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August 13, 2008

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 Bob Goodlatte  
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, 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, Perishable Agricultural Commodities, Peanuts, Pecans, Ginseng, and Macadamia Nuts” (RIN: 0581-AC26). We received the rule and it was published in the *Federal Register* as an “interim final rule with request for comments” on August 1, 2008. 73 Fed. Reg. 45,106. The rule has a stated effective date of September 30, 2008.

The interim final rule implements statutory requirements in sections of the Farm Security and Rural Investment Act of 2002 and the Food, Conservation, and Energy Act of 2008. Pub. L. No. 107-171, § 10816, 116 Stat. 134, 533–36 (May 13, 2002); Pub. L. No. 110-246, § 11002, 122 Stat 1651, 2113–16 (June 18, 2008). This interim final rule requires retailers to notify customers of the country of origin of certain commodities including muscle cuts of beef, lamb, chicken, goat, and pork; ground beef, lamb, chicken, goat, and pork; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. This interim final rule contains definitions, requirements for consumer notification and product marking, and details on the recordkeeping requirements of suppliers and retailers.

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. Our review indicates that USDA complied with the applicable requirements. USDA's submission to the Comptroller General did not include a description of any actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535.

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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Lloyd C. Day  
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, PERISHABLE AGRICULTURAL COMMODITIES,  
PEANUTS, PECANS, GINSENG, AND MACADAMIA NUTS"  
(RIN: 0581-AC26)

(i) Cost-benefit analysis

The Department of Agriculture (USDA) analyzed the costs and benefits of this interim final rule. USDA determined that the estimated benefits associated with this interim final rule are likely to be small, difficult to quantify, and accrue mainly to those consumers who desire country of origin information. USDA estimated that the first-year incremental costs for directly affected firms will be \$2.5 billion and the overall net costs to the U.S. economy in the tenth year after promulgation to be \$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 interim final rule will have a significant economic impact on a substantial number of small entities. Therefore, the agency prepared a regulatory analysis of the impacts under the Act. USDA estimated that approximately 1,256,000 establishments owned by approximately 1,222,000 firms will be directly or indirectly affected by this rule and that the direct incremental costs are approximately \$2.517 billion. Of these firms, USDA estimates that 83 percent of the retailers are considered small; 94 percent of wholesalers are small; 95 percent of manufacturers are small; and between 99 and 82 percent of producers, depending on the commodity produced, are small.

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

USDA's submission to the Comptroller General did not describe any actions relevant to the Act.

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

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

USDA promulgated this interim 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, to which it received over 5,600 timely comments. 68 Fed. Reg. 61,944. On June 20, 2007, USDA reopened the comment period and received over 721 comments. 72 Fed. Reg. 33,917. USDA responded to the comments in this interim final rule. 73 Fed. Reg. 45,114–26. USDA determined upon good cause that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this interim final rule into effect. After the issuance of this interim final rule, USDA will give all newly affected persons the opportunity to provide additional comments prior to issuing the final rule.

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

This interim final rule includes information collection requirements under the Act. USDA has submitted the information collection requirements associated with this rule to the Office of Management and Budget (OMB) for its review. USDA estimates that the total paperwork burden of this rule will be approximately \$624 million, of which \$125 million is for initial recordkeeping costs and \$499 million is for maintenance recordkeeping costs.

Statutory authorization for the rule

USDA is promulgating this interim final rule to implement sections of the Farm Security and Rural Investment Act of 2002 and the Food, Conservation, and Energy Act of 2008. Pub. L. No. 107-171, § 10816, 116 Stat. 134, 533–36 (May 13, 2002); Pub. L. No. 110-246, § 11002, 122 Stat 1651, 2113–16 (June 18, 2008). USDA promulgated this final rule under the authority of section 1638c of title 7, United States Code.

Executive Order No. 12,866

USDA determined that this interim final rule is significant under the order because it will have an effect on the economy of \$100 million or more in any one year. The rule has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

This interim final rule does have federalism implications under the order. USDA concluded that Congress intended to preempt state law in this instance.

Executive Order No. 12,988 (Civil Justice Reform)

USDA determined that this interim final rule is not intended to have a retroactive effect. State and local jurisdictions are preempted from creating or operating country of origin labeling programs for the commodities covered by this rule.