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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 52

[Document No. AMS-FV-08-0075]

RIN 0581-AC89

#### Country of Origin Labeling of Packed Honey

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

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts an interim rule, with change, establishing new regulations addressing country of origin labeling for packed honey bearing any official USDA mark or statement. Also, the rule added a new cause for debarment from inspection and certification service for honey if country of origin labeling requirements are not met for packages of honey containing official USDA grade marks or statements. The rule was 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.

**DATES:** *Effective Date:* February 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** Chere L. Shorter by phone at (202) 720-4693 or e-mail to [Chere.Shorter@ams.usda.gov](mailto:Chere.Shorter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** The regulations governing inspection and certification of processed fruits and vegetables 7 CFR part 52, were amended by an interim final rule published in the *Federal Register* on July 8, 2009 (74 FR 32389) to include provisions 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. The interim final rule became effective on October 6, 2009.

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, 1635-1638), 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 required 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 was 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. 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 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 2,700 producers of honey, 41 handlers/packers, and 614 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 144 million pounds in 2009, representing a decrease of 14 percent from 2004. The

number of U.S. bee colonies producing honey in 2009 was 2.4 million (based on beekeepers who manage five or more colonies).

The average annual yield per colony was 58.5 pounds of honey. The average producer price per pound was \$1.44. The 2009 honey crop was valued at more than \$208.2 million.

The top six honey producing States in 2009 were North Dakota, South Dakota, California, Florida, Minnesota, and Montana. NASS reported the value of honey sold from these six States in 2009 was \$144,843 and the volume produced was 101,697,000 pounds.

Based on data from Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, seventeen countries produced more than 98 percent of the honey imported into the U.S. In 2009, six of these countries produced over 80 percent of the total honey imported into the United States. These countries and their share of the imports are Brazil (19 percent), Vietnam (18 percent), India (14 percent), Argentina (11 percent), Malaysia (9 percent), and Canada (9 percent). Imports accounted for 62 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.

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 applies to domestic as well as foreign sources of honey. Under this rule, any honey that has an official U.S. grade mark must 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 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. This discussion has been clarified from that which appeared in the interim rule.

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, country of origin information usually is located on the back of the package. 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.

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 producers, except if a handler or importer is carrying official marks on their labels beyond the date that this rule is effective and has not reconfigured their labels. 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.

The Agency has identified some Federal rules that may conceivably be viewed to duplicate or overlap with this rule. Under pre-existing Federal laws and regulations, country of origin labeling is required by the Tariff Act of 1930, 19 U.S.C. 1304(a) and CBP Regulations, 19 CFR part 134.

Such requirements are enforced by the U.S. Customs and Border protection (CPB) 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.

#### *Summary of Comments*

AMS received six comments; four commenters were in favor and two opposed the rule.

Three commenters requested that a requirement for country of origin and country of process be placed on all containers of honey. The statute provides only for identification of country of origin as previously discussed, when packages of honey bear official USDA marks or statements. Accordingly, these comments were not adopted.

One commenter stated that COOL should be required for all other bee products intended to be ingested (including bee pollen, royal jelly, etc.), that are offered for sale in the U.S. including any containers that have been repackaged from bulk containers shipped to or processed in the U.S. However, the country of origin amendment to the 1946 Act is only applicable to packaged honey. Nonetheless, country of origin labeling is required for imported products under

the Tariff Act of 1930 and CBP regulations. Accordingly, these comments were not adopted.

One commenter requested that added ingredients be included on the labels. The labeling of added ingredients was not included in the 2008 Farm Bill amendment. The U.S. Food and Drug Administration regulates the labeling of food products. (*See* 21 CFR 101.4.) Accordingly this comment was not adopted.

One commenter requested that additional time be granted to allow domestic packers to exhaust current inventories of labels. The commenter stated that packers order labels in large quantities to effect cost savings and estimated that many domestic packers will need at least one year to use up current supplies and that an additional six months would be required for this stock to be sold from retailers' shelves. The new rule also affects packers of domestic honey, who are now required to include country of origin on their labels; formerly, only imported product required a COOL declaration.

As stated in the interim rule, the Department provided a 90-day period for packers to exhaust current inventories of labels. The Department believes this is a reasonable amount of time to allow packaged honey bearing any 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. Enforcement will be handled by AMS if it receives complaints. All complaints will be turned over to the AMS Compliance and Analysis Program (Compliance) who will investigate the alleged violation. Compliance will then determine the validity of the complaint and appropriate action to be taken.

One commenter asked if the country of origin can be abbreviated on the label. AMS considers generic abbreviations as appropriate if they comply with CBP requirements.

AMS has reviewed this rule pursuant to 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.

#### 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. Section 52.54 is revised to read as follows:

##### § 52.54 Debarment of services.

(a) The following acts or practices, or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title and the Supplemental Rules of Practice in part 50 of this chapter shall be applicable to such debarment action.

(1) *Fraud or misrepresentation.* Any misrepresentation or deceptive or fraudulent practice or act found to be made or committed in connection with:

(i) The making or filing of an application for any inspection service;

(ii) The submission of samples for inspection;

(iii) The use of any inspection report or any inspection certificate, or appeal inspection certificate issued under the regulations in this part;

(iv) The 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 words of similar import in the labeling or advertising of any processed product;

(v) The use of a facsimile form which simulates in whole or in part any official U.S. certificate for the purpose of purporting to evidence the U.S. grade of any processed product.

(2) *Willful violation of the regulations in this subpart.* Willful violation of the provisions of this part of the Act.

(i) Country of origin labeling for packed honey. 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.

(A) 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.

(3) *Interfering with an inspector, inspector's aid, or licensed sampler.* Any interference with, obstruction of, or attempted interference with, or attempted obstruction of any inspector, inspector's aide, or licensed sampler in the performance of his duties by intimidation, threat, assault, bribery, or any other means—real or imagined.

Dated: December 22, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–33137 Filed 1–3–11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2010–1286; Directorate Identifier 2010–CE–064–AD; Amendment 39–16563; AD 86–25–07 R1]

RIN 2120–AA64

#### Airworthiness Directives; ROLLADEN-SCHNEIDER Flugzeugbau GmbH Model LS6 Gliders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are rescinding an existing airworthiness directive (AD) for the products listed above. The existing AD resulted from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During flights at speeds between 250 to 270 km/h (135 to 145 kts) aileron flutter occurred resulting in damage of control stick attachment.