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March 21, 2016

The Honorable Pat Roberts
Chairman
The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable K. Michael Conaway
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Agricultural Marketing Service: Removal of Mandatory Country of Origin Labeling Requirements for Beef and Pork Muscle Cuts, Ground Beef, and Ground Pork*

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, Agricultural Marketing Service (AMS) entitled "Removal of Mandatory Country of Origin Labeling Requirements for Beef and Pork Muscle Cuts, Ground Beef, and Ground Pork" (RIN: 0581-AD29). We received the rule on March 4, 2016. It was published in the *Federal Register* as a final rule on March 2, 2016. 81 Fed. Reg. 10,755.

The final rule amends the Country of Origin Labeling (COOL) regulations to remove muscle cut beef and pork, and ground beef and pork from mandatory COOL requirements. The COOL regulations are issued pursuant to the Agricultural Marketing Act of 1946. AMS is issuing this rule to conform with amendments to the Act contained in the Consolidated Appropriations Act, 2016. Pub. L. No. 114-113, div. A, title VII, § 759, 129 Stat. 2242, ___ (Dec. 18, 2015).

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). The final rule has an effective date of March 2, 2016. We received the rule on March 4, 2016, and it was published in the *Federal Register* on March 2, 2016. Therefore, the final rule does not have the required 60-day delay in effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. AMS found good cause to waive the notice of proposed rulemaking and the notice and comment procedures for the final rule because AMS has no discretion in implementing the statutory provisions that remove beef and pork from the COOL regulations. Additionally, AMS stated that

on December 7, 2015, the World Trade Organization (WTO) Arbitrators set the maximum permissible levels of suspension of concessions at Canadian \$1.05 billion (U.S. \$781 million) annually for Canada and U.S. \$228 million annually for Mexico. WTO granted Canada and Mexico authorization to suspend concessions on December 21, 2015. For these same reasons, pursuant to 5 U.S.C. § 553, it was found and determined that good cause exists to exempt this rule from the requirement to delay the effective date.

Enclosed is our assessment of AMS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that AMS complied with the 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
Managing Associate General Counsel

Enclosure

cc: Elanor Starmer
Acting Associate 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
“REMOVAL OF MANDATORY COUNTRY OF ORIGIN
LABELING REQUIREMENTS FOR BEEF AND
PORK MUSCLE CUTS, GROUND BEEF, AND GROUND PORK”
(RIN: 0581-AD29)

(i) Cost-benefit analysis

The Agricultural Marketing Service (AMS) prepared a cost-benefit analysis of the final rule. According to AMS, the estimated economic benefits associated with this final rule, previously assessed as costs, are likely to be significant. AMS also stated that the estimated benefits for producers, processors, wholesalers, and retailers of previously covered beef and pork products are difficult to assess, as they are essentially the converse of the costs attributed to the 2009/2013 rules. However, the estimated benefits from incremental cost savings are likely to be less than the cumulative impact of these rules, \$1.8 billion in cost avoidance, as affected firms have adjusted their operations to accommodate Country of Origin Labeling (COOL) requirements more efficiently since implementation of the initial COOL measure in 2009, and the amended measure in 2013. On a total basis, the economic assessment estimated benefits in the form of cost savings of up to \$451.0 million for producers, \$613.7 million for intermediaries such as handlers, processors and wholesalers, and \$767.2 million for retailers for a total of \$1.832 billion.

According to AMS, the costs of this rule are the loss in benefits to consumers who desired such country of origin information for muscle cut beef and pork, and ground beef and pork products sold at retail. As discussed by AMS in previous rulemakings, these costs are difficult to determine quantitatively. The original rulemaking did not estimate a quantitative value of these preferences but noted their existence. AMS found that the lack of voluntary country of origin labeling programs, including labeling for beef and pork products, was evidence that consumers did not have strong enough preferences to support price premiums sufficient for firms in the supply chain to recoup the costs of labeling. AMS included a summary table in the final rule that reflects the number of affected entities by the final rule and concluded that this rule is estimated to directly or indirectly affect approximately 1,027,204 establishments owned by approximately 992,781 firms. AMS also included tables which estimated implementation costs of the COOL program in 2015 dollars for the 2009 regulation and the 2013 regulation, and the number of operations and average cost savings per affected entity under this final rule.

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

AMS prepared a final regulatory flexibility analysis of the rule's likely economic impact on small businesses pursuant to RFA. AMS believes that the final rule will have a significant economic impact on a substantial number of small entities, but this impact will be in the form of removing regulatory burdens. The rule is the direct result of statutory obligations to implement section 759 of division A of the Consolidated Appropriations Act, 2016. The intent of this law is to

remove muscle cut beef and pork and ground beef and pork from a regulation that provides consumers with information on the country of origin of covered commodities at certain retail establishments. Specifically, the law withdraws these commodities from federal country of origin labeling requirements for products sold by retailers subject to COOL.

Section 604 of RFA requires an agency to provide an estimate of the number of small entities to which the rule will apply. A listing of the number of entities (producers, handlers, processors, wholesalers, and retailers) in the supply chains for each of the covered commodities can be found in a summary table in the final rule. However, in the case of this rule, according to AMS, these entities will benefit from reduced costs, rather than incur additional costs.

Because of the removal from country of origin requirements, COOL information will no longer be required to be passed along the supply chain and made available to consumers at the retail level. As a result, each participant in the supply chain will benefit from reductions in recordkeeping costs, as well as changes or modifications to their business practices. AMS estimated that approximately 1,027,000 establishments owned by approximately 993,000 firms will be either directly or indirectly affected by the rule. According to AMS, this rule potentially will have an impact on all participants in the supply chain, although the nature and extent of the impact will depend on the participant's function within the marketing chain.

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

AMS did not provide an analysis of the final rule under the Unfunded Mandates Reform Act of 1995.

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

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

AMS found and determined that good cause exists under 5 U.S.C. 553(b)(3) for implementing this final rule on March 2, 2016, without prior notice and opportunity for comment. This rule has been determined to be a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.); however, the AMS finds that under 5 U.S.C. 808(2) good cause exists to waive the 60-day delay in the effective date. The Consolidated Appropriations Act, 2016 amended the Agricultural Marketing Act of 1946, to remove the requirements for labeling beef and pork to bring the United States into compliance with its international trade obligations. AMS states that providing notice and seeking comment are impractical, unnecessary, and contrary to public interest because AMS has no discretion in implementing the statutory provisions that remove beef and pork from the COOL regulations.

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

According to AMS, pursuant to PRA, the information collection provisions contained in this rule were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0581-0250. AMS simultaneously published a notice and request for comment seeking OMB approval to revise this information collection in the *Federal Register*. 81 Fed. Reg. 10,827 (March 2, 2016).

Statutory authorization for the rule

The final rule was promulgated to conform with amendments to the Agricultural Marketing Act of 1946, contained in the Consolidated Appropriations Act, 2016. Pub. L. No. 114-113, div. A, title VII, § 759, 129 Stat. 2242, ____ (Dec. 18, 2015).

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

This final rule has been designated as an “economically significant regulatory action” under section 3(f) of Executive Order 12,866, and, therefore, has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

AMS states that the COOL program is required by the 2002 Farm Bill, as amended by the 2008 Farm Bill and the Consolidated Appropriations Act, 2016. According to AMS, in the January 15, 2009, final rule regarding the program, the federalism analysis stated that to the extent that state country of origin labeling programs encompass commodities that are not governed by the COOL program, the states may continue to operate them. It also contained a preemption for those state country of origin labeling programs that encompass commodities that are governed by the COOL program. This final rule does not change the preemption. With regard to consultation with states, as directed by the federalism order, AMS previously consulted with the states that have country of origin labeling programs. AMS has cooperative agreements with all 50 states to assist in the enforcement of the COOL program and has communications with the states on a regular basis.