

# 1 Kosher Certification: Theory and Application

## The Purpose of Kosher Certification

Kosher *certification* is a process by which the Kosher status of a product is warranted and guaranteed to the “customer.” Customers may be divided into two broad groups:

- **Kosher consumers:** Individuals or institutions that make the Kosher status a significant factor or a condition of purchase for the foods they consume.
- **Manufacturers of Kosher foods:** Food manufacturers or processors that provide Kosher products to their customers. Such customers may be producers of Kosher retail products or themselves manufacturers of ingredients that, in turn, are used for the production of other Kosher products. The Kosher status of a finished product is predicated upon the Kosher integrity of each ingredient therein. To maintain their own Kosher programs, manufacturing concerns involved in the production of Kosher retail products (or those that supply ingredients to them) must ensure that all ingredients they use meet relevant Kosher requirements.

Kosher law makes no distinction between the Kosher *status* of a “finished product” and an “ingredient”—it is either Kosher or non-Kosher. Practical differences exist, however, in the manner by which their Kosher status may be *verified*. In the case of *industrial ingredients*, many basic raw materials have been investigated and determined to be inherently Kosher and thus may be approved for use in the manufacture of Kosher products without any formal Kosher certification. The use of more complex raw materials, however, raises potential concerns about the Kosher status of ingredients and equipment used in their manufacture, and generally presupposes professional oversight to ensure their Kosher status—a “Kosher certification.” In the case of most *retail products*, formal Kosher certification is the only reliable means by which the customer may determine that a product meets Kosher requirements.

## Theory of Kosher Certification

The designation of a product as Kosher may involve three distinct, but interrelated, considerations:

- Status:** The Kosher *status* of a food is nominally a function of the satisfaction of the following three requirements:<sup>1</sup>

<sup>1</sup> Several significant extraordinary requirements, such as *Bishul Akum* and *G'vinas Akum*, apply to specific categories of foods. Such requirements may mandate various levels of direct involvement or participation in the manufacture of the product by the *Mashgiach* beyond his normative supervisory responsibilities.

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- the kosher status of the ingredients therein,
- the avoidance of proscribed mixtures (for example, milk and meat), and
- preparation of the food on equipment that has not been compromised by the production of non-Kosher foods.

Assuming compliance with these requirements—by any means recognized as efficacious in *Halacha*—a food so produced would de facto be considered kosher.

- B. **Certification:** The kosher certification of a product is granted by an organization or individual competent to determine that a product enjoys a kosher status. The certification itself does not confer a kosher status but merely serves as a warrant of compliance with kosher requirements.

Ultimately, of course, the purpose of a kosher certification is to assure a customer that a product complies with kosher law. Products that are inherently kosher, therefore, are technically deemed to have satisfied this requirement without any formal certification.<sup>2</sup> Nonetheless, manufacturers often procure a formal kosher certification for such items for the following reasons: Customers may not be expert in determining which products may require a kosher certification and which do not, and a kosher certification is an efficient method for allaying customers' concerns. In addition, many industrial customers have created strict procurement procedures that encompass a variety of requirements, including compliance with kosher requirements. It is often easier for such customers to require a kosher certification for *all* products that they purchase as a matter of procedure, thus avoiding the complication of delineating which products require a certification and which do not. In the case of retail products, kosher consumers have no ready means of determining that a product is acceptable other than by the appearance of a kosher symbol on the label.

- C. **Supervision:** Kosher certification generally presupposes an inspection of the production of an item to be able to verify its kosher status, as well as an ongoing supervision of the product to ensure that it remains kosher. However, because *certification* and *supervision* are so closely connected, these terms are often used interchangeably; designating a product as “kosher certified” or “kosher supervised” means the same thing. Indeed, the Hebrew terms for these two concepts are used with similar imprecision. The Hebrew word for “certification” is *Hechsher* and that for “supervision” is *Hashgacha*, but both are commonly used to indicate that a product is kosher certified.

In theory, a kosher certification would therefore entail full-time, onsite supervision of the production of a food item to ensure that it complied with all kosher regulations. Such supervision would be undertaken by a *Mashgiach* because *Halachic* norms stipulate that only one who personally adheres to kosher regulations may verify compliance with kosher law. In practice, kosher certification of certain types of products must indeed be based on such an approach, and full-time *Mashgichim* supervise and control all aspects of the production, from the receiving of raw materials until the final packaging. Such supervision programs are typically found in meat-processing facilities and restaurants, as well as in situations in which both kosher and non-kosher productions of similar products take place.

*Halacha*, however, does recognize various other approaches to effect the supervision necessary to verify compliance with kosher requirements, and these approaches form the

<sup>2</sup> See Chapter 3, “Ingredient Management,” for a full discussion of the criteria for this category of foods.

basis on which modern Kosher certification systems are predicated. Recognizing that, in most cases, Kosher “supervision” is merely a method of assuring that Kosher requirements are met, the *Talmud* establishes the following theories for such verification:

- **Unfettered, unannounced inspections:**<sup>3</sup> *Halacha* recognizes the assumption of compliance with agreements whose fulfillment may be monitored at any moment.

The modern application of this concept is for representatives of the supervisory agency to have the right to inspect the production, ingredient inventory, and purchasing records relating to the Kosher-certified products *at any time*. The frequency of such supervision would be dependent on several factors, including the Kosher sensitivity of the ingredients used, the frequency of delivery of raw materials, and the need to monitor production records and other variables.

- **A professional does not compromise his reputation:**<sup>4</sup> *Halacha* further recognizes that professionals have a vested interest in maintaining their credibility, and it may therefore be assumed that agreements made with professionals will be honored.

The modern embodiment of this concept is the contract for Kosher certification, whereby a manufacturer accepts obligations that have both the force of contractual law and the implicit desire to maintain an exemplary corporate reputation.

By ensuring that an appropriate level of unannounced inspections occurs and a company's recognition of its contractual obligation, such *virtual supervision* can be accepted as a *Halachically* viable method of Kosher supervision.

## The Kosher Certification Program

The decision to pursue Kosher certification is generally based on the perceived marketing advantages that a company's products would enjoy as the result of a Kosher status. It does involve, however, a significant investment on the part of the manufacturer in time, effort, and costs associated with administering the Kosher program. By implementing a Kosher certification program, a food manufacturer obligates itself to abide by both the Kosher law and the regulatory mechanisms and procedures necessary to monitor compliance with them. Such requirements are certainly manageable within the context of normal plant operations, as evidenced by the explosive growth of Kosher programs in food manufacturing throughout the world. An awareness of the obligations entailed in such an undertaking is important, however.

A manufacturer will be expected to allow Rabbinic inspection of all aspects of the company's operations relating to the manufacturing process on a regular basis and without prior notice. Such inspections may also include a review of ingredient inventories and labels, as well as processing and ingredient purchasing and receiving records. *Mashgichim* (plural of *Mashgiach*—Rabbinic inspector) make every effort to make such inspections in the least intrusive manner possible. However, staff personnel must typically be available to

<sup>3</sup> In *Talmudic* terminology, this concept is known as *Yo'tzeh v'Nichnas*—literally, “walking out and walking in.” This type of oversight is routinely used by services such as the FDA and USDA to monitor compliance with regulatory requirements.

<sup>4</sup> In *Talmudic* terminology, this concept is known as *U'man Lo Ma'ra Umnuso*—literally, “a craftsman does not engage in activities that besmirch his reputation.” In the context of modern food production, companies are similarly assumed to attach great importance to their good name and reputation.

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facilitate such inspections by escorting the *Mashgiach* and providing him with appropriate documentation.<sup>5</sup>

In addition, the implementation of a Kosher certification program may involve modifications to ingredient procurement, product manufacturing, and packaging practices unrelated to the final marketing of the product. In addition to a Kosher program's benefits, a company must understand the ramifications for its daily operations.

#### **Restrictions on Raw Materials**

By implementing a Kosher certification program, a manufacturer agrees to adhere to a system of ingredient management encompassing the following components:

- a. All ingredients used in the production of Kosher-certified products must meet the Kosher requirements appropriate to the Kosher status of the certified product (that is, Pareve, Meat, Dairy, and Passover). As such, an integral part of the agreement between a manufacturer and a Kosher-certifying agency is an approved ingredient list,<sup>6</sup> which enumerates all ingredients approved for use in certified products. By agreeing to the terms of the Kosher certification agreement, the manufacturer explicitly agrees to limit itself to using only those ingredients that are specifically approved (as per any restrictions regarding their sources), as well as the methods by which they must be delivered to the factory.<sup>7</sup> Further, the manufacturer is responsible for ensuring compliance with any Kosher identification or documentation requirements indicated on the approved ingredient list before such ingredients may be used.
- b. Regardless of any Kosher certification enjoyed by an ingredient, its acceptability for use by the manufacturer is the *sole* prerogative of the *Kashrus* authority responsible for the certification of the final product. Although many certifications of Kosher status are generally considered reliable and meeting normative Kosher standards, a manufacturer may not assume that the existence of a Kosher certification for a particular ingredient from another Kosher-certifying agency constitutes presumptive approval for its use. The manufacturer therefore explicitly agrees that it may not substitute or add ingredients to the approved ingredient list without prior approval of the Kosher-certifying agency, even if such ingredients carry a Kosher<sup>8</sup> certification.
- c. For situations in which a manufacturer produces both Kosher-certified and -noncertified products, the use of non-Kosher ingredients may also be subject to review and approval by the *Kashrus* authority. Although the use of a non-Kosher ingredient in a product that is not Kosher certified may theoretically be of no consequence, appropriate oversight of such ingredients is necessary to ensure that they cannot be used in the Kosher-certified products or the equipment on which Kosher-certified items are produced. In such cases, an approved ingredient list may indeed contain non-Kosher ingredients, with

<sup>5</sup> A manufacturer is also typically required to maintain updated documentation confirming the Kosher status of ingredients it uses (see Chapter 3, "Ingredient Management").

<sup>6</sup> See Chapter 3, "Ingredient Management," for a detailed discussion of the Approved Ingredient List, which may also encompass restrictions for ingredients that are not used in Kosher productions.

<sup>7</sup> Products delivered in bulk (such as corn syrup, oils, and so on) must be transported in Kosher-approved tankers or similar transport.

<sup>8</sup> Ingredients that are deemed "inherently Kosher" and so indicated on the Approved Ingredient List are generally not subject to this restriction.

their “approval” being geared to their appropriate use in non-Kosher products, and the manufacturer may be bound by notification and approval requirements similar to those relating to Kosher ingredients. Such oversight also ensures that Kosher and non-Kosher versions of functionally compatible raw materials will not be used in the production facility, because such a situation may lead to the inadvertent use of the non-Kosher ingredient in Kosher productions.

### ***Restrictions on Production***

The methods by which products are manufactured are also subject to approval by the Kosher-certifying authority, with such approval being necessary to address the following concerns.

Equipment may not be used to process both Kosher and non-Kosher products (without appropriate cleaning or Kosherization<sup>9</sup>). A similar concern exists with equipment used in the production of Pareve, Dairy, and Meat products. If a manufacturer processes only Kosher products—and of only one category (Pareve, Dairy, or Meat)—such issues pose no concern. For situations in which such conflicting productions take place, however, plant operations may need to be adjusted to ensure an acceptable segregation of equipment and processing lines.

If equipment must be *Kashered* between productions of conflicting products (for example, between Kosher and non-Kosher, or Dairy and Pareve, items), scheduling flexibility is effectively restricted because of the inability to produce a given type of product during the period when the equipment has a conflicting status. In addition, equipment may have to remain unused for twenty-four hours prior to Kosherization, resulting in the possibility of lost production capacity for the equipment. Such Kosherization may also entail other expenses, such as those relating to the Kosherization process and the cost of any Rabbinic supervision required. In addition, the Rabbinic supervision required for Kosherization may not be available on certain dates or at certain<sup>10</sup> times, a factor that must be taken into account in production scheduling.

In certain situations, the use of a common steam and hot-water heating system for the production of conflicting types of products may not be<sup>11</sup> acceptable. In such situations, a manufacturer may be required to modify such existing utility systems.

Certain types of food are subject to the rules of *Bishul Akum*,<sup>12</sup> which requires that the *Mashgiach* be involved in the cooking process. In such cases, the heating system in a boiler or oven may need to be modified in order to ensure compliance with this rule. Similar modifications to bakery ovens may be required in order to address concerns of *Pas Yisroel*.<sup>13</sup>

Productions subject to certain extraordinary rules, such as those involving meat, *S'tam Yaynam*<sup>14</sup> (relating to wine and grape juice) and *G'vinas Akum*<sup>15</sup> (relating to cheese), may require the full-time supervision of a *Mashgiach*. The scheduling of such productions must therefore consider this requirement in determining production schedules.

<sup>9</sup> See Chapter 2, “Basic *Halachic* Concepts in *Kashrus*,” for a detailed discussion of the theory behind such restrictions and methods by which they may be addressed.

<sup>10</sup> See Chapter 4, “Rabbinic Etiquette.”

<sup>11</sup> See Chapter 2, “Basic *Halachic* Concepts in *Kashrus*.”

<sup>12</sup> *Ibid.*

<sup>13</sup> See Chapter 7, “The Baking Industry.”

<sup>14</sup> See Chapter 6, “Fruits and Vegetables.”

<sup>15</sup> See Chapter 9, “The Dairy Industry.”

In addition to *Kashrus* issues relating to the production, a Kosher certification program presupposes that all such production takes place in a facility that is monitored for compliance with Kosher requirements. Consequently, a manufacturer may not contract production of Kosher-certified products to outside processors without prior approval of the Kosher certifier. If such contracting were desired, a Kosher certification program would be required for that facility. Indeed, even if the outside manufacturer has no interest in obtaining Kosher certification for other products it produces, production of Kosher products in its facility would be subject to the same requirements and constraints applicable to the manufacturer for whom the product is being produced.

Further, a food manufacturer that maintains a Kosher certification program may not undertake the production of products for an outside contracting entity—even if the contractor has no interest in obtaining a Kosher product—without ensuring that such production would not compromise its ongoing Kosher program. When such production follows approved Kosher guidelines (that is, it is limited to ingredients on the approved ingredient list and processed in a manner consistent with the Kosher program), it poses no significant concern.<sup>16</sup>

The use of ingredients *not* previously approved, however, is subject to the same approval process as any other ingredient used in the factory, even if the product in which they are to be used is not certified. Gaining such approval may be complicated, however, if the contractor wishes to maintain the confidentiality of its formula and ingredients and does not wish to submit them to Kosher review, especially where Kosher certification is not being sought. When the Kosher status of such ingredients cannot be adequately established, their use may prevent the production of products containing them in a Kosher<sup>17</sup> facility.

### ***Restrictions on Packaging***

According to *Halacha*, products that require Kosher certification may be considered Kosher only if they can be reliably identified as such.<sup>18</sup> A Kosher designation may take many forms, such as a Kosher symbol, *Mashgiach*'s signature, or specific letter of Kosher certification. In all cases, however, the integrity of such Kosher identification presupposes the maintenance of a “Kosher chain-of-custody” from manufacture through final packaging. Therefore, products manufactured under Kosher certification may be packaged only in those facilities that are subject to Kosher oversight. In general, *any* packaging that bears the Kosher symbol may be used only in facilities authorized as part of the Kosher Certification Agreement.<sup>19</sup>

For products destined for use in an industrial setting, quality control systems may make the tracking and verification of a Kosher status workable, without the need for a Kosher symbol to be printed on the packaging. Many industrial ingredients—especially bulk items—are

<sup>16</sup> In such a case, the product would be inherently Kosher regardless of whether it were marked as such or not. Such products could also be eligible for formal Kosher certifications, subject to the concerns outlined in the “Private Label Agreements” section of this chapter.

<sup>17</sup> In certain limited circumstances, the use of such non-Kosher ingredients may nonetheless be permitted in non-Kosher-certified products (for example, when used at very low levels and when considered functionally incompatible with Kosher productions; see Chapter 3, “Ingredient Management”).

<sup>18</sup> In most cases, a single means of identifying is sufficient, such as a printed Kosher symbol on a label. In certain situations, such as with meat, *two* independent identifying seals may be required.

<sup>19</sup> When a Kosher-labeled product is subsequently packaged in a manner that leaves the original Kosher labeling undisturbed (and the additional packaging does not bear a Kosher designation), such additional packaging typically need not be subject to Kosher oversight.

especially amenable to such a system. Ingredients produced under special supervision, however, may require a more secure method of designation.

In dealing with *retail* products, reliance on a letter of certification would be ineffective. Shoppers do not come to the supermarket armed with such documents, and retailers would be overwhelmed if required to provide them. It has therefore become common to mark retail products with an appropriate Kosher designation.<sup>20</sup> Indeed, in North America and Israel, most Kosher-certifying agencies will decline to certify a retail product unless the company is willing to place a Kosher symbol on the package. The reasoning behind this requirement is that it serves to protect the consumer from incorrectly assuming the Kosher status of products not so labeled, as well as to ensure that information relating to its Dairy or Meat status is readily available. Food manufacturers in North America, Israel, and much of Europe have recognized the importance of this approach, and it has become standard industry practice. Indeed, the inclusion of the Kosher symbol on the package is the preference of many manufacturers because it serves to publicize the Kosher status of the product and thus makes it more appealing to the consumer.

In many other areas of the world, however, Kosher certification has not achieved the broad acceptance enjoyed in North America, Israel, and parts of Europe. Although many manufacturers in such countries may agree to have their products certified as Kosher, they may nonetheless be reluctant to print a Kosher designation on the product. In such situations, *Kashrus* authorities are forced to rely on the dissemination of “Kosher products’ lists,” in which the Kosher status of products is publicized.

To ensure the accuracy of the Kosher information appearing on the label, a Kosher Certification Agreement will typically stipulate that all such labels must be reviewed and approved by the Kosher-certifying agency. The Kosher symbol is the property (usually trademarked in the United States) of the agency that authorizes its use, and exercising such an oversight of the use its symbol serves to ensure that the Kosher designation properly reflects the Dairy, Pareve, or Meat status of a certified product.

Because a Kosher designation on a product implies that *everything* included in that package is indeed Kosher, marketing programs that include samples of unrelated products pose a *Kashrus* concern. For example, manufacturers of breakfast cereals often enter into promotional agreements that include samples of candies, cookies, or other foods in the package of cereal. If the promotional sample is a non-Kosher food item, the use of the Kosher symbol on the package of cereal will not be allowed, irrespective of the inherent Kosher status of the cereal itself.<sup>21</sup> In a similar vein, “multipacks” of Kosher and non-Kosher products may not bear a Kosher designation, although the individual units of Kosher items may retain their individual Kosher designations.

An additional restriction involves identical versions of Kosher and non-Kosher retail products.<sup>22</sup> To avoid consumer confusion, most Kosher-certifying agencies will decline to certify food items produced in *identical* Kosher and non-Kosher versions, even though the

<sup>20</sup> See the section “Letter of Certification and Labeling Requirements” concerning the types of Kosher designations that may be used.

<sup>21</sup> Recognizing that such a lapse in Kosher designation is transient in nature, agencies may publicize the fact that the product itself remains Kosher certified.

<sup>22</sup> Industrial products, however, are often produced in virtually identical Kosher and non-Kosher versions. The distinction between retail and industrial products is based on the inherent ability of industrial processors to order specific products and monitor the status of the items that are being used.

non-Kosher versions will obviously not bear the Kosher designation.<sup>23</sup> Differing varieties of the same product *line*, however, are generally not considered subject to this concern. For example, a soup company may produce both Kosher and non-Kosher varieties of soups under the same brand name, provided that *all* production of the Kosher varieties is maintained as Kosher.

## The Certification Process

After the decision to obtain a Kosher certification has been made, a company will generally need to contact an individual or agency that specializes in Kosher food certification. Many such certification services are available, and the choice of which certification service to employ is the next critical decision in the Kosher certification process.

## Choice of Certification

Although Kosher certification may be granted by any Rabbinic authority,<sup>24</sup> the complexities of modern food production demand specialized expertise in both the *Halachic* and technical arenas. Rabbinic services that specialize in such matters can be divided into the following broad categories:

- **Kosher certification agencies:** Organizations have been established that specialize in Kosher certification services. Some are divisions of national or local Rabbinic organizations, and generally operate as nonprofit entities. Others are privately held and profit based. In all cases, the fees charged by these organizations are used to cover the costs of providing the professional services necessary to administer the Kosher certification program. Such organizations also typically invest significant resources into research to stay current with changes in the food industry that may affect Kosher standards and practices. Many such organizations are international in scope and have large staff and specialized services. Along with their ubiquitous Kosher symbols, they are typically well recognized by Kosher consumers, based on the stated policies of the organization, the reputation of their staff, and the *Halachic* authorities that they consult.<sup>25</sup>
- **Communal organizations:** These are typically Rabbinic organizations responsible for the religious needs of individual Jewish communities, including local *Kashrus* issues. They generally provide Kosher certification for local establishments (for example, restaurants, caterers, and bakeries), and many also provide Kosher certification services for retail

<sup>23</sup> In most cases, no exception is made for different-size packages of the same product (for example, a 10-ounce and a 20-ounce can), nor is an allowance made for products having different distribution patterns.

<sup>24</sup> In contradistinction to other religious systems, Judaism has no formal ecclesiastical or hierarchical structure. The term *Rabbi* means *teacher*, and any male of the Jewish faith who has mastered aspects of Jewish law may rule on matters in which he has demonstrated competence. Although Rabbinic ordination (*S'michah*) is generally conferred by a respected authority to formalize the use of the term *Rabbi*, no formal mechanism exists to establish standards or requirements for such a designation. The determination of the Kosher status of a product is ultimately a religious function and thus amenable to the decision of any Rabbi. As in any human endeavor, however, some individuals possess greater competence than others, in both the *Halachic* and technical spheres, and the acceptability of any Kosher certification is thus a function of the reputation of the individual or organization granting it.

<sup>25</sup> In most organizations, the *Halachic* review and adjudication processes operate independently of the administrative/operational aspects of the organization to assure the integrity of the *Halachic* decisions.



and industrial establishments both inside and outside their nominal geographical base.<sup>26</sup> They are generally smaller organizations than the major Kosher certification agencies, and the retail products certified by them are often geared to the geographic area in which they are located. They typically enjoy the recognition of the local community.

- **Private certification:** Historically, Kosher certification was routinely granted by individual Rabbis, relying on their reputation to assure the acceptance of their certifications by the Kosher consumer. Today, many individuals provide such services, which often enjoy excellent acceptability in the marketplace based on their personal reputation, competence, and the standards to which they subscribe. Indeed, many of the *M'hadrin* certifications (those adhering to exceptionally strict standards; see the section “*M'hadrin* Certifications”) are administered by individual Rabbis who have a reputation for very strict *Halachic* interpretation and supervisory standards. Some certifications, on the other hand, are not well respected and may not adhere to the standards expected by a significant segment of the Kosher-consuming public. Although compliance with the programs administered by such certifications may prove easier for the manufacturer, they may not provide the broad acceptability in the Kosher market, which is the purpose of such certification. Of critical importance, therefore, is that the manufacturer establishes the reputation and effectiveness of the Kosher supervision service that it chooses to employ.

The lines of distinction between these categories often blur considerably, however. Some communal organizations have developed Kosher certification divisions that rival the national *Kashrus* organizations in size and breadth. Private certifications, on the other hand, may be perceived as “organizations” in the sense that they often use trademarked Kosher symbols (rather than their name) to indicate their Kosher certification, and may certify a sizable number of products or companies.

The decision of which Kosher certification service to employ is an individual one because each may provide significant advantages for the manufacturer. Factors to consider include:

- **The reputation of the certification:** Although some certifications may be “easier” to deal with, such ease may be a function of less-than-stellar Kosher standards. Many consumers are quite perceptive in divining the competence and *Halachic* reliability of a certifying entity, and a company will not realize the full benefit of a Kosher program if the certification is not respected by the consumer.
- **The standards of the certification:** Some organizations follow more stringent guidelines, such as requiring that all Dairy products be *Cholov Yisroel*<sup>27</sup> and all baked products be *Pas Yisroel*.<sup>28</sup> Although adherence to such standards may make the certified products acceptable to a wider range of customers, they may not be appropriate for certain manufacturers.
- **The size of the organization:** Larger organizations may be able to provide greater depth of service and recognition in larger markets. On the other hand, smaller organizations or individuals may be able to provide more personalized service and be more flexible in meeting the scheduling needs or special requests of a manufacturer.

<sup>26</sup> This expansion often occurs simply because local companies with which they work expand their operations and choose to maintain the existing Kosher certification service as they grow.

<sup>27</sup> See Chapter 9, “The Dairy Industry.”

<sup>28</sup> See Chapter 7, “The Baking Industry.”

- **Fees and expenses:** Fees charged for Kosher certification may vary significantly from one certification to another. Often, a higher fee reflects a higher level of service and competence, which may prove worthwhile in the long term. In addition, the greater acceptability by the consumer of certain certifications over others may outweigh the importance of a higher fee charged for them.
- **Projected Kosher customer base:** Kosher certification symbols command significant consumer recognition and are often regarded by manufacturers as important marketing tools in both the Jewish and non-Jewish Kosher market. Manufacturers of retail products should consider such product recognition when determining which certification service best fits their needs. Products with national distribution may benefit from the brand recognition of a national certification service, whereas products geared to a regional market may benefit from a local service.

Products marketed to food manufacturers, on the other hand, require a Kosher certification that is well regarded in the industry. In such a context, the size or regional base of the certification is far less important. What is critical, however, is for the certification to be accepted by the Kosher certification services employed by the potential customers of the product.

### **Labeling**

Historically, many systems have been devised to label products as Kosher, with some creating as many problems as they were designed to resolve:

- **The letter *K*:** The word *Kosher* (at least in the English language) begins with this letter, and including a *K* on a product's label is an efficient, if not terribly prominent, means of indicating a Kosher status. Unfortunately, such a system tends to suffer from a number of deficiencies, not the least of which is that it has no legal standing. A consumer should be entitled to expect that any claim that appears on a label be accurate and enforceable. The letter *K*, however, has never been vested with the implication of a Kosher status in the context of secular labeling law (it is, after all, merely a letter of the alphabet) and for this reason (as well as others noted later), it serves as a very poor warrant of any Kosher status.

The use of the *K* does not ipso facto imply a *Kashrus* deficiency. Some manufacturers who use the *K* maintain appropriate Kosher programs administered by competent Rabbinic authorities, and these products may indeed meet the highest Kosher standards. However, many Kosher consumers shy away from such products because the *K* affords them no ready means of being assured of any Kosher claim or of identifying the individual or organization that vouches for the Kosher status of that product. For this reason, most of the major Kosher-certifying agencies insist that their unique Kosher symbol (discussed shortly) be used on products that they certify.

- **The word *Kosher*:** An improvement over the simple *K* was the use of the word *Kosher* because, at a minimum, it clearly implied that the manufacturer was making some kind of Kosher claim. Placing a "Kosher" designation on a product that was patently non-Kosher (for example, pork) could be considered fraudulent and thus enforceable.<sup>29</sup>

<sup>29</sup> Prosecution of patently offending labeling could be pursued under standard consumer protection and fraudulent labeling statutes or as a violation of specific "Kosher laws" in many states.

This approach, however, raised another significant issue: the basis on which the Kosher claim itself was made. Anyone may *claim* that a product is Kosher, and manufacturers, distributors, or lay people with limited or no knowledge of Kosher law may innocently (or otherwise) declare something that is not Kosher to be Kosher that is not. The “word” Kosher, therefore, had no accountability, and conscientious Kosher consumers found this designation almost as wanting as the *K*.

- **The name of the Rabbi:** To address the concerns of its customers and the need for an accountable method of advising them of the Kosher status of their products, companies began printing the name of the certifying Rabbi or organization on the label. This system is the precursor of the system of Kosher symbols we often see today, and indeed does adequately address most labeling issues. It does suffer, however, from two drawbacks. First, a Rabbi may be well known in his immediate area, but his name recognition may not extend much beyond. Potential customers in other parts of the country (or the world) may not be familiar with the Rabbi or the standards that he employs. In addition, the use of a fictitious name has not been unknown. Second, names are hard to read and recognize, especially in small print, and, of course, more than one Rabbi can have the same name. In addition, that may bring undue attention to the Kosher status of a product whose primary market has no interest in such a status.
- **Kosher symbols:** To provide a readily recognizable system of labeling products as Kosher, as well as to ensure the accountability of the claim of a Kosher status, Kosher certification services have developed unique symbols by which to mark products they certified as Kosher. These symbols, trademarked by their respective Kosher certification services, have become well known to consumers interested in purchasing Kosher products. By agreeing to place such symbols on their products that are Kosher certified, manufacturers avail themselves of the marketing advantage of well-known symbols and, because the use of these symbols must be authorized by the Kosher-certifying service, the symbols convey a sense of security about the Kosher claims for their products.

### ***Application***

After a choice of certification services has been made, the next step is the formal application process. Because a Kosher review will probe into virtually all aspects of ingredients and production systems relating to the products to be certified, such an application may be viewed as an opportunity to conduct an extremely thorough self-audit. It may also involve a review of any non-Kosher productions taking place in the manufacturing facility, in order to ensure that they do not impinge on the Kosher program.

An application for Kosher certification entails submission of the following:

- **Corporate information:** This should include the name, address, and contact information of the company making the application. It should also include the names of the personnel who will be involved in the Kosher certification program, including the plant manager, raw-material manager, and the contact person who will be responsible for the handling of Kosher project. If the applicant is an entity other than the actual manufacturer, information for both parties should be included.
- **Manufacturing location:** When the manufacturing site differs from corporate headquarters, of critical importance is listing the contact information for *all* manufacturing locations that will be used for Kosher production.

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- **List of products to be certified:** This includes a complete list of all products for which certification is being requested, as well as a brief description of the processing system. If non-Kosher products will also be manufactured at this site, their production should also be noted.
- **Ingredients:** A list of all ingredients used in the facility should be included, along with their sources and Kosher certification, if any. If possible, documentation supporting the Kosher status of these ingredients (letters of Kosher certification) should be appended, although this can be done at a later time as the program moves forward.
- **Labels:** A list of all labels under which the products are to be packaged should be included. If the product is to be packaged under a label not owned by the company (“private label”), this should also be noted. (Certification of such labels may be subject to a private label agreement; see the section “Private Label Agreements.”)
- **Application fee:** Most Kosher-certifying agencies require the payment of a fee to cover the cost of processing the application. Unless the parties have otherwise agreed, this fee does not cover expenses related to the subsequent inspection of the manufacturing facility.

### ***Initial Inspection***

After the application is received, it is reviewed by the certifying agency to make a preliminary determination of the feasibility of granting Kosher certification. If no significant impediments are noted, the company will be contacted to arrange for an inspection by a Rabbinic representative to conduct a thorough inspection of the facility and ingredients. In certain situations, however, the review of the application will reveal Kosher issues relating to ingredients or processes that, unless rectified, would preclude the granting of Kosher certification. In such cases, the Kosher-certifying agency will advise the manufacturer of these issues and discuss possible solutions to them. If no solution seems probable, the application may be rejected or withdrawn. Alternatively, a manufacturer may nevertheless request an inspection of the facility, with the hope that solutions to outstanding issues may be developed based on a hands-on review of the situation.

The Rabbinic representative assigned to conduct an initial inspection typically possesses significant experience in Kosher certification, allowing him to accurately assess all issues relevant to the prospective Kosher program. His inspection may address the following points:

- Verification of the accuracy of the application and the ingredient list submitted.
- An assessment of the production system, including the possible need to Kosherize the equipment and the method by which this may be accomplished. Included in this review would be a determination as to whether any recirculating steam or hot-water issues pose a Kosher concern.<sup>30</sup>
- A determination of whether issues pertaining to *Bishul Akum* are relevant to the products in question.<sup>31</sup>

If the certification is to be granted by an individual Rabbi, he will typically inspect the facility and make all necessary determinations regarding the requirements for certification.

<sup>30</sup> See Chapter 2, “Basic *Halachic* Concepts in *Kashrus*.”

<sup>31</sup> *Ibid.*

When an agency or organization provides this service, the inspecting Rabbi will prepare an initial inspection report, which will contain the Rabbi's initial determinations and recommendations regarding plant operations. (It will generally not deal with the *acceptability* of ingredients; that function is usually subject to separate administrative review.) This report is a confidential document and, although instructive to the Kosher certification service to which the inspector reports, it is not determinative. Rather, it is designed to provide sufficient information for the Rabbinic authority charged with managing this application to properly assess the situation and make final decisions as to the potential Kosher program that may be administered.

Generally, the applicant is responsible for all direct costs necessary to the inspection (travel, lodging, and so on) incurred by the inspecting Rabbi. The fee for this inspection may be included in the application fee, or it may be billed separately. Payment of an application fee, as well as any subsequent charges for inspection, should not be assumed to automatically guarantee a Kosher certification. These services are exploratory in nature and, if Kosher certification is subsequently determined to be inappropriate, the fees usually are not refundable.

### ***Review of Ingredients and Other Issues Relating to the Certification***

The next step in the certification process is to review all the information relating to the potential certification to determine whether and how Kosher productions may be certified. The initial inspection report is analyzed, as is the Kosher status of all ingredients on the submitted list. Just as every food manufacturer operates in its unique manner, so must the Kosher certification program for each manufacturer be tailored to meet issues specific to that situation. On review of the application, certain changes may be required before Kosher certification may be granted. In most large organizations, a Rabbinic administrator (often called a Rabbinic coordinator) works with the manufacturer to resolve these issues and to effect the changes necessary to allow for Kosher certification. Such issues may include:

- **Changes in ingredients:** Certain ingredients currently used by the manufacturer, or that had been submitted for approval, might be deemed unacceptable for Kosher production. The company and the certification agency will typically work together to identify suitable alternatives.
- **Changes in production systems:** Conflicts between Dairy and Pareve productions, as well as between Kosher and non-Kosher productions, may require changes in production systems or Kosherization of equipment for certain productions.
- **Changes in record keeping:** Appropriate systems of documentation must be put into place to allow for the verification of compliance with the Kosher Certification Agreement. The Kosher certification agency typically works with the company to develop protocols for monitoring critical points of compliance, such as methods of documenting the Kosher status of raw materials at the point of arrival into the plant and adherence to production-scheduling requirements. In addition, procedures will be developed for approving new ingredients and products.
- **Changes in steam or other utilities:** If a common steam or hot-water system is used in the processing of Kosher and non-Kosher or Dairy and Pareve products, modifications in such systems may be required.

- **Type of supervision:** Most Kosher programs operate based on periodic inspections and audits, the anticipated frequency of which must be determined by the Rabbinic coordinator in order to determine appropriate fees. In certain situations, however, Kosher certification may be appropriate only with full-time supervision. The agency will generally try to inform the company of such a requirement at the earliest point at which they are able to determine that this might be the case.

### **Contract**

On satisfactory resolution of all issues relating to the Kosher program, a contract for Kosher certification may be prepared that provides for a formal summary of the basic points of the Kosher program. The contract for Kosher certification is perhaps the single most important element in a Kosher certification program because it provides the *Halachic* basis by which such certification may be granted.<sup>32</sup> In addition, it recognizes the unique nature of Kosher certification in that it is based on the satisfaction of religious, rather than financial, commitments, although these must obviously also be dealt with satisfactorily. The contract will therefore stipulate that all terms of the contract relating to the Kosher status of the product are subject to their complete and specific performance, with no monetary equivalence being recognized as an acceptable alternative to full compliance. As such, in the event of egregious breaches of the terms of the contract that affect the Kosher status of the product, a recall of such product or other remedial action may be mandated.

A typical contract covers the following salient points:

- **Products:** All products that are to be certified are specifically listed in the contract or its annexes. The contract further stipulates that no additional products may bear the Kosher designation unless approved and registered, even if they bear identical ingredients and are produced under identical Kosher conditions. The contract also stipulates that the company will not produce non-Kosher versions of products identical to those bearing the Kosher designation, even though they will not be labeled as Kosher products.
- **Labeling:** The contract stipulates that the Kosher symbol authorized by the certifying agency remains the property of that agency and may be used only when specifically authorized. To minimize the possibility of its inappropriate application, the use of rubber stamps or generic stickers bearing the Kosher symbol is generally prohibited. Stickers that bear the name of the manufacturer and specific product identification in addition to the Kosher symbol, however, may be allowed under special circumstances.

In addition, the contract requires that only approved Kosher products may be included in packaging that bears the Kosher symbol; samples of non-Kosher products may not be included as promotional items, even if separately wrapped.

- **Ingredients:** Certified products may contain only ingredients specified in the list of approved ingredients, which forms a part of the contract. Additional provisions include:
  - Approval of all ingredients is subject to the conditions indicated on the approved ingredient list, including requirements relating to their labeling, documentation, and sources.

<sup>32</sup> That is, (1) the right of unfettered inspections of production, ingredients, and records, and (2) establishing the acceptance by the manufacturer of the terms of the agreement, which would then presuppose the manufacturer's desire to maintain its good reputation in abiding by them (see the section "Theory of Kosher Certification").

- Any changes in ingredients or suppliers are subject to *prior* approval, unless otherwise stipulated.
- Any change in the status of ingredients noted by the manufacturer must be brought to the attention of the certifying agency.
- *All* ingredients in the production facility must be registered on this list, even those not intended for use in Kosher productions.
- Ingredients used for R&D purposes are also subject to the above requirements, unless stipulated otherwise in writing.

The contract also stipulates that the certifying agency reserves the right to terminate approval of any ingredient at the agency's sole discretion.<sup>33</sup>

- **Locations:** All production and packaging sites must be specifically approved, including sites for trials, temporary or seasonal production, and packaging.
- **Equipment:** The company agrees to advise the certifying agency before using any previously used equipment that may be introduced into the production of Kosher product, because such equipment may require a Kosherization prior to use in Kosher productions.
- **Inspection and review of records:** The company agrees to allow unfettered inspections by duly authorized representatives of the certifying agency at any time during normal business hours, as well as whenever production takes place. Such inspections may cover raw-material inventories and purchasing records, production systems, and other areas of plant operations that have a bearing on Kosher production. Details concerning ingredient proportions<sup>34</sup> and recipes are generally not germane to establishing the Kosher status of a product.<sup>35</sup>
- **Confidentiality:** The certifying agency agrees to maintain the strict confidentiality of all information provided to it by the company, as well as any observations it makes as part of its supervision or administration of the Kosher program.<sup>36</sup>
- **Special clauses and production requirements:** The contract will outline any special requirements relating to Kosher productions. These may include requirements for Kosherization of equipment, special supervision, and segregations of non-Kosher and Kosher productions, or Dairy/Meat/Pareve segregation.
- **Fees and expenses:** Charges for Kosher certification should be regarded as a fee for service, regardless of the financial structure of the certification service. Fees cover many expenses, including overhead, salaries, and research, and may vary significantly from one certification service to another.<sup>37</sup> In general, however, they are grouped as follows:

<sup>33</sup> Many factors may cause a previously approved ingredient to lose its acceptable status. For example, ingredients heretofore assumed to be inherently Kosher may be determined to pose a *Kashrus* concern. In addition, manufacturers of certain ingredients may choose to discontinue their Kosher certification or to change the certification to one that is not acceptable to the certifying agency of the finished product.

<sup>34</sup> The ratio of fish in a product, however, may be significant in determining whether it will be labeled as "Fish" (see Chapter 3, "Ingredient Management").

<sup>35</sup> Although the usage level of ingredients is generally not significant in determining the status of the product itself, it may be significant in determining the status of the *equipment* on which such products are processed (see Chapter 2, "Basic *Halachic* Concepts in *Kashrus*," and Chapter 3, "Ingredient Management").

<sup>36</sup> Manufacturers may also choose to draft additional nondisclosure agreements to be executed with each individual *Mashgiach*.

<sup>37</sup> Fees charged for modern Kosher certification programs designed for mass production are typically based on a fixed fee, exclusive of special charges for ongoing supervision and Kosherization. Fees are generally considered payment for services rendered and are not tied to the volume of production. Historically, however, fees for Kosher productions undertaken for a limited Kosher market were based on production volumes, reasoning that such an arrangement would allow for the cost of the Kosher certification to be directly

- *Certification fee.* This is typically an annual fee that covers the routine costs of administering the Kosher program. In most cases, it will cover the costs of routine inspections by the *Mashgiach* and will therefore reflect the projected costs of the *Mashgiach*'s time and expenses involved in making such inspections. It will also cover the operating overhead of the certification service and the administrative resources necessary to administer the program for the manufacturer.
- *Set-up fee.* Some Kosher certification services will also charge a one-time fee to defray the administrative costs of establishing the certification program.
- *Special production fees.* When special supervision is required, a fee is stipulated to cover such costs, usually on a per-shift basis. This fee excludes travel and lodging expenses.
- *Kosherization expenses.* When either a one-time or an ongoing Kosherization is required, a fee is stipulated to cover the supervision of this process. Again, this fee excludes travel and lodging expense.
- *Annual or periodic reviews.* To ensure the ongoing integrity of the Kosher program, provision is typically made for an annual review of the manufacturing facility by an administrative member of the Kosher certification staff. The purpose of this review is to ensure that close levels of cooperation are maintained between the *Mashgiach* assigned to make regular inspections and the administration and that the administrator is intimately familiar with plant operations and issues relating to the Kosher program at each facility. The manufacturer is typically responsible for the costs of such reviews.<sup>38</sup>
- **Term of the agreement:** Most agreements for Kosher certification have a term of one year. However, they typically allow for automatic renewal of the agreement unless either party provides timely notification to the contrary. In such cases, the contract will automatically renew itself for another year as per the terms of the agreement, although the annual fee and associated expenses may be reasonably adjusted with appropriate prior notice.  
 The Kosher certification agency, however, retains the right to terminate certification at any time that it feels unable to reasonably guarantee the Kosher status of the product, such as when the manufacturer has exhibited a wanton disregard for adherence to Kosher requirements (see the next item in this list).  
 The manufacturer also agrees that, on termination of the Kosher agreement for any reason, it will destroy any labels bearing the Kosher certification or fully obliterate the Kosher symbol from them. In addition, it will discontinue the use of the Kosher symbol in any advertising.
- **Enforcement and violations:** Although the contract calls for specific performance relating to *Kashrus* issues, it also recognizes that violations may nevertheless occur. In the event of willful intent to violate Kosher guidelines, certification may be subject to summary termination. If such violations are due to errors or negligence, however, the contract makes provisions for correcting the deficiency and ensuring that the program may continue. The following is a list of typical responses to violations in the Kosher program, some or all of which may be implemented as warranted:

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related to the cost of the product. Although some specialty Kosher certifications still rely on such a formula, the cost of most Kosher programs is amortized as part of general overhead and is not tied to production volumes.

<sup>38</sup> Every effort is made to keep such costs to minimum. Typically, several reviews are scheduled in a given area, allowing travel and lodging costs to be divided among the companies involved.



- Equipment that has been rendered non-Kosher must be Kosherized under supervision of the *Mashgiach*, the cost of which is borne by the manufacturer.
- Items that had been produced and determined to be non-Kosher, owing to non-Kosher ingredients or equipment, must be recalled from the marketplace.<sup>39</sup>
- The level of inspections and supervision may be increased, either temporarily or permanently, to prevent future violations. The costs of such increased supervision are borne by the manufacturer.
- Financial penalties may be assessed against the company as provided in the contract.
- The company may be required to alert the Kosher-consuming public of non-Kosher products that had been distributed.
- Any other remedy permitted by equity or law.
- **Legal:** The contract will also typically provide for its legal validity, recognizing that the parties regard it as reasonable to ensure the Kosher status of certified products and to provide for adjudication of any disputes.

### ***Inspections***

After both parties sign the contract, the Kosher program comes into force, subject to fulfillment of any outstanding requirements such as Kosherization of equipment and verification of, or changes in, ingredients. Typically, the Kosher certification agency will require a final inspection to verify that all such requirements have been met, after which the company may begin producing Kosher products as stipulated in the contract and labeling them as such. Unless the certification program calls for ongoing supervision, a *Mashgiach* will be assigned to make regular, unannounced visits to the factory. The *Mashgiach* will typically prepare a written report during each visit and may ask the plant manager or other responsible individual in the factory to sign it, confirming his visit and his findings (or indicating any disagreement with them). (The company can retain a copy of the document should it choose to do so.) This report is then forwarded to the Rabbinic coordinator handling the certification.

It is important to recognize that the *Mashgiach* and the Rabbinic coordinator perform separate, but complementary, functions in the administration of the Kosher program. The *Mashgiach* is charged with reviewing compliance with the terms of the certification and reporting on any deviations or new situations. He is *not* charged with approving new ingredients, products, or procedures. His purpose is to serve as the eyes and ears of the Rabbinic coordinator, and it is to the Rabbinic coordinator that all requests for changes in ingredients or production issues should be addressed. The *Mashgiach* is an excellent resource from whom to request explanations or information, but all significant decisions relating to the certification are the province of the Rabbinic coordinator, acting in consultation with other members of the administration, and the Rabbinic authorities of the certification service.

### ***Letter of Certification and Labeling Requirements***

The Kosher status of a product is typically confirmed by a document, known as a letter of certification, which is issued by the Kosher-certifying agency. This document generally contains the following information:

<sup>39</sup> When the violation is unintentional, every effort is typically made to determine whether the product may nevertheless be considered Kosher post facto, thus avoiding a product recall (see the section “*Bitul* (Nullification)” in Chapter 2, “Basic *Halachic* Concepts in *Kashrus*”).

- The name of the certified company.<sup>40</sup>
- The brand name under which the products are sold.
- The specific names of the products that are certified.<sup>41</sup>
- The Kosher status of each product (such as Pareve, Meat, or Dairy).<sup>42</sup>
- Requirements for identification of the Kosher-certified product, such as the presence of a specific Kosher symbol,<sup>43</sup> stamp, or *Mashgiach*'s signature on the label. Alternatively, certification may be limited to specific production lot numbers or, in the case of bulk shipments, to product shipped in tankers sealed with specifically numbered seals.<sup>44</sup>
- Whether the product is certified for year-round use (not for Passover) or certified for Passover use.
- Additional *Kashrus* information, such as *Cholov Yisroel*,<sup>45</sup> *Pas Yisroel*, or *Yoshon*.<sup>46</sup>

The letter of certification is signed by the Rabbi responsible for certifying the products' Kosher status and is typically valid for one year.

Many letters of certification stipulate that the Kosher status of the certified product is valid only when it is labeled with a specific Kosher symbol. In many countries (such as the United States, Canada, Israel, and parts of Europe), *Kashrus* agencies often require that all retail products bear a Kosher designation on their label because the retail consumer is ill equipped to consult letters of certification to verify the Kosher status of an item. Even when a product is sold for industrial use, many *Kashrus* organizations—and customers—may prefer to have the Kosher symbol appear on the label.<sup>47</sup> Regardless of the rationale for such a requirement, the Kosher status of a product is subject to compliance with the terms of certification stipulated in the letter of certification, and failure of a product to bear the required symbol may be grounds to reject the Kosher status of the product.<sup>48</sup>

In addition to establishing that a product is certified as Kosher, symbols are also used to indicate the *category* of certification. Generally, this is accomplished by printing the certifying agency's Kosher symbol together with a modifying letter (or letters). Table 1.1 provides a list of symbol constructs commonly used for such purposes. In all cases, the full designation, such as "Pareve" or "Dairy," may be printed alongside the Kosher symbol instead of the mnemonic abbreviation of its status.

<sup>40</sup> In the case of products produced under private label (see the section "Private Label Agreements"), the name of the distributor may replace that of the actual manufacturer.

<sup>41</sup> In situations in which *all* products manufactured by a specific company are Kosher, a letter of certification may be issued for that company, without listing each certified product individually. Most *Kashrus* organizations, however, avoid issuing such letters, preferring to document each specific certified product (with its specific Kosher status).

<sup>42</sup> See text that follows, concerning labeling requirements for a complete list of status categories.

<sup>43</sup> See text that follows, concerning the general requirement for a Kosher symbol to appear on the product label.

<sup>44</sup> See Chapter 3, "Ingredient Management," for a detailed discussion of the various requirements and methods by which products may be labeled or marked as Kosher.

<sup>45</sup> See Chapter 9, "The Dairy Industry," for a description of this term.

<sup>46</sup> See Chapter 7, "The Baking Industry," for a description of these terms.

<sup>47</sup> See the section "Restrictions on Packaging," earlier in this chapter.

<sup>48</sup> When the Kosher symbol is affixed by the *Mashgiach*, it is generally considered critical to establishing the Kosher status of the product. When the symbol is routinely affixed by the manufacturer, its inadvertent absence may be less of a concern. In all cases, however, failure to comply with any of the terms of the letter of certification is a serious matter, and such product should not be accepted as Kosher unless its Kosher status is verified by the certifying agency.

**Table 1.1.** Symbols used to indicate the category of Kosher certification

Symbol	Designation	Definition
***	Pareve	By default, an unmodified Kosher symbol indicates a Pareve status (unless it appears on milk, meat, or other similar, obviously non-Pareve item). Often, however, the manufacturer may choose to include the word “Pareve” along with the Kosher designation to ensure to avoid any confusion
*** D	Dairy	Product is certified as Dairy due to the inclusion of a dairy component. Many <i>Kashrus</i> organizations will certify a product as “D” even though it may contain no dairy ingredients but was produced on dairy equipment (see “DE,” below)
*** DE	Dairy Equipment <sup>49</sup>	Product contains no dairy ingredients, but is produced on dairy equipment (This designation is used by some, but not all, <i>Kashrus</i> organizations <sup>50</sup> )
*** M	Meat	Product contains a meat ingredient. Many <i>Kashrus</i> organizations will certify a product as “M” even though it may contain no meat ingredients but was produced on meat equipment (see “ME,” below)
*** ME	Meat Equipment	Product contains no meat ingredients, but is produced on meat equipment (This designation is used by some, but not all, <i>Kashrus</i> organizations)
*** P	Passover	Virtually all <i>Kashrus</i> agencies use the letter “P” to indicate Passover approval (not “Pareve”)
*** F	Fish	Product contains fish as an ingredient <sup>51</sup>

### “Dairy” versus “Dairy Equipment”

Several significant *Halachic* distinctions are made between products that are “Dairy”—those containing dairy components—and products that are inherently Pareve produced on dairy equipment.<sup>52</sup> Many Kosher-certifying agencies have chosen to differentiate their “Dairy” certifications on this basis, generally by appending a “D” to their symbol to indicate a truly Dairy status and a “DE” to indicate that the product is inherently Pareve but is produced on dairy equipment. Other organizations, however, have taken the position that such information may be confusing, misleading, or difficult to monitor properly, and make no distinction between “Dairy” and “Dairy Equipment”—all products are certified as “Dairy.”

Products certified by such organizations as “Dairy,” however, may technically qualify for a “Dairy Equipment” status, irrespective of their formal designation, and consumers often attempt to divine their true status by examining the ingredient declaration. Such attempts must be taken with caution, however, for while some ingredients are obviously Dairy (for

<sup>49</sup> See Chapter 2, “Basic *Halachic* Concepts in *Kashrus*,” for a discussion of the *Halachic* status of inherently Pareve products processed in dairy or meat equipment.

<sup>50</sup> See below for a discussion of the application of this policy.

<sup>51</sup> Some *Kashrus* organizations require the use of a fish designation only if the percentage of fish is above the level of *Bitul* (1/60). Others, however, require the use of this designation regardless of the amount of fish used (see Chapter 2, “Basic *Halachic* Concepts in *Kashrus*,” in the section “Fish and Meat”).

<sup>52</sup> For example, inherently Pareve products cooked in dairy equipment may be eaten immediately after (but not together with) a meat meal, as opposed to products containing dairy ingredients that may not be eaten for a certain period of time after a meat meal (see Chapter 2, “Basic *Halachic* Concepts in *Kashrus*,” for additional distinctions).

example, milk, butter, whey, and casein),<sup>53</sup> the status of others may be hidden behind terms such as “flavors” or “stabilizers,” leaving the consumer without a reliable means of ascertaining the product’s true status.

The Food Allergen Labeling and Consumer Protection Act, however, may provide a useful tool in determining whether a product actually contains even a minor amount of dairy material. This law, which became effective January 1, 2006, required all food manufacturers to declare even trace amounts of the following eight major food allergens:

- Milk
- Eggs
- Fish
- Crustacean shellfish
- Peanuts
- Tree nuts
- Wheat
- Soybeans

Food manufacturers generally err on the side of caution, and will indicate that a product “Contains Dairy” even if only in trace amounts or a component of a flavor or other processing aid. As such, a product labeled “Dairy”—but not listing “Dairy” as an allergen—may indeed be considered to have a “Dairy Equipment” status. In case of doubt, however, the consumer should always err on the side of caution and consider the product to be Dairy.

### ***Private Label Agreements***

Kosher programs involving only the manufacturer and the certification agency may be administered in a reasonably straightforward manner. All ingredient, production, and labeling issues are the province of the manufacturer, who can coordinate issues relating to *Kashrus* directly with the certification agency. As such, the accountability and traceability of a product bearing a specific company and Kosher label are clearly established.

“Private labeling” refers to a situation in which one company contracts with an independent manufacturer to produce goods under the label of that company. Indeed, the contracting company may have no manufacturing base whatsoever, relying exclusively on outside contractors to produce its products. When the contracting company desires a Kosher status for its products, the Kosher certification model involves *three* independent parties: the manufacturer, the owner of the label, and the Kosher certification agency. In many cases, the contracting company may wish to avail itself of the existing Kosher certification established by the manufacturer and to merely add a Kosher designation to the product under the terms of the existing Kosher program (using ingredients and processes previously or newly approved for these products). Although the Kosher status of product is nominally a function of manufacturing and not the owner of label, such an arrangement raises several issues in the administration of the Kosher program:

<sup>53</sup> Casein is a milk protein and is a quintessential dairy ingredient, irrespective of political considerations in the United States that accord it a “Non-Dairy” status (see “The Story of Cheese and Casein” in Chapter 17 for a full discussion of this subject).

- The Kosher symbol is the property of the Kosher certification agency and may not be used without its permission. Indeed, certification agencies are constantly on guard lest the symbol appear on products that it does not certify, because customers rely on appropriate use of Kosher symbols to maintain their adherence to a Kosher diet. If the label is owned by the manufacturer, it will typically bear the legend “Manufactured by [the name of the company],” and any Kosher symbol on such a package may be easily traced back to the manufacturer. If the production takes place by an entity other than the owner of the label, however, it will typically bear the legend “Manufactured for . . .” or “Distributed by . . .” In such cases, no clear relationship between the Kosher symbol and the company listed may exist. Such indiscriminate appearance of Kosher symbols on products for which no Kosher agreement exists—and thus lack any record of appropriate use—would serve to undermine the entire program of Kosher labeling, even if the product technically was Kosher.
- The owner of a private label may seek to have several manufacturers produce the same item. Some of these manufacturers may be under Kosher certification, whereas others may not. If the label printed by the company bore the Kosher symbol, its use in non-Kosher production facilities would pose a major concern. Even if two separate stocks of labels are printed, errors in label distribution may cause a label bearing the Kosher designation to be used in a non-Kosher facility. In addition, the mere existence of Kosher and non-Kosher versions of identical products is not permitted under normative Kosher procedures (see the earlier section “Contract” that addresses the Kosher contract).
- Because no formal relationship exists between the owner of the label and the Kosher certification, no agreement would be extant to govern the resolution of *Kashrus* issues were a product mislabeled or subject to a Kosher recall.

To address these issues, Kosher certification agencies have developed a “Private Label Agreement” that serves to authorize the use of a Kosher designation on products manufactured in a facility that is already subject to ongoing Kosher certification. This document is a three-party covenant that creates a contractual relationship between the certified manufacturer, the owner of the private label, and the Kosher certification service. The following are its salient points:

- All private label products that will bear the Kosher symbol must be subject to all relevant Kosher requirements stipulated in the master Kosher agreement between the manufacturer and the Kosher-certifying agency. The validity of the Private Label Agreement is contingent on the ongoing validity of the master contract for Kosher certification, and automatically terminates should that master contract lapse for any reason.
- Each label that will bear the Kosher symbol must be registered with the certifying agency and subject to its approval.
- The owner of the private label agrees that it will not contract for the production of any items identical to those listed in the Private Label Agreement at any other facility, whether labeled as Kosher or not, without the express approval of the Kosher-certifying agency.
- The owner of the private label agrees that the disposition of labels bearing the Kosher symbol is subject to the terms of the master agreement and may not be used by another manufacturer without the express authorization of the certifying agency. Further, in the event that the product loses its certification for any reason, the owner of the private label agrees to destroy all labels bearing the Kosher certification or fully obliterate the Kosher symbol from them.

- The Private Label Agreement also establishes the privity between the owner of the private label and the certifying agency such that issues relating to the Kosher status of the product, if any, are a mutual responsibility.
- A Private Label Agreement is required only when the manufacturer requests the use of the Kosher symbol on the private label. If the private label will not bear the Kosher symbol, no agreement or approval is required, provided that such productions comply with the Kosher requirements of the ongoing Kosher program.
- A nominal processing fee is typically assessed for each Private Label Agreement, which is generally charged for the agreement itself and not for each label covered.

### **M'hadrin Certifications**

The rules that regulate a Kosher certification program are based on *Halachic* requirements that have been codified over centuries. Kosher food production in the context of modern processing systems involves the application of these rules in a manner that is consistent with *Halacha* while simultaneously allowing the food industry to operate as efficiently as possible. Such a synthesis allows for the broadest availability of reliably certified Kosher products in the most cost-efficient manner. To this end, *Kashrus* authorities have been remarkably successful in developing programs and procedures that satisfy both requirements. We shall call this the *normative* approach to Kosher certification, and there is indeed broad unanimity on the part of *Kashrus* authorities as to the methods by which Kosher programs should be administered. The approaches and theories expounded in this book are based on such normative Kosher standards, which serve as the basis for most of the major Kosher certification programs, and such programs meet the needs of the vast majority of Kosher consumers.

A significant segment of the Kosher-consuming public, however, prefers or demands a more stringent level of supervision. The term *M'hadrin* is Hebrew for *scrupulous*, and a distinctive subset of Kosher certification has developed to address this need. It is critical to note that *M'hadrin* certifications do not impugn the integrity of mainstream Kosher programs. Indeed, they often work in concert with one another and recognize the validity of each other's approach. Rather, *M'hadrin* certifications provide an additional service to meet the needs of a particular market segment.

The difference between normative and *M'hadrin* Kosher certification may be noted in their respective approaches to both the method by which certification programs are administered and the standards employed. *M'hadrin* certifications typically require full-time supervision for most productions and do not rely on the periodic inspection system on which many normative Kosher programs are based. In addition, virtually all *M'hadrin* certifications eschew products that are not *Cholov Yisroel* and *Pas Yisroel*. All ingredients used in the production of a *M'hadrin* product must meet similar *M'hadrin* standards, and some *M'hadrin* certifications will also avoid the use of ingredients that are produced on equipment requiring *Kashering*. Based on these restrictions, many products that are certifiable under normative Kosher standards may not be eligible for a *M'hadrin* certification.

From the perspective of the manufacturer, most Kosher production will be undertaken in the context of mainstream Kosher certification. The key to the success of large-scale Kosher food production is its ability to forge a reliable Kosher program that meshes relatively seamlessly with the requirements of the general food industry. Many of the requirements of *M'hadrin* certification, however, would pose too great a burden on the industry for it to undertake them on a widespread basis.

*M'hadrin* certification may be practical on a limited basis, though. Indeed, many of the companies that specialize in selling *M'hadrin* products arrange for the production of their products in facilities that enjoy mainstream Kosher certification. To effect such production, manufacturers may be asked to change certain ingredients and procedures to satisfy *M'hadrin* requirements, and be subject to special supervision during those productions. In such cases, products may bear both the mainstream and *M'hadrin* Kosher certification symbols.

