regions WOULD NOT be considered “other covered commodities” and therefore WOULD still be subject to labeling.*

Recordkeeping:

Under the final rule record keeping requirements for fish and shellfish were amended to align with those required for other covered commodities (muscle and ground cuts of beef, pork, veal, chicken, lamb, goat; perishable agriculture commodities; peanuts; pecans; ginseng; & macadamia nuts.

Recordkeeping Requirements for Retailers:

Retailers, wholesalers/suppliers must maintain for a period of 1 year records used in the normal course of business (i.e. invoices, bill of lading) used to determine the country of origin, method of production and / or wild/fresh caught (for seafood). Records can be maintained either onsite or offsite (electronically or in hardcopy) and must be made available to a USDA authorized inspector within 5 businesses days of the request.

Recordkeeping for Wholesalers:

Wholesalers must keep records for one year from the date of the transaction identifying the immediate previous source (if applicable) and immediate subsequent recipient of a covered commodity.