

# Americans for Country of Origin Labeling

*An alliance of food producers and consumer advocates*

P.O. Box 30715, Billings, MT 59107, 406-252-2516

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Country of Origin Labeling Program  
Agricultural Marketing Service  
USDA Stop 0249  
Room 2092-S  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-0249

Via E-Mail: [cool@usda.gov](mailto:cool@usda.gov) and Facsimile: 202-720-3499

**Re: Notice of Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946**

Dear Sir or Madam:

We, the undersigned trade organizations, representing fruit and vegetable, peanut, wild fish, farm-raised fish, and live cattle, sheep, and swine industries, and consumer organizations, together submit the following comments on the Agricultural Marketing Service's Voluntary Guidelines for Country of Origin Labeling. We appreciate the hard work and openness of the Agricultural Marketing Service (Agency) in this process. We collectively submit these comments as an addition to any individual comments submitted on behalf of our respective organizations.

The Agency is encouraged to consider and incorporate the following principles which we collectively believe should form the basis for revising the current voluntary guidelines as well as for establishing mandatory country of origin labeling rules:

## **Principle 1**

**The Agency should not unilaterally shrink the pool of covered commodities beyond the specific exclusions expressly listed by Congress.**

- A. Congress expressly excluded covered commodities only if they meet the following criteria: (1) If the item is an ingredient in a processed food item. (2) If the covered commodity is – (a) prepared or served in a food service

establishment; and (b)(i) offered for sale or sold at the food service establishment in normal retail quantities; or (ii) served to consumers at the food service establishment.

- a. The Agency unilaterally added a more restrictive criterion by excluding covered commodities that have undergone a material change. As a result, covered commodities that have been cooked, cured, or restructured are excluded from coverage, despite the fact that such cooking, curing, or restructuring does not change the composition of the covered commodity.
    - i. Only if Congress had specified that covered commodities be “fresh” or “raw” commodities would the Agency’s exclusion of cooked, cured, or restructured items be appropriate.
  - b. The Agency unilaterally excluded covered commodities that have merely been enhanced with such additives as water, salt, flavoring, vegetable protein, or other extenders, enhancers, or additives. As a result, merely adding water or flavoring, regardless of the amount, to ground beef, pork, or lamb would effectively exclude these items from coverage.
- B. The Agency should specifically include in rules that merely processing a covered commodity, i.e., cooking, roasting, curing, or restructuring does not exclude the commodity from coverage.
- C. The Agency should specifically include in rules that merely adding water, salt, seasoning, flavoring, or other additives to a covered commodity does not exclude the covered commodity from coverage. The following are examples of covered commodities that should not be excluded from coverage:
- a. Peanut butter, a processed product derived exclusively from peanuts, is a covered commodity.
  - b. Breaded fish and shellfish are covered commodities.
  - c. Ground beef that has been seasoned, watered, or otherwise enhanced remains a covered commodity.
  - d. Salmon canned in brine, water or oil are covered commodities.
- D. The Agency should distinguish between “ingredients,” which should include components of a food product that are also commodities; and “additives,” “enhancers,” “extenders,” “flavoring,” “seasoning,” and “breading,” that are separate and distinct from legitimate ingredients as they do not result in changing the covered commodity into a separate and distinct food product. The exclusion should only apply to such food items as soup, stew, pizza, TV dinners, frozen casseroles, and other food items in which the combination of commodities results in a food item separate and distinct from any of the individual covered commodities included in the food item.

## **Principle 2**

**The Agency should not restrict the flexibility Congress afforded retailers in labeling covered commodities.**

- A. The Agency's voluntary guidelines mandate that terms such as "Produce of Country X" or "Grown in Country Y" be used to denote the origin of the covered product. In the final regulations, we believe the Agency should accept the listing or marking of the individual country name, or recognized abbreviation, e.g., United States or USA, as being sufficient to meet the requirements of the statute.

## **Principle 3**

**The Agency should not impose a regulatory burden on persons Congress did not include as regulated entities.**

- A. Congress listed all the persons who would be subject to the Secretary's discretionary authority to require a verifiable record-keeping audit trail. Included are persons who prepare, store, handle, or distribute a covered commodity for resale. Excluded are producers who sell live cattle, hogs, and sheep (not covered commodities) to persons who subsequently transform these live animals into covered commodities, and growers who sell covered commodities to those who subsequently prepare, store, handle, or distribute a covered commodity for resale.
- B. The Agency should not use the statutory reference to "suppliers" in section 282(e) of the Act as the basis for regulating producers or growers of covered commodities unless they are direct sellers to retailers. That provision requires those supplying a covered commodity to a retailer to provide information on product origin to the retailer. Thus, that provision can only refer to those selling directly to the retailer, not indirect sellers.
  - a. If the Agency intends to exercise its discretionary authority to require a verifiable record-keeping audit trail, only those persons who prepare, store, handle, or distribute covered commodities should be subject to such requirement.

## **Principle 4**

**The Agency should take affirmative steps to delineate responsibilities and authorities relative to verifying origin.**

- A. The Agency should require that sellers of a covered commodity, i.e., those who prepare, store, handle, or distribute a covered commodity, have no greater duty than to denote the country of origin of the covered commodities during each sales transaction; and

- B. The Agency should state in rules that the buyers of covered commodities must rely exclusively on the representations made by the sellers; and
- C. The Agency should state in rules that it has the exclusive authority to conduct compliance audits for verifying origin.

## **Principle 5**

**The Agency should establish a “Presumption of Domestic Origin” in rules. Such a presumption would be the least cost approach for regulatory efficiency without contravening WTO rules that allow imported products to be labeled and tracked in the food system.**

- A. For commodities not covered by the act, i.e., live cattle, hogs, and sheep; and commodities not already subject to USDA record-keeping requirements, i.e., fruit and vegetables under PACA, fish and shellfish under HACCP, the Agency should establish a presumption of domestic origin.
  - a. For commodities not already required to be marked as a foreign product as a condition of entry into the United States, the Agency should mandate that all cattle, sheep, and hogs be marked with their respective country of origin as a condition of entry into the United States.
  - b. The Agency should establish in rules that all commodities including live cattle, hogs, and sheep not marked with a foreign marking at the point of slaughter shall be deemed a commodity born and raised exclusively in the United States.
  - c. The Agency should establish in rules that live cattle, hogs, and sheep that have a foreign marking shall be identified as originating from the country from which it was marked. Only if the foreign-marked cattle, hogs, and sheep are also accompanied by a verifiable record-keeping trail denoting that the animal has resided in multiple countries during its production phase shall the resulting beef be labeled with a multiple country label. The maintenance and conveyance of the verifiable record-keeping trail shall be voluntary until the documentation reaches the point of slaughter. If such documentation is conveyed at the point of slaughter, the packer shall have an affirmative duty to maintain the multi-country of origin label applicable to the resulting covered commodities.

## **Principle 6**

**The Agency should establish a reasonable means of clearing livestock of unknown origin from the United States production system that a) does not cause a delay in the implementation of the Act, and b) that does not affect the marketability of existing livestock.**

- A. The Agency should establish in rules that because it is not practical or possible to determine the origin of animals presently residing in the United States, all animals not marked with a foreign marking are deemed to be born, raised, and slaughtered in the United States. Thus, the enforcement of the Act shall begin on the date the United States imposed the requirement that all animals imported in the United States must bear a permanent foreign marking. This will effectively constitute a grand fathering of any animals presently within the United States and of foreign origin. This grand fathering is prudent and necessary in order to equitably and fairly clear the livestock presently within the production system.

## **Principle 7**

**The Agency should establish in rules that labeling of fish and shellfish shall include the specific designations of “farmed” or “wild” in addition to the country of origin.**

## **Principle 8**

**The Agency should establish in rules that origin declarations be incorporated within existing industry practices and programs.**

- A. Retailers and suppliers of perishable agricultural commodities are already required to maintain records associated with each produce transaction. It would be a simple matter to incorporate an additional line, box, or field on existing records for a country of origin designation.
- B. For non-perishable covered commodities, the Agency should similarly overlay a line, box, or field on existing records associated with the five distinct model certification programs listed by Congress.
- C. The Agency should, as a service to industry, developed standardized forms for use in transferring origin information from sellers to buyers in the stream of commerce where industry does not have a pre-existing document adaptable for the purpose.

**Principle 9**

**The Agency should not impose a greater labeling requirement on blended products other than requiring the listing of the countries (and only the countries) from which the individual components originate.**

We appreciate the opportunity to comment on the Agency's voluntary guidelines and look forward to working with the Agency to promulgate workable and effective rules for mandatory country of origin labeling.

Sincerely,



Bill Bullard  
Official Signatory on Behalf of the Following  
Americans for Country of Origin Labeling Co-Signers:

Keith Gray  
Alabama Farmers Federation

Keith Gray  
Alabama Peanut Producers Association

Larry Mitchell  
American Corn Growers Association

Hugh Warren  
Catfish Farmers of America

Traci Bruckner  
Center for Rural Affairs

Arthur S. Jaeger  
Consumer Federation of America

Ray Hodge  
Florida Farm Bureau Federation

Luis Rodriguez  
Florida Farmers, Inc.

Ray Gilmer  
Florida Fruit and Vegetables Association

Bob Redding  
Florida Peanut Producers Association

Reggie Brown  
Florida Tomato Exchange

Bob Redding  
Georgia Peanut Commission

Barry T. Edington  
Georgia Poultry Justice Alliance

Shane Sklar  
Executive Director  
Independent Cattlemen's Association of Texas

Mark Ritchie  
President  
Institute for Agriculture and Trade Policy

Larry Brack  
President  
Kansas Cattlemen's Association

Nancy Robinson  
Vice President, Government & Industry Affairs  
Livestock Marketing Association

R.M. Thornsberry, D.V.M.  
President  
Missouri Stockgrower's Association

Brother David Andrews, CSC  
National Catholic Rural Life Conference

Tom Buis  
Vice President, Government Relations  
National Farmers Union

Eugene Paul  
National Farmers Organization

Kay Doby  
President  
North Carolina Contract Poultry Growers Association

Stephen Begley  
Northern Plains Resource Council

Mike Smith  
President  
Oregon Livestock Producers Association

Fred Stokes  
President  
Organization for Competitive Markets

Pennie Vance  
Powder River Basin Resource Council

Colette DePhelps Brown  
Executive Director  
Rural Roots: The Inland Northwest  
Community Food Systems Association

Carrie Longwood  
Executive Director  
South Dakota Stockgrowers Association

Stan Rosendahl  
President  
Platte County, Nebraska, Farm Bureau Federation

Patricia Lovera  
Critical Mass Energy & Environment Program  
Public Citizen

Leo McDonnell  
President  
R-CALF United Stockgrowers of America

Bob Jones  
Executive Director  
Southeastern Fisheries Association

Bob Redding  
Southern Peanut Farmers Federation

Randy Stevenson  
President  
Southeast Wyoming Cattlefeeder's Association

Harvey Joe Sanner  
Executive Director  
Soybean Producers of America

John Smillie  
Western Organization of Resource Councils

Cc: The Honorable Ann Veneman  
Members of Congress