



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

MEMORANDUM

From: Gary Jay Kushner
Elizabeth Barr Fawell
Brian D. Eyink
Leigh G. Barcham

Date: April 14, 2020

Re: COVID-19 Update: AMS Announces COOL Labeling Flexibilities to Facilitate Redirection of Foodservice Product to Retail

The U.S. Department of Agriculture's (USDA's) Agricultural Marketing Service (AMS) announced it will temporarily exercise enforcement discretion for country of origin labeling (COOL) or method of production requirements to facilitate the redistribution of food products intended for foodservice to be sold in retail establishments. ^{1/} The temporary policy will take effect April 20, 2020 and will last for a period of 60 days, after which COOL designations will once again be required for covered commodities.

Under AMS COOL, covered commodities are required to be accompanied by a COOL statement (including method of production for some products) when sold at retail, but that requirement does not apply when those products are sold to foodservice users. To facilitate redirecting foodservice products to retail, AMS has announced that for a 60-day period, AMS will not take enforcement action against the retail sale of commodities that lack an appropriate country of origin or method of production label, provided the food does not make any country of origin or method of production claims.

The temporary policy is intended to help suppliers that have inventory on hand that is labeled for use in restaurants distribute those products to retail establishments that currently are experiencing greater demand during the COVID-19 pandemic. AMS positioned its enforcement discretion as covering all COOL commodities sold at retail; AMS does not indicate that a company needs to demonstrate that a product had been redirected from foodservice to be eligible for the exemption.

Covered commodities include muscle cut and ground lamb, goat, chicken, and venison; wild and farm-raised fish and shellfish; fresh and frozen fruits and vegetables; peanuts, pecans, and macadamia nuts; and ginseng.

^{1/} USDA Announces Labeling Flexibilities to Facilitate Distribution of Food to Retail Locations (Apr. 13, 2020), available at <https://www.ams.usda.gov/content/usda-announces-labeling-flexibilities-facilitate-distribution-food-retail-locations>.

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We will continue to monitor AMS's response to COVID-19. Please contact us if you have any questions regarding this or other matters.