

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 52

[Doc. No. AMS-FV-08-0075; FV-08-330]

RIN 0581-AC89

#### Country of Origin Labeling of Packed Honey

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule would establish a new regulation addressing country of origin labeling for packed honey bearing any official USDA mark or statement and would add a new cause for debarment from inspection and certification service for honey. The rule is necessary because section 10402 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) amended the Agricultural Marketing Act of 1946 to require country of origin labeling for honey if it contains official USDA grade marks or statements. The regulations governing inspection and certification would be amended to include a provision for country of origin labeling requirements for packed honey and for debarment of services if the country of origin labeling requirements are not met for packages of honey containing official USDA grade marks or statements.

**DATES:** This interim final rule is effective on October 6, 2009. Comments must be submitted on or before September 8, 2009.

**ADDRESSES:** Interested persons are invited to submit comments via the Internet at <http://www.regulations.gov>. Comments submitted by mail or courier must be sent in duplicate to the Chere L. Shorter, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S.

Department of Agriculture, STOP 0247, Washington, DC 20250-0247, fax (202) 690-1087, or e-mail

*Chere.Shorter@ams.usda.gov*.

Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours and on the Internet at <http://www.regulations.gov> or <http://www.ams.usda.gov/processedinspection>. All comments received will be posted without change, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Chere L. Shorter at the above address, call (202) 720-4693, or e-mail *Chere.Shorter@usda.gov*.

**SUPPLEMENTARY INFORMATION:** Section 10402 of the 2008 Farm Bill (Pub. L. 110-246) amended section 1622(h) of the Agricultural Marketing Act of 1946, (7 U.S.C. 1621-1627, 1635-1638d (Act)), to require that all packed honey bearing any official USDA mark or statement also bear “legibly and permanently in close proximity (such as on the same side(s) or surface(s)) to the certificate, mark, or statement, and in at least a comparable size, the [country or] countries of origin of the lot or container of honey, preceded by the words ‘Product of’ or other words of similar meaning.” Section 10402 also establishes that a violation of the labeling requirements may be deemed by the Secretary of Agriculture to be sufficient cause for debarment from the benefits of the Act, only with respect to honey, and that the honey amendments shall take effect one year after the date of enactment of the 2008 Farm Bill, which is June 18, 2009.

The Act authorizes official inspection, grading, and certification for processed fruits, vegetables, and processed products made from them. This amendment to the Act requires the amendment of the regulations in 7 CFR part 52, which provide for official inspection and certification services with respect to processed fruit, vegetables, and miscellaneous products and the fees charged for such services. Section 52.53 describes and illustrates the use of approved certification marks. Section 52.54 lists the acts or practices that may cause debarment by the Administrator of any person from any benefits of the Act for a specified period

of time. These include: (1) Fraud or misrepresentation in filing an application; submission of samples; use of an inspection report or certificate; use of the words “Packed under continuous inspection of the U.S. Department of Agriculture,” any legend signifying that the product has been officially inspected, any statement of grade or similar words; use of a facsimile form; (2) willful violations of the regulations; or (3) interfering with an inspector, inspector’s aid, or licensed sampler. Pursuant to the amendment of the Act by the 2008 Farm Bill, section 52.54 will be amended to add a new paragraph providing for debarment of services if the country of origin labeling requirements are not met for honey.

#### Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and does not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act and Paperwork Reduction Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Agricultural Marketing Service (AMS) has prepared a regulatory flexibility analysis. AMS, however, does not currently have all of the data necessary for a comprehensive analysis of the effects of this interim final rule on small entities. Therefore, AMS welcomes public comment that would enable it to more fully consider impacts of the rule, especially information on the use of official USDA grade marks on honey and any costs associated with reconfiguring product labeling.

AMS estimates that there are between 139,600 and 212,000 beekeepers in the United States. The vast majority of beekeepers (95 percent) are hobbyists with fewer than 25 hives, or bee colonies, and about 4 percent are part-

time beekeepers who keep from 25 to 299 hives. Together, hobbyists and part-time beekeepers account for about 50 percent of bee colonies and about 40 percent of honey produced. Commercial beekeepers are those with 300 or more bee colonies. There are approximately 1,600 commercial beekeeping operations in the United States, which produce about 60 percent of the nation's honey.

AMS believes that there are approximately 2,000 producers of honey, 45 handlers/packers, and 659 importers of honey and honey products. The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of \$750,000 or less annually and small agricultural service firms as those having annual receipts of \$7 million or less. Using these criteria, most producers and handlers/packers would be considered small businesses, while most importers would not.

National Agricultural Statistics Service (NASS) data report that U.S. production of honey, from producers with five or more colonies, totaled less than 155 million pounds in 2006, representing a decrease of almost 16 percent from 2004. The number of U.S. bee colonies producing honey in 2007 was 2.4 million (based on beekeepers who manage five or more colonies).

In 2007, more than 148 million pounds of honey were produced in the United States. The average annual yield per colony was 60.8 pounds of honey. The average producer price per pound was \$1.03. The 2007 honey crop was valued at more than \$153 million. In 2006, the honey price was \$1.04, which was up 14 percent from \$0.92 in 2005.

The top six honey producing States in 2006 were North Dakota, California, Florida, South Dakota, Montana, and Minnesota. NASS reported the value of honey sold from these six states in 2006 was \$84,583,000 and the volume produced was 90,433,000 pounds. From 1980–2002, U.S. honey production averaged around 200 million pounds per year, with U.S. commercial beekeepers producing more than 220 million pounds of honey as recently as 2000.

Based on the reports by U.S. Customs and Border Protection (Customs), seventeen countries produced more than 93 percent of the honey imported into the U.S. In 2005, five of these countries produced almost 79 percent of the total honey imported into the United States. These countries and their share of the imports are China (27 percent), Argentina (21 percent), Vietnam (13 percent), Canada (10 percent), and India (8 percent). Imports accounted for 69

percent of U.S. consumption in 2006, an increase of 18 percent, up from 51 percent since 2002.

The United States is one of the world's largest markets for industrial honey. This sector accounts for approximately 45 percent of total domestic consumption. The primary users of industrial honey are bakery, health food, and cereal manufacturers. Other users such as the food service industry account for another 10 percent of domestic consumption. Individual consumers who purchase small amounts of honey for personal use also significantly contribute to overall consumption in the United States. Consumption in the United States is about 275 million pounds.

USDA grades for honey are not mandatory, but beekeepers, handlers/packers labeling honey as a particular grade are responsible for the accuracy of the label. The U.S. Standards for Grades of Honey are located on the AMS Web site at <http://www.ams.usda.gov/processedinspection>.

The Act authorizes the inspection, certification, and identification of class, quality, quantity, and condition of agricultural commodities. Under the Act, no person is required to use the services.

The 2008 Farm Bill amended the Act to require that packaged honey bearing a grade mark or statement, continuous inspection mark or statement, sampling mark or statement, or any combination of marks or statements of the Department of Agriculture, must also bear the one or more names of the countries of origin of the lot or container of honey legibly and permanently in close proximity to and at least in comparable size to the mark or statement.

Under the existing regulations governing the inspection and grading of processed fruits, vegetables, and miscellaneous products, section 52.53 provides for the use of approved identification marks and paragraph (h) describes or lists prohibited uses of approved identification. Section 52.53(h) provides that, except for officially inspected or otherwise approved products, no label or advertising material used upon, or in conjunction with, a processed product shall bear a brand name, trademark, product name, company name, or any other descriptive material as it relates or alludes to any official U.S. Department of Agriculture certificate of quality or loading, grade mark, grade statement (except honey and maple syrup which may bear such grade mark or statement), continuous inspection mark, continuous inspection statement, sampling mark or

sampling statement or combinations of one or more of the above. Therefore, honey and maple syrup may bear official USDA grade marks without official inspection.

This rule would apply to domestic as well as foreign sources of honey. Under this rule, any honey that has a grade mark or official U.S. grade mark would have to include in its label the country of origin in letters at least the same size and in close proximity to the grade mark. For example, if foreign or domestic honey were labeled Grade A or U.S. Grade A, then it would have to identify its country or countries of origin. Conversely, if the honey is not officially grade labeled, the country of origin labeling is not necessary whether the honey is domestic or foreign.

AMS believes that under current industry labeling practices, packages of honey that include the official U.S. grade marks, in most cases, also include country of origin labeling. However, the Act requires that all honey bearing any official USDA mark or statement also bear legibly and permanently in close proximity (such as on the same side(s) or surface(s)) to the certificate, mark, or statement, and in at least a comparable size, the country or countries of origin of the lot or container of honey, preceded by the words "Product of" or other words of similar meaning. AMS is interested in any comments from producers, handlers, importers, or other interested persons concerning the cost, if any, associated with reconfiguring the labeling of honey in accordance with this rule.

Because honey does not require official inspection in order to carry official USDA grade marks and since there are no existing programs that require the official inspection and certification of honey, AMS believes that there will be little, if any, impact on the honey industry or small entities. Further, AMS believes that product labeling changes normally involve reconfiguring labeling without substantial costs and without having to purchase new equipment.

With regard to alternatives to this rule, section 10402 of the 2008 Farm Bill amends the Act, which requires AMS to amend its regulations.

Enforcement will be handled by AMS if it receives complaints. All complaints will be turned over to our Compliance and Analysis Program (Compliance) who will investigate the alleged violation. Compliance would then determine the validity of the complaint, and appropriate action would be taken. Further, it is reasonable to allow time for packaged honey bearing any official USDA mark or statement already in the

chain of commerce to clear the system and allow the honey industry time to reconfigure labels as appropriate. A 90-day period is provided for that purpose.

The Agency has identified some Federal rules that may be viewed to duplicate or overlap with this rule. Under pre-existing Federal laws and regulations, country of origin labeling is required.

Such requirements are enforced by the U.S. Customs and Border Protection (CBP) as authorized by the Tariff Act of 1930 and CBP regulations (19 U.S.C. 1304(a) and 19 CFR Part 134). This law requires that every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin.

Additionally, repackers are required by CBP to mark containers of repackaged imports with the English name of the country of origin. In the event that further reprocessing or material is added to the article in another country and results in a "substantial transformation" of the product, the other country becomes the country of origin within the meaning of CBP's labeling requirements, 19 CFR 134.1(b) and 134.11.

AMS has reviewed this rule under the Paperwork Reduction Act, 44 U.S.C. 3501–3520, and has determined that there are no additional information collection requirements imposed by this rule.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) This rule has to be implemented because of an amendment by the Farm Bill to the Act and has an effective date of October 6, 2009; and (2) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Honey, Miscellaneous products, Debarment of services, Reporting and recordkeeping requirements, Approved identification, Country of origin labeling, and Prohibited uses of approved identification.

■ For the reasons set forth in the preamble, 7 CFR part 52 is amended as follows:

### PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

■ 2. In part 52, § 52.54 is amended by adding paragraph (a)(4) to read as follows:

#### § 52.54 Debarment of service.

(a) \* \* \*

(4) *Country of origin labeling for packed honey.* (i) The use of a label or advertising material on, or in conjunction with, packaged honey that bears any official certificate of quality, grade mark or statement, continuous inspection mark or statement, sampling mark or statement, or any combination of the certificates, marks, or statements of the Department of Agriculture is hereby prohibited unless there appears legibly and permanently in close proximity (such as on the same side(s) or surface(s)) to the certificate, mark, or statement, and in at least a comparable size, the one or more names of the one or more countries of origin of the lot or container of honey, preceded by the words 'Product of' or other words of similar meaning.

(ii) A violation of the requirements of this section may be deemed by the Secretary to be sufficient cause for debarment from the benefits of the regulations governing inspection and certification only with respect to honey.

Dated: June 30, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9–16029 Filed 7–7–09; 8:45 am]

#### BILLING CODE P

### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 354

[Docket No. APHIS–2006–0137]

RIN 0579–AC22

#### User Fees; Export Certification for Plants and Plant Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the user fee regulations by adjusting the fees charged for export certification of plants and

plant products. We are increasing these user fees for fiscal years 2010 through 2012 to reflect the anticipated costs associated with providing these services during each year. We are also adding a new user fee for Federal export certificates for plants and plant products that an exporter obtains from a State or county cooperator in order to recover our costs associated with that service. Finally, we are making several nonsubstantive changes to the regulations for clarity. These changes will enable us to properly recover the costs of providing export certification services for plants and plant products.

**DATES:** *Effective Date:* October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations, contact Mr. Marcus McElvaine, Senior Export Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–8414. For information concerning rate development, contact Mrs. Kris Caraher, User Fee Section, Financial Services Branch, Financial Management Division, MRPBS, APHIS, 4700 River Road Unit 55, Riverdale, MD 20737–1232; (301) 734–0882.

#### SUPPLEMENTARY INFORMATION:

#### Background

On June 12, 2007, we published in the **Federal Register** (72 FR 32223–32230, Docket No. APHIS–2006–0137) a proposal<sup>1</sup> to amend the user fee regulations in 7 CFR 354.3 by adjusting the fees charged for export certification of plants and plant products. We proposed to increase these user fees for fiscal years (FYs) 2007 through 2012 to reflect the anticipated costs associated with providing these services during each year. We also proposed to add a new user fee for Federal export certificates for plants and plant products that an exporter obtains from a State or county cooperator in order to recover our costs associated with that service and to make some additional nonsubstantive changes to the regulations for greater clarity. The proposed changes were intended to enable us to properly recover the costs of providing export certification services for plants and plant products.

We solicited comments concerning our proposal for 60 days ending August 13, 2007. We received 75 comments by that date. They were from producers, exporters, research institutions, relief agencies, and representatives of State

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0137>.