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January 30, 2009

The Honorable Tom Harkin
Chairman
The Honorable Saxby Chambliss
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Collin C. Peterson
Chairman
The Honorable Frank D. Lucas
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Agricultural Marketing Service: Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture (USDA), Agricultural Marketing Service, entitled “Mandatory Country of Origin Labeling of Beef, Pork, Lamb, Chicken, Goat Meat, Wild and Farm-Raised Fish and Shellfish, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts” (RIN: 0581-AC26). We received the rule on January 15, 2009. It was published in the *Federal Register* as a final rule on January 15, 2009. 74 Fed. Reg. 2658.

The final rule implements provisions in the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), Pub. L. No. 107-171, § 10816, 116 Stat. 134, 533, and the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Pub. L. No. 110-246, § 11002, 122 Stat. 1651, 2113, that require retailers to notify their customers of the country of origin of covered commodities. Covered commodities include muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. The final rule has an effective date of March 16, 2009.

Enclosed is our assessment of the USDA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. USDA did not address the Unfunded Mandates Reform Act of 1995 in the final rule. Our review of the procedural steps taken indicates that USDA complied with the other applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: James E. Link
Administrator
Agricultural Marketing Service
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE
ENTITLED
"MANDATORY COUNTRY OF ORIGIN LABELING OF BEEF,
PORK, LAMB, CHICKEN, GOAT MEAT, WILD AND FARM-RAISED FISH
AND SHELLFISH, PERISHABLE AGRICULTURAL COMMODITIES,
PEANUTS, PECANS, GINSENG, AND MACADAMIA NUTS"
(RIN: 0581-AC26)

(i) Cost-benefit analysis

USDA conducted a cost-benefit analysis of this final rule. USDA concluded that the estimated economic benefits of this final rule are difficult to quantify but likely to be small. The estimated first-year incremental costs for growers, producers, processors, wholesalers, and retailers are \$2.6 billion. The estimated cost to the United States economy in higher food prices and reduced food production in the 10th year after implementation of the final rule is \$211.9 million.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

USDA determined that this final rule will have a significant economic impact on a substantial number of small entities, and, therefore, prepared a final regulatory flexibility analysis. USDA stated that the statutory requirements for country of origin labeling (COOL) are prescriptive and provide little regulatory discretion for this rulemaking. Nonetheless, USDA considered alternatives that would reduce the impact on small business. For example, the rule does not dictate systems that firms will need to put in place to implement the requirements; different segments of the affected industries will be able to develop their own least-cost systems.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

There is no express reference to the Unfunded Mandates Reform Act in the final rule.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

USDA promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On October 30, 2003, USDA

published a proposed rule for the mandatory COOL program with a 60-day comment period. 68 Fed. Reg. 61,944. On June 20, 2007, USDA reopened the comment period for the proposed rule for all covered commodities. 72 Fed. Reg. 33,917. USDA published two interim final rules requesting comment, one for fish and shellfish on October 5, 2004, 69 Fed. Reg. 59,708, and one for covered commodities other than fish and shellfish on August 1, 2008, 73 Fed. Reg. 45,106. USDA responds to the comments in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains new information collection requirements that have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581-0250.

Statutory authorization for the rule

The final rule was promulgated to implement provisions in the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, § 10816, 116 Stat. 134, 533, and the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 11002, 122 Stat. 1651, 2113.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the Order.

Executive Order No. 13,132 (Federalism)

The final rule does have federalism implications under the Order. USDA concluded that, while the 2002 and 2008 Farm Bills do not contain express preemption provisions, it is clear from the language in these statutes that Congress intended preemption of state law.