



CRS Report for Congress

Country-of-Origin Labeling for Foods

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Summary

The 2002 farm bill (§10816 of P.L. 107-171) required retailers to provide country-of-origin labeling for fresh produce, red meats, peanuts, and seafood by September 30, 2004. Congress twice postponed implementation for all but seafood; COOL now must be implemented by September 30, 2008. In the 110th Congress, a new omnibus farm bill (H.R. 2419) would maintain this date but modify some labeling and record-keeping requirements, as well as extend the law to several additional commodities. Elsewhere, some lawmakers have proposed new COOL requirements for other foods and food ingredients, as part of a proposed overhaul of the Federal Food, Drug, and Cosmetic Act.

Background

Tariff Act Provisions. Under §304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), every imported item must be conspicuously and indelibly marked in English to indicate to the “ultimate purchaser” its country of origin. The U.S. Customs Service generally defines the “ultimate purchaser” as the last U.S. person who will receive the article in the form in which it was imported. So, articles arriving at the U.S. border in retail-ready packages — including food products, such as a can of Danish ham, or a bottle of Italian olive oil — must carry such a mark. However, if the article is destined for a U.S. processor where it will undergo “substantial transformation” (as determined by Customs), then that processor or manufacturer is considered the ultimate purchaser.

The law authorizes exceptions to labeling requirements, such as for articles incapable of being marked or where the cost would be “economically prohibitive.” One important set of exceptions has been the “J List,” so named for §1304(a)(3)(J) of the statute, which empowered the Secretary of the Treasury to exempt classes of items that were “imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin.”

Among the items placed on the J List were specified agricultural products including “natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.” (See 19 C.F.R. 134.33.) Although

J List items themselves have been exempt from the labeling requirements, §304 of the 1930 Act has required that their “immediate containers” have country-of-origin labels. For example, when Mexican tomatoes or Chilean grapes are sold loosely from a store bin, country labeling has not been required.

Meat and Poultry Inspection Provisions. USDA’s Food Safety and Inspection Service (FSIS) is responsible for ensuring the safety and proper labeling of most meat and poultry products, including imports, under the Federal Meat Inspection Act as amended (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq.*). Regulations issued under these laws have required that the country of origin appear in English on the immediate containers of all meat and poultry products entering the United States (9 C.F.R. 327.14 and 9 C.F.R. 381.205, respectively). Only plants in countries certified by USDA to have inspection systems equivalent to those of the United States are eligible to export products to the United States.

All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry destined for U.S. plants for further processing, also have had to bear country-of-origin marks. However, once these non-retail items have entered the country the federal meat inspection law deemed them to be domestic products. When they are further processed in a domestic, USDA-inspected meat or poultry establishment — which has been considered the ultimate purchaser for purposes of country-of-origin labeling — USDA no longer required such labeling on either the new product or its container. USDA considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.

Although country-of-origin labeling has not been *required* by USDA after an import leaves the U.S. processing plant, the Department (which must *preapprove all* meat labels) has the discretion to *permit* labels to cite the country of origin, including U.S. origin, if the processor requests it.

Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules but also with Tariff Act labeling regulations. Because Customs generally requires that imports undergo more extensive changes (i.e., “substantial transformation”) than required by USDA to avoid the need for labeling, a potential for conflict has existed between the two requirements, Administration officials acknowledge.

Requirements of the 2002 Farm Bill, As Amended

The last omnibus farm bill, the Farm Security and Rural Investment Act of 2002 (§10816 of P.L. 107-171), has language requiring retail-level COOL for fresh produce, red meats, peanuts, and seafood. Specifically, the language amended the Agricultural Marketing Act of 1946 to:

- Cover ground and muscle cuts of beef, lamb and pork, farm-raised and wild fish and shellfish, peanuts, and “perishable agricultural commodities” as defined by the Perishable Agricultural Commodities Act (PACA), (i.e., fresh and fresh frozen fruits and vegetables);

- Exempt these products if they are ingredients of processed foods, generally as defined by USDA — for example, USDA proposed that cooked roast beef be labeled but not bacon, and that canned roasted and salted peanuts be labeled but not mixed nuts;
- Require PACA-regulated retailers (those selling at least \$230,000 a year in fresh fruits and vegetables) to inform consumers of origin “by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers”;
- Exempt “food service establishments” such as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public.

The 2002 bill required USDA to issue mandatory labeling rules by September 30, 2004. USDA’s Agricultural Marketing Service (AMS) published a proposed rule on October 30, 2003; a final rule has not been published, because Congress has twice postponed full implementation. The FY2004 omnibus appropriation (P.L. 108-199) delayed mandatory COOL for all covered commodities, except farmed seafood and wild seafood, until September 30, 2006. The FY2006 USDA appropriation (P.L. 109-97) postponed the date for two more years, until September 30, 2008.¹

Requirements of the 2007-2008 Farm Bill

In 2007, both the House and Senate passed versions of a new omnibus farm bill (H.R. 2419) which include similar COOL provisions. The bill would retain the September 30, 2008, implementation date but also alter some requirements in order to make it easier for affected industries to comply with mandatory COOL. These provisions generally were incorporated into a compromise farm bill announced by House-Senate conferees on May 8, 2009. The compromise version would newly subject goat meat, chicken, pecans, macadamia nuts, and ginseng to mandatory COOL.

The conference bill (in §11002) would continue to limit use of the U.S.A. country of origin for the covered red meats only to items from animals that were exclusively born, raised, or slaughtered in the United States, with a narrow exception for those animals present here before July 15, 2008. For multiple countries of origin, retailers may designate such meat products as being from all of the countries in which the animals may have been born, raised, or slaughtered. For meat from animals imported for immediate slaughter, the retailer must cite both the exporting country and the United States. Products from animals not born, raised, or slaughtered in the United States must designate the country of origin. Ground meat products shall include a list of all countries of origin, or all “reasonably possible” countries of origin. Other key provisions would ease industry record-keeping requirements for audit verification purposes and lower the penalties for failure to comply with COOL, but extend their application to suppliers as well as retailers.

¹ The agency did publish an interim final rule on seafood on October 5, 2004, which took effect April 4, 2005 (69 *Federal Register* 59708-59750). AMS maintains an extensive website on COOL, with links to the voluntary guidelines, the seafood rule, the proposed mandatory rule, and a cost-benefit analysis, at [<http://www.ams.usda.gov/cool/>].

These changes in the 2007-2008 farm bill have created uncertainty among regulators and the regulated industries about what the final requirements will be. For example, AMS did not meet the first of several COOL deadlines in report language accompanying the Consolidated Appropriations Act, 2008 (P.L. 110-161). This language laid out a rulemaking schedule leading to implementation by September 30, 2008, and recommended \$2 million for AMS for COOL activity.

Food and Drug Globalization Act of 2008 (Dingell Draft)²

A draft food and drug safety bill being circulated by the chairman of the House Energy and Commerce Committee would establish a new COOL program, presumably focusing on foods regulated under the Federal Food, Drug, and Cosmetic Act (FFDCA) by the U.S. Food and Drug Administration (FDA). As of mid-May 2008, the bill had not been formally introduced or marked up in committee.

Currently, the FFDCA (at 21 U.S.C. §§ 301 *et seq.*) does not contain express country-of-origin labeling requirements for foods or drugs. It addresses origin to some extent, however, in its provisions delineating what will constitute misbranding. Thus, § 403(e) provides that a food in package form will be deemed to be misbranded unless it bears a label containing the name and place of business of the manufacturer, packer, or distributor.

Section 133(a) of the Dingell draft would add a new section (z) to §403 of the Federal Food Drug and Cosmetic Act (FFDCA), which lists acts of misbranding for foods. New section (z) would provide that a “processed food” will be considered misbranded if “(1) the labeling of the food fails to identify the country in which the final processing of the food occurs; and (2) the website for the manufacturer of the food fails to identify the country (or countries) of origin for each ingredient in the food.” Section 133(a) would also add a new section (aa) to § 403 to provide that a “non-processed food” will be considered to be misbranded if “(1) the labeling of the food fails to identify the country of origin of the food; and (2) the website for the original packer of the food fails to identify the country of origin for the food.”

The term “food” is currently defined in § 201 of the FFDCA as “(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.” The term “processed food” is currently defined as “any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, or milling.” The term “raw agricultural commodity” is currently defined as “any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.”³ The “non-processed food” is not defined in the proposed legislation. Final regulations to implement the new FFDCA provisions would need to be promulgated no later than 180 days after the date of enactment (proposed § 133(b)); the requirements in new §§ 403(z) and (aa) would themselves take effect two years after the date of enactment (proposed § 133(c)).

² This section is taken, with some revisions, from material prepared by Jeanne Grimmer, Legislative Attorney in the CRS American Law Division.

³ FFDCA, § 201(r), 21 U.S.C. § 321(r).

Selected Issues

Industry Costs and Benefits. Some contend that U.S. consumers, if offered a clear choice, would choose fresh foods of domestic origin, strengthening demand and prices for them. COOL supporters argue that a number of studies show that consumers want such labeling and would pay extra for it. Analysis accompanying USDA's October 2003 proposed rule found "little evidence that consumers are willing to pay a price premium" for such information. A Colorado State University economist suggests that consumers might be willing to pay a premium for "COOL meat" from the United States, but only if they perceive U.S. meat to be safer and of higher quality than foreign meat.⁴ USDA estimated that purchases of (demand for) covered commodities would have to increase by between 1% and 5% for benefits to cover COOL costs, but added that such increases were not anticipated. Data from several economic modeling studies of COOL impacts appear to fall within this range.⁵

Critics of mandatory COOL argue that huge compliance costs would more than offset any consumer benefits. USDA estimated that total first-year implementation costs for all affected industries could range from \$582 million to \$3.9 billion, of which \$582 million might be for recordkeeping and related costs. Some COOL supporters counter that USDA wrote overly complicated implementation proposals, and relied heavily upon critics' cost estimates in grossly exaggerating costs, because it is opposed to the program.

Consumer Choice and Food Safety. Proponents of mandatory COOL argue that U.S. consumers have a right to know the origin of their food, particularly during a period when food imports are increasing, or when particular health and safety problems arise. Others counter that COOL does not increase public health by telling consumers which foods are safer than others. Safety problems can as likely originate in domestic supplies as in imports, which already must meet equivalent U.S. safety standards.⁶

Recordkeeping and Verification. The 2002 law prohibited USDA from using a mandatory identification (ID) system, but at the same time stated that the Secretary "may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance..." Under USDA's proposed mandatory rule, upon request, affected retailers and suppliers must make available "records and other documentary evidence that will permit substantiation of an origin claim" at a reasonable time and place. Suppliers "must make available information to the buyer about the country of origin;" and those who initiate an origin declaration (e.g., a meat packer or produce packer) "must possess or have legal access to records that substantiate that

⁴ Wendy J. Umberger, "Will Consumers Pay a Premium for Country-of-Origin Labeled Meat?" *Choices*, 4th quarter 2004, published online at [<http://www.choicesmagazine.org>].

⁵ Gary W. Brewster et al., "Who Will Bear the Costs of Country-of-Origin Labeling?" and Daniel D. Hanselka et al., "Demand Shifts in Beef Associated with Country-of-Origin Labeling to Minimize Losses in Social Welfare," both in *Choices*. Brewster argues that the "poultry industry is the only unequivocal winner" because it is not subject to the COOL law.

⁶ See also CRS Report RL34198, *U.S. Food and Agricultural Imports: Safeguards and Selected Issues*, by Geoffrey S. Becker.

claim,” the proposed rule states. Suppliers must maintain records for two years that identify the immediate previous source and subsequent recipient of a covered commodity, the proposed rule states. Retailers would have similar responsibilities. The law subjected retailers to \$10,000 fines for willful violations, although the proposed rule would not hold violators liable if they could not reasonably have known that a previous supplier had provided false information.

Verification has been controversial, in part because of the potential complications and costs to affected industries of tracking animals (or plants) from birth (harvest) through retail sale. Producers and processors say they may have to segregate these relatively fungible commodities if from different sources. Failure to maintain acceptable records could result in the product being forced off retail markets and into either export or restaurant outlets. Program proponents do not agree that record-keeping difficulties will be as difficult as critics contend. Modern production methods already incorporate many aspects of animal tracking for purposes of improved nutrition, animal health, and quality control, providing opportunities for rules that are minimally burdensome.⁷ As noted above, the 2007-2008 farm bill contains provisions aimed at addressing concerns about recordkeeping and verification.

Defining “Origin”. To claim a product is entirely of U.S. origin, the 2002 law set forth criteria that must be met: for beef, lamb, and pork, and for farm-raised fish and shellfish, the product must be derived exclusively from animals born (for fish and shellfish, hatched), raised, and slaughtered (processed) in the United States; wild fish and shellfish must be derived exclusively from those either harvested in U.S. waters or by a U.S. flagged vessel, and processed in the United States or on a U.S. vessel (wild and farm-raised seafood must be differentiated); fresh and frozen fruits and vegetables and peanuts must be exclusively from products grown, packed, and if applicable, processed in the United States. Difficulties arise when products — particularly meats — are produced in multiple countries. For example, beef may be from an animal that was born in the United States, fed and slaughtered in Canada, and its meat reimported for processing — now more common, as the two countries become more dependent on each’s economic strengths in those production phases. Likewise, products from several different countries often are mixed, such as ground beef. The 2007-2008 farm bill changes are intended to address such concerns.

Trade. Supporters of the COOL law argue that it is unfair to exempt meats and produce from country labeling requirements when almost all other imported consumer products, from automobiles to most other foods, must comply. They note that many foreign countries already impose their own country-of-origin labeling, at retail and/or import sites, for various perishable commodities. Critics counter that COOL is a thinly disguised trade barrier intended to increase importers’ costs and to foster the unfounded perception that imports may be inherently less safe (or of lower quality) than U.S. products. Mandatory COOL undermines U.S. efforts to break down other countries’ trade barriers and to expand international markets for U.S. products, critics contend.

⁷ See CRS Report RS22653, *Animal Identification: Overview and Issues*, by Geoffrey S. Becker.