

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 60

[Docket No. AMS-LS-06-0081; LS-04-04]

RIN 0581-AC26

Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Perishable Agricultural Commodities, and Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule; reopening of comment period.

SUMMARY: The Agricultural Marketing Service (AMS) is reopening the comment period for 60 days for the proposed rule for mandatory country of origin labeling (COOL) for beef, lamb, pork, perishable agricultural commodities, and peanuts that was published in the **Federal Register** on October 30, 2003 (68 FR 61944). AMS requests general comments on the proposed rule taking into account that the Agency has changed corresponding definitions and requirements in the interim final rule for fish and shellfish published in the **Federal Register** on October 5, 2004 (69 FR 59708). When preparing comments on the proposed rule, AMS asks that interested parties consider the provisions of the interim final rule for fish and shellfish and whether the definitions and requirements in the interim final rule can also be applied to beef, lamb, pork, perishable agricultural commodities, and peanuts. The interim final rule's definitions and requirements include, but are not limited to: Processed food item definition, country of origin notification, markings, and recordkeeping requirements. All affected persons are hereby given notice of the opportunity to submit written data and views concerning the proposed rule. AMS will review and consider the submitted comments and information as it promulgates a final regulatory action

for mandatory COOL for beef, lamb, pork, perishable agricultural commodities and peanut covered commodities. AMS is simultaneously reopening the comment period for the interim final rule for the mandatory COOL program for fish and shellfish covered commodities.

DATES: Comments must be submitted on or before August 20, 2007, to be assured of consideration.

ADDRESSES: Comments should be submitted through the Internet at <http://www.regulations.gov>. Send written comments to: Country of Origin Labeling Program, Room 2607-S; Agricultural Marketing Service (AMS), USDA; 1400 Independence Avenue, SW., Washington, DC 20250-0254, or by facsimile to (202) 720-1112. Comments received will be posted on the Web site <http://www.regulations.gov>. Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Martin O'Connor, Chief; Standards, Analysis, and Technology Branch; Livestock and Seed Program, AMS, USDA, by telephone on (202) 720-4486, or via e-mail to: COOL@usda.gov. Information can also be found at <http://www.ams.usda.gov/cool/>.

SUPPLEMENTARY INFORMATION: The Farm Security and Rural Investment Act of 2002 (Farm Bill) (7 U.S.C. 7901) and the 2002 Supplemental Appropriations Act (Appropriations Act) (Pub. L. 107-206) amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) by adding 7 U.S.C. 1638-1638d to direct the Secretary of Agriculture to promulgate regulations by September 30, 2004, requiring retailers to notify their customers of the country of origin of covered commodities. On October 30, 2003, AMS published a proposed rule for mandatory COOL for all covered commodities—beef, lamb, pork, fish, perishable agricultural commodities, and peanuts (68 FR 61944). The proposed rule can be found at: <http://www.ams.usda.gov/cool/index.htm>. Subsequently, the FY 2004 Consolidated Appropriations Act (Pub. L. 108-199)

delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2006 (Pub. L. 109-97) further delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2008. On October 5, 2004, AMS published an interim final rule (69 FR 59708) for the mandatory COOL program for fish and shellfish. The interim final rule can be found at: <http://www.ams.usda.gov/cool/index.htm>. The interim final rule became effective on April 4, 2005.

AMS reopened the interim final rule's comment period for 90 days on November 27, 2006 (71 FR 68431). The reopened comment period was limited to comments concerning the economic impacts of the interim final rule, including implementation costs, maintenance, the burden of the information collection and recordkeeping requirements, benefits, and net economic impacts. Further, comments and information received as a result of the reopened interim final rule's comment period, to the extent relevant, would be reviewed in connection with any final regulatory action for any of the covered commodities.

In preparation for promulgating a final regulatory action, AMS seeks comment on all aspects of the proposed rule for mandatory COOL for beef, lamb, pork, perishable agricultural commodities, and peanuts as well as specific comments, data, and other relevant information on whether the definitions and requirements contained in the interim final rule for fish and shellfish can be applied to a mandatory COOL program for beef, lamb, pork, perishable agricultural commodities and peanuts. Additionally, interested parties are requested to provide comments and perspective related to the information that is to be provided from a mandatory COOL program and the expected costs and benefits of such a program. While AMS welcomes all comments on a mandatory COOL program for the applicable covered commodities, comments addressing the following definitions and requirements are of special interest:

Processed Food Item

In an effort to make the definition of a processed food item clearer in the interim final rule, AMS modified the language in the proposed rule for fish and shellfish to provide specific examples of the types of processing that that would result in a product being considered a processed food item. Under the interim final rule, all cooked items (e.g., canned fish, cooked shrimp) and breaded products are considered processed food items and are excluded from coverage. In addition, retail items have given a distinct flavor (e.g., Cajun marinated catfish) are also considered processed food items. Should the Agency provide specific examples of the types of processing that would result in beef, lamb, pork, perishable agricultural commodity and peanut covered commodities being considered processed food items and excluded from coverage? Are there significant differences in the preparation of beef, lamb, pork, perishable agricultural commodities and peanuts for retail sale, compared to fish and shellfish, which the Agency should consider? Are the major components of the definition of a processed food item set forth in the interim final rule for fish and shellfish (i.e., change in character and/or combined with other substantive components) also applicable to beef, lamb, pork, perishable agricultural commodities and peanuts?

Country of Origin Notification

Under § 60.200 of the interim final rule for fish and shellfish, the requirements and procedures for labeling a covered commodity for country of origin are established. The interim final rule modified provision of the proposed rule by changing the labeling and notification requirements to simplify the labels and remain compliant and consistent with other existing Federal regulatory requirements. The interim final rule changed the requirements for the labeling of imported fish and shellfish covered commodities not substantially transformed in the United States, imported fish and shellfish covered commodities substantially transformed in the United States, and blended products (i.e., commingling of the same covered commodity). AMS seeks comments on the applicability of these requirements and procedures to beef, lamb, pork, perishable agricultural commodity and peanut covered commodities. Can the requirements contained in the interim final rule for fish and shellfish for determining the origin of imported products and

products partially produced in a foreign country and imported into and further processed in the United States be used in whole or part? What would be the impact of applying the same or similar requirements for beef, lamb, pork, perishable agricultural commodity and peanut covered commodities?

Markings

Under § 60.300 of the interim final rule for fish and shellfish the types of markings permissible to label covered commodities are defined. AMS seeks comment on the established requirements for markings for all covered commodities which includes the type of labels allowed, placement, font, design, signs, location, and allowable abbreviations.

Recordkeeping Requirements

The recordkeeping requirements for retailers and suppliers are established under § 60.400 of the interim final rule for fish and shellfish. The interim final rule for fish and shellfish modified provisions of the proposed rule for fish and shellfish by significantly changing the record retention requirements of retailers and their suppliers. For example, the retention of records for a specific transaction was reduced from 2 years to 1 year for both retailers and suppliers for certain records. Additionally, records required to verify country of origin and method of production for fish and shellfish covered commodities at the retail site were reduced from 7 days following retail sale of the product to the timeframe the product is for sale. AMS seeks comment on the impact of applying the recordkeeping requirements of the interim final rule for this proposed rule for beef, lamb, pork, perishable agricultural commodity and peanut covered commodities. Of particular interest are comments on internal recordkeeping systems that beef, lamb, pork, perishable agricultural commodity and peanut covered commodity suppliers may use to comply with requirements for providing accurate country of origin information to retailers. Are the retention periods established for records to substantiate claims in the interim final rule for fish and shellfish reasonable for this proposed rule given the nature of the covered commodities? How will the recordkeeping requirements set forth in the interim final rule for fish and shellfish impact the initial and intermediary suppliers of beef, lamb, pork, perishable agricultural commodity and peanut covered commodities in the supply chain?

Timeframes for Products Produced Prior to the Implementation Date To Clear the Channels of Commerce

In the interim final rule, fish and shellfish covered commodities derived from fish and shellfish caught or harvested before December 6, 2004, were exempt from the mandatory COOL program. This provision was provided to allow products without source verification information produced prior to the implementation date (i.e., April 4, 2005) to clear the channels of commerce. Since harvest is a key component of determining origin, this provision allowed suppliers time to develop the necessary verification and recordkeeping systems to comply with the mandatory COOL program. That being said, should specific timeframes for exempting beef, lamb, pork, perishable agricultural commodity and peanut covered commodities without verifiable records produced prior to an implementation date be established in this proposed rule? If so, what should be the specific timeframe for each covered commodity?

Authority: 7 U.S.C. 1621 *et seq.*

Dated: June 14, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 923

[Docket Nos. AMS-FV-07-0017; FV07-905-610 Review; and AMS-FV-07-0018; FV07-923-610 Review]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Sweet Cherries Grown in Designated Counties in Washington; Section 610 Reviews

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This document announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 905 (Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida), and Marketing Order 923 (Sweet Cherries Grown in Designated Counties in Washington) under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).