

Chapter 16

Marking

CFR 134 and CFR 11.9 – 11.13

I. General Marking Requirements

CFR 134.1 - .14 and 134.43 - .47

Each and every product imported into the United States must be marked with the Country of Origin. This is to inform the American purchaser of the name of the Country where the product was produced. Unless there is a specific exemption provided by law, the Tariff Act of 1930 requires this marking on all products.

The requirements for how an article shall be marked vary, but in general **each article must be marked in a conspicuous place as legibly and permanently as the article permits**. It must be done in a manner so that the ultimate purchaser in the U.S. will know the country of origin. (134.11)

The only word necessary to identify the Country of Origin is the name of the Country, Ex. Italy, France, Belgium etc.. It is generally not necessary to state anything else on the article. However, if the product has words such as USA, American, or any city such as “Laredo Tuff” written on it, the product should be marked with “Made in _____” or “Product of _____” in order to distinguish between the advertising markings and the true Country of Origin. (134.46)

There are some abbreviations of Countries allowed, but they are very limited. Only abbreviations which clearly indicate the Country are allowed. Such as Gt. Britain for Great Britain or Luxemb for Luxemborg.

There are spelling variation allowed as well, such as Brasil for Brazil or Italie for Italy. (134.45)

CBP regulations state that any method of marking is acceptable. In other words, a paper sticker or a tag can be sufficient as long as it is designed to stay securely fastened to the article until it reaches the ultimate consumer. Some articles require die stamping, molded, engraving, acid or etched marking methods. Examples of these articles are steel and iron pipe, knives, forks, scissors, razors, scientific instruments, etc... (134.43) (If such items are goods of NAFTA, they only need reasonable marking, not die stamped type marking. (134.43(a))

Some other articles such as watch movements require both the Country of Origin and the Manufacturer. Native American Style Jewelry requires die stamping or engraved type marking, but, other jewelry of different design does not.

II. Marking of Containers and Repacking 134.21 - 134.26

A container will require its own marking and that of the item inside of the container if it is designed for and capable of re-use after the contents have been consumed. (134.23) It should be marked “Container Made in _____ “. However, if the container is a normal and usual container which is discarded after the contents have been consumed, such as a box or bag, it should be

marked with the Country of Origin of the article. (134.24(d)) Normal and usual containers of NAFTA countries, whether imported empty or filled, do not have to be marked. (134.22(d))

No marking of the container or item required if it is articles imported for sole use of importer and not intended for sale; Articles to be processed by importer; Articles for which importer must know the country of origin. (134.24(d) and 134.32(f)(g)(h).

If the article is going to be repacked after it is released from CBP, the importer must certify to CBP that the marking will not be obscured or that a new container will be properly marked. If the importer is going to sell or transfer the items to another party, the importer must notify the subsequent purchaser in writing of marking requirements. Under either circumstance, CBP has a form for this which is called a “repacking form” or a “certificate of marking”. This certification should be filed with the Port Director at the time of entry summary. (134.25)

II. Marking Exceptions 134.31 - 134.36

Remember the general rule is that all imported articles shall be marked! However, there are some exceptions listed in the regulations and the Tariff Act of 1930. CFR 134.32 sets out a list of articles that do not have to be marked, however, it does not mean that the containers of these items are exempt as well. The list includes:

1. Articles incapable of marking - grain
2. Articles that cannot be marked without injury – a horse

3. Where economically prohibitive costs
4. When the container is sufficient
5. **Articles imported and not intended for resale!!!**
6. **Articles to be processed by the importer!!**
7. **Articles produced over 20 years before import**
8. Articles of American Fisheries – (no marking on Gorton’s fish sticks!)
9. Articles of U.S. Possessions
10. A.G.R’s
11. NAFTA original art works
12. etc...

Note, if an item is to be imported for use in manufacturing and the item will be transformed into something new and different, the importer is considered the “ultimate purchaser” and no marking of the item or container is required.

The J-List - 134.33

The J-List is a list of items in CFR 134.33 which do not require marking. The item itself does not require marking, however, any container of a J-list item must be properly marked. **The J-list is a frequent test question. You must understand this information.** It is called the “J” list because the Tariff Act section is 1304(a)(3)(J).

III. Articles not Marked and Marking Penalties 134.51 - 134.55

Failure to have properly marked merchandise can cause serious problems and result in both penalties and delays of the imported merchandise. First, any article found not to be marked at the time of importation will be subject to additional duties of 10% of the appraised value unless

the article is destroyed or exported. (134.2) CBP will notify the importer of the marking violation on CF 4647. The importer will usually have the option to get the merchandise properly marked or (redelivery) return the merchandise to CBP Custody for exportation and destruction. The importer has no more than 30 days to comply with the notice. (134.53)

Sample Exam Question:

Oct. '19 21.) Articles without country of origin marking, as required, shall be subject to additional duties of _____ percent of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry.

- a) 10
- b) 20
- c) 50
- d) 100
- e) 200

Answer is “A” 134.1. Marking penalty imposed when goods are not marked.

Remember that the articles were not released from CBP custody, however, they can be “constructively released” for the sole purpose of marking. Once marked the importer files the “Certificate of Marking” with CBP (sometimes along with a sample) swearing to compliance with the marking request. CBP will countersign the certificate allowing the articles to be released. Until CBP signs the certificate, the articles are considered in CBP custody. (134.52) If the importer does not mark the merchandise it will be sent to General Order warehouse (G.O.).

If an importer files a false “Certificate of Marking” indicating that the goods have been marked when they actually have not been, it is a crime punishable up to \$10,000.00 and 5 years in jail. (134.52) CBP can also seize and issues penalties. Also, if any marking is intentionally removed, defaced, destroyed, or altered in order to conceal the marking information, it is a crime punishable up to one year in jail and a \$5,000.00 fine. (134.4)

If goods are found after release to be not legally marked, CBP can demand redelivery for up to 30 days after the date of entry for the purpose of requiring marking. (141.113 and 134.3) Or, 30 days after examination when examined at importers premises. (134.3) If the merchandise is textiles, CBP may demand redelivery up to 180 days after the date of release. If the importer fails to comply and does not redeliver the merchandise, CBP will make a demand for liquidated damages equal to the value of the entered value of the merchandise not properly marked. (134.54) The importer may file a petition for relief from liquidated damages, but 10% marking duties from 134.2 must be deposited for the petition to be considered by the Fines, Penalty, and Forfeiture officer. (134.54(c)) Also, if the unmarked articles are exported or destroyed, after being released, such export or destruction does not exempt payment of duties other than marking duties. (158.45(d))

IV. Special Marking and Labeling Rules CFR 11.6 - 11.13

Some items have special marking rules. For example, the PD can require marks, stamps, brands, or labels to be affixed to any bulk container used for holding, storing, or transferring alcohol, spirits, or wines. (11.6) The PD shall determine what is an acceptable form of marking based upon the nature,

surface and composition of the container. (11.6)

The Federal Trade Commission has placed certain marking requirements on Textiles, Watches, Fur Products, Gold and Silver. For example, watches must have the Country of Origin and the Manufacturer's name on the movements and cases. (11.9)

Labeling for Wool, Fur, or Textile fiber products also has special requirements. (11.12, .12a, .12b) IF CBP finds incorrect labeling, with no fraud or willful neglect suspected, CBP can release the goods to the importer to correct the issue. (11.12)

Textile products must contain the Country of Origin, fiber content, care instructions, and manufacturer. Actually, you can use the manufacturer, exporter, or importer's name and the Federal Trade Commission (FTC) allows registration of these names. When a manufacturer registers with the FTC, an "RN" code (Registration Number) is assigned and this number can be used on the labels instead of the manufacturer's name.

If any of these articles are imported not in compliance and the violation is thought to be a willful and flagrant violation of the marking requirements, CBP will seize the goods and notify the FTC for legal action. For Gold and Silver, if the marking indicates a greater amount of Gold or Silver, than is actually present, CBP will notify the US attorney for prosecution. (11.13)

Sample Exam Questions:

Oct '19 21.) Articles without country of origin marking, as required, shall be subject to additional duties of _____ percent of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry.

- A) 10
- B) 20
- C) 50
- D) 100
- E) 200

Answer is A (134.2) 10% marking penalty applies if goods are not marked upon entry.

April '18 77.) Which item is listed on the j-list?

- A) Bundles of red-cedar shingles
- B) Finished Leather
- C) Snelled Fish Hooks
- D) Barbed Wire
- E) Sponges

Answer is E (134.33) J-List is a high repeat area for marking questions.