

# Proposed Rules

Federal Register

Vol. 68, No. 45

Friday, March 7, 2003

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

### Food Safety and Inspection Service

#### 9 CFR Parts 317 and 327

[Docket No. 00-036W]

RIN 0583-AC85

#### Product Labeling: Defining United States Cattle and United States Fresh Beef Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is withdrawing an advance notice of proposed rulemaking (ANPR) entitled "Product Labeling: Defining United States Cattle and United States Fresh Beef Products," which was published in the **Federal Register** on August 7, 2001. In the ANPR, the Agency requested comments on the need for regulations to clarify the definition of "United States cattle" and "United States fresh beef products," and whether such products should bear labeling claims that are different from the claims that are permitted under FSIS' current policy. Under FSIS policy, beef products that are made from animals that are documented to have been born, raised, slaughtered, and prepared in the United States are permitted to be labeled as USA products. The country-of-origin labeling provisions (Section 10816) in the Farm Security and Rural Investment Act of 2002 (the Farm Bill)<sup>1</sup> supplant the issues raised in the ANPR and, therefore, FSIS is withdrawing the ANPR.

**ADDRESSES:** Send an original and two copies of comments to the FSIS Docket Clerk, Docket # 00-036W, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250-3700. Any comments will be available for public inspection in the Docket Room from

8:30 a.m. to 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, FSIS, by telephone at (202) 205-0279 or by fax at (202) 205-3625.

**SUPPLEMENTARY INFORMATION:**

**Background**

FSIS published the ANPR (66 FR 41160) in response to the Conference Report accompanying the Agriculture Appropriations for 2000.<sup>2</sup> The report directed the Secretary of Agriculture, in consultation with the affected industries, to promulgate regulations to define which cattle and fresh beef products are "Products of the U.S.A." The report also directed the Secretary to determine the terminology that would best reflect in labeling that such beef products are, in fact, U.S. products. The report stated that clarifying regulations would facilitate the development of voluntary, value-added promotion programs that benefit U.S. producers, business, industry, consumers, and commerce.

Under the mandate of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), FSIS issues regulations to ensure that labeling statements about the origin of a product are truthful, accurate, and not misleading. Under FSIS regulations, producers and processors wishing to make such labeling statements on the labels of products shipped from Federal establishments must submit documentation that verifies that the statements are truthful and accurate.

The Department's Agriculture Marketing Service (AMS) has the authority to establish voluntary programs under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) to verify/certify the origin of animals, which can be reflected in labeling statements. However, producers wishing to make such statements are not required to have their production practices verified/certified by an AMS program. In 1998, AMS proposed program guidelines to certify that livestock, meat, and meat products are eligible to be labeled as "U.S. Beef" because they are derived from animals that were born, raised, slaughtered, and

prepared in the United States. There was to be a fee for this service, however, and no firm took advantage of it.

**Provisions in the 2002 Farm Bill**

On May 13, 2002, the President signed the Farm Bill into law. The new law amends the Agriculture Marketing Act of 1946 to require retailers to inform consumers of the country-of-origin of covered commodities at the point of final retail sale. The term "covered commodity" is defined in the law as muscle cuts of beef (including veal), lamb, and pork; ground beef, lamb, and pork; wild and farm-raised fish and shellfish; perishable agricultural commodities (fresh fruits and vegetables); and peanuts. The Act directs the Secretary, through AMS, to implement the requirements by September 30, 2004.

On October 11, 2002, AMS published a notice in the **Federal Register** (67 FR 63367) entitled "Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts Under the Authority of the Agricultural Marketing Act of 1946." In accordance with the notice, during the interim period between the signing of the law and its implementation date, compliance with the guidelines is voluntary. One of the provisions of the Farm Bill is that a retailer of beef, lamb, and pork may designate the covered meat commodity as having originated in the United States only if it is "exclusively born, raised, and slaughtered in the United States."

As a result of the enactment of the Farm Bill, FSIS is withdrawing the ANPR and will not proceed with further regulatory action pursuant to this rulemaking.

**Summary of Comments on the ANPR**

FSIS received 1,036 comments on the 2001 ANPR from trade associations, consumer groups, farmers unions of various states, the Canadian Government, the U.S. Chamber of Commerce, and citizens/consumers. More than 900 comments were from write-in campaigns by cattle producers/consumers who support the definition for labeling purposes as "born, raised, slaughtered, and processed (prepared) in the United States." There was almost no support for any other labeling terminology, no support for a petition

<sup>1</sup> Public Law 107-171 (May 13, 2002).

<sup>2</sup> Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2000 (Public Law 106-78 (October 23, 1999)).

submitted by the beef industry that suggested that cattle born outside the United States and finished in U.S. feedlots for at least 100 days be allowed to be labeled as "Product of the U.S.A.," and a strong interest in maintaining the existing FSIS policy. According to one respondent, any change in the existing policy of FSIS would be costly and damaging to the industry, provide no real benefit for consumers, and undermine U.S. efforts in international negotiations.

Many respondents opposed any change in FSIS' country-of-origin labeling policy simply because no change was warranted. One commenter said that there is no convincing evidence that there is a problem that needs to be addressed by additional Federal regulation. The comment went on to say that applying the current definition for "USA Beef" and "Fresh American Beef" more broadly to country-of-origin labels such as "Product of the USA" is not necessary and would be disruptive. It concluded that substantiation and verification of "born, raised, slaughtered, and prepared in the United States" would be unreliable and expensive since there is no national tracking system for cattle in this country.

A trade association director commented that the introduction of new rules for a single product category would not be helpful or acceptable. The comment stated that it would only add to the inconsistencies and confusion for industry, regulatory, and U.S. Customs Service officials. In addition, the commenter said such a change would set an undesirable precedent for further processed and other types of products.

Although there was minimal support for a mandatory program, most commenters strongly believed that a labeling program should be kept voluntary. One commenter stated that mandatory labeling should be restricted to protection of consumer health and safety. Others cautioned that what is acceptable for a voluntary labeling program would be unacceptable as a mandatory program. Voluntary labeling of U.S. beef will be market driven in private sector retail and foodservice channels, said the commenter. USDA should provide certification and audit services for alternative U.S. labels and allow competitive market forces to determine the merit of various labels in the marketplace, the commenter concluded.

Many of the commenters discussed the inconsistency of USDA's geographic labeling policies, the variety of the claims used to certify U.S. origin, and the differences in regulations governing

domestic and foreign products. Some called the policy confusing but acceptable, because it was consistent with international practices. Others maintained that it was incumbent upon USDA to authorize a single, universal term.

Several respondents who opposed the meat industry petition, referred to above, mentioned a fear of Foot and Mouth Disease and Bovine Spongiform Encephalopathy. One commenter said that it would be devastating to the U.S. livestock industry and to consumer confidence if an infected animal or product entered the United States and received a "Made in USA" label.

As a result of Congress' action, FSIS is withdrawing the advance notice of proposed rulemaking. Comments on "country-of-origin" labeling should be submitted in response to the AMS published notice entitled "Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities and Peanuts under the Authority of the Agricultural Marketing Act of 1946."

#### Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice and informed about the mechanism for providing their comments, FSIS will announce it and make copies of this **Federal Register** publication through the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available online through the FSIS Web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720-9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS Web site at

<http://www.fsis.usda.gov/oa/update.htm>. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Signed in Washington, DC on March 3, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03-5363 Filed 3-6-03; 8:45 am]

BILLING CODE 3410-DM-P

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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket No. EE-RM/TP-02-001]

RIN 1904-AB12

#### Office of Energy Efficiency and Renewable Energy; Energy Conservation Program for Consumer Products: Test Procedure for Refrigerators and Refrigerator-Freezers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking contains an amendment to the test procedure for measuring the energy consumption of refrigerators and refrigerator-freezers for models with a long-time automatic defrost function. The amendment gives credit for a slight improvement in energy efficiency because the defrost heater on such models of refrigerators and refrigerator-freezers is not required to heat the evaporator from its coldest temperature. This change in the test procedure will encourage use of efficiency enhancing technology. Because the amendment to the rule is not expected to receive any significant adverse comments, the amendment is also being issued as a direct final rule in this **Federal Register**. **DATES:** Public comments on the amendment proposed herein will be accepted until April 7, 2003.

**ADDRESSES:** Written comments should be addressed to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-2J, 1000 Independence Avenue, SW, Washington, DC 20585-0121. E-mail address: [Brenda.Edwards-Jones@ee.doe.gov](mailto:Brenda.Edwards-Jones@ee.doe.gov). You should identify all such documents both on the envelope and on the documents as Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators and Refrigerator-Freezers, Docket No. EE-RM/TP-02-001.

Copies of public comments received may be read in the Freedom of