

Agency Contact for the following items: Susan Arthur, Federal Trade Commission, Dallas Regional Office, 100 N. Central Expressway, Suite 500, Dallas, TX 75201, 214/767-5517.

(1) Guides for the Luggage and Related Products Industry (16 CFR Part 24).

(2) Guides for Shoe Content Labeling and Advertising (16 CFR Part 231).

(3) Guides for the Ladies' Handbag Industry (16 CFR Part 247).

Agency Contacts for the following item: Douglas Goglia, Donald G. D'Amato, and Eugene Lipkowitz, New York Regional Office, Federal Trade Commission, 150 William Street, Suite 1300, New York, New York 10038, 212/264-1229, 212/264-1223, and 212/264-1230, respectively.

(4) Guides for the Beauty and Barber Equipment and Supplies Industry (16 CFR Part 248).

Agency Contact for the following item: Michelle Rusk, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, Room S4002, Sixth and Pennsylvania Ave., NW, Washington, DC 20580, 202/326-3148.

(5) Guides for the Use of Environmental Marketing Claims (16 CFR Part 260) (Green Guides).

Agency Contact for the following item: Russell Deitch, Federal Trade Commission; Los Angeles Regional Office, Suite 13209, 11000 Wilshire Blvd., Los Angeles, CA 90024, 310/235-7890.

(6) Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts (16 CFR Part 405) (Leather Belt Rule).

Agency Contact for the following items: Kent C. Howerton, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S4631, Sixth and Pennsylvania Ave., NW, Washington, DC 20580, 202/326-3013.

(7) Trade Regulation Rule Concerning the Incandescent Lamp Industry (Light Bulb Rule) (16 CFR Part 409).

(8) Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation ("R-value Rule") (16 CFR Part 460).

Agency Contact for the following item: Steven Toporoff, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, Room H238, Sixth and Pennsylvania Ave., NW, Washington, DC 20580, 202/326-3135.

(9) Trade Regulation Rule Regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("Franchise Rule") (16 CFR Part 436).

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95-2620 Filed 2-1-95; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515-AB61

Advance Notice of Proposed Customs Regulations Amendments Concerning the Country of Origin Marking Requirements for Frozen Produce Packages

AGENCY: Customs Service, Department of Treasury.

ACTION: Advance notice of proposed rulemaking; solicitation of comments.

SUMMARY: This document provides advance notice of a proposal to amend the Customs Regulations to: Prescribe rules regarding a conspicuous place for the marking of country of origin on packages of frozen produce; and establish rules concerning the appropriate type size and style to be employed in marking frozen produce packages. The purpose of this document is to help determine whether a rulemaking is needed to ensure a uniform standard for conspicuous and legible country of origin marking for packages of frozen produce, and, if needed, the contents of that rulemaking.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Ave., N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Wende Schuster, Special Classification and Marking Branch, Office of Regulations and Rulings (202-482-6980).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported

into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Failure to mark an article in accordance with the requirements of 19 U.S.C. 1304 shall result in the levy of a duty of ten percent *ad valorem*. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Customs Ruling and Court Action

On May 9, 1988, Norcal Crosetti Foods, Inc. and other California packers of domestically-grown produce requested a ruling from Customs concerning what constituted conspicuous country of origin marking for packages of frozen produce, *i.e.*, whether the marking should be located on the front or some other panel of the package and in what type size and style it should appear. Specifically, Customs was asked to determine whether packaged frozen produce was considered conspicuously marked if the marking did not appear on the front panel of the package in prominent lettering. Sample packages which were not marked on their front panels were submitted with the ruling request. On November 21, 1988, Customs issued a ruling (Headquarters Ruling Letter (HRL) 731830), stating that the country of origin markings on all of the samples submitted were in compliance with the country of origin marking requirements, as the packages were marked by names and words which appeared on the back panel of the packaging in close proximity to nutritional and other information.

The packers appealed Customs determination in HRL 731830 to the Court of International Trade (CIT). *Norcal/Crosetti Foods, Inc. v. U.S. Customs Service*, 15 CIT 60, 758 F.Supp. 729 (1991) (*Norcal I*). In *Norcal I*, the court ruled that frozen produce is not marked in a conspicuous place unless it is marked on the front panel of the package. The court remanded the matter to Customs with directions to issue a new ruling. Pursuant to the court's order in *Norcal I*, Customs issued Treasury Decision (T.D.) 91-48 (56 FR 24115, May 28, 1991), which required the country of origin marking for frozen produce to be placed on the front panel of the package.

Arguing that the CIT did not have jurisdiction to decide the case, the government appealed the CIT's decision to the Court of Appeals for the Federal

Circuit. *Norcal/Crosetti Foods, Inc. v. U.S.*, 963 F.2d 356 (Fed.Cir. 1992) (*Norcal II*). In *Norcal II*, the court ruled on procedural grounds to reverse the judgment of the CIT and remand the case with instructions to dismiss the complaint for lack of jurisdiction. The appellate court reasoned that since the packers' had not exhausted their administrative remedies, their claims were not properly before the CIT. The court further indicated that a proper course would have been for the packers to initiate a proceeding before Customs under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516).

The 516 Petition and Agency Action (1993)

A 516 petition (the *Norcal* petition) was initiated by letters dated January 13 and January 29, 1993, and filed with Customs under 19 U.S.C. 1516 and Part 175, Customs Regulations (19 CFR Part 175). The petitioners were Norcal Crosetti Foods, Inc. and Patterson Frozen Foods, Inc., California packers of produce grown domestically. The International Brotherhood of Teamsters, on behalf of its Local 912, submitted a letter dated February 24, 1993, supporting the *Norcal* and Patterson petition. The *Norcal* petition asked Customs to reconsider its position in HRL 731830, and to adopt the findings of the CIT in *Norcal I*.

The petitioners contended that imported frozen produce is not marked in a conspicuous place in accordance with the requirements of 19 U.S.C. 1304. The petitioners argued that under a correct application of 19 U.S.C. 1304, the indication of country of origin must appear on the front panel of a package to be considered as marked in a conspicuous place. These domestic producers argued further that Customs standards for the size and prominence of such country of origin markings were not in conformity with 19 U.S.C. 1304.

Customs published a notice in the **Federal Register** on September 9, 1993 (58 FR 47413), advising the public of the petitioners' contentions and soliciting public comments on the issues raised in the petition. Also in this notice, Customs effectively suspended the effective date of T.D. 91-48 by reinstating HRL 731830. Seventy-one comments were submitted in response to the petitions.

In T.D. 94-5 (58 FR 68743, December 29, 1993), Customs issued a final interpretive ruling based on the comments which were received in response to the September 9 **Federal Register** notice. T.D. 94-5 stated that back panel marking was insufficient and front panel country of origin marking

was prescribed in a specified type size and style designed to match the net weight or net quantity of contents marking of the product under the Food Labeling Regulations (21 CFR 101.105). In T.D. 94-5, Customs modified T.D. 91-48 by requiring that conspicuous marking within the meaning of T.D. 91-48, shall be limited to marking which complies with the additional specifications for type size and style set forth in T.D. 94-5. The effective date initially established for the decision in T.D. 94-5 was May 8, 1994, in order to allow importers time to modify their packaging. On March 29, 1994, however, Customs issued two **Federal Register** documents: One (59 FR 14458) suspending the compliance date of May 8, 1994, for parties adversely affected by the country of origin marking requirements specified in T.D. 94-5, and the other (59 FR 14579) giving notice of its intention to adopt a new compliance date of January 1, 1995, and soliciting comments on both the proposed compliance date and on the specifications regarding type size and style.

In response to T.D. 94-5, however, an action was filed with the Court of International Trade on behalf of American Frozen Food Institute, Inc. and National Food Processors Association, which challenged Customs decision. In *American Frozen Food Institute, Inc., et al. v. The United States*, Slip Op. 94-97 (June 9, 1994), the CIT ruled that because Customs had chosen to promulgate front panel marking in combination with other requirements needing APA [Administrative Procedure Act, 5 U.S.C. 553] rulemaking procedures, the entirety of T.D. 94-5 could not stand. The court stated that it expected Customs to formulate a rational rule based on comments received in connection with this matter before publishing any proposed rule.

The court further concluded that, because the full rulemaking process had not yet been followed, it would not rule on whether T.D. 94-5 was acceptable substantively. Since the court declared T.D. 94-5, in its entirety, null and void, there is no decision on the January 1993 petition filed by Norcal Crosetti Foods, Inc. and Patterson Frozen Foods, Inc. The decision on the 516 petition will be held in abeyance. Publication of this document is without prejudice to an ultimate decision on the 516 petition.

Issues for Consideration in Determining Whether Customs Should Issue a Notice of Proposed Rulemaking With Regard to Specific Country of Origin Marking of Frozen Produce

The Customs Service is considering issuing a notice of proposed rulemaking to amend the Customs Regulations to prescribe rules regarding a conspicuous location for the country of origin marking on packages of frozen produce and to require that such marking meet certain type size and style specifications. Although relevant comments were received in response to the **Federal Register** notices pertaining to T.D. 94-5, there are several other issues on which we would like to receive additional public comments before deciding whether to propose rulemaking on this matter. In addition to general comments, interested parties are invited to comment on the following specific issues:

(1) Is there a need for Customs to initiate a proposed rulemaking regarding country of origin marking of frozen produce?

(2) Whether there are current abuses in the country of origin marking of imported packages of frozen produce. If so, whether such abuses require that Customs prescribe country of origin marking requirements by rules applicable to all packages of frozen produce, or whether the abuses should be handled on a case-by-case basis.

(3) For purposes of the marking statute and regulations, are there sound reasons of public policy for treating frozen produce differently from produce packaged in other ways (e.g., canned goods)?

(4) Whether the front panel of frozen produce is the only "conspicuous place" on the package for country of origin marking.

(5) Whether a specified location on another panel (e.g., the back panel) where the country of origin marking is demarcated by, for example, a box, a header, bold print, margins, a contrasting background, or other graphic devices, would constitute a "conspicuous place" for purposes of the marking statute.

(6) Whether Customs should prescribe, by regulation, certain type size and style specifications for the country of origin marking of frozen produce. If so, whether the regulations should specify one type size for all packages of frozen produce, or different type sizes depending upon the size of the package. If one type size is prescribed for all packages of frozen produce, what type size should be recommended and why?

(7) Whether for purposes of country of origin marking, the term "produce" should be defined to include both fruits and vegetables.

(8) Where frozen produce packaging contains produce sourced from multiple countries, should this have any bearing on the placement of the country of origin marking?

(9) Whether the particular conditions of the frozen food section in a store impact on the likelihood that a consumer will notice label information regarding country of origin without this information being given special prominence. If so, whether there is any empirical evidence of such consumer behavior.

(10) Whether consumer behaviors and attitudes toward country of origin marking of frozen produce can be documented with studies or surveys. If so, how much time would be needed for a study or survey to be conducted and for the data to be analyzed?

(11) If Customs goes forward with a notice of proposed rulemaking, what should be a sufficient period of time for public comment?

(12) If Customs issues a notice of proposed rulemaking, should a public hearing be held in connection with such proposed rulemaking?

(13) If Customs proposes and adopts new country of origin marking regulations, what would be an appropriate time frame between the publication of the final rule and the effective date of such regulations?

(14) What other issues should be addressed in the proposed rulemaking in order to afford a full opportunity for public comment?

Comments

In order to assist Customs in determining whether to proceed with a notice of proposed rulemaking to prescribe rules regarding the country of origin marking for packages of frozen produce, and the appropriate type size and style specifications for such marking, this notice invites written comments on the issues raised in this document as well as any other issues in connection with this matter.

Consideration will be given to any comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs

Service, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

William F. Riley,

Acting Commissioner of Customs.

Approved: January 27, 1995.

Ronald K. Noble,

Under Secretary of the Treasury.

[FR Doc. 95-2546 Filed 2-1-95; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Petition for Rulemaking to the Secretaries of the Interior and Agriculture Relating to the Federal Subsistence Management Program for Public Lands in Alaska; Notice of Availability and Request for Comments

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Petition for rulemaking.

SUMMARY: The Secretary of the Interior and the Secretary of Agriculture (Secretaries) have received a petition submitted by the Northwest Arctic Regional Council and other Alaska Native groups requesting the Secretaries initiate rulemaking to (1) establish that they have authority to regulate hunting and fishing on non-public lands to protect the subsistence priority afforded on public lands by Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), and (2) determine that lands selected by, but not yet conveyed to, Native Corporations and the State of Alaska be treated as public lands subject to the ANILCA subsistence priority. Copies of this petition are available for review from the address listed below. To aid the Secretaries in reaching a decision on this petition, the Federal Subsistence Board is soliciting public comments on the issues presented.

DATES: Comments must be submitted on or before April 3, 1995.

ADDRESSES: Comments should be submitted to and copies of the petition may be obtained by contacting Richard S. Pospahala, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503.

FOR FURTHER INFORMATION CONTACT:

Copies of the petition may be obtained by contacting Richard S. Pospahala,

telephone (907) 786-3447. For questions specific to National Forest System lands, contact Norman R. Howse, telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111-3126) requires the Secretaries to implement a joint program to grant a preference to subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with, and provide for, the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska*, 785 P.2d 1 (Alaska 1989), that the rural preference in the State subsistence statute violated the Alaska Constitution. The ruling in *McDowell* required the State to delete the rural preference from its subsistence statute, which put the State out of compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

The Department of the Interior and the Department of Agriculture assumed responsibility for implementation of the subsistence preference in Title VIII of ANILCA on public lands on July 1, 1990, pursuant to the Temporary Subsistence Management Regulations for Public Lands in Alaska that were published in the **Federal Register** on June 29, 1990 (55 FR 27114-27170). The Departments published Permanent Subsistence Management Regulations for Public Lands in Alaska on May 29, 1992 (57 FR 22940-22964).

The subsistence preference established in Section 804 of ANILCA accords priority to the taking of fish and wildlife for nonwasteful subsistence uses on "public lands" over the taking of fish and wildlife on public lands for other purposes. "Public lands" are defined in Section 102 of ANILCA to mean lands, waters, and interests therein that are situated in Alaska and to which the United States holds title, except for:

(1) Land selections of the State of Alaska that have been tentatively approved or validly selected under the Alaska Statehood Act and lands that have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;