

GUIDANCE TO INDUSTRY:

COUNTRY OF ORIGIN LABELING OF PACKED HONEY

The National Honey Board has been asked to provide guidance to the industry regarding best practices for denoting Country of Origin Labeling (COOL) on Packed Honey. This guide provides a summary of the law and regulations concerning as well as examples of labeling that complies with the spirit and intent of Federal requirements.

INTRODUCTION

Identification of the country of origin (COO) on consumer products is not a new requirement. The United States (U.S.) government has required country of origin labels on many products dating back to the 1930's. The Tariff Act of 1930 has historically required nearly every item imported into the U.S. to disclose the item's country of origin to the "ultimate purchaser," unless the item met one of the specified exemptions under the law. In this guidance, we outline the laws and regulations applicable to COO labeling for packaged honey.

LAWS & REGULATIONS EXAMINED

The Tariff Act of 1930 Customs Border Protection (CBP)¹

- Every article of foreign origin imported into the U.S. shall be marked in a conspicuous place.
- The marking should be in such a manner to indicate the COO to the ultimate purchaser in the U.S.
- The marking should be in the English name of the country of origin.
- The ultimate purchaser is the last person in the U.S. that will receive the product in the form in which it was imported.
- When referring to the processing and packing of honey the consumer or the company receiving bulk honey would be the ultimate purchaser.

CBP 1984 Ruling for Retail-Packed Honey²

- Customs issued its first and only ruling that broadly addresses how a domestic packer can generally comply with COO Marking law for imported honey.
- Clarified the term "substantial transformation" and noted that the act of processing and packing honey does not amount to "substantial transformation" of honey and therefore does not change the form in which it was imported.
- Given lack of transformation, any imported honey packed by a domestic packer is required to inform the consumer on the containers label which country (or countries) of origin are in that bottle.
- Customs requires disclosure of the foreign countries of origin.
- The C.F.R. § 134.46 regulations state: In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there

¹ 19 U.S.C. §§ 1202-1681b <https://www.law.cornell.edu/uscode/text/19/1304>

² Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) [https://uscode.house.gov/view.xhtml?req=\(title:19%20section:1304%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:19%20section:1304%20edition:prelim))

CBP 1983 Ruling for Retail-Packed Honey (cont'd)

shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

- Packers may not use a "simple marking such as "a Blend of Domestic and Foreign honeys." In lieu of COO marking or otherwise include the U.S. on the label in a manner that expressly or impliedly conveys that the honey meets the "Product of the USA" standard.

Farm Bill 2008³

- This law brought forth by the Agricultural Marketing Service (AMS) made it a violation, subject to debarment, to fail to provide a COO marking where the packaging bears any official grade, mark, or statement of quality.
- The debarment penalty would not apply to a failure to COO mark ungraded honey. Previous marking rules and any penalties set forth in other statutes would still apply.
- AMS agrees with the 1984 ruling by CBP requiring "every article of foreign origin or its container" to be "legibly, permanently and conspicuously marked to indicate the country of origin", and that the CBP ruling is in no way invalidated or superseded by the additional marking requirements required by the 2008 Farm Bill.
- This statement means all imported honey must be marked with country origin as set out in other rulings.
- Prohibits the use of any USDA grade or mark (ex. "Grade A" or "USDA Organic") unless adjacent to the mark or statement is the 1 or more names of the 1 or more countries of the lot or container of honey, preceded by the words "Product of" or other words of similar meaning.
- All imported packed honey must list all COO sources regardless of whether the USDA grade or mark is used.

Agricultural Marketing Services (AMS) - Federal Register 7/6/18⁴

- On 8/8/16 all major organizations asked for clarification on whether COOL must be included on packed honey.
- Confirmed the Farm Bill's language that "All packed honey bearing any official USDA mark or statement also bear "legibly and permanently in close proximity (Such as on the (s) or surface (s) to the certificate, mark or statement, and in at least a comparable size, the country or countries of origin of the lot or container of honey, preceded by the words "Product of" or other words of similar meaning."
- Confirmed that the Farm Bill text communicated "If the honey is not officially grade labeled, the country of origin is not necessary whether the honey is domestic or foreign" for purposes of the debarment penalty, but it did not override the COO labeling requirements of pre-existing Federal laws, including the Tariff Act of 1930.
- Restates that the Tariff Act requires that every imported item be conspicuously and indelibly (i.e., permanently) marked in English to indicate its country of origin to the ultimate purchaser.
- Ended by confirming that "In an effort to promote fair competition in the honey industry, this document clarifies that honey packers must include conspicuous and indelible labeling, in English, naming the country of origin of all imported products, regardless of whether the product labeling uses approved USDA marks or grade statements."

³ SEC. 10402. IDENTIFICATION OF HONEY. In P.L. 110-234 <https://www.govinfo.gov/content/pkg/PLAW-110publ234/pdf/PLAW-110publ234.pdf>

⁴ AGRICULTURAL MARKETING SERVICES (AMS) - FEDERAL REGISTER 7/6/18
<https://www.federalregister.gov/documents/2018/07/06/2018-14509/country-of-origin-labeling-of-packed-honey>

BEST PRACTICES GUIDE

Federal regulations require that packaged honey bearing a:

- U.S. Grade A and Grade A mark or statement



- Continuous inspection mark or statement



- Any combination of marks or statements of the USDA



Must also bear:

- The countries of origin of the container of honey.

This listing of the countries of origin must be:

- printed legibly and permanently,
- placed in close proximity, and of comparable size, to the certificate, mark, or statement, and
- preceded by the words "Product of" or other words of similar meaning.

A violation of these requirements may be deemed by the Secretary of Agriculture to be sufficient cause for debarment from the benefits of this Act, such as the use of the grade statements for honey.



FREQUENTLY ASKED QUESTIONS

GENERAL FOOD LABELING REQUIREMENTS

Where should label statements be placed on containers and packages?

Answer: There are two ways to label packages and containers: a. Place all required label statements on the front label panel (the principal display panel or PDP), or b. Place certain specified label statements on the PDP and other labeling on the information panel (the label panel immediately to the right of the PDP, as seen by the consumer facing the product). 21 CFR 101.1 The practice of inkjet printing the COO directly on the jar, lid or container is not considered “Best Practices”. These markings are often very difficult to read once the container is filled, and in most cases, do not meet legibility criteria..

What are the PDP and the alternate PDP?

Answer: The PDP, is that portion of the package label that is most likely to be seen by the consumer at the time of purchase. Many containers are designed with two or more different surfaces that are suitable for display as the PDP. These are alternate PDPs. 21 CFR 101.1

What is Substantial Transformation?

Answer: In an effort to promote fair competition in the honey industry, this document clarifies that honey packers must include conspicuous and indelible labeling, in English, naming the country of origin of all imported products, regardless of whether the product labeling uses approved USDA marks or grade statements.

Substantial transformation means that the good underwent a fundamental change (normally as a result of processing or manufacturing in the country claiming origin) in form, appearance, nature, or character, which adds to its value an amount or percentage that is significant in comparison to the value which the good (or its components or materials) had when exported from the country in which it was first made or grown. Usually a new article of commerce—normally one with a different name—is found to result from any process that Customs decides has brought about a “substantial transformation” in the pre-existing components. As a result, of Customs ruling in 1984 they found that the activity of processing and packing imported honey does not amount to a substantial transformation. Below are some examples of both substantial transformation and not substantial transformation.

- Sugar from country A, flour from country B, dairy products from country C, and nuts from country D are taken to country E and undergo manufacturing to result in cookies. (The inputs were substantially transformed into a product of country E, in that a new type of goods resulted from processing)
- Fresh vegetables grown in various countries are taken to another country to be mixed together and frozen. (The vegetables were NOT substantially transformed into products of the country where mixing and freezing occurred, and the mixture must be labeled with the origin of each ingredient).
- Repackaging, dilution with water, and similar minor processes usually do NOT cause a substantial transformation. Assembly or disassembly may result in a substantial transformation, depending on the nature of the products involved and the complexity of the operations.

When must packaged honey bear a country of origin label?

Answer: Taking all the rulings into consideration all imported honey must be marked with the country of origin. If it arrives in a barrel or a jar, the barrel or jar must have the COO marked on it. If the honey is processed and packed into jars or other containers after importation for shipment to the ultimate user, the jars, or containers into which it was repacked must be marked with the COO. Retail packed honey does not have a different name, character, and use than bulk packaged honey, and no agency has found packing to constitute a substantial transformation.

What label statements must appear on the PDP?

Answer: The CBP confirmed that all imported packed honey should be marked with the COO on the PDP or alternate PDP panel. Packaged honey bearing a grade mark or grade statement, continuous inspection mark or statement, sampling mark or statement, or any combination of marks or statements of the Department of Agriculture, must also bear the countries of origin of the container of honey or face debarment. This listing of the countries of origin must be printed legibly and permanently, placed in close proximity, and of comparable size, to the certificate, mark, or statement, and preceded by the words "Product of" or other words of similar meaning. 7 CFR Part 52

Which label panel is the information panel?

Answer: The information panel is the label panel immediately to the right of the PDP, as displayed to the consumer. If this panel is not usable, due to package design and construction, (e.g., folded flaps), then the information panel is the next label panel immediately to the right. 21 CFR 101.2(a)

What type size, prominence and conspicuousness is required?

Answer: For information panel labeling, use a print or type size that is prominent, conspicuous, and easy to read. Use letters that are at least one sixteenth (1/16) inch in height based on the lower-case letter "o". The letters must not be more than three times as high as they are wide, and the lettering must contrast sufficiently with the background to be easy to read. Do not crowd required labeling with artwork or non-required labeling. Smaller type sizes may be used for information panel labeling on very small food packages as discussed in 21 CFR 101.2(c) & (f). Different type sizes are specified for the Nutrition Facts label.

Where should the country of origin be declared on an imported food?

Answer: The country-of-origin statement must be conspicuous. If a domestic firm's name and address is declared as the firm responsible for distributing the product, then the country-of-origin statement must appear in close proximity to the name and address and be at least comparable in size of lettering. (FDA/ CBP (Customs and Border Protection) Guidance and Customs regulation 19 CFR 134).

Can COO be ink-jetted onto cap, container, or label?

Answer: The Tariff Act requires that every imported item be printed legibly and permanently. Ink jet printing on the bottle, cap, lid or container would not be considered a best practice as some non-permanent inks can easily be removed or scuffed and font sizes are often too small to be legible. Because the bottle to the left has "U.S. Grade A" and mentions a U.S. locality (Colorado) on the back

Can COO be ink-jetted onto cap, container, or label? (cont'd)

label, the COO marking must also be on this label as shown here, and a marking on the cap would not be proper because it is not proximate to the U.S. designations or localities on the label. Best practice is to move the COO to the label which can also be ink-jetted onto a label, as seen in the white box in the example on the right.



For questions, please email the Food Disclosure and Labelling Division (FDLD) at cool@usda.gov.
For more information, please visit <https://www.ams.usda.gov/rules-regulations/cool>.