



THE CENTER FOR FOOD SAFETY

September 30, 2008

Country of Origin Labeling Program, Room 2607-S
Agricultural Marketing Service (AMS), USDA; STOP 0254
1400 Independence Avenue, SW.
Washington, DC 20250-0254

Re: [Docket No. AMS-LS-07-0081]

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

The Center for Food Safety (CFS) welcomes the opportunity to comment on USDA's interim final rule for mandatory Country of Origin Labeling (COOL) of beef, pork, lamb, chicken, goat meat, perishable agricultural commodities, peanuts, pecans, ginseng, and macadamia nuts (Docket No. AMS-LS-07-0081).

CFS fully supports Country of Origin Labeling; however, we remain deeply concerned about exemptions for certain retailers, processed foods, and mixed (or “commingled”) foods in the proposed labeling requirements. We believe that COOL should be implemented as broadly as possible to best inform the public in the marketplace—wherever they may shop or dine. Although we agree that COOL will offer the public much-needed point-of-purchase information, several loopholes exist which may mislead the public on the origins of their food, or simply leave them uninformed; neither of which suit the intent of COOL.

Specifically, CFS is concerned about the exemptions of the following:

Retailers: 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.*). 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.

Therefore, retail establishments, such as butcher shops, which do not generally sell fruits and vegetables, do not meet the PACA definition of a retailer and therefore are not subject to this rule.

Unfortunately, this definition of retailer does not conform to what the average person thinks of as a retailer. It completely excludes stores that do not sell fruits and vegetables, such as large meat markets, butcher shops, or deli's, even though meat and chicken are covered under the interim final rule. It also excludes 92 percent of small food retailers, according to the Agricultural Marketing Service (AMS). AMS estimates that 53 percent of United States food sales are sold by retailers not subject to the rule, or sold as food away from home.

AMS acknowledges that USDA data indicate that there are 4,040 retail firms as defined by PACA that would thus be subject to the rule. Most small food store firms have been excluded from mandatory COOL based upon the narrow PACA definition of a retailer:

The 2002 Economic Census data provide information on the number of food store firms by sales categories. Of the 42,318 food stores, warehouse club, and superstore firms, an estimated 41,629 firms had annual sales meeting the SBA definition of a small firm plus 689 other firms that would be classified as above the \$25 million threshold. USDA assumes, however, that all or nearly all of the 689 large firms would meet the definition of a PACA retailer because most of these larger food retailers likely would handle fresh and frozen fruits and vegetables with an invoice value of at least \$230,000 annually. Thus, an estimated 83 percent (3,351 out of 4,040) of the retailers subject to the rule are small. However, this is only 8.0 percent of the estimated total number of small food store retailers. In other words, an estimated 92.0 percent of small food store retailers would not be subject to the requirements of the rule.

Additionally, food service establishments are specifically exempted, despite the fact that Americans spend at least 44% of their food dollars in such food service establishments (Bureau of Labor Statistics, *Consumer Expenditure Survey*, 2005). The broad definition of food service establishments appears to also leave a wide gap in information regarding whether in-store deli, meat counters, and prepared food operations would be exempt from COOL:

Food service establishments are restaurants, cafeterias, lunch rooms, food stands, saloons, taverns, bars, lounges, or other similar facilities operated as an enterprise engaged in the business of selling food to the public. Similar food service facilities include salad bars, delicatessens, meal preparation stations in which the retailer sets out ingredients for different meals and consumers assemble the ingredients into meals to take home, 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.

COOL will have little meaningful impact on food decision-making if so few food purveyors are actually required to participate. Therefore, CFS strongly recommends that AMS take steps to limit such exemptions and expand the narrow scope of the rule so that the public can make informed food buying choices at those establishments where they routinely shop, as per the intent of the law.

Processed Food Items: CFS objects to exemptions for the specified processed foods. AMS should redefine "processed food item" to make clear that cooking, canning, breading, curing, and smoking are not considered forms of processing.

The rule currently states that:

A processed food item is 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: Meatloaf, meatballs, fabricated steak, breaded veal cutlets, corned beef, sausage, breaded chicken tenders, and teriyaki flavored pork loin.

We believe it is correct to say that the addition of water, sugar, or salt represents a further step in the preparation of a product for consumption and that their addition does not create a new processed food. However, to then assert that cooking a product such as beef, ground meat, goat meat, chicken, or pork makes it a processed food product is inconsistent and misleading. “Cooking” represents nothing more than the “further preparation for consumption,” akin to peeling shrimp or shucking corn.

Additionally, AMS goes on to recognize that:

With respect to the recommendation to recognize that perishable agricultural commodities that retailers prepare and package for consumers’ immediate consumption should be considered processed food items, many of these preparations must be done prior to a product being ready for consumption. For example, a consumer would not eat a pineapple that wasn’t peeled, cored, and sliced and/or chopped. Such processing thus does not change the character of the product but rather prepares it for consumption. This is similar to the process of peeling shrimp. A consumer would not eat shrimp prior to it being peeled and accordingly, peeling shrimp is not considered a processing step under the interim final rule for fish and shellfish.

Similar logic would dictate that since the vast majority of consumers would not eat raw chicken (nor raw pork, goat meat, ground meats, lamb, or beef), cooked chicken and meat products should not be exempt from COOL simply by virtue of their being cooked. Cooking is obviously a necessary step that prepares these products for consumption and does not create a new processed food product.

Under the proposed rule, items that were cooked would have been required to be labeled. We agree with the initial proposed rule here, and ask that AMS withdraw the exemption for covered commodities that are cooked.

Additionally, AMS rightfully does not consider freezing as something that would result in a processed food exemption, stating that freezing is “clearly a form of preservation.” We agree with AMS, and further note that curing, canning, and smoking are also forms of preservation, and should not be considered exempt from COOL. Adding non-covered commodities such as breading or sauce to a covered commodity such as chicken or pork should likewise not exempt the original covered commodity from COOL.

Commingled Covered Commodities as Processed Food Products: CFS strongly disagrees with the addition of “mixed” food items (commingled) in the exclusion for processed foods. In a time when more and more food products are geared towards consumer convenience—bagged salad mixes with dressing packets, pre-cooked or marinated meats and poultry, mixed fruits and vegetables (both fresh and frozen)—it is simply irresponsible to leave such commonplace products out of COOL requirements.

AMS lists the following examples of foods not covered by COOL:

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, would all be exempt from COOL.

The mere addition of a dressing packet, which would not be covered under COOL, should not exempt what is otherwise just a bag of lettuce from requiring the country of origin label. Likewise, the addition of carrots to a bag of lettuce, or peas, should not negate COOL labeling.

In the wake of recent food contamination scandals and outbreaks of food-borne illness, it stands to reason that COOL on single, as well as mixed, covered commodities would assist the public in making purchasing decisions they feel safer about. If COOL had been in place during the salmonella outbreak attributed to jalapeño peppers from Mexico, for example, consumers would have been able to identify and avoid purchasing the whole peppers. Yet, FDA also cautioned consumers against purchasing fresh salsa containing jalapeños, which according to AMS would be a processed food product exempt from COOL. While AMS clearly wants to protect industry from the costs associated with a new label, we believe COOL labeling in this type of situation would protect them much more by giving the public the information they need to purchase those products confidently. If no salsa ingredients are labeled with respect to country of origin, all manufacturers and retailers of salsa could face severe losses in sales because they lack the label to establish that their peppers do not come from an affected area.

Instead of needlessly excluding such “commingled” products, CFS supports the language in the interim final rule for fish and shellfish, which states “the declaration shall indicate the countries of origin contained therein or that may [reasonably] be contained therein.”

We appreciate the opportunity to submit our comments on this interim final rule, and we hope that AMS will consider our concerns seriously. We urge AMS to take action to remedy the loopholes and undue exemptions contained in the rule, and to adhere to the original intent of COOL.

The Center for Food Safety (CFS) is a national, non-profit, membership organization founded in 1997 to protect human health and the environment by curbing the use of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. CFS represents approximately 67,000 members.