



655 15th Street, N.W.
Washington, DC 20005-5701
Tel: (202) 452-8444
Fax: (202) 429-4519
E-mail: fmi@fmi.org
Website: www.fmi.org

Country of Origin Labeling

Proposed Regulatory Provisions Relevant to Seafood¹

Covered Fish Products

“Fish”:
Fillets, steaks, nuggets and any other flesh from farm-raised or wild fish or shellfish.

Exempt: Processed Fish Products

Statute: “An ingredient in a processed food item.”

Proposal: See Appendix A.

Exempt: Food Service

Statute: Covered commodities need not bear country of origin (CoO) or method production (MoP) information if they are prepared and served to consumers at food service establishments in normal retail quantities or served to consumers at food service establishments.

Proposal: “Food service” includes salad bars, delis 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. (7 CFR 60.109)

Country of Origin Declaration

U.S. “Hatched, raised, harvested and processed in US” [farm]
Harvested and processed in waters of US or by US-flagged vessel
AND processed in US waters or aboard US-flagged vessel [wild]

¹ 68 FR 61944 (Oct. 30, 2003).

For purposes of fish, “processed” means substantially transformed as defined by CBP rules of origin. 68 FR 61949

Non-U.S.:	Defer to current CBP Rules of Origin, looking to place of substantial transformation.		
"Mixed":	<u>Hatched, Raised and/or Harvested</u>	<u>Processed</u>	<u>Declaration</u>
	US	Country X	"Product of country X or "Product of x; Hatched, Raised and/or Harvested in US"
	Country X	US	"Imported from Country x, processed in US"

Method of Production Declaration

Statute:

- “Farm”:
- “Wild”:

Proposal:

- “Farm”:
- “Wild”:

Store Level Implementation

- Statute:
- Proposal:

Typed, printed, or handwritten; English

Mixed bulk displays, if individually labeled.

Retailer Records

Proposal: General (7 CFR 60.400(a))

“Various forms of records will be acceptable provided *the chain of custody* of the covered commodity can be determined and the origin claims and, if applicable, designations of wild or farm-raised, *substantiated*.” 7 CFR 60.400(a)(1).

Legible and English; electronic or hard copy.

Records must be provided in a “timely manner during normal hours of business and at a location that is reasonable in consideration of the products and firm under review.”

Store Level (7 CFR 60.400(c)(1))

Records relied upon at point of sale to establish CoO and MoP must be maintained or reasonably available at PoS. Example: shipping receipt from central warehouse.

At least 7 days following retail sale of product.

Corporate (7 CFR 60.400(c)(2))

Identify (1) retail supplier; (2) *product unique to transaction*; and (3) CoO/MoP.

Two years from “date the origin declaration was made at retail.”

May be kept off-site.

Preamble: Should suppliers also provide *affidavit* for each transaction to the immediate subsequent recipient certifying CoO and MoP are truthful and that the required records are being maintained? 68 FR 61951.

Suppliers handling similar covered commodities must document segregation. 68 FR 61951.

Enforcement and Penalties

Statute: If USDA determines retailer not in compliance: notice + 30 days to comply.

If USDA then determines that retailer has willfully violated the Act: penalty of up to \$10,000 per violation.

Partner with states with enforcement infrastructure.

Proposal: “Any retailer handling a covered commodity that is found to be mislabeled for country of origin shall not be held liable for a violation of the Act by reason of the conduct of another if the retailer could not have been reasonably expected to have had knowledge of the violation from the information provided by the supplier.” (7 CFR 60.400(c)(3)).

Acts of agents will be deemed acts of persons subject to the law. (7 CFR 60.400(c)(4)).

Preamble: USDA will consider circumstances, such as adhesion rates and consumer patterns (such as separating hands of bananas) in determining whether retailer has willfully violated the Act. 68 FR 61952.

Routine compliance at retailers and suppliers subject to rules, plus complaint investigation.

Only USDA will initiate enforcement actions.

Specific comment is requested on “implications of statutory mandate for retail labeling beginning September 30, 2004, relative to the amount of lead time necessary for firms in the supply chain to comply with this rule.” 68 FR 61952.

Appendix A

To Label or Not to Label ...

The mandatory COL law requires retailers to inform consumers of the country of origin (and method of production for seafood) of all "covered commodities" identified in the statutes, unless the covered commodity is "an ingredient in a processed food item." The statute does not define "processed food item," so that task has been left to USDA. In the proposed regulations, USDA proposes the following definition:

Processed food item means:

- (a) a retail item derived from a covered commodity that has undergone a physical or chemical change, and has a character that is different from that of a covered commodity; or
- (b) a retail item derived from a covered commodity that has been combined with: other covered commodities; or other substantive food components (*e.g.*, chocolate, stuffing), resulting in a distinct retail item that is no longer marketed as a covered commodity, provided that the addition of components that enhance or represent further steps in the preparation of the product for consumption, such as water, seasonings, sugars, breading would not in itself exclude a covered commodity from labeling under this subpart.

NB: This standard may very well change in the final regulations.

The proposed definition has led to many questions from members regarding those food items that are "in" the scope of the statute and therefore require labeling and those that are "out." The following chart reflects USDA's application of the proposed standard to various food products. Although only the seafood items are of immediate relevance, the agency's application of the proposed standard to other foods may help with respect to seafood items not otherwise included in the preamble.

In (Need Labeling)	Out (No Labeling)
"Fish and shellfish whether chilled, frozen, raw, cooked, breaded or canned"	Fish stick
Needle-tenderized steaks	Smoked or cured salmon
Fully cooked beef pot roast and gravy	Surimi
Seasoned, vacuum packed pork loins	Stuffed salmon
Water-enhanced case ready steaks	Seafood medley
Ground beef, pork, lamb	Orange juice
Frozen strawberries	Ham
Frozen french fried potatoes	Peanut butter
Shelled, roasted, salted or flavored peanuts	Salad mix (lettuce and tomatoes)
	Candy bar with peanuts
	Stuffed pork chop
	Restructured steaks

	Corned beef briskets
	Bacon
	Beef and lamb shish kabob
	Cooked fruits or vegetables*
	Canned fruits or vegetables*
	Apple sauce
	Apple pie
	Fruit cup
	Frozen strawberries and blueberries
	Vegetable tray with carrots and celery

* The mandatory COL statute refers to the Perishable Agricultural Commodity Act (PACA) definition of "perishable agricultural commodity." PACA defines this term to be fresh or frozen fruits and vegetables of every kind or character; it does not include cooked or canned fruits or vegetables. Therefore, these latter need not bear country of origin labeling because they are not "covered commodities" within the meaning of the COL statute at all; whether they might also be considered "processed" is irrelevant.