

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number LS-02-13]

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.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Farm Security and Rural Investment Act of 2002 (Public Law 107-171) amended the Agricultural Marketing Act of 1946 to require the Department of Agriculture's Agricultural Marketing Service (AMS) to issue country of origin labeling guidelines for voluntary use by retailers who wish to notify their customers of the country of origin of beef (including veal), lamb, pork, fish, perishable agricultural commodities, and peanuts. The guidelines contained within this notice include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the voluntary labeling or identification of commodities covered by this program by their respective country of origin. These voluntary guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program. AMS is committed to providing the industry and consumers with a workable voluntary program that will carry out the intent of the law. Public Law 107-171 also requires the Secretary to promulgate a regulation for mandatory labeling by September 30, 2004. Development of this mandatory regulation will begin in April 2003 and will likely be based on these voluntary guidelines from the current interim period as well as related input the Agency receives. AMS encourages submissions on the utility of these voluntary guidelines during the next 180 days. The forthcoming mandatory regulation will be developed through the rulemaking process, which will include a proposal and an opportunity for public comment. Although the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will choose to participate if the benefits outweigh the costs. However, as the Agency moves toward the development of the regulation that will implement the mandatory program as required by Public Law 107-171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency.

DATES: These voluntary guidelines are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Submissions must be received by [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send written submissions to: Country of Origin Labeling Program, Agricultural Marketing Service, USDA, Stop 0249, Room 2092-S, 1400 Independence Avenue, SW, Washington, D.C. 20250-0249, or by fax to (202) 720-3499, or by E-mail to cool@usda.gov.

FOR FURTHER INFORMATION CONTACT: Eric Forman, Associate Deputy Administrator, Fruit and Vegetable Programs, AMS, USDA, by phone at: (202) 690-0262, or via E-mail at: eric.forman@usda.gov; or William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by phone at: (202) 720-5705, or via E-mail at: william.sessions@usda.gov. Additional information may also be obtained over the Agency's website at: www.ams.usda.gov/cool/.

SUPPLEMENTARY INFORMATION:

Background

Section 10816 of Public Law 107-171 (7 U.S.C. 1638-1638d) amends the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621 *et seq.*) to require retailers to inform consumers of the country of origin for covered commodities. The term "covered commodity" is defined in the law as muscle cuts of beef (including veal), lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish and shellfish; wild fish and shellfish; perishable agricultural commodities (fresh and frozen fruits and vegetables); and peanuts. The terms "retailers" and "perishable agricultural commodities" are defined in the law as in the Perishable Agricultural Commodities Act of 1930 (PACA) (7 U.S.C. 499a(b)).

Interest has been expressed in expanding these covered commodities to include other commodities, such as pecans. The Department of Agriculture (USDA), however, does not have the authority to include commodities in this program other than those specified in the statute. For agricultural commodities that cannot be covered under these guidelines, the Department has different authority to develop voluntary user-fee programs to certify that a non-covered commodity is a product of the United States. Under such a program, a participating handler or processor could label its product as a USDA certified product of the United States. Any person interested in such a program should contact the Agricultural Marketing Service (AMS).

In the case of beef, lamb, and pork products, the law states that a retailer may use a "United States Country of Origin" label only if the product is from an animal that was exclusively born, raised, and slaughtered in the United States. However, in the case of beef, this definition also includes cattle exclusively born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States. In the case of farm-raised fish and shellfish, the product must be fish or shellfish hatched, raised, harvested, and processed in the United States. For wild fish and shellfish, it must either be harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel. In addition, the label must distinguish between farm-raised and wild fish products. In the case of peanuts and perishable agricultural commodities, they must be exclusively produced in the United States to carry that label.

To convey country of origin information to consumers, the law states that retailers may use a label, stamp, mark, placard, or other clear and visible sign on the covered commodity, or on the package, display, holding unit, or bin containing the commodity at the final point of consumption. Food-service establishments—such as restaurants, bars, food stands, and similar facilities—are exempt.

The law makes reference to the definition of “retailer” in the PACA as the meaning of “retailer” for the application of country of origin labeling requirements. Under the PACA, a “retailer” is any person who buys or sells perishable agricultural products solely for sale at retail with a cumulative invoice value in any calendar year of more than \$230,000. This definition excludes butcher shops, fish markets, and small grocery stores that either purchase fruit and vegetables at a level below this dollar volume threshold or do not purchase fruit and vegetables at all.

The law directs the Secretary to first issue guidelines for voluntary labeling and then, by September 30, 2004, to promulgate requirements for mandatory labeling. When the mandatory labeling program takes effect, the law states that the Secretary may require any person who prepares, stores, handles, or distributes a covered commodity for retail sale to maintain a verifiable recordkeeping audit trail. According to the law, under the mandatory labeling program, suppliers are required to provide information to retailers indicating the country of origin of the covered commodity. Although the law states that the Secretary shall not use a mandatory identification system to verify country of origin under the mandatory labeling program, it does state that the Secretary may use, as a model, identity verification programs already in place. The law also provides enforcement procedures for the mandatory labeling program that includes fines, civil penalties, and cease and desist orders for retailers, packers, or other persons for willful violations.

Key Components of the Law

These voluntary guidelines describe a program that allows retailers, as defined by the law, to label covered commodities by their country of origin. It is important to note that industry is not required to participate in this voluntary labeling program that will be in effect until a mandatory program is implemented. However, for those retailers and other market participants who choose to adopt these voluntary guidelines, all of the requirements contained within must be followed. It also is important to note that retailers and other market participants can place country of origin information on labels independent of these voluntary guidelines, provided that current labeling laws are followed.

Defining a Covered Commodity

Covered commodities are muscle cuts of beef, lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised fish; wild fish; perishable agricultural commodities; and peanuts.

Ingredient in a Processed Food Item

The law excludes food items from country of origin labeling when a covered commodity is an “ingredient in a processed food item.” However, Public Law 107-171 does not define a “processed food item.” Therefore, the Agency must define what constitutes a “processed food item” for each covered commodity in the context of Public Law 107-171 for the purposes of these guidelines.

In developing the definition of “processed food item”, the Agency considered using existing definitions of processing. For example, the National Organic Program defines processing as: cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving,

dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container. While this definition was useful as a starting point, the Agency believes that such a definition would exempt commodities that Congress clearly intended to be subject to these guidelines. For example, with the coverage of muscle products of beef, lamb, and pork, Congress clearly intended that the slaughtering, cutting, and chilling of these commodities would not exempt them from the guidelines.

The Agency considered defining this exemption to exclude any “ingredient” listed on an ingredient label. Such an interpretation, however, would exclude many products that Congress intended to be covered by this statute. For example, if such an interpretation would be adopted, an item such as bagged lettuce, which lists only lettuce on the ingredients statement, could be excluded. The Agency believes that the mere listing of an otherwise covered commodity in an ingredient statement or list on a packaged covered commodity does not meet the threshold set forth in the law.

To determine when a covered commodity is an ingredient in a processed food item and excluded from these guidelines, the Agency has chosen to define a “processed food item” in two ways. First, a processed food item is defined as a combination of ingredients that result in a product with an identity that is different from that of the covered commodity. Such items include raw salmon when combined with other ingredients to produce sushi and peanuts when combined with other ingredients to produce a candy bar. However, blended and mixed covered commodities, which will be discussed in more detail later in this notice, where the covered commodities retain their identity are still covered by these guidelines. Such items include mixed vegetables such as peas and carrots.

Second, a commodity that is materially changed to the point that its character is substantially different from that of the covered commodity is also deemed to be a processed food item. This includes, but is not limited to, changes that occur as a result of cooking, curing, or restructuring. However, covered commodities that retain their identity when combined with other ingredients, such as water enhanced case ready steaks, are not considered to be “processed food items” under these guidelines. To the extent that this applies to specific covered commodities, further guidance is provided under the particular section for each category of covered commodity.

Whole Muscle Beef, Lamb, and Pork

All raw fresh and frozen whole muscle beef, lamb, and pork products are covered under these guidelines unless they are an ingredient in a processed food item or have been materially changed before retail marketing.

Where there are added ingredients, so long as the character of the whole muscle beef, lamb or pork is retained, the resulting products are covered. This includes such products as needle-tenderized steaks; seasoned, vacuum packaged pork loins; and water enhanced case ready steaks, chops and roasts. These items would be covered because combination of the ingredients and the whole muscle beef, lamb, or pork in does not result in a product with an identity that is different from that of the covered commodity.

In situations where the whole muscle beef, lamb, and pork is an ingredient in a processed food item and the identity of the processed food item is significantly different from that of the covered commodity, the processed food item is excluded from country of origin labeling. For example, items such as ready-to-cook Beef Wellington would be exempt

because the combination of ingredients with the covered commodity (muscle cut of beef) creates a product with an identity different from the covered commodity.

When items are materially changed to the point that they do not retain their raw, whole muscle character they would also be excluded from country of origin labeling. This includes such products as restructured steaks and lamb pita meats, which contain pieces of whole muscle beef, pork or lamb that are formed back together. The cooking and curing of products (e.g., the addition of nitrites) also excludes products from labeling. Examples of these products include corned beef briskets and bacon. This is because cooked and cured products, including raw whole muscle cured products, are functionally different products and are not typically marketed with fresh and frozen whole muscle meats at a retail establishment, but instead they are marketed with other excluded meat products.

Ground Beef, Lamb, and Pork

Public Law 107-171 specifically covers “ground beef, ground lamb, and ground pork.” The FSIS Food Standards and Labeling Policy Book (1998) defines products labeled as ground meats as not containing added water, cereal, soy derivatives, or other extenders. The Policy Book also specifically defines ground beef as not being able to have any salt, sweetening agents, flavorings, spices, or other seasonings added.

Using the FSIS standards for ground meat and ground beef as a guide, the Agency does not believe that any added ingredient items or further processed products produced from ground beef, ground lamb, or ground pork are covered.

Fresh and Frozen Fruits and Vegetables

The Perishable Agricultural Commodities Act defines perishable agricultural commodities as “any of the following, whether or not frozen or packed in ice: Fresh fruits and vegetables of every kind and character; and ... includes cherries in brine as defined by the Secretary in accordance with trade usages”. Therefore, frozen fruits and vegetables (e.g., a package of frozen strawberries, or frozen French fried potatoes made from sliced potatoes) are covered commodities and fall under these country of origin labeling guidelines.

To maintain consistency with PACA, a frozen fruit or vegetable will be a covered commodity so long as its “kind or character” has not been altered. Therefore, for all perishable agricultural commodities, an “ingredient in a processed food item” is defined to mean an otherwise covered commodity that is a constituent in a food item where the identity of the food item is different from that of the covered commodity (e.g., a frozen prepared pie that includes frozen sliced apples) or is included in a package with significant other foods (e.g., a frozen entree consisting of a pre-cooked meat item and frozen vegetables). Alternatively, when a perishable agricultural commodity is processed (i.e., frozen so as to remain subject to the PACA) and packaged with only preservatives, seasoning, sweeteners or other minor ingredients, the covered commodity would fall under these voluntary country of origin labeling guidelines.

Peanuts

Because the vast majority of peanuts sold at retail are shelled, roasted, and salted, the Agency believes these products were intended to be covered by the law. Accordingly, shelling, roasting, salting, and flavoring of peanuts would not exclude these products from

being subject to Public Law 107-171. However, further processed peanut products, including such items as candy coated peanuts, peanut brittle, and peanut butter would not be covered by country of origin labeling guidelines. Similarly, where the peanuts are ingredients in other food products, such as peanuts in a candy bar, they would be excluded.

Wild and farm-raised fish and shellfish

All fresh and frozen fish and shellfish items are covered by these country of origin labeling guidelines. All cooked and canned fish products, including such items as canned tuna and canned sardines, and restructured fish products, such as fish sticks and surimi, are excluded. Similarly, processed products where the fish or shellfish is an ingredient, such items as sushi, crab salad, and clam chowder, are excluded.

Labeling Country of Origin for products produced exclusively in the United States

If following these guidelines, a retailer shall label a covered commodity as having a “United States Country of Origin” only if the following criteria are met:

1. Beef: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States (including animals that were born and raised in Alaska or Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).
2. Lamb and Pork: Covered commodities must be derived exclusively from animals born, raised, and slaughtered in the United States.
3. Farm-raised Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish hatched, harvested, and processed in the United States.
4. Wild Fish and Shellfish: Covered commodities must be derived exclusively from fish or shellfish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.
5. Fresh and Frozen Fruits and Vegetables, and Peanuts: Covered commodities must be derived exclusively from produce or peanuts grown, packed and, if applicable, processed in the United States.

Product otherwise meeting the requirements of “United States Country of Origin” may retain that designation after export for further processing in a foreign country and reentry into the United States for retail sale so long as a verifiable recordkeeping audit trail is maintained and such labeling is consistent with other Federal labeling requirements.

Labeling Country of Origin for Imported Products (i.e., produced entirely outside of the United States)

Currently, Federal law—the Tariff Act of 1930 as amended (19 U.S.C. 1304), the Federal Meat Inspection Act, the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq.*), and other legislation—requires most imports, including food items, to bear labels informing the “ultimate purchaser” of their country of origin. Ultimate purchaser has been defined as the last U.S. person who will receive the article in the form in which it was imported. Containers (e.g., cartons and boxes) holding imported fresh fruits and vegetables, for example, must be labeled with country of origin information when entering the United

States. (NOTE: The PACA requires all labels on subject commodities to be accurate, but requires no specific labeling information.) Consumer-ready packages, including food products (e.g., a vacuum packaged imported lamb leg, a bundle of asparagus, or a package of frozen strawberries), although they are packed in a box, currently must have country of origin labels on each consumer-ready package. In contrast, a retailer may take loose produce out of a container and display it in an open bin, selling each individual piece of produce that has not been labeled. A placard or other label indicating country of origin is not currently required. If the article is destined for a U.S. processor or manufacturer where it will undergo "substantial transformation," that processor or manufacturer is considered the ultimate purchaser. As a result, meat and other items have not been required to carry a country of origin mark after cutting or processing in the United States and may presently be labeled product of the United States.

Under these guidelines, the country of origin for products produced entirely outside of the United States shall be the country as specified by the requirements of existing Federal laws at the time the product arrives at the U.S. port of entry. For example, an imported lamb carcass may have actually resulted from an animal slaughtered in the exporting country but born in a country other than the exporting country. However, for the purposes of these labeling guidelines, the imported lamb carcass may be labeled as the product of the exporting country.

Using this country of origin information for imported products, retailers (and their suppliers) will have to maintain the country of origin identity of this class of products to the final point of sale of a covered commodity. So, for the imported lamb carcass example above, under these guidelines if the carcass is fabricated into cuts in the United States, a resulting lamb loin marketed at retail would be marked as product of the exporting nation as it is not eligible for a United States origin claim.

Labeling Country of Origin when the Product has entered the United States during the production process (i.e., Mixed Origin that includes the United States)

The law explicitly defines the requirements for covered commodities to be labeled with a "United States Country of Origin." However, the law is considerably less prescriptive for products produced completely or in part outside of the United States. In these cases, the law only requires that retailers inform consumers at the point of sale of a covered commodity of the country of origin.

A number of animals born in foreign countries are raised and slaughtered in the United States. Also, some animals born in the U.S. are raised in foreign countries and then may be slaughtered in either that foreign country or returned to the United States for slaughter. As all three criteria (i.e., born, raised, slaughtered for beef, lamb, and pork) are needed for product to be considered "United States Country of Origin," the Agency has to define how the products from mixed origin animals should most appropriately be labeled. Similarly, the law states that peanuts and perishable agricultural commodities must be "produced" in the United States to be labeled "United States Country of Origin." Since many such products may be grown, packed, or processed in different countries, the Agency must determine how they should be labeled.

The Agency recognizes that the definition provided in the law does not allow products that were produced in both the United States and in a foreign country to be called

“United States Country of Origin” or even “Product of the United States and *Country X*.” However, the Agency also recognizes that products such as pork products derived from a pig that was born in a foreign country (e.g., *Country X*), raised, and slaughtered in the United States cannot be labeled as “Product of *Country X*” as much of the production of that animal was in the United States. Accordingly, these guidelines provide a system where such products that were produced in both foreign markets and in the United States would be labeled to identify what production processes occurred in a foreign market and what production processes occurred in the United States, up to the point that the country of origin definition was determined. For the pork example above, the product label could either read, “From *Country X* hogs Raised and Slaughtered in the United States,” or alternatively, “Born in *Country X*, Raised and Slaughtered in the United States.” A different example would be vegetables grown in the United States, frozen (processed) in a foreign country, and imported back into the United States for retail sale. This product could be labeled as, “Grown in the United States, Processed in *Country X*.”

The Agency is aware that in some cases, a covered commodity will undergo production processes in two or more foreign countries prior to entering the United States for additional processing or a final process such as slaughter. In these cases, verifiable product information will not always be available for all points in the production process (i.e., born, raised, or grown and packed) prior to the port of entry. In these cases, the product label will designate the country of origin as specified by existing Federal laws (e.g., requirements of the U.S. Customs Service) at the time the product arrives at the U.S. port of entry and any additional major processes (e.g., slaughter for beef or processing for peanuts) performed in the United States be listed on the product label. For example, if a calf was born in *Country X* and raised in *Country Y* before being imported for slaughter in the United States, an acceptable product label under these guidelines for the covered commodities derived from this animal would be: “From Cattle Imported from *Country Y*, Slaughtered in the United States.” However, alternatively, if all of the production process information is known for the product that occurred in both *Country X* and *Country Y*, it may be included on the product label. So, for the previous example, a label of, “Born in *Country X*, Raised in *Country Y*, and Slaughtered in the United States” would be acceptable under these guidelines if a verifiable recordkeeping trail was available, but it would not be required since two or more countries (prior to the product entering the United States) are involved.

The Agency believes this level of detail is required under the statute and will be consistent with the law’s purpose of providing meaningful information to consumers. However, the Agency does have concerns that requiring meat products to carry labels that refer to the slaughtering of livestock could be viewed negatively by consumers. As a result, the Agency will allow the term “Processed” to be used in lieu of the term “Slaughtered” on meat products.

Defining Country of Origin for Blended or Mixed Products

The law requires the Agency to formulate guidelines for country of origin labeling for ground beef (and to a lesser extent ground lamb and pork), mixed fruit and vegetables, and blended seafood products that are covered commodities. For the purposes of these labeling provisions, blended or mixed products are those that contain one or more covered commodities from one or more countries. The Agency recognizes that these items are often a

mixture of raw materials that are derived from covered commodities produced both in the United States and in countries outside of the United States. Each of the raw material sources for mixed or blended items would have a country of origin as defined by these guidelines.

In addition, the Agency recognizes that it could be misleading to consumers if only a small percentage of a mixture of a covered commodity met the definition of United States origin and yet the mixture could list the United States first ahead of other countries in a country of origin declaration on the package. Therefore, under these guidelines the applicable country of origin labeling for each raw material source (as defined in the guidelines) must be reflected in the labeling of the mixed or blended retail item by order of prominence by weight. This being the case, ground beef would be labeled with the applicable country of origin information as required by the guidelines for each raw material source in descending order of prominence by weight.

For example, the label “From *Country X* Cattle Slaughtered in the United States; Product of *Country Y*; and United States Product” could be the label on a package of ground beef for a mixture of three beef raw material sources where the most substantial raw material source was from cattle born and raised in *Country X* and slaughtered in the United States, followed by imported *Country Y* beef trimmings, and then followed by trimmings from beef completely of United States origin. Likewise, the labeling for a bag of shrimp tails containing shrimp that were sourced from multiple countries must, under these guidelines, specify the country of origin of each of the sources of the shrimp in order of their prominence by weight for those shrimp tails in the bag. It is important to note that these guidelines do not require the label to list the actual percentage of weight for each constituent ingredient (e.g., 50 percent United States, 40 percent *Country X*, 10 percent *Country Y*).

In the case of mixed or blended products where the individual constituents can be separately identified, the guidelines would require the container to be labeled to individually identify the country of origin of each constituent. An example of a mixed or blended product where the individual constituents can be separately identified is a bagged salad. For a bagged salad that contains lettuce, spinach, and peppers from three different countries, the package label would list the applicable country of origin separately for each constituent ingredient.

Method of Notification

The law states that country of origin notification may be provided to consumers by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers. However, it is important to note that this requirement does not supercede any existing labeling requirements and any such country of origin notification must not obscure other labeling information required by existing regulatory requirements.

The guidelines allow market participants to utilize a variety of different labeling nomenclatures to denote the country of origin of a covered commodity. For example, “U.K.” and “United Kingdom of Great Britain and Northern Ireland” are both allowed under the guidelines. Similarly, covered commodities meeting the guidelines for a “United States Country of Origin” may be labeled by any commonly understood designations such as:

1. Country of Origin--United States;
2. Product of the United States;
3. Produced in the United States; or

4. Product of USA.

The Agency kept this portion of the guidelines non-prescriptive to provide the industry with the most flexibility in implementing the program in the least costly manner possible.

State and Regional Labeling Programs

Under this voluntary program, the law states that retailers notify consumers of the country of origin of covered commodities. The Agency has determined that State and regional labeling programs, such as “Washington Apples,” “Idaho Potatoes,” and “California Grown” do not meet this requirement. Therefore, such State and regional labeling claims cannot be accepted in lieu of country of origin labeling.

Remotely Purchased Products

For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (e.g., Internet sales, home delivery sales, etc.), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (i.e., Internet site, home delivery catalog, etc.) as part of the information describing the covered commodity being offered for sale. This is because of the Agency’s belief that consumers must be made aware of the country of origin of the covered commodity before the purchase is made.

Verification and Enforcement of Country of Origin Labeling Claims under the Voluntary Program

A distinction was made by Congress when constructing the legislation authorizing this program between the voluntary labeling program and the mandatory labeling program. During the voluntary labeling timeframe covered by these guidelines, the Agency will not perform compliance visits pursuant to Public Law 107-171 and has no authority under the law to pursue enforcement action against entities participating in this voluntary program. However, it is important to note that when retailers and their suppliers choose to adopt the guidelines that all of the provisions contained within must be followed. Any reference by retailers and their suppliers to the use of these guidelines when certain provisions are not being met could be considered a labeling claim that is not truthful and therefore may be a violation of the PACA and other applicable labeling laws and subject to enforcement under these laws.

The law contains several provisions for the verification of country of origin claims. The law states that, “The Secretary may require that any person that ... distributes a covered commodity for retail sale maintain a verifiable record keeping audit trail...to verify compliance...” However, the law also sets forth that, “The Secretary shall not use a mandatory identification system to verify the country of origin of a covered commodity.” To have a meaningful program, retailers and their down-line suppliers will have to maintain a verifiable audit trail on covered commodities to substantiate country of origin labeling claims. The law states that, “To certify the country of origin of a covered commodity, the Secretary may use as a model certification programs in existence on the date of enactment of this Act.” The Agency encourages all retailers who voluntarily choose to adopt these guidelines to contact the Agency to gain a better understanding of the various verification

programs operated by the Agency that are already in place in certain market segments that would meet the requirements of this program.

Verification and Enforcement of Country of Origin Labeling Claims under the Mandatory Program

Enforcement of the country of origin labeling provisions of Public Law 107-171 relative to the frequency and extent of surveillance activities, complaint response, retailer and violation tracking, and public disclosure of information obtained by the Agency are all areas that will be addressed in the mandatory program. Accordingly, the Agency will not perform surveillance activities, investigate complaints, prosecute violations, or otherwise enforce the voluntary guidelines (except as might normally occur under other program authorities). However, as a preparatory measure, retailers and others may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Retention of Records

These guidelines require a two-year records retention policy. This timeframe was chosen because it is consistent with the current records retention requirements of the PACA, which govern these same retailers.

Economic implications

Though the benefits and costs of the voluntary program are difficult to quantify, the Agency believes that retailers will only choose to participate if the benefits outweigh the costs. As the Agency moves toward the development of a regulation to implement the mandatory program as required by Public Law 107-171, information concerning the benefits and the estimated or actual costs of implementing a program in compliance with the voluntary guidelines will be of great benefit to the Agency. The Agency is aware that studies have been conducted by USDA's Food Safety and Inspection Service (FSIS) and the United States General Accounting Office regarding implications of country of origin labeling and will use this information accordingly.

Labeling of Covered Commodities Marketed to Others Besides Retailers

It is important to note that these guidelines do not apply to covered commodities marketed to others besides retailers, as defined in the law. This includes covered commodities sold to such businesses as food service establishments, butcher shops, and foreign outlets. So, for example, boxed whole muscle beef cuts sold to an importer in Japan would be labeled as they currently are labeled under existing regulations.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Agency has requested emergency approval from the Office of Management and Budget for the information collection burden imposed by this program.

The Guidelines

These guidelines include definitions that can be used by retailers and their suppliers and understood by other market participants, to facilitate the labeling or identification of commodities covered by this program by their respective country of origin. These guidelines also outline what the Agency believes represents the framework of a consumer notification, product marking, and recordkeeping program that would be required to carry out this program.

VOLUNTARY COUNTRY OF ORIGIN LABELING GUIDELINES

Definitions:

Unless otherwise defined, the following terms should be construed as follows:

“**Act**” means the Agricultural Marketing Act of 1946, (7 U.S.C. 1621 et seq.).

“**Agency**” means the Agricultural Marketing Service, United States Department of Agriculture.

“**Beef**” means meat produced from cattle, including veal.

“**Consumer package**” means any container or wrapping in which any covered commodity is enclosed for use in the delivery or display of such commodity to retail purchasers.

“**Covered commodity**” means fresh or frozen muscle cuts of beef (including veal), lamb, and pork, ground beef, lamb, and pork, as well as farm-raised fish, wild fish, and shellfish (including steaks, nuggets, any other flesh from farmed raised fish and shellfish), perishable agricultural commodities as defined in the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), and peanuts. Covered commodities are excluded from these guidelines if the commodity is an ingredient in a processed food item.

“**Department**” means the United States Department of Agriculture.

“**Farm-raised fish**” means net-pen aquaculture or other farm-raised fish or shellfish; and fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

“**Food service establishment**” means a restaurant, cafeteria, lunchroom, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public. Food service establishments include salad bars, delicatessens, and other prepared food enterprises that provide ready-to-eat foods that are consumed either on or outside of the retailer’s premises.

“**Ground beef**” means ground beef of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

“**Ground lamb**” means ground lamb of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

“**Ground pork**” means ground pork of skeletal origin produced in conformance with all applicable Food Safety and Inspection Service labeling guidelines. This product contains no added ingredients.

“**Ingredient**” means the component, either in part or in full, of a finished food product.

“**Lamb**” means meat, other than mutton, produced from sheep.

“**Legibly**” means English language text that can be easily read.

“Material change” means altered prior to retail to the extent that the product does not meet the definition of covered commodity. To be considered “materially changed,” changes to a commodity must be of such magnitude that its character is substantially different from that of the covered commodity. Specifically, for the following:

1. Whole muscle beef, lamb, and pork: altered to the point that its character is no longer that of the covered commodity; such as through restructuring, cooking, and curing. Examples include ham, raw corned beef brisket, and restructured beef steaks.
2. Ground beef, lamb, and pork: the addition of any ingredients or cooking. Examples include ground beef with vegetable protein, cooked ground beef crumbles, bratwurst, fresh pork sausage, and lamb sausage.
3. Fresh and frozen fruits and vegetables: altered to the point that its character is no longer that of the covered commodity. Examples include orange and other fruit juices.
4. Peanuts: altered to the point that its character is no longer that of the covered commodity. An example is peanut butter.
5. Wild fish and farm-raised fish: altered to the point that its character is no longer that of the covered commodity. Includes the cooking and canning of fish and shellfish. Examples include canned tuna and canned sardines as well as surimi and restructured fish sticks.

“Perishable agricultural commodity” means fresh and frozen fruits and vegetables of every kind and character where the original character has not been changed (for example, frozen green beans would be included, but frozen concentrated orange juice would be excluded) and includes cherries in brine as defined by the Secretary in accordance with trade usages.

“Person” means any individual, partnership, corporation, association, or other legal entity.

“Pork” means meat produced from hogs.

“Processed food item” means either:

1. a combination of ingredients that may include a covered commodity but the identity of the processed food item is different from that of the covered commodity; or
2. a covered commodity that has undergone a material change.

“Produced in any country other than the United States” means born, raised, slaughtered, grown, packed, processed, or harvested (as applicable to the covered commodity), outside the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines), or by a vessel not registered in the United States.

“Raised” means, in the case of beef, lamb, and pork, the period of time following weaning until slaughter.

“Retailer” has the meaning given the term in section 1(b) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(b)), i.e., a person who is a dealer engaged in the business of selling any perishable agricultural commodity solely at retail with an invoice value in any calendar year of more than \$230,000.

“Secretary” means the Secretary of Agriculture of the United States or any person to whom the Secretary’s authority has been delegated.

“Slaughter” means the point in which a livestock animal (including cattle, swine, and sheep) is prepared into meat products fit for human consumption. For labeling purposes, the term “slaughtered” is interchangeable with the term “processed.”

“United States” means the fifty U.S states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Trust Territories of the Pacific Islands, and the waters of the United States (as defined in these guidelines).

“United States country of origin” means in the case of:

1. Beef: from animals born, raised, and slaughtered in the United States (including animals born and raised in Alaska and Hawaii and transported for a period not to exceed 60 days through Canada to the United States and slaughtered in the United States).
2. Lamb and pork: from animals born, raised, and slaughtered in the United States.
3. Farm-raised fish: from fish hatched, raised, harvested, and processed in the United States.
4. Wild-fish: from fish either harvested in the waters of the United States or by a U.S. flagged vessel and processed in the United States or aboard a U.S. flagged vessel.
5. Fresh and frozen fruits and vegetables, and peanuts: from products produced in the United States.

“U.S. flagged vessel” means a ship or boat registered in the United States or documented under chapter 121 of title 46, United States Code.

“Vessel flag” means the country of registry for a vessel, ship, or boat.

“Waters of the United States” means those fresh and ocean waters contained within the 200-mile boundary of the Exclusive Economic Zone (EEZ) surrounding the United States.

“Wild fish” means fish and shellfish, regardless of origin, harvested in the wild; and fillets, steaks, nuggets, and any other flesh from a wild fish or shellfish.

Country of Origin Notification:

In voluntarily providing notice of the country of origin as covered by this statute, the following guidelines shall be followed:

1. CONSUMER NOTIFICATION

A. General:

I. All covered commodities offered for sale individually, in bulk bins, cartons, crates, barrels, clusters, or consumer packages shall be legibly marked with the country of origin.

II. Country of origin labeling may be applied prior to or after delivery to the United States.

B. Exemptions

I. Food service establishments are exempted from the country of origin guidelines.

C. Exclusions

I. Covered commodities are excluded from country of origin labeling if they are an ingredient in a processed food item. Examples include:

- i. Whole muscle beef, lamb, and pork: Ready-to-cook Beef Wellington.
- ii. Ground beef, ground lamb, ground pork: A meal kit that includes ground beef and other ingredients.
- iii. Fresh and frozen fruit and vegetables: Frozen prepared pie that includes frozen sliced apples.
- iv. Peanuts: Peanuts in a candy bar.
- v. Wild and farm-raised fish and shellfish: Salmon sushi.

D. Designation of Wild fish and Farm-raised Fish:

I. The notice of country of origin for wild fish and farm-raised fish shall specify and distinguish between wild fish and farm-raised fish.

E. Labeling Covered Commodities of United States Country of Origin:

I. They must fully meet the definition of United States Country of Origin as put forth in the Definitions section of these guidelines.

II. Products further processed or handled in foreign countries after reaching the threshold point in which the country of origin of the covered commodity is determined may still qualify for “United States Country of Origin” under these guidelines if the product’s identity is maintained under a verifiable recordkeeping system. Otherwise, such products shall be labeled with the country from which it was exported in conformance with existing Federal laws. An example is a beef carcass meeting the definition of “Product of United States Origin” exported to another country for cutting into steaks. The resulting steaks from this carcass that are imported back into the United States may either be marked as product of “*Country X*” or, alternatively, if a verifiable recordkeeping system is in place, “Product of United States Origin.”

F. Labeling Imported Products:

I. Shall be labeled with the country from which it was exported in conformance with existing Federal laws.

II. For covered commodities that undergo different phases of preparation, production or processing in various countries prior to export to the United States, the label may also include additional country of origin information if the product’s identity is maintained under a verifiable recordkeeping system. This includes referencing production processes which may have occurred in the United States prior to export to a foreign country and ultimate import back into the United States.

G. Labeling Covered Commodities from Multiple Countries that Include the United States:

I. Beef, Lamb, Pork:

- i. If an animal was born or raised in a foreign country prior to slaughter in the United States, the resulting meat products shall be labeled to show the processing steps that occurred in a foreign country prior to slaughter in the

United States consistent with existing Federal law at the time the animal entered the United States. For example, if a calf is born and raised in a foreign country, and then exported for further raising and slaughtering in the United States, the label could either read, “From *Country X*” cattle Raised and Slaughtered in the United States,” or, alternatively, “Born and Raised in *Country X* and Raised and Slaughtered in the United States.”

- ii. If the animal was born or raised in two or more foreign countries prior to slaughter in the United States, the resulting meat products shall be labeled as originating from animals from the country as determined under existing Federal law at the time they entered the United States and for the process(es) occurring in the United States. For example, a steer born in *Country X*, exported to *Country Y* for raising, and then exported to the United States for slaughter could have the label, “From *Country Y* cattle Slaughtered in the United States.” However, such products may instead be labeled to identify each specific country (e.g., “Born in *Country X*, Raised in *Country Y*, and Slaughtered in the United States”) if the animal’s identity was maintained under a verifiable recordkeeping system.

II. Fresh and Frozen Fruits and Vegetables, and Peanuts:

- i. In the case where a covered commodity was grown and packed in a foreign country prior to processing in the United States, the product shall be labeled with the foreign country where it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, the product label could be applied as: “Grown and packed in *Country X* and Processed in the United States.”
- ii. In the case where a covered commodity was grown and packed in two or more foreign countries prior to processing in the United States, the product shall be labeled with the foreign country it was grown and/or packed in accordance with existing Federal law at the time when the product entered the United States. For example, product may have been grown in *Country X*, packed in *Country Y*, and processed in the United States. When the product entered the United States, under existing Federal law it would be identified as product of *Country Y* and could carry the label “Product of *Country Y*, Processed in the United States.” However, such products may instead be labeled to identify each specific country and in applicable chronological order by country if the product’s identity was maintained under a verifiable recordkeeping system.

III. Wild Fish and Farm-raised Fish: In the case where a covered commodity was harvested in the waters of or by a flagged vessel of one country and processed in another country or onboard a vessel with a different flag, the product label shall be applied as: “Harvested in (*Country X*, as applicable) and Processed in (*Country Y*, as applicable).”

H. Blended Products:

- I. For commingled, blended, or mixed covered commodities offered for retail sale that are prepared from raw materials originating from different countries (e.g., ground beef, salads, or fresh or frozen mixed fruits or vegetables) the

label shall indicate the country of origin information of each constituent or component covered commodity raw material source in accordance with these guidelines by order of prominence by weight.

- II. The product label shall be applied as: “Produced from covered commodities with the following countries of origin: (Raw material source A, with born, raised, slaughtered, grown, packed, harvested, or processed information as applicable to the commodity as defined by these guidelines), (Raw material source B, with born, raised, slaughtered, grown, packed, harvested, or processed as applicable to the commodity as defined by these guidelines),” and so forth until all covered commodity raw material sources are accounted for by order of prominence by weight.
- III. Products made from commingled, blended, or mixed covered commodities where processing has altered the commodity’s character (e.g., cooked vegetables in a soup), do not have to be labeled as to the country of origin of the constituent items.
 - I. Remotely purchased products:
 - I. For sales of a covered commodity where the customer purchases a covered commodity prior to having an opportunity to observe the final package (e.g., Internet sales, home delivery sales, etc.), the retailer, as defined by these guidelines, shall provide the country of origin information on the sales vehicle (i.e., Internet site, home delivery catalog, etc.) as part of the information describing the covered commodity being offered for sale.

2. MARKINGS

- A. Country of origin notification markings can either be in the form of a placard, sign, label, sticker, or other format that allows consumers to identify the country of origin of particular covered items. The placard, sign, label, sticker or other display must be placed in a conspicuous location. Country of origin information may be typed, printed, or handwritten. Labels must be written in English; additional accompanying languages are permissible. Country of origin notification shall be written in a form that allows the consumer to read them when selecting items to be purchased.
- B. Abbreviations and variant spellings, which unmistakably indicate the country such as: “U.K.” for “The United Kingdom of Great Britain and Northern Ireland” and “Brasil” for “Brazil” are acceptable. The adjectival form of the name of a country or region/city within a country may not be used as proper indication of the country of origin of imported commodities. For example, product names such as “Spanish peanuts” which are most commonly used to designate a product variety and not the actual origin of the product, would, without a further designation of country of origin, be unacceptable even if the products did actually originate from that country. Symbols (flags, national symbols, etc.) may not be used to denote a country of origin, but may be used in conjunction with an acceptable country of origin label.
- C. State or regional labeling programs will not be accepted in lieu of country of origin labeling.
- D. The phrases “Product of *Country X*,” and / or “Grown in *Country X*,” and/or “Imported from *Country X*,” can be used to denote the country of origin for products produced entirely in any country other than the United States.

3. RECORDKEEPING

- A. Every person that prepares, stores, handles, or distributes a covered commodity for retail sale must keep records on the country of origin for a period of at least two years.
- B. Any person engaged in the business of supplying a covered commodity to a retailer must make available information to the retailer indicating the country of origin of the covered commodity. Such persons, which include but are not limited to, producers, growers, handlers, packers, processors, and importers, must maintain auditable records documenting the origin of covered commodities. Self-certification by such persons is not sufficient.
- C. Retailers must ensure that a verifiable audit trail is maintained through contracts or other means, recognizing that suppliers throughout the production/marketing chain have a responsibility to maintain the necessary supporting records.
- D. All records must be legible and written in English, and may be maintained in either electronic or hard copy formats. To ensure accurate labeling and provide an auditable document trail, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold at that facility. In addition, records of any person who prepares, stores, handles, or distributes a covered commodity and/or comprehensive records maintained by the retailer may be located at points of distribution and sale, warehouses, or at central offices. Wherever maintained and in whatever format, these records must be readily accessible to review by the retailer and the Department.
- E. Records for domestically produced and/or processed products must clearly identify the location of the growers and production facilities. When similar covered commodities may be present from more than one country or different production regimes, a verifiable segregation plan must be in place. For imported commodities, records must provide clear product tracking from the port of entry into the United States.
- F. Recognizing retailers and their suppliers may have different accounting and inventory documentary systems; various forms of documentation will be acceptable provided the necessary tracking information is available.

4. ENFORCEMENT

- A. The Secretary will not perform surveillance of retailers, investigate complaints, prosecute violations, or otherwise enforce the provisions of the voluntary guidelines.
- B. The voluntary guidelines will not interfere with or supercede any other statutory requirement for country of origin labeling for the covered commodities. (i.e., all other Federal and/or state labeling requirements remain in force).
- C. As a preparatory measure, retailers and any other person that prepares, stores, handles, or distributes a covered commodity for retail sale may request that the Agency perform advisory audits on a user-fee basis to receive feedback on their application of the voluntary system.

Authority: 7 U.S.C. 1621 et seq.

A.J. Yates
Administrator