



441 G St. N.W.  
Washington, DC 20548

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June 10, 2013

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable Thad Cochran  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Frank D. Lucas  
Chairman  
The Honorable Collin C. Peterson  
Ranking 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, Agricultural Marketing Service (AMS), 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-AD29). We received the rule on May 24, 2013. It was published in the *Federal Register* as a final rule on May 24, 2013. 78 Fed. Reg. 31,367.

The final rule amends the Country of Origin Labeling (COOL) regulations to change the labeling provisions for muscle cut covered commodities to provide consumers with more specific information and amends the definition for “retailer” to include any person subject to be licensed as a retailer under the Perishable Agricultural Commodities Act. Under this final rule, origin designations for muscle cut covered commodities derived from animals slaughtered in the United States are required to specify the production steps of birth, raising, and slaughter of the animal from which the meat is derived that took place in each country listed on the origin designation. In addition, this rule eliminates the allowance for commingling of muscle cut covered commodities of different origins. These changes will provide consumers with more specific information about the origin of muscle cut covered commodities.

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). This final rule was received and published on May 24, 2013. The stated effective date for this final rule is May 23, 2013. Therefore, this rule does not have the required 60-day delay. However, notwithstanding the 60-day delay

requirement, any rule that an agency for good cause finds that notice and comment are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. §§ 553(d)(3), 808(2). AMS found and determined that good cause exists for not postponing the effective date of this rule for two reasons. First, on July 23, 2012, the World Trade Organization (WTO) Dispute Settlement Body (DSB) adopted its recommendations and rulings, finding certain COOL requirements to be inconsistent with U.S. WTO obligations. A WTO arbitrator determined that the reasonable period of time for the United States to comply with the DSB recommendations and rulings is 10 months, meaning that the United States must comply with the recommendations and rulings by May 23, 2013. If the United States does not bring the rule into effect by this date, the complaining parties in the WTO dispute, Canada and Mexico, may seek to exercise their rights to suspend application to the United States of WTO concessions or other obligations equivalent to the trade benefits they have lost as a result of the inconsistent COOL requirements. If so authorized, Canada and Mexico could take action that adversely affects U.S. interests (e.g., increasing tariffs on U.S. goods). Second, changes to the labeling provisions for muscle cut covered commodities, which will provide consumers with more specific information with regard to muscle cut covered commodities, and the other modifications to the regulations will enhance the overall operation of the program. To the extent that the reasons offered by AMS represent a finding that notice and comment procedures are impractical, unnecessary, or contrary to the public interest, the 60-day delay in effective date is not required.

Enclosed is our assessment of Agriculture's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. AMS did not address the Unfunded Mandates Reform Act of 1995 in the final rule and indicated in its submission that the requirement to prepare a written statement under that Act did not apply. Our review of the procedural steps taken indicates that Agriculture 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: Rex A. Barnes  
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  
"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-AD29)

(i) Cost-benefit analysis

Agricultural Marketing Service (AMS) discussed the costs and the benefits of this final rule. AMS believes that the total cost of the rule is driven by the cost to firms of changing the labels and the cost some firms will incur to adjust to the loss of the flexibility afforded by commingling. ACS estimated that number of firms that will need to augment labels for muscle cut covered commodities is 2,808 livestock processing and slaughtering firms, 38 chicken processing firms, and 4,335 retailers. ACS estimates the midpoint cost of the labeling component of this final rule is \$32.8 million with a range of \$17.0 million to \$47.3 million. With regard to the elimination of commingling flexibility, ACS estimates total costs of \$21.1 million, \$52.8 million, and \$84.5 million at the lower, midpoint, and upper levels for the beef segment. Similarly for the pork segment, ACS estimates total costs for the loss of commingling flexibility to intermediaries and retailers to be \$15.0 million, \$37.7 million, and \$60.3 million at the lower, midpoint, and upper levels. Combining costs for label changes with costs from the elimination of commingling flexibility yields estimated total adjustment costs of \$123.3 million at the midpoint and ranging from \$53.1 million at the low end to \$192.1 million at the high end. Given that ACS believes that the current extent of commingling likely falls closer to the lower end than the higher end of the estimates, the estimated implementation costs narrow to a range of \$53.1 to \$137.8 million.

AMS believes that the incremental economic benefits from the labeling of production steps are difficult to quantify and will be comparatively small relative to those that were discussed in an earlier related final rule. Removing the commingling allowance lets consumers benefit from more specific labels.

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

AMS determined that this final rule will have a relatively small economic impact on a substantial number of small entities and therefore prepared a regulatory flexibility analysis. AMS estimates that total cost will be \$3,403 per small livestock slaughtering establishment and \$242,387 per large establishment. AMS's total estimated costs are \$5,475 per small meat processing establishment and \$63,021 per large establishment. Based on these average estimated implementation costs, AMS estimates the small packer and processor costs under the rule at about \$11.9 million. However, AMS expects the cost of the loss of commingling flexibility to be mostly concentrated among those facilities that currently commingle domestic and foreign-origin cattle or hogs and the number of small slaughtering and processing establishments that currently commingle is expected to be considerably fewer than the total number of small establishments. AMS also considered other alternatives to this final rule and determined that

the country of origin labeling (COOL) labeling program provides the maximum flexibility practicable to enable small entities to minimize the costs on their operations.

(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 address the Act in the final rule. In its submission to us, AMS indicated that the Act's requirement to prepare a written statement under section 20 of the Act (15 U.S.C. § 1532) did not apply.

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

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

On March 12, 2013, AMS published a proposed rule to amend the country of origin labeling provisions for muscle cut covered commodities. 78 Fed. Reg. 15,645. AMS received 936 timely comments from consumers, retailers, producers, wholesalers, foreign governments, distributors, trade associations, and other interested parties. AMS received 453 comments, including four petitions signed by more than 40,000 individuals, which indicated that the proposed rule makes labels more informative for consumers. AMS also received 476 comments opposing the rule from numerous producer, packer, and international trading partner entities, as well as individual ranchers, packing companies and foreign government officials. The comments expressed opposition to the proposed rule due to concerns about the costs of implementation and the lack of quantifiable benefits to consumers. AMS summarized and responded to the comments in the final rule.

AMS determined that good cause existed for not postponing the effective date of this rule until 30 days after publication for two reasons. First, on July 23, 2012, the World Trade Organization (WTO) Dispute Settlement Body (DSB) adopted its recommendations and rulings, finding certain COOL requirements to be inconsistent with U.S. WTO obligations. A WTO arbitrator determined that the reasonable period of time for the United States to comply with the DSB recommendations and rulings is 10 months, meaning that the United States must comply with the recommendations and rulings by May 23, 2013. If the United States does not bring the rule into effect by this date, the complaining parties in the WTO dispute, Canada and Mexico, may seek to exercise their rights to suspend application to the United States of WTO concessions or other obligations equivalent to the trade benefits they have lost as a result of the inconsistent COOL requirements. If so authorized, Canada and Mexico could take action that adversely affects U.S. interests (e.g., increasing tariffs on U.S. goods). Second, changes to the labeling provisions for muscle cut covered commodities, which will provide consumers with more specific information with regard to muscle cut covered commodities, and the other modifications to the regulations will enhance the overall operation of the program.

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

AMS determined that this final rule contains information collection requirements under the Act and that those information collection requirements are currently approved by the Office of Management and Budget (OMB) under OMB Control Number 0581-0250.

Statutory authorization for the rule

AMS promulgated this final rule under the authority of sections 1638 to 1638d of title 7, United States Code.

Executive Order No. 12,866 and 13,563 (Regulatory Planning and Review)

AMS determined that this final rule is economically significant under the Order, and it was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

AMS determined that this final rule does not change the existing preemption of state law for those states with country-of-origin labeling programs that encompass commodities governed by these regulations.