

# **Food Promotion Act of 2004**

## ***Summary Analysis***

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### **SECTION 1. SHORT TITLE.**

The short title of the bill is Food Promotion Act of 2004.

### **SECTION 2. REPLACEMENT OF MANDATORY COUNTRY OF ORIGIN LABELING WITH VOLUNTARY PROGRAM OF COUNTRY OF ORIGIN LABELING.**

This bill amends Subtitle D of the Agricultural Marketing Act of 1946, thus replacing the current law governing mandatory country of origin labeling with the following provisions.

### **SECTION 281. VOLUNTARY PROGRAM OF COUNTRY OF ORIGIN LABELING FOR CERTAIN MEAT PRODUCTS.**

This section provides the parameters for a voluntary country of origin labeling program for beef, pork and lamb. Details on the nature of the program will be discussed below with reference to Section 283 for perishable agricultural products.

### **SECTION 282. VOLUNTARY PROGRAM OF COUNTRY OF ORIGIN LABELING FOR FISH PRODUCTS.**

This section provides the parameters for a voluntary country of origin labeling program for fish and shellfish.

### **SECTION 283. VOLUNTARY PROGRAM OF COUNTRY OF ORIGIN LABELING FOR PERISHABLE AGRICULTURAL COMMODITIES.**

This section provides the parameters for a voluntary country of origin labeling program for perishable agricultural commodities.

#### **Subsection (a). Definition.**

This section defines perishable agricultural commodity to include all fresh fruits and vegetables, but not frozen.

**Subsection (b). Country of Origin Labeling.**

These provisions follow parallel structure with the provisions for meat and fish to implement a new voluntary country of origin labeling program by the Department of Agriculture. This section would require the Secretary to establish a new program for voluntary labeling, which could be used to promote U.S. products by those who choose to participate.

**Subsection (c). Label.**

Under such program, the Secretary would create a new label that designates U.S. country of origin, such as “USA Grown,” or some such graphic. Any person who wishes to use that label must elect to become a participant in the voluntary labeling program, and thus volunteer to become subject to its rules and regulations. The Secretary also has the flexibility to authorize other labels to convey participation in the program.

A critical factor here is that any firm within the produce industry and/or retail industry can label products with the country of origin, just as many are doing presently, *without volunteering to become subject to the new voluntary program to be established by USDA*. Simply adding the name of country to a PLU sticker, twist tie, or bin sign at retail does NOT enter that party into the volunteer program, thus one would have no additional regulatory oversight of that action other than current law.

The only case in which companies will become subject to the voluntary labeling program is if they perceive sufficient added value to use the new “official” USDA designed “USA” label, and thus choose to enter into the USDA voluntary program and agree to its terms.

**Subsection (d). Limitation on Use of U.S. Country of Origin Label.**

This section requires that persons participating in the program only use the new label on products exclusively grown in the United States.

**Subsection (e). Survey of Country of Origin Labeling; Purpose.**

This section provides for direct oversight by the Department of Agriculture to measure how well the produce and retail industries are doing in labeling produce for country of origin. This is a unique provision in the bill for produce, and provides strong incentive to the industry to maximize country of origin labeling.

(1) Definition.

This definition is important because it provides a wide range of labeling techniques that will be considered by USDA in the survey, including bin and display labeling at final point of sale.

(2) Survey Required; Intervals.

Within one year of date of enactment, USDA must conduct a baseline survey to measure and report on many specific aspects of produce labeling with regard to country of origin. A similar survey is required to be conducted every two years thereafter, subject to results outlined in subsection (f)(2)(c) below. Basically, the survey will measure the extent of country of origin labeling of produce in the United States.

A critically important factor for the industry is that USDA will measure not only products that carry the new “official” USDA sanctioned label for voluntary participants in the program, but also ALL produce that carries any form of country of origin identification such that consumers could reasonably ascertain a product’s country of origin. Therefore, industry has wide flexibility in how it provides information to consumers – with a new label as a formal participant in the new USDA program, or simply by adding a country name as many are doing today – so long as consumers can tell the country of origin.

Item (G) is perhaps the most important measurement, and calls for a determination by the Secretary of “how we’re doing” in providing country of origin information to consumers. The Secretary will determine “whether consumers can reasonably ascertain the country of origin of a substantial majority” of produce. These terms will be specifically defined in the regulations to be promulgated by USDA following bill passage, but it is clear that the “substantial majority” language is strong incentive to maximize label information for consumers.

(3) Location of Survey.

This section provides flexibility for USDA in conducting its analysis at retail stores and other locations.

(4) Special Considerations.

This section contains two critically important provisions to produce.

Item (A) provides that bulk displays shall be considered adequately labeled for country of origin if a majority of products contained therein are labeled. This will allow for mixed displays, such as a bin with fruit from two or more countries, to be considered adequately labeled for country of origin so long as the majority of the fruit is labeled.

Item (B) provides that state, regional and local designations within the United States is sufficient to convey U.S. origin of product. This is a tremendous boon to those state and regional marketing efforts which desire to promote their local marketing message, without adding an additional USA sticker.

### **Subsection (f). Use and Availability of Survey Results**

(1) Report to Congress.

In addition to conducting the survey to measure country of origin labeling for produce, the Secretary must report to Congress on the results of the survey and her determination of

whether consumers “*can reasonably ascertain the country of origin of a substantial majority*” of produce.

(2) Subsequent Surveys.

(2)(A) Determination of Consumer Awareness.

After the first report to Congress, if USDA determines in a subsequent survey that consumers *cannot reasonably ascertain* country of origin, the Secretary will include in the report submitted to Congress action steps and guidance to assist the industry in increasing the amount of labeling.

(2)(B) Effect of Failure to Ascertain Country of Origin.

If during the immediate next biannual survey, consumers still *cannot reasonably ascertain* country of origin, the Secretary shall make recommendations to Congress on ways to achieve that goal.

(2)(C) Effect of Ability to Ascertain Country of Origin.

If on the other hand, the Secretary determines in two consecutive biannual surveys that consumers *are indeed able to reasonably ascertain* country of origin, USDA will no longer be required to conduct biannual surveys. It is still within the Secretary’s authority to conduct such a survey if so desired, but with two consecutive “positive” reports, she will no longer be required to do so.

(3) Public Availability.

All of the Secretary’s reports to Congress will be made available to the public and industry, providing ample opportunity for all parties to address perceived success or shortcoming in the amount of produce found to be labeled, and evaluate trends from survey to survey.

## **SECTION 284. VERIFICATION**

This section provides the same verification terms for all voluntary participants in the labeling program to be established by the Secretary for meat, fish and produce. The specific steps that “may” be required for verification would be determined in promulgation of regulations by USDA.

It is important to remember, however, that participating in this program is completely voluntary. Only those firms that choose to subject themselves to these requirements in order to use the new “official” USDA USA logo will be covered. Produce and retail firms that simply choose to label their produce with a country of origin name and *NOT* the USDA label will *NOT* be subject to this provision.

## **SECTION 285. ENFORCEMENT**

This section provides the same enforcement terms for all voluntary participants in the labeling program to be established by the Secretary for meat, fish and produce.

As is the case in Section 284 above, it is important to remember that participating in this program is completely voluntary. Only those firms that choose to subject themselves to these enforcement provisions in order to use the new “official” USDA USA logo will be covered. Produce and retail firms that simply choose to label their produce with a country of origin name and *NOT* the USDA label will *NOT* be subject to this provision.

For those firms that might wish to use the new USDA label and become voluntary participants in this program, the standard for assessing civil penalties under this provision is still extremely high.

The Secretary is permitted to assess civil penalties only against program participants who “purposely and knowingly” violate the terms of the program. This standard provides protection to any firm that unknowingly or unintentionally makes a mistake. The only program participants that should be concerned by this provision are those that intend to switch labels or intentionally mislead the public. Within current laws applicable to produce, those acts are already illegal and subject to enforcement.