

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 60 and 65

[Document No. AMS-LPS-16-0002]

RIN 0581-AD29

Removal of Mandatory Country of Origin Labeling Requirements for Beef and Pork Muscle Cuts, Ground Beef, and Ground Pork

**AGENCY:** Agricultural Marketing Service (AMS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This 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 (Act). The Agency is issuing this rule to conform with amendments to the Act contained in the Consolidated Appropriations Act, 2016.

**DATES:** This final rule is effective on [insert the date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Julie Henderson, Director, COOL Division, AMS, USDA by telephone on 202/720-4486 or via email at [COOL@ams.usda.gov](mailto:COOL@ams.usda.gov); or Erin Morris, Associate Administrator, AMS, USDA, by telephone on 202/690-4024, or via e-mail at: [erin.morris@ams.usda.gov](mailto:erin.morris@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill)(Pub. L. 107-171), the 2002 Supplemental Appropriations Act (2002 Appropriations)(Pub. L. 107-206), and the Food,

Conservation and Energy Act of 2008 (2008 Farm Bill)(Pub. L. 110-234) amended the Agricultural Marketing Act of 1946 (Act)(7 U.S.C. 1621 et seq.) to require retailers to notify their customers of the country of origin of covered commodities. Covered commodities included muscle cuts of beef (including veal), lamb, chicken, goat, and pork; ground beef, ground lamb, ground chicken, ground goat, and ground pork; wild and farm-raised fish and shellfish; perishable agricultural commodities; macadamia nuts; pecans; ginseng; and peanuts. AMS published a final rule for all covered commodities on January 15, 2009 (74 FR 2658), which took effect on March 16, 2009. On May 23, 2013, AMS issued a final rule to amend the country of origin labeling provisions for muscle cut covered commodities (78 FR 31367). The Consolidated Appropriations Act, 2016 (Pub. L. 114-113) amended the Act to remove mandatory COOL requirements for muscle cut beef and pork, and ground beef and pork. The Agency is issuing this rule to conform to these statutory amendments.

## **Executive Summary**

### **Purpose of the Regulatory Action**

The Consolidated Appropriations Act, 2016 amended the Act to remove muscle cut beef and pork, and ground beef and pork from COOL requirements in order to bring the United States into compliance with its international trade obligations. The Agency is issuing this rule to conform to these amendments.

### **Summary of the Major Provisions of the Regulatory Action in Question**

Under this final rule, beef and pork muscle cuts and ground beef and pork are removed from the list of covered commodities subject to the COOL regulation. Accordingly, changes

have been made to the relevant Code of Federal Regulations (CFR) sections, including definitions, country of origin notification, and recordkeeping.

### **Costs and Benefits**

The estimated economic benefits associated with this final rule, previously assessed as costs, are likely to be significant. 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 benefits from incremental cost savings are likely to be less than the cumulative impact of these rules, \$1.8 billion, as affected firms have adjusted their operations to accommodate COOL requirements more efficiently since implementation of the initial COOL measure in 2009, and the amended measure in 2013. A complete discussion of the cost and benefits can be found under the Executive Order 12866 section.

### **Summary of Changes to the COOL Regulations**

This rule removes certain mandatory COOL requirements from retailers (as defined by the law and regulations) and their suppliers. Retailers are no longer required by the rule to provide country of origin information for the beef and pork that they sell, and firms that supply beef and pork to these retailers no longer must provide them with this information. In addition, firms in the supply chain for beef and pork are also relieved from the requirements associated with mandatory COOL, from cattle and hogs downstream to muscle cut and ground beef and pork sold at covered retail establishments.

### ***Definitions***

The definitions of beef (§65.110), ground beef (§65.155), ground pork (§65.175), and pork (§65.215) are removed from the regulation. The definition of the term covered commodity (§65.135(a) (1) and (2)) is amended to remove references to beef, pork, ground beef, and ground pork. The definitions of production step (§65.230), raised (§65.235) and United States country of origin (§65.260(a)) are amended to remove references to beef and pork. In addition, the definition of a processed food item (§65.220) is amended to remove the example of teriyaki flavored pork loin.

### ***Country of Origin Notification***

Country of origin notification (§65.300(h)) is amended to remove references to ground beef and ground pork.

### ***Recordkeeping***

Responsibilities of suppliers (§65.500(b)(1)) is amended to remove references to beef, pork, and cattle.

### **Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated as an “economically significant

regulatory action” under section 3(f) of Executive Order 12866, and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. The purpose of this rule is to amend the COOL regulation to remove beef and pork products from the list of covered commodities as required by the Consolidated Appropriations Act, 2016. As a result, the rulemaking represents a deregulatory action, and the logical approach for the economic analysis is to reverse the previous assessment for those portions of the analysis relating to beef and pork.

The estimated economic benefits associated with this final rule, previously assessed as costs, are likely to be significant. The estimated benefits for producers, processors, wholesalers, and retailers of previously covered beef and pork products are as much as \$1.8 billion in cost avoidance. However, the benefits from incremental cost savings are likely to be less than this upper bound, as affected firms have adjusted their operations to accommodate COOL requirements more efficiently since implementation of the initial COOL measure in 2009, and the amended measure in 2013.

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 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. USDA 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.

### **Statement of Need**

Justification for this final rule is to conform to changes made to COOL provisions by the Consolidated Appropriations Act, 2016. There are no alternatives to federal regulatory intervention for implementing this statutory directive.

The COOL provisions of the Act changed federal labeling requirements to remove muscle cuts of beef and pork and ground beef and ground pork from the list of covered commodities for the COOL regulation.

### **III. Analysis of Benefits and Costs**

The baseline for this analysis is the present state of the affected industries with mandatory COOL.

*Benefits:* The benefits of the rule removing beef and pork products from mandatory COOL are the reduction in costs to those affected parties associated with meeting the rule requirements. This includes implementation costs related to capital, labor, and other inputs. Following the economic analysis from previous rulemaking (74 FR 2658; 78 FR 31367), the overall impact of the cost savings to directly affected firms will be an increase in economic activity resulting in an overall net benefit (benefits minus costs) from this rulemaking.

*Number of firms and number of establishments affected:* This rule is estimated to directly or indirectly affect approximately 1,027,204 establishments owned by approximately 992,781 firms. Table 1 provides estimates of the affected firms and establishments.

Table 1. Number of Affected Entities		
Type	Firms	Operations
<b>Beef and Pork</b>		
Cattle and Calves <sup>1</sup>	913,246	913,246
Hogs and Pigs <sup>2</sup>	63,246	63,246
Stockyards, Dealers & Market Agencies <sup>3</sup>	4,723	4,723
Livestock Processing & Slaughtering <sup>4</sup>	2,629	2,862
Meat & Meat Product Wholesale <sup>5</sup>	2,162	2,405
General Line Grocery Wholesalers <sup>6</sup>	2,271	2,832
Retailers <sup>7</sup>	4,504	37,890
<b>Totals</b>		
Producers	976,492	976,492
Handlers, Processors, & Wholesalers	11,785	12,822
Retailers	4,504	37,890
<b>Grand Total</b>	<b>992,781</b>	<b>1,027,204</b>

It is assumed that all firms and establishments identified in Table 1 will be affected by the rule, although some may not produce or sell products within the scope of this rule. While this assumption likely overstates the number of affected firms and establishments, it is consistent with previous regulatory assessments of COOL. With the exception of retailers, the number of

<sup>1</sup> NASS, USDA. 2012 Census of Agriculture.

<sup>2</sup> Ibid.

<sup>3</sup> Grain Inspection, Packers and Stockyards Program, USDA. Market Agencies Buying on Commission and Dealers. December 2015. [http://gipsa.usda.gov/psp/regulated/dealersBOC\\_list.pdf](http://gipsa.usda.gov/psp/regulated/dealersBOC_list.pdf).

Grain Inspection, Packers and Stockyards Program, USDA. Registered and Bonded Market Agencies Selling Livestock on Commission. December 2015. [http://gipsa.usda.gov/psp/regulated/SOC\\_list.pdf](http://gipsa.usda.gov/psp/regulated/SOC_list.pdf)

<sup>4</sup> NASS, USDA. Livestock Slaughter Annual Summary, April 2015.

<sup>5</sup> U.S. Census Bureau. 2012 Economic Census. Business and Industry Subject Series. Sales/Receipt Size of Establishment/Firm. EC1251SSSZ1. Issued October 2015.

<sup>6</sup> Ibid.

<sup>7</sup> AMS, USDA. Perishable Agricultural Commodities Act database.

firms and operations has declined as compared to the 2009 final rule. Detailed data are not available on the number of entities categorized by the marketing channels in which they operate and the specific products that they sell. Such data would be needed to refine the estimates of the entities directly affected by COOL.

*Estimation of benefits:* The process of determining estimates of what were previously costs, but are now considered to be benefits (costs avoided) of this rule have been detailed in both the economic analyses for the 2009 and 2013 final rules, as well as proposed and interim rulemaking actions associated with those rules. Details of the data, sources, and methods underlying the economic analyses are provided in the previous Final Regulatory Impact Analyses (FRIA), the Intermediate Regulatory Impact Analysis (IRIA), and the previous Preliminary Regulatory Impact Analysis (PRIA) under the sections relating to costs for the beef and pork industries. This section presents the revised benefits estimates and describes changes made for this final analysis.

In the 2009 final rule (74 FR 2658), the economic analysis provided estimates of first-year incremental outlays for directly affected firms. In addition, the results of a computable general equilibrium model were included to show the economic impact of the rule 10 years after the initial implementation. The longer term assessment was conducted to show that over time the impact of the rule will likely change as economic agents adapt to the rule. The longer term assessment also allowed for estimation of impacts of COOL across the U.S. economy.

Table 2 below presents results of the 2009 rule economic analysis for beef and pork, adjusted for inflation (2015 dollars)<sup>8</sup>. All impacted entities in the supply chain are included in

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<sup>8</sup> Bureau of Labor Statistics. [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm).



these values, from the producer to the processor, wholesaler and retailer. The second, third and fourth columns show the adjusted estimates of increased costs for the first year of the rule's implementation.

Table 2. Estimated Implementation Costs for the 2009 COOL Regulation, in 2015 Dollars			
	Beef	Pork	Total
	(Million \$)		
Producers	\$335.5	\$115.5	\$451.0
Intermediaries	\$410.3	\$111.1	\$521.4
Retailers	\$631.4	\$102.3	\$733.7
Total	\$1,377.2	\$328.9	\$1,706.1

The 2009 rule is now at the start of its seventh year of implementation. The economic analysis for the 2009 rule did not examine the costs of implementing COOL to affected entities beyond the initial year. However, it was acknowledged that the first year costs were likely to be higher than subsequent year costs due to changes in technology, development of more efficient practices, and greater familiarity with its implementation. While such cost reductions are likely, in the absence of detail on subsequent years of implementation we to assume that removal of beef and pork from COOL regulations results in a cost savings to affected entities of at most \$1.377 billion for the beef sector, \$328 million for the pork sector, and a total of \$1.706 billion for both industries combined.

In 2013, an additional rule was promulgated that amended the requirements regarding labeling of muscle cuts of covered commodities to provide consumers with more specific information. The economic assessment for this rule determined the costs of implementation to be the figures reported in Table 3, adjusted to 2015 dollars. As Table 3 shows, the economic assessment presented low, high, and mid-point values for estimated outlays.

Table 3. Estimated Implementation Costs for the 2013 COOL Regulation, in 2015 Dollars			
	Low Estimate	Mid-Point Estimate	High Estimate
Labeling—Retail (million \$)	17.3	33.5	48.2
Commingling—Beef (million \$)	21.5	53.9	86.2
Commingling—Pork (million \$)	15.3	38.4	61.5
Total (million \$)	54.1	125.8	195.9

Again, these costs were estimated for the initial year of implementation, with the recognition that over time increased efficiencies would lead to reduced annual costs. However, as with the 2009 rule, the 2013 regulation did not provide cost estimates beyond the first year. For consistency, we again assume the cost savings for this third year of the 2013 rule's implementation is equivalent to the first year, recognizing that it is likely to be an upper limit value. Assuming the mid-point of the range, removing beef and pork products from the 2013 COOL regulation would save these industries a total of roughly \$126 million per year in costs.

Withdrawing beef and pork products completely from both the 2009 and the 2013 COOL regulations therefore is expected to save these industries a combined \$1.832 billion. Specifically, this translates into total cost savings for the industry as \$799.7 million saved by beef producers and intermediaries, \$265.0 million saved by pork producers, and \$767.2 million saved by retailers for both beef and pork covered commodities.

The benefits per firm and per establishment represent industry averages for aggregated segments of the supply chain. Large firms and establishments may see greater savings relative to small operations due to the volume of commodities that they handle and the increased complexity of their operations. In addition, different types of businesses within each segment are

likely to benefit differently. Thus, the range of benefits gained by individual businesses within each segment is expected to be large, with some firms seeing greater gains than others.<sup>9</sup>

Average benefits, in the form of cost savings per operation for each of the three types of operations is shown in Table 4. These values were calculated from Table 1, and total cost savings estimations of \$451.0 million for producers, \$613.7 million for intermediaries such as handlers, processors and wholesalers, and \$767.2 million for retailers.

Table 4. Number of Operations and Average Cost Savings per Affected Entity		
Type	Operations	Average Cost Savings
Producers	976,492	\$462
Intermediaries	12,822	\$47,863
Retailers	37,890	\$20,248

*Net Effects on the Economy:* As discussed in the 2009 final rule, the impacts described fall to those directly involved in the production, distribution, and marketing of covered commodities. However, they do not represent the net impacts to the United States economy.

In the 2009 rule-making, the impact of the regulation on overall economy was examined using a Computable General Equilibrium (CGE) model developed by the USDA’s Economic Research Service. Given that this is a deregulatory action that reduces costs and in the interest of expediency, the CGE model was not re-estimated with COOL compliance costs for beef and pork covered commodities removed as economic “shocks” to the model. However, reasonable assumptions can be applied to the earlier results to arrive at approximate estimates of the impact of this rulemaking action on the broader U.S. economy.

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<sup>9</sup> Some affected entities may not experience net savings. For example, although this rulemaking will reduce the cost of compliance activities conducted by firms in the beef and pork supply chain, the savings may, in some cases, be passed on to others in the supply chain or consumers.

The 2009 economic impact analysis demonstrated that production and marketing cost increases associated with COOL regulations for covered commodities ultimately led to reduced output within the covered industries, in other industries, or both. As a result, the net impact on the general economy of regulations that increased supply-side costs for covered commodities was negative.

In the 2009 rule (74 FR 2658), it was determined that the overall impact on the U.S. economy from that rule (which also included lamb, chicken, fruits, vegetables, and other commodities) was \$234.1 million in 2015 dollars. The assumptions used in developing this value were that consumers' preferences for the commodities would not change, and that the adjustments were made over a 10-year time period. This value represents the decline in consumer purchasing power as a result of the initial implementation costs filtering through the economy after 10 years of adjustment.

Because removal of beef and pork from COOL regulations should have the opposite effect, it is likely that the long-term impact on the overall economy from withdrawing beef and pork from COOL requirements would be a reduction in this loss of purchasing power. In the 2009 FRIA, 59 percent of the total initial implementation costs were attributable to beef and pork. If we assume the same proportion applies to the CGE model, the reduction in purchasing power to U.S. consumers attributable to cost increases for beef and pork would be approximately \$138 million after 10 years of adjustment. Conversely, then, removal of COOL requirements for beef and pork through this rulemaking may result in an improvement of approximately \$138 million in U.S. consumers' purchasing power after 10 years of adjustment.

*Costs:* As discussed in previous assessments of COOL regulation, the expected benefits from implementation of the rule (i.e., the current regulations) were likely to be negligible and were difficult to quantify. With this rule removing beef and pork products from COOL, those consumers who had previously benefited from the information will now experience a reduction in economic welfare due to the loss of this information. This reduction in welfare is the cost of exempting beef and pork from COOL requirements.

COOL provides consumers with information about a credence attribute. Another credence attribute that consumers sometimes confuse with COOL is food safety. However, as noted in previous rulemaking actions, COOL is simply a labeling rule, not a food safety rule. As a result, there are no costs to consumers from removing COOL requirements for beef and pork products from a food safety perspective.

*Alternatives considered:* Section 759 of Division A of the Consolidated Appropriations Act, 2016 mandates the withdrawal of beef and pork muscle cuts, ground beef, and ground pork. This rule would implement the Act accordingly. The only effective means of achieving the results mandated by the Consolidated Appropriations Act, 2016, is through rule promulgation.

### **Regulatory Flexibility Analysis**

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 et seq.). The purpose of RFA is to consider the economic impact of a rule on small businesses and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace. The Agency believes that this 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 Agency has prepared the following final regulatory flexibility analysis of the rule's likely economic impact on small businesses pursuant to section 604 of the Regulatory Flexibility Act.

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.

The objective of the current COOL regulation is to regulate the activities of covered retailers and their suppliers to enable retailers to fulfill their statutory and regulatory obligations. COOL requires retailers to provide country of origin information for all of the covered commodities that they sell. It also requires all firms that supply covered commodities to these retailers to provide the retailers with the information needed to correctly label the covered commodities. In addition, all other firms in the supply chain for the covered commodities are potentially affected by the rule because country of origin information needs to be maintained and transferred along the entire supply chain. In general, the supply chains for the covered commodities consist of farms, processors, wholesalers, importers, and retailers. This rule withdraws muscle cut beef and pork, and ground beef and pork from the list of covered commodities, and subsequently withdraws all entities along the supply chain for these commodities from the requirements of COOL regulation.

Section 604 of the RFA requires the Agency to provide an estimate of the number of small entities to which the rule will apply. A listing of the number of entities in the supply chains for each of the covered commodities can be found in Table 1. However, in the case of this rule, these entities will benefit from reduced costs, rather than incur additional costs. Retailers covered by this rule must meet the definition of a retailer as defined by Perishable Agricultural Commodities Act of 1930 (PACA). In utilizing this definition, the number of retailers affected by this rule is considerably smaller than the total number of retailers nationwide.

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 as identified in Table 1 will benefit from reductions in recordkeeping costs, as well as changes or modifications to their business practices. It is estimated that approximately 1,027,000 establishments owned by approximately 993,000 firms will be either directly or indirectly affected by this rule.

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. 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.

On a per operation basis, the rule likely will have the largest benefit on intermediaries (handlers, processors, wholesalers, and importers) and retailers, while the impact on individual

producers is likely to be relatively small. These impacts were shown in Table 6 of the economic impact analysis.

There are two measures used by the Small Business Administration (SBA) to identify businesses as small: sales receipts or number of employees. In terms of sales, SBA classifies as small those grocery stores with less than \$25 million in annual sales and specialty food stores with less than \$6.5 million in annual sales (13 CFR 121.201). Warehouse clubs and superstores with less than \$25 million in annual sales are also defined as small. SBA defines as small those agricultural producers with less than \$750,000 in annual sales. Of the other businesses potentially affected by the rule, SBA classifies as small those manufacturing firms with less than 500 employees and wholesalers with less than 100 employees.

*Retailers:* While there are many potential retail outlets for the covered commodities, food stores, warehouse clubs, and superstores are the primary retail outlets for food consumed at home. The number of retailers subject to the COOL rule is considerably smaller than the number of food retailers nationwide. There are 4,504 retail firms as defined by PACA that would be subject to the rule. An estimated 88 percent (3,964 out of 4,504) of the retailers subject to the rule were reported to be small.

Retailer benefits under this rule are estimated at \$767.2 million. Benefits are estimated at \$170,337 per retail firm and \$47,863 per retail establishment. Retailers will save on recordkeeping costs, costs associated with supplying country of origin information to consumers, and handling costs.

*Wholesalers:* Any establishment that supplies retailers with one or more of the covered commodities will no longer be required to provide country of origin information to retailers. Of



wholesalers potentially affected by the rule, SBA defines those having less than 100 employees as small. Importers of covered commodities will also be affected by the rule and are categorized as wholesalers in the data.

General-line wholesalers were assumed to handle at least one and possibly all of the covered commodities. As a result, the number of general-line wholesale businesses was included among entities affected by the rule. In 2012 there were 2,271 firms in total, and 2,108 firms had less than 100 employees. Therefore, approximately 93 percent of the general-line grocery wholesaler can be classified as small businesses.

In addition to general-line wholesalers, there are specialty wholesalers which deal in certain types of products. According to the 2012 Economic Census, there was a total of 2,162 meat and meat products wholesalers firms. Of these, 2,043 firms had less than 100 employees, meaning approximately 95 percent of meat wholesalers were considered small firms.

The 2012 Economic Census reports that 2,629 livestock processing and slaughtering firms were in operation. Almost 90 percent or 2,354 of these firms qualified as small businesses under the SBA definition.

The USDA's Packers and Stockyards Program provides regularly updated data on the number of livestock buyers, dealers and auction markets. While this information does not include sales and/or employment data, it is expected that the large majority of these entities are small businesses.

It is estimated that intermediaries (importers and domestic wholesalers, handlers, and processors) would benefit from cost savings under the rule by approximately \$613.7 million, or \$52,075 per intermediary firm and \$47,863 per establishment. Wholesalers will save

recordkeeping costs, costs associated with supplying country of origin and method of production information to retailers, costs associated with segmenting products by country of origin and method of production, and additional handling costs.

*Producers:* Producers of cattle and hogs will be affected because covered meat commodities are produced from livestock. SBA defines a small agricultural producer as having annual receipts less than \$750,000. According to the 2012 Census of Agriculture, there were 913,246 farms that raised beef cows, and roughly 45,000 were estimated to have annual receipts greater than \$750,000. Thus, about 95 percent of these beef cattle farms were classified as small businesses according to the SBA definition. Similarly, an estimated 80 percent of hog farms were considered small.

At the production level, agricultural producers maintained records to establish country of origin information. This information was conveyed as the animals and products derived from them moved through the supply chains. Producer costs included the cost of establishing and maintaining a recordkeeping system for the country of origin information, animal or product identification, and labor and training. The savings benefits for producers are expected to be \$451.0 million, or an estimated \$462 per firm.<sup>10</sup>

*Additional alternatives considered:* Section 604 of the RFA requires the Agency to describe the steps taken to minimize the significant economic impact on small entities including a discussion of alternatives considered. As the effect of this rule is reduced burdens rather than increased costs on firms, and because there were no alternatives for implementing the legislation, no alternatives to lessen the burden of this rule on small businesses were considered.

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<sup>10</sup> As noted in more detail above, these savings may be shifted to others in the supply chain or consumers.

## **Paperwork Reduction Act**

Pursuant to the Paperwork Reduction Act (PRA)(44 U.S.C 3501-3520) the information collection provisions contained in this rule were previously approved by OMB and assigned OMB Control Number 0581-0250. AMS is publishing a notice and request for comment seeking OMB approval to revise this information collection in this same edition of the Federal Register.

## **Executive Order 13175**

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Agricultural Marketing Service (AMS) has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under EO 13175. If a Tribe requests consultation, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

## **Executive Order 12988**

The contents of this rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are

preempted from creating or operating country of origin labeling programs for the commodities specified in the Act and this regulation. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

### **Civil Rights Review**

AMS considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations. This final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. This program is required by the 2002 Farm Bill, as amended by the 2008 Farm Bill and the Consolidated Appropriations Act, 2016.

In the January 15, 2009, final rule, 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 Executive Order 13132, 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.

It is found and determined that good cause exists under 5 U.S.C. 553(b)(3) for implementing this final rule on [insert date of publication in the Federal Register] 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 Agency 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 Act to remove the requirements for labeling beef and pork to bring the United States into compliance with its international trade obligations. 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. Additionally, on December 7, 2015, the World Trade Organization (“WTO”) Arbitrators set the maximum permissible levels of suspension of concessions at Canadian \$1.05 billion (US \$781 million) annually for Canada and US \$228 million annually for Mexico. The 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 is found and determined that good cause exists to exempt this rule from the requirement to delay the effective date. Accordingly, this rule will be effective on [insert date of publication in the Federal Register].

#### List of Subjects

Agricultural Commodities, Food Labeling, Meat and Meat Products, Reporting and Recordkeeping Requirements.

For the reasons set forth in the preamble, 7 CFR Part 65 is amended as follows:

1. Revise the part heading of Part 65 to read as follows:

PART 65--COUNTRY OF ORIGIN LABELING OF LAMB, CHICKEN, AND GOAT MEAT, PERISHABLE AGRICULTURAL COMMODITIES, MACADAMIA NUTS, PECANS, PEANUTS, AND GINSENG

2. REPUBLISH

The authority citation for part 65 is republished and continues to read as follows:

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

3. REMOVE

§65.110 [Removed]

REMOVE §65.110

§65.155 [Removed]

REMOVE §65.155

§65.175 [Removed]

REMOVE §65.175

§65.215 [Removed]

REMOVE §65.215

4. AMEND §65.135 to revise paragraphs (a) (1) and (2) to read as follows:

§65.135 Covered commodity.

(a) Covered commodity means:

(1) Muscle cuts of lamb, chicken, and goat;

(2) Ground lamb, ground chicken, and ground goat;

5. AMEND §65.220 to read as follows:

§65.220 Processed food item.

Processed food item means a retail item derived from a covered commodity that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g., chocolate, breading, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item. Specific processing that results in a change in the character of the covered commodity includes cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding). Examples of items excluded include roasted peanuts, breaded chicken tenders, and fruit medley.

6. AMEND §65.300 paragraph (h) to read as follows:

§65.300 Country of origin notification.

(h) Labeling Ground Lamb, Ground Goat, and Ground Chicken. The declaration for ground lamb, ground goat, and ground chicken covered commodities shall list all countries of origin

contained therein or that may be reasonably contained therein. In determining what is considered reasonable, when a raw material from a specific origin is not in a processor's inventory for more than 60 days, that country shall no longer be included as a possible country of origin.

7. AMEND §65.500 paragraph (b) (1) to read as follows:

§65.500 Recordkeeping requirements.

(b) Responsibilities of Suppliers.

(1) Any person engaged in the business of supplying a covered commodity to a retailer, whether directly or indirectly, must make available information to the buyer about the country(ies) of origin of the covered commodity. This information may be provided either on the product itself, on the master shipping container, or in a document that accompanies the product through retail sale. In addition, the supplier of a covered commodity that is responsible for initiating a country(ies) of origin claim, which in the case of lamb, chicken, and goat, is the slaughter facility, must possess records that are necessary to substantiate that claim for a period of 1 year from the date of the transaction. For that purpose, packers that slaughter animals that are tagged with an 840 Animal Identification Number device without the presence of any additional accompanying marking (i.e., "CAN" or "M") may use that information as a basis for a U.S. origin claim. Packers that slaughter animals that are part of another country's recognized official system (e.g. Canadian official system, Mexico official system) may also rely on the presence of



an official ear tag or other approved device on which to base their origin claims. Producer affidavits shall also be considered acceptable records that suppliers may utilize to initiate origin claims, provided it is made by someone having first-hand knowledge of the origin of the covered commodity and identifies the covered commodity unique to the transaction.

Dated:

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Elanor Starmer  
Acting Administrator  
Agricultural Marketing Service