[ORAL ARGUMENT NOT SCHEDULED]

No. 13-5281

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN MEAT INSTITUTE, *et al.*,

Plaintiffs-Appellants,

v.

U.S. DEPARTMENT OF AGRICULTURE, *et al.*,

Defendants-Appellees,

UNITED STATES CATTLEMEN'S ASSOCIATION, *et al.*,

Intervenor-Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANT-APPELLEES

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MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Federal Rule of Appellate Procedure 29, *amici curiae* The Humane Society of the United States, Organization for Competitive Markets, United Farm Workers of America, American Grassfed Association, Fulton Farms, Fox Hollow Farm, and Marshy Meadows Farm—(collectively "*Amici*")—hereby move for leave to submit the attached brief in support of the federal Defendant-Appellees and in support of the District Court's ruling denying the Plaintiff-Appellants' motion for a preliminary injunction to enjoin the 2013 final rule implementing mandatory country of origin labeling. *See* 78 Fed. Reg. 31,367 (May 24, 2013) [JA509-27].

As set forth more fully in the proposed brief, *Amici* are a broad coalition of agricultural producers, farm workers, and environmental and humane advocates who have a direct interest in this appeal, as disposition of this action could cause significant harm to their interests in protecting fair and competitive markets for agricultural products, preventing animal cruelty, promoting the quality of domestic production, and ensuring the survival of small farmers in America.

Amici provide a unique perspective on the broader history and constitutional authority to mandate country of origin information disclosures for consumers purchasing meat products. COOL provides critical information that consumers need to weigh attributes like labor, animal welfare, and environmental standards followed in the production of goods. Such attributes play an important role in consumer purchasing decisions, as well as contributing to market stability by increasing consumer confidence in a traceable food supply system. Undersigned counsel has reviewed the briefs filed by other parties and submits this brief to focus on points not made or adequately elaborated upon in those pleadings.

Respectfully Submitted,

Date: October 30, 2013

/s/ Jonathan R. Lovvorn

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2013, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Jonathan R. Lovvorn
Jonathan R. Lovvorn

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), the undersigned counsel certifies as follows:

A. Parties and *Amici*.

The plaintiffs in the district court, who are appellants in this Court, are the American Meat Institute, American Association of Meat Processors, Canadian Cattlemen's Association, Canadian Pork Council, National Cattlemen's Beef Association, National Pork Producers Council, North American Meat Association, Southwest Meat Association, and Confederación Nacional de Organizaciones Ganaderas.

The defendants in the district court, appellees in this Court, are the United States Department of Agriculture, the Agricultural Marketing Service, Tom Vilsack in his official capacity as Secretary of Agriculture, and Anne L. Alonzo in her official capacity as Administrator of the Agricultural Marketing Service.

The United States Cattlemen's Association, National Farmers Union, American Sheep Industry Association, and Consumer Federation of America intervened as defendants in the district

court and are appellees in this Court.

Food & Water Watch, Ranchers Cattlemen Action Legal Fund, United Stockgrowers of America, South Dakota Stockgrowers Association, and Western Organization of Resource Councils intervened as defendants in the district court. These parties have moved to file an amicus brief in this Court, but this Court has not yet acted on the motion.

There were no *amici* in the district court.

B. Rulings Under Review.

The ruling under review is the opinion issued on September 11, 2013, by Judge Ketanji Brown Jackson, docket number 48 [JA 1139], denying plaintiffs' motion for a preliminary injunction, and the accompanying order, docket number 49 [JA 1219].

C. Related Cases.

This case has not previously been before this Court or any other court and there are no related cases.

D. Corporate Disclosure Statement.

None of *Amici* has a parent corporation. No publicly held

company owns more than 10% of stock in any of *Amici*.

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GLOSSARY

AMA	AGRICULTURAL MARKETING ACT
COOL	COUNTRY OF ORIGIN LABELING
WTO	WORLD TRADE ORGANIZATION

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 29, *amici curiae* The Humane Society of the United States, Organization for Competitive Markets, United Farm Workers of America, American Grassfed Association, Fulton Farms, Fox Hollow Farm, and Marshy Meadows Farm—(collectively "*Amici*")—hereby submit this brief in support of the federal Defendant-Appellees and in support of the District Court ruling denying the Plaintiff-Appellants' motion for a preliminary injunction to enjoin the 2013 final rule implementing mandatory country of origin labeling. *See* 78 Fed. Reg. 31,367 (May 24, 2013) [JA509-27].

Amici file this brief to assist the Court's review of the legal issues and provide a unique perspective on the broader history and constitutional authority to mandate country of origin information disclosures for purchasing consumers. COOL provides material information that consumers can then use to weigh attributes like labor, animal welfare, and environmental standards followed in the production of goods. Such attributes play an important role in consumer purchasing decisions, as well as contributing to market stability by increasing consumer confidence in a traceable food supply system.

Undersigned counsel has reviewed the briefs filed by other parties in this action and submits this brief to focus on points not made or adequately elaborated upon in them, although relevant to the issues before this court.

I. Interest of *Amici*

Amici are composed of a diverse coalition of agricultural producers, farm workers, and environmental and humane advocates that have core mission interests in and extensive experience advocating for truthful and open disclosures of agricultural production information.

A. HSUS

HSUS is a national non-profit animal protection organization that works to reduce animal suffering and create meaningful societal change by actively advocating against animal cruelty, working to enforce existing laws, promoting sensible public policies, and educating the public about animal issues. Moreover, HSUS has expended significant time and resources on issues relating to the accuracy and availability of public information relating to production issues of animal agriculture. HSUS has filed challenges relating to misleading animal production

claims with the Federal Trade Commission,[1] the Securities and Exchange Commission,[2] the National Advertising Division of the Better Business Bureau,[3] and more. Such challenges have involved extensive review and analysis of legal issues related to labeling and the importance of consumer information in meat purchasing decisions. HSUS has also been active in fighting for legislation to eliminate the most intensive animal confinement systems in production agriculture and, consequently, has a definite interest in ensuring the ability of consumers to make informed choices about the production standards under which animals are raised. The COOL mandate and similar laws are essential to the mission of HSUS in its efforts to ensure accurate and complete information to its members and the public generally.

B. OCM

OCM is a national, non-profit public policy organization with a membership that includes farmers, ranchers, attorneys, agricultural

[1] *See* Complaint Requesting Action to Enjoin the Dissemination of False or Deceptive Advertising, www.humanesociety.org/assets/pdfs/farm/seaboard_ftc.pdf.
[2] *See* Release, Humane Society of the United States, IHOP and DineEquity Face SEC, FTC Complaints Over False Animal Welfare Claims (Oct. 14, 2009), *at* www.humanesociety.org/news/press_releases/2009/10/ihop_trade_complaints_101409.html.
[3] *See* Release, National Advertising Division of the Council of Better Business Bureaus, NAD Examines Advertising for D'Artagnan's Artisan Foie Gras (Jan. 26, 2009), *at* www.asrcreviews.org/2009/01/nad-examines-advertising-for-dartagnans-artisan-foie-gras.

economists, rural sociologists, legislators, and others. OCM's mission is to work for transparent, fair, and truly competitive agricultural and food markets. OCM has been at the forefront of the effort to bring about fair play in agricultural markets and thereby stem the drawdown of independent family farming and ranching and the degradation of America's rural communities. OCM also believes that proper identification of food products is essential to domestic market stability and the survival of the family farm and ranch in the United States.

As such, OCM has long been an advocate for COOL, including prior to its 2002 enactment.[4] OCM also vigorously protested the delayed implementation of the COOL statute when funding for the program was stripped during the appropriations process. OCM has continued its efforts in support of COOL and strongly opposes the efforts of Plaintiffs to prevent implementation of the revised rule.

C. United Farm Workers

Founded in 1962 by Cesar Chavez, UFW is the nation's first successful and largest farm workers union. UFW's mission is to serve as an advocate for and improve the lives of farm workers in the United

[4] *See* 147 Cong. Rec. S13245-07, *S13271 (Dec. 14, 2001) (statement of Sen. Johnson).

States. UFW represents farm workers involved in a variety of agricultural operations in the United States, including workers at cattle feedlots and dairies. UFW views proper identification and labeling regarding the source of agricultural products, including the meat products produced on farms that employ UFW members, as a material factor in ensuring consumer confidence in these products. UFW and its members are strong supporters of COOL and would be adversely affected if implementation of the revised regulation at issue in this action is prevented.

D. American Grassfed Association

AGA is a national, non-profit association representing a membership that includes meat producers, food service industry personnel, and consumer interest representatives. AGA developed and administers a certification program for producers of grassfed ruminants, including producers of cattle, bison, sheep, and goats. All AGA-Certified Producers are family farms and their animals are all born and raised in the United States. In order to obtain certification, a producer must meet AGA's stringent standards, which include a requirement that producer records tracing an animal from birth to

harvest accompany the animals when they are delivered to the processor. In AGA's view, proper identification of and labeling regarding the source of agricultural products plays an important role in ensuring consumer confidence in these products. As such, AGA and its members are strong supporters of COOL, and their interest in ensuring that the products they promote and produce are properly identified and labeled would be adversely impacted if the COOL regulations at issue in this action are overturned and vacated.

E. Fulton Farms

Fulton Farms is an organic grazing operation in Litchfield, Nebraska that produces and markets grass-fed beef and provides land for custom grazing. Fulton Farms' unique approach to farming has been featured in trade journals, magazines, and newspapers across the nation. Fulton Farms is committed to promoting sustainable agriculture and grass-based livestock systems. Fulton Farms believes that mandated production information, the proper identification and labeling regarding the source of agricultural products, plays an important role in ensuring consumer confidence in these products.

Proper identification and labeling of meat products therefore directly impacts the interests of Fulton Farms. As such, Fulton Farms is a strong supporter of COOL, which provides consumers with important information regarding the source of meat and other agricultural products.

F. Fox Hollow Farm

Fox Hollow Farm is a pasture-based livestock farm located in Fredericktown, Ohio. Fox Hollow Farm is committed to promoting sustainable agriculture and pasture-based farming methods. Fox Hollow Farm strongly believes that the proper identification and labeling regarding the source of agricultural products plays an important role in ensuring consumer confidence in these products and, therefore, directly impacts the interests of Fox Hollow Farm. As such, Fox Hollow Farm is a strong supporter of COOL, which provides consumers with important information regarding the source of meat and other agricultural products. Fox Hollow Farm believes that without COOL, labeling becomes lying by omission.

G. Marshy Meadows Farm

Marshy Meadows Farm is an organic pasture-grazing beef operation located in Windsor, Ohio. Marshy Meadows is committed to sustainable agriculture and humane animal care. It believes that mandated production information, including the proper identification and labeling regarding the source of agricultural products, plays an important role in ensuring consumer confidence in these products. Proper identification and labeling of meat products therefore directly impacts the interests of Marshy Meadows Farm. As such, Marshy Meadows Farm has been and continues to be a strong supporter of COOL, which provides consumers with important information regarding the source of meat and other agricultural products. Marshy Meadows Farm's interest in ensuring that its products are properly identified and labeled would be adversely impacted if the COOL regulations at issue in this action are overturned and vacated.

II. Statement of Authorship and Financial Contributions

No party's counsel authored this brief in whole or in part, and no person – other than *amici* or their counsel – contributed money that was intended to fund preparing or submitting this brief.

III. Argument

A. Mandatory Country of Origin Labeling has been the lawful norm for imported goods for nearly a century.

Federally mandated country of origin labeling for imported goods began as early as 1890. *See* Tariff Act of 1890 (26 Stat. 613); *U.S. v. Ury*, 106 F.2d 28, 29 (2d Cir. 1939). After a series of amendments, Section 304 of the Tariff Act of 1930, *as amended* (codified at 19 U.S.C. § 1304), was enacted and mandated that *all* articles imported into the United States must be conspicuously marked for the consumer with its country of origin. The Act allowed the Secretary of the Treasury to make exceptions for certain goods that were imported in "substantial quantities" during the five year period preceding 1937. 19 U.S.C. § 1304(a)(3)(J). Among the items placed on this list of exceptions were "natural products" in their natural state, including "vegetables, fruits, nuts, berries, and live or dead animals, fish and birds." 19 C.F.R. §

134.33. Importantly, the J-List exceptions (named for the section of the Tariff Act that authorized them) only apply to goods in their unpackaged state – any item imported in containers would still be required to carry a country of origin mark. *Id.*

Thus, it has been the statutory norm for nearly a century to mandate that the purchasing consumer be informed of the country of production for imported goods. Applying longstanding origin labeling requirements to meat products through the COOL statute and rule, then, is not some new venture into uncharted constitutional waters, but merely the removal of an administrative exception that has prevented consumers from being informed of the same production information for meat products that they have been informed of for nearly every other import since the 1930s.

Given the well-tested history of mandatory disclosures to inform consumers of the country in which production of goods occurred, it is hardly surprising that Plaintiffs in this case challenge only the constitutionality of the COOL rule, but not the underlying COOL statute. The federal defendants articulate in their brief the well-established judicial precedent for the constitutionality of mandating

factual disclosures of commercial information. *See* Brief for Federal Appellees, pp. 21-25; *see also Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio,* 471 U.S. 626, 651 (1985); *Spirit Airlines, Inc. v. U.S. Dep't of Transp.,* 687 F.3d 403 (D.C. Cir. 2012) *cert. denied*, 133 S. Ct. 1723, 185 L. Ed. 2d 785 (U.S. 2013). Plaintiffs confine their challenge to the rule because they are aware that it is impossible to challenge Congressional authority to mandate country of origin disclosures without also challenging the same mandated disclosures already found to be valid under the Tariff Act in 1939.[5] *See Ury*, 106 F.2d at 29 ("No one questions that Congress had power to impose such a requirement on the importation of goods, as an exercise of its constitutional power over commerce with foreign nations."); *Globemaster, Inc. v. U.S.*, 340 F. Supp. 974, 976 (Cust. Ct. 1972). Plaintiffs provide no reason for upsetting more than fifty years of precedent and consumer expectations.

[5] Indeed, Plaintiffs surely would direct their challenge to the statute if they truly believed it to be constitutionally defective, given a recent Congressional Research Service report that indicated that several of the Plaintiffs in this action have "opposed mandatory COOL from its inception." *Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling*, Congressional Research Service, April 22, 2013, p.23.

The far-reaching impact of Plaintiff's First Amendment challenge to mandatory consumer disclosures would also threaten fundamental Congressional purposes of the Agricultural Marketing Act (pursuant to which USDA promulgated the challenged COOL regulations). *See* 7 U.S.C. § 1622 (Secretary is directed to "conduct and cooperate in consumer education" in furtherance of the AMA goal to benefit the American agricultural industry.). One of the express purposes of the AMA is to make it "possible for the full production of *American* farms to be disposed of usefully, economically, profitably, and in an orderly manner." 7 U.S.C. § 1621 (emphasis added).

There can hardly be any piece of information more vital to the promotion of American agricultural products than their labeling as such for consumers. If that most basic production fact cannot be constitutionally mandated, then the AMA, like the older tariff laws have been unconstitutional from their beginnings. No court has ever reached that radical conclusion despite the decades these laws have been in effect, and their application to countless tons of products and thousands of producers, sellers and importers.

B. The Plaintiffs misrepresent the purpose of the COOL law as merely satisfying "Consumer Curiosity".

Plaintiffs confuse a category of disclosure, *i.e.* consumer information, with the Congressional *purpose* of the disclosure. Plaintiffs' represent the purpose of the COOL Act as merely to satisfy "consumer curiosity," and then proceed to argue that this is not a legitimate basis upon which to mandate disclosure. *See* First Amended Complaint ¶ 76 [JA26]. The Court should not be so easily fooled.

In fact, there are compelling market-based reasons for mandating consumer information for products, including providing confidence and stability in the market, as well as preventing consumer deception. Both purposes were specifically identified by the legislators supporting COOL when it was initially enacted:

> Food labeling can help increase consumer confidence by assuring consumers they are making informed and knowledgeable decisions about the products they buy.

149 Cong. Rec. S14104-02, *S14120 (Nov. 6, 2003) (statement of Sen. Enzi).

> [O]ur own consumers are being denied the information they need to have confidence, to make knowing choices about the meat they serve their families…

149 Cong. Rec. S14104-02, *S14117 (Nov. 6, 2003) (statement of Sen. Johnson).

Plaintiffs suggest that there needs to be a food safety issue before labeling may be constitutionally compelled. *See* First Amended Complaint ¶ 76 [JA26]. Yet such a rule has never been mandated by this or any other Court. If adopted, Plaintiffs' theory would severely limit the legal foundations of all food labeling, and threaten interests a great deal broader than those implicated by country of origin disclosures.

Nor would such a theory be consistent with longstanding provisions of the AMA and the tariff laws. Neither the AMA nor the Tariff statutes' disclosure requirements are grounded in food safety, yet consumer factual disclosures have been mandated under such laws for decades. *See, for example, Ury*, 106 F.2d at 29 (The purpose of mandated country of origin marking was "to confer an advantage on domestic producers of competing goods. Congress was aware that many consumers prefer merchandise produced in this country.").

It is the promotion of fair and competitive markets for domestic agriculture that is a core purpose of the AMA. 7 U.S.C. § 1621 ("The

Congress declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation."). The COOL legislation was introduced as an amendment to the AMA, thereby demonstrating its design as a tool in furtherance of that purpose. *See* Farm Security and Rural Investment Act of 2002, PL 107–171, May 13, 2002, 116 Stat 134 ("The Agricultural Marketing Act of 1946 (7 U.S.C. §§ 1621, *et seq.*) is amended by adding at the end the [COOL provisions]…"). On initially passing the COOL law, Senator Paul Wellstone noted its significance to independent producers and consumers:

> I know these big conglomerates don't like it because it gives our independent producers a leg up, because these big conglomerates are shipping out and shipping in and not relying on our independent producers here in this country. In addition consumers have a right to know what they are eating and where it is from. It is hugely important.
>
> 148 Cong.Rec. S3904-03, S3918 (May 07, 2002).

Although Plaintiffs struggle mightily to confine their challenge to a single rule, their legal theory is as far-reaching as it is radical.

Even the World Trade Organization – long hostile to domestic labeling requirements – has conceded that "providing consumers with information on the origin of the products they purchase is in keeping with the requirements of current social norms in a considerable part of the WTO Membership." Panel Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/R, WT/DS386/R (Nov. 18, 2011) ¶ 7.650. The WTO found that providing such information to consumers is a "legitimate objective" under its rules, which are generally much more strict than domestic laws concerning labeling of products. Plaintiffs' theory seeks to take the U.S. well-beyond WTO's strict standards for labeling, and into a place where virtually all mandated product labeling is suspect, and open to legal challenge. This novelty alone is reason enough to support the district court's finding that the Plaintiffs are unlikely to succeed on the merits.

In short, Plaintiffs' protestations that the final rule contains no health or safety basis simply have no relevance to this case. Mandating country of origin disclosures promotes fair competition and informed purchases of agricultural products across the industry and consequently

is a much greater value to both producers and consumers than any minimal interests Plaintiffs claim in being able to withhold that information. Mandating disclosure of accurate and factual commercial information "furthers, rather than hinders, the First Amendment goal of the discovery of truth and contributes to the efficiency of the 'marketplace of ideas.'" *Nat'l Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 114 (2d Cir. 2001).

The market-based interests that are realized from mandated disclosures are neither novel nor rare. One needs look no further than the other provisions of the AMA itself to see examples of such. Several sections of the AMA contain mandatory public reporting disclosures that include among their express purposes to "promote competition" and "facilitate more informed marketing decisions." *See* 7 U.S.C. § 1635e (Mandatory Reporting for Live Cattle); 7 U.S.C. § 1635j (Mandatory Reporting for Swine); 7 U.S.C. § 1637b (Mandatory Reporting for Dairy Products). "Protection of the robust and free flow of accurate information is the principal First Amendment justification for protecting commercial speech, and requiring disclosure of truthful

information promotes that goal." *Nat'l Elec. Mfrs. Ass'n*, 272 F.3d at 114.

Consumer information is a category of speech that is constitutionally permissible for market-based reasons and many other reasons unrelated to safety, or even to the prevention of deception. While the consumer protection factors supporting the COOL rule are well articulated in other briefs before this Court, *Amici* notes that such protection is directly connected and an inherent benefit of a market structure that promotes stability and fair competition through mandated disclosure of accurate and factual production information. As noted by the WTO appellate body, "we view the objective of providing consumers with information on origin as related to the objective of preventing deceptive practices, which is in turn linked to the objective of consumer protection." Appellate Body Reports, United States – *Certain Country of Origin Labelling (COOL) Requirements* (June 29, 2012), WT/DS384/AB/R, WT/DS386/AB/R, ¶ 451.

Mandated country of origin labeling is a congressionally approved and internationally practiced legal standard. If Plaintiffs believe that requiring disclosure about countries of production is not justified for

market-based reasons, then their challenge is appropriately directed not at the rule but at the COOL provisions of the Agricultural Marketing Act. By challenging only the COOL rule (for understandable reasons discussed above), Plaintiffs implicitly accept the constitutional validity of mandatory country of origin labeling for market-based reasons and confine themselves to the question of whether the final rule reasonably implements the statutory directive. *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). For reasons articulated in the Federal Register notice of the Final Rule, the ruling of the District Court, and the brief submitted to this Court by the federal appellees, the rule easily meets this standard. Thus, the District Court's finding that Plaintiffs have failed to show a likelihood of success, and thus are not entitled to preliminary injunctive relief, should be affirmed.

CONCLUSION

For the foregoing reasons, *Amici Curiae* respectfully request that the District Court's order denying Appellants' Motion for a Preliminary Injunction be affirmed.

Respectfully Submitted,

Date: October 30, 2013

/s/ Jonathan R. Lovvorn

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CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF APPELLATE PROCEDURE 32(A)(7)

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). This brief contains 4,384 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface of 14 point, Century, using Microsoft Word 2010.

/s/ Jonathan R. Lovvorn
Jonathan R. Lovvorn

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2013, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Jonathan R. Lovvorn
Jonathan R. Lovvorn

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1) 19 U.S.C. § 1304

2) 7 U.S.C. § 1621

3) 7 U.S.C. § 1622

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5) 7 U.S.C. § 1635j

6) 7 U.S.C. § 1637b

7) 19 C.F.R. § 134.33

section 1354 of Title 22, Foreign Relations and Intercourse.

§ 1301a. Repealed. Pub. L. 87–456, title III, § 301(a), May 24, 1962, 76 Stat. 75

Section, act June 17, 1930, ch. 497, title III, § 301, as added Sept. 1, 1954, ch. 1213, title IV, § 401, 68 Stat. 1139, related to rates of duty upon articles coming into the United States from its insular possessions.

§ 1302. Omitted

CODIFICATION

Section, acts June 17, 1930, ch. 497, title III, § 302, 46 Stat. 686; May 17, 1932, ch. 190, 47 Stat. 158, was incorporated as section 3361(b) of the Internal Revenue Code of 1939. See section 7653 of Title 26, Internal Revenue Code.

§ 1303. Repealed. Pub. L. 103–465, title II, § 261(a), Dec. 8, 1994, 108 Stat. 4908

Section, acts June 17, 1930, ch. 497, title III, § 303, 46 Stat. 687; Jan. 3, 1975, Pub. L. 93–618, title III, § 331(a), 88 Stat. 2049; Apr. 3, 1979, Pub. L. 96–6, § 1, 93 Stat. 10; July 26, 1979, Pub. L. 96–39, title I, §§ 103, 105(a), 93 Stat. 190, 193, provided for the levy of countervailing duties.

EFFECTIVE DATE OF REPEAL

Section 261(a) of title II of Pub. L. 103–465 provided that this section is repealed ''effective on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title]''.

SAVINGS PROVISION

Section 261(b), (c) of title II of Pub. L. 103–465 provided that:

''(b) SAVINGS PROVISIONS.—

''(1) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, and other administrative actions—

''(A) which have been issued pursuant to an investigation conducted under section 303 of the Tariff Act of 1930 [19 U.S.C. 1303], and

''(B) which are in effect on the effective date of this title [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title], or were final before such date and are to become effective on or after such date,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the administering authority, the International Trade Commission, or a court of competent jurisdiction, or by operation of law. Except as provided in paragraph (3), such orders or determinations shall be subject to review under section 751 of the Tariff Act of 1930 [19 U.S.C. 1675] and, to the extent applicable, investigation under section 753 of such Act [19 U.S.C. 1675b] (as added by this title).

''(2) PROCEEDINGS NOT AFFECTED.—The provisions of subsection (a) shall not affect any proceedings, including notices of proposed rulemaking, pending before the administering authority or the International Trade Commission on the effective date of this title with respect to such section 303 [19 U.S.C. 1303]. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, in accordance with such section 303 as in effect on the day before the effective date of this title and, except as provided in paragraph (3), shall be subject to review under section 751 of the Tariff Act of 1930 [19 U.S.C. 1675] and, to the extent applicable, investigation under section 753 of such Act [19 U.S.C. 1675b]. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, set aside, or revoked in accordance with law by the administering authority, a court of competent jurisdiction, or by operation of law. Nothing in this section shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this section had not been enacted.

''(3) SUITS NOT AFFECTED.—The provisions of subsection (a) shall not affect the review pursuant to section 516A of the Tariff Act of 1930 [19 U.S.C. 1516a] of a countervailing duty order issued pursuant to an investigation conducted under section 303 of such Act [19 U.S.C. 1303] or a review of a countervailing duty order issued under section 751 of such Act [19 U.S.C. 1675], if such review is pending or the time for filing such review has not expired on the effective date of this title.

''(c) DEFINITION OF ADMINISTERING AUTHORITY.—For purposes of this section, the term 'administering authority' has the meaning given such term by section 771(1) of the Tariff Act of 1930 [19 U.S.C. 1677(1)].''

REFERENCES TO FORMER SECTION 1303

Section 261(d)(1)(C) of Pub. L. 103–365 provided that: ''Any reference to section 303 [19 U.S.C. 1303] in any other Federal law, Executive order, rule, or regulation shall be treated as a reference to section 303 of the Tariff Act of 1930 as in effect on the day before the effective date of title II of this Act [Jan. 1, 1995, see Effective Date of 1994 Amendment note set out under section 1671 of this title].''

References to section 1303 in chapter 4 of this title defined to mean section 1303 as in effect on the day before Jan. 1, 1995, see section 1677(26) of this title.

§ 1304. Marking of imported articles and containers

(a) Marking of articles

Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear;

(2) Require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article or as to the origin of any other article with which such imported article is usually combined subsequent to importation but before delivery to an ultimate purchaser; and

(3) Authorize the exception of any article from the requirements of marking if—

(A) Such article is incapable of being marked;

(B) Such article cannot be marked prior to shipment to the United States without injury;

(C) Such article cannot be marked prior to shipment to the United States, except at an

expense economically prohibitive of its importation;

(D) The marking of a container of such article will reasonably indicate the origin of such article;

(E) Such article is a crude substance;

(F) Such article is imported for use by the importer and not intended for sale in its imported or any other form;

(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

(I) Such article was produced more than twenty years prior to its importation into the United States;

(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of sections 1351, 1352, 1353, 1354 of this title, as extended; or

(K) Such article cannot be marked after importation except at any expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section.

(b) Marking of containers

Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a) of this section. If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin.

(c) Marking of certain pipe and fittings

(1) Except as provided in paragraph (2), no exception may be made under subsection (a)(3) of this section with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or continuous paint stenciling.

(2) If, because of the nature of an article, it is technically or commercially infeasible to mark it by one of the five methods specified in paragraph (1), the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles.

(d) Marking of compressed gas cylinders

No exception may be made under subsection (a)(3) of this section with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) Marking of certain manhole rings or frames, covers, and assemblies thereof

No exception may be made under subsection (a)(3) of this section with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, engraving, or an equally permanent method of marking.

(f) Marking of certain coffee and tea products

The marking requirements of subsections (a) and (b) of this section shall not apply to articles described in subheadings 0901.21, 0901.22, 0902.10, 0902.20, 0902.30, 0902.40, 2101.10, and 2101.20 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(g) Marking of spices

The marking requirements of subsections (a) and (b) of this section shall not apply to articles provided for under subheadings 0904.11, 0904.12, 0904.20, 0905.00, 0906.10, 0906.20, 0907.00, 0908.10, 0908.20, 0908.30, 0909.10, 0909.20, 0909.30, 0909.40, 0909.50, 0910.10, 0910.20, 0910.30, 0910.40, 0910.50, 0910.91, 0910.99, 1106.20, 1207.40, 1207.50, 1207.91, 1404.90, and 3302.10, and items classifiable in categories 0712.90.60, 0712.90.8080, 1209.91.2000, 1211.90.2000, 1211.90.8040, 1211.90.8050, 1211.90.8090, 2006.00.3000, 2918.13.2000, 3203.00.8000, 3301.90.1010, 3301.90.1020, and 3301.90.1050 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1995.

(h) Marking of certain silk products

The marking requirements of subsections (a) and (b) of this section shall not apply either to—

(1) articles provided for in subheading 6214.10.10 of the Harmonized Tariff Schedule of the United States, as in effect on January 1, 1997; or

(2) articles provided for in heading 5007 of the Harmonized Tariff Schedule of the United States as in effect on January 1, 1997.

(i) Additional duties for failure to mark

If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(j) Delivery withheld until marked

No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (i) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(k) Treatment of goods of NAFTA country

(1) Application of section

In applying this section to an article that qualifies as a good of a NAFTA country (as defined in section 3301(4) of this title) under the regulations issued by the Secretary to implement Annex 311 of the North American Free Trade Agreement—

(A) the exemption under subsection (a)(3)(H) of this section shall be applied by substituting ''reasonably know'' for ''necessarily know'';

(B) the Secretary shall exempt the good from the requirements for marking under subsection (a) of this section if the good—

(i) is an original work of art, or

(ii) is provided for under subheading 6904.10, heading 8541, or heading 8542 of the Harmonized Tariff Schedule of the United States; and

(C) subsection (b) of this section does not apply to the usual container of any good described in subsection (a)(3)(E) or (I) of this section or subparagraph (B)(i) or (ii) of this paragraph.

(2) Petition rights of NAFTA exporters and producers regarding marking determinations

(A) Definitions

For purposes of this paragraph:

(i) The term ''adverse marking decision'' means a determination by the Customs Service which an exporter or producer of merchandise believes to be contrary to Annex 311 of the North American Free Trade Agreement.

(ii) A person may not be treated as the exporter or producer of merchandise regarding which an adverse marking decision was made unless such person—

(I) if claiming to be the exporter, is located in a NAFTA country and is required to maintain records in that country regarding exportations to NAFTA countries; or

(II) if claiming to be the producer, grows, mines, harvests, fishes, traps, hunts, manufactures, processes, or assembles such merchandise in a NAFTA country.

(B) Intervention or petition regarding adverse marking decisions

If the Customs Service makes an adverse marking decision regarding any merchandise, the Customs Service shall, upon written request by the exporter or producer of the merchandise, provide to the exporter or producer a statement of the basis for the decision. If the exporter or producer believes that the decision is not correct, it may intervene in any protest proceeding initiated by the importer of the merchandise. If the importer does not file a protest with regard to the decision, the exporter or producer may file a petition with the Customs Service setting forth—

(i) a description of the merchandise; and

(ii) the basis for its claim that the merchandise should be marked as a good of a NAFTA country.

(C) Effect of determination regarding decision

If, after receipt and consideration of a petition filed by an exporter or producer under subparagraph (B), the Customs Service determines that the adverse marking decision—

(i) is not correct, the Customs Service shall notify the petitioner of the determination and all merchandise entered, or withdrawn from warehouse for consumption, more than 30 days after the date that notice of the determination under this clause is published in the weekly Custom Bulletin shall be marked in conformity with the determination; or

(ii) is correct, the Customs Service shall notify the petitioner that the petition is denied.

(D) Judicial review

For purposes of judicial review, the denial of a petition under subparagraph (C)(ii) shall be treated as if it were a denial of a petition of an interested party under section 1516 of this title regarding an issue arising under any of the preceding provisions of this section.

(*l*) Penalties

Any person who, with intent to conceal the information given thereby or contained therein, defaces, destroys, removes, alters, covers, obscures, or obliterates any mark required under the provisions of this chapter shall—

(1) upon conviction for the first violation of this subsection, be fined not more than $100,000, or imprisoned for not more than 1 year, or both; and

(2) upon conviction for the second or any subsequent violation of this subsection, be fined not more than $250,000, or imprisoned for not more than 1 year, or both.

(June 17, 1930, ch. 497, title III, § 304, 46 Stat. 687; June 25, 1938, ch. 679, § 3, 52 Stat. 1077; Aug. 8, 1953, ch. 397, § 4(c), 67 Stat. 509; Pub. L. 98–573, title II, § 207, Oct. 30, 1984, 98 Stat. 2976; Pub. L. 99–514, title XVIII, § 1888(1), Oct. 22, 1986, 100 Stat. 2924; Pub. L. 100–418, title I, § 1907(a)(1), Aug. 23, 1988, 102 Stat. 1314; Pub. L. 103–182, title II, § 207(a), Dec. 8, 1993, 107 Stat. 2096; Pub. L. 104–295, § 14(a), (b), Oct. 11, 1996, 110 Stat. 3521, 3522; Pub. L. 106–36, title II, § 2423(a), (b), June 25, 1999, 113 Stat. 180.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (f) to (h) and (k)(1)(B)(ii), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

PRIOR PROVISIONS

Provisions dealing with the subject matter of this section and former section 133 of this title were contained in act Oct. 3, 1913, ch. 16, § IV, F, subsecs. 1 and 2, 38 Stat. 194, superseding similar provisions of previous tariff acts. Those subsections were superseded by act Sept. 21, 1922, ch. 356, title III, § 304(a), 42 Stat. 947, and repealed by § 321 of that act. Section 304(a) of the act of 1922 was superseded by section 304 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

AMENDMENTS

1999—Subsecs. (h), (i). Pub. L. 106–36, § 2423(a), added subsec. (h) and redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 106–36, § 2423(a)(1), (b), redesignated subsec. (i) as (j) and substituted ''subsection (i)'' for ''subsection (h)''. Former subsec. (j) redesignated (k).

Subsecs. (k), (*l*). Pub. L. 106–36, § 2423(a)(1), redesignated subsecs. (j) and (k) as (k) and (*l*), respectively.

1996—Subsecs. (f) to (h). Pub. L. 104–295, § 14(a), added subsecs. (f) and (g) and redesignated former subsec. (f) as (h). Former subsecs. (g) and (h) redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 104–295, § 14(a)(1), (b), redesignated subsec. (g) as (i) and substituted ''subsection (h) of this section'' for ''subsection (f) of this section''.

Subsecs. (j), (k). Pub. L. 104–295, § 14(a)(1), redesignated subsecs. (h) and (i) as (j) and (k), respectively.

1993—Subsec. (c)(1). Pub. L. 103–182, § 207(a)(1), substituted ''engraving, or continuous paint stenciling'' for ''or engraving''.

Subsec. (c)(2). Pub. L. 103–182, § 207(a)(2), substituted ''five methods'' for ''four methods'' and struck out ''such as paint stenciling'' after ''method of marking''.

Subsec. (e). Pub. L. 103–182, § 207(a)(3), substituted ''engraving, or an equally permanent method of marking'' for ''or engraving''.

Subsecs. (h), (i). Pub. L. 103–182, § 207(a)(4), (5), added subsec. (h) and redesignated former subsec. (h) as (i).

1988—Subsec. (h). Pub. L. 100–418 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this chapter, he shall, upon conviction, be fined not more than $5,000 or imprisoned not more than one year, or both.''

1986—Subsec. (c). Pub. L. 99–514 substituted ''(1) Except as provided in paragraph (2), no'' for ''No'' and added par. (2).

1984—Subsecs. (c) to (h). Pub. L. 98–573 added subsecs. (c) to (e), redesignated former subsecs. (c) to (e) as (f) to (h), respectively, and in subsec. (g), as redesignated, substituted ''subsection (f) of this section'' for ''subsection (c) of this section''.

1953—Subsec. (a)(3)(K). Act Aug. 8, 1953, added cl. (K).

1938—Act June 25, 1938, amended section generally.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–36, title II, § 2423(c), June 25, 1999, 113 Stat. 180, provided that: ''The amendments made by this section [amending this section] apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act [June 25, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 14(c) of Pub. L. 104–295 provided that: ''The amendments made by this section [amending this section] apply to goods entered, or withdrawn from warehouse for consumption, on or after the date of the enactment of this Act [Oct. 11, 1996].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1907(a)(2) of Pub. L. 100–418 provided that:

''(A) The amendment made by paragraph (1) [amending this section] applies with respect to acts committed on or after the date of the enactment of this Act [Aug. 23, 1988].

''(B) The conviction of a person under section 304(h) of the Tariff Act of 1930 [19 U.S.C. 1304(h)] for an act committed before the date of the enactment of this Act shall be disregarded for purposes of applying paragraph (2) of such subsection (as added by the amendment made by paragraph (1) of this subsection[])].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 214 of title II of Pub. L. 98–573 provided that:

''(a) For purposes of this section, the term '15th day' means the 15th day after the date of the enactment of this Act [Oct. 30, 1984].

''(b) Except as provided in subsections (c), (d), and (e), the amendments made by this title [enacting sections 58b, 1339, and 1627a of this title, amending sections 81c, 81*o*, 1313, 1330, 1431, 1498, 1555, 2192, 2251, 2253, and 2703 of this title, section 925 of Title 18, Crimes and Criminal Procedure, and section 162 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under

sections 2, 81c, 81*o*, and 1339 of this title, and section 162 of Title 26] shall take effect on the 15th day.

''(c)(1) The amendment made by section 204 [amending section 1441 of this title] shall apply with respect to vessels returning from the British Virgin Islands on or after the 15th day.

''(2) The amendments made by section 207 [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day; except for such of those articles that, on or before the 15th day, had been taken on board for transit to the customs territory of the United States.

''(3)(A) The amendment made by section 208 [amending section 1466 of this title] shall apply with respect to entries made in connection with arrivals of vessels on or after the 15th day.

''(B) Upon request therefor filed with the customs officer concerned on or before the 90th day after the date of the enactment of this Act [Oct. 30, 1984], any entry in connection with the arrival of a vessel used primarily for transporting passengers or property—

''(i) made before the 15th day but not liquidated as of January 1, 1983, or

''(ii) made before the 15th day but which is the subject of an action in a court of competent jurisdiction on September 19, 1983, and

''(iii) with respect to which there would have been no duty if the amendment made by section 208 applied to such entry,

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, be liquidated or reliquidated as though such entry had been made on the 15th day.

''(4) The amendments made by section 209 [enacting section 1484a of this title and amending section 1202 of this title] shall apply with respect to articles launched into space from the customs territory of the United States on or after January 1, 1985.

''(5)(A) The amendment made by section 210(a) [amending section 1505 of this title] shall take effect on the 30th day after the date of the enactment of this Act [Oct. 30, 1984].

''(B) The amendment made by section 210(b) [amending section 1520 of this title] shall apply with respect to determinations made or ordered on or after the date of the enactment of this Act [Oct. 30, 1984].

''(d)(1) The amendments made by section 212 [amending sections 1520, 1564, and 1641 of this title and sections 1581, 1582, 2631, 2636, 2640, and 2643 of Title 28, Judiciary and Judicial Procedure] shall take effect upon the close of the 180th day following the date of the enactment of this Act [Oct. 30, 1984] with the following exceptions:

''(A) Section 641(c)(1)(B) and section 641(c)(2) of the Tariff Act of 1930, as added by such section [19 U.S.C. 1641(c)(1)(B), (2)], shall take effect three years after the date of the enactment of this Act [Oct. 30, 1984].

''(B) The amendments made to the Tariff Act of 1930 by subsection (c) of section 212 [no subsec. (c) of section 212 was enacted] shall take effect on such date of enactment [Oct. 30, 1984].

''(2) A license in effect on the date of enactment of this Act [Oct. 30, 1984] under section 641 of the Tariff Act of 1930 (as in effect before such date of enactment) shall continue in force as a license to transact customs business as a customs broker, subject to all the provisions of section 212 and such licenses shall be accepted as permits for the district or districts covered by that license.

''(3) Any proceeding for revocation or suspension of a license instituted under section 641 of the Tariff Act of 1930 before the date of the enactment of this Act [Oct. 30, 1984] shall continue and be governed by the law in effect at the time the proceeding was instituted.

''(4) If any provision of section 212 or its application to any person or circumstances is held invalid, it shall not affect the validity of the remaining provisions or their application to any other person or circumstances.

''(e) The amendments made by section 213 [enacting sections 1589a, 1613b, and 1616a of this title, amending sections 1602, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1618, and 1619 of this title and repealing section 7607 of Title 26, Internal Revenue Code] shall take effect October 15, 1984.''

EFFECTIVE DATE OF 1953 AMENDMENTS, ENACTMENTS, AND REPEALS

Section 1 of act Aug. 8, 1953, provided that such act [see Short Title of 1953 Amendment note set out under section 1654 of this title] is effective, except as otherwise specifically provided for, on and after the thirtieth day following the date of its enactment [Aug. 8, 1953].

The exception ''except as otherwise specifically provided for'' apparently refers to the amendments made to the provisions preceding subd. (1) of section 1308 of this title, and to section 1557(b) of this title, for which separate effective dates were provided as explained in notes under such sections.

EFFECTIVE DATE OF 1938 AMENDMENT

Amendment by act June 25, 1938, effective on thirtieth day following June 25, 1938, except as otherwise specifically provided, see section 37 of act June 25, 1938, set out as a note under section 1401 of this title.

SAVINGS PROVISION

Section 23 of act Aug. 8, 1953, provided: ''Except as may be otherwise provided for in this Act [see Short Title of 1953 Amendment note set out under section 1654 of this title], the repeal of existing law or modifications thereof embraced in this Act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil or criminal case prior to such repeal or modification, but all liabilities under such laws shall continue, except as otherwise specifically provided in this Act, and may be enforced in the same manner as if such repeal or modification had not been made.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of all other officers of Department of the Treasury and functions of all agencies and employees of such Department transferred, with certain exceptions, to Secretary of the Treasury, with power vested in him to authorize their performance or performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Customs officers and employees, referred to in text, were under Department of the Treasury.

MARKING REQUIREMENTS FOR ARTICLES QUALIFYING AS GOODS OF NAFTA COUNTRY

Section 207(b) of Pub. L. 103–182 provided that: ''Articles that qualify as goods of a NAFTA country under regulations issued by the Secretary in accordance with Annex 311 of the Agreement [North American Free Trade Agreement] are exempt from the marking requirements promulgated by the Secretary of the Treasury under section 1907(c) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418 [102 Stat. 1315]), but are subject to the requirements of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147

and 1171–1177] or title XVIII [§§ 1801–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 1305. Immoral articles; importation prohibited

(a) Prohibition of importation

All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may, in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes: *Provided further*, That effective January 1, 1993, this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.

(b)[1] Enforcement procedures

Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the appropriate customs officer to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Court of International Trade from the decision of such customs officer. Upon the seizure of such book or matter, such customs officer shall transmit information thereof to the United States attorney of the district in which is situated either—

(1) the office at which such seizure took place; or

(2) the place to which such book or matter is addressed;

and the United States attorney shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits.

(c)[1] Institution of forfeiture proceedings

Notwithstanding the provisions of subsections (a) and (b) of this section, whenever a customs officer discovers any obscene material after such material has been imported or brought into the United States, or attempted to be imported or brought into the United States, he may refer the matter to the United States attorney for the institution of forfeiture proceedings under this section. Such proceedings shall begin no more than 30 days after the time the material is seized; except that no seizure or forfeiture shall be invalidated for delay if the claimant is responsible for extending the action beyond the allowable time limits or if proceedings are postponed pending the consideration of constitutional issues.

(d) Stay of forfeiture proceedings

Upon motion of the United States, a court shall stay such civil forfeiture proceedings commenced under this section pending the completion of any related criminal matter.

(b)[1] Coordination of forfeiture proceedings with criminal proceedings

(1) Notwithstanding subsection (a) of this section, whenever the Customs Service is of the opinion that criminal prosecution would be appropriate or that further criminal investigation is warranted in connection with allegedly obscene material seized at the time of entry, the appropriate customs officer shall immediately transmit information concerning such seizure to the United States Attorney[2] of the district of the addressee's residence. No notice to the addressee or consignee concerning the seizure is required at the time of such transmittal.

(2) Upon receipt of such information, such United States attorney shall promptly determine whether in such attorney's opinion the referral of the matter for forfeiture under this section would materially affect the Government's ability to conduct a criminal investigation with respect to such seizure.

(3) If the United States attorney is of the opinion that no prejudice to such investigation will

[1] So in original. Two subsecs. (b) and (c) have been enacted. Second subsecs. (b) and (c) probably should be designated (e) and (f), respectively.

[2] So in original. Probably should not be capitalized.

§ 1610. Effective date

This chapter shall take effect as follows: As to agricultural seeds, and the importation of vegetable seeds, on the one hundred and eightieth day after August 9, 1939; as to vegetable seeds in interstate commerce, one year after August 9, 1939; and as to sections 1591 to 1593 of this title, on August 9, 1939.

(Aug. 9, 1939, ch. 615, title IV, § 420, 53 Stat. 1290.)

SUBCHAPTER V—SALE OF UNCERTIFIED SEED OF PROTECTED VARIETY

§ 1611. Illegal sales of uncertified seed

It shall be unlawful in the United States or in interstate or foreign commerce to sell or offer for sale or advertise, by variety name, seed not certified by an official seed certifying agency, when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act [7 U.S.C. 2321 et seq.] specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owners of the variety.

(Aug. 9, 1939, ch. 615, title V, § 501, as added Pub. L. 91–577, title III, § 142(a), Dec. 24, 1970, 84 Stat. 1558; amended Pub. L. 97–98, title XI, § 1118, Dec. 22, 1981, 95 Stat. 1272.)

REFERENCES IN TEXT

The Plant Variety Protection Act, referred to in text, is Pub. L. 91–577, Dec. 24, 1970, 84 Stat. 1542, as amended, which is classified principally to chapter 57 (§ 2321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2321 of this title and Tables.

AMENDMENTS

1981—Pub. L. 97–98 substituted ''sell or offer for sale or advertise, by variety name, seed'' for ''sell by variety name seed'', ''certifying agency, when'' for ''certifying agency when'', and ''owners of the variety'' for ''owner of the variety''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of this title.

EFFECTIVE DATE

Section effective Dec. 24, 1970, see section 141 of Pub. L. 91–577, set out as a note under section 2321 of this title.

CHAPTER 38—DISTRIBUTION AND MARKETING OF AGRICULTURAL PRODUCTS

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1622. Duties of Secretary relating to agricultural products.
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SUBCHAPTER IV—COUNTRY OF ORIGIN LABELING

1638. Definitions.
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SUBCHAPTER I—GENERAL PROVISIONS

§ 1621. Congressional declaration of purpose; use of existing facilities; cooperation with States

The Congress declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Na-

tion. It is further declared to be the policy of Congress to promote through research, study, experimentation, and through cooperation among Federal and State agencies, farm organizations, and private industry a scientific approach to the problems of marketing, transportation, and distribution of agricultural products similar to the scientific methods which have been utilized so successfully during the past eighty-four years in connection with the production of agricultural products so that such products capable of being produced in abundance may be marketed in an orderly manner and efficiently distributed. In order to attain these objectives, it is the intent of Congress to provide for (1) continuous research to improve the marketing, handling, storage, processing, transportation, and distribution of agricultural products; (2) cooperation among Federal and State agencies, producers, industry organizations, and others in the development and effectuation of research and marketing programs to improve the distribution processes; (3) an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products through research, market aids and services, and regulatory activities, to the end that marketing methods and facilities may be improved, that distribution costs may be reduced and the price spread between the producer and consumer may be narrowed, that dietary and nutritional standards may be improved, that new and wider markets for American agricultural products may be developed, both in the United States and in other countries, with a view to making it possible for the full production of American farms to be disposed of usefully, economically, profitably, and in an orderly manner. In effectuating the purposes of this chapter, maximum use shall be made of existing research facilities owned or controlled by the Federal Government or by State agricultural experiment stations and of the facilities of the Federal and State extension services. To the maximum extent practicable marketing research work done under this chapter in cooperation with the States shall be done in cooperation with the State agricultural experiment stations; marketing educational and demonstrational work done under this chapter in cooperation with the States shall be done in cooperation with the State agricultural extension service; market information, inspection, regulatory work and other marketing service done under this chapter in cooperation with the State agencies shall be done in cooperation with the State departments of agriculture, and State bureaus and departments of markets.

(Aug. 14, 1946, ch. 966, title II, § 202, 60 Stat. 1087.)

REFERENCES IN TEXT

Under this chapter, referred to in text, was in the original ''hereunder'', and was translated as meaning under title II of act Aug. 14, 1946, which is classified generally to this chapter.

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–239, § 1, Sept. 27, 2010, 124 Stat. 2501, provided that: ''This Act [enacting section 1635k of this title, amending sections 1636i, 1637b, and 5712 of this title, enacting provisions set out as notes under sections 1635k and 1637b of this title, and amending provisions set out as a note under section 1635 of this title] may be cited as the 'Mandatory Price Reporting Act of 2010'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–532, § 1, Nov. 22, 2000, 114 Stat. 2541, provided that: ''This Act [enacting subchapter III of this chapter] may be cited as the 'Dairy Market Enhancement Act of 2000'.''

SHORT TITLE

Act Aug. 14, 1946, ch. 966, title II, § 201, 60 Stat. 1087, provided that: ''This title [enacting this chapter] may be cited as the 'Agricultural Marketing Act of 1946'.''

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain exceptions, to Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 2201 of this title.

SPECIALTY CROPS COMPETITIVENESS

Pub. L. 108–465, §§ 2, 3, title I, § 101, Dec. 21, 2004, 118 Stat. 3882, 3883, as amended by Pub. L. 110–234, title X, § 10109, May 22, 2008, 122 Stat. 1338; Pub. L. 110–246, § 4(a), title X, § 10109, June 18, 2008, 122 Stat. 1664, 2100, provided that:

''SEC. 2. FINDINGS AND PURPOSE.

''(a) FINDINGS.—Congress finds the following:

''(1) A secure domestic food supply is a national security imperative for the United States.

''(2) A competitive specialty crop industry in the United States is necessary for the production of an abundant, affordable supply of highly nutritious fruits, vegetables, and other specialty crops, which are vital to the health and well-being of all Americans.

''(3) Increased consumption of specialty crops will provide tremendous health and economic benefits to both consumers and specialty crop growers.

''(4) Specialty crop growers believe that there are numerous areas of Federal agriculture policy that could be improved to promote increased consumption of specialty crops and increase the competitiveness of producers in the efficient production of affordable specialty crops in the United States.

''(5) As the globalization of markets continues, it is becoming increasingly difficult for United States producers to compete against heavily subsidized foreign producers in both the domestic and foreign markets.

''(6) United States specialty crop producers also continue to face serious tariff and non-tariff trade barriers in many export markets.

''(b) PURPOSE.—It is the purpose of this Act [see Short Title of 2004 Amendment note set out under section 3101 of this title] to make necessary changes in Federal agriculture policy to accomplish the goals of increasing fruit, vegetable, and nut consumption and improving the competitiveness of United States specialty crop producers.

''SEC. 3. DEFINITIONS.

''In this Act:

''(1) The term 'specialty crop' means fruits and vegetables, tree nuts, dried fruits, and horticulture and nursery crops (including floriculture).

''(2) The term 'State' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

''(3) The term 'State department of agriculture' means the agency, commission, or department of a State government responsible for agriculture within the State.

''TITLE I—STATE ASSISTANCE FOR SPECIALTY CROPS

''SEC. 101. SPECIALTY CROP BLOCK GRANTS.

''(a) AVAILABILITY AND PURPOSE OF GRANTS.—Using the funds made available under subsection (j), the Sec-

retary of Agriculture shall make grants to States for each of the fiscal years 2005 through 2012 to be used by State departments of agriculture solely to enhance the competitiveness of specialty crops.

''(b) GRANTS BASED ON VALUE OF PRODUCTION.—Subject to subsection (c), the amount of the grant for a fiscal year to a State under this section shall bear the same ratio to the total amount made available under subsection (j) for that fiscal year as the value of specialty crop production in the State during the preceding calendar year bears to the value of specialty crop production during the preceding calendar year in all States whose application for a grant for that fiscal year is accepted by the Secretary under subsection (f).

''(c) MINIMUM GRANT AMOUNT.—Notwithstanding subsection (b), each State shall receive a grant under this section for each fiscal year in an amount that is at least equal to the higher of—

''(1) $100,000; or

''(2) ⅓ of 1 percent of the total amount of funding made available to carry out this section for the fiscal year.

''(d) ELIGIBILITY.—To be eligible to receive a grant under this section, a State department of agriculture shall prepare and submit, for approval by the Secretary of Agriculture, an application at such time, in such a manner, and containing such information as the Secretary shall require by regulation, including—

''(1) a State plan that meets the requirements of subsection (e);

''(2) an assurance that the State will comply with the requirements of the plan; and

''(3) an assurance that grant funds received under this section shall supplement the expenditure of State funds in support of specialty crops grown in that State, rather than replace State funds.

''(e) PLAN REQUIREMENTS.—The State plan shall identify the lead agency charged with the responsibility of carrying out the plan and indicate how the grant funds will be utilized to enhance the competitiveness of specialty crops.

''(f) REVIEW OF APPLICATION.—In reviewing the application of a State submitted under subsection (d), the Secretary of Agriculture shall ensure that the State plan would carry out the purpose of grant program, as specified in subsection (a). The Secretary may accept or reject applications for a grant under this section.

''(g) EFFECT OF NONCOMPLIANCE.—If the Secretary of Agriculture, after reasonable notice to a State, finds that there has been a failure by the State to comply substantially with any provision or requirement of the State plan, the Secretary may disqualify, for one or more years, the State from receipt of future grants under this section.

''(h) AUDIT REQUIREMENTS.—For each year that a State receives a grant under this section, the State shall conduct an audit of the expenditures of grant funds by the State. Not later than 30 days after the completion of the audit, the State shall submit a copy of the audit to the Secretary of Agriculture.

''(i) REALLOCATION.—

''(1) IN GENERAL.—The Secretary shall reallocate to other States in accordance with paragraph (2) any amounts made available for a fiscal year under this section that are not obligated or expended by a date during that fiscal year determined by the Secretary.

''(2) PRO RATA ALLOCATION.—The Secretary shall allocate funds described in paragraph (1) pro rata to the remaining States that applied during the specified grant application period.

''(3) USE OF REALLOCATED FUNDS.—Funds allocated to a State under this subsection shall be used by the State only to carry out projects that were previously approved in the State plan of the State.

''(j) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary of Agriculture shall make grants under this section, using—

''(1) $10,000,000 for fiscal year 2008;

''(2) $49,000,000 for fiscal year 2009; and

''(3) $55,000,000 for each of fiscal years 2010 through 2012.''

NATIONAL COMMISSION ON FOOD MARKETING

Pub. L. 88–354, July 3, 1964, 78 Stat. 269, as amended by Pub. L. 89–20, May 15, 1965, 79 Stat. 111, provided for the establishment of a bipartisan National Commission on Food Marketing composed of fifteen members, five from the Senate, five from the House of Representatives and five from outside the Federal Government, to study and appraise the marketing structure of the food industry and to make a final report of its findings and conclusions to the President and to the Congress by July 1, 1966. The Commission ceased to exist ninety days after submission of its final report.

§ 1622. Duties of Secretary relating to agricultural products

The Secretary of Agriculture is directed and authorized:

(a) Determination of methods of processing, packaging, marketing, etc.; publication of results

To conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market, packaging, handling, transporting, storing, distributing, and marketing agricultural products: *Provided*, That the results of such research shall be made available to the public for the purpose of expanding the use of American agricultural products in such manner as the Secretary of Agriculture may determine.

(b) Determination of costs

To determine costs of marketing agricultural products in their various forms and through the various channels and to foster and assist in the development and establishment of more efficient marketing methods (including analyses of methods and proposed methods), practices, and facilities, for the purpose of bringing about more efficient and orderly marketing, and reducing the price spread between the producer and the consumer.

(c) Improvement of standards of quality, condition, etc.; standard of quality for ice cream

To develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. Within thirty days after September 29, 1977, the Secretary shall by regulation adopt a standard of quality for ice cream which shall provide that ice cream shall contain at least 1.6 pounds of total solids to the gallon, weigh not less than 4.5 pounds to the gallon and contain not less than 20 percent total milk solids, constituted of not less than 10 percent milkfat. In no case shall the content of milk solids not fat be less than 6 percent. Whey shall not, by weight, be more than 25 percent of the milk solids not fat. Only those products which meet the standard issued by the Secretary may bear a symbol thereon indicating that they meet the Department of Agriculture standard for ''ice cream''.

(d) Elimination of artificial barriers to free movement

To conduct, assist, foster, and direct studies and informational programs designed to eliminate artificial barriers to the free movement of agricultural products.

(e) Development of new markets

(1) In general

To foster and assist in the development of new or expanded markets (domestic and foreign) and new and expanded uses and in the moving of larger quantities of agricultural products through the private marketing system to consumers in the United States and abroad.

(2) Fees and penalties

(A) In general

In carrying out paragraph (1), the Secretary may assess and collect reasonable fees and late payment penalties to mediate and arbitrate disputes arising between parties in connection with transactions involving agricultural products moving in foreign commerce under the jurisdiction of a multinational entity.

(B) Deposit

Fees and penalties collected under subparagraph (A) shall be deposited into the account that incurred the cost of providing the mediation or arbitration service.

(C) Availability

Fees and penalties collected under subparagraph (A) shall be available to the Secretary without further Act of appropriation and shall remain available until expended to pay the expenses of the Secretary for providing mediation and arbitration services under this paragraph.

(D) No requirement for use of services

No person shall be required by the Secretary to use the mediation and arbitration services provided under this paragraph.

(f) Increasing consumer education

To conduct and cooperate in consumer education for the more effective utilization and greater consumption of agricultural products: *Provided*, That no money appropriated under the authority of this Act shall be used to pay for newspaper or periodical advertising space or radio time in carrying out the purposes of this section and subsection (e) of this section.

(g) Collection and dissemination of marketing information

To collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

(h) Inspection and certification of products in interstate commerce; credit and future availability of funds; investment; certificates as evidence; penalties

(1) To inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire, except that no person shall be required to use the service authorized by this subsection.

(2)(A) Any fees collected under this subsection, late payment penalties, the proceeds from the sales of samples, and interest earned from the investment of such funds shall be credited to the trust fund account that incurs the cost of the services provided under this subsection and shall remain available without fiscal year limitation to pay the expenses of the Secretary incident to providing such services.

(B) Such funds may be invested by the Secretary in insured or fully collateralized, interest-bearing accounts or, at the discretion of the Secretary, by the Secretary of the Treasury in United States Government debt instruments.

(3) Any official certificate issued under the authority of this subsection shall be received by all officers and all courts of the United States as prima facie evidence of the truth of the statements therein contained.

(4) Whoever knowingly shall falsely make, issue, alter, forge, or counterfeit any official certificate, memorandum, mark, or other identification, or device for making such mark or identification, with respect to inspection, class, grade, quality, size, quantity, or condition, issued or authorized under this section or knowingly cause or procure, or aid, assist in, or be a party to, such false making, issuing, altering, forging, or counterfeiting, or whoever knowingly shall possess, without promptly notifying the Secretary of Agriculture or his representative, utter, publish, or use as true, or cause to be uttered, published, or used as true, any such falsely made, altered, forged, or counterfeited official certificate, memorandum, mark, identification, or device, or whoever knowingly represents that an agricultural product has been officially inspected or graded (by an authorized inspector or grader) under the authority of this section when such commodity has in fact not been so graded or inspected shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(5) Shell eggs packed under the voluntary grading program of the Department of Agriculture shall not have been shipped for sale previous to being packed under the program, as determined under a regulation promulgated by the Secretary.

(6) IDENTIFICATION OF HONEY.—

(A) IN GENERAL.—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 under this Act 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 1 or more names of the 1 or more countries of origin of the lot

or container of honey, preceded by the words ''Product of'' or other words of similar meaning.

(B) VIOLATION.—A violation of the requirements of subparagraph (A) may be deemed by the Secretary to be sufficient cause for debarment from the benefits of this Act only with respect to honey.

(i) Development of facilities for assembling, processing, transporting, etc.

To determine the needs and develop or assist in the development of plans for efficient facilities and methods of operating such facilities for the proper assembly, processing, transportation, storage, distribution, and handling of agricultural products.

(j) Improvement of transportation facilities and rates

To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission,,[1] or other Federal or State transportation regulatory body, or the Secretary of Transportation, with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers.

(k) Collection and dissemination of marketing statistics

To collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on market supplies, storage stocks, quantity, quality, and condition of such products in various positions in the marketing channel, utilization of such products, and shipments and unloads thereof.

(*l*) Development of procurement standards and specifications

To develop and promulgate, for the use and at the request of any Federal agency or State, procurement standards and specifications for agricultural products, and submit such standards and specifications to such agency or State for use or adoption for procurement purposes.

(m) Promotion of research for handling, storing, preserving, etc.

To conduct, assist, encourage, and promote research, investigation, and experimentation to determine the most efficient and practical means, methods, and processes for the handling, storing, preserving, protecting, processing, and distributing of agricultural commodities to the end that such commodities may be marketed in an orderly manner and to the best interest of the producers thereof.

(n) Grading program

To establish within the Department of Agriculture a voluntary fee based grading program for—

(1) catfish (as defined by the Secretary under paragraph (2) of section 601(w) of title 21); and

(2) any additional species of farm-raised fish or farm-raised shellfish—

(A) for which the Secretary receives a petition requesting such voluntary fee based grading; and

(B) that the Secretary considers appropriate.

(*o*) General research, services, and activities

To conduct such other research and services and to perform such other activities as will facilitate the marketing, distribution, processing, and utilization of agricultural products through commercial channels.

(Aug. 14, 1946, ch. 966, title II, §203, 60 Stat. 1087; Aug. 9, 1955, ch. 632, §1, 69 Stat. 553; Pub. L. 95–113, title II, §206, Sept. 29, 1977, 91 Stat. 920; Pub. L. 97–31, §12(2), Aug. 6, 1981, 95 Stat. 153; Pub. L. 98–403, §2, Aug. 28, 1984, 98 Stat. 1480; Pub. L. 98–443, §9(j), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 105–277, div. A, §101(a) [title VII, §755(a)], Oct. 21, 1998, 112 Stat. 2681, 2681–34; Pub. L. 106–472, title III, §303, Nov. 9, 2000, 114 Stat. 2069; Pub. L. 110–234, title X, §10402(a), title XI, §11016(a), May 22, 2008, 122 Stat. 1349, 1368; Pub. L. 110–246, §4(a), title X, §10402(a), title XI, §11016(a), June 18, 2008, 122 Stat. 1664, 2110, 2130.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (f) and (h)(6), is act Aug. 14, 1946, ch. 966, 60 Stat. 1082, which enacted this chapter and sections 427h to 427j of this title and amended section 427 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (h). Pub. L. 110–246, §10402(a), designated the first to sixth sentences of existing provisions as pars. (1), (2)(A), (2)(B), and (3) to (5), respectively, and added par. (6).

Subsecs. (n), (*o*). Pub. L. 110–246, §11016(a), added subsec. (n) and redesignated former subsec. (n) as (*o*).

2000—Subsec. (e). Pub. L. 106–472 inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

1998—Subsec. (h). Pub. L. 105–277 inserted at end ''Shell eggs packed under the voluntary grading program of the Department of Agriculture shall not have been shipped for sale previous to being packed under the program, as determined under a regulation promulgated by the Secretary.''

1984—Subsec. (h). Pub. L. 98–403 inserted provisions relating to the credit of certain funds to the trust fund account which incurs the cost of services provided under this subsection, the future availability of those funds, and investment thereof by the Secretary of Agriculture or the Secretary of the Treasury.

Subsec. (j). Pub. L. 98–443 struck out ''the Civil Aeronautics Board'' after ''the Maritime Commission,''.

1981—Subsec. (j). Pub. L. 97–31 inserted reference to Secretary of Transportation.

1977—Subsec. (c). Pub. L. 95–113 inserted provisions relating to the setting of a standard of quality for ice cream.

1955—Subsec. (h). Act Aug. 9, 1955, inserted sentence to provide penalties for forgery or alteration of inspection certificates, unauthorized use of official grade marks or designations, and false or deceptive reference to United States grade standards or services.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the

[1] So in original.

date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

Pub. L. 110–234, title X, §10402(b), May 22, 2008, 122 Stat. 1349, and Pub. L. 110–246, §4(a), title X, §10402(b), June 18, 2008, 122 Stat. 1664, 2111, provided that: ''The amendments made by subsection (a) [amending this section] take effect on the date that is 1 year after the date of enactment of this Act [June 18, 2008].''

[Pub. L. 110–234 and Pub. L. 110–246 enacted identical provisions. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246, set out as a note under section 8701 of this title.]

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95–113, set out as a note under section 1307 of this title.

TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of Title 49.

Section 304 of 1961 Reorg. Plan No. 7, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, Government Organization and Employees, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission or to Secretary of Commerce by sections 103 and 202 of 1961 Reorg. Plan No. 7.

United States Maritime Commission abolished by 1950 Reorg. Plan No. 21, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix of Title 5, Government Organization and Employees, which transferred part of its functions and part of functions of its Chairman to Federal Maritime Board and Chairman thereof, such Board having created by that Plan as an agency within Department of Commerce with an independent status in some respects, and transferred remainder of such Commission's functions and functions of its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Maritime Administrator, head of Maritime Administration, which likewise was established by Plan in Department of Commerce with provision that chairman of said Federal Maritime Board should, ex officio, be such Administrator.

Executive and administrative functions of Maritime Commission transferred to Chairman of Maritime Commission by 1949 Reorg. Plan No. 6, eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5.

AGRICULTURAL PROCESSING EQUIPMENT; INSPECTION AND CERTIFICATION; FEE

Pub. L. 106–387, §1(a) [title VII, §729], Oct. 28, 2000, 114 Stat. 1549, 1549A–33, provided that: ''Hereafter, none of the funds appropriated by this Act or any other Act may be used to:

''(1) carry out the proviso under 7 U.S.C. 1622(f); or

''(2) carry out 7 U.S.C. 1622(h) unless the Secretary of Agriculture inspects and certifies agricultural processing equipment, and imposes a fee for the inspection and certification, in a manner that is similar to the inspection and certification of agricultural products under that section, as determined by the Secretary: *Provided*, That this provision shall not affect the authority of the Secretary to carry out the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), or the Egg Products Inspection Act (21 U.S.C. 1031 et seq.).''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–78, title VII, §734, Oct. 22, 1999, 113 Stat. 1165.

Pub. L. 105–277, div. A, §101(a) [title VII, §747], Oct. 21, 1998, 112 Stat. 2681, 2681–32, as amended by Pub. L. 106–31, title V, §5001(c), May 21, 1999, 113 Stat. 109.

COLLECTION AND DISSEMINATION OF INFORMATION ON PRICES RECEIVED FOR BULK CHEESE

Pub. L. 105–18, title II, §1001, June 12, 1997, 111 Stat. 172, provided that not later than 30 days after June 12, 1997, Secretary of Agriculture was to collect and disseminate, on weekly basis, statistically reliable information, obtained from cheese manufacturing areas in United States, on prices received and terms of trade involving bulk cheese, including information on national average price for bulk cheese sold through spot and forward contract transactions, and further provided for confidentiality of information provided to, or acquired by, Secretary, report to Congress not later than 150 days after June 12, 1997, on rate of reporting compliance by cheese manufacturers with respect to information collected, and for termination of authority to collect information on Apr. 5, 1999.

LAMB PRICE AND SUPPLY REPORTING SERVICES REPORT AND SYSTEM

Pub. L. 102–237, title I, §124, Dec. 13, 1991, 105 Stat. 1844, provided that:

''(a) REPORT.—Not later than 90 days after the date of enactment of this Act [Dec. 13, 1991], the Secretary of Agriculture shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on measures that are necessary to improve the lamb price and supply reporting services of the Department of Agriculture, including recommendations to establish a complete information gathering system that reflects the market structure of the national lamb industry. In preparing the report, the Secretary shall examine measures to improve information on—

''(1) price reporting series of wholesale, retail, box, carcass, pelt, offal, and live lamb sales in the United States, including markets in—

''(A) California (including San Francisco);

''(B) the East Coast region (including Washington, D.C.);

''(C) the Midwest region (including Chicago, Illinois);

''(D) Texas;

''(E) the Rocky Mountain region; and

''(F) Florida;

''(2) sheep and lamb inventories, including on-feed reports;

''(3) the price and supply relationships between retailers and breakers;

''(4) the viability of voluntary or mandatory reporting for sheep prices; and

''(5) information on the import and export of sheep, analyzed by cut, carcass, box, breeder stock, and sex.

''(b) PRICE DISCOVERY AND REPORTING SYSTEM.—

''(1) SYSTEM REQUIRED.—Based on the report required under subsection (a), the Secretary shall—

''(A) develop a price discovery system formula for the lamb market, such as carcass equivalent pricing; and

''(B) establish a price discovery and reporting system for the lamb market to assist lamb producers to better allocate their resources and make informed production and marketing decisions.

''(2) IMPLEMENTATION.—The price discovery and reporting system for the lamb market shall be implemented by the Secretary not later than 180 days after the date of the submission of the report.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to develop and establish the system required under this subsection.

''(c) CONSULTATION.—In preparing the report required under subsection (a) and establishing the price discovery and reporting system required under subsection (b), the Secretary shall consult with lamb producers and other persons in the national lamb industry.''

RESEARCH TO INVESTIGATE EXTENT TO WHICH GRADE STANDARDS GOVERNING COSMETIC APPEARANCE AFFECT PESTICIDE USE IN PRODUCTION OF PERISHABLE COMMODITIES; ADVISORY COMMITTEE; REPORT

Pub. L. 101–624, title XIII, subtitle C, Nov. 28, 1990, 104 Stat. 3566, as amended by Pub. L. 102–237, title I, § 114(a)(3), Dec. 13, 1991, 105 Stat. 1838, provided that:

''SEC. 1351. DEFINITION.

''As used in this subtitle, the term 'cosmetic appearance' means the exterior appearance of an agricultural commodity, including changes to that appearance resulting from superficial damage or other alteration that do not significantly affect yield, taste, or nutritional value.

''SEC. 1352. RESEARCH.

''(a) REQUIREMENT.—The Secretary of Agriculture shall conduct research to examine the effects, to the extent listed in subsection (b), of grade standards and other regulations, as developed and promulgated pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), and other statutes governing cosmetic appearance.

''(b) SCOPE OF RESEARCH.—The primary goal of this research is to investigate the extent to which grade standards and other regulations governing cosmetic appearance affect pesticide use in the production of perishable commodities. The research shall also—

''(1) determine pesticide application levels for United States perishable commodity production and assess trends, and factors influencing those trends, of pesticide application levels since 1975;

''(2) determine the extent to which Federal grade standards and other regulations affect pesticide use in agriculture for cosmetic appearance;

''(3) determine the effect of reducing emphasis on cosmetic appearance in grade standards and other regulations on—

''(A) the application and availability of pesticides in agriculture;

''(B) the adoption of agricultural practices that result in reduced pesticide use;

''(C) production and marketing costs;

''(D) domestic and international markets and trade for perishable commodities;

''(4) determine the extent to which grade standards and other regulations reflect consumer preferences;

''(5) develop options for implementation of food marketing policies and practices that will remove obstacles that may exist to pesticide use reduction, based on the findings of research conducted under this section.

''(c) FIELD RESEARCH.—

''(1) LENGTH OF PROJECTS.—The Secretary of Agriculture shall implement, not later than 12 months after the date of enactment of this Act [Nov. 28, 1990], a minimum of three, 2-year market research projects, in at least three States, to demonstrate and evaluate the feasibility of consumer education and information programs.

''(2) SCOPE OF FIELD RESEARCH.—Research under paragraph (1) shall be conducted to evaluate programs designed to—

''(A) offer consumers choices among perishable commodities produced with different production practices;

''(B) provide consumers with information about agricultural practices used in the production of perishable commodities; or

''(C) educate the public about the relationship, as determined in the research conducted under this subtitle, between the cosmetic appearance of perishable commodities and pesticide use.

''(d) DISSEMINATION OF RESULTS.—The Secretary of Agriculture shall disseminate to concerned parties the results obtained from prior scientifically valid research concerning Federal marketing policies and practices described in this section to avoid any duplication of effort and to ensure that current knowledge concerning such policies and practices is enhanced.

''(e) ADVISORY COMMITTEE.—

''(1) ESTABLISHMENT.—The Secretary of Agriculture shall establish an advisory committee for the purpose of providing ongoing review of the implementation of the requirements in this section and providing the Secretary of Agriculture with recommendations regarding the implementation of those requirements.

''(2) MEMBERSHIP.—The Advisory Committee shall consist of 12 members comprised of three representatives from not-for-profit consumer organizations, three representatives from not-for-profit environmental organizations, three representatives from production agriculture and the perishable commodity grower and shipper community, and three representatives from the food retailing sector, each with experience in the policy issues discussed in this section.

''(f) REPORT.—The Secretary of Agriculture shall report to Congress on the research conducted under this section no later than September 30, 1992. The Secretary shall report on the research conducted under subsection (c) no later than September 30, 1993.

''SEC. 1353. CHANGES IN PROCEDURAL REGULATIONS.

''With regard to Federal grade standards developed and promulgated pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), the Secretary of Agriculture shall:

''(1) Take into account the impact of those standards on the ability of perishable commodity growers to reduce the use of pesticides.

''(2) Provide for citizens outside of the perishable commodity industry fair and reasonable opportunity to formally petition a change in grade standards.

''(3) Provide for a comment period after a formal petition to change grade standards has been made to enable all interested parties to submit information. The Secretary of Agriculture shall evaluate the information and consider it in the revision process.

''(4) Provide interested parties with annual status reports during the period 1992 through 1994, updated upon request, on all pending grade standard changes the Department of Agriculture is considering.

''SEC. 1354. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out the activities required under this subtitle, $4,000,000 for each fiscal year.''

§ 1622a. Authority to assist farmers and elevator operators

The Secretary may provide technical assistance (including information on such financial assistance as may be available) to grain producers and elevator operators to assist such producers and operators in installing or improving grain cleaning, drying or storage equipment.

(Pub. L. 101–624, title XX, § 2014, Nov. 28, 1990, 104 Stat. 3933.)

CODIFICATION

Section was enacted as part of the Grain Quality Incentives Act of 1990, and also as part of the Food, Agriculture, Conservation, and Trade Act of 1990, and not as

(C) the Department of Agriculture is open to conduct business.

(13) Secretary

The term ''Secretary'' means the Secretary of Agriculture.

(14) State

The term ''State'' means each of the 50 States.

(Aug. 14, 1946, ch. 966, title II, § 212, as added Pub. L. 106–78, title IX, § 911(2), Oct. 22, 1999, 113 Stat. 1188.)

PART B—CATTLE REPORTING

§ 1635d. Definitions

In this part:

(1) Cattle committed

The term ''cattle committed'' means cattle that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the cattle.

(2) Cattle type

The term ''cattle type'' means the following types of cattle purchased for slaughter:

(A) Fed steers.

(B) Fed heifers.

(C) Fed Holsteins and other fed dairy steers and heifers.

(D) Cows.

(E) Bulls.

(3) Formula marketing arrangement

The term ''formula marketing arrangement'' means the advance commitment of cattle for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(4) Forward contract

The term ''forward contract'' means—

(A) an agreement for the purchase of cattle, executed in advance of slaughter, under which the base price is established by reference to—

(i) prices quoted on the Chicago Mercantile Exchange; or

(ii) other comparable publicly available prices; or

(B) such other forward contract as the Secretary determines to be applicable.

(5) Packer

The term ''packer'' means any person engaged in the business of buying cattle in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from cattle for sale or shipment in commerce, or of marketing meats or meat food products from cattle in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce, except that—

(A) the term includes only a cattle processing plant that is federally inspected;

(B) for any calendar year, the term includes only a cattle processing plant that slaughtered an average of at least 125,000 head of cattle per year during the immediately preceding 5 calendar years; and

(C) in the case of a cattle processing plant that did not slaughter cattle during the immediately preceding 5 calendar years, the Secretary shall consider the plant capacity of the processing plant in determining whether the processing plant should be considered a packer under this part.

(6) Packer-owned cattle

The term ''packer-owned cattle'' means cattle that a packer owns for at least 14 days immediately before slaughter.

(7) Terms of trade

The term ''terms of trade'' includes, with respect to the purchase of cattle for slaughter—

(A) whether a packer provided any financing agreement or arrangement with regard to the cattle;

(B) whether the delivery terms specified the location of the producer or the location of the packer's plant;

(C) whether the producer is able to unilaterally specify the date and time during the business day of the packer that the cattle are to be delivered for slaughter; and

(D) the percentage of cattle purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of—

(i) the date on which the cattle were committed to the packer; or

(ii) the date on which the cattle were purchased by the packer.

(8) Type of purchase

The term ''type of purchase'', with respect to cattle, means—

(A) a negotiated purchase;

(B) a formula market arrangement; and

(C) a forward contract.

(Aug. 14, 1946, ch. 966, title II, § 221, as added Pub. L. 106–78, title IX, § 911(2), Oct. 22, 1999, 113 Stat. 1189.)

§ 1635e. Mandatory reporting for live cattle

(a) Establishment

The Secretary shall establish a program of live cattle price information reporting that will—

(1) provide timely, accurate, and reliable market information;

(2) facilitate more informed marketing decisions; and

(3) promote competition in the cattle slaughtering industry.

(b) General reporting provisions applicable to packers and the Secretary

(1) In general

Whenever the prices or quantities of cattle are required to be reported or published under this section, the prices or quantities shall be categorized so as to clearly delineate—

(A) the prices or quantities, as applicable, of the cattle purchased in the domestic market; and

(B) the prices or quantities, as applicable, of imported cattle.

(2) Packer-owned cattle

Information required under this section for packer-owned cattle shall include quantity and carcass characteristics, but not price.

(c) Daily reporting

(1) In general

The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (including once not later than 10:00 a.m. Central Time and once not later than 2:00 p.m. Central Time) the following information for each cattle type:

(A) The prices for cattle (per hundredweight) established on that day, categorized by—

(i) type of purchase;

(ii) the quantity of cattle purchased on a live weight basis;

(iii) the quantity of cattle purchased on a dressed weight basis;

(iv) a range of the estimated live weights of the cattle purchased;

(v) an estimate of the percentage of the cattle purchased that were of a quality grade of choice or better; and

(vi) any premiums or discounts associated with—

(I) weight, grade, or yield; or

(II) any type of purchase.

(B) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by—

(i) type of purchase;

(ii) the quantity of cattle delivered on a live weight basis; and

(iii) the quantity of cattle delivered on a dressed weight basis.

(C) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by—

(i) type of purchase;

(ii) the quantity of cattle committed on a live weight basis; and

(iii) the quantity of cattle committed on a dressed weight basis.

(D) The terms of trade regarding the cattle, as applicable.

(2) Publication

The Secretary shall make the information available to the public not less frequently than three times each reporting day.

(d) Weekly reporting

(1) In general

The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information applicable to the prior slaughter week:

(A) The quantity of cattle purchased through a forward contract that were slaughtered.

(B) The quantity of cattle delivered under a formula marketing arrangement that were slaughtered.

(C) The quantity and carcass characteristics of packer-owned cattle that were slaughtered.

(D) The quantity, basis level, and delivery month for all cattle purchased through forward contracts that were agreed to by the parties.

(E) The range and average of intended premiums and discounts that are expected to be in effect for the current slaughter week.

(2) Formula purchases

The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information for cattle purchased through a formula marketing arrangement and slaughtered during the prior slaughter week:

(A) The quantity (quoted in both numbers of head and hundredweights) of cattle.

(B) The weighted average price paid for a carcass, including applicable premiums and discounts.

(C) The range of premiums and discounts paid.

(D) The weighted average of premiums and discounts paid.

(E) The range of prices paid.

(F) The aggregate weighted average price paid for a carcass.

(G) The terms of trade regarding the cattle, as applicable.

(3) Publication

The Secretary shall make available to the public the information obtained under paragraphs (1) and (2) on the first reporting day of the current slaughter week, not later than 10:00 a.m. Central Time.

(e) Regional reporting of cattle types

(1) In general

The Secretary shall determine whether adequate data can be obtained on a regional basis for fed Holsteins and other fed dairy steers and heifers, cows, and bulls based on the number of packers required to report under this section.

(2) Report

Not later than 2 years after October 22, 1999, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the determination of the Secretary under paragraph (1).

(Aug. 14, 1946, ch. 966, title II, § 222, as added Pub. L. 106–78, title IX, § 911(2), Oct. 22, 1999, 113 Stat. 1191.)

§ 1635f. Mandatory packer reporting of boxed beef sales

(a) Daily reporting

The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (not less than once before, and once after, 12:00 noon Central Time) information on total boxed beef sales, including—

affiliate of the packer) owns for at least 14 days immediately before slaughter.

(14) Packer-sold swine

The term ''packer-sold swine'' means the swine that are—

(A) owned by a packer (including a subsidiary or affiliate of the packer) for more than 14 days immediately before sale for slaughter; and

(B) sold for slaughter to another packer.

(15) Pork

The term ''pork'' means the meat of a porcine animal.

(16) Pork product

The term ''pork product'' means a product or byproduct produced or processed in whole or in part from pork.

(17) Purchase data

The term ''purchase data'' means all of the applicable data, including weight (if purchased live), for all swine purchased during the applicable reporting period, regardless of the expected delivery date of the swine, reported by—

(A) hog class;

(B) type of purchase; and

(C) packer-owned swine.

(18) Slaughter data

The term ''slaughter data'' means all of the applicable data for all swine slaughtered by a packer during the applicable reporting period, regardless of when the price of the swine was negotiated or otherwise determined, reported by—

(A) hog class;

(B) type of purchase; and

(C) packer-owned swine.

(19) Sow

The term ''sow'' means an adult female swine that has produced one or more litters.

(20) Swine

The term ''swine'' means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

(21) Swine or pork market formula purchase

The term ''swine or pork market formula purchase'' means a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or a pork product.

(22) Type of purchase

The term ''type of purchase'', with respect to swine, means—

(A) a negotiated purchase;

(B) other market formula purchase;

(C) a swine or pork market formula purchase; and

(D) other purchase arrangement.

(Aug. 14, 1946, ch. 966, title II, §231, as added Pub. L. 106–78, title IX, §911(2), Oct. 22, 1999, 113 Stat. 1193; amended Pub. L. 109–296, §2, Oct. 5, 2006, 120 Stat. 1464.)

AMENDMENTS

2006—Par. (4). Pub. L. 109–296, §2(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'base market hog' means a hog for which no discounts are subtracted from and no premiums are added to the base price.''

Par. (5). Pub. L. 109–296, §2(b), amended heading and text of par. (5) generally. Prior to amendment, text read as follows: ''The term 'bred female swine' means any female swine, whether a sow or gilt, that has been mated or inseminated and is assumed, or has been confirmed, to be pregnant.''

Par. (12)(B). Pub. L. 109–296, §2(c)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''for any calendar year, the term includes only a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years; and''.

Par. (12)(C). Pub. L. 109–296, §2(c)(2), inserted ''or person'' after ''swine processing plant'', ''plant capacity of the processing plant'', and ''determining whether the processing plant''.

§ 1635j. Mandatory reporting for swine

(a) Establishment

The Secretary shall establish a program of swine price information reporting that will—

(1) provide timely, accurate, and reliable market information;

(2) facilitate more informed marketing decisions; and

(3) promote competition in the swine slaughtering industry.

(b) General reporting provisions applicable to packers and the Secretary

(1) In general

The Secretary shall establish and implement a price reporting program in accordance with this section that includes the reporting and publication of information required under this section.

(2) Packer-owned swine

Information required under this section for packer-owned swine shall include quantity and carcass characteristics, but not price.

(3) Packer-sold swine

If information regarding the type of purchase is required under this section, the information shall be reported according to the numbers and percentages of each type of purchase comprising—

(A) packer-sold swine; and

(B) all other swine.

(4) Additional information

(A) Review

The Secretary shall review the information required to be reported by packers under this section at least once every 2 years.

(B) Outdated information

After public notice and an opportunity for comment, subject to subparagraph (C), the Secretary shall promulgate regulations that specify additional information that shall be reported under this section if the Secretary determines under the review under subparagraph (A) that—

(i) information that is currently required no longer accurately reflects the methods by which swine are valued and priced by packers; or

(ii) packers that slaughter a significant majority of the swine produced in the United States no longer use backfat or lean percentage factors as indicators of price.

(C) Limitation

Under subparagraph (B), the Secretary may not require packers to provide any new or additional information that—

(i) is not generally available or maintained by packers; or

(ii) would be otherwise unduly burdensome to provide.

(c) Daily reporting; barrows and gilts

(1) Prior day report

(A) In general

The corporate officers or officially designated representatives of each packer processing plant that processes barrows or gilts shall report to the Secretary, for each business day of the packer, such information as the Secretary determines necessary and appropriate to—

(i) comply with the publication requirements of this section; and

(ii) provide for the timely access to the information by producers, packers, and other market participants.

(B) Reporting deadline and plants required to report

A packer required to report under subparagraph (A) shall—

(i) not later than 7:00 a.m. Central Time on each reporting day, report information regarding all barrows and gilts purchased or priced, and

(ii) not later than 9:00 a.m. Central Time on each reporting day, report information regarding all barrows and gilts slaughtered,

during the prior business day of the packer.

(C) Information required

The information from the prior business day of a packer required under this paragraph shall include—

(i) all purchase data, including—

(I) the total number of—

(aa) barrows and gilts purchased; and

(bb) barrows and gilts scheduled for delivery; and

(II) the base price and purchase data for slaughtered barrows and gilts for which a price has been established;

(ii) all slaughter data for the total number of barrows and gilts slaughtered, including—

(I) information concerning the net price, which shall be equal to the total amount paid by a packer to a producer (including all premiums, less all discounts) per hundred pounds of carcass weight of barrows and gilts delivered at the plant—

(aa) including any sum deducted from the price per hundredweight paid to a producer that reflects the repayment of a balance owed by the producer to the packer or the accumulation of a balance to later be repaid by the packer to the producer; and

(bb) excluding any sum earlier paid to a producer that must later be repaid to the packer;

(II) information concerning the average net price, which shall be equal to the quotient (stated per hundred pounds of carcass weight of barrows and gilts) obtained by dividing—

(aa) the total amount paid for the barrows and gilts slaughtered at a packing plant during the applicable reporting period, including all premiums and discounts, and including any sum deducted from the price per hundredweight paid to a producer that reflects the repayment of a balance owed by the producer to the packer, or the accumulation of a balance to later be repaid by the packer to the producer, less all discounts; by

(bb) the total carcass weight (in hundred pound increments) of the barrows and gilts;

(III) information concerning the lowest net price, which shall be equal to the lowest net price paid for a single lot or a group of barrows or gilts slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of barrows and gilts;

(IV) information concerning the highest net price, which shall be equal to the highest net price paid for a single lot or group of barrows or gilts slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of barrows and gilts;

(V) the average carcass weight, which shall be equal to the quotient obtained by dividing—

(aa) the total carcass weight of the barrows and gilts slaughtered at the packing plant during the applicable reporting period, by

(bb) the number of the barrows and gilts described in item (aa),

adjusted for special slaughter situations (such as skinning or foot removal), as the Secretary determines necessary to render comparable carcass weights;

(VI) the average sort loss, which shall be equal to the average discount (in dollars per hundred pounds carcass weight) for barrows and gilts slaughtered during the applicable reporting period, resulting from the fact that the barrows and gilts did not fall within the individual packer's established carcass weight or lot variation range;

(VII) the average backfat, which shall be equal to the average of the backfat thickness (in inches) measured between the third and fourth from the last ribs, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point

using an adjustment made by the Secretary) of the barrows and gilts slaughtered during the applicable reporting period;

(VIII) the average lean percentage, which shall be equal to the average percentage of the carcass weight comprised of lean meat for the barrows and gilts slaughtered during the applicable reporting period, except that when a packer is required to report the average lean percentage under this subclause, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary may convert to the carcass measurements or lean percentage of the barrows and gilts of the individual packer to correlate to a common percent lean measurement; and

(IX) the total slaughter quantity, which shall be equal to the total number of barrows and gilts slaughtered during the applicable reporting period, including all types of purchases and barrows and gilts that qualify as packer-owned swine; and

(iii) packer purchase commitments, which shall be equal to the number of barrows and gilts scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.

(D) Publication

(i) In general

The Secretary shall publish the information obtained under this paragraph in a prior day report—

(I) in the case of information regarding barrows and gilts purchased or priced, not later than 8:00 a.m. Central Time, and

(II) in the case of information regarding barrows and gilts slaughtered, not later than 10:00 a.m. Central Time,

on the reporting day on which the information is received from the packer.

(ii) Price distributions

The information published by the Secretary under clause (i) shall include a distribution of net prices in the range between and including the lowest net price and the highest net price reported. The publication shall include a delineation of the number of barrows and gilts at each reported price level or, at the option of the Secretary, the number of barrows and gilts within each of a series of reasonable price bands within the range of prices.

(2) Morning report

(A) In general

The corporate officers or officially designated representatives of each packer processing plant that processes barrows or gilts shall report to the Secretary not later than 10:00 a.m. Central Time each reporting day—

(i) the packer's best estimate of the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, expected to be purchased throughout the reporting day through each type of purchase;

(ii) the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(iii) the base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(iv) the base price paid for all base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis.

(B) Publication

The Secretary shall publish the information obtained under this paragraph in the morning report as soon as practicable, but not later than 11:00 a.m. Central Time, on each reporting day.

(3) Afternoon report

(A) In general

The corporate officers or officially designated representatives of each packer processing plant that processes barrows or gilts shall report to the Secretary not later than 2:00 p.m. Central Time each reporting day—

(i) the packer's best estimate of the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, expected to be purchased throughout the reporting day through each type of purchase;

(ii) the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(iii) the base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(iv) the base price paid for all base market hogs purchased up to that time of the reporting day through each type of purchase other than negotiated purchase, unless such information is unavailable due to pricing that is determined on a delayed basis.

(B) Publication

The Secretary shall publish the information obtained under this paragraph in the afternoon report as soon as practicable, but not later than 3:00 p.m. Central Time, on each reporting day.

(d) Daily reporting; sows and boars

(1) Prior day report

The corporate officers or officially designated representatives of each packer of sows and boars shall report to the Secretary, for

each business day of the packer, such information reported by hog class as the Secretary determines necessary and appropriate to—

(A) comply with the publication requirements of this section; and

(B) provide for the timely access to the information by producers, packers, and other market participants.

(2) Reporting

Not later than 9:30 a.m. Central Time, or such other time as the Secretary considers appropriate, on each reporting day, a packer required to report under paragraph (1) shall report information regarding all sows and boars purchased or priced during the prior business day of the packer.

(3) Information required

The information from the prior business day of a packer required under this subsection shall include all purchase data, including—

(A) the total number of sows purchased and the total number of boars purchased, each divided into at least three reasonable and meaningful weight classes specified by the Secretary;

(B) the number of sows that qualify as packer-owned swine;

(C) the number of boars that qualify as packer-owned swine;

(D) the average price paid for all sows;

(E) the average price paid for all boars;

(F) the average price paid for sows in each weight class specified by the Secretary under subparagraph (A);

(G) the average price paid for boars in each weight class specified by the Secretary under subparagraph (A);

(H) the number of sows and the number of boars for which prices are determined, by each type of purchase;

(I) the average prices for sows and the average prices for boars for which prices are determined, by each type of purchase; and

(J) such other information as the Secretary considers appropriate to carry out this subsection.

(4) Price calculations without packer-owned swine

A packer shall omit the prices of sows and boars that qualify as packer-owned swine from all average price calculations, price range calculations, and reports required by this subsection.

(5) Reporting exception: public auction purchases

The information required to be reported under this subsection shall not include purchases of sows or boars made by agents of the reporting packer at a public auction at which the title of the sows and boars is transferred directly from the producer to such packer.

(6) Publication

The Secretary shall publish the information obtained under this paragraph in a prior day report not later than 11:00 a.m. Central Time on the reporting day on which the information is received from the packer.

(7) Electronic submission of information

The Secretary of Agriculture shall provide for the electronic submission of any information required to be reported under this subsection through an Internet website or equivalent electronic means maintained by the Department of Agriculture.

(e) Weekly noncarcass merit premium report

(1) In general

Not later than 4:00 p.m. Central Time on the first reporting day of each week, the corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary a noncarcass merit premium report that lists—

(A) each category of standard noncarcass merit premiums used by the packer in the prior slaughter week; and

(B) the amount (in dollars per hundred pounds of carcass weight) paid to producers by the packer, by category.

(2) Premium list

A packer shall maintain and make available to a producer, on request, a current listing of the dollar values (per hundred pounds of carcass weight) of each noncarcass merit premium used by the packer during the current or the prior slaughter week.

(3) Availability

A packer shall not be required to pay a listed noncarcass merit premium to a producer that meets the requirements for the premium if the need for swine in a given category is filled at a particular point in time.

(4) Publication

The Secretary shall publish the information obtained under this subsection as soon as practicable, but not later than 5:00 p.m. Central Time, on the first reporting day of each week.

(Aug. 14, 1946, ch. 966, title II, § 232, as added Pub. L. 106–78, title IX, § 911(2), Oct. 22, 1999, 113 Stat. 1195; amended Pub. L. 109–296, §§ 3, 4, Oct. 5, 2006, 120 Stat. 1465, 1468.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–296, § 3, amended heading and text of subsec. (c) generally. Prior to amendment, text related to daily reporting.

Subsecs. (d), (e). Pub. L. 109–296, § 4, added subsec. (d) and redesignated former subsec. (d) as (e).

§ 1635k. Mandatory reporting of wholesale pork cuts

(a) Reporting

The corporate officers or officially designated representatives of each packer shall report to the Secretary information concerning the price and volume of wholesale pork cuts, as the Secretary determines is necessary and appropriate.

(b) Publication

The Secretary shall publish information reported under subsection (a) as the Secretary determines necessary and appropriate.

(Aug. 14, 1946, ch. 966, title II, § 233, as added Pub. L. 111–239, § 2(b)(1), Sept. 27, 2010, 124 Stat. 2501.)

NEGOTIATED RULEMAKING PROCESS

Pub. L. 111–239, § 2(b)(2)–(4), Sept. 27, 2010, 124 Stat. 2501, provided that:

''(2) NEGOTIATED RULEMAKING.—The Secretary of Agriculture shall establish a negotiated rulemaking proc-

tives of this chapter, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subchapter with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.

(Aug. 14, 1946, ch. 966, title II, § 259, as added Pub. L. 106–78, title IX, § 911(2), Oct. 22, 1999, 113 Stat. 1205.)

§ 1636i. Termination of authority

The authority provided by this subchapter terminates on September 30, 2015.

(Aug. 14, 1946, ch. 966, title II, § 260, as added Pub. L. 109–296, § 1(a), Oct. 5, 2006, 120 Stat. 1464; amended Pub. L. 111–239, § 2(a)(1), Sept. 27, 2010, 124 Stat. 2501.)

AMENDMENTS

2010—Pub. L. 111–239 substituted ''September 30, 2015'' for ''September 30, 2010''.

SUBCHAPTER III—DAIRY PRODUCT MANDATORY REPORTING

§ 1637. Purpose

The purpose of this subchapter is to establish a program of information regarding the marketing of dairy products that—

(1) provides information that can be readily understood by producers and other market participants, including information with respect to prices, quantities sold, and inventories of dairy products;

(2) improves the price and supply reporting services of the Department of Agriculture; and

(3) encourages competition in the marketplace for dairy products.

(Aug. 14, 1946, ch. 966, title II, § 271, as added Pub. L. 106–532, § 2, Nov. 22, 2000, 114 Stat. 2541.)

§ 1637a. Definitions

In this subchapter:

(1) Dairy products

The term ''dairy products'' means—

(A) manufactured dairy products that are used by the Secretary to establish minimum prices for Class III and Class IV milk under a Federal milk marketing order issued under section 608c of this title; and

(B) substantially identical products designated by the Secretary.

(2) Manufacturer

The term ''manufacturer'' means any person engaged in the business of buying milk in commerce for the purpose of manufacturing dairy products.

(3) Secretary

The term ''Secretary'' means the Secretary of Agriculture.

(Aug. 14, 1946, ch. 966, title II, § 272, as added Pub. L. 106–532, § 2, Nov. 22, 2000, 114 Stat. 2541; amended Pub. L. 107–171, title I, § 1504, May 13, 2002, 116 Stat. 207.)

AMENDMENTS

2002—Par. (1). Pub. L. 107–171 inserted hyphen after ''means'', designated remainder of existing provisions as subpar. (A), substituted ''; and'' for period at end, and added subpar. (B).

§ 1637b. Mandatory reporting for dairy products

(a) Establishment

The Secretary shall establish a program of mandatory dairy product information reporting that will—

(1) provide timely, accurate, and reliable market information;

(2) facilitate more informed marketing decisions; and

(3) promote competition in the dairy product manufacturing industry.

(b) Requirements

(1) In general

In establishing the program, the Secretary shall only—

(A)(i) subject to the conditions described in paragraph (2), require each manufacturer to report to the Secretary information concerning the price, quantity, and moisture content of dairy products sold by the manufacturer; and

(ii) modify the format used to provide the information on the day before November 22, 2000, to ensure that the information can be readily understood by market participants; and

(B) require each manufacturer and other person storing dairy products to report to the Secretary, at a periodic interval determined by the Secretary, information on the quantity of dairy products stored.

(2) Conditions

The conditions referred to in paragraph (1)(A)(i) are that—

(A) the information referred to in paragraph (1)(A)(i) is required only with respect to those package sizes actually used to establish minimum prices for Class III or Class IV milk under a Federal milk marketing order;

(B) the information referred to in paragraph (1)(A)(i) is required only to the extent that the information is actually used to establish minimum prices for Class III or Class IV milk under a Federal milk marketing order;

(C) the frequency of the required reporting under paragraph (1)(A)(i) does not exceed the frequency used to establish minimum prices for Class III or Class IV milk under a Federal milk marketing order; and

(D) the Secretary may exempt from all reporting requirements any manufacturer that processes and markets less than 1,000,000 pounds of dairy products per year.

(c) Administration

(1) In general

The Secretary shall promulgate such regulations as are necessary to ensure compliance with, and otherwise carry out, this subchapter.

(2) Confidentiality

(A) In general

Except as otherwise directed by the Secretary or the Attorney General for enforce-

ment purposes, no officer, employee, or agent of the United States shall make available to the public information, statistics, or documents obtained from or submitted by any person under this subchapter other than in a manner that ensures that confidentiality is preserved regarding the identity of persons, including parties to a contract, and proprietary business information.

(B) Relation to other requirements

Notwithstanding any other provision of law, no facts or information obtained under this subchapter shall be disclosed in accordance with section 552 of title 5.

(3) Verification

(A) In general

The Secretary shall take such actions as the Secretary considers necessary to verify the accuracy of the information submitted or reported under this subchapter.

(B) Quarterly audits

The Secretary shall quarterly conduct an audit of information submitted or reported under this subchapter and compare such information with other related dairy market statistics.

(4) Enforcement

(A) Unlawful act

It shall be unlawful and a violation of this subchapter for any person subject to this subchapter to willfully fail or refuse to provide, or delay the timely reporting of, accurate information to the Secretary in accordance with this subchapter.

(B) Order

After providing notice and an opportunity for a hearing to affected persons, the Secretary may issue an order against any person to cease and desist from continuing any violation of this subchapter.

(C) Appeal

(i) In general

The order of the Secretary under subparagraph (B) shall be final and conclusive unless an affected person files an appeal of the order of the Secretary in United States district court not later than 30 days after the date of the issuance of the order.

(ii) Findings

A finding of the Secretary under this paragraph shall be set aside only if the finding is found to be unsupported by substantial evidence.

(D) Noncompliance with order

(i) In general

If a person subject to this subchapter fails to obey an order issued under this paragraph after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, the United States may apply to the appropriate United States district court for enforcement of the order.

(ii) Enforcement

If the court determines that the order was lawfully made and duly served and that the person violated the order, the court shall enforce the order.

(iii) Civil penalty

If the court finds that the person violated the order, the person shall be subject to a civil penalty of not more than $10,000 for each offense.

(5) Fees

The Secretary shall not charge or assess a user fee, transaction fee, service charge, assessment, reimbursement fee, or any other fee under this subchapter for—

(A) the submission or reporting of information;

(B) the receipt or availability of, or access to, published reports or information; or

(C) any other activity required under this subchapter.

(6) Recordkeeping

Each person required to report information to the Secretary under this subchapter shall maintain, and make available to the Secretary, on request, original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products during the 2-year period beginning on the date of the creation of the records.

(d) Electronic reporting

(1) Electronic reporting system required

The Secretary shall establish an electronic reporting system to carry out this section.

(2) Publication

Not later than 3:00 p.m. Eastern Time on the Wednesday of each week, the Secretary shall publish a report containing the information obtained under this section for the preceding week.

(e) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this section.

(Aug. 14, 1946, ch. 966, title II, § 273, as added Pub. L. 106–532, § 2, Nov. 22, 2000, 114 Stat. 2542; amended Pub. L. 110–234, title I, § 1510, May 22, 2008, 122 Stat. 999; Pub. L. 110–246, § 4(a), title I, § 1510, June 18, 2008, 122 Stat. 1664, 1728; Pub. L. 111–239, § 3(a), Sept. 27, 2010, 124 Stat. 2502.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–239 amended subsec. (d) generally. Prior to amendment, text read as follows:

''(1) IN GENERAL.—Subject to the availability of funds under paragraph (3), the Secretary shall establish an electronic reporting system to carry out this section.

''(2) FREQUENCY OF REPORTS.—After the establishment of the electronic reporting system in accordance with paragraph (1), the Secretary shall increase the frequency of the reports required under this section.

''(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.''

2008—Subsec. (c)(3). Pub. L. 110–246, §1510(b), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: ''The Secretary shall take such actions as the Secretary considers necessary to verify the accuracy of the information submitted or reported under this subchapter.''

Subsecs. (d), (e). Pub. L. 110–246, §1510(a), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

IMPLEMENTATION OF ELECTRONIC REPORTING SYSTEM

Pub. L. 111–239, §3(b), Sept. 27, 2010, 124 Stat. 2502, provided that: ''Not later than one year after the date of enactment of this Act [Sept. 27, 2010], the Secretary of Agriculture shall implement the electronic reporting system required by subsection (d) of section 273 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1637b), as amended by subsection (a). Until the electronic reporting system is implemented, the Secretary shall continue to conduct mandatory dairy product information reporting under the authority of such section, as in effect on the day before the date of enactment of this Act.''

SUBCHAPTER IV—COUNTRY OF ORIGIN LABELING

§ 1638. Definitions

In this subchapter:

(1) Beef

The term ''beef'' means meat produced from cattle (including veal).

(2) Covered commodity

(A) In general

The term ''covered commodity'' means—
(i) muscle cuts of beef, lamb, and pork;
(ii) ground beef, ground lamb, and ground pork;
(iii) farm-raised fish;
(iv) wild fish;
(v) a perishable agricultural commodity;
(vi) peanuts; and[1]
(vii) meat produced from goats;
(viii) chicken, in whole and in part;
(ix) ginseng;
(x) pecans; and
(xi) macadamia nuts.

(B) Exclusions

The term ''covered commodity'' does not include an item described in subparagraph (A) if the item is an ingredient in a processed food item.

(3) Farm-raised fish

The term ''farm-raised fish'' includes—
(A) farm-raised shellfish; and
(B) fillets, steaks, nuggets, and any other flesh from a farm-raised fish or shellfish.

(4) Food service establishment

The term ''food service establishment'' means a restaurant, cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, or other similar facility operated as an enterprise engaged in the business of selling food to the public.

(5) Lamb

The term ''lamb'' means meat, other than mutton, produced from sheep.

(6) Perishable agricultural commodity; retailer

The terms ''perishable agricultural commodity'' and ''retailer'' have the meanings given the terms in section 499a(b) of this title.

(7) Pork

The term ''pork'' means meat produced from hogs.

(8) Secretary

The term ''Secretary'' means the Secretary of Agriculture, acting through the Agricultural Marketing Service.

(9) Wild fish

(A) In general

The term ''wild fish'' means naturally-born or hatchery-raised fish and shellfish harvested in the wild.

(B) Inclusions

The term ''wild fish'' includes a fillet, steak, nugget, and any other flesh from wild fish or shellfish.

(C) Exclusions

The term ''wild fish'' excludes net-pen aquacultural or other farm-raised fish.

(Aug. 14, 1946, ch. 966, title II, §281, as added Pub. L. 107–171, title X, §10816, May 13, 2002, 116 Stat. 533; amended Pub. L. 110–234, title XI, §11002(1), May 22, 2008, 112 Stat. 1351; Pub. L. 110–246, §4(a), title XI, §11002(1), June 18, 2008, 122 Stat. 1664, 2113.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Par. (2)(A)(vii) to (xi). Pub. L. 110–246, §11002(1), added cls. (vii) to (xi).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

§ 1638a. Notice of country of origin

(a) In general

(1) Requirement

Except as provided in subsection (b) of this section, a retailer of a covered commodity shall inform consumers, at the final point of sale of the covered commodity to consumers, of the country of origin of the covered commodity.

(2) Designation of country of origin for beef, lamb, pork, chicken, and goat meat

(A) United States country of origin

A retailer of a covered commodity that is beef, lamb, pork, chicken, or goat meat may

[1] So in original. The word ''and'' probably should not appear.

origin by reason of the circumstances of their importation or by reason of the character of the articles even though they are not marked to indicate their origin;

(i) Articles which were produced more than 20 years prior to their importation into the United States;

(j) Articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation;

(k) Products of American fisheries which are free of duty;

(l) Products of possessions of the United States;

(m) Products of the United States exported and returned;

(n) Articles exempt from duty under §§ 10.151 through 10.153, 145.31 or 145.32 of this chapter;

(o) Articles which cannot be marked after importation except at an expense that would be economically prohibitive unless the importer, producer, seller, or shipper failed to mark the articles before importation to avoid meeting the requirements of the law;

(p) Goods of a NAFTA country which are original works of art; and

(q) Goods of a NAFTA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73–135, 38 FR 13369, May 21, 1973; T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; T.D. 94–4, 59 FR 140, Jan. 3, 1994; T.D. 96–48, 61 FR 28980, June 6, 1996]

§ 134.33 J-List exceptions.

Articles of a class or kind listed below are excepted from the requirements of country of origin marking in accordance with the provisions of section 304(a)(3)(J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(J)). However, in the case of any article described in this list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents in accordance with the requirements of subpart C of this part. All articles are listed in Treasury Decisions 49690, 49835, and 49896. A reference different from the foregoing indicates an amendment.

Articles	References
Art, works of.	
Articles classified under subheadings 9810.00.15, 9810.00.25, 9810.00.40 and 9810.00.45, Harmonized Tariff Schedule of the United States.	T.D. 66–153.
Articles entered in good faith as antiques and rejected as unauthentic.	
Bagging, waste.	
Bags, jute.	
Bands, steel.	
Beads, unstrung.	
Bearings, ball, 5/8–inch or less in diameter.	
Blanks, metal, to be plated.	
Bodies, harvest hat.	
Bolts, nuts, and washers.	
Briarwood in blocks.	
Briquettes, coal or coke.	
Buckles, 1 inch or less in greatest dimension.	
Burlap.	
Buttons.	
Cards, playing.	
Cellophane and celluloid in sheets, bands, or strips.	
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.	
Cigars and cigarettes.	
Covers, straw bottle.	
Dies, diamond wire, unmounted.	
Dowels, wooden.	
Effects, theatrical.	
Eggs.	
Feathers.	
Firewood.	
Flooring, not further manufactured than planed, tongued and grooved.	T.D.s 49750; 50366(6).
Flowers, artificial, except bunches.	
Flowers, cut.	
Glass, cut to shape and size for use in clocks, hand, pocket, and purse mirrors, and other glass of similar shapes and sizes, not including lenses or watch crystals.	
Glides, furniture, except glides with prongs.	
Hairnets.	
Hides, raw.	
Hooks, fish (except snelled fish hooks).	T.D. 50205(3).
Hoops (wood), barrel.	
Laths.	
Leather, except finished.	
Livestock.	
Lumber, sawed	T.D.s 49750; 50366(6).
Metal bars, except concrete reinforcement bars; billets, blocks, blooms; ingots; pigs; plates; sheets, except galvanized sheets; shafting; slabs; and metal in similar forms.	
Mica not further manufactured than cut or stamped to dimensions, shape or form.	

Articles	References
Monuments.	
Nails, spikes, and staples.	
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.	
Nets, bottle, wire.	
Paper, newsprint.	
Paper, stencil.	
Paper, stock.	
Parchment and vellum.	
Parts for machines imported from same country as parts.	
Pickets (wood).	
Pins, tuning.	
Plants, shrubs and other nursery stock.	
Plugs, tie.	
Poles, bamboo.	
Posts (wood), fence.	
Pulpwood.	
Rags (including wiping rags)	
Rails, joint bars, and tie plates covered by subheadings 7302.10.10 through 7302.90.00, Harmonized Tariff Schedule of the United States.	
Ribbon.	
Rivets.	
Rope, including wire rope; cordage; cords; twines, threads, and yarns.	
Scrap and waste.	
Screws.	
Shims, track.	
Shingles (wood), bundles of (except bundles of red-cedar shingles).	T.D. 49750.
Skins, fur, dressed or dyed.	
Skins, raw fur.	
Sponges.	
Springs, watch.	
Stamps, postage and revenue, and other articles covered in subheadings 9704.00.00 and 4807.00.00, Harmonized Tariff Schedule of the United States.	T.D. 66–153.
Staves (wood), barrel.	
Steel, hoop.	
Sugar, maple.	
Ties (wood), railroad.	
Tides, not over 1 inch in greatest dimension.	
Timbers, sawed.	
Tips, penholder.	
Trees, Christmas.	
Weights, analytical and precision in sets	T.D.s 49750; 51802.
Wicking, candle.	
Wire, except barbed.	

[T.D. 72–262, 35 FR 20318, Sept. 29, 1972, as amended by T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 95–79, 60 FR, 49752, Sept. 27, 1995]

§ 134.34 Certain repacked articles.

(a) *Exception for repacked articles.* An exception under § 134.32(d) may be authorized in the discretion of the port director for imported articles which are to be repacked after release from Customs custody under the following conditions:

(1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the United States.

(2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

(b) *Liquidation of entries.* The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the port director in his discretion upon written application by the importer.

[T.D. 84–127, 49 FR 22795, June 1, 1984]

§ 134.35 Articles substantially changed by manufacture.

(a) *Articles other than goods of a NAFTA country.* An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the ''ultimate purchaser'' of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

(b) *Goods of a NAFTA country.* A good of a NAFTA country which is to be processed in the United States in a manner that would result in the good becoming a good of the United States