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April 7, 2003

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

Dear Sir/Madam:

Ref: 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 - Submission of comments.

We are very thankful to the Agricultural Marketing Service (AMS) division of the U.S. Department of Agriculture for the opportunity to provide comments and feedback on the voluntary Country of Origin Labeling (COO) guidelines.

The voluntary guidelines document reflects the agency current thinking on the subject and approach to propose final rules for the implementation of Country of Origin Labeling Laws. With this background, we respectfully submit the following comments for consideration in promulgating the final rule.

The voluntary guidelines are a vast expansion of the requirements of the Country of Origin Labeling requirements in the Farm Security and Rural Investment Act of 2002 (Farm Bill 2002) and go beyond the intent of the Congressional mandate. USDA's new regulations should only add to current requirements where absolutely necessary to implement the Act.

USDA should carefully study and review all existing laws, rules and regulations affecting "covered commodities" under the Act, so as to avoid adding new and unnecessary requirements on any party.

Issue - The approach by USDA that the final rule must be applicable to all covered commodities?

AMS is charged with the formidable task of developing regulations for all "covered commodities". We strongly urge USDA to explore proposing separate regulations for fresh fruits and vegetables from all other covered commodities to

implement the Act. There are several major differences between fresh fruits and vegetables and other "covered commodities" which make a single set of regulations ineffective, inefficient and prohibitively expensive

USDA must recognize the country of origin declarations that are mandatory legal requirements under other statutes as acceptable to meet the current law. The existing PACA law requires produce suppliers and marketers to provide truthful COO declaration and as legally responsible for the accuracy of the information supplied. This obviates the need for retailers to audit suppliers or use third party auditors to confirm the COO of products supplied by PACA licensees. In order to commit a willful violation under the Act, USDA should state that a retailer must intentionally change the information regarding COO provided by the supplier or demonstrate repeated and wanton disregard for communicating COO information as required by the Act.

Issue - Blended products (salads) current COO labeling under the Tariff Act of 1930

Under the Tariff Act of 1930, the COO of blended products such as salads and mixed fruit cups made from imported ingredients is legally required to be labeled for consumer purchase. This meets the Congressional intent of making information available to consumers about the COO of their foods.

USDA's voluntary guidelines for blended products show a regulatory response far different from Congressional intent. The current guidelines state: "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." The requirement to have country of origin identification of each individual constituent when individual constituents are sourced from more than one country, is unnecessary and very confusing for the consumers. The USDA should accept the current U.S. FDA and U.S. Customs regulations on labeling as adequate to meet the Congressional intent for mixed and blended products.

Issue - Recordkeeping

The requirement to retain records for two years to authenticate COO claims for perishable commodities is too onerous and burdensome. Since covered commodities are subject to PACA, there is no need for any additional recordkeeping specifically for the COO labeling. Records maintained under PACA have information about the COO of the produce and USDA could determine the validity of the claim by reviewing these records. No additional new recordkeeping is required.

Issue - Adequacy of Consumer Information

USDA should specifically state in the final regulation that a bulk retail display of produce from a single country complies with the Act if the majority of produce items in the bin or display bear stickers or if there signage posted at the bin with qualified country of origin information. This should meet the requirement to comply with the Act for consumer information, while recognizing the reality that stickers cannot be affixed to every piece of produce through packing and retail sale. The USDA should recognize that a requirement to have stickers on each individual piece of produce would require fundamental change in produce marketing or redesign of the produce departments at retail to comply with the Act adding substantial costs without additional benefits to the consumers.

Issue - Adequacy of Country or State Name

USDA should specifically state in the final regulation that an individual country name is sufficient to meet COO declarations, whether on stickers or in signage. Similarly, the use of a state name together with a product such as "Idaho Potatoes" meets the requirements under the Act to provide the COO information to the consumers at retail. The voluntary guidelines are overly prescriptive in requiring the words "Product of" in order to comply with the statute. A mere listing of the country name or the use of a state name together with the product is sufficient.

Issue - Inspections/Enforcement/Funding

It is essential that any penalties from enforcement by states or USDA must go to the general U.S. treasury. This is similar to PACA enforcement penalties, and is essential in order to prevent inspections from becoming a profit center for enforcing agencies or states.

Funding to implement, manage and enforce COO regulations must be authorized and appropriated by Congress and clearly designated by USDA. Funds from produce user fee or other existing produce related programs must not be used for the administration or enforcement of this regulation.

Thank you for the opportunity to provide comments on the voluntary guidelines.

Sincerely,

Mahipal Kunduru, Ph.D.
Director Food Safety and Quality
Dole Fresh Vegetables Inc.,