

commodity must be derived from an animal that was exclusively born, raised, and slaughtered in the United States. In the case of beef, this definition also includes cattle exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States. In the case of farm-raised fish and shellfish, the covered commodity must be derived from fish or shellfish hatched, raised, harvested, and processed in the United States. In the case of wild fish and shellfish, the covered commodity must be derived from fish or shellfish harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the law also requires the country of origin declaration to distinguish between wild and farm-raised fish and shellfish. In the case of perishable agricultural commodities and peanuts, the products must be produced in the United States.

To convey the country of origin information, the law states that retailers may use 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. Food service establishments, such as restaurants, cafeterias, food stands, and other similar facilities are exempt from these labeling requirements.

The law makes reference to the definition of "retailer" in PACA as the meaning of "retailer" for the application of the labeling requirements under the COOL law. Under PACA, a retailer is any person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail when the invoice cost of all purchases of produce exceeds \$230,000 during a calendar year. This definition excludes butcher shops, fish markets, and small grocery stores that either sell fruits and vegetables at a level below this dollar volume threshold or do not sell any fruits and vegetables at all.

The law requires any person engaged in the business of supplying a covered commodity to a retailer to provide the retailer with the product's country of origin information. In addition, the law states the Secretary of Agriculture (Secretary) may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail. The law prohibits the Secretary from using a mandatory identification system to verify the country of origin of a covered

commodity and provides examples of existing certification programs that may be used to certify the country of origin of a covered commodity. The law contains enforcement provisions for both retailers and suppliers that include civil penalties of up to \$10,000 for each violation. The law also encourages the Secretary to enter into partnerships with States with enforcement infrastructure to the extent possible to assist in the program's administration.

Key Components of the Law

Defining Covered Commodities

The law defines the term "covered commodity" as: Muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities; and peanuts.

Exclusion for Ingredient in a Processed Food Item

The law excludes items from needing to bear a country of origin declaration when a covered commodity is an "ingredient in a processed food item." However, Public Law 107-171 does not define a "processed food item." Therefore, AMS must define what constitutes a "processed food item" for each covered commodity in the context of Public Law 107-171 for the purposes of this proposed regulation.

In defining "processed food item" in the voluntary guidelines (67 FR 63367), AMS recognized that the term "processed" has been previously defined in other regulations promulgated by AMS, such as those issued in conjunction with the National Organic Program. AMS also stated that it did not believe that these definitions were suitable for use in the COOL program because using such a broad definition would exempt commodities that Congress clearly intended to be governed under this law.

AMS received numerous comments relating to the definition of a "processed food item." Many commenters suggested that the definition of processed food item published in the voluntary guidelines (67 FR 63367) resulted in significantly reducing the number of food items Congress intended to be covered by the Act. These commenters contend, for example, that a roast remains a muscle cut of beef even if cooked, salted, or flavored.

Conversely, many other commenters suggested that the definition published in the voluntary guidelines (67 FR 63367) was too narrow and resulted in the inclusion of products that Congress did not intend to be covered by the Act.

These commenters contend that any item bearing an ingredient statement should not be required to be labeled under COOL.

As this is a retail labeling law, to help guide AMS in determining how to define a "processed food item," AMS viewed the scope of covered commodities in the context of how these products are marketed at the retail level. For example, most peanuts sold at retail are shelled and roasted. To interpret the law as only applying to green peanuts would result in the exclusion of most peanuts sold at retail. Similarly, to exclude canned fish would result in the exclusion of a large share of the fish products sold at retail.

To address the concerns raised by the commenters, AMS has chosen to define a "processed food item" utilizing a 2-step approach. First, a retail item derived from a covered commodity that has undergone a physical or chemical change, causing the character to be different from that of the covered commodity is deemed to be a processed food item. Examples include oranges that have been squeezed and made into orange juice, a fresh leg of pork that has been cured and made into a ham, peanuts that have been ground and made into peanut butter, or flesh of a fish that has been restructured and made into a fish stick. These retail items have undergone a physical or chemical change such that they no longer retain the characteristics of the covered commodity and thus consumers would not use the items in the same manner as they would the covered commodities. Second, a retail item derived from a covered commodity that has been combined with either (1) other covered commodities, or (2) other substantive food components (e.g., chocolate, stuffing) resulting in a distinct retail item that is no longer marketed as a covered commodity. Examples include a salad mix that contains lettuce and tomatoes, peanuts in a candy bar, a stuffed pork chop, or seafood medley.

Alternatively, some commenters suggested that a processed food item could be defined as to exclude any product that bears an ingredient statement. These commenters contend that this would establish a bright line standard that would enable companies throughout the marketing chain to readily determine whether the commodities they produce or sell would be covered commodities. Utilizing such a definition would result in the exclusion of many products, including those products in which the ingredient statement lists only the commodity itself. Accordingly, AMS invites further